

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

NOTIFICATION

New Delhi, the 13th July 2007

Final Findings

(Mid-term Review)

Subject: Anti-Dumping (Mid-term Review) investigations concerning imports of Phenol originating in or exported from Singapore, South Africa and European Union.

No.15/4/2006-DGAD - Having regard to the Customs Tariff Act, 1975, (hereinafter referred to as Act.) 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 (hereinafter referred to as Rules.);

A. BACKGROUND

2. WHEREAS, having regard to above Rules the Designated Authority (hereinafter also referred to as the Authority) notified final findings vide Notification No.14/4/2002-DGAD dated 13.02.2003 recommending imposition of anti-dumping duties on all imports of Phenol originating in or exported from Singapore, South Africa and European Union. In the original investigation the Preliminary findings were notified by the Designated Authority vide Notification No. 14/4/2002-DGAD dated 24.06.2002. Final findings of the Authority were notified by the Designated Authority vide Notification No. 14/4/2002-DGAD dated 13.02.2003 and the final duty was imposed on the subject goods vide Customs Notification No.47/2003-Cus. dated 24.3.2003.

3. The Designated Authority, in terms of section 9A (5) of said Act. received a substantiated application from M/s Hindustan Organic Chemicals Ltd. and M/s SI Group-India Ltd., Mumbai requesting for review and continuation of the anti-dumping duties levied on the subject goods, for another five years on the grounds that the dumping had continued in spite of imposition of anti-dumping duty on imports of

subject goods from subject countries and the domestic industry continued to suffer injury on account of dumping by the subject countries. It was also claimed that the anti-dumping duty was not sufficient to provide due relief to the domestic industry and cessation of anti-dumping duty would result in intensified injury to the domestic industry. The Designated Authority issued a public notice No. 15/4/2006-DGAD dated 14.7.2006, published in the Gazette of India, Extraordinary, initiating anti-dumping (Mid-term Review) investigations, to examine whether the expiry of anti dumping duty would lead to continuation or recurrence of dumping, injury or both.

B. GENERAL DISCLOSURE

4. The procedure described below has been followed with regard to the investigation:

i) The Designated Authority under the above Rules, received an application filed by M/s. Hindustan Organic Chemicals Ltd. and SI Group (formerly known as Schenectady Herdillia Ltd.) requesting initiation of midterm review investigation for review and enhancement of anti dumping duties in force concerning imports of Phenol (hereinafter referred as Phenol or subject goods) originating in or exported from Singapore, South Africa and European Union (hereinafter referred to as subject countries).

ii) The information provided by the applicant showed sufficient prima facie justification to initiate a mid tem review investigation. On being satisfied, the Authority issued a public notice dated 14th July, 2006 published in the Gazette of India, Extraordinary, initiating antidumping midterm review investigation concerning imports of the subject goods originating in or exported from Singapore, South Africa and European Union.

iii) The Authority forwarded a copy of the public notice to the following known producers and/or exporters in the subject countries

- Hungarom-Europe-2000 Company, Hungary
- A H Marks and Company Limited, England
- Phenolchemie GmbH, Germany
- Enichem, Italy
- Mitsui & Co. Ltd. Singapore
- Merisol, South Africa

and provided them opportunity to provide relevant information and make their views known in writing within forty days or extended time from the date of the letter in accordance with the Rule 6(2).

iv) The Embassies of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.

v) The Authority forwarded a copy of the Initiation notification to following known importers, consumers, industrial users of subject goods in India

- ☐C. J. Shah and Company, Mumbai
- ☐Haresh Kumar and Company, Mumbai
- ☐PCL Industries New Delhi
- ☐Kantilal Manilal and Company Mumbai
- ☐Sonkamal Enterprises Mumbai
- ☐Khetan Brothers Mumbai
- ☐Shubam Dyes & Chemicals Limited Delhi
- ☐Acron Enterprises Ahmedabad
- ☐Naiknavare Chemicals Limited Mumbai
- ☐Paras Dyes & Chemicals New Delhi
- ☐Torrent Pharmaceuticals Limited Gujrat
- ☐United Phosphorous Ltd. Mumbai
- ☐Resins & Plastic Ltd. Mumbai
- ☐Kailash Polymers New Delhi
- ☐Centrum Metalics Pvt. Ltd. Mumbai
- ☐Wonder Laminates Pvt. Ltd. West Bengal
- ☐Meghdev Enterprises Ahmedabad
- ☐Satguru International New Delhi
- ☐High Polymer Labs Ltd. New Delhi
- ☐Rainbow Colours & Chemicals Gujrat
- ☐Bleach Marketing Pvt. Ltd. Gujrat
- ☐Karmen International (P) Ltd. Tamil Nadu
- ☐Krishna Antioxidants Pvt. Ltd. Mumbai
- ☐NGP Industries Ltd. New Delhi
- ☐Farmson Pharmaceutical Gujrat Ltd. Baroda
- ☐India Glycols Ltd. New Delhi
- ☐Singh Plasticisers and Resins (I) Pvt. Ltd. New Delhi
- ☐National Plywood Industries Ltd. West Bengal

and advised them to provide relevant information in the form and manner prescribed and make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).

vi) Requests were made to the Central Board of Excise and Customs (CBEC) and Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods in India for the period of investigation and preceding three years. However, no information was provided by CBEC.

vii) The Authority provided copies of the non-confidential version of the application to the known producers and/or exporters and the Embassies of the subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential application was also made available for other interested parties, wherever requested.

viii) Following producers/exporters/importers have filed their submission/response/information to the Designated Authority:-

- a. Merisol RSA (Pvt) Limited, South Africa
- b. Mitsui Phenols Singapore Pte. Ltd. ('MPS'), Singapore
- c. Mitsui & Co. Ltd. ('MBK), exporter from Singapore exporting phenol produced by Mitsui Phenols Singapore Pte. Ltd. ('MPS'), producer from Singapore
- d. Crescent Chemsol Private Limited, Mumbai

ix) M/s Shri Ram Industries Ltd. collected the copy of initiation notification but did not file any response thereafter.

x) Exporters/importers who have not provided information have been treated as non-cooperating exporters/importers.

xi) Investigation was carried out for the period starting from 1st July 2005 to 31st March 2006 (POI). However, injury examination was conducted for a period from 2002-03, 2003-04, 2004-05, 2005-06 and POI

xii) The Authority held a oral hearing on 16th January 2007 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6(6), which was attended by M/s. Hindustan Organic Chemicals Ltd. and SI Group (formerly known as Schenectady Herdillia Ltd.), TPM Consultants (consultants for HOCL and SI Group) ,advocate of exporters from Singapore and South Africa, advocate of importer, officials from High commissioner of Singapore. The parties attended the oral hearing were advised to file written submissions of the information presented orally. The interested parties were allowed to present rebuttal arguments on the views/information presented by other interested parties. Designated Authority has considered submissions received from various interested parties appropriately.

xiii) Arguments raised and information/evidence provided by various interested parties during the course of the investigation, to that extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority.

xiv) The Authority during the course of investigation satisfied itself as to the adequacy and accuracy of the information supplied. For that purpose, the Authority conducted on-the-spot verification of the domestic industry and producers/exporters to the extent considered relevant and necessary. Additional/ supplementary details regarding injury were sought from the domestic industry, which were also received.

