

No 15/31/2010-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi

NOTIFICATION

(Final Findings)

Dated the 23rd February, 2012

Subject: -Mid-Term Review investigation concerning import of Phenol originating in or exported from Korea RP.

No. 15/31/2010-DGAD:- Having regard to the Customs Tariff Act, 1975 as amended from time to time, and the Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995 thereof:

A. BACKGROUND OF THE CASE

Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the AD Rules or the Rules), the Designated Authority (hereinafter referred to as the Authority) initiated a Mid Term Review anti-dumping investigation on 26th November, 2010, into alleged dumping of Phenol (hereinafter referred to as the subject goods) originating in or exported from Korea RP (hereinafter referred to as the subject country). The original investigation was initiated on 11th January, 2007 against imports of Phenol originating in and exported from Korea RP, USA and Taiwan. The provisional antidumping duty was imposed on imports of Phenol from all the three countries vide Customs Notification No. 105/2007-Customs dated 19th September, 2007 on the basis of the Preliminary Findings of the Authority issue vide Notification dated 29th August, 2007. The Final Findings were notified by the Designated Authority vide Notification No 14/5/2006-DGAD dated 07th January, 2008, and the Department of Revenue imposed definitive anti dumping duties on the imports of the subject goods from the above mentioned countries vide Notification No 30/2008-Customs dated 03rd March, 2008.

2. And whereas Rule 23 of the AD Rules requires the Authority to review, from time to time, the need for continued imposition of anti-dumping duty, and if the Authority is satisfied on the basis of positive information received by it that there is no justification for continued imposition of such duty, the Authority may recommend to the Central Government for its withdrawal. In terms of the legal provisions, the Designated Authority received an application from one of the exporters of the subject goods, namely, M/s. LG Chem. Ltd., Korea RP, substantiating the need for a Mid Term Review (MTR) of the anti dumping duty imposed on the subject goods originating in or exported from Korea RP and requested the Authority for withdrawal/revision of the anti dumping duty. The exporter submitted that due to change in major parameters, such as increase in price of the basic raw materials, increase in the export price of the subject goods from Korea RP to India and substantial increase in domestic prices of the subject goods in India as also substantial increase in domestic price of the subject goods in Korea RP, there is a need to review the anti dumping duty imposed by the Authority. It has further been argued that dumping from Korea RP by the subject exporter does not exist at all and there is a need for downward revision of the dumping margin and consequent duty which is in place.

3. This change in circumstances, on the basis of prima facie evidence, was considered appropriate by the Authority to initiate the Mid Term Review. Having decided to review the Final Findings notified vide Notification No. 14/5/2006-DGAD dated 07.01.2008, the Authority initiated the investigations vide Initiation Notification No 15/31/2010-DGAD dated 26.11.2011 in terms of the Rule 23 of the AD Rules, to review the imposition of anti dumping duty on the subject goods being imported from the subject country.

B. PROCEDURE FOLLOWED IN THE INVESTIGATION

4. The procedure described below has been followed in the present investigation:
- i) The Authority received an application from M/s. LG Chem. Ltd., Korea RP, for review of the anti dumping duty in force on the imports of Phenol from Korea RP.
 - ii) Having satisfied itself that the petitioner has produced sufficient prima facie information substantiating the need for a mid term review, the Authority initiated the Mid Term Review investigation of anti-dumping duty imposed on imports of the subject goods originating in or exported from Korea RP vide Notification No. 15/31/2010 dated 26.11.2010 under Rule 23 of the AD Rules. The scope of the present review covers all aspects of the original Notification.
 - iii) The Embassy of the Government of Korea RP in New Delhi was informed about the initiation of the investigation, in accordance with Rule 6 (2), with a request to advise all the exporters/producers in their country to respond to the prescribed Questionnaire within the prescribed time.

iv) After initiating the review, the Authority sent Exporter Questionnaires, along with the Initiation Notification, to all the known producers and/or exporters of the subject goods in the subject country including the exporter/producer M/s. Kumho P&B Chemicals Inc in accordance with the Rule 6(4) of the AD Rules to elicit relevant information.

v) The following filed Exporter Questionnaire response:

- M/s LG Chem. Ltd, Korea RP,
- M/s Kumho P& B Chemicals Inc, Korea RP,
- M/s Humade Corporation, Korea RP, Trader Exporter of M/s Kumho P& B Chemicals Inc, Korea RP, and
- M/s Chemoil Corporation, Korea RP, Trader /Exporter of M/s Kumho P& B Chemicals, Inc, Korea RP

vi) Importers' Questionnaires were sent to the following known importers, consumers, industrial users of the subject goods in India, calling for necessary information in accordance with Rule 6(4) of the AD Rules:

- C. J. Shah and Company, Mumbai
- Hareesh Kumar and Company, Mumbai
- PCL Industries New Delhi
- Kantilal Manilal and Company Mumbai
- Sonkamal Enterprises Mumbai
- Khetan Brothers Mumbai
- Shubam Dyes & Chemicals Limited Delhi
- Acron Enterprises Ahmedabad
- Naiknavare Chemicals Limited Mumbai
- Paras Dyes & Chemicals New Delhi
- Torrent Pharmaceuticals Limited Gujrat
- United Phosphorous Ltd. Mumbai
- Resins & Plastic Ltd. Mumbai
- Kailash Polymers New Delhi
- Centrum Metalics Pvt. Ltd. Mumbai
- Wonder Laminates Pvt. Ltd. West Bengal
- Meghdev Enterprises Ahmedabad
- Satguru International New Delhi
- High Polymer Labs Ltd. New Delhi
- Rainbow Colours & Chemicals Gujrat
- Bleach Marketing Pvt. Ltd. Gujrat
- Karmen International (P) Ltd. Tamil Nadu

- Krishna Antioxidants Pvt. Ltd. Mumbai
- NGP Industries Ltd. New Delhi
- Farmson Pharmaceutical Gujrat Ltd. Baroda
- India Glycols Ltd. New Delhi
- Singh Plasticisers and Resins (I) Pvt. Ltd. New Delhi
- National Plywood Industries Ltd. West Bengal

vii) None of the above filed any response to the Importer Questionnaire in the form and manner prescribed. Responses, however, from the following interested parties were received:

- Merino Panel Products Ltd;
- Green Ply Industries Ltd,
- Exim-Corp India Pvt Ltd.
- ARCL Organics Ltd.
- M/s Aggarwal Chemicals.

viii) Investigation was carried out for the period of investigation (POI) starting from 1st July, 2009 to 30th June, 2010. However, injury examination was conducted for the period starting from 2007-08 to the end of the POI.

ix) Request was made to the Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata, to arrange details of imports of subject goods in India for the period of investigation and the preceding three years. Information was received from the DGCI&S.

x) The Authority provided copies of the non-confidential version of the application to the known producers /exporters and the Embassy of the subject country in accordance with Rules 6(3) supra. A copy of the non-confidential application was also made available to other interested parties, wherever requested.

xi) Response to the Initiation Notification was received from the following:

- LG Chem Korea RP (Producer/Exporter)
- M/s Kumho P&B Chemicals, Inc, Korea RP (Producer)
- M/s Humade Corporation, Korea RP (Exporter)
- M/s Chemoil Corporation, Korea RP (Exporter)
- M/s Merino Panel Products Ltd (Importer)
- M/s Green Ply Industries Ltd (Importer)
- M/s Exim-Corp India Pvt Ltd (Importer)
- M/s ARCL Organics Ltd (Importer)

- M/s Agarwal Chemicals (Importer)

xii) The Authority held an oral hearing on 8th March, 2011 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6 (6). The parties who attended the oral hearing were advised to file written submissions of the information presented orally. The interested parties were allowed to present rejoinders on the views/information presented by the other interested parties. The Authority has considered submissions received from the interested parties appropriately.

xiii) The Authority, during the course of investigation, satisfied itself as to the adequacy and accuracy of the information supplied.

xiv) The Authority conducted on-the-spot verification of the domestic industry and producers/exporters to the extent considered relevant and necessary. Additional/supplementary details regarding injury were sought from the domestic industry, which were also received.

xv) The Authority made available non-confidential version of the evidence presented by the interested parties through a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7) of the Rules.

xvi) Cost investigations were conducted to determine non-injurious price based on the cost of production of the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry or that the domestic injury will not face any injury in the event of revocation of duty.

xvii) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded its analysis on the basis of the facts available.

