

To be published in Part-I Section I of the Gazette of India Extraordinary

**No.15/16/2011-DGAD
Ministry of Commerce & Industry
Department of Commerce
DGAD**

6th February, 2013

Final findings

Subject: - Mid Term Review of Anti Dumping Duty imposed in respect of imports of Phenol originating in or exported from European Union, South Africa and Singapore – Final findings

A. BACKGROUND OF THE CASE

1. Whereas the Designated Authority (hereinafter referred to as the Authority), having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter referred to as the AD Rules); recommended, inter alia, imposition of Anti Dumping duty on the imports of 'Phenol' (hereinafter also referred to as the subject goods) originating in or exported from European Union, Singapore & South Africa (hereinafter also referred to as the subject countries) falling under Subheading 2907.11 and 2707.60 of ITCES. The final findings were notified on 15th February, 2003 and definitive anti dumping duties were imposed by the Central Government vide Notification No. 47/2003-Customs dated 24th March, 2003. A midterm review of anti dumping duty imposed was initiated on 14th July 2006 and the final findings were issued on 13th July 2007 vide notification 15/4/2006-DGAD which was amended on 25th July 2007. The revised definitive anti dumping duty was imposed on 31st August 2007 vide customs notification No.98/2007-Customs. A sunset review of the anti dumping duty was initiated on 10th August, 2007 and the final findings of the sunset review of the anti dumping investigation were issued on 4th August, 2008 vide notification no 15/09/2007 and definitive anti dumping duty was imposed on 31st October 2008 vide Customs Notification No.114/2008.
2. The Authority received a duly substantiated application from M/s Merino Panel Products Ltd ("The Applicant/Petitioner"), who is an importer of subject goods from subject countries requesting the Authority to undertake a Mid-Term Review of the anti dumping duty imposed on the subject goods originating in or exported from subject countries. The importer claimed changes in the parameters affecting dumping margin, injury margin and improvement in the operating performance of the domestic industry as major grounds for seeking mid term review. The Authority considered that changes in these circumstances necessitated initiation of a mid-term review.

3. Having satisfied that the applicant has provided sufficient positive information substantiating the need for a review, the Authority initiated the mid-term review investigation of anti-dumping duty imposed on imports of the subject goods originating in or exported from the subject country vide Notification No. 15/16/2011-DGAD dated 8th December, 2011 in accordance with Section 9A (5) of the Act, read with Rule 23 of the AD Rules. Following a request from the Designated Authority, the Central Government accorded permission for extension of time up to 6th February, 2013 for completing the subject investigation and notifying the final findings.

B. PROCEDURE

4. In these proceedings the procedure described below has been followed:
 - i. The Authority received an application from M/s Merino Panel Products Ltd, an importer and consumer of subject goods, for review of the anti dumping duty in force on the imports of Phenol from the subject countries.
 - ii. Having satisfied itself that the petitioner has produced sufficient prima facie information substantiating the need for a mid-term review, the Authority initiated the Mid Term Review investigation of anti-dumping duty earlier imposed on imports of the subject goods originating in or exported from European Union, Singapore & South Africa vide Notification No.15/16/2011-DGAD dated 8th December 2011 under Rule 23 of the AD Rules. The scope of the present review covers all aspects of the original Notification.
 - iii. The Embassy of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise all the exporters/producers in their country to respond to the prescribed Questionnaire within the prescribed time.
 - iv. The Authority sent Exporter Questionnaires, along with the Initiation Notification, to all the known producers and/or exporters of the subject goods in the subject countries in accordance with the Rule 6(4) of the AD Rules to elicit relevant information.
 - v. In response to the notification, following exporters have filed their questionnaire responses. Barring these four companies, no other producer/exporter has furnished replies to the questionnaires in response to the above notification.
 - a. Merisol RSA Pty, South Africa
 - b. Mitsui Phenols Singapore Pte. Ltd, Singapore (MPS).
 - c. Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP).
 - d. M/s Petrochem Middle-east (FZE), Dubai.
 - vi. Questionnaires were sent to the following known importers and users of the subject goods in India for necessary information in accordance with Rule 6(4) of the AD Rules:
 - a. C. J. Shah and Company, Mumbai
 - b. Haresh Kumar and Company, Mumbai

- c. PCL Industries New Delhi
- d. Kantilal Manilal and Company Mumbai
- e. Sonkamal Enterprises Mumbai
- f. Khetan Brothers Mumbai
- g. Shubam Dyes & Chemicals Limited Delhi
- h. Acron Enterprises Ahmedabad
- i. Naiknavare Chemicals Limited Mumbai
- j. Paras Dyes & Chemicals New Delhi
- k. Torrent Pharmaceuticals Limited Gujrat
- l. United Phosphorous Ltd. Mumbai
- m. Resins & Plastic Ltd. Mumbai
- n. Kailash Polymers New Delhi
- o. Centrum Metalics Pvt. Ltd. Mumbai
- p. Wonder Laminates Pvt. Ltd. West Bengal
- q. Meghdev Enterprises Ahmedabad
- r. Satguru International New Delhi
- s. High Polymer Labs Ltd. New Delhi
- t. Rainbow Colours & Chemicals Gujrat
- u. Bleach Marketing Pvt. Ltd. Gujrat
- v. Karmen International (P) Ltd. Tamil Nadu
- w. Krishna Antioxidants Pvt. Ltd. Mumbai
- x. NGP Industries Ltd. New Delhi
- y. Farmson Pharmaceutical Gujrat Ltd. Baroda
- z. India Glycols Ltd. New Delhi
- aa. Singh Plasticisers and Resins (I) Pvt. Ltd. New Delhi

In response, the following interested parties have filed their submissions.

- a. Merino Panel Products Ltd;
 - b. Green Ply Industries Ltd,
 - c. Exim-Corp India Pvt Ltd
 - d. Century Plyboards (I) Ltd.
 - e. Federation of Indian Plywood and paper industry.
- vii. The imports data for the period of investigation and preceding three years was called from Directorate General of Commercial Intelligence and Statistics (DGCI&S). The information of imports of subject goods from subject countries was adopted from data from DGCIS.
 - viii. The Authority made available non-confidential version of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
 - ix. In response to the initiation notification M/s Hindustan Organics Ltd has submitted the information/data, as domestic industry, for undertaking injury analysis. No information was received from the other domestic producer during the same period.

- x. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 29th May, 2012. Further, in view of change in the Designated Authority, another opportunity for hearing was provided to all interested parties on 27th December, 2012. The parties who presented their views orally in the public hearing were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered, wherever found relevant, in this statement.
- xi. The period of investigation for purposes of the present review is April 10-June 11. However, injury analysis shall cover the years Apr'07-Mar'08, Apr'08-Mar'09, Apr'09-Mar'10 and Apr'10-Jun' 11. In order to find out whether the dumping margin, injury and injury margin determined for POI are of lasting nature, the Authority examined the data for the post POI period - i.e. from July 2011 to December 2011.
- xii. Cost investigations were conducted to determine non-injurious price based on the cost of production of the subject good in India on the basis of Generally Accepted Accounting Principles (GAAP) to ascertain if anti-dumping duty lower than dumping margin would be sufficient to remove injury to the domestic industry, or the domestic injury will not face any injury in the event of revocation of duty. The NIP has been computed in terms of the principles mentioned in Annexure III to the AD Rules.
- xiii. On the spot verification of the data provided by the applicant was carried out to the extent considered necessary. The Authority during the course of investigation satisfied itself as to the adequacy and accuracy of the information supplied. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have been considered in Final Findings.

The following interested parties submitted their response to the disclosure statement within the stipulated time:

- Exim-corp India Private Ltd
- M/s HOCL, the domestic industry.
- M/s Century Plyboard (I) Ltd
- M/s Mitsui & Co (Asia Pacific), Singapore.
- M/s Merino Panel Products Ltd (“The Applicant/Petitioner”),
- MITSUI PHENOLS SINGAPORE PTE. LTD., Singapore
- Petrochem Middle East FZE,UAE
- Merisol RSA (Pty) Ltd, South Africa

It is stated that the submissions made by above mentioned interested parties pursuant to the issuance of disclosure statement has been dealt in the appropriate headings of the final finding

- xiv. 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 its analysis on the basis of the facts available.
- xv. 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.
- xvi. *** in the final findings represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

- 5. The product under consideration, as in the original investigation and also in the present review application is Phenol.

C.1 Views of the Domestic Industry

- 6. The product involved in the original investigation, and in the present midterm review investigation is Phenol. The product under consideration in the present midterm review is the same as has been held by the Designated Authority in the previous investigations.

C.2 Views of the Importers, Consumers, Exporters and Other Interested Parties

- 7. 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

- 8. The Authority notes that product under consideration, as in the original investigation and also in the present review application is Phenol. As per the original investigation carried out by the Designated Authority the product has been defined as under:

“Phenol, is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is classifiable under Customs Tariff heading no. 2907.11. The product is marketed in two grades Crystalline and Hydrated. The two grades are differentiated on the basis of flow characteristics of Phenol. The product is marketed in two forms - loose and packed. Loose sales are normally in bulk, whereas packed consignments can be of much smaller container loads. Phenol is used in the manufacture of Phenol formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols Pharmaceuticals, Dephenyl Oxide, etc.”