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

xvi) The Authority made available non-confidential version of the evidence presented by various interested parties through a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

xvii) Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

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

xix) In compliance of decision of Supreme Court in Civil Appeal No.1294 of 2001, the normal values for subject countries have been determined.

xx) Information provided by interested parties on confidential basis were examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

xxi) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the AD Rules.

C. Product under consideration AND LIKE ARTICLE

C.1 VIEWS OF THE DOMESTIC INDUSTRY

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

- I. The present review investigation is a midterm investigation. The product involved in the original investigation and in the present midterm review investigation is Phenol. The product under consideration in the present midterm review is the same as has been in the original investigation.
- II. Phenol is an organic chemical classified under chapter 27 and chapter 29 of the customs Tariff Act. The domestic industry has submitted that duty should be recommended on both the classification.
- III. Phenol produced by the domestic industry and imported from the Singapore, South Africa and European Union are like product.
- IV. 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.
- V. 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 term of characteristics such as physical & chemical characteristics
- VI. Phenol is used in the manufacture of Phenol Formaldehyde Resins, Laminates, Plywood, Particle Board, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl oxide etc.
- VII. There is no difference in the Phenol produced by the domestic industry and imported from subject countries. Phenol produced by the domestic industry and imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology (followed by most of the producers world over), functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used the two interchangeably. Phenol produced by the petitioners and imported from subject countries is like article.

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

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

C.3 EXAMINATION BY THE AUTHORITY

7. The product involved in the original investigation was Phenol. This being a Mid-term Review, therefore, the investigation covers the product covered in the original investigation. The product under consideration is Phenol originating in or exported from Singapore, South Africa and European Union. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms – bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide etc. This product is classified under Customs Tariff heading no. 2907.11 and 2707.60 as per Indian Trade Classification. The Customs and ITC HS classifications are, however, indicative only and in no way binding on the scope of the present investigation

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

9. The petitioner claimed that the goods produced by him are like articles to the goods originating in or exported from subject countries. The Authority 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.

D. DOMESTIC INDUSTRY

D.1 VIEWS OF THE DOMESTIC INDUSTRY

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

i) The petition was jointly filed by M/s. Hindustan Organic Chemicals Ltd. And SI Group (formerly known as Schenectady Herdillia Ltd.). There are three companies in India who created capacity for production of Phenol namely Hindustan Organic

Chemicals Ltd., SI Group (formerly known as Schenectady Herdillia Ltd) and Neyveli Lignite. However, Neyveli Lignite has not produced/sold phenol in the last three years, as would be seen from the annual report of the company. The petitioners, therefore, constitutes domestic industry under Rule 2(b) of the Rules, 1995.

ii) Production of petitioner constitutes a major proportion in Indian Production and therefore petitioner should be treated as “domestic industry” within the meaning of the Rules.

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

11. M/s. Merisol RSA (Pvt.) Limited, South Africa has raised following issues:

i) The petitioners have misunderstood the provisions applicable to anti-dumping investigation. The rules rightly provides for inclusion of domestic producers as a whole, but the same is said to be qualified only if the conditions as regards the standing and domestic industry provisions are first satisfied. In the facts of the present case, the domestic industry has failed to address these issues and the Designated Authority should rightly carry out the investigation with in the ambit of rules and jurisprudence on the issues before hand. SI Group should be excluded from the scope of domestic industry for the reason that they are importers themselves and their production is meant for captive consumption.

ii) The Designated Authority should direct the petitioners to provide *proforma* IV A of each of the company, since Herdillia need to be excluded from the scope of the domestic industry.

iii) In the facts of the present case, Herdillia is not only a captive producer but also an importer of subject goods in the said investigation and therefore, on the basis of the jurisprudence and the practice of the designated Authority, they ought to have been excluded fro being part of the domestic industry at the stage of initiation.

iv) Neyveli no longer produces Phenol. The company closed down in 2004. The fact was known to the petitioner. Nevertheless, in order to inflate he supplies in the market, they had included them as a producer in the petition.

D.3 EXAMINATION BY THE AUTHORITY

12 The Authority has examined the contention made by exporters in this regard as well as the evidence available on record. With regard to standing of the domestic industry, Rule 2(b) states as under:

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

13. Authority notes that one petitioner SI Group (formerly known as Schenectady Herdillia Ltd.) has imported the subject goods during the POI from the subject countries. It is noted that the imports made by the company are in duty free category and in duty paid category, both substantial in volume. The company was excluded from the scope of the domestic industry in the original investigations also as they were importer of subject goods from subject countries. In view of the facts & circumstances of the present case, the Authority has considered it appropriate to exclude SI Group from the scope of Domestic Industry. The petitioners were directed to provide injury information after excluding SI Group, which was provided by them. This information was sent to other interested parties participating in the investigations and they were advised to file their comments, if any, on the revised injury information.

E. OTHER ISSUES

E.1 VIEWS OF THE DOMESTIC INDUSTRY

14. Following other issues has been raised by the domestic industry:-

- i) The Designated Authority had earlier recommended imposition of Anti Dumping Duties. After imposition of anti dumping duties, the price of crude oil increased significantly, resulting into significant increase in cost of production for all producers world over. Therefore, the reference price becomes meaningless resulting into flood of dumped imports in the Indian market by the producers and exporters from subject countries.
- ii) The provision of law contemplating a mid term review investigation clearly implies that a mid term review investigation can be initiated when there are

“changed circumstances”. Changed circumstances can only be considered as changes in those circumstances, which led to imposition of anti dumping duty.

iii) Given the nature of product and volatility in the input for the production, the benchmark form of duty is not an appropriate form of duty and a review is required to be conducted in order to change the form of measures from variable to fixed quantum of duty.

iv) Designated Authority would have called for some supplementary information from the responding exporters. However, no such responses could be seen in the public file. It implies that the no non confidential version of additional information have been filed by these exporters.

