

F.No.14/5/2007- DGAD  
GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

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

Date: 30.10.2015

**NOTIFICATION**

**(Final Findings)**

**Subject: - CESTAT remand case in the Final Findings issued in the anti-dumping investigation concerning the imports of Rubber Chemicals, namely, MBT, CBS, TDQ, PVI and TMT originating in or exported from China PR and PX-13(6PPD) originating in or exported from China PR and Korea RP-reg**

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No.14/5/2007- DGAD: Having regard to the Customs Tariff Act, 1975 as amended from time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the Rules or AD Rules):

**A. BACKGROUND**

1. The Designated Authority (hereinafter referred to as the Authority), consequent to an application filed by National Organic Chemical Industries Ltd. on behalf of the domestic industry, had recommended imposition of anti dumping duty on the imports of Rubber Chemicals, namely, MBT, CBS, TDQ, PVI and TMT originating in or exported from China PR and PX-13(6PPD) originating in or exported from China PR and Korea RP vide its Final Findings Notification No.14/5/2007- DGAD dated 1st October, 2008. On the basis of the Findings, anti dumping duties on the above mentioned rubber chemicals originating in or exported from China PR and Korea RP (hereinafter referred to as the subject countries) were imposed by the Central Government vide Notification No.133/2008-Customs dated 12th December, 2008.
2. Aggrieved by the recommendations of the Authority in the above referred Final Findings, M/s Kumho Petrochemicals Co. Limited, Korea RP, a Korean exporter of one of the rubber chemicals, i.e., PX-13(6PPD) and M/s Rishirop Polymers Pvt. Ltd., an Indian importer of PX-13(6PPD) filed appeals before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter also referred to as CESTAT or the Tribunal), challenging the Customs Notification No. 133/2008-Customs dated 12th December, 2008 issued by the Ministry of Finance and the Final Findings Notification No.14/5/2007-DGAD dated 1st October, 2008 issued by the Designated Authority, and praying for setting aside the impugned customs notification and the Final Findings.
3. National Organic Chemical Industries Ltd (NOCIL), the domestic industry in this investigation, also filed an appeal before the CESTAT, Principal Bench, New Delhi,

challenging the Final Findings Notification No.14/5/2007- DGAD dated 1st October, 2008 and the Customs Notification issued by the Ministry of Finance and seeking modification / enhancement of duties on the exports from Korea RP.

4. The Hon'ble CESTAT passed its final orders nos. 54808-54810/2014-CU(DB) on 26.12.2014 in Application Nos. AD/STAY/1085&1449/2009-CU(DB); Application Nos. AD/MISC/60369, 61349, 60370 & 61348/2009-CU(DB) and Appeal Nos AD/6,7&9/2009-CU(DB) filed by M/s Kumho Petrochemicals Co Ltd, Korea RP; National Organic Chemical Industries and Rishiroop Polymers Pvt Ltd vs Designated Authority and Another, under Section 9C of the Customs Tariff Act against the Final Findings Notification No. 14/5/2007-DGAD dated 01.10.2008 and the Customs Notification No. 133/2008-Customs dated 12th December, 2008 issued by the Central Government in the anti-dumping investigation concerning imports of Rubber Chemicals originating in or exported from China PR and Korea RP, remanding the matter back to the Designated Authority to grant post-decisional hearing to the concerned parties and complete other associated process preferably within six months from the date of the order.
5. The brief facts under consideration of the CESTAT in the said appeals were the Authority had recommended imposition of anti-dumping duty on the exports of, *inter-alia*, PX-13 (6PPD) from *inter-alia* M/s Kumho Petrochemicals Co. Ltd, Korea RP. The Authority found that the exports from Korea RP were being made below their normal value and the domestic industry had suffered material injury, cumulatively from the subject imports. In respect of the Korean exporter Kumho Petrochemicals, the Authority had constructed its cost of production for PX-13 (6PPD) (hereinafter also referred to as the subject goods), by considering the international price of the major raw material, i.e., 4-ADPA instead of the actual procurement cost of the said raw material from China PR.
6. The Id. counsel of the exporter Kumho Petrochemicals had *inter-alia* submitted to the Tribunal that the normal value for 6PPD had not been appropriately determined by the Designated Authority; that Kumho Petrochemicals had been sourcing 4ADPA from Sinorgchem, China PR and that the Authority committed a serious error by rejecting the actual cost of 4ADPA, in the absence of any legal provision to justify rejection of the actual cost of procurement of 4ADPA, since Korea is a market economy country and not subject to provisions of paragraphs 7 and 8 of Annexure 1 to the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995.
7. The Id. counsel for the domestic industry had *inter-alia* submitted to the Tribunal that the actual cost of procurement of 4-ADPA (the main raw material to manufacture 6PPD) from Sinorgchem from China was not reliable since it did not reflect the intrinsic cost of the input.
8. The Id. counsel for the Authority had *inter-alia* contended that since 4ADPA used in production of 6PPD was solely sourced from China, a non-market economy company, the use of actual purchase price of Kumho Petrochemicals for 4ADPA would not reasonably reflect the cost associated with production of 6PPD. The Authority had correctly revised the cost of sales of 6PPD. On the aspect of inadequate disclosure, it was argued that the

international market price was given in paragraph 58 of the Final Findings as USD 3.09 per Kg, as also in the letters of domestic industry, which were available in the public file. It was also argued that the methodology adopted for fixation of normal value and export price had been appropriately given in the disclosure statement.

9. The Id. counsel for the Department of Revenue supported the Notification on the ground that it was based on valid legal considerations and referred to the Panel Reports on the point that where the accounts do not appropriately reflect the intrinsic value of an input, the Authority was justified in adoption of international price.
10. In the context of the aforesaid arguments, the Tribunal framed the following issues for its consideration :-
  - i) Whether the Authority was right in construction of the cost of production of 6PPD, disregarding the cost of 4ADPA.
  - ii) Whether due process has been followed by the Designated Authority with regard to disclosure of relevant information to the affected parties.
11. In the light of the foregoing, the Hon'ble Tribunal passed the final orders as under:

***Findings and order***

20. In the light of the foregoing, we are of the view that the Authority rightly rejected the price of 4ADPA from Sinorgchem, and opted for construction of normal value, based on the international price of 4ADPA. However, having rightly rejected the 4ADPA price from China and opting for construction of normal value based on the international price of 4ADPA, it was incumbent on the Authority to make adequate disclosure, and call for information / comments from the interested parties as regards evidence of international price. We find that the domestic industry had brought on record evidence of the import prices of 4ADPA from Germany to India. But the Authority before recording the Final Findings, did not give opportunity to the other interested parties, to comment on acceptability / appropriateness of such evidence. To this extent, the Authority has not observed due process and violated the principles of natural justice and adversely affected the rights of the Korean exporter. We also find merit in the submission of domestic industry, that the methodology followed for fixation of export price, normal value, and dumping margin has not been given in sufficient detail, to enable them to offer meaningful comments. The Apex Court in the case of Automotive Tyre Manufacturers Association [2012 (263) 481 (SC)] in the context of anti-dumping case has held as under:-

*“58. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application. Undoubtedly, there can be exceptions to the said doctrine. As*

*stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. [See: Union of India v. Col. J.N. Sinha & Anr. (1970) 2 SCC 458]*

59. *In the light of the afore noted legal position and the elaborate procedure prescribed in Rule 6 of 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said Rules.”*

21. We, therefore, direct the Designated Authority to make disclosure of the international price of 4ADPA adopted by the Authority as well as the methodology used for fixation of normal value, export price and dumping margin. The Designated Authority shall grant post-decisional hearing to the parties and re-determine for 6PPD the export price, normal value, and the dumping margin in the light of the observations made above, in so far as they relate to Kumho Petrochemicals. The respondent-domestic industry and other interested parties, if any, shall also be allowed to participate in such post-decisional hearing. Any modifications thus made in the Final Findings would be considered by the Government for the purpose of amending the impugned anti-dumping notification. This process shall be completed expeditiously, *preferably* within 6 months from the date of this order. Status quo shall be maintained in the meanwhile”.

