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

NOTIFICATION

4th Floor, Jeevan Tara Building
5 Parliament Street,
New Delhi-110001

Dated the 30th June, 2015

FINAL FINDING

Subject:- Sunset Review (SSR) anti-dumping investigation concerning imports of Acrylonitrile Butadiene Rubber (NBR), originating in or exported from Korea RP.

No.15/29/2013-DGAD: Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

A. Background of the Case

2. WHEREAS, the original investigation concerning imports of Acrylonitrile Butadiene Rubber or NBR (herein after also referred to as the subject goods), originating in or exported from Korea RP and Germany, was initiated by the Designated Authority (hereinafter also referred to as the Authority) vide Notification No. 9/1/95-ADD dated 15th March, 1996. The Preliminary Finding was issued by the Authority vide Notification No. 9/1/95-ADD dated 30th December, 1996 and the provisional anti-dumping duty was imposed by the Department of Revenue vide Notification No. 9/97-Customs dated 31st January, 1997. The Final Findings Notification was issued by the Authority vide notification No. 9/1/95-ADD dated 17th July, 1997, recommending imposition of definitive duty. On the basis of the recommendations made by the Authority in the final findings, definitive anti-dumping duty was imposed by the Department of Revenue vide Notification No. 62/1997- Customs dated 30th July, 1997 on the imports of the of the subject goods, originating in or exported from Korea RP and Germany.

3. WHEREAS, the Authority initiated the first sunset review of the anti-dumping duties imposed on the imports of the subject goods, originating in or exported from Korea RP and Germany vide Notification No. 50/1/2001 dated 1st October, 2001 and recommended continued imposition of the anti-dumping duties on the imports of the subject goods vide notification No. 50/1/2001 dated 21st September 2002. The Central Government in the Revenue Department vide notification No. 111/2002- Customs dated 10th October, 2002 notified continued imposition of anti-dumping duties on the imports of the subject goods, originating in or exported from Korea RP and Germany.
4. The Authority initiated mid-term review investigations on imports of subject goods exported from Korea RP and Germany on 29th March, 2004 and recommended continued imposition of definitive antidumping duty on imports of the subject good vide notification No. 15/5/2004 dated 6th June 2005. The continued imposition of anti-dumping duties were notified by the Central Government vide Notification No.78/2005-Customs dated 1st September 2005.
5. Another sunset review investigation was initiated by the Authority vide Notification No. 15/6/2007 dated 8th October 2007 and the Authority recommended continued imposition of anti dumping duty on imports of the subject goods from Korea RP only vide Notification No. 15/6/2007 dated 4th October 2008 and continued duty was notified by the Central Government vide Notification No. 01/2009-Customs dated 2nd January 2009.
6. Whereas, in the present SSR investigation, M/s Omnova Solutions (India) Pvt. Ltd., filed a duly substantiated application before the Authority, on behalf of the domestic industry, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the subject goods, originating in or exported from Korea RP (hereinafter also referred to as the subject country) and consequent injury to the domestic industry and have requested for review, continuation and enhancement of the anti-dumping duties, imposed on the imports of the subject goods, originating in or exported from Korea RP.
7. In view of the duly substantiated application filed on behalf of the domestic industry and in accordance with section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated the present sunset review investigation vide Notification No. 15/29/2013-DGAD dated 31st December, 2013 to review the need for continued imposition of the duties in respect of the subject goods, originating in or exported from the subject country, and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The validity of the anti-dumping duty on the imports of the subject goods from the subject country has been extended up to 1st January, 2015 by the Central Government vide Notification No. 06/2014-Customs (ADD) dated 23rd January, 2014.

8. The scope of the present review covers all aspects of the previous investigations concerning imports of the subject goods, originating in or exported from the subject country.

B. Procedure

9. The procedure described below has been followed with regard to the subject investigation:

a) The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2).

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

c) The Authority forwarded a copy of the public notice to the following known producers/exporters in Korea RP (whose names and addresses were made available to the Authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4):

- (i) M/s Kumho Petrochemical Co. Ltd.
- (ii) M/s LG Chem Ltd.

d) Response to exporter questionnaire was received from both the producers/exporters from the subject country.

e) The Authority forwarded a copy of the public notice to the following known importers/consumers (whose names and addresses were made available to the authority) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(4):

- (i) Nu-Cork Products Pvt. Ltd.
- (ii) Shaktiman Rub Rolls Pvt. Ltd.
- (iii) Bony Polymers Ltd.
- (iv) Unique Rubber Udyog
- (v) Lakhani Rubber Udyog Ltd.
- (vi) Alaska Tyres Pvt. Ltd.
- (vii) Super Seals (India) Ltd.
- (viii) Roop Rubber

- (ix) Layallpur Rubber Mills
- (x) Ferolite Jointings Ltd.
- (xi) Gates India Pvt. Ltd.
- (xii) Banco Products (India) Ltd.
- (xiii) Bharat Corrub Industries
- (xiv) Champion Jointings Ltd.
- (xv) Favourite Safety Products
- (xvi) Grindback
- (xvii) Industrial Roller Corporation
- (xviii) Lathia Indl Suppliers Co. Pvt. Ltd.
- (xix) Polyrub Extruction (India)
- (xx) Precitex Rubber Ind. P. Ltd.
- (xxi) Andhra Polymers (P) Ltd.
- (xxii) Godavari Petro Products (P) Ltd.
- (xxiii) Galaxy Rubber Products
- (xxiv) Sundram Industries Ltd.
- (xxv) Sundram Brakelining Ltd.
- (xxvi) Sundaram Auto Components Ltd
- (xxvii) Suja Rubber Industries Pvt. Ltd.
- (xxviii) Rane Brakelining Ltd.
- (xxix) M R F Ltd.
- (xxx) Lakshmi Machine Works Ltd.
- (xxxi) Industrial Rubber Products
- (xxxii) Habasit Lakola Pvt. Ltd.
- (xxxiii) Elgi Ultra Industries Ltd.
- (xxxiv) M/s. Imperial Rubber Products
- (xxxv) M/s. Jayashree Polymers Pvt. Ltd.
- (xxxvi) M/s. K. D. Joshi
- (xxxvii) M/s. Perfect Oil Seals & I.R.P.
- (xxxviii) M/s. Hindustan Composites Ltd.
- (xxxix) M/s. Inacora Ltd.
- (xl) M/s. Imperial Waterproofing Industries Pvt. Ltd.
- (xli) M/s. Parker Markwel Inds. P. Ltd.

f) No response to importer questionnaire has been submitted by any of the importers/users.

g) The Period of Investigation (POI) for the purpose of the present review was 1st October, 2012 to 30th September, 2013 (POI). The examination of trends in the context of injury analysis covered the periods April 2010-March 2011, April 2011-March 2012, April 2012-March 2013 and the POI.

- h) The domestic industry had relied upon the DGCI&S published data for imports. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the injury period including the POI and also the post-POI. The Authority has relied upon the transaction-wise imports data provided by DGCI&S in the present investigation. However, for the POI, the Authority has relied upon the verified data of the cooperating exporters since the volume and value of the same was found to be higher.
- i) Exporters, producers, importers and other interested parties who have neither responded to the Authority nor supplied information relevant to this investigation have been treated as non-cooperating interested parties.
- j) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties as per Rule 6(7).
- k) 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 Anti-dumping Rules to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- l) In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 9th October, 2014, which was attended by the domestic industry and other interested parties. The parties which presented their views in the oral hearing were requested to file written submissions of the views expressed orally.
- m) The submissions made by the interested parties during the course of the investigation and considered relevant by the Authority, have been examined and addressed in this finding.
- n) The Department of Revenue vide their letter No. 354/179/2002-TRU (Pt. V) dated 8th January, 2015 extended the time period up to 30th June, 2015 to complete the investigation.
- o) On the spot verification of the information and data submitted by the domestic industry and other interested parties was carried out to the extent deemed necessary.

- p) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- q) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available' and treated such parties as non-cooperative.
- r) In accordance with Rule 16 of the Rules supra, the essential facts were disclosed by the Authority to the known interested parties vide a disclosure statement issued on 22nd June, 2015 and comments received on the same, to the extent considered relevant by the Authority, have been examined and addressed in this finding.
- s) ***in this finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- t) The exchange rate for the POI has been taken by the Authority as Rs.56.89 = 1 US\$.

