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**No.15/21/2013-DGAD**  
**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**DEPARTMENT OF COMMERCE**  
**(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**  
Jeevan Tara Building, 4<sup>th</sup> Floor  
5, Parliament Street, New Delhi-110001

**Date: 27. 04.2015**

**Final Finding**

**Subject: Sunset Review (SSR) anti-dumping investigation concerning imports of Phenol originating in or exported from South Africa.**

**No.15/21/2013:** Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

**A. Background of the Case**

1. The Designated Authority, having regard to the Customs Tariff Act, 1975, as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, had initiated the original investigation concerning imports of Phenol (hereinafter also referred to as the subject goods), originating in or exported from European Union, South Africa and Singapore vide Notification No.14/4/2002-DGAD dated 15<sup>th</sup> February, 2002. The Designated Authority vide Notification No.14/4/2002-DGAD dated 24<sup>th</sup> June, 2002 notified the Preliminary Findings recommending provisional anti dumping duties. The Final Findings Notification was issued by the Authority vide Notification No.14/4/2002-DGAD dated 13<sup>th</sup> February, 2003, recommending imposition of definitive duty on the imports of the subject goods, originating in or exported from European Union, South Africa and Singapore. Definitive anti-dumping duties were imposed by the Department of Revenue vide Notification No.47/2003-Customs dated 24<sup>th</sup> March, 2003.

2. A Mid-Term Review investigation was conducted and the Final Finding Notification was notified by the Authority vide Notification No.15/4/2006-DGAD dated 13<sup>th</sup> July, 2007 recommending continuation of definitive anti dumping duty, on all imports of subject goods originating from Singapore, South Africa and European Union with change in the form of duty by imposing fixed amount of duty. The Department of Revenue imposed the definitive anti dumping duties on the subject goods vide Notification No.98/2007-Customs dated 31.08.2007.
3. The first Sunset Review investigation was initiated on 10<sup>th</sup> August, 2007. The Final Findings Notification was issued by the Authority vide Notification No.15/9/2007-DGAD dated 4<sup>th</sup> August, 2008 recommending continuation of same anti dumping duty on the imports of subject goods from European Union and Singapore and revised definitive anti dumping duty on imports of subject goods from South Africa. On the basis of the recommendations made by the Authority, definitive anti dumping duties were imposed by the Department of Revenue vide Notification No.114/2008-Customs dated 31<sup>st</sup> October, 2008.
4. The second Mid-term review was initiated by the Authority vide Notification No. 15/16/2011-DGAD dated 8<sup>th</sup> December, 2011 in respect of imports of Phenol originating in or exported from European Union, South Africa and Singapore. The Final findings in the second MTR investigation were notified by the Authority vide Notification No.15/16/2011-DGAD dated 6<sup>th</sup> February, 2013, recommending continuation of anti dumping duties with respect to imports from South Africa and recommending withdrawal of duties on imports of subject goods from Singapore and European Union. On the basis of recommendations made by the Authority the Department of Revenue continued the imposition of anti dumping duties on imports of subject goods from South Africa and withdrew anti dumping duties from Singapore and European Union vide Notification No.10/2013-Customs (ADD) dated 3<sup>rd</sup> May, 2013
5. The Designated Authority initiated the present review investigation vide Notification No.15/21/2013-DGAD dated 28<sup>th</sup> October, 2013 in respect of imports of Phenol originating in or exported from South Africa (hereinafter referred to as subject country)
6. M/s Hindustan Organic Chemicals Limited (hereinafter also referred to as HOCL), supported by M/s SI Group India Ltd (hereinafter also referred as SI Group), filed a duly substantiated application before the Designated Authority, alleging likelihood of continuation of dumping of the subject goods, originating in or exported from the subject country and consequent injury to the domestic industry and have requested for review, continuation and enhancement of the anti-dumping duties, imposed on the imports of the subject goods, originating in or exported from the subject country.
7. In view of the duly substantiated application filed on behalf of the domestic industry and in accordance with section 9A(5) of the Act, read with Rule 23 of the

Anti-dumping Rules, the Authority initiated a sunset review investigation vide Notification No. 15/21/2013-DGAD dated 28<sup>th</sup> October, 2013 to review the need for continued imposition of the anti-dumping duties in respect of the subject goods, originating in or exported from the subject country, and to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The duty was extended by the Department of Revenue till 30<sup>th</sup> October 2014.

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

## **B. Procedure**

9. The procedure described below has been followed with regard to the subject investigation:
  - i. The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2).
  - ii. The Authority provided copies of the non-confidential version of the application to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra. A copy of the non- confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.
  - iii. The Authority forwarded a copy of the public notice to Merisol , South Africa , the only known manufacturer/exporter in South Africa (whose name and address was made available to the Authority by the petitioner) and provided opportunity to make its views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4).
  - iv. M/s Merisol RSA Pty Ltd., the known producer/exporter from South Africa, filed an Exporter's Questionnaire response as an interested party to the investigation. However, subsequently, M/s ELP, Mumbai, the authorized representative of M/s Merisol in India vide their letter dated 18.6.2014 had informed the Authority about the withdrawal of Merisol from the investigation as an interested party due to commercial considerations.
  - v. The Authority forwarded a copy of the public notice to the following known importers/consumers (whose names and addresses were made available to the authority by the applicants) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(4):

- a. M/s C.J. Shah and Company, Mumbai
  - b. M/s Haresh Kumar & Co, Mumbai
  - c. M/s PCL Oil Industries, New Delhi
  - d. M/s Kantilal Manilal & Co. Pvt. Ltd.
  - e. M/s Sonkamal Enterprises, Mumbai
  - f. M/s Khetan Brothers, Mumbai
  - g. M/s Shubham Dyes & Chemicals Limited, Delhi
  - h. M/s Acron Enterprises, Gujarat.
  - i. M/s Naiknavare Chemicals Limited, Mumbai
  - j. M/s Paras Dyes & Chemicals, New Delhi.
  - k. M/s Torrent Pharmaceuticals Limited, Gujarat.
  - l. M/s United Phosphorous Ltd., Mumbai
  - m. M/s Resins and Plastics Ltd.
  - n. M/s Kailash Polymers, New Delhi
  - o. M/s Centrum Metalics Pvt. Ltd, Mumbai
  - p. M/s Wonder Laminates Pvt. Ltd, Kolkata
  - q. M/s Meghdev Enterprises, Ahmedabad
  - r. M/s Satguru International, New Delhi
  - s. M/s High Polymer Labs Ltd, New Delhi
  - t. M/s Rainbow Colours & Chemicals, Gujarat.
  - u. M/s Bleach Marketing Pvt. Ltd.
  - v. M/s Karmen International (P) Ltd., Chennai.
  - w. M/s Krishna Antioxidants Pvt. Ltd, Mumbai
  - x. M/s NGP Industries Ltd, New Delhi
  - y. M/s Farmson Pharmaceutical Gujarat Ltd,
  - z. M/s India Glycols Ltd., New Delhi
  - aa. M/s Singh Plasticisers and Resins (I) Pvt., New Delhi
  - bb. M/s National Plywood Industries Ltd, Kolkata
  - cc. Kundan Rice Mills Ltd, New Delhi
- vi. Only one of the importers of the subject goods i.e. M/s Eximcorp India Private Limited has filed a response in this matter.
  - vii. The Period of Investigation (POI) for the purpose of the present review investigation was 1<sup>st</sup> April, 2012 to 31<sup>st</sup> March, 2013 (POI). The examination of trends in the context of injury analysis covered the periods April 2009-March, 2010, April 2010-March 2011, April 2011-March 2012 and the POI.
  - viii. Transaction wise imports data for the period of investigation and preceding three years was, procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S), has been relied upon for the analysis in present SSR investigation.
  - ix. Exporters, producers, importers and other interested parties who have neither responded to the Authority nor supplied information relevant to this investigation

have been treated as non-cooperating interested parties by the Authority.

- x. The Authority made available non-confidential version of the evidence presented by interested parties in the form of a public file kept open for inspection by the interested parties as per Rule 6(7).
- xi. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III of the Rules to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xii. The Authority provided opportunity to all interested parties to present their views orally in public hearings held on 26.06.2014. All the interested parties attending the hearings were requested to file written submissions/rejoinders of the views expressed orally.
- xiii. The submissions made by the interested parties during the course of this investigation have been examined and addressed in this finding.
- xiv. The Department of Revenue vide their OM No.354/124/2012-TRU (Pt-III) dated 7.11.2014 extended the time period to complete the investigations up to 27.4.2015.
- xv. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied upon which these findings are based. The Authority conducted on-the-spot verification at the premises of the domestic industry to the extent considered relevant and necessary. Additional/supplementary details regarding injury were sought from the domestic industry, which were also received.
- xvi. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xvii. In accordance with the Rules the Authority issued a disclosure statement containing all essential facts of the case on 20.04.2015 for the comments of the interested parties. The comments of the interested parties, to the extent they are relevant have been addressed in this finding in appropriate places.
- xviii. \*\*\* in this finding represents information furnished by an interested party on

confidential basis and so considered by the Authority under the Rules.

- xix. The exchange rate for the POI has been taken by the Authority as Rs.54.70 = 1US\$.

### **C. Scope of Product under consideration and like article**

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

10. Following are the submissions made by the domestic industry with regard to product under consideration and like article:

- i. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms- bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc. This product is classified under Customs Tariff heading no. 29071110. The Customs and ITC HS classifications are, however, indicative only and in no way binding on the scope of the present investigation.
- ii. No significant development has taken place over the period with regard to product under consideration.
- iii. The goods produced by the domestic industry are like article to the imported product in terms of parameters such as physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification.

#### **C.2 Submissions by producers/exporters/importers/other interested parties**

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

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

12. The product under consideration, as in the original investigation, as also in the present sunset review application is Phenol. As per the original investigation carried out by the Designated Authority the product has been defined as under:

*“The product under consideration is Phenol originating in or exported from Singapore, South Africa and European Union. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms- bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals,*

*Diphenyl Oxide, etc. This product is classified under Customs Tariff heading no. 2907.11 and 2707.60 as per Indian Trade Classification. The Customs and ITC HS classifications are, however, indicative only and in no way binding on the scope of the present investigation.”*

13. The petitioners have claimed that the product produced by them is a like article to the product imported from the subject country in terms of physical and technical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution & marketing, and tariff classification of the goods. The two are technically and commercially substitutable, and consumers use the two interchangeably. Subject goods produced by the petitioners are being treated as 'like article' to the goods being imported from the subject country for the purpose of the present review investigation. Further, none of the interested parties have made any relevant submissions requesting for change in the scope of the product under consideration.
14. This being the sunset review investigation, the Authority holds that the scope of the PUC in the present investigation remains the same as that of the original investigation.

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

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

15. The following are the submissions made by the domestic industry with regard to scope of the domestic industry and standing:
- i. The scope of domestic industry and standing are not relevant in a sunset review.
  - ii. The petitioners M/s Hindustan Organic Chemicals Limited and SI Group India Ltd. are the only producers of Phenol in the country.
  - iii. The production by the petitioners constitutes 100% of the total Indian production.
  - iv. The petitioners are multi product companies.
  - v. The petitioners have not imported the subject goods from the subject country. They are neither related to the exporters of the product under consideration from the subject country nor related to the importers of the subject goods from the subject country.

