

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

New Delhi, the 24th June 2002

PRELIMINARY FINDINGS

Subject: Anti-dumping investigation concerning imports of Phenol from the European Union, Singapore and South Africa - Preliminary findings.

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

A. PROCEDURE

2. The procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Hindustan Organic Chemicals Limited (HOCL) on behalf of the domestic industry, alleging dumping of Phenol (hereinafter referred to as subject goods) originating in and exported from European Union, Singapore and South Africa (hereinafter referred to as subject countries);
- ii. The Authority notified the Embassies/Representative of the subject countries in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iii. The Authority issued a Public Notice dated 15th February 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Phenol originating in or exported from the subject countries falling under Customs Sub-heading 2907.11 and 2707.60 under chapter 29 and 27 respectively of the Customs Tariff Act, 1975;
- iv. The Authority forwarded copy of the said public notice to the known exporters, importers, users, industry associations and to the complainants and gave them an opportunity to make their views known in writing;

- v. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters; and Embassies/representatives of subject countries in India.
- vi. The Authority sent questionnaires, to elicit relevant information, to the following exporters from the subject countries:
 - a. Phenolchemie GmbH, Postfach 508, Germany
 - b. Enichem, Piazza Boldrini 1, Italy.
 - c. Mitsui & Co Ltd, 16 Raffles Quay, Singapore.
 - d. Merisol, Sasolberg, South Africa
- vii. The Embassies/representative of subject countries in New Delhi were also informed about the initiation of investigation and were requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- viii. The questionnaire was sent to the following users/importers of subject goods:

(A) Segment wise list of major consumers:

PF Resins

- a. PF Moulding Powder: XPRO India, Division Cimmco Birla Ltd, Kandivali West, Mumbai 400067.
- b. Laminates: Bakelite Hylam Ltd, Sanathanagar, Hyderabad, AP
- c. Plywood/Particle Boards: Greenply Industries Ltd, Ratnagiri, Maharashtra.
- d. Foundries/Abrasives: Gargi Huttenes Albertus Pvt Ltd, 205 Vasant Vihar Complex, Chembur, Mumbai 400074

Drugs and Pharmaceuticals

Alta Laboratories Ltd, Alta Bhavan, Senapati Bapat marg, Dadar, Mumbai 400028.

Pesticides and Insecticides:

United Phosphorus Ltd, Readymoney Terrace, Dr. Annie Besant Rd. Mumbai

Syntans Colour Chem Ltd, Mumbai Agra road, Balkum, Thane, Mumbai.

Alkyl Phenols and Diphenyl Oxide

Herdillia Chemicals Ltd, 13th Floor, Air India Building, Nariman Point, Mumbai

(B) Addresses of Indian importers (Traders)

- C. J. Shah and Company
105, Bajaj Bhawan
10th Floor, Nariman Point
Mumbai – 400021
- Haresh Kumar and Company
1212, Maker Chambers 5
Jamnalal Bajaj Road,
Nariman Point
Mumbai – 400021
- PCL Industries
M – 105, Connaught Place
New Delhi – 110001
- Kantilal Manilal and Company
16, Princess Street
Mumbai – 400003
- Sonkamal Enterprises
10, Dev Darshan Apartment
Old Nagardas Road
Andheri (East)
Mumbai-400 069
- Khetan Brothers
C-17, Dalia Industrial Area
Off New Link Road
Opposite Laxmi Industrial Estate
Andheri (West)
Mumbai-400 058
- Shubham Dyes & Chemicals Limited
1 / 26, Roop Nagar
Delhi-110 007

(C) Domestic Associations of User Industries

- a. Indian associations of user industries, 16, Mumbai Samachar Marg, Mumbai 400023
 - b. Society of thermosetting Industries, TIPCO, Rani sati marg, Malad(East), Mumbai 400097
 - c. Indian Laminates Mfrs Associations, Das chambers, Mumbai 400023
- ix. Mitsui Phenol Singapore Pte, Singapore had asked for some more time to respond in view of the delay in receiving the letter. M/s Kesar Petro Products, a user of the subject goods had also asked for extension of time for filing their reply as their name was not there in the petition submitted by the domestic

- industry. One-week extension was allowed to both the exporter as well as the user.
- x. The Authority kept available non-confidential version of the evidence resented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
 - xi. ***** In this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
 - xii. The investigation covered the period from 1st April 2001 to 31st Dec 2001.
 - xiii. Additional details regarding injury were sought from the petitioner, which were also furnished.
 - xiv. The Authority conducted on-the-spot verification of the domestic industry to the extent considered necessary.
 - xv. The cost of production of the domestic industry was also analyzed 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) based on the information furnished by petitioner so as to ascertain if anti dumping duty lower than dumping margin would be sufficient to remove injury to domestic industry.
 - xvi. Copies of initiation notice were also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

B. PETITIONER'S VIEWS

3. The petitioners have made the following major points in to their submissions:
- i. The product under consideration in the present petition is Phenol also known as carboic acid. It is produced by the oxidation of Cumene using air at elevated temperature and pressures. The product is then alkali washed and concentrated to a higher strength and then mixed with H₂SO₄, which causes a cleavage reaction to give Phenol and Acetone. This is then washed to remove acidity and distilled in a series of distillation columns to give Phenol and Acetone.
 - ii. It is classified under chapter 29 of Customs tariff Act under Customs sub heading 2907.11. However it is also imported under Chapter 27 under subheading 2707.60.
 - iii. There are three producers of Phenol in India, who have created capacity to produce Phenol. Apart from the petitioner, M/s. Herdillia Chemicals Limited and M/s. Neyveli Lignite Corporation have also created capacity to produce Phenol. However, The petitioner has submitted that M/s. Neyveli Lignites is relatively much small producer of Phenol.

- iv. There is no difference in Phenol produced by the Indian industry and Phenol exported from the subject countries. Phenol produced by the Indian industry and imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology (followed by most of the producers from the subject countries), functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. Phenol produced by the petitioner and imported from the subject countries should be treated as like articles in accordance with the anti-dumping Rules
- v. As regards the normal value in the case of subject countries, the petitioner has not been able to get evidence either with regards to the prices of phenol in subject countries or price lists of the exporters. They have also not been able to get any evidence of exports from subject countries to other countries (Except for Singapore). Only in the case of Singapore they have been able to get evidence of price at which the producer in Singapore has exported phenol to various countries. The petitioner believes that there is a significant difference in the price at which the material has been exported to India and the price at which the Singapore exporter exported the material to other countries. In fact the prices at which Singapore exporter has been exporting the product to India has been benchmarking the price of Phenol in India and is forcing other producers in other countries to reduce the prices and resort to dumping. The petitioner has been able to get the information about exports of Phenol from Singapore to India and top ten countries. Normal value has been determined on the basis of exports from Singapore to Malaysia and Thailand. As regards EU and South Africa the petitioner has claimed normal value on the constructed cost of production after taking the price at which the basic raw material has been imported into India.
- vi. The petitioner has claimed export price on the basis of published data of DGCI&S, Kolkata. However the above information has been relied upon for determination of value and volume of imports of phenol in India for the period up to June 20001. For the later period of the POI (from July onwards), the petitioner has procured information from secondary sources (From Kandla port) as they maintain that DGCI&S data is incomplete and does not reflect the total imports. In the case of Singapore the petitioner has given an evidence of the subject goods exported from Singapore to India as per Singapore Trade Statistics.
- vii. The petitioner has submitted that dumping margin from all subject countries is not only more than de-minimus but also substantial. In fact cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the prices offered by the domestic

