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

**NOTIFICATION**

New Delhi

Dated the 8<sup>th</sup> November, 2013

**Final Findings**

**Subject: Sunset Review of the Anti-dumping Duties imposed on the imports of Nonyl Phenol originating in or exported from Chinese Taipei.**

**F.No.15/1007/2012-DGAD** – 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 Rules) thereof;

**A. Background of the Case**

1. WHEREAS, the original investigation concerning imports of Nonyl Phenol (herein after referred to as the subject goods), originating in or exported from Chinese Taipei (hereinafter referred to as the subject country), was initiated by the Designated Authority (hereinafter referred to as the Authority) vide Notification No. 14/13/2005-DGAD dated 29th June 2006. The Final Findings Notification was issued by the Authority vide notification No.14/13/2005-DGAD dated 25th June 2007, recommending imposition of definitive duty. On the basis of the recommendations made by the Authority in the final findings, definitive anti-dumping duty was imposed w.e.f. 22nd August, 2007 by the Department of Revenue vide Notifications No. 94/2007-Customs dated 22nd August, 2007 on the imports of the subject goods, originating in or exported from the subject country.
2. WHEREAS, M/s. S.I Group India Limited filed a duly substantiated application before the Authority, on behalf of the producers of the subject goods in India, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the subject goods, originating in or exported from the subject country and

consequent injury to the domestic industry and have requested for review, continuation and enhancement of the anti-dumping duties, imposed on the imports of the subject goods, originating in or exported from the subject country.

3. In view of the duly substantiated application filed and in accordance with Section 9 A (5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated a sunset review investigation vide notification No.15/1007/2012-DGAD dated 9th August, 2012, published in the Gazette of India, Extraordinary, to review the need for continued imposition of the duties in force in respect of the subject goods, originating in or exported from the subject country and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
4. A corrigendum notification was issued by the Authority vide No. No.15/1007/2012-DGAD dated 27th December, 2012 rectifying the injury period of the investigation.

## **B. PROCEDURE**

5. The procedure described below has been followed with regard to the investigation:
  - i. The Taipei Economic and Cultural Centre in New Delhi were informed about the initiation of the investigations in accordance with Rule 6(2).
  - ii. The Authority initiated the present sunset review investigation on 9th August, 2012, published in the Gazette of India, Extraordinary, on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry and in accordance with the Act and the Rules, to examine whether cessation of the duty would lead to continuation or recurrence of dumping of the subject goods originating in or exported from the subject country and consequent injury to the domestic industry.
  - iii. The Authority provided copies of the non-confidential version of the application of the domestic industry to the known exporters and the Taipei Economic and Cultural Centre in New Delhi in accordance with Rules 6(3) supra. A copy of the non-confidential application of the domestic industry was also provided to other interested parties, wherever requested.

- iv. The Authority forwarded a copy of the public notice to the following known exporters (whose names and addresses were made available to the Authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2) & 6(4) of the Rules, with copy to the Taipei Economic and Cultural Centre in New Delhi:
  - a. China Man-made Fibre Corporation, 10F, NO. 50, SEC. 1, Hsin Sheng S. Road, Taipei, Taiwan.
  - b. Formosan Union Chemical Corporation 14F, No. 206, Nanking East Road, Sec. 2, Taipei, Taiwan.
- v. The following producers/exporters from the subject country filed exporter's questionnaire response:
  - a. China Man-made Fibre Corporation, 10F, NO. 50, SEC. 1, Hsin Sheng S. Road, Taipei, Taiwan.
  - b. Formosan Union Chemical Corporation 14F, No. 206, Nanking East Road, Sec. 2, Taipei, Taiwan.
- vi. Copy of the initiation notification was also sent to the Taipei Economic and Cultural Centre in India, along with a copy of the letter, petition and questionnaire sent to the exporters, and requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time.
- vii. The Authority forwarded a copy of the initiation notification to the following known importers of the subject goods in India in accordance with the Rule 6(4) of the Rules:
  - i. India Glycols Ltd.
  - ii. M/s Micro Inks Limited.
  - iii. Manali Chemicals.
  - iv. M/s C.J. Shah & Co.
  - v. Leo ChemoplastPvt Ltd.
  - vi. Lexicon Chemicals Pvt Ltd.
  - vii. Akshya Industries.
  - viii. Samnman Trade ImpexPvt Ltd.
  - ix. M/s Sterling Auxiliaries Pvt. Ltd.
  - x. M/s Krishna Antioxidants Pvt. Ltd.
  - xi. Star Orechem International Pvt Ltd.
  - xii. Jay Chemical Industries Ltd.
  - xiii. Unitop Chemicals P. Ltd.
  - xiv. Indian Chemicals Council.

- viii. None of the Indian importers/users filed importers questionnaire response.
- ix. The Period of Investigation (POI) for the purpose of the present review was from 1st April, 2011 to 31st March, 2012 (12 months). However, injury investigation covered the years 2008-09, 2009-10, 2010-11 and the POI. The data beyond the POI has also been examined to determine the likelihood of dumping and injury.
- x. The domestic industry had relied upon the data from the secondary sources i.e. IBIS. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the injury period including the POI and also the post-POI. Since during the POI the volume of the imports of the subject goods from the subject country, as per the IBIS source, was found to be more than that reported in the DGCI&S data, although price of the subject goods in both the sources of data is almost at the same level, the Authority has relied upon the data from the IBIS source in the present investigation. Moreover, the data from the IBIS source reports the imports of the subject goods under several other customs heads which does not seem to have been captured in the data from the DGCI&S source.
- xi. Exporters, producers, importers and other interested parties who have neither responded to the Authority nor supplied information relevant to this investigation have been treated as non-cooperating interested parties by the Authority.
- xii. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xiii. 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 7th May, 2013.

The parties which presented their views in the oral hearing were requested to file written submissions of the views expressed orally. The arguments made in the written submissions and rejoinders received from the interested parties have been considered by the Authority, wherever found relevant, in the present findings.

- xiv. Verification of the information and data submitted by the participating domestic producers and the cooperating producers/exporters from the subject country was carried out to the extent deemed necessary.
- xv. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as 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. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available' and treated such parties as non-cooperative.
- xvii. The Department of Revenue vide its Office Memorandum No.354III7/2001-TRU dated 14th August, 2013 allowed extension of time up to 8<sup>th</sup> November, 2013 for completing the subject investigation.
- xviii. In accordance with Rule 16 of the Rules supra, the essential facts were disclosed by the Authority to the known interested parties vide a disclosure statement issued on 1<sup>st</sup> November, 2013 and comments received on the same, to the extent considered relevant by the Authority, have been considered in this finding.

xix. \*\*\* In this finding represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

xx. The exchange rate for the POI has been taken as Rs.48.14=1 US\$.

### **C. Product under consideration and Like article**

6. The product under consideration in the present sunset review investigation, as in the original investigation, is Nonyl Phenol, which is also known as Para Nonyl Phenol. It is a clear viscous liquid without sediments. The chemical formula and structure of Nonyl Phenol is C<sub>15</sub>H<sub>24</sub>O. It is used in the manufactures of NP-ethylene oxide condensates for application as non-ionic surfactants after subsequent sulphonation, of oil soluble phenolic resin, of derivatives applied as corrosion inhibitors in lubricating oils and of ingredients for agro-chemical formulations. It is also used in flame-retardants and plasticizers.
7. The product is classified under sub-heading No. 2907.13 under Customs Tariff Act. As claimed by the domestic industry and as per the IBIS data, the subject goods are also imported under various other Customs classifications such as 29071190, 29072990, 32041790, 38109090, 29214590, 29095090, 34031900, 34021300, and 34021900. However, Customs classification is indicative only and not binding on the scope of the investigation.
8. The Domestic industry has submitted that the present review investigation is a sunset review investigation and the product involved in the original investigation as well as in the present sunset review investigation is Nonyl Phenol. It is further argued that Nonyl Phenol produced by the domestic industry and imported from the subject country are like product.
9. The Authority notes that none of the interested parties has contested the meaning and scope of the product under consideration as defined by the Authority. The Authority further notes that the product under consideration produced by the domestic industry is like article to the goods imported from the subject country. Product under consideration produced by the domestic industry and imported from the subject country are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution &

marketing and tariff classification of the goods. The two are technically and commercially substitutable. The Designated Authority has examined the issue of product under consideration and like article in the original investigation, which is relied upon. The goods produced by the domestic industry and imported from subject country are like articles in terms of the Rules.

