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No.15/05/2015-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
Jeevan Tara Building, 4th Floor
5, Parliament Street, New Delhi-110001

Date: 1st July, 2016

Final Finding

Subject: Sunset Review (SSR) anti-dumping investigation concerning imports of Phenol originating in or exported from Japan and Thailand.

No.15/05/2015: Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also 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 also referred to as the Rules) thereof;

A. Background of the Case

1. Having regard to the above Rules the Designated Authority had initiated the original investigation concerning imports of Phenol, originating in or exported from Japan and Thailand, vide Notification No. 14/27/2009-DGAD dated 11th August 2009. The Designated Authority notified the Preliminary Findings recommending provisional anti-dumping duties on 3rd February, 2010. Provisional duties were imposed on 19th April 2010. The Final Findings Notification was issued by the Authority on 8th October 2010 recommending imposition of definitive duty on the imports of Phenol, originating in or exported from Japan and Thailand. Definitive anti-dumping duties were imposed by the Department of Revenue vide Notification No.120 /2010-Customs dated 1st December 2010 for a period of 5 years from 19th April 2010, i.e., upto 18th April 2015.
2. M/s Hindustan Organic Chemicals Limited (hereinafter also referred to as HOCL), M/s SI Group India Ltd (hereinafter also referred as SI Group), filed an application before the Designated Authority for initiating a combined sunset review of the antidumping duties on import of Phenol and Acetone from Thailand and Japan, imposed vide Notification No.120 /2010-Customs dated 1st December 2010 and No. 36/2011-Customs dated 18th April, 2011. The petitioners alleged likelihood of continuation of dumping of the above goods, originating in or exported from Japan and Thailand (herein after referred to as the subject countries) and consequent

injury to the domestic industry and 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 countries.

3. In accordance with section 9A (5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated a sunset review investigation, vide Notification No. 15/05/2015-DGAD dated 9th April 2015 to review the need for continued imposition of the anti-dumping duties in respect Phenol (hereinafter also referred to as the subject goods), originating in or exported from the subject countries, and to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The duty was extended by the Department of Revenue till 18th April 2016, vide notification no.14/2015-Customs (ADD), dated 17th April 2015. The time period for completion of the investigation and notification of final finding of the Authority was extended by the Central Government till 8th July 2016, in terms of Rule 17 of the Rules.
4. Apart from the subject countries, antidumping duties are also in force on the subject goods originating in or exported from the European Union, Singapore, Korea RP, Chinese Taipei, USA and South Africa. The scope of the present review is with respect to the duties in force on the import of the subject goods, originating in or exported from Japan and Thailand and covers all aspects of the previous investigation.

B. Procedure

5. The procedure described below has been followed with regard to the subject investigation:
 - i. The Embassies of the subject countries in New Delhi were informed about the initiation of the sunset review investigations in accordance with Rule 6(2).
 - ii. The Authority provided copies of the non-confidential version of the application to the known exporters and the Embassies of the subject countries in accordance with Rules 6(3) supra. A copy of the non- confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.
 - iii. The Authority forwarded copies of the public notice to the following known manufacturers/exporters in the subject countries (whose names and addresses were made available to the Authority by the petitioner) and provided opportunity to make its views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4).
 - i. PTT Phenol Co., Ltd. (PPCL)
 - ii. Chiba Phenol Co. Ltd. Shiodome

- iii. Mitsubishi Chemicals
 - iv. Mitsui & Co., Ltd. ("MBK"), Japan
 - v. M/s Mitsui & Co. (Asia Pacific) Pte. Limited, Singapore
 - vi. Mitsubishi Chemical Corporation ("MCC")
 - vii. Sunitomo Corporation
 - viii. Mitsui Chemicals, Inc.
- iv. The following producers/exporters of the subject goods in the subject countries have filed their questionnaire responses:
1. M/s PTT Phenol Company Limited, Thailand (Producer)
 2. M/s MITSUI CHEMICALS, INC., JAPAN (Producer)
 3. M/s MITSUI & CO., LTD., JAPAN, (Exporter)
 4. M/s MITSUI & CO. (ASIA PACIFIC) PTE. LTD., Singapore (Exporter)
- v. The Authority forwarded copies of the public notice to the following known importers/consumers (whose names and addresses were made available to the authority by the applicants) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter, in accordance with the Rule 6(4):
1. M/s. C.J. Shah and Company
 2. M/s Haresh Kumar & Co., Mumbai
 3. M/s. PCL Oil & Industries
 4. M/s Kantilal Manilal & Co. Pvt. Ltd.
 5. M/s Sonkamal Enterprises, Mumbai
 6. M/s. Khetan Brothers
 7. M/s. Shubham Dyes & Chemicals Limited
 8. M/s Acron Enterprises
 9. M/s. Naiknavare Chemicals Limited
 10. M/s. Paras Dyes & Chemicals
 11. M/s. Torrent Pharmaceuticals Limited, Gujarat
 12. M/s. United Phosphorus Ltd., Mumbai
 13. M/s. Resins & Plastic Ltd.
 14. M/s. Kailash Polymers
 15. M/s Centrum Metalics Pvt. Ltd.
 16. M/s. Wonder Laminates Pvt. Ltd.
 17. M/s. Meghdev Enterprises
 18. M/s. Satguru International
 19. M/s. Bleach Marketing Pvt. Ltd.
 20. M/s. Karmen International (P) Ltd.
 21. M/s. High Polymer Labs Ltd.
 22. M/s. Rainbow colours & Chemicals
 23. M/s. Krishna Antioxidants Pvt. Ltd.
 24. M/s. NGP Industries Ltd.
 25. M/s. Farmson Pharmaceutical Gujrat Ltd.
 26. M/s. India Glycols Ltd.
 27. M/s. Singh Plasticisers and Resins (I) Pvt.
 28. M/s. National Plywood Industries Ltd.

29. Kundan Rice Mills Ltd.

- vi. Only one of the importers of the subject goods, i.e. M/s Century Ply Board Limited, has filed certain submissions without filing any questionnaire response in this matter.
- vii. The Period of Investigation (POI) for the purpose of the present review investigation was April 2013 –September, 2014 (18 months). The examination of trends in the context of injury analysis covered the periods 2010-11, 2011-12, 2012-13 and the POI.
- viii. Transaction-wise imports data for the period of investigation and preceding three years was procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and has been relied upon for the analysis in this investigation.
- ix. Exporters, producers, importers and other parties concerned with the subject goods, who have neither responded to the Authority, nor supplied information relevant to this investigation, have not been treated as interested parties in this investigation.
- x. The Authority made available non-confidential version of the evidence presented by interested parties, in the form of a public file kept open for inspection by the other interested parties as per Rule 6(7).
- xi. 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 of the Rules 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.
- xii. The Authority provided opportunity to all interested parties to present their views orally in public hearings held on 20th January 2016. All the interested parties attending the hearings were requested to file written submissions/rejoinders of the views expressed orally.
- xiii. The submissions made by the interested parties during the course of this investigation have been examined and addressed in this finding.
- xiv. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied upon which these findings are based. The Authority conducted on-the-spot verification at the premises of the domestic industry and the cooperating producers and exporters to the extent considered relevant and necessary. Additional/supplementary details regarding injury were sought from the domestic industry, which were also received.

- xv. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. 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. In accordance with the Rules the Authority issued a disclosure statement containing all essential facts of the case on 17.06.2016 for the comments of the interested parties. The comments of the interested parties, to the extent they are relevant, have been addressed in this finding in appropriate places.
- xvii. *** in this finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xviii. The exchange rate for the POI has been taken by the Authority as Rs.60.76 = 1US\$.

C. Scope of Product under consideration and like article

- 6. The product under consideration in the Final Findings of the original investigation of Phenol dated 8th October, 2010 was described as follows:

“The product under consideration is ‘Phenol’. It is an organic chemical, also known as Carboic Acid and used in the manufacture of Phenol Formaldehyde Resins, Laminates, Plywood, particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide and downstream chemicals. Phenol is classified under Chapter 29 & 27 of Custom Tariff Act under the sub-heading 29071110, 27079900 respectively. The customs classification is however, indicative only and in no way binding on the scope of the present investigation. It is a basic organic chemical, marketed in two grades, viz., Crystalline and Hydrated. The two grades are differentiated on the basis of flow characteristics of Phenol. It is marketed in two forms- loose/ bulk and packed.”

- 7. Petitioners have submitted that the Phenol produced by them are like article to the Phenol imported from the subject countries in terms of physical and technical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing, and tariff classification of the goods. The imported products and the domestically produced goods are technically and commercially substitutable, and consumers use them interchangeably.
- 8. The product under consideration is classified under Chapter 29 and 27 (Phenol) of the Custom Tariff Act under the subheadings 29071110 and 27079900.
- 9. No relevant submission has been made by the producers/exporters/ importers/other

interested parties with regard to the scope of the product under consideration (PUC) and like article. This being the sunset review investigation, the Authority holds that the scope of the PUC in the present investigation remains the same as that of the original investigation.

D. Domestic Industry and Standing

10. As noted earlier, a combined petition for the sunset review of the antidumping duty on Phenol and Acetone was filed by M/s Hindustan Organic Chemicals Limited (HOCL) and M/s SI Group India Ltd. (SI Group). The Petitioners are the only producers of Phenol and Acetone in India and therefore, account for total Indian production. At the stage of initiation, it was submitted by the petitioners that M/s SI Group had imported these goods from several countries, including subject countries, both under duty free and duty paid schemes for captive consumption only and the imported goods were not sold in the domestic market. Pending further inquiry, the Authority, considered, at the stage of initiation, SI Group as an eligible domestic producer to be a constituent of domestic industry.

