

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

**F. No. 7/25/2019-DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Trade Remedies  
Jeevan Tara Building, 5, Parliament Street, New Delhi-110001**

Dated 22<sup>nd</sup> December, 2020

**NOTIFICATION**

**FINAL FINDINGS**

**Case No. SSR-13/2019**

**Subject: Sunset Review of Anti-Dumping Investigation concerning imports of ‘Phenol’ originating in or exported from South Africa.**

**A. Background**

1. Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as ‘the Act’) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as ‘the Rules’) thereof, the Designated Authority (hereinafter referred to as the “Authority”) received an application dated 13<sup>th</sup> November, 2019 from M/s. Deepak Phenolics Ltd., M/s. Hindustan Organics Chemicals Ltd. and M/s. SI Group India Pvt. Ltd. (hereinafter also referred to as the “Applicants”) requesting for the initiation of a Sunset Review (SSR) investigation of Anti-Dumping Duty (ADD) under the Act and the Rules on imports of ‘Phenol’, (hereinafter also referred to as “Subject Goods” or “Product Under Consideration” or “PUC”) originating in or exported from South Africa (hereinafter referred to as “Subject Country”).
2. The Authority had initiated the original investigation concerning imports of Phenol originating in or exported from European Union (EU), Singapore and South Africa vide Notification No.14/4/2002-DGAD dated 15<sup>th</sup> February, 2002. The Authority vide Notification No.14/4/2002-DGAD dated 24<sup>th</sup> June, 2002 notified the Preliminary Findings recommending provisional ADD. The Final Findings were issued by the Authority vide Notification No.14/4/2002-DGAD dated 13<sup>th</sup> February, 2003, recommending imposition of definitive duty on the imports of the subject goods, originating in or exported from EU, Singapore and South Africa. Definitive ADD were imposed by the Department of Revenue vide Notification No.47/2003-Customs dated 24<sup>th</sup> March, 2003.
3. A Mid-Term Review (MTR) investigation was conducted and the Final Findings were notified by the Authority vide Notification No.15/4/2006-DGAD dated 13<sup>th</sup> July, 2007 recommending continuation of definitive ADD, on all imports of subject goods

originating from EU, Singapore and South Africa with a change in the form of duty by imposing a fixed amount of duty. The Department of Revenue imposed the definitive ADD on the subject goods vide Notification No.98/2007-Customs dated 31<sup>st</sup> August, 2007.

4. The first SSR investigation was initiated on 10<sup>th</sup> August, 2007. The Final Findings were issued by the Authority vide Notification No.15/9/2007-DGAD dated 4<sup>th</sup> August, 2008 recommending continuation of the same ADD on the imports of subject goods from EU and Singapore and revised definitive ADD on imports of subject goods from South Africa. On the basis of the recommendations made by the Authority, definitive ADD were imposed by the Department of Revenue vide Notification No.114/2008-Customs dated 31<sup>st</sup> October, 2008.
5. The second MTR was initiated by the Authority vide Notification No. 15/16/2011-DGAD dated 8<sup>th</sup> December, 2011 in respect of imports of Phenol originating in or exported from EU, Singapore and South Africa. The Final Findings in the second MTR investigation were notified by the Authority vide Notification No.15/16/2011-DGAD dated 6<sup>th</sup> February, 2013, recommending continuation of ADD with respect to imports from South Africa and recommending withdrawal of duties on imports of subject goods from EU and Singapore. On the basis of recommendations made by the Authority the Department of Revenue continued the imposition of ADD on imports of subject goods from South Africa and withdrew ADD from EU and Singapore vide Notification No.10/2013-Customs (ADD) dated 3<sup>rd</sup> May, 2013.
6. In the second SSR investigation, the Authority thereafter recommended continuation of definitive ADD on the subject goods originating in or exported from the subject country vide Notification No.15/21/2013-DGAD dated 27<sup>th</sup> April, 2015 and the same was extended vide Notification No. 32/2015-Customs (ADD) dated 10<sup>th</sup> July, 2015 for a period of five years and further vide Notification No. 18/2020-Customs (ADD) dated 9<sup>th</sup> July, 2020, the current duties were extended up to 9<sup>th</sup> January, 2021.
7. In terms of Section 9A (5) of the Act, ADD imposed shall unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review, whether the expiry of ADD is likely to lead to continuation or recurrence of dumping and injury. Further, Rule 23 (1B) of the Rules provides as follows:  
*“any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.”*
8. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the DI, as to whether the expiry of ADD is likely to lead to continuation or recurrence of dumping and injury.
9. The Applicants jointly filed an application dated 13<sup>th</sup> November, 2019 requesting initiation of SSR of ADD imposed earlier and seeking continuation of ADD against imports of Phenol from South Africa. The request was based on the grounds that the

expiry of the measure was likely to result in continuation of dumping of the subject goods and consequent injury to the Domestic Industry.

10. In view of the duly substantiated application with prima facie evidence of likelihood of dumping and injury filed on behalf of the Domestic Industry and in accordance with Section 9A(5) of the Act, read with Rule 23 of the Rules, the Authority initiated the SSR investigation vide Notification no. 7/25/2019-DGTR dated 27<sup>th</sup> December, 2019 to review the need for continued imposition of ADD in respect of the subject goods, originating in or exported from the subject country and to examine whether the expiry of the said ADD is likely to lead to continuation or recurrence of dumping and injury to the Domestic Industry.
11. The scope of the present review covers all aspects of the Final Findings Notification No.15/21/2013-DGAD dated 27<sup>th</sup> April, 2015 which had recommended the imposition of ADD on imports of subject goods originating in or exported from the subject country.

**B. Procedure**

12. The procedure described herein below has been followed with regard to the investigation:
  - i. The Authority vide Notification No. 7/25/2019-DGTR dated 27<sup>th</sup> December, 2019 published a public notice in the Gazette of India, extraordinary, initiating anti-dumping investigation against imports of the subject goods from the subject country.
  - ii. A copy of the Notification dated 27<sup>th</sup> December, 2019 was forwarded by the Authority to all known exporters of the subject goods, the Government of the subject country through its Embassy in India, and other interested parties about the initiation of the subject investigation in accordance with Rule 6(2) of the Rules.
  - iii. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, and to the Government of the subject country, through its embassy, and to other interested parties who made a request in writing in accordance with Rule 6(3) of the Rules supra. A copy of the non-confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.
  - iv. The Embassy of South Africa, New Delhi, made legal submissions in response to the initiation notification.
  - v. The Authority forwarded a copy of the Notification dated 27<sup>th</sup> December, 2019 initiating anti-dumping investigation to the known producers / exporters in the subject country, and other interested parties and provided them an opportunity to file responses to questionnaires in the form and manner prescribed within time limit as prescribed in the initiation notification or extended time limit, and make their views known in writing in accordance with the Rule 6(4) of the Rules. Copies of the letter and the questionnaire sent to the exporters were also sent to the Embassy of the subject country along with a list of known exporters/ producers, with a request to advise the exporters/producers from the subject country to respond within the prescribed time.

- vi. The Authority, upon requests made by the interested parties, granted an extension of time to the interested parties to file their response as well as submissions. Vide communication dated 3<sup>rd</sup> February, 2020, the time was extended up to 22<sup>nd</sup> February, 2020.
- vii. The Authority forwarded a copy of the Notification to the following known producer/exporter:
  - a. M/s. Merisol RSA (PTY) Ltd, 2 Sturdee Ave, Rosebank, Sandton, 2196, South Africa.
- viii. In response to the initiation of the subject investigation, M/s. Sasol South Africa (PTY) Ltd., responded seeking time for filing questionnaire response and making submissions. However, no questionnaire response was filed by the exporter.
- ix. The Authority forwarded a copy of the Notification to the following known importers/users of subject Goods in India calling for necessary information, in accordance with Rule 6(4) of the Rules:
  - a. M/s. Acron Enterprises;
  - b. M/s. Bleach Marketing Pvt. Ltd.;
  - c. M/s. C.J. Shah and Company;
  - d. M/s. Centrum Metalics Pvt. Ltd.;
  - e. M/s. Farmson Pharmaceutical Gujarat Ltd.;
  - f. M/s. Haresh Kumar & Co.;
  - g. M/s. High Polymer Labs Ltd.;
  - h. M/s. India Glycols Ltd.;
  - i. M/s. Kailash Polymers;
  - j. M/s. Kantilal Manilal & Co. Pvt. Ltd.;
  - k. M/s. Karmen International (P) Ltd.;
  - l. M/s. Khetan Brothers;
  - m. M/s. Krishna Antioxidants Pvt. Ltd.;
  - n. M/s. Kundan Rice Mills Ltd.;
  - o. M/s. Meghdev Enterprises;
  - p. M/s. Naiknavare Chemicals Limited;
  - q. M/s. National Plywood Industries Ltd.;
  - r. M/s. NGP Industries Ltd.;
  - s. M/s. Paras Dyes & Chemicals;
  - t. M/s. PCL Oil & Industries;
  - u. M/s. Rainbow Colours & Chemicals;
  - v. M/s. Resins & Plastic Ltd.;
  - w. M/s. Satguru International;
  - x. M/s. Sonkamal Enterprises;
  - y. M/s. Shubham Dyes & Chemicals Limited;
  - z. M/s. Singh Plasticisers and Resins (I) Pvt.;
  - aa. M/s. Torrent Pharmaceuticals Limited;
  - bb. M/s. United Phosphorus Ltd.;
  - cc. M/s. Wonder Laminates Pvt. Ltd.;
- x. In response to the above, M/s. Agarwal Chemicals, an importer/user, filed a questionnaire response and made submissions.

