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**No.15/1/2013-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti-Dumping & Allied Duties)  
Udyog Bhawan, New Delhi**

Dated 29<sup>th</sup> April, 2014

**NOTIFICATION**

**(Final Findings)**

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

No 15/1/2013-DGAD - 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 thereof:

**A. BACKGROUND OF THE CASE**

1. Whereas having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the Rules or AD Rules), the Designated Authority (hereinafter referred to as the Authority) recommended imposition of anti dumping duty on the imports of Rubber Chemicals, namely, MBT, CBS, TDQ, PVI and TMT originating in or exported from China PR and PX-13(6PPD) originating in or exported from China PR and Korea RP vide its Final Findings Notification No.14/5/2007- DGAD dated 1st October, 2008. On the basis of the Findings, anti dumping duties on the above mentioned rubber chemicals (hereinafter referred to as the subject goods or the product under consideration) originating in or exported from China PR and Korea RP (hereinafter referred to as the subject countries) were imposed by the Central Government vide Notification No. 133/2008-Customs dated 12th December, 2008. These Findings with respect to imports of PX-13 (6PPD) originating in or exported from Korea RP were modified by the Authority in a Mid-Term Review investigation vide Final Findings Notification No 15/21/2010-DGAD dated 5th August, 2011 and whereupon with respect to imports of PX-13 (6PPD) originating in or exported from Korea RP, the anti-dumping duty was modified vide Customs Notification No 92/2011 dated 20th September, 2011.

2. Whereas, M/s National Organic Chemicals Limited (herein after also referred to as the petitioner or the applicant or the domestic industry), a producer of the subject goods in India, filed a duly substantiated application before the Authority in accordance with the Act and the Rules alleging continued dumping of the rubber chemicals, namely, MBT, CBS, TDQ, PVI, TMT originating in or exported from China PR and PX-13 (6PPD) originating in and exported from China PR and Korea RP and requested the Authority for review, modification and continuation of the anti-dumping duties.
3. And, whereupon in accordance with Section 9A (5) of the Act read with Rule 23 of the AD Rules, the Authority issued a public notice dated 30th April, 2013, published in the Gazette of India, Extraordinary, initiating the Sunset Review investigation to review the need for continued imposition of duties in force on the imports of the rubber chemicals, namely, MBT, CBS, TDQ, PVI, TMT originating in or exported from China PR and PX-13 (6PPD) originating in and exported from China PR and Korea RP and to examine as to whether the cessation of such duties is likely to lead to continuation or recurrence of dumping and injury.
4. And, whereas the antidumping duty as notified vide Notification No 133/2008-Customs dated 12th December, 2008 was extended by the Central Government up to 4th May, 2014 vide Notification No 16/2013-Customs (ADD) dated 5th July, 2013 and the antidumping duty as notified vide Notification No 92/2011-Customs dated 20th September, 2011 was extended up to 4th of May, 2014 vide Notification No 17/2013-Customs (ADD) dated 5th July, 2013, in terms of Section 9(A)(5) of the Act.

## **B. PROCEDURE**

5. The procedure described below has been followed with regard to this investigation:
  - a. The Authority issued public notice No. 15/1/2013-DGAD dated 30<sup>th</sup> April, 2013, published in the Gazette of India Extraordinary, initiating sunset review investigation.
  - b. The Authority sent copies of initiation notification dated 30<sup>th</sup> April, 2013; exporter's questionnaire including Market Economy Questionnaire in respect of the exporters/producers from China PR to the embassies of the subject countries in India, known exporters/producers from the subject countries and known importers and other interested parties. Parties to this investigation were requested to file the responses to the questionnaire and make their views known in writing within the prescribed time limit. The embassies of the subject countries were also requested to advise the other exporters/producers from the subject countries to respond to the questionnaires within the prescribed time.

- c. The Authority provided copies of the non-confidential version of the application to the known exporters and the embassies of subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential version of the application was also provided to other interested parties, wherever requested.
- d. The Authority forwarded a copy of the public notice to the following known exporters (whose names and addresses were made available to the Authority in the application) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4):
- i. Shandong Shanxi and Chemical Co Ltd
  - ii. Jiangsu Sinorgchem Technology Co., Ltd.
  - iii. Shandong Yanggu Huatai Chemical Co., Ltd.
  - iv. Changde Dingyuan Chemical Industrial Limited
  - v. Dongying Bo Chen Chemical Co., Ltd.
  - vi. Jinan Runquan Chemical Co., Ltd.
  - vii. Nanjing Chemical Plant (NCP)
  - viii. Zhejiang Yongjia chemical Plant
  - ix. Henan Kailun Chemical Co., Ltd.
  - x. Rongcheng Chemical General Factory Co., Ltd.
  - xi. Dalian Richon Chem Co., Ltd.
  - xii. Zhenjiang No. 2 Chemical Factory
  - xiii. Hebei Haufeng Chemical Group
  - xiv. Shenzhen Huaren Industrial Co.
  - xv. Yixing Dongfang Fince Chemicals
  - xvi. Zhejina Yueqing Ultrafine Powders & Chemicals Co Ltd.
  - xvii. M/s Kumho Petrochemical Co. Ltd
- e. Response to exporter's questionnaire were received from the following producers/exporters of the subject goods from the subject countries:
- i. M/s Shandong Sinorgchem Technology Co. Ltd, China PR
  - ii. M/s Sinorgchem Co., Tai'an, China PR
  - iii. M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR
  - iv. Kumho Petrochemicals Co. Ltd., Korea RP
  - v. Daewoo International Corporation, Korea RP
- f. The Authority forwarded a copy of the public notice to the following known importers (whose names and addresses were made available to the Authority) of the subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(4).
- i. Automotive Tyre Manufacturers' Association

- ii. The All India Rubber Industries Association
  - iii. J.K. Industries Ltd.
  - iv. Metro Tyres Ltd.
  - v. CEAT Limited
  - vi. Poddar Tyres Ltd.
  - vii. Apollo Tyres Ltd.
  - viii. Raison India Ltd.
  - ix. Birla Tyre
  - x. Rubber Products Ltd.
  - xi. MRF Limited
- g. In response to the Importers' Questionnaire, CEAT Ltd, Apollo Tyres Ltd and J K Tyres & Industries Ltd filed importer questionnaire responses.
- h. The following opposing interested parties also submitted the written submissions:
- i. M/s Kumho Petrochemicals Co. Ltd., Korea RP
  - ii. M/s Rishiroop Polymers Pvt. Ltd., importer in India
  - iii. Automotive Tyre Manufacturers' Association (ATMA)
- i. Exporters, producers and other interested parties who neither responded to the Authority nor supplied information relevant to this investigation have been treated as non-cooperating interested parties by the Authority.
- j. Investigation has been carried out for the period starting from 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012 (also referred to as the period of investigation or the POI). The examination of trends in the context of injury analysis covered the period from 2009-2010, 2010-11, 2011-12 and the POI.
- k. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and the period of investigation and the same was received.
- l. Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry. The Non-injurious Price has been worked out in accordance with Annexure III of the anti-dumping rules.
- m. The Authority held a public hearing on 6<sup>th</sup> December, 2013 to provide an opportunity to the interested parties to present relevant information orally. The parties attending the public hearing were advised to file written submissions of the information presented orally. Interested parties were also provided opportunity for rejoinder submissions on the views expressed by opposing interested parties in the public hearing. The Authority has considered the written submissions and rejoinders received from the interested parties to the extent found relevant in this Final Findings Notification.

- n. The Authority made available non-confidential version of the evidence presented by the interested parties through a public file maintained by the Authority and kept open for inspection by all interested parties as per Rule 6(7).
- o. The Authority during the course of investigation satisfied itself as to the accuracy of the information supplied upon. For that purpose, the Authority conducted on-the-spot verification of the domestic industry and the co-operating producer/exporter to the extent considered relevant and necessary.
- p. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded its observations/analysis on the basis of the facts available.
- q. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to 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.
- r. A Disclosure Statement containing the essential facts in this investigation which formed the basis of the Final Findings was issued to the interested parties on 18.04.2014. The post-Disclosure Statement submissions received from the interested parties have been considered, to the extent found relevant, in this Final Findings Notification.
- s. \*\*\* In this Final Findings Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.
- t. The average exchange rate of Rs.53.69 per 1 US\$ as per Ministry of Finance order has been considered for conversion of US\$ into INR in the POI.

**PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

- 6. The product under consideration (PUC) in the present investigation are the following rubber chemicals:
  - i) MBT, having chemical description 2-Mercapto Benzothiazole, with other trade/brand name as Accelerator M, Accelerator MBT etc.
  - ii) CBS, having chemical description N-Cyclohexyl-2-Benzothiazole Sulphenamide with other trade name/brand names as Accelerator CZ, Accelerator HBS, CBS etc.
  - iii) TDQ, having chemical description Polymerized 2,2,4 – Trimethyl-1,2-dihydroquinoline with other trade/brand names as TMR or Antioxidant RD etc.
  - iv) PVI, having chemical description N-(Cyclohexylthio) Pthalimide with other trade/brand names as Anti Scorch agent CTP, PVI etc.

- v) TMT having chemical description as Tetramethylthiuram Disulfide with other trade/brand names as Accelerator TMTD Thiuram C etc.
- vi) PX-13 (6PPD) having chemical description N-(1,3-dimethyl butyl)-N'' Phenyl-P-1 with other trade/brand names as 6C, Pilflex 13, Sirantox 4020 Antioxidant 4020, Kumanox 13 Vulcanox 4020 etc.

### **Views of the Domestic Industry**

7. The following submissions have been made by the domestic industry with regard to the scope of the product under consideration (PUC) and the like article:
  - a. The present investigation being a sunset review investigation, the scope of the product under consideration should be the same as that in the original investigation, that is:
    - i. MBT, having chemical description 2-Mercapto Benzothiazole, with other trade/brand name as Accelerator M, Accelerator MBT etc.
    - ii. CBS, having chemical description N-Cyclohexyl-2-Benzothiazole Sulphenamide with other trade name/brand names as Accelerator CZ. Accelerator HBS, CBS etc.
    - iii. TDQ, having chemical description Polymerized 2,2,4 – Trimethyl-1,2-dihydroquinoline with other trade/brand names as TMR or Antioxidant RD etc.
    - iv. PVI, having chemical description N-(Cyclohexylthio) Pthalimide with other trade/brand names as Anti Scorch agent CTP, PVI etc.
    - v. TMT having chemical description as Tetramethylthiuram Disulfide with other trade/brand names as Accelerator TMTD Thiuram C etc.
    - vi. PX-13 (6PPD) having chemical description N-(1,3-dimethyl butyl)-N'' Phenyl-P-1 with other trade/brand names as 6C, Pilflex 13, Sirantox 4020 Antioxidant 4020, Kumanox 13 Vulcanox 4020 etc.
  
8. The rubber chemicals as detailed above are used in treating natural rubber and synthetic rubber based compounds. The products do not have a dedicated classification at 8 digit level. The products are stated to be imported under chapter 29 and 38 of the Customs Tariff Act.

### **Views of the exporters/ importers and other opposing interested parties**

9. None of the other interested parties raised issues with regard to the scope of the product under consideration and the like article.

### **Examination by the Authority**

10. The present investigation is a sunset review investigation concerning anti dumping duties already in force on imports of the above mentioned rubber chemicals on the basis of recommendations earlier made by the Authority. The Authority notes that the scope

of the product under consideration remains the same as that of the original investigation.

11. The Authority notes that there is no significant difference in each of the subject goods produced by the Indian industry and each of the respective subject goods imported from the subject countries. Each of the subject goods produced by the Indian industry and respective subject goods imported from subject countries are comparable in terms of their physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties has raised any objection in this regard. Thus, each of the subject rubber chemicals produced by the petitioner company are being treated by the Authority as like articles to the respective subject goods imported from the subject countries in accordance with the Anti-dumping Rules.

### **C. DOMESTIC INDUSTRY AND STANDING**

12. The application has been filed by M/s National Organic Chemicals Limited (NOCIL), producer of the product under consideration in India. NOCIL has provided all relevant information for the purpose of the present investigations.

#### **Views of exporters/importers/other opposing interested parties**

13. The following submissions have been made:
  - a) The applicant domestic producer in the present sunset review is M/s National Organic Chemical Industries Limited. The applicant does not satisfy the definition of “domestic industry” as the collective output of the subject goods produced by the applicant may not constitute a “major proportion” of the total domestic production of the subject goods.
  - b) Reliance is placed on the fact that Merchem Ltd., one of the domestic producers of the subject goods, is also manufacturing the 4-ADPA at its new facilities, as stated in its Annual Report 2010-11 and is further setting up a new plant for the manufacture of PX-13 (6PPD). The applicant is thus facing stiff competition from other domestic producers who are seeking to capture the market. It is also known that the applicant has set up a new manufacturing plant at Dahej which may have commenced production sometime in the financial year 2012-13.
  - c) At the hearing conducted by the Directorate General of Safeguards in connection with the review of safeguard duty on PX-13 (6 PPD), the applicant had claimed that the capacity for the domestic producers was the following: NOCIL (8500 MT/year), Merchem (8500 MT/year), Lanxess (2000 MT/year) and PMC (1000 MT/year).

- d) It is submitted that as a result of significant capacity additions, the production break up in the domestic market has undergone a significant change. The applicant no longer has 50% of the capacity to produce the subject goods and it is highly likely that it will not ultimately produce 50% of the subject good. None of the other domestic producers has supported the petition of the applicant. When the applicant cannot produce 50% of the subject goods, it fails to satisfy the definition of “domestic industry” in Rule 2(b) and Article 4.1 which mandates that the collective output of the domestic industry should constitute a “major proportion” of the subject goods.
- e) It is further claimed that an applicant who produces any proportion of the total domestic production of the subject goods cannot constitute the “domestic industry”. The ruling of the Appellate Body in European Communities - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/AB/R (28 July 2011) where the term “major proportion” was interpreted to mean “a relatively high proportion of the domestic production” is also relied upon.
- f) Thus, it is argued that the applicant does not satisfy the definition of “domestic industry” and as a result of the same, the present review is to be terminated.

#### **Views of the domestic industry**

14. The following submissions have been made by the domestic industry with regard to the scope of the domestic industry and standing:
- a. The petitioner, NOCIL, is a major producer of the product under consideration in the country. Lanxess India Pvt. Ltd, Merchem Ltd and PMC Rubber Chemicals India Pvt. Ltd. are other known producers of the product under consideration in India.
  - b. The petitioner has not imported the subject goods. Petitioner is not related either to an exporter of the subject products in the subject countries or an importer in India.
  - c. NOCIL is a major producer of each of the subject rubber chemicals in the country. As regards the production of subject goods by other producers, no published information is available in this regard. The petitioner has assessed the production of other companies based on their imports of raw material. Petitioner has assessed the production by considering the domestic sales, imports and exports made by individual companies.
  - d. The petitioner accounts for a major proportion in the Indian production and, therefore, constitutes domestic industry. It has the standing to file the petition under the Anti-dumping Rules.
  - e. As regards Merchem, it is submitted that the production of PX-13 by Merchem is at low volumes as compared to the total Indian production.

#### **Examination by the Authority**

15. The Authority notes that the application has been filed by NOCIL, a producer of the product under consideration in India and that NOCIL has provided all relevant information for the purpose of the present sunset review investigation. The production of petitioner company constituted a major proportion for each of the subject rubber chemicals, as is seen from the table below:

Products	NOCIL Production MT	Supporter Production MT	Total Domestic Production (NOCIL + Supporter) MT	Production Other Indian Producers MT	Total Indian Production on MT	Share of Domestic Industry in Indian Production %	Share of Domestic Industry in Indian Production % Range
PX-13 (6PPD)	***	***	***	***	***	***	60-70%
TDQ	***	***	***	***	***	***	85-95%
PVI	***	***	***	***	***	***	90-100%
TMT	***	***	***	***	***	***	90-100%
MBT	***	***	***	***	***	***	75-85%
CBS	***	***	***	***	***	***	90-100%

16. As regards the argument on production of PX-13 by Merchem Ltd, domestic industry provided a letter from Merchem Ltd addressed to the Authority wherein Merchem Ltd has stated following capacity and capacity utilization. It is noted from that letter that the company has produced very low volume of PX-13 during the injury period as can be seen in the table below.

	2010-11	2011-12	2012-13
Capacity	***	***	***
Production	***	***	***
Capacity utilisation	***	***	***

17. Based on the information on record, the Authority determines that the production by NOCIL accounts for a major proportion of total Indian production of each of the subject rubber chemicals. The petitioner, therefore, satisfies standing and constitutes domestic industry within the meaning of the Rules.

#### D. CONFIDENTIALITY

### **Views of exporters/importers/other opposing interested parties**

18. The following submissions have been made by the domestic industry with regard to confidentiality:

- i. Selective and excess confidentiality not in keeping with Rule 7 of AD Rules since domestic industry has revealed domestic sales figures but capacity, capacity utilization and production figures have not been revealed.

### **Views of the Domestic Industry**

19. The following submissions have been made by the domestic industry with regard to confidentiality:

- a. The opposing interested parties have claimed excessive confidentiality in their Exporter Questionnaire Responses.
  - i. M/s Shandong Sinorgchem Technology Co. Ltd China, M/s Sinorgchem Co Tai'an, China PR and M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR have claimed confidentiality regarding names of the shareholder, related companies involved in product concerned, details of cost centers, details and name of raw materials, production process and Appendix 1. Further, there is no summarization or indexed version provided by the company for information claimed confidential and volume information like capacity, production and sales, inventories.
  - ii. Kumho Petrochemicals has claimed confidentiality regarding names of the shareholders, details of related supplier of sub materials, production process, flow chart, details and name of raw materials exports to third countries, capability to produce or any plants to produce in India or other countries, change in operations relating to production of PUC, export markets, significance of ADD on KPC and changes in production capacity. Further, one of the raw materials is purchased from related company but the details are kept confidential. Almost entire SSR questionnaire is kept confidential.
  - iii. In Importer Questionnaire Responses of CEAT and Apollo, information in all the Annexures claimed confidential and no indexation is provided.