D.1 Views of the opposing interested parties

11. The opposing interested parties, in their submissions, have strongly argued for exclusion of SI Group from the scope of domestic industry for the purpose of the injury investigation and have *inter alia* submitted as under:

- i. That SI Group has been excluded from domestic industry in the past on account of imports, which have been made in the present investigation also to the tune of 20,000 MT in the POI. It has been submitted that out of several investigations carried out by the Designated Authority in most of the original investigations SI Group had been excluded from the scope of the domestic industry on account of imports. Therefore, SI Group's participation in this anti-dumping investigations has been highly inconsistent.
- ii. That imports of SI Group account for large share of production and sales made by domestic industry. SI Group has imported from sources of alleged dumping and has benefitted by trying to shield itself by partaking in dumping activities.
- iii. That whether the imports are for captive consumption or commercial sales is irrelevant since any imports directly or indirectly impact the commercial market in India. Even if SI Group used most of imports for captive consumption, it freed up production and inventory of the product under consideration for commercial sales, while also at the same time ensuring that the captive consumption was substituted by cheap dumped imports.
- iv. that while it is undisputed that the Hon'ble Designated Authority has complete discretion to include a domestic producer which is also an importer, this discretion must be moored on the touchstone of reasonableness and equity.

Therefore, the inclusion of SI Group as domestic industry must be based on a rational and objective examination of facts.

- v. That in plethora of cases decided by the Authority in the past (Anti-dumping investigation concerning imports of 'Viscose Staple Fibre excluding Bamboo fibre' originating in or exported from China PR and Indonesia- 2010; Soda Ash originating in or exported from China PR, European Union, Kenya, Iran, Pakistan, Ukraine and USA- 2012; Mid-term Review (MTR) Anti-Dumping investigation concerning imports of 'Carbon Black used in rubber applications', originating in or exported from China PR, Australia, Russia and Thailand -2013, Electrical Insulators-2015, etc.) the issue has been decided by the Authority based on certain principles. In the light of the earlier precedents involving similar situations faced by the Authority, the key parameters typically examined by the Authority for exercising its discretion while excluding or including a domestic producer from the ambit of "domestic industry" are as follows:
- a. Quantum of Imports in Comparison to Production and Sales;
 - b. The level or long term nature of the commitment shown by the producer to the domestic production, as opposed to importing activities;
 - c. If inclusion of a domestic producer would distort the injury findings, it must be excluded.
- vi. That by juxtaposing the above information on SI Group with the identified parameters for the Authority to exercise its discretion, the following relevant factors would emerge:
- The imports made by SI Group account for a large share of not just production but also sales made by the domestic industry.
 - As is evident from the data that its imports from countries subject to anti-dumping duties/ongoing investigations are over 37% of the total production of SI Group.
 - Therefore, it is undisputed that SI Group has not just imported from sources of alleged dumping, but also benefitted from the alleged dumping and in the process shielded itself by partaking in the dumping activities.
 - The current activities of SI Group are merely a continuation of a long standing trend as also recognized in the previous investigations carried out by the Authority, whereby it is clear that SI Group has had a long commitment towards importing the product under consideration from sources of alleged dumping.
- vii. That the Authority may segregate and analyse the imports made by SI Group into duty paid and duty free imports and the impact thereto on its operations and margins, and make the same available for the interested parties so as to allow them to make meaningful submissions in this behalf.
- viii. That in light of the above, the Authority should exercise the wide discretion accorded to it under the Anti-dumping Rules in a judicious manner in

consideration of the facts and evidence before it and exclude SI Group from the scope of the domestic industry for the purpose of the injury examination.

D.2 Views of the Petitioners

12. The petitioners, in their submissions, have argued that the petitioners in the present investigation namely, M/s Hindustan Organic Chemicals Limited and SI Group India Ltd, are the only producers of the product under consideration in the country. Although M/s SI Group India Ltd has imported subject goods, these imports are not from the subject countries. Moreover, these imports have been made under duty exemption scheme for export production or after paying custom duty for captive consumption used for downstream products. The company hasn't imported for trading purposes and therefore, this behaviour should not be considered as causing injury to domestic industry. It has been further argued that since imports by SI Group pertain to non-subject countries, they are not relevant for present investigation.
13. It has been further argued that the Designated Authority, in various Acetone and Phenol cases, has held that whether imports are for captive consumption or commercial sales is an important distinction. However, notwithstanding the above should the Authority consider that SI Group cannot be a part of domestic industry the Authority can exclude SI Group from the scope of domestic industry and proceed on the data/information pertaining to M/s HOCL alone.

D.3 Examination by the Authority

14. The Authority has examined the issue of eligibility of M/s SI Group, to be treated as a part of the domestic industry for injury examination, in the light of the above arguments put forth by the interested parties, the extant Rules and the jurisprudence evolved on the issue.
15. The Authority notes that SI Group and HOCL filed a combined application for initiation of a combined sunset review investigation covering both the products as the domestic industry, countries involved and period of investigation were same for both the products. At the time of investigation SI Group claimed that they had imported certain quantities of Phenol during the proposed POI from various countries under duty exemption schemes for export production and certain quantities were imported, from various countries, including the countries under investigation, with payment of applicable duties for captive production of downstream products. The Company further declared that they imported certain quantities of Acetone under duty exemption schemes for export processing. It was declared that they have not sold any imported goods in the domestic market. Based on these declarations SI Group was included in the scope of the domestic industry at the time of initiation pending further inquiry into the issue.

16. During course of the investigation it has been found that during the POI SI Group imported 12246.43 MTs of Phenol out of which 7455.732 MTs were imported under duty exemption schemes for export production and remaining 4745.346 MTs were imported duty paid. Out of the duty paid imports 45.35 MTs were sold in the domestic market. It is further noted that all the imports are from countries attracting antidumping duty and 800 MTs have been imported from Thailand, which is one of the countries under investigation in this case. The imports of this Company are about 23% of its own production of Phenol during the POI. Similarly, SI Group imported 9924 MTs of Acetone under duty exemption schemes for export production. It is further noted that all the imports of Acetone are from countries attracting antidumping duty though no imports have been made from the countries under investigation. The imports of Acetone are about 30% of its own production during the POI.
17. The Authority further notes that in its submissions as recorded above the Company had argued that since imports by SI Group pertain to non-subject countries they are not relevant for present investigation. It has been further argued by the petitioners that SI Group did not import the goods for trading purposes and therefore, this behaviour should not be considered as causing injury to domestic industry, though the investigation reveals that about 45MTs of duty paid Phenol imported by this Company was sold in the market during the POI. Investigation also reveals that SI Group continues to import substantial volumes of both Phenol and Acetone during the post POI period of these two investigations. The past history of the Company also shows that they have been consistently importing the goods for their own consumption.
18. With this factual position of the case the Authority turns to the definition of the domestic industry and the discretion available to it under the extant Rules. Rule 2(b) of the Antidumping Rules provides as under:
- 2. (b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case the term 'domestic industry' may be construed as referring to the rest of the producers"*
19. In the instant case one of the complaining domestic producers, i.e., SI Group, has been importing of both Acetone and Phenol for its captive consumption largely for export production. This fact was also before the Authority in the earlier investigations and this Company was included in the domestic industry in certain cases and in certain other cases it was excluded in the factual matrix of those cases. It is now established position of the law and jurisprudence evolved in other

investigating authorities that Article 4.1 of ADA and Rule 2(b) of Antidumping Rules do not provide for the automatic exclusion of producers which themselves import the dumped products, but rather obliges the Authority to examine, on a case-by-case basis, whether the inclusion or exclusion of any producer in such a situation is warranted. In deciding whether to exclude a domestic producer from the scope of the domestic industry, the Authorities generally examine the following factors:

- Whether the imports are sporadic and small compared to its own production and sales, not a regular phenomenon;
- Whether the imports are necessitated to tide over certain situations, say production issues; or supplementing the grades not manufactured by it; or quality testing and product development etc.;
- Need for completing their product range so as to be able to satisfy demand;
- Whether there is no other viable domestic producer to be defined as domestic industry.

20. The discretion available to the Authority under Rule 2 (b) has been used in the past with due circumspection, in situations where the complaining producer is the only domestic producer or the imports are not very significant in comparison to their production and sale and/or imports are meant for product development and testing etc. In the instant case, SI Group has been importing the subject goods in significant quantities though it has been submitted that major portion of the goods are being imported for its downstream production for export sales. Further, a small quantity of the imports has been sold in the domestic market and this fact was not brought to the notice of the Authority at the time of initiation. However, the Authority notes that there is only one other domestic producer in the country in the public sector i.e., M/s Hindustan Organic Chemicals Ltd.(HOCL) with significant production capacities. But the production facilities of HOCL has been on and off out of production and operated only for few months during the POI because of certain other factors, though the domestic industry has argued that the production of this producer has been significantly affected by several factors, including prolonged dumping from various sources leading to closure of the plant for a considerable period during the POI. In this situation, if SI Group is disallowed to be a part of the domestic industry for the purpose of injury examination, there will be practically no viable domestic industry to evaluate the injury and injury investigation will be significantly skewed or would not enable a reasonable analysis of the impact or likely impact of the imports from the subject countries.

21. In view of the above situation, the Authority is inclined to use the discretions available to it under Rule 2(b) with due circumspection and considers SI Group as a part of the domestic industry for injury examination in this case.

