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

NOTIFICATION

New Delhi the 4th August, 2008

Final Findings

(Sun Set Review)

No.15/9/2007 DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

A. BACKGROUND

2. Whereas, having regard to above Rule, the Designated Authority (hereinafter referred to as Authority) initiated a sunset review antidumping investigation on 10-8-2007 into alleged dumping of Phenol originating in or exported from Singapore, South Africa and European Union. The provisional antidumping duty was imposed on imports of Phenol from Singapore, South Africa and European Union vide customs notification no. 79/2002-CUS dated 13.08.2002 on the basis of the preliminary findings of the Authority dated 24.06.2002. The final findings were notified vide notification dated 13.02.2003 and the Department of Revenue imposed definitive anti dumping duties on the subject goods from subject countries vide notification no. 47/2003-CUS dated 24.03.2003. The mid-term final findings were notified vide notification dated 13.07.2007 and the Department of Revenue imposed definitive anti dumping duties on the subject goods from subject countries vide notification no. 98/2007-CUS dated 31.08.2007

3. And whereas the Rules require the Authority to review, from time to time, the need for continued imposition of Anti-Dumping Duty and if it is satisfied, on the basis of information received by it that there is no justification for continued imposition of such duty, the authority may recommend to the Central Government for its withdrawal.

4. In terms of the above provision, Designated Authority, received an application filed by the Domestic Industry substantiating the need for sunset review of the anti dumping duty imposed on the subject goods originating in or exported from Singapore, South Africa and European Union and have requested for enhancement / revision of the anti dumping duty imposed on subject goods.

B. Procedure

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 - India Ltd. requesting initiation of sunset 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 sunset review investigation. On being satisfied, the Authority issued a public notice dated 10th August, 2007 published in the Gazette of India, Extraordinary, initiating antidumping sunset 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 and provided them opportunity to provide relevant information and make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2).
 - Hungarom-Europe-2000 Company, Hungary
 - A H Marks and Company Limited, England
 - Phenolchemie GmbH, Germany

- Enichem, Italy
- Mitsui & Co. Ltd. Singapore
- Merisol, South Africa

iv) The Embassies of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 5(5) 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 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).

- 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

None of these parties however filed any response to questionnaire in the form and manner prescribed.

- 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. Information was received from the DGCI&S. 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 has field their submission/ response/ information to the Designated Authority.
 - (a) Mitsui Phenols Singapore Pte. Ltd. ('MPS'), Singapore
 - (b) Mitsui & Co. Ltd. (Asia Pacific) Pte. Ltd., exporter from Singapore exporting phenol produced by Mitsui Phenols Singapore Pte. Ltd. ('MPS'), producer from Singapore
 - (c) Sumitomo Corporation (Singapore) Pte. Ltd., a company in Singapore exporting phenol produced by Mitsui Phenols Singapore Pte. Ltd. ('MPS'), producer from Singapore and producers in other countries through Adani Global.
- ix) Investigation was carried out for the period starting from 1st April 2006 to 31st March 2007 (POI). However, injury examination was conducted for a period from 2003-04, 2004-05, 2005-06 and POI
- x) The Authority held a oral hearing on 11th April 2008 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 – India Ltd -(through their consultants), advocate of exporters and producers from 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.

- xi) 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.
- xii) 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.
- xiii) 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 also been considered in the these Final Findings.
- xiv) 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).
- xv) 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.
- xvi) 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.
- xvii) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has 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.

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 sunset investigation. The product involved in the original investigation and in the present sunset review investigation is Phenol. The product under consideration in the present sunset 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.

- (viii) Present investigation is a review investigation. The Designated Authority has examined the issue of product under consideration and like article in the original investigation, which is relied upon.

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 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 them 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.

- a. The petition was jointly filed by M/s. Hindustan Organic Chemicals Ltd. and SI Group – India Ltd. There are two companies in India who created capacity for production of Phenol namely Hindustan Organic Chemicals Ltd. and SI Group - India Ltd. Both the companies are participating in the present investigation and must be considered as “domestic industry” within the meaning of the rules.
- b. 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. Mitsui Phenols Singapore Pte. Ltd. (MPS-Producers) and M/s Mitsui & Company (Asia Pacific) Pte. Ltd. (MAP-Exporter) has raised following issues.

i) SI Group – India Ltd. should be excluded from the scope of domestic industry for the reason that they are importers themselves. The Authority in the previous investigation had excluded SIG from the purview of the domestic industry on the same ground.

ii) 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 from being part of the domestic industry at the stage of initiation.

iii) The domestic industry in their application has falsely mentioned that the authority in the past has considered the level of imports as made by SIG as insignificant and has included the company within the scope of domestic industry.

iv) Assuming but not accepting the authority does not exclude SIG from the domestic industry, all the imports made for export purposes and the imports made SIG ought to be excluded for analyzing injury to the domestic industry.

12. M/s. Sumitomo Corporation (Singapore) Pte Ltd -Exporter has raised following additional issues.

i) The authority has so far conducted three investigations on this product – original and a MTR covering the same subject countries and another investigation covering USA, Korea and Taiwan. In all the three investigation, HOCL was held to be the sole constituent of the domestic industry and other producer namely SI Group was excluded from the scope of the domestic industry on the ground that they themselves were the importers of the subject goods.

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. A fresh public hearing may be held after the domestic industry provides revised injury information as without injury information, exporters are highly handicapped in making their submission.

iii) In response to the disclosure statement they have reiterated their stand on exclusion of SIG as a part of domestic industry and sought injury determination a fresh after this exclusion.