10. The present investigation being a sun set review investigation the Authority considers that the scope of the PUC in the present investigation remains the same as that of the original investigation. Moreover, none of the interested parties has made any relevant submission requesting modification in the scope of the Product under consideration or disputing the likeness of the subject goods imported from the subject countries and produced and supplied by the domestic industry.

#### **D. Scope of the Domestic Industry& Standing**

11. The application has been filed by M/s. S.I Group India Limited, the sole producer of the subject product in India. The Authority notes that the production of the aforesaid producer constitutes 100% of the total domestic production of the domestic like article. None of the interested parties have made any relevant submission with regard to the scope of domestic industry and standing requiring the Authority to specifically examine and address the same. In view of the above position and having regard to the Rules, the Authority considers M/s. S.I Group India Limited accounts for a major proportion in the Indian production of the subject goods and constitute domestic industry satisfying the requirements of Rule 2(b) read with Rule 5(3) of the Antidumping Rules.

#### **E. Confidentiality**

##### **Submissions by the Domestic industry**

12. The following are the submissions made by the domestic industry as regards confidentiality issue:
  - (a) Excessive confidentiality has been claimed by the exporters in respect of financial statements, details of raw materials usage, mode of production etc.
  - (b) Claims of confidentiality made by the exporters do not meet the requirement of confidentiality prescribed under the statute.

## **Submissions by exporters/importers and other opposing interested parties**

13. No relevant submission has been made by the opposite interested parties as regards confidentiality.

### **Examination by the Authority**

14. The Authority has examined the confidentiality claims of the interested parties. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. 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.*

15. The provision for disclosure of essential facts before giving final findings has been laid down at Rule 16 of the Anti-dumping Rules. Even under Rule 16, the confidential facts are required to be disclosed to “respective interested parties” only, while non-confidential facts are required to be disclosed to all interested parties. At no stage the

Designated Authority is empowered to disclose the confidential information to the parties with competing and conflicting interests.

16. The Authority notes that the 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. However, wherever possible, parties providing information on confidential basis were directed to provide non-confidential version of the information filed on confidential basis and the non-confidential information was made available to the interested parties in the form of a public file.

#### **F. De Minimis Limit**

17. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary sources and from the cooperating producers/exporters from the subject country, the import of the subject goods from the subject country is significant and above de minimis level.

#### **G. Determination of Dumping Margin, Normal Value and Export Price - Methodology and Parameters**

##### **Submissions by the Domestic Industry**

18. The following are the submissions made by the domestic industry:
  - i. The exporters from subject country are offering year-end quantity discounts to the importers in India. If these year-end discounts are considered in determining the import price into India, price undercutting and price underselling would be significant.
  - ii. Though the volume of imports fell marginally during the POI, the volumes are significantly high when compared to the base year of the original investigation as well as the current investigation.
  - iii. Despite the fall in volume of imports during the POI, the market share of the imports increased. This clearly shows that

the minimal fall in volume of imports cannot be regarded as a sign for withdrawal of the said duty.

- iv. As evident from the deficiency reply submitted by the exporters, traders and related companies involved in the sale of the subject goods from the subject country have not cooperated and filed response. In view of this, the respondent exporters should be treated as non-cooperative and their responses should be rejected.
- v. In a situation where costs have increased by close to 73% for the Indian domestic industry, costs would have also increased on the same lines (if not by identical percentage) for the Taiwanese exporters also. Their claim relating to increase in export prices have to be seen in this context. In view of the significant increase in costs, the increased export prices also were dumped prices only.

**Submissions by the Exporters/Producers/Importers and other interested parties**

19. The following are the submissions made by the Exporters/Producers/Importers and other interested parties:
  - i. During the period of investigation the prices charged by the Taiwanese Exporters to India were the highest. Therefore the argument of the domestic industry that the exporters have absorbed the Anti-dumping Duty to keep the volumes of exports at its highest levels is not true.
  - ii. The claim of the domestic industry that exporters from Taiwan are charging lower price than prices charged to other countries is also baseless.

**Examination by the Authority**

20. The Authority notes that the contention of the domestic industry that the exporters from the subject country are offering year-end quantity discounts to the importers in India is unsubstantiated.
21. As regards the submission of the domestic industry that traders and related companies involved in the sale of the subject goods from the subject country have not cooperated and filed response and therefore the respondent exporters should be treated as non-cooperative and

their responses should be rejected, the Authority notes that during verification of China Man-made Fibre Corporation and Formosan Union Chemical Corporation it was ascertained that both the producers/exporters have exported the subject goods to India during the POI directly as well as through traders/related companies. The issue has been addressed in the para concerning determination of export price.

22. Under Section 9A (1) (c) of the Customs Tariff (Amendment) Act, 1995 normal value in relation to an article means:

*"(i) The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or*

*(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –*

*(a) comparable representative price of the like article when exported from the exporting country or territory to 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 following producers and exporters from the subject country have responded to the questionnaire response:

a. China Man-made Fibre Corporation (CMFC)

b. Formosan Union Chemical Corporation(FUCC)

24. The Authority has determined individual dumping margin in respect of co-operative exporters/ producers who have provided the requisite information. The general methodology adopted for determination of Normal value is as follows.

25. The Authority notes that the co-operative exporters/producers have sold the subject goods on bulk basis as well as in packed form. Hence, the dumping margin for the said exporters has been computed taking cognizance of this distinction as well. After satisfying the ordinary

course of trade, the Authority has determined the normal value based on the domestic sales of the cooperating exporters.

**Normal value for Formosan Union Chemical Corporation (FUCC), Chinese Taipei.**

26. The Authority notes that FUCC, Chinese Taipei, is a producer of Nonyl Phenol and has exported the subject goods to India directly as well as through traders during the period of investigation. In addition, FUCC has sold the subject goods in the domestic market as well during the POI. During the POI, the company has sold \*\*\* MT (NTD \*\*\*) of the subject goods in the domestic market to non-affiliated parties. For the determination of the ordinary course of trade test, the costs of production of the product concerned have been accepted. 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. The Authority notes that the domestic sales of subject goods by FUCC in the home market were representative for permitting determination of normal value on the basis of domestic selling prices, and the ordinary course of trade test was satisfied as per the data provided by the responding producer/exporter. The Normal Value determined by the Authority in respect of FUCC, Chinese Taipei during the POI is US\$ \*\*\*per MT.

**Normal value for China Man-made Fibre Corporation (CMFC), Chinese Taipei.**

27. The Authority notes that CMFC, Chinese Taipei, is a producer of Nonyl Phenol and has exported the subject goods to India directly as well as through traders during the period of investigation. In addition, CMFC has sold the subject goods in the domestic market during the POI. The company has sold \*\*\*MT (NTD \*\*\*) of the subject goods in the domestic market. All domestic sales transactions of CMFC 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. The Authority notes that the domestic sales of subject goods by CMFC in the home market were representative for permitting determination of normal value on the basis of domestic selling prices, and the ordinary course of trade test was satisfied as per the data provided by the responding producer/exporter. For the determination of the ordinary course of trade test, the costs of production of the product concerned have been accepted. The Normal Value determined by the Authority in respect of CMFC, Chinese Taipei during the POI is US\$\*\*\*per MT.

### **Normal Value: Non-cooperative Exporters/Producers from Taiwan**

28. No other exporter/producer from Taiwan has responded to the Questionnaire. The Authority determined the normal value for all other producers/exporters of Chinese Taipei, based on the facts available on record, as US\$ \*\*\*per MT.

### **Determination of Export Price**

29. The Authority notes that the co-operative exporters/producers have exported the subject goods on bulk basis as well as in packed form. Hence, the export price for the said exporters has been computed taking cognizance of this distinction as well.