##### **D.2 Submissions by producers/exporters/importers/other interested parties**

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

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

17. The petition has been filed by M/s Hindustan Organic Chemicals Limited and supported by SI Group India Ltd. It is noted that the Petitioners are the only producers of the product concerned in India and therefore, account for total Indian production. Further, the Petitioners have not imported the subject goods from the subject country and are not related to either the importers or exporters of the product under consideration from the subject country. The Authority, therefore, holds that the petitioners constitute Domestic Industry within the meaning of the Rules for the purpose of examination of injury and have the standing to file this application for review.

### **E. Miscellaneous Submissions**

#### **E.1 Miscellaneous submissions made by the producers/exporters/importers and other interested parties**

18. The following miscellaneous submissions have been made by the responding importer of the subject goods as an interested party:

- i. The duty cannot be reviewed after it has lapsed on 30<sup>th</sup> October, 2013. Therefore, extension of duty, vide Customs Notification No.29/2013 dated 12<sup>th</sup> November, 2013 is illegal.
- ii. SI Group has shown positive growth while HOCL's condition has deteriorated. Imports cannot affect just one producer.
- iii. The duty has been imposed on the domestic industry almost 12 years since 2002. If during this time also the domestic industry has not been able to recover, then it needs to show that how does it intend to do in the future.
- iv. HOCL is completely sick due to mismanagement.
- v. HOCL is unable to operate as the finance generated is eaten up by many closed line of production.
- vi. The Indian Express report provided that there was a temporary shutdown due to dearth of raw materials, high stock and no off take of its chemicals including Phenol and Acetone. There is immediate need of Rs.150 crores for revival of the units. Any anti dumping duty will hardly help in bringing the plant into operation. Non-receipt of funds will result in permanent shutdown of the unit.
- vii. The situation of a recent case of Sodium Tri Poly Phosphate from China PR applies in the present case. In the present case, HOCL has not disclosed the fact that it is not operating the plant for a considerable period but is asking for duties. This is a violation of natural justice.
- viii. The users are forced to bear extra cost due to closure of HOCL and SI Group will be shielded from international competition and earn unjustified extra profit at the expense of small Indian users of the subject goods.
- ix. The Authority has provided in some of its own final findings that the duty should not continue beyond 10 years.

- x. The respondent is not related to the South African producer. In such a situation it is unable to comment on the non-cooperation of the South African producer.
- xi. It is naïve for the petitioner to come now before DGAD when in each of the previous cases it never appealed against the quantum of duty determined by the DGAD and approved by the Ministry of Finance.
- xii. Petitioner failed to apply for enhancement of anti dumping duty in a mid-term review. Petitioner cannot be allowed to now rely on its mistake and make a claim during sunset review.

## **E.2 Miscellaneous submissions made by the domestic industry**

19. The following miscellaneous submissions have been made by the domestic industry:

- i. As regards the expiry of duty is concerned it is submitted that it wasn't illegal. The DGAD has in the past extended the duties, in a similar manner, in various cases and it is a consistent practice. In cases such as Diclofenac Sodium from China PR, Pentaerithrytol from Chinese Taipei and many others such approach has been found.
- ii. Both HOCL and SI Group are suffering. The Designated Authority may examine injury statements of the two companies. In any case, the Designated Authority is required to examine injury to the domestic industry by considering both the domestic producers.
- iii. Despite anti-dumping duties, the domestic industry has been suffering from unfair competition from one source or the other. This is because of significant surplus in global market and the ability of the global producers to dump the goods. The present petition is for continued imposition of anti dumping duties and the concern of the petitioners is with regard to dumping of the product in the country. Further, the investigation conducted so far by the Designated Authority relating to Phenol and Acetone establishes dumping in a large number of cases on the basis of questionnaire responses that have been filed by the exporters. In other words, the dumping margin established in a large number of cases are on the basis of admission of discriminatory price at which goods have been sold by the foreign producers. Thus, these foreign producers must explain their behavior and inform the authority about the reasons for exporting the subject goods at a discriminatory price to the Indian market.
- iv. Anti Dumping law is for removing unfair trade practice and providing a level playing field to the domestic industry. The Authority recommends anti dumping duty only after following the requirements prescribed under the laws.
- v. Even if it is considered that production of HOCL suffered partly on account of non-availability of raw material, the same does not address the adverse price effect of dumped imports on the domestic industry. In fact, in a situation of low production, the company should have been in a position to sell the product at more than the fair

price. Thus, the adverse price effect is on account of dumped imports and not on account of lower production. Further, dumping of the product for a long period is preventing the domestic industry from generating sufficient funds for fresh investment and it is one of the principal causes of the overall deterioration in the performance of the domestic industry.

- vi. The same Indian express report which has been referred to by the respondents, discusses the situation being so due to the import of large quantities of the subject goods from countries such as South Africa.
- vii. Further, HOCL suspended the production because of intensified dumping of the product which has made its current operations totally unviable. HOCL has not completely gone out of business and it has merely suspended the production. In fact, this fact further supports the contention of the domestic industry that dumping of the production in the country is required to be prevented in order to allow domestic industry a fair market situation.
- viii. The petitioner is owned and controlled by the Ministry of Chemicals and Fertilizers and therefore as the owner of the company, the Ministry of Chemicals is entitled to take up the case of the domestic industry before the competent Authority. This, however, cannot be termed as interference as founded by the Hon'ble CESTAT in the stated case. Furthermore, the submissions by Ministry of Chemicals are based on facts.
- ix. The facts and circumstances of the case of Sodium Tripoly Phosphate were different and do not apply in this investigation. In the present case one of the domestic producers has shut-down temporarily, in the other case the sole domestic producer has stopped the production.
- x. HOCL has only suspended the production temporarily. Further, even in case one of the producers has permanently closed down, the petitioners are entitled to seek protection under the law. Mere imposition of anti dumping duty does not imply that a company is shielded from international competition or unjustified extra profits. Further the Designated Authority has repeatedly held 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 general interest of the country. Imposition of anti dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers.*

- xi. With respect to the argument that the respondent cannot comment on the non-cooperation of the South African producer since they are unrelated, the petitioner submits that this is evasion of the issue. However, it may be noted that M/s Merisol

is the sole producer and has been a part of previous investigations. It's non-participation herein despite rising imports from South Africa indicates that they are unaffected by the anti-dumping duties or the situation (Demand-supply gap) is such that they are ready to export the subject goods in any situation, with duty or without duty to utilize their capacity.

- xii. Merely because the Designated Authority has not admitted the claim in the past, it does not imply that the petitioners should forego its right to request the Authority to consider their claim. There are already eight petitions pending in Delhi High Court which clearly establishes the grievances of Indian manufacturing sector against the Non Injurious Price Law.
- xiii. As regards the argument that the domestic industry failed to apply for enhancement of anti dumping duty, it is submitted that there is no such need in a sunset review.

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

20. The Authority has examined the miscellaneous submissions as follows:

- i. As regards the contention of the interested parties that duty cannot be reviewed after it has lapsed and that the extension of duty in this case being illegal the Authority notes that the present investigation was initiated prior to the expiry of the duty. Extension of the anti dumping duty after initiation of sunset review investigation has been done by the Department of Revenue in accordance with the Rules as has been done in all such cases. The Ministry of Finance, in its recent circular as quoted below, has further clarified the issue justifying the continuation of duty:

*“From a plain reading of this provision it is evident that definitive/final anti-dumping duty can be collected only for a period of five years from the date of its imposition. Generally by virtue of sub-section (2) of section 9A of the Customs tariff Act, 1975, the anti-dumping duty levied in pursuance of final findings of the Directorate General of Anti-Dumping and Allied Duties (DGAD) is effective for a period of five years from the date of imposition of provisional duty except in cases where the DGAD initiates a review before expiry of such five year period. In cases where the DGAD has not initiated any sunset review before the expiry of aforesaid five years, no anti-dumping duty can be collected beyond the period of five years from the date of its imposition.”*

- ii. The Authority further notes that the matter is sub-judice and under the consideration of the Hon'ble Supreme Court of India.
- iii. As regards the submission that imports cannot affect just one producer, considering that SI Group has shown positive growth the Authority notes that the Rules require injury examination of the domestic industry as a whole. Even

a standalone examination of the performance of SI Group indicates deterioration of its performance during the POI.

- iv. As regards the contention that antidumping duty has been imposed for nearly 12 years and till date the Domestic Industry has not shown any signs of recovery the Authority notes that the data indicates that during the injury investigation period of this investigation, except the POI the domestic industry was making significant profits from the product under consideration. Therefore, the contentions of the interested parties that the domestic industry did not show any sign of recovery is not correct.
- v. The Authority also notes that in a few mid-term review investigations concerning imports of Phenol from some countries, the Authority had recommended revocation of antidumping duty after objective assessment of various aspects of the cases.
- vi. As regards the submission that HOCL has been declared sick in the past, the Authority notes that HOCL has been classified as a sick company since 2005. However, it has also made profits thereafter. The Authority will however, examine the injury if any, caused by the dumped imports, irrespective of the fact whether HOCL was a sick company due to other reasons without attributing injury caused by the other factors to dumping. Moreover, the Authority has also examined whether SI Group is also suffering injury on standalone basis.
- vii. As regards the contention that HOCL is unable to operate as the finance generated is eaten up by many closed lines of production, the Authority has examined whether the adverse price effect on HOCL is on account of dumped imports and not on account of lower production.
- viii. As regards the contention that HOCL is shut-down and anti dumping duty will hardly help in bringing the plant into operation, the Authority notes that the production facilities of HOCL were temporarily shut down allegedly because of significant dumped imports from various sources. Such temporary shutdown does not warrant closure of investigation. The other domestic producer i.e., SI Group was in production and apparently suffered injury also. Imposition of anti dumping duty is intended to provide a level playing field against unfair trading and to enable the domestic industry to revamp itself.
- ix. As regards the contention that the Administrative Ministry's influence is being used by the domestic industry the Authority notes that being the owner and controller of one of the constituents of the domestic industry, the Ministry of Chemicals is entitled to present its views in the matter as an interested party in the matter. The proceedings before the Authority are quasi judicial in nature

and has to take into consideration all material facts placed before it in an unbiased and objective manner within the framework of the Law.

- x. As regards the argument that users are forced to bear extra cost due to closure of HOCL and SI Group will be shielded from International competition and earn unjustified extra profit at the expense of small Indian users of the subject goods, the Authority notes the purpose of anti dumping law is not to shield the domestic industry from international competition. It is reiterated that the purpose is to provide a level playing field against unfair trade practices by foreign producers.
- xi. As regards the contention that the Authority has provided in some of its own final findings that the duty should not continue beyond 10 years, the Authority notes the same to be irrelevant if injurious dumping persists.
- xii. As regards the contention that domestic industry has never appealed against the quantum of duty determined by DGAD in the past or approached for MTR, the Authority notes that the same does not preclude the domestic industry in any manner from approaching the Authority for continuation of duties.

#### **E.4 Post Disclosure Submissions**

21. In their respective post disclosure submissions the interested parties have *inter alia* reiterated their stands taken during the investigation in their earlier submissions. For the sake of brevity such issues have not been repeated and other submissions made by the parties, to the extent they are relevant, and backed by material facts on record, have been addressed in the relevant sections in this finding.

##### **Post Disclosure submissions of M/s Eximcorp**

22. M/s Eximcorp has *inter alia* argued as follows:

- i. That review conducted by the DA shall be concluded within a period not exceeding 12 months from the date of initiation of review. In the present case, such period of 12 months already expired on 28<sup>th</sup> October, 2013. Therefore, the continuation of such review is illegal.
- ii. That in the facts of present case, there is no possibility of existence of special circumstances, which necessitated the DA to request for extension of time for further six months. First proviso to Rule 17(1) of Anti-Dumping rules has to be strictly construed and not used as a general practice.
- iii. Disclosure statement has been issued in violation of principles of natural justice as only Partial disclosure of relied upon information has been made with inadequate opportunity of hearing to comment upon the partial disclosure of unreliable information.