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

15. Mitsui has stated that they have extended full co-operation to the authority. The Company has argued that the disclosures made by the petitioners on non-confidential basis are insufficient. They have asked for disclosure of information such as pre-initiation correspondence between the authority and the petitioners.

16. Petitioners have claimed excessive confidentiality on all the issues. Non Confidential petition filed by the petitioner does not comply with the requirements and broad disclosure parameters required of such a petition under the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Article and determination of injury) Rules 1995. The petitioners have claimed confidentiality on frivolous grounds. The claim of confidentiality is illegal, self serving and deserving of denial. The information provided is not by mean neither adequately summarized nor indexed of any sort been provided.

17. The petition filed does not appear to have been examined to ensure that the same justified initiation of mid-term review. The initiation of the investigations by the authority is beyond jurisdiction. The petition filed is not complete as of sections of application as the Performa have not been fully answered, nor necessary evidence has been provided.

18. The import data has been taken from three sources. Original data received has not been disclosed. Selective data from different sources has been relied upon.

19. Original duty was on reference price basis and the petitioners did not challenge the same in appeal.

20. Evidence and information with regard to bulk and packed imports has not been provided properly by the petitioners.

21. Information with regard to imports made by SI Group has not been disclosed. It is not clear whether these imports have been included in the import analysis.

22. Merisol RSA has raised the issue of difference in technology and production process employed by Merisol and the petitioners. In spite of this, the petitioners have calculated normal value on the basis of taking Benzene and Propylene as inputs.

23. Change in the form of duty is unjustified and unsubstantiated for the Authority to accept the same. Present investigation is a mid term review and as per practice of the Designated Authority while conducting the investigations, the form of duty if any imposed has been on the same basis as it was during original investigation. The reasons cited by the domestic industry on the issue of change in form of duty have been illogical and unsubstantiated and the Designated Authority should therefore, cautiously tread before acceding to their request on any of the grounds cited by the domestic industry.

E.3 EXAMINATION BY THE AUTHORITY

24. The petition filed was examined for sufficiency of evidence to justify the present investigations. Authority notes in this regard that under Rule 23, it would be appropriate to initiate a review investigation, if there are sufficient grounds showing need for review. The petition was filed in the form and manner prescribed by the Authority for imposition of duty. Therefore, all that the Authority was required to consider was whether there was sufficient evidence to justify a review.

25. Information provided by interested parties on confidential basis were examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted, and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.

26. The information provided by the applicant showed sufficient prima facie justification to initiate a mid tem review investigation. On being satisfied, the Authority issued a public notice dated 14th July, 2006, initiating antidumping midterm review investigation concerning imports of the subject goods originating in or exported from Singapore, South Africa and European Union.

27. Subsequent to the initiation of the investigation, the Authority requested DGCI&S to provide import information for period of investigation and injury period which was received and being considered by the Designated Authority for injury determination.

28. Grade wise information – Authority notes that the Rules require determination of injury to the domestic industry in respect of like article. The Rules do not envisage separate assessment of injury in respect of different forms or grade of the product. Further, petitioners provided separate information with regard cost of production, selling price, profit/loss in respect of loose and packed product.

29. Change in form of duty – Authority notes that there is no legal basis to state that the form of duty can not be changed in a review investigation. The power to recommend form of duty inherently vest with DA and flows from his obligation as given in Rule 4(d) of anti dumping rules. The Designated Authority in mid-term review has to determine the dumping margin and injury as per Rule 23 read with Rule 10 and 11 of Anti-dumping Rules. Consequently, duty need to be adjusted depending upon the dumping margin determined during the MTR

30. The Authority has conducted on the spot verification of Merisol RSA and determination of normal value is being determined as per records maintained by the company as discussed in dumping section.

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

F. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN

F.1 DUMPING DETERMINATION: NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

European Union

Normal value for European Union

32. No exporter from the European Union has responded to the Initiation Notification. In absence of any response, the Authority has relied on the facts available as per Rule 6(8) of the Anti-dumping Rules to determine the normal value. For this purpose, the normal value has been constructed based on the prices of major raw materials as reported in ICIS LOR Europe, consumption as per standard input output norms, utilities, conversion and other costs of the domestic industry. In addition to that

reasonable profit at the rate of 5% has been added. By adopting this method, the normal value has been calculated as US \$ *** per MT for bulk and US \$ *** for packed material

Export Price for Non-cooperating Exporters

33. The Authority has taken into account transaction wise data from DGCI&S with regards to imports from EU. The Authority notes that the European Union has exported 12010 MT of phenol in bulk and 1229 MT of packed phenol. The export price has been taken from transaction-wise details of the DGCIS data. After making adjustments on account of ocean freight, overseas insurance, commission, inland freight, port expenses, bank charges, the ex-factory export price is calculated at US\$ *** per MT for bulk material and US\$ *** per MT for packed material.

South Africa

34. M/s Merisol RSA (Pty) Limited, South Africa has cooperated and provided the information. From the information it has been observed that the exporter had exported the product in packed and bulk form to India. It was also observed that exporter had made sale of both packed and bulk product in the home market as well. During the verification the exporter, explained that they are the only company in the world who is producing Phenol by coal route whereas all other companies in the world are producing Phenol from Cummins route where Benzene & Propylene are the main raw materials. Since their production route is different they further explained that the Phenol produced by them cannot be used in pharmacy Sector. However, the usage in other sectors remains same and also there is no difference in price in the Market in the Phenol produced by different routes. They admitted that the Phenol produced by Indian domestic producers and Phenol produced by them are like article.

Normal Value for South Africa

35. For this purpose, the transaction-wise data provided by the exporter have been relied upon to determine the normal value. During the POI the exporter from South Africa *** MT of bulk Phenol and ***MT packed Phenol to India. Expenses on account of inland freight and handling charges as verified during the investigation have been adjusted for calculating normal value. By this method, the normal value for bulk product has been determined as US\$ *** per MT and US\$ *** per MT for packed product.

Export price for Merisol RSA Pty Limited.

36. To determine the export price for the cooperating exporter, the transaction-wise data provided have been relied upon. Expenses on account of inland freight, handling charges, overseas freight, insurance, credit cost and commission to agents have been adjusted to determine the export price at ex-factory level. On the basis of data provided and verified, the export price has been determined US\$ *** per MT for bulk product and US\$ *** per MT for packed product.