- 9. There is no argument from any interested party with regard to the scope of product under consideration. The present investigation being a midterm review investigation, the scope of

the product under consideration in the present investigation is, therefore, the same as the original investigation.

D. DOMESTIC INDUSTRY

D.1 Views of the Domestic Industry

10. HOCL production constitutes a major share in Indian Production. HOCL therefore constitutes domestic industry within the meaning of the Rules.

D.2 Views of the Exporter, Importers, Consumers and Other Interested Parties

11. There is no argument from any interested party with regard to the standing and scope of the domestic industry.

D.3 Examination by the Authority

12. It is noted that only Hindustan Organic Chemicals Ltd. (HOCL) has responded to the notice of initiation as a domestic producer of the subject product. The company claimed that there are only two producers of the subject product – SI Group being the other producer in India. HOCL claimed that its production of the subject goods constitutes a major proportion in Indian production. It is further noted that none of the interested parties participating in the present investigations have disputed the claim of HOCL. The information on record of the Authority shows that production of HOCL constitutes a major proportion in Indian production and therefore HOCL has been treated as “domestic industry” within the meaning of the Rules.

E. MISCELLANEOUS SUBMISSIONS

E.1 Views of the Exporter, Importers, Consumers and Other Interested Parties

13. The exporters, importers and other interested parties have submitted as under:-

- i. Amended rule 23(1A) of AD Rules requires only positive information substantiating a need for review. Thus, the information now sought under Rule 23(1A) is substantially different from old Rule 23.
- ii. The claim of the domestic industry that the initiation of MTR investigation is unjustified on the ground that need for withdrawal is not established by the applicant does not hold merit as the amended Rule 23 requires only positive information to be submitted for the initiation, which was provided by the applicant.
- iii. Applicant is not required to establish the need for withdrawal of anti-dumping duty, but is only required to submit information establishing the need for review. It is for the DGAD to consider and determine whether there is sufficient justification for withdrawal of anti dumping duty before completion of five years.
- iv. The investigation was rightly initiated by the Authority based on the positive evidence provided by the applicant substantiating the need for review and demonstrating changed circumstances on various relevant criteria.

- v. The objection to the various issues being raised by the opposing interested parties, under the pretext that they had not been raised earlier and therefore could not be raised at this stage is not only against the Anti-Dumping Rules, but also against the principles of natural justice.
- vi. It is an understood principle that the standard of examination for likelihood is higher in a sunset review than a mid-term review.
- vii. There is a substantial difference between the figures claimed by the two different communications submitted by the Domestic Industry. Sales value has grown by 49% but has been shown to grow only by 18%. Consequently, price which has actually grown by 40% has been shown to grow only by 10%. As a consequence, none of the indexed figures of the domestic industry now seem reliable.
- viii. Holding public hearing without disclosure of essential facts and conclusions arrived at by the Authority is premature. Quasi judicial propriety obliges the Designated Authority to make available essential facts and its findings in the case so far on which a public hearing could be addressed by the interested parties.
- ix. Subsequent to the issuance of the disclosure statement, various interested parties representing Exporter, Importers, Consumers have reiterated their views which have been mentioned above.

E.2 Views of the Domestic Industry

14. The domestic industry has submitted as under:-

- i. If the Designated Authority is required to undertake a determination of likelihood of dumping and injury, the petition must contain at least a prima facie information and evidence about the same.
- ii. Applicant has claimed that it is not required to establish the need for withdrawal of duty and mere information on a “need for review” is sufficient in MTR however, the Designated Authority does not apply such a test for sunset review. There is no justification for a discriminatory approach between a sunset review and a midterm review.
- iii. There is nothing new in the information filed. All information contained in this injury statement can alternatively be determined from the verification documents. The Authority may consider the information provided by the domestic industry during the course of investigations and verified by the Designated Authority.
- iv. The law provides for presentation of information orally during the course of the investigations. The Designated Authority has clearly provided such an opportunity.
- v. Subsequent to the issuance of the disclosure statement, the domestic industry has reiterated its views which have been mentioned above.

E.3 Examination by the Authority

15. The miscellaneous submissions made by the interested parties have been examined and addressed by the Authority as follows:

- i. With regard to the submission of the interested parties that amended rule 23(1A) requires only positive information substantiating a need for review, the Authority notes that rule 23 (1A) states as follows:

(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.”

It may be seen from the above that the Authority shall review the need for the continued imposition of antidumping duty upon a request made by an interested party provided that such party submits positive information substantiating the need for such review and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty. In the instant case the Authority, after examining the positive evidence regarding the need for continued imposition of antidumping duty submitted by the petitioner and after satisfying that sufficient time has elapsed since the imposition of antidumping duty has initiated the investigation in terms of Rule 23 (1A) supra.

- ii. With regard to the submission on the non conformity of data, the Authority notes that it has adopted the data for the present investigation after duly verifying the same.
- iii. With regard to the submission that the essential facts need to be disclosed before holding the oral hearing, the Authority holds that there is no merit in the argument as the purpose of holding public hearing is to give opportunity to the interested parties to present information relevant to the investigation whereas the purpose of disclosure of essential facts under the consideration of Authority before the issue of final findings under Rule 16 is to provide an opportunity to the interested parties to submit their comments if any on such facts for the consideration of the Authority. Accordingly, the submissions made by interested parties pursuant to the issuance of disclosure statement have been dealt in the appropriate headings of this final finding.

F. Confidentiality

F.1 Views of the Exporter, Importers, Consumers and Other Interested Parties

16. The exporters, importers and other interested parties have submitted as under:-

- i. The domestic industry has claimed excessive confidentiality in particular on account of selling price when such prices of HOCL are available from the Annual Reports of the company. Such prices are available from disclosure of quantitative information in the published annual reports which is available in the public domain.
- ii. HOCL has claimed confidentiality without providing any reasons how competitors can take advantage from the disclosure of such information.

- iii. The non-confidential version of the first communication provides complete details of sales, price and cost on a monthly and quarterly basis. On the other hand, the second communication has indexed these figures.

F.2 Views of the Domestic Industry

17. The domestic industry has submitted as under:-

- i. The annual report only contains information with regard to sales volumes and sales value. The same cannot lead to determination of net sales realization. The Designated Authority considers net sales realization and not average selling price of the total sales based on sales volume and sales values.

Examination by Authority

18. With regard to confidentiality of information Rule 7 of Anti-dumping Rules provides as follows:-

(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.

19. The Authority has examined the confidentiality claims of the interested parties. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection. The Authority examined the confidentiality claims of the interested parties and on being satisfied with regard to claim on confidentiality, the same has been allowed. In response to the comments to the disclosure statement about the excessive confidentiality, it is stated that all the volume information is disclosed on absolute basis while the price information has been provided on a indexed basis. Similarly, the exporter's information in relation to domestic selling prices, export prices and dumping margin has been provided on indexed basis. Further, the non injurious price and injury margin have been provided on indexed basis and ranges have been given. On the issue of providing export prices and normal values of producers and exporters

from subject countries on monthly basis, it is stated that dumping margin and injury margin has been determined for the POI and post POI period as per the confidential data provided by the responding producers and exporters (from Singapore and South Africa) and hence these have not been divulged. However, the ranges of the dumping margin and injury margin for the post POI period are provided in the final findings. In response to comments from the interested parties, the Authority has examined the information on monthly basis for exporters of subject goods from EU.

G. NORMAL VALUE AND DUMPING MARGIN

G.1 Views of the Exporter, Importers, Consumers and Other Interested Parties

20. The exporters, importers and other interested parties have submitted as under:-

- i. The methodology for allocation and apportionment of raw material and utilities cost for the purpose of constructed normal value must remain identical to that in the earlier SSR investigation for the consistent application of methodology.
- ii. Comparison of cost of production as given in the communication by HOCL with the constructed normal value for the period of investigation shows significant difference which is not the Domestic industry's costs or rates which have been employed to construct costs. Therefore, such data cannot be accepted without a proper source and explanation.
- iii. Same normal value has been constructed for all sources of imports. No adjustments have been made taking into account the market conditions, efficiency levels and utility costs in the various import sources.
- iv. There is a mismatch between the exports from South Africa provided by the Domestic Industry and as per the Exporter as the Exporter is the sole known producer of the subject goods in South Africa.
- v. Normal value is highly inflated. The basis that has been adopted while considering Benzene and LPG prices in the computation of CNV has not been disclosed.
- vi. Calculation of normal value as per the figures given in the Annual Report of HOCL shows the dumping margin to be negative for European Union and Singapore and less than 2% for South Africa.

G.2 Views of the Domestic Industry

21. The domestic industry has submitted as under:-

- i. No efforts have been made by the applicant to compare normal value and export price on month to month basis, as there have been significant variations in the raw material prices, which would have led to significant variations in the associated costs and prices of the product.
- ii. Export price to third countries cannot form the basis of normal value, unless it is established that such export price is in the ordinary course of trade.

