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**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**

**Dated 9<sup>th</sup> February 2012**

**Final findings**

**Subject: -Mid-Term Review investigation concerning import of Phenol originating in or exported from Chinese Taipei and USA. –Final findings.**

**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 10<sup>th</sup> February, 2011, into alleged dumping of Phenol (hereinafter referred to as the subject goods) originating in or exported from Chinese Taipei and USA (hereinafter referred to as the subject countries). The original investigation was initiated on 11<sup>th</sup> January, 2007 against imports of Phenol originating in and exported from Chinese Taipei and USA, 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 19<sup>th</sup> September, 2007 on the basis of the Preliminary Findings of the Authority issue vide Notification dated 29<sup>th</sup> August, 2007. The Final Findings were notified by the Designated Authority vide Notification No 14/5/2006-DGAD dated 07<sup>th</sup> 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 03<sup>rd</sup> 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. FCFC, Chinese Taipei and importer

M/s Century Plyboards (I) Ltd substantiating the need for a Mid Term Review (MTR) of the anti dumping duty imposed on the subject goods originating in or exported from Chinese Taipei and USA and requested the Authority for withdrawal/revision of the anti dumping duty. The above mentioned exporter and importer 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 Chinese Taipei and USA 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 Chinese Taipei and USA, there is a need to review the anti dumping duty imposed by the Authority. It has further been argued that dumping from Chinese Taipei and USA 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 15/01/2011-DGAD dated 10.02.2011 in terms of the Rule 23 of the AD Rules, to review the need for continued imposition of anti dumping duty on the subject goods being imported from the subject countries.

#### **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. FCPC, Chinese Taipei and M/s **Century Plyboards (I) Ltd**, an importer of subject goods for review of the anti dumping duty in force on the imports of Phenol from Chinese Taipei and USA.
  - 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 Chinese Taipei and USA vide Notification No. 15/02/2011 dated 10.02.2011 under Rule 23 of the AD Rules. The scope of the present review covers all aspects of the original Notification.
  - iii) The Embassy of the Government of USA and Economic and Cultural Centre, Chinese Taipei in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6 (2), with a request to advise all the exporters/producers in their country to respond to the prescribed Questionnaire within the prescribed time.
  - iv) 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 countries in accordance with the Rule 6(4) of the AD Rules to elicit relevant information.

v) The following producers and exporters have filed response to exporters questionnaire.

- M/s Formosa Chemicals and Fiber Corporation (FCFC), Chinese Taipei- producer and exporter
- M/s Taiwan Prosperity Chemical Corporation (TPCC)- producer and exporter
- M/s Chang Chun Plastics Co. Ltd (CCP), Taiwan- producer and exporter
- M/s Kolmar Group AF, Switzerland (Exporter);
- M/s Mitsui and Co. (Asia Pacific, Singapore)- Exporter;
- M/s Mitsui and Co. PTE, Japan- Exporter

vi) Importer 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
- Haresh 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 Agarwal Chemicals.
- **Century Plyboards (I) Ltd.**

viii) Investigation was carried out for the period of investigation (POI) starting from 1<sup>st</sup> January, 2010 to 31<sup>st</sup> December, 2010. However, injury examination was conducted for the period starting from 2007-08, 2008-09, 2009-10 and the POI. For likely hood of injury and dumping, the post POI information from producers and exporters and also from domestic industry for Jan –June 2011 was also analysed.

ix) A 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 and also POI. The Transaction-wise data in respect of imports of subject goods under various customs classifications for the period of investigation and preceding three years has been provided by Directorate General of Commercial Intelligence & Statistics (DGCI&S). It is also noted that the domestic Industry has furnished data based on IBIS (Secondary Source) in respect of imports of subject goods from the subject country under various customs classifications. Further, the Domestic Industry also submitted details of imports sourced from DGCI&S. It is also noted that the applicants have submitted details of import statistics from subject countries as reported by Taiwan Customs on their website and also from US ITC. The Authority has crosschecked the imports data as reported by the Exporters and other sources to come to a fair conclusion.

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.

xii) The Authority held an oral hearing on 18<sup>th</sup> August, 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 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:

- Allied Resins & Chemicals Ltd.
- Green Ply Industries Ltd
- Exim-corp India Private Ltd
- ARCL Organics Ltd.
- M/s HOCL, the domestic industry.

- M/s Century Plyboard (I) Ltd
- M/s Eximcorp (I) Pvt Ltd
- M/s Mitsui & Co Ltd, Japan
- M/s Mitsui & Co (Asia Pacific), Singapore.

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

(xx) \*\*\*\* in this final findings represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

### **PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

5. The Product under Consideration, as in the original investigation and also in the present review application is Phenol. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act.

#### **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.

#### **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.

#### **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, Diphenyl 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.

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. On the basis of examination, it is noted that Phenol produced by the domestic industry and sold in the domestic market and those 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 petitioners **is treated as like** article to the subject goods imported from subject countries.

#### **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 Chinese Taipei, namely, M/s FCFC and Century Plywood, Response to the Initiation of Mid-term Review investigation has been received from one of the domestic producers in India namely M/s HOCL. Though, M/s SI group has supported M/s HOCL in opposing the present review and has submitted limited information with regard to production and capacity, no response in the form and manner of domestic industry proforma was submitted by them. M/s HOCL submitted the costing and injury information in the form and manner of application proforma for domestic industry. Further, as per available information, it represents

55% of the total domestic production in India. None of the interested parties have raised any issue with regard to the standing of the Domestic Industry. M/s HOCL therefore, is treated and considered by the Designated Authority as the domestic industry under Rule 2(b) of the AD Rules.

## **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 Chinese Taipei and USA. The Petitioner has provided no information to establish need for withdrawal. Submissions made by Petitioner 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:
- i. 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.
  - ii. 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.
  - iii. Export price of M/s FCFC, Chinese Taipei is much higher than the price in the home market.
  - iv. Imports are necessary to bridge the gap between demand and supply.

- v. 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., Chinese Taipei and USA, 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.
- vi. The Review should cover the entire interregnum period.
- vii. 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.
- viii. Imposition of antidumping duty violates the public interest.
- ix. Excessive confidentiality shall not be granted to the data presented by the domestic industry. In all determinations where the duty has been recommended on variable basis, the 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.
- x. Constructed normal value should not be from Cumene, which is an intermediate product, but should be from benzene and propylene.