- iv. That it cannot be known from the import statistics, how the Designated Authority sorted out the imports statistics and whether the data provided is raw import data or sorted import data, after due consultation with DGCI&S.
- v. That the Designated Authority has also provided the raw material prices adopted to 'illegally construct' the normal value for South Africa. But the table provided by the Designated Authority is insufficient as the basis/supporting documents for preparing such table has not been provided.
- vi. It is not known from the summary what were the terms of transactions, volume, FOB/CIF, credit terms, level of trade, with related parties or not, etc. It is already held by the Hon'ble Tribunal and upheld by the Hon'ble Supreme Court that reliance on such unreliable data from International journals is illegal.
- vii. Eximcorp requested for other relied upon documents such as verification report, comments on verification report, communications with domestic producers, additional/supplementary information sought by the Authority and reply thereof.
- viii. Eximcorp submits that the Designated Authority has not complied with principles of natural justice by providing all the relied upon documents and evidences as well as providing inadequate opportunity of hearing to Eximcorp to offer its comments. Eximcorp requests the Designated Authority to provide adequate opportunity of hearing as well as all the required documents before proceeding further.
- ix. That the Treaty obligations refer to and are confined to only external contents of any such municipal law arising out of the Treaty or ADA. Thus, the obligation to hold the data of the exporters can alone be subject matter of confidentiality. The data of the importers or domestic industry cannot be a subject matter of confidentiality, that too on the basis that the data of domestic industry are used to inflict and impose anti-dumping duty on importers and thus cannot be withheld from the affected parties. In short, the DA has no obligation to the domestic industry to withhold its data from the importers. As a result, the DA is not prohibited from publishing the data on NIP, landed cost and injury. All that the DA is prohibited is to publish the data of an exporter, which in this case is absent entirely. So, there is no part of Disclosure that can be classified as confidential.
- x. That the disclosure statement issued by DA is unreasoned as it does not examine the issues raised by Eximcorp and give any reasons for rejecting the submissions made by Eximcorp through its letter dated 19.03.2015.
- xi. That the subject product is manufactured along with another product – Acetone. Both the products require same raw **material** and go through the same production process. As a result, Eximcorp raised the following two queries, which have also not been considered by the DA:
  - a. Whether the cost including depreciation cost has been shown only for the product concerned, that is, Phenol or whether cost for Acetone and Phenol has been taken together?

- b. Whether the demand for Acetone has had any effect on production of Phenol and whether production of Phenol can be changed in response to change in demand in Acetone?
- xii. That the performance of the applicant domestic producer was impacted because of closure of Kochi plant of HOCL. However, same has not even been noted by the Authority.
- xiii. That the following submissions, which have not at all been examined by the DA, though the same have been noted in the disclosure statement:
  - a. Requirements of Rule 23(1B) of Anti-Dumping Rules have not been met with respect to “duly substantiated petition”
  - b. Issues regarding determination of non-injurious price
  - c. Issue of old depreciated plants affecting the domestic industry
  - d. Price not a determining factor for Phenol
  - e. Examination of increase in salary & wages as well as power consumption
  - f. Use of LSFO instead of LNG as fuel resulted in extra-ordinary expenses, as reported in the Annual Report of HOCL, which should have been excluded in the determination of non-injurious price
- xiv. That in spite of repeated submissions on various aspects of determination of non-injurious price, including return on capital employed the DA has simply reiterated the principles enunciated at Annexure III to the Anti-Dumping rules for determining non-injurious price without addressing the issues.
- xv. That sub-para (iii) of para (4) of Annexure III to AD Rules requires the Designated Authority to consider the best capacity utilization over the past three years and period of investigation, while arriving at the non-injurious price. As has been submitted above, in the past three years, applicant domestic industry had the best capacity utilization of 108.89% in the year 2011-12. It cannot be ascertained from the Disclosure Statement whether the Designated Authority took into consideration the best capacity utilization during the injury period, that is, 108.89% for the purposes of determining non-injurious price.
- xvi. Similarly, sub-para (ix) of Para (4) of Annexure III to AD Rules provides that while examining the reasonableness of interest cost, details of term loans, cash credit limits, short term loans, deposits and other borrowings taken by the company needs to be examined in detail. It is not known whether the Designated Authority took into consideration the loans taken by applicant domestic industry and whether only those loans that relate to or may be apportioned to subject product were taken into account while determining non-injurious price.
- xvii. DA is not expected to apply a strait jacket formula while determining non-injurious price. If there are other factors, which have been brought to the notice of the DA, then it is imperative for DA to examine such factors or at least seek clarifications on the same, if the information available seems

- insufficient or incomplete. But in no case, the DA can disregard the submissions made by the interested parties.
- xviii.** DA has constructed the normal value for South Africa, a market economy country, by considering the costs of the Indian domestic producer. The methodology has been adopted from the petition filed by the Applicant domestic industry in a blind manner, without appreciating the fact that for market economy countries, normal value cannot be determined by considering the cost of domestic industry.
  - xix. That “best facts available” can be applied by the DA only when such application is done legally. Best facts available cannot be used to substitute the prevailing law. If a law does not permit any particular methodology, DA cannot replace such law and use the facts available. In view of the same, Eximcorp submits that the determination of normal value and the resultant dumping margin is illegal.
  - xx. That the extension of anti-dumping duty for a period of one year in the present case is a subject matter of writ petition W.P (C) 4633/2014 pending before Hon’ble Delhi High Court. Eximcorp submits that the DA shall not proceed until the disposal of the said writ petition.
  - xxi.** That the DA has stated that it has examined whether SI Group is also suffering injury on standalone basis. However, from the injury analysis made by the DA, it is not possible to ascertain whether such an exercise was indeed done or not. If the DA has indeed done such an exercise, then Eximcorp submits that such standalone information may also be made available to interested parties.
  - xxii.** That as may be seen from above, South African imports comprised of only 8-9% of total imports during the injury period. Increase in imports was mainly from countries against which investigation is under progress or other countries, not investigated so far. When it is abundantly clear that increase in imports was from countries other than South Africa, impact of such imports – which comprised of 91-92% of total imports, cannot be attributed to South Africa alone.
  - xxiii.** That the DA should segregate the effect of other factors, including the imports from other countries, and then analyze the situation. Such an exercise is absent in the Disclosure Statement
  - xxiv. That a likelihood determination under Article 11.3 entails an analysis of future events based on positive evidence available and as a result, the mere computation of a dumping margin will not discharge the burden required under Article 11.3. In the Disclosure Statement, there is no examination of post POI period altogether. In such a situation, the likelihood test done by the DA is flawed and incomplete; thus liable to be rejected.
  - xxv.** That the DA is obliged to quantify the normal value and dumping margins in Rand only. Similarly, the DA is duty bound to quantify the NIP in INR only. By converting the Non Injurious Price from INR into Dollars, the non-injurious price is inflated, which results in higher injury margin and resultant anti-dumping duty

## Post Disclosure Submissions of Domestic Industry

23. The basis arguments/submissions of the Domestic industry has been summarized as follows:
- a. The Authority has rightly held that since the only producer/exporter from the subject country who has filed questionnaire response has withdrawn from the investigation, the Authority is constrained to determine the normal values in the subject country on the basis of facts available, including the information contained in the petition of the domestic industry.
  - b. The Authority has rightly proposed to construct the normal value by considering the international price of major raw materials and the cost of production of the domestic producer, duly adjusted to include selling, general and administrative costs and a reasonable margin of profit.
  - c. The Authority has rightly proposed to consider the data from DGCI&S for determination of the export price considering all imports of the product under consideration in India. Price adjustments have been rightly made on the basis of claims made by the applicant domestic industry in view of the non-cooperation from the producer/exporters from South Africa.
  - d. As regards the contention that the Administrative Ministry's influence is being used by the domestic industry, while the Authority has already noted that being the owner and controller of one of the constituents of the domestic industry, the Ministry of Chemicals is entitled to present its views in the matter as an interested party in the matter and held that the proceedings before the Authority are quasi judicial in nature and has to take into consideration all material facts placed before it in an unbiased and objective manner within the framework of the Law; the domestic industry submits that there is no interference by the Ministry of Chemicals & Petrochemicals within the meaning of the word "interference" referred by the CESTAT in the matter of metcoke.
  - e. As regards the NIP, the domestic industry notes that the non-injurious price determined is grossly low and insufficient to protect the domestic industry. In particular, the Net Fixed Assets cannot form the basis for determination of profits when the original phenol-acetone plant set up by the domestic industry is already fully depreciated. Further, the rules do not prescribe the quantum of reasonable profits that the Designated Authority should consider. Given the high age of the plant, the Designated Authority should consider higher rate of return for the domestic industry. It is without any rationality to grant 22% return to a brand new investment and 22% return on 20-50 years old investments.
  - f. The domestic industry wishes to refer to email dated 21<sup>st</sup> April, 2015 from the counsel for M/s Eximcorp India and submits as follows:
    - i. The writ petition has been filed before Delhi High Court by M/s. Century Plyboards. The company has not participated in the investigations being conducted by the Designated Authority and has now filed writ petition before High Court.

- ii. While it is for the Designated Authority to clarify, the petitioners cross checked the disclosure statement with DGCI&S published data and found that the figures contained in the disclosure statement perfectly matched with the imports figures given in the DGCI&S published data which implies the Designated Authority adopted DGCI&S published data for determination. The domestic industry has not provided transaction by transaction DGCI&S import statistics to the Designated Authority in the present case. Therefore, the information is not required to be provided to the interested parties as this is not the information adopted for determination. However, if the Designated Authority has made available any information to the company in response to their mail, the same may kindly be made available to the domestic industry as well.
- iii. Petitioner submits that Exim Corp has not filed questionnaire response. Petitioner has once again perused submissions made on behalf of Eximcorp and does not find that it has been established by the company that Eximcorp has imported product under consideration from South Africa. The disclosure statement states that Eximcorp has filed questionnaire response. In fact, at the time of oral hearing, the company even stated that no questionnaire has been filed by us as it is not a prerequisite for raising legal issues. We, therefore, request the Authority to kindly review Para 9(vi) and modify the same appropriately if the company has not filed questionnaire response. This is very vital in view of the fact that if Eximcorp has not filed questionnaire response then Eximcorp is not an interested party. Under the rules, interested parties are only those parties who are importers of the product from subject countries. An importer of the like product from other countries is not an interested party. It is absolutely clear from the definition of Rule 2(c) read with Rule 14 that imports from subject countries constitutes product under consideration, while imports from other countries constitute like article. Thus, an importer of the product from third countries is not an importer of the product under consideration within the meaning of Rule 2(c). Therefore, if the Eximcorp is not an importer of product under consideration from the subject countries, we request the Authority to kindly modify the disclosure statement and clarify that the company is not an interested party but their submissions have been considered by the Authority. We request the Authority to kindly clarify that the company has not been accorded the status of an interested party to Eximcorp.
- g. As regards verification reports, no such report has been issued to the domestic industry.
- h. As regards communication made by SI Group Ltd as well as HOCL to the Designated Authority, the same have been provided on NCV basis. As regards communication sent by Designated Authority to SI Group Ltd and HOCL, no such communication has been sent by the Designated Authority to these companies.
- i. As regards communication to Ministry of Chemicals to the Designated Authority, we are not aware of any such communication. However, if any such communication has been sent, the same may kindly be placed in public file.