22. The opposing interested parties, in their post disclosure submissions, have commented that the Authority has taken a step in the right direction by examining

several factors in deciding whether to exclude a domestic producer from the scope of the domestic industry. However, In spite of analyzing the above factors, the Authority has decided to exercise its discretions available to it under Rule 2(b) with due circumspection and has determined that SI Group constitutes Domestic Industry, simply because if SI Group is disallowed to be a part of the domestic industry for the purpose of injury examination, there will be practically no viable domestic industry to evaluate the injury and injury investigation will be significantly skewed or would not enable a reasonable analysis of the impact or likely impact of the imports from the subject countries. This might set a perilous precedent, whereby the Indian manufacturer will always find a way to qualify as domestic industry despite importing the subject goods and benefitting out of such imports. It has been further argued that the imports made by SI Group have had a substantial impact on the domestic market in India, even if they were mostly utilized for downstream exports. Further, SI Group has evidently benefited from these imports since it is able to competitively price its downstream product in the export market.

23. In this connection the Authority notes that all issues raised by the opposing interested parties have been examined and in the factual matrix of the case it has been found necessary to retain SI Group as a part of the domestic industry for injury examination in this case.

E. Interested Parties to this investigation

24. Apart from the petitioners, the responding exporters and importers, who have made themselves known as interested parties in this investigation, as listed in para 5 (iv) and (vi) above, and the Governments of the responding countries have been treated as interested parties to this investigation.

F. Miscellaneous Submissions

F.1 Confidentiality

25. The opposing interested parties, in their submissions, have contended that petitioners have claimed excessive confidentiality and production figures of Phenol in injury period and POI have not been provided while the same for Acetone have been provided in the petition. It has been argued that the domestic industry has not provided the basis for adjustments to export prices and Indexed ranges for costing information in Format A, B, C-1, C-2, D and E have not been provided and the underselling margin, capital employed and non-injurious price have not been disclosed in the petition in summarized form or in indexed ranges.

26. With regard to the confidentiality issues the domestic industry has submitted that all confidentiality claims of the domestic industry are as per the legal provisions, trade notice issued by the DGAD, and practice being followed by Authority in this regard. It has been further submitted that the questionnaire responses submitted by the interested parties are excessively confidential and prevent the domestic industry from making reasonable submissions.

27. The issues raised by the interested parties with regards to confidentiality have been examined. The Authority notes that to the extent possible and practicable the confidentiality claims of various parties submitting the information have been examined and confidentiality claims admitted on the basis of nature of information provided by the parties. As far as the submissions of the exporters are concerned, the information provided by the exporters, to the extent they are not business sensitive to the party providing the same, have been placed in the public file. In view of the above the objections of all parties with respect to confidentiality claims of the opposing parties have been disposed of.

F.2 Other Issues

28. The opposing interested parties have further argued that the Petition for sunset review filed by the Petitioners is deficient to the extent that it does not adequately address likelihood and provides baseless allegations without any evidence to corroborate its claims. In fact, as regards the claim of likelihood, the Petitioners appear to be contradicting themselves. The Petitioners have claimed in the petition that the performance of the domestic industry shows no improvement. In the same paragraph, the Petitioners have then stated that there is no injury to the domestic industry because dumping has continued at low level. Such ambiguous statements are meant to mislead the interested parties and the Designated Authority. Therefore, the petition should be rejected.

29. Further the Petitioners have out rightly contradicted themselves on their own Petition as far as imports of the subject goods from Japan. The data indicates that there has been no import of the subject goods from Japan in the period of investigation and the previous year.

30. It has been submitted that Authority has, in several investigations, examined such a factual scenario, wherein there were no present imports from the subject countries in the recent years and revoked the duties in such cases. Therefore, given the fact that: (i) there are no imports of the subject goods from Japan; and (iii) SI Group being major importer of Phenol during POI, there is no reason for continuing the anti-dumping duty in force on imports of the subject goods.

31. The exporters, in their submissions have also argued that the petitioners are inherently inefficient and have caused injury to themselves due to their operational infirmities and setbacks and resorting to repeatedly reliance on antidumping measures for over a decade. It has been argued that since its inception of its plant in 1987, HOCL has failed to make any improvement in its production facility or process even though the demand in the country has increased by nearly 200% since 1999. Since 2005 HOCL has been classified as a sick company and recently due to fall in international prices of crude Phenol manufacturing plant of HOCL has been shut down and HOCL has publicly admitted that these shutdowns are as a result of raw materials shortages which have no co-relation with the alleged

dumping of the subject goods. Further, severe shortage of the working capital has also led to stoppage of production.

32. Apart from the above M/s Century Ply board limited, in its brief submissions, has made the following submissions:

- That they are one of the major users of Phenol, which has been subjected to antidumping duties for a long time on the request of HOCL.
- That HOCL has shut down its Phenol plant since August 2015 and since then HOCL has not been able to supply Phenol. Earlier also they were working intermittently.
- That after shutdown of the plant, HOCL has issued tenders seeking bids for running the plant on toll contract basis. However, considering the condition of the plant and machinery no one is coming forward to participate in the tender.
- On the other hand, the users of the subject goods are being unnecessarily burdened with antidumping duty on the imports. Therefore, there is no reason to continue with the duties.
- That unjustified levy and collection of antidumping duties on the subject goods is causing unnecessary burden on the consumers and end users and is contributing to the slowdown of the economy.

33. The domestic industry in its submissions has argued that the significance and purpose of imposition of anti-dumping duties is that the domestic industry gets increased fair market opportunities to sell its materials at fair prices. The domestic industry in the present case did not get fair market opportunity with the imposition of anti-dumping duty. However, cessation of anti-dumping duty would result in continuation or recurrence of duty and consequent injury to the domestic industry.

34. In their post disclosure submissions, the opposing interested parties have submitted that the merits of the present investigation can be adequately analysed only if due consideration is given to the history of the AD duties. The Authority has taken a due note of this fact in the disclosure statement. It has been argued that Anti- Dumping duties have been repeatedly relied on by the domestic industry for over a decade to buffer its own inefficiency and have attempted to systematically eliminate all competition from the domestic market.

35. The Authority notes that this product has a long history of anti-dumping investigations and duties have been imposed on the import of the subject goods from various countries since 2002. Apart from the subject countries, the duties are currently in force against imports from Chinese Taipei, USA, EU, Korea RP, South Africa and Singapore.

36. With regard to the arguments of the interested parties that the petitioners are seeking repeated protection of antidumping duty while they are inherently inefficient, the Authority notes that in a sunset review investigation it is the consistent practice of the authority to review all the aspects of the original investigation, including the

likelihood scenario of dumping and injury in the event of cessation of duties. Accordingly, all issues raised by the interested parties have been duly examined to the extent they are relevant and supported by evidence.

37. All other issues raised by the interested parties with regard to dumping and injury have been addressed in the respective sections in this finding to the extent they are relevant and supported by evidence.

G. Methodology of Determination of current Dumping

G.1 Legal Positions

38. Section 9A (5) of Customs Tariff Act, 1975 provides that: -

“The anti-dumping duty imposed under this Section 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;

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the Anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.”

39. Accordingly, in a sunset review investigation the Authority is required to examine:

- Whether the dumping continues after imposition of the antidumping duty and if so, whether it is likely to continue;
- In cases where dumping did not continue, whether the dumping would recur in the event of revocation of anti-dumping duties;
- Whether the domestic industry continued to suffer material injury and if so, whether injury to the domestic industry is likely to continue if the duties are removed;
- In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti-dumping duties.

40. Therefore, the Authority has first proceeded with the examination as to whether dumping of the subject goods continues from the subject countries and whether dumping is likely to continue or recur if the duties are revoked, before examining whether the domestic industry continues to suffer material injury on account of such dumped imports and injury is likely to continue or recur in such a situation.

G.2. Examination of Continuation of Dumping: Determination of Normal Values, Export Prices and Dumping Margins.

41. The Authority notes that the following producers and exporters from Thailand and Japan have submitted their questionnaire responses:

1. M/s PTT Phenol Company Limited, Thailand (Producer)
2. M/s MITSUI CHEMICALS, INC., JAPAN (Producer)
3. M/s MITSUI & CO., LTD., JAPAN, (Exporter)
4. M/s MITSUI & CO. (ASIA PACIFIC) PTE. LTD., Singapore (Exporter)

42. The current dumping and likelihood of continuation or recurrence of dumping of the subject goods from these two countries have been examined based on the information filed by the cooperating exporters and other information provided by the domestic industry as follows:

(a) Thailand

43. As per DGCI&S import data relied upon 34,308 MT of Phenol was imported from Thailand during the POI. M/s PTT Phenol Company Limited, Thailand (PPCL), one of the major producers of the subject goods in Thailand, has filed its questionnaire response in this case. As per the verified data of this exporter, they had exported [***] MTs of the subject goods to India during this period. Considering the time lag between the exportation and importation, the data seems to match.

44. During the POI PPCL exported the subject goods to India directly as well as through unrelated exporters i.e., M/s Mitsui & Co., Ltd., Japan and M/s Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore. These unrelated exporters have also filed their questionnaire responses. The responses filed have been verified through on-spot investigations. Accordingly, the normal value, export price and dumping margin have been determined based on the verified data of the producer and the exporters as follows:

Normal Value

45. During the POI PPCL sold [***] KG of the subject goods in the domestic market to unaffiliated customers, mostly on ex-works basis with few transactions on delivered basis, with various payment terms. It was noted that though the domestic sales were throughout the POI, the export sales were only in certain months in the POI. Due to significant fluctuation in prices of basic raw materials, i.e. benzene and propylene, in the global market the producer has requested for determination of normal values and export prices on monthly basis and has provided month-wise cost sheet of Phenol. Accordingly, the month-wise domestic sales were subjected to ordinary course of trade test and the monthly normal values have been determined as follows, after adjusting the domestic sales prices for expenses towards Inland Freight, Handling expenses and Credit Cost, wherever applicable, as given in the dumping margin table below.