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

xix) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these Findings were disclosed to the known interested parties and comments received on the same

have been considered in Final Findings. The following interested parties submitted their response to the disclosure statement and their submissions have been dealt in the appropriate headings of the final finding.:

1. Merino Panel Products Ltd
2. Green Ply Industries Ltd
3. Exim-corp India Private Ltd
4. ARCL Organics Ltd.
5. Agarwal Chemicals
6. Federation of Indian Plywood & Panel Industry
7. HOCL, the Domestic Industry
8. LG Chem Ltd. Korea RP
9. Kumho Petrochemicals, Korea RP

xx) *** in this Final Findings Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. Under Rule 2(d) of the Anti-dumping Rules, like article means an article, which is identical and alike in all respects to the product under investigation or in the absence of such an article, another article having characteristics closely resembling those of the article under examination.

C.1 Views of the Domestic Industry

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

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

7. None of the importers, consumers, exporters and other interested parties have filed any comment or submissions with regard to the product under consideration and the like articles.

C.3 Examination by the Authority

8. The Authority notes that Product under Consideration, as in the original investigation and also in the present review application is Phenol. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. However, imports are reported under

Chapter 27 also. The product is classifiable under Customs Tariff heading no. 2907.11 and 2707.60. The Customs classifications are, however, indicative only and in no way binding on the scope of the present investigation. As per the original investigation carried out by the Designated Authority, the product has been defined as under:

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

9. There is no comment from any party with regard to scope of the product under consideration. The present investigation is a midterm review investigation. The scope of the product under consideration in the present investigation is, therefore, the same as in the original investigation. The Authority concludes that there is no difference in Phenol produced by the domestic industry and imported from the subject country. Phenol produced by the domestic industry and imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology (followed by most of the producers world over), functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used the two interchangeably. Phenol produced by the petitioner is treated as like article to the subject goods imported from the subject country.

D. STANDING OF THE DOMESTIC INDUSTRY

10. With regard to the standing of the domestic industry, Rule 2(b) states as under:

“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 such producers shall be deemed not to form part of domestic industry

11. The present Mid-term Review investigation has been initiated based on an application filed by one of the exporters from Korea RP, namely, M/s LG Chem Ltd. Response to the Initiation of Mid-term Review investigation has been received from one of the domestic producers in India

namely M/s HOCL. M/s SI Group of India, another producer of Phenol in India, has supported the submissions made by HOCL. M/s HOCL submitted the costing and injury information in the form and manner of application proforma for domestic industry. As per the information made available by HOCL, it represents 52.10% of the total domestic sales in India. None of the interested parties has raised any issue with regard to the standing of the Domestic Industry. HOCL, therefore, is considered by the Designated Authority as the domestic industry under Rule 2(b) of the AD Rules.

E. OTHER ISSUES

Views of the Domestic Industry

12. Views expressed by the Domestic Industry are as under:
 - a) Scope of the Mid-term Review is substantially different from scope of the Sunset Review.
 - b) There is no justification for the proposed premature withdrawal of anti dumping duty on imports of the subject goods from Korea RP. The Petitioner has provided no information to establish need for withdrawal. Submissions made by LG Chem Ltd. are unsubstantiated and do not justify any change in the duty whatsoever, leave aside premature withdrawal of anti dumping duty.
 - c) In a mid term review “no dumping” by the exporter in question is not sufficient for modification of the duty.
 - d) In order to examine whether the product is likely to be dumped by the exporter with the modification or withdrawal of the anti dumping duty, the Designated Authority is required to examine whether exporter is dumping goods to other countries.
 - e) The onus of establishing that there is a need for modification or withdrawal of anti dumping duty in force lies on the petitioner and not on the Domestic Industry.
 - f) Petitioner has claimed excessive confidentiality on various information filed before the Designated Authority.

Views of the Applicant and other interested parties (other exporters/importers/end users)

13. They have expressed their view as under:
 - a. Normal value and basic raw material (Naphtha) prices have increased due to change in the exchange rate and prices of crude oil compared to the original investigation.

- b. Increase in export price of Phenol is much more than the increase in raw material prices due to imbalance in supply and demand of Phenol.
- c. Reduction in customs duty in India by 50% compared to the original investigation which reduced its impact on landed value and injury margin.
- d. Export price of LG Chem Ltd is much higher than the price in the home market.
- e. There is a significant increase in the sales price of the domestic industry when compared with the original period of investigation.
- f. Imports are necessary to bridge the gap between demand and supply.
- g. Domestic Industry is making bumper profits and is not adversely affected by imports from Korea RP.
- h. The review should cover all the countries from which the import of Phenol in to India is subject to anti-dumping duty rather than just one country, i.e., Korea RP, notwithstanding the absence of any formal requests from other sources in view of the overwhelming changes in circumstances making it incumbent upon DGAD to exercise its powers consistent with its obligations under the relevant Statute.
- i. The Review should cover the entire interregnum period, i.e., from 15th July 2007 to 30th June 2010 for both dumping and injury.
- j. The form of duty needs an urgent re-evaluation as the existing fixed specific rate of duty is not at all suited to the product under consideration.
- k. Imposition of antidumping duty violates the public interest. Phenol is an important key input in various products. There is a surge of imports in the products using Phenol, the interest of the user industry as well as the consumers should also be considered.
- l. There is a huge demand supply gap. Domestic Industry enjoys a monopoly position in the market. Laminate, plywood, particle board users are under small scale businesses and therefore they cannot file application for imposition of ADD on final product. The small scale industries will be finished if the anti dumping measure is not revoked.
- m. Excessive confidentiality shall not be granted to the data presented by the domestic industry. In all the determinations where the duty has been recommended on variable basis, normal value has been disclosed and notified, the same should be done in the instant case, particularly when the normal value is the constructed normal value, the basis whereof is fully discussed in the same finding without disclosing the numbers.
- n. DGAD shall keep in mind the interests of general public while recommending the duties.

- o. Constructed normal value should not be from Cumene, which is an intermediate product, but should be from benzene and propylene.
- p. Injury examination should be made by considering cost of Cumene transfer to Phenol on cost basis. If the methodology should be changed, then the Authority should give opportunity to comments.
- q. NIP should be calculated according to the latest amendment. Market price of Cumene is required and not the cost in factory, which is after adding basic customs duty.

Comments on Non-Injurious Price & Injury Margin

Comments of the Domestic Industry

14. The Domestic Industry has submitted as under:
 - a. Comparison of non injurious price with net sales realization is wholly irrelevant in a Mid Term Review.
 - b. The non injurious price is required to be determined considering gross fixed assets and that too at current market values. The original plant of the domestic industry is already fully depreciated. It cannot be expected that the domestic industry should earn no profits and merely because the investments are fully depreciated in the books. In fact, the domestic industry is entitled to profits on the basis of the present market value of these investments.
 - c. The present case is the fittest case for reviewing the methodology of non injurious price determination on the basis of net fixed assets. The domestic industry requests the Authority to verify its books of accounts, which would show that original investments in Phenol plant are already fully depreciated.
 - d. There may be no or low imports of cumene in this period. Should the Authority consider it appropriate to construct cumene price, the domestic industry submits that following expenses need to be added to determine the market price of cumene. It is important to point out in this regard that no business entity can buy material without incurring these expenses:
 - Ocean Freight (if price is FOB)
 - Marine insurance (if price is FOB)
 - Customs Duty
 - Cess on customs duty
 - Port Expenses

- Terminal handing charges
 - Bank Commission
 - Commission
 - Inland Freight from port to plant
 - Storage expenses
 - Working capital investment
- e. The Designated Authority has, in fact, considered gross fixed assets as the basis for determination of profits in the past. The decision was after due consideration and was applied for quite some time, and thereafter modified for no reasons publicly known.
- f. The non injurious price should include following expenses:
- i. Indian freight from factory to extended warehouse within the country.
 - ii. End period quantity discounts — the mere fact that this expense is discount should not imply that the same should be excluded for non injurious price determination. While it may be appropriate to deduct on invoice discounts as these are discounts given at the time of sale; off invoice discounts given as a matter of sales policies are end period discounts and have no relevance to import competition and, therefore, must not be deducted.
 - iii. Cash discounts

Views of other interested parties (importers and end users)

15. Other interested parties have submitted that Non injurious price should be calculated as per Customs Notification No. 15/2011-Customs (N.T) dated 1st March, 2011.