D.3 EXAMINATION BY THE AUTHORITY

13 Authority notes that one petitioner SI Group – India 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 and Duty paid, Duty paid imports by the company are only *** MT in total imports of *** MT in India from subject countries. Duty paid imports by the SIG from subject countries constitutes very small proportion (2% of total imports into India). The Authority considers that merely because the company was excluded in previous investigations, the same does not imply that the company should be excluded in the present investigations as well. Exclusion or inclusion of a company is required to be considered on case by case basis. In view of the facts & circumstances of the present case, the Authority has considered it appropriate to include SI Group - India Ltd for the scope of Domestic Industry.

E. OTHER ISSUES

E.1 VIEWS OF THE DOMESTIC INDUSTRY

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

i) Sumitomo Corporation is a trading company based in Singapore. The company is free to source Phenol from any party. Domestic industry disputes the claim of the Company to demand its own dumping margin.

ii) It is disputed MPS and MAP are fully co-operating or that the questionnaire response filed was fully documented. Domestic industry submits that any decision for verification would be pre-matured, unless it is established that the company had provided all relevant information.

iii) The exporter has failed to establish that the petitioner has claimed such information confidential which is not permitted under the rules.

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

15. 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.

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

17. The correspondence exchanged with the domestic industry prior to initiation and thereafter is not available in the public file for the interested parties to offer their comments.

18. Domestic industry nowhere in the application has mentioned that the other producer namely HOCL is a BIFR company and its crucial information had not been disclosed to the Authority prior to initiation.

E.3 EXAMINATION BY THE AUTHORITY:

19. The petition filed was examined for sufficiency of evidence to justify the present investigations. Authority notes in this regard that under Section 9A(5) and 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.

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

21. 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.

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

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

F. DUMPING MARGIN

F.1. VIEWS OF THE DOMESTIC INDUSTRY

23. Domestic industry has raised following issues with regard to dumping.

- (i) Normal value in European Union should be determined as per prices reported by ICIS-LOR.

- (ii) In view of significant difference in loose and packed cost of production and selling price, it is necessary to do separate comparison between loose and packed product. The resultant dumping margins may thereafter be cumulated.
- (iii) The export price should be determined on the basis of this transaction wise import data.
- (iv) Information provided by the responding exporters should be verified with the information maintained by the Customs Port Authorities, as possibilities of significant differences are not ruled out.
- (v) Comparison between normal value and export price and landed price of imports and selling price/ non-injurious price should be done separately for loose and packed material.
- (vi) Information has not been adequately disclosed by the foreign producers in the non confidential versions. Information which is publicly disclosed has been kept confidential. Further, mere blank formats have been provided in the non confidential version. Information with regard to exports to India, third countries, sales in home market and cost of production, etc. should be provided on indexed basis.
- (vi) No supplementary information filed by the foreign producers, if any, can be seen in the public version.
- (vii) Normal value determined should include contract and spot sales.

F.2 VIEW OF EXPORTERS/IMPORTERS AND OTHER INTERESTED PARTIES

24. Exporters, importers and other interested parties have raised following issues.

Sumitomo Corporation (Asia) Pte Ltd -Singapore

- i. A separate dumping margin may be determined for them in their capacity as trader.
- ii. Without making necessary adjustments towards significant variations in delivery terms and payment terms applicable on sales of different countries, Authority cannot compare the export prices to India with export prices to other countries.

- iii. Two NIPs be determined, one for loose and one for packed for determination of injury margin
- iv. Normal value and export price should be compared on month to month basis and not on weighted average basis for entire period of review.
- v. Since there were no questions in exporter questionnaire prescribed by the authority with regard to continuation or reoccurrence of dumping, any continuation or reoccurrence test without asking for required information would be gross violation of principle of natural justice.
- vi. Under the law it is not sufficient to determine only the likelihood of dumping but the examination of likelihood of continuance or reoccurrence of injury is also mandatory.
- vii. In their response to the disclosure statement, they have once again sought individual dumping margin on the premise that in the exporter questionnaire response they had clearly stated that they purchase phenol from Mitsui Phenols Singapore Pte Ltd (MPS) and they export the same to India except in case of POI where invoices were raised in on Adani Global Pte Ltd, Singapore who in turn raised its own invoices on Indian customer. Further subsequent to POI Adani Global Pte Ltd had exited from the business and they had started exporting directly to India. It has further been stated that they had already furnished related documents of Adani Global Pte Ltd who in turn had sought instructions as to whether they needed to file a separate exporters questionnaire.
- viii. It has further been contended that Sumitomo and Adani Global have presented their respective export invoices and the export price shown in the export invoiced raised by Adani Global are the same as shown in the bill of entry filed at the Indian port and this conclusively proves the authenticity of export price for the transaction.
- ix. In response to the disclosure statement they have sought determination of individual dumping margin quoting Rule 17(3) of Anti-dumping Rules which states that the Authority shall determine the individual margin of dumping for each exporter and producer concerned of the article under investigation.
- x. It has been contended that if Sumitomo is treated as falling under residual category, it would amount to application of best information available which under Rule 6(6) is applicable in respect of an interested party who refuses access to or otherwise does not provide necessary information within a reasonable period. They on the contrary have cooperated with the authority and provided all the available information and therefore, Rule 6(6) does not apply to them.

Mitsui Phenols Singapore Pte. Ltd.(MPS – Producer) and Mitsui and Company (Asia Pacific) Pte. Ltd. (MAP – exporter)- Singapore

- i. Normal value, export price and dumping margin are required to be computed on weighted average basis as per consistent practice of the Authority.
- ii. The Authority may take into consideration only the actual figures made available to them by cooperating producer and exporter while calculating the dumping margin.
- iii. Commenting on the disclosure statement they have contested determination of dumping margin based upon weighted average export price of exports made to third countries particularly when verified export price to India is available.
- iv. They requested that export price be determined without considering adjustment on account of trader's expenses.