- iii. If normal value on the basis of third country price is low, the Designated Authority is required to consider whether such third country price are in the ordinary course of trade by reason of cost (i.e., above cost of production).
- iv. Petitioner has selectively provided information in respect of some country in such a manner as would show no dumping.
- v. The volumes considered in respect of exports to India do not match with the volume reported in the exporting country trade data. Evidently, the period for which information has been considered for normal value is different from the period for which information has been considered for export price.
- vi. Determination of dumping margin should be done on monthly basis, as the price of the raw material changed substantially on month to month basis.

Examination by the Authority

22. 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);

23. The Authority has examined the contention of various interested parties and after examining the same, normal value and export price has been determined. It is further noted that normal value has been determined based on responses filed by cooperating producers and exporters from subject countries after taking into account the domestic sales price of subject goods of these producers and their costs of production. Export price has been determined net of adjustments which have been verified by the Authority. As there is no cooperation from any of the producers and exporters from European Union during the investigation, normal value has been constructed taking into account the international price of major raw material and other costs as per the best information available and after adding 5% profit margin. It is noted that the Authority has analyzed the data culled out from transaction wise data as received from DGCIS and also from the data made available by the petitioner from UNCOM trade and for POI as well as post POI. It is noted that the Authority sent questionnaire to the known exporters of subject goods from subject countries. It is also noted that exports quantity of producers and exporters

from subject countries have been taken into account for the purpose of normal value and export price for POI as well as post POI. Wherever there is a gap in the exporter's data because of nil exports during those months, DGCIS information has been used. For post POI, as well, the Authority has taken into account information made available from producers and exporters, DGCIS data as well as data made available from UNCOM trade to the extent the same was available.

24. The Authority had asked all known producers and exporters from subject countries to submit information in the form and manner of exporter's questionnaire. In response to the same, the following producers and exporters have submitted Exporters Questionnaire and have requested the Authority to base their dumping margin determination on the basis of their questionnaire response.

- a. Merisol RSA Pty, South Africa.
- b. Mitsui Phenols Singapore Pte. Ltd, Singapore (MPS).
- c. Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP).
- d. M/s Petrochem Middle-east (FZE), Dubai.

General methodology followed for the responding exporters for determination of Normal Value

25. It has been contended by the Domestic Industry that there had been volatility of the prices of the subject goods during the Period of Investigation. The Authority has, therefore, done a month-wise analysis of the entire data for the determination of dumping. Necessary data from the cooperating producers/exporters was called for undertaking month-wise analysis and the Dumping Margin has been assessed on monthly basis based on such data submitted by the cooperating producers/exporters.

26. The Authority has assessed the Normal Value based on the information submitted by the exporters and in accordance with the Rules. It was first seen as to whether the domestic sales of the subject goods by the responding exporters/producers in their home markets were representative and viable for permitting determination of Normal Values on the basis of their domestic selling prices and whether such domestic sales satisfied the ordinary course of trade test. In their responses, the respondents have provided transaction-wise details of sales made in their home markets. The information so provided has been relied upon to determine separate weighted average domestic selling price for the subject goods. For the determination of the ordinary course of the trade test, the costs of production of the product concerned have been accepted as verified during the on-the-spot verification. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. It was also seen whether the loss-making transactions account for over 20% of the sales or not. Wherever the profitable domestic sales transactions were found to be accounting for more than 80% of the total sales, the weighted average price of the domestic sales have been taken into consideration. Wherever the profitable sales volume were found to be less than 80%, the weighted average price of the profitable domestic sales has been taken into consideration.

Determination of dumping margin for producers and exporters from Singapore

Normal value in Singapore for M/s MPS

27. The Authority notes that M/s Mitsui Phenols Singapore Pte. Ltd., (MPS) and M/s **Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP)** from Singapore has responded to the Authority and has submitted exporter questionnaire response. Their response along with the additional information submitted during the course of the proceedings was examined and it was noted that the product concerned is produced by the Company Mitsui Phenols Singapore Pte Ltd (MPS). It was further noted that in terms of the production process, benzene and propylene are procured from domestic as well as imported sources to produce cumene. From cumene, the company produces phenol and acetone. It was noted during the verification that domestic sales are made by this company directly to domestic customers except DAS where the sales are made through MAP. It was explained that some of the sales (less than ***) are being made through MAP largely due to historical reasons as some of the clients had approached them first. However, more than **% of the sales were made directly to the customers in Singapore. Further, it was noted that all the sales whether domestic or exports through MAP were made on bulk basis through the vessel and there was no drum sales involved.

28. It was further noted that M/s MAP was a trader and was procuring the subject goods from their related company M/s **Mitsui Phenols Singapore PTE. Ltd., (MPS)** and also from other sources. However, during the POI, they had sold the subject goods to India which was procured only from MPS. In fact, shipments to India by MAP carried the origin certificate from Singapore. It was also noted that the company was also selling the subject goods in the domestic market which it had bought from its related company M/s MPS.

29. It was further noted that there was *** transaction of the subject goods being exported by the co-operating producer M/s MPS, Singapore and related trader M/s MAP, Singapore during the POI through Petrochem Middle East FZE, Dubai. The information submitted by the company in Appendix II was verified during the visit. The company clarified that it has purchased one consignment of the subject goods from Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP). This consignment was manufactured by Mitsui Phenols Singapore Pte. Ltd. (MPS). The total quantity of the single consignment of Phenol exported by the company during the period of investigation to India was *** metric tons. Since Petrochem Middle East FZE is a trading company, the sales data and SGA expenses submitted by the company was verified from the original documents and the computerized accounting system.

30. The response filed by the company was examined. It is noted from the questionnaires response that the company has given month-wise costing for the subject goods. SGA expenses have been claimed on the basis of turnover. It is noted that the domestic sales meet the sufficiency test. The cost of production of the subject goods as indicated in Appendix-8B of the

response has been accepted as verified during the on-the-spot verification for the purposes of carrying out the ordinary course of trade test. Adjustments thereof have been allowed as noted and verified during the on-the spot verification. Based on such a determination, the Normal Value has been worked out on a monthly basis.

Normal value in South Africa

31. It was noted that the subject goods are manufactured at Sasolburg, wherein Merisol has facility to produce the PUC. In this facility, Sasol is the related company of Merisol which manages the logistics both in terms of the inputs, as well as the product under consideration. It was noted that the primary material used in the manufacturing of the product concerned is LNO DTA (Light Neutral Oil Depitched Acid). It was noted that there is no difference in the factory cost for exports to India, for sales in domestic market and for exports to other countries. Merisol-RSA receives its main raw materials, called Depitched Tar Acids (DTA) from Secunda. The DTA is purified using two processes, namely *** and ***. After these purification steps the intermediate product, called *** is sent to a distillation process to produce Phenol.

32. It was noted that the Company has reported *** transactions as domestic sales and *** transactions as rebates in Appendix -1. The Company has sold *** MT of the subject goods in the domestic market. The company has claimed adjustments on account of Inland Freight, Insurance and Credit Expenses, which was allowed after verification. The normal value as arrived is mentioned in the table showing dumping margin. The response filed by the company was examined including month wise data. It is noted that the domestic sales meet the sufficiency test. The cost of production of the subject goods as indicated in Appendix-8B of the response has been accepted as verified during the on-the-spot verification for the purposes of carrying out the ordinary course of trade test. Adjustments thereof have been allowed as noted and verified during the on-the spot verification. Based on such a determination, the Normal Value has been worked out on monthly basis.

Normal value for other non responding producers and exporters and all producers and exporters in European Union

33. Since no response has been received from any producer/exporter of the subject goods from EU; the Authority has determined the Normal Value in EU as per facts available in terms of Rule 6(8) of the Anti Dumping Rules. Data has been collated from the information provided by the applicant, the transaction wise information received from DGCIS and other sources.

General methodology for determination of export price for the responding exporters

34. The Authority has examined the export prices in respect of responding exporters on the basis of questionnaire responses filed by them. The export prices and the adjustments thereof have been allowed after examination as noted during the on-the-spot verification.

EXPORT PRICE and Dumping margin for subject countries

Export price for MPS, Singapore through MAP to India.

35. It is noted that M/s MAP was a trader and was procuring the subject goods from their related company M/s **Mitsui Phenols Singapore PTE. Ltd., (MPS)** and also from other sources. However, during the POI, they had sold the subject goods to India which was procured only from MPS. In fact, shipments to India made by MAP carried the origin certificate from Singapore. It was also submitted that the company was also selling the subject goods in the domestic market which it had bought it from related company M/s MPS.

36. It was noted that the Company had made three transactions of exports of subject goods to India during the POI in the months of April 2010 and October 2010. It was also noted that *** transaction was made through another trader M/s Petrochem Middle East FZE, Dubai. It is noted that M/s Petrochem Middle East FZE, Dubai has cooperated in this investigation and had submitted their export price to India in respect of the subject goods procured from MAP (and was produced by MAS). The adjustments on account of expenses of the MAP has been taken into account to determine ex factory price for M/s MPS for the subject goods which have been exported through MAP to India. The dumping margin has been determined by comparing the month wise export price to their respective normal value at the ex factory level.

Export price for MPS through MAP and M/s Petrochem Middle-east (FZE), Dubai to India.