Examination by the Authority

16. Issues raised by the Exporters, Domestic Industry, Importers and other interested parties have been considered by the Designated Authority appropriately in the Final Finding. The Authority notes that determination of Non-injurious Price and the application of lesser duty Rule is governed by Annexure III to the Anti Dumping Rules. The Authority has computed the Non-Injurious Price based on the information submitted by the Domestic Industry and in accordance with the consistent practice of the Authority and in accordance with the Anti Dumping Rules. Details of computation of Non-Injurious Price were enumerated in Annexure IV of the Disclosure Statement.

Post Disclosure Statement submissions by interested parties

Submissions by the Domestic Industry:

17. Following submissions to the Disclosure Statement have been made by the Domestic Industry:
- a) The disclosure statement does not deal with likelihood of dumping. A mere claim of no dumping during review period is insufficient in a Midterm Review.
 - b) The responding exporters have given no material to the Designated Authority to determine likelihood of dumping.
 - c) The Designated Authority has not determined likelihood of dumping considering the exports of exporters in third countries.
 - d) Information on transaction wise exports to third countries has not been provided by any responding exporters/producers.
 - e) The Designated Authority should consider performance upto the most recent period to come to a conclusion that the situation prevailing during the investigation period was of lasting nature.
 - f) The injury margin determined ignores of the submissions made by the domestic industry with regard to (i) non injurious price determination, (ii) fair comparison between import price and domestic industry's target/desired prices.
 - g) Considering the non injurious price determined by the authority for the investigation period and subsequent increase in the raw material prices, the non injurious price of the domestic industry at present is much below the landed price of imports.
 - h) The domestic industry disputes the contention of the exporters and observation of the authority with regard to likelihood. Threat of injury is different from likelihood of injury.
 - i) The Designated Authority should consider performance upto the most recent period to come to a conclusion that the situation prevailing during the investigation period was of lasting nature. Mere improvement in performance during investigation period is grossly insufficient to conclude about likelihood.
 - j) It is evident from the Disclosure Statement that the producers have not given full information to the Authority in this regard and yet dumping margins have been determined.

- k) The difference between the non injurious price and net sales realization is immaterial in a midterm review investigations.
- l) Volume of exports made by the exporter is insignificant compared to production and consumption in India.

Submissions by the Other Interested Parties (Exporters/producers/importers/users):

18. Submissions by the other Interested Parties on the Disclosure Statement are as follows:

- a) DGAD has already recommended discontinuance of anti-dumping duty in mid-term review on the subject product imported from USA and Taiwan on 9th February 2012. In both the MTR investigations, the period of review are overlapping. Thus, it may reasonably be concluded that performance of the domestic industry would be similar. Since DGAD has already recently held that the domestic industry is no longer suffering any injury, there exists no reason to recommend continuance of antidumping duty in the present review investigation also.
- b) Further, DGAD is requested to disclose the normal value and actual margin of dumping both in US\$ and Indian Rupee terms for both injury period and period of investigation.
- c) As regards determination of injury, we accept the finding of DGAD and request it to confirm the same in the final findings.
- d) We agree with the finding of DGAD as regards the causal link analysis and request DGAD to confirm the same in the final findings.
- e) We agree with the determination of DGAD that there is no possibility of recurrence of injury to the domestic industry and request DGAD to confirm the same in the final finding.
- f) Absence of any existing injury as well as likelihood of injury to the domestic industry, we request DGAD to recommend discontinuance of anti-dumping duty imposed on Phenol.
- g) Export prices from Korea RP beyond the POI of the present MTR are much higher than the export prices from Taiwan. POI of MTR investigation carried out by the DA in respect of exports from Taiwan is similar to the POI of the present MTR. If the DA has concluded that exports from Taiwan are not likely to cause injury to the domestic industry, the same conclusion should be drawn in the present MTR.
- h) Surge in prices in the international market for Phenol is more on account of vacuum in supplies rather than occasional. Surge in demand will outpace the new capacities underway and the trend is unlikely to reverse in mid-long term. Indian imports account for one percent of global production. Trends in pricing in India when compared to other third countries will always demonstrate lesser significance of Indian Market in global scenario.

Examination by the Authority

19. Submissions made by the interested parties have been examined by the Authority in terms of relevant provisions of the Anti-Dumping Rules. With regards to the post disclosure submission by the domestic industry, the Authority notes that the same have been dealt with in these Final Findings under appropriate paras. The Authority has also examined the likelihood of injury to the domestic industry based on all the relevant parameters. The Authority notes that transaction wise details of exports to third countries was provided by the cooperating exporters. Further, the Authority has obtained relevant information from the Exporters for one year beyond the POI to examine likelihood of injury to the Domestic Industry. Likelihood of injury has been appropriately examined in detail by the Authority in the relevant paras of this Final Findings Notification. The Authority further notes that the NSR of the domestic industry has been consistently found to be higher than the NIP, both in the POI and in the post POI period. With regard to the views made by importers, users and exporters, it is noted that imports of the subject goods by countries attracting anti dumping duties are mentioned in the injury determination.

F. ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS

Dumping Margin

Views of the Domestic Industry

20. The following are the submissions made by the Domestic Industry with regard to the dumping margin:
- a. The product continues to be exported at dumped prices.
 - b. Entire purpose of review inquiry was not to see whether there was a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffer
 - c. In a midterm review investigation, it is insufficient for the exporter to establish that the product was not being dumped in the present review period. The exporter is required to establish that there was no dumping and there was no likelihood of dumping of the product in the event of modification or withdrawal of anti dumping duties.
 - d. The exporter is required to establish that there is no likelihood of injury in the event of modification or withdrawal of anti dumping duties.
 - e. Under Rule 23, there are three tests that are required to be considered by the Designated Authority:
 - i. identification of the specific factors which would constitute sufficient “changed circumstances” to warrant a review;

- ii. the dumping and/or injury would be unlikely to continue or recur if the measures were removed or varied, i.e., a possibility of “no injury” in case of discontinuance of the anti-dumping duty needs to be established.
 - iii. whether because of the existing measures, the domestic industry has been able to offset injury and counteract dumping which was causing injury or the duty is no longer sufficient to counteract dumping which is causing injury.
- f. It has been claimed by the applicant that normal value has declined and export price has increased. However, this does not mean that there is no dumping. It is not even claimed by the petitioner herein that (a) the product is no longer being dumped and (b) it is unlikely that the dumping would continue or recur if the duties were modified or withdrawn. Nor there is any positive evidence provided in this regard.
 - g. No dumping in review period is not sufficient to modify or withdraw the duty.
 - h. Onus of establishing need for withdrawal is on the applicant.
 - i. Phenol has been exported from South Korea at prices below normal value, thus resulting in continued dumping.
 - j. The dumping margin is significantly higher if Korean export data is adopted.
 - k. Exports from Korea RP to third countries clearly shows that (a) such exports are at prices significantly lower than export price from Korea RP to India (which further establishes that export price to India are unreliable and must be rejected), and (b) significantly higher dumping in respect of these exports to third countries. This clearly establishes likelihood of significant dumping in the event of premature withdrawal of anti dumping duty.