**M/s Century PlyBoards India Ltd. Calcutta**

14. The following submissions were made:
- i. This is the mid-term review investigations. Therefore, methodology or basis of allocation and apportionment of cost of production and constructed normal value should not be changed for this investigation as from the one Hon'ble Authority had adopted in the original findings. The domestic industry has claimed constructed normal value in their submissions from Cumene stage. However, domestic industry had claimed in the petition of original case constructed normal value from Benzene and Propylene as a raw material and Authority has adopted this methodology. Therefore, it is submitted that the methodology or basis of allocation and apportionment should remain the same and not changed from that adopted during original investigation.
  - ii. Although price undercutting exists on paper, it could be only due to a high domestic sales realization of the domestic industry. Further, the petitioner submits that selling price of domestic industry was high not only from fair selling price but also as compared to international market. Therefore, the Authority should examine the change in the prices in the exporting countries and International market and also whether Domestic Industry is exploiting the situation by raising the prices above the international level by taking advantage of anti-dumping duty.

**M/s. Mitsui & Co, Ltd., Japan and M/s. Mitsui & Co (Asia Pacific) PTE Ltd Singapore”**

15. The following submissions were made:
- i. Although the Volume of Imports from US and Taiwan has increased however, the increase in the sales in not substantial and has not affected the sales of HOCL. Further, the price of the imports from Taiwan has increased by 18% and the price of the imports from US has increased by 14% over the Injury Period.
  - ii. The share of HOCL and SI Group in the total Demand in the country has not been affected by the imports. Hence, no injurious effect of the imports can be seen and market share of the Domestic Industry has remained unaffected.
  - iii. Despite Anti Dumping duty in place export volumes to India have increased to meet the demand supply gap. Export price during the poi has increased by more than 96% and the volumes have remained same. The increase in Export Price which has almost doubled is far more than increase in raw material prices.
  - iv. During the original investigation none of the Exporters from Taiwan and other countries participated and the Designated Authority assessed Dumping Margin based on best available information and the Dumping Margin was assessed as 21% and Anti Dumping Duty equal to 137 US\$ per MT was imposed. With the existing Normal Value, export prices from Taiwan and Prices as well as Non-injurious Price of the Domestic Industry the exporters are not dumping and also the Injury margin in respect of exports from Taipei is negative. There is no price suppression and no Price depression.
  - v. The Domestic Industry in its submissions has worked out the Dumping Margin based on constructed cost. The Domestic Industry has worked out 13% negative Dumping Margin for all exports from Taiwan. All participating exporters/producers from Taiwan have also claimed negative Dumping Margin.
  - vi. The Domestic Industry is consistently earning an ROCE ranging between 70% to 220% for the last five years. Per Mt profit as % of sales is as high as 43.28% during the period of investigation. Above parameters clearly show that there is no adverse impact of alleged dumping and consistent improved performance of the Domestic Industry is an indication of stable condition of the Domestic Industry. This fact also demonstrates that the Domestic Industry will not be adversely affected if the Anti Dumping Duty imposed on imports from Taiwan is removed or withdrawn.
  - vii. The increase in prices of Phenol in Domestic market is consistent and stable and continuing beyond the period of investigation of the MTR. Further increase in prices of Phenol by the Domestic Industry is far more than increase in raw materials and other costs.
  - viii. That the trends of increase in price both in India as well exports from Taiwan are not only consistent but stable also and will continue to exist once Anti Dumping Duty is removed. If the Anti Dumping Duty on Phenol from Taiwan is removed, prices from Taiwan will

further increase to the extent of existing Anti Dumping Duty which is neutralized in the present pricing system.

- ix. Demand of subject goods in India is much higher than the capacity of the Indian Domestic Industry. In such a situation the gap is bound to be filled with imports. When the Domestic Industry is making bumper profit and there is a gap between demand and supply, Anti Dumping Duty imposed has become counterproductive and results in undue burden on the end user.
- x. Aim of imposition of Anti Dumping Duty is to remove unfair trade practice. Exporters from Taiwan are not dumping and there is no injury to the Domestic Industry. In such a situation Anti Dumping Duty in respect of imports of Phenol from Taiwan should be removed immediately.

**Written submission Allied Resins & Chemicals Ltd., Green Ply Industries Ltd, Exim-corp India Private Ltd, ARCL Organics Ltd.**

16. The following submissions were made:

- i. The size of the Indian market is very small and there should not be any fear of third country exports being diverted to India in the event of withdrawal of anti-dumping duty.
- ii. The conditions prevailing at the time of the original investigation have altered significantly and there is no justification for continued imposition of duty.
- iii. Import prices from all the countries including USA and Taiwan have gone up considerably. The raw material prices have increased only by Rs.569 PMT and import prices have increased by a whopping Rs. 35,422 PMT. Therefore, difference between the landed value and the NIP would be far too lower or non-existent.
- iv. Further, the data would show that the import prices have been ruling at a far higher level for the past four years. Therefore, it is both obligatory and necessary for the DGAD to reassess the injury margin and based on it, it shall decide on the continuation or withdrawal of duty.
- v. Determination of the margin of dumping and the injury margin during the review period is relevant criterion in determining the likelihood of dumping causing injury to the domestic industry. There is no likelihood of dumping causing injury to the domestic injury as required under law.
- vi. The NIP should be calculated based on Annexure III to the Rules.

**Views of interested parties after disclosure statement**

Views of M/s Eximcorp, CenturyPly, Allied Resins & Chemicals Ltd., Green Ply Industries Ltd, Exim-corp India Private Ltd, ARCL Organics Ltd.and other importers, users and exporters after disclosure statement

17. These importers and users have requested the Authority to confirm the analysis of the Authority in determination of dumping margin, injury margin, and likely hood of injury margin. However, they have requested the Authority to examine the issue of confidentiality claimed by the domestic industry and give Authority's ruling on it. Some of them have requested the Authority to grant reference price rather than fixed duty in its determination should the Authority give a positive findings of likely hood of injury on the basis of examination. Some of the importers have requested to examine the imports of the countries attracting anti dumping duties and take off duties on those countries if subject goods are not being dumped from those countries and no injury to domestic industry are taking place on account of imports of subject goods from these countries. Some of them have requested the Authority to examine the issue of public interest as well.

18. Views of the domestic industry after disclosure statement

- i. Petitioner did not disclosure full factual information on exports to India at the initial stage.
- ii. Dumping margin in respect of subject goods from subject countries is more than de-minimus during the POI.
- iii. The injury margin is negative. The same is however due to unrealistically low non injurious price determined by the Designated Authority.
- iv. Imports are undercutting the domestic prices and margin of undercutting is found to be positive. Thus, in the event of withdrawal of anti dumping duty, the domestic industry would be forced to reduce the prices. Withdrawal of anti dumping duty would therefore have adverse price effect.
- v. Net Sales Realization of domestic industry is above non Injurious price determined. The same however is entirely immaterial.
- vi. The observation of no likelihood of recurrence of dumping and injury to the domestic industry is without any basis.
- vii. Domestic industry submits that the performance of the domestic industry has improved as a result of imposition of anti dumping duties. The improvement in performance was not, however, of lasting nature.