## **B. PROCEDURE**

12. The procedure described below has been followed in this investigation:

- a. In compliance with the order of the Hon’ble CESTAT, the Authority vide email dated 1<sup>st</sup> April, 2015 provided to the interested parties the import price of raw material 4-ADPA from Germany to India which the domestic industry had brought on record as evidence and which was adopted by the Authority for computation of normal value of Korea RP.
- b. In compliance with the order of the Hon’ble CESTAT, the Authority vide email dated 1<sup>st</sup> April, 2015 also provided to all the interested parties the methodology of calculation of normal value and export price.
- c. The Authority provided an opportunity to the interested parties to present their views orally in a Oral Hearing held on 24<sup>th</sup> April, 2015. The oral hearing was attended by the following parties: National Organic Chemical Industries Ltd. (NOCIL), the Domestic Industry, M/s Kumho Petrochemicals Co. Ltd., Korea RP (exporter) and Rishiroop Polymers Pvt. Ltd. (importer).
- d. The interested parties who presented their views orally at the time of Oral Hearing were requested to file written submissions of the views expressed by them orally and were allowed to file rejoinders to the submissions made by the opposing parties. The following interested parties filed submissions subsequent to the oral hearing:
  - NOCIL- Domestic Industry
  - M/s Kumho Petrochemicals Ltd., Korea RP and
  - M/s Rishiroop Polymers Pvt. Ltd., Mumbai

- e. Submissions made by various interested parties pursuant to the post decisional oral hearing held by the Authority were examined in detail in the light of the facts and the legal provisions.
- f. After the oral hearing, a Disclosure Statement was issued on 03.08.2015. However, because of a sudden administrative exigency, a new officer was appointed as the Designated Authority. This development necessitated that a new public hearing be held by the new DA as per the judgment of the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers Association (ATMA) vs Designated Authority, delivered by a Division Bench in Civil Appeal No. 949 of 2006 on 7-1-2011. The new oral hearing was, therefore, conducted by the new Designated Authority on 28.08.2015. All the interested parties who attended the hearing were again requested to file written submissions/rejoinders of the views expressed orally. The following interested parties filed submissions subsequent to the second oral hearing:
  - NOCIL- Domestic Industry,
  - M/s Kumho Petrochemicals Ltd., Korea RP, and
  - M/s Rishirop Polymers Pvt. Ltd., Mumbai
- g. After the second oral hearing, second Disclosure Statement was issued on 06.10.2015. The submissions subsequent to the second Disclosure Statement were filed on behalf of the same interested parties and the domestic industry, which have been considered to the extent found relevant to the investigation.
- h. \*\*\* in this Final Findings Notification represents information furnished by an interested party on confidential basis and so considered by the Authority on merits under the Rules.
- i. The exchange rate for the POI has been taken by the Authority as Rs.53.69 = 1US\$.

### **C. SUBMISSIONS MADE AFTER POST-DECISIONAL ORAL HEARINGS**

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

13. The following submissions were made by the domestic industry:
  - a. The CESTAT has upheld the decision of the Authority to reject the price of 4ADPA and adoption of constructed normal value based on international price. The issue is now beyond the scope of the present post decisional hearing. The only scope of the present post decisional proceedings is to disclose the international price and methodology adopted for fixation of normal value, export price and dumping margin. Further the Designated Authority may re-determine normal value, export price and dumping margin in the light of the CESTAT observation.
  - b. No disclosure relating to methodology adopted for determination relating to constructing cost of production of KKPC was provided to the domestic industry, including copies of verification report, etc. Verification report issued to KKPC and comments offered by KKPC on the verification report formed the basis for the methodology adopted and determination of dumping margin and, therefore, its disclosure was extremely important and relevant for the domestic industry. The domestic industry has sought disclosure of the same.

- c. Manner of computation of interest cost for the determination of normal value has not been disclosed to the domestic industry, including the issue that interest income not relating to the product under consideration cannot be set off against interest expenses relating to the product.
- d. Steam is generally not a marketable commodity and thus determination of its cost has always been disputed. Therefore, reduction of the cost of production by notional income from use of steam for other products is not permissible.
- e. The company claims SGA expenses, which are not strictly on turnover basis. A number of adjustments are made by the company, which has not been admitted by the Designated Authority in the past. These adjustments are grossly shadowing the vital information of the company from the Authority.
- f. It is unclear as to how the company has priced its captive inputs. Any captively produced input should be charged to product at the prevailing market rates.
- g. Negative deduction (addition) has been made towards input drawback even though customs (import) duties have not been included in construction of 4ADPA cost. Thus, Authority allowed customs duty benefit in export price, without adding the same to the cost of production.
- h. For constructing cost of production of KKPC, the Designated Authority was required to include following expenses that would have been incurred by KKPC - (i) port expenses, (ii) clearing expenses, (iii) customs duty and (iv) inland freight from Korean port to factory.
- i. Though the Authority has disclosed the “methodology” adopted for calculation of normal value, export price and dumping margin, yet it is still to disclose the requisite information as sought by the domestic industry despite clear directions by CESTAT.
- j. Cost of production claimed by Kumho is understated and is required to be examined especially concerning costs on account of Steam, Interest Cost, SGA expenses, captive inputs, etc.
- k. The Korean exporter, Indian importers and consumers of the product under consideration never disputed this claim of domestic industry with regard to its accuracy and adequacy. The comments of these interested parties were limited only to appropriateness. Therefore, the question of accuracy and adequacy is no longer open to discussions.
- l. In spite of adequate time and opportunity, neither the Korean exporter nor the Indian importer has furnished an iota of evidence to controvert the evidence of international prices of 4ADPA submitted by the domestic industry in 2008. In the absence of alternate evidence being adduced by the exporter or any other interested party, the Authority is required to make a determination based on the information available on its record.
- m. The domestic industry had claimed a price of US\$ 3.09 and disclosed that this was based on IBIS data. While the interested parties had a right to claim that the Authority should adopt their records and consumption price as per their records, these interested parties had an obligation to claim before the Authority that the figures of US\$ 3.09 or the source based on which this figure was adopted was inappropriate.
- n. The interested parties neither demanded transaction wise information nor said that the figures claimed based on IBIS may be unreliable. The interested parties cannot reduce this post decisional hearing to a fact finding investigation, a job that is performed by the Authority at the time of original investigation. No methodology is required to be applied to sort out the data. 4-ADPA is imported by known names and all those transactions wherein the description is stated so must be considered.
- o. There is no obligation on the Authority to seek information from the Indian embassies or various ports. It is for the interested parties participating in the investigations to provide relevant information to the Authority. The Authority is required to make determination on the basis of information and submissions on record.
- p. The Authority in the past has adopted import data procured from private agencies apart from DGCI&S in a number of cases. The Authority has in the past discarded DGCI&S

data and adopted IBIS or other secondary source data. Hence, it cannot be said that IBIS data adopted in the present case is not reliable unless evidence to the same is being provided to the Authority.

- q. The exporter may be called upon to demonstrate the manner and extent to which the factors like payment terms, delivery terms, freight, etc. would affect the price for the purpose of making the adjustment. It is submitted that such adjustment is permissible only where the exporter adduces evidence to show the effect of such factors on prices. Further adjustments on account of port expenses, custom duty, inland freight from Korea to factory etc also needs to be done.
- r. The Customs Valuation Rules and the Special Valuation Branch of the Customs Department implementing such Rules routinely reject the declared values, if they find that the relationship has influenced the price. The values being accepted by the customs authorities cannot be doubted at this stage.
- s. No evidence has been made available to the Authority to show the freight rates as they existed during the relevant period for different destinations. The freight rates are largely dependent on the volume of trade between different ports, rather than the distance alone.
- t. The exporter incurs expenses on account of port expenses, customs duty in Korea @ 6.5% and inland freight from Korean port to factory. The Authority should have considered the inland freight claimed by the exporter for exporting the product from Korea.
- u. If price of 4ADPA is adopted, the difference in manufacturing process has no relevance. Alleged difference in the process can at best have difference in the cost of production. No such adjustments have been made with regard to different manufacturing process of the raw material, when the eventual product or for that matter the raw material is competing in the same market in the past cases.
- v. As regards the argument that PMC Rubber Chemicals Ltd is also buying raw material from China at competing prices, the issue is beyond the scope of Post Decisional Hearing as read in the light of para 20 of the CESTAT judgment.
- w. There is no basis for the argument that if the volumes are higher the price shall be lower. In fact, it is a routine business situation that the price under contracts can be higher than the price in spot purchases (and vice versa).
- x. The interested parties had full opportunity to assist the Authority with documents and evidences and could have raised claims before the Authority at the time of original investigation. The interested parties can not reduce this post decisional hearing to a fact finding investigation process.
- y. As regards the argument of difference in exchange rate, it is factually incorrect and the average exchange rate table has been provided by the domestic industry to the Authority to verify its claim.
- z. There is no concrete evidence to disprove the claim of the domestic industry as the claims of the other interested parties hold no ground before the CESTAT order.
- aa. Additional time for completion of investigation has not caused any prejudice to any party, as the anti dumping duty imposed pursuant to the impugned notification has already completed its life long back and the fresh duty is running as a result of sunset review conducted by the Authority.
- bb. Once the Tribunal has held that the Designated Authority shall re-determine dumping margin, it follows that the Designated Authority is required to consider all relevant aspects thereof.
- cc. The price adopted was a CIF price and, therefore, reference to the same makes it obvious/clear to all the parties that the Designated Authority has adopted a CIF import price.
- dd. The price adopted by the Authority does not include customs duty payable in India and, therefore, it cannot be reduced again. The petitioner domestic industry did not claim international price of 4 ADPA on the basis of consumption price in India. The Authority

can adopt this consumption price and add customs duties and all expenses associated with import in 4ADPA costs. The Authority is requested to consider this consumption price and determine dumping margin accordingly.

- ee. The price from Germany to India is unaffected by relationship. In fact, the customs have a clear provision for assessment of goods when transactions are between related parties. Even if such a provision exists in Korea, the transaction between Sinorgchem and KPC would not have been subjected to this scrutiny, given that they do not have relationship within the meaning of related party under the customs law. Notwithstanding, petitioner had made alternate claim of the consideration of cost of production of 4ADPA reported by the petitioner.
- ff. The port expenses are never added in the prices reported in the customs duty.
- gg. Customs data is in fact considered as an independent data. In fact, even the WTO Agreement provides that the Authority can consider customs data as best available information. Thus, there is no need for further verification of the same.
- hh. There is no legal requirement of providing excel sheets containing calculations.