- j. As regards Additional/supplementary details regarding injury sought from domestic industry as stated at para 9(xv) of the disclosure statement, petitioners submit that this constitutes information provided to the Designated Authority in support of costing and injury information. The information collected by the Authority at the time of verification constitutes internal records of the company and therefore the same cannot be made available to the opposing interested parties.
- k. As regards procedure listed by the party, petitioner submit that the same is without any relevance. Each case has to be proceeded based on its merits and facts. When import data adopted in the disclosure statement matches with import data published by DGCI&S, it follows that Eximcorp has not even cross verified the information in disclosure statement with publically available information and has rushed in assuming and presuming on the procedures that the Designated Authority may have followed and writing communication to the Authority. Reference has been made to private agencies when the information in disclosure statement matches with the published data.
- l. The petitioners have referred to their letter dated 23<sup>rd</sup> April, 2015 and reiterated the queries that
  - i. Whether Eximcorp or Century Plyboards has filed response to importer's questionnaire?
  - ii. Whether import data on record of the Authority given by DGCI&S shows that Eximcorp or Century Plyboards is an importer of Phenol from South Africa.
- m. The Domestic industry has reiterated its submissions as regards the product under consideration, Domestic industry and standing, and injury submissions. It has further reiterated its submissions as regards the Likelihood of dumping.

### **Examination of the issues raised in post disclosure submissions**

#### **Issues raised by M/s Eximcorp**

24. The Authority has taken note of the submissions made by the interested parties in response to the Disclosure Statement issued on 21<sup>st</sup> April 2015. The issues raised by the parties have been addressed as follows:
- i. The Authority notes that M/s Eximcorp did not file a detailed Importer Questionnaire response except various injury submissions made by them at various points of time. The party has made various averments without providing any positive evidence on any of the aspects of the determinations while challenging them. It is the primary obligation of an interested party to provide information relevant to the investigation in the absence of which the Authority is constrained to proceed with the facts available including information available in the petition filed by the Domestic Industry. However, in the interest of natural justice and fair play various submissions made by

M/s Eximcorp have been taken on record and addressed to the extent they are relevant.

- ii. As far as the issue of powers of the Central Government to extend the period for completion of a sunset review investigation beyond 12 months is concerned the Authority notes that the power for such extension is available under Rule 17(1) of AD Rules which is also mutatis mutandis applicable to sunset reviews in terms of Rule 23 (3) of AD Rules. The Authority also notes that some of the interested parties have challenged this before the Hon'ble High Court at Delhi and the matter is sub judice.
- iii. Rule 17(1) provides discretion to the Central Government in the matter of extension and the expression "special circumstances" in the said provision is an administrative matter which could include administrative exigencies such as availability of key personnel and also complexities of the investigation to illustrate a few. The Rule does not require the Authority or the Government to give a reason or explanation to the interested parties about the nature of such special circumstances.
- iv. With regard to the argument that only partial disclosure of essential facts has been made with inadequate time, the Authority notes that the judgment of the Hon'ble High Court allowing disclosure of transaction wise import data relied upon is under examination for filing an appropriate appeal before the Hon'ble Supreme Court. Notwithstanding this and without prejudice, the transaction wise import data was made available to the interested parties as per their request. Neither the Rule nor the said judgment of the Hon'ble Court cast any obligation to provide the information in any particular form or manner.
- v. As far as adoption of raw material price is concerned the source of the information and the data adopted in a statement form was made available to the parties. The interested parties have also not provided any positive information in this regard. Therefore, in the absence of any other positive information the aforesaid data has been accepted as best facts available for the determinations. Hence, the arguments of the interested party in this regard are not tenable.
- vi. As far as the arguments that the Authority should have disclosed the verification report of the domestic industry and all correspondence with them, the Authority notes that verification of domestic industry's data is a continuous process and involves commercially sensitive information. Therefore, neither a verification report is prepared nor shared with the domestic industry. Hence, question of sharing this report and correspondence related to this does not arise.
- vii. The Authority notes that a public hearing was held in this matter and all the interested parties were provided adequate opportunity to present their views. Therefore, the argument that the interested parties were not provided adequate opportunity of hearing is not correct.
- viii. A strange argument has been made by the party that only the exporters' data is the subject matter of the confidentiality and no such protection of confidentiality is available to the domestic industry's data simply because the

data of domestic industry is used to impose antidumping duty. This argument is not supported by any provision of the law and therefore, does not merit consideration.

- ix. As far as the arguments of the interested party that their submissions with regard to various issues regarding various elements of cost of production for determination of non injurious price of the domestic industry are concerned, the Authority notes that the cost and NIP are determined as per the principle and procedures laid down in the Rules and all such issues raised during the course of the investigation regarding various elements of costs and capacity utilisation, etc. have been appropriately considered while determining the cost and NIP. The Authority further notes that in order to work out the non-injurious price for each of the constituents of the domestic industry, their respective best capacity utilisation achieved during the injury period has been considered in terms of Annexure III to the AD Rules and this methodology automatically removes the injury, if any, suffered by the domestic industry on account of closure of the unit and its associated cost. The Authority further notes that for determining non-injurious price, the cost of phenol only has been considered.
- x. The Authority further notes that the demand for Phenol and Acetone in India during the investigation period was adequate for the domestic industry to sell its entire production in the domestic market. Therefore, the Authority holds that demand for Acetone had no effect on the production of Phenol of the domestic industry.
- xi. The determination made by the Designated Authority is a technical determination taking into account all material facts and arguments placed before it by various interested parties. It is neither feasible nor required under the law to address and record each and every such argument in a determination. Therefore, the argument of Eximcorp that all their arguments and submissions have not been individually addressed is not tenable.
- xii. As far as determination of Normal Value is concerned, the Authority notes that the Normal Value has been determined in terms of second proviso of Sec 9A(1)(c)(ii)(b) on the basis of costs of production of the said article in the country of origin along with reasonable addition for administrative, selling & general costs and for profits. However, in absence of cooperation from the exporter in the subject country who only could have provided the details of cost of production of the subject goods, the best fact that is available with the Authority is the estimates of cost of production of the domestic industry duly adjusted. The principles of adoption of best facts have been enshrined in Annex II to the ADA and it clearly provides that if the information is not supplied by the interested party within a reasonable time, the Authority will be free to make determinations on the basis of facts available, including those contained in the application for the initiation of the investigation by the domestic industry. Therefore, the arguments of the party are not tenable.
- xiii. As far as the standalone examination of injury to SI Group is concerned, the Authority notes that the rules require examination of injury to the domestic

industry as a whole and not any individual constituent of the domestic industry. However, keeping in view the peculiar nature of this case in which one of the constituents was closed for a certain period during the POI, to the extent possible certain parameters of the other constituent was also examined separately and the same has been reflected in the findings to the extent found relevant.

- xiv. As far as the issue raised by Eximcorp regarding the share of South Africa in the total imports vis-a-vis import from other countries and non attribution analysis is concerned, the Authority notes that the disclosure clearly indicated that the imports from other countries having significant share in imports are also subject to antidumping investigation with prima facie evidence of alleged dumping. Therefore, the current injury to the domestic industry has been found to be caused due to cumulative effects of dumped imports from all such sources.
- xv. In the face of existence of dumping from the subject country and injury to the domestic industry, the question requiring examination in the current investigation is whether the dumping is likely to continue and whether the domestic industry is likely to continue to suffer injury if the duties are revoked. In the factual matrix of the case where dumped imports are entering the country from several sources, it is most likely that the subject country would also continue to dump in India to retain its market if the duties are revoked and the domestic industry would continue to suffer material injury in such a situation.
- xvi. As far as the argument that the currency for determination of Normal value and NIP is concerned the Rules clearly provide conversion of the domestic and export transactions to one currency for comparison purpose and such conversion should be made using the rate of exchange on the date of sale and since the duty is to imposed as a lower of dumping and injury margin, the injury margin is also required to be converted to the same currency for the purpose of comparison. Therefore, there is no inconsistency in the determination either with respect to the Indian Anti Dumping Law or an Anti Dumping Agreement. Hence, the arguments of the interested parties are not tenable.

### **Issues raised by the domestic industry**

25. Domestic industry, in its post disclosure submissions has reiterated its position with respect to the present investigation. Specific issues raised by the domestic industry in their post disclosures submissions have been addressed as follows:

- i. With regard to the contention that the non injurious price determined is grossly low and insufficient to protect the domestic industry, the Authority notes that the NIP has been determined as per the consistent practice of the Authority and as per the principles laid down in the Rules.
- ii. With regard to the contention of the domestic industry that M/s Eximcorp India cannot be given the status of interested party in this investigation, the

Authority notes that the submissions made by Eximcorp has been taken on record and their legal arguments have been addressed keeping in view Natural Justice and fair play without treating them as the interested party within the meaning of the term in Rule 2(c).

- iii. The Authority also notes that Century Plyboard has not filed any questionnaire response though the import data shows that they have imported the goods during the investigation period.

26. The Authority also notes that M/s Century Plyboard India Pvt. Ltd., has filed a letter dated 23<sup>rd</sup> April 2015 stating that they have filed a Writ Petition in this case in Delhi High Court challenging the extension of the period of review. They have further argued that in the earlier Mid-term Review, they were treated as an interested party but in this investigation they have not been considered as an interested party for the public hearing. In this connection the Authority notes that the initiation of sunset review was notified through the Gazette of India and was available to the public domain for the parties having substantive interest in the matter to file Questionnaire response and identify themselves as interested parties which this company has failed to do. Therefore, without prejudice to the Writ Petition filed by them they cannot be treated as interested party in this investigation at this stage.

## **F. Assessment of Current Dumping; Methodology for determination of Normal Value, Export Price and Dumping Margin**

### **F.1 Submissions by producers/importers/exporters and other interested parties:**

27. Following are the submissions made by the producers/exporters/importers/and other interested parties with regard to the evidence submitted by the petitioners for determination of dumping margin of the subject goods in the subject country and likelihood of continuation or recurrence of dumping:

- i. The petitioners have failed to give any evidence of dumping. A single invoice given by the petitioners is inconclusive to represent selling price in South Africa. The increase in imports is not an increase from South Africa but from other countries like USA and Taiwan.
- ii. The data presented in the petition with regard to every adjustment was nothing but simple assertions unsubstantiated by relevant evidence, which could not have been relied upon even on a prima facie basis.
- iii. Petition also does not provide any substantiation with respect to the recurrence of dumping since there is no information on post Period of Investigation.

### **F.2 Submissions by the Domestic Industry**

28. The petitioners in their petition and subsequent submissions have submitted:

- i. That they have not been able to get any information/evidence of price of subject goods in the domestic market of the subject country. Therefore, they had estimated

the Normal value of the subject goods in the subject country on the basis of best estimates of cost of production, duly adjusted. Cost of major raw material i.e., Benzene has been considered as per Platts report and other raw material costs are taken as petitioner's cost, considering the same as the best estimates of conversion costs available.

