

Government of India
Ministry of Commerce & Industry
Department of Commerce

NOTIFICATION

New-Delhi, the 13TH February 2003

FINAL FINDINGS

Subject: Anti-Dumping investigations concerning import of Phenol originating in or exported from European Union, South Africa and Singapore

No. 14/4/2002- DGAD Having regard to the Customs Tariff Act, 1975, as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof:

A. PROCEDURE

The procedure described below has been followed with regard to the investigations:

- a. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Hindustan Organic Chemicals Limited (HOCL) on behalf of the domestic industry, alleging dumping of Phenol (hereinafter referred to as subject goods) originating in and exported from European Union, Singapore and South Africa (hereinafter referred to as subject countries/territories);
- b. The Authority notified the Embassies/Representative of the subject countries in India about the receipt of petition made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- c. The Authority issued a Public Notice dated 15th February 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Phenol originating in or exported from the subject countries falling under Customs Sub-heading 2907.11 and 2707.60 under chapter 29 and 27 respectively of the Customs Tariff Act, 1975;
- d. The Authority notified Preliminary Findings vide notification No. 14/4/2002-DGAD dated 24/6/2002 with regard to anti-dumping investigations concerning imports of Phenol originating in or exported from European Union, South Africa and Singapore and requested the interested parties to make their views known in writing within forty days from the date of its publication;

- e. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the said findings within forty days from the date of the letter;
- f. The Authority provided an opportunity to all interested parties to present their views orally on 17th September 2002. All parties presenting views orally were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rejoinders, if any. The petitioners, exporters and members of the user industry were present at the oral hearing.
- g. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted and arguments made by various interested parties.
- h. The arguments raised by the petitioners and other interested parties have been appropriately dealt with in the preliminary findings and/or these findings;
- i. In accordance with Rule 16 supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same, have been duly considered in these findings;
- j. Investigations were carried out for the period 1st April 2001 to 31st December 2002 (9 months).
- k. **** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

B. VARIOUS ISSUES COVERED IN THE INVESTIGATIONS AND EXAMINED BY THE AUTHORITY.

Product under consideration and Like Article

Views of Importers and exporters

Views of M/s Kesar Petroproducts Ltd, Mitsui & Co and Others

1. The product under consideration in this investigation is phenol. The Authority has determined that phenol produced by the domestic industry and those being imported from the subject countries are like articles. However, it is submitted that we exported number one class of phenol with typical purity of 99.99%, which the petitioner industry is not capable of producing. This high purity material is required in advanced applications like pharmaceuticals and special resins for automobile industry. By defining the product under investigation in very broad terms, protection is sought to be extended to products, which are not manufactured in the country. It is suggested

that the production capabilities of the petitioner company be suitably verified and the product under consideration be amended accordingly.

M/s HOC is not in a position to give Phenol of the grade required for the manufacture of BPA which goes into manufacture Polycarbonates and is required for special epoxies.

In response to the disclosure, M/s Kesar Petroproducts Ltd, Mumbai, have reiterated their observation regarding product under consideration and like article by maintaining that phenol required for manufacture of Polycarbonate grade BPA is not a like article.

Views of the Domestic Industry

2. The product under consideration in the present petition is Phenol also known as Carboic Acid. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. It is marketed in two grades– Crystalline and Hydrated - and in two forms - loose/bulk and packed.

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, manufacturing process & technology (followed by most of the producers from the subject countries), functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. Phenol produced by the petitioner and imported from the subject countries are like articles in accordance with the Anti-Dumping Rules.

In response to the disclosure, with regards to issue of purity and polycarbonate grade raised by opposing interested parties, the petitioner reiterates that it produces phenol containing 99.9% purity. Moreover, Phenol produced by the domestic industry can be used in production of Bisphenol-A polycarbonate grade.

Examination By the Authority

3. The Product under consideration in this investigation is Phenol. Phenol is a basic organic chemical classified under Chapter XXIX of Customs Tariff Act under sub heading 2907.11 and subheading 2707.60 under Chapter XXVII of Customs Tariff Act. The present investigations are in respect of the product under consideration irrespective of the classification under which they are imported. Custom classification is indicative only and is in no way binding on the scope of the present investigations.

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.

In order to establish that Phenol produced by the domestic industry is a Like Article to that exported from EU, South Africa and Singapore, characteristics such as technical specifications, manufacturing process, functions and uses and tariff classification have been considered by the Authority.

The petitioner claimed that the goods produced by him are like articles to the goods originating in or exported from subject countries. However, some of the exporters and importers have argued that the phenol imported by them is different in quality. No evidence has been adduced by any of the interested parties to indicate that imported phenol is not substituting the domestically produced phenol either technically or commercially. The Authority notes that the sole producer of Bisphenol A has been sourcing their requirements of phenol from the petitioner. The Authority, therefore, notes that phenol produced by domestic industry has characteristics, which are similar to those of the phenol imported from subject countries. In view of the above the Authority holds that phenol produced by the domestic industry and those being imported from the subject countries are like articles within the meaning of the rules.

The Authority confirms the provisional findings with regards to product under consideration and like article.

Initiation, Standing and Domestic Industry:

4. Views of M/s Merisol, South Africa, Mitsui & Co, Singapore, M/s Atul Ltd, M/s Foseco, M/s FMA, Mumbai, M/s Kesar Petroproducts Ltd, Mumbai

1. Rule 5(3) (b) of the Customs Tariff (Anti Dumping Duty on Dumped Articles), Rules, 1995, ('the Rules') make it incumbent upon the Hon'ble Designated Authority not to initiate an investigation unless it examines the 'accuracy and adequacy of the evidence provided and satisfies itself that there is sufficient evidence regarding:

Dumping, Injury, where applicable; and

Where applicable, a causal link between such dumped imports and alleged injury, to justify an investigation."

While petitioners may satisfy Part (b) of the test, the onus is on the Hon'ble Designated Authority to verify Part (a) of the test, until such time as is done, it is submitted that this initiation is ultra vires and illegal.

In the instant case, the Petitioner namely Hindustan Chemicals Organic Limited (HOCL) admittedly account for 46.11% of the total production of the Domestic Industry. As the Hon'ble Designated Authority has failed to verify the accuracy and adequacy of the petitioner to file the application, at the time of initiation, therefore, the initiation of the investigation is illegal and bad in law as mandated under the Anti Dumping rules.

The Hon'ble Designated Authority has erred in initiating this investigation without completing the two-part test required for the initiation. Besides, ensuring that the petitioner accounted for over 25% of the domestic industry, the law mandates that the Hon'ble Designated Authority should ascertain the support for the application by 'polling' the remaining constitutes of the domestic industry.

First para of the initiation notification dated 15th February 2002 acknowledges the Petition was lodged by HOCL without any support from any other domestic industry and not on behalf of the Domestic Industry. However, the authority in spite of complete absence of any support from any quarters in para 2 of the initiation notification proceed to record that the Petition has been filed by M/s. Hindustan Organic Chemicals Limited on behalf of the domestic industry in spite of the fact that no support authorization was also lodged along with the Petition.

The details of preliminary findings reveal that the applicability of standing of the petition has not been adequately dealt with and verified by the Authorities before initiating the investigation, considering certain contradictory information which we feel, does not fulfill the condition under 5(3)(b) wherein the domestic producers expressly supporting the application must account for more than 50% of total production. The petitioners themselves admit that during the period of investigation they accounted for less than 50% of domestic production.

There is contradiction in the findings that it is first stated that HCL has supported the petition and it is then stated that HOCL does not qualify as 'Domestic Industry' and hence excluded for applying the criteria of standing. As stated above HCL support was not available in the public file and excluding HCL due to imports is not correct since such imports were not for domestic market. Thus, on this basis itself, the initiation of this investigation does not satisfy the prescribed criteria and should not be proceeded with further.

In response to disclosure, M/s Kesar petroproducts Ltd have again reiterated their stand that condition under article 5(3)(b) is not satisfied and safeguard duty in combination with Anti Dumping duty would give double protection. M/s Merisol RSA, M/s Merisol RSA (Pty), South Africa has reiterated his earlier submission regarding the incorrect initiation of the investigation by Authority as the it has failed verify the twin tests under 5(3)(a) and 5(3)(b) of the Anti Dumping rules. M/s Mitsui & Co have also submitted that their submissions regarding standing have not taken into consideration.

Views of the Domestic Industry

5. The petition has been filed by M/s. Hindustan Organic Chemicals Limited on behalf of the domestic industry. There are three producers of subject goods in India. Petitioner accounts for 47% of Indian Production. However, out of three producers, M/s. Herdillia is an importer of product concerned. The Designated Authority has, therefore, excluded M/s Herdillia Chemicals Ltd, from the scope of eligible domestic industry. Furthermore, the company has expressed its support to the petition and has provided its costing information. Should Herdillia be excluded from the eligible domestic producers, the petitioner would command significantly more than 50% of Indian Production. Further, should Herdillia be included as an eligible domestic producer, then petitioner along with support commands more than 50% of Indian Production. The petitioner, therefore, satisfies standing requirement in all the circumstances and constitute domestic industry within the meaning of the Rules.