C. Litigation Involved

10. The initiation of the present SSR investigation by the DGAD and the extension of the validity of the relevant anti-dumping duty by the DOR were challenged by Kumho Petrochemicals Co. Ltd. and Fairdeal Polychem Ltd before High Court of Delhi vide WPC No. 1851/2014 and No. 1866/2014 respectively. The Hon'ble High Court in its order dated 11th July, 2014 held inter alia as follows:

"The imperative nature of second proviso to Section 9A (5) leaves no room for doubt that in case the Central Government wishes to extend the levy during the sunset review period, it has to comply with the terms of that provision and do so, before expiration of the original period - which in this case was 01-01-2014. Not having done so, its attempt to levy the duty through the later notification of 23-01-2014 is without authority of law; it is contrary to the terms of proviso to Section 9A (5). The attempt to recover any amounts as duty, therefore, violates Article 265 of the Constitution of India. 27. In view of the above findings, it is held that the initiation of sunset review is valid and legal; however the levy of anti-

dumping duty through the impugned notification of 23-01-2014 is without authority of law. The said notification is declared illegal and hereby set aside. The petitioners are entitled to refund of the amounts paid till date. The writ petitions partly succeed and are allowed to the above extent; there shall be no order on costs."

11. The aforesaid judgment of Hon'ble High Court of Delhi was challenged by the Authority before the Hon'ble Supreme Court vide SLP No. 29268-69 of 2014. The Hon'ble Supreme Court vide its interim order dated 9th March, 2015 has stayed the aforesaid judgment.

**D. Scope of Product under consideration and like article
Submissions made by the Domestic Industry**

12. Following are the submissions made by the domestic industry with regard to product under consideration and like article:
- (i) The product under consideration in the present investigation is Acrylonitrile Butadiene Rubber (NBR). The product under consideration is same as defined in the original and subsequent investigations.
 - (ii) NBR is primarily used where oil resistance, abrasion resistance and heat resistance applications are involved. NBR is widely used in Defence, Automobile, Footwear, Fabrics, Printers, Oil field products industries etc.
 - (iii) Grades of Acrylonitrile Butadiene Rubber are described in terms of acrylonitrile content and mooney viscosity in the rubber. The percentage content of Acrylonitrile and Mooney viscosity in NBR differentiates one grade of NBR with other grade. Indian industry produces equivalent/ comparable of various grades being imported at present from the subject country.
 - (iv) The PUC is Acrylonitrile Butadiene Rubber (NBR) also known as Nitrile Rubber falling under heading No. 40025900 in Chapter 40 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. However, customs classification is indicative only and not binding on the scope of the investigation.
 - (v) There is no difference in subject goods produced by the petitioner and exported from the subject country. Subject goods produced by the petitioner and imported from the subject country are having comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology,

functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Subject goods produced by the domestic industry and imported from subject country are like article in accordance with the Rules.

Submissions by producers/exporters/importers/other interested parties

13. No submission has been made by the producers/exporters/importers/other interested parties with regard to the scope of the product under consideration (PUC) and like article.

Examination by the Authority

14. The product under consideration (PUC) in the earlier investigations as well as the present SSR investigation is Acrylonitrile Butadiene Rubber (NBR), originating in or exported from Korea RP. NBR is a synthetic rubber copolymer of acrylonitrile (ACN) and butadiene. NBR is used in the manufacture of various rubber articles where resistance to oil, abrasion and heat applications are involved, such as oil seals, hoses, automotive products, gaskets, rice de-husking rolls, printers, fabrics, oilfield products, etc. The major raw materials required for NBR are Acrylonitrile and Butadiene. Different grades of NBR are defined in terms of mooney viscosity and acrylonitrile content. Acrylonitrile Butadiene Rubber (NBR) is classified in Chapter 40 of the First Schedule to the Customs Tariff Act, 1975 under subheading No. 40025900. However, the Customs classification is indicative only and is no way binding on the scope of the present investigation. The present investigation being a sunset review, the PUC remains the same as in the earlier investigations.

**E. Domestic Industry and Standing
Submissions by the Domestic Industry**

15. The following are the submissions made by the domestic industry with regard to scope of the domestic industry and standing:
- (i) The petitioner i.e. Omnova Solutions (India) Pvt. Ltd is the sole producer of NBR in the Country. Thus, production of NBR by Omnova Solutions (India) Pvt. Ltd constitutes 100% of the total Indian production.
 - (ii) In view thereof, Omnova Solutions (India) Pvt. Ltd satisfies the requirement of standing to file the present petition and constitutes 'Domestic Industry' within the meaning of the Rules.

Submissions by producers/exporters/importers/other interested parties

16. No submission has been made by the producers/exporters/importers/other interested parties regarding standing and scope of the domestic industry.

Examination by Authority

17. The Authority notes that Rule 2(b) of the Anti-dumping Rules provides as follows:

(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"

18. The Authority further notes that the application for the present sunset review has been filed by M/s Omnova Solutions (India) Pvt. Ltd, who is the sole domestic producer of the subject goods in the country. M/s Omnova Solutions (India) Pvt. Ltd., has also declared that there are no imports of the subject goods by them either directly or through an affiliated company from Korea RP and they are not related to any importer in India or exporter from Korea RP. In view of the above position and having regard to the Anti-dumping Rules, the Authority determines that the M/s Omnova Solutions (India) Pvt. Ltd constitutes domestic industry within the meaning of Rule 2 (b) and satisfies the criteria of standing in terms of Rule 5 (3) of the Anti- dumping Rules.

F. MISCELLANEOUS ISSUES

Submissions by producers/exporters/importers/other interested parties

19. Following are the miscellaneous submissions made by producers/exporters/importers/other interested parties:
- i. The initiation of the present sunset review is bad in law. The anti-dumping duty on the subject goods expired on 1st January 2014 and the extension of the duty vide notification dated 23rd January 2014 has been held illegal by Hon'ble Delhi High Court. The Petitioner has also not established the material grounds for the extension of the duty. Respondents are participating in this investigation under protest as there is no anti-dumping duty in force. The present investigation was

improperly initiated after the expiry of existing anti-dumping duties and merits termination ab-initio.

- ii. Even though the initiation notification is dated 31st December 2013, however, the sunset review initiation was published or in other words made public only on 6th January 2014. The power to extend the anti-dumping duty is vested in the Central Govt. by way of the second proviso in Section 9A(5) of the Act; however, in this case, no such extension was issued till two months after the expiry of the duty.
- iii. Despite a clear mandate issued by DGAD that domestic industry seeking initiation of sunset review should file a duly substantiated request at least 90 days prior to expiry of anti-dumping duties, the Petitioner has in the present investigation, submitted a petition for the initiation of the sunset review on 11th November 2013, which is beyond the 90 day time limit granted by DGAD. Therefore, authority should terminate the present sunset review immediately.
- iv. The anti-dumping duty is in force against Korea for more than 16 years. In line with DGAD's approach in its SSR final findings concerning imports of 'Dry Cell Batteries' from China PR that anti-dumping duties should not normally continue beyond 10 years, the ADD on the imports subject goods from Korea should be discontinued.
- v. Hon'ble Delhi High Court had set aside the Customs notification of extending the ADD. Kumho has already preferred an SLP challenging the decision to Hon'ble Delhi High Court only with respect to the decision of upholding the initiation of investigation. Therefore the initiation of present sunset review is illegal and cannot be acted upon.
- vi. The decision of Hon'ble Delhi High Court is binding on DGAD and DGAD cannot act contrary to the decision of Hon'ble Delhi High Court. Thus, in view of the fact that (a) there is no anti-dumping duty in existence as extension notification has been held illegal by Delhi High Court and (b) the principal notification has also expired, DGAD is thus restrained from making any determination that "expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry". Since anti-dumping duty has already expired, DGAD cannot make any other determination in terms of Rule 23.
- vii. Applicant has been getting protection of anti-dumping duty for about 17 years. Applicant has reached a situation, wherein it is totally dependent on anti-dumping duty and will always remain so. Such being the case,

where Applicant is inherently incapable of competing, it should seek the protection in any other manner, without affecting importers and other end-users.