### **China Man-made Fibre Corporation (CMFC)**

30. The Authority notes that during the POI CMFC exported a total of \*\*\*MT of subject goods to India amounting to US\$ \*\*\*through \*\*\* transactions. During verification it was informed by CMFC that they had supplied \*\*\* MT of the subject goods to one of their related parties in Taiwan, which was further exported to India. The Authority further notes that \*\*\* MT of the subject goods were also exported by CMFC through some unrelated traders. Since the exports made through the related party and the unrelated traders are negligible, the Authority has determined the export price by excluding such exports. The direct exports made by CMFC, which are considered by the Authority for determining export price, is \*\*\*MT for US\$\*\*\*.
31. The Authority notes that all the sales of the subject goods to India made by CMFC were on CIF basis and that the expenses with regard to exports to India were incurred by the CMFC. The adjustments claimed by the company on account of Inland Freight, Trade Promotion Fee, Harbour Service Fee, Ocean Freight, Marine Insurance, Commission, Clearance and Handling Loading and Ancillary expenses, Packing Expenses, Bank Charge, and Credit Cost were accepted by the Authority. The total adjustments claimed and accepted by the Authority is US\$\*\*\*. After excluding the indirect exports, and after deducting the adjustments, the Net Export Price of CMFC at ex-factory level is determined by the Authority as US\$ \*\*\*per MT.
32. The Authority notes that during the post-POI period CMFC exported \*\*\*MT of subject goods to India for a total value of US\$ US\$ \*\*\*. After deducting the adjustments, the net export price of CMFC during the post-POI is noted as US\$ \*\*\*per MT.

33. The Authority notes that during POI CMFC exported \*\*\*MT (US\$ \*\*\*) of the subject goods to the third countries with an average value of US \$ \*\*\*/MT. After deducting adjustments, the net export price of CMFC to the third countries during the POI is noted as US\$ \*\*\*per MT. The Authority further notes that out of the total third country exports by the company, the export price in respect of exports to China during the POI is US\$ \*\*\*per MT.
34. During post-POI, CMFC exported \*\*\*MT(US\$ \*\*\*) of the subject goods to third countries. The Authority notes that after adjustments the net export price of CMFC to the third countries comes to US\$ \*\*\*per MT. The Authority further notes that out of the total third country exports made by the company during the post-POI period, the export price in respect of exports to China during the post-POI is US\$ \*\*\*MT.

**Formosan Union Chemical Corporation (FUCC)**

35. The Authority notes that during the POI FUCC has exported a total of \*\*\*MT of subject goods to India amounting to US\$ \*\*\*through \*\*\* transactions. Out of these, \*\*\*MT amounting to US\$ \*\*\*were made through some unrelated traders. Since the traders involved are unrelated, the Authority proposes to determine the export price of CMFC by excluding such exports. The authority further notes that during the POI the company exported \*\*\*MT of the subject goods for US\$ \*\*\* to India directly. The adjustments claimed by the company on account of Inland Freight, Trade Promotion Fee, Harbour Service Fee, Ocean Freight, Marine Insurance, Commission, Clearance and Handling Loading and Ancillary expenses, Packing Expenses, Bank Charge, and Credit Cost were accepted by the Authority. The total adjustments claimed and accepted by the Authority is US\$ \*\*\*. After excluding the small quantum and value of exports made through traders and deducting the adjustments, the Net Export Price of FUCC at ex-factory level is determined by the Authority as US\$ \*\*\*per MT.
36. The Authority notes that during post-POI FUCC exported directly \*\*\*MT of the subject goods to India for a total value of US\$ \*\*\*. The Authority further notes that after deducting the adjustments, the net export price of FUCC during the post-POI is US\$ \*\*\*per MT.
37. As regards third country exports, the Authority notes that during POI, FUCC exported \*\*\*MT (US\$ \*\*\*) of the subject goods to third countries.

The Authority further notes that after adjustments, the net export price of FUCC to the third countries during the POI is US\$ \*\*\*per MT.

38. The Authority notes that during post-POI, FUCC exported \*\*\*MT (US\$ \*\*\*) of the subject goods to third countries. The Authority further notes that after adjustments, the net export price of FUCC to the third countries during the post-POI is US\$ \*\*\*per MT.

**Determination of Export Price in respect of non-cooperative exporters**

39. The Authority has determined the export price in respect of non-cooperative exporters as per facts available in terms of Rule 6(8) of the Anti-dumping Rules. Accordingly, the export price at ex-factory level in respect of all non-co-operative exporters from Chinese Taipei during the POI is determined by the Authority as US\$ \*\*\* per MT.

**Dumping Margin**

40. On the basis of the normal value and export price so determined at ex-factory level, the dumping margin during the POI for all exporters/producers from Taiwan is determined by the Authority as shown in the table below. It is noted that the dumping margin is positive in respect of CMFC and in respect of FUCC and all other exporters of the subject country dumping margin is not only positive but also significant.

**Dumping Margin- POI**

Exporter/ Producer	Normal Value USD/MT	Export Price USD/MT	Dumping Margin USD/MT	Dumping Margin %	Dumping Margin % Range
CMFC	***	***	***	***	0-10
FUCC	***	***	***	***	5-15
All other exporters from Taiwan	***	***	***	***	25-35

41. The likely dumping margin during the post-POI period in respect of the cooperative exporters/producers from Taiwan is positive and significant:

**Likely Dumping Margin – Post POI**

Exporter/Producer	Likely Normal Value USD/MT	Likely Export Price USD/MT	Likely Dumping Margin USD/MT	Likely Dumping Margin %	Likely Dumping Margin % Range
CMFC	***	***	***	***	5-15
FUCC	***	***	***	***	15-25

42. The likely dumping margin during the POI and Post-POI in respect of exports of the subject goods to third countries is as shown in the table below:

**Likely Dumping Margin – POI – Third Country**

Exporter/Producer	Normal Value USD/MT	Export Price USD/MT	Dumping Margin USD/MT	Dumping Margin %	Dumping Margin % Range
CMFC	***	***	***	***	0-10
FUCC	***	***	***	***	5-15

**Likely Dumping Margin – Post- POI – Third Country**

Exporter/Producer	Normal Value USD/MT	Export Price USD/MT	Dumping Margin USD/MT	Dumping Margin %	Dumping Margin % Range
CMFC	***	***	***	***	5-15
FUCC	***	***	***	***	5-15

The Authority notes that the likely dumping margin in respect of exports of the cooperative exporters to third countries, during POI as well as post-POI periods, is positive.

43. The Authority notes that the dumping margin for both the cooperative exporters during the POI is positive and during the post-POI period the dumping margin is significant. In respect of third country exports, the dumping margin is positive as well.

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

### **Submissions made by the Domestic industry**

44. The following are the submissions made by the domestic industry:

- i. Despite imposition of AD Duty, imports of subject goods from the subject country have recorded a significant increase in absolute terms as well as in relation to the imports from other countries.
- ii. Imports from subject country increased significantly despite the fact that there was significant unutilized capacity lying with the petitioner during the entire injury period.
- iii. During post POI, the position of dumping has further intensified.
- iv. The landed value of imports from the subject country have been undercutting the selling prices of the domestic industry significantly during the entire injury period and the period post the POI, except for 2008-09 when the price undercutting was negative, but price underselling was very significant during the same period.
- v. The capacity shown in the Audited Annual Report of the petitioner relates to the company as a whole covering all the plants and is not specific to the product concerned.
- vi. The price underselling from the subject country has been significantly high during the entire injury period as well as the post POI period despite AD Duty being in force.
- vii. The petitioner has been forced to keep its plant idle in spite of existence of huge market in India.
- viii. Notwithstanding the fact that some of the injury has been mitigated by aggressive cost cutting processes, the drastic growth in dumped imports is causing severe injury to the Petitioner.