F.3 EXAMINATION BY THE AUTHORITY

25. Under section 9A (1) (c) normal value in relation to an article means:
- (i) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6),
or
 - (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in

the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either

- (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

F.3.1 Dumping margin for European Union

F.3.1.1 Normal value

26. The Authority notes that none of the exporters from EU have filed any response. As information about actual domestic sales price, information on exports to third country or cost of production in EU and other information as per the questionnaire have not been furnished by the producers/exporters in Europe; the Authority proposes to rely upon the best available information for determination of normal value. The petitioners have provided details of normal value in Europe on the basis of prices published in ICIS-LOR and estimates of cost of production in Europe. Examination of the information provided shows that the normal value, on the basis of prices published in ICIR-LOR (approx US \$ ***/ per MT) is significantly higher than the normal value determined by construction (US \$***/ per MT) on the basis of estimated cost of production. In the absence of any response from the exporters from EU in the form and manner prescribed, the Authority proposes to determine normal value in EU on the basis of construction by estimating cost of production in accordance with Rule 6(8) supra. The normal value so determined for EU is US \$ *** per MT for bulk shipments. The normal value has been constructed by adopting ICIS-LOR (Europe) prices of major raw

materials, i.e. Benzene and Propylene, best consumption factors for these raw materials and best known estimates of conversion cost during the relevant period. Selling, general & administrative costs and reasonable profit margin has been added to the cost of production so determined.

F.3.1.2. Export Price

27. The Authority has taken into account transaction wise data from DGCI&S with regards to imports from EU. The Authority notes that the DGCI&S information shows imports of 5416 MT of phenol in bulk and 16 MT, which appears to be packed phenol. The import price in case of 16 MT import is significantly lower than other import transactions. The Authority therefore has ignored this import transaction and considered that all imports during the investigation period were bulk shipments. The export price has been taken from transaction-wise information provided by the DGCIS, after excluding the import transaction of 16MT. After making adjustments on account of ocean freight, overseas insurance, inland freight, port expenses, bank charges, the ex-factory export price is calculated at US\$ *** per MT. The dumping margin is calculated at US\$ *** Per MT.

28. In absence of any information/ cooperation by the EU exporters, the data provided in the World Trade Atlas was analyzed to examine the likelihood of dumping. The World Trade Atlas compiles data based on calendar year. It was seen that the exports volume for world increased by 52.43% for Phenol (from *** MT to *** MT) for the calendar year 2007 over 2006. During the same period, the exports to India increased by 267% (from *** MT to *** MT). The data shows increase in quantity from 4.87% to 11.72% in exports to India in comparison to exports to rest of the world. This shows the potential of diversion of material to India in case of withdrawal of duties. Further, the increase in price to the world market is approx 15.78% whereas the price increase to India is 34.63% during the same period that is in 2007 over 2006. In the event of withdrawal of duties, the possibility of diversion of cheaper exports to India cannot be ruled out. The Authority has also compiled the information concerning the available capacity in EU. The source is ICIS-LOR capacities in world. It shows that EU has in total the capacity of 2,985,000 MT per year. The capacities have been in Spain (610,000MT/year), Belgium (680,000 MT/year), Finland (195,000 MT/year), France (180,000 MT/year), Germany (800,000 MT/year) and in Italy (520,000 Mt/year). Thus in this likelihood scenario, the dumping margin has been worked out on the basis of minimum export consignment price for bulk phenol as follows:

	Bulk (Average Price)	Bulk (Based Upon Minimum E P)
Normal value(US\$)	***	***
Export price(US\$)	***	***
Dumping margin(US\$)	***	***
Dumping Margin %	17-22	34-39
Import volumes (MT)	5416	

F.3.2 Dumping margin for South Africa

F.3.2.1 Normal value

29. The Authority notes that none of the exporters from South Africa have filed any response, even though M/s. Sasol had filed detailed questionnaire response and had fully cooperated in the recently concluded midterm review investigation. As information about domestic sales price, exports to third country, cost of production in South Africa and other information as per prescribed questionnaire have not been furnished by any producer/exporter in South Africa; the Authority proposes to rely upon the best available information for determination of normal value. The petitioners have claimed normal value in respect of South Africa on the basis of estimates of cost of production. The Authority examined the possibility of considering whether any other evidence of prices of phenol in South Africa could be adopted. However, no published information could be traced in respect of domestic selling prices of phenol or its Raw material. In respect of finished product World Trade Atlas reflects data relating to exports to third countries by South Africa for the calendar year 2007 and not financial year 2006-07, POI in the present investigation. The data on imports into

China alone from South Africa for the financial year 2006-07 was however available on world trade atlas according to which China had imported *** MT of Phenol from South Africa during 2006-07 at an Average export price of US \$ *** per MT. This price is being treated as average price for bulk and packed as no separate price for bulk and packed phenol is available. The normal value for South Africa has been determined based upon this data by making reasonable adjustments on account of Ocean Freight, Marine insurance, Inland freight, port expenses, and Bank expenses at par with similar adjustments made for determination of export price. The normal value so determined works out to US \$ *** MT

F.3.2.2 Export Price

30. The Authority has taken into account transaction wise data from DGCI&S with regards to imports from South Africa in view of non cooperation from producer/exporter from South Africa. The Authority notes that the South Africa has exported 5458 MT of phenol in bulk and 1003 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, 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 and on a weighted average basis the net export price thus calculated works out to US\$ *** per MT.