## **C.2 Submissions made by the opposing interested parties**

14. The following submissions were made by the opposing interested parties:

- a. The CESTAT order has been overruled by the Hon'ble High Court of Delhi in W.P. No. 744/2015 in SanDisk International vs. The Designated Authority and others; wherein this CESTAT order was cited before the Hon'ble court but the court rejected the contention in toto and pronounced that in view of gross violation of principles of natural justice, the Final Findings cannot sustain or be remanded back to the Designated Authority.
- b. The Authority's obligation with regard to evidence collected from secondary sources not met. In view of the CESTAT decision, the Designated Authority was asked to make adequate disclosure, and call for information/comments from the interested parties as regards the evidence of international price.
- c. Import data of 4ADPA by domestic industry has following problems:
  - i. The raw data was never provided to the Authority by the domestic industry and in the absence of such data, Authority did not verify accuracy and adequacy of information.
  - ii. Raw data as well as refined data was required to be disclosed to respondents.
  - iii. Methodology adopted for sorting the raw data was not provided.
  - iv. Since Authority has adopted the prices of 4ADPA without verification, the entire purpose is defeated and there is violation of principles of natural justice as well as Article 6.8 of ADA.
  - v. The respondent is not aware if the Authority in the past has relied upon and adopted the other facts/figures submitted by domestic industry without verifying and substantiating the same.
  - vi. The Authority should demonstrate that it has written to customs authorities at various ports, DGCI&S, Indian Embassies in the world to ascertain the international price for 4ADPA.
- d. The obligation to conduct the investigation is with the Authority and it is not the prerogative of the domestic industry to partially conduct the investigation. It is imperative on the part of Designated Authority to provide raw import statistics to the Respondent, if it is procured by the domestic industry. In a scenario, where the raw material has been sourced by the domestic industry, then it is even more imperative that the Authority seeks such data and independently corroborates the accuracy of such data.
- e. The Authority in the past has rejected the data on being deficient when it is procured from private agencies like IBIS/CYBEX/INFODRIVE found to be deficient and disregarded. Example is the USB Flash Drive case.

- f. It is vital that raw import statistics be provided to the interested parties to confirm:
  - a. imports statistics include only 4ADPA.
  - b. to check the quantities of imports so that very high or low quantities are not considered.
  - c. payment terms and delivery terms are verified and adjusted accordingly.
  - d. Freight element is required to be examined.
- g. To the best of the understanding, at that point in time Lanxess, Germany was the only producer of 4ADPA and its related company in India seems to have imported 4ADPA. The Authority is required to examine the following:
  - i. The price cannot be reflected of market price as these were transactions between related parties. No evidence to prove otherwise. The Customs Authority would not raise any doubts as they are getting higher customs duties on such high transaction values.
  - ii. The CIF price from Germany, a market economy third country, to India cannot easily substitute 4ADPA price from Sinorgchem to KPC as it includes freight from Germany to India and not from China to Korea, as the difference in distance is more than 15 times.
  - iii. The Authority has given adjustment to freight in sunset review and thus it may reconsider adjusting freight as well.
  - iv. The manufacturing process by Sinorgchem and by Flexsys is different. Therefore, the cost of producing 4ADPA will differ substantially. The Authority is required to give adjustments due to difference in production process.
- h. It is apparent that the basis of such summary was not provided by the Domestic Industry to the Designated Authority. The transaction-wise import statistics from which this summary would have been prepared was not provided even to the Designated Authority and the Designated Authority relied upon and adopted such unsubstantiated summary as evidence and anti-dumping duty was imposed.
- i. It is also apparent that the Designated Authority was never in possession of any other data/evidence to establish that the transaction value at which KPC procured 4ADPA was lower or unreliable.
- j. Further, the Designated Authority has never validated/verified by any means the data submitted by the Domestic Industry as a summary.
- k. If the assumption is made that the export price from China PR is always low and transaction value is unreliable because China is an NME, then in all cases at the time of assessment of goods in India imported from China the transaction value would be rejected and loaded/enhanced to arrive at the Assessable Value and higher import duties would be charged. However, such action would be based only on surmises and conjunctures and would not stand in the court of law.
- l. The Designated Authority is requested to make available other evidences, if any, regarding price of 4ADPA proposed to be used.
- m. The Designated Authority is requested to disclose other instances in the subject investigation where the Designated Authority has just relied upon and adopted the facts/figures submitted by the Domestic Industry without verifying and substantiating those facts and figures. The Designated Authority is requested to rely upon and adopt any fact/figure submitted by the Domestic Industry only after verifying and substantiate the same.
- n. If PMC Rubber Chemicals Ltd. is also buying raw material from China at competing prices, rejection of import price of the same by KPC is unjustified.
- o. The Authority could have adopted the price of China origin after seeking information from Customs regarding PMC import price from unrelated producer to KPC or Sinorgchem.

- p. KPC has purchased large quantities of 4-ADPA from Sinorgchem during the POI and accordingly the Authority is required to grant an adjustment for volume discount.
- q. Different exchange rate adopted for (i) import price of 4ADPA from China to India (ii) import price of 4ADPA from Germany to India and (iii) the average import price into India. The exchange rate adopted should be the same. This highlights the importance of providing raw data.
- r. The Authority considered the profits earned on the sales of subject goods as a whole including profits of export sales as well. The Authority should either consider profit margin for domestic sales or 5% as per consistent practice as adopted in sunset reviews.
- s. CESTAT has indeed held that the Authority was correct in rejecting the price of 4ADPA but that decision was made on the assumption that there is a reliable international price in existence.
- t. CESTAT has held that the Authority was correct in rejecting the price of 4ADPA from Sinorgchem and opting for construction of normal value based on international price of 4ADPA. However, the domestic industry has erroneously concluded that the Authority cannot go into the question of correctness of adoption of international price and rejection of 4ADPA price of Sinorgchem, as CESTAT arrived at such a conclusion on an assumption of reliable international price in existence.
- u. This price adopted by the Authority is unreliable primarily because such price involves sales between Lanxess Germany and Lanxess India who are related parties. Thus, this price is unreliable and must not be adopted. Considering the fact that there is no reliable international price of 4ADPA, the Authority must adopt price of 4ADPA from Sinorgchem itself.
- v. The Authority is required to follow same practice for disclosure of methodology for construction of normal value to domestic industry as it does for disclosure of methodology for determination of NIP to exporters. The CESTAT order nowhere mandates that individual costing element of KPC is required to be disclosed. Such information is confidential in nature and thus such disclosure is outside the scope of CESTAT order.
- w. In all past investigations, Authority only highlights the principles of determination of NIP to the exporters; it does not reveal each and every element of calculation while computing NIP. Likewise, only the principles of determination of normal value must be disclosed and not each and every calculation made while computing such normal value.
- x. The Authority is required to disclose the international price of 4-ADPA and receive and consider comments from interested parties on the suitability of such price used by the Authority and the Authority is required to disclose the methodology adopted for finalizing of normal value, export price and dumping margin and taking into account the comments of interested parties re-determine normal value, export price and dumping margin.
- y. The Authority must disclose the methodology used for fixation of normal value, export price and dumping margin and does not require to disclose individual costing element of KPC as it is confidential in nature and disclosure of such information is beyond the scope of CESTAT order and AD rules. The Authority must adopt the same standards of disclosure for all interested parties in an investigation.
- z. Verification reports and verification exhibits of the KPC are confidential information and cannot be disclosed to the domestic industry. Domestic Industry is trying to access KPC's confidential information under the guise of Rule 16 and if such verification reports and verification exhibits are to be disclosed then it must happen for both the parties.
- aa. The Authority has verified the costing information of KPC during the on the spot verification and is completely satisfied by the veracity of information.
- bb. Without identifying any specific instances where the allegation relating to interest cost has actually happened, respondents cannot make meaningful comments on the same.

- cc. Domestic industry is requested to clarify under which accounting rule captive inputs are valued at market rates. While determining cost of production, actual cost incurred by the exporter is to be ascertained.
- dd. Hon'ble CESTAT noted the submission of domestic industry of duty drawback but made no finding on this subject which shows that Hon'ble CESTAT feels there is no need to look into this aspect.
- ee. Hon'ble CESTAT has noted in its order that: "9. In respect of the appeal filed by domestic industry, it was argued that the import price of 6PPD into Korea may be considered for determination of Normal value. However, since the notification under challenge had already expired, they did not press this point at this stage".
- ff. The reason that respondent did not dispute the claim of domestic industry with regard to international price of 4-ADPA was because no disclosure about the international price of 4-ADPA adopted by the Authority for construction of normal value by KPC was ever made to the respondent during the original investigation and, therefore, there was no opportunity to make any comments on the same and this is the reason why the respondents went to appeal in CESTAT.
- gg. KPC has correctly disclosed all information which was substantially verified by the Authority and the Authority was satisfied with its accuracy. Since the Authority was satisfied with the costing records of the respondent, domestic industry's attempt to rake up this issue must be out rightly rejected.
- hh. Remand proceeding were directed by the Hon'ble CESTAT to be completed within 6 months from the date of the order. However, more than 6 months have passed from the date of order of CESTAT and the Authority is not able to complete the remand proceedings. The word used "preferably" in the CESTAT order does not mean that the proceedings would be commenced "preferably" at the fag end of the six months.
- ii. The goods were non-dumped and consequently any continuation or extension of duty in the subsequent reviews was also illegal. Therefore, the proper determination of dumping margin for KPC in this proceeding would have far reaching consequences.
- jj. The Tribunal remanded the case only to the extent that the Designated Authority shall disclose the international prices which are proposed to be substituted for actual procurement cost of 4-ADPA by KPC and then after considering the comments of the Respondents (KPC), re-determine the dumping margin.
- kk. As far as other adjustment in freight, handling charges and customs duty are concerned, these adjustment are done incorrectly because:
  - i. As the Applicant Domestic Producer never raised the issue of such expenses before the Designated Authority or in the Appeal before the Tribunal, they are debarred to raise such issue in remand proceedings, even if the Applicant Domestic Producer failed to include the customs duty at that point .
  - ii. Even the issue of duty-drawback is absent in the appeal and, thus, cannot be agitated by them in this remand proceedings
  - iii. The Designated Authority is also not empowered to review such issue in remand proceedings. KPC cannot be put into worst condition to the one they were before filing the appeal.
  - iv. The Applicant Domestic Producer, which provided the international price and which the Designated Authority adopted, must have added such expenses (15% customs duty payable in India plus freight and handling charges) and, therefore,

firstly, such expenses are required to be deducted and then only comparable expenses may be added again.