Examination by the Authority with regard to views of the interested parties after disclosure statement

19. The 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 appropriately dealt with in these findings. The authority has also examined the likelihood of injury to the domestic industry based on all the relevant parameters and notes that there is no likelihood of injury to the domestic industry. The authority further notes that the NIP for the domestic industry

has been determined based on the provisions of the Anti-Dumping rules and the consistent practice followed by the authority in this regard. 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.

20. With regard to the views made by importers, users and exporters, it is noted that imports of subject goods by countries attracting anti dumping duties are mentioned in the injury determination. As the investigations are initiated against the subject countries only, the examination of dumping and likely hood of injury has been examined only from imports from those countries. With regard to grant of confidentiality, it is noted that all the volume parameters of the domestic industry have been disclosed in the final findings while the price parameters have been kept confidential (while giving in the indexed form) in keeping with consistent practice of the Authority. The other submissions by the interested parties are appropriately dealt with in the findings.

### **Continuation of Dumping and determination of dumping margin.**

#### **Views of other importers, users and interested parties including M/s Century Plyboards (I) Ltd**

21. This is the mid-term review investigations. Therefore, methodology or basis of allocation and apportionment of cost of production and constructed normal value should not be changed for this investigation as from the one Hon'ble Authority had adopted in the original findings. The domestic industry has claimed constructed normal value in their submissions from Cumene stage. However, domestic industry had claimed in the petition of original case constructed normal value from Benzene and Propylene as a raw material and Authority has adopted this methodology. Therefore, it is submitted that the methodology or basis of allocation and apportionment should not remain the same and not changed from that adopted during original investigation.

22. The change in the prices in the exporting countries and international market should be considered for lasting nature and whether domestic industry is exploiting the situation by raising the prices above the International level by taking advantage of anti-dumping duty, should also be investigated by the Authority.

#### **Submission on behalf of exporters of subject goods from Japan and Singapore and produced by Taiwan**

23. The following submissions were made:

- i. The Exporter submitted that it has fully co-operated with the Hon'ble Designated Authority and has provided all necessary information as required.
- ii. The normal value calculations depicted by HOCL do not disclose any sources for calculations made to obtain the ex-factory prices. For instance, there is no source

provided for Salary and Wages, Administration Overheads, Selling and Distribution overheads, Interest Costs etc. Further, no summary or ranges of such figures have been provided.

- iii. That these normal values are constructed based on Cumene prices, which are irrelevant for Phenol cost construction by HOCL's own admission. Hence, the Normal Value should be constructed based on Benzene costs and then be admitted as "constructed normal value". The Exporter, therefore, requests the Hon'ble Designated Authority to verify the reliability of the normal value calculation.
- iv. The Export Price calculations mention adjustments which have been provided without any source. No source has been provided for adjustments like freight, commission, port expenses etc, whereby the reductions made to obtain ex-factory export price remain dubious.
- v. Even if it is noted that the dumping margin calculation establishes that there is no dumping from Taiwan, and minimal dumping from USA relying upon the USITC database (about 2%). Therefore, even the Domestic Industry does not dispute that presently, there is no case of dumped imports from the subject countries.

COMMENTS TO THE DISCLOSURE STATEMENT ON BEHALF OF M/s. MITSUI & CO. LIMITED FROM JAPAN AND M/S MITSUI & CO ASIA PACIFIC PTE, SINGAPORE

24. It has been submitted that M/s Mitsui Japan as well as M/s Mitsui Singapore have both cooperated with the Hon'ble Designated Authority. With regard to non grant of individual dumping margin for the chain involving both the exporters, it has been submitted that that the Dubai entity is unrelated to the Cooperating Exporters, and the fact is that the export chain in so far as the Cooperating Exporters is complete and verified. It has also been submitted that the transactions made through the Dubai entity is a small percentage of Mitsui Singapore's total exports to India in the period of investigation (ex-Taiwan). The Dubai entity is unrelated and independent and took a commercial call not to cooperate in this investigation. While the law permits that a non-cooperating exporter may be penalized, a co-operating exporter cannot be penalized. The fact is that is so far as Mitsui Singapore's exports to India are concerned, the chain has been completely verified and on this basis the export price can be calculated by the Hon'ble Designated Authority.

Examination by the Authority

25. The authority notes that though the complete chain of exports to India involving both the entities i.e M/s Mitsui & Co , Japan and M/s Mitsui & Co Asia Pacific PTE, Singapore for the subject goods sourced through Chinese Taipei ( M/s FCFC and M/s TPCC) are not been complete as some part of the shipments to India have been exported through Dubai entity ( M/s Petrochem Middle east FZE) who has not cooperated before the Authority and submitted their export price to India during investigations. Though sales to M/s petrochem, Dubai was identified during the

verification; its sale price to India for subject goods exported through Mitsui group of companies and sourced from Taiwan was not made available to the Authority. This was also elaborated in the verification report made available to the exporters. In the absence of complete chain of transactions of exports, the authority is unable to grant individual dumping margin to the chain involving both the entities i.e M/s Mitsui & Co , Japan and M/s Mitsui & Co Asia Pacific PTE, Singapore for the subject goods sourced through Chinese Taipei ( M/s FCFC and M/s TPCC).

### **Other Submission on behalf of importers and users**

26. The following submissions were made:

- i. Anti-dumping duty has to be withdrawn or reduced if the margin of dumping or injury has altered during a review investigation.
- ii. In a mid-term review investigation authority is to determine the likelihood of dumping causing injury to the domestic industry. In other words, designated authority has to determine whether in case the anti-dumping duty is removed on the subject product, the injury is likely to recur or continue in such circumstances.
- iii. Determination of the margin of dumping and the injury margin during the review period is relevant criterion in determining the likelihood of dumping causing injury to the domestic industry.
- iv. In *Forum of Acrylic Fibre Manufacturers Vs. Designated Authority*, 2006 (202) ELT 257, Hon'ble Tribunal upheld the findings of the Designated Authority in a mid-term review investigation to withdraw the anti-dumping duty after the authority determined that the landed value was much higher than the non injurious price.
- v. Thus, it is clear that to determine the issue of continuance of duty, present injury trends and the injury margin has to be determined. However, no information is available regarding the price undercutting or underselling from the non confidential version of the submission made by the domestic industry. Domestic industry is well aware of the consequence of such disclosure and thus has not revealed the vital information.