### **Examination by the Authority**

20. The Authority notes that information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. As regards the argument on non-disclosure of some information by the domestic industry, the petitioner claimed that the information not disclosed by the petitioner is confidential business sensitive information of the petitioner and the domestic industry has not disclosed this information publicly. Merely because the petitioner has chosen to disclose information on domestic sales volumes, it does not imply that the petitioner is obliged to disclose all other information as well. It has not been shown that the petitioner has claimed some information confidential, which has been otherwise disclosed publicly by the petitioner

elsewhere. The Authority notes that wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and 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.

## **E. MISCELLANEOUS ISSUES**

### **Views of the exporters/importers/other opposing interested parties**

21. The following submissions have been made by the exporters/importers and other opposing interested parties:

- a) The sunset review is required to be terminated in light of certain preliminary objections, i.e., expiry of anti-dumping duty on subject good and extension post-expiry in violation of Section 9A(5) of the Act; and delayed filing of petition by the applicant requesting the initiation of anti-dumping investigation in violation of Rule 23(1B) of the AD Rules and Trade Notice No. 2/2011 issued by the DGAD.
- b) It is submitted that the anti-dumping duty on the subject goods expired on May 4, 2013 according to the sunset clause in Notification No. 92/2011–Cus dated 20th September, 2011. It was only on 5th July, 2013 that the duty was extended vide Notification No.17/2013-Customs (ADD). Therefore, it is argued that because the duty had expired before the extension, the present review is infructuous as there was no anti-dumping duty in existence to review.
- c) Circular No. 28 dated 08.07.2011 by the Ministry of Finance is relied upon which clarified that an anti-dumping measure in force shall expire automatically at the end of five years unless a notification extending the levy of such duty is issued before the expiry of the five year period.
- d) Additionally, it is submitted that as per the requirements of Trade Notice No. 2/2011 dated 6th June 2011, the applicant was required to file the petition for initiation of sunset review 90 days before the expiry of the anti-dumping duty, i.e., before 4th March 2013. However, such petition was not filed by the applicant until 20th March 2013, as stated in Annexure 2.1 of the petition. This infirmity also rendered the present sunset review invalid and liable to be terminated.
- e) The domestic industry has enjoyed anti-dumping duty protection on various rubber chemicals from various sources for eight years and in the form of safeguard duty on PX-13 from all sources for two years.

### **Views of the domestic industry**

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

- a. With respect to the argument that the domestic industry has enjoyed duty protection, it is submitted that antidumping duty merely corrects an unfair trade practice and is required to be imposed so long as there is evidence of continuation or likelihood of recurrence of dumping and injury.

### **Examination by the Authority**

23. As regards the submission that the domestic industry has already enjoyed duty protection, it is noted that this does not preclude the Authority from continuing duties if it finds that there is continuation or likelihood of recurrence of dumping and injury.
24. As regards the argument that the present review is infructuous as there was no anti-dumping duty in existence to review because the duty had expired on 4<sup>th</sup> May, 2013 before its extension on 5<sup>th</sup> July, 2013, the Authority notes that the only obligation under Section 9A (5) in this regard is that the investigation must be initiated before the expiry of the duty.
25. As regards Circular No. 28 dated 08.07.2011 by the Ministry of Finance, the Authority notes that the scope of the same is with regard to collection of anti dumping duty and specifies that anti dumping duty shall not be collected beyond the time period.
26. As regards the argument that delayed filing of petition by the applicant requesting the initiation of anti-dumping duty is in violation of Rule 23(1B) of the AD Rules and Trade Notice No. 2/2011 issued by the DGAD, it is noted from the records before the Authority that the petition was filed within the reasonable period of time considering January-December, 2012 as the proposed investigation period.

## **G. ASSESSMENT OF DUMPING - METHODOLOGY AND PARAMETERS**

### **Determination of Dumping Margin**

27. The Authority notes that the following exporters/importers filed questionnaire responses:
  - i. M/s Shandong Sinorgchem Technology Co. Ltd, China PR
  - ii. M/s Sinorgchem Co., Tai'an, China PR
  - iii. M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR
  - iv. Kumho Petrochemicals Co. Ltd., Korea RP
  - v. Daewoo International Corporation, Korea RP
  - vi. CEAT Limited (Importer)
  - vii. J K Tyres Ltd (Importer)
  - viii. Apollo Tyres Ltd (Importer)

### **Views of the exporters/ importers/other opposing interested parties**

28. The following submissions have been made by the exporters/importers and other opposing interested parties:

- a. There is no “special relationship” between Kumho Petrochemicals Co. Ltd., (KPC) and Sinorgchem by which KPC gets 4ADPA at a special concessional rate.
- b. The applicant stated that KPC’s domestic sales have declined over the years. It is not known how it establishes any relation between KPC and Sinorgchem.
- c. The alleged decline of Sinorgchem exports to other countries and the US and alleged increase of KPC exports to other countries and US do not prove the claim of special relationship.
- d. The applicant’s claim that Solutia Inc., Sinorgchem and KPC have reached a settlement whereby Solutia grants Sinorgchem and KPC to manufacture 4-ADPA proves that there is no restriction on export of the goods to US by Sinorgchem.
- e. If KPC was able to procure 4-ADPA at a reduced rate and dump the product into India, as alleged, it would not be losing revenue in sales or with regard to the product.
- f. When a particular buyer buys huge quantity in comparison to other buyers, then that particular buyer will certainly be at a ‘different price’. However, such relationship is usual and if a buyer gets extra discount because of the quantity off take that does not mean the arm’s length transaction price is to be rejected.
- g. The procurement price of 4-ADPA as provided by KPC cannot be disregarded as Korea RP is a Market Economy Country. This would adversely affect the treatment of Indian exporters before investigating authorities in other countries.
- h. The law does not permit the investigating authority to discard input prices even when they are considered to be dumped. 4-ADPA is/was not subject to anti-dumping investigation and there is no determination that its prices to South Korea were dumped during THE POI.
- i. In case the Authority rejects the procurement prices of 4-ADPA by KPC, it should follow the bare minimum requirements prescribed for selection of third country as per law.
- j. Applicant is contending that normal value be computed on the basis of weighted average of sales volumes of the subject goods of the Respondent in the Korean domestic market and import price of the same into Korea but Section 9A (6A) of Customs Tariff Act states that normal value shall be determined based on the records of the exporter/producer and has no reference to imported goods in that country.
- k. If import prices are to be considered for normal value, EQ should be amended to ask exporters to provide data relating to import volume and value of the like product in its country. Exporters would be unable to provide such data and declared non-cooperating.

- l. Reliance on unverified import data in the subject country is highly risky. Further, the value of the goods would include freight from the country of export to Korea RP.
- m. Normal value is not comparable to non-injurious price in the sense that NIP is required to be determined by taking weighted average of various expenses of each applicant domestic producer whereas normal value is required to be determined individually for each producer/exporter.
- n. The contention of the applicant that the normal value of the subject goods should be computed on the basis of domestic suppliers' price and the import price of PX-13 (6 PPD) into Korea RP is squarely rejected. The entirety of such an approach is rejected on the grounds listed below.

i) Firstly, it is argued that it is against Section 9A(6A) of the Customs Tariff Act which places an obligation upon the Authority to estimate the margin of dumping based on normal value and export price determined on the basis of records maintained and information provided by the exporter or producer. Thus, it is contended that the normal value shall be determined based on the records of the exporter/producer of that article and it has no reference to imported goods in that country. The application of the same principle is extended to the cost of production provided by Kumho Petrochemical Co. Ltd.

ii) Secondly, it is submitted that if import prices are to be considered for normal value, then it will result in an absurd situation wherein the Authority will be required to amend the Exporters Questionnaire format, in addition to making the relevant amendments to the AD Rules, and further will be required to request each exporter to provide, apart from his own data, data relating to import volume and value of the like product in the respective country. Since such exporters/producers will evidently be unable to provide such data, the Authority will then be in a position to declare them non-cooperating. Reliance on such unverified data is also highly risky because (i) it is not known whether the value adopted was the sole consideration for the transaction and (ii) how other factors have been apportioned including freight from the country of export (USA, EU etc.) to Korea RP.

- o. Furthermore, it is submitted that the procurement price of 4-ADPA as disclosed by the exporter cannot be rejected by the Authority as such non-acceptance would set a dangerous precedent for Indian exporters facing anti-dumping investigations worldwide. If rejection of the procurement price is given effect to, then the cost of production of the Indian exporters may be rejected wherever part of the raw material had been procured from a Non-Market Economy. For instance, a manufacturer-exporter of cars in India could import the engine, steering knuckles, the front axle beam, steel wheels and

tyres from a Non-Market Economy country, assemble them along with other parts produced in India into cars and then export the finished cars to various other countries. In such a situation, the investigating authority in other countries investigating the dumping of cars from India may cite such a decision and reject the cost of production of cars as disclosed by the Indian exporter because the inputs/parts of cars were procured from a Non-Market Economy country.

- p. It is also argued that the Authority may not supplant the provisions applicable to NMEs and use it for the exporter, who is based in a market economy country, i.e., Korea RP.
- q. It is additionally submitted that the claim of the applicant that there are 'legal battles' being waged in the courts of Ohio and South Korea regarding IP infringement is misinformed and irrelevant as firstly, the patent claims that were made involved processes for the production of 4-ADPA and the derivatives of 4-ADPA. The product under consideration is PX-13 (6PPD) and not 4-ADPA. Secondly, the U.S. International Trade Commission (ITC) ruled in 2006 that Kumho did not infringe the Flexsys America LP's (the complainant) patents. A second set of claims initiated against Kumho as well as the action initiated in the district court in Ohio were also rejected.

### **Views of the Domestic Industry**

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

- a. Chinese producers' cost and price cannot be relied upon for determination of normal value and the same must be treated as operating in a non-market economy.
- b. Normal Value for China cannot be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not publicly available. Petitioner has determined Normal Value in China on the basis of cost of production in India; duly adjusted.
- c. Normal Value for Korea RP in respect of 6PPD is required to be determined on the basis of weighted average of the imported product price and domestic supplier's price. Normal value based solely on M/s Kumho Petrochemical Co. Ltd data would be highly distorted. Provisions relating to cost of production do not establish that the normal value should be based, that too solely, on the domestic sales transactions of the manufacturer concerned.
- d. KPC's questionnaire response of previous investigation shows that domestic sales have declined over the years and KPC's exports to China have declined while its exports to rest of the world have increased and the company has got significant unutilized capacities. This is clear from its annual report for 2009.

The company has admitted its inability to increase its exports in Chinese market because of relationship with its raw material supplier.

- e. KPC is losing revenue of more than \$ 4-5 million in domestic sales and \$15 million in the product, despite a price difference of more than \$1. This clearly shows that the intermediate is being given to KPC under some special arrangements and KPC is not free to fix the prices as per prevailing market prices. The low prices fixed by KPC are clearly a result of the ambition of the Chinese producer to be the sole global producer in this product.
- f. The benefits of non-market economy available to Sinorgchem are being passed on to KPC.
- g. Cost of production of KPC cannot be taken since such elements of cost must reasonably reflect the costs associated with production and sale of the product under consideration, irrespective of the producer. In the previous cases, the Designated Authority had already held that Sinorgchem is not operating under market economy conditions.
- h. The normal value of Korea has been determined by considering the import price of PX-13 into Korea.
- i. Export price has been determined as the weighted average import price of each of the rubber chemicals from respective subject countries. Adjustments for Ocean Freight, Marine Insurance, Port Expenses, Inland Freight and Commission have been considered.
- j. Dumping margins are above de minimis and significant for each of the rubber chemicals from the subject countries.
- k. The agreement between Solutia Inc., Sinorgchem and KPC is proved by the facts – (a) in the past, Sinorgchem was prevented free market access and, therefore, used KPC as a proxy for sale in those markets; and (b) with Sinorgchem and KPC now allowed to sell globally, the two in a combined way wish to kill all other producers for the product globally.
- l. With respect to big buyers getting a lower price, the present situation is not one of lower price due to higher quantities, but a clear absence of ordinary market situation.
- m. The request of domestic industry for rejection of procurement price of 4-ADPA by Korea RP is not based on the ground that Korea RP is not a market economy country but on the two obligations on the Authority, i.e., (a) such records should be in accordance with the generally accepted accounting principles of the exporting country, and (b) such records reasonably reflect the cost associated with production and sale of the article under consideration. The issue is not whether 4-ADPA is/was being procured at dumped prices. The issue is whether costs as per records reasonably reflect the cost associated with production and sale of the article under consideration.
- n. The claim that if the Authority rejects the procurement prices for 4-ADPA, it should select a third country is unsupported by legal requirement. The petitioner has not sought rejection of the procurement price on the grounds of

non market economy and, therefore, the question of selection of third country shall not arise.

- o. With respect to the calculation of normal value for Korea, KPC has selectively referred to Section 9A(6)(a) and has conveniently ignored Section 9A(1)(c) which directly obliges the Authority to consider consumption price in the exporting country.
- p. With respect to the argument that EQ should be amended to ask exporters to provide data relating to import volume and value of the like product in its country, nothing prevents the exporter from providing the relevant information or commenting on the information provided by the domestic industry.
- q. With respect to the argument that reliance on unverified data in the subject country is risky, the petitioner has no objection to verification of data and has adopted publically available information which can be verified by the Designated Authority. As regards freight, the same is required to be added as the Authority is required to determine consumption price in the exporting country.
- r. With respect to the argument that Normal Value cannot be calculated as a weighted average as in the case of NIP when the data given by the exporter is not be helpful in determining consumption price in the ordinary course of trade because of particular market situation, the Authority is fully justified in adopting other methods provided under the law.
- s. Exports made by Xiangyu Chemicals cannot be adopted for determination of correct price for the reason that the company is understood to have been criminally indicted for theft of technology by a Chinese Court.
- t. The authority should consider the usage norms of various raw materials while determining the cost of production from 4 ADPA to PX13 (6 PPD) in KPC's cost records.
- u. M/s Kumho Petrochemical Co. Ltd is captively producing Hydrogen and, therefore, correct valuation of Hydrogen is vital for reasonably reflecting the cost associated with production and sale of the article.
- v. A noble metal catalyst is needed for this conversion of 4ADPA into 6PPD. Its cost should also be reflected suitably in the cost of 6PPD.
- w. M/s Kumho Petrochemical Co. Ltd is producing its own utilities for production of the product as it has a large manufacturing multiproduct setup. The authority should, therefore, consider correct valuation of these utilities and compare the same with the technical certificate provided by NOCIL.
- x. In view of significant difference in the packing cost in domestic and export markets, the authority should examine the response to ascertain whether the exporter has reported difference in packing cost.
- y. It is understood that M/s Kumho Petrochemical Co. Ltd is giving 4% commission to its Indian agent. The authority may verify the agreement. The Indian agent is dealing with KPC on various products. Therefore, 1 % or 2% reduction in commission in 6 PPD business can be easily adjusted against commission of other business.

- z. M/s Kumho Petrochemical Co. Ltd is giving 120-180 days credit to various Indian customers. The credit in domestic market must be significantly low. The cost of credit for the domestic and export market being the same, the exporter must have incurred significantly higher expenses in offering significantly higher credit period in exports to India.
- aa. Mere fact that the credit is being offered by Government of Korea in respect of duty paid by M/s Kumho Petrochemical Co. Ltd is insufficient to permit credit for the same. Korean scheme in fact allows an exporter to avail drawback benefits by applying a fixed % of FOB without any relation to actual consumption of imports/input duties. There is absence of linkage between duty saved and inputs consumed.
- bb. Given the accounting standards, KPC must have booked exchange loss under the head “exchange loss/gains” instead of adjusting from the export price
- cc. Since anti-dumping investigations are product specific and further since interest income arise from other operations whereas interest expense arise from production activities, interest income from other operations cannot be reduced from the interest expenses
- dd. As KPC is having low capacity utilisation, it is important that the cost of production is determined at the level of actual production.

### **Examination of the Authority**

30. The Authority has examined the submissions and issues raised by the interested parties with regard to dumping of the subject goods as under :-
- a. With respect to the argument that a buyer who purchases in large quantities is often given a special price, the Authority notes that this does not preclude it from examining the transactions to see whether they are made in the ordinary course of the trade and reflect market price.
  - b. One of the responding parties has argued that the procurement price of 4-ADPA as provided by the exporter cannot be disregarded as Korea RP is a Market Economy country and that such a practice would adversely affect the treatment of Indian exporters before investigating authorities in other countries. The Authority notes that Korea RP is a market economy country and treated as such in the present investigation. Producers and exporters from Korea RP are not determined to be operating under non-market economy conditions. However, this does not preclude the Authority from examining whether costs such as the procurement price of 4-ADPA are costs in the ordinary course of trade.
  - c. With respect to the argument whether 4-ADPA import prices in Korea RP are the dumped prices, the Authority notes that it is outside the scope of the investigation. However, the Authority is to consider whether the records provided by the exporter are (a) in accordance with the generally accepted

accounting principles of the exporting country, and (b) reasonably reflect the cost associated with production and sale of the product under consideration. The Authority determines that the costs reported for 4-ADPA by KPC were not such as to reasonably reflect the cost associated with production and sale of the product under consideration in the ordinary course of international trade.