- ll. The Designated Authority in its first Disclosure Statement has introduced the word “CIF” for the first time as the same was not appearing in the Final Findings which was remanded back. It has been introduced to overcome the difficulty to make an addition of the customs duty in the claimed landed value so as to once again to keep the dumping margin level as determined earlier
- mm. Since the 4ADPA price as submitted by the Applicant included customs duty @15%, it is the requirement to first deduct duty from the price to make a fresh claim before the Designated Authority to accept such claim.
- nn. The Applicant claimed for the substitution of consumption price of KPC. It is but obvious that the price submitted for the substitution by the Applicant would have been adjusted for all such expenses. Applicant never raised such issues before the Designated Authority before issuance of the Final Finding dated 01.10.2008 or subsequently in its appeal before the Tribunal that such adjustments are to be carried out. Thus, it is not anymore open at this stage to raise the issue.
- oo. Designated Authority is not supposed to review its final finding dated 01.10.2008 on the issue of completeness and correctness of the response to the questionnaire filed by KPC. Hon’ble CESTAT has not allowed the Designated Authority to do so. However, Designated Authority notes that KPC failed to provide breakdown of inland transportation and overseas transportation. It is not permissible for an Authority to review its own order suo-moto and hold against a party in a matter remanded to it on the appeal of such party, so that earlier order may be justified in any manner. Secondly there is no questionnaire format prescribed by the Authority that such breakup for transportation cost is required to be provided.
- pp. The supplier from Germany of 4-ADPA and buyers in India are related parties unlike KPC and Sinorgchem and, therefore, credit terms are required to be examined to allow necessary adjustment. Designated Authority cannot ignore “facts available” arbitrarily.
- qq. The Authority has not provided any reason as to why its previous decision with regard to interest expenses was wrong. In any case, as aforementioned, the respondents cannot be made worse off by the re-determining issues which are not open before the Authority pursuant to the remand order.
- rr. In the Final Finding date 01.10.2008, it is an admitted position that price of 4 ADPA to India by Sinorgchem was higher than the price of 4ADPA to KPC. The reason for the difference was the quantity discount. This fact on record cannot be ignored. The same difference should be allowed as adjustment to the newly subsisted price of 4-ADPA.
- ss. Designated Authority should disclose basis for arriving at the stated expenses for the port in Korea:
  - i. Only the transaction-wise import data was made available. That data does not show if the value is assessable value or the value arrived at after adjusting other expenses. Therefore, it should be assumed that the value includes all adjustments
  - ii. Data in column below Importer (Column F) shows “company not known”. However, on top of the Excel File, it shows “Lanxes”. It is not known whether Lanxes provided such data or IBIS provided the same. In any case, the data also

included import from China PR. The Hon'ble Tribunal already held that in case if imports of raw material are made from China, then that must be included in constructing the Normal Value, the Final Findings be modified to that extent.

- iii. Value indicated in that data is the value at which goods are cleared by the customs at that time. Such value need not necessarily be the final assessment of imports by the Customs Authority. Goods can be cleared on a provisional assessment basis owing to several issues with regards to related party transactions in the instant case. The Designated Authority ought to provide the clarification in this regard.
  - iv. As regards the argument that goods can be cleared on a provisional assessment basis owing to several issues with regard to related party transactions in the instant case, the Authority notes that the interested parties have not provided any evidence to support their claim.
  - v. It is not clear whether the Designated Authority independently verified through any means the correctness of the imports of 4ADPA submitted by the Applicant Domestic Producer.
- tt. The Authority should have provided the calculations in excel sheet clearly containing the calculations methodology and the explanation used to arrive at the stated dumping margin. The Respondents are unable to make comment on the basis of hard copy.

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

15. Whereas in the impugned customs notification and the Final Findings, the products under consideration were various Rubber Chemicals, viz., MBT, CBS, TDQ, PVI and TMT originating in or exported from China PR and PX-13(6PPD) originating in or exported from China PR and Korea RP, the Tribunal limited the scope in the impugned appeals to only imports of PX-13 (6PPD) originating in or exported from Korea RP. Therefore, the scope of the present post decisional investigation is limited to imports of PX-13 (6PPD) originating in or exported from Korea RP. PX-13 (6PPD) is a rubber chemical having chemical description N-(1,3-dimethyl butyl)-N” Phenyl-P-1 with other trade/brand names as 6C, Pilflex 13, Sirantox 4020 Antioxidant 4020, Kumhonax 13 Vulcanox 4020, etc.
16. The Authority notes that while remanding the matter back to the Authority, the Tribunal passed specific orders limiting the scope of the post decisional hearing and the scope of the re-determination in this remand investigation to the following:
  - a. Disclosure of international price of 4ADPA adopted by the Authority for re-determination for 6PPD the export price, normal value, and the dumping margin in so far as they relate to Kumho Petrochemicals.
  - b. Disclosure of “methodology” followed for fixation of normal value, export price and dumping margin.
17. The Authority, therefore, proposes to conclude that the scope of the present post decisional hearing and re-determination does not exceed beyond the issues mentioned in the preceding paragraph.
18. As far as the contention that the CESTAT order dated 26.12.2014 passed in the present remand case has been overruled by the Delhi High Court in the W.P. No 744/2015, it is

noted that the Delhi High Court judgment is specific to the SanDisk case and cannot be said to have any bearing on the CESTAT order in the sense that the CESTAT order has not been stayed by the Delhi High Court.

19. The Authority further notes that Special Leave Petitions were also filed by Kumho Petrochemicals Ltd, Korea RP (KPC), Rishiroop Polymers and NOCIL, the Domestic Industry, against the CESTAT order dated 26.12.2014.
20. The Authority further notes that KPC and Rishiroop Polymers in their Special Leave to Appeal (C) No(s).12086-12087/2015 contended inter-alia that the above-mentioned order of CESTAT remanding the matter back to the Authority for re-determination was illegal and the findings should have been set aside. KPC and Rishiroop Polymers contended that the principles of natural justice have been violated and the post decisional hearing is not an appropriate remedy as much time has elapsed since the customs notification levying the anti dumping duty came into force. It was also contended by them that the major submissions of the interested parties were not taken into consideration by the CESTAT which rejected majority of their arguments. They also contended that the cost of production was not an evaluated fair cost and that the prices of exported goods are not low due to dumping. It was also argued that the determination of normal value by the Authority was incorrect.
21. The domestic industry on the other hand in its S.L.P.(C).CC No. 8088/2015 contended that the international price of 4ADPA was not rebutted by the Korean exporter and that they had enough time to comment on any discrepancy in the determination of the same and thus they had no merit in this contention. This fact was overlooked by the CESTAT and thus the case was remanded back to the Authority. It was contended by the domestic industry that the CESTAT did not appreciate the fact that KPC pleaded ignorance of the figures adopted by Authority and only pretended that there is gross violation of natural justice principles.
22. All these three SLPs came up for hearing on 8<sup>th</sup> May, 2015 wherein, after hearing the parties, the Hon'ble Supreme Court declined to grant leave to the parties and permitted withdrawal of their petitions. The Hon'ble court observed as follows:

*“Learned counsel for the petitioners, on instructions, seeks permission of this Court to withdraw these special leave petitions with liberty to the petitioners, if they so desire, to question the correctness or otherwise of the order that may be passed by the designated authority, Director General of Anti-Dumping and allied duties, before an appropriate forum by taking up all such contentions which are available to them including the contentions raised in these special leave petitions. Permission sought for is granted”.*
23. Thus, the Hon'ble apex court disposed off the SLPs and they stand withdrawn with the aforesaid liberty.
24. It is, thus, noted that Hon'ble Supreme Court has neither held that the order of Hon'ble Tribunal remanding the matter back to the Authority for re-determination is inappropriate nor the Hon'ble Apex Court has held that the Tribunal should not have remanded the matter back to the Authority.