37. It is noted that the company is primarily engaged in the trading of a wide range of Chemicals and Petro Chemicals. The Dubai unit of the company is engaged in the trading of the subject goods. It was noted that there was one transaction involving the subject goods being exported from the co-operating producer M/s MPS, Singapore and related trader M/s MAP, Singapore during the POI. The information submitted by the company in Appendix II was verified during the visit. The company clarified that it has purchased one consignment of the subject goods from Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP). This consignment was manufactured by Mitsui Phenols Singapore Pte. Ltd. (MPS). The total quantity of the single consignment of Phenol exported by the company during the period of investigation to India was *** metric tons. Since Petrochem Middle East FZE is a trading company, the sales data and SGA expenses submitted by the company was verified from the original documents. The adjustments on account of expenses of the FZE and MAP has been taken into account to determine ex factory price for M/s MPS for the subject goods which have been exported through MAP and FZE to India. The dumping margin has been determined by comparing the month wise export price to their respective normal value at the ex factory level.

Export price for Merisol, South Africa

38. It was noted that the Company has reported *** transactions as export sales in Appendix -2. The Company has sold *** MT of the subject goods in the export market. Adjustments were claimed on account of Agent Commission, Inland Freight, Ocean Freight, Clearance and handling and Credit Expenses and Bank Charges which was allowed after verification of the same. The net export price as arrived is mentioned in the table showing dumping margin. The dumping margin has been determined by comparing the month wise export price to their respective normal value at the ex factory level. Thereafter, a weighted average dumping margin for the cooperating producers and exporters has been determined.

Determination of Export Price and Dumping margin in respect of Non-Co-operative Exporters/Producers from Singapore and South Africa

39. Since no other response has been received from any other producer/exporter of the subject goods from Singapore; the Authority has determined the Export prices as per facts available in terms of Rule 6(8) of the Anti Dumping Rules. Data has been collated from the information provided by the applicant, the co-operative exporters and by the Domestic Industry. With regard to the export price and Dumping margin for residual producers and exporters from South Africa, it is noted that apart from the cooperating producers and exporters, there is no other producer of subject goods on record with the Authority. In view of this, same dumping margin has been determined for residual producers and exporters from South Africa.

Determination of Export Price and Dumping margin in respect of Exporters/Producers from EU

40. Since no response has been received from any producer/exporter of the subject goods from USA; the Authority has determined the Export prices as per facts available in terms of Rule 6(8) of the Anti Dumping Rules. Data has been collated from the information provided by the applicant as well as transaction wise imports information received from DGCIS.

DUMPING MARGIN for the POI

41. Considering the month wise Normal values and Export prices as determined above, the dumping margins have been determined as follows:

| Sl. No. | Country | Producer | Exporter | Dumping Margin US\$/MT | Dumping Margin % |
|---------|--------------|---|---|---------------------------|---------------------|
| 1 | South Africa | Merisol RSA Pty, South Africa. | Merisol RSA Pty, South Africa. | *** | 10-15 |
| | | Others | Others | *** | 10-15 |
| 3. | Singapore | Mitsui Phenols Singapore Pte. Ltd, Singapore (MPS). | Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP). | (***) | (10-15) |

| | | | | | |
|----|-------------------|--|--|-----|-----|
| 4. | | Mitsui Phenols Singapore Pte. Ltd, Singapore (MPS) | M/s MAP and M/s Petrochem Middle- east (FZE), Dubai. | | |
| 5. | | Other Producers and exporters | Other Producers and exporters | *** | 0-5 |
| 6. | European Union | All producers | All Exporters | *** | 0-5 |

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

H.1 Views of the Exporters, Importers and Other Interested Parties

42. The exporters, importers and other interested parties have submitted as under:-

- i. DGAD is required to compare the injury factors existing during POI of present case with the injury factors existing at the time of previous investigation.
- ii. Domestic industry is performing extremely well, while at the same time, import prices have been consistently increasing.
- iii. Considering the post POI information submitted by HOCL, it seems that injury if any (in Q3 2011-12) caused to the domestic industry is self-inflicted. Landed price of imports were Rs.84330/MT whereas the selling price of domestic industry was Rs.79975/MT, which clearly shows that imports have not forced the company to reduce its price.
- iv. Cost and price of domestic industry are less than the landed price of imports for Q3, 2011-12. This has been done to show loss to domestic industry and a positive price undercutting.
- v. Selling price as shown in the indexed form is substantially lower than the selling price as has been given by HOCL.
- vi. Two concluded MTR investigation held that NSR of the domestic industry is higher than the NIP of the domestic industry. Thus it is fair to assume that in the present case also, domestic industry is earning more than its NIP. The letter by HOCL also supports this view.
- vii. No price depression and price undercutting is present in the present period.
- viii. There is no evidence of continuance of injury on account of imports from subject countries.

- ix. Price underselling: estimated calculation (source Annual reports) of NIP should not be more than Rs.69,032/MT. Reference has been made to Acrylic Fibre case, wherein CESTAT held that there was no likelihood of material injury to the domestic industry on the basis of similar data.
- x. Price undercutting: price undercutting on paper may be because of the high domestic sales realization. NSR of the domestic industry was not only above NIP but also higher than the prices prevailing in the international market.
- xi. Price suppression: whereas both the cost of production and selling price of subject goods increased over the injury period, the increases in the selling price were far more than increase in the cost of production.
- xii. Profitability of the domestic industry has significantly increased during the POI. Further, selling price as provided in the Proforma IV A appears to be incorrect as selling price as calculated from the Annual Report shows that the same cannot be below Rs 94,533/MT.
- xiii. According to market information, the domestic industry lost almost 60-70 days for maintenance during the POI. The reason for such shut down, whether normal or abnormal, needs to be enquired and effects of such closure should be excluded from the injury parameters.
- xiv. Depreciation amount has significantly increased by 625 points in POI as compared to base year, whereas the plant capacity has remained the same. Authority must verify basis of allocation or apportionment of depreciation from financial records or cost record rules.
- xv. Designated Authority should call for SI Group's injury data so as to be able to make the injury and threat determination for the domestic industry. In any event, the injury figures of HOCL clearly indicate that no injury has been suffered by the domestic industry. Further, no likelihood of dumping implies a need for withdrawal of imports.
- xvi. Imports from South Africa have remained fairly low in the period of investigation as well as the period before the period of investigation.
- xvii. Domestic industry has not included SI's sales figures while calculating demand. By excluding SI Group's sales figures, the domestic industry has managed to reduce market share of the domestic producers.
- xviii. Domestic sales, capacity utilization, selling price, profits, etc shows significant improvement.
- xix. Final findings for Phenol MTR (Taiwan and USA) determined a NIP for the year 2010 (Jan-Dec) for HOCL. Thereafter, upon comparing this NIP with the landed value for USA calculated the injury margin. Landed value for USA is known. Therefore NIP range could be calculated. The analysis shows that NIP is still lower than NSR of the domestic industry. Accordingly, it could also be calculated that price underselling is negative.
- xx. Depreciation of the Domestic Industry has increased alarmingly over the injury period as compared to the base year despite there being no capacity expansion over the injury period.
- xxi. The claim of domestic industry that the original plant of the company is fully depreciated as per its own books of account is contradictory to the principles set out in Annexure III of the Anti-dumping Rules. Domestic Industry cannot claim depreciation as per "market

- value” of the Assets and must be made in accordance with the value as per the books maintained by the company.
- xxii. On comparison of the selling price and cost of production with the landed values provided by the domestic industry for post POI, Q3 2010-11 shows negative undercutting. At the same time, the selling price of domestic industry remains below the cost of production even when the landed values are above cost for the second quarter after the period of investigation
 - xxiii. Situation prevailing during 2008 is completely different from that prevailing at the time of SSR investigation.
 - xxiv. DGAD has already concluded that imports from USA at Rs.75.9/MT are neither causing any injury nor are likely to cause injury in future to domestic industry, then it is unlikely that there would be any injury to domestic industry from imports coming from subject countries whose prices are higher than USA’s landed price.
 - xxv. HOCL’s information reveals that the loss suffered by the domestic industry is self-inflicted. As during Q3 of 2011-12, the landed value of imports was Rs. 84330/MT while the selling price of the domestic industry was only Rs.79975/MT.
 - xxvi. During Q3 of 2011-12, the selling price of domestic industry is lower than its cost of production, both of which, in turn, are lower than landed value of imports.
 - xxvii. In the MTR investigation on imports from USA & Taiwan and Korea, DGAD held that during January 2010-June 2011, NSR of the domestic industry was consistently higher than its NIP. The POI in the present investigation is April 2010 to June 2011. Thus, it is fair to assume that in the present case also, domestic industry is earning more than its NIP.
 - xxviii. There is a need for restricting the period for post POI analysis.
 - xxix. There are no significant imports from Singapore. The import volumes decreased and at the same time, import prices increased substantially from EU and South Africa.
 - xxx. Claim of domestic industry for adjustments in its NIP holds no merit. DGAD has computed NIP based on Annexure III to AD Rules. There is absolutely no need to deviate from this practice. Any grievance with regard to computation of NIP, then the appropriate remedy is filing an appeal before CESTAT.
 - xxxi. Data presented in the paper book is completely different from the submission filed earlier.
 - xxxii. Domestic industry should explain as to why the domestic industry did not produce the volume targeted or produced in the preceding financial years.
 - xxxiii. Designated Authority must obtain the cost data certified by the domestic industry’ Cost Auditors as per requirement in Annexure-III than to rely on superficial verification carried out by its own officers without an objective examination of factors underlying under utilization of the capacity.
 - xxxiv. Annual report of the domestic industry for the year 2011-12 has inter-alia observed that its consumption of power and utilities have remained high as a result of ‘*reduction in capacity utilization.*’ No reasons have been attributed as to why the management has decided to reduce the capacity utilization.
 - xxxv. Domestic industry has the ability to raise the selling prices whenever thought necessary even on daily basis. The discounts are also allowed on case to case basis without any uniform policy and these are maximum discount, therefore, injury caused is not attributed to imports.