Submissions by the Domestic Industry

20. Following are the miscellaneous submissions made by domestic industry:
- i. The contention that the Central Government would not be in a position to extend the anti dumping duty on receipt of final findings in view of the gap between existing duties and the revised duties is incorrect. Section 9A (5) clearly provides for initiation of investigation before expiry of duty and not "sufficiently before the expiry".
 - ii. Hon'ble High Court has upheld the initiation and, therefore, the Designated Authority is fully justified in recording its final findings.
 - iii. The contention that the domestic industry has been protected for a long period is irrelevant. First of all, imposition anti dumping duty is not a "protection". The purpose of imposition of anti dumping duty is merely to eliminate unfair practice of dumping, if the same is causing or is likely to cause injury to the domestic industry. The duty should remain in force as long as necessary to counteract dumping, which is causing injury.

Examination by the Authority

21. The miscellaneous submissions are examined as below:
- i. It has been contented by the opposing interested parties that the initiation of the present review investigation is bad in law and should be terminated ab-initio as the initiation notification dated 31st December 2013 was made public on 6th January 2014 and the extension of the duty has been held illegal by Hon'ble Delhi High Court in their Judgment dated 11th July, 2014. In this regard, the Authority notes that the Hon'ble Delhi High Court in their Judgment has already held the initiation as valid and legal; but the levy of anti-dumping duty as without authority of law. However the aforesaid judgment of Hon'ble High Court of Delhi was challenged by the Authority as well as domestic industry before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide their interim order dated 9th March, 2015 has stayed the said judgment. Thus, the contention is without any basis.
 - ii. It has been contented by the opposing interested parties that the domestic industry has not filed petition within 90 days prior to the date

of expiry of anti dumping duty in terms of the trade notice No. 2/2011 dated 6/6/2011. In this regard, the Authority notes that the provisions of Rule 23(1)(B) of Anti-dumping Rules requires the Designated Authority to consider a petition received for review and extension of anti dumping duty within a reasonable period of time prior to the expiry of that period. The reasonable period of time requirement provided under the Rules is a provision intended to grant sufficient time to the Authority to consider an application and not to bar the Authority to consider an application beyond that period. In the present case the facts of the delay in filing application by the domestic industry was examined by the Authority while initiating the investigation. The fact that the investigation has been initiated by the Authority should be enough to treat that the delay has been condoned by the Authority.

- iii. The contention that the anti-dumping duty is in force against Korea for more than 16 years and therefore, it should be discontinued has no legal basis. The Authority notes that there is no provision under the Customs Tariff Act or the Anti-dumping Rules or the WTO Agreement prescribing any time frame for discontinuation of anti-dumping duty. As long as there is dumping causing injury to the domestic industry, anti-dumping duties can be in force to provide a level playing field to the domestic industry vis-à-vis dumped goods.

G. Confidentiality

Submissions made by exporters/importers/users/other interested parties

22. Following are the submissions made by producers/exporters/importers/other interested parties with regard to confidentiality:
 - i. The present petition suffers from excessive confidentiality.
 - ii. Transaction by transaction import statistics has not been made available. Without the import statistics, it is not possible to determine with accuracy whether the claims regarding effects of imports have been given correctly or not.

Submissions made Domestic Industry

23. Following are the submissions made by domestic industry with regard to confidentiality:
 - i. The exporters have resorted to excessive confidentiality in the questionnaire response filed by them.

- ii. Excessive confidentiality claimed by the respondent producers/exporters completely prevented the domestic industry from defending its interests.
- iii. The non-confidential transaction-wise DGCI&S import data furnished by the domestic industry to the Authority may be placed in the public file.

Examination by the Authority

24. Submissions made by the interested parties with regard to confidentiality and considered relevant by the Authority are examined and addressed as follows:

- i. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:-

Confidential information: (1) Notwithstanding anything contained in sub-rules and (7)of rule 6, sub-rule(2),(3)(2) of rule12,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.

- ii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered 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 evidences submitted by various interested parties in the form of public

file. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

- iii. As regards the contention that transaction by transaction import statistics has not been made available to interested parties, the Authority notes that domestic industry has already placed the transaction by transaction DGCI&S import statistics in public file.

H. **NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

Submissions by producers/exporters/importers/other interested parties

25. Following are the submissions made by producers/exporters/importers/other interested parties with regard to normal value, export price and dumping margin
 - i. In the previous sunset review investigation, Kumho's dumping margin was a mere ***%. During the POI of present investigation, there is no dumping by Kumho.
 - ii. Kumho exported a mere ***% of its total sales of subject goods to India. The allegation that Kumho has made misleading statements about its exports into India is wrong.
 - iii. Kumho is operating in a market economy country and thus has claimed normal value based on prices in its domestic market. Kumho has provided all the information to the extent relevant in the manner and form prescribed in line with the accounting standards of Korea.
 - iv. The submission made by the Applicant that DGAD should verify the consumption factors and compare the same with consumption reported by Applicant makes no sense. DGAD has to only go by the consumption norms given by Kumho and accept the same if found reliable. There is no legal basis for comparing the same with Applicant's consumption norm.
 - v. During the period of investigation LG Chem Ltd., Korea RP, has exported negligible quantities and could not have caused injury to the domestic industry.
 - vi. The estimation of normal value and export price by Petitioner is faulty and illegal. While normal value has been determined based on Petitioner's own prices, which is not mandated under the law in case of market economy countries, export price has been determined by making undue and unsubstantiated adjustments. Thus, the dumping

margin arrived at by Petitioner for claiming continued dumping is flawed.

- vii. The Domestic Industry has claimed a dumping margin of 23%. The same is based on the inflated normal value claimed by the Domestic Industry.
- viii. In the previous investigation, Authority rejected the request of Kumho to determine dumping margin on month-wise analysis and instead Authority determined dumping margin based on weighted average basis for the POI. Therefore, Authority is requested to determine dumping margin in this investigation on weighted average basis for the entire period of POI.

Submissions by Domestic Industry

26. Following are the submissions made by the domestic industry with regard to normal value, export price and dumping margin:
- i. Kumho stated that their exports have shown hardly 5-8% increase over the period. LG Chem stated that their exports in Indian market were negligible. On the contrary, imports have increased from about 419 MT in 1992-93 to 13,322 MT in 2013-14 and Korea is the majority supplier of the product in the Indian market. The volume of imports from Korea, which were merely in the region of 400 MT in 1992-93 (base year of original investigation) have increased to a whopping 14,000 MT. This has been only because of dumping resorted by the exporters.
 - ii. Authority should examine the transaction-wise exports data in respect of third countries, if provided by the respondent exporters. Otherwise, the questionnaire responses should be considered as incomplete and rejected.
 - iii. KPC purchased the raw materials from unrelated companies. However, KPC has also produced the butadiene and used it for the production of the product concerned. This aspect needs to be focussed by the Authority. The Authority must investigate the exporters' data thoroughly considering the complexity of the in-house consumption of inputs, such as transfer pricing and related party transactions.
 - iv. The dumping margins determined by the Authority in the previous investigations are too low, considering the prices of inputs, factors of production and minimum costs that must be incurred by a producer in producing and selling the product. Cost of production that should be

determined and considered should be the cost that is ordinary cost and not special cost. Such costs must reflect intrinsic value of the materials.

- v. The elements of costs, even though might be based on the records kept by the exporter, nevertheless does not imply that the Designated Authority is bound to adopt the cost of production of the exporter without satisfaction whether the same reasonably reflect the cost associated with production and sale of the product under consideration. Such costs should reasonably reflect the costs associated with production and sale of the product under consideration.
- vi. The determination of dumping margin for Korean companies in the present product has remained an issue of significant dispute. The domestic industry has all along been contending that the dumping margins determined are grossly low considering reasonable estimates of cost of production for the product under consideration. The captive input consumed by the exporter is required to be taken at their market value.
- vii. The dumping margin in respect of the subject country is quite significant. Existence of significant dumping is a clear evidence of continued injury being caused to the domestic industry.
- viii. The exporters and producers from the subject country have continued to export the material at the dumped prices even after the imposition of the anti-dumping duty. Given that the dumping has consistently continued from the subject country in the past, there is no reason to consider that cessation of duties in the present case would not result in intensified dumping from this source.

Examination by the Authority

27. The facts of dumping analysis ipso facto address the various submissions made by the interested parties. The Authority notes that the information/data furnished by the respondent cooperative producers/exporters from Korea RP has been verified and the normal value, export price and dumping margin has been determined as follows:

Determination of Normal Value

28. Under section 9A (1) (c), the 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

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

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 exporter 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.