It would be worthy to mention here that the all imports made by Herdillia were for exports of Phenol derivatives only, under advance license, as earlier clarified by the company.

In response to the disclosure, Petitioner reiterates its earlier submissions on these issues, which are not being repeated for sake of brevity.

Examination by the Authority

6. The petition has been filed by HOCL, Mumbai on behalf of the domestic industry. The petitioners accounts for almost 47% of the total Indian production of the subject goods. A large number of exporters/importers/users have argued that the petitioners do not have the standing to file the applications. They have quoted 5(3) of the anti dumping rules which says that the DA shall not initiate any investigations pursuant to the application made under sub rule (a) unless it determines on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product that the application has been made by or on behalf of the domestic industry provided that no investigation shall be initiated if

domestic producers expressly supporting the application account for less than 25% of the total production of the like article by the domestic industry. It has also been explained in the sub rules that the application is deemed to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like article produced by that portion of the domestic industry expressing, either support for or opposition as the case may be to the application.

The Authority has examined the contention made by importers/users/exporters in this regard as well as the evidence available on record. It is seen that M/s Herdillia Chemicals Ltd (HCL) is another major producer of Phenol in this country and has supported the petition filed by HOCL. However the Authority notes that Herdillia Chemicals Ltd has imported the subject goods during the POI from the subject countries/territories and therefore the Authority has excluded them from the scope of Domestic Industry. Excluding Herdillia Chemicals Ltd, M/s HOCL satisfies the criteria of standing.

Thus, the Authority holds that the petitioner satisfies the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra. The Authority also proposes to consider this petitioner company as 'domestic industry' within the meaning of Rule 2(b) supra.

Safeguards, Anti Dumping and Double Protection

7. Views of M/s Meisol, South Africa, Mitsui & Co Ltd, Singapore, M/s Atul Ltd, M/s Foseco Ltd, M/s Kesar Petro, M/s MPCL, Mumbai, FMA, Mumbai, EU and Others

Safeguard duties are an emergency measure permitted pursuant to Article XIX of GATT. It is applied when domestic industry cannot compete with the sudden increase in imports. Prior to the imposition of safeguard duties, the Domestic Industry must be suffering from "serious injury". This serious injury must have been caused by the sudden increase of imports.

Unlike in the Anti Dumping sphere, where the Authority may recommend duties to the full extent of the dumping margin, in the Safeguard sphere there is no such concept duties under safeguard sphere can be maximum to address the serious injury by the sudden increase in imports. Countervailing duties on the other hand are duties imposed in the exporting country. Countervailing duties are also country specific and exporter specific, as in the case of Anti Dumping Duties. In view of the jurisprudence above, it is conceivable that both countervailing duties and anti dumping duty may co-exist as the "material injury" can be compensated in terms of the dumping margin and the subsidy margin, thus, it is possible to have duties simultaneously. However, in the

case of safeguard duties, the only measure for imposition of duty is the serious injury to the domestic industry. It is a matter of consensus that the "serious injury" is far greater than 'material injury and subsumes the latter. Clearly, it is inherent that there is an admission of serious injury being caused by the sudden increase in imports, thus, warranting the imposition of safeguard duty, there can be no imposition of anti dumping duties which require a causal link between the material injury and the dumping.

In view of the above, it is submitted that there can be no imposition of anti dumping duties and safeguard duties on the same product.

Safeguard duty is primarily protection granted to compensate for 'serious injury' brought about out by the technological state of the domestic industry of the Member state. It is for this precise reason that the WTO agreements provide for the payment of compensation to the affected Member States.

Thus, it is clear that the law in India precludes the imposition of both anti dumping duty/countervailing duty and safeguard duty

M/s Mitsui & Co has pointed out that as against the concept of 'serious injury' to the domestic injury to the domestic industry under the safeguard provisions, the Anti dumping Rules provide only for material injury. Thus, if sufficient duties have been recommended for removing material injury, which under the very same Act is a less serious situation. Thus, it is obvious that an anti dumping investigation cannot be initiated in a case where safeguard duties have been recommended taking into account almost the same period of investigation

The International Price of phenol during the POI for anti dumping has remained at the same at US \$ 382 PMT as the price based on which SGD Protection for phenol was extended. Thus, extension of SGD was sanctioned on the ground that international price of phenol of \$382 PMT and the price remain at the same level. Therefore, there is no justification for sanctioning additional protection in form of anti dumping duty.

It is to be further noted that the grounds on which this safeguard application was made exactly the same as the grounds mentioned in the present petition for imposition of anti dumping duty namely increase in imports from South Africa and Singapore from April 2001 and more particularly major increase in imports from July 2001.

While recommending Safeguard duty on phenol DG (Safeguard) had obtained commitment from phenol manufacturers that they would achieve cost reduction of Rs.6000/MT. Thus, profit of phenol must have gone up to the extent of saving per annum since such saving were not passed on to the customers.

In response to the disclosure, **M/s Kesar Petroproducts Ltd**, Mumbai submits that SGD must be considered for working out the landed value from subject countries. On the Issue of safeguard duty and Anti Dumping Duty, M/s Merisol RSA, has asked the Authority to verify that methodologies for calculating serious injury and material injury are synchronized and though the injury analysis is for different periods, practically the burden is on the consumer in two folds as duties are prospective. **M/s Mitsui & Co** has submitted that there is an over lapping of the POI for the Anti Dumping Investigations and safeguard investigations and the Authority has not addressed the issue of as to how the concept of material injury is different in scope than the scope of serious injury. EU, in response to the disclosure has submitted that concrete evidence must be provided to aall parties showing that double protection has been avoided.

Views by Domestic Industry

8. It can be argued that this is the first product wherein safeguard duty is in force and anti dumping duty has been recommended. However, there is no legal basis argued by any interested party to state that the two duties cannot run concurrently. Countervailing duty and anti dumping duty have a condition which prohibit simultaneous application of anti dumping duty and countervailing duty. More importantly, even when there is specific legal provision that anti dumping duty and countervailing duties can not be applied simultaneously, there is no legal provision that the safeguard duty and anti dumping duty can not be applied simultaneously. Thus, the entire argument of the other interested parties is without any legal basis. . Thus, strictly speaking, the safeguard duty regulation does not provide that anti dumping duty and safeguard duty can not be applied simultaneously against the same injury

It is a matter of common knowledge that Indian Exporters are suffering anti dumping duty and countervailing duties simultaneously against their exports to Other Countries. When other countries can impose the two duties simultaneously, it follows that the two duties can be imposed simultaneously.

In a situation wherein the import price were earlier fair but became unfair subsequently due to various reasons, it is obvious that the dumping of the product starts in subsequent period. In the instant case, there was no evidence that the imports (in 1999 and before) were at dumping prices. However, there is a positive evidence available now that the imports are at unfair and dumped prices. When the market situation and behavior of imports has changed, naturally, the domestic industry would be entitled to another remedy available. To put otherwise, dumping of the product has surfaced with the imposition of safeguard duty on the product. Naturally, the safeguard duty would is taking care of that part of the injury which is due to fairly

priced imports and industry requires protection in terms of anti dumping duty when dumping has surfaced.

Review 2 was initiated by the Director General (Safeguards) on 22nd October 2001. Though, the period investigation by the Director General (Safeguards) overlaps with the period being investigated by the Designated Authority, the scope of this review 2 was restricted to extension of safeguard duty to developing countries (which were not in the purview of the duty). The initiation notification of review 2 states as under in this regard.

The matter has been examined and it appears that prima facie the imports of Phenol from the aforementioned developing countries are more than de-minimus level stipulated under section 78B of the Customs Tariff Act 1975 and accordingly it has been decided to initiate review proceedings through this notice. The purpose of the review is to determine whether such notified developing countries are eligible to the exemption from payment of safeguard duty on imports of Phenol from these countries." (Emphasis added).

In response to the disclosure, on the issue of the adding of safeguard duty for the calculation of the landed value, the domestic industry submits that , while on the one hand safeguard duty has been included in the landed price of imports, the non-injurious price has been lowered for the domestic industry on account of optimization and normations. Should the safeguard duty be included in the calculations, there is then no justification for calculating optimum cost of production. The cost of production should then be taken at actual levels.

Examination by the Authority

9. It has been argued by various interested parties that since the safeguard duty has been imposed on the subject goods originating from the subject countries, there is no need for any Anti-Dumping duty as safeguard duty has addressed the issue of serious injury which is a part of material injury that Anti-Dumping duty addresses. There are also arguments that after having got the redressal by way of safeguard duty, the domestic industry can not have double benefit by the way of ant dumping duty also. It has been further argued that the cost savings measures that the domestic Industry was required to do has not been passed on to consumers. There are also arguments regarding the lack of enough Jurisprudence in this matter. It has also been pointed out that Indian Exporters are suffering anti dumping duty and countervailing duties simultaneously against their exports to Other Countries.

The Authority has examined the issues concerning this case where safeguard duty has been imposed prior to the initiation of anti dumping investigations and concludes that

The POI in the safeguard investigation was different than the present investigation and hence the injury determination cannot be assumed to be the same and correlated. It has also been examined and confirmed by the Authority that the purpose of the second review in 2001 was to determine whether such notified developing countries are eligible to the exemption from payment of safeguard duty on imports of Phenol from these countries.