- xi. The following parties have registered as interested parties/filed legal submissions in response to the initiation notification:
  - a. M/s. Cent Ply;
  - b. M/s. Eximcorp India Private Limited;
  - c. M/s. Atul Ltd.;
  - d. Federation of Indian Plywood and Panel Industry;
  - e. Indian Laminate Manufacturers Association.
- xii. The period of investigation (POI) for the purpose of the present investigation is 1<sup>st</sup> April to 30<sup>th</sup> September, 2019 (6 months) and the injury investigation period is from 1<sup>st</sup> April, 2016 to 31<sup>st</sup> March, 2017; 1<sup>st</sup> April, 2017 to 31<sup>st</sup> March, 2018; 1<sup>st</sup> April, 2018 to 31<sup>st</sup> March, 2019, and POI.
- xiii. Transaction-wise imports data for the POI and the preceding three years were procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems and Data Management (DGS). The Authority has, relied upon data of DGCI&S and DGS data for calculating the volume and value of imports of the subject goods in India.
- xiv. Further information was sought from the Applicants and other interested parties to the extent deemed necessary. Verification of the data provided by Domestic Industry was conducted to the extent considered necessary for the purpose of present investigation.
- xv. The Authority made available the non-confidential version of the submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xvi. The Authority has examined the information furnished by the Domestic Industry to the extent possible on the basis of guidelines laid down in Annexure III of the Rules to work out the cost of production and the non-injurious price (NIP) of the subject goods in India so as to ascertain if ADD lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xvii. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 18<sup>th</sup> May, 2020. Further, a second oral hearing was held on 14<sup>th</sup> August, 2020 in view of change in the Designated Authority, in pursuance of the decision of the Hon'ble Supreme Court in the matter of *Automotive Tyres Manufacturers' Association vs. Designated Authority*. The parties, who presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
- xviii. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this final finding.
- xix. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of this Final

Findings, to the extent possible and verified the data/documents submitted by the Domestic Industry to the extent considered relevant, practicable and necessary.

- xx. The information provided by interested parties on a confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xxi. Exporters, foreign producers and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation, have been treated as non-cooperating interested parties. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded the final finding on the basis of available facts.
- xxii. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 23<sup>rd</sup> November, 2020 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings.
- xxiii. \*\*\* in this final finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the AD Rules.
- xxiv. The average exchange rate of US\$1 = Rs.70.73/- prevailing during the POI has been adopted by the Authority.

## **C. Scope of Product Under Consideration (PUC) and Like Article**

### **C.1 Submissions by the Domestic Industry**

- 13. The Domestic Industry has made the following submissions with regard to the scope of the PUC and like article:
  - i. The product under consideration in the present petition is Phenol.
  - ii. The PUC was defined by the Authority in its Final Findings dated 27<sup>th</sup> April, 2015. Since the present investigation is a sunset review investigation, the PUC remains the same as defined in the previously conducted investigation. Further, no significant developments have taken place over the period. Therefore, the Applicants have referred to and relied upon the previous investigation with regard to the PUC.
  - iii. Further, the present Application is for SSR investigation for continued imposition of ADD. The issue of like article has been examined by the Authority in the original investigation as well. Therefore, the Applicants have submitted that product imported from subject country is like article to product produced by the Domestic Industry.

## **C.2 Submissions by other interested parties**

14. No submissions have been made by the exporters/other interested parties with regard to the PUC and like article.

## **C.3 Examination by the Authority**

15. The PUC in the original investigation, previous SSRs, as well as in the present SSR, is Phenol. In the previous investigation, the PUC was defined as under:

*“The product under consideration is Phenol originating in or exported from Singapore, South Africa and European Union. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms- bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc. This product is classified under Customs Tariff heading no. 2907.11 and 2707.60 as per Indian Trade Classification. The Customs and ITC HS classifications are, however, indicative only and in no way binding on the scope of the present investigation.”*

16. Rule 2(d) relating to the definition of “like article” specifies that “like article” means an article which is identical or alike in all respects to the article under investigation, or in the absence of such an article, another article having characteristics closely resembling those of the article under investigation.
17. From the above definition of the term “like article”, it is noted that the like article has to be identical or alike in all respects to the article under investigation. The scope of the term like article shall also include those articles having closely resembling characteristics to those under investigation in the absence of articles identical or alike in all respects.
18. On the basis of information on record, the Authority holds that there is no known difference in the subject goods produced by the Domestic Industry and those imported from the subject country. The two are comparable in terms of physical & technical characteristics, manufacturing process & technology, functions and uses, product specifications, distribution & marketing, and tariff classifications of the goods. The two are technically and commercially substitutable. The consumers also use the two interchangeably. In view of the same, the Authority holds that the product manufactured by the Applicant constitutes like article to the subject goods being imported into India from the subject country.
19. None of the importers, consumers, exporters, Domestic Industry and other interested parties have raised any objection with regard to the scope of the PUC and like article. In view of the above, information filed by various interested parties and information on record, the scope of the PUC in the present review investigation remains the same as that in the original investigation.

## **D. Domestic Industry and Standing**

### **D.1 Submissions by the Domestic Industry**

20. The following submissions have been made by the Domestic Industry with regard to standing and scope of the Domestic Industry:
- i. The production of subject goods of Applicants, namely, M/s. Deepak Phenolics Ltd., M/s. Hindustan Organics Chemicals Ltd. and M/s. SI Group India Pvt. Ltd., constitute 100% of the domestic production for the subject goods in India.
  - ii. The Applicants are neither related to any exporters in the subject country nor importers of the subject goods in India.
  - iii. Imports made by SI Group are under duty-free scheme and the quantity is insignificant in relation to production and demand in India.
  - iv. The Domestic Industry has alleged dumping during the POI from South Africa and, therefore, only imports from South Africa during the POI is relevant.

### **D.2 Submissions by other interested parties**

21. The other interested parties have made following submissions with regard to the standing and scope of the Domestic Industry:
- i. M/s. SI Group India Pvt. Ltd cannot be considered as Domestic Industry due to subject goods imported during the POI. The same can be as high as 50% of the imports from South Africa. Therefore, if imports are significant, then M/s. SI Group should be excluded.
  - ii. Three domestic producers provided answers with respect to subject country only and did not provide any answer for imports from other countries. Whereas as per the application proforma, the declaration of imports is required to be provided by the Domestic Industry, specifically for the POI and for the previous three years for all countries including the subject country without fail.
  - iii. M/s. Deepak Phenolics Ltd. is neither an established producer nor was it a part of the 'domestic industry' in the original investigation. M/s. Deepak Phenolics Ltd. falls within the category where injury is assessed with respect to causing 'material retardation to the establishment of an industry in India'. The Rules do not permit combining an 'established' Domestic Industry with a Domestic Industry, which is affected by 'material retardation' that limits its establishment.
  - iv. Since M/s. Deepak Phenolics Ltd. is not present in the entire injury period, the assessment is flawed and not uniform in nature. The performance is affected owing to scaling issues in newly commenced operations and start-up costs, which are also required to be adjusted.

### **D.3 Examination by the Authority**

22. Rule 2 (b) of the Rules defines Domestic Industry as under:  
*"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers".*
23. The present SSR application has been filed by M/s. SI Group India Pvt. Ltd, M/s. Hindustan Organics Chemical Limited and M/s. Deepak Phenolics Ltd. There are no other producers of the PUC in India and the applicants constitute 100% of the total domestic production in India.
24. The Applicants have stated that they are not related to exporters or importers of the subject goods. Further, there are no imports of alleged dumped article from South Africa by M/s. Hindustan Organics Chemical Limited and M/s. Deepak Phenolics Ltd of the product in India.
25. It is noted that the imports made by M/s. SI Group India Pvt. Ltd. during the POI are quite low in absolute volume (650 MT) and in relation to the company's production (3.5%), total imports (0.8%), total India production (3.9%) and demand (0.3%). Moreover, the imports were made under the duty-free scheme. The Authority, therefore, holds M/s. SI Group India Pvt. Ltd. to be an eligible Domestic Industry within the meaning of Rules 2(b) of the AD Rules.
26. As regards the contention of other interested parties that M/s. Deepak Phenolics Ltd. is not an established producer as it has been affected by material retardation, the Authority notes that M/s. Deepak Phenolics Ltd. had commenced its commercial production in November, 2018 and has already achieved 96% capacity utilisation and, therefore, established itself as a leading producer of subject goods in India. The Authority also holds that the scope of the Domestic Industry is required to be established with regard to (a) the investigation period, and (b) production of like article by eligible domestic producers during such period. The Authority, therefore, holds that M/s. Deepak Phenolics Ltd. is one of the constituents of Domestic Industry.
27. In view of the above, the Authority holds that the Applicants are an eligible Domestic Industry within the meaning of Rule 2(b) of the Rules and the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules supra.

### **E. Issues relating to Confidentiality**

#### **E.1 Submissions by the Domestic Industry**

28. The following submissions have been made by the Domestic Industry with regard to confidentiality:

- i. The Domestic Industry has provided all information with strict adherence to the Authority's Trade Notice No. 10/2018 dated 7<sup>th</sup> September, 2018. Company-wise details and details of imports made by the Applicants is a business proprietary information, which is not amenable to summarization.
- ii. The Authority's Trade Notice No. 7/2018 dated 15<sup>th</sup> March, 2018 mandates only hard copy of the DGCI&S data to be accessible to the interested parties only after providing declaration/undertaking to the Investigating Officer.
- iii. Evidence of ocean freight adjustment has been provided in the Application. As regards other adjustments, the same has been done as per the established practice of the Authority.
- iv. Information with regard to volume parameters has been provided in the non-confidential version with strict adherence to the Trade Notice 10/2018 dated 7<sup>th</sup> September, 2018, applicable for two producers, given that the Domestic Industry consisted of two producers during the injury period up to November, 2018.
- v. Purchase policy, sales policy, accounting policy, cost accounting policy, quality control procedure and tests are business proprietary information and not amenable to summarization.

## **E.2. Submissions by other interested parties**

29. The following submissions have been made by other interested parties in this regard:
- i. The soft copy excel file of sorted DGCI&S has not been provided by the Domestic Industry.
  - ii. Company-wise information and details of imports by M/s. SI Group India Pvt. Ltd. have also been claimed confidential by the DI.
  - iii. Annual Reports have not been provided by the Applicants. Only links to website have been shared.
  - iv. Volume figures and profitability in percentage have been claimed confidential by the Applicants.
  - v. Excessive confidentiality has been claimed in violation of Anti-Dumping Agreement and the Rules. Only summarized data has been provided for economic parameters such as capacity, production, capacity utilisation and sales. There is a stark difference from the previous investigations on the same product.
  - vi. Even the purchase policy, sales policy, accounting policy, cost accounting policy, quality control procedure and tests have been treated as confidential.