29. Acrylonitrile Butadiene Rubber (NBR) is a synthetic rubber copolymer of acrylonitrile (ACN) and butadiene. The major raw materials required for NBR are Acrylonitrile and Butadiene. Different grades of NBR are defined in terms of mooney viscosity and acrylonitrile content. NBR of various grades is produced and sold both in domestic and export markets. Though there are numerous PCNs depending upon the mooney viscosity and acrylonitrile content suitable for various applications, but the main cost driver in NBR is the composition of Butadiene and acrylonitrile monomers in the final product. Based on the contents of ACN, the product is broadly classified into three grades having 36%-45% (High), 31%-35% (Medium) and 26%-30% (Low) contents of ACN. The share of Medium ACN grade in production and domestic sales is 75%-80% and export of this particular grade to India from both the co-operating exporters during POI was around 95%. Moreover, the comparison of raw material cost in each of these grades demonstrated that the variation from the medium ACN grade was 1%-1.5% only.

Keeping in view these facts, the Authority does not consider it appropriate to determine grade-wise normal value. Instead, considering the wide fluctuation in the prices of the major raw materials and as submitted by the interested parties, the Authority considers it appropriate to determine the normal value on monthly basis and determine the net export price and dumping margin accordingly. As per the practice in DGAD, after applying the 80/20 test, the domestic unit sales price of each month has been compared with the average unit cost for the corresponding month and the domestic ex factory price of profit making transactions have been adopted as normal value.

30. The following producers/exporters from Korea RP have filed exporter's questionnaire response:
- i. Kumho Petrochemical Co. Ltd. (KPC)
 - ii. LG Chem Ltd. (LG)

Kumho Petrochemical Co. Ltd. (KPC)

31. In the present investigation, Kumho Petrochemical Co. Ltd., Korea RP (producer/exporter) had filed exporter's questionnaire response. During the verification, it was informed that with effect from 14th March 2008 the name of the Company has been changed from "Korea Kumho Petrochemicals Co Ltd" to "Kumho Petrochemicals Co Ltd". During the POI, KPC sold *** MT of subject goods in the domestic market for a total ex factory value of KRW ***. All the domestic sales were made by KPC to unrelated parties. The Authority made month-wise analysis of the transactions and applied ordinary course of Test. After making due adjustments on account of packing expenses, inland freight and credit expense, the Authority has determined the normal value for KPC as US\$ ***per MT.

LG Chem Ltd. (LG)

32. In the present investigation, LG Chem Ltd., Korea RP (producer/exporter) had filed exporter's questionnaire response. On the basis of verified information/data, during the POI, LG made ***MT of domestic sales of subject goods worth of KRW *** and USD ***. Out of the total domestic sales of subject goods, about 0.18% was sold to affiliated parties and the balance 99.82% was sold to non-affiliated parties. Since the average sales realization from sales made to the affiliated parties was not less than other non-related parties, the same have not been ignored. Further, information furnished in Appendix 1 to the questionnaire response, the company had included NBR powder also

which is not part of subject goods and the same has been excluded for the purpose of working out normal value. As such domestic sales of ***MT with ex-factory value of *** KRW (** USD equivalent). The Authority made month-wise analysis of the transactions and applied ordinary course of Test. After making due adjustments on account of packing expenses, inland freight and credit expense, the Authority has determined the normal value for LG as US\$ ***per MT.

Determination of Normal Value for all other exporters

33. The Authority notes that apart from the above stated exporters, no other exporter/producer from Korea RP has responded to the Authority in the present investigation. For all the non-cooperative exporters/producers of the product under consideration in Korea RP, the Authority has determined the normal value on the basis of best available information as ***US\$/MT.

Export Price

Kumho Petrochemical Co. Ltd. (KPC)

34. During the POI, KPC had exported ***MT of the product under consideration to India for a total value of USD ***. Almost ***% of the exports of the product under consideration to India comprised of the Medium grade. After making the due adjustments on account of packing expenses, inland freight, ocean freight, ocean insurance, port handling charges, customs brokers fee, credit expense, bank charges and sales commission, the Authority has determined the net export price of KPC as US\$ ***per MT during the POI.

LG Chem Ltd. (LG)

35. During the POI, LG exported ***MT of product under consideration to India worth of US\$ ***. Almost 95% of the exports of the product under consideration to India comprised of the Medium Grade. This also included a small quantity of indirect exports for which the response to the questionnaire has not been filed by the exporter/importer. Therefore, only direct exports of ***MT have been considered for the purpose of calculation of Net Export Price. After making due adjustments on account of packing expenses, inland freight, ocean freight, ocean insurance, customs agent fee, credit expense, bank charges and sales commission, the Authority has determined the net export price of LG as US\$ ***per MT during the POI.

Determination of Export Price in respect of Non-Co-operative Exporters/Producers from Korea RP

36. In respect of all other exporters from Korea RP who are treated to be non-cooperative, the Authority has determined their net export price as per facts available in terms of Rule 6(8) of the Rules as US\$ ***per MT.

I. Dumping Margins

37. Considering normal value and export price at ex-factory level as determined above, the dumping margin for all the producers/exporters in the subject country has been determined by the Authority as follows:-

		KPC	LG	Others
Normal value	US\$/MT	***	***	***
Net Export price	US\$/MT	***	***	***
Dumping Margin	US\$/MT	***	***	***
Dumping Margin as a Percentage of net Export Price (NEP)	%	***	***	***
Dumping Margin	Range %	0-10%	0-10%	0-10%

J. Methodology for Injury Determination and Examination of Injury and Causal Link

Submissions by the domestic industry

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

- i. The fact that the consumption in India is higher than the capacities with the Indian producer may justify imports per se. The same, however, does not justify dumping. There is no reason/occasion for the foreign suppliers to resort to dumping to meet Indian demand. In view of inevitable imports into the Country, the domestic industry is forced to set its prices considering the price offers of the leading foreign suppliers and disregard its cost consideration. Since the foreign producers are resorting to dumping, the domestic industry is forced to follow such dumped prices.
- ii. The volume of imports from the subject country has increased in absolute terms throughout the injury period despite anti-

dumping duty in existence. This clearly evidences that the present anti-dumping duty is inadequate to curb the dumped imports from the subject country.

- iii. The landed price of imports was substantially below the selling price of the Domestic Industry. The imports are undercutting the prices of the domestic industry in the market. The landed price of imports from the subject country is also far lower than the cost of sales and NIP of the domestic industry.
- iv. The landed price of imports is significantly below the cost of production of the domestic industry throughout the injury period signifying price suppression. Imports have also significant depressing effect on the prices of the domestic industry in the market. The effect is such that the domestic industry was compelled not to increase their price in proportion to increase in cost of sales, thereby, suffering huge financial losses.
- v. While cost of production and selling price increased in 2011-12 and thereafter in 2012-13. However, the selling price declined in 2012-13 when the cost of production increased. Even though in POI, the cost of production declined to some extent, the decline in the selling price in 2012-13 and POI was still too significant than the decline in cost of production. It is, thus, evident that the effect of dumped imports on the domestic industry has been adverse and significant.
- vi. The production of the petitioner and capacity utilization declined throughout the period. The sales of the domestic industry also declined throughout the period. The adverse situation of the domestic industry is despite (a) anti-dumping duty in existence, (b) demand for the product far beyond the capacities with the domestic industry. This shows that the anti dumping duty imposed is inadequate.
- vii. The domestic industry could make some profits in 2011-12 and then suffered significant financial losses. As a result of decline in profitability, the domestic industry has suffered cash losses and negative return on investment.
- viii. Average inventory levels of the domestic industry have declined. This is because the domestic industry has been regulating the inventories and production is being undertaken considering the sales volumes.
- ix. Employment level has declined over the injury period. However, there has been an increase in the wages.

- x. Productivity of the domestic industry has declined over the injury period in tandem with the decline in production. Should the anti dumping duty on the product be removed, productivity of the domestic industry would suffer further.
- xi. Consideration of the import prices from the subject country and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market shows that the landed value of imported material from subject country is below the selling price of the domestic industry, causing significant price undercutting in the Indian market and imports of subject goods from other countries are at much higher prices.
- xii. Demand for the subject goods was showing significant increase and this could not have been a factor affecting domestic prices. Thus, the major factor responsible for the domestic industry's prices is the landed price of the subject goods from subject country and the cost of production of the domestic industry.
- xiii. There is positive and significant increase in demand of product in India. Capacity of domestic industry is lower than demand, despite which the sales volumes of the domestic industry declined due to presence of dumped imports in the Indian market. On the other hand, volume of dumped imports from the subject country has increased significantly over the injury period.
- xiv. The growth of the domestic industry in terms of sales, production, capacity utilization, market share, profits, return on investment and cash profits was negative. This is clearly due to continued dumping of the product under consideration in the market.
- xv. Continuous adverse performance of the product due to persistent Korean dumping has prevented the domestic industry from moving further on the capacity expansion.
- xvi. Domestic Industry is suffering continued injury because of dumped imports of subject goods. Further, the Domestic Industry is yet to earn reasonable rate of return. Above all, the domestic industry is not able to fully utilize its capacities despite significant and sufficient demand in the Country.
- xvii. Imports from subject country are causing severe price undercutting to the Domestic Industry. Should the present anti dumping duty cease, there is a clear likelihood that price undercutting would increase further.