31. The Authority notes that as per response of the cooperating exporter from South Africa in the MTR case, the actual capacity during POI of MTR case was ***MT where as their production was only *** MT. In other words the capacity utilization was to the extent of just ***** %. The information as available in ICIS-LOR world capacities however shows the capacity of this plant as 40,000 MT/ year. This indicates that the South African manufacturer has surplus capacity and in the event of withdrawal of duty, the manufacturer has every reason to increase the production and divert the subject goods to Indian market at dumped prices, demand being there. However analysis of pricing pattern of exports of subject goods by South Africa to world

over vis-a vis to India as per data available in World Trade Atlas reveals that the prices to India both in the year 2006 and 2007(calendar Year – data available in WTA is on calendar year basis) are lower than their export price to world over. Whereas the per K.G price to India during 2006 and 2007 stands at US\$ 1.02 and US\$ 1.27 respectively, the corresponding prices to world over stand at US\$1.06 and US\$ 1.59 respectively. In other words, the prices to India based upon which the Dumping and subsequently landed value and Injury margins have been calculated can be termed as reliable.

Dumping Margin Calculation:

	For product under consideration(Weighted Average Basis)
Normal value(US\$)	***
Export price(US\$)	***
Dumping margin(US\$)	***
Dumping Margin %	13-18
Import volumes (MT)	6461

F.3.3. Dumping margin for Singapore

F.3.3.1 Normal value

Mitsui Phenol Singapore Pte. Ltd producer And Mitsui & Co. Ltd. (Asia Pacific) Pte. Ltd. exporter

32. Mitsui & Co. Ltd. (Asia Pacific) Pte. Ltd. exporter had filed response in the prescribed form and thus co operated in the investigation.

33. The exporter in this case i.e. Mitsui & Co. Ltd., (Asia Pacific) Pte. Ltd. (hereinafter referred to as MAP) 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. This company has an annual capacity of *** MT/ year. Mitsui & Co. Ltd. holds 5% of the shareholding in Mitsui Phenols. The Authority conducted on the spot verification of producer/exporter in May, 2008 at their office. 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.

34. The producer has two channels of sales. Goods are sold by the producer to its affiliated trader who has in turn sold the material to various parties. The producer has directly sold to the customers also. The producer has sold *** MT during the period of investigation at an average price of US\$ *** per MT. This price is net of margin to the trader. The exporter has claimed adjustments on account of credit cost, which have been verified and allowed. The normal value so determined is *** per MT.

F.3.3.2 Export price :-

35. The exporter has claimed exports of only two consignments to India, which involves exports of *** MT at an average price of US \$ *** PMT. The exporter has claimed price adjustment on account of ocean freight, marine insurance and credit cost, which has been verified. The exporter has not claimed any adjustment on account of expenses of the trading company i.e. MAP. The Authority has considered the same quantum of price adjustment for MAP expenses as has been considered for normal value. The net expected price comes to US \$ ***per MT.

36. It was found at the time of verification that total volume exported by the trading company is higher than total volumes supplied by the producer company. The remaining volumes were supplied from Japan, USA and Taiwan, which were exported to third countries.

37. Considering the above mentioned normal value and export price, the dumping margin comes as under

	Exports to India
Normal value claimed	***
FOB export price	***
Less : Trader's expenses	***
Credit cost	***
Net Export price	***
Dumping margin	(-***) negative

38. The Authority notes that there is significant price difference between exports to India and third countries (for shipments made) in and around the same month based on the compilations provided by the exporter during the verification. During the course of verification, the documents pertaining to third country exports could not be verified due to the inability expressed by the exporters in this regard. The exporter however, in response to the verification report explained that the “marginal differences in export prices to India and to other countries are bound to occur in view of different conditions prevailing in different markets. Further, the exporter is selling goods to India as well as to other countries by purchasing from MPS as well as from some other producers of subject goods in other countries and therefore any conclusions based on these prices would be misleading.” Perusal of the above table indicates that there were substantial differences in the selling prices between Domestic sales and sales to third countries. The difference was on the lower side in favour of third countries barring the months of April, Oct 06 and Jan 07. Except these months, the price differential on a monthly basis was as high as up to US \$ ***. The exporter has not put forward any claim for this differential on account of quality/ grade difference in the product. Further, as per the argument in response to the verification report, the conclusions can be misleading, but the exporter has not denied the facts/ factual reporting of the huge price differential in the sales made in the home market vis a vis sales made to third countries. The Authority

notes that no reasoned explanation has been given by the exporter with regard to significant price difference between exports to India and exports to third countries for shipment made in and around the same month. It has not been established by the exporter that the price at which the exporter sells the product in different markets is linked to source of supply. Nor has the exporter established that the goods purchased from third country exporters would never be sold in Indian market or domestic market. In view of the availability of production capacity with the producer, existence of financial capabilities of the company to operate under huge differential pricing mechanism, and the fact that the exporter is buying and selling the product in global market after purchasing the same from a number of producers in third countries, there is a likelihood of continuation/ recurrence of dumping in case the duties are withdrawn. Consequently, in the scenario of likelihood of continuation/ recurrence, the Authority has determined the likelihood of dumping by adopting the export price for exports made to third countries. The dumping margin for the purpose of this likelihood analysis has been determined on the basis of weighted average price of exports made to all other third countries.

40. It is noted that the exporter has sold *** MT at a price of US\$ *** per MT to third countries other than India as per the consolidated country wise exports statement provided regarding sales to Australia, China, Indonesia and Thailand. Thus, in a situation where the exporter has sold at a price difference of as high as US \$ *** per MT in and around the same month between India and third countries, the possibility of routing this material to India, in the event of revocation of anti dumping duties, cannot be ruled out. The Authority therefore has adopted the price to third countries as export price for the purpose of determining whether the dumping is likely in the event of revocation of anti dumping duties. Further, adjustments have been made on account of credit cost, at par with the same as claimed for exports to India.