With regard to the argument that the DG, Safeguards has removed serious injury and the same implied removal of material injury also, the Authority notes that the nature of injury has changed with exporters now resorting to unfair pricing from a situation of fair pricing (safeguard duty). The Authority concludes that petitioner now needs the protection of anti dumping when the exporters have resorted to unfair pricing of their products. Hence, there is no merit in the argument raised by exporters/users regarding double protection being accorded to the petitioner. It has been claimed by the exporters and importers/users that imposition of anti dumping duty would amount to double protection to the domestic industry. On the other hand the domestic industry has submitted that the safeguard duty has been imposed on the imports of the subject goods to take into account injuries (serious injury) coming out of fair imports as against unfair imports for which anti dumping duty is required. The authority has carefully considered the issues in this regard and notes that the purpose of Anti dumping investigations is to examine whether the firm is undergoing any injury due to unfair imports from subject countries during POI. The Authority feels that occurrence of injury is common in anti dumping and safeguard investigations and the imposition of anti dumping and safeguard duty is to grant protection to the domestic industry for a limited timeframe against dumped/unfair and fair imports respectively. The authority concludes that while calculating injury margin, the safeguard duty would be taken into account in determining landed value of subject goods from the subject countries.

Period of Investigation : Views by M/s Foseco Ltd, FMA, Mumbai and Others

10. It is also stated that the period of investigation is not representative because apart from being a small period of 9 months it was abnormal period since there was major addition to supply of phenol in the world market due to commissioning of MPSL new plant of 2,00,000 MT capacity and depressed market demand. The phenol industry always under goes cyclic variations production, sales, closing stock and prices of finished product.

The petitioner has stated that dumping of phenol started since July 2001 and has submitted statistics up to Nov 2001 only. It is submitted that this period of 5 months is too short a period for taking a decision on long-term measure like imposition of Anti Dumping Duty.

Views of Petitioner

11. At one place, it has been stated that there is no bar or limitations on the power to the Designated Authority to pick any particular period as period of investigation. In the same paragraph, other statement states that six months period is too short for investigation.

We submit that the statement of the opposing interested parties is contradictory. When, there is no bar, the Designated Authority has discretion to choose any period as investigation period. Neither WTO agreement nor Indian Anti Dumping Rules provides any restrictions in this regard.

Examination of the Authority

12. The Authority has taken POI from 1st April 2001 – 31st December 2001 being the most recent period for the investigation when this case was initiated on 15th February 2002. This period was also taken because of the closing of the quarters and the feasibility of getting the complete data. The Authority confirms that nine months time is adequate and just for Anti Dumping Investigation since it also synchronizes with the three quarters for which the relevant data could be available.

Fixed Duty, Variable Duty and Ad valorem Duty

Views of M/s Atul Ltd, M/s Foseco Ltd, Government of Maharashtra, Mumbai and Alta Labs, MPCL and Others

13. Without prejudice to our stand, that initiation of investigation is improper and further processing of the investigation should be discontinued, we suggest imposition of graded anti dumping duty if the authorities decide to go ahead with the imposition of anti dumping duty. As the calculations of injury and dumping margin are based on a price of US \$ 360/- per MT we suggest imposition of AD duty in suitable slabs of CIF prices till the injury is taken care of beyond which there should not be any levy of anti dumping duty.

If it is still felt that Anti Dumping Duty is to be levied it should be based on import price of US \$ 360 with reducing duty structure on increase in phenol price and at imports of US \$ 450 there should be "zero" Anti Dumping Duty which should protect the domestic consumers and domestic industry, as domestic industry need protection between phenol price of US \$ 360-450 PMT.

In response to the disclosure, M/s Kesar petroproducts Ltd, has requested that if at all such duty is to be considered then it should be linked such that no duty is levied for import price above US\$ 450PMT.

Views of the Petitioner:

1. With regard to the argument on graded duty, it is submitted that the duty has to be lower of dumping margin and injury margin. So long as the margins remains unchanged, the duties cannot be modified.

Examination by the Authority

Anti Dumping duty has to be the lower of the dumping margin and injury margin. Graded duty would imply that the test of lower of the dumping margin and injury margin would not be met.

Demand and Supply, Monopoly and Indian Industries Interest

15. Views of M/s Ficom Organics Ltd, Mumbai, Kesar Petroproducts, M/s Foseco, Pune, and Others

Various interested parties have commented on the fact that there is a large supply and demand gap and there is inadequate domestic indigenous domestic manufacturing capacity which is the major reason for the imports of Phenol. They have also highlighted the fact that M/s Mitsui Singapore Ltd (MPSL) set up a new plant with the latest technology which enabled it to sell phenol at a very competitive price. They have also highlighted on the net shortfall between the consumption and combined production capacity of the two domestic players in India.

In response to the disclosure. **M/s Kesar petroproducts Ltd**, have brought the attention of the Authority towards the demand & supply situation in the Indian market coupled with adverse duty structure for phenol users and internal problem of the petitioner. They have further highlighted the issue regarding the current price increase and supply constraint. **M/s Ficom organics Ltd**, M/s Ficom Organics Ltd, Mumbai, has highlighted the fact that there is an acute shortage of Phenol in the market and Indian Phenol manufacturers are not at all able to fulfill their contractual fulfillments on supply of Phenol. They have also informed of a price hike of more than 70% in a year of the subject goods and have requested that in the interest of the entire Industry, Anti Dumping duty on Phenol be removed with the immediate

Views of the Petitioner:

16. Public interest can not imply consumer interest. Imposition of anti dumping duty would be in public interest as it would help maintaining availability of wider choice to the consumers of subject goods, which is necessary for fair competition. In fact, Director General (Safeguards) has in particular held that imposition of safeguard duty was in the public interest. When safeguard duty was in the public interest, there is no basis or reasoning to argue that imposition of anti dumping duty would not be in the public interest.

It would also be relevant to point out that all the arguments on the issue of public interest are unsupported with the Rules.

In response to the disclosure, the domestic Industry submits that monopoly means a situation in which a producer can dictate the price. We reiterate that when there are more than a producer, there can not be monopoly and when a producer is in a position to dictate the price, there can not be a situation of dumping and injury.

Examination by the Authority

17. It has also been argued by some interested parties that HOCL, is the only producer of the subject goods in the country besides Herdillia which has been taken over by Schenectady and therefore, the present petition has been filed by them to avoid any competition. Further, the total capacity of the petitioner is short of the demand of Phenol in the country and the size of the plant is too small to cater to total demand of the in this country. It has also been argued that the technology used by the domestic industry is obsolete. Issues have also been raised regarding the poor quality of the goods produced by the domestic industry as well as the methodology adopted for apportionment of fixed costs, depreciation and overheads to the production of Phenol. It has also been stated that the prices of exports to India are at the prices prevailing in international market.

The Authority has examined the above issues. The purpose of anti dumping duty is to ensure that any injury caused to the domestic industry due to dumping is addressed adequately. The fact that there is a single producer of the subject goods in the country (apart from Herdillia which has been taken over by Schenectady) does not, in any way, restrict the right of the domestic producers to claim relief from the Designated Authority against the dumped imports under the Anti Dumping Rules. It has been the accepted position that anti dumping duty is in the nature and form of providing a remedy against the trade distorting practice of dumping. Further, anti dumping duties do not propose to restrict or block imports from any sources and therefore, the issue of the domestic supply being short of the total consumption in the country, has no relevance. Also since alternative sources of supply are available to the Indian

industrial users, the apprehension of the petitioner company exercising monopoly position to exploit the customers is misplaced.

Internal problems, long shut down, Low closing stocks and inefficient productions of the Petitioner

Views of M/s Kesar Petroproducts Ltd, and Others

18. Various interested parties have commented upon the fact that internal problems of the petitioner industry coupled with the long shut down period during the April- May 2001 with low closing stocks were the main reason for the injury to the domestic Industry and not the dumped imports. Few interested parties have also mentioned about the inefficient nature of the production of the domestic Industry. They have also referred to the fact that low closing stocks during May month prompted the user industries to go in for the imports.

In response to the disclosure, M/s Kesar Petroproducts Ltd, have reiterated its earlier submissions.

Views of the Petitioner

19. The petitioner has submitted that there is a direct correlation between production and sales volume of the product by the Indian manufacturer and imports from subject countries. Sales volume of the domestic Industry got adversely affected with consumers switching over to imports. In March 2001 i.e. just prior to the period of the investigation, there was significant import bookings by the exporters, which landed in April and thereafter. Effect of these bookings were felt on the sales volume of the petitioner and consequently upon the production. In April 2001, the production and sales were **** and **** MT and considering the stock level of **** MT as also significant order bookings by the exporters, the domestic Industry decided to take a shutdown in the plant in May 2001. In spite of no production. the domestic industry continue, to meet the requirement and brought the inventory levels to realistic levels of *** MT. In June, July and August, production of the domestic industry was comparatively higher. However, availability of dumped material resulted into significant inventory pile up from *** MT in May to **** MT by August. This was higher than average monthly sales during that period. In September, the domestic industry restricted its production and made hard efforts to sell its produce at reduced prices. This resulted in higher sales volume and reduction in the inventory levels. The Company, therefore, once again increased its production in October, which was almost double than September. However, again due to arrival of significant dumped imports in the market, sales volume remained sluggish and inventories increased to a level of almost average monthly sales during that period. In November, company

again restricted its production. However, it did not help the company in reducing inventories significantly as sales volumes did not pick up. In December 2001, production of the domestic industry was comparatively higher. Even after reducing selling price and offering material at loss, the company was not able to sell the material resulting into decline in sales volume and higher inventories.