- d. KPC has argued that in case the Authority rejects the procurement prices of 4-ADPA by KPC, it should follow the bare minimum requirements prescribed for selection of third country as per law. The Authority notes that since it is not treating KPC as operating under non-market economy conditions, this argument is irrelevant.
- e. With respect to the issue of exporter being required to provide data relating to imports of the like product in its country, the Authority notes that the argument cannot be stretched to conclude that the Authority cannot seek information available which reasonably reflects the cost associated with production and sale of the product under consideration.
- f. With respect to the argument of import data of KITA for Korea RP being unverified, the Authority considers that it can use the data that is publically available after examination unless any interested party comes out with evidence that those data is not reliable.
- g. The responding party has argued that normal value is not comparable to non-injurious price in the sense that NIP is required to be determined by taking weighted average of various expenses of each applicant domestic producer whereas normal value is required to be determined individually for each producer/exporter. The Authority has not determined the normal value in the present case on the basis of weighted average principle for determining non-injurious price.
- h. As regards the contention that normal value of the subject good should be computed on the basis of weighted average of domestic suppliers' price and the import price of PX-13 (6 PPD) into Korea RP, the Authority considers that the same is impermissible under the law.

#### Examination of market economy claims of Producers/Exporter from China

31. The Authority notes that China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO members. In terms of Para 8(2) of the annexure-1 of anti-dumping rules, China PR was proposed to be treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules.

32. As per Paragraph 8, Annexure 1 to the Anti-Dumping Rules, as amended, the presumption of a non-market economy can be rebutted, if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub

paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment (MET) questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a. The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand without significant state interference in this regard, and whether costs of major inputs substantially reflect market values; the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- b. Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms.
- c. The exchange rate conversions are carried out at the market rate.

33. It is noted that none of the responding producers and exporter from China RP has requested for Market Economy Treatment and asked for individual normal value determination for them.

### **Determination of Normal Value**

#### **Normal Value for China PR**

34. China PR is a non-market economy country. Para 7 of Annexure I of the Rule provides that:

*“In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy*

*third country and shall be given a reasonable period of time to offer their comments.”*

35. The normal value for the subject products imported from China PR into India has been constructed based on the following principles:- optimum consumption norms of the domestic industry for major raw materials have been considered with the exception of raw material of PX-13(6PPD). In the case of PX-13(6PPD), norms of the cooperative exporter have been adopted in line with the methodology followed at the time of original investigation. Further, the Authority notes that none of the responding producers and exporter from China RP has requested for Market Economy Treatment and asked for individual normal value determination for them. However, since China is treated as a non-market economy country by the Authority, international prices for the raw material consumed by the different products have been adopted for working out the major raw material cost. Cost of other raw materials has been considered at par with the domestic industry. Conversion cost, interest, SGA etc. have been considered at the level allowed for the domestic industry. 5% of cost of sales excluding interest has been allowed towards reasonable profit. The constructed normal value determined for China is as under:

Product	Constructed Normal Value for China PR (US\$/Kg)
PX-13 (6PPD)	***
TDQ	***
PVI	***
TMT	***
MBT	***
CBS	***

### **Determination of Export Price**

#### **Export price of cooperating exporters from China PR**

M/s Shandong Sinorgchem Technology Co. Ltd China PR through M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR

36. The weighted average export price (CIF) to India is determined as per the data provided by the exporter in Appendix 2 and 3A of the exporter’s questionnaire response. Price adjustments have been claimed on overseas freight, overseas insurance, inland freight, credit cost, bank charges, handling and export packing. The Authority has admitted the adjustments claimed by the exporter. Accordingly, the

export price at ex-factory level determined is as given in the Dumping Margin Table below.

M/s Sinorgchem Co Tai'an China PR through M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR

37. The weighted average export price (CIF) to India is determined as per the data provided by the exporter in Appendix 2 and 3A of the exporter's questionnaire response. Price adjustments have been claimed on overseas freight, overseas insurance, inland freight, credit cost, bank charges, handling and export packing. The Authority has admitted the adjustments claimed by the exporter. Accordingly, the export price at ex-factory level determined is as given in the Dumping Margin Table below.

**Export price of non-cooperating exporters from China PR**

38. The Authority notes that no other exporter from China PR has submitted exporter's questionnaire response. Therefore, the Authority has adopted the the lowest export price of the cooperating exporters for PX13 (6PPD) for non-cooperative exporters. As regards TDQ, TMT, PVI, CBS and MBT, there being no response, the average export price into India has been considered for calculation of net export price. Adjustments have been allowed at par with the ones allowed in respect of co-operating exporters from China PR as above for arriving at export price at ex-factory level. By adopting this method, the export price at ex-factory level in respect of non-cooperating exporters from China PR worked out by the Authority is as per table below:

Product	Net Export Price of China PR (US\$/Kg)
PX-13 (6PPD)	***
TDQ	***
PVI	***
TMT	***
MBT	***
CBS	***

**Normal value for Korea RP**

Kumho Petrochemicals Company Ltd (KPC)

39. With regard to determination of Normal Value for KPC in the original investigation, the Authority in the Final Findings dated 1st October, 2008 recorded as under:

*"58. Section 9A (1) (c) (i) and Para 1 of Annexure 1 referred in rule 10 of anti-dumping rules require that in order to ascertain the comparable price in ordinary course of trade for the like article when meant for consumption in the exporting country, the domestic sales reflected in the records for the relevant period at the price shown therein will normally be accepted when the records reasonably reflected the cost associated with the production and sale of such article. Authority concludes that during the course of verification it came to notice that 4 ADPA, the primary raw material required for manufacture of 6 PPD was sourced by Korea Kumho from Sinorgchem, a Chinese producer at a price of approximately US\$ \*\*\* per K.G., lower than the price of US \$ \*\*\* per K.G., at which they had been supplying the same to India. Further the import price of this very raw material when sourced from a market*

*economy country into India was found to be US \$ 3.09 per K.G. Incidentally Sinorgchem happens to be a participating exporter from China PR in the present investigation and verification of the said exporter by the Authority revealed that they are operating under nonmarket economy conditions.*

*59. Therefore, the Authority concludes that in a situation where major input i.e. 4 ADPA used in production of 6 PPD was solely sourced from a non-market Economy Company, the use of actual purchase price of Kumho Petrochemicals for 4 ADPA, would not reasonably reflect the cost associated with production of 6 PPD.*

*60. In view of above, the authority has adjusted the cost of production and sale by the*

*difference between the international price of 4 ADPA from a market economy country and actual purchase price of Kumho Petrochemicals. Accordingly the revised cost of sales for PX 13(6PPD) works out to US \$ \*\*\* per kg. At this adjusted cost of sale the domestic sales made by Kumho Petrochemicals during POI fail to pass the ordinary course of trade test. Accordingly the domestic sales do not permit a proper comparison. The Authority, therefore, has constructed the normal value for Kumho Petrochemicals in terms of Section 9A (1) (c) (ii)*

*61. Taking note of these factors, the Authority has calculated the normal value in the*

*instant case by taking into account the cost of production of the subject goods in Korea RP based upon the 4ADPA's international price from a market economy country, and allowing other costs as claimed and verified. On the cost of sales so arrived at, the average profit margin has been considered. Normal value for PX-13 (6PPD) has been determined accordingly and worked out as US \$ \*\*\* per K.G by the Authority."*

40. With regard to determination of Normal Value for KPC in the Mid Term Review investigation, the Authority in the Final Findings dated 5th August, 2011 has recorded as under:

*"28. The Authority concludes that the situation in the present investigation has not undergone any change from the original investigation for the reasons that Kumho Petrochemicals continues to source the major input 4ADPA from the same non-market economy company and no facts or evidence have been brought before the*

*Authority since the issuance of Final Findings in the original investigation that the non-market economy status of the said company has undergone any change. The Authority, therefore, concludes that the use of actual purchase price of 4ADPA by KPC from the said non-market economy company would not reasonably reflect the cost associated with production of PX13 (6 PPD). Further, there are no imports of 4ADPA to India from a market economy third country during the POI in the present MTR.*

*29. Since there is no evidence available showing international price of 4-ADPA during the POI in this Review, the Authority has constructed the cost of production of 4-ADPA. The Authority notes that the domestic industry has produced only 4-NDPA, which is a stage prior to 4-ADPA and the Authority adopted the cost of the same for determining the cost of 4ADPA on a conservative basis. While adopting the cost of production of 4ADPA of the domestic industry, cost of major inputs as per the best usage of the domestic industry at international prices, conversion costs and SGA expenses of the domestic industry, and reasonable profit have been considered.*

*30. The Authority has further adjusted the cost of production and sale of PX-13 (6PPD) by the difference between the constructed international price of 4ADPA (computed on the basis of data of the domestic industry) and its actual purchase price of KPC. The revised cost of sales of PX-13 (6PPD) so constructed works out to US \$ \*\*\* per kg. At this adjusted cost of sales, the domestic sales of PX-13 (6PPD) made by KPC during the POI in this MTR fail to pass the OCT test. In view of the above, the Authority has constructed the normal value of PX-13 (6PPD) for Kumho Petrochemicals in terms of Section 9A (1) (c) (ii) of the Act as detailed below.*

*31. The Authority has calculated the normal value of the subject goods in the instant case by taking into account the cost of production of the subject goods in Korea RP based on the usage of 4ADPA as per KPC and the price computed on the basis explained in the above paragraph. The other costs (cost of other raw materials, conversion cost, SGA expenses, etc) of KPC as claimed and verified have also been taken into account. Further, reasonable profit has also been allowed. The Normal value for PX-13 (6PPD) thus computed works out to US \$ \*\*\* per K.G."*

41. With regard to determination of Normal Value for KPC in the present sunset review investigation, the Authority concludes as under:

- i) The situation in the present sunset review investigation has not undergone any major change from the previous two investigations, i.e., the original investigation and the midterm review investigation for the reasons that Kumho Petrochemicals continues to source majority of 4ADPA from the same non-market economy company with whom Kumho Petrochemicals Co Ltd had earlier reported to have special relationship and no facts or evidence have been brought before the Authority in the present sunset review investigation that the non-market economy status of the said company has undergone any change since the issuance of Final Findings in the original investigation and

midterm review investigation. From the questionnaire response filed by Kumho Petrochemicals in the present investigation, the Authority notes that in the POI, the total import of 4ADPA by the company is \*\*\* MT, out of which the company has imported \*\*\* MT (\*\*\*) from the same company Sinorgchem in China PR which has been considered by the Authority as a non-market economy country, and only \*\*\* MT (\*\*\*) has been imported from Solutia in European Union.

- ii) The Authority further notes that the domestic industry has also submitted the China Customs export data for the exports of 4ADPA to the world in the POI in this sunset review investigation. This data shows that China PR has exported a total of 21,153 MT of 4ADPA to the world (including Korea RP). Out of this, Sinorgchem, China PR alone has exported \*\*\* MT (\*\*\*) of 4ADPA to Korea RP where the only user of this raw material is KPC and only \*\*\*% has been exported to other countries. Therefore, Sinorgchem, with whom Kumho Petrochemicals Co Ltd had earlier reported to have special relationship, remains practically the major supplier of 4ADPA to KPC.
- iii) KPC has argued that there is no special relationship between KPC and Sinorgchem by which KPC gets 4ADPA at an extra discount. KPC has argued that when a particular buyer buys huge quantity in comparison to other buyers, then that particular buyer will certainly be at a 'different price'. However, such relationship is usual and if a buyer gets extra discount because of the quantity off-take that does not mean the arm's length transaction price is to be rejected. Therefore, both the parties negotiated the terms and prices from time to time and all purchases were made in the normal course of international trade. KPC also argued that it also procured 4ADPA from another company - Solutia Inc based in Europe during the POI and a comparison of the prices showed that the company has purchased 4ADPA at lower prices from Solutia in EU as compared to Sinorgchem, China PR. In this regard, the Authority notes from the questionnaire response of KPC that the company has purchased 4ADPA from \*\*\* in the POI in only two months at an average price of \*\*\* US\$ per kg and in the same two months from Sinorgchem at an average price of \*\*\* US\$ per kg. The Authority therefore holds that if it goes by the argument of KPC that when a particular buyer buys huge quantity in comparison to other buyers, then that particular buyer will certainly be given a special price, then why would Sinorgchem not sell 4ADPA to KPC at a price lower than that of \*\*\* as it has given \*\*\*% of the total requirement of 4ADPA of KPC. Again by the above logic of KPC, the Authority also sees no reason as to why \*\*\* offered 4ADPA to KPC at a price lower than that of Sinorgchem as KPC has not procured substantial quantity from \*\*\*. The Authority also sees no reason that if \*\*\* prices of 4ADPA to KPC are lower than that of Sinorgchem, then as to why KPC did not procure more quantity of 4ADPA from \*\*\* on regular basis.
- iv) The Authority notes that Aniline and Benzene are the two major raw materials for manufacturing 4ADPA. The price movement of Aniline and Benzene as per the DGCIS data from the period of original investigation to the present SSR investigation shows that the prices of Aniline have gone up over these periods from 1.33 US\$ per kg in the original investigation to 1.74 US\$ per kg in the present SSR investigation

and prices of Benzene have gone up over these periods from 1.00 US\$ per kg in the original investigation to 1.17 US\$ per kg in the present SSR investigation. However, Korea Customs data shows that the prices of 4ADPA at which China has exported 4ADPA to Korea RP instead of moving up in tune with the increase in the prices of its raw materials Aniline and Benzene, remained in the same price range over these periods from \*\*\* US\$ per kg in the original investigation to \*\*\* US\$ per kg in the mid term review investigation to \*\*\* US\$ per kg in the present SSR investigation. Therefore, the prices of 4ADPA at which China has exported 4ADPA to Korea RP cannot be relied upon.

- v) The Authority notes that the import prices of 4ADPA to India are also available with the Authority from the DGCIS import data. The DGCIS import data shows imports of 4ADPA during the original investigation and the present SSR investigation. These imports are from Germany and China PR. The import data shows that the import prices of 4ADPA from Germany, a market economy country, have gone up over these periods from 3.13 US\$ per kg in the original investigation to 3.48 US\$ per kg in the present SSR investigation and in comparison the import prices of 4ADPA from China, a non market economy country, show price of \*\*\* US\$ per kg in the original investigation and \*\*\* US\$ per kg in the present SSR investigation. On the other hand, as per China customs data for the POI of the present SSR investigation, China PR has exported 4ADPA to Korea RP at an average price of 2.46 US\$ per kg and to the rest of the countries at an average price of 3.13 US\$ per kg. Therefore, export price of 4ADPA from China PR, to either Korea RP or India or the rest of the world cannot be relied upon when compared to higher price from Germany, a market economy country.
  - vi) The Authority, therefore, concludes that the use of actual purchase price of 4ADPA by KPC from China PR, a non-market economy country would not reasonably reflect the cost associated with production of PX13 (6 PPD) by KPC in the ordinary course of trade.
  - vii) The Authority notes that in the original investigation there were imports from a market economy country. However, in the mid-term review investigation, there was no evidence of import of 4ADPA from a market economy country. Now, in the POI of the present SSR investigation, there is again evidence available showing international price of 4-ADPA from Germany as shown above. In the original investigation, the Authority had not considered the actual purchase price of 4ADPA by KPC from China PR and instead, adopted the import price in to India from a market economy country. Therefore, in the present SSR investigation also, the Authority has decided not to adopt the actual purchase price of 4ADPA by KPC from China PR, a non-market economy country for the reasons mentioned in the paras above and instead adopted the import prices of 4ADPA from Germany to India.
42. Taking note of these factors, the Authority has calculated the normal value in the instant case by taking into account the cost of production of the subject goods in Korea RP based upon the 4ADPA's international price of 3.48 US\$ per kg from Germany, a market economy country to India, after duly adjusting the same for the

difference in freight at the rate \*\*\* US\$ per kg and allowing other costs as verified. On the cost of sales so arrived at 5% has been considered towards profit. Normal value for PX-13 (6PPD) determined accordingly is mentioned in the Dumping Margin Table below.

### **Export Price**

#### **Kumho Petrochemicals Company Ltd (KPC)**

43. The Authority has determined the weighted average export price (CIF) to India as per the data provided by KPC in Appendix 2 and 3A of the exporter's questionnaire response. Price adjustments have been allowed on packing expenses, inland freight, overseas freight, port handling, customs brokerage, bank charges, credit expense, overseas insurances and sales commission. Accordingly, the export price at ex-factory level determined is mentioned in the Dumping Margin Table below.

#### **Kumho Petrochemicals Company Ltd through Daewoo International Corporation, Korea RP**

44. Daewoo International Corporation, Korea RP, filed questionnaire response and reported that the company exported 6PPD to Indian market. The company is, however, not a producer of the product under consideration and has exported the goods produced by KPC. The Authority has, therefore, determined dumping margin in respect of exports made by Daewoo International Corporation. Weighted average export price (CIF) to India has been determined as per data provided by the exporter in Appendix 2 and 3A of the exporter's questionnaire response. Price adjustments have been allowed on Overseas Insurance, Credit Expenses and Bank Charges. Accordingly, the export price at ex-factory level determined is mentioned in the Dumping Margin Table below.

#### **Non cooperating exporters from Korea RP**

45. The Authority notes that no other exporter from Korea RP has submitted exporter's questionnaire response. Therefore, the Authority adopted the lowest representative net export price to India of the cooperative exporters for non-cooperative exporters. The export price determined is mentioned in the Dumping Margin Table below.

### **DUMPING MARGIN**

46. Based on the above, the Normal Value, Export Price and Dumping Margin in respect of cooperative and non-cooperative exporters from the subject countries are summarized below.