- xxxvi. Domestic industry has also not made out any case to demonstrate the risk of recurrence and therefore DA cannot assume the function of risk recurrence assessment in this case.
- xxxvii. Vastly different set of manipulative data from domestic industry have been possible.
- xxxviii. Price underselling: Estimated calculation (source Annual Reports) of NIP should not be more than Rs. 69,032/MT.
- xxxix. Price undercutting: Price undercutting on paper may be because of high domestic sales realization. NSR of the domestic industry was not only above NIP but also higher than the prices prevailing in the international market.
- xl. Price suppression: Whereas both the cost of production and selling price of subject goods increased over the injury period, the increases in the selling price were far more than the increase in the cost of production.
- xli. According to market information almost 60-70 days for maintenance during the POI. The reason for such shut down, if normal or abnormal, needs to be enquired and effects of such closure should be excluded from the injury parameters.

H.2 Views of the Domestic Industry

- 43. The domestic industry has submitted as under :
 - i. The argument that performance of the domestic industry improved with regard to production and sale is factually incorrect. The information provided by the domestic industry clearly shows decline in production, sales, capacity utilization, market share and rise in inventories. Even with regard to profits, ROI, etc., performance of the domestic industry improved in 2010 and deteriorated in 2011.
 - ii. As regards the selling price in Q3, the landed price of imports in this period declined to as low as Rs.71,715/MT which is much lower than the selling price of the domestic industry. Imports from various countries constituted majority of the market and therefore the only option to the domestic industry was to align its prices in the direction of imports.
 - iii. The difference between non injurious price and net sales realization is immaterial in a midterm review investigations as has been held by the Authority in a number of cases. Anti dumping duties have been extended in various SSR cases where non injurious price was lower than net sales realization. In the present case, it is only a midterm review and therefore the objective is extremely limited.
 - iv. The mere fact that non injurious price is lower than NSR does not imply that the imports are not causing injury. The purpose of non injurious price is merely to determine injury margin.
 - v. In the investigations relating to digital printing plate, despite the fact that this was a fresh investigations and the performance of the domestic industry shows no “volume injury”, the Authority held that domestic industry suffered injury, even though price parameters in this case showed consistent improvement.
 - vi. The facts of the present case clearly establish that 22% Return on Capital Employed is leading to absurdity, as 5% profit on cost of production is allowed even for foreign produces for constructing normal value. It cannot certainly be reasonable to consider that the reasonable profits for domestic industry shall be a meager 1-2% profit on the cost of production. Thus, if calculations are leading to certain absurdity, the Designated Authority must consider appropriateness of the same.

- vii. Responding to various submissions of the interested parties with regard to difference in the data or change in the data, the domestic industry has submitted that the Authority may consider the information provided by the domestic industry during the course of investigations and verified by the Designated Authority.
- viii. Reason for lower production is inability of the domestic industry to sell the goods in view of cheaper material available in the market from foreign suppliers. Rising inventories is the evidence in this regard.
- ix. The injury margin and dumping margin in post period of investigation have become negative. Further, the Designated Authority has already recognized in the previous investigations relating to midterm review of phenol and acetone that the weighted average for the period of investigation is highly misleading and the Authority may adopt a month by month comparison.
- x. The non injurious price is required to be determined considering gross fixed assets and that too at current market values.
- xi. With regard to profit/loss, return on capital employed and cash flow, the information clearly shows that the performance of the domestic industry improved during 2010 and deteriorated thereafter consistently in 2011 to such an extent that domestic industry suffered financial losses in Oct.-Dec., 2011 and the position deteriorated thereafter.
- xii. Price undercutting has nothing to do with comparison of non injurious price and NSR. Price undercutting is the difference between selling price and import price.
- xiii. Profitability of the domestic industry deteriorated significantly in 2011 as would be seen from the month by month and quarter by quarter movements in profitability between 2010 and 2011.
- xiv. Imports from subject countries are significant in the POI. Further, significant price undercutting by the dumped imports as compared with the price of like product in India.
- xv. Assuming though not admitting that domestic industry is no longer suffering injury, the same is grossly insufficient for premature withdrawal of anti dumping duty. At the stage of Mid Term Review, the interested parties seeking revocation of anti dumping duty must establish “no injury to domestic industry is likely” in the event of withdrawal of anti dumping duty.
- xvi. The obligation of establishing “no likelihood of injury” is not on the domestic industry. It is on the petitioner before the Designated Authority. The authority is not required to determine the “justification for continuation”. “Justification for continuation” is different from “justification for withdrawal”.
- xvii. The non injurious price should include following expenses :
 - a. Indian freight from factory to extended warehouse within the country.
 - b. End period quantity discounts
 - c. Cash discounts

H.3 EXAMINATION BY THE AUTHORITY

- 44. The injury analysis made by the authority hereunder *ipso facto* addresses the various submissions made by the interested parties.
- 45. The authority has considered import data as per DGCI&S data. 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.

46. Regarding comparison of present POI factors with earlier case POI factors, it is noted that factors are examined based on well established practice of the Authority, which are discussed in detail in foregoing paras. The issue of landed price of the subject goods being higher than the selling price of Domestic Industry i.e. negative price undercutting; has been examined by the Authority in the relevant paras in this statement. With regard to the issue of absence of injury to the Domestic Industry, the Authority has examined the same in the following section of this statement. With regard to price undercutting and underselling, due to significant changes in input cost and cost of production, selling price, analysis has been done by the Authority on month to month basis. With regard to the submission for considering market value of investment, the Authority has determined the capital employed based on net fixed assets as per its consistent practice and Annexure III of the rules. The Authority has determined the non-injurious price in terms of the principles mentioned in Annexure III to the rules after verifying the data submitted by the domestic industry to the extent considered relevant.

ASSESSMENT OF DEMAND AND MARKET SHARE

47. The designated authority has determined the demand for the subject goods as the sum of domestic sales of the domestic industry, sales of other Indian producer and imports of the subject goods into India from all sources. The demand so assessed is shown in the following table. It is seen that the demand for the subject product in the country has increased in the period of investigation after a decline in 2008-09 and 2009-10.

| Particulars | Unit | 2007-08 | 2008-09 | 2009-10 | POI | POI Annualised |
|---------------------------------|-------------|----------------|----------------|----------------|------------|---------------------------|
| Sales of domestic industry | MT | 43,723 | 40,924 | 37,671 | 46,889 | 37,511 |
| Sales of other Indian producer | MT | 29,247 | 31,451 | 31,958 | 44,741 | 35,793 |
| Sales of all domestic producers | MT | 72,970 | 72,375 | 69,629 | 91,630 | 73,304 |
| Imports from | | | | | | |
| - Subject countries | MT | 33,352 | 22,541 | 10,571 | 32,232 | 25,786 |
| - European Union | MT | 25,263 | 8,457 | 1,776 | 14,933 | 11,947 |
| - South Africa | MT | 7,058 | 8,176 | 8,794 | 14,176 | 11,341 |
| - Singapore | MT | 1,031 | 5,907 | 1 | 3,123 | 2,498 |

| | | | | | | |
|--------------------|----|---------|---------|---------|---------|---------|
| - Other countries | MT | 67,070 | 67,607 | 89,519 | 118,266 | 94,612 |
| Total Imports | MT | 100,422 | 90,148 | 100,090 | 150,498 | 120,398 |
| Demand/consumption | MT | 173,392 | 162,522 | 169,719 | 242,128 | 193,702 |

VOLUME EFFECT OF DUMPED IMPORTS

IMPORT VOLUME

48. With regard to the 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. For the purpose of injury analysis, the authority has relied on the import data procured from DGCIS. The volume of imports of the subject goods from the subject countries have been analysed as under:

| Particulars | UNIT | 2007-08 | 2008-09 | 2009-10 | POI | POI Annua- lised |
|-------------------|------|---------|---------|---------|---------|------------------------|
| Subject countries | MT | 33,352 | 22,541 | 10,571 | 32,232 | 25,786 |
| European Union | MT | 25,263 | 8,457 | 1,776 | 14,933 | 11,947 |
| South Africa | MT | 7,058 | 8,176 | 8,794 | 14,176 | 11,341 |
| Singapore | MT | 1,031 | 5,907 | 1 | 3,123 | 2,498 |
| Others countries | MT | 67,070 | 67,607 | 89,519 | 118,266 | 94,612 |
| Total imports | MT | 100,422 | 90,148 | 100,090 | 150,498 | 120,398 |

49. The authority notes that the imports from subject countries had declined in POI as compared to the base year. The Authority further notes that the imports from subject countries had declined sharply till 2009-10 and thereafter increased sharply in POI as compared to 2009-10. The Authority further notes that this increase is in spite of antidumping duty in force during the period. The Authority also notes that the imports from other countries are showing an increasing trend.