25. As regards the argument of delay in remand proceedings, the Authority had already issued the Disclosure Statement on 3rd Aug, 2015, but had to conduct the second oral hearing because due to a sudden administrative exigency, a new officer was appointed as the Designated Authority. Because of this development, as per the judgment of the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers Association (ATMA) vs Designated Authority in Civil Appeal No. 949 of 2006 on 7-1-2011, the new Designated Authority has held second oral hearing on 23.08.2015.
26. As regards the argument that goods from KPC were undumped and consequently any continuation or extension of duty in subsequent reviews was also illegal, the Authority finds that the dumping margin was more than de-minimus limits prescribed.
27. The Authority notes that while remanding the matter back to the Authority, the Tribunal has ordered that the Authority shall re-determine the dumping margin. Therefore, the scope of the present investigation is re-determination of dumping margin in so far as it relates to Kumho Petrochemicals.
28. As regards the argument that the Authority is not empowered to review issues of adjustment in freight, handling charges and customs duty in remand proceedings, the Authority notes that the Authority is required to re-determine export price, normal value, and the dumping margin in so far as they relate to Kumho Petrochemicals. Re-determination of normal value, export price and dumping margin includes all aspects of such determination, including the issues of adjustment in freight, handling charges and customs duty.
29. As regards the argument that Authority in its Disclosure Statement has introduced word "CIF" for first time as the same was not appearing in the Final Findings, the Authority notes that this was precisely the reason the Appeal was filed by the responding exporter and the Tribunal has remanded back the proceeding to disclose the price adopted by the Designated Authority for 4-ADPA. The Authority has, therefore, clarified that the price adopted was CIF import price. As regards the argument of the domestic industry in this regard that the authority should adopt consumption price in India considering the CIF price and thereafter make appropriate adjustment, the Authority considers that when the CIF import price itself is available, there is no necessity of first adding various post importation expenses in India and then reducing the same. Since the authority is required to determine consumption price in Korea, the Authority has considered the CIF export price and made appropriate adjustments to arrive at the consumption price of Kumho Petrochemicals.
30. As regards the argument that the Authority is not required to review the completeness and correctness of the response to the questionnaire filed by KPC with regard to inland freight, the Authority notes that the scope of the post decisional hearing is re-determination of export price, normal value, and the dumping margin in so far as they relate to Kumho Petrochemicals. Re-determination of normal value, export price and dumping margin would include all aspects of such determination including issues of adjustment in freight, handling charges and customs duty.
31. As regards 4-ADPA prices from Germany being related party transaction, the Authority notes that the imports of 4-ADPA by Lanxess India from Lanxess Germany are between

related companies situated in two different market economy countries and in the absence of any material evidence, it should be considered that these are at arm's length basis unless any evidence to the contrary is brought to the notice of the Authority.

32. As regards the argument that goods could have been cleared on a provisional assessment basis owing to several issues with regard to related party transactions in the instant case, the Authority notes that the interested parties have not provided any evidence to support their claim.
33. As regards the request for providing import price calculations in excel sheet, the Authority notes that there is neither any prescribed requirement under the law, nor it is established in the present case that the said information was imperative or in any way deficient to enable the exporter to offer its comments. The import listing provided by the domestic industry clearly shows very limited number of transactions, a number of which further fell in some price bands.
34. The Authority considers that appropriateness or otherwise of acceptance of 4ADPA consumption price reported by Kumho Petrochemicals Limited (erstwhile Korea Kumho Petrochemicals Ltd.) is beyond the scope of the present re-determination. The Authority notes that the CESTAT has upheld the decision of the Authority to reject 4-ADPA consumption price reported by KPC.
35. The domestic industry had contended that no disclosure had been made by the Authority concerning methodology adopted for constructing the cost of production of KPC, verification report, comments on the verification report offered by KPC which has formed the basis for the methodology adopted and determination of dumping margin and, therefore, information disclosed to the domestic industry is insufficient. The Authority holds that while remanding the matter back to the Designated Authority, the Tribunal has not given any such specific direction for disclosure of information demanded by the domestic industry. Recording of arguments of the interested parties is different from order of the Tribunal. The Tribunal has merely recorded the contention of the domestic industry raised at the time of hearing. The Tribunal has not passed any specific order with regard to disclosure of these documents. However, since the Tribunal has directed the Authority to make re-determination of the dumping margin, the Authority has appropriately disclosed the facts to all the interested parties in so far as these concern determination of dumping margin in respect of KPC. The Authority has disclosed adequately its determination with regard to computation of interest cost, steam cost, SGA expenses, valuation of captive inputs, expenses that should be added to the international price for determination of consumption price of 4ADPA.
36. As regards negative deduction in duty drawback, adjustment for freight difference and additions for other expenses, the Authority notes as follows:
  - a. **Freight difference** - The consumption price of 4ADPA adopted by the Authority was based on CIF export price of 4ADPA from Germany to India. KPC has contended that the difference in freight in exports to India from Germany and exports to Korea RP from China should be adjusted. The exporter has, however, not quantified its claim in this regard. The Authority has accepted the argument of KPC, and has allowed this difference on the basis of best information available in this regard. The Authority while conducting

the sunset review investigation concerning the same product had noted the argument of the KPC that expenses associated with import of the product vary with the distance involved. The Authority had appropriately adjusted the price for the difference in freight between freight from Germany to India and freight from China to Korea RP in that sunset review investigation (Final Findings Notification No 15/1/2013-DGAD Dated 29<sup>th</sup> April, 2014). The consumption price was, therefore, reduced by an amount of US\$ \*\*\*pmt, considering the same as the best available information with regard to difference in freight in view of no claim by KPC in this regard. Since KPC has not made any quantified claim, the Authority has adopted the same difference in the present case as well. The Authority notes that it is important to add/deduct following expenses for determining consumption price of KPC.

- b. **Port expenses in Korea RP** - Since the 4ADPA price considered does not include port expenses and since imports of the product must involve port charges, the Authority has added \*\*\*% of the CIF import price as the port expenses in Korea. The Authority notes in this regard that KPC has not provided relevant information and, therefore, this amount has been adopted on the basis of best available information.
- c. **Customs duty payable on imports in Korea RP**- Imports of 4-ADPA involves payment of \*\*\*% customs duty in Korea. Therefore, the same has been added to the CIF import price.
- d. **Inland freight from port to factory** – The Authority notes that the exporter has not reported the expense that was incurred by the exporter in procurement of goods, shipment of the same from port to its factory. The consumption prices reported by the exporter did not contain separate breakdown for these expenses. The information with regard to freight incurred by the exporter in exporting the product from its factory to Indian sea port could not be considered in view of insufficient breakdown provided by the exporter in its questionnaire response. The Authority has considered appropriate to determine this expense at the rate of \*\*\*%. The Authority notes in this regard that the prescribed exporter questionnaire indeed requires the exporter to provide separate breakdown of inland transportation and overseas transportation. The exporter has, however, not provided the information in the form and manner prescribed.
- e. As regards disallowance of the duty drawback adjustment, there is no straight jacket approach for allowing or disallowing this adjustment. The said adjustment is allowed after due verification of the claim of the producer/exporter on case to case basis. In case the producer/exporter is able to produce relevant documents in support of the said adjustment to the verification team, this adjustment is allowed. In the cases quoted by the applicant, the producer/exporter could not provide necessary documents showing details of import duty paid on raw materials used in the manufacture of subject goods and the duty drawback claimed and received on account of exports to India and other countries. It is further noted that in one of the cases quoted by the applicant, the duty drawback was allowed to another producer/exporter as the claim was duly supported with requisite documents to the satisfaction of the Authority. Since, this is a remand case and the Authority had already verified and allowed the adjustment at the time of original investigation after due verification, there is no merit in the contention of the domestic industry to disallow the adjustment on account of duty drawback at this stage.

37. The domestic industry has contended that the cost of production claimed by the exporter is understated. The domestic industry has further contended that such understatement may be on account of expenses that are required to be incurred in production of the goods in the form of steam, interest cost, SGA expenses, captive inputs, etc. The claim of the domestic industry has been examined in detail.
38. As regards the submission of KPC for the deduction of customs duty @15% from the price of 4ADPA adopted by the Authority, it is clarified that the Authority has considered only the CIF import price of 4ADPA and, therefore, custom duty was not included in the price adopted. Since the customs duty was not included, the same is not required to be excluded.
39. As regards the contention of KPC that the Authority would have already adjusted various expenses claimed by the domestic industry, it is clarified that the Authority had considered CIF import price in India and substituted the same with the consumption price reported by KPC. Therefore, the CIF import price in India is required to be adjusted for various expenses and thereafter, the consumption price is to be determined. The same has now been done.
40. As far as captive inputs are concerned, the Authority has adopted the claim made by the exporter on the basis of records maintained by the company.
41. As regards the steam expenses, the Authority notes that the exporter is generating steam for consumption in various products. The exporter does not produce steam only for production of product under consideration. The expenses charged by the exporter on account of steam are on the basis of records maintained by the company. It is doing specific allocation of expense on steam and the same has been adopted for the present purpose.
42. As regards SGA expense, the Authority has adopted turnover ratio for apportionment of SGA expenses.
43. As regards the interest expenses, the Authority has considered the interest expenditure incurred by the company without adjusting the interest income. It is noted that the interest income earned by the company is for other business operations (i.e., financing operations) and, therefore, such interest income cannot be reduced from the interest expenses. The interest cost has, therefore, been re-determined without adjusting the interest income. The interest expense has been apportioned to various products on the basis of turnover.
44. It has been contended that the Authority should have procured import data from its own sources and the information provided by domestic industry cannot be accepted. The Authority holds that neither at the time of original investigation, nor at the time of hearing before the Tribunal nor in the present post decisional hearing; the exporter, importer or any other interested party has provided any information which could be adopted for the present purpose. The Authority notes that while it is open for the interested party to advance arguments, they also hold an obligation to provide information which they consider relevant and appropriate.