Export Price

46. During the POI PPCL exported [***] Kg of the subject goods to India against [***] transactions to unrelated traders and end users. Out of this [***] Kgs were exported through the trading Company Mitsui and Co. Japan, which in turn exported the goods through its related company M/s Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore. Both these companies have filed their questionnaire responses. A small quantity (only one transaction) has been sold through another trading Co. in Hong Kong. Rest of the quantity has been sold to direct customers in India.

47. As far as exports through, M/s Mitsui & Co., Limited (MBK) is concerned, MBK purchases goods from PPCL and sells to its associated Company, M/s Mitsui & Co. Asia Pacific Singapore (“MAP”), which in turn sells the goods to various countries, including India. During the POI MBK exported [***] of the subject goods (Thai Origin) to India against [***] transactions through MAP. All transactions have been invoiced to MAP on FOB/CFR term with 90 days TT term and MAP has, in turn sold the goods to independent end users in India. Direct exports of PPCL were on Ex-works/FOB/CFR terms against LCs with various credit terms.

48. Phenol is first delivered to Thai Tank Terminal for distribution in bulk, both for domestic and export. The Company pays a fixed fee and throughput fee to Thai Tank Terminal. Accordingly, PPCL has claimed handling expenses, which are comprised of storage and throughput expenditure. The net ex-works export prices of the company for its direct exports as well as exports through the trading companies have been determined after due adjustments towards Inland freight, ocean freight, handling expenses, credit cost, bank charges and commission, wherever applicable. The exports are in bulk form and no packing expenses are involved. Accordingly, month-wise net ex-works export prices work out as given in the dumping margin table below.

Dumping margin: PPCL-MBK-MAP

49. The month-wise normal value determined at ex-works level have been compared with the month-wise net ex-works export price to arrive at the dumping margin for PPCL as follows:

Row Labels	Sum of Quantity in Kgs	NV US\$/Kg	EP US\$/Kg	DM US\$/Kg	DM %
Customer	***			***	0-5%
Apr-13	***	***	***	***	
May-13	***	***	***	***	
Aug-13	***	***	***	***	
Nov-13	***	***	***	***	
Feb-14	***	***	***	***	
Jun-14	***	***	***	***	
Aug-14	***	***	***	***	
Sep-14	***	***	***	***	

Trader	***	***	***	***	0-5%
Apr-13	***	***	***	***	
May-13	***	***	***	***	
Jul-13	***	***	***	***	
Aug-13	***	***	***	***	
Jan-14	***	***	***	***	
Feb-14	***	***	***	***	
Apr-14	***	***	***	***	
May-14	***	***	***	***	
Jun-14	***	***	***	***	
Jul-14	***	***	***	***	
Aug-14	***	***	***	***	
Sep-14	***	***	***	***	
Grand Total	***	***	***	***	0-5%

50. In its post disclosure comments the domestic industry has submitted that since the trader in Hong Kong who carried out a single transaction during the POI the channel of export is not complete and therefore, individual treatment should have been denied to PTT Phenol. The Authority notes that the exports of PTT through the Hong Kong trading company was a single transaction accounting for less than 5% of total exports to India and therefore, the determination has not been affected by absence of any significant data.

All other exporters from Thailand

51. The entire exports from Thailand during the POI have been accounted for by the exports made by PPCL. There is no other producer of the subject goods in Thailand. Therefore, determination of residual dumping margin for other producers and exporters in Thailand is infructuous and therefore, has not been carried out.

(b) Japan

52. The DGCI&S data relied upon indicates that no imports of the subject goods has taken place from Japan during the POI. Only a very small quantity of 48 MTs was imported during 2012-13 and thereafter there has been no imports. M/s Mitsui Chemicals, Inc., Japan, one of the leading producers of the subject goods, has a filed a questionnaire response and has submitted that they have not exported the subject goods to India during the POI. Therefore, no determination of dumping margin has been made in respect of Japan.

53. The above examination indicates that the dumping margin of the subject goods imported from Thailand during the POI was marginally above *de minimis* level and there was no dumping from Japan during the said period.

H. Likelihood of continuation or recurrence of dumping

H.1 Views of the opposing interested parties

54. The opposing interested parties, in their submissions have argued that

- i. Petitioners have calculated a vague and unsubstantiated dumping margin.
- ii. Petitioners have not only not provided any evidence to substantiate export orientation; they have failed to give the source of third country data and evidence in this regard. They should be directed to submit the same.
- iii. The argument of price attractiveness is contradictory because the petitioner's data suggests that the present export price to India does not allow for recovery of cost. Petitioner's argument contradicts the concept of producer's equilibrium. They are posing selling below cost to be 'attractive'.
- iv. Price undercutting has remained constant in the POI yet the extent of injury and profitability has seen radical variation implying that price undercutting has no correlation to the injury suffered by the domestic industry.

H.2 Views of the domestic industry

55. The domestic industry, in its submissions has argued that

- i. The dumping has continued in case of Thailand. The volume of imports is significant enough in case of Thailand to allow a determination with regard to likelihood in the event of cessation of anti-dumping duty.
- ii. In case of Japan, although there have been no imports during the present POI, the presence of, significant exports to third countries at dumped prices clearly shows likelihood of dumping and injury. Thus the dumping is likely to recur in case of cessation of anti-dumping duty.
- iii. There are significant exports from Japan to third countries revealing a significant injury margin. There is significant dumping in the third countries from Thailand as well. Therefore, in the event of cessation of the anti-dumping duties, there is strong likelihood of these third country imports getting dumped in India.
- iv. Dumping Margin determined in previous investigations and present petition are significant and clearly shows likelihood of dumping and consequent injury in the event of cessation of anti-dumping duty.
- v. The prices at which subject goods are being imported are substantially lower than the price at which the goods are being sold in the domestic market.
- vi. There is significant price undercutting which is likely to intensify if the duties are revoked. Significant price undercutting by the Japanese exports is likely,

considering the prices at which the Japanese exporters have exported the product under consideration to third countries in the POI.

- vii. There is no contradiction in domestic industry's statements with regard to likelihood. Dumping of the product under consideration, injury to the domestic industry, injury to the domestic industry from present subject countries, injury to the domestic industry from other dumping sources, injury to the domestic industry from present subject countries in the event of cessation of anti-dumping duty are all different parameters and must be considered accordingly.
- viii. Excess capacity is a proved parameter to determine likelihood, it is sufficient to show high probability of injury to the domestic industry.
- ix. Excess capacity in a country can lead to many problems in the home country such as falling product prices, deteriorating profitability, corporate –sector distress and financial sector distress which can cause the producer to look for avenues outside the country at disposable prices. The purchasing power of the citizens may not grow at the same rate. In such situations since the demand is already excessive, the investments are controlled because in such a scenario investments result in loss rather than profit. A glut of capacity is an important indicator of likelihood analysis in anti-dumping investigations.
- x. It is not necessary that the price undercutting increases with increase in losses. The two are different parameters.

56. In their respective post disclosure submissions, the domestic industry and the opposing interested parties, have reiterated their positions with regards to the likelihood of continuation or recurrence of dumping.

H.3 Examination by the Authority

57. It was noted in the previous section that there were no dumped imports from Japan during the POI. The dumping margin of the imports from Thailand is marginally above the *de minimis* level. In view of the above, what is required to be examined in this review is whether the dumping would continue or recur if the duties are revoked. In this connection the Authority has looked at the price behavior and capacities of the major producers in the subject countries.

58. As far as Thailand is concerned, PPCL is the only producer of the subject goods in Thailand with a capacity of about [***] KT per annum which they operate at above 100% capacity utilization. The data submitted by PPCL indicates that while their domestic sales and captive transfers over the injury investigation period has increased exports show a declining trend. It has been brought to the notice of the Authority that PPCL is considering capacity addition of about [***] KTA in the near

future to double its phenol capacity for the purpose of fulfilling major demand from domestic market and third countries. In Thailand, current demand of phenol is approximately 330,000 MT per annum, mainly for BPA production. There are only two BPA producers in Thailand namely, PPCL and Bayer Thai Company Limited who consume more than 90% of demand of Phenol. Export quantity of Phenol from PPCL has been significantly decreased since December 2010, after PPCL started to captively consume Phenol for its own Bis-Phenol-A (BPA) production, mainly exported to China. The new Plant is to cater to this growing domestic demand. With Bayer Thai consumption, total domestic consumption of phenol in Thailand will be about [***] KTA and only about [***] KTA will be available for exports. However, PPCL has submitted that they already have significant committed/ contracted quantities for Korea, Taiwan, China, South-East Asia markets for this spare capacity. Therefore, it appears that PPCL will not have significant spare capacity to significantly increase the volume of exports to India in the near future.

59. The price trend of PPCL during the period of investigation indicates that the prices in the domestic market, exports to India and third countries were in a narrow band. The actual margin of dumping established in the previous section is marginally above *de minimis* level. Hence, the argument that the third country exports from Thailand are at dumped prices and therefore, there is a likelihood of intensified recurrence of dumping to India, if duties are revoked, do not seem to be valid. In this connection the post POI (Oct 2014-March 2015) data has also been examined and the data shows that total import, as well as import from Thailand, has increased apparently because HOCL has gone completely out of production and the additional gap of about 40,000 MT has to be filled up through increased imports. On the price front the prices from across the countries show significant drop from the first quarter of 2015 apparently because of crude price situation. Therefore, it appears that the imports from Thailand would continue at the current level even if the duties are removed. Since the prices from Thailand is following the global trend, major reduction of prices by this producer *vis a vis* other global producers do not appear to be imminent.