Export Price for Non-cooperating Exporters

37. No exporter other than Merisol has responded from South Africa. For determination of export price, the Authority has relied on transaction-wise details provided by DGCIS. Adjustments on account of expenses on exports have been taken as per information provided by the cooperating exporter from South Africa. After making adjustments, the ex-factory export price is calculated as US\$*** /MT for bulk material and US\$*** /MT for packed material.

Singapore

38. Mitsui Phenol Singapore Pte. Ltd. (producer) and Mitsui & Co. Ltd., Singapore (exporter) have cooperated in the investigation and provided the information. Mitsui Phenol Singapore Pte. Ltd. (hereinafter referred to as 'MPS') is a private limited company incorporated under the Singapore Companies Act. MPS is an amalgamation of the erstwhile Mitsui Phenol Singapore Pte. Ltd. and Mitsui Bisphenol Singapore Pte. Ltd. (hereinafter refers to as 'MBS') w.e.f 1st January 2006 pursuant to amalgamation agreement signed on 27th September 2005. Prior to amalgamation MPS and MBS, both were the subsidiary of Mitsui Chemical corp. Japan. Prior to amalgamation, MBS was engaged in the activity of manufacturing Bisphenol. On 1 January 2006, the company changed its name from Mitsui Phenol Singapore Pte. Ltd. to Mitsui Phenols Singapore Pte. Ltd. Further, the exporter in this case i.e. Mitsui & Co. Ltd., Singapore (hereinafter referred to as MBK) is not by itself the producer. The phenol exported to India during the period of investigation has been produced by Mitsui Phenols Singapore Pte. Ltd.. Mitsui & Co. Ltd. holds 5% of the shareholding in Mitsui Phenols. During verification, the company explained that during the period of investigation sales in the domestic market has been made to related as well as unrelated customers. To the unrelated customers the sales have been made on spot basis as well as to customers through pipeline with whom company has entered into long term contracts of 12-15 years and the prices are charged on the basis of agreed formula. The formula are based on the price of main raw material i.e. Benzene and/or prevailing prices of phenol in the Asian region. They further stated that they are selling phenol in bulk in domestic as well as in export market and do not have any sales in packed form.

Normal Value for Singapore

39. The transaction-wise information provided by the cooperating exporter has been relied upon to determine the normal value for Singapore. For determination of normal value, sales made by the exporter in the home market have been taken into account. In this case it has been contended by the exporter that only spot sales in the home market should be taken into account for determination of normal value as conditions of sales, pricing policy, position in distribution system and size of quantity of such sales are comparable with the export sales made to India. It has also been contended that the spot sales made in the home market meet the tests of (5%) sufficiency of sales and (80%-20%) sales below cost sales i.e. the spot sales qualifies as sales made 'in the ordinary course of trade'. Further it has been submitted that contract sale (sales made through pipelines) should not be considered for determination of normal value as prices charged, pricing policy, quantities, distribution system etc. of such sales are not comparable with the sales made to India. As per section 9(A)(1)(c) of the Custom Tariff Act, normal value means the comparable price 'in the ordinary course of trade' for the 'like article' in the home market of the exporter. Both spot sales and contract sales in home market qualify as sales made 'in the ordinary course of trade' as per para 2 of Annexure-1 of the Anti-dumping Rules. As per para 6(1) of Annexure 1 of the Anti-dumping Rules, the comparison of the normal value with export sale is required to be made at the same level of trade and due allowance need to be made on merits concerning difference which affect price comparability including difference in conditions and terms of sales. As per provision of the law, only allowance need to be made in case conditions of sale are different and not to exclude sales made 'in the ordinary course of trade' if the conditions of sales are different. In view of the fact that both the contract sales and spot sales qualify as sales made in 'ordinary course of trade', therefore, the Authority finds it appropriate to take into account all sales for determination of normal value and not to exclude the contract sales because of the different conditions of such sales in the home market. In this case, if due allowance is to be made for higher volume of contract sales then the normal value would increase further. Therefore, for determination of normal value, all sales constituting spot and contract sales have been taken into account. It has also been contended that the related party transactions should be excluded to determine the normal value. The argument that all related party transactions should be excluded to determine the normal value is untenable because as per the Anti-dumping Agreement the transactions made during the ordinary course of trade are to be taken into account. The exporter nowhere has contended that the transactions were not made in the ordinary course of trade. The Annual Report of the exporter very clearly states that the transactions to related party was made in the ordinary course of business. Further, it has also been noticed that long term contract sales to related and unrelated parties were made on the basis of same formula. The actual prices however, differ depending upon the period agreed

upon to by the contracting parties. In this case, no material has been provided by the exporter showing that the prices to the related customers was influenced by their relationship. The Authority, therefore, has considered related sales as sales made in the ordinary course of trade and taken the same into account for determining the normal value. The expenses claimed on account of inland, freight and handling charges by the exporter and verified during the verification have been adjusted to determine the normal value. The normal value for the bulk product has been calculated as US\$ *** per MT. The cooperating exporter has not made any packed sale, therefore, to determine the normal value for the packed product, packing charges have been added to determine normal value for the bulk product. By this method, the normal value for the packed product has been determined as US\$ ***per MT.

Export price for Mitsui Phenol Singapore Pte. Ltd. (producer) and Mitsui & Co. Ltd., Singapore (exporter)

40. The transaction-wise information provided by the exporter and importer has been relied upon. The total quantity of exports to India of bulk phenol during POI was verified as *** MT at a gross CIF price at *** per MT. Adjustments on account of ocean freight @ US \$ *** per MT, insurance @ US \$*** per MT and credit cost @ US \$ *** per MT were made to calculate the ex-factory export price. After these adjustments export price at ex-factory level was calculated as US \$ *** per MT for the bulk product.

Export Price for Non-Cooperating exporters

41. For determination of export price, the Authority has relied on transaction-wise details provided by DGCIS. Adjustments on account of expenses on exports have been taken as per information provided by the cooperating exporter from Singapore. After making adjustments, the ex-factory export price is calculated as US\$***/MT for bulk material and US\$***/MT for packed material.

Dumping Margin

42. On the basis of normal values and export prices determined above, the dumping margins are calculated as under:-

				IN US \$ (PMT)
Normal Value		Export Price		Weighted Dumping Margin
Bulk	Packed	Bulk	Packed	

South Africa

Merisol RSA (Pty.) Ltd.	***	***	***	***	(26.36%)

Non-cooperating Exporters	***	***	***	***	(68.54%)

Singapore

Mitsui Phenol Singapore Pte. Ltd producer and Mitsui & Co. Ltd., exporter	***		***		(26.34)

Non-cooperating exporters	***	***	***	***	(33.79%)

European Union

Non-cooperating Exporters	***	***	***	***	(29.23%)

The above calculated dumping margins are more than de minimis.

G. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

G.1 VIEWS OF THE DOMESTIC INDUSTRY

43. The domestic industry has submitted as under:-

- I. Imports of Phenol from the subject countries have increased significantly in absolute terms and relative to production and consumption in India.
- II. Export price from the subject countries have remained at dumped level. Further, these prices have not increased proportionate to increases in input prices
- III. Production, sales and capacity utilization of the domestic industry declined after showing improvements.
- IV. Decline in Production, sales and capacity utilization is in spite of anti dumping duties earlier imposed and sub-optimal prices offered by the domestic industry.
- V. Profit/loss is required to be determined on the basis of market value of captive inputs in the light of Supreme Court judgment in the matter relating to Reliance Industries Ltd. vs. Designated Authority. Decision of the Authority to determine profit/loss on the basis of actual cost of production is inconsistent with the decision of the Supreme Court.
- VI. Profit before depreciation & interest, profit before interest, profit before taxes (PBDIT, PBIT, PBT), cash profits, return on investments have all shown significant deterioration after improvements upto 2004-05.

- VII. So significant has been decline in profit before depreciation & interest, profit before interest, profit before taxes that PBDIT, PBIT and PBT all became negative in the investigation period.
- VIII. Market share of the domestic industry declined significantly, whereas that of imports increased.
- IX. Dumped imports have captured significant market share in demand in India.
- X. Imports from each of the subject countries have been undercutting the prices of the domestic industry in the market to a significant degree.
- XI. Imports from the subject countries have forced the domestic industry to reduce the prices steeply between 2004-05 and during investigation period. Thus, the imports were depressing the prices in this period.
- XII. Employment levels with the domestic industry have not undergone any significant change, even though there is a marginal decline. Wages paid have increased.
- XIII. Inventory level with the domestic industry increased. Increase in inventories is in spite of reduction/curtailment in production.
- XIV. Domestic industry posted negative growth in terms of both volume and price parameters, viz., decline in sales, production, capacity utilization, market share, cash flow, profits, return on investments etc. Overall, the domestic industry faced negative growth.

The various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury.

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

44. The exporter, importers and other interested parties has submitted as under:-

- i) The Designated Authority has not examined whether the information provided is in the same form and manner as was given by International Business Information Service and Kandla Port. Information provided by DGCI&S, Kandla Port and International Business Information Service cannot be claimed confidential.
- ii) Information in Performa IV-A has not been indexed properly and the same does not meet the criteria laid down under WTO Agreement. Further, the indexed information was not complete.
- iii) No grade wise information has been provided.
- iv) Merisol RSA have disputed that there is significant increase in utility costs.
- v) Reasons for claiming confidentiality with regard to volume of exports, captive consumption, demand excluding captive, net sales realization, have not given in the petition.
- vi) Costing information has not been indicated.
- vii) The manner of determination of cost of production and terms of various products – co-products and by-products – has not been disclosed.
- viii) The petitioner has not suffered any material injury.
- ix) It has been argued that exports from South Africa have declined, total imports in India have declined, market share of South Africa in total imports as also demand have declined. Installed capacity, production, capacity utilization, captive consumption, domestic sales and demand have all shown declined.
- x) There is no casual link between alleged dumping and injury. Various WTO decisions have established the need for proper casual link analysis.

xi) The authority should also consider the issue of public interest as domestic industry is not able to meet the demand. Herdillia themselves are importing as well as using the phenol for captive consumption.

xii) The claim of petitioners with regard to revision of duty is unjustified.

xiii) Regarding the increased in allegedly dumped imports, it is worth mentioning that there is a limited availability of domestic industry's capacity to attend the Indian market. Besides the capacity of the domestic industry is far from the needs of the domestic market and its production of the subject goods is also destined to captive consumption and to exports. So it could not be concluded that the increase in allegedly dumped imports have affected the domestic industry, but that the incapability of the domestic industry to provide subject goods to the market was responsible for the increase in those imports.

G.3 EXAMINATION BY THE AUTHORITY

45. The Authority has considered data as per DGCIS data. The Authority notes it is not specifically pointed out in what respect the *pro forma* IVA is not indexed properly and how it is not meeting WTO agreement. In the subsequent paragraphs, the Authority has analyzed injury parameters as per Rules.

a) Grade wise information – Authority notes that the Rules require determination of injury to the domestic industry in respect of like article. The Rules do not envisage separate assessment of injury in respect of different forms or grade of the product.

b) Information provided by interested parties on confidential basis were examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis

e) Cost of production – Authority notes that the cost of production adopted for the purpose of present determination is on the basis of consistent practice of the Authority.

Cumulative Assessment of Injury

46. Subject countries in the present investigation are Singapore, South Africa and European Union. Annexure II of Anti Dumping Rules provides that in case more than one country simultaneously subjected to anti-dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that (a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent, the imports collectively accounts for more than seven per cent of the import of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles. Present investigation is a midterm review investigation initiated under Rule 23 of the Rules.

47. On examination of information, the Authority finds that the prices of the subject goods of the domestic industry are comparable to price of subject goods coming from subject countries. These have been imported under the same tariff classification. The user and user industry for the imported product and the domestic product is the same. The Authority has, therefore, found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article in the light of conditions of competition between the imported products and the conditions of competition between the imported products and domestic like product.

Volume Effect of Dumped Imports

48. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. Annexure II (ii) of the anti dumping rules provides as under:

“While examining the volume of dumped imports the said authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India.”

Assessment of demand and market share

49. Designated Authority has determined demand as the sum of domestic sales of the domestic industry, sales of other Indian producers and imports of the subject goods in India from all sources. The demand so assessed is shown in the following table.