- industry in the India market. The authority is therefore requested to assess injury to the domestic industry cumulatively from the subject countries.
- viii. Import statistics show that the quantum of imports from subject countries has increased in a significant way. Volume of imports has increased in spite of imposition of safeguard duty.
 - ix. Various economic parameters suggest that the petitioner has suffered injury due to import from subject country. Production and capacity utilization has very significantly declined in the current year. The domestic industry has been forced to restrict its production due to dumping from subject countries.
 - x. Prices of imported Phenol fell sharply causing severe price depression. The prices of imported Phenol when adjusted for price increases actually fell even below the already low levels of the year 1989-99 which covered the first period of the safeguard investigations.
 - xi. The petitioner has added that the price (after including the basic custom duty) at which the material is imported is not only below the selling price of the domestic industry but also are not permitting recovery of the full cost of production to the petitioner. Thus the imports are causing severe price undercutting, depression, and suppression in the market.
 - xii. Thus selling prices of the domestic industry were far below the costs of production, resulting in the severe financial losses to the domestic industry.
 - xiii. Thus various economic parameters relating to the domestic industry collectively and cumulatively establish that the domestic industry has suffered injury despite safeguard duty in place and the injury is directly caused by dumped imports from subject countries.

C. EXPORTERS', IMPORTERS', USERS' AND OTHER INTERESTED PARTIES' VIEWS:

4. Responses have been received from the following exporters and exporters Organizations.

- i. Mitsui & Co.,Ltd Singapore Branch, Singapore.
- ii. Mitsui Phenol Singapore Pte Ltd., Singapore.
- iii. Merisol RSA (Ptv) Ltd., Johannesburg, South Africa

5. The submissions made and/or the information provided by the above as follows:

- i. Mitsui & Co.,Ltd Singapore Branch, Singapore
 - a. M/s Mitsui & Co. Ltd. has held that they do not dump any exports into India and cause any damage to Indian local producers.

- b. The price of exports to India has been set in accordance with world's supply/demand balance as well as in consideration of the international prices and competition with other suppliers.
- c. Demand for phenol in 2001 fell sharply all over the world due to severely depressed economic situation. Total demand for phenol in 2001 was approximately at 6.5 million tones, which was 3% less than compared with the previous year. However, the total phenol production capacity reached around 8 million tones, which means that average plant utilisation ration was deemed at about 82-83% throughout year 2001, which was extremely low in view of last five years. For example, the standard market prices in Asia were about US \$ 600/MT CIF at the beginning of 2001 and fell to US\$400/MT CIF by the end of 2001.
- d. Indian demand of phenol has been growing with a steady growth in Indian economy and accordingly demand for imported phenol has increased remarkably. While total demand is estimated at around 110-120 Kilo tones per year, production of all domestic producers is only about 60 kilo tones per year which means India needs a constant import of 50-60 kilo tones per year.
- e. Mitsui Phenol Singapore Ltd (MPHS) is one of the newest and biggest plants in the world and is most competitive in terms of stable production, high productivity and low production cost. As a result of imports from Singapore many customers could improve their profitability, which should have contributed a lot to the Indian economy while domestic producers often have production problems and unstable supply. In fact it was not import of Singaporean product, but rather domestic producer's uncompetitive nature and delays in their restructuring of their production and supply system that brought heavy injury to domestic industry.
- f. The exporter has added that phenol's price dropped very sharply due to a sudden occurrence of excessive demand and supply imbalance and a large decrease in the raw material price. The price drop happened not only in India but also throughout the world.
- g. Phenol itself is not different in terms of chemicals characteristic. However, overall services and quality controls, as well as the value added at the factory for the end customers, are different.
- h. HOCL plant is too old and the yield ratio is too poor to cover their costs. On the other hand, MBHS has the latest advanced technology.
- i. There is a large phenol consumer in Singapore and the price of this consumer should be taken as a normal value.
- j. As regards substantial increase in imports from the subject countries in absolute terms, the exporter has held that demand in India has increased a lot while new capacity was built in Singapore. In addition, world demand outside India slowed considerably after the year 2001. Imports increased due to growing

Indian economy and not due to dumping price. The fact that HOC sales decreased less than 30 Kilo tones is due to their technical and financial problems.

- ii. Mitsui Phenol Singapore Pte Ltd (MPSL), Singapore Branch:
 - a. Mitsui Phenol Singapore Pte Ltd is owned by M/s Mitsui Chemicals Inc. Japan and Mitsui & Co, Japan.
 - b. The petitioner has submitted similar arguments to the one submitted by Exporter M/s Mitsui & Co Ltd as mentioned in earlier paragraph. These are not being repeated for the sake of brevity. However their normal value and export price are being dealt separately as per their submission in the relevant headings.
- iii. M/s Merisol RSA (Pty), South Africa.
 - a. M/s Merisol RSA (pty) has responded to the questionnaire and has given arguments in their submissions.
 - b. **STANDING:** The petitioners themselves admit that during the period of investigation they accounted for less than 50 of the domestic production. According to rule 5(3) in order to constitute a valid application, the following two conditions have to be satisfied:
 - i. Their domestic producers expressly supporting the application must account for not less than 25% of the total production of like articles by the domestic industry in India; and
 - ii. The domestic producers expressly supporting the application must account for more than 50% of total production of the like articles by those expressly supporting and those opposing the application. While the petitioners may satisfy part a) of the test, the onus is on the designated authority to verify part b) of the test and until such time as is done, it is submitted that this initiation is ultra vires.
 - iii. **HERDILLIA DATA NOT AVAILBALE:** It is pointed that M/s Herdillia was taken over by Schenectady Group on 1st July 2001. M/s Merisol RSA (pty) holds that M/s Herdillia has suffered no injury during the period of investigation and this fact must be checked while determining the injury if any to the domestic industry in India otherwise M/s Herdillia Chemicals Ltd would enjoy the benefits of ant-dumping duty without disclosing any injury at all.
 - iv. **DETERMINATION OF INJURY MARGIN:** The petitioner has claimed a landed value without considering the existing safeguard duty on the product. In order to determine the injury margin, if any, to the domestic industry, the safeguard must be considered in calculating landed value as doing otherwise would be tantamount to doubly protecting the domestic industry, first for their

own inefficiency and second for the injury caused by the alleged dumping. Both of these manifests in injury margin to the petitioners.