- ix. The volume of imports of subject goods does not seem to have been impacted by the imposition of AD Duty. Despite imposition of AD Duty, there has been a significant increase in imports of subject goods into India. This has resulted in the domestic industry losing its market share to the dumped imports coming from subject country.
- x. The increase in imports is despite the fact that domestic industry is holding significant unutilized capacity to produce the subject goods.
- xi. Production and capacity utilization of the domestic industry have improved a little bit during the period from 2007-08 to 2011-12, but saw a steep fall during the post Poi period.
- xii. The capacity utilization achieved by the petitioner during the POI is still far below the levels that existed when there were no dumped imports in the market. The domestic industry is not able to utilize its capacity fully due to the dumped imports coming from the subject country during the POI post-POI periods.
- xiii. The domestic sales of the petitioner showed improvement up to 2010-11, but declined during the POI and the post-POI periods.
- xiv. Despite the increase in production and sales during the POI as compared to the base year, the domestic industry has not been able to increase its market share even to a level of 50%, while the dumped imports from the subject country have constantly been maintaining a significant market share in India.
- xv. Low Inventory is not a relevant parameter for of injury analysis in the present case as most of the production is based on order backings.
- xvi. The domestic industry incurred huge losses during 2007-08 and 2008-09. The situation started improving marginally thereafter and the domestic industry started earning cash profits from 2009-10 onwards. However, injury suffered by the domestic industry deteriorated during the post POI period. Further, the returns earned by the petitioner also

turned negative during the post POI period. In the event of withdrawal of AD Duty now, the dumped imports would intensify further and cause serious injury to the domestic industry. The domestic industry's return on capital employed is below the standard rate of return allowed by the Authority.

- xvii. Considering the market size for the subject goods in India, the petitioner should have been able to increase its capacity utilization significantly, which it was not able to do due to presence of dumped goods from Chinese Taipei in significant volume.
- xviii. The claims of the exporters that the petitioner has not suffered any price effect due to the subject imports and the sales realization of the petitioner have also improved during the POI are completely misplaced. Although the profitability of the domestic industry saw slight improvement during the latter part of the five years period of imposition of the Duty, but during the post POI period, the domestic industry turned into deep losses.
- xix. The imports from countries other than the subject country are not significant in volume terms so as to injure or threaten to cause injury to the domestic industry. Therefore, the primary cause of injury suffered by the domestic industry is the dumped imports from the subject country.
- xx. It is the consistent practice of the Authority to allow 22% return on capital employed in determining NIP of the domestic industry.

**Submissions by the producers/exporters/other interested parties**

- 45. The following are the submissions made by producers/exporters/other interested parties:
  - i. The Domestic Industry has not suffered any volume as well price injury. The subject goods is produced in a plant by Domestic Industry which can produce both Nonyl Phenol as well as DOP. Main reason for decline in capacity utilization is reduction in production of DOP and reduction in exports of

Nonyl Phenol and not reduction in domestic sales of Nonyl Phenol.

- ii. Domestic Industry was able to export about 3783 Mt of Nonyl Phenol in 2009-10. During 2009-10 exports of subject goods constituted more than 35% of the total sales of the subject goods by the Domestic Industry. Exports sales have reduced to 486 Mt during the period of investigation which constitutes only 6% of the total sales. During the same period production of DOP also declined by 2183 Mt. The above fact clearly establishes that there is no volume effect on the Domestic Industry during the period of investigation.
- iii. The imports from Taiwan have declined significantly during the period of investigation.
- iv. The Domestic Industry has earned more than reasonable ROI.
- v. Cash profit is the highest during the period of investigation.
- vi. The Non-injurious Price has come down and sales realization has gone up. The Domestic Industry has been able to earn the Non-injurious Price during the period of investigation. Therefore no price injury has been caused to the Domestic Industry.
- vii. The export price from Taiwan during the period of investigation was the highest. During the same period the Domestic Industry could get highest realization in the Domestic Market. On the contrary the cost of production of the Domestic Industry has declined.
- viii. Since prices of Phenol, one of the major raw materials, have fluctuated during the period of investigation and post period of investigation, dumping and injury analysis should be done on quarterly basis.
- ix. The claim of the Domestic Industry as regards its installed capacity does not match with its Audit Reports.
- x. With decline in Capacity there should have been decline in depreciation also. On the contrary the Domestic Industry has

claimed that depreciation in Indexed form has increased three time during 2010-11 as compared to 2008-09.

- xi. Decline in interest cost does not match with claims of capital employed.
- xii. Since the domestic industry is captively manufacturing Phenol, the actual cost of Phenol should be charged to the cost of production of the subject goods.
- xiii. Methodology of Non-injurious Price needs to be revisited and NIP needs to be determined as per para 4 of the Annexure III to Anti-dumping Rules.
- xiv. Adoption of 22% ROCE is not reasonable.
- xv. Claims of decline in capacity utilization by domestic industry are misleading. Domestic Industry has been able to sell almost what it produced.
- xvi. Imports from the Taiwan have declined during the period of investigation.

#### **Examination by the Authority**

- 46. In consideration of the various submissions made by the domestic industry and other interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country.
- 47. Rule 11 of Antidumping Rules read with Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles..." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article 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.

48. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.
49. The present investigation is a sunset review of anti-dumping duties in force. Rule 23 provide that provisions of Rule 11 shall apply, mutatis mutandis in case of a review as well. The Authority has therefore determined injury to the domestic industry considering, mutatis mutandis, the provisions of Rule 11 read with Annexure II. Further, since anti-dumping duties are in force on imports of the product under consideration, the Authority considers that the fact of existing anti-dumping duties on the imports of subject goods from subject country is required to be considered while examining injury to the domestic industry. The Authority has examined whether existing measure is sufficient or not to counteract the dumping which is causing injury.
50. According to Section 9 (A) (5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.
51. For the purpose of current injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods from the subject country on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between the dumping and injury, if any. Accordingly, the volume and price effect of dumped imports have been examined as below.
52. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties. However, the specific submissions made by the interested parties, considered relevant, are addressed below by the Authority:
  - i. As regards the contention of the opposite interested parties that the main reason for decline in capacity

utilization of the domestic industry is reduction in production of DOP and reduction in exports of Nonyl Phenol and not reduction in domestic sales of Nonyl Phenol, the Authority notes that during the POI the capacity utilisation of the domestic industry has increased as compared with the base year, although declined vis-a-vis the immediate preceding year. Further, the export performance of the domestic industry has been excluded from the present injury analysis and therefore same cannot be considered as a factor for injury to the domestic industry.

- ii. As regards the contention of the opposite interested parties that dumping and injury analysis should be done on quarterly basis since prices of major raw material i.e. Phenol has fluctuated, the Authority notes that the fluctuation in the prices of major raw materials is not substantial to justify quarterly analysis.
- iii. As regards the contention of the opposite interested parties that the methodology of Non-injurious Price needs to be revisited and NIP needs to be determined as per para 4 of the Annexure III to Anti-dumping Rules, the Authority notes that the NIP for the domestic industry has been determined on the basis of the rules and guidelines laid down under the Rules.
- iv. As regards the contention of the opposite interested parties that adoption of 22% ROCE is not reasonable, the Authority notes that it is the consistent practice of the DGAD to adopt 22% ROCE.
- v. Regarding captively manufactured Phenol, Authority has satisfied itself during verification and from the evidence submitted during verification it is noted that domestic industry has not used captively produced phenol in the production of subject goods and that the entire requirement of phenol is met by imports from unrelated parties.
- vi. As regards the contention that no price injury has been caused to the domestic industry as they have been able to earn the non-injurious price during the period of

investigation, the Authority notes that there is no legal provision that the Authority should compare the non-injurious price with net sales realization in order to determine the price effect. Furthermore, the Authority notes that NSR is not the only parameter to decide the imposition of anti-dumping duties. The other price effects of imports have been adequately examined by the Authority which shows injury to the Domestic Industry.

**VOLUME EFFECT:**

53. Volume effect of dumped imports and impact on domestic industry has been examined as follows:

**Demand and Market Share**

54. The Authority has determined demand or apparent consumption of the product in the Country as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed can be seen in the table below :

Particulars	2008-09	2009-10	2010-11	2011-12 (POI)	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Sales of Domestic Industry	1,220	6,968	7,824	7,287	5,540	2891
Total imports	8,267	8,623	8,097	7,405	9357	4599
Imports from subject country	5,139	8,611	6,701	6,494	8984	4257
Other Countries – Imports	3,128	12	1,396	911	372	342
Total Demand	9,487	15,591	15,921	14,692	14,897	7490
Market Share						
➤ Domestic Industry	12.86%	44.69%	49.14%	49.60%	37.19%	38.59%
➤ Subject Country	54.17%	55.23%	42.09%	44.20%	60.31%	56.84%
➤ Other Countries	32.97%	0.08%	8.77%	6.20%	2.50%	4.57%
➤ Total	100%	100%	100%	100%	100%	100%

The Authority notes that sales of the subject goods of the domestic industry show a marginal decline during the POI as compared to the immediate preceding year, but show a substantial increase vis-à-vis the base year. The Authority further notes that the imports of the subject goods from the subject country during the POI, although declined vis-a-vis the immediate preceding year, show a significant

increase as compared with the base year. The demand of the subject goods in the domestic market of the country also shows a similar trend. During the post-POI period, the imports of the subject goods from subject country have increased substantially. On the contrary, the sales of domestic industry show significant declining trend. During the post-POI period, the market share of the subject country has increased substantially, whereas the market share of the domestic industry has gone down drastically.