### **E.3 Examination by the Authority**

30. Various submissions made by the Applicant as well as other interested parties during the course of the investigation with regard to confidentiality, to the extent considered relevant by the Authority, have been examined.
31. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection as per Rule 6(7).
32. With regard to confidentiality of information, Rule 7 of the Rules provides as follows:

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

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

*(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”*
33. As regards the contentions with regard to confidentiality of information, it is noted that information provided by the interested parties on a confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidence submitted by various interested parties in the form of public file. The information related to imports, performance parameters and injury parameters of Domestic Industry has been made available in the public file. Business sensitive information has been kept confidential as per practice. The Authority notes that any information which is available in the public domain cannot be treated as confidential.
34. As regards disclosure of DGCI&S data, the Authority’s Trade Notice No. 7/2018 dated 15<sup>th</sup> March, 2018, prescribes the procedure for collecting DGCI&S data for Domestic Industry as well as for other interested parties. The interested parties, thus, had access to procure DGCI&S data as per the Trade Notice and defend their interests.

## **F. Miscellaneous Submissions**

### **F.1. Submissions by the Domestic Industry**

35. The following miscellaneous submissions have been made by the Domestic Industry:
- i. None of the exporters have responded to the questionnaire issued by the Authority. Exporters should, therefore, be considered non-cooperative as per Rule 6(8) and the Authority should proceed according to the best information available.
  - ii. None of the interested parties have filed any submissions within the time limit prescribed.
  - iii. M/s. Agrawal Chemicals is not an importer of the article being subject to investigation for being dumped in India, as they have not imported the PUC from South Africa.
  - iv. Federation of Indian Plywood and Panel Industry is non-cooperative as none of the users under the Association have filed any questionnaire responses. Moreover, the Association itself has not filed any submissions in the permissible time limits.
  - v. M/s. Cent Ply has not filed response to prescribed questionnaire issued by the Authority. The party has only filed submissions opposing the interested parties. The party should be considered as non-cooperative in the current investigation.
  - vi. M/s. Sasol Limited cannot be considered as an interested party as they have neither registered themselves with the Authority within the timelines prescribed nor filed any questionnaire response as mandated by the Trade Notice No. 11/2018 dated 10<sup>th</sup> September, 2018.
  - vii. The South African producer attempted to justify its non-cooperation under the garb of corona virus. The investigation was initiated in December, 2019, much before the corona virus problem started in South Africa. The Government of South Africa did not declare any lockdown until 25<sup>th</sup> March, 2020.
  - viii. Additional two weeks' time was granted to the interested parties to file the questionnaire response. The Domestic Industry fails to understand the difficulty of the responding exporter to file the questionnaire despite additional time provided.
  - ix. COVID-19 cannot be an excuse to allow dumping of the PUC.
  - x. The transactions, wherever bulk is mentioned, have been considered as bulk. In the import transactions where bulk is not mentioned, the same is segregated between bulk and packed as per the volumes. If the volume is more than 100 MT, the same is considered as bulk. During the POI only one transaction of 110 kg has been excluded due to abnormal price. The quantity is too small to impact price effect or tantamount to zeroing.

- xi. The period for which duty has been in force is no relevant consideration to determine whether ADD is required to be extended further. The only relevant consideration are the conditions specified under Section 9A(5).
- xii. The Authority has continued the duties for a period beyond 10 years for the reason that there was likelihood of continuation or recurrence of dumping and injury in the event of cessation of duties. Facts of the present case are totally opposite from the cases referred to by the interested parties.
- xiii. The POI considered by the Authority is appropriate due to the facts and circumstances of the case. Import prices of the PUC declined significantly during the POI with no commensurate decline in raw material prices.
- xiv. With the imposition of ADD by China, there has been a very drastic decline in the prices.

## **F.2 Submissions by other interested parties**

36. The following miscellaneous submissions have been made by other interested parties:
- i. The POI is generally of 12 months. No exceptional circumstances exist to consider a POI of 6 month. It is for the first time an SSR investigation is being carried out with a POI of 6 months. The Domestic Industry has cherry-picked and proposed a shorter 6-month POI in order to demonstrate injury as a result of reduced profitability in the first two quarters of 2019-20. Phenol is a derivative of crude-petro and natural gas and should not be handled with the same yardstick as applicable to other industrial products. Phenol sales are impacted by frequent fluctuations in costs and selling prices on a daily basis. Hence, for an accurate and objective assessment, a period of at least 12 months is essential and a 6-month POI is extremely inadequate. The Trade Notice No.02/2017 dated 12<sup>th</sup> December, 2017 has been violated, as it mandates POI to be at least 1 year.
  - ii. The imposition of ADD on Phenol in China is not an exceptional circumstance. South Africa was not a subject country, nor does it have high exports to China. Only provisional duties were imposed by China before September, 2019. Provisional duties have no meaning unless final duties are imposed. Imports were only affected for 4 months in the POI due to provisional duties. The same is not enough to justify exceptional circumstances for POI.
  - iii. The decline in import prices is only due to fluctuation in raw material pricing.
  - iv. The Authority has rightly held previously that ADD beyond 10 years be imposed in special cases only. No special circumstances exist for continuation of ADD.
  - v. Since the imports are under duty free schemes, ADD are not required to be extended in the present case.
  - vi. Medium, Small and Micro Enterprises (MSMEs) contribute over 50% to GDP and two-thirds of formal employment. They form the biggest user base of Phenol in India. MSMEs shall be gravely affected by such continuation of ADD. The levy of

ADD shall be counterproductive as it will hinder growth. COVID-19 has already ravaged all economies around the world and anti-dumping measures during a global recession is not called for.

- vii. Not providing an extension to file the Questionnaire Response is arbitrary and unjustified. It ought to have been granted as per the general practice of the Authority, especially since Sasol is the sole producer-exporter from South Africa.
- viii. Considering the COVID-19 outbreak which started in December, 2019, the abilities of parties to provide information was severely circumscribed.
- ix. The sorting of bulk and packed imports is arbitrary. When transaction cannot be sorted into bulk or packed, such transactions may not be used for price analysis. Further, the Domestic Industry has excluded the high price transactions from South Africa by stating that these are abnormal. The Authority is requested to consider these import transactions.
- x. The higher priced units have been excluded considering them abnormal. Such acts tantamount to zeroing, which is not permissible.
- xi. Sasol is clearly an ‘interested party’ for the purposes of the present investigation and has an inalienable statutory right to participate in the hearing and present its views to the Authority, regardless of whether it has filed a Questionnaire Response.

### **F.3 Examination by the Authority**

- 37. The Authority has noted all the arguments and counterarguments of the interested parties and has examined all aspects of the submissions made.
- 38. With regard to the submissions of the Domestic Industry regarding eligibility of the importer, M/s Agarwal Chemicals as an interested party, the Authority notes that Rule 2(c) provides as under:  
“(c) “Interested party” includes -
  - (i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;
  - (ii) the government of the exporting country; and
  - (iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India”
- 39. As submitted by M/s Agarwal Chemical in the Importer Questionnaire Response on record with the Authority, the importer has not made any imports of the PUC from the subject country. Therefore, the party is not an importer of the subject goods from the subject country. However, the party has imported the product from other countries. The Authority has considered submissions made by the company considering that the company has imported the product, though from different sources.
- 40. Regarding the selection of 6 months as POI, the Authority notes that the adoption of 6 months as POI is not inconsistent with the Rules and is a requirement of the case. The Domestic Industry substantiated the need for considering 6 months as the POI by providing reasons that the import prices have drastically declined during this period. The

Applicants submitted that the purpose of fixation of an investigation period is to fix a period to determine whether the product was exported at dumping price and whether the same caused injury. The Authority accepted the POI proposed by the applicant, being satisfied with the reasons given by the Domestic Industry. Further, since the present investigation is an SSR investigation, the Authority has also considered information for the post-POI period (October, 2019 to March, 2020).

41. The time limit for submission of Questionnaire Response was mentioned in the initiation Notification, and the Authority had granted an extension of two weeks. Keeping in view the pressing timelines, a further extension was not granted.
42. With regard to submissions on eligibility of M/s. Sasol South Africa (PTY) Ltd., Federation of Indian Plywood and Panel Industry and M/s. Cent Ply, the Authority has, on the basis of facts and circumstances of the case, and the practice of the Authority, acknowledged and accepted the submissions made by the interested parties.
43. The argument that imports made under advance licence should be excluded from the total imports was examined. An Advance licence/authorization holder has a choice either to import the inputs on a duty-free basis or procure the same from indigenous sources by using the mechanism of Advance Release Order. The purpose of injury analysis is to examine and capture the effect of dumped imports on the Domestic Industry. Therefore, it would not be reasonable to exclude the duty-free imports from the injury analysis. It would not be appropriate to consider that imports made under advance licences do not cause injury to the Domestic Industry.
44. The Authority notes that DGCI&S data indicates that all imports of the PUC from the subject country were in bulk form.
45. Only abnormally priced PUCs have not been included for the purpose of analysis.

#### **G. Normal Value, Export Price and Dumping Margin**

##### **G.1. Submissions by the Domestic Industry**

46. The submissions made by the Domestic Industry with regard to normal value, export price and dumping margin are as follows:
  - i. The Domestic Industry has claimed normal value in South Africa based on its export price to Belgium as it is the second largest export destination of South Africa.
  - ii. The export price is adjusted on account of ocean freight, marine insurance, commission, inland freight and port expenses to arrive at net export price.
  - iii. The dumping margin calculated is not only significant, but also substantial.
  - iv. There is a preferential sequence for determining normal value. The Supreme Court has also held so in the matter of Ministry of Commerce vs. M/s. Haldor Topsoe. If acceptable material is available with regard to the comparable price in the ordinary course of trade in the exporting country itself, then the normal value will have to be determined on that basis.

- v. The South African Revenue Service (SARS) is the revenue service (tax-collecting agency) of the South African government. The opposing interested party has neither established as to why SARS statistics is not appropriate nor provided any alternative method for normal value calculation. The opposing interested parties is questioning the data of the subject country Government without any basis.