In response to the disclosure, with regards to the low closing stocks, domestic industry submits that the statement is far away from facts. In all months of the period of investigation, the domestic industry had sufficient stocks to meet the demand of the product. Even at the time of shutdown, the domestic industry had sufficient stocks, which were sufficient to meet sales during the shut down periods.

Examination by the Authority

20. The Authority has verified the records of the company from the data supplied by them and it notes that due to the dumping of the subject goods from the subject countries, the domestic industry was not able to sell the subject goods resulting into decline in the sales volume and higher inventories.

Issue regarding Current Price Increase and Current Supply constraints

Views of M/s Foseco Ltd and Others

21. It may kindly be noted that plant set up by Mitsui Phenol Singapore Ltd. of 2,00,000 tone capacity is now being used solely for its own captive consumption for manufacturing BPA and they have stopped selling phenol totally. The sale by this plant in POI was thus a temporary event which should be ignored for deciding the matter.

It may also be mentioned that recently there has been a major fire in Albama Plant in Texas, USA of 4 lacs MT capacity, which has affected the supply of phenol in the world market.

Views of the Petitioner:

22. Post period investigation facts have no relevance in the present investigation period. Without prejudice, the parameter can not be seen in isolation. Another factor of equal importance is the prices of associated raw materials and their impact on the cost of production. It would be worthy to mention here that crude oil prices in post investigation period have reached to more than double level. The relevant factor possibly is cost adjusted prices and a minimum period of six months (even though these interested parties have argued that even six months period is too short a period).

Petitioner notes that while these interested parties argue that dumping should be seen over a period longer than six months, factors such as present temporary prices over a short period of 1-3 months are arguably sufficient to decide the present investigation.

Other Issues

M/s HOCL, Mumbai

Calculations of Landed Value of imports for determination of injury margin

23. It is found from the preliminary findings that the Designated Authority has included the safeguard duty in force for calculation of landed value of imports. The calculation is inconsistent with the practice being followed for determination of injury margin

Duty on packed phenol

24. Since the Designated Authority has considered it appropriate to determine separate duty for packed and loose phenol, domestic industry would like to provide information with regard to packing cost involved in case of packed phenol. It is requested that such information may kindly be taken into account while calculating non injurious price for packed phenol.

The statement of opposing interested parties that HOCL is the only producer is factually incorrect as it is a well known fact, known to opposing interested parties also that the HOCL is one of the three producers of Phenol in India.

The installed capacity of the petitioner is 40000 MT. At the time of making application for safeguard duty, the domestic industry has draw adjustment plan and accordingly necessary changes have been made. Accordingly, effective capacity of the domestic industry is 49000 MT.

Views expressed by M/s Schenectady Herdillia, Mumbai.

25. Our company has pioneered the manufacture of phenol in India by the synthetic route and have been manufacturing this product since 1968. Apart from this, for the last over a decade, we have been manufacturing derivatives of phenol as well. We have been exporting significant quantities of phenol derivatives for which we had imported phenol duty free. All our imports of phenol during the Investigation period were under DEEC Scheme/Advance License.

We have already supported the application made by Hindustan Organic Chemicals Ltd. (HOCL) for levy of Anti Dumping duty on phenol imported from the subject countries.

The data provided by us is open for verification by the officers of your Honorable Directorate. The data provided by us for the investigation period clearly shows that we have suffered injury due to dumping.

Since major portion of phenol derivatives manufacture by us is exported, the captive consumption for our own phenol (for manufacture and sale of derivatives in domestic market) is a very small portion of our domestic production.

Our company has no objection for being included as a part of the domestic Industry. Likewise, our company has no objection to being excluded from the domestic industry for the purpose of said investigation.

We learn that M/s HOCL are praying for increase in Anti-Dumping Duty on phenol imported in packed condition. We support this prayer of HOCL.

M/s Merisol S.A South Africa

26. Use of data filed by Merisol at para43 page 37 of the Preliminary Findings, the Hon'ble Designated Authority has noted that the 'the authority has, therefore, taken the port data furnished by Kandla Customs for imports of subject goods from EU and all bulk imports from South Africa. It is submitted that Merisol is the only exporter of this product under consideration from South Africa. The data filed by Merisol is true and complete representing all drum and bulk imports from South Africa, thus, it is submitted that the exporters data be accepted as full and complete and all calculations be made on this basis.

The petitioners cite the example of Polyol as a basis for the co-existence of Anti dumping duty and safeguard duties. However, it is clear from the sequence of events that at the time of discontinuance of safeguard duties, no anti dumping duty had come into force.

At the outset, it must be stated that the Hon'ble Designated Authority has erred by relying only on the information provided by M/s. HOCL and has ignored the data of M/s. Schenectady Herdillia by ruling them out of being domestic industry. It may please be noted that M/s HOCL has historically been an inefficient enterprise and basing all the injury calculations on the HOCL data is causing extreme hardship to the consuming industry.

M/s Mitsui &Co, Singapore

27. In para 35 of the preliminary findings, the information related to cost of production, net sales realization and profit and loss has been indexed with reference to the year 1998-99. In this connection, we wish to submit that the figures of the period of investigation cannot be compared to 1998-99 as a proper analysis would require that the comparisons are made with the immediately preceding period unless reasons to the contrary are demonstrated.

M/s Atul Ltd, Mumbai

28. We wish to mention here that Atul Limited is a Rs.600 crore turnover company belonging to the Lalbhai group having diversified interests in various fields. Our Agrochemicals division manufactures wide range of pesticides (herbicides and fungicides) and cater to domestic as well as export market. We are the major end user of phenol in pesticide industry and would severely be affected due to proposed imposition of anti dumping duty on phenol imports.

Authorities have already accepted in para 8 of part D that HCL is another major producer in the country and supports the petition. We submit that here that in all fairness, the same yardstick should be applied for interpreting various provisions of the act and the Authorities should reconsider their exclusion from the investigation.

- Imposition of Anti Dumping Duty does not serve public interest:
- This would lead to heavy losses and in turn closure of the units.
- Retrenchment of labour creating labour unrest/unemployment.
- Reduction in export hence loss of valuable foreign exchange to the country.
- M/s Foseco

29. We are one of the largest speciality chemical supplier to the Foundry and steel industries, mainly consisting of automotive, general engineering, railways, valves and associated small foundry ancillaries, who are catering to the auto manufacturers. As you are aware, due to continuous recession and the slack in the economy in the above mentioned foundries (viz. automotive, general engineering, railways, valves) our customers are unable to bear the increase in the input cost with the result we are forced to absorb the increased cost since we are unable to recover the same from the end users.

High prices of phenol has made the operational cost of the phenol user industry non-viable and same units are closing down.

It may be noted that the fluctuation in selling prices of phenol is result of supply and demand of phenol in market at a given time and not due to dumping. It can be seen that prices of phenol have since been increased by phenol manufacturers by Rs.4000 pmt and prices of acetone have also been increased by Rs.3500 PMT though there has been no increase in cost of raw materials.

M/s Kesar Petroproducts

30. We are manufacturers of Bisphenol-A (BPA) having rated capacity of 5000 TPA. Our requirement of phenol is 0.966 MT per MT of BPA. We also require Acetone (0.303 MT per MT BPA) which is a joint product of phenol. Thus, we are fully dependent on phenol manufacturers of our production programme and have been buying our requirements of phenol and acetone from HOC. We have developed strong business relationship with HOC and have received highly satisfactory service from them in terms of deliveries, product information, terms of payment etc.

It is, however, experienced that price of phenol as well as acetone are very frequently revised upwards under a joint strategy followed by the two phenol manufacturers. For every increase of Rs.1000 in the price of phenol, the manufacturing cost of BPA goes up by Rs.1000 per MT. We are not able to pass on these increases in the cost of production to our customers since BPA is available in the international at a very competitive price and in order to retain our customers we have to absorb such increases which result in our operations becoming unprofitable.

M/s Ficom Organics

31. We were one of the largest manufacturers of Alkyl Phenols in India since 1983 to 1998 and were consuming large quantity of phenol from M/s. Hindustan Organics Chemicals Limited, (HOCL), Cochin. However, in the process of globalization, import duties have been reduced drastically from original level of 100% to 30% on Alkyl phenols thereby opening up the gates of cheaper imports of Alkyl phenols in to India from nearby countries. We could not compete them as we had no direct/indirect protection and also no control on phenol price as there were only two manufacturers of phenol.

We have not been able to operate the plant at full capacity as phenol supply from HOCL is erratic.