### **Import Volume & Market share**

55. 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.

Particulars	Unit	2008-09	2009-10	2010-11	POI	2012-13 (Post-POI Annual)	2012-13 (Post-POI April - September, 2012)
Subject Country	MT	5,139	8,611	6,701	6,494	8984	4257
Other Countries	MT	3,128	12	1,396	911	372	342
Total Imports	MT	8,267	8,623	8,097	7,405	9356	4599
Market Share in Imports							
Subject Country	%	62.2	99.9	82.8	87.7	96	92.56
Other Countries	%	37.8	0.1	17.2	12.3	4	7.44
Total Imports	%	100	100	100	100	100	100
Subject country's Imports in relation to							
Consumption/Demand in India	%	54.17	55.23	42.09	44.20	60.31	56.84
Production in India	%	375.55	78.57	67.60	80.03	156.02	148.71

The Authority notes that volume of dumped imports from the subject country has marginally declined in the POI as compared to preceding year but significantly increased vis-à-vis the base year. However, the share of the subject country in the total imports in to India has significantly increased during the POI as compared to both the immediate preceding year as well as the base year. During the post-POI period, the market share of the subject country has increased substantially.

### **Production, Capacity & Capacity Utilization**

56. As per table given below, the Authority notes that during the POI the Production and capacity utilization of the domestic industry, although increased vis-a-vis the base year, show significant decline as compared to the immediate preceding year. The Authority notes that during the post-POI, the production of the PUC has declined substantially.

Particulars	Unit	2008-09	2009-10	2010-11	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Installed capacity	MT	24,315	24,315	24,315	24,315	24,315	12158
Trend		100	100	100	100	100	100
Production (Plant)	MT	7,581	18,868	17,353	13,840	12,098	5606
Trend		100	249	229	183	160	148
Production of PUC	MT	1,368	10,960	9,913	8,115	5,758	2898
Trend		100	801	725	593	421	424
Capacity Utilization (Plant)	%	31.18%	77.60%	71.37%	56.92%	49.75%	46.12
Trend		100	249	229	183	160	148

### **Sales**

57. The sales volume of the domestic industry shows decline during the POI as compared to the immediate preceding year. The Authority notes that the sales of the domestic industry have declined despite having the capacity to meet the entire demand in the country. The Authority notes that during the post-POI the sales of the domestic industry have gone down drastically, whereas the total demand in the country for the subject goods has increased.

Particulars	Unit	2008-09	2009-10	2010-11	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Domestic Sales	MT	1,220	6,968	7,824	7,287	5,540	2891
<i>Indexed</i>		100	571	641	597	454	474
Total Demand	MT	9,487	15,591	15,921	14,692	14,897	7490
<i>Indexed</i>		100	164	168	155	157	158

### **Market Share**

58. The imports from the subject country continue to hold significant share in the Indian market throughout the injury period including the POI despite the domestic industry holding the capacity to meet the entire domestic demand and despite the anti-dumping duty imposed. The Authority notes that during the post-POI the market share of the domestic industry has further gone down, whereas the market share of the subject country has increased substantially.

Market Share in Demand	UOM	2008-09	2009-10	2010-11	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
➤ Domestic Industry	%	12.86	44.69	49.14	49.60	37.19	38.59
➤ Subject Country	%	54.17	55.23	42.09	44.20	60.31	56.84
➤ Other Countries	%	32.97	0.08	8.77	6.20	2.50	4.57

### **Price Effect of the dumped imports on the Domestic Industry**

59. The impact on the prices of the domestic industry on account of imports of the subject goods from the subject country have been examined with reference to price undercutting, price underselling, price suppression and price depression. For the purpose of this analysis the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed value of imports from the subject country. A comparison for subject goods during the period of investigation was made between the landed value of dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic

industry, taxes, rebates, discounts and commission offered by the domestic industry have been adjusted. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic industry by appropriately considering the cost of production for the product under consideration during the POI. The position is as follows:

**Price undercutting and underselling effect**

60. The Authority has made price undercutting and underselling analysis both with and without anti-dumping duty as below:

**Price Undercutting**

Particulars	UOM	2008-09	2009-10	2010-11	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Net Sales Realization	Rs/MT	***	***	***	***	***	***
Trend		100	104	132	161	159	162
Landed Value without ADD	Rs/MT	***	***	***	***	***	***
Trend		100	80	121	155	144	152
Landed Value with ADD	Rs/MT	***	***	***	***	***	***
Trend		100	82	119	151	142	150
Price Undercutting without ADD	Rs/MT	***	***	***	***	***	***
	Trend	-100	653	235	39	312	151
	%	***	***	***	***	***	***
	Range %	(0-10)	15-25	0-10	0-10	0-10	0-10
Price Undercutting with ADD	Rs/MT	***	***	***	***	***	***
	Trend	-100	86	-16	-69	-11	<b>-52</b>
	%	***	***	***	***	***	***
	Range	(10-20)	10-20	(0-10)	(0-10)	(0-10)	(0-10)

### **Price Under-selling**

Particulars	UOM	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Non-Injurious Price of Domestic Industry	Rs/MT	***	***	***
Trend		100	107	108
Landed value without ADD	Rs/MT	***	***	***
Trend		100	93	98
Landed value with ADD	Rs/MT	***	***	***
Trend		100	94	99
Price Underselling without ADD	Rs/MT	***	***	***
	%	***	***	***
	Range %	(0-10)	0-10	0-10
Price Underselling with ADD	Rs/MT	***	***	***
	%	***	***	***
	Range %	(5-15)	0-10	(0-10)

The Authority notes that during the POI as well as post-POI, the price undercutting with ADD is negative and without ADD is positive. Therefore, during the post-POI, likelihood of price undercutting in the event of revocation of the anti-dumping duty is significant. The Authority further notes that during POI the price underselling, with as well as without ADD, is negative. During the post-POI (annual), the price underselling with and without ADD is positive.

### **Price suppression and depression effects of the dumped imports:**

61. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with the cost of production. The data given below shows that the domestic industry has not been able to increase its selling price commensurate to the increase in the cost of sales due to the dumped imports.

Particulars	UOM	2008-09	2009-10	2010-11	POI	2012-13 (Post-POI Annual)	2012-13 (Post-POI April - September, 2012)
Cost of production	Rs/MT	***	***	***	***	***	***
Trend	Index	100	52	72	84	92	93
Net selling Price	Rs/MT	***	***	***	***	***	***
Trend	Index	100	104	132	161	159	162
Profit/Loss	Rs/MT	***	***	***	***	***	***
Trend	Index	(100)	12	4	13	(9)	(7)
Landed Price	Rs/MT	***	***	***	***	***	***
Trend	Index	100	80	121	155	144	152

### **Examination of other Injury Parameters**

62. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other economic parameters which could indicate existence of injury to the domestic industry have been analyzed hereunder as follows:

### **Profit/loss, Return on Investment and Cash Flow**

63. The return on investment, profit/loss before and after interest, return on investment and cash profit are shown in the table below:

Particulars	Unit	2008-09	2009-10	2010-11	POI	2012-13 (Post-POI Annual)	2012-13 (Post-POI April - September, 2012)
Cost of production	Rs./MT	***	***	***	***	***	***
Trend	Index	100	52	72	84	92	93
Net selling	Rs./MT	***	***	***	***	***	***
Trend	Index	100	104	132	161	159	162
Profit/Loss	Rs./MT	***	***	***	***	***	***
Trend	Index	(100)	12	4	13	(9)	(7)

Profit/loss	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	(100)	68	27	77	(41)	(16)
Profit before Interest	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	(100)	72	28	81	(42)	(16)
Cash Profit		***	***	***	***	***	***
Trend	Indexed	(100)	100	48	104	(27)	(9)
Return on Capital Employed	%	***	***	***	***	***	***
Trend	Indexed	(100)	31	12	30	(16)	(24)

The Authority notes that the cost of production as well as net selling price of the domestic industry has increased during the POI as compared to the immediate preceding year. The profit position of the domestic industry has also improved significantly during the POI as compared to the immediate preceding year. The ROI position has also improved during the POI. These improvements in the domestic industry can be attributed to the ADD protection. But, despite the ADD, during the post-POI period, the profit, net sales realization and ROC have turned negative due to significant decline in the landed value.