	Unit	2002-03	2003-04	2004-05	2005-06	July05- Mar06	Annualized POI
Domestic Industry	Mt	42039	37583	44265	28143	23221	30961
Other Producers	Mt	30525	32329	34099	26952	18760	25013
Import from Subject country -Mid Term	Mt	9094	15928	16698	30088	22949	30598
Import from Other country	Mt	12245	49497	48337	63353	50462	67282
Total Demand excluding Captive	Mt	93903	135337	143399	148536	115391	153855
Trend	Indexed	100	144	153	158	123	164
Captive	Mt	3069	2761	1311	1523	1506	2008
Total Demand including Captive	Mt	96972	138098	144710	150059	116897	155863
Trend	Indexed	100	142	149	155	121	161
Market Share excluding captive							
Domestic Industry	%	44.77	27.77	30.87	18.95	20.12	20.12
Other Producers	%	32.51	23.89	23.78	18.14	16.26	16.26
Import from Subject country -Mid Term	%	9.68	11.77	11.64	20.26	19.89	19.89
Import from Other country	%	13.04	36.57	33.71	42.65	43.73	43.73
Market Share including captive							
Domestic Industry	%	43.35	27.21	30.59	18.75	19.86	19.86
Other Producers	%	34.64	25.41	24.47	18.98	17.34	17.34
Import from Subject count-y -Mid Term	%	9.38	11.53	11.54	20.05	19.63	19.63
Import from Other country	%	12.63	35.84	33.40	42.22	43.17	43.17

50. The Authority notes that the imports of the subject goods have significantly increased while the sales of the domestic industry and other domestic producers have declined during the injury investigation period in spite of the fact that the demand of the product shows positive trend. The market share of the domestic industry has significantly declined during this period.

Price Effect

51. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows:-

"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 undercutting 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 other wise would have occurred to a significant degree."

52. In a review investigation, it is required to examine whether there has been a significant price effect by the dumped imports as compared with the price of the like product in India, or whether there is likelihood of recurrence of price effect after revocation of duty.

	2003-04	2004-05	2005-06	Loose-POI	Packed-POI
Landed Price Subject countries	32,508	57,319	52,323	46,584	65,413
EU	38,344	58,388	52,728	46,489	66,986
South Africa	21,758	53,300	53,572	46,343	62,780
Singapore	39,529	68,731	48,579	47,124	67,228
NSR (Rs/Mt)	***	***	***	***	***
Price Undercutting (Rs/Mt) Subject countries	***	***	***	***	***
EU	***	***	***	***	***
South Africa	***	***	***	***	***
Singapore	***	***	***	***	***
Price Undercutting (%) Subject countries	***	***	***	***	***
Non Injurious Price				***	***
Price Underselling (Rs/Mt) Subject countries				***	***
EU				***	***
South Africa				***	***
Singapore				***	***
Price Under selling (%) Subject countries				***	***

53. It is noted that the price at which material is exported from subject countries in loose form is lower than the price at which material is being sold by the India Producers. The Authority notes that in the original investigation the reference price for the purpose of levying anti dumping duties from subject countries were ranging from US \$710 to US \$778. During the Period of investigation it is noted that even CIF value is more than the reference price fixed in earlier investigation which implies that anti dumping duties were not effective. However, the goods continue to have significant price undercutting and underselling effects on the domestic industry.

Price suppression and depression

	Unit	2002-03	2003-04	2004-05	2005-06	POI
Cost of sales	Rs./Mt	***	***	***	***	***

Trend)	Indexed	100	101	134	135	137
Selling Price per unit	Rs./Mt	***	***	***	***	***
Trend	Indexed	100	106	156	128	125
Average Landed value	Rs/Mt		***	***	***	***

54. The cost and price structure of the domestic industry and the landed value of imports from the subject countries show that the cost has increased by about 37% over the base year whereas the prices have increased by only 25%. The landed value of imports after showing an upward trend in the intervening period has again declined significantly.

55. The price at which material is being sold by the Indian Producers does not provide reasonable return on investment and is below non-injurious price of the domestic industry.

OTHERECONOMIC PARAMETERS RELATING TO THE DOMESTIC INDUSTRY

56. Annexure II to the Rules requires that the determination of injury shall involve an object examination of the consequent impact of these imports on domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows:-

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

Actual and potential Production, Capacity and Capacity Utilization, Sales

57. Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

	Unit	2002-03	2003-04	2004-05	2005-06	POI	POI Annual
Installed Capacity	Mt	40000	40000	40000	40000	30000	40000
Trend	Indexed	100.00	100.00	100.00	100.00		100.00
Production	Mt	***	***	***	***	***	***
Trend	Indexed	100.00	94.49	114.07	67.77		81.20
Capacity Utilization	%	106	100	121	72	86	86
Trend	Indexed	100.00	94.49	114.07	67.77		81.20
Domestic Sales	Mt	***	***	***	***	***	***
Trend	Indexed	100.00	89.40	105.30	66.95		73.65
Imports from Subject Countries	Mt	9094	15928	16698	30088	22949	30598
Trend	Indexed	100.00	175.15	183.61	330.86		336.47

58. It is noted that production, capacity utilization and sales of the domestic industry show negative trend during the entire injury period, at the same time, imports from subject countries have increased significantly. Production of the domestic industry has declined in response to decline in sales due to increase in imports from various sources, including the subject countries. Subject countries are exporting significant volumes of subject goods at a price, which is below the non-injurious price of domestic industry. Decline in production has directly resulted in the decline in capacity utilization.

Cost of sales and selling price of domestic industry

	Unit	2002-03	2003-04	2004-05	2005-06	POI
Cost of sales	Rs./Mt	***	***	***	***	***
Trend)	Indexed	100	101	134	135	137
Selling Price per unit -	Rs./Mt	***	***	***	***	***
Trend	Indexed	100	106	156	128	125

59. The Authority notes that while cost of sales and of the domestic industry increased during POI the selling price declined significantly after showing a positive trend up to 2004-05. Though the increase in sales price was more than the cost up to year 2004-05, thereafter the increase in selling price was not in proportion to the increase in cost. The increase in cost was mainly due to increase in inputs price of benzene and LPG, which are petro based.

Profits, return on investment and cash flow

60. Profits, return on investment and cash flow of the domestic industry has been examined as under:

	Unit	2002-03	2003-04	2004-05	2005-06	POI	POI Annual
Profit Before Interest & Tax	Rs./Lacs	***	***	***	***	***	***
Trend	Indexed	100.00	126.47	319.62	49.50	22.83	22.83
Return on Capital Employed % (NFA Basis)	%	***	***	***	***	***	***
Trend	Indexed	100.00	130.40	250.83	48.64	21.89	21.89
Cash Profit	Rs./Lacs	***	***	***	***	***	***
Trend	Indexed	100.00	132.94	347.74	49.53	20.29	20.29

61. The above data shows that the profitability and return on capital employed by the domestic industry has been significantly affected during the injury investigation period though the profitability and ROCE remains positive.