### **Views of domestic industry**

27. The following submissions were made on behalf of domestic industry:

- i. In the review cases, the duties are required to be continued even with negative margin of dumping, unless it is established that there is no threat of dumping and consequent injury in the event of revocation of the anti dumping duty.

- ii. The Designated Authority may consider an appropriate methodology or basis of allocation and apportionment of cost of production and apply the same for the construction of normal value.
- iii. Determination of dumping margin should be done on monthly based analysis, as the price of the raw material changes substantially on monthly basis making it difficult to show the actual fluctuations in the dumping margin.

### **Examination by the Authority**

28. The Authority has examined the contention of various interested parties and after examining the same, normal value and export price has been determined. It is further noted that normal value has been determined based on responses filed by cooperating producers and exporters from Taiwan after taking into account the domestic sales price of subject goods of these producers and their costs of production. Export price has been determined net of adjustments which have been verified by the Authority. As there is no cooperation from any of the producers and exporters from USA during the investigation, normal value has been constructed taking into account the international prices of raw materials and other costs as per the best information available and after adding 5% profit margin. It is noted that the Authority have analyzed the data culled out from transaction wise data as received from DGCIS and also from the data made available by the petitioner from UNCOM trade and USITC for POI as well as Post POI. It is recalled that the Authority sent questionnaire to the known exporters of subject goods from Chinese Taipei. It is noted that exports quantity of three cooperating producers and exporters match the information made available from Taipei Customs and hence the Qty and value of imports of subject goods from Chinese Taipei have been taken from cooperating producers and exporters from that country and Taiwanese Customs information. For post POI, as well, the Authority has taken into account information made available from Taiwan customs data. It is noted that DGCIS transaction data in the case of Taiwan shows lesser quantity for the POI and hence they have not been taken into account for POI as well as post POI period for the purpose of examination of likely hood.

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

- M/s Formosa Chemicals and Fiber Corporation., Chinese Taipei, (FCFC)
- M/s Taiwan Prosperity Chemical Corporation. Chinese Taipei, (TPCC)
- M/s Chang Chun Plastics Co., Ltd. Chinese Taipei, (CCP)
- Kolmar Group AG Switzerland.
- Mitsui & Co. Japan
- Mitsui &Co (Asia pacific), Singapore.

30. It is noted that M/s Formosa Chemicals and Fibre Corporation., Chinese Taipei, M/s Taiwan Prosperity Chemical Corporation., Chinese Taipei, M/s Chang Chun Platics Co., Ltd., Chinese Taipei, are producers and exporters of subject goods. It is also noted that M/s FCFC has exported the subjects directly as well as through Kolmar Group AG Switzerland . It is further noted that M/s TPCC has exported the subject goods directly as well as through Kolmar and Mitsui & Co. Japan which have exported the subject goods through Mitsui &Co (Asia pacific) to India. Both the traders have also filed Questionnaire Response and have requested that they may be granted individual treatment.

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

31. 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.

32. 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. In their responses, the respondents have provided transaction-wise details of sales made in their home markets. The information so provided has been relied upon to determine separate weighted average domestic selling price for the subject goods. For the determination of the ordinary course of the trade test, the costs of production of the product concerned have been accepted as verified during the on-the-spot verification. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. It was also seen whether the loss-making transactions account for over 20% of the sales or not. Wherever the profitable domestic sales transactions were found to be accounting for more than 80% of the total sales, the weighted average price of the domestic sales have been taken into consideration. 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.

### **M/s Formosa Chemicals and Fiber Corporation. Chinese Taipei**

33. The response filed by the company was perused, which has been filed month-wise information. It is seen from the questionnaires response that the company have given month-wise costing for the products. SGA expenses have been claimed on the basis of turnover. It is noted that the domestic sales meet the sufficiency test. The cost of production of the subject goods as

indicated in Appendix-8B of the response has been accepted as verified during the on-the-spot verification for the purposes of carrying out the ordinary course of trade test. Adjustments thereof have been allowed as noted and verified during the on-the spot verification. Based on such a determination, the Normal Value has been worked out on a monthly basis.

#### **M/s Taiwan Prosperity Chemical Corporation, Chinese Taipei**

34. The response filed by the company was perused, it is noted from the questionnaires response that the company has given month-wise costing. It is also noted that the Company has sold \*\*\*\* Mt of subject goods to CCP which has been exported to India by CCP. These sales transactions have been reported by TPCC as domestic sales in Appendix-1. It is also noted that the SGA expenses have been claimed and apportioned on the basis of turnover. It is noted that the domestic sales meet the sufficiency test. The cost of production of the subject goods as indicated in Appendix-8B of the response has been accepted as verified during the on-the-spot verification for the purposes of carrying out the ordinary course of trade test. Adjustments thereof have been allowed as noted and verified during the on-the spot verification. Based on such a determination, the Normal Value has been worked out on a monthly basis.

#### **M/s Chang Chun Platics Co., Ltd. Chinese Taipei,**

35. The response filed by the company was perused, which has been filed month-wise information. It is seen from the questionnaires response that the company have given month-wise costing for the products. SGA expenses have been claimed on the basis of turnover. It is noted that the domestic sales meet the sufficiency test. The cost of production of the subject goods as indicated in Appendix-8B of the response has been accepted as verified during the on-the-spot verification for the purposes of carrying out the ordinary course of trade test. Adjustments thereof have been allowed as noted and verified during the on-the spot verification. Based on such a determination, the Normal Value has been worked out on a monthly basis.

#### **Normal Value in respect of USA**

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

#### **EXPORT PRICE**

##### **General methodology for determination of export price for the responding exporters**

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

#### **M/s Formosa Chemicals and Fibre Corporation. Chinese Taipei**

38. The Applicant has furnished information in Appendix 2 relating to exports to India. FCFC has exported the subject goods directly as well through exporters/traders. Adjustments on account of ex factory expenses have been allowed as noted during the on-the-spot verification. It is noted that M/s FCFC has exported the subject goods directly to India and also through exporters

- Kolmar Group AG Switzerland.
- Mitsui & Co. Japan
- Mitsui &Co (Asia pacific), Singapore\

39. It is noted that M/s Kolmar group has submitted all the information regarding export prices to India on account of subject goods sourced from FCFC. The dumping margin for FCFC have been determined on account of exports of subject goods made directly by them to India and also through Kolmar as information pertaining to entire chain upto exports to India have been made to the Authority.