60. As regards Japan, there is no imports from that country during the POI and also during the post POI period. During the injury investigation period there was some import in 2011-12 and a very small quantity of 45 MTs was imported in 2012-13. As per the information submitted by the interested parties the total production of Phenol in Japan is roughly 775KT/p.a. against an Annual demand of roughly 600KT/p.a. Mitsui chemicals, one of the major producers in Japan, having annual production about [***] KT, in its response, has indicated that it is already producing about [***] KT per annum indicating thereby that it has no spare capacity. Its annual sales are about [***] KT, rest being captive consumption. As per the submissions of MCI [***] % of its sales are dedicated for captive consumption and domestic sales and rest being for exports. Its exports have significantly declined to about [***] KT/p.a. In its response the company has intimated that it closed its joint venture plant with Idemitsu Kosan in September 2014 indicating further reduction in its capacity.

61. The price level indicated by MCI shows that at gross level domestic prices are higher compared to the export prices though the exports are very small compared to domestic sales. There was no export to India during the POI apparently because of high antidumping duty on Japan. There is no import from Japan in the post POI period either. Therefore, there is a possibility of some volume of imports from Japan entering the Indian market at dumped prices, if the duties are removed. But likelihood of significantly high imports appears to be low keeping in view the demand supply position in that country.

62. Considering all the above the Authority is of the view that though imports from Thailand may continue at the present level, and some imports may take place from Japan, if the duties are revoked, there is no imminent likelihood of recurrence of intensified dumping of the subject goods from the subject countries if the duties are revoked.

I. Methodology and Determination of Injury and Causal Link

63. As noted earlier, in a sunset review investigation, with regard to injury examination, the Authority is required to examine:

- Whether the domestic industry continued to suffer injury and if so, whether injury to the domestic industry is likely to continue;
- In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti-dumping duties.

64. Therefore, the Authority has first examined whether the domestic industry continues to suffer material injury on account of dumped imports from the subject countries before proceeding to examine the likelihood of continuation or recurrence of injury to the domestic industry in the event of revocation of the duties from the subject countries. Examination of material injury to the domestic industry is in accordance with the Article 3 of the AD Agreement and Annexure II to the AD Rules, 1995.

J. Determination of Injury and Causal Link

J.1 Submissions of the opposing interested parties

65. The opposing interested parties have made the following submissions with regard to the injury and causal link:

- i. That there is a contradiction in the petitioners' submissions that domestic industry performance shows no improvement and at the same time domestic industry claims that this is a case where dumping has continued at low level and the domestic industry has not suffered injury because of low level of dumping but injury to the domestic industry is likely in case the present anti-dumping duties are withdrawn.

- ii. That as per market intelligence it is known that a large portion of the imports of the subject goods have been made in the injury period as well as the period of investigation under the advance license scheme. Under the said scheme, any domestic producers seeking to export his finished products may import their raw materials under the said advance license. The advantage of such a scheme would be that any imports made under advance license are exempted from any anti-dumping or safeguard duties. SI Group, one of the applicants in this case, has imported significant quantities of the subject goods under advance licence. Therefore, DA must segregate and analyze SI Group imports into duty paid and duty free imports and the same should be made available to the interested parties;
- iii. Citing the judgment in *Vetcare Organic Pvt. Ltd. vs CESTAT, Chennai*, 2011 (269) E.L.T. 444 (Mad.), and *Thai Acrylic Fibre Co. Ltd. vs. Designated Authority*, 2010 (253) E.L.T. 564 (Tri. - Del.), the opposing interested parties have argued that imports under advance license ought to be identified and excluded from the import volumes considered for examining injury and dumping.
- iv. That any injury suffered by HOCL is inflicted by its own inefficiencies, operational infirmities and other setbacks and has been seeking protection of antidumping law for over a decade now which is evident from the plethora of investigation since 2002.
- v. That in a Safeguard investigation in 1999 HOCL submitted an adjustment plan in lieu of the safeguards duty in which they gave some exaggerated plans to expand capacity and minimise cost as they admitted then that one of the reasons identified by them is the lack of economies of scales. Despite that admitted fact and adjustment plans HOCL's capacity remains at the same exact level as it was in 1999.
- vi. That in the present petition HOCL has admitted that the long shutdowns are a result of raw material shortages, and other issues which have no correlation to the alleged dumping of the subject goods. Despite several help from parent ministry and various anti-dumping duties HOCL was classified as a sick company by BIFR under SICA and has remained so for nearly a decade. Reliance has been placed on the Ninth Report of Parliamentary Committee on Public Undertakings (2015-16) which clearly records that even after 16 years having elapsed from its proposal submitted to Directorate General of Safeguards, HOCL has not upgraded the technology for manufacture of Cumene by the use of modern zeolite catalyst system.
- vii. That this shows that there is indeed no injury due to the alleged dumping and the Petitioners are abusing the anti-dumping laws by misrepresenting before the Hon'ble Authority. Further, this reflects an inability to overcome HOCL's inefficiency and a lack of initiative to expand and seize the expanding demand.

- viii. That HOCL, has had repeated and sustained plant shutdowns in recent years, including the period of investigation. Since 2005, HOCL has been classified as a sick company under the Indian law. Recently due to an international fall in crude prices, the Phenol manufacturing plant of HOCL was shut down again. These continuous shutdowns have impacted the ability of HOCL to supply to the domestic market and consequently HOCL's performance has suffered. In fact, HOCL has publically admitted that these shutdowns are as a result of raw material shortages, which has no correlation to the alleged dumping of the subject goods.
- ix. That has admitted by HOCL, the Rasayani plant remains closed as of today and yet the Petitioners claim that their production and sales levels have been falling due to alleged dumping.
- x. That a severe shortage of working capital has also led to stoppage in production. The Company is on record in public domain that Kochi Refinery, which was supplying the raw materials, has refused to continue the supply as the Company had a debt of over 90 crores. Therefore, reintroduction of the anti-dumping duty will hardly help them to bring the plant to operation.
- xi. That there is a huge demand-supply gap in the country making imports inevitable.
- xii. That the injury to the domestic industry is not due to imports but due to various other factors as highlighted in the Parliamentary Committee Report such as high cost of production, huge demand-supply gap, poor technology, plant inefficiencies, plant shutdowns, lack of foresight and poor management.
- xiii. The production has suffered due to recurring and sustained plant shutdowns. The domestic industry has lost 22% market share while the subject countries imports have gained only 4% of the market share. The majority share is attributed to the imports from Korea and Singapore.
- xiv. The performance of SI Group, the only other producer of the subject goods in India has been much better, indicating internal inefficiencies of HOCL causing loss of market share.
- xv. That excess capacity of the exporters cannot be prejudiced against them. There is no proposition under any law or WTO that one must only produce what is required by it. The assumption that any excess capacity in the world will hit only India is faulty and hurts the consumers.
- xvi. That there is breach in causal link as no injury has been suffered on account of subject imports. There is heavy impact of imports from Korea and other

countries not including subject countries. HOCL has acknowledged that it is the withdrawal of anti-dumping duties on other countries and not the subject countries, since the duties on subject countries were never ever removed.

J.2 Submissions by the domestic industry

66. The domestic industry has made the following submissions with regard to the injury and causal link:

- i. That the demand for the product under consideration has increased in the POI with respect to the base year.
- ii. That the volume of imports from Thailand increased in 2011-12, declined in 2012-13 and increased thereafter till POI. Further imports in the POI were much higher than the imports in 2010-11 and significant enough to establish dumping and injury margin for the purpose of deciding the likely situation.
- iii. As regards Japan, while there were no imports in the present period, Japan has exported significant volumes to third countries, which shows significant price undercutting, dumping margin and injury margin in the event of cessation of anti-dumping duty and diversion of these goods to India. There is strong likelihood that volume of imports shall increase further if anti-dumping duties are removed.
- iv. In case of Thailand the subject imports are undercutting the prices of like product in India. However, in case of Japan third country exports are at such prices that cessation of anti-dumping duty shall result in diversion of goods to the Indian market and the domestic industry would suffer price undercutting.
- v. Imports are undercutting the domestic price and effect of cessation of anti-dumping duty shall have significant suppressing effect on the prices of the domestic industry in the market.
- vi. While the current low volume of imports from Thailand and no imports from Japan was due to no anti-dumping duty on other countries (and thus an option with the consumers to source from alternative sources), should the present anti-dumping duty be withdrawn, it is evident that the dumping and consequent injury to the domestic industry would intensify and the imports from these countries shall cause injury to the domestic industry.
- vii. Domestic industry has continued to suffer material injury due to continued dumping of the products in the country.
- viii. The jurisprudence on the issue of advance licensing warrants that the import volume coming under advance licensing is causing a price injury. Therefore, it cannot be excluded.

- ix. The imports of SI Group are majorly duty free imports made against export obligation and therefore, are not a cause of concern for the present investigation.
- x. There is no obligation on the Designated Authority to segregate and analyze SI Group imports into duty paid and duty free imports.
- xi. Demand supply gap justifies imports per se but not dumping of the product in the country. As held by CESTAT in the matter of DSM Idemitsu, if the exporters wanted to supply the goods to meet the requirement in Indian market that could be done by exporting the requirements at a price equivalent to normal value but not at a dumped value and to capture the market.
- xii. In past anti-dumping duties have only been imposed when the parameters are satisfied.
- xiii. The claimed injury is not due to developments in technology. Further it is an established principle that domestic industry should be seen as it is and not in the context of ideal conditions.
- xiv. Even if HOCL was classified as a sick industry an analysis must be done as to whether it was a sick company due to other reasons without attributing injury caused by other factors to dumping.
- xv. Raw material shortages are a result of prolonged dumping and consequent injury. There is a direct causal link
- xvi. Dumping leads to injury, leading to decline in profitability resulting in losses suffered by domestic industry which impacts cash flow, which in turn affects the ability of the company to source raw materials. This leads to production suffering, which adversely impacts the capacity utilization and sales. As a result, cost of production increases due to lower production and losses further impact the cash flow. The mounting cash flows impact the ability of company to source raw materials and this cycle continues so long as the market remains impacted by dumping.
- xvii. With regard to SI Group interested parties have focused on difference in performance whereas the requirement under the law is deterioration (or likelihood of deterioration) in performance.
- xviii. Injury to the domestic industry from other dumped imports does not imply "no injury or likelihood thereof" from present sources.