## **G.2 Submissions by other interested parties**

- 47. The submissions made by other interested parties with regard to normal value, export price and dumping margin are as follows:
  - i. The construction of Normal Value on the basis of exports to Belgium is not permissible and is highly inflated. As per practice, due to non-cooperation of exporter, Domestic Industry's cost should be used for Normal Value. The reasoning that Belgium is the second largest market after India and, therefore, it is appropriate is random. One should examine how Belgium is appropriate for comparing with South Africa. Third country prices can be relied upon only in a situation when there are no sales of the like article in the ordinary course of trade or otherwise. There are no claims from the Domestic Industry that such a situation exists. An appropriate third country has to be determined on the same criterion as for the purpose of determining an appropriate market economy third country as per Annexure I Para 7.
  - ii. There is no merit in calculation of dumping margin based on Domestic Industry's costs as Sasol's process and raw materials are extremely different and dissimilar from that of the Domestic Industry.
  - iii. For lack of legally sustainable normal value, the application should be rejected. If normal value is unsustainable, dumping margin is also unsustainable.
  - iv. ITC calculations based on SARS statistics cannot be used as neither the point of sale, nor the terms thereof can be ascertained.
  - v. For Ocean freight, World Freight Rates LLC data has no sanctity and is not tenable as it has not been sourced from a public authority and thereby, cannot constitute judicially noticeable facts.
  - vi. No evidences have been provided for Normal value and Export Price adjustments. Claims regarding freight, marine insurance, Commission and Inland Transportation are abnormally high and are unsubstantiated by any evidence.
  - vii. Since the price of Phenol fluctuates on a daily basis and market-to-market, there cannot be a concept of normal value of NIP.

## **G.3 Examination by the Authority**

- 48. Under section 9A (1) (c), normal value in relation to an article means:
  - (i) *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

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

*(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

*the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

*(b) Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.*

49. The Authority sent questionnaires to the known exporter from the subject country advising them to provide information in the form and manner prescribed. However, the exporter from subject country has not cooperated in this investigation by filing their Questionnaires' responses.

### **Normal Value**

50. As none of the producers/exporters from subject country have responded and none of the interested parties have provided any evidences of domestic prices of like article in the subject country, the Authority has determined the normal value for all producers/exporters on the basis of best available information in accordance with Rule 6 (8) by adopting export price from South Africa to Belgium as normal value. Belgium is the second largest export destination for South Africa; first being India; and constitutes more than 5% of the exports to India. The normal value determined is mentioned in the dumping margin table.

### **Export Price**

51. As none of the producers/exporters have cooperated, the Authority has adopted the DGCI&S import data for determining the CIF price. The ex-factory export price has been determined after considering adjustments on account of ocean freight, marine insurance, commission, inland freight and port expenses as per facts available. Accordingly, the ex-factory export price is calculated and mentioned in the dumping table.

### **Determination of dumping margin for producers and exporters in the subject country**

52. Considering the normal value and export price as above, the dumping margins for all producers/exporters of the subject goods from the subject country is determined as below. It is seen that the dumping margin is significant.

## **Dumping Margin Table**

Normal Value	USD/MT	***
Export Price	USD/MT	***
Dumping Margin	USD/MT	***
	%	***
	Range	80-100

### **H. Assessment of Injury and Causal link**

#### **H.1 Submissions by the Domestic Industry**

53. The submissions of the Domestic Industry with regard to injury and causal link are reproduced below:
- i. The demand for the subject goods has increased over the injury period in India.
  - ii. The imports have continued despite imposition of ADD. In absolute terms, the imports remain significant and at almost similar levels through the injury period, with a minor decline in the POI.
  - iii. The imports have increased (by about 50%) in post-POI.
  - iv. The share of the subject country in total imports has almost doubled over the injury period. The imports in relation to consumption have increased during post-POI.
  - v. The imports are undercutting the prices of the Domestic Industry and are depressing the prices of Domestic Industry in the market.
  - vi. Imports are significantly underselling the prices of the Domestic Industry. The injury margin is positive during the POI and post-POI.
  - vii. The selling price of the Domestic Industry has declined significantly over the injury period and the same is not due to the decline in raw material prices. The selling price has declined more than the decline in cost, thus, resulting in price depression.
  - viii. The Domestic Industry is unable to earn profits due to the presence of dumped products in India. The losses have further increased during post-POI.
  - ix. The capacity of the Domestic Industry has increased during the POI since M/s. Deepak Phenolics Ltd. commenced its production during the period. Consequently, the sales and production of the Domestic Industry have also increased.
  - x. With new capacities in India, the market share of the Domestic Industry has increased over the injury period. The market share of the imports from subject country has also increased during post-POI.
  - xi. Inventories with the Domestic Industry have been significant throughout and have increased significantly in the POI.

- xii. The return on investment has severely declined in the POI and further declined during post-POI.
- xiii. The quarter-wise analysis shows further deterioration in the performance of the Domestic Industry. The losses have increased in each quarter of the POI and post-POI.
- xiv. The fact that the consumption in India is higher than the capacities with the Indian producers may justify imports per se. The same, however, does not justify dumping.
- xv. NIP is required to be calculated for the POI. The POI in the present case was not affected by COVID-19 and, therefore, the argument should not be accepted.
- xvi. It is an established position in law that all forms of injury can co-exist in a case. The Domestic Industry has referred to the case *TRINSEO EUROPE GmbH Versus Union of India*.
- xvii. It is very presumptuous of the opposing interested parties to assume that the situation of the Domestic Industry has not undergone a change since 2016-17. Even public statements of M/s. Hindustan Organics Chemicals Ltd. will show that it is no more a sick unit.

## **H.2 Submissions by other interested parties**

54. The other interested parties have submitted as under:
- i. Imports are inevitable as Domestic Industry is unable to meet the entire demand in India. The Domestic Industry can only meet 70% of Demand.
  - ii. Due to COVID-19, raw material prices have gone to an all-time low, NIP maybe calculated accordingly again with due adjustments.
  - iii. The volume parameters have significantly improved and imports of 15,000 MT from South Africa has no effect on them.
  - iv. There is no price undercutting and no price suppression or depression in the present investigation and, therefore, no price effect is present.
  - v. The interpretation of WTO jurisprudence by Domestic Industry is flawed and zeroing is not permissible. The Panel has only mentioned about the examination of the number of sales at undercutting prices and the extent of undercutting of such sales and has not laid down any other form of examination.
  - vi. The cost of sales declined over the injury period but the selling price increased and, therefore, imports have no price effect.
  - vii. All profitability parameters have significantly improved over the injury period and, therefore, there is no injury to the DI.

- viii. The mere existence of positive price undercutting, injury margin per se does not imply that the Domestic Industry has suffered injury.
- ix. The margin of price undercutting has significantly declined over the injury period indicating price undercutting of lesser frequency and margin.
- x. The domestic sales of the Domestic Industry have increased from 13% to 60% of the total demand in the POI. Therefore, imports from subject country have no effect.
- xi. Indicators such as capacity addition by the Domestic Industry, along with no price suppression, depression or undercutting, an increase in sales quantity, show no injury.
- xii. M/s. Hindustan Organics Chemicals Ltd.'s current position should be re-examined keeping in view the findings of the Authority. Similarly, DGTR held, M/s. SI Group India Pvt. Ltd. was operating at full capacity and their performance was found to be not affected by imports from various countries.
- xiii. There has been no change in circumstances since the previous findings have been provided. For M/s. Deepak Phenolics Ltd., the Applicants should have explained why their alleged injury shall not be attributed to factors other than dumped imports. Maybe the new entrant is making profits and old players are into losses due to with depreciated plant and machinery. Moreover, injury is determined for DI as of whole and not individual constituents of the Domestic Industry.
- xiv. The profit of Phenol Acetone plant of Deepak Phenolics does not show any injury to the Domestic Industry. Deepak Phenolics commissioned their Phenol plant in November, 2018 and has more than 72% of India's installed capacity. The other two manufacturers - Hindustan Organic Chemicals and SI group have very small capacity plants and such small plants without backward integration into Benzene and Propylene cannot be competitive. Thus, injury, if any, to the two small players cannot be attributed to imports. Deepak Phenolics has been able to operate the plant at close to 100% capacity in such a short period. The very healthy profitability and high capacity utilisation shows that there is no injury to Deepak Phenolics.
- xv. The Domestic Industry mentioned that the demand in the country is more than the installed capacity by 88,000 MT per year. They estimate that 1,00,000 MT of Phenol demand in India is for manufacture of products, which are exported and, thus, should be excluded from the demand-supply gap as these imports can be made under advance licence where no duty will be applied. What is the source of information showing 1,00,000 MT of Phenol used for manufacture of export products? It is in the interest of the nation that we use local raw materials for both local and export demand of the finished goods to the maximum extent possible and there is no merit in reducing the local demand by 1,00,000 MT as argued by the Domestic Industry. Thus, there is a clear gap between Indian demand and supply of Phenol.
- xvi. The Authority cannot disregard its own trade notice and no sympathetic or special concession can be accorded to any party.
- xvii. Price underselling cannot be considered as a factor for the purpose of assessing whether the Domestic Industry is suffering from material injury and the same has to

be considered only for the purposes of quantifying the amount of ADD to be levied. The price underselling is an irrelevant factor as far as determining material injury is concerned.

- xviii. It is not appropriate to look at the decline in import prices on a standalone basis. It should be examined in the light of decline in costs.
- xix. Trade remedial measures on Phenol have continued since 1999. If ADD has failed to arrest the injury, clearly there are factors other than alleged dumping contributing to injury.
- xx. If the injuries are arising from or are attributable to global recession affecting prices, it is also a factor other than dumping.
- xxi. There is a co-product generated during the production of Phenol for which the market size in India is insufficient. The Applicants are not able to dispose of the co-product at remunerative prices. The inability to dispose of the co-product is a critical factor causing injury to the applicants. This should also be examined in detail before any decision is taken by the Authority.