PRICE EFFECT

50. 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."

51. In a review investigation, the Authority 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 in case duty is revoked.
52. 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, the authority analyzed import prices over the injury period. The 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 and cess thereon.
53. **Price undercutting:** In order to assess whether imports from subject countries were undercutting the prices of the domestic industry, the authority has compared the net sales realization (at ex-factory level) of the domestic industry with the landed price of imports over the injury period as per details given in the table below:

| Particulars | | 2007-08 | 2008-09 | 2009-10 | POI |
|----------------------------------|-------|---------|---------|---------|--------|
| Landed value – Subject Countries | | | | | |
| European Union | Rs/Mt | 67,721 | 57,391 | 56,083 | 84,445 |
| South Africa | Rs/Mt | 64,555 | 52,962 | 48,826 | 73,308 |
| Singapore | Rs/Mt | 66,290 | 51,519 | - | 80,773 |
| Net Selling Price | Rs/Mt | *** | *** | *** | *** |
| Net Selling Price | Index | 100 | 92 | 92 | 138 |
| Price undercutting | | | | | |
| European union | Rs/Mt | *** | *** | *** | *** |
| South Africa | Rs/Mt | *** | *** | *** | *** |
| Singapore | Rs/Mt | *** | *** | *** | *** |
| Price Undercutting | | | | | |
| European Union | % | *** | *** | *** | *** |

| | | | | | |
|---------------------------|-------|-------|--------|--------|--------|
| South Africa | % | *** | *** | *** | *** |
| Singapore | % | *** | *** | *** | *** |
| Price Undercutting | | | | | |
| European Union | Range | 0-10% | 5-15% | 10-20% | 10-20% |
| South Africa | Range | 0-10% | 10-20% | 20-30% | 20-30% |
| Singapore | Range | 0-10% | 15-25% | - | 10-20% |

The authority notes that the price undercutting by the imports from subject countries without the anti dumping duties is significant.

54. Price underselling: In order to assess whether imports from subject countries were underselling the prices of the domestic industry, the authority has compared the month wise non-injurious price (at ex-factory level) of the domestic industry with the month wise landed price of imports during POI. The weighted average underselling was negative for the imports from all the subject countries during POI.

PRICE SUPPRESSION AND DEPRESSION

55. In order to assess whether imports from subject countries were suppressing/depressing the prices of the domestic industry, the authority has compared the cost of sales with the net sales realization (at ex-factory level) of the domestic industry over the injury period as per details given in the table below:

| Particulars | Unit | 2007-08 | 2008-09 | 2009-10 | POI |
|-----------------------|-------------|----------------|----------------|----------------|------------|
| Cost of sales | Rs./MT | *** | *** | *** | *** |
| | Index | 100 | 101 | 102 | 126 |
| Net sales realization | Rs./MT | *** | *** | *** | *** |
| | Index | 100 | 92 | 92 | 138 |

56. The authority notes from the above Table that though there was increase in cost of sales during the entire injury period, the selling price increased in POI only. The authority further notes that there was neither price depression nor price suppression during the POI.

ECONOMIC PARAMETERS RELATING TO THE DOMESTIC INDUSTRY

57. Annexure II to the AD rules requires that the determination of injury shall involve an objective examination of the consequent impact of the dumped imports on domestic producers of the subject goods. Further Annexure II (iv) of the rules lays down as follows“

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

PRODUCTION, CAPACITY AND CAPACITY UTILIZATION, SALES

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

| Particulars | Unit | 2007-08 | 2008-09 | 2009-10 | POI | POI Annua- lised |
|----------------------|-------------|----------------|----------------|----------------|------------|---------------------------------|
| Installed capacity | MT | 40,000 | 40,000 | 40,000 | 50,000 | 40,000 |
| Production | MT | 41,908 | 42,641 | 36,751 | 47,745 | 38,196 |
| Capacity utilization | % | 105 | 107 | 92 | 95 | 95 |
| Domestic sales | MT | 43,723 | 40,924 | 37,671 | 46,889 | 37,511 |
| Demand | MT | 173,392 | 162,522 | 169,719 | 242,128 | 193,702 |

59. It is noted that production and capacity utilisation of the domestic industry declined significantly in 2009-10 and thereafter improved marginally in POI. However, the same were lower than the levels achieved during the base year. The domestic sales showed a declining trend during the injury period. The decline in domestic sales was significant in POI as compared to base year, even though there was steep increase in demand for the PUC during POI.

PROFITS, RETURN ON INVESTMENT AND CASH FLOW

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

| Particulars | Unit | 2007-08 | 2008-09 | 2009-10 | POI | POI Annua- lised |
|--------------------|-------------|----------------|----------------|----------------|------------|---------------------------------|
| | | | | | | |

| | | | | | | |
|--------------------------------|----------|-----|-----|-----|-----|-----|
| Profit before interest and tax | Rs. Lacs | *** | *** | *** | *** | *** |
| | Index | 100 | 27 | 26 | 192 | 153 |
| Return on capital employed | % | *** | *** | *** | *** | *** |
| | Index | 100 | 29 | 29 | 159 | 159 |
| Cash profit | Rs. Lacs | *** | *** | *** | *** | *** |
| | Index | 100 | 23 | 24 | 190 | 152 |
| Profit/loss | Rs./MT | *** | *** | *** | *** | *** |
| | Index | 100 | 33 | 30 | 214 | 214 |

61. The authority notes from the above table that Profit before Interest and Tax (PBIT), Cash profit, Profit/loss per Mt and Return on investment of the domestic industry declined till 2009-10 and thereafter sharply increased in POI as compared to the base year.

EMPLOYMENT AND WAGES

62. It is noted that the domestic industry is a multi product multi location company. 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 | 2007-08 | 2008-09 | 2009-10 | POI | POI Annualised |
|-----------------|----------|---------|---------|---------|-----|----------------|
| No of employees | Nos | *** | *** | *** | *** | *** |
| | Index | 100 | 94 | 94 | 109 | 109 |
| Wages | Rs. Lacs | *** | *** | *** | *** | *** |
| | Index | 100 | 102 | 105 | 142 | 113 |

63. The authority notes that the employment level of the domestic industry has remained stable over the period of injury whereas wages have shown a positive trend during the POI period.

PRODUCTIVITY

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

| Particulars | Unit | 2007-08 | 2008-09 | 2009-10 | POI |
|----------------------|------|---------|---------|---------|-----|
| Productivity per day | MT | 120 | 122 | 105 | 101 |

| | | | | | |
|--|-------|-----|-----|----|----|
| | Index | 100 | 102 | 88 | 84 |
|--|-------|-----|-----|----|----|

65. The authority notes that productivity of the domestic industry has steeply declined during POI in line with the decline in production.

INVENTORIES

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

| Particulars | Unit | 2007-08 | 2008-09 | 2009-10 | POI |
|---------------|-------|---------|---------|---------|-------|
| Opening stock | MT | 2,307 | 492 | 2,209 | 1,289 |
| Closing stock | MT | 492 | 2,209 | 1,289 | 2,137 |
| Average stock | MT | 1,399 | 1,351 | 1,749 | 1,713 |
| | Index | 100 | 97 | 125 | 122 |

The Authority notes that while the average inventory level of the subject goods has increased sharply in POI as compared to the base period, the stock at the end of the relevant periods has shown a sharp increase in POI as compared to the base period.

GROWTH

67. On examination of various economic parameters of the domestic industry, the authority notes that the volume parameters such as production and sales have shown negative growth; various price parameters of the domestic industry showed positive trend on overall basis.

ABILITY TO RAISE CAPITAL

68. The domestic industry is a multi product company. Their ability to raise further investment has not been considered a significant factor showing injury. However, the domestic industry contended that should the dumping from the present sources persist, ability of the domestic industry to raise capital would suffer severely.

G. OTHER KNOWN FACTORS

69. During the POI, imports have been reported from subject countries of present investigation. However, imports from third countries are quite significant. Further, the CIF import prices from other countries are marginally higher. It is also noted that imports from some of the third countries are attracting anti-dumping duties.

CONTRACTION IN DEMAND AND/OR CHANGE IN PATTERN OF CONSUMPTION

70. Overall demand for subject goods has shown significant positive growth during the injury period. It is also noted that no significant change in the pattern of consumption has come to the knowledge of the authority, nor any interested party has made any submission in this regard.

TRADE RESTRICTIVE PRACTICES OF AND COMPETITION BETWEEN THE FOREIGN AND DOMESTIC PRODUCERS

71. 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. Further, imports from other sources have sizable presence in the indian market.

DEVELOPMENT OF TECHNOLOGY AND EXPORT PERFORMANCE

72. The investigation has not brought out any evidence to show that there was any significant change in technology which could have caused injury to the domestic industry.

EXPORTS BY THE DOMESTIC INDUSTRY

73. Exports of the domestic industry are quite low in volume. Further, the price and profitability in the domestic and export market has been segregated by the authority for the purpose of present injury assessment. Therefore, export performance would not have affected the injury analysis made by the Authority in this statement.