Submissions by producers/exporters/importers other interested parties

39. The following injury related submissions have been made by producers/exporters/importers other interested parties:
- i. There is no correlation with prices of imports of subject goods and selling price of domestic industry.
 - ii. Capacity of domestic industry is insufficient to meet the demand of the Indian market.
 - iii. There seems to be a big anomaly between the trend of fixed assets and trend of depreciation provided by the Petitioner. While fixed assets of Petitioner have declined consistently throughout the injury period, depreciation has consistently gone up.
 - iv. Domestic industry's claim for 22% return on capital employed is undue and baseless.
 - v. Contrary to the analysis of Applicant that imports have increased substantially in comparison to production, it is the other way round as it is the production, which has declined substantially with increase in imports remaining more or less stable. Had it been only increase in subject imports, then the same would have shown a substantial increase in comparison to total imports as well.
 - vi. Applicant has computed landed value incorrectly by adding basic customs duty and customs cess to CIF value instead of assessable value. This has deflated the landed value and rendered the entire price effect incorrect.
 - vii. Two mid-term reviews and two sunset reviews have already been conducted, wherein dumping margin was lower than the injury margin. This implies that there were other reasons apart from dumping of subject goods, which resulted in injury to the domestic industry.
 - viii. Dumping and injury margins should be determined on monthly basis due to wide fluctuation in the prices of NBR caused by wide variation in the prices of the major raw materials.

Examination by the Authority

40. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties. However, the specific submissions made by the interested parties, and considered relevant, are addressed by the Authority as below:
- i. As regards the submission that capacity of domestic industry is insufficient to meet the demand of the Indian market, the Authority notes that there is no legal provision mandating the domestic industry to meet the entire demand in the country.
 - ii. As regards the submission that 22% return on capital employed, allowed by DGAD, is not reasonable, the Authority notes that granting 22% return on capital employed is a consistent practice in the DGAD.
 - iii. As regards the contention that while fixed assets of petitioner have declined consistently throughout the injury period, depreciation has consistently gone up, the Authority notes that the non-injurious price of the domestic industry has been determined in terms of Annexure III of the Anti-dumping Rules.
 - iv. As regards the submission that dumping and injury margins for period of investigation should be determined on monthly basis due to wide fluctuation in the prices of NBR caused by wide variation in the prices of the major raw materials, the Authority notes that dumping margin and injury margin have been determined on monthly basis.
41. In consideration of 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.
42. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the

dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

43. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.
44. The present investigation is a sunset review of anti-dumping duties in force. Rule 23 provides that provisions of Rule 11 shall apply, mutatis mutandis in case of a review as well. The Authority has, therefore, determined injury to the domestic industry considering, mutatis mutandis, the provisions of Rule 11 read with Annexure II. Further, since anti-dumping duties are in force on imports of the product under consideration, the Authority considers whether the existing anti-dumping duties on the imports of subject goods from Korea RP are required to be considered while examining injury to the domestic industry. The Authority has examined whether the existing anti-dumping measure is sufficient or not to counteract the dumping which is causing injury.
45. According to Section 9(A)(5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.
46. 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. The Authority has examined injury to the domestic industry by considering information relating to M/s Omnova Solutions (India) Pvt. Ltd., constituting domestic industry under the Rules. Accordingly, the volume and price effect of dumped imports have been examined as follows:

VOLUME EFFECT

Volume effect of dumped imports and impact on domestic industry Demand and Market Share

47. The Authority notes that the import volume and value as reported by the cooperative exporters from the subject country for the POI is more than that reported in the DGCI&S data by *** MT. In view of this, the Authority has accepted the import volume and value reported by the cooperative exporters for the POI. The Authority has determined demand or apparent consumption of the product in the Country as the sum of domestic sales of the Indian producer and imports from all sources. The demand so assessed can be seen in the table given below. The Authority notes that demand for the product under consideration in the country has increased consistently throughout the injury period including the POI. Further, while the imports from subject country have also increased in line with the domestic demand, the sales of the domestic industry have declined. The Authority further notes that the market share of the domestic industry has declined over the injury period, whereas market share of the subject country as well as imports from other countries increased during the POI as compared to the base year.

Period	UOM	2010-11	2011-12	2012-13	POI
Demand	MT	24,300	25,751	31,961	33,691
<i>Trend</i>	%	100	106	132	139
Imports - Korea RP	MT	7,596	7,808	11,187	13,585
Imports - Other countries	MT	8,657	10,605	14,493	14,079
Sales of Domestic industry	MT	8,047	7,338	6,281	6,027
Market Share					
Subject imports	%	31	30	35	40
Other imports	%	36	41	45	42
Domestic industry	%	33	29	20	18

Import Volume & market share

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

imports either in absolute terms or relative to production or consumption in India.

Period	UOM	2010-11	2011-12	2012-13	POI
Korea RP	MT	7,596	7,808	11,187	13,585
Other Countries	MT	8,657	10,605	14,493	14,079
Total Imports	MT	16,253	18,413	25,680	27,664
Imports from Subject country in relation to					
Total Imports	%	47	42	44	49
Consumption in India	%	29	29	34	39
Production in India	%	80	91	153	191

49. The Authority notes that the volume of imports from the subject country is significant. Further, the imports from the subject country vis-à-vis domestic demand and production have increased during the POI as compared to the base year.

PRICE EFFECT

Price effect of dumped imports and impact on domestic industry

50. The impact on the prices of the domestic industry on account of imports of the subject goods from the subject country have been examined with reference to price undercutting, price underselling, price suppression and price depression. For the purpose of this analysis the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed value of imports from the subject country. A comparison for subject goods during the period of investigation was made between the landed value of the dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission incurred by the domestic industry have been adjusted. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic industry in terms of Annexure III of the Anti-dumping Rules. The position is as follows.

Price Undercutting and Underselling

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

Price Undercutting

Period	UOM	2010-11	2011-12	2012-13	POI
Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>136</i>	<i>123</i>	<i>111</i>
Landed Price – Korea RP	Rs./MT	1,38,151	1,82,931	179,736	1,49,123
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting %	%	***	***	***	***
Price Undercutting %	Range	10-20%	10-20%	5-15%	10-20%
With anti dumping duty					
Landed Price – Korea RP	Rs./MT	1,39,999	1,84,986	1,81,704	1,51,289
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting %	%	***	***	***	***
Price Undercutting %	Range	10-20%	10-20%	5-15%	5-15%

Price Underselling

Particulars	Unit	POI
Non injurious Price of Domestic industry	Rs./KG	***
Landed Value	Rs./KG	1,49,123
Price Underselling	Rs./KG	***
	%	***
	Range%	10-20

52. The Authority notes that landed price of imports is below the selling price of the domestic industry even after adding anti-dumping duty, resulting in significant price undercutting. Further, price underselling effect is also significant.

Price Suppression and Depression

53. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with that of cost of sales. The given data shows that the domestic industry's selling price has remained below its cost of sales throughout the injury period except in 2011-12, signifying existence of price suppression effect.

Period	UOM	2010-11	2011-12	2012-13	POI
Cost of Sales	Rs./MT	***	***	***	***
<i>Trend</i>	%	100	126	134	115
Net Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>	%	100	136	123	111

K. Examination of other economic parameters of the domestic industry

54. Annexure II to the Anti-dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further 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. The various injury parameters relating to the domestic industry are analysed below.

Sales, Production, capacity and capacity utilization

55. The Authority notes from the table below that the production, sales and capacity utilization of the domestic industry declined over the injury period, despite increase in demand in the country and continued imposition of anti-dumping measures.