When Indian manufacturers are not able to meet domestic demand there is no alternative for the consumers of phenol but to import and if anti dumping duty is levied in such a situation, especially manufacturers like us who will be forced to once again shut their plant due to high cost of their finished goods.

International prices are currently ruling around US \$ 750/MT. At such a high price coupled with local customs duty, safeguard duty, special additional duty and storage cost we do not see any justification of still to levy anti dumping duty as this will seriously affect the consumers of phenol who will be forced to import due to non-availability from domestic manufacturers. In such a situation dumping of phenol in India is just not possible.

At this juncture, we would also request you to make anti dumping duty applicable on range of Alkyl Phenols being produced in India as we also need equal protection from other countries against cheaper imports.

Govt of Maharashtra, Department of Energy

32. A number of representations have been received from manufacturers of downstream products based on phenol in Maharashtra to the effect that imposition of such duties will be extremely harmful to them and many of them may have to discontinue or drastically reduced their production since they are already selling their products below cost of production due to international competition.

It is requested that the matter may be viewed very carefully in the longer interest of phenol manufacturers as well as phenol users which is required in the interest of long term growth of phenol and phenol based industry.

M/s MPCL

33. It may be considered that like the petitioner, the phenol users are also domestic industry which requires market conditions in which it can survive. Thus, a view has to be taken on how to protect the interest of the domestic industry as a whole and not only the interest of the petitioners who have much more financial strength than the downstream small and medium sector users of the petitioners product.

M/s Pragati Chemicals

34. They have pointed out towards high profitability of Phenol plant and also the fact that HOC was an importer of phenol earlier. They have also pointed out the fact that like the petitioners, phenol users are also domestic industry, which requires market conditions in which it can survive.

Alta Laboratories

35. We are manufacturers of Bulk Drugs & Fine Chemicals mainly Salicylic Acid & its derivatives and phenol is our basic raw material. Prior to the year 1987 M/s.

Herdillia Chemicals Ltd. was the sole manufacturer of phenol and we had to face all sorts of problems, which are inherent in a monopolistic supplier. With the advent of M/s. Hindustan Organic Chemicals Limited, we were optimistic that the situation would improve, but it was only an illusion.

Like petitioner we are also a domestic industry and we require market conditions in which we can survive. Our main product Aspirin is subject to statutory price control under DPCO and Govt. expects us to sale this drug at reasonable price. Aspirin contributes more than 60% of our sales turnover. Thus, a view has to be taken on how to protect the interest of the domestic industry as a whole and not only the interest of the petitioners.

All India Association of Industries

36. We like to bring to your notice that one of our members has been seriously affected by way of heavy increase in input cost of phenol imported Europe, Singapore and South Africa.

The Speciality chemical is supplied mainly to the Foundry and Steel Industries, mainly consisting of automotive, general engineering, railways, valves and associated small industry ancillaries, who are catering to the auto manufacturers.

Hence, for survival of the foundry industry and foundry chemical suppliers, it is requested that the anti dumping duty should not be imposed and look forward to your valued response.

European Union

37. In addition, the European Commission would like to draw your attention to what seems to be an incoherent use of information. When determining whether exports from the EU were below the De Minimis threshold, the Designated Authority has used data as submitted by the petitioner allegedly due to the incompleteness of published data from the DGCI&S.

The assertion by the DA that 'the landed value of imports has been found to be significantly lower than the domestic industry's net sales realization should led to an even more demanding analysis of all factors causing injury, as determined under Article 3.4 of the WTO AD Agreement

Given the above, it is submitted that the current anti dumping investigation must be terminated.

Examination by the Authority regarding Current Price Increase, Current Supply constraints and Other Issues raised

1. It has been recognized by the Authority consistently that the imposition of anti dumping duty may have some impact on the prices of the product in the market. However, at the same time, the Authority has consistently held that the relative competitiveness of the users would not be affected with imposition of anti dumping duty. In the long run, Users would have assured supply of material at reasonable prices.
2. There have been arguments that the Indian Producers jointly resort to price increases. In case the Indian Producers increase the prices beyond a certain limits, there would be automatic check on the same by way of imports.
3. The fact that there is a single producer of subject goods in the country and does not, in any way, restrict the right of domestic producer to claim relief from the Authority against the dumped imports under anti-dumping rules. It has been the accepted that anti-dumping duty is in the nature and form of providing a remedy against trade distorted practice of dumping. Further, anti-dumping duties do not propose to restrict or block imports from any sources and, therefore, the issue of domestic supply being short of the total consumption in the country, has no relevance. Also, since alternative sources of supply are available to the Indian users, the apprehensions of user industry, in this regard, are misplaced.
4. With regards the point raised by various interested parties about domestic industry being an inefficient supplier of the subject goods, the Authority holds that it has determined injury margin considering the optimum costs of the production.

C. Normal Value, Export Price and Dumping Margin

Issues relating to the Dumping Margin

Views by M/s Mitsui & Co, Singapore and others.

38. It appears that the dumping margins worked out for various countries are not based on the actual cost data, but is based on constructed cost by the petitioner. There is a wide variation and the data requires proper scrutiny. We support the views expressed by the exporters M/s. Mitsui & Co. and Merisol as covered in the preliminary findings.

The Authority has worked out the dumping marking in case MPSL at 28.75% of export price and for Mitsui & Co. at 28.5% of export price. In case of Merisol, South

Africa the dumping margin is estimated at 42.24% for bulk sales and 36.48% for drum sales. It is however seen in case of European Union the dumping margin is taken as 97.72% based on the constructed cost of production as worked out by the petitioner. It is submitted that there cannot be such big difference in the dumping margin in Singapore, South Africa and European Union since the manufacturing process and cost of raw materials will not be so different as to justify such variation.

In response to the disclosure, M/s Kesar Petroproducts Ltd, submits that dumping margin appears to be very high and exporters of Phenol being major players in the world, domestic user would suffer serious injury if AD is levied based on such unrealistic dumping margin. On the issue of methodology of calculation of dumping margin, M/s Merisol,RSA, an exporter has requested the Authority to reconsider the use of best information i.e 6(8) as the exporter had commercial constraints and challenges to part with the information requested. They have concluded that margin of dumping is inflated and erroneous, factors do not indicate injury, and causal link is not established and duty recommended is unjustifiably high. On the Issue of Dumping, M/s Mitsui & Co have highlighted the fact that issue of various appendices pertaining to the exporters questionnaire are not relevant to them as they are a trading company and hence their cost of production details are irrelevant.

Views of the Petitioner

39. Designated Authority sent initiation notification along with questionnaire proforma to the known exporters/producers in subject countries as also embassies of the subject countries in India. Only two companies from Singapore and South Africa and one trader from Singapore has responded to the Designated Authority. It is acknowledged in the preliminary findings that none of the exporters have furnished complete response in the form and manner prescribed and vital information was withheld by the exporters/ producers. Even after acknowledging that the exporter has not provided complete information, partial information has been accepted and dumping margin determined in the preliminary findings, resulting in lower dumping margin. It is worthy to note that the deficiencies in the response are in the nature of information consciously withheld by the exporters. Such being the case, acceptance of partial response is nothing but a bonus to the exporters for providing partial response.

40. The Designated Authority has determined separate dumping margin for

- a. Mitsui & Company,
- b. Mitsui Phenol Singapore

The response filed by Mitsui & Company states that the goods exported by the company were goods produced by Mitsui Phenol Singapore. This is in response to the

question in the questionnaire with regard to identity of the producer. Followings are relevant in this regard: -

Since Mitsui & Company is not a producer of the subject goods, the company is not entitled for determination of dumping margin in isolation. At best, the company could seek fixation of anti dumping duty rate along with the concerned producer.

Since Mitsui & Company and Mitsui Phenol are affiliates, sales made by Mitsui & Company should be treated as sales made by Mitsui Phenol through its affiliates. Thus, Mitsui & Company is left with no sales which did not originate in Mitsui Phenol. Such being the case, Mitsui & Company could not have demanded a separate dumping margin.

The response filed by Mitsui Phenol is deficient to the extent that the company has not disclosed the fact that the exports to India were in fact carried out by Mitsui & Company. Thus, the same export transaction to India has been treated twice for determination of dumping margin - once as exports of Mitsui & Company and again as exports of Mitsui Phenol.

In response to the disclosure, the domestic industry on the issue of dumping from M/S Mitsui Phenol Singapore Ltd, maintains that the exporter has not furnished profit & loss statement of the company, which is very critical for determination of fair cost of production of the company (relevant for determination of whether the sales made in the domestic market of the exporting country were in ordinary course of trade. As regards Mitsui & Co, Designated Authority is fully justified in treating exporter as non-cooperative, as vital information has not been provided by the company though they maintain that There is no legal basis for the exporter to claim separate dumping margin in case the exporter is a trader. As regards M/s Merisol, since the exporter has not provided information desired by the Authority, it has been rightly held that the exporter has not cooperated in the investigations

Examination by the Authority

41. The Authority sent questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)©. The Authority received responses from the following exporters and exporters association.

Mitsui & Co Ltd. Singapore Branch.

Mitsui Phenol Singapore Ltd(MPSL), Singapore.

Merisol RSA (pty) Ltd, South Africa.