40. However, the similar information pertaining to entire chain up to exports to India have not been made available to the Authority on account of subject goods sourced from FCFC and TPCC and exported by M/s Mitsui & Co, Japan through M/s Mitsui &Co Asia Pacific, Singapore. It is noted during examination and subsequent verification that some of the subject goods sourced through FCFC and TPCC have been exported through another company in Dubai for exports to India for which no information was made available to the Authority. The copy of the report on verification of data for exports made through individual exports / manufacturers was made available to the respective interested parties. However, the comments on the verification report have been received from M/s Mitsui & Co. Japan and M/s Mitsui & Co. (Asia Pacific) Singapore. The authority has examined the comments of both the parties and it is noted that since the complete chain of exporters shipments from Taiwan through M/s Mitsui & Co. Japan and M/s Mitsui & Co. (Asia Pacific) Singapore and Dubai company to India are not available, it is proposed not to grant separate dumping margin for the chain involving Mitsui & Co. Japan and M/s Mitsui & Co. (Asia Pacific) Singapore. In view of the above, the Authority has not granted separate dumping margin to the chain comprising of exports made through M/s Mitsui & Co, Japan and M/s Mitsui & Co Asia Pacific, Singapore.

**M/s Taiwan Prosperity Chemical Corporation., (TPCC), Chinese Taipei**

41. TPCC has furnished information in Appendix 2 relating to exports to India. TPCC has exported the subject goods directly as well through Exporter/Trader as mentioned in the table below. Adjustments on account of account of ex factory expenses have been allowed as noted during the on-the-spot verification. The dumping margins have been worked out taking into account separate chain of exporters which are complete and in respect of exports made through exporters who have exported the subject goods to India and those who have made submitted the details relating to the export price to India.

**M/s Chang Chun Platics Co., Ltd. Chinese Taipei, (CCP)**

42. CCP has furnished information in Appendix 2 relating to exports to India. CCP has exported the subject goods produced by it directly to India. It is also noted that one consignment

of subject goods sourced from TPCC have been exported to India during the POI and all information relating to the complete chain was made available to the Authority. Adjustments on account of all expenses to reach to ex factory price have been allowed as noted during the on-the-spot verification.

**Kolmar Group AG Switzerland (Kolmar)**

43. Kolmar has exported the subject material sourced both from FCFC and TPCC. It is noted that subject goods sold to India by Kolmar are on CIF basis. Adjustments on account of ex factory expenses have been allowed as noted during the on-the-spot verification.

**Determination of Export Price in respect of Non-Co-operative Exporters/Producers from Chinese Taipei**

44. Since no other response has been received from any other producer/exporter of the subject goods; the Authority has determined the Export prices as per facts available in terms of Rule 6(8) of the Anti Dumping Rules. Data has been collated as per the information provided by the applicant, the co-operative exporters and by the Domestic Industry.

**Determination of Export Price in respect of Exporters/Producers from USA**

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

**A. DUMPING MARGIN**

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

Sl. No.	Country	Producer	Exporter	Dumping Margin US\$/MT	Dumping Margin %
1	Chinese Taipei	M/s Formosa Chemicals and Fibre Corporation.,Chinese Taipei.	M/s Formosa Chemicals and Fibre Corporation.,Chinese Taipei.	****	1.63
2		M/s Formosa Chemicals and Fibre Corporation.,Chinese Taipei.	M/s Kolmar Group AG Switzerland	****	2.07

3		Taiwan Prosperity Chemical Corporation., Chinese Taipei	Taiwan Prosperity Chemical Corporation., Chinese Taipei	****	8.51
4		Taiwan Prosperity Chemical Corporation. Chinese Taipei	Kolmar Group AG Switzerland	****	1.74
5		Taiwan Prosperity Chemical Corporation. Chinese Taipei	Chang Chun Plastics Coprporation Taiwan	****	2.05
6		Chang Chun Plastics Coprporation Chinese Taipei	Chang Chun Plastics Coprporation Chinese Taipei	****	4.93
7		All other producers and Exporters from Chinese Taipei.	All other producers and Exporters from Chinese Taipei.	****	8.51
8	USA	All producers and exporters from USA	All producers and exporters from USA	****	2.96

## **CONTINUATION OR RECURRENCE OF INJURY AND DETERMINATION OF CAUSAL LINK**

### **Continuation or recurrence of injury**

#### **Submissions by the Applicant Exporter and importer**

47. There is a significant increase in the sales price of the domestic industry when compared with the original period of investigation. It has also been submitted that the tomestic Industry is making bumper profits and is not adversely affected by imports from Chinese Taipei and USA. Further, the 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.

#### **Submissions by the domestic industry**

48. The following submissions were made:

- i. 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, (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.

- ii. Argued, 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. It is reiterated that this obligation of establishing “no likelihood of injury” is not on the domestic industry. It is on the petitioner before the Designated Authority. The burden to establish “no need for continuation” cannot be shifted to domestic industry for the simple reason that the authority is required to determine the “justification for withdrawal of duty”. The authority is not required to determine the “justification for continuation”. As stated before, “justification for continuation” is different from “justification for withdrawal”.
- iii. On non injurious price & injury margin, the domestic industry submits that comparison of non injurious price with net sales realisation is wholly irrelevant in a Mid Term Review.
- iv. 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.
- v. 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 kindly verify its books of accounts, which would show that original investments in Phenol plant are already fully depreciated.
- vi. There may be no or low imports of Cumene in this period, which is eventual raw material for Phenol. 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 and the port and then at the plant

- Working capital investment

49. 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.

- 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.

#### **Response from other interested parties (importers and users)**

50. The following responses were made:

- i. One of the most important parameters which needs to be investigated in a review is that whether the landed price of import are causing any price underselling. Any substantial change in terms of price underselling needs to be treated as a core parameter suggesting lasting nature of change in circumstances. In the present case there are evidences of a negative price underselling. In the event of landed price of imports are much higher than Non Injurious Price (NIP) there can't have any adverse effect on domestic industry from such imports.
- ii. The analysis of various economic parameters would show that there is no continued or likelihood of injury to the Domestic Industry. In fact, the DI has superb performance over the injury period.
- iii. Sales volume of the domestic industry, in the domestic market has significantly increased in POI as compared to the original investigation. Further, it is also noted that sales volume of the Domestic Industry, in the domestic market has maintained at above its plant capacity in POI. Thus, there is no effect on the sales volume of the domestic industry.
- iv. The estimated profit of domestic industry as about Rs.1,158 million in POI as against profit of Rs. 71 million during the original POI. This clearly establishes that domestic industry has earned huge profits at an approximate rate of Rs. 28,341 per MT during the current POI. Thus, performance of domestic industry is superb in POI as compared to original POI.
  - a. The return on investment earned by the domestic industry for subject goods improved significantly as compared to original POI. Similar is the situation of cash profit as well.