- ii. That the export price has been determined as weighted average import price of the product under consideration calculated at the CIF level. Export price has been adjusted for (a) Ocean Freight, (b) Marine Insurance, (c) Commission, (d) Port Expenses, (e) Inland Freight and (f) Bank Commission.
- iii. In response to the argument that the domestic industry has given no evidence of dumping and is relying on a single invoice which is inconclusive to represent selling price in South Africa the petitioner has submitted that being a domestic industry it can only have access to at the maximum one or two invoices. It was for the exporter from South Africa to provide relevant information in the form and manner prescribed by the Authority. If the exporter has preferred non-cooperation, Rule 6(8) clearly requires Authority to proceed with best available information.
- iv. With regard to the argument of adjustments claimed with regard to export price are arbitrary and without supporting evidence, the petitioners have submitted that the adjustments have been claimed on the experience of petitioners. The Authority may apply best available information in view of non cooperation from the exporter. The exporter clearly had mala fide intentions in not responding to the present investigation, as exporter was aware that the data would have shown significant dumping, possibly higher than what has been claimed in the petition.
- v. With respect to the argument that the dumping margin, normal value and export price is unreliable it is submitted that petitioners have estimated the normal value, export price and dumping margin on a basis accepted by the Authority in several cases. Sufficient disclosures in this regard have been made in the non-confidential version of the petition.
- vi. In response to the argument that there is lack of evidence with respect to export price of South Africa to third countries and thus the dumping margin and normal value estimated, and further the comparison with export price to third countries is incorrect it is submitted that there is clear evidence of dumping margin in respect of exports of the product under consideration from South Africa to third countries. For the purpose, the petitioners have been able to procure evidence of the prices at which the goods are being exported from South Africa to third countries. Based on this export price and considering the estimates of normal value, the petitioners have determined dumping margin in these exports to third countries. It would be seen that the dumping margin is very significant during POI as well as post POI.

### F.3 Examination by Authority

29. The interested parties have argued that the petitioners have failed to give any evidence of normal value of the subject goods in the subject country for estimation of dumping margin at the time of filing of application for initiation of the sunset review investigation. The Authority notes that the petitioners have submitted certain invoices in the domestic market in South Africa as an evidence of the Normal Value. In the absence of any other credible evidence this information was accepted as best information available for initiation of the investigation.

30. The Authority further notes that the only known producer/exporter in South Africa has withdrawn itself from the investigation after initial questionnaire response. Therefore, the Authority proceeds to determine the normal value in South Africa as follows:

### F.4 Determination of Normal Value

31. Since the only producer/exporter from the subject country who has filed the questionnaire response has withdrawn from the investigation, the Authority is constrained to determine the normal values in the subject country based on best facts available, including the information contained in the petition of the domestic industry. The Authority constructed the normal value by considering the international price of major raw material i.e., Benzene and the cost of production of the efficient domestic producer, duly adjusted to include selling, general and administrative costs and a reasonable margin of profit. The weighted average normal value so determined is as follows:

Raw Material Cost USD/MT	Conversion Costs USD/MT	Total Cost USD/MT	Profit Margin @ 5% USD/MT	Normal Value USD/MT
****	****	****	****	****

### F.5 Determination of Export Price for producers and exporters

32. Since the only producer/exporter who had filed the exporter's questionnaire response, has subsequently withdrawn from the investigation, the Authority has determined the Export Price in respect of imports from South Africa on the basis of best information available in accordance with Rule 6(8) of the AD Rules. The Designated Authority considered the data received from DGCI&S for determination of the export price considering all imports of the product under consideration in India. Price adjustments have been made on the basis of claims made by the applicant domestic industry in view of non-cooperation from the producers/exporters from South Africa. Export price so determined at ex-factory level is as follows:

Import as DGCI&S (MT)	Qty per	Value Rs. lakhs	In	CIF Price Rs/MT	Adjustments Rs/MT	Net Works Price Rs./MT	Ex- Works Price	Net Ex-works Export Price US\$/MT
14033		9922		70,704	6,654	64,050		1173

## F.6 Dumping Margin

33. Comparing the Constructed Normal Value and the Export price at ex-factory level determined as above, the Dumping Margin for the producers/exporters in the subject country is determined as follows:

S. No	Producer	Exporter	Normal value US\$/MT	Net Export price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin % Range
1	All Producers	All Exporters	****	1173	****	****	40-50

34. The dumping margin so determined is above de minimis and significant.

## G. Determination of Injury and Causal Link

### G.1 Submissions of interested parties other than the domestic industry

35. The other interested parties have made the following submissions with regard to the injury and causal link claims of the domestic industry and on the issue of likelihood of continuation or recurrence of injury.

- i. While HOCL has had continued protection and is stagnating, the other domestic producer i.e. SI Group has been able to perform well during the same period, though condition of competition in the market remained the same for both. Thus, there exists some other factor apart from market conditions, which has resulted in drop of production of HOCL and same should not be attributed to the imports from South Africa.
- ii. Imports from Taiwan and USA are more injurious than the South African imports. Further, the imports from USA and Taiwan have increased substantially since the revocation of anti dumping duty in 2012. During the same period only, the performance of applicant also came down.

- iii. The price sensitivity of the product is not a determinative factor and therefore analysis of price under cutting may not be reflective of the correct position. The market dynamics of Phenol in India is not affected by prices. Imports from Taiwan and USA have had higher price as compared to imports from South Africa throughout the period. There is no link between price undercutting range and profits provided by Petitioner.
- iv. In the light of decline in imports from South Africa from 2009-10 to POI, there is no causal link between the drop in profits of the domestic industry and the imports from South Africa.
- v. There are other factors apart from imports from subject country which may be causing injury to the petitioner domestic industry:
  - a. There is no link between the profits of domestic industry and the imports from the subject country.
  - b. HOCL is incurring abnormally and extra-ordinary high cost on account of use of LSFO as fuel in its burner at Kochi plant.
  - c. The wages and employment of the domestic industry has increased over the injury period.
  - d. The intrinsic problems faced by HOCL.
- vi. Imports of subject goods are not affecting the prices in India. This is in view of the fact that in 2010-11, the Domestic industry was selling goods with ROCE more than 86% and Anti Dumping Duty continued on various countries including South Africa.
- vii. The continuation of anti dumping duties on the subject goods from South Africa restrict competition and affect the consumers adversely.
- viii. Petitioners must provide the methodology followed in bifurcation of their data between like article and other products manufactured by them.
- ix. A 3% increase in imports from South Africa cannot displace 9% of Petitioner's lost sales in the same period.
- x. The imports as a percentage of production will reduce production which may be due to intrinsic factors of petitioner. The imports have not increased in relation to demand, imports as a percentage of consumption remained constant since 2010-11.
- xi. Due to old plant fixed costs are high. Thus the landed value is low due to the inability of the petitioner to reduce its cost of production. The sharp increase in cost of the petitioner has had a domino effect on the profits of the petitioner.
- xii. The petitioners must provide the reason for steep increase in cost of production. Anti Dumping duties cannot improve the position of the petitioner.
- xiii. It is not possible that imports can spare one domestic producer to produce at full capacity utilization and allow other producer to suffer. DGAD is requested to examine the two producers' positions separately.
- xiv. The post POI data is unreliable due to excessive hidden information. Logically 1% increase in market share of subject imports cannot result in petitioner losing 8% market share. Petitioners have not disclosed the increase in imports from other countries and their share in total market share.

- xv. It is not clear if fall in sales, profit and production is for both HOCL and SI Group or only HOCL.
- xvi. HOCL in its annual and financial reports has itself reported various reasons why they haven't been able to achieve their targets. These range from depreciated plants, erosion of net worth, etc.
- xvii. As per admission of petitioner even after highest possible levy of anti dumping duty, its perennial problem of old plants, eroded net worth will remain. In that case imposing duties would only mean forcing the consumers to pay unduly higher price for petitioner's efficiency.

## **G.2 Submissions by the domestic industry**

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

- i. There is continued dumping of the product under consideration from the subject country.
- ii. There is steady increase in the demand throughout the injury period.
- iii. Imports of the product under consideration have increased significantly in absolute terms over the period despite imposition of anti dumping duty.
- iv. Imports have increased from these sources which are not attracting anti dumping duty. Further, the increase from sources having lower duty is also significant, whereas, imports have declined from countries having anti dumping duty. This clearly establishes that the consumers are looking for sources not attracting anti dumping duty and global producers are faced with significant unutilized capacities and are therefore willing to start dumping the moment there is an opportunity.
- v. The imports from the subject country are undercutting the prices of the Domestic Industry in the Indian market. There existed a significant price undercutting in the whole injury period.
- vi. Although, the domestic industry was able to earn profits up to 2011-12, the imports have had a significant suppressing effect on the prices of the domestic industry that the domestic industry has started suffering significant financial losses.
- vii. Performance of the domestic industry has deteriorated in terms of production, sales, capacity utilization, market share, profits, and return on investments and cash profits to a very significant extent.
- viii. Domestic industry has been prevented from utilizing its capacities to the fullest extent.
- ix. The imports from the subject country have increased in absolute terms, preventing sales of the domestic industry.
- x. Market share of the subject country has remained significant throughout the injury period. However, the market share of the domestic industry has declined.
- xi. Imports from subject country would be undercutting the prices of the Domestic Industry in the event of cessation of anti dumping duties.

- xii. Profitability and consequently return on investment and cash profit situation of the domestic industry deteriorated.
- xiii. The imports are still continuing at dumping prices. Thus, existence of such a situation after imposition of anti dumping duty gives a clear implication of likelihood of injury.
- xiv. Domestic industry is facing continued injury from the dumping of subject goods. However, there is no reason or justification to believe that cessation of the duty would not lead to increased or continued dumping at a higher level with consequent injury to the Domestic Industry.
- xv. As regards the argument that SI Group is improving while HOCL is stagnating, it is submitted that both HOCL and SI Group are suffering. The Designated Authority may examine the injury statements of the two companies. In any case the Designated Authority is required to examine injury to the domestic industry by considering the two companies directly.
- xvi. With respect to the contention that there is increase in volume of imports from other countries and not from South Africa, it is submitted that the imports of South Africa have grown from 8000 MT to 19000MT. This is an increase of more than 100%. Further, it is also relevant to point out that the present investigation is a sunset review investigation and the current volume of imports is despite the existing anti dumping duties.
- xvii. With respect to the contention of price being not a determining factor for Phenol in the market, it is submitted that in this respect, it is highly surprising that the interested party is arguing that 8% of imports are 'low' imports. When the law recognizes 3% of imports from a country sufficient to cause injury to the domestic industry, the interested party is arguing increase in imports which constitutes 8% of imports as 'low' that too in a sunset review investigation when the duties are already attracted on goods imported from the subject country. It is submitted that the dumped imports from the subject country have further increased in post POI despite anti dumping duty. Subject imports are undercutting and suppressing the domestic industry prices, thereby causing injury to the domestic industry. Petitioners agree that there are imports from other countries as well, which are separately being investigated by the Designated authority. The petitioners have sought and the Designated Authority has considered imposition of anti dumping duty on non-discriminatory basis.
- xviii. There is a decline in profits of the domestic industry showing a clear causal link with the dumped imports.
- xix. The change in fuel is not an extraordinary cost. It has been charged as a revenue expense which is consistent with GAAP. GAAP specifically states that write-offs, write-downs, gains, or losses on the following items are not to be treated as extraordinary items. These include (a) Abandonment of property, (b) Accruals on long term contracts, (c) Disposal of a component of an entity, (d) Effects of a strike, (e) Equipment leased to others, (f) Foreign currency exchange, (g) Foreign currency translation, (h) Intangible assets, (i) Inventories, (j) Receivables and (k) Sale of property.