- v. **SAFEGUARDS DUTIES AND INJURY:** As this is first case in India where antidumping duties have been petitioned for during the pendency of the safeguard duty, the Hon'ble designated authority must isolate the injury caused by the inefficiencies of the domestic industry themselves.

IMPORTERS AND USERS

6. The Following importers and users have responded to the questionnaire:

- a. All India Association of Industries: Names of the industries who have made their submissions through this representation are:
 - i. Resins and Plastics Ltd.
 - ii. Neeluxe India Limited
 - iii. United Phosphorus Ltd.
 - iv. Alka Laboratories Ltd.
 - v. Dujoowala Resins & Terpenes Ltd.
 - vi. IVP Ltd.
 - vii. Dujodwala Paper Chemicals Ltd.
 - viii. Gargi Huttenes Albertus Ltd.
 - ix. Dujodwala Products Ltd.
 - x. Marvel Themosets Pvt. Ltd.
 - xi. XPRO India Ltd.
 - xii. BASF India Ltd.
 - xiii. United Metachem Pvt. Ltd.
 - xiv. Colour Chem Ltd.
- b. M/s Kesar Petroproducts Ltd.
- c. Associations of users and consumers of Phenol

7. Major points/arguments as submitted by the various industry associations and Users organizations as mentioned above are as follows:

- a. Anti-dumping applications are filed by or on behalf of the domestic industry in terms of the provisions of the Customs Tariff (Identification, Assessment And Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The relevant section is Rule 5 of Anti-Dumping act, which is reproduced below:

"5. Initiation of investigation. –

(1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by evidence of –

- a. Dumping
- b. Injury, where applicable, and
- c. Where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

- a. It determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

- b. it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding –
 - i. Dumping,
 - ii. Injury, where applicable; and
 - iii. Where applicable, a casual link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

Under the provisions of the Anti-dumping Rules, a petition is required to be supported by those units, which account for at least 25% of the production of the entire domestic industry. The explanation to the Rule further prescribes that the application should have the support of at least 50% of those producers who express support or opposition

to the application. In other words, there are two tests to be passed for an application to be considered as a valid application under the provisions of Rule 5 of the Anti-dumping Rules, i.e., 25% of the total production and 50% of those who are either supporting or opposing the application. It is obligatory on the Designated Authority to ensure that both the tests are fulfilled before initiation of the case.

In the instant case, the petitioner namely HOCL admittedly accounts for 46.11% of the total production of the domestic industry. The Designated Authority has not made any effort to find out whether there is any opposition to the application or not. In this connection, it is important to see Rule 5(3)(b) which clearly obligates the Designated Authority to determine the standing prior to the initiation only. In fact this aspect of the proceedings is required to be 'determined' prior to the investigation itself. As the Designated Authority has failed to carry out the mandatory tests, and being a failure to satisfy a condition precedent, the initiation of the investigation cannot survive

- b. It is pertinent to note that in the final findings of the DG Safeguard dated 14/5/99 on the original application of HOCL and Herdillia Chemicals Ltd, it has been concluded by DG safeguard that there is no proof of dumping of phenol in India and hence the case was considered fit to be examined by DG safeguard for safeguard duty.
- c. It is seen that in the present petition HOCL has taken exactly the opposite stand and claimed that phenol is being dumped in India on the basis of certain figures published in Singapore Trade Statistics. Even now HOC has not been able to produce any data on the selling prices of phenol in the domestic markets of the exporting countries. Moreover, after getting the benefit of Safeguard Duty on the basis that it is not a case of dumping, HOC is now trying to get double benefit by applying for anti-dumping duty on phenol.
- d. HOC has claimed that the dumping of Phenol started from April'01. It has also admitted there was no safeguard duty (SGD) in force in the period April-Dec'01 in so far as Singapore and South Africa are concerned. In this connection it is to be mentioned that representation was already made on this subject by Phenol manufacturers to DG (Safeguard) on the grounds of spurt of imports from South Africa & Singapore from April'01 and more particularly major increase in imports in July'01. On the basis of this representation DG (Safeguard) has already recommended levy of SGD on imports from Malaysia, South Africa and Singapore in his final findings on 11th Dec'01. Thus the relief sought by Phenol manufacturers for increase in imports from Singapore and South Africa has already been recommended by DG (Safeguard) and there is no case for granting further relief on the same grounds by levy of Anti Dumping Duty.

- e. Initiation of Anti-dumping Investigation is Improper: DG (Safeguards) had initiated investigations for imposition of safeguard duty against Malaysia, Singapore as well as South Africa taking into account the period of investigation from April 2001 onwards. Based on a thorough examination, DG (Safeguards) recommended safeguard duties on imports from these sources also.
- f. As against the concept of 'serious injury' to the domestic industry under the safeguard provisions, the Anti-dumping Rules provide only for 'material injury'. Thus if sufficient duties have been recommended for removing 'serious injury', it is inconceivable that an additional amount is required for removing 'material injury' which under the very same Act is a less serious situation. Thus, it is obvious that an anti-dumping investigation cannot be initiated in a case where safeguard duties have been recommended taking into account almost the same period of investigation.
- g. It is stated by the petitioner that dumping of Phenol started since July 2001. It is further seen that HOCL has submitted import statistic only up to Nov'01 and no statistic is submitted for the month of Dec'01. It is submitted that this period of 5 months is too short a period for taking the decision on major issue like levy of Anti Dumping duty which has got long term impact on the users of phenol in the country.
- h. Users maintain that low stock created uncertainty about the availability of phenol, which prompted phenol users to plan their requirement for a couple of months. The stock of Acetone, a co-product of phenol had also come down and the suppliers of Acetone in the international market link it with supply of phenol. Thus shortage of phenol and acetone was the main reason for imports in July-Nov'01.

It is to be noted that in July'01 a major additional capacity of 2,00,000 MT set up by Mitsui Corporation in Singapore was commissioned. This additional capacity was one of the main grounds for which SGD was extended for two years.

- i. Apart from shortfall in production, HOC pricing policy has also to be blamed for imports during this period as consistent rise in prices along with lack of sufficient stock resulted in the consumers planning for imports, which are required to be arranged in bulk.
- j. During the period April-December, 01 HOC plant was shut down for 68 days for different reasons, which also can be the ground of low production of Phenol.
- k. Users also maintain that there is an added cost to imports as product is to be stored in special road tankers with insulation and steam coils, which add to

about 15% extra cost to the landed cost of imports. . Domestic manufacturers are thus gaining around 15% price advantage as compared to imports.