- xix. That the interested parties referred to reviews/recommendations of the Parliamentary Committee on public undertaking at the time of oral hearing and read extensively about the contents of its report, projecting as if the Parliamentary Committee has actually found entirely different reasons for adverse performance of HOCL and that HOCL has wrongly attributed their difficulties to the dumping in their product.
- xx. Despite anti-dumping duties in the past many years the domestic industry has been suffering from unfair competition from one source to another. This is primarily due to significant surplus in the global market and the ability of the global producers to dump the goods. The suspension of production by HOCL may turn to complete shut down if domestic industry is not meted out justified anti-dumping duties.
- xxi. If there is any mismanagement at the end of HOCL then it is rightly being dealt with by the parliamentary committee since HOCL is a public sector undertaking. Further for the purposes of anti-dumping the Authority would only recommend duty after following requirements prescribed under the laws. Such a finding of the Committee in no way jeopardizes the investigation process of Designated Authority.
- xxii. Contrary to the averment of the opposing interested parties the Committee recognized the 'negative' impact of the withdrawal of anti-dumping duty as one of the significant factors leading to dismal situation of HOCL.
- xxiii. That dumping has not just impacted HOCL, SI Group has also suffered. The Designated Authority may kindly examine the injury statements of the two companies.

J.3 Post disclosure submissions of the interested parties

67. In its post disclosure submissions, the domestic industry, has mostly reiterated its stand on the injury and causal links and had inter alia submitted as follows:
- i. That the Price Undercutting is positive and is likely to increase the demand for the product under consideration in the market in the event of cessation of anti-dumping duty.
 - ii. That HOCL suspended production because of intensified dumping of the product which has made its current operations totally unviable. HOCL has not completely gone out of business. It has merely suspended production. Which has been recommenced and a certificate as asked by the Authority was also provided
 - iii. That performance of the domestic industry in terms of production, capacity utilization, domestic sales, market share, profits, return on investments, cash flow has deteriorated. The information filed by SI Group clearly shows significant deterioration in its profits, cash flows and return on investment.

While SI Group is a private enterprise, HOCL is a public sector organization. The financial losses being suffered by the company forced the company to reduce its production.

- iv. That sales realization has been below cost of production in the period of investigation.
- v. That because of dumping of the global surplus of the product in the Indian market, HOCL could not improve its performance further and is once again suffering losses.
- vi. That the domestic industry is still suffering continued injury from the imports of dumped subject goods;
- vii. That even at best capacity utilization, HOCL would have suffered significant adverse price effect in the POI.
- viii. That none of the factors such as exchange volatility, inflation, high interest rates, and volatile stock markets are responsible for claimed injury to the domestic industry. There has been no significant change on any of these factors and as far as domestic industry and the present product is concerned. The performance of the domestic industry has, however, significantly deteriorated which clearly establishes that such deterioration is not because of the other factors.
- ix. That imports from Thailand are significant, which clearly shows that the Thailand producers are likely to cause significant injury to the domestic industry in case of cessation of anti-dumping duty.
- x. That HOCL has not adopted different methodology to allocate cost to Phenol and Acetone. HOCL has provided information in a consistent manner.
- xi. That relevant parameters show that injury to the domestic industry has been caused by the dumped imports and thereby establish causal link.
- xii. That contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.
- xiii. That pattern of consumption with regard to the product under consideration has not undergone any change. Change in pattern of consumption is unlikely to contribute to the injury to the domestic industry.
- xiv. That there is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

- xv. That technology for production of the product has not undergone any change nor are there any likely changes in coming future. Developments in technology are therefore, not a factor of injury.
- xvi. That the fact of dumping is established by the Authority in all past cases. The significant global surplus in Phenol and Acetone capacity is clearly the cause of dumping of the product in India. Such significant surpluses are likely to continue. In fact, demand for Phenol is likely to increase without proportionate increase in demand of Acetone, which will further create pressure on Acetone prices in the global market.
68. The opposing interested parties, in their post disclosure submissions, have argued as under:
- That if import volumes (or prices) prevalent in advance license imports are injuring a domestic industry, any levy of anti-dumping duties will not remedy such an injury. Unless there is a wide policy change, no levy of anti-dumping duties will be able to protect the petitioners from advance license imports (whether dumped or not).
 - That imports might have been triggered due to the suspension of production by the domestic industry during the POI. Inflow of imports into India does not point towards dumping especially in the present case where the domestic industry has suspended production during the POI – in fact such competition is merely an indicator of a free market. Furthermore, as noted by the Authority at paragraph 71 of the Phenol disclosure statement, the major gain had been for the other non-subject countries attracting duties, and not subject countries. This aspect clearly indicates that there was no volume injury from the subject countries.
 - That the net sales realisation of the Domestic Industry still remains above the non-injurious price in spite of the fact that the cost and prices were affected due to suspension of the production by HOCL for a major part of the POI. This statement clearly indicates that there is a clear breach in causal link between imports from subject countries and the alleged injury claimed by the Domestic Industry as the alleged dumped imports do not seem to restrict the Domestic Industry to recover its Non Injurious Price from the Indian market. Owing to this finding alone, the Authority should return a final finding recommending discontinuation of duties from the subject countries.
 - That SI Group was in full production during the POI and was able to sell at a relatively higher price in the same market during the same period, much above the landed prices, which indicates that the dumped imports did not have suppression or depression effect on the domestic prices.

- That the HOCL shutdown was because of internal factors such as lack of modernization of technology, working capital crunch and non-supply of raw materials by the refinery due to mounting dues from HOCL and not because of alleged dumping from the subject countries.

J.4 Examination by the Authority

69. The Authority has taken note of various submissions of the interested parties and the domestic industry on the injury and causal links and all the averments made have been examined taking into account the facts available on record and applicable law. Accordingly, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood of continuation or recurrence injury on account of imports from the subject countries in the event of cessation of the duties.
70. 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.
71. For the purpose of current injury analysis, the Authority is required to examine the volume and price effects of dumped imports of the subject goods from the subject countries on the domestic industry and its effect on the prices and profitability, to examine the existence of injury and causal links between the dumping and injury, if any.
72. The Authority notes that the application for continuation of antidumping duty was initially filed by HOCL and SI Industries and they have been treated as the domestic industry for the purpose of injury investigation in this review. However, as argued by the domestic industry performance of both the producers have been has also been examined separately, to the extent feasible, to see the state of health of both the domestic producers as HOCL was out of production for a considerable period during the POI thereby significantly affecting their performance indices.
73. The volume and price impacts of the dumped imports on the physical parameters of the domestic industry have been examined before proceeding to examine the likelihood of continuation or recurrence of injury to the domestic industry in the event of revocation of the duties.

A. Volume impact of dumped imports

(i) Import Volumes & share in Imports

74. The import data obtained from DGCI&S has been examined to analyse the trend in import volumes and prices and their impact on the domestic industry as follows:

SN	Particulars	UOM	2010-11	2011-12	2012-13	POI Annualised	POI
1	Subject Countries	MT	12,047	23,140	5,594	22,872	34,308
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>192</i>	<i>46</i>	<i>190</i>	<i>285</i>
a	Japan	MT	0	1,079	48	0	0
	<i>Trend</i>	<i>Indexed</i>	<i>0</i>	<i>100</i>	<i>4</i>	<i>0</i>	<i>0</i>
b	Thailand	MT	12,047	22,061	5,546	22,872	34,308
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>183</i>	<i>46</i>	<i>190</i>	<i>285</i>
3	Countries Attracting ADD	MT	87,580	1,09,181	1,61,481	1,56,774	2,35,162
	<i>Trend</i>		<i>100</i>	<i>125</i>	<i>184</i>	<i>179</i>	<i>269</i>
a	EU	MT	10,608	8,251	104	14,319	21,479
b	Korea	MT	3,425	872	15,533	49,741	74,611
c	Singapore	MT	1,146	897	498	24,776	37,164
d	South Africa	MT	11,223	10,494	14,033	18,604	27,906
e	Taiwan	MT	14,607	38,066	44,861	26,747	40,120
f	U S A	MT	46,571	50,602	86,451	22,587	33,881
4	Other Countries	MT	18,909	10,720	1,574	5,670	8,505
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>57</i>	<i>8</i>	<i>30</i>	<i>45</i>
5	Total	MT	1,18,536	1,43,042	1,68,649	1,85,316	2,77,974
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>121</i>	<i>142</i>	<i>156</i>	<i>235</i>

75. The data above shows that total imports during the injury investigation period grew almost by about 56% on annualised basis compared to the base year. However, while there is no import from Japan during major part of the injury period, including POI, imports from Thailand has increased significantly during this period by about 90% on annualised basis and account for about 12% of total imports. The Authority notes that though the subject goods are attracting antidumping duty on imports from several countries, some of the major exporters in Korea RP and Singapore are outside the ambit of the duty because of negative or *de minimis* margins. Therefore, imports from these countries have significantly increased during this period and account for about 85% of total imports, whereas imports from other countries have declined.