Employment and wages

62. It is noted that the constituent of the domestic industry is a multi product multi location company; therefore, there may not be direct effect of dumping on employment levels of the domestic industry. Status of employment levels and wages of the domestic industry has been as under:

	Unit	2002-03	2003-04	2004-05	2005-06	POI	POI Annual
Employment (Manpower strength)	Nos.	***	***	***	***	***	***
Trend	Indexed	100.00	99.41	100.45	96.36	96.36	96.36
Wages	Rs./Lacs	***	***	***	***	***	***
Trend	Indexed	100.00	108.42	126.70	130.64	135.02	135.02

63. It is evident from the above that employment level of the domestic industry have almost remained stagnant. Wages shows positive trend.

Actual and potential decline in Productivity

64. The productivity of the domestic industry is given in the following table:

	Unit	2002-03	2003-04	2004-05	2005-06	POI	POI Annual
Productivity per employee	Mt	***	***	***	***	***	***
Trend	Indexed	100.00	95.05	113.56	70.33	84.26	84.26
Productivity per day	Mt	***	***	***	***	***	***
Trend	Indexed	100	94.49	114.07	67.77	81.20	81.20

65. The productivity of the domestic industry has declined during the injury period with the decline of production, which was declined due to decline in sales due to increase in imports from subject countries as also other countries.

Inventories

66. Designated Authority has examined the inventory level of the domestic industry, which is given in the following table:-

	Unit	2002-03	2003-04	2004-05	2005-06	POI
Average Stock	Mt	***	***	***	***	***
Trend	Indexed	100.00	359.05	510.74	480.27	280.77
Average Stock in terms of No. of D'ys' sales	Nos.	4	18	21	31	22
Trend	Indexed	100.00	401.62	485.05	717.41	508.30

67. Based on the above, it is noted that the inventory levels of the domestic industry shows increasing trend over the injury period. .

Factors affecting domestic prices

68. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider 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 or prevent price increases, which otherwise would have occurred, to a significant degree. In order to assess the effect of imports on the domestic market, Designated Authority analyzed import prices over the injury period. It was found that the landed value of imports per PMT, in period of investigation, is lower than the net selling price and non-injurious price of bulk

phenol in respect of all subject countries. It was also found that the landed value of imports per PMT, in period of investigation, is higher than the net selling price in respect of packed phenol from all subject countries and higher than non-injurious price of packed phenol in respect of EU and Singapore but lower in the case of packed phenol from South Africa. Out of total imports from subject countries, the packed and bulk imports are 9% and 91% respectively. The decline in customs duty further resulted into reduction in landed price of imports. Change in cost structure if any, due to competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. There is no viable substitute to this product and the prices were affected due to dumped prices.

69. Designated Authority determined the net sales realization of the domestic industry considering selling price, excluding taxes & duties, rebates, discounts and freight & transportation. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The comparison is done between net sales realization and landed price of imports separately for bulk and packed phenol. The landed value of imports from the subject countries was lower than the net sales realization of the domestic industry for the subject goods during the POI in respect of bulk phenol thereby, undercutting the selling price of the domestic industry. The undercutting margin was 1-10%.

70. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been worked out for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI. It was found that the landed value of imports of bulk phenol per PMT, in period of investigation, is lower than the non-injurious price determined for the domestic industry during the period of investigation in respect of all subject countries. It was also found that the landed value of imports per PMT, in period of investigation higher than non-injurious price of packed phenol in respect of EU and Singapore but lower in the case of packed phenol from South Africa. The underselling margin was 10-20%.

Growth

71. On examination of various economic parameters of the domestic industry, it is noted that various volume and price parameters of the domestic industry shows negative trend, which is in spite of anti-dumping duty in force against subject countries, resultantly, growth of the domestic industry remained negative.

Ability to raise capital

72. The domestic industry has not made any capital investment after 2004-05 and during the POI.

Conclusion on Injury

73. The demand of subject goods increased by 61% (annualized) during POI as compared to base year. The domestic sale of the domestic industry during the same period declined to 73.67%. The domestic sale had increased by 5% in 2004-05 as compared to base year, however, in 2005-06 and POI the sale declined to 67% and 74% respectively. The production declined to 81% during POI as compared to base year. The capacity utilization declined to 86% during POI which was 106% in 2002-03. The average stock measured in terms of No. of days sales, the average stock increased from 4 days in 2002-03 to 22 days in POI. The market share of the domestic industry and other producers declined from 43% and 35% in 2002-03 to 20%, 17% respectively during POI. Imports from the subject countries increased from 9094 MT in 2002-03 to 30598 MT (annualized) during POI. The increase in imports and corresponding decline in sales, production, capacity utilization despite healthy growth in demand indicates injury to the domestic industry in volume terms.

74. The landed value of imports from subject countries rose in 2004-05 as compared to 2003-04. However, in 2005-06 and POI it declined significantly. The cost of sale of the domestic industry increased by 34% in 2004-05, 35% in 2005-06 and 37% in POI as compared to base year.

The average selling price of the domestic industry increased by 56% in 2004-05 as compared to base year. However, the selling price declined in 2005-06 and POI as compared to 2004-05. The undercutting of the selling price by the imports from subject countries were negative in 2005-06 and increased significantly during POI. The profits show similar trend and increased by 220% in 2004-05 as compared to base year. In 2005-06 and POI the profits declined significantly. It declined to 49.50% in 2005-06 and 23% in POI as compared to base year. The return on capital employed shows similar trends. The financial performance of the company shows improvement up to 2004-05, however, in 2005-06 and POI it deteriorated significantly.

75. The selling price behavior of the domestic industry indicate that in 2005-06 with the declining landed value of the imports, the selling price was reduced despite the fact that there was no decline in cost of sales. However, in POI the landed value declined further thereby undercutting became positive putting further pressure on the selling price. The selling price declined further in 2005-06 and POI whereas there was slight increase in cost of sales during the same period.

76. The evaluation of various parameters as analysed above shows that the performance of the domestic industry improved considerably from 2002-03 to 2004-05. However, the performance deteriorated in 2005-06 and POI.

OTHER KNOWN FACTORS & CAUSAL LINK

77. During the POI, imports have taken place from subject countries of present investigation and other countries against which investigation is progress. Imports from other than these countries are at higher prices.

Contraction in demand and / or change in pattern of consumption

	Unit	2002-03	2003-04	2004-05	2005-06	POI	POI Annual
Total Demand excluding captive	Mt	93903	135337	143399	148536	115391	153855
Trend	Indexed	100.00	144.12	152.71	158.18	163.84	163.84
Total Demand including captive	Mt	96972	138098	144710	150059	116897	155863
Trend	Indexed	100.00	142.41	149.23	154.74	160.73	160.73

78. It is evident from the above that demand of the product under consideration has increased significantly, decline in demand, is therefore, not a cause of injury to the domestic industry

Trade restrictive practices of and competition between the foreign and domestic producers

79. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. The domestic industry competes among one another and at the same time competes with the landed price of the subject goods. The price of the domestic industry is determined by the landed price of subject goods. Moreover, imports from other sources have sizable presence in the Indian market.