- l. Monopolistic Market Control of HOC on Phenol Market: Subsequent to the extension of SGD period by 2 years from 30.06.01 onwards there was a major development in form of acquisition of HCL by Schenectady of USA, which is a major consumer of Phenol in India and the world. This has resulted in HCL Phenol capacity becoming captive to Schenectady and HOC remaining the only merchant manufacturer of Phenol in India. This monopolistic position of HOC is a factor, which has to be taken into account while considering grant of any further duty protection to Phenol.
- m. HOC is not in a position to manufacture phenol of the grade required for manufacture of BPA, which goes into the manufacture of polycarbonates. HOC has admitted its inability to produce this grade of phenol and hence this grade should be exempted from any duty protection except the basic custom duty. BPA manufacturer has to incur additional cost of Rs.3000 per MT for using HOC phenol instead of PC grade phenol.
- n. Normal value: The petitioner has not given any information regarding the price of this product in the domestic market of the exporting countries or price lists of the exporter of these countries. They have not been able to get any accurate & adequate evidence of the exports from the subject countries to other countries (except for Singapore). Additionally no information is given in respect of the cost of production of the subject goods in the country of origin along with permissible additions. Instead of this, the petitioner has worked out "constructed cost of production" of phenol in the exporting countries and requested the "Designated Authority" to accept the same. It is submitted that Normal Value based on such constructed cost of production may not be accepted as technological development is much superior in these countries and hence their consumption norms of raw materials and particularly utilities like steam, chilled water, cooling water, compressed air etc., are much tighter than the plants operated in India. Their manpower requirement is very less as compared to India and rate of interest prevailing in these countries are also much below than India. Thus, the Users maintain that it would not be correct to construct the cost of production on the basis of Indian Standards for deciding such important issues. It is also pointed out that in case of South Africa the Petitioner is not even aware of the manufacturing process and hence his ability to work out the constructed cost of production is highly questionable. As regards export price, Petitioners has submitted data pertaining to exports from Singapore to India and other countries. This information is based on a trade statistics published by statlink, which does not appear to be official publication of Singapore Trade Authority.

- o. The petitioner has again mentioned about the difference between the statistics of import reported by DGCI&S and DG Safeguard but as pointed out by us earlier, the figures of DG Safeguard were based on market information given by the phenol manufacturers whereas information published by DGCI&S is the correct information on imports.
- p. One of the major parameters of injury cited by the petitioners is the decline in the profitability of HOCL during POI. As per table shown in page 17 of the petition, there was a profit for the quarter April 01-June01 as well as in the earlier 3 years from 98-99 to 00-01 but in the quarters July01-sep01 and Oct 01- Dec01 there is a loss. In fact a reading of the profit figures of HOC from the year 1988-89 to 2000-01 show that the profit of Kochi unit has gone up very high from 14% to 990% over the period of 10 years up to 1997-98. There after Kochi unit is still making high profit continuously and in the year 2000-01 profits was Rs. *****lacs.

Rs crores

Year	Rasayani	Kochi	Total
98-99	-41.24	10.17	-23.07
99-00	-109.92	4.90	-105.02
2000-01	-80.43	41.37	-39.05

- q. It is however seen that HOCL's quarterly forecast of profit based on unaudited results are not proved to be correct at the end of the financial year. It is thus not advisable to accept the figures of HOC of the loss suffered by it up to Dec'01 unless its audited financial results are available.
- r. It is to be noted that HOCL's phenol plant is more than 12 years old and thus it is fully depreciated and is free from term loan liabilities. It however appears that depreciation and interest are still added as cost components.
- s. Petitioners understanding that the cost of the production from coal tar route is higher than the route followed by HOCL is without any proof and must not be accepted. Hence constructed cost of production as worked out by petitioner must not be considered on the same ground. As per our information the cost of production of phenol from coal tar based process is definitely lower due to lower cost of raw materials as compared to benzene and propylene, which are expensive petroleum based raw materials.
- t. The export prices from subject countries were always in the range of RS. 18000 TPA Rs. 21000 except in 2000-01 when the prices went up mainly due to high cost of raw materials due to very high crude prices. Now that the crude price have come down the prices of phenol have again returned to their normal value. . Thus the price at which phenol was imported into India from Singapore in the period under investigation is in keeping with this trend.

- u. The rated capacity of HOC's phenol plant is 40,000 TPA. It is seen that HOCL was achieving almost full capacity utilisation in the last 3 years. During the period April-Dec'01 the capacity utilisation is 72.5% but this is due to HOC internal problem and not due to increase in imports.
- v. It is seen that during the same period the other manufacturer of Phenol, Herdillia Chemicals Limited (HCL) has produced 23928 MT (31904 MT annualized) against 29804 MT produced by it last year (7% increase). Thus it was not the market conditions, which was responsible for lower production of HOC but on the other hand the low production of HOCL resulted in imports of phenol in to the country. .

D. Examination and Findings by the Authority

14. The submission made by the petitioners, importers, exporters and other interested parties, to the extent filed before the Authority have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

ii) The Authority confirms, in the absence of complete and sufficient response from the exporters from subject countries in the form and manner prescribed, having made the findings with regard to exports from subject countries on the basis of the facts available to it as per rule 6(8) supra.

iii) The cases of new exporters or those stated to be willing to give price undertaking should be considered, on request, by the Authority in accordance with the Rules supra.

Product under Consideration and like article

15. The Product under consideration in this investigation is Phenol also known as carboic acid. Benzene and LPG are two major inputs required in the production of Phenol. Cumene is manufactured by the reaction between propylene and benzene in the presence of solid phosphoric acid catalyst at high pressures and elevated temperatures. Phenol is produced by oxidation of cumene using air at elevated temperatures and pressures. The product is cumene hydroperoxide at lower concentration, which is then alkali washed and concentrated to a higher strength. This is then mixed with H₂SO₄, which causes a reaction to give phenol and acetone. Phenol is a basic organic chemical classified under Chapter XXIX of Customs Tariff Act under sub heading 2907.11 and subheading 2707.60 under Chapter XXVII of Customs Tariff Act. The present investigations are in respect of the product under consideration irrespective of the classification under which they are imported. Custom classification is indicative only and is in no way binding on the scope of the present investigations.

ii. 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.

iii. The petitioner claimed that the goods produced by him are like articles to the goods originating in or exported from subject countries. However, some of the exporters and importers have argued that the phenol imported by them are different in quality. However, no evidence has been adduced by them to indicate that imported phenol is not substituting the domestically produced phenol either technically or commercially. 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 for the purpose of injury determination.

De Minimus Limits

16. As regards ascertaining that the imports from the subject countries during the period of investigation (POI) are above de-minimus levels, the Authority has examined the contention of the petitioner not to accept the DGCI&S published data for the subject goods as import statistics brought out by DGCI&S is incomplete and quite a large number of transactions are not reported in their data. The Authority has crosschecked the data submitted by the petitioner with the data furnished by Kandla port customs and notes that DGCI&S data for the POI is incomplete and large imports especially bulk imports from south Africa and imports from European union is not reflected correctly. The authority has therefore taken kandla customs port data for determining imports from South Africa (bulk imports) and European union and has gone by the submissions of exporters from South Africa (drum imports) and Singapore. Thus authority notes that the imports of subject goods from subject countries during POI are above de-minimus.