Views of other interested parties (exporters, importers and end users)

21. Other interested parties have submitted as under:
- a. The dumping margin should be reexamined in review investigations as combined reading of Article 9.2 and 9.3 suggests that if the amount of anti dumping duty levied is in excess to the margin of dumping, then it cannot be termed as ‘appropriate’.
 - b. The provisions of AD Agreement, Customs Tariff Act and the Rules framed therein have clearly provided for re determination of dumping margin in a review investigation.
 - c. Actual dumping margin should be calculated for the entire period so that the refund contemplated under Section 9AA could be sought under relevant provision. Importers are unable to prefer a formal quantified claim for refunds due to the absence of actual dumping margin.
 - d. Anti dumping duty by reference to difference between the normal value and landed cost, subject to a maximum of dumping or injury margin, should be imposed.

- e. Section 9AA as amended by Finance Bill 2011, envisages determination of actual margin of dumping with respect to each import which is possible if the mechanism of variable duty being difference of specified normal value and the landed cost is in place.
- f. Usage of constructed cost methodology by applying an unspecified rate of return on capital employed is inappropriate when the corresponding normal value in the ordinary course of international trade is available on the published reports of ICIS-LOR.
- g. Kumho are fully cooperating and are entitled to respective combination determinations.
- h. Due to volatility in prices during the period of investigation, monthly information and dumping margin has been submitted.
- i. The two transactions by Kumho are representative for dumping margin determination as per the established practices and precedents of the Authority. Alternatively, the Authority may exclude both spot market sales and packaged sales from the scope of any AD duty as the prices are higher than in case of long term bulk sales and the volumes are lower and thus cannot cause injury.
- j. Domestic Industry 's argument that the differences between the third country export price and the export price to India were doctored is totally unfounded assumption as no evidence adduced to suggest that export to third country and India were made at same level of trade, no evidence to affirm that the export prices to India were non commissionable and on same set of terms and conditions of business, no evidence to demonstrate that the export prices to other third countries were not bounden by the long term contract and how does an importer get help in the specific fixed duty regime to cause an overstatement in the import price.

Examination by the Authority

Normal Value

22. The Authority sent questionnaire to the known exporters from subject country advising them to provide information in the form and manner prescribed. In response to the same, the following producers and exporters have submitted Exporters Questionnaire and requested the Authority to base their dumping margin determination on the basis of their Questionnaire response.

- a) M/s LG Chem, Korea RP
- b) M/s. Kumho P&B Chemicals, Inc, Korea RP

M/s. Kumho P&B Chemicals Inc is a producer of the subject goods and has exported the subject goods through two traders, namely, M/s Humade Co. Korea RP and M/s Chemoil Co. Korea RP. Both the traders have also filed Questionnaire Response and requested that they may be granted individual treatment.

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

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

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

accounting for more than 80% of the total sales, the weighted average price of the domestic sales have been taken into consideration for each month. However, wherever the profitable sales volume were found to be less than 80%, the weighted average price of the profitable domestic sales has been taken into consideration.

Normal Value for M/s LG Chem Ltd, Korea RP

25. Response filed by the company was examined in detail. The exporter was asked to submit month wise cost data for the subject goods which was submitted. After analysing the data, the Authority notes that the domestic sales meet the sufficiency test. Further, the monthly cost of production of the subject goods as indicated in Appendix-8B of the response has been verified during the on-the-spot verification for the purposes of carrying out the ordinary course of trade test. Adjustments thereof have been allowed as noted and verified during the on-the-spot verification. Based on such a determination, the weighted average Normal Value for the period of investigation, (based on month wise analysis of the domestic sales and cost data), has been determined.

Normal Value for M/s Kumho P&B Chemicals, Korea RP

26. Response filed by the company was perused. The exporter was asked to submit month wise cost data for the subject goods which was submitted. After analysing the data, the Authority notes that the domestic sales meet the sufficiency test. Further, the monthly cost of production of the subject goods as indicated in Appendix-8B of the response has been verified during the on-the-spot verification for the purposes of carrying out the ordinary course of trade test. Adjustments thereof have been allowed as noted and verified during the on-the-spot verification. Based on such a determination, the weighted average Normal Value for the period of investigation , (based on month wise analysis of the domestic sales and cost data), has been determined.

Export Price

27. The Authority has examined the export prices in respect of responding exporters as claimed in the Questionnaire responses filed by them. The export prices and the adjustments thereof have been allowed as noted and verified during on-the-spot verification.

Export Price for M/s LG Chem Ltd., Korea RP

28. The respondent has furnished information in Appendix 2 relating to exports of the subject goods to India. The subject goods have been exported directly by LG Chem to India on FOB basis. Adjustments on account of Bank Charges, Export Inspection Fee and credit expenses have been allowed as noted during the on-the-spot verification. Based on such a determination, the weighted average ex-factory Export Price, based on month wise analysis of the data, has been determined.

Export Price for M/s Kumho P&B Chemicals Inc

29. During the period of investigation, M/s Kumho P&B Chemicals Inc, producer of the subject goods has exported subject goods through two traders, namely, M/s Humade Co and M/s Chemoil Co, both located in Korea RP. Both the traders have cooperated and filed the responses and the information submitted by the traders has been duly verified. The traders have furnished information in Appendix 2 relating to exports to India. The adjustments on account of packing cost, inland freight, handling charge, ocean freight, marine insurance, handling, custom brokerage, commission, credit expenses, bank charges and duty drawback have been allowed as noted and verified during the on-the-spot verification. Based on such a determination, the weighted average ex factory Export Price, based on month wise analysis of the data, for exports made by Kumho P&B Chemicals through M/s Humade Co and for exports made by Kumho P&B Chemicals through M/s Chemoil Co has been worked out.

Determination of Normal Value & Export Price in respect of Non-co-operative Exporters/Producers

30. Since no other response has been received from any other producer/exporter of the subject goods, the Authority has determined the Normal Value and Export Price for them as per facts available in terms of Rule 6(8) of the Anti Dumping Rules. Accordingly, the weighted average normal value and export price for non-co-operative Exporters/Producers has been determined based on data provided by the applicant and other cooperating exporter.

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

Dumping Margin

US\$ per MT					
Sl. No.	Country -Producer/Exporter	Normal Value	Export Price	Dumping Margin	Dumping Margin %
	Korea RP				
1	M/s LG Chem ltd.	****	****	****	-3.16
2	Phenol produced by M/s Kumho P&B Chemicals Inc and exported by M/s Humade Co. Korea RP	****	****	****	0.90
3	Phenol produced by M/s Kumho P&B Chemicals Inc and exported by M/sChemoil Co. Korea RP	****	****	****	-3.84
4	All other producers and Exporters from Korea RP.	****	****	****	5.55

G. ASSESSMENT OF INJURY AND DETERMINATION OF CAUSAL LINK

Assessment of Injury and likelihood of injury to continue or recur

Submissions by the Exporters

32. Exporters (M/s LG Chem Ltd & Kumho P & B) has submitted as under:

- i. Export price to third countries by Korea RP cannot be considered for examining the 'likelihood test'. There is no basis in law for considering such data in an MTR.
- ii. Assuming but not conceding likelihood of dumping, it is not sufficient as there should be 'likelihood of dumping causing injury' and not likelihood of dumping alone.
- iii. Current prices of Phenol in India as well as in the global markets are far higher than what prevailed during the period of investigation. There is an increase of more than 51% in the selling price of the Domestic Industry as compared to the period of investigation. Therefore, there is no need for continuation of ADD.
- iv. Domestic Industry referred to some previous finding of CESTAT on recurrence of injury. The facts in this case are quite different, i.e., (i) Domestic industry is earning super profit, (ii) capacity of Domestic industry is less than the demand and (iii) small scale is also consuming this product. Therefore with imposition of duty, can the small scale industry survive?
- v. Export price to India has been higher than those to third countries.
- vi. Assertion of likelihood is vexatious. Even if DI's argument is accepted, the reference price based levy of duty is required.
- vii. India is not a focused market of Kumho. It had over 6% growth in the past year. Therefore, there is no threat of injury by Kumho.
- viii. No participation of SI Group India Limited in the DI's response. In the absence of injury data of SI Group, the DA is unable to comply with the requirement of Rule 11 of the Anti Dumping Rules. It is most likely that it has not faced any injury and therefore, refrained from participating in the investigation with relevant data.