	Exports to India	Exports to 3rd Countries
Normal value claimed (US\$)	***	***
FOB export price(US\$)	***	***
Credit cost(US\$)	***	***
Traders expenses	***	***
Net Export price(US\$)	***	***
Dumping margin(US\$)	(-***)	***
Dumping Margin %	Negative	22-27%

In its disclosure comments, the exporter disputed consideration of exports to third countries for the purpose of present investigations. It was argued that exports made to third countries and price thereof is completely irrelevant. Definition of normal value, export price, determination of

dumping margin, legal requirements for determination of individual dumping margin, past practice of the Authority to determine dumping margin based on actual exports to India, etc. have been referred by the exporter, arguing that exports to India is the only relevant information for the purpose of present investigations. The Authority clarifies that the dumping margin in respect of shipments made during the investigation period has been determined on the basis of exports to India made by the exporter. In fact, the Authority has clearly stated that the dumping margin in respect of actual shipments made to India was negative. Any confusion in this regard is therefore self created. It is clarified that it is for the purpose of determination of likelihood of dumping, as mandated under Section 9A(5), that the Authority has considered actual exports to India and the exports to third countries during the present investigation period and determined dumping margin in respect of the same. It is important to note that Section 9A(5) clearly provides that the Designated Authority shall determine whether dumping is likely to continue or recur. Therefore, the Authority is required to determine whether dumping is likely in the event of revocation of anti dumping duties. It cannot be said that such likelihood analysis should be based solely on the actual shipments to India during the relevant period. In the present case, where very substantial volume of material has been exported by the company in various countries globally, it is not only relevant but also important to examine such third country exports. The Authority also notes that the exporter has not provided any plausible reasons establishing why dumping is unlikely to recur in the event of revocation of anti dumping duties, in the light of vast difference in the prices in respect of exports to India and third countries.

Sumitomo Corporation (Singapore) Pte. Ltd., exporter from Singapore exporting phenol produced by Mitsui Phenols Singapore Pte. Ltd. ('MPS'), producer from Singapore

41. The exporter had claimed in its response that it has exported goods originating in Singapore during the investigation period as a trader and accordingly requested the Designated Authority to determine dumping margin in respect of its exports made to India. In view of request for individual treatment, the Authority verified the claims of the interested party. At the time of spot verification, however, it was found that the exporter had in fact sold this material to another trading company in Singapore. The exporter had thus not exported the goods to India. Further, it was found that the exporter purchased material from Japan, USA and Taiwan, which is sold in the global market, including Indian market. During the investigation period, the exporter had in fact one transaction wherein the material originated in USA and shipped to India, via Singapore. This transaction was ignored as the material was not of Singapore origin. The exporter also argued in their comments to the disclosure statement that since they had co-operated with the Authority and provided all the available related information and considering the fact that in post POI they had commenced direct exports to India consequent upon closure of operations by Adani Global as also considering the fact that the source of procurement for them is MPS, same as is for MAP. The Authority however considers that dumping margin can be determined only on the basis of shipments during the investigation period. Post investigation period developments are not relevant in this regard. Moreover, in the investigation period, the exporter of the subject goods was Adani Global and not Sumitomo. It is the consistent practice of the Designated Authority to consider the eventual exporter to India as the exporter of the subject goods. The intermediary exporter/trader of the subject goods cannot be considered as exporter of the subject goods. Even if the Authority were to determine individual dumping margin in the present case, the same would be for Mitsui Phenol – Sumitomo – Advani Global combination and not for Mitsui Phenol – Sumotomo combination. The

resultant duties in that case would have been with Mitsui Phenol as a producer and Adani Global as the exporter.. In any case, the Authority could not grant individual dumping margin and individual anti dumping duty on Mitsui Phenol – Sumitomo combination. The Authority has therefore not determined individual dumping margin in respect of exports made by this company through another trading company in Singapore.

Non-Co operative exporters

42. The Authority notes that total volume of imports reported from Singapore as per DGCIS [3577 MT] are higher than the exports volume by responding exporters [*** MT]. Normal value in case of non cooperative exporters has been calculated at the same rate as has been determined for responding exporters. For determination of export price, the Authority has relied on transaction-wise details provided by DGCIS and has considered export price considering the residual volume of imports. Adjustments on account of expenses on exports have been taken as per information provided by the cooperating exporter from Singapore. After making adjustments for ocean freight, marine insurance and credit cost, the ex-factory export price is calculated as US\$ ***per MT. This has been considered as bulk/ loose shipment in the absence of any information to the contrary. The dumping margin so calculated comes to US \$ ***per MT.

	Unit	Exports to India (verified data)	Exports to 3 rd countries (average)	DGCIS Residual Price
CIF Price	US \$/MT	***	***	***
Ocean freight	US \$/MT	***	***	***
Marine Insurance	US \$/MT	***	***	***
FOB price @ ex-factory	US \$/MT	***	***	***
Credit cost	US \$/MT	***	***	***
Less : MAP's expenses	US \$/MT	***	***	***
Net Export Price	US \$/MT	***	***	***
Normal Value	US \$/MT	***	***	***
Dumping Margin	US \$/MT	(***)	***	***
DM as a percentage of NEP	%	Negative)	22-27	38-43

The Authority notes that as per the response of the responding producer, MPS produced Phenol ***MT in Singapore. The company had *** MT captive consumption. The company was thus faced with freely disposable production capacity for *** MT. Further, the questionnaire response filed by the responding companies, MAP and Sumitomo shows that they have cumulatively sold ***MT in Indian and third country markets. These trading companies have purchased material from global market and sold in various markets. The data provided by the responding companies also shows that there is very significant difference in the price at which the goods have been exported to other countries. The data shows that exports to a number

of third countries have been made at prices significantly lower than export price to India in the current period. The verified information also shows that the price at which MAP has sold the product can be materially different than the price at which MPS has sold the product. In fact, it was found that MAP has sold the product during the current POI in third countries at prices much lower than the price at which MPS has sold the material. The data thus clearly shows likelihood of dumping in the event of revocation of anti dumping duties.