Country Name	Quantity (MT) POI	%Age share in imports (POI)
Singapore	****	27.48
South Africa	****	15.84
European Union	****	31.2

Domestic Industry

17. The petition has been filed by HOCL, Mumbai on behalf of the domestic industry. The petitioners have claimed that they account for almost 47% of the total Indian production of the subject goods. A large number of exporters/importers/users have

argued that the petitioners do not have the standing to file the applications. They have quoted 5(3) of the anti dumping rules which says that the DA shall not initiate any investigations pursuant to the application made under sub rule (a) unless it determines on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product that the application has been made by or on behalf of the domestic industry provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than 25% of the total production of the like article by the domestic industry. It has also been explained in the sub rules that the application is deemed to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like article produced by that portion of the domestic industry expressing, either support for or opposition as the case may be to the application.

18. The Authority has examined the contention made by importers/users/exporters in this regard as well as the evidence available on record. It is seen that M/s Herdillia Chemicals Ltd (HCL) is another major producer of Phenol in this country and has supported the petition filed by HOCL. However the Authority notes that the Herdillia Chemicals Ltd has imported the subject goods during the POI from subject countries and thus they cannot be treated as part of domestic industry and therefore Authority has excluded them in further investigations. Excluding Herdillia Chemicals Ltd, the domestic industry satisfies the criteria of standing.

Thus, the Authority holds that petitioners satisfy the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra, for the purpose of preliminary finding. The Authority also considers these petitioner companies as 'domestic industry' within the meaning of Rule 2(b) supra.

E. DUMPING & EXAMINATION OF CLAIMS MADE ON NORMAL VALUE & EXPORT PRICES

Normal Value

19. Under Section 9A(1)© of the Customs Tariff (Amendment) Act, 1995 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)";

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

1. Mitsui & Co Ltd. Singapore Branch.
2. Mitsui Phenol Singapore Ltd(MPSL), Singapore.
3. Merisol RSA (pty) Ltd, South Africa.

21. The Authority notes that M/s Mitsui & Company Ltd is a public company Incorporated and listed in Japan. They have exported to different companies in India during POI though they donot have any domestic sales. On the other hand M/s Mitsui Phenol Singapore Pte ltd, Singapore has exported to India during the POI through trading houses and they have made domestic sales also during this period.

Normal value and Export Price determination for Singapore:

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

However the Authority notes that they have submitted the different transactions pertaining to domestic sales by giving invoice numbers, date volume sold and rate per unit in Appendix 1, which indicates that their sales have been made under ordinary

course of trade. The Exporter has also submitted information with regards to Appendix 3, which shows the export to India and domestic market sales. They have also submitted Appendix 4 and Appendix 5, which show sales price structure for exports to India and Sales price structure to Domestic sales. Further they have submitted the information under major heads excepting financial and interests costs as per Appendix 8 & 9 which gives the ex factory price for domestic sales and sales price for export to India. The Authority, for the purpose of preliminary determination, accepts the data submitted by the exporter for normal value and export price determination by taking ex factory price for domestic sales as normal value on weighted average basis and ex factory price for sales to India as Export price also on weighted average basis subject to further verification and investigation.

The Authority notes that the exporter has made sales of **** MT in the home market for US\$**** and as per Appendix 5 the ex factory price after making adjustments towards commissions, freight etc comes to US\$****. The Authority also notes that the firm has exported ****MT at the rate of US\$ **** during the POI and ex factory price after making all adjustments come to US\$****. As per Anti-Dumping agreement comparison of normal value and export prices should be made at the same level, preferably at the ex factory level. However since the normal value and export price has been taken at ex factory level, no further adjustments are required to be made in these values. The authority has determined normal value as US\$**** and Export price as US\$****. Accordingly the dumping Margin comes to US\$ **** or 28.75% of the export price.

M/s. Mitsui & Co. Ltd. Singapore Branch has submitted similar arguments as made by M/s Mitsui Phenol Pte Ltd. Singapore. They have not submitted any information as per appendix I of the questionnaire. However, as per appendix III, they have confirmed that they do not any domestic market sales. They have given an account of exports made to India by giving customers names and addresses along with details of shipments made. They have given further information as regards sales price structure for exports to India and countries other than India. They have also calculated the price at the ex factory level for exports to India after making adjustments towards discounts/commissions and overseas freights. However they have not submitted any information towards appendix VII onwards and therefore, the Authority is constrained to admit the submissions made by the exporter in totality. However, the Authority has accepted the exporter's submissions for the limited purpose of preliminary findings subject to further verification and investigation. The Authority notes that the firm has exported **** MT of subject goods to India for a total value of US \$ **** during the period of investigation and their ex factory export price has been taken as US \$ **** after making adjustments towards discounts/commissions and overseas freight. The firm has claimed that they made exports to third country and they had given an

account of third country sales during POI. However, the authority has taken the domestic selling price for Mitsui & Co by referring to the data provided for M/s Mitsui Phenol Singapore Pte Ltd as mentioned in the previous paragraph being the best information available in terms of 6(8) of Anti dumping rules and since both the exporters are in same country with prices determined by the market forces. The Authority has therefore taken the normal value for Mitsui & Co. Ltd. as US \$ ****. Since the exporter has not submitted information pertaining to appendix 7 onwards, no exporter specific adjustments can be granted to M/s Mitsui & Co in the normal value computation. The dumping margin for M/s. Mitsui & Co. comes to US\$ ****or 28.50% of export price.

Other Exporters from Singapore

23 As regards determination of normal value for other non-cooperating exporters, the authority has taken normal value as determined in the case of M/s Mitsui & Co. Singapore as mentioned in the preceding paragraph. As regards the export price the Authority has taken the lowest export price from Singapore to India during POI as the export price for non-cooperating exporters. The ex factory export price has been arrived after making adjustments towards commission, ocean freight and insurance. The authority has determined normal value as US\$**** and Export price as US\$**** for non-cooperating exporters. The Dumping margin for Non-cooperating exporters comes to US\$. **** Or 53.42% of the export price.

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

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

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

The Authority has gone through the submissions of the exporter and is inclined to accept the submissions of the exporter for the limited purpose of Preliminary findings subject to further verification and investigations. The Authority notes that M/s Merisol SA has sold ****MT in bulk sales for US\$**** and ****MT in drum sales for US\$**** in their domestic market during POI. The Authority has determined normal value as US\$**** and US\$**** after making adjustments towards inland freight, insurance, storage and handling costs as submitted by exporter as ex factory price of sales (bulk and drum respectively) in the domestic market. Since these normal value and export price have been taken at ex factory level, no further adjustments are required to be made in these values. As regards determination of export price, the Authority notes that the exporter has exported ****MT of subject goods to India for a value of US\$**** at the rate of US\$**** for bulk sales and ****MT for US\$**** at the rate of US\$**** for drum sales. Thus export price has been determined at the ex factory level after making adjustments towards inland freight, handling, insurance, overseas freight, overseas commission etc as worked out by exporter and thus export price has been worked out as US\$**** for bulk sales and US\$**** for drum sales.