### **H.3 Examination by the Authority**

- 55. The Authority has taken note of the arguments and counter-arguments of all the interested parties with regard to injury to the Domestic Industry. The injury analysis so made by the Authority hereunder addresses the various submissions made by the interested parties.
- 56. Rule 11 of the Rules read with its Annexure – II thereto provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, “.... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles*”.
- 57. As regards the consequent impact of dumped imports on the Domestic Industry, Para (iv) of Annexure II of the Rules states as under-  
*“(iv) 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.”*
- 58. The Rules provide for an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to 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 the price effect of the dumped imports, the Authority is required to examine whether

there has been significant price undercutting by the dumped imports as compared to the 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 increases, which would have otherwise occurred to a significant degree. For the purpose of current injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods on the Domestic Industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

59. Rule 23 of the Rules provides that the provisions of Rule 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall apply mutatis mutandis in case of a review. In case the performance of the Domestic Industry shows that it has not suffered injury during the current injury period, the Authority shall determine whether cessation of the present duty is likely to lead to recurrence of injury to the Domestic Industry.
60. While considering the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the Domestic Industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure-II of the Rules. The Authority has taken note of various submissions of the Domestic Industry and the exporters / importers / traders / users on injury to the Domestic Industry and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties.
61. With reference to the argument of demand-supply gap, the Authority considers that possible demand-supply gap may not be a reason for depriving a Domestic Industry from seeking redressal against dumped imports causing injury.
62. As regards the argument that NIP should be determined on the basis of current raw material prices which are very low due to COVID-19 situation, the Authority notes that it is consistent practice of the Authority to determine NIP for the POI, and in the instant case also NIP has been determined accordingly.
63. With reference to the argument of low volume of imports from South Africa, it is noted that the volume of imports from the subject country has increased in POI.
64. As regards the argument of long period of duty, the Authority notes that the law clearly envisages that the ADD can be extended further from time to time, if it is found that dumping and consequent injury to the Domestic Industry is likely to recur in the event of cessation of ADD. The Authority recommends anti-dumping duty only after following the requirements prescribed under the laws.

65. As regards the argument that price underselling is not a parameter for injury analysis, it is noted that the law does not provide for an exhaustive list of parameters which can be examined for injury analysis. Further, price underselling is nothing but injury margin for the country as a whole and it is a consistent practice of the Authority to examine the same.
66. As regards the argument that M/s. Deepak Phenolics Ltd. is earning huge profits in Acetone and Phenol business, the Authority notes that injury to the Domestic Industry is required to be analysed for the product concerned and not for the sector as a whole. The injury to the Domestic Industry has been analysed for Phenol based on available data/information.
67. Further, it may not be necessary that all parameters of injury show deterioration. The Authority considers all injury parameters and, thereafter, concludes whether the Domestic Industry has suffered injury or not. The Authority has examined the injury parameters taking into account the facts and submissions made by the Domestic Industry as under:

#### **I. ASSESSMENT OF DEMAND**

68. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of the Domestic Industry and other Indian producers have been added to the total imports into India and the same have been summarized below.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Domestic Industry's Sales	MT	42,604	53,129	1,31,185	1,22,462	2,44,924
Trend	Indexed	100	125	308	287	575
Imports from South Africa	MT	15,534	17,638	18,314	9,679	19,359
Trend	Indexed	100	114	118	62	125
Imports attracting ADD	MT	83,101	87,637	38,085	11,200	22,400
Trend	Indexed	100	105	46	13	27
Imports from Other Countries	MT	1,83,239	1,82,812	1,72,570	55,901	1,11,801
Trend	Indexed	100	100	94	31	61
Total Demand	MT	3,24,477	3,41,215	3,60,154	1,99,242	3,98,484
Trend	Indexed	100	105	111	61	123

69. It is noted that the demand for the PUC has increased consistently over the injury period, and in the POI.

#### **VOLUME EFFECTS OF DUMPED IMPORTS**

##### **i. Import volumes and market share of imports**

70. With regard to the volume of dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute

terms or relative to production or consumption in India. In the present case, however, ADD has been in force. For the purpose of injury analysis, the Authority has relied on the transaction-wise import data procured from DGCI&S. The volume of imports of the subject goods from the subject country and the share of the dumped imports during the injury investigation period have been analyzed below.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
South Africa	MT	15,534	17,638	18,314	9,679	19,359
Trend	Indexed	100	114	118	62	125
Countries Attracting ADD	MT	83,101	87,637	38,085	11,200	22,400
Trend	Indexed	100	105	46	13	27
EU	MT	4,213	15,825	4,410	3,076	6,152
Trend	Indexed	100	376	105	73	146
Korea	MT	54,768	53,557	25,802	2,840	5,680
Trend	Indexed	100	98	47	5	10
Singapore	MT	24,120	18,254	7,873	5,284	10,568
Trend	Indexed	100	76	33	22	44
Others	MT	1,83,239	1,82,812	1,72,570	55,901	1,11,801
Trend	Indexed	100	100	94	31	61
Grand Total	MT	2,81,874	2,88,087	2,28,970	76,780	1,53,560
<b>Subject Imports in relation to</b>						
Total imports	%	6%	6%	8%	13%	13%
Trend	Indexed	100	111	145	229	229
Indian Production	MT	36%	33%	13%	8%	8%
Trend	Indexed	100	92	37	21	21
Indian Demand	%	5%	5%	5%	5%	5%
Trend	Indexed	100	108	106	101	101

71. It is seen that:

- i. Imports from the subject country has increased throughout the injury period, including in the POI.
- ii. The share of imports from the subject country in total imports has increased in the POI, as compared to the preceding years.
- iii. Imports from the subject country in relation to Indian production have declined over the injury period with new capacities established in India. Imports from the subject country in relation to demand has remained the same during the investigation period.

### **PRICE EFFECT OF DUMPED IMPORTS**

72. In terms of Annexure II (ii) of the Rules, the Authority is required to consider the effect of the dumped imports on domestic prices in terms of price undercutting, price underselling, price suppression and price depression, if any. The impact on the prices of the Domestic Industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price

suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization and NIP of the Domestic Industry have been compared with the landed cost of imports from the subject country.

**i. Price undercutting**

73. In order to determine whether the imports are undercutting the prices, the Authority has undertaken comparison between the landed price of the product and the average selling price of the Domestic Industry net of all rebates and taxes. The landed price of imports, domestic prices and margin of undercutting are shown as per the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Net Sales Realisation	Rs/MT	***	***	***	***	***
Trend	Indexed	100	111	122	94	94
Landed Price	Rs/MT	55,588	63,645	88,795	75,131	75,131
Trend	Indexed	100	114	160	135	135
Price undercutting	Rs/MT	***	***	***	***	***
Trend	Indexed	***	***	***	***	***
Price undercutting	%	***	***	***	***	***
Price undercutting	Range	40-60	40-60	0-20	0-20	0-20

74. It is seen that landed price of imports is below the net sales realization of the Domestic Industry, showing positive price undercutting.

**ii. Price suppression or depression**

75. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority has examined the changes in the landed price of imports, and costs & prices of the Domestic Industry over the injury period, when ADD was in force.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Cost of sales	Rs./MT	***	***	***	***	***
Trend	Indexed	100	115	117	101	101
Selling price	Rs./MT	***	***	***	***	***
Trend	Indexed	100	111	122	94	94
Landed price	Rs./MT	55,588	63,645	88,795	75,131	75,131
Trend	Indexed	100	114	160	135	135

76. It is seen that whereas the selling price of the Domestic Industry and landed price of imports increased till 2018-19, the same declined thereafter. The cost of sales increased till 2018-19 and then declined. It is also noted while the landed price of the imports was below the cost of sales throughout the injury period, except in 2018-19.

77. It is noted from above that imports from the subject country have depressed the prices of the Domestic Industry. The Domestic Industry has also suffered price suppression on account of imports of subject goods from the subject country.

**iii. Price underselling**

78. The price underselling has been evaluated by comparing the NIP with the landed price of the subject imports.

Particulars	Unit	South Africa
Landed Value	Rs./MT	75,131
Non-Injurious Price	Rs./MT	***
Price underselling	Rs./MT	***
Price underselling	%	***
Price underselling	Range	0-10

79. From a comparison of the landed price with the NIP, it is noted that the price underselling is positive.

**Impact on Economic Parameters relating to Domestic Industry**

80. Annexure – II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. The Rules provide that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual 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. Various injury parameters relating to the Domestic Industry are discussed herein below.

**i. Production, capacity, capacity utilization and sales volumes**

81. The performance of the Domestic Industry with regard to production, domestic sales, capacity and capacity utilization is as follows.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Capacity Per annum	MT	76,750	76,750	1,600,83	1,38,375	2,76,750
Trend	Indexed	100	100	209	361	361
Production	MT	43,524	53,490	1,38,431	1,26,634	2,53,268
Trend	Indexed	100	123	318	582	582
Capacity Utilization	%	57	70	86	92	92
Trend	Indexed	100	123	152	161	161
Domestic Sales	MT	42,604	53,129	1,31,185	1,22,462	2,44,924

Trend	Indexed	100	125	308	575	575
-------	---------	-----	-----	-----	-----	-----

All trends are on an annualised basis.

82. The Authority notes the following:

- i. The capacity with the Domestic Industry increased during the injury period with the commencement of commercial production by M/s. Deepak Phenolics Ltd. in 2018-19.
- ii. The production and sales have increased over the injury period. Resultantly, the capacity utilization of the Domestic Industry improved over the injury period.

**ii. Market share in demand**

83. The market share of alleged dumped imports and the Domestic Industry have been examined as below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Domestic Industry	%	13.1	15.6	36.4	61.5	61.5
Trend	Indexed	100	119	277	468	468
Subject Country	%	4.8	5.2	5.1	4.9	4.9
Trend	Indexed	100	108	106	101	101
Countries attracting ADD	%	25.6	25.7	10.6	5.6	5.6
Trend	Indexed	100	100	41	22	22
Other countries	%	56.5	53.6	47.9	28.1	28.1
Trend	Indexed	100	95	85	50	50

84. It is seen that the market share of the Domestic Industry increased over the injury period, with the addition in capacity. Further, the share of imports from the subject country in demand has remained almost same over the injury period.

**iii. Inventories**

85. The data relating to inventory of the subject goods are shown in the following table.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Average Inventory	MT	***	***	***	***	***
Trend	Indexed	100	110	301	591	591
Inventory as No. of days of Production	Days	***	***	***	***	***
Trend	Indexed	100	89	95	102	102
Inventory as No. of days of Sales	Days	***	***	***	***	***
Trend	Indexed	100	88	98	102	102

All trends are on an annualised basis.

86. It is seen that there is a significant increase in the level of inventories in 2018-19 and in the POI due to the increase in production and sales.