## Dumping Margin Table

US\$/Kg

Product	Name of producer	Exporter	Normal Value	Export Price	Dumping Margin	Dumping Margin %	Dumping Margin % Range
PX-13	M/s Shandong Sinorgchem Technology Co. Ltd, China PR	M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR	***	***	***	***	30-40
	M/s Sinorgchem Co, Tai'an China PR	M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR	***	***	***	***	30-40
	Kumho Petrochemicals Company Ltd, Korea RP	Kumho Petrochemicals Company Ltd	***	***	***	***	30-40
	Kumho Petrochemicals Company Ltd, Korea RP	Daewoo International Corporation, Korea RP	***	***	***	***	30-40
	Non cooperating exporters from Korea RP		***	***	***	***	35-35

### Non Co-operating Exporters - China PR

Product under consideration	Normal Value (US\$/Kg)	Net Export Price (US\$/Kg)	Dumping Margin (US\$/Kg)	Dumping Margin (%)	Dumping Margin (% Range)
PX-13 (6PPD)	***	***	***	***	40-50
TDQ	***	***	***	***	20-30
PVI	***	***	***	***	20-30
TMT	***	***	***	***	25-35
MBT	***	***	***	***	20-30
CBS	***	***	***	***	20-30

## **ASSESSMENT OF INJURY AND EXAMINATION OF CAUSAL LINK**

### **Injury & Causal Link**

#### **Views of the exporters/importers/consumers and other opposing interested parties**

47. The following arguments have been advanced:

##### **ATMA**

- a. Each of the products should be evaluated individually and the impact of import on one product should not lead to a prejudicial effect on the other products.
- b. In spite of duty for the past 8 years, the domestic industry has not taken any steps to increase the capacity of the industry to meet the demand of the market and the new plant at Dahej is for 4ADPA manufacturing.
- c. Even if the domestic industry produces at 100% capacity they would only be able to cater to about 46% of the total demand of the market.
- d. The domestic industry stated that the PX-13 production capacity has increased to 14000 MT. However, the PX-13 Safeguard initiation notification showed that capacity is 8500 MT in 2012-13. Even assuming this is correct, it would mean increased capacity for two months in the POI and so the argument that domestic industry had the capacity to supply PX-13 to the entire user industry during the injury period is incorrect. Demand-supply gap exists for other rubber chemicals as well.
- e. The domestic industry exports 50% of their production.
- f. TDQ:
  - i. Imports of TDQ have decreased in the POI from 2009-10 by 27% while demand for PUC increased by 20%. The CIF price has increased.
  - ii. There was an increase in production and sales in both volume and value.
  - iii. As a result of the above increase, the market share of the domestic industry increased as well.
  - iv. The figures show that the domestic industry is in profit with the sales of TDQ.
  - v. There is no causal link since import volume has declined and CIF price increased for TDQ. Production, volume and value of sales and market share increased and profits were posted.
- g. CBS:
  - i. Volume of production and sales and sales realization increased for CBS over the injury period.
  - ii. Increase in domestic sales was in consonance with increase in domestic demand.
  - iii. There is an increase in CIF price of CBS by 40%.

- iv. Slight decrease in market share by the domestic industry is due to increase in share of imports by other countries. Market share of imports from China have decreased.
  - v. Based on figures from market sources, profit of Rs. 28.44 per kg is reported for CBS.
- h. PX-13:
- i. The SG data shows that there has been a significant increase in sales of the domestic industry as a percentage of total production.
  - ii. The domestic industry exports nearly 50% of their production hence, any decline in export sales would hamper their own production, which has seen a decline.
  - iii. The domestic demand for PX-13 had increased by 26% in the POI from 2009-10. However, the domestic industry can only cater to 46% of the total market and there has been no increase in installed capacity.
  - iv. Increase in imports of PX-13 in POI from subject countries was miniscule and market share decreased. Import price increased.
- i. No evidence of excess capacities with foreign producers given. Further, mere existence of surplus capacity cannot lead to conclusion of threat.
  - j. The fact that no other country has imposed measures cannot mean that surplus production will be diverted to India.
  - k. The domestic industry is not vulnerable since it has increased its production, volume and value of domestic sales, and market share. Market share of subject countries has declined, CIF price has increased. Hence, no likelihood of injury.

**Kumho Petrochemical Co. Ltd and Rishirop Polymers Pvt. Ltd.**

- a. the Applicant claimed that KPC had reported loss because of dumping of the subject goods in India but at the same time that turnover of the subject goods forms 1% of the total turnover of KPC.
- b. The PX-13 Safeguard petition and review initiation notification states that the Dahej plant set up for 10000 MTS of intermediaries went into production from November 2012 but at other places it is claimed that production commenced in March 2013.
- c. Business intelligence confirms the old plant is discontinued. The Authority is requested to verify since applicant claimed that 4ADPA is manufactured at both plants and final product at old plant.
- d. Setting up of a new plant requires examination of the following:
  - i. A likelihood determination under Article 11.3 entails an analysis of projected future events based on positive evidence available. In the context of the present review, the operation of the new plant at Dahej is of crucial importance.
  - ii. The applicant has claimed that it has achieved significant cost saving by undertaking production at Dahej. Computation of cost of production has to be done after consideration of the plant at Dahej. The heads

under which costs were saved must be examined to see whether it is because of best utilization of raw materials, etc. or other causes.

- iii. Any extraordinary costs involved in the Dahej plant must be excluded.
- e. Any determination of likelihood of injury must take into account the safeguard duty.
- f. After imposition of safeguard duty on PX-13, the applicant could not increase selling price, domestic sales or market share. It kept losing export market. It increased the cost of production and reduced the profitability during the period of Safeguard protection.
- g. Other factors of Injury:
  - i. Injury due to increased imports alleged in safeguards investigation.
  - ii. The share of other domestic producers with regard to domestic sales consistently increased in the years compared. This implies that the injury allegedly caused has not happened due to imports but internal market competition. Other producers are performing better and offering the subject goods at lower prices than the applicant.
  - iii. At least 50% of the imports of the subject goods are used to manufacture final goods which are exported to other countries. That portion of imported goods is imported with exemptions from anti-dumping duty, safeguard duty, basic customs duty and CVD. It is this portion of the imported subject goods which are exerting a downward pressure on the prices of the domestic industry goods.
  - iv. The Authority is to verify what proportion of installed capacity is earmarked for domestic and export production. Project reports by the applicant on the status of the Dahej plant must be submitted.
  - v. During FY 2012-13, applicant incurred costs on plants having capacity to produce 18,500MT of 4-ADPA whereas the limiting factor, capacity to produce only 8,500MT of PX-13, was not changed.
  - vi. DA may seek information from the jurisdictional Central Excise Commissioner regarding reporting of losses on sales by the DI. If the applicant has not reported its sales as loss-making before that authority, it cannot make the claim before the DA.
  - vii. Since the exports of the applicant decreased very sharply after 2009-10, the allocation of cost should be proportionate to the base year to make comparison for costs and profits for subsequent years. Applicant should provide methodology for allocation of cost on domestic and export production.
  - viii. The applicant claimed that imports from Europe need not be evaluated under other factors of injury since producers in Europe were exiting the market. The reason is heavy fines imposed on them for cartelization by the European Commission. Authority is requested to evaluate imports from Europe.
  - ix. The applicant had not established how factors such as production, profitability, capacity utilization, return on investment, productivity,

sales, demand supply gap, selling price have behaved and contributed to injury due to dumped imports.

- x. After communication of the information that the applicant is setting up/has set up a new plant at Dahej, it was requested that information relating to the exact installed capacity of the plant, how much of the installed capacity will be utilised for the production of the subject good for domestic consumption, and the exact earmarking of capacity to be employed for that purpose be verified as such information is crucial for a correct analysis to be undertaken. The percentage of installed capacity to be utilised for the manufacture of the subject good which is subsequently exported is also to be provided. It was also requested that the correct timeline of production at the new plant be established and that verification at the new plant be conducted to determine which manufacturing process is being carried on at which plant of the applicant. Additionally, it was submitted that a corresponding allocation in costs be made after scrutiny of the above information.
- xi. The applicant has claimed that its manufacturing plant was shut down for 190 days. It is submitted that even when the plant of the applicant was shut for 190 days in a year, which comes to more than half the year, the capacity utilisation of the applicant had increased from 75 indexed points in 2011-12 to 76 indexed points in the POI. The applicant, thus, has an extremely high rate of capacity utilisation even in the light of plant shutdowns as submitted by it.
- xii. The mutually contradictory claims of the applicant are also highlighted. The applicant has claimed that there was a lack of demand as well as the presence of inventories with it. However, from the petition, it is clear that domestic sales of the applicant underwent a significant increase and inventories are undergoing a decreasing trend.
- xiii. There is no injury to the applicant on account of sales, which has undergone an increasing trend throughout the injury period as well as the POI, with an increase from 100 indexed points in 2009-10 to 118 indexed points in the POI.
- xiv. Furthermore, there is no injury on account of landed price of the subject imports, which after the addition of safeguard duty is greater than the domestic selling price of the subject good in 2011-12 as well as in the POI. Despite the increase in the landed value and the provision of additional protection in the form of safeguard duty, the applicant has not been able to improve its performance. This is because it has intrinsic causes of injury which cannot be cured by the provision of any duty.

### **Views of the domestic industry**

48. The Domestic Industry has submitted that the subject goods from the subject countries have caused injury to the domestic industry as evident from the following:
- a. Petitioner considers that these are not inter se like products. Further, production facilities for different types of rubber chemicals are also dedicated. Therefore, petitioner considers that injury to the domestic industry can be assessed individually for each of the subject rubber chemical as has been done in the original investigation.
  - b. Apart from MBT and TMT, the demands of rest of the rubber chemicals (CBS, TDQ, PVI and PX-13) have shown a positive trend throughout the injury period.
  - c. The petitioner has considered imports from the base period of the original investigation in order to assess the trend of volume of imports pre and post imposition of anti-dumping duty.
    - i. Imports of PX-13 have increased throughout the period, despite the original duty and enhancement of duty following the mid-term review.
    - ii. Imports of TMT have increased when compared to the year 2003-04. The volume of imports has declined in the recent period, but still the imports of TMT have remained significant.
    - iii. Imports of MBT have increased when compared to the year 2003-04. The volume of imports has declined in the recent period, but still the imports of MBT have remained significant.
    - iv. Imports of CBS and PVC have increased throughout the period.
    - v. Imports of TDQ have increased till 2010-11 but declined thereafter. However imports have remained significant.
  - d. Share of imports from the subject countries with respect to each rubber chemical showed the following trends.
    - i. Imports of TMT in relation to total imports, production and consumption in India have declined throughout the injury period due to anti-dumping duty in existence.
    - ii. Imports of TDQ in relation to total imports have increased till 2011-12 but marginally declined during POI. Imports in relation to production have declined till 2011-12 and remained same thereafter during POI. Imports in relation to consumption have declined during the period.
    - iii. Imports of PX-13 in relation to total imports have increased till 2011-12 but marginally declined during POI. Imports in relation to total production have increased till 2011-12 but marginally declined during POI. Imports in relation to total consumption have increased till 2011-12 but marginally declined during POI.
    - iv. PVI imports in relation to total imports, production and consumption in India have increased significantly throughout the injury period.
    - v. CBS imports in relation to total imports declined in 2010-11, but started increasing thereafter during 2011-12 and further in the period of investigation. The imports in relation to production and consumption in

India declined in 2010-11, but started increasing thereafter during 2011-12 and further in the period of investigation.

- vi. Imports of MBT in relation to total imports and consumption in India have declined throughout the injury period. It is pertinent to note that it is due to anti-dumping duty in existence. The imports in relation to production in India declined in 2010-11, but started increasing thereafter during 2011-12 and further in the period of investigation. In the event of revocation of anti-dumping duty, the imports will increase at a significant rate.
- e. There is price undercutting by each type of rubber chemical imported from the subject countries, and either price depression or suppression.
- f. Production, capacity, capacity utilization and sales show injury as follows:
  - i. For TMT, the production and capacity utilization of the petitioner declined in 2010-11 but thereafter increased. The sales of the domestic industry declined throughout the period with a slight increase in the year 2010-11. However, the sale of the domestic industry has declined during period of investigation.
  - ii. For TDQ, the production and capacity utilization of the petitioner increased throughout the period. The sales of the domestic industry increased throughout the injury period.
  - iii. For PX-13, the production and capacity utilization of the petitioner declined throughout the injury period with a marginal increase during POI. The sales of the domestic industry increased throughout the injury period. The petitioner in order to sustain in the market due to dumped imports, offered sub optimal prices and hence the sales of the domestic industry have increased.
  - iv. For PVI, the production and capacity utilization of the petitioner increased till 2011-12 but thereafter declined in the period of investigation. The sales of the domestic industry increased throughout the injury period.
  - v. For CBS, the production of the petitioner declined in 2010-11 but thereafter increased. The sales and capacity utilization of the domestic industry showed the same trend as that of production.
  - vi. For MBT, the production of the petitioner increased till 2010-11 thereafter declined significantly. The sales of the domestic industry declined over the injury period.
- g. Profitability, return on investment and cash profits showed following trends.
  - i. For TMT, the profit per unit and PBIT of the domestic industry declined throughout the injury period. Cash profits showed the same trend as that of Profit/Loss. The return on investment also declined throughout the injury period.
  - ii. For TDQ, the profit per unit and PBIT of the domestic industry declined throughout the injury period. Cash profits showed the same

trend as that of Profit/Loss. The return on investment also declined throughout the injury period.

- iii. For PX-13, the profits of the domestic industry declined throughout the injury period, with significant losses during 2011-12 and the period of investigation. Cash profits showed the same trend as that of Profit/Loss. The cash profits of the domestic industry declined throughout the injury period and the domestic industry suffered cash losses during 2011-12 and the period of investigation. The return on investment also declined throughout the injury period to such an extent that the domestic industry suffered negative return on investments during 2011-12 and the period of investigation
- iv. In the case of PVI, the profits of the domestic industry declined throughout the injury period, with significant losses during the period of investigation. Cash profits showed the same trend as that of Profit/Loss. The cash profits of the domestic industry declined throughout the injury period and the domestic industry suffered cash losses during the period of investigation. The return on investment also declined throughout the injury period to such an extent that the domestic industry suffered negative return on investments during period of investigation.
- v. In the case of CBS, the profits of the domestic industry increased in 2010-11 but thereafter declined. Cash profits showed the same trend as that of Profit/Loss. The cash profits of the domestic industry increased in 2010-11 thereafter declined. The return on investment showed the same trend as that of profits.
- vi. In the case of MBT, the profit per unit and PBIT of the domestic industry declined throughout the injury period. Cash profits increased in 2010-11 but thereafter declined. The return on investment also declined throughout the injury period
- h. Market share in demand has shown the following trends:
  - i. TMT: Market share of the domestic industry has increased whereas that of imports from China has declined. This is a situation when the anti-dumping duty in existence. The situation is likely to reverse in the event of revocation of anti-dumping duty.
  - ii. TDQ: Market share of the domestic industry has increased whereas that of imports from China has declined. This is a situation when the anti-dumping duty in existence. The situation is likely to reverse in the event of revocation of anti-dumping duty
  - iii. PX-13: Market share of the domestic industry has remained stable whereas that of imports from China has declined. This is a situation when the anti-dumping duty in existence. However, market share of other Indian producers have increased.
  - iv. PVI: Market share of the domestic industry increased and that of imports materially increased over the injury period. However, the

market share of imports have increased upto 21% whereas the market share of domestic industry increased only by 3%.

- v. CBS: Market share of the domestic industry declined despite existence of anti-dumping duty.
- vi. MBT: Market share of the domestic industry has increased whereas that of imports from China has declined. The situation is likely to reverse in the event of revocation of anti-dumping duty.
- i. Employment, wages and productivity have shown the following trends:
  - i. TDQ: The employment with the domestic industry has declined in the period of investigation. Wages paid have shown normal wage growth till 2011-12 but declined during period of investigation. Productivity per day has also shown an increase.
  - ii. PX-13: The employment with the domestic industry has increased till 2011-12 but thereafter declined in the period of investigation. Wages paid have shown normal wage growth. Productivity per day has declined till 2011-12 and then marginally increased during the period of investigation.
  - iii. PVI: The employment with the domestic industry has declined in the period of investigation. Wages paid have shown normal wage growth. Productivity per day has also shown an increase with a marginal decline in the period of investigation.
  - iv. CBS: The employment with the domestic industry has increased throughout the period. Wages paid have shown normal wage growth. Productivity per day has also shown an increase.
  - v. TMT and MBT: The production of TMT and MBT is done through job workers. Hence there are no dedicated employees for production of these rubber chemicals.
- j. Inventories have shown the following trends:
  - i. TMT: The inventory levels of the domestic industry have declined till 2011-12 but thereafter increased in the period of investigation. Stock as no of days sales have declined till 2011-12 but thereafter declined in the period of investigation
  - ii. TDQ: The inventory levels of the domestic industry have increased throughout the period. Stock as no of days sales have increased also increased throughout the period.
  - iii. PX-13: The inventory levels have increased till 2010-11 and started declining thereafter. The Stock as no of days sales have also remained significant in the period of investigation.
  - iv. PVI. The inventory levels have declined during 2010-11 but thereafter increased. However, the Stock as no of days sales have declined till 2011-12 and increased in the period of investigation
  - v. CBS: The inventory levels of the domestic industry have increased in 2011-12 but thereafter declined in the period of investigation. The

Stock as no of days sales have also remained significant in the period of investigation

- vi. MBT: The inventory levels of the domestic industry have increased throughout the injury period with a significant increase during period of investigation. Stock as no of days sales have also increased throughout the period.
- k. Growth of the domestic industry in terms of sales, production, and capacity utilization was positive whereas growth in respect of profits, return on investment, cash profits and inventories was negative.
- l. There is likelihood of continuation and intensification of injury in the event of revocation of anti-dumping duty due to excessive production capacities held in the subject countries, the vulnerability of the domestic industry in terms of its performance in the event of revocation, price attractiveness of the Indian market, the magnitude of price undercutting in the event of revocation, and there has been an increasing trend among foreign chemicals manufacturers to set up factories in China. Further, Solutia Inc., Jiangsu Sinorgchem Technology Co., Ltd., and Korea Kumho Petrochemical Co., Ltd. announced that they have reached a global settlement to resolve all disputes among them involving Solutia's patents for processes to produce 4-ADPA. Under the terms of the settlement, Solutia grants Sinorgchem and KPC licenses to manufacture 4-ADPA under Solutia's patents, which do not expire until 2019. As licensees, Sinorgchem and KPC are also granted certain rights to enforce those patents.
- m. There is no other factor causing injury to the domestic industry since:
  - i. Imports of product under consideration from other countries are either negligible or the export prices are higher.
  - ii. There is no contraction in demand of the each of the rubber chemicals during POI except TMT and MBT.
  - iii. The pattern of consumption with regard to the each of the rubber chemicals has not undergone any change.
  - iv. There is no trade restrictive practice which could have contributed to the injury to the domestic industry.
  - v. Technology for production of the product has not undergone any change.
  - vi. The petitioner has exported the product under consideration. However, the claimed injury to the domestic industry is on account of domestic operations.
- n. There is a clear causal link for the following reasons:
  - i. Imported product is entering the Indian market at dumped prices.
  - ii. Imported product was undercutting the prices of the domestic industry. Resultantly, the domestic industry has been prevented from increasing its prices in proportion to increase in cost of sales.
  - iii. Consequently, the domestic industry has to face deterioration in profits, PBIT, return on capital employed and cash profits.