42. The Authority notes that M/s Mitsui & Company Ltd, Singapore Branch is a public company Incorporated and listed in Japan. They have exported to different importers in India during POI though they don't have any domestic sales. On the other hand M/s Mitsui Phenol Singapore Pte ltd, Singapore has exported to India during the POI through trading houses and they have made domestic sales also during this period.

Normal value and Export Price determination for Singapore:

43. Only M/s. Mitsui & Co Ltd, Singapore branch and M/s Mitsui Phenol Singapore Ltd, Singapore have responded from amongst the exporters of Singapore. M/s Mitsui Phenol Singapore Pte. Ltd. has given information relating to sales made in the home market and they have given an account of volumes sold along with invoice numbers and dates as per appendix I. They have added that they had sold phenol into India via Trading Houses and they have given customers names and addresses along with the details of shipment made. However they have not enclosed any profit and loss statement and balance sheets for the last three years in their submissions. The Authority also notes that the exporter has not submitted any information regarding financing and interests costs as required in the Appendix-8,9 and 10 in their submission as per their response to the questionnaire .

However the Authority notes that they have submitted the different transactions pertaining to domestic sales by giving invoice numbers, date volume sold and rate per unit in Appendix 1. The Exporter has also submitted information with regards to Appendix 3, which shows the export to India and domestic market sales. They have also submitted Appendix 4 and Appendix 5, which show sales price structure for exports to India and Sales price structure to Domestic sales. Further they have submitted the information under major heads excepting financial and interests costs as per Appendix 8 & 9 which gives the ex factory price for domestic sales and sales price for export to India. The Authority, for the purpose of preliminary determination, had accepted the data submitted by the exporter for normal value and export price determination by taking ex factory price for domestic sales as normal value on weighted average basis and ex factory price for sales to India as Export price also on weighted average basis subject to further verification and investigation. The Authority notes that they have not participated in the Public hearing conducted by the Authority and have not responded to the information sought during the preliminary findings and the subsequent letters written by the Authority to them to provide additional information as well. The Authority hereby declares the exporter as uncooperative and has constructed the normal value as per the facts available as per Rule 6(8) as the exporter has not submitted the relevant documents even after preliminary findings and subsequent letters written to them to provide the same. The Authority has therefore assessed the normal value for the exporter as per the best information available. The

Authority has also accepted the data made available by the domestic industry with suitable normation and applicable adjustments. The normal value for this exporter comes to US\$ **** per MT.

The Authority also notes that the firm has exported **** MT of subject goods to India at the rate of US\$ **** during the POI and ex factory price after making all adjustments come to US\$**** per MT. The Authority has allowed various adjustments as claimed by the exporter while arriving at the net export price at the ex. Factory level. These include discount @ US\$ ****per MT, Charges before FOB @ US\$****, after FOB adjustments @ US\$ **** towards overseas freight and @ US\$ **** towards overseas Insurance on per MT basis. The authority has determined normal value as US\$ **** per MT and Export price as US\$**** per MT. Accordingly the dumping Margin comes to US\$ **** per MT or 70.88 % of the export price.

M/s Mitsui & Co, Singapore

44. M/s. Mitsui & Co. Ltd. Singapore Branch has submitted similar arguments as made by M/s Mitsui Phenol Pte ltd. Singapore. They have not submitted any information as per Appendix I of the questionnaire. However, as per Appendix III, they have confirmed that they do not any domestic market sales. They have given an account of exports made to India by giving customers names and addresses along with details of shipments made. They have given further information as regards sales price structure for exports to India and countries other than India. They have also calculated the price at the ex factory level for exports to India after making adjustments towards discounts/commissions and overseas freights. However they have not submitted any information towards appendix VII onwards. . However, the Authority had accepted the exporter's submissions for the limited purpose of preliminary findings subject to further verification and investigation. However, after the preliminary findings, the exporter was asked to submit the detailed information pertaining to the investigation along with the information listed in the preliminary findings but the exporter has submitted no relevant information till date. The firm has claimed that they made exports to third country and they had given an account of third country sales during POI. However, the Authority notes that the firm has not submitted any information listed in the letter written to them on 20th September 2002 with regards to the details of the raw material consumed and their expenses, complete details of the utilities, basis of determination of adjustments in the Appendix IV, V and VI, profit and loss accounts and balance sheet for the POI and three years prior to that etc, . As the required information has not been made available to the Authority, the Authority has been constrained to construct the normal value as per the best information possible as per Rule 6(8) . In this regards, the Authority has also accepted the data made available by the domestic Industry with applicable adjustments and suitable normation as has

been done in the case with Mitsui Phenol Singapore Ltd. The Authority has therefore determined the normal value for Mitsui & Co. Ltd. as US \$ **** per MT. From the Exporters data, the Authority notes that the firm has exported **** MT of subject goods to India for a total value of US \$ **** during the period of investigation and their ex factory export price has been taken as US \$ **** pre MT after making adjustments towards discounts/commissions and overseas freight. The Authority has allowed discounts/ Commission @ of US\$ @ **** , overseas freight @ of US \$**** , overseas insurance of US\$ **** as claimed by the exporter on per MT basis. The dumping margin for M/s. Mitsui & Co. comes to US\$ **** per MT or 60.56 % of export price

Other Exporters from Singapore

45. As regards determination of normal value for other non-cooperating exporters, the Authority has taken normal value as determined in the case of M/s Mitsui & Co. Singapore as mentioned in the preceding paragraph. As regards the export price the Authority has taken the lowest export price from Singapore to India during POI as the export price for non-cooperating exporters. The ex factory export price has been arrived after making adjustments towards commission, ocean freight and insurance. The authority has determined normal value as US\$ **** per MT and Export price as US\$**** per MT for non-cooperating exporters. The Dumping margin for Non-cooperating exporters comes to US\$. **** Per MT or 91.70% of the export price.

Normal Value and export price for Merisol RSA (pty), South Africa

46. M/s. Merisol RSA (pty), South Africa has responded to the questionnaire but has given incomplete information with regards to the different Annexure. As per the Appendix 1 they have submitted detailed information about the various sales in their domestic market by mentioning the invoice numbers, volume sold, sales value and rate per unit. They have also given invoice numbers of their domestic sales with quantity and rate per unit with respect to two principal grades, drum sales and bulk sales. In the Appendix 2 they have submitted an account of Phenol exports to India for the POI. They have backed this information by giving an account of sales to Indian customers by name giving a breakup of invoice values, ocean freight, insurance, commission, etc. In the Appendix 3 they have given an account of exports to India, sales to third countries and also sales in their domestic markets. They have submitted Appendix 4 and 5 giving sales price structure for exports to India and sales price structure for their domestic sales. However they have not given sufficient information regarding their other product's quantity and value. However they have given an account of factory costs and profit of exports to India and for their domestic market with regards to their bulk and drum sales though they have not submitted required

information about their financing and interests costs and they have not submitted net profit which they have added to their ex factory costs in the Appendix 8 and 9.

The Authority, after the public hearing, had asked the exporter to provide additional information especially relating to the costing and had also asked the exporter about their willingness to have the data submitted by them verified but the exporter has not replied to the Authority letter till date. The exporter was asked to furnish information relating to the basis of allocation of expenses to the product under consideration, basis of adjustments claimed in the various Appendices, copies of profit & loss and balance sheet for the POI and three years prior to that, net profit/loss before tax and unit selling price in the Appendix VIII and IX amongst others. As the exporter has not submitted the required data, the Authority has been constrained to determine the normal value as per the best information possible as per Rule 6(8). In this regards, the Authority has also accepted the data made available by the domestic industry with applicable adjustments and suitable normation. Normal Value for the bulk sales come to US\$ **** per MT and US\$ **** per MT from drum sales. As regards determination of export price, the Authority notes that the exporter has exported **** MT of subject goods to India for a value of US\$ **** at the rate of US\$ **** per MT for bulk sales and ***** for US\$***** at the rate of US\$***** per MT for drum sales. The export price has been determined at the ex factory level after making adjustments towards inland freight @ US\$***** for bulk and US\$***** for drum sales on per MT basis. Packing @ US\$***** per MT in the case of drum phenol has been allowed by the Authority. Storage @ US\$***** , handling, @ US\$ ****, others, @ US\$ ****, have been allowed for the bulk sales on per tonnage basis. As regards drum sales, commission has been allowed @ ****, inland freight @ US\$ ****, handling @ US\$ ****, others @ US\$ ****, overseas freight @ US\$ ****, overseas insurance @ US\$***** and shipping charges @ US\$ **** have been allowed on per tonnage basis. Thus after all adjustments, the export price has been worked out as US\$***** for bulk sales and US\$ **** for drum sales.

Dumping margin comes to US\$ **** per MT or 74.14% of the export price for bulk sales and US\$ **** per MT or 75.38 % of Export price for drum sales.

Normal Value and Export Price for other exporters from South Africa

47. As regards the export price, the Authority has taken the lowest export price from South Africa to India during POI as the export price for non-cooperating exporters both for bulk as well as drum sales. The authority has determined normal value as US\$***** per MT and US\$***** per MT for bulk sales and drum sales respectively as has been done in the case of M/s Merisol Pty Ltd and Export price as US\$ **** per MT and US\$***** pre MT both for bulk sales and drum sales respectively for Non-cooperating exporters. Dumping margin comes to US\$ **** per MT or 146.87% of

Export price and US\$ **** per MT or 108.69% of export price for bulk and drum sales respectively.