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. Export price from the subject countries have remained at dumped level.
- ii. Production, sales and capacity utilization of the domestic industry declined after showing improvements.
- iii. 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.
- iv. 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.
- v. 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 up to 2004-05.
- vi. 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.
- vii. Dumped imports have captured significant market share in demand in India.
- viii. Imports from each of the subject countries have been undercutting the prices of the domestic industry in the market to a significant degree.
- ix. 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.
- x. Employment levels with the domestic industry have not undergone any significant change, even though there is a marginal decline. Wages paid have increased.
- xi. Inventory level with the domestic industry increased. Increase in inventories is in spite of reduction/curtailment in production.
- xii. 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.

44. 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

45. Sumitomo Corporation (Asia) Pte Ltd has made following submissions.

- (i) There is actually a significant fall in exports from subject countries and market share of Indian producer have increased from 37% to 53% during period of review compared to 2005-06. Further the sales value of the domestic industry has increased so has the production of the domestic industry which includes 96% capacity utilisation. Therefore, none of these factors can be deemed to have contributed injury to the domestic industry.
- (ii) There is no price suppression or depression.
- (iii) Imports from number of other countries are taking place at the same time. Injury, if any, caused by those imports shall not be attributed to the subject countries.
- (iv) NIP shall be determined in the same way in which it was determined in the original and earlier mid-term review investigations.
- (v) In their comments to the disclosure statement it has been stated that the statement containing methodology for determination of NIP does not disclose the reasonable profit margin, basis on which countrywide NIP was arrived, cost variation of HOCL vis-à-vis SIG, whether NIP has been determined at ex-factory level, whether the same is inclusive or exclusive of taxes and trend of NIP from previous investigation to SSR.
- (vi) They have sought determination of injury margin for Sumitomo as also disclosure of import volumes from subject countries. They have further contested that imports from subject countries continue to hold significant share in Indian demand on the premise that there is nothing wrong if the imports constituted in significant share as Anti-dumping law does not require that existing duty shall be terminated only when the share of imports is not significant.

46. Mitsui Phenols Singapore Pte. Ltd.(MPS – Producer) and Mitsui and Company (Asia Pacific) Pte. Ltd. (MAP – exporter) have made following submissions.

- (i) The domestic industry allegation that there is significant decline in export price from Singapore to India is incorrect as the same has increased significantly from Rs. *** per MT in 2003-04 to Rs. ***per MT.
- (ii) The injury to the domestic industry, if any, as also decline in cash flow and return on investment is due to imports from other countries and not due to imports from subject countries.
- (iii) The market share of domestic industry over injury investigation period has increased and there is no injury to the domestic industry with respect to this factor. Similarly the landed value from subject countries has increased drastically from Rs. *** per MT in 2003-04 to Rs.*** per MT in POI and thus imports from subject countries have not affected domestic prices.
- (iv) Authority should also analyse that injury to the domestic industry may have been caused by SIG as also the fact that HOCL is a BIFR company.

G.3 EXAMINATION BY THE AUTHORITY

47. The Authority has considered data as per DGCI&S 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. Further, petitioners provided separate information with regard cost of production, selling price, profit/loss in respect of bulk and packed product and in these findings duties are levied for bulk and packed phenol separately.
- b) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted

and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis

- c) 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.
- d) Decline in imports – Authority notes that the present investigations being that of review investigations, the fact of decline in import volumes is not relevant. Also the authority proposes to assess injury on cumulative basis as dealt in subsequent paragraphs.
- e) Public interests – Authority notes that while arguing that imposition or continuation of anti dumping duty is not in public interest, no information or evidence has been provided by these interested parties. Thus, it has not been established how imposition of anti dumping duty would not be in public interest. The Authority levy the duties as per Rules.
- f) The agreement provides that the Anti Dumping Duty shall remain in force only as long as and to the extent necessary to counteract dumping, which causes injury. In the Sunset review, the authority has to review that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury. Thus the examination is on likelihood and recurrence than the present dumping and injury to the domestic industry. The authority has examined the available information accordingly.

Cumulative Assessment of Injury

48. 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. The Designated Authority therefore, notes that the various conditions of cumulative assessment will apply in this investigation. In view of the above, Designated Authority has cumulatively assessed the injury and likelihood of continuation and recurrence of injury to the domestic industry.

49. 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. The Authority has therefore considered it appropriate to examine cumulatively the effect of injury by imports of subject goods from subject countries on the domestic industry in this investigation.

Volume Effect of Dumped Imports

50. 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

51. 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.

Particulars	Unit	2003-04	2004-05	2005-06	2006-07
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Domestic industry	MT	69912	78364	55095	67893
Import from subject country	MT	15928	16698	30088	15470
Other country	MT	49497	48330	63353	47414
Total demand excluding captive	MT	135337	143399	148536	130777
Trend	Indexed	100	106	110	97
Captive	MT	2761	1311	1523	2852
Total demand including captive	MT	138098	144710	150059	133629
Trend	Indexed	100	105	109	97
Market share (excluding captive)					
Domestic industry	%	51.66	54.65	37.09	51.88
Import from subject country	%	11.77	11.64	20.26	11.89
Other country	%	36.57	33.71	42.65	36.23
Market share (including captive)					
Domestic industry	%	52.62	55.06	37.73	52.91
Import from subject country	%	11.53	11.54	20.05	11.64
Other country	%	35.84	33.40	42.22	35.46

52. The Authority notes that the imports from subject countries as also sales of the domestic industry have marginally declined over the injury investigation period. Sales of the domestic industry declined significantly in 2005-06 and thereafter increased in POI, whereas the imports from subject countries showed the reversed trend, i.e., the volume of imports increased significantly in 2005-06 and then declined in POI. Market share of the domestic industry and subject imports have also remained at the similar levels, except for 2005-06, when market share of the domestic industry had declined and that of subject imports had increased. Domestic industry regained market share significantly in POI whereas the subject imports lost market share. The domestic industry had earlier filed a petition for increase in quantum of anti dumping duty where the POI was July 2005- March 2006. Considering that the present investigations are sunset review investigations, the Authority holds that imports from subject countries continue to hold significant share in Indian demand.