As per the Anti-Dumping agreement comparison of normal value and export prices should be made at the same level, preferably at the ex factory level. However since the normal value and export price has been taken at ex factory level, no further adjustments are required to be made in these values and Dumping margin comes to US\$ **** or 42.24% of the export price for bulk sales and US\$ **** or 36.48% of Export price.

Normal Value and Export Price for other exporters from South Africa

25. As regards determination of normal value for other non-cooperating exporters, the authority has taken normal value as the weighted average domestic sales price at ex factory level both for bulk sales and drum sales.

As regards the export price, the Authority has taken the lowest export price from South Africa to India during POI as the export price for non-cooperating exporters both for bulk as well as drum sales. However since these normal value and export price have been taken at ex factory level, no further adjustments are required to be made in these values. The authority has determined normal value as US\$**** and US\$**** for bulk sales and drum sales respectively and Export price as US\$**** and US\$**** both for bulk sales and drum sales respectively for Non-cooperating exporters. Dumping margin comes to US\$ **** or 101.32% of Export price and US\$**** or 62.40% of export price for bulk and drum sales respectively.

Normal value and Export Price for European Union

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

Accordingly, the Authority has constructed the normal value on the basis of cost of production details as made available by the petitioner with the applicable adjustments. The normal value so determined for EU is US \$ ****.

The Petitioner has submitted information regarding imports of subject goods from European Union. The Authority notes that the European Union has exported ****MT for US\$**** at the rate of US\$****. The Authority has arrived at export price from European Union to India on the basis of the DGCIS data for POI and after making adjustments for ocean freight, overseas insurance, commission, port expenses, inland freight, the export price comes to US\$**** at the ex factory level. The Dumping margin comes to US\$**** or 97.72% of the export price.

Sl. No.	Country	Dumping Margin %
1.	European Union	97.72
2.	Singapore Mitsui & Co. Mitsui Phenol Singapore Ltd. Other Exporters	28.50 28.76 53.42
3.	South Africa a. Merisol, RSA 1. Bulk sales 2. .Drum Sales b. Others 1. Bulk sales 2. Drum sale	42.24 36.48 101.32 62.40

F. INJURY

27. Rule 11 of Anti Dumping Rules reads as follows:

"Determination of Injury:

- i. In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;
- ii. The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules."
- iii. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that:
 - a. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.
 - b. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

28. Views of the petitioners

The domestic industry is suffering from dumping of Phenol from South Africa, Singapore and European Union. Annexure 2(2) of the Anti-Dumping rules provide that in case imports of a product from more than one country are being simultaneously subjected to Anti-Dumping investigations, The Designated Authority will cumulatively assess the effect of such imports, in case it determines that

- a. The margin of dumping established in relation to the imports from each country is more than 2% expressed as percentage of export price and the volume of imports from each country is 3% of the imports of the like articles or where the export of the individual countries less than 3%, the imports cumulatively accounts for more than 7% of the imports of like article, and

- b. Cumulative assessment of the effect of imports is appropriate in light of conditions of competition between the imported articles and the like domestic articles.
- c. The margins of dumping from each of subject country are more than the limits described above (de-minimus).
- d. Cumulative assessment of the effect of imports is appropriate since the exports from the subject countries directly compete with the prices offered by the domestic industry in the Indian market. The Authority is therefore requested to assess injury to the domestic industry cumulatively from subject country.
- e. There has been substantial increase in imports from the subject countries in absolute terms and the markets share of imports from subject countries has also increased.
- f. The volume of imports has increased in spite of imposition of safeguard duty. Evidently, safeguard duty has not been deterrent to the importers. Export price from the subject country has declined significantly and decline in export price in US dollars are much more significant than Indian rupees. In fact the prices have declined lower than the landed value of imports of subject goods and is significantly below the selling price of the domestic industry.
- g. The production and capacity utilization of the domestic industry has very significantly declined in the current year as per the table below. Hence, the domestic industry has been forced to restrict its production due to dumping from subject countries.
- h. The selling price of the domestic industry has increased during the POI but the increase in prices was lower than the increase in the cost due to increase in raw material and fuel cost. However, the prices of imported phenol when adjusted for costs increases, actually fell even below the already low level of the year 1998-99. Thus, the cost increase adjusted sales realization of the domestic industry declined.
- i. The prices at which the material is being exported into India is not below the selling prices of the domestic industry but is not permitting recovery of full cost of production to the petitioner and hence the imports are causing severe price under cutting, depression, suppression in the market.
- j. The domestic industry is losing substantial sales from its regular customers in favour of traders importing phenol.
- k. Though there is no significant change in the employment level in the petitioner's companies. However, this is because of labour related legislation in the country due to which retrenchment is virtually impossible.
- l. The sales of phenol at prices significantly below the cost of production and fair selling price has resulted in heavy losses in the domestic industry and domestic industry has been forced to sell at a price which do not permit recovery of full cost of production leave alone profit.

- m. The injury to the domestic industry is directly being caused due to dumped imports from the subject countries.

Views of Exporters, Importers and Users/Associations

29. There are only two manufacturers of phenol in the countries namely HOCL & HCL who account for 98% of the total capacity established in the country. It is seen that HOC and HCL were jointly increasing prices of Phenol. Moreover it is also evident that both HOCL & HCL are charging the same price for the last many years and the prices are also changed upwards or downward exactly on the same date. It is to be further seen that with the same price the HCL made profit for the period of 3 quarters for the current year for the period ending up to 31st Dec'01, whereas HOC claims that it has made loss in this period on phenol. It will be appreciated that there can not be such a major loss in case of one company and profit in case of other when both of them are selling their products at the same market rate.