- iv. Growth of the domestic industry became negative in respect of a number of parameters.
- o. With respect to the argument that the domestic industry did not take steps to increase capacity, Indian industry was in a position to meet the entire demand for all the rubber chemicals in the country. Imports were not necessitated for this reason. While some share of demand (approx. 12-15%) may be because of duty exemption granted by the Government of India, demand to the extent of 55-62% has been met by imports. Statistics published by ATMA show that exports of tyres from India are hardly in the region of 12-15% of total industry's production.
- p. If Indian capacity is taken into account, there is sufficient capacity in the country to cater to Indian demand. In the case of CBS, if duty free imports are reviewed, there is no demand-supply gap.
- q. With respect to PX-13 capacity, the installed capacities with the domestic industry till investigation period were 8500 MT. With commencement of production at Dahej, the capacity of the domestic industry has got enhanced to 14000 MT.
- r. Exports for the domestic industry are a matter of compulsion. The export price of NOCIL is lower than the price at which NOCIL is selling the product in the Indian market. There is no contractual obligation on NOCIL to earmark its capacities to the foreign consumers. NOCIL's first preference is to get the order from domestic market and sell to them. Further, it is a case where consumers place orders and domestic industry supplies the material and so where it was not getting orders, it had to look to international markets.
- s. While performance of the domestic industry with respect to TDQ improved in terms of production, capacity utilization, market share, domestic sales volumes, export sales volumes; performance of the domestic industry deteriorated in terms of inventories, profit/loss, return on investment and cash profits. Further, imports were undercutting the domestic price which has led to price suppression. Further, increase in cost of production has been on account of increase in raw material cost.
- t. While performance of the domestic industry with respect to CBS increased in terms of production, capacity utilization, market share, domestic sales volumes, export sales volumes, performance of the domestic industry deteriorated in terms of inventories, profit/loss, cash profits, return on investment. Imports were undercutting the domestic price which has led to price suppression. Further, the injury margin is significantly positive and higher than that in the original investigation.
- u. The injury to the domestic industry with respect to PX-13 is evident in decline in capacity utilization, production, market share, profits, return on investment and cash flow and increase in inventories.
- v. Responding exporters from Korea RP and China have not disputed existence of surplus capacities in the exporting countries but ATMA is disputing the same.

- w. The fact that subject foreign producers are faced with surplus capacities in itself is sufficient to show that such surplus production will be diverted to the Indian market in the event of cessation of anti-dumping duty. It is a simple business situation that a producer with unutilized capacity will look for market where product can be sold.
- x. Vulnerability of the domestic industry has to be seen in the absence of the measures. The fact that import price is lower than domestic industry prices clearly establishes that the domestic industry is vulnerable in the event of cessation of antidumping duties.
- y. In tyre segment, there are about eleven large consumers of the product who are procuring various raw materials from various sources on the basis of the relative price being offered by various suppliers. Thus, the domestic industry is clearly vulnerable to injury.
- z. The domestic industry did not state during the public hearing that the dumping of the product by the company led to financial losses to the company. In fact, the domestic industry quoted from their annual report and stated that the company has stated to have suffered financial losses in specialty chemicals.
- aa. With respect to KPC's argument regarding the Dahej plant, the petitioner has nowhere stated that the plant went into commercial production in November, 2012. The plant commenced trial production in November, 2012 and commercial production in March, 2013.
- bb. NOCIL was earlier producing 4NDPA-4ADPA and PX-13 at the old plant. Consequent to setting up plant at Dahej, the process of converting 4-NDPA to 4-ADPA is not required, as Dahej is manufacturing 4-ADPA. The company is now producing PX-13 at the old plant after getting the intermediate 4-ADPA from the new plant.
- cc. With respect to the argument that analysis of projected future events is required, the Authority is required to determine the parameters in the present case based on the period of investigation. Since there is significant imports into the country during the relevant period and these imports are at dumped price which has caused injury to the domestic industry, the events occurred after period of investigations are totally irrelevant.
- dd. The petitioner never stated that production at Dahej has led to significant cost savings. In fact, cost of production of the petitioner at present is significantly higher as compared to the cost of production in the past. Further, the Dahej plant is totally irrelevant upto the POI. No costs of the plant have been included in the analysis.
- ee. With respect to the arguments concerning safeguard duty, the safeguard duty was imposed in such a manner that it was payable only if anti-dumping duty was less than safeguard duty.
- ff. It was argued that the petitioner could not increase prices despite safeguard duty. The petitioner has not been able to gain market share to the extent it could, because exporters have absorbed the duties. The petitioner is losing export market because of significant dumping by the subject exporters in the

export market as well. Access to low priced 4-ADPA to KPC is helping KPC in globally dumping the product. The cost of production of the petitioner has not increased because of reduction in exports. In fact, significant proportion of the cost of production is a variable cost.

- gg. With respect to dual remedy, injury to the domestic industry is because of imports. To the extent these imports are dumped imports, the petitioner is entitled to dumping duties. Since such dumping duty does not fully address the injury suffered by the domestic industry, the domestic industry has requested for imposition of safeguard duty in order to cover the unaddressed injury.
- hh. With respect to internal market competition, Lanxess had earlier shutdown its production in India temporarily to shift its plant from one location to another. During this period, Lanxess resorted to imports, and sales by Lanxess are included in the imports and market share of imports during this period. After recommencing the production at the new location, Lanxess has been selling from its own production. This sale has been reported as sales by domestic producer. Since all these sales have been made by Lanxess, this should be seen together whether these are from production or through imports.
- ii. It would be seen that the market share of Lanxess has increased whereas the market share of other Indian producer has declined, clearly showing that the market share of other Indian producers as whole, has increased due to Lanxess started production once again instead of importing.
- jj. It is factually incorrect that the 50% of the imports are under duty exemption scheme. In fact, exports of tyre industry are in the region of 12-15% as established by the statistics published by ATMA. Further, there are significant imports on duty paid basis where domestic industry could clearly sell the product. The duty paid imports being made by consumers are clearly causing volume injury to the domestic industry. Further, the imports whether duty paid or duty free have adverse price effect on the domestic industry, as the domestic industry fixes its price on the basis of import price parity. Thus, even if 100% of the exports are under duty exemption scheme, it will have price effect on the domestic industry. It is undisputed that the domestic industry prices are fixed on import parity basis.
- kk. The petitioner does not earmark capacity for export market. Since price in the domestic market is higher, the first preference for the domestic industry is the domestic market.
- ll. It was argued that during FY 2012-13, applicant incurred costs on plants having capacity to produce 18,500MT of 4-ADPA whereas the limiting factor, capacity to produce only 8,500MT of PX-13, was not changed. The petitioner incurred no expense in the new plant which has been included in the cost of production claimed in the data given to the Designated Authority. In fact, none of the expenses incurred at Dahej have been included in the cost computation given to the Designated Authority.
- mm. It was argued that since the exports of the applicant decreased very sharply after 2009-10, the allocation of cost should be proportionate to the base year to

make comparison for costs and profits for subsequent years. This claim is not supported by Annexure-III which provides for determination of cost of production for the quantities produced.

- nn. With respect to the need for examining imports from the EU, imports of PX-13 are attracting anti-dumping duty. Thus, these imports are imports from dumping countries which are now attracting anti-dumping duty. These are not non-dumped imports. Under the Rules, the authority is required to evaluate impact of non-dumped imports.

### **Examination by the Authority**

49. The Authority has examined the submissions and issues raised by the interested parties with regard to injury to the domestic industry as under:-

- a. With respect to the argument that each of the rubber chemicals should be evaluated separately, it is noted that a number of different types of rubber chemicals are involved in the present sunset review investigation. These types are not like products *inter se*. Since the production facilities for the different types of rubber chemicals are dedicated, the Authority has examined injury to the domestic industry individually for each of the subject rubber chemical as has been done in the original investigation.
- b. With respect to the argument that the around 50% of the imports are made under duty exemption scheme and domestic industry has not increased capacity despite duties in force, the Authority notes that these interested parties provided no evidence to establish the same and the domestic industry contended that approximately 12-15% of the demand may be met by imports because of duty exemption granted by the Government of India where tyres are exported. Information on tyres exports provided by the domestic industry showed that exports by tyre industry, barring Ceat Ltd and Balakrishna were in the region of 3-16%. Exports by Ceat are in the region of 22%. However, imports of 6PPD constituted 55-62% of demand of the product in the country.
- c. With respect to the argument that even if the domestic industry produces at 100% capacity they would only be able to cater to about 46% of the total demand of the market, the Authority notes that (i) capacity for the product under consideration in India as a whole should be considered and compared with demand during the investigation period for the purpose and comparison with capacity of the domestic industry is inappropriate, (ii) the present capacity with the domestic industry remained significantly unutilized and, therefore, demand-supply gap would not justified the present level of imports, (iii) Merchem Ltd has stated that it has not been able to produce and sell in view of significantly low priced imports and the capacities with the company have remained almost completely unutilized, (iv) AD Rules do not require that the domestic industry must meet the demand of the user industry for getting redressal to its injury on account of dumping.

- d. With respect to exports by the domestic industry of the PX-13, the domestic industry contended that it had to export to minimize losses. The Authority notes that export price of domestic industry were always lower than the domestic selling price but higher than the price at which such goods are imported into India. No evidence has been brought on record to show that domestic industry has refused to sell in domestic market in preference to export market.
- e. With respect to capacities with foreign producers, the Authority notes that the domestic industry has provided information in its petition regarding both the capacities with the foreign producers in the subject countries and the demand for the respective rubber chemicals in those countries. Hence, the Authority notes that there are considerable excess capacities with the foreign producers in the subject countries and that with the revocation of the existing anti-dumping duties, there is a likelihood of those volumes being diverted to India at dumped prices, causing material injury to the domestic industry.
- f. KPC highlighted that the turnover of the subject goods forms 1% of the total turnover of KPC and so losses of KPC could not be a result of dumping by the company. The Authority notes the actual statement from the Annual Report of KPC for the year 2012 which is as follows:

*“..... Our specialty chemicals business saw its first loss in three years due to intensifying competition driven by the lower price strategy of certain competitors.....”*

- g. With respect to the plant of NOCIL at Dahej, the Authority notes that the plant commenced trial production in November, 2012 and commercial production in March, 2013. NOCIL was earlier producing PX-13 through 4NDPA at the old plant. Once the new plant at Dahej is commercialized, it was no longer required to convert 4-NDPA to 4-ADPA. NOCIL now (after the investigation period) produces PX-13 at its Thane plant using the intermediate 4-ADPA manufactured at the new plant at Dahej. It is noted that contrary to the claim of the responding party, the cost of production of the petitioner at present is significantly higher than the cost of production in the past. In any case, costs at the Dahej plant are not relevant in the present investigation. Therefore, there are no ‘extraordinary costs’ that need to be addressed in relation to the Dahej plant.
- h. One of the responding parties has claimed that any determination of likelihood of injury must take into account the safeguard duty. Further, the Authority notes that safeguard duty was only made payable where anti-dumping duty was less than safeguard duty.
- i. With respect to the argument that the domestic industry could not improve its position despite duties on PX-13, the Authority notes that the exporters/producers from the subject countries appear to have absorbed the duties, as established by the increased dumping margin and injury margin in the present investigation period.
- j. With respect to the domestic industry claiming that injury was due to increased imports in the safeguards investigation, the Authority notes that this does not

disentitle the petitioner from seeking extension of anti-dumping duty to address injury being caused by dumping.

- k. With respect to internal market competition, the Authority notes the argument of the domestic industry that Lanxess had shut down production in India temporarily in order to relocate its plant. During this time it had resorted to imports. Once it had relocated its plant, production resumed and imports were no longer required. Hence, the increase in production by Lanxess was examined in this light. The market share of other Indian producers has declined. Further, there has been positive price undercutting by subject countries imports of the domestic selling price in the period of investigation.
- l. The Authority notes that the domestic industry does not specifically earmark its capacity for export and domestic production. The Authority notes the claim of the domestic industry that since domestic prices are higher, the first preference is to sell in the domestic market and it is only in the event that it is unable to do so that it exports the product under consideration.
- m. It was claimed by one of the interested parties that during FY 2012-13, applicant incurred costs on plants having capacity to produce 18,500MT of 4-ADPA whereas the limiting factor, capacity to produce only 8,500MT of PX-13, was not changed. The Authority notes in this regards that the information submitted by the petitioner and verified by the Authority does not include expenses incurred at the Dahej plant.
- n. With respect to the Authority seeking information from the Central Excise Commissioner regarding the reporting of losses on sales by the domestic industry, the Authority considers that such recourse is not necessary or warranted in the present case. The Authority has verified the data provided and considers that the domestic industry has suffered losses with respect to the product under consideration.
- o. One of the parties has claimed that since the exports of the applicant decreased very sharply after 2009-10, the allocation of cost should be proportionate to the base year to make comparison for costs and profits for subsequent years. The Authority notes in this regard that profit/loss in the product under consideration is required to be determined after considering the expenses and production in the product. The petitioner does not have separate or earmarked capacities for the domestic and export markets.
- p. The applicant claimed that imports from Europe need not be evaluated under other factors of injury since producers in Europe were exiting the market. The authority notes that imports from Europe were attracting anti-dumping duty and therefore, these are dumped imports.
- q. As regards investment made by the petitioner at Dahej, the authority notes that the petitioner has set up a plant for production of 4-ADPA, an intermediate in the production of the product under consideration. The said plant commenced commercial production after the investigation period. Further, none of the expenses incurred by the petitioner at Dahej have been included in expenses considered for the product under consideration. The profit/loss relied upon in the

present determination does not include any expense incurred by the petitioner at Dahej. It is further noted that the petitioner has claimed that its capacity for PX-13 has increased to 14,000 MT after commencement of production at Dahej plant. The petitioner provided a Charatered Engg. Certificate in this regard.

50. A number of different types of rubber chemicals are involved in the present sunset review investigation. These types are not like products *inter se*. Since the production facilities for different types of rubber chemicals are dedicated, the Authority has examined injury to the domestic industry individually for each of the subject rubber chemical as has been done in the original investigation.

### **Factors other than dumped imports**

51. The following are the submissions on factors other than dumped imports made by the opposing interested parties:

- (i). The applicant had filed a petition for the extension of safeguard duty in existence on the subject good. A safeguard duty is sought by domestic producers when injury suffered by them is not due to dumped imports. In light of the same, the applicant is required to demonstrate and quantify the injury due to imports other than the dumped imports.
- (ii). The share of other domestic producers with regard to domestic sales consistently increased from 100 in 2009-10 to 132 in 2010-11, 168 in 2011-12 to 173 in the POI. This was accompanied by a decline in NOCIL's sales from 100 in 2009-10, 90 in 2010-11, 78 in 2011-12 to 76 in the POI. The existence of inter se competition between the domestic producers is the real cause of injury because other domestic producers who are operating in the same market conditions are able to perform relatively better than the applicant. This approach is supported by the ruling of the Appellate Body in *Egypt - Definitive Anti-Dumping Measures on Steel Rebar from Turkey, WT/DS211/R* (1 October 2002) where the Appellate Body ruled that the investigating authority is required to evaluate the condition of the domestic industry overall.
- (iii). Fifty percent of the subject goods was used in the manufacturing of final product which are subsequently exported out of India. That portion of imported goods are exempted from all duties including anti-dumping, safeguard, Basic Customs Duty as well as CVD (equal to excise duties). Therefore, it was argued that the landed value of such portion of imported goods is much lower due to exemptions and is exerting a direct downward price pressure on prices of the subject good produced by the applicant. The investigating authority is required to separate the injurious effects of the dumped imports and the injurious effects of other factors; otherwise such

an analysis will not attribute the injurious effects to the correct causes. The judgment of the General Court (Seventh Chamber) of the European Union in *Gul Ahmed Textile Mills v Council*, Case C-638/11 (27 Sept. 2011) for the above principle of law is relied upon.