#### **Profit or Loss, Cash Profits and Return on Investment**

87. The performance of the Domestic Industry with regard to profit, return on investment and cash flow is as follows.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Cost of sales	₹/MT	***	***	***	***	***
Trend	Indexed	100	115	117	101	101
Selling price	₹/MT	***	***	***	***	***
Trend	Indexed	100	111	122	94	94
Profit per unit	₹/MT	***	***	***	***	***
Trend	Indexed	100	71	163	15	15
Total Profit/(Loss)	₹ Lacs	***	***	***	***	***
Trend	Indexed	100	90	647	118	118
Cash Profit	₹ Lacs	***	***	***	***	***
Trend	Indexed	100	88	668	315	315
PBIT	₹ Lacs	***	***	***	***	***
Trend	Indexed	100	97	376	242	242
Return on Capital Employed	%	***	***	***	***	***
Trend	Indexed	100	80	52	18	18

All trends are on an annualised basis.

88. It is noted that the profit per unit declined from the base year till 2017-18, thereafter increased in 2018-19 and then declined significantly in the POI. The Return on Investment declined significantly in the POI.

#### **iv. Employment, wages and productivity**

89. The details of employment and wages are given below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
No. of Employees	Nos.	***	***	***	***	***
Trend	Indexed	100	97	197	197	197
Salaries & Wages	₹ Lacs	***	***	***	***	***
Trend	Indexed	100	115	171	120	240
Productivity per day	MT/Day	***	***	***	***	***
Trend	Indexed	100	123	318	582	582

All trends are on an annualised basis.

90. It is seen that performance of the Domestic Industry has improved in respect of employment, wages and productivity in the POI.

**v. Growth**

91. The summarized position regarding growth is as under -

<b>Particulars</b>	<b>Unit</b>	<b>2017-18</b>	<b>2018-19</b>	<b>POI</b>
Production	Y/Y	23	159	83
Domestic Sales	Y/Y	25	147	87
Capacity Utilisation	Y/Y	23	24	(8)
Average Inventory	Y/Y	10	174	96
Market share of Domestic Industry	Y/Y	19	134	69
Profit/Loss	Y/Y	(10)	615	(82)
Cash Profit	Y/Y	(12)	659	(53)
PBIT	Y/Y	(3)	289	(36)
Return on Capital Employed	Y/Y	(20)	(35)	(66)

92. It is noted that while volume parameters of the Domestic Industry have shown a growth over the period. As noted above, the volume parameter has witnessed a positive growth due to the addition in capacities by the Domestic Industry.

**vi. Margin of dumping**

93. It is found that the margin of dumping is positive. There is continued dumping of subject goods from the subject country.

**vii. Factors affecting prices**

94. It is noted that the landed value of the subject goods from subject country is not only below its net selling price but also below the NIP of the Domestic Industry. Further, the landed prices of subject imports have depressed the prices of the Domestic Industry leading to a significant decline in profitability during the POI. The imports of subject goods from third countries are either attracting ADD or at de-minimis levels or are at higher prices. Dumped imports are impacting the prices of the product in the market.

**viii. Ability to raise capital investments**

95. Significant investment was recently made in the PUC. The Domestic Industry is suffering a significant decline in profitability during the POI. With the competition being faced by the Domestic Industry because of the dumped imports, the operations of the industry have been impacted which has affected its ability to raise capital investment. The Domestic Industry is a multi-product company and, therefore, the ability to raise capital investment is not governed based on the performance of the product alone.

**I. Magnitude of Injury Margin**

96. The Authority has determined NIP for the Domestic Industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the PUC has been determined by adopting the information/data relating to the cost of production for the period of investigation. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining NIP, the best

utilisation of the raw materials by the Domestic Industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. The production in the POI has been calculated considering the best capacity utilisation and the same production has been considered for arriving per unit fixed cost. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. Average Net Fixed Assets plus Average Working Capital) for the product under consideration was allowed as pre-tax profit to arrive the NIP as prescribed in Annexure III of the Rules and being followed. The NIP of the Domestic Industry has been determined and compared with the landed value of the subject goods to arrive at the extent of price underselling. The analysis shows that during the POI, the landed value of subject imports from the subject country was below the NIP of the Domestic Industry, as can be seen from the table below, demonstrating positive injury margin.

<b>Particulars</b>	<b>Unit</b>	<b>South Africa</b>
Landed Value	US\$/MT	1062.22
Non-Injurious Price	US\$/MT	***
Injury Margin	US\$/MT	***
	%	***
	Range	0-10

### **Overall Assessment of injury**

97. The examination of imports of the subject goods and the performance of the Domestic Industry shows the following:
- i. The volume of imports from the subject country has increased in absolute terms and in relation to total imports.
  - ii. The imports from the subject country are undercutting the prices of the Domestic Industry and the price underselling is also positive.
  - iii. Imports from the subject country have depressed the prices of the Domestic Industry. The Domestic Industry has also suffered price suppression on account of imports of subject goods from subject country.
  - iv. Production, sales and capacity utilization have increased over the injury period.
  - v. The performance of the Domestic Industry has significantly deteriorated in respect of profitability, and return on capital employed.

### **J. Causal Link & Non Attribution Analysis**

98. Under Section 9A (5), the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the PUC during the review investigation period or not. It has been examined below whether factors other than dumped imports could have contributed to the injury to the Domestic Industry:

#### **i. Volume and Prices of Imports from Third Countries**

99. It is seen that the imports into from third countries are either attracting ADD or are under ADD investigation or at higher prices. Therefore, the imports of third countries have not caused injury to the Domestic Industry.

**ii. Contraction in Demand**

100. It is seen that the demand of the PUC has increased over the injury period. Therefore, contraction in demand cannot be considered as a reason of injury to the Domestic Industry.

**iii. Export Performance of the Domestic Industry**

101. The Domestic Industry has exported the PUC in negligible volumes. A possible deterioration in the export performance of the Domestic Industry is, therefore, not a possible cause of injury to the Domestic Industry.

**iv. Developments in Technology**

102. It is noted that the technology and the production process for producing the PUC have not undergone any significant development. The possible development in technology is not a cause of injury to the Domestic Industry.

**v. Performance of other products of the company**

103. The performance of other products being produced and sold by the Applicants is not a possible cause of injury to the Domestic Industry. The Applicants consider that information relating to the PUC is the only relevant information for the present purpose and the Applicants have provided this information as the Domestic Industry.

**vi. Conditions of Competition and Trade Restrictive Practices**

104. The investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the Domestic Industry.

**vii. Changes in the patterns of consumption**

105. There have been no material change in the pattern of consumption of the PUC. Changes in the pattern of consumption have not caused claimed injury to the Domestic Industry. In fact, the demand for the subject goods has increased over the relevant period.

**K. Analysis of Continuation of Injury and Causal Link**

**L. Likelihood of Continuation or Recurrence of Dumping and Injury**

106. The Authority observes that this is an SSR investigation and the focus of this investigation is to examine the likely scenario of continued dumping and consequent injury if ADD were to be allowed to expire, even if there is no current injury.

**L.1 Submissions by the Domestic Industry**

107. The Domestic Industry submitted as follows with regard to likelihood of continuation or recurrence of dumping or injury –

- i. Dumping margin determined in all previous investigations relating to the PUC have been positive.
- ii. Significant imports in the presence of ADD show likelihood of increased imports in the event of cessation of ADD.
- iii. Excess production capacities held by the producer in subject country are significant. The producer has a capacity of 40,000 MT with no matching demand in the domestic market.
- iv. Freely disposable capacities with the foreign producer show likelihood of increased imports in the event of cessation of duty. Due to low domestic demand, the producer has an approximate freely disposable capacity of about 36,800 MT.
- v. The exporter in the subject country has significant unutilized capacities.
- vi. Export orientation of the producer in the subject country is very high at about 75% of their capacity.
- vii. The producer is pre-dominantly export-oriented, and the Indian market is important to their interests. About 65-70% of the total exports are made to Indian market.
- viii. Producers are habitual of dumping, as can be seen from the price difference in respect of exports to various markets.
- ix. Overcapacity in Asian Countries, self-sufficiency of Chinese industry have led to oversupply of Phenol in the market. This has significantly changed the market scenarios.
- x. There is a shifting pattern of trade in Phenol, whereby the source of the imports into India changes in tandem with the imposition and cessation of ADD.
- xi. Phenol is present in excess quantities in the markets globally as there is an over-supply of the product.
- xii. India is a lucrative market for the exporters from subject country, and no other market offers such prospects, as the Indian market. Prices at which the PUC is exporter is exporting to the other markets is lower than India.
- xiii. There is an increase in non-essential imports in the presence of increased domestic capacities in India.
- xiv. The export price from South Africa to India was consistently lower than the export price to the rest of the world. Despite low export price to India and ADD in existence, India still has remained historically the major export destination for South Africa.

- xv. The Domestic Industry has a right to sell in the market and the same cannot be taken away by dumped imports.
- xvi. The Authority has considered injury margin as a basis of likelihood. In the instant case the injury margin is positive in the POI, which clearly establishes likelihood in the event of cessation of ADD.
- xvii. At present the world is faced with over capacity with an exception of India. Therefore, India has become the most desirable market for all the exporters of Phenol.
- xviii. Sluggish demand in Asia will result in other exporting countries to export aggressively to India. India being the major export destination for South Africa, it will have no choice but to reduce its prices further in order to sustain in Indian market.

## **L.2 Submissions by other interested parties**

108. The following submissions have been made by other interested parties with regard to likelihood of continuation or recurrence of dumping or injury:
- i. South Africa only caters to a small demand in India under advance licence and the exports are not attractive as other countries have higher prices.
  - ii. Submissions on essential and non-essential imports are irrelevant. Domestic Industry acts as if they have a right to sell in market all of its capacity regardless of competition.
  - iii. Domestic Industry has failed to provide any evidence in support of their case on the likelihood of dumping and injury.
  - iv. There is no excess or unutilized capacity in South Africa, and the imports under duty free schemes are bound to take place as Domestic Industry cannot carter entire demand. Import from other sources will also continue.
  - v. There would be no surge in imports on expiry of ADD as imports from South Africa are stable and have remained constant throughout.
  - vi. Existence or the threat of recurrence of both dumping and injury are required so as to continue the ADD.
  - vii. For likelihood, historical dumping margin has been significant for the reason that the dumping margin was determined on the basis of facts available.
  - viii. India is a price sensitive market as well as the largest market for South African exports and therefore, economies of scale permit lower pricing. Therefore, prices are lower than exports to other countries.