- a. HOC had stated that it has implemented cost reduction scheme as part of adjustment plans committed to DG (Safeguard). It is seen from the findings of DG (Safeguard) that the phenol manufacturers had promised to achieve cost reduction of Rs.6000/MT in its first application for SGD and when it was sought to be extended by another 2 years, HOC had committed further cost saving of Rs. 3726/MT. Thus there was a plan to achieve cost saving of Rs. 9726/MT. The total increase in income due to such cost saving on the production of 40,000 TPA of phenol alone works out to Rs. 36.34 crore per annum. In addition HOC had also committed to achieve cost reduction in case of Acetone (a co-product of Phenol) of the order of Rs. 7467/MT (Annexure-17) which means saving of Rs.17.92 crore for its rated capacity of 24000 MT. Thus the prices of phenol should have been reduced considerably. It is however seen that the net sale realization of phenol actually increased by 44% in the year 2000-01 as shown above. Thus the benefit of cost reduction was not passed on to the customers of phenol, which resulted in increase in imports of phenol in the country.
- b. Though the SGD has been reduced from 15% to 10% from July'01 it is to be noted that the SGD was originally sanctioned only for 2 years on the commitment given by the phenol manufacturers to achieve cost reduction and discontinue the Safeguard duty. Further at that reduced rate of SGD the protection of duty being received by Phenol manufacturers is 35% (basic 25% + SGD10%), which is very high in the present duty regime. It is also to be noted that the USD rate in Indian rupees also went up from Rs. 42.95 in June'99 to Rs. 48.72 at present, which has resulted in 13.43% additional protection in import duty which was not intended.

- c. It is seen that HOC had made very high profit in the year 2000-01 which were 192% of the profits in 1998-99 and 215% of the profits in the previous year. Evidently HOC used the SGD protection and its joint marketing strategy with HCL to increase the prices to very high levels which affected the operational cost to phenol user industry to such an extent that phenol users like Bakelite Hylam have even closed down their operations. In fact imposition of SGD for 2 years and its further extension for another 2 years was very strongly opposed by the phenol users in India and it was brought to the notice of DG (Safeguard) that such a protection will be used at the cost of phenol based industry for covering up the losses made by phenol manufacturers in their other product lines.

G. Examination by the Authority.

30. Analysis of injury to the domestic industry has been done on the basis of the Information available on record and the verification done by the officials of the Director general of Anti Dumping & Allied Duties. The following parameters have been analysed for the purpose of assessment of injury to the domestic industry.

Sales Volume and Value

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

Volume and Market Share of Dumped Imports

31. The Authority has examined the information regarding the volume of exports from the subject countries during the period of investigation and the preceding years. During the POI the imports from the three subject countries taken together were 36726Mt as compared to the total imports of 46418 MT from all countries. During the year 2000-2001 the imports from subject countries were 4501MT out of total imports of 14298MT in the country. In percentage terms the imports from subject countries accounted for a market share of 64.3% in 1999-2000, 31.48% during 2000-01 and 79.43% during POI. When compared to the previous year 2000-01 the share in the market has shown a significant increase during the POI. Even in volume terms, the imports from the subject countries during POI showed an increase of 332% over the imports in the previous year. The increase in market share is very significant and the increase in imports in absolute terms does hold a threat for the domestic industry. The Authority notes that there has been a significant increase in the dumped imports in absolute terms.

Country	European Union		Singapore		South Africa	
	Qty MT	% Share	Qty MT	% Share	Qty MT	% Share
2000-01	****	11.05	****	0.58	****	3.34
POI (9 Months)	****	26.58	****	40	****	13
POI Annualised	****	26.58	****	40	****	13

Market Share of imports from Subject Countries			
Year	Imports from subject countries MT	Total Imports MT	% Share
1999-2000	18730	29128	64.3
2000-2001	3502	14298	31.48
POI Annualised	****	****	79.43

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

The Authority has calculated the total demand in the country by adding the total imports to the sales of the domestic industry as well as other producers of the product under consideration. The Authority notes that the imports from the subject countries could acquire a market share of 40% of the total demand in a short span of 9 months.

Year	Imports from Subject Countries MT	Total Demand MT	% Share
1999-2000	18730	98764	22.92
2000-2001	4502	81691	5.51
POI (Annualised)	****	****	40.59

Production and Lower Capacity Utilisation

33. It has been stated by the exporters that the demand for the subject goods has grown in the country at a faster pace and the rise in the imports have been due to the short fall in the domestic production of the subject goods. However the domestic industry has claimed that despite the existence of the growing market, their losses have gone up due to indiscriminate dumping by the subject countries. The Authority observes that capacity utilization of the domestic industry has worsened in the POI and as a consequence its production has declined in the POI as compared to previous year.

The petitioner company accounts for 47% share, i.e. a major proportion of the domestic production of the subject goods during the POI and have been construed as 'Domestic Industry' in terms of Rule 2(b) supra and so stated in foregoing Para 13 of these findings. Therefore, the Authority holds the view that the domestic industry has suffered injury on account of decline in production and capacity utilization. The sales volumes of the domestic industry as represented by the petitioner companies also

declined during the POI by 26% in comparison to the previous year. Various exporters and importers have argued that the long shut down period which were much above the industry average was responsible for the decline in production and hence the decline in capacity Utilisation. The Authority has examined these facts in detail after on spot verification at the plant site and have come to the conclusion that it was because of large inventory piled up inside the Phenol storage tanks (which incidentally cannot be stored in other containers and which have to be consumed/off taken before fresh production can be started) that were responsible for the frequent shutdown apart from the normal maintenance shutdown. In fact the authority is inclined to hold the view that it was dumping which led to the low off take of phenol resulting in large pile up and hence frequent shutdown. Volume).

	Unit	1998-99	1999-00	2000-01	POI	POI Annualisd
Effective Capacity	MT	45000	45000	49000	49000	49000
Production	MT	40142	39261	39055	29008	29008
Capacity Utilization	%	89.2	87.25	79.7	59.2	59.2
Opening Stocks	MT	2464	2885	1517	1920	2560
Closing stocks	MT	2885	1517	1920	2399	3199
Indigenous sales	MT	39956	40325	38633	28384	28384
Cost of Production*	Rs../MT	100	103.69	133.47	135.82	135.82
Selling Price*	Rs./MT	100	94	140	108.31	108.3
Profit/Loss*	Rs./MT	100	48	173	-25	-25
Net Block	Rs.Lacs	*****	*****	*****	****	
Gross Block	Rs. Lacs	****	****	****	****	

Price Undercutting and Price Underselling

34. As regards the impact of the dumped imports on the domestic industry the principle (iv) of Annexure-II of the Anti-Dumping Rules states:

"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 utilisation of capacity; factors affecting domestic prices, the magnitude of margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments."

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority

has compared the landed value of imports of subject goods from subject countries during the POI with the net sales realization and has found that there has been a significant price under-cutting by the dumped imports. The landed value of imports has been found to be significantly lower than the domestic industry's net sales realization.

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

Selling Price / Profitability

35. The authority notes that selling prices of the domestic industry is significantly below the price, which would have permitted the domestic industry, a fair recovery of its cost of production and earn a reasonable return. Thus, the dumped imports have prevented the domestic industry from effecting legitimate price increase to realise a reasonable price. The industry has suffered material injury on account of depressed selling prices resulting in non-recovery of cost of production and thereby suffering financial losses.