- b. That whereas both the cost of production and selling price of subject goods increased over the injury period, the increases in the selling price were far more than increase in the cost of production. Thus, it is apparent that the price suppression/depression effect on the prices of domestic industry is missing during the POI.
  - c. The landed price to India from USA is more than non-injurious price (estimated) of domestic industry and 3<sup>rd</sup> countries export price is also higher than non-injurious price of domestic industry. Thus, price underselling is negative as compared to landed price from USA as well as compared to 3<sup>rd</sup> countries exports price of USA. Therefore, there is no chance of recurrence of injury to domestic industry in case Authority discontinues anti-dumping duty from USA.
- v. It may be noted that the Selling price of HOCL has increased by 32% over the injury period and by 40% in the POI as compared to the earlier year. Hence, the imports from Taiwan and US are not affecting the selling price of HOCL.
  - vi. The imports of the subject goods from Taiwan and US have not had any adverse effect on the sales and prices of HOCL, therefore no volume effect or price effect as required has occurred which may be attributed to the imports from US and Taiwan. Therefore, the imports of the subject goods from US and Taiwan have not caused any injurious effect to the Domestic Industry.
  - vii. During the Period of Investigation the capacity utilisation is at 107%, which is also the highest during the injury period. The capacity utilisation of HOCL has not been adversely affected and does not show any signs of injury to the Domestic Industry.
  - viii. The profitability of HOCL has shown a phenomenal rise in the Period of Investigation. The Costs of the Domestic Industry has appreciated negligibly while the Selling price of the Domestic Industry has increased substantially. Whereas, the Profits of the Domestic Industry have increased exponentially.
  - ix. The Cost of Production per unit has increased marginally by 4% in the Period of Investigation, as compared to the earlier years. Whereas, the Selling Price of HOCL has increased by 32% in the injury period and by about 40% as compared to the earlier year. Hence, the Domestic Industry has been able to increase its Selling Prices and the marginal rise in costs has not had any injurious effect vis-a-vis the Selling Price.
  - x. It would be against the mandate of the Anti Dumping Agreement to examine threat on the basis of mere speculation and the Hon'ble Designated Authority is requested to examine whether a "clearly foreseen and imminent" threat exists for the Domestic Industry. Only if the answer is a positive affirmative should the duties be continued.

### **Examination by the Authority**

#### **Continuation of Injury**

51. 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.

52. 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.”*

53. 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 sheet of M/s HOCL, representing the Domestic Industry have been examined and verified by the Authority. 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.

54. During the present investigation, the interested parties have argued that there is significant change in the prices of raw materials and consequently the sale realization, profitability of the domestic industry. It has also been argued that the landed values of subject goods have varied on a month to month basis during the POI. Therefore, the interested parties

have desired for a month to month analysis of the cost of production, NIP, NSR and the landed values of the subject goods during the POI. Accordingly, all the interested parties were requested to make available the relevant data on a month to month basis. The designated authority has accordingly worked out, the NIP, NSR and the profitability of domestic industry on a month to month basis during the POI. The authority notes that the NIP of domestic industry has varied from Rs. \*\*\*\* per MT (Indexed 91.86) to Rs. \*\*\*\* per MT (Indexed 103.79). On the other hand the NSR of the domestic industry has ranged from Rs. \*\*\*\* (Indexed 96.50) to \*\*\*\*per MT (Indexed 152.17). The authority further notes that the NSR of the domestic industry was consistently higher than the NIP of the domestic industry. Therefore, the domestic industry has earned reasonable profits during the POI.

55. It has also been argued by some of the interested parties that the profitability of the domestic industry is significant primarily on account of depreciated values of the plant and machinery. Therefore, the arguments have been raised that the designated authority may consider determining the NIP for the domestic industry based on Gross value of assets. In this regard the authority notes that the returns on investments have been allowed by the authority based on the principles as laid down under the Anti-Dumping rules and in accordance with the consistent practice followed by the authority in all cases. As regards the arguments by some of the interested parties for adopting a particular methodology for determination of the constructed normal value for exports, the authority notes that as far as normal value of the subject goods is concerned, the authority addressed to all the interested parties to make available the relevant information. Therefore, in such cases wherein the interested parties have furnished the required information and co-operated with the authority, the authority has considered the normal value based on such information. In the absence of the required information, from the exporters, the authority has considered the normal value based on best available information.

### **Demand, Imports & Market Share of the Domestic Industry**

56. The petitioners in the present investigation submitted the import data based on secondary sources i.e. US ITC for imports of subject goods from USA, DGCIS, IBIS and also from Taiwanese Customs and apart from the exporters own data. The Designated 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 (Taiwan) have submitted detailing individual responses on the quantum of exports where along with the supporting documents. The exporters from the Chinese Taipei 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 Taiwan. However, in case of Chinese Taipei, since the volume of exports are noted to be lower in the DGCIS, compared to the admitted volume of exports from Chinese Taipei, the Authority has considered the exports based on the data as evidenced by Chinese Taipei 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	40858
Sale of SI Industries*	MT	29247	31451	31958	33754
Total Sales of Indian Domestic producers	MT	72970	72375	69629	74609
Trend	%	100	96.1	100	108
Subject country-Imports	MT	48921	27511	48408	63274
Trend	%	100	56.2	98.9	129
Other Countries-Imports subject to duty	MT	44113	60726	44370	31272
Trend	%	100	137.6	100.5	70.8
Other Countries not subject to duty	MT	7388	1911	9312	22039
Total Imports in India	MT	100422	90148	100090	116505
Trend	%	100	89.7	99.6	116.10
Total Demand in India	MT	173392	162523	169719	191194
Trend	%	100	93.7	97.8	110.3

### **Imports in relation to various parameters**

57. The Authority has analysed the trend of the subject imports in relation to production and consumption in India. It is noted that the volume of imports of the subject goods during the POI has gone up by around 29% during the POI over the base year. Further, the share of the subject countries in the total demand has also gone up from 48.7% in the year 2007-08 to 54.3% in the POI. Further, the share of Indian producers in the total demand has generally remained constant. However, the market share of the imports of subject goods in the total demand has been examined by the Authority in the light of limited production capacity available in the country,

and the price impact of the imports on the Domestic Industry. The details of imports from the subject countries along with the sales of the domestic industry are summarized below:

Particulars	Units	2007-08	2008-09	2009-10	POI
Imports from Chinese Taipei	MT	13555	2873	14778	20596
USA	MT	35366	24637	33630	42678
Imports from subject countries	MT	48921	27511	48404	63274
Imports from other countries subject to Anti-Dumping duty	MT	44113	60726	42370	31272
Imports from other countries not subject to ADD	MT	7388	1911	9312	22039
Total Imports	MT	100422	90148	100090	116585
Total Domestic sales	MT	72970	72375	69629	74609
Total Demand of Subject goods	MT	173392	162523	169719	191194
Imports from Chinese Taipei as % of demand	%	7.8	1.768	8.7	10.8
Imports from USA as % of demand	%	20.4	15.15	19.8	22.3
Imports from subject countries as % of demand	%	28.2	16.9	28.5	33.10
Share of Indian producers in demand	%	42.1	41.7	41.0	43.00

58. 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 has generally remained constant as compared during the injury period and the period of investigation. However, the share of imports for the subject countries have marginally increased. The volume of imports from the subject countries have also increased substantially during the POI.