- (iv). The imports of the subject goods originating in or exported from Europe are also to be evaluated by the Authority as “other factors of injury”. Such an analysis must not be neglected due to contentions of the applicant that rubber manufacturers in Europe are exiting the market. Any such exits are only due to the heavy fines imposed on the manufacturers of rubber chemicals in Europe by the European Commission for cartelisation.
- (v). If the applicant is claiming losses, then the Authority may seek information from the jurisdictional Central Excise Commissionerate regarding reporting of such losses to them. If the applicant paid Central Excise duty on transaction value then that value itself should be taken to be “profit making sales” unless it was reported to the Central Excise Authorities that the value mentioned in the invoices was the loss making sales. If the applicant had not claimed its selling prices to be loss making prices before the Central Excise authorities, such a claim cannot be made before the DGAD also.
- (vi). It is submitted that the applicant is an incapable and inefficient producer of the subject good and is not capable of producing and supplying the sufficient quantity of 6PPD even if protection is given as anti-dumping or safeguard duty. The above contention is supported with the fact that after the imposition of safeguard duty, the price at which PX-13 was available to the user industry increased by 30% than at which it was available earlier. As a result of imposition of the safeguard duty, the applicant also had ample opportunity to increase its sales price. However, it could neither increase the selling price nor its sales volume/market share and lost the export market at an increased rate as well. It is submitted that the applicant suffers from intrinsic cause of injury and thus, the duty must not be extended.

### **Examination by the Authority**

52. The Authority has examined the submissions and issues raised by the opposing interested parties on factors other than dumped imports as under:

- i) As regards the contention that the petitioner has also sought imposition of safeguard duty, the authority notes that both anti dumping duty and safeguard duty can be imposed on a product at the same time. The only bar is that the domestic industry should not be granted dual protection for the same injury. It is noted in this regard that the safeguard duty imposed by the Central Govt. clearly stated that the quantum of

anti dumping duty shall be reduced from the quantum of safeguard duty and only the difference shall be charged as safeguard duty. It is thus noted that the quantum of anti dumping duty and safeguard duty has not exceeded total quantum of injury to the domestic industry.

ii) As regards the contention that about 50% imports have been reported under duty exemption category where customs duty, anti dumping duty and safeguard duty does not apply, it is clarified that the authority has determined weighted average price undercutting.

iii) As regards imports from Europe, the authority notes that imports from Europe are already subject to anti dumping duty. Under the rules, the authority is required to segregate injury to the domestic industry from sources not resorting to dumping. Injury to the domestic industry from other dumped imports is not required to be segregated.

iv) As regards reporting of losses to Central Excise authorities and payment of excise duty, the authority notes that it has adopted verified information and found that the domestic industry has suffered financial losses in production and sale of the product under consideration in the domestic market.

v) As regards contention that the domestic industry is incapable and inefficient producer, the authority notes that the anti dumping duty is recommended at the lower of dumping margin and injury margin. Further, the performance of the domestic industry has shown deterioration over the period. It is not the contention of the interested parties that the domestic industry was earlier an efficient and capable producer and has now become an incapable & inefficient producer. The performance of the domestic industry has deteriorated with the same level of efficiencies.

vi) As regards the contention that the domestic industry is not capable of producing & supplying the goods, the authority notes that the petitioner has been producing some of its products at significantly higher level of capacity utilisation than the capacity utilisations of the responding exporters. It is found that the domestic industry had capacity utilisation of 85% in 6PPD in 2009-10. The interested parties have not provided evidence to show that the domestic industry has not been able to produce and supply goods against confirmed orders placed by the purchasers.

vii) As regards the contention that the domestic industry has not been able to increase its prices even after imposition of safeguard duty (PX-13), the authority has analysed the landed price of imports after addition of customs duty, anti dumping duty and safeguard duty have remained below the selling price of the domestic industry.

#### Cumulative Assessment of Injury

53. As per annexure-II (iii) of the Rules, in case imports of a product from more than one country are being simultaneously subjected to Anti-Dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that

b. The margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the

- imports from each country is 3% of the imports of like article, or where the export of individual countries is less than 3%, the imports collectively accounts for more than 7% of the imports of like article, and
- c. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.
54. In the instant case, investigations in respect of 6PPD are from more than one country. The Authority, therefore, examined whether the injury to the domestic industry must be determined cumulatively from these two sources in respect of 6 PPD. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%. Cumulative assessment of injury is appropriate in respect of these two countries in view of the followings-
- i. The subject goods have been imported from the subject countries under the same tariff classification;
  - ii. The Authority has found that the imported subject goods are commercial substitutes of the domestically produced 6 PPD.
  - iii. The information furnished to the Authority gives a reasonable indication that the exports made from the subject countries compete in the same market and are like products.
  - iv. Imports from Korea RP and China have been made by same category of customers who are buying the product from the domestic industry.
55. The Authority holds that it is appropriate to cumulatively assess the effect of dumped imports of 6 PPD on the domestically produced like article

#### Assessment of market share and share in demand

56. For the calculation of the domestic consumption/demand of the product under consideration, the Authority has taken the sum of Indian production and imports from all sources. Exports made by the Indian producers have been excluded from the computation in order to ascertain apparent consumption.
57. It is noted that domestic industry has determined imports volume and value based on data collected from secondary source, i.e., International Business Information Services, Mumbai (IBIS). The domestic industry has earlier submitted transaction wise import information in their submission. During the investigation, the Authority requested DGCI&S to provide the said information on transaction to transaction basis, which was received by the Authority. It is noted that since there is no dedicated code for the product under consideration, imports of the products under consideration reported by the petitioner based on IBIS shows much higher volume of imports as compared to the volume of imports reported in DGCI&S and, therefore, information from DGCI&S could not be used and so the Authority has considered import data as reported in IBIS.
58. Demand in India are as follows:

Product Type	Unit	2009-10	2010-11	2011-12	Jan-Dec 2012
MBT	MT	1,450	1,477	1,385	1,372
CBS	MT	3,171	3,513	4,325	4,263
TDQ	MT	6,581	7,973	8,135	7,923
PVI	MT	1,717	1,694	1,569	1,907
TMT	MT	1,843	1,591	1,744	1,679
PX-13	MT	14,311	14,851	16,003	18,033

59. The Authority notes that apart from MBT and TMT, the demand for rest of the rubber chemicals (CBS, TDQ, PVI and PX-13) have shown a positive trend over the injury period.

#### Volume Effect of Dumped Imports

60. With regard to the volume of the dumped imports, it has been examined that whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. Annexure II (ii) of the Anti Dumping Rules provides as under:

*“While examining the volume of dumped imports, the said authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India”*

#### Import volumes and market share

61. The volume of imports is provided in the table below:

Imports Volume	Unit	2009-10	2010-11	2011-12	POI
<b>MBT</b>					
China	MT	865	797	768	550
Countries Attracting anti dumping duty(ADD)	MT	-	-	-	-
Other Countries	MT	4	18	70	265
Total Imports	MT	869	816	838	815
<b>CBS</b>					
China	MT	929	604	1,023	1,135
Countries Attracting ADD	MT	-	-	-	-
Other Countries	MT	356	705	1,034	832
Total Imports	MT	1,285	1,309	2,057	1,967
<b>PVI</b>					
China	MT	707	830	985	1,192

Countries Attracting ADD	MT	-	-	-	-
Other Countries	MT	1	0	-	1
Total Imports	MT	707	831	985	1,193
<b>PX-13</b>					
China	MT	1,831	1,970	3,364	2,569
Korea	MT	6,030	5,541	4,504	5,726
Subject Country	MT	7,860	7,511	7,868	8,294
Countries Attracting ADD	MT	577	1,009	815	2,511
Other Countries	MT	1,392	1,243	1,052	286
Total Imports	MT	9,828	9,763	9,735	11,092
<b>TDQ</b>					
China	MT	1,063	1,217	887	781
Countries Attracting ADD	MT	-	-	-	-
Other Countries	MT	1,256	1,035	12	317
Total Imports	MT	2,320	2,253	899	1,098
<b>TMT</b>					
China	MT	572	352	324	244
Countries Attracting ADD	MT	-	-	-	-
Other Countries	MT	220	144	248	299
Total Imports	MT	792	496	572	543

62. It is noted from the table above:

- a. Imports of PX-13, PVI, CBS have increased over the period despite the imposition of anti-dumping and safeguard duties (PX-13).
- b. The imports of TMT, MBT and TDQ have declined in the recent period, but remained significant despite imposition of anti-dumping duty.

63. The share of imports is provided in the table below:

Market Share in Imports	Unit	2009-10	2010-11	2011-12	POI
<b>MBT</b>					
China	%	99.51	97.74	91.70	67.48
Countries Attracting ADD	%	-	-	-	-
Other Countries	%	0.49	2.26	8.30	32.52
Total Imports	%	100.00	100.00	100.00	100.00
<b>CBS</b>					
China	%	72.26	46.15	49.74	57.69
Countries Attracting ADD	%	-	-	-	-

Other Countries	%	27.74	53.85	50.26	42.31
Total Imports	%	100.00	100.00	100.00	100.00
<b>PVI</b>					
China	%	99.89	99.97	100.00	99.95
Countries Attracting ADD	%	-	-	-	-
Other Countries	%	0.11	0.03	-	0.05
Total Imports	%	100.00	100.00	100.00	100.00
<b>PX-13</b>					
China	%	18.63	20.18	34.56	23.16
Korea RP	%	61.35	56.76	46.26	51.62
Subject Countries	%	79.97	76.94	80.82	74.78
Countries Attracting ADD	%	5.87	10.33	8.37	22.64
Other Countries	%	14.16	12.73	10.81	2.58
Total Imports	%	100.00	100.00	100.00	100.00
<b>TDQ</b>					
China	%	45.84	54.04	98.72	71.15
Countries Attracting ADD	%	-	-	-	-
Other Countries	%	54.16	45.96	1.28	28.85
Total Imports	%	100.00	100.00	100.00	100.00
<b>TMT</b>					
China	%	72.21	70.95	56.61	44.95
Countries Attracting ADD	%	-	-	-	-
Other Countries	%	27.79	29.05	43.39	55.05
Total Imports	%	100.00	100.00	100.00	100.00

64. Imports from the subject countries in relation to total imports, Indian production and consumption in India was as follows:

Particulars	Unit	2009-10	2010-11	2011-12	POI
<b>MBT</b>					
Import volumes	MT	865	797	768	550
Share of imports in relation to					
Ø Total imports	%	99.51	97.74	91.70	67.48
Ø Production	%	***	***	***	***
Ø Consumption	%	59.63	54.00	55.46	40.07
<b>CBS</b>					
Import volumes	MT	929	604	1,023	1,135
Share of imports in relation to					
Ø Total imports	%	72.26	46.15	49.74	57.69
Ø Production	%	***	***	***	***
Ø Consumption	%	29.28	17.19	23.66	26.62
<b>PVI</b>					

Import volumes	MT	707	830	985	1,192
Share of imports in relation to					
Ø Total imports	%	38.60	42.15	29.28	46.40
Ø Production	%	***	***	***	***
Ø Consumption	%	41.15	49.01	62.78	62.50
<b>PX-13</b>					
Import volumes	MT	7,860	7,511	7,868	8,294
Share of imports in relation to					
Ø Total imports	%	79.97	76.94	80.82	74.78
Ø Production	%	***	***	***	***
Ø Consumption	%	54.92	50.58	49.17	46.00
<b>TDQ</b>					
Import volumes	MT	1,063	1,217	887	781
Share of imports in relation to					
Ø Total imports	%	45.84	54.04	98.72	71.15
Ø Production	%	***	***	***	***
Ø Consumption	%	16.16	15.27	10.91	9.86
<b>TMT</b>					
Import volumes	MT	572	352	324	244
Share of imports in relation to					
Ø Total imports	%	72.21	70.95	56.61	44.95
Ø Production	%	***	***	***	***
Ø Consumption	%	31.02	22.11	18.55	14.54

65. It is noted from the tables above:

- a. TMT – the imports in relation to total imports, production and consumption in India have declined throughout the injury period.
- b. TDQ – the imports in relation to total imports have increased till 2011-12 but declined during the period of investigation. Imports in relation to production and consumption have declined during the period.
- c. PX-13 – the imports in relation to total imports remained almost at the same level, but declined during the period of investigation. Imports in relation to production have increased over the injury period. Imports in relation to consumption declined over the injury period.
- d. PVI – the imports in relation to total imports, production and consumption in India have increased throughout the injury period.
- e. CBS – the imports in relation to total imports declined in 2010-11, but started increasing thereafter during 2011-12 and further in the period of investigation. The imports in relation to production and consumption in India declined in 2010-11, but started increasing thereafter during 2011-12 and further in the period of investigation.

- f. MBT – the imports in relation to total imports and consumption in India have declined throughout the injury period. The imports in relation to production in India declined in 2010-11, but started increasing thereafter.

66. In respect of 6PPD, it has been contended that whereas the market share of other domestic producers increased, that of domestic industry declined. This implied existence of inter se competition amongst domestic producers causing injury to the domestic industry. The domestic industry contended that imports of 6PPD include imports by Lanxess. Lanxess imported the product for some time, as it was shifting its production facilities to another location. Therefore, the imports made by Lanxess and production by the company should be seen together. The authority examined the imports and market share in case of 6PPD in detail. The Authority examined import data of DGCI&S and found that the same shows imports of 6PPD by Lanxess. The Authority examined the market share of various parties by considering market share of Lanxess cumulatively from imports and production. It is found that the share of Lanxess has remained almost at the same level over the period. The following table may be seen.

Market Share in Demand	Unit	2009-10	2010-11	2011-12	POI
China	%	12.79	13.27	21.02	14.24
Korea	%	42.13	37.31	28.14	31.75
Subject Country	%	54.92	50.58	49.17	46.00
Countries Attracting anti-dumping duty	%	4.03	6.79	5.09	13.92
Share of all dumping countries	%	58.95	57.37	54.26	59.92
Other Countries	%	1.27	2.79	5.45	1.59
Import by Lanxess	%	***	***	***	***
NOCIL	%	***	***	***	***
Lanxess India P Ltd	%	***	***	***	***
Lanxess (imports + production)	%	***	***	***	***
PMC Pvt Ltd	%	***	***	***	***
Indian Industry	%	***	***	***	***
Total	%	100.00	100.00	100.00	100.00

67. The Authority notes that the market share of all countries attracting anti dumping duty has remained almost at similar levels over the injury period. The Authority notes that the present investigation is a sunset review investigation and, therefore, the market share of the subject countries in consumption in India has to be seen considering that anti dumping duty is in force on imports from these countries. The interested parties contended that about 50% of the subject goods are used in the manufacturing of final products which are subsequently exported out of India. These imports are exempted

from all duties including anti-dumping, safeguard, Basic Customs Duty as well as CVD (equal to excise duties). The Authority thus notes that near static market share of various parties appears to be due to near static share of duty free imports of the product in the country. However, it has been analysed that the landed price of imports even after adding customs duty, anti dumping duty and safeguard duty were below the selling price of the domestic industry. The domestic industry submitted that majority of the product (86%) is consumed in tyre industry where the number of consumers are limited (less than ten). These consumers are sourcing both from Indian producers and imports. This clearly establishes that even if entirety of the imports are being made under duty exemption category, the same are having adverse price effect on the domestic industry.

### **Price Effect of the Dumped imports on the Domestic Industry & factors affecting prices**

68. With regard to the effect of dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared to the price of like product in India or whether effect of such imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred to a significant degree.
69. The impact of dumped imports on the prices of the domestic industry from the subject countries have been examined by the Authority with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the weighted average cost of production, Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from the subject countries by the Authority.
70. While working out the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been excluded by the Authority.
71. Price undercutting has been determined by the Authority by comparing the landed value of dumped imports from the subject countries over the entire period of investigation with the net sales realization of the domestic industry for the same period. For this purpose, landed value of imports has been calculated by adding 1% landing charge and applicable basic customs duty to the weighted average export price reported by responding exporters and verified during spot verification by the investigating team. So far as the non-cooperating exporters from the subject countries are concerned, the landed price has been determined by the Authority based upon the least export price of the cooperating exporters reflected in their submissions and verified by the Authority.
72. For the purpose of price underselling, the landed prices of imports from subject countries have been compared with the non-injurious price of the domestic industry determined for the POI by the Authority. The trend of undercutting and underselling is given below.

### Price Undercutting

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
Landed Price of subject country	Rs/Kg	102.73	108.42	121.68	136.04
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	30-40	30-40	25-35	20-30
<b>CBS</b>					
Landed Price of subject country	Rs/Kg	128.63	148.78	171.76	180.68
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	35-45	25-35	20-30	20-30
<b>PVI</b>					
Landed Price of subject country	Rs/Kg	206.67	195.34	201.04	215.96
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	15-25	15-25	15-25	10-20
<b>PX-13</b>					
Landed Price of subject country	Rs/Kg	166.64	165.62	172.04	168.82
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	25-35	25-35	20-30	20-30
<b>TDQ</b>					
Landed Price of subject country	Rs/Kg	88.25	105.86	107.66	123.59
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	25-35	10-20	15-25	10-20
<b>TMT</b>					
Landed Price of subject	Rs/Kg	76.59	69.73	82.53	91.03

country					
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	30-40	35-45	30-40	25-35

### **Price Underselling**

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
Landed Price of subject country	Rs/Kg	102.73	108.42	121.68	136.04
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	30-40	30-40	25-35	20-30
<b>CBS</b>					
Landed Price of subject country	Rs/Kg	128.63	148.78	171.76	180.68
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	35-45	25-35	20-30	20-30
<b>PVI</b>					
Landed Price of subject country	Rs/Kg	206.67	195.34	201.04	215.96
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	15-25	15-25	15-25	10-20
<b>PX-13</b>					
Landed Price of subject country	Rs/Kg	166.64	165.62	172.04	168.82
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	25-35	25-35	20-30	20-30

<b>TDQ</b>					
Landed Price of subject country	Rs/Kg	88.25	105.86	107.66	123.59
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	25-35	10-20	15-25	10-20
<b>TMT</b>					
Landed Price of subject country	Rs/Kg	76.59	69.73	82.53	91.03
Net Sales Realization	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	30-40	35-45	30-40	25-35

73. From the above table, the Authority holds that the landed value of dumped imports of subject rubber chemicals have been undercutting the domestic prices significantly. Further, the landed value from the subject countries are also significantly below the non-injurious price of the domestic industry. The authority also notes that the landed price of imports after addition for anti dumping duty and safeguard duty (PX-13) were lower than the selling price of the domestic industry which clearly establishes that the dumped imports prevented the domestic industry from raising its prices.