- ix. Domestic producer had consistently improved in its volume of production, sales, showing that imports have not affected the prices in the domestic market for the like article.
- x. Increase in price of raw material, i.e., benzene is just 17% as compared to 35% increase in selling price.
- xi. The capability of manufacture to earn a reasonable return has been largely affected by global competition and tightening of parameters like rationalized duty structure and strict quality controls.
- xii. ADD should be applied on reference price basis in this case.
- xiii. DI accepted at the public hearing that the landed prices are more than the prices selling price, which negates the existence of causal link, as held by the Tribunal in the matter of Acrylic Fibre vs. D.A and Jindal Stainless Ltd vs. D.A.
- xiv. Performance of DI shows positive trend in most parameters such as production, capacity utilization, sales volume, selling price, profits. Return on capital investment and cash profit.
- xv. DI did not plan to produce optimum capacity for the period. Therefore, lower capacity utilization cannot be blamed on dumping.
- xvi. Argument that NIP should be determined by including the expenses such as inland freight from factory to extended warehouse, end quantity discounts, cash counts should be rejected as the calculation of NIP must be done according to clause vii (b) of para 4 of the Annexure III which states that NIP is determined at ex-factory level.
- xvii. Increase in export price by almost 84% whereas the main raw material has increased by only 17%.
- xviii. There is an increase in export price and no change in normal value. Therefore, dumping is negative.
- xix. Globally, (including for HOCL), the prices of phenol has doubled when compared to the POI of the original investigation.
- xx. ROCE increased from 22.92% for POI in the original investigation to 112.68%. No adverse impact on DI. Consequently, no harm would be caused to DI with the revocation of the ADD.
- xxi. Capacity utilization of Domestic Industry has increased from 86% to 104%, which means it has utilized its plant more than the capacity.

- xxii. Production and Sales volume has increased significantly.
- xxiii. Benzene cost has increased by Rs. 8000 PMT and the selling price has increased to Rs. 45000 PMT. This shows that contribution of DI has increased to almost Rs. 37000 PMT.
- xxiv. Profit of the Domestic Industry has increased significantly over the period of injury.
- xxv. Capacity utilization and volume of sales of domestic industry has increased.
- xxvi. Domestic selling price of the product has increased significantly as compared to the rise in the price of the raw material, benzene. (benzene is used to produce cumene, therefore the amounts have so been adjusted).
- xxvii. Domestic Industry's demand of adding and including certain added expenses like cost of transportation should be considered on equitable basis by applying the same principle in arriving at the landed price on the same level of trade.

Submissions by the domestic industry

33. The domestic industry has argued that:

- i. The difference between non injurious price and net sales realization is immaterial in a midterm review investigations as has been held by the Authority in a number of cases. Anti dumping duties have been extended in various SSR cases where non injurious price was lower than net sales realization. In the present case, it is only a midterm review and, therefore, the objective is extremely limited.
- ii. Performance of the domestic industry has improved as a result of imposition of anti dumping duties. But it has not fully recovered back to a situation which was established before dumping started.
- iii. The current import price from Korea RP is unreliable. Thus, prices undercutting, underselling and injury margin based on such prices would clearly be flawed.
- iv. Even if it is assumed that the domestic industry is no longer suffering injury, the same is grossly insufficient for premature withdrawal of anti dumping duty as it must be established that no injury is likely to occur in the event of withdrawal of anti dumping duty.
- v. The non injurious price is required to be determined considering gross fixed assets and that too at current market values.
- vi. Performance of the domestic industry has improved as a result of imposition of anti dumping duties. Parameters such as production, capacity utilization, sales volume, selling price, profits, return on investment, cash profit have shown improvement as compared with the dumping period. However, (a) this improvement is over the dumping, and (b)

performance is still adverse as compared to 2007-08 (pre-dumping period). In other words, the domestic industry has not fully recovered back to a situation which was established before dumping started.

- vii. Assuming though not admitting that domestic industry is no longer suffering injury, the same is grossly insufficient for premature withdrawal of anti dumping duty. At the stage of Mid Term Review, the interested parties seeking revocation of anti dumping duty must establish “no injury to domestic industry is likely” in the event of withdrawal of anti dumping duty.
- viii. The obligation of establishing “no likelihood of injury” is not on the domestic industry. It is on the petitioner before the Designated Authority. The Authority is not required to determine the “justification for continuation”. “Justification for continuation” is different from “justification for withdrawal”.
- ix. The price at which Korea has exported the product to third countries clearly establishes that if goods were to be exported to India during this period at these prices, the resultant imports would have resulted in significant price undercutting and underselling. The resultant injury margin would also have been significantly positive.
- x. Weighted average import price into India from third countries clearly establishes significant price undercutting, price underselling and positive injury margin. Should the Korean producers have sold the product at prices comparable to third countries, the resultant imports would have caused significant injury in terms of price undercutting and positive injury margin.
- xi. Significant exports from Korea to various global markets, significant surplus capacities in the global market and fresh additions to the capacity in the foreseeable near future clearly establish existence of significant freely disburseable production capacities.
- xii. The non injurious price should include following expenses :
 - a. Indian freight from factory to extended warehouse within the country.
 - b. End period quantity discounts – the mere fact that this expense is “discount” should not imply that the same should be excluded for non injurious price determination. While it may be appropriate to deduct “on invoice” discounts as these are discounts given at the time of sale; “off invoice” discounts given as a matter of sales policies are end period discounts and have no relevance to import competition and therefore must not be deducted.
 - c. Cash discounts

Response from other interested parties (importers and users)

34. This is a case where falsity in the various statements claiming injury from alleged dumped imports before the DGAD has been proved beyond any reasonable doubt. Domestic Industry has committed the impropriety of misleading a quasi judicial Authority in arriving at its decisions at the severe cost of the public at large.

Examination by the Authority

35. The Authority has taken note of submissions made by the interested parties. Annexure II of the Anti Dumping Rules provides for objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact on domestic producers of such products. While examining the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports either in absolute term or relative to production or consumption in India. With regard to price effect of dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increase which would have otherwise occurred to a significant degree.

36. As regards the impact of dumped imports on the domestic industry, Para (iv) of Annexure-II of AD Rules states as follows: *“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”*

37. The Authority has examined the injury parameters objectively taking into account the facts and arguments of the interested parties. For analyzing the injury parameters, all relevant documents including the audited balance sheets of both the producers have been examined and verified by the Authority. The Authority also examined the audited accounts of the domestic industry. The issues relating to the interest of the Indian industry and other issues have been dealt by the Authority under appropriate headings. On the issue of consumers becoming non competitive on account of levy of anti dumping duty and the impact of anti dumping duty on end product, it is noted that the question of consumers becoming non-competing on account of levy of anti dumping duty on subject goods does not arise, particularly when the quantum of anti-dumping duty is restricted to lower of the dumping margin and the injury margin. Further, it is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

Demand, Imports & Market Share of the Domestic Industry

38. In the present investigation petitioner and the Domestic Industry submitted the import data based on secondary sources i.e. DGCIS, IBIS and also from Korean Customs (KITA) and apart from the exporters own data. The Authority also addressed a communication to the office of DGCIS calling for the required information. The authority notes that for the POI, there are significant variances in the volume of imports as reflected in the Exporters data for the POI and the data made available by DGCIS. The authority further notes that the exporters from the subject country (Korea RP) have submitted detailing individual responses on the quantum of exports where along with the supporting documents. The exporters from the Korea have substantiated the volume and price of exports based on their data. The authority for the present investigation has considered the import data based on DGCIS from all subject countries except Korea RP. However, in case of Korea RP, since the volume of exports are noted to be lower in the DGCIS, compared to the admitted volume of exports from Korea RP, the Authority has considered the exports based on the data as evidenced by Korea RP customs which correlates well with the volume reported by the exporters in their response. Based on the above, the volume of exports from the subject countries along with the share of domestic industry in the total demand is detailed below:

Particulars	Units	2007-08	2008-09	2009-10	POI
Sales of HOCL	MT	43,723	40,924	37,671	40,214
Sale of SI Industries	MT	29247	31451	31958	36,969
Total Sales of Indian Domestic Producers	MT	72,970	72,375	69,629	77,183
Trend	%	100	99	95	106
Subject Country-Imports*	MT	5,805	144	32	1,593
Trend	%	100	2	1	27
Other Countries	MT	94,617	90,004	100,058	95087
Total Imports in India	MT	100422	90148	100090	96680
Trend	%	100	90	100	96

Total Demand in India	MT	173392	162523	169719	173863
Trend	%	100	94	98	100

Imports in relation to various parameters

39. The Authority has analysed the trend of the subject imports in relation to production and consumption in India. It is noted that imports of the subject goods from subject country decreased in relation to total imports as well as total demand of the like product in India during the injury period. Further, this has also decreased in relation to consumption as well as sales of the domestic industry in India as can be seen in the table below:

Particulars	Units	2007-08	2008-09	2009-10	July,09- June,2010 (POI)
Imports from Korea RP	MT	5,805	144	32	1,595
<i>Trend</i>		100	2	1	27
Total Imports	MT	100422	90148	100090	96680
<i>Trend</i>		100	94	98	100
Demand in India	MT	173392	162523	169719	173863
<i>Trend</i>		100	94	98	100
Sales of Indian Producers	MT	72,970	72,375	69,629	77,183
<i>Trend</i>		100	99	95	106
Imports from Korea as % of demand	%	3.35	0.09	0.02	0.92
Share of Indian producers in demand	%	42.08	44.53	41.03	44.39
Share of total imports in demand	%	57.92	55.47	58.97	55.61

40 The Authority has determined the market share of the domestic industry by taking into account the total demand of the subject goods and sales of the Indian industry. It is noted from the table above that the market share of the Indian producers declined in 2009-10 but slightly increased during the POI as compared to the base year, while at the same time market share of subject goods from Korea RP has decreased by 73%.

Production, Capacity & Capacity Utilization

41. It is noted from the table below that the production of the Domestic Industry has decreased only by 1% in the POI as compared to the base year. However, the capacity utilization during the POI was 104%. Further, it is noted that the demand for the product has not increased in the same period.

Particulars	Units	2007-08	2008-09	2009-10	July09- June2010
Capacity	MT	40,000	40,000	40,000	40,000
Production	MT	41,908	42,641	36,751	41,543
<i>Trend</i>		100	102	88	99

Profitability

42. The profitability of the domestic industry in respect of the subject goods has been examined only in respect of the domestic sales. It is seen that profitability of the domestic industry for the subject goods decreased during 2008-09 and 2009-10 as compared to 2007-08 but increased significantly during the POI.

Particulars	Units	2007-08	2008-09	2009-10	July09- June2010
Cost of Sales	Rs./MT	****	****	****	****
Trend	Index	100	101	102	104
Net Sales Realization	Rs./MT	****	****	****	****
Trend	Index	100	92	92	103
Profit/Loss	Rs./MT	****	****	****	****
Trend	Index	100	33	30	99
Profit before tax	Rs. Lacs	****	****	****	****
Trend	Index	100	27	26	78

Employment and Wages

43. No significant trends of change in the no. of employees during the POI and the injury period have been noted. However, the wages costs of the company have increased on an overall bases as well as in terms of wages per employee.

Particulars	Units	2007-08	2008-09	2009-10	July09- June2010
Number of employees	No	****	****	****	****
Trends	Indexed	100	94	94	109
Wages	Rs. Lacs	****	****	****	****
<i>Trend</i>	Indexed	100	102	105	113
Wage per employee	Rs. Lacs	****	****	****	****
<i>Trend</i>		100	108	111	104

Productivity

44. No significant trends of change have been noted in the productivity per day and the productivity per employee during the POI over the base year of the injury period.

Particulars	Units	2007-08	2008-09	2009-10	July09- June2010
Productivity per day	MT	****	****	****	****
<i>Indexed</i>	<i>Trend</i>	100	102	88	99
Productivity per Employee	MT	****	****	****	****
<i>Indexed</i>	<i>Trend</i>	100	102	88	99

Return on investments and cash flow

45. The return on investment has been determined considering profit before interest and tax and capital employed for the product. Impact on cash flow has been determined considering profit before depreciation but after interest cost. It is noted that return on capital employed has decreased during 2008-09 and 2009-10 as compared to 2007-08 but increased significantly afterward. During the POI, the ROCE was 50.30%.

Particulars	Units	2007-08	2008-09	2009-10	July09- June2010
Profit/Loss	Rs./MT	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	33	30	99
Profit before tax	Rs. Lacs	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	27	26	78
ROCE	%	****	****	****	****
<i>Indexed</i>	<i>Trend</i>	100	29	29	82
Cash Profit	Rs. Lacs	****	****	****	****
<i>Indexed</i>	<i>Trend</i>	100	23	24	79

Inventories

46. It is noted from the table below that the inventory level of domestic industry has declined in the POI as compared to the base year.

Particulars	Units	2007-08	2008-09	2009-10	July09- June2010
Opening	MT	2,307	492	2,209	461
Closing	MT	492	2,209	1,289	1,790
Average	MT	1,399	1,351	1,749	1,126
	Index	100	96.57	125.01	80.49

Growth

47. There is no addition in the capacity by the Domestic Industry which is operating at 104% during the POI. Number of employees has increased by about 9% as compared to POI. Productivity per day is stable during the POI as compared to the base year.

Ability to raise capital investments

48. No arguments have been put forward by the Domestic Industry with regard to its ability to raise capital investments. The Domestic Industry has not indicated any plans to expand the capacity. With the level of profitability attained by the Domestic Industry, it is evident that there should not be any adverse impact on the ability of the Domestic Industry to raise capital investments if so desired.

Level of dumping and dumping margin

49. As explained in Annexure II of the Disclosure Statement, in the case of M/s LG Chem Ltd, the dumping margin established in the foregoing paras is found to be negative in all the months of exports. In the case of exports by M/s KPB through Humade, the Dumping Margin is found to be positive whereas in the case of exports by M/s KPB through Chemoil, the same is negative. However, the Dumping Margin ~~in the case of~~ non cooperating exporter is assessed as positive.

Price effect of imports

50. With regard to the effect of the dumped imports on prices, it has been examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. A comparison for the subject goods was made between the landed value of exported product and the average selling price of the domestic industry for domestic market net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex factory level. This comparison showed that during the period of investigation, the subject goods originating in Korea RP were sold in the Indian market at prices which were higher than the domestic industry's prices. It is, thus, seen that imports were not undercutting the domestic prices and margin of undercutting is found to be negative during the injury period except 2009-10 as per the table below:-

Particulars	Unit	2007-08	2008-09	2009-10	July09- June2010

					(POI)
Landed Value from Korea RP	Rs./Kg	****	****	****	****
Net Sales Realization	Rs./Kg	****	****	****	****
Price Undercutting	Rs./Kg	****	****	****	****
Price Undercutting	%	-11.98	-28.20	31.56	-4.07
Price Undercutting	% Range	Negative	Negative	Positive	Negative

51. The price undercutting with respect to cooperating exporters has been worked out by the Authority and these are as follows:

Sl.No	Producer	Exporter	Price undercutting	Price undercutting %
1	M/s LG Chem, Korea RP	M/s LG Chem, Korea RP	***	-6.68
2	M/s Kumho P&B Chemicals, Inc, Korea RP	M/s Humade Corp., Korea RP	***	14.83
3	M/s Kumho P&B Chemicals, Inc, Korea RP	M/s Chemoil Corp., Korea RP	***	-11.68
4	All other producers and exporters from Korea RP	All other producers and exporters from Korea RP	***	14.83

52. The Authority has also examined price depression, price suppression and price underselling, if any, suffered by the domestic industry on account of dumped imports from the subject country. After examination, the Authority notes that while in the year 2008-09 and 2009-10, the domestic industry was not able to increase its selling price in line with exchange in the cost of sales, but in the POI, the increase in selling price is marginally lower than the increase in the cost of production. The landed values of exports has increased in 2008-09 and decreased in 2009-10 and has again increased in the POI. The domestic industry has also not suffered any price suppression during the POI.