Normal value and Export Price for European Union

48. The Authority notes that none of the exporters from EU has filed any response. As no information about domestic sales price structure of the subject goods, its cost of production in EU and other information as per the questionnaire has been furnished, the Authority has proceeded to rely upon the best available information for determination of normal value. The petitioners have claimed normal value in respect of EU on the basis of constructed cost of production. The Authority finds that none of the exporters have given any information to enable it to determine the normal value based on the domestic sales price. The Authority confirms, in the absence of any response from the exporters from subject countries in the form and manner prescribed, having made the findings with regard to exports from subject countries on the basis of the facts available to it as per rule 6(8) supra.

Accordingly, the Authority has constructed the normal value on the basis of facts available with the applicable adjustments. The normal value so determined for EU is US \$**** per MT.

The Authority has taken into account transaction wise data from the information sent by Kandla Port Customs with regards to import from EU as this shows higher volumes. The Authority notes that the European Union has exported 11878MT for US\$5203737 at the rate of US\$ 438.09 per MT and after making adjustments for ocean freight, overseas insurance, commission, port expenses, inland freight, the export price comes to US\$ **** at the ex factory level. The Authority has made adjustments for US\$ **** as overseas freight, **** for marine insurance, ****% as commission, and US\$ **** each as port expenses and inland freight as per the best information available on per tonnage basis as pre the information made available by the petitioner. The Dumping margin comes to US\$ **** per MT or 77.87% of the export price.

Serial No	Country	Dumping Margin %
1.	European Union	77.88
2.	Singapore	
	Mitsui & Co.	60.56
	Mitsui Phenol Singapore Ltd.	70.88
	Other Exporters	91.70
3	South Africa	

a. Merisol, RSA	
1. Bulk sales	74.14
2. Drum sales	75.38
b. Others	
1. Bulk sales	146.47
2. Drum sales	108.69

D. Injury:

Issue regarding Injury Parameters and profitability and Causal Link:

Views of the M/s Merisol, South Africa, FMA, M/s Mitsui & Co, Mumbai, Pragati Chemicals Ltd. and others:

49. In para 33 of the preliminary findings, the Authority observed that the domestic industry has suffered injury on account of decline in production, capacity utilization and increase in inventory. The result is based on erroneous principles used for annualizing the period of investigation data. Comments have also been made that all the 15 injury parameters have not been examined by the Authority.

Various interested parties have commented upon the fact that HOCL made every high profit during the AM01. It is also said that manufacturers of Phenol are cash rich today as could be seen from their financial results of the last few years. They have also commented upon the fact that Authority has not examined upon the fact that there was a causal link between injury and failure of the domestic Industry to export. It has also been pointed out that if the interest and depreciation of the Hydrogen peroxide plant is excluded then profit of the profit on phenol plant for AM 01 would have been 60.89 Cr.

In response to the disclosure, the EU has brought the attention of the Authority towards the fact that it is required by Article 7.4 of the WTO Anti Dumping agreements to apply the lesser duty rule and there is no indication in the disclosure that this has been done.

Views of the Domestic Industry:

50. The domestic industry has already provided detailed information to the Designated Authority as per parameters prescribed in application proforma. The same have been

dealt by the Designated Authority in preliminary findings in so far considered relevant.

The specific parameters laid down under the Rules, such as imports from other countries, possible contraction in demand, export performance and technological factors have not caused injury to the domestic industry. Various parameters relating to the Injury include

Natural and potential decline in sales: -

a. Sales volumes of the domestic industry declined in the investigation period as compared to previous years. Sales of the domestic industry declined in spite of alleged excess demand in the country.

Profits:

b. The domestic industry was making profits till 2000-01 after imposition of safeguard duty. However, in 2nd quarter of investigation period triggered by the commencement of production in Singapore, the exporters from subject countries reduced their prices drastically. The domestic industry had no option but to reduce its prices even to a level of losses from a situation of profits. Analysis of the quarterly performance shows that the profitability of the domestic industry kept declining within the investigation period.

Market share:

c. Share of subject countries in imports of Phenol in India was just 31.48% in 2000-01 and increased significantly to 79.43% in period of investigation. Share of the subject countries in demand of Phenol in India also increased significantly from about 5% in 2000-01 to above 40% in the investigation period. Further, the imports from subject countries increased significantly in relation to production of Phenol by the domestic industry.

Productivity:

d. The productivity of the domestic industry declined between 98-99 and investigation period even after reduction in number of employees. The productivity, which was 78.10 in 1998-99 declined to just 46.19 in the investigation period.

Return on investments

e. Return on investment for the domestic industry for the product under consideration was positive up to 2000-01. However, the same become negative in the investigation period.

Utilization of capacity

f. The capacity utilization of the domestic industry declined.

Factors affecting domestic prices,

Price undercutting

51. Landed value of imported material from subject countries was significantly below the selling price of the domestic industry causing severe price undercutting in the Indian market. Imports were undercutting prices to a level of more than 25%. Further, the significant price undercutting faced by the domestic industry was in spite of significant reduction in the prices by the domestic industry.

Price suppression/depression

52. The landed value of imports was not only below the selling price of the domestic industry but also below the cost of production and non injurious price for the domestic industry causing severe price suppression/depression in the Indian market.

The magnitude of the margin of dumping:

53. The dumping margin from the subject countries is not only more than de-minimus but also very significant. The impact of dumping on the domestic industry is significant.

Actual and potential negative effects on cash flow:

54. The cash flow which was negative in 1998-99 became positive thereafter till 2000-01. However, cash flow situation of the domestic industry deteriorated significantly in the investigation period after the imports from subject countries started in substantial volumes.

Inventories:

55. Stocks with the domestic industry increased to such an extent that the domestic industry had to take shutdown twice in the investigation period in order to reduce its inventory levels.

Employment:

56. The employment level with the domestic industry declined between 98-99 and investigation period even after increase in capacity.

Wages:

57. The domestic industry has no other option but to increase the wages for the employees due to the prevailing regulations in the country.

Growth:-

58. The domestic industry has enhanced capacity by de-bottlenecking in an effort to reduce the incidence of fixed costs. However, its impact has been nullified by the dumped imports. The domestic industry has not been able to grow in the investigation period with increasing demand in the market.

Ability to raise capital investments:

59. The domestic industry cannot think of raising fresh capital at this stage, given the poor performance of its product for some time.

Capacities with the exporters:

60. It is submitted that the exporters in the subject countries are holding significant surplus capacities. In fact, the new plant which has commenced commercial production in Singapore has exports as its primary thrust market. Vast Indian market is naturally quite lucrative to the exporters.

Significant increase in the rate of imports:

61. Imports from the subject countries have very increased very dramatically. These have shown very high growth rate in a very short period.

62. It may be seen from the above that Dumping from subject countries caused material injury to the domestic Industry. The exports from the subject countries were causing threat of material injury.

Examination by the Authority

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

- a. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.
- b. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

The following parameters have been analyzed for the purpose of assessment of injury to the domestic industry.

Sales Volume and Value

The Authority observes that there is a decline in the sales volume as well as the sales value in the POI as compared to the previous year. The unit price realization has also gone down by about 26% in the POI over the previous year.

Volume and Market Share of Dumped Imports

Country	European Union (Kandla Port Customs)		Singapore (Exporters information claimed confidential)		South Africa (Exporters Information claimed Confidential)	
	Qty MT	% Share	Qty MT	% Share	Qty MT	% Share
Year	****	11.05	****	0.58	****	3.34
2000-01	****	29.13	****	32.30	****	14.80
POI (9 Months)	****	29.13	****	32.30	****	14.80
POI Annualised	****	29.13	****	32.30	****	14.80

The Authority has examined the information regarding the volume of exports from the subject countries during the period of investigation and the preceding years. In percentage terms the imports from subject countries accounted for a market share of 64.3% in 1999-2000, 31.48% during 2000-01 and 76.23% during POI. When compared to the previous year 2000-01 the share in the market has shown a significant increase during the POI. The Authority notes that there has been a significant increase in the imports from the subject countries during the POI

Market Share of Imports from Subject countries			
Year	Imports From Subject Countries MT	Total Imports MT	% Share

1999-2000	18730	29128	64.3
2000-2001	4502	14298	31.48
POI Annualised	41441	54364	76.23

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

64. The Authority has calculated the total demand in the country by adding the total imports to the sales of the domestic industry as well as other producers of the product under consideration. The Authority notes that the imports from the subject countries could acquire a market share of 36 % of the total demand in a short span of 9 months.

Year	Imports from Subject Countries MT	Total Demand MT	% Share
1999-2000	18730	98764	22.92
2000-2001	4502	81691	5.51
POI (Annualized)	41441	113089	36.6

It is also examined that the sales volumes of the domestic industry as represented by the petitioner companies also declined during the POI by 26% in comparison to the previous year.