45. As regards the authenticity of information provided by IBIS, the Authority notes that the Authority has in several past investigations adopted information provided by the secondary source including IBIS for the purpose of determination of dumping, injury and causal link. IBIS is an independent private specialized agency and the information provided by IBIS is based on the information made available by the customs authorities. The Authority considers that the purpose of providing IBIS information was to determine the international price of the input. While there is no evidence to support of the contention that the claim of the domestic industry was not based on imports of 4ADPA into India, the Authority notes that in any case, the purpose of using this information is to arrive at a reasonable and representative international price of 4ADPA. None of the interested parties provided evidence to demonstrate that the possible exclusion or inclusion of a transaction has distorted the resultant price of US\$ \*\*\* adopted by the Authority for the purpose of present determination. The Authority also notes from the transaction wise details of imports of 4ADPA in India that the said information does not show significantly high or low price. On the contrary the said information shows a large number of transactions at one price. It is thus clarified that the Authority has adopted the 4ADPA international price after due verification.
46. As regards the argument that the Authority should demonstrate that it has written to customs authorities at various ports, DGCI&S, Indian Embassies in the world to ascertain international price, it is clarified that it is not incumbent upon the Authority to seek information from various agencies as sought by KPC. Rule 6 lays down specific obligation with regard to the manner in which investigations should be conducted, the source from where information should be procured and the manner in which information should be processed and adopted. While the Authority is obliged to provide opportunity to the exporter, importer and users to provide relevant information, there is no legal mandate that Authority should write to various ports in the country or various Indian Embassies in the world or for that matter to DGCI&S to ascertain the international price. It is not the case that some interested party provided some evidence and the Authority ignored the same. The obligation to provide relevant information is with the domestic industry, exporters, importers and users and association of these parties.
47. As regards the argument that the obligation to conduct the investigation is with the Authority and it not the prerogative of the domestic industry to partially conduct the investigation, the Authority clarifies that the Authority had conducted the original investigation and made the determination in terms of Anti-dumping Rules. The present re-determination has also been made by the Authority. Nothing has been left to the prerogative of either the domestic industry or for that matter any other interested parties.
48. As regards the contention that the Authority has rejected information provided by private agencies in the past, the Authority notes that rejection or acceptance of information with regard to volume and value of imports is based on facts of a particular case. Merely because information provided by private agencies was found deficient and disregarded in some other investigation, it does not imply that information provided in the present case as well is also deficient and must be disregarded, or the source itself should be considered inappropriate forever. In fact, the Authority finds that the volume of imports reported by DGCI&S are sometimes lower than the volume of imports reported in secondary sources,

while volume of imports reported in DGCI&S has also been found higher than the volume of imports reported in secondary sources in some other cases. Moreover, in those matters, the issue involved is both volume and price of imports. Volume of import is relevant for the purpose of assessment of injury to the domestic industry and volume and value of imports is relevant for the purpose of determination of import price. The Authority, therefore, considers both volume and price of imports reported in the data provided by DGCI&S and private agencies. It is, therefore, highly important for that purpose that the import data adopted represents most exhaustive account of the imports of the product. However, for the present purpose, it is not necessary that the import data adopted represents most exhaustive account of 4ADPA. The important and relevant criterion is that the resultant import price of 4ADPA should be reasonable and representative of the international price of the product. It is also clarified that the import transactions considered for this purpose pertain only to the imports of 4ADPA and does not include any significantly high or low price.

49. As regards payment terms, the Authority does not consider the payment terms that were negotiated between the exporter and its raw material suppliers, nor it was established by any interested party that the payment terms in raw materials procurement were relevant factor. When payment terms and delivery terms were not contended as relevant parameters in respect of 4ADPA purchased by KPC from Sinorgchem, it cannot be contended that the payment terms and delivery terms between the supplier from Germany and buyer in India would be relevant for the present purpose.
50. As regards the adjustment for the difference in freight costs, it is clarified that since the price adopted by the Authority was CIF import price in India, the same has been appropriately adjusted for the difference in freight from China to Korea and the one from Germany to Korea.
51. The exporter and the importer have contended that the import transaction of 4ADPA adopted by the Authority could pertain to transaction between Lanxess Germany and Lanxess India and, therefore, the transaction value could be distorted because of the relationship. The Authority notes that it has not adopted the invoice value reported by either the exporter or the importer. The Authority notes that the customs authorities are required to satisfy themselves about the correctness of the assessable value reported by the related importer before considering them for assessment of customs duty. The Authority has adopted the transaction value considered by the customs authority for assessment of customs duty which is supposed to be distortion free due to relationship. In any case, the Authority notes that it has not been demonstrated by any party that the import price is in fact affected due to relationship.
52. As regards adoption of the import price from China, the Authority notes that adoption of import price from China is not open for the present re-determination. In any case, the import price from China could not be adopted for the very same reason for which consumption price of KPC was not adopted. If the consumption price of the exporter was rejected on the ground that the same was artificially low, the import price of 4ADPA of Chinese exporter in India cannot be adopted for the same reason. In this connection, the Authority notes that the domestic industry contended that Sinorgchem is holding

capacities for 4ADPA significantly beyond its own requirement and was dumping the product under consideration by selling raw materials at artificially low prices.

53. As regards the argument that given the large quantities of 4ADPA that were being bought by KPC from Sinorgchem, there should be a volume discount on the consumption price, the Authority notes that KPC has not provided any evidence to demonstrate that a volume discount is invariably provided by the sellers when the quantities are large. It is not appropriate to generalize the proportion that the selling price would be lower if the volume is higher. In fact, it is quite possible that the selling price is lower despite lower volumes. In any case, it is a question of fact which should have been established by the interested parties.
54. As regards the issue of adoption of different exchange rates adopted, the Authority notes that there is no difference in the exchange rate adopted. The weighted average export rates are different due to the difference in associated volume as shown in the table below.

Particulars	Volume in Kg	Avg. Exch. Rate
<b>China PR</b>		
April-06	80,000	44.85
June-06	64,000	46.20
July-06	83,360	46.55
August-06	32,000	47.20
September-06	64,000	46.80
October-06	64,000	46.15
November-06	128,000	45.55
January-07	112,000	44.70
February-07	112,000	44.45
March-07	112,000	44.45
<b>Total China PR</b>	<b>851,360</b>	<b>45.69</b>
<b>Germany</b>		
April-06	241,100	44.85
May-06	108,380	45.35
June-06	154,820	46.20
July-06	109,100	46.55
August-06	44,160	47.20
September-06	44,260	46.80
October-06	88,500	46.15
November-06	89,820	45.55
December-06	133,220	44.95
January-07	109,540	44.70
February-07	66,320	44.45
March-07	43,840	44.45
<b>Total Germany</b>	<b>1,233,060</b>	<b>45.60</b>

55. As regards reasonable profit that should be adopted for the present purpose, the Authority has considered \*\*\*% of cost of sales excluding interest as profit as per its practice in the absence of any other information provided by the interested parties.
56. As regards the contention of KPC that the CESTAT upheld the decision of the Authority with regard to rejection of 4ADPA price on the assumption that there is a reliable international price in existence, the Authority holds that the argument of KPC is without any basis. In fact, the figure of US\$ \*\*\* adopted by the Authority and the basis of the same was acknowledged by the Tribunal. The observation of the Tribunal was that the said figure was not disclosed to the exporter, importer and other interested parties at the time of determination. The Tribunal has in fact directed the Authority to disclose the international price that had been adopted. This does not mean that the price of US\$ \*\*\* adopted by the Authority has been rejected by the Tribunal.
57. The Authority notes that the domestic industry had made available information with regard to international price of 4-ADPA on the basis of imports of the product from Germany to India in a number of its submissions. The domestic industry, in particular in their hearing paper book, post hearing written submissions and letters dated 6<sup>th</sup> February, 2008, has provided the transaction by transaction data of imports of 4-ADPA which formed the basis of the import price of US\$ \*\*\* per kg. These submissions made it abundantly clear that the claim of the domestic industry was based on the imports of 4-ADPA as per information procured by them from IBIS. The domestic industry has also provided non-confidential version of these submissions, which have been placed in public file. The interested parties, including Kumho Petrochemicals, had filed their rejoinder to the written submissions filed by the domestic industry and, therefore, had ample opportunity to comment on the correctness or otherwise of the IBIS data or the import price of US\$ \*\*\* per kg. as claimed by the domestic industry on the basis of imports of 4-ADPA in India. The Authority notes that while the interested parties could contend that they were not aware about the figure of US\$ \*\*\* adopted by the Authority or the source of the same, the interested parties cannot contend that they did not have opportunity to comment on the claim made by the domestic industry in this regard. It is also evident that the domestic industry had been disputing throughout the investigation the adoption of the cost of production of the Korean exporter and had been pleading consideration of import price into Korea and rejection of the cost of production of the exporter in view of inappropriateness of the procurement price. Kumho Petrochemicals and other interested parties, however, chose not to offer any comments on the amount of international price claimed by the domestic industry, nor offered any comments on the appropriateness of the source of information or accuracy of the information.
58. The Authority notes that the domestic industry in this remand proceeding has once again provided a statement showing imports of 4-ADPA into India as per information made available by IBIS, including transaction wise details of these imports of 4-ADPA in India. The Authority also notes that IBIS as a source of information for determination of import volume or import price has been used by the Authority in several investigations. The Authority notes that international price of 4-ADPA on the basis of imports of the 4ADPA from Germany to India as US\$ \*\*\* per kg was adopted by the Authority at the time of original investigation. The Authority considered the arguments made by interested parties

with regard to the appropriateness of IBIS data and does not find any infirmity with regard to adoption of 4ADPA price as US\$ \*\*\* per kg.