### **Inventories**

64. The Authority notes from the information given in the table below that inventories with the domestic industry have increased during the POI as compared to the base year as well as immediate preceding year. During post-POI, the domestic industry is saddled with huge inventory.

Particulars	Unit	2008-09	2009-10	2010-11	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Average Stocks	MT	***	***	***	***	***	***
Average Stocks	Index	100	167	160	170	274	274

### **Employment, wages and productivity**

65. The Authority notes from the information given in the table below that while employment has declined during the POI as compared to the base year as well as immediate preceding year, wages have increased during the same periods.

Particulars	Unit	2008-09	2009-10	2010-11	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Employment	No	71	71	70	66	66	66
<i>Trend</i>	Indexed	100	100	99	93	93	93
Wages	Rs. Lacs	***	***	***	***	***	***
<i>Trend</i>	Indexed	100	102	131	144	158	158
Productivity per Employee	Mt	106.78	265.75	247.90	209.70	183.30	170
<i>Trend</i>	Indexed	100	249	232	196	172	159
Productivity per day	Mt	20.77	51.69	47.54	37.92	33.14	30.72
<i>Trend</i>	indexed	100	249	229	183	160	148

### **Growth**

66. The volume and price parameters of the domestic industry indicate positive growth during POI. The Authority notes that the overall economic health of the domestic industry has improved mainly due to the ADD measures. But, during post-POI, the economic health of the domestic industry has deteriorated despite the anti-dumping measures due to significant decline in the landed value.

### **Magnitude of Margin of Dumping**

67. The Authority notes that the dumping margin determined in respect of imports from the subject country is positive during the POI as well as post-POI.

### **Ability to raise Capital Investment**

68. The ability to raise capital investment in the event of dumping is not relevant since the domestic industry is a multi-product industry.

I. **Other Known factors and Causal Link:**

**Submissions by Domestic Industry**

69. The primary cause of injury suffered by the domestic industry is the dumped imports from the subject country. The imports from countries other than the subject country are not significant in volume terms so as to injure or threaten to cause injury to the domestic industry.

**Submissions by producers/exporters/importers/other interested parties**

70. Exports price from Taiwan and sales realization of the Domestic Industry is the highest during the period of investigation. Therefore there is no causal link between the dumping and injury as alleged by the petitioner.

**Examination by the Authority**

71. Under Section 9A (5) of the Act, the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties. Notwithstanding this, the Authority examined whether other known factors could have caused injury to the domestic industry as follows:

- i. **Imports from Third Countries:** - The imports of the subject goods from other countries are either below de-minimus or the import price is higher. Therefore, imports from any other country cannot have any adverse effect on the domestic industry.
- ii. **Contraction in Demand:** - The Authority notes that there is a significant increase in the demand for the subject goods in India during the POI as compared to the base year, although it declined marginally vis-a-vis the immediate preceding year. But, such marginal contraction in demand cannot be considered as the reason for the injury.
- iii. **Pattern of consumption:** - It is noted that no significant change in the pattern of consumption for the subject goods has come to the knowledge of the Authority, nor any interested party has made any submission to that regard.
- iv. **Conditions of competition:-** The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry since M/s

SI Group representing domestic industry in the present case is the sole producer of the subject goods in the country.

- v. **Developments in technology:** - The Authority notes that the investigation has not shown that there was any significant change in technology which could have caused injury to the domestic industry.
- vi. **Export performance:** From the information given in the table below it is seen that the export performance of the domestic industry has substantially declined during the POI as compared to the immediate preceding year. However; the decline in the export performance has no impact since injury analysis has been done without including export performances of the domestic industry.

Particulars	Unit	2008-09	2009-10	2010-11	POI	2012-13 (Post POI Annual)	2012-13 (Post-POI April - September, 2012)
Export Sales of subject goods by Petitioner (MT)	MT	82	3,783	2,112	486	50	36
Trend		100	4,593	2,565	590	61	87

**Likelihood of Continuation or Recurrence of Injury**

**Submissions made by the domestic industry**

72. Following submissions have been made by the domestic industry with regard to likelihood of continuation or recurrence of dumping and injury :

- i. The subject goods, originating in or exported from Chinese Taipei and also India are subjected to AD duty in China. China PR has recently decided to continue the Duty on India and Chinese Taipei for a further period of 5 years after conducting an SSR investigation. This situation enables the exporters from the subject country to divert the subject goods into the Indian market in the event of revocation of ADD by India.

- ii. The subject goods are continuously being dumped into India even after imposition of AD Duty. When the goods have been dumped into India even after imposition of AD Duty, it is evident that the margin of dumping would increase further in the event of withdrawal of AD Duty.
- iii. The domestic industry has continued to suffer injury despite imposition of AD Duty. Despite imposition of AD Duty, the imports from subject countries continue to hold more than 50% of market share in India.
- iv. Despite the domestic industry holding adequate capacity to serve the entire domestic market, due to the presence of dumped imports from subject country, the petitioner has been forced to operate at sub optimal levels.
- v. Despite imposition of AD Duty, the petitioner has never been able to achieve 22% return on capital employed during the last four years and POR.
- vi. The total capacity in Chinese Taipei was 50,000 MT per annum till 2009 which further increased to 62,000 MT in 2010. These capacities are far higher than the total consumption in Chinese Taipei which is around 8,000 MT. More than 80% of the total capacity in Chinese Taipei is meant for exports to third countries.
- vii. The excess capacity available with the producers in Chinese Taipei is around three times the total domestic demand in India. It is clearly obvious that the additional capacity for the subject goods in Chinese Taipei is meant only for exports to third countries. Due to economies of transportation, the subject goods have to be sold only in Asia. The biggest market in Asia, China PR, has already continued imposition of AD Duty on the subject goods from Chinese Taipei and therefore, the withdrawal of AD Duty by India would provide free access to producers from Chinese Taipei to dump their products into India without any restriction.
- viii. The exporters have failed to establish as to how the difference in POI will have an impact on the likelihood analysis. If India does not continue the duty when China PR has done so, it is obvious

that the goods meant for China PR would be diverted to Indian market.

- ix. The subject AD Duty by India has been in force since August 2007 and that of China PR from March 2007. Upon imposition of AD Duty by India and China PR in 2007, the exporters from Chinese Taipei tried to widen their market presence in non-Asian countries. Exports to non-Asian countries constituted 20% of total exports from Chinese Taipei in 2008-09 and 23% in 2009-10. However, the exporters from Chinese Taipei were not able to maintain the momentum for more than 2 years and were forced to dispose of their goods in Asian continent from 2010-11 onwards at throw away prices despite trade restrictive measures in force in China PR and India.
- x. The exporters from Chinese Taipei during the past five years have increased their exports to India alone, keeping the exports to other countries constant. This alone is a ground for extension of the duty for a further period of five years.
- xi. Further, the exports from Chinese Taipei to countries subject to AD Duty in proportion to their total exports continued to increase despite imposition of AD Duty. The export to China PR and India which was at 38% of the total exports during 2006-07 (before imposition of AD Duty) increased to 55% immediately after imposition of AD Duty and has remained significantly high in the subsequent years also. The above analysis clearly shows that it is incumbent for the exporters from Chinese Taipei to export their production to China PR and India as it is not feasible to export their goods to other countries. Therefore, there exists all likelihood for dumped imports to intensify into India and injure the domestic industry in the event of withdrawal of the AD Duty.
- xii. AD Duty was imposed by the Authority at a fixed rate of USD163.62 per MT. Owing to phenomenal increase in prices of raw materials of the subject goods, the prices of the subject goods also increased substantially. Consequently, the quantum of AD Duty which represented around \*\*\* % of the export price to India from Chinese Taipei in 2005-06 became a mere \*\*\* % of the export price in 2011-12. In such a situation, in the event of withdrawal of AD Duty, the exporters from Chinese Taipei would

be in a position to increase their exports to India in much higher volumes.