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

59. It is noted from the table below that the production of the Domestic Industry has increased by 1% in the POI as compared to the base year. However, the capacity utilization during the POI was 107%.

Particulars	Units	2007-08	2008-09	2009-10	POI
Capacity	MT	40,000	40,000	40,000	40,000
Production	MT	41,908	42,641	36,751	42,894
<i>Trend</i>		100	102	88	107

### **Profitability**

60. The authority notes that the cost of production of the domestic industry has marginally increased during 2007-08 and 2008-09. On the other hand the sales realisation of the domestic industry has declined substantially. However, during the POI the increase in the sales realisation was significantly higher than the increase in the cost of production. As a result, while the profitability of the domestic industry declined in the years 2008-09 and 2009-10, there was an increase in the profitability of the domestic industry in the POI. Similar trends were noted in the profits before tax of the domestic industry during the injury period and the POI.

Particulars	Units	2007-08	2008-09	2009-10	POI
Cost of Production	Rs./MT	****	****	****	****
Trend	Index	100	101	102	106
Net Sales Realization	Rs./MT	****	****	****	****
Trend	Index	100	92	92	132
Profit/Loss	Rs./MT	****	****	****	****

Trend	Index	100	33	30	297
Profit before tax	Rs. Lacs	****	****	****	****
Trend	Index	100	23	22	227

### **Employment and Wages**

61. 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	POI
Number of employees	No	****	****	****	****
Trends	Indexed	100	94	94	100
Wages	Rs. Lacs	****	****	****	****
<i>Trend</i>	Indexed	100	102	105	139
Wage per employee	Rs. Lacs	****	****	****	****
<i>Trend</i>		100	108	111	139

### **Productivity**

62. No 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	POI
Productivity per day	MT	****	****	****	****
<i>Indexed</i>	<i>Trend</i>	100	102	88	102
Productivity per Employee	MT	****	****	****	****

<i>Indexed</i>	<i>Trend</i>	100	102	88	102
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### **Return on investments and cash flow**

63. 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. The return on capital employed of the domestic industry has shown divergent trends during the injury period and the POI. While the returns on capital employed declined in the first two years of the injury period, it has shown a substantial increase over the previous year as well as the base year this investigation. Similar trends have been noted in the cash profits and the profits per tonne on the subject goods.

Particulars	Units	2007-08	2008-09	2009-10	POI
Profit/Loss	Rs./MT	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	33	30	227
Profit before tax	Rs. Lacs	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	27	26	222
ROCE	%	****	****	****	****
<i>Indexed</i>	<i>Trend</i>	100	29	29	244
Cash Profit	Rs. Lacs	****	****	****	****
<i>Indexed</i>	<i>Trend</i>	100	23	24	228

### **Inventories**

64. It is noted from the table below that the inventory level of domestic industry has marginally increased in year 2009-10 in the POI

Particulars	Units	2007-08	2008-09	2009-10	POI
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Opening	MT	2,307	492	2,209	760
Closing	MT	492	2,209	1,289	2,796
Average	MT	1,399	1,351	1,749	1,778
Stocks as no. of months sales		0.38	0.39	0.56	0.52

## **Growth**

### **Ability to raise capital investments**

65. 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**

66. The dumping margin in respect of subject goods from subject countries are more than de minimus during the POI.

### **Price effect of imports**

67. 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 product concerned 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 Chinese Taipei and USA were sold in the Indian market at prices which were higher than the domestic industry's prices. It is, thus, seen that imports were undercutting the domestic prices and margin of undercutting is found to be positive.

Particulars	Unit	2007-08	2008-09	2009-10	POI
Landed Value from Chinese Taipei	Rs./MT	73380	55840	60750	83830
Landed Value from USA	Rs./MT	67670	67790	48228	80310
Average landed value from subject countries	Rs./MT	69272	66541	52098	81616
Net Sales Realization	Rs./MT	****	****	****	****
Price Undercutting	Rs./MT	****	****	****	****
Price Undercutting	%	-	3-6	(15-25)	8-12

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

Sl. No.	Country	Producer	Exporter	price undercutting	Price undercutting %
1	Chinese Taipei	M/s Formosa Chemicals and Fibre Corporation., Chinese Taipei.	M/s Formosa Chemicals and Fibre Corporation., Chinese Taipei.	****	9
2		M/s Formosa Chemicals and Fibre Corporation., Chinese Taipei.	M/s Kolmar Group AG Switzerland	****	12
3		Taiwan Prosperity Chemical Corporation., Chinese Taipei	Taiwan Prosperity Chemical Corporation., Chinese Taipei	****	4
4		Taiwan Prosperity Chemical Corporation. Chinese Taipei	Kolmar Group AG Switzerland	****	28

5		Taiwan Prosperity Chemical Corporation. Chinese Taipei	Chang Chun Plastics Corporation Taiwan	****	20
6		Chang Chun Plastics Corporation Chinese Taipei	Chang Chun Plastics Corporation Chinese Taipei	****	19
7	USA	All producers and exporters from USA	All producers and exporters from USA	****	18

69. 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 DI was not able to increase its selling price in line with exchange in the cost of production, but in the POI. The increase in selling price is significantly higher than the increase in the cost of production. A similar trend has been noted in the landed values of exporters. 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	132
Cost of Sales – Domestic	Rs/MT	****	****	****	****
Indexed		100	101	102	106
Landed Price	Rs/MT	69272	66541	52098	81616
Indexed		100	94	75	118

70. The Designated Authority determined the net sales realization of the domestic industry considering selling price, excluding taxes & duties, rebates, discounts and freight & transportation. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty and applicable cess. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the

extent of price underselling. The non-injurious price has been worked out for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI. It is noted that the landed value of imports per MT, in period of investigation, is higher than the non injurious price determined for the domestic industry during the period of investigation in respect of the subject countries. The underselling margin is found to be negative.