76. The interested parties have argued that a significant volume of imports are under advance licence scheme without payment of the antidumping duties and therefore, the imports should be segregated and analysed for the injury analysis. However, none of the interested parties has provided any information on the volume of imports under advance licence.

ii) Assessment of Demand and Market Shares

77. The interested parties have argued that there is a huge demand supply gap in the domestic market. The demand data determined as the sum of domestic sales of the Indian producers and imports from all sources is as follows:

SN	Particulars	UOM	2010-11	2011-12	2012-13	POI Annualised	POI
	Demand in India						
1	Sales of Domestic Producers	MT	77,521	60,189	54,316	37,830	56,745
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>78</i>	<i>70</i>	<i>49</i>	<i>73</i>
	<i>HOCL</i>	<i>MT</i>	<i>***</i>	<i>***</i>	<i>***</i>	<i>***</i>	<i>***</i>
	<i>SI Group</i>	<i>MT</i>	<i>***</i>	<i>***</i>	<i>***</i>	<i>***</i>	<i>***</i>
2	Total Imports	MT	89,465	1,07,231	1,35,453	1,63,517	2,45,275
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>120</i>	<i>151</i>	<i>183</i>	<i>274</i>
3	Demand in India	MT	1,96,057	2,03,231	2,22,965	2,23,146	3,34,719
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>104</i>	<i>114</i>	<i>114</i>	<i>171</i>

78. The above data indicates that while demand has remained flat for last couple of years the imports have increased and domestic sales have declined significantly particularly during the POI, largely because of decline in HOCL's sales. The trend in market share of various players in the domestic market during the POI was as follows:

Particulars	UOM	2010-11	2011-12	2012-13	POI Annualised	POI
Sales of Domestic producers	%	40%	30%	24%	17%	17%
HOCL	%	***	***	***	***	***
SI Group	%	***	***	***	***	***
Dumped Imports from subject countries	%	6%	11%	3%	10%	10%
Countries Attracting ADD	%	45%	54%	72%	70%	70%

Other Countries	%	10%	5%	1%	3%	3%
Total	%	100%	100%	100%	100%	100%

79. The above data indicates that the share of the domestic producers in the total demand has fallen largely due to production loss of HOCL as the other producer is producing at almost its full capacity. The share of imports from Thailand has increased after a decline in 2012-13. But major gain has been for the countries attracting duties, which corner about 70% of the market demand in the country.

B. Price impact of dumped imports

i) Trend of Import Prices

80. The import prices of the subject goods imported from various countries during the POI as per DGCI&S data is as follows:

Country	Price (Rs./Kg)				
	2010-11	2011-12	2012-13	POI Annualised	POI
Subject Countries	82	77	83	91	91
Japan	-	74	95	-	-
Thailand	82	77	83	91	91
Countries Already Attracting Duty	74	74	80	88	88
Eu	73	85	59	88	88
Korea Rp	74	86	86	91	91
Singapore	82	94	90	83	83
South Africa	67	69	71	81	81
Taiwan	80	78	81	92	92
U S A	74	69	80	87	87
Others	77	84	78	92	92
Grand Total	75	75	80	88	88

81. The data above indicates that the CIF prices of imports from all countries moved in a very narrow band during the POI except for South Africa and Singapore, where the prices were lower during the POI.

ii) Price undercutting effect of dumped imports

82. To examine the price undercutting effects of the dumped imports from the subject countries the landed values of the imports have been compared with the net sales realisations of the domestic industry.

Particulars	UOM	Japan	Thailand
Landed price of dumped imports	Rs./MT	No Imports	1,01,241
Net Sales Realization	Rs./MT		***
Price Undercutting (without ADD)	Rs./MT		***
	%		0-10%
Price Undercutting (with ADD)	Rs./MT		***
	%		0-10%

83. The data indicates that the dumped imports from Thailand marginally undercut the selling prices of the domestic industry.

(iii) Price underselling effects of dumped imports

84. The landed value of the dumped imports has also been compared with the Non-injurious price determined for the domestic industry taking into account the cost of production of both HOCL and SI Group to see if the dumped imports had significant price underselling effect on the domestic prices.

Particulars	UOM	Japan	Thailand
Non Injurious Price	Rs./MT	***	***
Landed Price of dumped imports	Rs./MT	No Imports	1,01,241
Price Underselling without ADD	Rs./MT		***
	%		0-10%
Price Underselling with ADD	Rs./MT		***
	%		0-10%

85. The above data indicates that the dumped imports had a very marginal underselling effect on the domestic industry's prices. However, net sales realisation remain above the non-injurious price in spite of the fact that the cost and prices were affected due to suspension of the production by HOCL for a major part of the POI.

(iv) Price suppression or depression

86. Since the cost of the domestic industry has been significantly affected by production loss and very low capacity utilisation of one of the producers during the POI, a reasonable analysis of the trends, to see if the price of the domestic industry has been considerably suppressed because of the presence of dumped imports, has not been possible. However, comparison of the non-injurious price, which is an indicator of the costs, and the landed value of the imports and sales realisation indicates that the prices are not suppressed. Moreover, the other domestic producer was able to sell at a relatively higher price in the same market during the same period, much above the landed prices, which indicates that the dumped imports did not have suppression or depression effect on the domestic prices.

C. Economic Parameters affecting Domestic Industry

87. The various physical performance parameters relating to the domestic industry are as follows:

(i) Actual and potential impact on Capacity, Production, Capacity Utilization and Sales

88. Considering the fact that the production the domestic industry (HOCL) was significantly affected during the POI, performance of both the domestic producer has also been examined separately in respect of sales, capacity, production and capacity utilization are as under, to see if the performance of both the producers was impacted by the dumped imports.

Particulars	Unit	2010-11	2011-12	2012-13	POI Annualised	POI
Capacity DI	MT	74,200	74,200	76,750	63,417	95,125
Trend		100	100	103	85	128
HOCL	MT	40,000	40,000	40,000	40000	60,000
SI Group	MT	34,200	34,200	36,750	36,750	55,125
Production DI	MT	80,796	67,500	59,921	43,537	65,306
Trend		100	100	89	64	97
HOCL	MT	***	***	***	***	***
SI Group	MT	***	***	***	***	***
Capacity Utilisation DI		109%	91%	78%	69%	69%
Trend		100	100	86	75	75
HOCL	%	***	***	***	***	***
SI Group	%	***	***	***	***	***
Domestic Sales DI	MT	77,521	60,189	54,316	37,830	56,745
Trend		100	100	90	63	94
HOCL	MT	***	***	***	***	***
SI	MT	***	***	***	***	***
Captive Sales	MT	2,499	5,942	6,870	6,525	9,787
Trend		100	100	116	110	165
HOCL	MT	***	***	***	***	***
SI	MT	***	***	***	***	***

89. The Authority notes that while SI Group was operating almost at its full capacity during the entire injury investigation period, HOCL's production has significantly declined since 2011-12. The Authority further notes that the production facility of HOCL was operational only for 119 days during the POI leading to this production loss and low capacity utilisation during the POI.

90. The interested parties have argued that the performance of the HOCL has been affected for a long time due to several internal factors. The petitioners on the other hand have argued that the performance has been affected because of presence of dumped imports from several sources. However, Authority notes that duties were in force on most of the major supplying countries, including the subject countries,

during the entire injury period, except few producers from some of the countries. Moreover, near full capacity production of the other domestic producer does not appear to support this argument of the domestic industry, though certain fluctuation in international prices could have affected the production and capacity utilisation as is observed in the case of SI Group also.

(ii) Actual and potential impact on Profit/loss, return on investment and cash flow

91. The financial performance of HOCL during the injury investigation period for the subject goods as shown in table below.

Profit/ Loss - Domestic	Unit	2010-11	2011-12	2012-13	POI Annualised	POI
Cost of Sales	Rs/MT	***	***	***	***	***
Trend		100	100	114	129	129
HOCL	Rs/MT	***	***	***	***	***
SI	Rs/MT	***	***	***	***	***
Selling Price	Rs./MT	***	***	***	***	***
Trend		100	100	104	117	117
HOCL	Rs./MT	***	***	***	***	***
SI	Rs./MT	***	***	***	***	***
Profit/ Loss	Rs/MT	***	***	(***)	(***)	(***)
Trend		100	100	-215	-294	-294
HOCL	Rs/MT	***	***	(***)	(***)	(***)
SI	Rs/MT	***	***	(***)	***	***
Return on Capital Employed	%	***	***	(***)	(***)	(***)
Trend		100	100	-150	-108	-163
HOCL	%	***	***	(***)	(***)	(***)
SI	%	***	***	(***)	***	***

92. The Authority notes that the plant of HOCL was in operation for only 119 days out of 18 months of POI. Therefore, the cost is significantly affected by prolonged shutdown of the plant and would not reflect the true cost of production. The data of the previous years show that HOCL was an efficient producer of the subject goods with higher profit margins compared to its domestic competitors till the time it was using its capacity fully. HOCL's capacity utilization started falling since 2011-12 leading to reduction in margins and subsequent losses in 2012-13 onwards. At the same time the other domestic producer continues to have a positive profit margin throughout except 2012-13 when it faced a marginal decline in capacity utilization. It is clear that the losses suffered by HOCL are on account of its inability to produce and sale during the period under consideration. Therefore, it is important to analyze the reasons for the production loss during the injury investigation.

93. Since one of the domestic producer, i.e., HOCL's plant was not operational for a prolonged period due to various reasons other mandatory parameters are irrelevant in this scenario and have not been examined.