- xiii. During the year 2010 and 2011, the petitioner had supplied substantial quantities of subject goods to domestic users, but many of them did not turn up to the petitioner in 2012 for further orders despite repeated price enquiry proposals received from them. It is not a case of domestic users changing their business model and stopping purchases of subject goods. It is a case where the domestic users are resorting to increased imports of dumped goods from Chinese Taipei. The primary reason for such a shift in the procurement policy of the end users is the year end volume discounts being offered by exporters from Chinese Taipei.
- xiv. The export price of the subject goods from the subject country has fallen by 8% during the post-POI period, whereas the prices of the major raw materials have increased.

**Submissions by Producers/ Exporters/ Importers and Other Interested Parties**

73. Following submissions have been made by the opposite interested parties with regard to likelihood of continuation or recurrence of dumping and injury:
- i. Continued imposition of ADD by China on the imports of subject goods from Chinese Taipei cannot be cited as likelihood for continued imposition of ADD by India as the POI adopted by China is different from what has been adopted by India.
  - ii. China does not adopt the lesser duty rules like India and the cost and price structure in China is entirely different from what is prevailing in India.
  - iii. Likelihood test should be restricted to the period of investigation and six months post period of investigation.

**Examination by the Authority**

74. The present investigation is a sun set review of anti-dumping duties imposed on the imports of subject goods from Chinese Taipei. Under

the Rules, the Authority is required to determine whether continued imposition of anti-dumping duty is warranted. This also requires examination of whether the duty imposed is serving the intended purpose of eliminating injurious dumping.

75. In the present investigation, as there are continued dumped imports from the subject country, the Authority is not required to examine whether revocation of duty is likely to lead to recurrence of dumping. Despite the anti-dumping measures in force, the subject country could maintain a significant presence in the Indian market and continued to dump the subject goods to the detriment of the domestic industry. The Authority notes that imports of product under consideration from the subject country remained significant over the current injury period in absolute terms. Although the analysis of various economic parameters shows overall economic health of the domestic industry has improved during the POI, the Authority notes that this improvement is mainly due to the anti-dumping measures in force. However, during the post-POI, despite the anti-dumping duty, the economic health of the domestic industry has deteriorated miserably due to intensified dumping by the subject country. Thus, in the event of cessation of the anti-dumping measures, the dumping of subject goods from the subject country is likely to continue at more intensified manner, causing injury to the domestic industry.
76. In the present investigation, as there are continued dumped imports from the subject country, the Authority is not required to examine whether revocation of duty is likely to lead to continued dumping of the product. However, the Authority has determined the likely dumping margin in respect of the exports made by the cooperative exporters as well as the subject country as a whole during post-POI period to India and also the third countries in the relevant para of this finding. The Authority notes that the likely dumping margin is positive and substantial. Therefore, in the event of revocation of the anti-dumping measures, the dumping of the subject goods from the subject country in India may be intensified.
77. As submitted by the domestic industry, the total capacity in Chinese Taipei was 50,000 MT per annum till 2009 which further increased to 62,000 MT in 2010. These capacities are far higher than the total consumption in Chinese Taipei which is expected to be around 8,000 MT. The relevant details, as submitted by the domestic industry, are under:

<b>Particulars</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Total Capacity	50,000	50,000	62,000	62,000
Domestic consumption in Chinese Taipei	8,100	8,400	11,800	8,700
Excess capacity	41,900	41,600	50,200	53,300
Excess capacity as % of total capacity	83.80%	83.20%	80.97%	85.97%
Exports by Chinese Taipei	36,229	45,551	40,421	39,259
Exports as a % of total capacity	72.46%	91.10%	65.20%	63.32%

78. From the details given above by the domestic industry It is evident that more than 80% of the total capacity in Chinese Taipei is meant for exports to third countries. The total Indian market for the subject goods is around 15,000 MT per annum. The excess capacity available with the producers in Chinese Taipei is around four times the total domestic demand in India. It is clearly obvious that the additional capacity for the subject goods in Chinese Taipei is meant only for exports to third countries. Since China has continued imposition of anti-dumping duty on Chinese Taipei, the subject goods are bound to be diverted to the Indian market in a more intensified manner in the event of revocation of the anti-dumping duty. The post-POI data is self explanatory. Under this situation, considering the substantial demand for the subject goods in the Indian market, huge capacity in the subject country and its export orientation, revocation of the anti-dumping measures by India may result in intensified dumping and consequent injury to the domestic industry,.

### **Magnitude of injury and injury margin**

79. The non-injurious price of the subject goods produced by the domestic industry has been determined by the Authority in terms of Annexure III to the Anti-dumping Rules. The NIP so determined has been compared with the landed value of the exports of subject goods from Chinese Taipei for determination of injury margin during the POI. The Authority notes that the co-operative exporters/ producers have exported the subject goods on bulk basis as well as in packed form. Hence, the injury margin has been computed taking cognizance of this distinction as well in NIP and landed value.

### **Injury margin – POI & post-POI**

Particulars	UOM	POI			Post-POI	
		CMFC	FUCC	All other	CMFC	FUCC
Non-Injurious Price	Rs/MT	***	***	***	***	***
Landed Price without ADD	Rs/MT	***	***	***	***	***
Injury Margin	Rs/MT	***	***	***	***	***
	US\$/MT	***	***	***	***	***
	%	***	***	***	***	***
	Range %	(0-10)	0-10	10-20	0-10	0-10

80. The Authority notes that the injury margin in respect of CMFC is negative during the POI, but positive during the post-POI. In the case of FUCC, the Authority notes that the injury margin is positive both during POI as well as post-POI. The Authority further notes that during post-POI period the injury margin in respect of both the cooperative exporters from the subject country is positive and significant.

### **Indian industry's interest and other issues**

81. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in 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, 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 the anti-dumping measures would not restrict imports from the subject country 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.

82. The purpose of imposing 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. Further, imposition of anti-dumping duties, would not affect the availability of the product to the consumers.

### **Post Disclosure Comments**

83. The following submissions have been made by China Man-made Fibre Corporation (CMFC) and Formosan Union Chemical Corporation (FUCC) in their post-disclosure comments:
- i. Continuation of the existing investigation after expiry of Anti-dumping Duty is bad in law.
  - ii. Inadequate time provided for disclosure comments.
  - iii. The data for post-POI analysis should be for six months instead of one year.
  - iv. Export performance of the domestic industry should not be excluded from the injury analysis.
  - v. Dumping and injury analysis should be done on monthly or quarterly basis.
  - vi. Domestic Industry is able to earn the non injurious price and therefore no injury is caused to them.
  - vii. Despite anti-dumping duty imposed by China on Taiwan, the prices to China are either equal to or higher than prices to India. Under such circumstances it is not practically and commercially viable and appropriate to shift and divert exports made to China to Indian Market.
84. The domestic industry in their post-disclosure comments reiterated that both China Man-made Fibre Corporation (CMFC) and Formosan Union Chemical Corporation (FUCC) should be declared as non-cooperative as the traders (related/unrelated) through whom they have exported the subject goods during the POI have not filed response.

### **Examination by the Authority**

85. The Authority notes that most of the post-disclosure submissions made by the domestic industry and other interested parties are reiterations which have already been addressed in the relevant para of this finding. Nevertheless, the post-disclosure submissions are examined as below:
- i. As regards the post-disclosure submission made by the domestic industry that China Man-made Fibre Corporation (CMFC) and Formosan Union Chemical Corporation (FUCC) should be declared as non-cooperative as the traders (related/unrelated) through whom they have exported the subject goods during the POI have not filed response, the Authority notes that the exports made through the related party

and the unrelated traders are negligible and the export price has been determined by excluding such exports.