59. As regards contention that the Authority is not required to disclose individual costing elements of KPC to the domestic industry, the Authority notes that the rules require the Authority to address the issues and concerns raised by the interested parties while making determination. Since domestic industry has raised concerns with regard to specific elements of costing, the Authority is required to address the same. The Authority also notes in this regard that if an interested party raises specific concerns with regard to elements of cost or NIP of the domestic industry, the same are also considered and addressed by the Authority. The Authority, however, notes that the rules with regard to confidentiality are required to be followed in this regard and, therefore, while specific confidential information of the exporter cannot be disclosed, the Authority has addressed all the issues raised by the domestic industry with regard to cost of production of the exporter.
60. As regards the disclosure of verification reports prepared by the Authority and comments on the verification report and documents provided by the exporter or the domestic industry at the time of on the spot verification are concerned, the Authority notes that it is the consistent practice of the Authority not to disclose verification report to the domestic industry. The Authority also notes in this regard that verification reports are issued to the exporters in compliance with the WTO Agreement on anti dumping even though there is no such specific requirement under the Indian law.
61. As regards the contention that the exporter and importer did not comment on the claim of the domestic industry with regard to international price of 4ADPA, the Authority notes that non confidential submissions made by various interested parties were made available to the interested parties through the public file. These non confidential versions include submissions of the domestic industry with regard to their claim concerning international price of 4ADPA. The importer and exporter had clear opportunity to defend their interests and counter the claim made by the domestic industry. The exporter-importer however preferred not to offer any comments on the same or provide any other evidence of international price of 4ADPA. The main thrust of the arguments of the importer as well as the exporter was that the Authority cannot reject the consumption price reported by the exporter and its costs on the basis of the records maintained by the exporter.
62. Cost of production of KPC has been determined by considering the information provided by the exporter and verified by the Authority. All elements of expense and costs claimed by the exporters were allowed except for the following:
  - a. Consumption price of 4ADPA – The Authority has not accepted the consumption price of 4ADPA reported by the exporter. The Authority has adopted consumption price of 4ADPA as reported in IBIS data. The CIF price of US\$\*\*\* per kg has been adopted for the purpose. This has been adjusted for (a) the difference in freight between China and Korea and Germany and India; (b) port expenses in Korea; (c) customs duty on imports in Korea @ \*\*\*% and (d) inland freight in Korea from port to factory of KPC. The consumption price so adopted comes to US\$ \*\*\* per kg.

- b. Interest cost – The interest expenses claimed by the exporter have been considered after excluding the interest income reported by the exporter. Interest cost has been allowed without adjusting interest income.
- c. The cost of production/sales claimed by the exporter was \*\*\* KRW per Kg as against which the cost of production determined by the Authority is \*\*\* KRW per Kg. Full disclosure of cost of sales determined by the Authority was made to the exporter on confidential basis.
- d. Since all sales made by the exporter were below the cost of sales determined by the Authority, the normal value has been determined on the basis of cost of sales after providing profits at \*\*\*% of cost of sales excluding interest.

#### **D. ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS**

##### **Dumping margin for Korea RP**

###### i) Details of normal value determined for 6PPD for KKPC

- 63. The Authority has considered the cost of 4ADPA at the rate of US\$ \*\*\* per kg being the price at which the said raw material was sourced from a market economy country, i.e., Germany, based on the data provided by the domestic industry. The domestic industry vide their letter dated 6.2.2008 had attached a statement showing the above said price of US\$ \*\*\* per kg sourced from IBIS.
- 64. The Authority has adopted average exchange rate of \*\*\* KRW per US\$ and arrived at the rate for 4ADPA at \*\*\* KRW per Kg as against \*\*\* KRW per kg of 4ADPA claimed in Appendix-8B submitted by KKPC.
- 65. In view of the above, the cost of production of 6PPD has been reworked by revising the cost of 4DAPA from \*\*\* KRW per kg to \*\*\* KRW per kg. The other elements of cost with the exception of interest have been kept at the level claimed by KPC. As regards interest, the Authority has considered interest without adjusting interest income. This has resulted in increase in the cost of 6PPD from \*\*\* KRW per Kg to \*\*\* KRW per Kg.
- 66. Since the revised cost of \*\*\* KRW per kg of 6PPD, was higher than the domestic selling price for domestic sales of KKPC, the Ordinary Course of Trade Test had failed. The Authority had, therefore, considered the profit at \*\*\*% of cost of sales excluding interest to determine the normal value for 6PPD. The normal value so determined by the Authority works out to US\$ \*\*\* per Kg of 6PPD.

###### ii) Details of export price determined for 6PPD exported by KKPC to India

- 67. The Authority has determined the net export price based on the Appendix-2 filed by KKPC after due verification. The adjustments claimed by KKPC, viz., inland freight, ocean freight (inclusive of terminal handling charges, bill of lading fee, handling charges and wharfage), ocean insurance, bank charges and commission were verified and accepted. In addition, the negative adjustment for the duty drawback received on exports to India on the basis of revised customs duty considered on the 4ADPA price had been

admitted. The net export price so determined by the Authority worked out to \*\*\* US\$ per Kg of 6PPD.

**Dumping Margin For Kumho Petrochemicals Co, Ltd Korea RP**

68. Dumping Margin based upon the above calculations of Normal Value and Export price has been worked out by the Authority in the table below.

Normal value US\$/Kg	Net Export Price US\$/Kg	Dumping Margin US\$/Kg	Dumping Margin (%)	Dumping Margin (%) Range
***	***	***	***	0 - 10

**E. ASSESSMENT OF INJURY AND CAUSAL LINK**

**i) Injury Determination**

69. The Authority considers that imports of PX13 during the POI increased significantly in absolute terms. Imports increased significantly in relation to total imports into India, production and consumption in India. With regard to the price effect, it is noted that imports were significantly undercutting the prices of the domestic industry in the market and selling price of the domestic industry declined significantly during POI. Performance of the domestic industry first improved and thereafter deteriorated in the POI in terms of production, capacity utilization, selling price, profits, cash profit and return on investments. Domestic sales and market share declined and the inventories increased throughout the injury period. Imports were suppressing domestic prices. The dumping margin determined in respect of imports from China PR and Korea RP was significant. Thus, the dumping of subject goods is causing injury to the domestic industry and that the domestic industry suffered material injury as a result of dumping of the subject goods.

**Injury Margin Table**

Injury Margin	UOM	POI
NIP	Rs./kg	***
Landed Value of Kumho Petrochemicals Co Ltd, Korea RP	Rs./kg	***
Injury Margin	Rs./kg	***
Injury Margin	%	***
Injury Margin Range	%	20-30

**ii) Conclusion on Causation**

70. On the basis of the detailed examination done in the final findings vide Notification No.14/5/2007- DGAD dated 1st October, 2008 and the present determination, the Authority concludes that the subject goods were exported from the subject country at

prices below their normal values resulting in dumping of the subject goods. Further, the landed price of imports was below Non Injurious Price of the domestic industry and the net sales realization of the subject goods of the applicants. Imports from subject countries caused material injury to the domestic industry establishing causal links between dumping of subject goods and injury to the domestic industry. Significant increase in the volume of dumped imports had resulted in significant decline in the market share of domestic industry. It was further seen that decline in market share of domestic industry as a consequence of increase in market share of subject imports from the subject country prevented the domestic industry from increasing their sales commensurate to growth in demand. As a result, the sales of the domestic industry during the POI did not increase to such an extent that domestic industry could have optimally utilized its capacity. Consequently, production, sales and capacity utilization of the domestic industry suffered as a result of the decline in the market share of the domestic industry. Significant price undercutting caused by dumped imports prevented the domestic industry from increasing its prices. Resultantly, profit, cash flow and return on investment of the domestic industry deteriorated in the POI. Significant price undercutting and substantial increase in the volume of dumped imports adversely affected the performance of the domestic industry in terms of profits, cash flow, and return on investment, these parameters deteriorated in POI after improving till 2005-06.

71. The Authority, therefore, concludes that the dumped imports originating in or exported from Korea and China had caused material injury to the domestic industry within the meaning of Rule 11 of Anti-dumping Rules.
72. The Authority notes that the CESTAT vide its order dated 26.12.2014 had directed the Authority to re-determine normal value, export price and dumping margin in so far they relate to KPC and make modification to the Final Findings as may be necessary as a result of such post decisional hearing.
73. Having regard to final findings earlier notified, various submissions made by the interested parties during the course of the investigations as well as at the time of post decisional oral hearing and thereafter in their written and rejoinder submissions and considering the merits in the arguments raised by the interested parties in view of legal and factual position, the Authority holds that the final findings earlier notified by the Authority do not require any modification, except in respect of dumping margin, injury margin and quantum of anti dumping duty in so far as it relates to Korea Kumho Petrochemicals Ltd. The Authority holds that the product under consideration has been exported by Korea Kumho Petrochemicals Ltd., at a price below the associated normal value causing material injury to the domestic industry. The dumping margin so determined for Korea Kumho is above de-minimis. The Authority concludes that antidumping duties are therefore required to be imposed on the exports made by Korea Kumho Petrochemicals Ltd.