K. Overall Assessment of Injury and Causal Link

94. Examination of the injury parameters as above indicates that one of the domestic producers, i.e., HOCL has suffered significant production loss leading to financial losses. The previous section has established that there was no import from Japan. The imports from Thailand were at dumped prices but the dumping margins are marginally above the *de minimis* level. The other domestic producer continues to produce almost at full capacity and earn positive profit margins. Under these circumstances it is essential to examine whether the production loss and consequent financial losses suffered is on account of dumped imports from the subject countries or because of other factors.
95. With regard to the production loss of HOCL and consequent injury in terms of financial losses the opposing interested parties, quoting the Parliamentary Committee Reports and other publicly available information, have argued that the production unit of HOCL has been shut down because of its internal inefficiencies and management problems rather than dumping. It has been submitted that inability of the unit to modernize and scale up to economic size and working capital unavailability has led to shutdown of the plant and not because of the imports from the subject countries.
96. The domestic industry, in its post disclosure submissions, has argued that HOCL suspended its production during the POI as the production and sales were unviable due to dumped imports and the plant has not been completely shut down. It has further been submitted that HOCL has resumed its production recently with certain arrangements of raw material supply from the Cochin refinery.
97. The Authority notes that the production unit of HOCL was set up in late 1980s with a capacity of about 40,000 MTs of Phenol and 45000 MTS of Acetone and other ancillary products with raw material linkage with Cochin Refinery. The capacity and technology was perhaps based on the demand scenario and technology available at that point of time. Thereafter, the demand has increased significantly and technology has also improved, as noted by the Parliamentary Committee in its reports and submissions of the Company before other Authorities. But the Company has not been able to scale up the capacity or modernize the plant due to various reasons. The inability of the plant to scale up and modernize, coupled with dumping from several countries affected the performance of the Company and antidumping duties were imposed on imports of Phenol and Acetone from several countries starting in the year 2002. However, due to continued losses HOCL was declared a sick unit in 2005 and still continues to be under BIFR.
98. The Rashayani unit of the Company engaged in several other products with a significant workforce has been shut down since 2013. The Cochi Unit, which produced Phenol and Acetone with certain other products, was however, producing with full capacity for certain period before this also got affected by working capital

problems as the profits of this unit was supporting the fixed expenses of the other unit closed earlier. Due to mounting dues of over 90 Crores to Cochin Refinery, against supply of raw materials, the Refinery has stopped raw material supply to the unit leading to suspension of production of the Cochi plant since Mid-2015.

99. The Authority further notes that imports from all major sources were attracting antidumping duties, except certain sources which were found not to be dumping in the respective investigations. Therefore, those imports cannot be attributed to the injury suffered by this producer.

100. The interested parties have also raised the issue of lack of modernization and adoption of efficient production methods and scaling up of the capacities to economic size as noted in various reports and its commitments to other Authorities as one of the causes of the injury. The Authority notes that the production facilities of the Company are old and has not gone through major modernization due to various factors, including dumping from several sources.

101. Therefore, overall assessment of the state of affairs of HOCL indicates that the closure of the plant is directly linked to its working capital and management issues rather than the dumped imports from the subject countries as antidumping duty protection was available against these imports for the entire injury investigation period. In view of the above the performance of the Company during the POI cannot be attributed to the imports from the subject countries. The very fact that HOCL has attempted resumption of production with certain agreements for raw material supply with Cochin Refinery further indicates that the suspension of production was due to raw material and working capital related issues and not significantly because of dumped imports from the subject countries.

102. The performance of the other domestic producer i.e., SI Group does not show any significant deterioration. Their production, capacity utilization and sales remain stable and the profitability remains closer to their 2011-12 level. The performance of this company does not appear to be significantly affected during this period though substantial imports are taking place from several countries at similar price bands.

103. Therefore, the Authority does not find any significant causal link between the alleged dumped imports and the injury suffered by the domestic industry as a whole.

L. Magnitude of Injury and injury margin

104. Since the injury to the domestic industry is not found to be on account of the dumped imports from the subject countries, determination of the injury margin is irrelevant. However, as per the Non-injurious price determined for the domestic industry on the basis of the relevant provisions of the Rules and taking into account the production loss during the POI, and the landed value of imports from the subject

countries, the injury margins of imports work out as under:

Particulars	UOM	Japan	Thailand
Non Injurious Price	Rs./MT	***	***
Landed Price of dumped imports	Rs./MT	No Imports	1,01,241
Injury Margin	Rs./MT		***
	%		0-10%

105. Though, the weighted average landed price was marginally below the weighted average non-injurious price determined for the domestic industry, the weighted average selling price of the domestic industry was found to be above the non-injurious price.

106. The domestic industry as well as the opposing interested parties, in their post disclosure submissions, have raised certain issues regarding the determination of the non-injurious price. However, the Authority notes that the non-injurious price has been determined as per the consistent practice of the Authority in terms of the methodology in Annexure III of the AD Rules and taking into account the information provided by the domestic industry and therefore, no revision of the NIP is called for.

M. Likelihood of continuation of injury

107. The domestic industry has argued that the current price undercutting and/or the potential undercutting, based on third country exports from the subject countries would indicate that the goods will cause material injury to the domestic industry if the duties are revoked. The opposing interested parties have, on the other hand, argued that the injury has not been caused by the imports from the subject countries and the domestic industry is suffering on account of its internal problems. It has been argued that there is no likelihood of recurrence of dumping from the subject countries due to prior commitment of major suppliers in the subject countries for their own captive consumption and other committed buyers.

108. In its post disclosure comments the domestic industry has reiterated its stand and has argued that in case of expiry of existing duty, exporters from the subject country would further channelize their output in the Indian market, as they are already holding excessive capacities and are highly export oriented. It has been argued that the producer in Thailand are increasing its capacity. This excessive capacity would be used to increase its exports and India being large demand would be first choice for them. The imports are still continuing at dumping prices rather increased in post POI. Thus, existence of such a situation after imposition of anti-dumping duty gives a clear implication of likelihood of injury.

109. The opposing interested parties, in their post disclosure submissions, have

argued that the post POI data does not indicate any significant increase in volume of imports from Thailand while import from Japan continues to be nil, though there is a significant demand supply gap arising out of closure of the plant of the domestic industry. The price level of imports from all sources shows a decline in prices because of the decline in raw material prices. It has been further argued that there is no likelihood of recurrence of dumping and resultant injury from Thailand due to prior commitment to buyers' major markets in third countries as well as for its own captive consumption.

110. As noted earlier there was no dumping of the subject goods from Japan during the POI and the dumping margin of imports from Thailand was marginally above *de minimis* during the POI. It was also noted that there is no imminent likelihood of intensified dumping from the subject countries, keeping in view the capacities and demand supply position of the major producers in those countries. The post POI data indicates that there is an increase in volume of imports to fill in the demand supply gap arising out of closure of the plant of the domestic industry. The price level of imports from all sources show a decline in prices apparently because of the decline in raw material prices.

111. Post POI data (Oct-March 2015) of the domestic productions shows that HOCL was out of production for the entire period but the other producer (SI Group) continued to operate at almost full capacity. Further the analysis in the previous section establishes that the production of HOCL has been suspended largely because of its internal problems arising out of non-availability of working capital to purchase raw materials and outstanding dues to its raw material supplier. Therefore, the question arises whether the Company would be in a position to revive its production if the duties are continued.

112. The examination of various factors and information available with the Authority indicates that without resolving the working capital and management issues the unit would not be in a position to revive production and sale, even if an antidumping duty protection is provided. The resumption of production, with certain understanding with the raw material supplier recently, is yet to stabilise. The impact of imports from various sources, including the subject countries during the POI, was negligible. Therefore, in the factual matrix of the case the Authority is of the view that though the injury to the industry as a whole is likely to continue it would not be on account of the dumped imports from the subject countries and continuation of the measure would be of no help in revival of HOCL unless other measures are put in place.

N. Indian Industry's interest and other issues

113. 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 domestic market. However, in the instant case one of the domestic producers have gone out of

production because of factors other than dumped imports from the countries against which this review was conducted. The other domestic producer is not significantly affected during the period under review. There is significant demand supply gap in the domestic market which necessitates imports. Therefore, neither the interests of the domestic producers of the subject goods nor the interests of the user industry would be best served if the duties on the subject goods from the subject countries are extended by another period of five years.

O. Conclusion and Recommendations

114. The Authority initiated and conducted this review investigation in accordance with the Law and examined the current dumping, injury and causal links between dumping and injury to the domestic industry and likelihood of continuation or recurrence of dumping from the subject countries and consequent injury to the domestic industry in the event of withdrawal of duty. It has been established in the foregoing paragraphs that there was no dumping of the subject goods from Japan during the period under review. Dumping continued from Thailand but at a very low level. It was also found that though imports from Thailand may continue at the present level, and some imports may take place from Japan, if the duties are revoked, there is no imminent likelihood of recurrence of intensified dumping of the subject goods from the subject countries. It has also been established that though the domestic industry as a whole has suffered injury during the period of review, the injury suffered is on account on account of HOCL's performance due to factors other than the dumped imports from the subject countries. The performance of the other domestic producer is not significantly affected during the period of review and marginal decline, if any, cannot be attributed to the dumped imports as imports are taking place from other countries as well at similar price levels.

115. The examination also indicates that even if the duties are extended HOCL would not be able to revive its production to a level where it will be viable, unless other fundamental issues affecting the Company are addressed as a long term solution to the problems of the Company. Since one of the two domestic producers was out of production it has added to the demand supply gap in the country. Therefore, neither the interests of the domestic producers of the subject goods, nor the interests of the user industry would be best served if the duties on the subject goods from the subject countries are extended for a further period of five years.

116. Therefore, the Authority is of the view that there is no need for continued imposition of the duties on the import of the subject goods from the subject countries. Accordingly, the Authority does not recommend continuation of definitive anti-dumping duty on import of Phenol originating in or exported from Japan and Thailand, imposed vide Customs Notification No.120 /2010-Customs dated 1st December 2010.

117. Appeal against the orders of the Central Government that may arise out of the

recommendations of the Designated Authority lies before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the relevant provisions of the Act.

A. K. Bhalla
Additional Secretary & Designated Authority