- xx. Examples of items that could be classified as extraordinary are destruction of facilities by an earthquake or destruction of a vineyard by a hailstorm in a region where hailstorm damage is rare. Conversely, an example of an item that does not qualify as extraordinary is weather related crop damage in a region where such crop damage is relatively frequent. The intent behind reporting extraordinary items within separate line items in the income statement is to clarify to the readers which items are totally unrelated to the operational and financial results of the business.
- xxi. LNG was anticipated to be cheaper fuel. LNG was not available before 2013-14 in Cochin. It was anticipated that LNG would become cheaper fuel as compared to LSFO and it would become available in Cochin in 2013-14. Therefore, the company set up facilities for using LNG as a fuel. The company hoped that this would save cost of the company.
- xxii. The company started using LNG as a fuel as and when it was introduced in 2013-14. It implies that the relevant price of LNG and LSFO have been changing from time to time and do not prove the case that LNG is invariably a cheaper source of fuel as compared to LSFO.
- xxiii. The increase in power consumption is not because of inefficiency of the domestic industry.
- xxiv. The decline in profits is significantly beyond the increase in wages. Wages per MT are showing increasing trend not because of higher wages paid, but because of arrears of wages paid in next year and declines in production over the year.
- xxv. HOCL is not facing injury due to intrinsic factors. Being an old plant, its depreciation and interests costs are low and, therefore, the maintenance cost is low as compared to a new plant. This is a general business/economic situation and there is nothing unusual about it.
- xxvi. As regards the argument of more than 86% ROCE, it is submitted that the return on investment for the domestic industry has very significantly changed over the period from a high of 22.29% to the low of - 22.31%. One of the reasons for such a swing in return on investment is the fact that capital employed in the product is very low. While assets of both the companies are largely depreciated, both the companies are forced to work with low working capital. This, abnormally low level of capital employed is leading to abnormally low or high return on capital employed with low changes in profits per unit. Further, the Authority may kindly consider the past return on investment earned by the domestic industry for the purpose of fixation of non injurious price. This is additionally justified because of very low level of capital employed.
- xxvii. The continuous dumping of the product makes the competition unfair. This is affecting the interests of the consumers of the product concerned.
- xxviii. The petitioners have followed the methodology which has been applied in the past several cases. The Designated Authority may verify the information in this regard.

- xxix. It is not petitioner's argument that the entire market share has been taken away by South Africa. Petitioner's argument is that their market share has been taken away by dumped imports from several sources dumping the product which is having a significant adverse price effect on the domestic industry.
- xxx. There is no legal requirement at the stage of sunset review that imports from subject countries should be increasing in relation to consumption in India. As stated elsewhere, import volume from South Africa has remained quite significant despite existing anti dumping duties. Further, the volume has increased significantly in the post investigation period. This clearly establishes likelihood.
- xxxi. There is no basis for the argument that due to old plant fixed costs are high. Being an old plant, its depreciation and interests cost is quite low. It is natural under these circumstances that the maintenance cost will be higher than a new plant. A new plant will have higher interests and depreciation cost; but low maintenance cost; while an old plant will have low depreciation and interest cost, but higher maintenance cost. This is general economic/business situation and there is nothing unusual about it. The petitioner agrees that both cost of production and selling price have increased in the proposed POI, however the increase in selling price is far below the increase in the cost of sales. Further, the effect on the profits of the domestic industry is because of the significantly suppressing effect of the imports on the prices of the domestic industry. The domestic industry was able to earn profits up to 2011-12. It may be noted herein that as per research during 2012 and 2013, South Africa has been responsible for 8-9% of total supply of phenol to India which is significant by all standards.
- xxxii. The increase in cost of production is because of increase in raw material cost. This may be verified by the Authority.
- xxxiii. With regard to argument that only one producer is suffering it is further submitted that this argument is highly presumptive. The profits of the SI Group shows steep decline over the period.
- xxxiv. With regard to the argument of the Post POI data being unreliable due to excessive hidden information, it is submitted that the volume of imports in the post period of investigation is about 19000 MT, constituting 7% of demand in the country and is thus significant enough in itself to establish likelihood of dumping and injury in the event of cessation of anti dumping duties. Even if volume of imports remains in the region of what it is the same is per se sufficient to establish likelihood.
- xxxv. With respect to fall in sales, profit, production etc, it is submitted that both HOCL and SI Group show injury individually also. However, since the figures have been given for both producers of domestic industry, they have been giving collectively.
- xxxvi. As far as reference to the annual reports by the respondents is concerned it is submitted that the annual report clearly identifies withdrawal of Anti Dumping Duty on the Phenol and Acetone manufactured at Kochi Unit as the

main reason for loss suffered by the unit. As regards the other factors identified in the annual report, these are factors which have existed for a considerably long period. While these factors may be responsible for the difference in absolute profitability of the domestic industry vis-à-vis foreign producers, these are not responsible for the deterioration in performance.

- xxxvii. As regard the argument of the respondents that even the highest possible anti dumping duty the perennial problems will not be solved, it is submitted that there is no basis for this argument. Old plant in fact implies low interest, depreciation cost and capital cost. The petitioner has repeatedly achieved capacity utilization above 90% and on several occasions achieved the capacity utilization beyond 100%. The consumption factors of the petitioner are clearly indicative of efficient running of the plant.

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

37. The Authority has taken note of various submissions of the interested parties on the injury to the domestic industry on account of dumping and has analyzed the same considering the facts available on record and applicable law. Accordingly, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country.
38. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
39. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.
40. For the purpose of current injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority has examined injury to the domestic industry by considering

information relating to M/s Hindustan Organic Chemicals Limited and M/s SI Group India Ltd, constituting domestic industry under the Rules. Accordingly, the volume and price effect of dumped imports have been examined as follows:

#### **G.4 VOLUME EFFECT:**

##### **(i) Volume effect of dumped imports and impact on domestic industry**

##### **a) Import Volume & share in Imports**

41. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. The import data obtained from DGCI&S has been examined to analyse the trend in import volumes and prices and their impact on the domestic industry as follows:

<b>Particulars</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Imports from					
Subject Country-South Africa	MT	8,243	11,223	13,582	14,033
Trend		100	136	165	170
Countries against which investigation is under process	MT	47,777	61,381	93,078	134,365
Trend		100	128	195	281
Other Countries Attracting Antidumping duties	MT	32,597	12,047	22,666	5,594
Trend		100	37	70	17
Other Countries	MT	11,947	37,319	16,775	17,726
Total Imports	MT	100,564	121,970	146,101	171,718
Trend		100	121	145	171
Share in Imports					
Subject Country-South Africa	%	8	9	9	8
Countries against which investigation is under process	%	48	50	64	78
Other Countries attracting ADD	%	32	10	16	3
Other Countries	%	12	31	11	10
Total Imports	%	100	100	100	100

42. The data above shows that total imports during the injury investigation period grew almost by 70% compared to the base year. The Authority notes that the subject goods are attracting antidumping duty on imports from several countries and antidumping investigations are in progress against several other countries. Most significant is the growth in imports from countries against which antidumping investigations are in progress whereas there is a significant decline from the countries against which antidumping duty is force except the subject country. In case of South Africa, though share of the subject country in total import has

remained at the same level as in the base year, there is an increase in import volume by about 70% during this period. Major share of the import comes from the countries under investigation.

**b) Assessment of Demand and Market Shares**

43. The Authority has determined demand or apparent consumption of the product in the Country as the sum of domestic sales of the Indian producers and imports from all sources. The demand so assessed can be seen in the table given below. The Authority notes that the demand of the subject goods has shown a positive trend throughout the injury period.

Particulars	Unit	2009-10	2010-11	2011-12	POI
<b>Demand in India</b>					
Sales of Domestic Industry (including captive consumption)	MT	73,430	80,020	67,361	61,185
Trend	Index	100	109	92	83
Commercial sales	MT	69,629	77,521	64,427	54,316
Captive Consumption	MT	3,801	2,499	2,934	6,869
Total Imports	MT	100,564	121,970	146,101	171,718
Trend	Index	100	121	145	171
Imports from Subject Country-South Africa	MT	8,243	11,223	13,582	14,033
Imports from countries against which investigation is under progress	MT	47,777	61,381	93,078	1,34,365
<b>Imports from other countries attracting ADD</b>	MT	32,597	12,047	22,666	5,594
Imports from other countries	MT	11,947	37,319	16,775	17,726
<b>Total Demand</b>	MT	1,73,994	2,01,990	2,13,462	2,32,903
<b>Trend</b>	Index	100	116	123	134
Market Share in Demand	%	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Domestic Industry	%	42	40	32	26
HOCL	%	22	21	14	11
SI Group	%	20	19	18	15
Subject Country-South Africa	%	5	6	6	6
Imports from countries against which investigation is under process	%	27	30	43	58

Imports from countries attracting ADD	%	19	6	11	2
Imports from Other countries	%	7	18	8	8
Total	%	100	100	100	100

44. The data indicates that there is a healthy increase in demand for the subject goods in India. The demand grew by about 33% compared to the base year. But major share of the market seems to have been cornered by the countries under investigation while the market shares of the domestic industry as well as the countries attracting duty have declined.

## **(ii) PRICE EFFECT**

### **a) Price effects of dumped imports and impact on domestic industry**

45. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price under cutting by the dumped imports as compared with the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred to a significant degree. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price suppression and price depression, if any.

### **b) Trend of Import Prices**

46. The import prices of the subject goods imported from various countries during the POI as per DGCI&S data is as follows:

<b>CIF Price of Imports from</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Subject Country-South Africa	Rs/MT	45,580	66,936	68,589	70,704
Trend	Index	100	147	150	155
Countries against which investigation is under process	Rs/MT	48,228	75,646	73,894	81,147
Trend	Index	100	157	153	168
Other Countries Attracting Antidumping duties	Rs/MT	49,470	81,961	76,953	83,341
Trend	Index	100	166	156	168
Other Countries	Rs/MT	60,559	75,688	87,044	85,305
Trend	Index	100	125	144	141
All Imports	Rs/MT	49,878	75,481	75,385	80,766
Trend	Index	100	151	151	162

47. The Authority notes from the data indicated in the above Table that the CIF prices of imports from South Africa are lowest as compared to the CIF prices of imports of the

subject goods from other countries.

**c) Price Undercutting and Underselling**

48. In order to determine whether the dumped imports are undercutting the prices of the domestic industry in the market, the Authority has compared the landed price of dumped imports with net sales realization of the domestic industry. The following table shows the Net Selling Price of the domestic industry, landed price of the dumped imports and the price undercutting. The Authority has made analysis of both price undercutting and underselling with and without antidumping duty as below:

<b>Particulars</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Net Sales Realization of DI	Rs/MT	****	****	****	****
Trend	Index	100	150	140	145
Landed Value without ADD	Rs/MT	49,592	72,828	74,626	76,927
Trend	Index	100	147	150	155
Landed Value with ADD	Rs/MT	55,340	78,323	80,355	83,436
Trend	Index	100	142	145	151
Price Undercutting without ADD	Rs/MT	****	****	****	****
Price Undercutting without ADD	Index	100	160	102	110
Price Undercutting without ADD	%	****	****	****	****
Price Undercutting without ADD	Range %	15-25	20-30	10-20	10-20
Price Undercutting with ADD	Rs/MT	****	****	****	****
Price Undercutting with ADD	Index	100	206	104	108
Price Undercutting with ADD	%	****	****	****	****
Price Undercutting with ADD	Range	10-20	10-20	5-15	5-15
Landed Price on imports from Countries under investigation	Rs/MT	52,473	82,304	80,398	88,289
Landed Price on imports from Countries under investigation	Index	100	157	153	168
Price undercutting by imports from countries under investigation	Rs./MT	****	****	****	****
Price undercutting by imports from countries under investigation	%	****	****	****	****
Price undercutting by imports from countries under investigation	Range %	10-20	10-20	5-15	0-10

49. The Authority notes that price undercutting effect of the dumped imports from the

subject country is significant both with and without anti-dumping duty. Though the landed value of the subject goods from the subject country but has increased marginally it remains the lowest compared to other countries undercutting the domestic prices to the maximum extent.