#### Price suppression/depression

74. The Authority notes that in a sunset review investigation, the Authority is required to examine whether there was a significant adverse price effect by the dumped imports as compared with the price of the like product in India, or whether there is likelihood of significant adverse price effect in case of revocation of anti dumping duty. To examine price suppression and depression effect, the Authority has examined cost of sales and selling price per unit of the domestic industry during the POI and the injury period as under.

Particular	Unit	2009-10	2010-11	2011-12	POI
<b>MBT</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>110</i>	<i>122</i>	<i>130</i>
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>111</i>	<i>113</i>

Landed Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	118	132
<b>CBS</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	105	115	122
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	111	116
Landed Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	116	134	140
<b>PVI</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	108	119
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	98	98
Landed Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	95	97	104
<b>PX-13</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	102	109	118
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	96	95
Landed Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	103	101
<b>TDQ</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	123	133
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	114	119
Landed Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	120	122	140
<b>TMT</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	116	139	150
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	108	113
Landed Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	91	108	119

75. To examine the price suppression effect of the dumped imports on the domestic prices, the trend of net sales realization has been compared with the cost of production by the Authority.
76. The Authority concludes that there were upward trends in the cost of sales during the injury period. Increase in cost of sales has mainly been due to increase in inputs price.
77. The movement in selling price of PX-13 (6 PPD) shows that while during POI, the cost of sales went up by about 18%, on the contrary, the selling price came down by about 5%. Similarly, in respect of PVI while cost of sales went up during POI, the selling price registered a fall of about 2%. In the case of TMT, while cost of sales went up during POI, the selling price, on the contrary, went up only by 13%. Similarly in MBT, CBS and TDQ, while cost of sales went up during POI by 25%, 21% and 33% respectively, the selling price, on the contrary, went up only by 13%, 16% and 19% respectively.
78. The above analysis by the Authority indicates that in the case of PVI and PX-13 the fall in the sales realization has been significantly higher despite increase in the cost of sales. In the case of TMT, TDQ, MBT and CBS, while cost of sales went up during POI, the domestic industry was unable to increase its selling price in proportion to increase in cost. The Authority, therefore, concludes that the price effect of the dumped imports has forced the domestic industry to keep its prices lower in order to retain its market share.

### **Economic parameters relating to the domestic industry**

79. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows:-

*“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments”*

### **Production, Capacity, Capacity Utilization and Sales**

80. The volume of domestic production and effects of dumped imports on the domestic operation of the domestic industry have been examined in terms of total production, capacity utilization and domestic sales of the domestic industry. Capacity, production, capacity utilization and sales volumes of the domestic industry have been as under:-

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
Installed Capacity	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	100	100
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	116	85	76
Capacity Utilization (%)	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	116	85	76
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	115	84	87
<b>CBS</b>					
Installed Capacity	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	100	100
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	98	123	133
Capacity Utilization (%)	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	98	123	133
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	113	119	127
<b>PVI</b>					
Installed Capacity	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	100	100
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	102	91
Capacity Utilization (%)	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	102	91
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	97	99	122
<b>PX-13</b>					
Installed Capacity	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	100	100
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	92	75	76
Capacity Utilization (%)	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	92	75	76
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	102	109	118
<b>TDQ</b>					
Installed Capacity	MT	***	***	***	***

<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>123</i>	<i>131</i>	<i>135</i>
Capacity Utilization (%)	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>127</i>	<i>134</i>	<i>135</i>
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>111</i>	<i>117</i>	<i>128</i>
<b>TMT</b>					
Installed Capacity	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>101</i>	<i>102</i>
Capacity Utilization (%)	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>101</i>	<i>102</i>
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>96</i>	<i>100</i>	<i>98</i>

81. The Authority notes that:

- a. TMT: The production and capacity utilization of the domestic industry declined in 2010-11 but thereafter increased. The sales declined in 2010-11 and then slightly increase in the year 2011-12. However, the sale of the domestic industry declined during the period of investigation.
- b. TDQ: The production, capacity utilization and sales of the domestic industry increased throughout the injury period.
- c. PX-13: The production and capacity utilization of the petitioner declined throughout the injury period except a marginal increase during POI. The sales of the domestic industry increased throughout the injury period.
- d. PVI: The production and capacity utilization of the petitioner increased till 2011-12 and thereafter declined in the period of investigation. The sales of the domestic industry increased throughout the injury period.
- e. CBS: The production and capacity utilization of the domestic industry declined in 2010-11 but thereafter increased. The sales of the domestic industry increased throughout the injury period.
- f. MBT: The production of the domestic industry increased till 2010-11 thereafter declined significantly. The sales and capacity utilization of the domestic industry declined over the injury period.

Profits, return on investment and cash profit

82. The profits, cash flow and return on investments earned by the domestic industry from the sales of the subject goods in the domestic market were as under: -

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	122	130
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	111	113
Profit/Loss	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	89	67	47
<b>CBS</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	105	115	122
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	111	116
Profit/Loss	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	89	86
<b>PVI</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	108	119
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	98	98
Profit/Loss	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	95	13	(76)
<b>PX-13</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	102	109	118
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	96	95
Profit/Loss	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	76	(33)	(137)
<b>TDQ</b>					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	123	133
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	106	114	119
Profit/Loss	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	87	55	38
<b>TMT</b>					

Cost of Sales	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	116	139	150
Selling Price	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	108	113
Profit/Loss	Rs/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	75	43	35

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
PBT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	56	41
PBIT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	56	43
Cash Profit - PBDT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	56	41
ROCE	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	80	53	38
<b>CBS</b>					
PBT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	124	105	110
PBIT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	124	106	114
Cash Profit - PBDT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	124	106	110
ROCE	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	123	83	96
<b>PVI</b>					
PBT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	91	13	(92)
PBIT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	91	13	(86)
Cash Profit - PBDT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	92	21	(70)
ROCE	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	113	14	(82)
<b>PX-13</b>					
PBT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	78	(36)	(162)
PBIT	Rs/Lacs	***	***	***	***

<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>78</i>	<i>(35)</i>	<i>(156)</i>
Cash Profit - PBDT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>83</i>	<i>(9)</i>	<i>(116)</i>
ROCE	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>68</i>	<i>(29)</i>	<i>(133)</i>
<b>TDQ</b>					
PBT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>65</i>	<i>49</i>
PBIT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>65</i>	<i>54</i>
Cash Profit - PBDT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>98</i>	<i>69</i>	<i>56</i>
ROCE	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>86</i>	<i>53</i>	<i>41</i>
<b>TMT</b>					
PBT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>72</i>	<i>43</i>	<i>34</i>
PBIT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>72</i>	<i>43</i>	<i>36</i>
Cash Profit – PBDT	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>72</i>	<i>43</i>	<i>34</i>
ROCE	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>81</i>	<i>40</i>	<i>37</i>

83. From the above table, the Authority concludes that:

- a. TMT: The profitability of the domestic industry declined throughout the injury period. The PBIT and cash profits of the domestic industry declined throughout the injury period. Return on investments showed the same trend as that of cash profits.
- b. TDQ: The profitability of the domestic industry declined throughout the injury period. The PBIT and cash profits of the domestic industry declined throughout the injury period. Return on investments showed the same trend as that of cash profits.
- c. PX-13: The profitability of the domestic industry declined throughout the injury period. The domestic industry is suffering losses in the year 2011-12 and POI. The PBIT and cash profits of the domestic industry declined throughout the injury period. The domestic industry has suffered cash losses and negative PBIT during 2011-12 and period of investigation. Return on investments showed the same trend as that of cash profits

- d. PVI: The profitability of the domestic industry declined throughout the injury period. The domestic industry is suffering losses during POI. The PBIT and cash profits of the domestic industry declined throughout the injury period. The domestic industry has suffered cash losses and negative PBIT during period of investigation. Return on investments increased in 2010-11 and thereafter declined to negative levels during period of investigation.
- e. CBS: The profitability of the domestic industry increased in 2010-11 but thereafter declined in 2011-12 and further in POI. PBIT and Cash profits have increased over the period. Return on investment increased in 2010-11 but thereafter declined.
- f. MBT: The profitability of the domestic industry declined throughout the injury period. PBIT, cash profits and return on investment increased in 2010-11 but thereafter declined in 2011-12 and further in period of investigation.

Employment, productivity and wages

84. The number of employees employed by the domestic industry, its productivity and wages paid shows as follows:

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Productivity per day					
MBT	MT	***	***	***	***
CBS	MT	***	***	***	***
PVI	MT	***	***	***	***
PX-13	MT	***	***	***	***
TDQ	MT	***	***	***	***
TMT	MT	***	***	***	***
Productivity per employee					
MBT	MT	***	***	***	***
CBS	MT	***	***	***	***
PVI	MT	***	***	***	***
PX-13	MT	***	***	***	***
TDQ	MT	***	***	***	***
TMT	MT	***	***	***	***

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
Employees	Nos.	***	***	***	***

<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Wages	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>111</i>	<i>122</i>	<i>133</i>
<b>CBS</b>					
Employees	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Wages	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>118</i>	<i>127</i>	<i>124</i>
<b>PVI</b>					
Employees	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>94</i>	<i>94</i>	<i>88</i>
Wages	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>107</i>	<i>122</i>	<i>118</i>
<b>PX-13</b>					
Employees	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>89</i>
Wages	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>105</i>	<i>100</i>	<i>123</i>
<b>TDQ</b>					
Employees	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>83</i>	<i>75</i>
Wages	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>98</i>	<i>102</i>	<i>98</i>
<b>TMT</b>					
Employees	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Wages	Rs/Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>111</i>	<i>122</i>	<i>133</i>

\*\*\*

85. From the data on production per day, the Authority concludes that the productivity of TDQ and CBS has increased. However, productivity of PX-13 and PVI declined during POI as compared to base year. This fall in production during POI, is due to decline in production. The productivity per employee in respect of TMT and MBT has remained at the same level.

86. The Authority concludes that the employment level does not show significant change. Wages paid have shown a normal growth except for TDQ.

### Inventories

87. Inventory position of the domestic industry in the form of closing stock is given in the table below:

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
Opening Stock	MT	***	***	***	***
Closing Stock	MT	***	***	***	***
Average Stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>121</i>	<i>190</i>	<i>215</i>
<b>CBS</b>					
Opening Stock	MT	***	***	***	***
Closing Stock	MT	***	***	***	***
Average Stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>93</i>	<i>149</i>	<i>156</i>
<b>PVI</b>					
Opening Stock	MT	***	***	***	***
Closing Stock	MT	***	***	***	***
Average Stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>83</i>	<i>79</i>	<i>129</i>
<b>PX-13</b>					
Opening Stock	MT	***	***	***	***
Closing Stock	MT	***	***	***	***
Average Stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>156</i>	<i>167</i>	<i>123</i>
<b>TDQ</b>					
Opening Stock	MT	***	***	***	***
Closing Stock	MT	***	***	***	***
Average Stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>110</i>	<i>133</i>	<i>146</i>
<b>TMT</b>					
Opening Stock	MT	***	***	***	***
Closing Stock	MT	***	***	***	***
Average Stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>82</i>	<i>70</i>	<i>117</i>

88. The Authority notes as follows from the table above:
- a. TMT: Inventory levels of the domestic industry have declined till 2011-12 but thereafter increased in the period of investigation.
  - b. TDQ: Inventory levels of the domestic industry have increased throughout the period.
  - c. PX-13: Inventory levels increased till 2011-12 and declined during period of investigation.
  - d. PVI: Inventory levels declined till 2011-12 but increased during period of investigation.
  - e. CBS: Inventory levels of the domestic industry have declined in 2010-11 but thereafter increased in 2011-12 and further in period of investigation.
  - f. MBT: Inventory levels of the domestic industry have increased throughout the injury period with a significant increase during period of investigation.

#### Factors affecting domestic prices

89. Consideration of the import prices from the subject countries and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market shows that the landed value of imported material of each of the subject rubber chemicals from the subject countries, are below the respective non injurious price determined for the domestic industry, causing price underselling in the Indian market. Imports from other countries are either de minimis or at much higher prices or are attracting anti dumping duties. There is no viable substitute to this product. Demand for the product was growing and could not have been a factor responsible for price suppression or depression faced by the domestic industry in each of the rubber chemicals. It is, thus, evident that the subject imports are responsible for the domestic industry's fragile state. The Authority also notes that the landed price of imports after addition of anti dumping duty and safeguard duty were lower than the selling price of the domestic industry, which clearly establishes that the dumped imports prevented the domestic industry from raising its prices.

#### Magnitude of Dumping Margin

90. The Authority notes that dumping margins for each of the rubber chemicals from the subject countries are more than the *de-minimis* limits and significant despite the existence of anti-dumping duties currently in force.

#### Ability to raise capital

91. The Authority notes that while continued dumping of the subject goods in the country has not yet impacted the ability of the domestic industry to raise capital, continued losses due to dumping may affect its ability to raise capital in the future.

## Growth

92. The growth of the domestic industry in terms of sales, production, and capacity utilization was positive whereas growth in respect of profits, return on investment, cash profits and inventories was negative. This situation is in existence in spite of anti-dumping duty being in force.

<b>Particular</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>MBT</b>					
Production volume	%	-	***	***	***
Sales volume	%	-	***	***	***
Cost of Sales	%	-	***	***	***
Selling Price	%	-	***	***	***
Profit/Loss	%	-	***	***	***
ROCE	%	-	***	***	***
<b>CBS</b>					
Production volume	%	-	***	***	***
Sales volume	%	-	***	***	***
Cost of Sales	%	-	***	***	***
Selling Price	%	-	***	***	***
Profit/Loss	%	-	***	***	***
ROCE	%	-	***	***	***
<b>PVI</b>					
Production volume	%	-	***	***	***
Sales volume	%	-	***	***	***
Cost of Sales	%	-	***	***	***
Selling Price	%	-	***	***	***
Profit/Loss	%	-	***	***	***
ROCE	%	-	***	***	***
<b>PX-13</b>					
Production volume	%	-	***	***	***
Sales volume	%	-	***	***	***
Cost of Sales	%	-	***	***	***
Selling Price	%	-	***	***	***
Profit/Loss	%	-	***	***	***
ROCE	%	-	***	***	***
<b>TDQ</b>					

Production volume	%	-	***	***	***
Sales volume	%	-	***	***	***
Cost of Sales	%	-	***	***	***
Selling Price	%	-	***	***	***
Profit/Loss	%	-	***	***	***
ROCE	%	-	***	***	***
<b>TMT</b>					
Production volume	%	-	***	***	***
Sales volume	%	-	***	***	***
Cost of Sales	%	-	***	***	***
Selling Price	%	-	***	***	***
Profit/Loss	%	-	***	***	***
ROCE	%	-	***	***	***

### **Conclusion on injury**

93. On the injury front, the Authority holds as under:

- i. **PX-13** – Imports of PX13 during POI increased in absolute terms despite existing anti dumping duty and safeguard duty. Imports remained significant in relation to total imports, production and consumption in India despite existing anti dumping duty and safeguard duty. With regard to price effect, it is noted that imports were significantly undercutting the prices of the domestic industry in the market and selling price of the domestic industry declined during investigation period, despite increase in cost of production. The imports were undercutting the domestic prices even after adding customs duty, anti dumping duty and safeguard duty (PX-13) which has resulted in price suppression. Performance of the domestic industry deteriorated over the injury period in terms of production, capacity utilization, selling price, profits, PBIT, cash profit and return on investments. Domestic sales have increased and inventories have declined during POI. Imports were depressing domestic prices. The authority notes that the domestic industry has suffered continued injury due to continued dumped imports of PX-13 from subject countries.
- ii. **PVI** – Imports of PVI increased in absolute terms. Imports increased in relation to production and consumption in India. With regard to price effect, it is found that imports were significantly undercutting the prices of the domestic industry in the market and selling price of the domestic industry declined over the injury period. As regards consequent impact of dumped imports on the domestic industry, it is noted that performance of the domestic industry deteriorated in terms of production, capacity utilization, inventories, selling price, profits, cash profit and return on investments. Imports were depressing the domestic prices throughout the injury

- period. The authority notes that the domestic industry has suffered continued injury due to dumped imports of PVI from China.
- ii. **TDQ** – Imports of TDQ declined over the period. With regard to price effect, imports were significantly undercutting the prices of the domestic industry in the market. Resultantly, profits, cash profits and return on investment declined in the investigation period. Performance of the domestic industry improved in terms of production, capacity utilization and domestic sales. However, the performance in respect of profitability, cash profits and return on investments declined in the investigation period with dumping from China. Inventories with the domestic industry increased throughout the period. The imports are significantly suppressing the prices of the domestic industry. The authority notes that the domestic industry has suffered continued injury due to dumped imports of TDQ from China.
  - iii. **TMT** – Imports of TMT declined during the period. With regard to price effect, imports were significantly undercutting the price of the domestic industry in the market. As regards consequent impact of dumped imports on the domestic industry, performance of the domestic industry improved in terms of production, capacity utilization, whereas profitability, cash profits and return on investments declined. The domestic industry was forced not to increase prices in proportion to increased in cost. The authority notes that the domestic industry has suffered continued injury due to dumped imports of TMT from China.
  - iv. **CBS** – Imports of CBS increased significantly in absolute terms and in relation to production/consumption in India. With regard to price effect, imports were significantly undercutting the price of the domestic industry in the market, and the domestic industry was unable to increase its prices in proportion to increase in cost. As regards consequent impact of dumped imports on the domestic industry, it is noted that the performance of the domestic industry improved in terms of production, sales volume and capacity utilization. However, the profitability, PBIT, cash profit and return on investment declined during the POI. The inventories with the domestic industry also increased over the period. The authority notes that the domestic industry has suffered continued injury due to dumped imports of CBS from China
  - v. **MBT** – Imports of MBT have declined. With regard to price effect, imports were significantly undercutting the price of the domestic industry in the market. Domestic industry was unable to increase selling price in proportion to increase in cost. The imports were thus suppressing of the domestic industry in the market. As regards consequent impact of dumped imports on the domestic industry, production, sales, capacity utilization, profitability, cash profits and return on investment declined during POI. The level of inventories increased throughout the period. The authority notes that the domestic industry has suffered continued injury due to dumped imports of MBT from China
94. On the basis of above analysis, the Authority holds that the performance of the domestic industry collectively and cumulatively shows that the domestic industry has suffered material injury.