Other injury parameters evaluated by the authority are as follows:

- a. The employment levels of domestic industry have not undergone any significant change during the period of investigation.
- b. There is a marked rise in the closing stocks during POI indicating that there is a significant change in the inventory position of the domestic industry during the period of investigation.
- c. Some exporters/Users have opined that during the POI, HCL has made profits and HOCL has incurred loss. They wanted the authority to examine this issue. The Authority has examined the records submitted by HCL and has come to a conclusion that there is no truth in the submission that HCL made profits during the POI. In fact they had made a loss of Rs **** during POI.

- d. The most significant parameter evidencing injury is the price undercutting and price underselling. On the basis of the evidence available before the Authority, it is determined that the domestic industry has suffered injury.
- e. Thus the Authority notes that injury to the industry has been caused by the dumped imports of subject goods from the subject countries. As the landed value of the subject goods is significantly below the selling price of the domestic industry, the industry has been forced to keep its selling price significantly below the cost of production.

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

Indexed figures considering 1998-99 as 100.

- f. It is evident from the table above that the domestic industry which was making profits during years 98-99,99-00 & 00-01 started incurring losses during the POI due to decrease in selling price. The Authority notes that the same has been caused by direct results of imports at dumped price.

Cumulative assessment of injury

36. As per annexure-II (iii), in cases where imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that (a) the margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article --- and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%. The Authority has also found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article and has found that there is a cumulative effect of injury by imports of subject goods on the domestic industry.

The above economic parameters cumulatively and collectively establish that domestic industry has suffered material injury on account of dumping.

H. CAUSAL LINK

37. Annexure-2 (v) of Anti-Dumping rules states that it must be demonstrated that dumped imports are, through the effects of dumping as set forth in Para 2 and 4 of said annexure above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports, which at the same time are injuring the domestic industry, and the injury caused by these factors must not be attributed to dumped imports. Factors which maybe relevant in this respect include inter- alia, the volume and price of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments n technology and the export performance and the productivity of the domestic industry.

Views of the Petitioners:

38. The petitioners have stated that injury to the industry has been caused by the dumped imports of subject goods from the subject countries. As the landed value of the subject goods is significantly below the selling price of the domestic industry, the industry has been forced to keep its selling price significantly below the cost of production. Therefore, the industry has not been able to realise a non-injurious price. The price suppression suffered due to dumped imports has resulted in severe financial losses to the domestic industry. The industry has also been prevented from increasing its sales and production. The domestic industry has also stated that there has not been a contraction of demand of the subject goods and the injury to the industry cannot be attributed to any fall in demand.

Examination by the Authority

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

- a. The authority observes that there is a single market for the subject goods where dumped imports compete directly with the goods produced by the domestic industry. Decline in demand is not a factor causing injury to the domestic injury. The imported subject article and the domestically produced goods are like articles and are used for the same applications/end uses. Thus, pricing

becomes the most important factor determining purchase of the article from either imported sources or domestic sources.

- b. The imports from Subject countries suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.
- c. Substantial imports of subject goods from Subject countries at dumped prices during POI has resulted in substantial losses to the domestic industry.

I. INDIAN INDUSTRY'S INTEREST

40. The purpose of anti dumping duties is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

ii. The Authority recognises that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. 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.

J. OTHER ISSUES

Issue of Safeguard:

41. It has been argued by some interested parties that since the safeguard duty has been imposed on the subject product originating from the subject countries, there is no need for any Anti-Dumping duty as safeguard duty has addressed the issue of serious injury which is a part of material injury that Anti-Dumping duty addresses. There are also arguments that after having got the redressal by way of safeguard duty, the domestic industry can not have double benefit by the way of anti dumping duty also.

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

1. The POI in the safeguard investigation was different than the present investigation and hence the injury determination cannot be assumed to be the same and correlated.

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

Issue relating to Monopoly

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

iii). The Authority has examined the above issues. The purpose of anti dumping duty is to ensure that any injury caused to the domestic industry due to dumping is addressed adequately. The fact that there is a single producer of the subject goods in

the country (apart from Herdillia which has been taken over by Schenectady) does not, in any way, restrict the right of the domestic producers to claim relief from the Designated Authority against the dumped imports under the Anti Dumping Rules. It has been the accepted position that anti dumping duty is in the nature and form of providing a remedy against the trade distorting practice of dumping. Further, anti dumping duties do not propose to restrict or block imports from any sources and therefore, the issue of the domestic supply being short of the total consumption in the country, has no relevance. Also since alternative sources of supply are available to the Indian industrial users, the apprehension of the petitioner company exercising monopoly position to exploit the customers is misplaced.

Issues relating to data from DGCI&S and secondary sources

43. It has been claimed by the exporters and associations of user industries in India that import data submitted by the domestic industry should not be accepted for injury determinations as these data have been taken from secondary sources and the authority should only take data from the primary sources (DGCI&S) into account in their anti dumping investigations. The Authority has examined this issue and has noted that DGCI&S data for imports of the subject goods are very much at variance with data submitted by the exporters and domestic industry. The Authority also notes that much of the subject goods cargo had arrived at Kandla port. The Authority has crosschecked the data submitted by the petitioner and exporters with import data furnished by Kandla port Customs and after crosschecking the data, the authority concludes that DGCI&S data is largely incomplete and does not indicate all the transactions from the subject countries during the POI. The authority has therefore taken the port data furnished by Kandla Customs for imports of subject goods from European Union and all bulk imports from South Africa. For drum imports from South Africa the authority has taken into account exporters submission. As regards imports from Singapore, the authority has taken data from the Singapore Trade statistics for the imports of subject goods into India from Singapore and has gone by exporters submission with regards to imports from Singapore.

J. CONCLUSIONS

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

- i. Phenol or product under consideration has been exported to India from subject countries below its normal value;
- ii. The Indian industry has suffered material injury;
- iii. The injury has been caused by the dumped imports from subject countries;

- iv. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of Phenol from subject countries in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is proposed to be compared with the non-injurious selling price of the petitioner companies determined for the period of investigation.
- v. Accordingly, the Authority recommends that the provisional anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Product under consideration originating in or exported from subject countries pending final determination. The anti-dumping duty shall be the the amount indicated in the table below, to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Phenol falling under chapter 29 and 27 of Customs tariff, originating in or exported from Singapore, South Africa and European Union.

Serial Number	Countries/exporters	Amount of Duty (US\$ Per MT)
1.	Singapore: a.Mitsui & Co. Ltd b.Mitsui Phenol Singapore Pte Ltd c. Other Exporters	95.77 101.62 161.38
2	South Africa a. Merisol RSA 1. Bulk Sales 2. Drum Sales b. Other exporters 1. Bulk Sales 2. Drum Sales	 89.12 24.76 222.74 130.60
3.	European Union	109.49

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

K. FURTHER PROCEDURE

45. The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would provide opportunity to all the interested parties for making oral submissions, which have to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary;
- e. The Authority would disclose essential facts before announcing final findings.

L.V.Saptharishi,
Designated Authority