	Unit	1998-99	1999-00	2000-01	POI	POI Annualised
Installed Capacity	MT	40,000	40,000	40,000	30,000	40,000
Effective Capacity	MT	45000	45000	49000	49000	49000
Production	MT	40142	39261	39055	21756	29008
Capacity Utilization	%	89.2	87.25	79.7	59.2	59.2
Capacity Utilisation as per Installed capacity	%	100.355	98.1525	97.6375	72.52	72.52
Opening Stocks	MT	2464	2885	1517	1920	1920
Closing stocks	MT	2885	1517	1920	2399	2399
Indigenous sales	MT	39956	40325	38633	21288	28384
Cost of Production*	Rs./MT	100	103.69	133.47	135.8	135.82
Selling Price*	Rs./MT	100	94	140	108.3	108.3
Profit/Loss*	Rs./MT	100	48	173	-25	-25
Empolyees	Nos	100	98	97	91	91
Productivity/Emp	MT	78.1	77.9	78.27	46.19	46.19
ROI	%	9.23	3.64	20.47	.82	.82
Wages	Rs/Month	100	111	115	136	136
Cash Flow	Rs lakhs	****	****	****	****	****
Indexed Figures						

Production & Issue of Capacity Utilization of the petitioner

Views of M/s Merisol, South Africa, Foseco Ltd, Govt of Maharashtra, FMA, and others.

65. It is a matter of public domain information from the Balance Sheets of HOCL, that the installed capacity is much lower than the effective capacity, the effective capacity claimed by the Petitioners is 45000 to 49000 MTPA. However, the balance sheet and the information put out by the Government of India for the privatization of the Petitioner, clearly, states that the installed capacity is 40000 MTPA. In the light of the above, the Petitioners must be put to strict proof of their claim. It is submitted that the information of the Government of India and auditors be accepted and the injury parameters be reworked using these figures.

Rated capacity of HOC's phenol plant is 40000 TPA as per its published Balance Sheet. HOC has been achieving very high capacity utilization based on its rated capacity.

Views of the Petitioner

66. Installed capacity of the domestic industry was 40000 MT. After restructuring plan undertaken by the company, the company has effectively increased its capacity to 49000 MT. Therefore, the effective capacity of the company now is 49000 MT. With regard to capacity mentioned in the Annual Reports and dis-investment proposal, please note that the capacity mentioned therein (40000 MT) is installed capacity, whereas the capacity relevant for the purpose of anti dumping investigations is effective capacity (which is 49000 MT). It is submitted that 'installed capacity' and 'effective capacity' need not be the same. Installed capacity refers more to what was the capacity installed by the company, whereas the effective capacity refers to what is the maximum possible production which the company can effectively achieve.

Examination by the Authority

67. The Authority has taken note of the various submissions made by the interested parties regarding the reworking of the capacity utilization on the basis of the installed capacity of the petitioner. The Authority has also taken note of the petitioner's plea that after de bottlenecking, their effective capacity has increased and they are in a position to produce more than the installed capacity. The Authority has now worked out the capacity utilization of the domestic industry based on their installed as well as the effective capacity and it concludes that the capacity utilization of the domestic industry has worsened in the POI.

68. Price Undercutting and Price Underselling

Price Undercutting during POI			
Country	Net selling Price petitioner	Landed Price from subject country	Price Undercutting
EU	****	****	****

MPSI, Singapore	****	****	****
Mitsui & Co, Singapore	****	****	****
Merisol, Bulk, S. A.	****	****	****
Merisol drum, S.A	****	****	(-) ****

Price Underselling during POI			
Country	Non Injurious Price of petitioner	Landed Price from Subject country	Price Underselling
EU	****	****	****
MPSI, Singapore	****	****	****
Mitsui & Co, Singapore	****	****	****
Merisol bulk, South Africa	****	****	****
Merisol drum sales, S.A	****	****	****

69. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the landed value of imports of subject goods from subject countries during the POI with the net sales realization and has found that there has been a significant price under-cutting by the dumped imports. The landed value of imports has been found to be significantly lower than the domestic industry's net sales realization.

The Authority has also examined the claim of the petitioner that the domestic industry is suffering on account of the losses. The Authority notes that price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the Non-injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis shows a significant incidence of price underselling causing injury to the domestic industry. The imports have had significant suppressing/ depressing effect on the prices in the domestic market, as the domestic industry has not been able to raise its selling price in view of the dumped imports.

Selling Price / Profitability

70. The authority notes that selling prices of the domestic industry is significantly below the price, which would have permitted the domestic industry, a fair recovery of its cost of production and earn a reasonable return. Thus, the dumped imports have prevented the domestic industry from effecting legitimate price increase to realise a

reasonable price. The industry has suffered material injury on account of depressed selling prices resulting in non-recovery of cost of production and thereby suffered financial losses.

Other injury parameters evaluated by the authority are as follows:

71. The employment levels of domestic industry have not undergone any significant change during the period of investigation.

There is a marked rise in the closing stocks during POI indicating that there is a significant change in the inventory position of the domestic industry during the period of investigation.

Some exporters/Users have opined that during the POI, HCL has made profits and HOCL has incurred loss. They wanted the Authority to examine this issue. They have also argued the fact that data pertaining to the M/s Herdillia Chemicals Ltd (HCL) should be examined and they should not be allowed to take the benefit of Anti Dumping Duty. Though the Authority has excluded the HCL as part of the domestic Industry as mentioned above, it has examined the records submitted by HCL and has come to a conclusion that there is no truth in the submission that HCL made profits during the POI. In fact they had made a loss of Rs **** during POI.

Month/Year	Cost of Production (HOCL) Rs/ MT	Net sales Realisation (HOCL)Rs/ MT	Profit/Loss (HOCL) Rs/. MT
98-99	100	100	100
99-00	103	94	48
2000-01	133	140	173
Apr.01- June-01	135	132	115
July 01-Sept 01	132	107	-13.5
Oct.01 – Dec 01	140	87	-170
PERIOD OF INVESTIGATION	135	108	-25

Indexed figures considering 1998-99 as 100.

The Authority also notes that the depreciation of the hydrogen peroxide plant has not been taken into account in working out the profitability of this plant.

Cumulative assessment of injury

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

country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article --- and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%. The Authority has also found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article and has found that there is a cumulative effect of injury by imports of subject goods on the domestic industry.

E. CAUSAL LINK

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

- a. The Authority observes that there is a single market for the subject goods where dumped imports compete directly with the goods produced by the domestic industry. Decline in demand is not a factor causing injury to the domestic industry. The imported subject article and the domestically produced goods are like articles and are used for the same applications/end uses. Thus, pricing becomes the most important factor determining purchase of the article from either imported sources or domestic sources.
- b. The imports from Subject countries undercut and suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering full cost of production and earn a reasonable profit from the sale of subject goods in India.
- c. The Authority has also examined that demand of the subject goods have increased during the POI and has not found any sign of contraction of demand, changes in the pattern of consumption, trade restrictive practice of and competition between the foreign and the domestic producers and development in technology. In view of the above, the Authority determines that the dumped imports, through the effect of dumping, have caused material injury to the domestic Industry.
- d. The landed value has been determined for the subject goods after adding onto the weighted average c.i.f. export price, the applicable level of customs duties (except duties levied under Section 3, 3(A), 9, 9(A) and 1% towards landing charges.
- e. While determining the non-injurious price for the like articles for the domestic industry, the Authority has used the actual cost of production of the subject goods to determine optimum cost of production for the domestic industry

which would take into account the normated best consumption norms and the actual price of the raw materials which are consumed for the production of the subject goods during the period of investigation. For calculation of injury margin, it has compared the ex-factory non-injurious price determined for the period of investigations with the landed value of the imported goods.

74. Duty up to dumping margin:

The Authority recommends the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry.

F. CONCLUSIONS

75. The Authority has, after considering the foregoing, concludes that:

- i. Phenol or product under consideration has been exported to India from subject countries below its normal value;
- ii. The Indian industry has suffered material injury;
- iii. The injury has been caused by the dumped imports from subject countries;
- iv. The Authority considers it necessary to impose an anti dumping duty on all imports of Phenol from subject countries in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority recommends the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports compared with the non-injurious selling price of the petitioner companies determined for the period of investigation.
- v. Accordingly, the Authority recommends that the definitive anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of subject goods originating in or exported from subject countries. The anti-dumping duty shall be the difference between the amount mentioned in col. 3 and the landed value of imports of Phenol falling under chapter 29 and 27 of Customs tariff, for all exporters/manufacturers from the countries mentioned in Col. 2 of the Table below:

Serial Number (1.)	Countries/exporters (2.)	Amount (US\$ Per MT) (3.)
1.	Singapore: a. Mitsui & Co. Ltd b. Mitsui Phenol Singapore Pte Ltd Other Exporters	710.84 710.84 710.84

2	South Africa a. Merisol RSA 1. Bulk Sales 2. Drum Sales a. Other exporters 1. Bulk Sales 2. Drum Sales	 710.84 778.59 710.84 778.59
3.	European Union	710.84

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

76. Subject to the above, the Authority confirms the preliminary findings dated 24th June 2002.

77. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, supra.

(L.V.SAPTHARISHI)
DESIGNATED AUTHORITY