Particulars	Unit	2007-08	2008-09	2009-10	POI
Net Selling Price of Domestic Industry	Rs/MT	****	****	****	****
Indexed		100	92	92	103
Cost of Sales – Domestic	Rs/MT	****	****	****	****
Indexed		100	101	102	104
Landed Price	Rs/MT	78702	88637	48480	74580
Indexed		100	112.62	61.60	94.76

53. The Authority has determined non-injurious price for the domestic industry taking into consideration cost of production of the domestic industry. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports to determine injury margin. The injury margin has been determined in line with the determination of dumping margins as mentioned in the appropriate heading. The injury margins have been worked out as follows:

Table showing Injury Margin (IM)

Producer	Exporter	IM	IM%
M/s LG Chem, Korea RP	M/s LG Chem, Korea RP	***	-14.46
M/s Kumho P&B Chemicals, Inc, Korea RP	M/s Humade Corp., Korea RP	***	1.23
M/s Kumho P&B Chemicals, Inc, Korea RP	M/s Chemoil Corp., Korea RP	***	-11.14
All other producers and exporters from Korea RP	All other producers and exporters from Korea RP	***	1.23

Likelihood of injury to continue or recur

54. The Authority has to determine as to whether the subject goods are continuing to enter the Indian market at dumped prices or are likely to be exported at dumped prices from the

subject countries in the event of withdrawal of anti dumping duties. It is pertinent to examine whether injury to the domestic industry is likely to recur due to these dumped imports if the duty is removed or varied. It has already been established that the actual landed value of imports from the subject countries to third countries were below the selling price of the domestic industry and the non injurious price determined for the domestic industry.

55. The Authority has also examined the likelihood of recurrence of injury to the domestic industry on the basis of information and evidence presented by the various interested parties during the course of the investigations. The Authority examined the likelihood of continuation or recurrence considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules, which states as under:

“A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter alia, such factors and;

a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.

b. Sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports.

c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports and,

d. Inventories of the article being investigated.”

Views of the Domestic Industry

56. The Domestic Industry has submitted as under:

- a. The applicant has not given any material along with their petition that there is no likelihood of dumping and injury. In a midterm review investigation, it is insufficient for the exporter to establish that the product was not being dumped in the present review period. The exporter is required to establish that there was no dumping and there was no likelihood of dumping of the product in the event of modification or withdrawn of anti dumping duties. Similarly, mere non-existence of injury to the domestic industry is insufficient. The exporter is required to establish that there is no likelihood of injury in the event of modification or withdrawn of anti dumping duties.

- b. Since the Designated Authority is required to examine the likelihood of dumping and injury in a midterm review investigations, it follows that the applicant is required to provide relevant information and evidence in this regard.
- c. In a review proceeding initiated by the Authority under Rule 23, there are three tests that are required to be considered by the Designated Authority:
- d. Identification of the specific factors which would constitute sufficient changed circumstances to warrant a review;
- e. The dumping and/or injury would be unlikely to continue or recur if the measures were removed or varied, i.e., a possibility of no injury in case of discontinuance of the anti-dumping duty needs to be established.
- f. Whether because of the existing measures the domestic industry has been able to offset injury and counteract dumping which was causing injury or the duty is no longer sufficient to counteract dumping which is causing injury.
- g. It has been claimed that normal value has declined and export price has increased. However, this does not mean that there is no dumping. It is not even claimed by the petitioner herein that (a) the product is no longer being dumped and (b) it is unlikely that the dumping would continue or recur if the duties were modified or withdrawn. Nor there is any positive evidence provided in this regard.
- h. Significant exports from Korea RP to various global markets, significant surplus capacities in the global market and fresh additions to the capacity in the foreseeable near future clearly establish existence of significant freely disburseable production capacities.
- i. The subject country is selling the subject goods to third countries at a price lower than the export price to India.

Views of the Applicant Exporter

57. Applicant exporter (M/s LG Chem) has submitted as under:

- a) They have established Phenol plant mainly to meet the captive demand for manufacture of Bisphenol-A. Only a small part of the subject goods is exported.
- b) Prices of Phenol in India as well globally are on the rise and the trend of increase after the period of investigation. After the period of investigation of the current Mid Term Review investigation, the Domestic Industry has increased the price of Phenol by more than 51%.

- c) Export price from Korea RP has also shown the same trends. During the month of Dec 2010, the FOB price from Korea RP was US\$ 2000 per MT which is almost 40% higher than the prices prevailing during the period of investigation of the current Mid-term Review investigation.

Views of other interested parties

58. Other interested parties have submitted as under:

- a) Purpose of anti-dumping measure is not to facilitate the domestic industry to create a monopoly on prices, but to eliminate the trade-distorting effects of injurious dumping and, thus, to ensure fair competition in the Indian market.
- b) Further, Domestic industry has argued on recurrence of injury and in support referred some previous findings and CESTAT decision during the hearing. Facts of this case are quite different because, in this case, (i) domestic industry is earning super/abnormal profit, (ii) Capacity of Indian producers is less than demand in India, and (iii) small scale industry is also consuming this product. Therefore, we would like to ask Authority, in this situation, can small user industries survive?
- c) In this product domestic industry is enjoying anti dumping duty benefits since long back because of imposition of Anti Dumping Duty from different countries while this is a commodity product. Domestic industry would always demand duty should continue because they want to earn super profit in the shade of ADD and do not want to play fair competition. Therefore, we request the Honorable Authority to kindly withdraw the ADD on Phenol.

Examination by the Authority

59. The Authority has called for additional information in a Supplementary Questionnaire from both the cooperating exporters for the period of investigation as well beyond the period of investigation w.r.t estimated production, domestic sales, imports into Korea RP and exports of the subject goods from Korea RP during the one year after the POI and exports to other countries during the POI to examine the issues raised by the Domestic Industry in respect of likelihood of injury as mandated under Rule 23. The Authority has noted the following:

- i. It has been found that both the responding exporters from Korea RP have created the capacities mainly to meet the internal demand of the subject goods for manufacture of Bisphenol-A. Significant portion of the total production of Phenol is captively consumed

and sold domestically by both the responding Korean producers/exporters. Remaining part is being exported to other countries including India. During the period of investigation exports to India was very limited. During the course of verification at the plant, it was noticed that LG Chem has enhanced the production capacity of Phenol Plant by about 10% after the period of investigation of the Mid-term Review. It was noted that enhancement in capacity was made to match the enhanced capacity of Bisphenol-A. It was found that the company has enhanced the capacity of Phenol due to the de-bottlenecking of certain operations and no additional plant and machinery was installed. The Authority found that enhancement in capacity by the applicant exporter was basically to meet the captive requirement.