- ii. As regards the post-disclosure submission made by exporters that continuation of the existing investigation after expiry of anti-dumping duty is bad in law, the Authority notes that Section 9A(5) of the Customs Tariff Act as well as Rule 23(1)(B) of the Anti-dumping Rules address the operation and conducting of sunset reviews of anti-dumping duties upon the expiry of the 5 year levy. The above provisions empower the Designated Authority to initiate a sunset review investigation prior to expiry of duties and extend duties for up to one year while the SSR is conducted (2<sup>nd</sup> proviso to Section 9A(5)). Further, it is provided under Rule 23(2) that any review shall be conducted within a period not exceeding 12 months. Further, Rule 23(3) clearly states that the provisions of rules 6, 7, 8, 9/10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review. In this behalf, it may be noted that the first proviso to Rule 17 clearly allows the Designated Authority to extend the 12 month period by another six months. Reading Rule 23(2) along with the proviso to Rule 17 clearly indicates that a similar extension may also be taken in case of a review as well. In this behalf, it is noted that in the present review, the extension of time in order to complete the investigation is well within the provision of anti dumping rules and grant of extension of time has been duly granted by Central Government. It is therefore noted that the present extension taken by the Designated Authority in order to complete the investigation is legal and within the rights granted to the Designated Authority under Rule 23, Rule 17 and Section 9A(5) of the Act and any Final Findings issued by the Designated Authority is legal and within the mandate of the letter and spirit of the law in this behalf.
- iii. As regards the post-disclosure submission made by exporters that inadequate time was provided for disclosure comments, the Authority notes that keeping in view the time period permitted for completing the investigation, reasonable and adequate time was provided to the interested parties for submission of post-disclosure comments.
- iv. As regards the post-disclosure submission made by exporters that the data for post-POI analysis should be for six months instead of one year, the authority notes that the relevant analysis has been done by taking both one year as well as six months data.

- v. As regards the post-disclosure submission made by exporters that the export performance of the domestic industry should not be excluded from the injury analysis, the authority notes that the injury analysis has been done by excluding the export performance of the domestic industry and therefore it has no impact.
- vi. As regards the post-disclosure submission made by exporters that the dumping and injury analysis should be done on monthly or quarterly basis, the authority notes that the fluctuation in the prices of major raw materials is not substantial to justify monthly/quarterly analysis.
- vii. As regards the post-disclosure submission made by exporters that the domestic industry is able to earn the non injurious price and therefore no injury is caused to them, the Authority notes that the net sales realisation is more than the non injurious price during the POI. However, the Authority further notes that the net sales realisation is not the only parameter to decide the imposition of anti-dumping duties. The other price effects of imports have been adequately examined by the Authority which shows injury to the Domestic Industry.
- viii. As regards the post-disclosure submission made by exporters that despite anti-dumping duty imposed by China on Taiwan, it is unlikely that the goods will be diverted to India in the event of revocation of the anti-dumping duty by India, the Authority notes that considering the substantial demand for the subject goods in the Indian market, huge capacity in the subject country and its export orientation, revocation of the anti-dumping measures by India may result in intensified dumping and consequent injury to the domestic industry.

### **CONCLUSIONS**

86. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in this final finding and on the basis of the above analysis of the state of continuation of dumping and consequent injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:
- i. Import of the subject goods from Chinese Taipei has remained at significant level throughout the injury period and continues to command a significant share during the POI.

- ii. There has been continued dumping of the subject goods from the subject country and the dumping is likely to continue and increase if the anti-dumping duty is allowed to cease.
- iii. While during the POI as well as post-POI, the price undercutting with ADD is negative, without ADD it is positive.
- iv. During POI the price underselling, with as well as without ADD, is negative. During the post-POI, the price underselling with and without ADD is positive.
- v. The volume and price parameters of the domestic industry indicate positive growth during POI. But, during post-POI, the economic health of the domestic industry has deteriorated despite the anti-dumping measures due to significant decline in the landed value. Thus, the overall economic health of the domestic industry improved during the POI mainly due to the ADD measures and the situation has worsened due to intensified dumping in the post-POI.
- vi. Considering the demand for the subject goods in India and the capacity in the subject country and continued anti-dumping duty by China on the subject country, in the event of revocation of duty by Indian Authority, the dumping is likely to intensify causing injury to the domestic industry.
- vii. The dumping margin for both Fucc and CMFC during the POI is positive and during the post-POI period the dumping margin is significant. Therefore, the subject country has continued to dump the subject goods in India unabated despite the anti-dumping duties in force.
- viii. The subject country is also engaged in dumping of the subject goods in other countries including China. While the Chinese Authorities have continued anti-dumping measures against Chinese Taipei, the likely dumping margin in respect of exports to third countries, during POI as well as post-POI periods, is positive.
- ix. While the injury margin in respect of CMFC is negative during the POI, but positive during the post-POI, in the case of Fucc, the injury margin is positive both during POI as well as post-POI.
- x. The injury margin during post-POI period is not only positive but also significant.
- xi. Thus, the anti dumping duties are required to be extended and modified.

## **J. Recommendations**

87. Having concluded that the situation of the domestic industry continues to be fragile and there is likelihood of continuation/resumption/intensification of dumping and injury on account of imports of the subject goods from the subject countries, if the duties are revoked, the Authority holds that the measure is required to be extended in respect of imports of the subject goods from the subject

country. Having concluded as above, the Authority is of the view that the anti-dumping measure is required to be extended in respect of imports of the subject goods, originating in or exported from the subject country, as specified in the duty table below. Accordingly, the anti-dumping duty equal to the amount indicated in Col. 9 of the table below is recommended to be imposed concerning all imports of the subject goods, originating in or exported from Chinese Taipei, by the Central Government.

88. The Authority notes that both China Man-made Fibre Corporation (CMFC) and Formosan Union Chemical Corporation (FUCC), cooperative producers/exporters of the subject goods in the subject country during the present SSR investigation, had not cooperated with the Indian Authority in the earlier investigation and were imposed US \$163.62/MT residual duty. In the present SSR investigation, China Man-made Fibre Corporation (CMFC) is having positive dumping margin and negative injury margin during the POI and positive and substantial dumping margin as well as injury margin during the post-POI. The Authority notes that there is a strong likelihood of intensified dumping with recurrent injurious impact on the domestic industry in the event of revocation of anti-dumping duty on M/s China Man-made Fibre Corporation (CMFC). Therefore, the Authority, relying upon the likelihood analysis, recommends continuation of the anti-dumping duty earlier imposed vide Customs Notification No. 94/2007-Customs dated 22nd August, 2007, as specified in the duty table below.
89. As regards Formosan Union Chemical Corporation (FUCC), the Authority notes that both dumping margin and injury margin during the POI as well as post-POI are positive and substantial. The Authority further notes that despite the anti-dumping measures in force, FUCC continued to dump the subject goods in India unabated in a more intensified manner during the POI as well as post-POI with continued injurious impact on the domestic industry. Therefore, having regard to the lesser duty rule, in respect of Formosan Union Chemical Corporation (FUCC), the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry, as specified in the duty table below.

**Duty Table**

S. No	Sub-Head-ing/ Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount of Duty	Unit of Measurement	Currency
(1)	(2)	(3)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	2907 1300	Nonyl Phenol	Chinese Taipei	Chinese Taipei	M/s China Man-made Fibre Corporation	M/s China Man-made Fibre Corporation	163.62	MT	US\$
2	-do-	-do-	Chinese Taipei	Chinese Taipei	M/s Formosan Union Chemical Corporation	M/s Formosan Union Chemical Corporation	207.18	MT	US\$
3	-do-	-do-	Chinese Taipei	Chinese Taipei	Any combination of producer/exporter (other than in Sl. No.1 & 2 above)		364.48	MT	US\$
4	-do-	-do-	Chinese Taipei	Any country other than Chinese Taipei	Any	Any	364.48	MT	US\$
5	-do-	-do-	Any country other than Chinese Taipei	Chinese Taipei	Any	Any	364.48	MT	US\$

**K. Further Procedures**

90. Landed value of imports for the purpose shall be the assessable value as determined by the Customs Authority 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.
91. An appeal against this order, after its acceptance by the Central Government, shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

**J.S. Deepak**  
**Designated Authority**