- ix. The capacity of South Africa is at 40,000 MT, which is equivalent to only 10% of India's demand for the PUC. The unutilized capacities are only 6,000 MT which constitutes a negligible quantity in relation to the demand in India which stands at 3,80,000 MT. Freely disposable capacity claims are misleading.
- x. China and Thailand are not export markets of South Africa, and, therefore, expansion in these countries is irrelevant.
- xi. A shifting pattern of trade is irrelevant as imports from South Africa have remained consistent despite the existence of ADD on them for the past 18 years.
- xii. South Africa does not export the PUC to China and secondly, because the countries upon which China has imposed ADD do not include South Africa. Therefore, Chinese industry has no relevance.
- xiii. South Africa is not going to be affected by any alleged sluggish demand in Asia as the same is not its major market. Moreover, the evidence pertains to 2013.
- xiv. Since per unit realization is the lowest in India, it cannot be lucrative market for South Africa.
- xv. Notion of non-essential import is unsustainable in law. South Africa cannot be expected to divert all its production to India and lose other lucrative markets to fulfil the demand for essential imports into India.
- xvi. The argument of the Domestic Industry that the level of capacity utilisation of foreign producers is quite low is contradicted by the Domestic Industry's own data which shows that capacity utilization in South Africa is quite high at 80%.

### **L.3 Examination by the Authority**

- 109. All factors brought to the notice of the Authority have been examined to determine as to whether there is a likelihood of continuation or recurrence of dumping or injury in the event of cessation of the duty. The Authority has considered various information, as made available by the Domestic Industry and other interested parties, in order to evaluate the likelihood of continuation or recurrence of dumping or injury.
- 110. The Authority has used data of actual imports, as available from DGCI&S, and has not made any distinction between essential and non-essential imports, as claimed by the Domestic Industry.
- 111. The Authority has examined the likelihood of continuation or recurrence of injury considering the requirement laid down under Section 9A(5), Rule 23 and parameters relating to the threat of material injury in terms of Annexure – II (vii) of the Rules, and other relevant factors brought on record by the interested parties. The present investigation is a sunset review of ADD earlier imposed on the imports of subject goods from China PR. Under the Rules, the Authority is required to determine whether continued imposition of ADD is warranted. This also requires a consideration of whether the duty imposed is serving the intended purpose of eliminating injurious dumping. There are no specific methodologies available to conduct such a likelihood analysis. However,

Clause (vii) of Annexure II of the Rules provides, inter alia for factors which are required to be taken into consideration viz.:

- i. A significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- ii. Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;
- iii. 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
- iv. Inventories of the article being investigated.

**i. Continued & existing dumping and injury**

112. The Authority notes that the imports of the PUC from the subject countries has been increasing in the injury period, including the POI and further in the post-POI period. Further, the dumping margin is positive. It is also seen that these imports are undercutting the Domestic Industry's prices and are at a price below NIP of the Domestic Industry. Dumping is likely to continue in the event of cessation of ADD.

**ii. Surplus capacities in subject country**

113. The Authority, on the basis of submissions made by the interested parties and evidence on record, has summarized the information as under –

<b>Particulars</b>	<b>South Africa</b>
Capacity	40,000
Production	34,000
Domestic demand	4,000
Surplus Capacities	36,000

114. It is seen that a large portion of the capacity with the exporters is surplus. The domestic demand can cater to only 10% of the capacity created by the company.

115. It is seen that the exporter has unutilized capacities to the extent of 15% of its capacities.

<b>Particulars</b>	<b>Quantity (MT)</b>
Capacity	40,000
Production	34,000
Unutilized capacities	6,000

116. On the basis of information on record, the Authority notes that the exporter has significant freely disposable capacity, which can be diverted to India in the event of cessation of ADD.

<b>Particulars</b>	<b>Unit</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Capacity	MT	40,000	40,000	40,000	40,000
Production	MT	34,000	34,000	35,000	34,000
Unutilized capacities	MT	6,000	6,000	5,000	6,000
Exports	MT	23,227	32,253	34,898	30,818
Freely Disposable Capacity	MT	29,227	38,253	39,898	36,818

### iii. Price Undercutting and Attractiveness of India as a Market

117. It is noted that price undercutting is positive during the POI, and thus, cessation of ADD currently in place is likely to lead to intensified dumping causing injury in the form of low volume of sales, reduced selling price and decline in profits to the Domestic Industry.
118. The Authority is required to establish that the price prevailing in the domestic market i.e. India is attractive for the exporter to divert the quantity exported to the third countries. It is noted that the landed value of imports is below the net selling price of the Domestic Industry in the POI.
119. It is seen that 91% of production and 77% of capacity of the exporter was destined for exports in the POI due to the low domestic demand in the country. The exporter is largely producing the goods for export.

<b>Particulars</b>	<b>Quantity (MT)</b>
Capacity	40,000
Production	34,000
Exports	30,818
<b>Export Orientation</b>	
as a % of Production	91%
as a % of Capacity	77%

120. The statement of exports of PUC from the subject country, as available on Trademap, is as follows:

<b>Export destinations</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>POI</b>	<b>POI (A)</b>
India	18,475	19,376	18,368	11,830	23,660
Belgium	-	1,585	350	3,034	6,068
Brazil	3,269	4,394	2,634	1,004	2,009
Taipei, Chinese	1,788	2,075	1,722	842	1,684
Argentina	338	753	696	529	1,059
New Zealand	1,093	1,218	1,280	463	927
Egypt	-	80	583	256	512
Korea	100	1,220	560	120	241
United Kingdom	4,644	2,157	3,573	110	220
Others	2,546	2,039	1,053	301	603
Total	32,253	34,898	30,818	18,491	36,982

121. It is seen that India is historically a major export destination for the subject country despite ADD in force. The exports to India constitute 64% of the total exports of Phenol from South Africa. Further 59% of the total Phenol capacity and 70% of total Phenol production in South Africa is being exported to India. From Trademap, it is further observed that the export price of the subject goods from South Africa to India has consistently remained one of the lowest, when compared to the export prices at which South Africa exported to third countries in 2019.

### **Conclusion on Likelihood of Dumping and Injury**

122. The evidence on record shows that the volume of dumped imports from subject countries has increased in absolute terms throughout the injury period including the POI. The imports from the subject country are undercutting the prices of the domestic industry and the price underselling is positive. The imports from the subject countries are suppressing and depressing the prices of the domestic industry. The performance of the Domestic Industry has significantly deteriorated during the POI. The Domestic Industry has suffered continued injury during the present period. It is seen that there is a clear likelihood of dumping and consequent injury to the domestic industry. The dumping margin and injury margin from the subject country continue to be positive during the successive reviews including the present sunset review. It is also noted that none of the producer and exporter from subject country has cooperated during the present investigations. The information on record shows that the exporters have surplus production capacities, unutilized capacities and freely disposable capacities that are likely to be diverted to India in the event of cessation of the anti-dumping duty. The evidence on record also shows that the exporters from subject country are highly export-oriented and are largely producing the goods for export. Further, the Authority also notes that the export price of the goods from South Africa to India has consistently remained the lowest, when compared with export prices to third countries. India has been a major export destination for the subject country. Thus, all these parameters indicate that, in the event of cessation of the existing ADD, the exporters in the subject countries are likely to intensify exports of the dumped products in India at dumped prices, leading to recurrence of injury to the domestic industry.

### **M. POST DISCLOSURE COMMENTS**

123. Post-disclosure submissions have been received from the interested parties. The Authority has examined the post disclosure submissions made by the interested parties including reiterations which have already been examined suitably and addressed adequately in the relevant paras of these final findings. The issues raised for the first time in the post disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.

#### **M.1 Submissions by the Domestic Industry**

124. The submissions made by the domestic industry are as follows:
- i. Agarwal Chemical cannot be considered as an importer in the present investigation as the company has not imported phenol from South Africa.
  - ii. Sasol South Africa (PTY) Ltd. cannot be considered as an interested party in the present investigation as it has not registered itself as an interested party nor filed questionnaire responses.

- iii. Federation of Indian Plywood and Panel Industry has to be considered as non-cooperative as they failed to file any comments or information related to their users within time limit and none of their members have filed questionnaire responses.
- iv. Century Ply should be considered non-cooperative as they have not filed any questionnaire responses.
- v. The margin of dumping from the subject country is positive. There is continued dumping of the subject goods from the subject country.
- vi. The volume of imports has increased in absolute terms when compared to base year.
- vii. The price undercutting and underselling are positive. Further, the import prices are suppressing and depressing the prices of the Domestic Industry.
- viii. The performance of the Domestic Industry has deteriorated in respect of profitability and ROCE.
- ix. The Domestic Industry has suffered continued injury. No other known factors other than dumped imports are causing injury to the Domestic Industry.
- x. There is likelihood of dumping and injury to the Domestic Industry in the event of cessation of ADD.
- xi. Producers are habitual of dumping, as can be seen from the price difference in respect of exports to various markets.
- xii. Overcapacity in Asian countries, self-sufficiency of Chinese industry have led to oversupply of Phenol in the market. This has significantly changed the market scenarios.
- xiii. There is a shifting pattern of trade in Phenol, whereby the source of the imports into India changes in tandem with the imposition and cessation of ADD.
- xiv. There is increase in non-essential imports in presence of increased domestic capacities in India.
- xv. The domestic industry submitted that Formats B and D working and the NIP should be sufficiently disclosed.
- xvi. Considering the low volume of imports from subject country in the POI, the consistent increase in imports from subject country throughout the injury period and the significant increase in imports from subject country post-POI, the same duty is required to be extended.
- xvii. The Authority is requested to continue ADD in the same form and in terms of USD.