**d) Price Underselling**

50. The following table shows the Non Injurious Price of the domestic industry worked out on annual weighted average basis, Landed price of the dumped imports and the price underselling.

<b>Particulars</b>	<b>UOM</b>	<b>POI</b>
Non-Injurious Price of Domestic Industry	Rs/MT	****
Landed value without ADD	Rs/MT	76,927
Price Underselling without ADD	Rs/MT	****
Price Underselling without ADD	%	****
Price Underselling without ADD	Range %	20-30
Landed price with ADD	Rs./MT	83,436
Price Underselling with ADD	Rs/MT	****
Price Underselling with ADD	%	****
Price Underselling with ADD	Range %	10 - 20
Landed value of imports from countries under investigation	Rs./MT	88,289
Price underselling of these imports	Rs./MT	****
Price underselling	%	****
Price underselling	Range %	5-15

51. The Authority notes that price underselling effect of the dumped imports from the subject country is significant both with and without anti-dumping duty. The Authority further notes that the landed value of imports from countries under investigation is higher than the landed value of dumped imports from subject country indicating higher price effects of the imports from the subject country.

**e) Price Suppression and Depression**

52. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with the cost of production. The data given below shows that the domestic industry was realising decent selling price above its cost of production till 2011-12. However, there is a significant increase in cost of production and sales

due to significant increase in cost of basic raw material i.e., Benzene during the period of investigation. But the domestic industry's selling price has remained below its cost of production due the presence of dumped imports at much lower prices during this period leading to financial losses in the POI.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Cost of Sales	Rs/MT	****	****	****	****
Trend	Index	100	121	133	164
HOCL	Rs/MT	****	****	****	****
Trend	Index	100	118	138	166
SI Group	Rs/MT	****	****	****	****
Trend	Index	100	124	131	164
Net Selling Price	Rs/MT	****	****	****	****
Trend	Index	100	150	140	145
HOCL	Rs/MT	****	****	****	****
Trend	Index	100	148	138	144
SI Group	Rs/MT	****	****	****	****
Trend	Index	100	152	141	146
Profit/Loss	Rs/MT	****	****	****	(****)
Trend	Index	100	571	233	(125)
HOCL	Rs/MT	****	****	****	(****)
Trend	Index	100	796	154	(324)
SI Group	Rs/MT	****	****	****	(****)
Trend	Index	100	449	253	(40)
Landed Price without ADD	Rs/MT	49,592	72,828	74,626	76,927
Trend	Index	100	147	150	155

### (iii) Economic Parameters affecting Domestic Industry

53. Annexure II to the Anti- dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments .An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

### (iv) Capacity, Production, Capacity Utilization and Sales

54. The performance of the domestic industry in respect of sales, capacity,

production and capacity utilization has been examined as under. The Authority notes from the table below that the production and sales of domestic industry has increased up to 2010-11 and thereafter declined significantly. It is further noted that despite sufficient demand, the domestic industry was not able to utilize its capacity to the full extent.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Installed Capacity	MT	74,200	74,200	74,200	74,200
Trend	Index	100	100	100	100
HOCL	MT	40,000	40,000	40,000	40,000
SI Group	MT	34,200	34,200	34,200	34,200
Production	MT	72,850	80,796	67,500	59,921
Trend	Index	100	111	93	82
HOCL	MT	****	****	****	****
Trend	Index	100	117	82	66
SI Group	MT	****	****	****	****
Trend	Index	100	105	104	99
Capacity utilization	%	98.18	108.89	90.97	80.76
Trend	Index	100	111	93	82
HOCL	%	****	****	****	****
Trend	Index				
SI Group	%	****	****	****	****
Trend	Index	100	105	104	99
Domestic Sales	MT	69,629	77,521	64,427	54,316
Trend	Index	100	111	93	78

55. The Authority notes that SI Group was operating at its full capacity during the entire injury investigation period. Even HOCL was also operating at full capacity in 2010-11. Thereafter HOCL's production and sales declined substantially. HOCL has claimed that it could not operate the plant to its peak capacity due to lack of working capital, which was the result of presence of dumped imports affecting realisation of fair selling price in the domestic market.

**(v) Market Share in Demand**

56. The effects of the dumped imports on the domestic sales and the market share of the domestic industry are indicated in the Table given below:

Market Share in Demand	%	2009-10	2010-11	2011-12	POI
Domestic Industry	%	42	40	32	26
HOCL	%	****	****	****	****
SI Group	%	****	****	****	****
Subject Country-South Africa	%	5	6	6	6

Imports from countries against which investigation is under process	%	27	30	43	58
Imports from countries attracting ADD	%	19	6	11	2
Imports from Other countries	%	7	18	8	8
Total	%	100	100	100	100

57. The data indicates that though the domestic industry has suffered significant loss of market share, the share of the subject country has remained at about 6% level throughout the injury investigation period. It appears that the domestic industry has lost significant market share to other countries under investigation.

**(vi) Profit/loss, return on investment and cash flow**

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

Particulars	Unit	2009-10	2010-11	2011-12	POI
Cost of Production of DI	Rs/MT	****	****	****	****
Trend	Index	100	121	133	164
Net Selling Price of DI	Rs/MT	****	****	****	****
Trend	Index	100	150	140	145
Profit/Loss of DI	Rs/MT	****	****	****	(****)
Trend	Index	100	571	233	(125)
Profit/Loss	Rs. Lacs	****	****	****	(****)
Trend	Index	100	622	214	(104)
Profit before interest	Rs/MT	****	****	****	(****)
Trend	Index	100	546	199	(68)
Cash Profit	Rs/MT	****	****	****	(****)
Trend	Index	100	574	203	(87)
Return on Capital Capital employed	%	****	****	****	(****)
Trend	Index	100	472	205	(100)

59. The Authority notes that the cost of production of the subject goods had gone up steeply due to steep increase in the price of major raw materials and utilities during POI as compared to the base year as well as the immediate preceding year. However, it appears that the domestic industry could not increase its selling price commensurate with the increase in cost of production during POI due to the presence of dumped imports of the subject goods from various sources, including the subject country.

60. It is seen from the above Table that the domestic industry was making significant

profit till the previous year i.e., 2011-12 and in fact there was a significant increase in profit as well as ROI in 2010-11 and 2011-12 as compared to the base year. However, during the POI profitability of the domestic industry has been affected leading to cash loss.

**(vii) Inventories**

61. The data given in the table below shows that the inventory levels with the domestic industry have come down as compared to the base year.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Average Stock	MT	2,086	2,142	2,520	2,006
Average Stock	Index	100	103	121	96

**(viii) Employment and wages**

62. From the table given below, the Authority notes that both the employment and wages of the domestic industry have shown improvement in the proposed injury period. However, it is also noted that given the fact that the domestic industry is a multi product company and performance on account of these factors are governed more by the law of the land, these parameters may not be reflective of the continued injury suffered by the domestic industry.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Employment	No.	289	325	288	296
Trend	index	100	112	100	102
Wages	Rs. Lacs	****	****	****	****
Trend	index	100	300	252	256

**(ix) Productivity**

63. The Authority notes from the table below that productivity of the domestic industry during POI has declined due to drop in production.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Productivity	MT/Employee	****	****	****	****
Trend	Index	100	99	93	80
Productivity	MT/Day	200	221	185	164
Trend	index	100	111	93	82

(x) **Magnitude of Dumping Margin**

64. The Authority notes that the dumping margin of the imports of the subject goods from the subject country is positive and substantial despite imposition of anti-dumping duty.

(xi) **Growth**

65. The Authority notes that the domestic industry has shown positive growth till 2010-11 after which the growth has become negative and during the POI, the growth is significantly negative.

<b>Growth year by year</b>		<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Production	%	10.91	(16.46)	(11.23)
Sales	%	11.34	(16.89)	(15.69)
Profit/MT	%	470.97	(59.14)	(153.64)
Market Share	%	(2)	(8)	(7)
ROCE	%	82.98	(59.47)	(68.11)

(xi) **Factors Affecting Domestic Prices**

66. The Authority notes that domestic demand for the subject goods is robust. The subject goods are being imported from several countries, and antidumping duties are in force against several countries, including the subject country. Antidumping duty investigations are also in progress against several other countries for alleged dumping from those countries. The domestic prices are therefore, affected due to cumulative effects of the volume and price of these imports from various sources.

(xii) **Ability to raise Capital Investment**

67. With regard to ability to raise investments, it is noted that the domestic industry has not made fresh investments in the product under consideration. Further, even though the demand is far in excess of the capacity with the domestic industry, the domestic industry is not able to utilize its capacity and is suffering losses.

H. **Causal Link**

68. The Rules mandate the Authority to examine the causal links between the dumped imports and the injury caused to the domestic industry on account of the dumped imports. The Authority has examined in the succeeding paragraphs whether any of the known factors could have caused injury to the domestic industry:

- i. **Imports from Third Countries**:-The Authority notes that the subject goods are being imported from several countries, and antidumping duties are in force

against some of these countries, including the subject country. Antidumping investigations are also in progress against several other countries for alleged dumping from those countries. The dumped imports from various sources are about 12% of the total imports and alleged dumped imports under investigation constitute about 78% of the total imports. Therefore, the injury caused to the dumped imports is due to cumulative effects of the imports from all these sources.

- ii. **Contraction in Demand**:- The Authority notes that the demand of the product under consideration has shown a positive growth throughout the injury period. Hence, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.
- iii. **Change in the pattern of consumption**:- The pattern of consumption with regard to the product under consideration has not undergone any change. Change in the pattern of consumption is therefore could not have contributed to the injury to the domestic industry.
- iv. **Trade restrictive practices of and competition between the foreign and domestic producers**:- The goods are being produced and sold in the domestic market by two domestic producers and there is a healthy competition between them. Goods are also being imported from several countries. Therefore, Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry.
- v. **Developments in technology**:- The Authority notes that the investigation has not shown that there was any significant change in the technology which could have caused injury to the domestic industry.
- vi. **Export performance of the domestic industry**:- The export performance of the domestic industry during the injury investigation period is as follows:

Particulars	Unit	2009-10	2010-11	2011-12	POI
Exports of Domestic Industry	MT	63	20	19	2
Trend	Index	100	32	30	3
HOCL	MT	-	8	-	-
SI	MT	63	12	19	2

- vii. However, the export performance of the domestic industry is not relevant since the Authority has considered only the domestic performance of the Domestic Industry for the injury analysis.
- viii. **Productivity**: The Authority notes that the productivity of the domestic industry

in terms of production per employee and per day has declined over the period as a result of decline in production. The decline in production is due to increase in the imports of the subject goods in the Country.