Period	UOM	2010-11	2011-12	2012-13	POI
Capacity	MT	11,000	11,000	11,000	11,000
Production	MT	10,349	9,196	7,874	7,390
Capacity utilization	%	94	84	72	67
Domestic sales	MT	8,047	7,338	6,281	6,027
Demand	MT	24,300	25,751	31,961	33,691

Profit/loss, return on investment and cash flow

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

Period	UOM	2010-11	2011-12	2012-13	POI
Cost of Sales	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	126	134	115
Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	136	123	111
Profit/loss	Rs./MT	(***)	***	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	(100)	28	(264)	(144)
Profit/loss	Rs. Lacs	(***)	***	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	(100)	25	(201)	(103)
Profit before interest & tax	Rs. Lacs	***	***	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	100	22583	(17507)	(8242)
Cash Profit	Rs. Lacs	(***)	***	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	(100)	78	(210)	(82)
Return on Investment	%	***	***	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	100	884	(957)	(430)

57. The Authority notes that the cost of sales increased up to 2012-13 and then declined in the POI. The selling price increased up to 2011-12 and then declined in 2012-13 and the POI. The domestic industry could make some profits in 2011-12 and then suffered significant financial losses. As a result of decline in profitability, the domestic industry has suffered cash losses and negative return on investment.

Inventories

58. The data given in the table below shows that the inventory of the subject goods of the domestic industry declined during the POI as compared to the base year. Keeping in view the fact that demand in India exceeded the supply, the inventory position of the company was substantial.

Period	UOM	2010-11	2011-12	2012-13	POI
Average Inventory	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>85</i>	<i>84</i>	<i>77</i>

Employment and wages

59. From the table given below, the Authority notes that the employment level of the domestic industry has declined during the POI as compared to the base year. It is, however, noted that the wages have increased.

Period	UOM	2010-11	2011-12	2012-13	POI
Employment	Nos.	***	***	***	***
<i>Trend</i>	<i>%</i>	<i>100</i>	<i>100</i>	<i>95</i>	<i>90</i>
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>%</i>	<i>100</i>	<i>128</i>	<i>162</i>	<i>163</i>

Productivity

60. The Authority notes from the table below that productivity of the domestic industry during POI has declined as compared to the base year.

Productivity	UOM	2010-11	2011-12	2012-13	POI
Per Employee	MT	***	***	***	***
<i>Trend</i>	<i>%</i>	<i>100</i>	<i>89</i>	<i>80</i>	<i>79</i>
Per Day	MT	29.57	26.27	22.50	21.11
<i>Trend</i>	<i>%</i>	<i>100</i>	<i>89</i>	<i>76</i>	<i>71</i>

Factors affecting prices

61. The examination of the import prices from the subject country and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc shows that

both with and without the anti-dumping duty, the landed value of imported material from the subject country is below the selling price and the non-injurious price of the domestic industry, causing significant price undercutting as well as under selling effects. It is also noted that the demand for the subject goods was showing significant increase during the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the landed value of subject goods from the subject country.

L. Magnitude of Dumping Margin

62. The Authority notes that the dumping margin of the imports of the subject goods from the subject country is positive and significant.

M. Growth

63. The Authority notes that the domestic industry has shown negative growth in terms of all economic parameters such as production, domestic sales, capacity utilization, market share in demand, profit, cash profit, ROCE, etc. throughout the injury period.

Growth % (Year by Year)	UOM	2010-11	2011-12	2012-13	POI
Production Volume	%	-	(11.14)	(14.38)	(6.15)
Domestic Sales Volume	%	-	(8.82)	(18.98)	(3.61)
Cost of Sales	%	-	25.08	6.46	(13.93)
Selling Price	%	-	36.10	(9.38)	(9.95)
Profit/Loss	%	-	125	(896)	49
Return on Capital Employed	%	-	14	(26)	6

Ability to raise Capital Investment

64. The Authority notes that in view of continuous dumping of subject goods from the subject country causing continued material injury, it is obvious that the domestic industry cannot contemplate for fresh investments.

N. Causal Link

65. The Authority examined whether other known factors could have caused injury to the domestic industry as follows:

- i. **Imports from Third Countries:** - The Authority notes that the average price of imports of product under consideration from other countries is higher than that of the subject country during the POI, and therefore, could not have caused injury to the domestic industry.
- ii. **Contraction in Demand:** - The Authority notes that there is no contraction in demand as the demand of the subject goods in the country has consistently increased throughout the injury period.
- iii. **Pattern of consumption:** - It is noted that no significant change in the pattern of consumption for the subject goods has come to the knowledge of the Authority, nor any interested party has made any submission in that regard.
- iv. **Conditions of competition:** - The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry.
- v. **Developments in technology:-** The Authority notes that the investigation has not shown that there was any significant change in technology which could have caused injury to the domestic industry.
- vi. **Export performance of the domestic industry:** - The export performance of the domestic industry is not relevant since price and profitability in the domestic and export market has been segregated by the Authority for the purpose of assessing injury to the domestic industry.

O. Likelihood of dumping and injury

Submissions by the domestic industry

66. Following are the submissions made by the domestic industry:

- i. There are continued dumping of the subject goods from the subject country and consequently continued injury to the domestic industry despite anti-dumping duty in existence. Despite imposition of anti-dumping duty (ADD) against imports from the subject country,

domestic industry continues to suffer injury because of the constant presence of the dumped imports in the Indian market. This clearly leads to an implication of likelihood of injury to the Domestic Industry.

- ii. The present anti-dumping duty in place is significantly low. Import price from the subject country **remained** lower than the cost and selling price of the domestic industry, as the exporters increased their prices much less than the increase in costs due to raw materials price increase. Where raw material prices registered decline, the same was reflected in the export price. Thus, the quantum of measures imposed has failed to protect the domestic industry from unfair competition from subject imports.
- iii. The volume of imports from the subject country has in fact increased when compared to the injury period of original investigations. One of the purposes of anti-dumping duties is to eliminate dumping and to restore a situation on fair market conditions. If there had been no continued dumping of the product, imports would have declined. Continued presence of dumped imports, in fact, in higher volumes, is due to continued dumping of the product in the country and not due to fair business practices. While the domestic industry is trying to come out of the ill-effects of dumping, it continues to suffer injury in view of continued dumping of the product in the country.
- iv. Dumping margin determined in the present investigation is higher than that of previous investigations and significant which clearly shows likelihood of dumping and consequent injury in the event of cessation of anti dumping duty.. This clearly establishes that the dumping is likely to continue and indeed intensify in the event of cessation of present anti dumping duty.
- v. The market share of imports from the subject country is quite significant in spite of the existing anti dumping duties.
- vi. Producers in the subject country maintain huge capacities to produce NBR, far beyond domestic demand. In case of cessation of the present duty, dumping from subject country would definitely continue and in fact intensify and ultimately cause intensified volume and price injury to the Domestic Industry.
- vii. The Indian market is highly price sensitive. In the event of cessation of current antidumping duty, the domestic industry will have to further reduce the price or loose significant sales volumes. In the event of cessation of current anti-dumping duty and if Domestic Industry chooses to sell at import prices, the Domestic Industry would suffer further decline in profitability.

- viii. Imports from subject country are undercutting and would continue to undercut the prices of the Domestic Industry, should the present anti dumping duty be removed. The Indian prices are quite lucrative to the foreign producers and would further lead to increase in imports.
- ix. It is not necessary that all conditions should exist for continuation of duty. Even if one or more parameters are satisfied, the anti dumping duty should be continued.
- x. The responding exporters in the subject country must establish that dumping is unlikely to continue in the event of revocation of anti dumping duty. Unless the exporters establish on the basis of information that dumping is unlikely to continue or intensify in the event of expiry of anti-dumping duties, the Designated Authority must hold that dumping would continue and intensify in the event of cessation of anti-dumping duties causing consequent injury to the domestic industry.
- xi. The causal link has already been established in all the previous investigations. In the present sunset review investigation, the Designated Authority has to examine whether cessation of anti dumping duty would lead to continuation or recurrence of dumping and injury. However, there exists a causal relationship between the likelihood of dumping and consequent injury.
- xii. The present injury to the domestic industry is because of dumped imports in India. This is clearly established by significant price undercutting, price underselling, price depression/suppression, increase in import volumes in absolute terms & in relation to production & consumption in India, decline in production, sales, market share, profits, cash flows and return on investment. The deterioration in performance of the domestic industry is due to dumped imports in the Country.