## **M.2 Submissions by other interested parties**

125. The submissions of other interested parties on the Disclosure Statement are reproduced herein below:
- i. In the disclosure statement, the fact of declaration of imports for M/s Hindustan Organics Chemical Ltd. and M/s Deepak Phenolics has been recorded only for subject country i.e. South Africa and no declaration for other countries has been made/received from these two producers. Further, the details of the imports made by M/s SI Group India Pvt. Ltd. are also from the subject country i.e. South Africa and no details or analysis of imports made by SI Group India Pvt. Ltd. from other countries has been carried out.
  - ii. In the disclosure statement, even the period of declaration of imports by M/s Hindustan Organics Chemical Ltd. and M/s Deepak Phenolics Ltd. has not been specified.
  - iii. As per the application proforma, the declaration of imports is required to be provided by the Domestic Industry specifically for the POI and for the previous 3 years for all countries, including the subject country without fail. The analysis of imports by the domestic producers is required to be made not only with respect to POI but also for the

- previous years.
- iv. The only reason in support of consideration of 6 months POI in this investigation recorded in the Disclosure Statement is the drastic decline in import prices, which by no means can be regarded as being exceptional or rare situation.
  - v. The logic of not considering a 12-month POI and then considering a 6-month POI, along with a 6-month post-POI information is not clear. The Authority has no discretion to allow a POI less than 6 months in an Application for SSR as the word 'should' in the Trade Notice 02/2017 indicates a mandatory obligation to adopt a POI of at least one year. Reference has been made to UOI v. Kumho Petrochemicals where the Supreme Court held that 'may' cannot be read as 'shall'. Further, reference was made to Forech India v. Designated Authority where the Delhi High Court held that the DA cannot disregard its own trade notice and no sympathetic or special concession can be accorded to any party.
  - vi. The Authority may indicate the basis of concluding that all imports of the PUC from the subject country were in bulk form, also the basis of classifying certain transactions as abnormal and exclusion of high priced imports.
  - vii. The determination of dumping margin for the subject country on the basis of the constructed normal value on the basis of export prices by South Africa to a third country i.e. Belgium is a clear departure from the consistent practice of the Hon'ble DGTR.
  - viii. There is no continuation or current injury to the domestic industry.
  - ix. Prices of exports from South Africa to third countries derived on the basis of ITC calculations based on SARS statistics cannot be relied upon as neither the point of sale nor the terms thereof can be ascertained. The prices mentioned in such statistics are always based on certain assumptions and presumptions and cannot form the basis to arrive at even a tentative normal value for the country.
  - x. The import volumes of the subject goods from South Africa disclosed in the Disclosure Statement are significantly at variance as compared to the import data disclosed by the domestic industry in their application/written submissions.
  - xi. The figures for demand, indices for cost of sales and for selling prices and the landed value are different in the Application and in the Disclosure Statement.
  - xii. The landed values have increased by 60% in 2018-19 as compared to base year i.e. 2016-17 whereas the domestic selling prices could increase only by 22%. There are no reasons/analysis of this scenario in the Disclosure Statement as to why the domestic industry could not increase its prices to the level of 60% increase in the landed values.
  - xiii. The profit and ROCE of the Domestic Industry declined in the POI as a result of the plant of Deepak Phenolics getting fully operational due to high production cost of Deepak Phenolics and not otherwise.
  - xiv. The figures of cash profit for POI(A) appears to be wrong as the same has not been annualized.
  - xv. The correct way to analyze inventories is to examine the same as percentage of sales or number of days of inventories and the analysis of inventories on any other basis would lead to misleading and incorrect conclusions.
  - xvi. With regard to likelihood of continuation or recurrence of dumping and injury in the Disclosure Statement in paras 112 to 121, it is submitted that there is a reproduction of the submissions of the Domestic Industry and the same have been accepted without analyzing them objectively.
  - xvii. There has been an excessively prolonged period for which ADD have been imposed on imports of the subject goods from South Africa. Imports of the subject goods from South Africa have been levied with definitive ADD since 2003.
  - xviii. The Applicants have clearly contravened the provisions for confidentiality under the

rules in the following instances:

- a. Actual Capacity of Domestic Industry in MT;
  - b. Actual Production of Domestic Industry in MT;
  - c. Sales volumes of Domestic Industry in MT; and
  - d. Market share and demand in %
- xix. There is clearly no adverse impact on the volume parameters of the Domestic Industry. The data provided in the Application clearly denotes the absence of any price effect on the Domestic Industry.
- xx. There has been no expansion in capacities in South Africa and the volume of imports from South Africa has remained consistently low, bearing an overall declining trend.
- xxi. South Africa has unutilized capacity of only about 6,000 MT and the same is merely 1%-2% of total demand in India which is not at all significant and even if, for the sake of argument, it is assumed that the said unutilized capacity would be exported to India after withdrawal of duties, it will not have any impact on the Indian market.
- xxii. In the present factual matrix, the facts clearly establish that there is no causal nexus between the alleged injury or likelihood of injury and the continued imports of the subject goods from South Africa.
- xxiii. The POI in the Anti-dumping investigation regarding imports of Phenol from Thailand and USA and the injury period in the present investigation overlap. From the Authority's examination in the Preliminary Findings of the former, clearly, the performance of HOCL has been proven to be affected by several other factors and the injury to the Domestic Industry is held to be not attributable to the alleged dumping of the subject goods. Therefore, the findings concerning a break in the causal link in the case of *Phenol from Japan and Thailand* are *ex facie* applicable to the present investigation. It is an established fact that the injury to HOCL is self-inflicted, based on factors that are not attributable to the imports from South Africa. Hence, the claim for the injury to the domestic industry being attributable to imports from South Africa is liable to be dismissed.
- xxiv. The parameters provided in the Application make it absolutely clear that the Applicants do not suffer any injury on account of the imports and the injury if any is clearly not attributable to imports from South Africa.
- xxv. The basis of adjustments of 5% for freight, commission and port expenses furnished by DI has not been substantiated and is not credible. DA has not disclosed quantum of adjustments made for arriving at ex-factory export price from CIF value and is bound to disclose as it is not confidential information. Export price calculated by Applicant has been exaggerated and the Authority has to re-determine the same.
- xxvi. The Authority seems to have calculated normal value entirely on the basis of information furnished by Applicants, and therefore, the adjustments adopted must be disclosed and no confidentiality can be claimed by the Applicant too.
- xxvii. Normal value for non-cooperating producers, exporters and country cannot be confidential as it is not business sensitive or proprietary information. Reference has been made to *UOI v. Meghmani Organics Ltd.* where it was observed that DA cannot treat any information confidential unless such claim has been made.
- xxviii. The capacity in the subject country is not even sufficient to fulfill even 40% of the demand-supply gap for Phenol in India. Negligible unutilized capacities cannot result in recurrence of injury even when it was utilized for exports to India.
- xxix. The Authority has not examined whether other export markets exist which can absorb additional production by the producer/exporters which possess surplus capacities.
- xxx. 22% ROCE not to be applied. Such benchmark to not be followed since it was made at a time when the PLR was 18%. The AD Agreement mandates actual cost and not

- notional cost.
- xxxi. Imposition of ADD for long duration increases cost to end consumer. User industries will suffer irreparable damage in case duties are continued.

### **M.3 Examination by the Authority**

126. With regard to the issues raised by the domestic industry regarding the status of the interested parties, the Authority has duly examined the same and recorded its findings in the relevant paragraphs of this final finding.
127. With regard to the issues raised by parties relating to likelihood of continuation or recurrence of dumping and injury, the Authority has duly examined the relevant parameters and has recorded its findings in the relevant paragraphs of the present final findings. The issues related to the standing of the Domestic Industry, PUC, confidentiality, Normal Value, Export Price and the POI raised by the other interested parties have already been dealt with in the relevant paragraphs above. The Authority notes that the POI in the present investigation has been considered as per the established practice which is consistent with the AD Rules.
128. As regards the argument of appropriateness of Belgium for normal value determination, it is noted that since none of the exporters from subject country has responded and since none of the interested parties have provided any contrary evidence for normal value, the Authority has relied upon facts available ie export price from subject country to Belgium for determination of normal value. Further Belgium is the second largest export destination for South Africa; first being India; and constitutes more than 5% of the exports to India.
129. As regards changes in data in the Application and the Disclosure Statement, it is noted that in the Application the Domestic Industry had considered the import data of only 29071110. Later it was found that the subject goods are imported under the HS code 29071190 also. The imports in the Disclosure Statement includes imports of subject goods under Customs Tariff heading no. 29071110 and 29071190 and accordingly, the imports and other relevant parameters have been revised.
130. As regards the duration for which ADD has been in force, the Authority notes that the duration of duty is irrelevant under Section 9A (5). The Authority is required to examine likelihood of continuation or recurrence of dumping and consequent injury to the Domestic Industry.

### **N. INDIAN INDUSTRY'S INTEREST**

131. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.
132. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some

influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, 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 measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

**O. CONCLUSION**

133. Having regard to the contentions raised, information provided and submissions made and facts available before the Authority as recorded in the above findings and on the basis of the above analysis of the likelihood of continuation or recurrence of dumping and injury to the domestic industry, the Authority concludes that:
- a. There is continued dumping of the subject goods from subject country and the imports are likely to enter the Indian market at dumped prices in the event of expiry of duty.
  - b. The performance of the domestic industry has deteriorated and remains vulnerable due to dumping of the subject goods.
  - c. The information on record shows likelihood of continuation/ recurrence of dumping and injury in case the Anti-dumping duty in force is allowed to cease at this stage.

**P. RECOMMENDATIONS**

134. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury, causal link, and likelihood of continuation or recurrence of dumping and injury in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that extension of anti-dumping duty is required to offset dumping and injury. Therefore, Authority considers it necessary and recommends the extension of anti-dumping duty on imports of subject goods from the subject country.
135. Under these circumstances, it is considered appropriate to recommend continuation of definitive anti-dumping duty on the subject goods originating in or exported from the subject country as per the dumping and injury margins calculated for the current investigation period, for a further period of 5 years from the date of its imposition. Having regard to the lesser duty rule followed by the authority, the Authority recommends continuation of definitive anti-dumping duties equal to the lesser of margins of dumping and margins of injury so established, so as to remove the injury to the domestic industry, in the form and manner described in the table below. The Authority, thus, considers it necessary to recommend continuation of definitive antidumping duty as modified, on all imports of the subject goods from the subject country as per column 7 in the duty table below, for a further period of five years.

### Duty Table

SN	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	2907.11 and 2707.60	Phenol	South Africa	Any country including South Africa	Any	18.16	Per MT	US\$
2	-do-	-do-	Any country other than country attracting anti-dumping duty	South Africa	Any	18.16	Per MT	US\$

136. The landed value of imports for this purpose shall be assessable value as determined by the Customs under Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 8B, 9, 9A of the Customs Tariff Act, 1975.

#### **Q. FURTHER PROCEDURE**

137. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the with the relevant provisions of the Act.

(B.B. Swain)  
Special Secretary & Designated Authority