## **I. Conclusion on material injury and causal link**

69. The interested parties have argued that SI Group, one of the constituents of the domestic industry, has been able to perform better, while HOCL is suffering losses because of use of obsolete technology and old plant, costly fuel usage, overstaffing and low productivity and not due to the dumped imports from South Africa. In this connection the Authority notes that the performance of both the producers have been examined separately also and it has been found that both HOCL and SI Group have suffered injury individually as well as collectively. As regards the arguments of the interested parties regarding the performance of HOCL due to its internal issues the Authority notes that this company was making significant profits for last several years. The Authority also notes that the return on capital employed for determination of the Non-injurious price of the domestic industry is as per consistent practice of the Authority

70. The above analysis indicates that the dumped imports from several sources, including the subject country, are preventing the domestic industry from raising its prices to remunerative prices resulting in significant financial losses and the domestic industry is suffering material injury..

## **J. Likelihood of continuation/recurrence of dumping and injury**

### **J.1 Submissions by producers/exporters/importers/other interested parties**

71. The following are the submissions made by the producers/exporters/importers/ other interested parties with regard to likelihood of dumping and injury:

- i. Petitioners have not substantiated that there is a likelihood of dumping and has made only rhetorical statements. In fact if the past period's information is considered, it may be seen that dumping margin from South Africa in each of the previous investigations had declined considerably.
- ii. Imports are showing a declining trend. Import prices from South Africa have been increasing significantly and consistently throughout the injury period, both in absolute terms and relative terms in relation to cost of sales and selling price of the Petitioner.
- iii. There is no significant increase in imports in terms of consumption.
- iv. There is no substantiation of the existence of excess capacities with global producers. Even if there are excess capacities they are by themselves insufficient to result in dumping of goods.
- v. The total capacity of South Africa cannot take care of the demand in Indian. There are exports to other countries also. The criteria to determine must be the surplus

capacity in South Africa. It is a prevailing standard of DGAD that surplus capacity should be established that can possibly come to India.

- vi. The likelihood of dumping is not substantiated. The past period's information shows that the dumping margin from South Africa in each or previous reviews declined considerably. Import prices from South Africa have also been increasing significantly in relation to cost of sales and selling price of the petitioner.
- vii. Even if there are excess capacities, the existence of excess capacities cannot mean likelihood of dumping as established by DGAD and CESTAT.

## **J.2 Submissions by the domestic industry**

72. Following are the submissions made by the domestic industry with regard to likelihood of dumping and injury:

- i. The dumping of the product under consideration continued from the subject country even after the imposition of anti dumping duty.
- ii. The high dumping margin in the current period clearly established that the dumping is likely to continue and intensify in the event of cessation of present anti dumping duty.
- iii. The volume of imports from subject country first declined and has then started increasing despite existing anti dumping duty.
- iv. The producers in the subject country maintain huge capacities. In case of cessation of anti dumping duty, the volume of imports of subject goods is bound to increase further, which is evident from the fact of continued imports in spite of imposition of duty.
- v. Cessation of anti dumping duty would have significant adverse effect on the prices in the market.
- vi. In the event of cessation of current anti dumping duty if domestic industry chooses to maintain the selling price at the same level, the imports volume will increase, thereby leading to further drop in the domestic industry sales volumes.
- vii. The current levels of import volumes and dumping margin from the subject country creates great possibility that the expiry of duty will result in intensified dumping of subject goods from the subject country in the Indian market. This is with regard to the fact of excessive high capacities held by the subject country.
- viii. Imports from the subject country are undercutting and would continue to undercut the prices of the Domestic Industry, should the present anti dumping duties be revoked.
- ix. The producers across the globe have capacities more than their domestic demand which forces them to sell their goods in other strong markets like India. The imports in the post period of investigation clearly establish significant increase in imports from South Africa despite existing anti dumping duties. Such being the case, imports are likely to increase further in the event of cessation of anti dumping duties. Further, even if the imports do not increase beyond the levels already registered, it would be seen that the volume of imports shall be at least in the region of 19000 MT which shall imply 7% of the Indian demand.
- x. Producers are setting up new plants for manufacturing Phenol and thereby

- enhancing their capacities. Further, as per the 2011 World Market outlook and Forecast up to 2016 which has already been submitted by the petitioners as a part of the petition, the capacity of Phenol with the producers in the subject country is about 40,000 MT. Moreover, the continued imports and non-participation of producers in spite of imposition of anti dumping clearly suggests that in the case of cessation of anti dumping duty, the volume of imports of subject goods is bound to increase further.
- xi. With respect to the contention that the total capacity of South Africa cannot take care of demand of India, it is submitted that there is no fixed criteria to determine likelihood of dumping and injury in a sunset review investigation. While spare capacity may be relevant in a situation of no or low dumping, given the volume of imports during the present period, the same itself shows that even if there are no further spare capacities in South Africa, the domestic industry would suffer aggravated injury in the event of cessation of anti dumping duty.
  - xii. In a situation where the dumping has continued to such a significant extent and where the domestic industry is already suffering continued injury, petitioners submit that the same itself is the biggest evidence of likelihood. Performance of the domestic industry would deteriorate further in the event of cessation of anti dumping duty.
  - xiii. It is frivolous to argue that it needs to be established that subject country has capacity to take care of the entire demand in the country. Phenol has a history of dumping from various sources, given the demand supply gap situation in the global market. The imports into India from the subject country have increased at dumped prices and the exports of Phenol from subject country to third country are also at dumped prices. This is sufficient to show the tendency of the producers in subject country to dump goods.
  - xiv. All the previous investigations have established existence of significant dumping. Likelihood is further substantiated on the ground of price attractiveness of the Indian market. The export oriented producers and exporters have started looking for new and existing markets. The growing demand of Phenol in India and good market opportunity attracted the producers cum exporters to export in India which led to tremendous increase in imports. The domestic industry is in a very vulnerable position and with cessation of duties; the situation of the domestic industry will further deteriorate.
  - xv. The midterm review conducted recently also indicated that exports from South Africa if diverted to India would lead to positive dumping margin, price undercutting and injury margin thus establishing that injury to the domestic industry is likely in the event of withdrawal of anti dumping duty from South Africa.
  - xvi. As regards the contention that existence of excess capacities cannot mean likelihood of dumping as per DGAD and CESTAT, it is submitted that there are a number of final findings issued by the Designated Authority in sunset reviews, wherein the Designated Authority has extended anti dumping duty on the grounds of significant surplus capacities.

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

73. The Rules require the Authority to examine the likelihood of continuation or recurrence of dumping and injury in the event of revocation of the duties.

74. The examination in the previous section indicates that the goods were being imported from South Africa at dumped prices during the POI and the domestic industry was suffering material injury due to import of substantial quantities of the subject goods at dumped or alleged dumped prices from several countries, including the subject country. Considering the fact that the dumping margin of the subject goods from South Africa in the original as well as the present investigation have been found to be significant and that there are favourable market conditions in the Indian market as far as demand and price for the subject goods are concerned, there is a reasonable indication to believe that dumping is likely to continue, if the duty is revoked. At the current import price levels and cost of production of the domestic industry, the industry suffers significant financial losses as it is unable to recover full cost. Therefore, if the imports continue from the subject country at the current dumped price level, there is a reasonable indication that the injury to the domestic industry will also continue. However, to examine the likelihood of continuation or recurrence of dumping and injury following factors have been considered:

#### **(i) Level of current and past dumping margin**

75. The level of dumping margin both in the original as well as present investigation is significant. Despite the domestic industry holding the capacity to meet demand, the import of the subject goods from the subject country still continues to be at dumped prices. The level of price undercutting, underselling without the anti-dumping duty of the import prices from South Africa during the review period has been significant indicating thereby that if the duties are removed the import prices would still continue to undercut the domestic prices to a significant extent.

#### **(ii) Price attractiveness of Indian market**

76. The prices at which the subject goods are being imported from various countries indicate that the Indian market is price sensitive and global producers with surplus capacities at their end, find the market attractive to sell. In spite of duties against several countries these price levels have held. Therefore, there is a strong likelihood that the imports from the subject country would be at similar price ranges which will hurt domestic industry.

#### **(iii) Excess Capacities and Export orientation of foreign producers**

77. From the available information on the capacity and sale of the South African producers/exporters it appears that the subject country has capacities in excess of its domestic demand and substantial quantities are available for exports and in fact

there has been substantial exports to other countries as well. Considering the high demand and favourable market conditions for the subject goods in India and the production capacity and export orientation of the South African producers, there is every likelihood that if the existing anti dumping duty is withdrawn, substantial demand for the subject goods in India will be catered to by the South African producers/exporters.

78. The above examination gives a positive indication that the goods are likely to continue to be exported from South Africa at dumped prices and such dumped imports are likely to continue to injure the domestic industry through their price and volume effects cumulatively with other dumped imports.

**(iv) Magnitude of Injury and injury margin**

79. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the AD Rules has been compared with the landed value of the exports from the subject country for determination of injury margin during the POI and the proposed injury margin based on monthly analysis so worked out is as under:

<b>Particulars</b>	<b>UOM</b>	<b>POI</b>
Non-Injurious Price	Rs/MT	****
Landed value without ADD	Rs/MT	****
Injury Margin	Rs/MT	****
Injury Margin	USD/MT	****
Injury Margin	%	****
Injury Margin (Range)	%	20 - 30

80. The Authority notes from the above data that the injury margin determined is not only positive but also significant in the POI.

**K. Conclusion on Likelihood of continuation of dumping and injury**

81. The above examination reveals that the subject goods are entering the Indian market from the subject country at dumped prices and the domestic industry is suffering material injury due to the cumulative effects of dumped imports from several sources, including the subject country. The examination also reveals that the dumping from the subject country is likely to continue if the duties are removed because of the market dynamics and capacity available in the subject country. Consequently, the domestic industry is likely to continue to suffer material injury.

**L. Indian Industry's interest and other issues**

82. The purpose of imposing 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, by creating a level playing field which is in the general interest of the country. The Authority notes that the imposition of the anti dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers. On the other hand, if distortion caused by the dumped imports are not corrected it may lead to closure of the domestic production base and subsequent price increase by the foreign producers, which will adversely affect the user industry.

**M. Recommendations**

83. The Authority initiated and conducted the investigation into current dumping, injury and causal links between dumping and injury to the domestic industry and likelihood of continuation or recurrence of dumping from the subject countries and consequent injury to the domestic industry in the event of withdrawal of duty in terms of the Rules laid down. It has been clearly established in the foregoing paragraphs that dumping of the subject goods is continuing from the subject country and the domestic industry has suffered material injury during the period of investigation after a better performance in the previous years, due to cumulative effects of dumped imports from several sources, including the subject country during this period. The examination also establishes that there is a clear likelihood of continuation of dumping from the subject country if the duties are removed which will lead to continuation or recurrence of injury to the domestic industry.

84. Therefore, the Authority is of the view that there is a need for continued imposition of the duties to protect the domestic industry against continuation or recurrence of dumping from the subject country and consequent injury to the domestic industry. Accordingly, the Authority recommends continuation of definitive anti dumping duty on the subject goods originating in or exported from the subject country as per the dumping and injury margins calculated for the current investigation period, for a further period of 5 years from the date of its imposition. Having regard to the lesser duty rule followed by the authority, the Authority recommends continuation of definitive anti-dumping duties equal to the lesser of margins of dumping and margins of injury so established, so as to remove the injury to the domestic industry, in the form and manner described in the table below.

### Duty Table

S. No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	2907.11 and 2707.60	Phenol	Bulk and/or Packed	South Africa	Any	Any	Any	342.76	MT	USD
2	-Do-	-Do-	-Do-	Any country other than countries attracting antidumping duty	South Africa	Any	Any	342.76	MT	USD

### **N. Further Procedures**

85. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal (CESTAT) in accordance with the relevant provisions of the Act.

**J. K. Dadoo**  
**Designated Authority**