## **F. POST SECOND DISCLOSURE STATEMENT SUBMISSIONS**

### Post second Disclosure Statement submissions by the opposing Interested Parties

74. The Authority notes that the post second disclosure statement submissions made by the opposing interested parties are repetitive in nature and have already been dealt with in the second Disclosure Statement. The important post second post Disclosure Statement submissions of the opposite interested parties, in brief, are as under:
- a. Remand proceedings pursuant to the CESTAT order cannot exceed beyond its scope. The appeal of the Applicant Domestic Producer before the Hon'ble CESTAT was not allowed for any re-determination. The Applicant Domestic Producer was unable to indicate any sentence in the CESTAT Order which may demonstrate that any direction on the re-determination was given qua the appeal of the Applicant Domestic Producer.
  - b. The Designated Authority cannot review its own order and support new insertions and inventions of the Applicant Domestic Producer when it has no mandate to re-determine the aspect about the payment of customs duty and other such extraneous issues at this stage. The direction to re-determine means only the redetermination of all aspects which could not be done earlier due to non-disclosure of the prices of 4-ADPA used by the Designated Authority.
  - c. As far as KPC is concerned, in the appeal of KPC, it cannot be placed in the worse position on any issue than the position in which it already was before the filing of appeal on those issues. The issues as framed by the Hon'ble CESTAT highlight that the only issue regarding re-determination was that to disclose the proposed international price of 4ADPA to KPC and take into consideration any submissions made by KPC on the adoption of the same price. The issues to consider whether customs duty would have been paid on import of the 4ADPA and other expenses would have been incurred are not open for redetermination to the Designated Authority in the absence of remand on these issues.
  - d. It is submitted that the Applicant Domestic Producer as well as the Designated Authority were aware about the price of 4ADPA adopted. The Applicant Domestic Producer at no stage submitted that they were kept in dark about the prices used for substitution. Even the Applicant Domestic Producer supported the decision of the Designated Authority to full extent. Therefore, the Applicant Domestic Producer as well as the Designated Authority were aware about inclusion or exclusion of the customs duty or any other expense before use of such prices in arriving at the cost of production.
  - e. In such circumstances, it is but obvious a presumption that all such adjustments were already made which are now requested by the Applicant Domestic Producer. Further, even if it is assumed that it was not done by the Designated Authority and the Applicant Domestic Producer kept quite on such aspect and foregone its right by not challenging it in appeal, then the Designated Authority cannot now oblige the Applicant Domestic Producer once again by accepting such adjustments. Once a right is forgone by the Applicant Domestic Producer, then such right cannot be resurrected in garb of the direction for redetermination in the appeal of the Respondents. The direction for redetermination is restricted in that manner.
  - f. It is again reiterated that the word "CIF" in paragraph 27.c has been introduced intentionally though the same was not present earlier. Is it the admission that the

Designated Authority did not care about the CIF price/FOB price, etc. in its determinations?

- g. CIF has been introduced to overcome the difficulty to make an addition of the customs duty in the claimed landed value once again to keep the dumping margin level.
- h. Further, when the Applicant Domestic Producer submitted the data for the last time, it would not have assumed that KPC has an operation in sea beyond the customs boundaries and, therefore, on the import of 4ADPA, customs duty would not have been payable. In other words, it is but obvious and beyond doubt that the Applicant Domestic Producer must have submitted the prices of 4ADPA for substitution after adding the customs duty payable in India at that time, i.e., 15%. The Applicant Domestic Producer as well as the Designated Authority failed to indicate any plausible reason because of that such adjustments were not done previously.
- i. Even if the Applicant Domestic Producer failed to include the customs duty at the point of time before the passing of the Final Findings dated 01.10.2008 and thereafter failed to file an appeal on the same aspect, it is not anymore open to the Applicant Domestic Producer to make a fresh claim before the Designated Authority to accept such claim.
- j. The Designated Authority had provided adjustment in relation to duty drawback while adopting the price of 4ADPA and, therefore, also it can reasonably be deduced that such adjustment was allowed if customs duty element was already included in the adopted price.
- k. The Applicant Domestic Producer has been blessed for all the adjustments sought even though such aspects were never raised and no appeal was filed on those aspects. The Respondents demonstrated from the Final Findings dated 01.10.2008 that it is an admitted position that price of 4ADPA to India by Sinorgchem was much higher than Price of 4ADPA to KPC. The reason for the difference was the quantity discount. The same difference should have been allowed as adjustment to the newly substituted price. However, it seems that Final Findings of the earlier Designated Authority on this fact has been ignored.

#### Post second Disclosure Statement submissions by the Domestic Industry

75. The Authority notes that the post second disclosure statement submissions made by the Domestic Industry are repetitive in nature and have already been dealt with in the second Disclosure Statement. The important post second post Disclosure Statement submissions of the Domestic Industry, in brief, are as under:
  - a. The only scope of the present post decisional proceedings is to disclose the international price and methodology adopted for fixation of normal value, export price and dumping margin. Further the designated authority may re-determine normal value, export price and dumping margin in light of the CESTAT observation. The Designated Authority should not go beyond the directions of CESTAT.

- b. The domestic industry requests the Designated Authority to disclose the methodology of determination of normal value in general and determination of interest cost, steam cost, SGA expenses and captive inputs in particular.
- c. Domestic industry requests the Designated Authority to either add customs duties and all expenses associated with import in 4ADPA costs or disallow adjustment of negative deduction towards duty drawback.
- d. Appropriately modify the dumping margin and consequently the duty quantum after making adjustments as requested by the domestic industry.

#### Examination by the Authority

76. The exporter's comments mainly relate to the scope of the Remand Investigation. The Tribunal passed the specific orders limiting the scope of the post decisional hearing to disclosure of international price of 4ADPA adopted by the Authority for re-determination 6PPD price, the export price, normal value and dumping margin in so far as they relate to Kumho Petrochemicals and disclose the methodology. The determination of revised Export Price, Normal Value and Dumping margin are in consonance with the said Order of the Tribunal. All the comments involve around re-determination of Export Price, Normal Value and Dumping Margin. The basis of redetermination has been amply described in the Final Findings. The calculations and methodology have been duly shared with the authorized representative of the Exporter. No specific comments have been made on the calculations. They have merely challenged the scope in which there are no merits.

#### **G. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES:**

77. The Authority notes that 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. Imposition of anti-dumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.
78. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

#### **H. CONCLUSION AND RECOMMENDATIONS**

79. After examining the submissions made by the opposing interested parties and the domestic industry and issues raised therein; and considering the facts available on record,

the Authority concludes that the product under consideration has been exported to India from Kumho Petrochemicals, Korea RP below its associated normal value, thus, resulting in dumping of the product. The domestic industry has suffered material injury in respect of the subject goods. The material injury has been caused by the dumped imports from Kumho Petrochemicals, Korea RP.

80. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti dumping duty is required to offset dumping and consequent injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on the imports of the subject goods originating in or exported from Kumho Petrochemicals, Korea RP in the form and manner described hereunder.
81. The Authority notes that the CESTAT had remanded the matter back to the Authority with a direction that the Authority shall re-determine for 6PPD the export price, normal value, and the dumping margin in so far as they relate to Kumho Petrochemicals, Korea RP. The Authority had recommended definitive anti dumping duty on the imports of Rubber Chemical 6-PPD (PX-13), originating in or exported from Kumho Petrochemicals, Korea RP vide its Final Findings Notification No.14/5/2007- DGAD dated 1st October, 2008, recommending imposition of the anti-dumping duty from the date of imposition of provisional findings Notification No. 14/5/2007-DGAD dated 28th February, 2008. The same was levied by the Central Government vide Notification No.133/2008-Customs dated 12th December, 2008 with effect from the Notification No 61/2008-Customs dated 5th May, 2008. In the remand case, the Authority has revised the Dumping Margin for Kumho Petrochemicals, Korea RP from what was recommended in the original Final Findings Notification No 14/5/2007- DGAD dated 1st October, 2008.
82. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive 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 Authority recommends to the Central Government that in Column No.- 9, S. No 4, of the Duty Table in the Final Findings Notification No.14/5/2007- DGAD dated 1st October, 2008, the amount of duty may be amended to read as 5.90 as against 10.35 and further recommends to the Central Government that definitive antidumping duty as per the amount specified above may be imposed by the Central Government from 5th May, 2008, on all imports of the subject goods originating in or exported from Kumho Petrochemicals, Korea RP. The above mentioned amended duty will, however, have no effect on the amount of duty recommended by the Authority in its Mid Term Review Final Findings Notification No 15/21/2010-DGAD dated 5th August, 2011 including the Corrigendum dated 19th August, 2011 and the Sunset Review Final Findings Notification No.15/1/2013-DGAD dated 29th April, 2014.

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

**(A K Bhalla)**  
**Designated Authority**