Price Effect

53. 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 otherwise would have occurred to a significant degree."

54. 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.

Particulars	Unit	2003-04	2004-05	2005-06	POI
Landed price					
EU(Bulk)	Rs/MT	***	***	***	***
South Africa(Average for Bulk and Packed)	Rs/MT	***	***	***	***
Singapore – Mitsui Phenol	Rs/MT	***	***	***	***
Singapore – Others		***	***	***	***
Subject country	Rs/MT	***	***	***	***
Net sales realization	Rs/MT	***	***	***	***
Price undercutting					
EU	Rs/MT				***
South Africa	Rs/MT				***
Singapore – MPS and MAP	Rs/MT				***
Singapore – Others					***
Subject country	Rs/MT				***
Price undercutting for subject countries	%				7-12%
Non injurious price(Average For Bulk and Packed)	Rs/MT				***
Price underselling					
EU	Rs/MT				***
South Africa	Rs/MT				***
Singapore – MPS and MAP	Rs/MT				***
Singapore – Others					***
Subject country	Rs/MT				***
Price underselling for subject countries	%				9-14%

55. The Authority notes that

the goods continue to have significant price undercutting and underselling effects on the domestic industry.

56. Considering the fact that the Authority is also required to look into the likelihood of recurrence of Dumping and consequential injury to the Domestic Industry and also considering the fact that as per cooperating exporter's data, the

export price to third countries is much lower than the export price to India during POI, Authority concludes that it is necessary to reevaluate the injury margins for the purposes of comparison with dumping margin for determination of duty component, and proposes to determine the injury margins by relying upon the landed value calculations based upon third country exports from Singapore, as per table below;

European Union (DGCI&S Data is the basis for landed value calculations)

	Unit	Bulk
NIP	Rs./MT	***
Landed cost	Rs./MT	***
Injury Margin	Indian Rupees	***
Injury Margin in US \$	US \$	***
Injury margin as a percentage of NIP		18-23%

South Africa (DGCI&S Data is the basis for landed value calculations)

	Unit	Bulk	Packed
NIP	Rs./MT	***	***
Landed cost	Rs./MT	***	***
Injury Margin	Indian Rupees	***	***
Injury Margin in US \$	US \$	***	***
Injury margin as a percentage of NIP		5-10%	7-12%

Singapore (only Bulk)

	Unit	Exports to India	Exports to 3 rd countries (average)	Exports to 3 rd countries (minimum EP)	DGCI&S Residual Price
NIP	Rs./MT	***	***	***	***
Landed cost	Rs./MT	***	***	***	***
Injury Margin	INR	(***)	***	***	***

Injury Margin in US \$	US \$	(***)	***	***	***
Injury margin as a percentage of NIP		Negative	21-26%	55-60%	32-37%

57. Further, there being no response from, either European Union or South Africa, the Authority has relied upon the trade data available in World Trade Atlas as also other available information from ICIS -LOR to assess the impact on likelihood of continuation of recurrence of dumping and consequential injury to the Domestic Industry in the event of either discontinuation or even reduction of the duty component from the present levels. The analysis has been done above in paras pertaining to export price calculations for individual country/ies.

58. **Price suppression and depression**

Particulars	Unit	2003-04	2004-05	2005-06	POI
Cost of sales	Rs/MT	***	***	***	***
Change from base year	Indexed	100	137.49	144.35	165.62
Net sales realization	Rs/MT	***	***	***	***
Change from base year	Indexed	100	148.47	121.67	159.04
Difference between increase in cost vs. increase in price	Rs/MT				***

59. 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 66% over the base year whereas the prices have increased by only 59%. 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. The Authority notes that whereas the domestic industry prices declined significantly in 2005-06 (the period for which midterm review petition was filed) and the domestic industry regained largely in POI, the increase in the cost of production over the entire injury period (Rs. *** PMT) was higher than increase in selling price (Rs. *** PMT). The Authority therefore concludes that imports were thus suppressing the prices in the market.

Other Economic Parameters Relating To The Domestic Industry

60. 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 investment's."

Actual and potential Production, Capacity and Capacity Utilization, Sales

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

Particulars	Unit	2003-04	2004-05	2005-06	POI
Installed capacity	Mt	74200	74200	74200	74200
Trend	Indexed	100	100.00	100.00	100.00
Production	Mt	75068	83742	58430	71283
Trend	Indexed	100	111.55	77.84	94.96
Capacity utilization	%	101.17	112.86	78.75	96.07
Trend	Indexed	100	111.55	77.84	94.96
Domestic sales	Mt	69912	78364	55095	67893
Trend	Indexed	100	112.09	78.81	97.11
Import from subject countries	Mt	15928	16698	30088	15470
Trend	Indexed	100	104.83	188.90	97.13

62. The Authority notes that production, capacity utilization and sales of the domestic industry show increase in 2004-05, decline in 2005-06 and again increase in POI. Even though the production and sales increased in the POI, yet the levels achieved were lower than then levels earlier achieved, particularly in 2004-05. The Authority concludes that it is thus evident that even though the domestic industry improved its position in POI, it did not reach back the levels achieved in 2003-04 and 2004-05.