Development of technology and export performance

80. Technology or technology related issues have not been raised by any interested party as cause of injury to the domestic industry.

Exports by the domestic industry

81. The exports of the domestic industry is only 206 MT during the POI and it constitutes less than 1% of their production.. Therefore, exports could not have affected its over all performance.

Causal Link

82. The above mentioned factors show that the injury to domestic industry was not caused by any of the other factors analysed above.

83. The Anti-dumping duty on imports of Phenol from subject country was imposed in the form of reference price. The duty became ineffective with the increase in imports price as a consequence of increase in cost of sales because of rising prices of raw materials. The imports at landed value higher than the reference price did not attract any anti dumping duty, therefore, imports had continued at dumped prices as if there was no anti-dumping duty in place. Despite growth in demand of the subject goods by 61% during POI as compared to base year, the sale of domestic industry declined to 73.65% during the same period.

84. The landed value in 2004-05 had increased by 76% as compared to 2003-04. During the same period the cost of sales in 2004-05 increased by 33%, the selling price increased by 46%, profits increased by 253%, the production increased by 20% and domestic sale increased by 17%. The capacity utilization in 2004-05 was 121%. In 2005-06, the landed value declined to 91% as compared to 2003-04. During the same period despite the increase in cost of sales of domestic industry, the selling price declined by 82%, the profit declined to 15%, the sales volume declined to 64% whereas the imports rose by 80%. The average inventory increased to 31 days. The production declined by 59% and capacity utilization declined to 72% of the total capacity. The landed value in POI further declined to 92% as compared to 2005-06. During the same period the cost of sale increased by approximately 1% whereas the selling price further declined to 91%, the profit declined to 46%.

85. The above analysis indicate that with the decline of landed value and increase in imports from the subject countries, the selling price and profits of the domestic industry declined significantly. In addition to that, the sales volume, production and capacity utilization was also impacted adversely. No factor other than the dumped imports has come to the notice of the Designated Authority causing injury to the domestic industry, establishing casual relationship between dumped imports and injury to the domestic industry.

H. LIKELIHOOD OF CONTINUANCE OR RECURRENCE OF DUMPING

86. As analysed in Section –F of this findings, the dumping from subject countries continued despite imposition of anti-dumping duty. No material has come on record indicating that dumping would cease on withdrawal of anti-dumping duty, therefore, the Authority holds that there is likelihood of continuance of dumping from the subject countries.

I. LIKELIHOOD OF CONTINUANCE OR RECURRENCE OF INJURY TO THE DOMESTIC INDUSTRY

87. As analysed in Section-G of this findings, the injury to the domestic industry continued despite imposition of anti-dumping duty on the subject goods from the subject countries. The anti-dumping duty was in the form of reference price, with the increase of cost of sales consequent to increase in prices of raw material, the landed value increased and anti-dumping duty became ineffective. In 2005-06, with the intensification of dumping from the subject countries, the performance of the domestic industry deteriorated sharply. As already analysed, with the increase in dumped imports directly impacted selling price, profits, sales volume, production and capacity utilization of the domestic industry, therefore, the Authority holds that on withdrawal of anti-dumping duty, the performance of the domestic industry would deteriorate.

J. FINAL FINDINGS

88. The Authority after considering the foregoing concludes that:

- a. Subject goods originating in or exported from subject countries have been exported to India below their normal value, resulting in dumping;
- b. The domestic industry has suffered material injury due to dumped imports;
- c. And discontinuation of anti-dumping duties on the subject goods from subject countries may result in continuance of dumping and continuance or intensification of injury to the domestic industry.

K. Indian industry’s interest & other issues

89. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the product in India. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply

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

L. Recommendations

91. In view of positive determination of likelihood of dumping and injury on account of imports from subject countries the Authority is of the opinion that continuation of the measure is required against imports from subject countries. However, considering the current level of dumping from subject countries and injury suffered by the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, Authority considers it necessary and recommends anti-dumping duty on imports of subject goods from subject countries in the form and manner described hereunder.

92. At present the anti-dumping duty on the subject goods from subject countries is in the form of reference price. As prices of main raw material have been fluctuating, the reference price has been proved to be ineffective in removing injury to the domestic industry, therefore, the Authority holds that the fixed duty would be appropriate form of duty to remove injury to the domestic industry.

93. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping or margin of injury whichever is lesser, so as to remove the injury to the domestic industry. The Authority recommends continuation of definitive antidumping duty, on all imports of subject goods originating in or exported from subject countries, as indicated in Col 8 of the table below.

Duty Table

Sl. No	Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	and 2907.11 2707.60	Phenol	Singapore	Singapore	Mitsui Phenol Singapore Pte. Ltd.	M/s Mitsui & Co. Ltd.	218.26	MT	USD
2.	Do	Do	Singapore	Singapore	Mitsui Phenol Singapore Pte. Ltd.	Any other than above	218.26	MT	USD
3.	Do	Do	Singapore	Singapore	Any other than above	Any other than above	218.26	MT	USD
4.	Do	Do	Singapore	Any country other than Singapore	Any	Any	218.26	MT	USD
5.	Do	Do	Any country other than subject countries	Singapore	Any	Any	218.26	MT	USD
6.	Do	Do	South Africa	South Africa	M/s Merisol RSA Pty. Ltd.	M/s Merisol RSA Pty. Ltd.	206	MT	USD
7.	Do	Do	South Africa	South Africa	M/s Merisol RSA Pty. Ltd.	Any other than above	206	MT	USD
8.	Do	Do	South Africa	South Africa	Any other than above	Any other than above	206	MT	USD
9.	Do	Do	South Africa	Any country other than South Africa	Any	Any	206	MT	USD
10.	Do	Do	Any country other than subject countries	South Africa	Any	Any	206	MT	USD
11.	Do	Do	European Union	European Union	Any	Any	212	MT	USD
12.	Do	Do	European Union	Any country other than European Union	Any	Any	212	MT	USD
13.	Do	Do	Any country other than subject countries	European Union	Any	Any	212	MT	USD

94. Landed value of imports for the purpose shall be the assessable value as determined by Customs under the Customs Act, 1962 and all duties of customs except duties levied under Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

95. An appeal against this order shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

(R. Gopalan)
Designated Authority