- ii. Transaction wise details of exports of Phenol to countries other than India were also obtained by the Authority for the period of investigation. It was found that export price to some of the other countries is almost similar or above the export price to India. In the case of LG Chem, the average export price to other countries during the months of exports to India was found to be comparable with the average export price to India. Since Kumho P&B Chemicals has exported the subject goods in drum form, comparison of export price to third countries on similar basis during the corresponding period indicates that the same are comparable.
- iii. It was also found that both LG Chem and Kumho P&B Chemicals are operating at almost 100% capacity utilization.
- iv. The Authority has also examined the state of the domestic industry viz-a-viz the behaviour of the responding Korean exporters. The Authority notes that the price behaviour of the Korean exporters during the POI is not injuring the domestic industry. The Authority notes that the imports from the subject country are not undercutting the prices of the subject goods of the domestic industry.
- v. In order to examine the likelihood of dumping and injury to the domestic industry due to dumping of the subject goods from the subject country, the Authority has undertaken a monthly analysis of the volume of exports of the subject goods to India from the subject country. The Authority notes that the volume of exports from Korea RP during the period July 2010-June 2011 was 1579 MT. During the corresponding period in the previous year, i.e., from July 2009 to June 2010, the volume of exports from the subject country to India was 1595 Mt. Therefore, the Authority notes that there doesn't appear to be any significant increase in the volume of exports from the subject country post the POI, so as to cause injury to the domestic industry.
- vi. The Authority notes that the prices of Phenol in India continue to increase even after the POI. In order to examine the likelihood of injury to the domestic industry due to dumped imports in the post investigation period, the Authority has also undertaken a month wise

analysis of the cost of production, net sales realization and the profitability of the domestic industry during the period from June 2010-July 2011. The analysis reveals that during the said period, the domestic industry has consistently made profits on the sales of the subject goods. Further, the Net sales realization of the domestic industry was noted to be significantly higher than the NIP of the domestic industry for the corresponding months. Therefore, no evidence of price suppression and or depression has been noted during the Post POI period.

- vii. The Authority further analysed that assuming that if the anti dumping duty presently in force is removed because of the above mentioned reasons, leading to third country exports of the responding producer/exporters being diverted to India, what would be the impact of such diverted exports on the domestic industry. In this regard, the Authority notes that in the case of LG Chem, the landed value of such third country exports is more than the Non-injurious Price of the domestic industry. In the case of Kumho P&B Chemicals, the landed value of such third country exports is less than the Non-injurious Price of the domestic industry.
- viii. In the post POI period, the Designated Authority has also undertaken an analysis of the landed values of imports from the subject country vis-à-vis the NIP of the domestic industry. It is noted that as per the Korea Customs Website KITA, the landed values of imports from Korea RP from July 2010 to June 2011 are higher than the NIP. It was also noted that the landed values of imports were at a price significantly higher than the non-injurious price for the domestic industry. Therefore, the landed values in the post investigation period were noted to be unlikely to cause any injury to the domestic industry. In fact, the injury margin for the post POI was consistently negative.
- ix. Regarding the submission by KPB that their two transactions may be considered as representative for dumping margin determination as per the established practices and precedents of the Authority, the Authority has noted that in a Mid Term Review, likelihood of dumping and injury is important to be examined and the Authority has examined the impact of exports from KPB to India and third countries during POI and Post POI periods. The Authority also notes that the goods exported by KPB are like article to the goods manufactured by the Domestic Industry.
- x. It has been argued by the domestic industry that the subject country is selling the subject goods to third countries at a price lower than the export price to India and, therefore, in the event of revocation of the anti-dumping duties, there is likelihood of the subject country diverting their exports to India after the POI resulting in injury to the domestic industry. In this regard, the Authority has undertaken a month wise analysis of the landed values of exports to third countries from the subject country, vis-à-vis, the NIP of the domestic industry. It is noted that the average landed value of exports to third countries from Korea RP to third countries as per KITA as compared to the NIP of the domestic

industry was higher. This suggests that even assuming that some of the exports from the subject country are diverted to India, consequent to the withdrawal of the duty, they are unlikely to cause a material injury to the domestic industry.

CAUSAL LINK

60. Submissions made by the interested parties in respect of the issue of causal link have been examined. A detailed examination was made with regards to the issues pertaining to the injury to the domestic industry and causal link between the material injury to the domestic industry and dumped imports. Paragraph (v) of Annexure II of the Anti-dumping Rules reads as under:

“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.”

Comments of the Domestic Industry

61. Domestic Industry has submitted as under:

a) It has been submitted by the Domestic Industry that given high export orientation of the Korean producers and significant present and potential surpluses in the global market, it is obvious that withdrawal of anti dumping duty shall result in significant increase in imports from Korea at prices below (i) selling price, (ii) cost of production and (iii) non injurious price of the domestic industry. The domestic industry, therefore, would be faced with a situation of significant decline in profits to the extent of financial losses in the event of withdrawal of anti dumping duties.

b) The present investigation is required to be terminated without any modification in the quantum of anti dumping duty. In any case, no case for premature withdrawal of anti dumping duty is made out.

c) Given the fact that current import price from Korea is unreliable, the same should be rejected for determining causal link. The current export price from Korea RP to global market and weighted average price of imports from various third countries into India should be adopted

for causal link determination. These prices being significantly below the non injurious price, it follows that withdrawal of anti dumping duty shall lead to a situation where in the domestic industry shall be forced to set at a price below non injurious price and current selling price. Thus, premature withdrawal of duty is likely to lead to injury to the domestic industry once again.

62. The Authority has examined whether other factors listed under the Anti Dumping Rules that could have contributed to injury to the domestic industry. It was found as follows

Imports from third countries.

63. Imports of subject goods from other countries are substantial.

Contraction in demand

64. The Authority notes that the demand for the subject goods has increased during the injury period. Possible contraction in demand could not have caused injury to the domestic industry.

Changes in the pattern of consumption

65. The pattern of consumption with regard to the product under consideration has not undergone any change, nor there is any quantified allegation in this regard. The investigation so far has not shown existence of alternate competing products and possible injury being caused by such alternate products.

Trade Restrictive practices of and competition between foreign and domestic producers

66. The Authority notes that there is a single market for the subject goods where dumped imports from Korea RP compete directly with the subject goods supplied by the domestic industry. It is noted that the imported subject goods and domestically produced goods are like articles and are used for similar applications/end uses. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

Developments in Technology

67. There is no allegation of developments in technology, nor has the investigation so far shown that possible injury to the domestic industry could have been caused by developments in technology.

Export performance

68. The Domestic Industry does not have any export sales. However, the Authority has considered only domestic operations and domestic profitability.

Productivity of the Domestic Industry

69. There is no material change in productivity of the domestic industry. Productivity of the domestic industry in terms of labour output and daily output has shown a growth during the POI compared to the base year. It is also noted that productivity has shown a growth during the entire injury period along with growth in production and sales.

CONCLUSIONS

70. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above Findings and on the basis of the above analysis, the Authority concludes that:

- i. Though there are imports of the product under consideration at dumped prices from one of the sources from the subject country (Korea RP) during the period of investigation in this midterm review, there is no adverse impact on the domestic industry during the POI and the post POI period.
- ii. Imports of the subject goods from the subject country are not undercutting the prices of the domestic industry during the POI, and the adverse impact of the same on the volume, prices and profitability of the domestic industry is absent. Further, a month wise analysis of the cost of production, net sales realization and the profitability of the domestic industry during the POI and post POI period reveal that during the said periods, the domestic industry have consistently made profits on the sales of the subject goods. Further, the net sales realization of the domestic industry was noted to be significantly higher than the Non injurious price of the domestic industry for the corresponding months during the same periods. Therefore, no evidence of price suppression and or depression has been noted during the POI and post POI period.
- iii. With regard to determination of lasting nature of the price effect and its impact on the domestic industry during the POI and post POI for determination of likely hood of continuation or recurrence of injury, a month wise analysis of the landed values of exports to third countries from the subject country, vis-à-vis, the NIP of the domestic industry indicated that the landed value of exports of subject goods from subject country to third countries, was generally higher than the non injurious price determined for the domestic industry. This suggests that even assuming that some of the exports from the subject country are diverted to India, consequent to the withdrawal of the Anti Dumping duty, they are unlikely to cause material injury to the domestic industry.

Recommendations

71. Having concluded as above, the Authority is of the opinion that there is no need for the continued imposition of anti-dumping duty on Phenol originating in and exported from Korea RP and the same, thus, is required to be withdrawn.
72. An appeal against the order of the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Vijaylaxmi Joshi
The Designated Authority