63. The Authority further notes that the cost of sales of the domestic industry increased as 66% during the POI but the selling price of the domestic industry increased as 59% during POI as

compare to base year. The Authority concludes that though the increase in sales price was less than the cost of sales, 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 propylene, which are petro based.

Profits, return on investment and cash flow

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

Particulars	Unit	2003-04	2004-05	2005-06	POI
Profit before interest and tax	Rs/Lacs	***	***	***	***
Trend	Indexed	100	380.64	-270.43	8.48
Return on capital employed (NFA basis)	%	***	***	***	***
Trend	Indexed	100	267.44	-227.62	4.92
Cash profit	Rs/Lacs	***	***	***	***
Trend	Indexed	100	509.57	-420.82	-43.59

65. 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. Profitability of the domestic industry improved significantly in 2004-05 and thereafter declined significantly in 2005-06 and the domestic industry suffered significant financial losses. Even though the domestic industry again posted profits in POI, the level of profits were far lower than the levels achieved in 2003-04 and 2004-05. Return on investment and cash profits followed the same trend as that of profits. The Authority concludes that the domestic industry, even though improved substantially in POI, has not been able to recover back to its earlier established position.

Employment and wages

66. The Authority notes 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:

Particulars	Unit	2003-04	2004-05	2005-06	POI
Employment (Manpower strength)	Nos	***	***	***	***
Trend	Indexed	100	118.25	104.56	115.25

Wages	Rs/Lacs	***	***	***	***
Trend	Indexed	100	106.35	121.85	145.00

67. The Authority concludes from the above that employment level of the domestic industry has almost remained stagnant whereas wages show a positive trend.

Actual and potential decline in Productivity

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

Particulars	Unit	2003-04	2004-05	2005-06	POI
Productivity per employee	Mt	***	***	***	***
Trend	Indexed	100	94.34	74.44	82.39
Productivity per day	Mt	***	***	***	***
Trend	Indexed	100	111.55	77.84	94.96

69. The Authority notes from above table that productivity of the domestic industry declined between 2003-04 and 2005-06, but improved again in POI. However, the productivity levels in POI, even though better than 2005-06 were lower than productivity levels in 2003-04 and 2004-05.

Inventories

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

Particulars	Unit	2003-04	2004-05	2005-06	POI
Average stock	MT	***	***	***	***
Trend	Indexed	100	119.28	111.27	131.48
Average stock in terms of No. of days sales	Nos	***	***	***	***
Trend	Indexed	100	106.41	141.19	135.39

71. Based on the above, Authority notes that the inventory levels of the domestic industry has not shown declining trend. In fact, inventory levels with the domestic industry continued to be significant and average level of inventories increased.

Factors affecting domestic prices

72. 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 and found that the landed value of imports per PMT, in period of investigation, is lower than the net selling price and non-injurious price from subject countries. 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. The Authority concludes that there is no viable substitute to this product and the prices were affected due to dumped prices.

73. 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 Authority concludes that 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%.

74. 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. The Authority 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. The Authority 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

75. On examination of various economic parameters of the domestic industry, Authority notes 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, and concludes that resultantly, growth of the domestic industry remained negative.

Ability to raise capital

76. The domestic industry has not made any capital investment after 2004-05 and during the POI. However, their ability to raise further investment is not a significant factor in this case.

Other Known Factors

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

Particulars	Unit	2003-04	2004-05	2005-06	POI
Total demand excluding captive	MT	135337	143399	148536	130777
Trend	Indexed	100	105.96	109.75	96.63
Total demand including captive	MT	138098	144710	150059	133629
Trend	Indexed	100	104.79	108.66	96.76

78. The data shows demand of the product under consideration has marginally declined. However, yet the same is significantly higher than the existing capacities. Decline in demand cannot be considered as the factor that would have impacted 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 are only *** MT during the POI and it constitutes less than 1% of their production. Therefore, exports could not have affected its overall performance.

FINAL FINDINGS:

82. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- i) The subject goods are entering the Indian market at dumped prices and dumping margins of the subject goods imported from EU and South Africa are substantial and above de-minimis.

- ii) The subject goods are likely to enter the Indian market at dumped prices and the likely dumping margins in respect of imports from Singapore and European Union is substantial and above de-minimis.

iii) The subject goods are likely to enter Indian market at dumped prices, should the present measures be withdrawn.

ii) Even though the domestic industry has improved its performance between 2006-07 and the POI, the situation of domestic industry continues to be fragile. Further, should the present anti dumping duties be revoked, injury to the domestic industry is likely to continue or recur.

83. Having concluded that the situation of the domestic industry continues to be fragile and there is likelihood of continuation or resumption of dumping and injury on account of imports from EU, South Africa and Singapore, if the duties are revoked, the Authority is of the opinion that the measure is required to be extended in respect of imports from these countries. However, the quantum of anti dumping duty in force need not be revised so far as European Union and Singapore is concerned. Therefore, the Authority considers it necessary and recommends continuation of anti dumping duty on imports of subject goods from EU, and Singapore at the rates specified vide notification no. 15/4/2006-DGAD dated 13/7/2007 and amendment dated 25/7/2007 and customs notification no. 98/2007 dated 31.08.2007. However, name of Mitsui and Co. Ltd. stands amended to Mitsui & Co. (Asia Pacific) Pte. Ltd. As regards South Africa; the Authority recommends a definitive antidumping duty of US\$ 119 per MT in respects of all exports of subject goods originating in or exported from that country to India.

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

R. Gopalan
Designated Authority