H. MAGNITUDE OF INJURY AND INJURY MARGIN

74. The non-injurious price for the subject goods has been compared with the landed value of the exports of subject goods from the subject country for determination of injury margin. The injury margin has been worked out as per the follows:

| Sl. No. | Country | Producer | Exporter | Injury Margin US\$/MT | Injury Margin % |
|---------|--------------|---|---|-----------------------|-----------------|
| 1 | South Africa | Merisol RSA Pty, South Africa. | Merisol RSA Pty, South Africa. | (***) | (3-8) |
| | | Others | Others | (***) | (3-8) |
| 3. | Singapore | Mitsui Phenols Singapore Pte. Ltd, Singapore (MPS). | Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP). | (***) | (3-8) |

| | | | | | |
|----|-------------------|---|---|-------|--------|
| | | | | | |
| 4. | | Mitsui Phenols Singapore Pte. Ltd, Singapore (MPS). | M/s MAP and Petrochem Middle- east (FZE), Dubai. | | |
| 5. | | Others | Others | (***) | (3-8) |
| 6. | European Union | All producers | All Exporters | (***) | (8-13) |

I. LIKELIHOOD OF RECURRENCE OF INJURY IN THE EVENT OF REVOCATION OF EXISITING ANTI-DUMPING DUTY

I.1 VIEWS OF THE IMPORTERS, CONSUMERS, EXPORTERS AND OTHER INTERESTED PARTIES

75. The exporters, importers and other interested parties have submitted as under:-

- i. Previous two investigations conducted by the DGAD considered (a) volume of exports post poi (b) profitability of domestic industry post poi (c) post poi landed value of imports, NSR and NIP of the domestic industry and (d) third country exports.
- ii. While deciding post poi data, there is a need to put a limit to the post poi period. Otherwise, interested parties will keep on giving information for the most recent period and authority will find it hard to conclude investigation within the deadlines. Therefore, a period of 6 months post poi should be considered.
- iii. Imports from Singapore were coming in reduced quantities and at high import prices. Further, post poi imports from Singapore have stopped, thus establishing no likelihood of dumping and injury.
- iv. Post poi import volumes declined and import price increased substantially from European Union and South Africa. In a recently concluded investigation, DGAD has compared imports for 6 months post poi with imports for the same 6 months for previous years. Similar approach should be adopted.
- v. Domestic industry has earned significant profits in the poi as well as in the first quarter of the post poi. Losses in Q3 of 2011-12 are because of its own pricing decision.
- vi. Post poi import prices from subject countries were significantly higher than the import prices prevailing during poi.
- vii. When import price from USA coming at much lower price can be considered as not causing or likely to cause injury, then it shows that import price from subject countries will not cause of injury.

- viii. Export price from subject countries to third countries should be compared with the nip (as has been done earlier) and then should determine whether likelihood of injury on this account.
- ix. The authority, for the sake of consistency should continue to apply the same standards of examination of likelihood dumping and injury that were applied in the previous two investigations concerning the subject goods, in the present case also. Even the responding domestic producer (HOCL) during public hearing has clearly endorsed that application of such standards would be suitable in the present case as well.
- x. Volume of imports from July- December, 2011 is 16,484 Mt, which in the corresponding previous year was 33,904 Mt which clearly shows decline in subject imports post poi.
- xi. Domestic industry had significant profits in the post poi. The month of oct-2011 should be excluded being an abnormal month caused by lower capacity utilization. Had the domestic industry maintained the same level of capacity utilization during the month of October 2011, as was during July to September 2011, the domestic industry would have earned reasonable profits in October, 2011.
- xii. Selling price of domestic industry during November, 2011 was Rs.76,485/Mt whereas the published price list of phenol on the website of HOCL showed a price of Rs.90,000/Mt (bulk).
- xiii. NSR is higher than the NIP for the post poi period.
- xiv. There exists no likelihood of dumping and therefore no question of likelihood of injury in the present facts of the case. It is an established practice in the European Commission that if there is no likelihood of dumping, the question of likelihood of injury does not arise.
- xv. Authority should examine whether a “clearly foreseen and imminent” threat exists for the domestic industry. Only if the answer is a positive affirmative should the duties be continued. Performance of the domestic industry has improved substantially over the injury period in terms of profitability and selling prices as well
- xvi. In MTR final findings on acrylic fibre, likelihood has been determined on the basis of improved performance of the domestic industry, which is also the case here. Even if it is argued that this improvement is due to the levying of duties, it must be noted that it only implies that the duties have fulfilled their purpose whereby any further continuance of duties would only favor domestic industry unfairly.
- xvii. SSR final finding on Metronidazole is referred, wherein reliance was placed on the period of investigation performance of the domestic industry and the dumping margin to determine whether there is a likelihood of further injury from dumping.
- xviii. Post disclosure, it has been submitted that there is no existing or continued injury to the domestic industry even though certain volume parameters have shown declining trend during the POI as compared to base year. It has further been submitted that the domestic industry has created monopoly on prices of the subject goods as the selling price of domestic industry is almost 20-25% higher than NIP and landed price from subject

countries because of anti-dumping duty. It has further been submitted that there is no Likelihood of Recurrence of Injury in the event of revocation of existing Anti-dumping duty from European Union. It has further been added that there is negative injury margin from EU during Post POI period as per disclosure statement. Thus, any injury to the domestic industry during Post POI period is not related to imports from EU. It has further been submitted that though the price undercutting is positive, the injury margin is negative from EU. With regard to export prices of subject goods from EU to third countries, it is submitted that such third country prices are not disclosed by the Authority in the disclosure statement while these prices are not privy to any exporter/producer or domestic industry. They have requested the Authority to determine monthly injury margin for the exports from EU to third countries and not on the annual basis as has been worked out by the Authority in the disclosure statement. There has been no examination made by the Hon'ble Designated Authority to establish that the imports from the subject countries have caused the alleged decline in the profit, selling price and return of the Domestic Industry in view of the admitted fact that there is voluminous increase in the imports from other countries during this period. Also, the non-disclosure of the critical parameters such as non injurious price, underselling, undercutting, import data and volumes of the subject merchandise post period of investigation have been withheld. It has also been submitted by some of the interested parties representing exporters from South Africa that export prices to third countries should also be analysed in the context of determination of likelihood of dumping and injury in the event of revocation of anti dumping duty. It has also been submitted by some of the interested parties representing exporters from Singapore that there is no threat of injury to the domestic industry on account of exports of subject goods from Singapore. One of the interested parties has mentioned that the objective of issuing the disclosure statement is to provide an opportunity to all the interested parties to review the facts and legal issues that have arisen in a case and offer their comments thereon so that they can effectively defend their interests. However, the Authority has given effectively only one working day to submit comments on it, which is not sufficient. It has been submitted that the NIP applied for European Union and Singapore is far higher as compared to the NIP applied for South Africa. It is not known whether the authority has calculated NIP for the domestic industry or for every exporting country or exporter. It has also been submitted that it is a common knowledge that South Africa exports a good proportion of 'off specification' phenol to other third countries on prices lower than India.

VIEWS OF THE DOMESTIC INDUSTRY

76. The domestic industry has submitted as under:-

- i. Method of determining likelihood in previous MTR is objected to. However, even if the same methodology is followed, likelihood would be established.
- ii. Lasting nature of changed circumstances: Post period of investigation performance upto most recent period must be examined.
- iii. There is no legal prescription that the authority should restrict to the investigation period, or consider six months after the investigation period to examine likelihood. The rules clearly provide for consideration of past and present data and come to a conclusion with regard to likely future developments.
- iv. The WTO jurisprudence very clearly shows that the authority should consider the performance of the domestic industry upto the most recent period, i.e., the past and the present performance must be examined.
- v. It is an established legal position that the obligation to establish need for withdrawal is on the foreign producers, importers and consumers. The domestic industry is not required to establish the need for continuation, given the very scope of the investigation.
- vi. In SSR investigation the duty was extended despite negative injury margin based on likelihood analysis.
- vii. When the domestic industry has once again started suffering injury, evidently, it is not established that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied.
- viii. Post disclosure, the domestic industry has asked for full disclosure of NIP and expressed their inability to offer their comments in the absence of the same. They have further submitted that the injury margin in respect of exports to third countries is positive in respect of each of the three subject countries and it is not established that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied. Further, it has been submitted that the Designated Authority should examine in mid term review whether injury to the domestic industry is not likely and only if the Designated Authority comes to a conclusion that the injury to the domestic industry is not likely, the Designated Authority can revoke the anti dumping duty. It has further been submitted that the information on record clearly shows that the domestic industry's performance in terms of volume parameters was adverse while the same in terms of price parameters was not adverse. Performance of the domestic industry with regard to production, domestic sales volumes, capacity utilization, inventories, market share deteriorated. It must therefore be concluded that the domestic industry has suffered volume injury. They have further added that between volume and price injury, it is not necessary that both form of injury should co-exist. Even if the domestic industry has suffered adverse volume effect, it must be concluded that the domestic industry has suffered injury. Since the domestic industry has suffered adverse volume effect, the present anti dumping duty cannot be revoked.

EXAMINATION BY THE AUTHORITY

77. The authority in a mid-term review investigation, besides determining whether the subject goods are continuing to enter the Indian market at dumped prices, has to determine whether

the subject goods are likely to be exported at dumped prices from the subject countries in the event of withdrawal of anti dumping duties. The Authority is further required to examine whether injury to the domestic industry is likely to continue or recur due to the dumped imports if the duty is removed or varied.