71. 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:

Sl. No.	Country	Producer	Exporter	IM US\$/MT	IM%
1	Chinese Taipei	M/s Formosa Chemicals and Fibre Corporation., Chinese Taipei.	M/s Formosa Chemicals and Fibre Corporation., Chinese Taipei.	*****	(25-30)
2		M/s Formosa Chemicals and Fibre Corporation., Chinese Taipei.	M/s Kolmar Group AG Switzerland	*****	(18-22)
3		Taiwan Prosperity Chemical Corporation., Chinese Taipei	Taiwan Prosperity Chemical Corporation., Chinese Taipei	*****	(22-27)
4		Taiwan Prosperity Chemical Corporation. Chinese Taipei	Kolmar Group AG Switzerland	*****	(24-28)
5		Taiwan Prosperity Chemical Corporation. Chinese Taipei	Chang Chun Plastics Corporation Taiwan	*****	(30-35)
6		Chang Chun Plastics Corporation Chinese Taipei	Chang Chun Plastics Corporation Chinese Taipei	*****	(30-35)
7		All other producers and Exporters from Chinese Taipei.	All other producers and Exporters from Chinese Taipei.	*****	(22-27)
8	USA	All producers and exporters from USA	All producers and exporters from USA	***** *****	(10-15)

9	Subject Countries	All producers and exporters	All producers and exporters	****  ****	(12-17)
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### **Likelihood of recurrence of injury in the event of its revocation**

72. The Authority has to determined 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.

73. 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**

74. The Domestic Industry has submitted as under:
- i. 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.
  - ii. 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.
  - iii. 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:
    - identification of the specific factors which would constitute sufficient “changed circumstances” to warrant a review;
    - 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.
    - 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.
    - Identification of the specific factors which would constitute sufficient changed circumstances to warrant a review;
  - iv. 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.
  - v. 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.
  - vi. 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.

75. Significant exports from Chinese Taipei and USA 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. It has been submitted that the likelihood test applies in mid-term review investigation as well.

76. Domestic industry submits that 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. In their submissions, the domestic industry has cited a number of cases/judgements from CESTAT substantiating their submissions that what is important in the review investigations is not the absence of injury but the evidences that absence of injury and injury margin determined by the Authority during the POI is of lasting nature and injury is not likely to recur absent the anti dumping duties.

#### **Views of the Applicant Exporter and other interested parties**

77. Applicant exporter (M/s FCPC, Taipei) have submitted as under:

- i. 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%.
- ii. Export price from Chinese Taipei and USA has also shown the same trends. During the month of Dec 2010, the FOB price from Chinese Taipei and USA 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**

78. Other interested parties have submitted as under:

- i. 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.

- ii. 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?
- iii. 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 that anti dumping duty should continue because they want to earn super profit in the shade of ADD and do not want to play fair competition. Therefore, they have requested for withdrawal of the ADD on Phenol.

### **Examination by the Authority**

79. The Authority has examined the contention of various interested parties. It may be recalled that the Authority had called for additional information in a Supplementary Questionnaire from the cooperating exporters for the period of investigation as well beyond the period of investigation w.r.t estimated production, domestic sales, imports into Chinese Taipei and USA and exports of the subject goods from Chinese Taipei and USA during two years 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. In this regard the authority notes as under:

- i. **Volume of Exports Post POI:** In order to examine, the likelihood of dumping and injury to the domestic industry due to dumping of subject goods from the subject countries, the authority has undertaken a monthly analysis of the volume of exports of subject goods to India from the subject countries. The authority notes that the volume of exports from Chinese Taipei and USA during the period January 2011-June 2011 was MT 13907 & MT 10694 respectively. Thus, the quantum of exports from the subject countries during the period January 2011-June 2011 was 24601 MT. During the corresponding period in the previous year i.e. from January 2010-June 2010, the volume of exports from the subject countries to India was MT 12073. However, the volume of exports in the second half of the POI was 43550 MT. Therefore, the authority notes that there doesn't appear to be any significant surge in the volume of exports from the subject countries post the POI, so as to cause injury to the domestic industry.
- ii. **Profitability of Domestic Industry:** 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 January 2011-June

2011. The analysis as above reveals that during the staid period the domestic industry have consistently made profits on the sales of the subject good. 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.

- iii. **Landed values of imports, Net Sales Realization (NSR) and NIP:** In the post POI period, the designated authority has also undertaken an analysis of the landed values of imports from the subject countries, vis-à-vis, NSR of the domestic industry. It is noted that the landed values of imports of Chinese Taipei were generally lower than the NSR for the domestic industry. However, in the months of February 2011 and June 2011 the landed values were marginally higher than the NSR. Similarly, in respect of USA the landed values of imports were noted to be lower than the NSR for the domestic industry, suggesting the existence of price undercutting. However, it was further noted that the landed values of imports were at a price significantly higher than the non-injurious selling price for the domestic industry for the corresponding period. Therefore, the landed values in the post investigation period were noted to be un-likely to cause any injury to the domestic industry. In fact, the injury margin for the post POI was consistently negative.
- iv. **Export prices of subject goods from Subject countries to third countries:** It has been argued by the domestic industry that the subject countries are selling the subject goods to third countries at a price lower than the export price to India. Therefore, in the event of revocation of the anti-dumping duties, there is likelihood of the subject countries diverting their exports to India 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 countries, vis-à-vis, NSR and the NIP of the domestic industry. It is noted that while the landed value of exports from third countries, as compared to the NSR of the domestic industry was lower. However, this was higher than the NIP of the domestic industry. This further suggest that even assuming that some of the exports from the subject countries 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**

80. 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.”*

### **Contraction in demand**

81. 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**

82. 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**

83. The Authority notes that there is a single market for the subject goods where dumped imports from Chinese Taipei and USA 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**

84. 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**

85. 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**

86. 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**

87. 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:

- i. Though there are continued imports of the product under consideration at dumped prices from the subject countries during the period of investigation in this midterm review, there doesn't appear to be any adverse impact on the domestic industry during the POI and the post POI period.
- ii. Though imports of subject goods from subject countries are undercutting the prices of the domestic industry during the POI, 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 reveals 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 countries, vis-à-vis, NSR and the NIP of the domestic industry indicated that the landed value of exports of subject goods from subject countries to third countries, was generally higher than the Non injurious price determined for the domestic industry. Further, the landed value of the exports from subject countries to third countries were noted to be at a price significantly lower than the net selling price of the domestic industry for the corresponding periods. This further suggests that even assuming that some of the exports from the subject countries are diverted to India, consequent to the withdrawal of the duty, they are unlikely to cause a material injury to the domestic industry.

**RECOMMENDATIONS**

88. Having concluded as above, the Authority is of the opinion that there is no need for the continued imposition of anti-dumping duties on Phenol originating in and exported from Chinese Taipei and USA and the same is required to be withdrawn.

89. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**(Vijaylaxmi Joshi)**  
**The Designated Authority**