Submissions by producers/exporters/importers/other interested parties

67. The responding opposite interested parties have made the following submissions:
- i. Kumho is already operating at more than optimal capacity utilization. As a result, even if a valid duty notification is revoked, it will not have surplus capacity to divert its production of subject goods to India.
 - ii. The submission that there exists significant freely disposable capacity in Korea is totally incorrect.

- iii. Kumho is already selling its subject goods in other countries at prices which are much higher than the export prices in India. Resultantly, with already higher prices, revocation of duty will not result in shifting of exports from other countries to India. Thus there is no likelihood of dumping of subject goods by Kumho.
- iv. Kumho has not increased its capacities since the beginning of injury period of previous investigation. Thus, the allegation of increasing capacities does not hold any merit as far as Kumho is concerned. Further, in the previous investigation, dumping margin for Kumho was determined to be a mere 1.69%. In the present investigation, the dumping margin is negative for Kumho. As a result, the allegation of continuous dumping also does not hold good.

Examination by the Authority

68. The present investigation is a sunset review of anti-dumping duties imposed on the imports of subject goods from Korea RP. Under the Rules, the Authority is required to determine whether continued imposition of antidumping duty is warranted. This also requires examination whether the duty imposed is serving the intended purpose of eliminating injurious dumping. In the present investigation, as there are continued dumping of the subject goods from the subject country causing continued injury to the domestic industry, which ipso facto indicates likelihood of dumping and injury, the Authority is not required to examine whether cessation of duty is likely to lead to continued dumping and injury to the domestic industry. However, considering the fact that the dumping margin in the previous as well as the present investigation is positive and that there are favorable market conditions in the Indian market as far as demand and price for the subject goods are concerned, the Authority has reason to believe that dumping may intensify if the anti-dumping duty ceases. It is a matter of fact that despite the anti-dumping measures in force, the subject country continued to dump the subject goods in the Indian market. The following analysis would show about the likelihood of continuation/ intensification of dumping and injury to the domestic industry in the event of revocation of anti dumping duty:

(i) Level of current and past dumping margin

69. The level of dumping margin both in the original as well as present investigation is positive. Given the level of price undercutting and price underselling and considering the capacity in Korea RP and demand in

India, the volume of dumped import is likely to increase further in the event of cessation of anti-dumping duty.

(ii) Price attractiveness of Indian market

70. The price at which the subject goods are being exported by Korea RP to India is an indicator of the likelihood of continuation/intensification of dumping. At the current landed price in India, there is positive undercutting even with anti-dumping duty. Thus, with the cessation of anti-dumping duty, dumping is likely to intensify causing further injury to the domestic industry.

(iii) Export orientation of Korean producers

71. From the available information it is evident that the Korean producers/exporters are very much export oriented. Considering the consistent increase in the volume of imports of subject goods from the subject country during the injury period including the POI and high demand and favorable market conditions for the subject goods in Indian market, the Authority holds that if the existing anti-dumping duty is withdrawn, the entire demand for the subject goods in India can easily be catered to by the Korean exporters.

P. Magnitude of Injury and injury margin

72. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the Anti-dumping Rules has been compared with the landed value of the exports made by the cooperative exporters from the subject country for determination of injury margin during the POI and the injury margin so worked out is as under:

Particulars	UOM	POI		
		KPC	LG	All other
Non-Injurious Price (Weighted Average of Monthly NIP)	Rs/MT	***	***	***
Landed Price without ADD	Rs/MT	***	***	***
Injury Margin	Rs/MT	***	***	***
	US\$/MT	***	***	***
	%	***	***	***
	Range %	10-20	10-20	10-20

Q. Indian industry's interest and other issues

73. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent injury to the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.
74. The purpose of anti dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

R. Post Disclosure Comments

75. The following are the post-disclosure submissions/comments made by the opposing interested parties and considered relevant by the Authority:
- i. Inadequate time provided by the authority for offering disclosure comments.
 - ii. The present investigation was improperly and illegally initiated after the expiry of existing anti-dumping duties and merits termination ab-initio.
 - iii. Determination of normal value on monthly basis without taking views of Kumho is in violation of principle of natural justice.
 - iv. Duty Drawback adjustment should have been allowed by the authority to make a fair comparison between the export price and the normal value.
 - v. While calculating the normal value, the authority should have allowed the level of trade adjustment. This would have enabled authority to make a fair comparison between the export price and the normal value.

- vi. Continuation of sunset review beyond one year is illegal and without jurisdiction. Rule 23(2) of AD Rules specifically mandates that the review shall be concluded within a period “not exceeding” twelve months from the date of initiation of such review.
- vii. There is no correlation between domestic industry’s selling price and landed value of imports. Thus, there is no link between the losses suffered by the domestic industry and the landed value of imports. Authority has failed to examine this aspect.
- viii. Capacity with the domestic industry is insufficient to meet the demand of the Indian market. Authority has not examined this aspect properly.
- ix. Allowing 22% return on capital employed to domestic industry while computing the non-injurious price stating is unreasonable.
- x. The Authority has incorrectly examined depreciation cost and fixed assets. Despite declining fixed assets, there has been consistent and substantial increase in the depreciation cost.
- xi. Authority has stated to have relied upon transaction-wise imports data provided by DGCI&S in the present investigation. But, authority has also stated that it has considered the import volume and value reported by the cooperative exporters for the POI. However, source of import data for previous years remains unknown. In view of this, the import data sourced from DGCI&S should be provided to the interested parties.
- xii. During the POI, Russia had more than de-minimis level of imports of subject goods into India and at a price lower than the Korean import prices. Authority should examine this aspect to rule out imports from Russia and also from other countries have not caused injury to the domestic industry.
- xiii. The transaction-wise import data of DGCI&S made available in public file shows that it includes a number of non-product under consideration as well, which should be excluded while determining the volume of imports of subject goods into India.
- xiv. There is no link between the profits & losses of the domestic industry and the price undercutting range. During 2011-12, when the domestic industry made profits, there was a high price

undercutting. However, during subsequent years, when domestic industry suffered losses, price undercutting reduced.

- xv. Authority has failed to examine that while employment level of the domestic industry has declined over the injury period, its wages has increased consistently and substantially over the same period. The undue increase in wages despite fall in employment and resultant effect of profitability of the domestic industry cannot be blamed on imports.
 - xvi. As stated by the authority in other investigations, it is the endeavour of the authority not to continue anti-dumping duty beyond a period of 10 years. However, in the present review, the anti-dumping duty has been in force for more than 17 years. Authority should recommend termination of anti-dumping duty on subject goods by following its own principle.
 - xvii. NBR 2255 is different from general type of NBR in terms of use of raw materials, end usage etc. authority should exclude NBR2255 from the calculation of normal value.
 - xviii. While calculating normal value, Authority should include interest revenue in calculating selling, general and administrative expenses.
 - xix. Authority should deduct profit from applied purchase prices of Butadiene for manufacturing cost of self-produced Butadiene.
76. The following are the post-disclosure submissions made by the domestic industry and considered relevant by the Authority:
- i. The exporters have resorted to excessive confidentiality while participating in the present investigations.
 - ii. The quantum of dumping margin determined is significantly low.
 - iii. Non injurious price may be determined considering actual cost where fixed expenses are apportioned on the basis of optimum production.
 - iv. The domestic industry is likely to suffer injury in the event of cessation of anti dumping duty.
 - v. The anti dumping duty is required to be continued in enhanced quantum.

- vi. Duty may be recommended on fixed amount basis in US\$ term.