78. The authority has examined the likelihood of recurrence of injury to the domestic industry on the basis of information and evidence presented by various interested parties during the course of the investigations. The authority has examined the contention of various interested parties. It is noted that the authority had earlier recommended revocation of anti dumping duties levied on subject goods from different countries. It was held by the authority that the domestic industry's performance had improved significantly in the respective period of investigation and there was no likelihood that the injury to the domestic industry will recur. However, in the instant case, it is noted that the domestic industry's performance has once again started deteriorating. In addition, the authority has examined the likelihood of injury and dumping by conducting a monthly analysis of the post POI information. The Post POI data regarding imports have been taken from the information submitted by the cooperating producers and exporters from subject countries, information submitted by the domestic industry from various sources including information from Singapore trade statistics and UN Comtrade data.
79. It is noted that several interested parties have argued that the post-poi performance should be analyzed only upto 6 months. The domestic industry contended that there is no such legal requirement and, on the contrary, past and future facts need to be considered. The Authority has confined its post poi analysis for 6 months after the poi as per past practice.
80. It is also noted that neither the responding exporters nor other interested parties have established with positive evidence like exports to third countries by the subject countries that there is no likelihood of dumping and consequent injury to the domestic industry. Since much of the information about the exports to third countries by the subject countries is available on annual basis only, the authority has considered the relevant data for the years 2010 and 2011.
81. The Authority has addressed the above comments of the interested parties to the extent considered relevant at relevant sections. Some of the specific comments have been examined below:
82. With regard to the submission regarding inadequate time provided to the interested parties to furnish their comments on the disclosure statement, the Authority notes that it had given 4 days to furnish responses keeping in view the need to complete the investigation within the extended time. Further, the interested parties have been given adequate opportunities to inspect the public file and attend oral hearings (twice) to make known their views and those views have been considered to the extent relevant.

83. The discrepancies in the disclosure statement pointed out by some of the interested parties have been corrected.
84. The details of element-wise claim of the cost of sales claimed by the domestic industry along with the amount allowed by the Authority were furnished to the domestic industry. Further, the basis of calculation of NIP has also been furnished as per the practice of the DGAD.
85. With regard to the comments of interested parties on injury to the domestic industry on account of dumped imports and likely diversion of dumped third country exports by the subject countries, the Authority has addressed them in relevant sections of injury and likely injury analysis.
86. With regard to the submission regarding adoption of post-POI data submitted by the domestic industry in the final findings, the Authority notes that the post-POI data submitted by the domestic industry has been considered after reconciliation with the audited accounts.
87. With regard to the submission regarding adoption of post-POI data submitted by the domestic industry in the final findings, the Authority notes that the post-POI data submitted by the domestic industry has been considered after reconciliation with the audited accounts for the relevant period.
88. As regards the submission that the Authority has adopted different NIP for different countries, the Authority notes that it had determined month-wise NIP for the subject goods both for POI as well as post-POI which is uniform for all subject countries. However, since the month-wise quantity of imports of subject goods imported from subject countries goods differ, the weighted average NIP for each of the subject countries is not the same.
89. With regard to the submission that Kochi division of HOCL has earned a profit of Rs.226.02 crores in 2011-12, the Authority notes that it had earned a profit of only Rs.*** crores. It may also be mentioned that Kochi Division also produces other products besides Phenol..

VOLUME OF EXPORTS POST POI AND DUMPING AND INJURY MARGIN POST POI:

90. In order to examine the likelihood of dumping and injury to the domestic industry due to dumping of subject goods from the subject countries, the authority has undertaken a monthly analysis of the volume of exports of subject goods to India from the subject countries. This analysis has been done with respect to Singapore and South Africa on the basis of information submitted by the cooperating producers and exporters. In response to comments from interested parties to analyse the Post POI data on a monthly basis, the Authority has done month wise analysis of information of exports of subject goods from EU to India and it is noted that while dumping margin is positive during the post POI period, injury margin is negative. It is also noted that there is a positive dumping margin as well as injury margin in respect of imports of subject goods from South Africa during the Post POI period and these margins are considered significant.
91. In respect of exports of subject goods from Singapore during post POI to India, it is noted that though the dumping margin is positive, the injury margin is negative.

PROFITABILITY OF DOMESTIC INDUSTRY

92. In order to examine the likelihood of injury to the domestic industry due to dumped imports, in the post investigation period, the authority has also undertaken quarterly analysis of the cost of production, net sales realization and the profitability of the domestic industry during the period from July 2011 - December 2011.

| Particulars | Unit | POI | 2011-12 (Q2) | 2011-12 (Q3) |
|--------------------|-------------|------------|---------------------|---------------------|
| Cost of Sales | Rs/MT | *** | *** | *** |
| | Index | 100 | 104 | 107 |
| Net Selling Price | Rs/MT | *** | *** | *** |
| | Index | 100 | 94 | 83 |
| Profit/loss | Rs/MT | *** | *** | *** |
| | Index | 100 | 57 | (4) |

93. It may be seen from the above Table that during the post POI period the domestic industry's performance has become adverse.

LANDED VALUES OF IMPORTS, NET SALES REALIZATION AND NON INJURIOUS PRICE

94. In the post poi period, the authority has also undertaken an analysis of the landed values of imports from the subject countries, vis-à-vis, NSR of the domestic industry. It is noted that the landed price of imports have remained significantly lower than the net selling price in respect of South Africa and EU showing significant positive price undercutting. However, the landed value of imports from Singapore during post POI has remained higher than the net selling price of the domestic industry showing negative undercutting.

EXPORT PRICES OF SUBJECT GOODS FROM SUBJECT COUNTRIES TO THIRD COUNTRIES:

95. In the absence of relevant information from the responding exporters, the authority has analysed the exports from subject countries to third countries based on the best available information and compared the same, after due adjustments, with NSR and the NIP of the domestic industry. It is noted that the exports from South Africa to third countries, after due adjustments, were below the NSR and NIP of the domestic industry during the post POI period. This suggests that the exports from South Africa if diverted to India would have led to positive dumping margin, price undercutting and injury margin thus establishing that injury to the domestic industry is likely in the event of withdrawal of anti dumping duty from South Africa. The Authority has done similar month wise analysis in respect of third country exports from EU and Singapore and it was noted that injury margin was negative during the post POI.

COUNCLUSIONS ON LIKELIHOOD OF CONTINUANCE OR RECURRENCE OF INJURY TO THE DOMESTIC INDUSTRY IN THE EVENT OF REVOCATION

96. It is noted that while the dumping margin of the subject goods imported from Singapore is negative, that from EU and South Africa during the period of investigation is positive. The injury margin during the same period is negative for all subject countries. However, both dumping margin and injury margin is positive for the post POI period from South Africa. It is also noted that exports from South Africa to third countries if diverted to India would have led to positive dumping margin, and injury margin thus establishing that injury to the domestic industry is likely in the event of withdrawal of anti dumping duty from South Africa. It is also noted that during the POI, there is no continuation of material injury to the domestic industry on account of imports of subject goods from subject countries. However subject goods are likely to enter the Indian market at dumped prices from South Africa should the present measures be withdrawn as the likely dumping margin and injury margin in respect of imports from south Africa is significant. Further, even though the domestic industry has improved its performance during the POI, the situation of domestic industry continues to be fragile especially after POI and therefore should the present anti dumping duties from South Africa be withdrawn, injury to the domestic industry is likely to recur. It is also noted that the injury to the domestic industry is not likely to continue or recur on account of imports of subject goods from Singapore and EU, if the said anti-dumping duty is removed.

J. Indian industry's interest & other issues

97. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the product in India. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply
98. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers.

K. FINAL FINDINGS:

-

99. 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 dumping margins of the subject goods imported from EU and South Africa is positive whereas for Singapore it is negative during the period of investigation.
 - ii) However subject goods are likely to enter the Indian market at dumped prices from South Africa should the present measures be withdrawn and the likely dumping margin and injury margin in respect of imports from South Africa is significant.
 - iii) The injury to the domestic industry is not likely to continue or recur on account of imports of subject goods from Singapore and EU, if the existing anti-dumping duty is withdrawn.
 - iv) Even though the domestic industry has improved its performance during the POI, the situation of domestic industry continues to be fragile. Further, should the present anti dumping duties from South Africa be withdrawn, injury to the domestic industry is likely to recur.

100. 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 South Africa, if the duties are withdrawn, the Authority is of the opinion that the measure is required to be extended in respect of imports from South Africa. However, the quantum of anti dumping duty in force need not be revised so far as South Africa is concerned. Therefore, the Authority considers it necessary and recommends continuation of anti dumping duty on imports of subject goods from South Africa at the rates specified vide notification no. 15/9/2007-DGAD dated 04/08/2008 and Customs Notification No.114/2008 dated 31st October 2008. The anti dumping duties on subject goods from Singapore and EU is recommended to be withdrawn as the injury to the domestic industry is not likely to continue or recur on account of imports of subject goods from Singapore and EU, if the said anti-dumping duty is removed.

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

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

(J S Deepak)
Designated Authority