Examination by the Authority

77. The Authority notes that the post-disclosure comments/submissions made by the interested parties are mostly reiterations and already examined suitably and adequately addressed in the relevant paras of this finding. However, the post-disclosure comments/submissions made by the interested parties and considered relevant by the Authority are examined as below:
- i. As regards the submission that the time granted by the Authority for disclosure comments is inadequate, the Authority notes that the anti-dumping investigations are time bound and reasonable time has been granted to the interested parties for furnishing comments on the disclosure statement. In the present case, the interested parties have filed their post-disclosure comments.
 - ii. As regards the contention that present investigation was improperly and illegally initiated after the expiry of existing anti-dumping duties and merits termination ab-initio, the Authority notes that this submission has already been examined and addressed in the relevant paras of this finding. However, the Authority once again notes that the Hon'ble Delhi High Court in their Judgment has upheld the initiation as valid and legal.
 - iii. As regards the contention that determination of normal value on monthly basis without taking views of Kumho is in violation of principle of natural justice, the Authority notes that in the present investigation, apart from Kumho, there are other interested parties, who have requested for monthly analysis of dumping margin and injury margin due to wide fluctuation in the prices of NBR caused by wide variation in the prices of the major raw materials. The Authority notes that this submission has already been examined and addressed in the relevant paras of this finding. However, the Authority once again notes that in view of the wide fluctuation in the prices of NBR caused by wide variation in the prices of the major raw materials and submission made by the interested parties in this regard, the Authority considered it appropriate to undertake monthly analysis.
 - iv. As regards the submission that duty drawback adjustment should have been allowed by the authority to make a fair comparison

between the export price and the normal value, the Authority notes that this claim was made by the exporters during on the spot verification. However, the exporters failed to substantiate their claim with supportive documentary evidence and demonstrate logically the linkage between the consumed materials in the exported products and the duties paid and the methodology of calculation of duty drawback. The exporters did not offer any comment on the verification reports as well. In view of this, the Authority does not consider it appropriate to accept the claim of the exporters in this regard.

- v. As regards the submission concerning level of trade adjustment in the normal value, the Authority notes that this claim was raised by the exporters during on the spot verification as well. The exporters had claimed level of trade adjustment on the ground that while in export sales a commission agent is involved who undertakes significant items of work and the same had been claimed as deduction from the export price, but the expenses incurred for carrying out those items of work had not been deducted from the domestic selling price. However, as already reflected in the verification reports, the company could not logically explain the claimed adjustments with supporting documentary evidence and did not offer any comment on the verification reports as well. In view of this, the Authority does not consider it appropriate to accept the claim of the exporters in this regard.
- vi. As regards the submission that continuation of sunset review beyond one year is illegal and without jurisdiction, the Authority notes that in terms of Rule 17 read with Rule 23(3) of the Anti-dumping Rules, the Central Government may, in its discretion in special circumstances, extend the time limit for completing the anti-dumping investigations, including review investigations, by six months beyond one year. In this regard, the Authority notes that some of the interested parties have challenged the decision of the Central Government to extend the time limit for completing the investigation for six months beyond one year before the Hon'ble Delhi High Court and the matter is pending for disposal.
- vii. As regards the submission that there is no correlation between domestic industry's selling price and landed value of imports, the authority notes that during POI, the landed price of imports is below the selling price of the domestic industry even after adding anti-dumping duty, resulting in significant price undercutting.

- viii. As regards the submission that capacity of domestic industry is insufficient to meet the demand of the Indian market, the Authority reiterates that there is no legal provision mandating the domestic industry to meet the entire demand in the country in order to be eligible for protection under anti-dumping law. Moreover, imposition of anti-dumping measures does not prevent imports.
- ix. As regards the submission that allowing 22% return on capital employed to domestic industry while computing the non-injurious price is unreasonable, the Authority reiterates that granting 22% return on capital employed is a consistent practice in the DGAD.
- x. The interested parties have contended that despite declining fixed assets, there has been consistent and substantial increase in the depreciation cost. In this regard, the Authority notes that this situation is because of falling production as compared to the base year. The capacity utilization has constantly declined from 94% to 67% during POI. However, it may be noted that while calculating NIP, depreciation and other fixed costs have been taken at the highest achieved capacity utilization i.e.94% in terms of Annexure III of the Rules.
- xi. As regards the submission concerning the relied upon imports data, the Authority notes that the transaction-wise imports data provided by DGCI&S has been relied upon in the present investigation. However, for the POI, the Authority has relied upon the verified data of the cooperating exporters since the volume and value of the same was found to be higher. The transaction-wise imports data from DGCI&S source provided by the domestic industry has been made available in the public file.
- xii. As regards the submission that Authority should have taken imports of subject goods from Russia in the injury analysis as the same was more than de minimis level, the Authority notes that as per available information the Russian price is more than the Korean price.
- xiii. As regards the submission that the transaction-wise import data of DGCI&S made available in public file includes a number of non-product under consideration, the Authority notes that only volume and value of the imports of product under consideration has been taken in to account for analysis.
- xiv. As regards the submission that there is no link between the profits & losses of the domestic industry during POI, the Authority notes

that during this period the domestic producer had to reduce the selling price to align it with the imported price resulting in reduction of price undercutting and increase in losses.

- xv. As regards the submission that Authority has failed to examine that the undue increase in wages despite fall in employment and resultant effect of profitability of the domestic industry, the Authority notes that the relevant injury parameters have been examined and injury to the domestic industry due to the dumped imports of subject goods from subject country has been established.
- xvi. As regards the submission that the present anti-dumping duty is in force for more than 17 years and therefore it should be discontinued, the Authority notes that there is no provision under the Customs Tariff Act or the Anti-dumping Rules or the WTO Agreement prescribing any time frame for discontinuation of anti-dumping duties. As long as there is dumping causing injury to the domestic industry, anti-dumping duties can be in force to provide a level playing field to the domestic industry vis-à-vis dumped goods.
- xvii. As regards the submission that NBR 2255 is different from general type of NBR and therefore the same should be excluded from the purview of the PUC, the Authority notes that the PUC in the earlier as well as present investigations is Acrylonitrile Butadiene Rubber (NBR). The raw materials required and the production process of the various grades of the PUC is same. Moreover, the different grades of the PUC are not mutually exclusive in usage. In view of the above, the Authority does not consider it appropriate to exclude NBR 2255 from the purview of the PUC.
- xviii. As regards the submission that while calculating normal value, authority should include interest revenue in calculating selling, general and administrative expenses, the Authority notes that when a company is a multi product company and the contribution of PUC in its total sales is minimal, it is appropriate to apportion the gross interest on the basis of sales ratio.
- xix. As regards the submission that Authority should deduct profit from applied purchase prices of Butadiene for manufacturing cost of self-produced Butadiene, the Authority notes that due allowance has been given while adopting Butadiene rates for in-house production. The transfer price is comparable to that of other exporter from Korea as well.

- xx. As regards the submission of the domestic industry that the non injurious price (NIP) may be determined considering actual cost where fixed expenses are apportioned on the basis of optimum production, the Authority notes that the NIP has been determined on the basis of the provisions laid down under Annexure III of the Anti-dumping Rules.

S. CONCLUSIONS

78. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in this finding and on the basis of the above analysis of the state of continuation of dumping and consequent injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:

- i) There is continued dumping of the product concerned from Korea RP, causing injury to the domestic industry.
- ii) Both price undercutting and underselling are positive.
- iii) The financial performance of the Domestic Industry has deteriorated. During the POI, the domestic industry has shown negative growth in terms of the economic parameters such as production, domestic sales, capacity utilization, market share, profit, profitability, ROCE. The dumped imports continue to cause injury to the domestic industry.
- iv) Dumping of the product under consideration is likely to intensify from the subject country should the current anti-dumping duty be withdrawn.

T. Recommendations

79. Having concluded as above, the Authority is of the view that the antidumping measure is required to be extended as specified in the duty table below.

80. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, the anti-dumping duty equal to the amount indicated in Col. 9 of the table below is recommended to be imposed by the Central Government on the imports of the subject goods, originating in or exported from the subject country.

DUTY TABLE

SL. No	Heading	Description of goods	Specification	Country of origin	Country of export	Producer	Exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	4002	Acrylonitrile Butadiene Rubber (NBR)	Any	Korea RP	Korea RP	M/s Kumho Petrochemicals Co Ltd	M/s Kumho Petrochemicals Co Ltd	57	MT	US Dollar
2.	4002	Acrylonitrile Butadiene Rubber (NBR)	Any	Korea RP	Korea RP	M/s LG Chemicals Ltd (LG)	M/s LG Chemicals Ltd (LG)	61	MT	US Dollar
3.	4002	Acrylonitrile Butadiene Rubber (NBR)	Any	Korea RP	Korea RP	Any other Producer/ exporter other than combination of Producer-exporter indicated at Sr. Nos. 1 & 2 Above		85	MT	US Dollar
4.	4002	Acrylonitrile Butadiene Rubber (NBR)	Any	Korea RP	Any Country other than Korea RP	Any	Any	85	MT	US Dollar
5.	4002	Acrylonitrile Butadiene Rubber (NBR)	Any	Any Country other than Korea RP	Korea RP	Any	Any	85	MT	US Dollar

U. Further Procedures

81. An appeal against this order, after its acceptance by the Central Government, shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

J. K. Dadoo
Designated Authority