## **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING & INJURY**

### **Views of the Domestic Industry**

95. There is high likelihood of continuation and intensification of dumping in the event of revocation of duties for the following reasons:
- i. Dumping margins determined in all previous investigations were significant.
  - ii. China has high capacity and output for rubber chemicals and holds a leading position worldwide.
  - iii. The volume of imports in case of each of rubber chemical from subject countries has remained significant despite imposition of anti dumping duty and is showing an increasing trend.
  - iv. Producers in subject countries maintain huge capacities to produce subject goods in excess of domestic demand.
  - v. Imports from subject countries are likely to undercut the prices of the Domestic Industry in the event of revocation of anti-dumping duty and price undercutting is likely to further increase.
  - vi. With worldwide rubber/tyre industry shifting to China, there has been an increasing trend among foreign chemicals manufacturers to set up factories in China as they attach more and more importance to the Chinese market.
  - vii. Solutia Inc. (“Solutia”), Jiangsu Sinorgchem Technology Co., Ltd. (“Sinorgchem”), and Korea Kumho Petrochemical Co., Ltd. (“KPC”) announced that they have reached a global settlement to resolve all disputes among them involving Solutia’s patents for processes to produce 4-ADPA. Under the terms of the settlement, Solutia grants Sinorgchem and KPC licenses to manufacture 4-ADPA under Solutia’s patents, which do not expire until 2019. As licensees, Sinorgchem and KPC are also granted certain rights to enforce those patents.
  - viii. The Indian market for the product under consideration is highly price sensitive. The consumers decide their source with the price being the foremost consideration.
  - ix. The market share of Chinese imports is quite significant in spite of the existing anti-dumping duties.
  - x. Capacities in subject countries, domestic demand and their current exports show that the producers in subject countries are having significant export orientation.

### **Views of the opposing interested parties**

96. The opposing interested parties made the following submissions with regard to the likelihood analysis:

- (i). The claim of the applicant that anti-dumping duty must be extended due to the fact that there existed excess capacities in Korea RP is refuted. It is submitted that the correct capacities may be verified from the questionnaire response. Additionally, it is also to be proved that any such excess capacity would be used to produce the product under consideration which would then be exported to India. Furthermore, the existence of excess capacities is not sufficient for the extension of anti-dumping duties. In this regard, the ruling of the Hon'ble CESTAT in *Indian Spinners Association v. Designated Authority* 2004 (170) E.L.T. 144 (Tri. - Del.) and the finding of the DGAD in the sunset review investigation on *Aniline from USA and Japan*, Final Findings No. 15/19/2010-DGAD dated 17<sup>th</sup> January 2012 is relied upon.
- (ii). It is submitted that since the sunset review is a futuristic examination, the relevant costs undergone by the applicant at the new plant at Dahej are required to be verified and computed accordingly. Without such an exercise, any computation of NIP will be inaccurate. It is submitted that the Authority must undertake a verification of the new manufacturing plant at Dahej and accordingly clarify (a) at which plant the verification was conducted; (b) whether NIP was determined taking into account cost of production at new plant, old plant or both; and (c) whether at the new plant the applicant was able to achieve any reduction in costs or not. Additionally, it is submitted that if the Authority decides to adopt the costs undergone at the old plant, then no element of costs at the new plant should be included for the purposes of calculating NIP.

### **Examination by the Authority**

97. The domestic industry in its submissions claimed that the requirement under a sunset review is to examine whether revocation of anti-dumping duty is likely to lead to continuance or recurrence of injury to the domestic industry and, therefore, any examination based on the factors listed for a threat analysis would be flawed. Therefore, all such factors brought to the notice of the Authority have been examined to find if there is a likelihood of continuation of injury in the event of withdrawal of the duty. The Authority has determined that the subject goods are continuing to enter the Indian market at dumped prices or are likely to be exported at dumped prices from the subject countries in the event of withdrawal of anti-dumping duties. It is pertinent to examine whether injury to the domestic industry is likely to continue or recur due to these dumped imports if the duty is removed.
98. In addition to the examination of continued injury, likelihood of continuation or recurrence of injury to the domestic industry has also been examined by the Authority on the basis of information and evidence as submitted by various interested parties during the course of the investigations. The Authority examined the likelihood of continuation or recurrence considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules which states as under:

*“A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter alia, such factors and;*

*i) a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.*

*ii) Sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports.*

*iii) Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports and,*

*iv) Inventories of the article being investigated”*

99. The domestic industry has provided information regarding excessive production capacity held by producers in the subject countries, vulnerability of the Domestic Industry, price attractiveness of Indian market, price undercutting in the absence of measures and the setting up of factories in China by foreign manufacturers in order to establish the likelihood of continuation of injury to the domestic industry.

100. In this regard, the following facts/data/trends have been noted by the Authority.

Excessive production capacity in the subject countries

101. Based on the analysis of actual capacity, consumption of the subject goods in the domestic market, the subject countries have surplus disposable capacities for production of the subject goods. Therefore, the Authority holds that in the event of withdrawal of the anti-dumping duties there is likely hood of the surplus disposable capacities being utilized by the companies to enhance the exports of the subject goods to India at dumped prices. Status of capacity, demand, of the subject countries are given below.

Country	Product	Capacity (MT/A)	Domestic Demand (MT/A)	Surplus (MT/A)
Korea	PX-13	70000	8000	62000
China	PX-13	195000+	90000	115000+
China	TDQ	78400+	60000	18400+
China	PVI	44000+	10000	34000+
China	MBT	79000+	10000	69000+

Country	Product	Capacity (MT/A)	Domestic Demand (MT/A)	Surplus (MT/A)
China	TMT	32240+	15000	17240+
China	CBS	54600+	25000	29000+

102. The Authority notes that the questionnaire response filed by KPC and Jiangsu Sinorgchem in the POI for PX-13 (6PPD) shows as follows: –

	KPC	Jiangsu Sinorgchem
Capacity (MT)	***	***
Production (MT)	***	***
Utilised capacity (%)	***	***

Continued dumping and continued injury to the domestic industry

103. With regard to likelihood of continuation of dumping of PX-13 from Korea RP, the Authority has relied upon the evidence available on record with regard to the price at which subject goods have been exported from Korea to a number of other countries during the POI. It is noted that subject goods have been exported from Korea RP to other countries during the POI and a statement of exports downloaded from Korea Customs Data indicates that they have exported 33,138 MT of PX-13 at a total value of US\$ 105 million at an average CIF price of US\$ 3.04 per Kg. Likelihood of dumping considering the price at which goods have been exported to third countries, individually and collectively, during the POI has been determined. It is noted that the producers in Korea have exported the subject goods to third countries at significantly lower prices than normal value of Korea determined for the POI. The dumping margin based on the export price of PX-13 to other countries during the POI is significant as can be seen below:

Particulars	Unit	
Value	US\$/million	105
Weight	MT	33,138
FOB Price	US\$/Kg	3.16
Ex-factory Price	US\$/Kg	2.96
CIF Price	US\$/Kg	3.04
Landed Price	US\$/Kg	3.27

Normal Value	US\$/Kg	***
Dumping Margin	US\$/Kg	***

104. The Authority notes that the products under consideration have been exported at significantly dumped prices. The volume of subject imports of each of the products under consideration were significant in absolute terms and in relation to production & consumption in India as can be seen from the table below. Further, the domestic industry has suffered material injury in the current period. Therefore, the Authority notes that continued dumping and continued injury, coupled with the current volumes involved itself establishes the likelihood of dumping and injury to the domestic industry in the absence of anti-dumping duty. In fact, the injury to the domestic industry would intensify in the event of cessation of anti-dumping duty.

Particulars	Unit	2009-10	2010-11	2011-12	POI
<b>MBT</b>					
Import volumes	MT	865	797	768	550
Share of imports in relation to					
Ø Total imports	%	99.51	97.74	91.70	67.48
Ø Production	%	***	***	***	***
Ø Consumption	%	59.63	54.00	55.46	40.07
<b>CBS</b>					
Import volumes	MT	929	604	1,023	1,135
Share of imports in relation to					
Ø Total imports	%	72.26	46.15	49.74	57.69
Ø Production	%	***	***	***	***
Ø Consumption	%	29.28	17.19	23.66	26.62
<b>PVI</b>					
Import volumes	MT	707	830	985	1,192
Share of imports in relation to					
Ø Total imports	%	38.60	42.15	29.28	46.40
Ø Production	%	***	***	***	***
Ø Consumption	%	41.15	49.01	62.78	62.50
<b>PX-13</b>					
Import volumes	MT	7,860	7,511	7,868	8,294
Share of imports in relation to					
Ø Total imports	%	79.97	76.94	80.82	74.78
Ø Production	%	***	***	***	***
Ø Consumption	%	54.92	50.58	49.17	46.00

TDQ					
Import volumes	MT	1,063	1,217	887	781
Share of imports in relation to					
Ø Total imports	%	45.84	54.04	98.72	71.15
Ø Production	%	***	***	***	***
Ø Consumption	%	16.16	15.27	10.91	9.86
TMT					
Import volumes	MT	572	352	324	244
Share of imports in relation to					
Ø Total imports	%	72.21	70.95	56.61	44.95
Ø Production	%	***	***	***	***
Ø Consumption	%	31.02	22.11	18.55	14.54

105. As regards the decision of the Hon'ble CESTAT in *Indian Spinners Association vs. Designated Authority* 2004 (170) E.L.T. 144 (Tri. - Del.), the Authority notes that the CESTAT found that dumping was going on and the dumped prices were not causing material injury to the domestic industry in that case and, therefore, existence of surplus production capacity could not be taken as posing a clearly foreseen and imminent threat of injury. In the instant case, however, the domestic industry is suffering injury. Price undercutting without prevailing anti dumping duty and safeguard duty is quite significant. The domestic industry would, therefore, suffer aggravated injury, should the present anti-dumping duty be revoked.

106. As regards consideration of future cost of production of the domestic industry, the Authority notes that injury margin is required to be determined considering the cost of production during the investigation period. Possible increase or reduction in cost of production in future cannot be considered for determining injury margin and quantum of anti-dumping duty that should be recommended. It is clarified in this regard that the commercial production of intermediate 4-ADPA in Dahej commenced only after the investigation period and in the month of March, 2012. Therefore, during the investigation period, the petitioner produced the product under consideration (including intermediate) at Thane plant only. The authority has done verification of expenses incurred at Thane plant. Since the petitioner has not commercially produced from the new process during the investigation period, the Authority has determined NIP considering the process followed by the domestic industry. As regards cost reduction at the new plant, since the petitioner has not commercially produced 4-ADPA at the new plant, possible cost reduction in the new plant were not examined by the authority. The authority also notes that the Rules provide for periodic review of anti dumping duty and in case an interested party establishes changed circumstances, the authority carries out period review of anti dumping duty in force. It is also

clarified that no element of costs at the new plant have been included for the purposes of calculating NIP.

#### Price undercutting in the absence of measures

107. The Authority notes that the prices at which the each of the subject goods were entering the country from the subject countries during the period of investigation are materially lower than the respective net sales realization of the domestic industry, making the Indian market an attractive destination for exporters.
108. In the instant matter, each of the subject goods has been imported from the subject countries during the period of investigation in significant volumes. It is noted that these goods have been exported at dumped prices and are significantly undercutting the prices of the domestic industry. In case the anti-dumping duties are allowed to expire, the volume of the subject goods at dumped prices is likely to increase. This view is further buttressed, considering the unutilized capacities to produce the subject goods in subject countries as provided by domestic industry.

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

109. The Authority determines that considering the information available to the Authority, there is a likelihood of continuation of dumping and consequent injury in the event of revocation of the existing anti-dumping duties, considering in particular the current financial position of the domestic industry, significant price undercutting, significant unutilised production capacities in China PR and Korea RP and the financial position of the domestic industry in the event of revocation of duty.

#### **Causal Link**

110. It is noted that the above facts establish that injury to the domestic industry has been caused by the dumped imports. Annexure 2 to the Rules provides as follows with regard to Causal Link:

*“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the Designated Authority. The Designated Authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter-alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and*

*competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.”*

## **Examination of Other Known Factors**

### Volume and value of imports not sold at dumping prices:

111. Statement of imports from various countries shows that the imports of products under consideration from other countries are entering at below de minimis levels or at higher prices than subject country imports during the POI or are attracting anti-dumping duty. It cannot, therefore, be said that the imports from other countries have also caused injury to the domestic industry.

### Contraction in demand:

112. There is no contraction in demand for any of the rubber chemicals in the POI when compared with the base year, except for TMT and MBT. It is noted that decline in demand has not caused the injury to the domestic industry.

### Changes in the patterns of consumption:

113. The pattern of consumption with regard to the product under consideration has not undergone any change. Change in the pattern of consumption has not contributed to the injury to the domestic industry.

### Trade restrictive practices of and competition between the foreign and domestic producers:

114. There is no trade restrictive practice which could have contributed to the injury to the domestic industry.

### Developments in technology:

115. Technology for production of the product has not undergone any change nor are there any likely changes in the coming future. Developments in technology are, therefore, not a factor of injury.

### Export performance:

116. The Authority notes that the domestic industry has exported the product under consideration. However, the injury to the domestic industry is on account of domestic operations. The Authority has examined costing and injury information for domestic sales separately. Hence, injury to the domestic industry cannot be attributed to exports.

Performance of other products produced and sold by the domestic industry:

117. The Authority notes that the injury parameters examined pertain to the products under consideration and the injury observed was not caused by the performance of other products produced and sold by the domestic industry.

**Causal Link analysis**

118. The causal link analysis is as under:

i. **PX-13** - Imports of PX-13 were significantly undercutting the prices of the domestic industry in the market. As a direct consequence, while volume of imports increased on one hand, selling prices of the domestic industry declined on the other hand. Consequently, domestic sales, profit/loss, cash profits, return on investment declined significantly in the investigation period and inventories with the domestic industry increased.

ii. **PVI** - Imports of PVI were significantly undercutting the prices of the domestic industry in the market. As a direct consequence, while volume of imports increased on one hand, selling prices of the domestic industry declined on the other hand. Consequently, performance of the domestic industry with regard to production, capacity utilization, inventories, profit/loss, cash profits and return on investment deteriorated over injury period. Significant price undercutting throughout the period has resulted in significant price depression in the market.

iii. **TDQ** - Imports of TDQ were significantly undercutting the prices of the domestic industry in the market. Consequently, performance of the domestic industry deteriorated in terms of profit/loss, cash profits and return on investment deteriorated during investigation period and inventories with the domestic industry increased. Significant price undercutting throughout the period has resulted in significant deterioration in profits, return on investment and cash profits.

iv. **TMT** - Imports of TMT were significantly undercutting the prices of the domestic industry in the market. Consequently, performance of the domestic industry with regard to inventories, profit/loss, cash profits, return on investment deteriorated over injury period.

v. **MBT** - Imports of MBT were significantly undercutting the prices of the domestic industry in the market. Consequently, performance of the domestic industry with regard to production, capacity utilization, inventories, profit/loss, cash profits and return on investment deteriorated. As a result of significant price undercutting, profits, cash profits and return on investments continued to decline in POI.

vi. **CBS** - Imports of CBS were significantly undercutting the prices of the domestic industry in the market. As a direct consequence, while volume of imports increased on one hand, selling prices of the domestic industry could not be increased in proportion to increase in cost. Consequently, performance of the domestic industry declined significantly in the investigation period with regard to profit/loss, inventories etc.

## Indian Industry's Interest

119. The purpose of anti-dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the products manufactured by using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti-dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

## Magnitude of injury and injury margin

120. The Authority has determined the non-injurious price for the domestic industry on the basis of principles laid down in the Rules. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports from subject countries to determine injury margin. The injury margins have, thus, been worked out as follows:

### Injury Margin in case of cooperating exporter

Product	Name of producer	Exporter	NIP (Rs/kg)	Landed value (Rs./Kg)	Injury Margin	Injury Margin %	Injury Margin Range%
PX-13	M/s Shandong Sinorgchem Technology Co. Ltd, China PR	M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR	***	***	***	***	55-65
	M/s Sinorgchem Co, Tai'an China PR	M/s Jiangsu Sinorgchem Technology Co. Ltd, China PR	***	***	***	***	55-65
	Kumho Petrochemicals Company Ltd, Korea	Kumho Petrochemicals Company	***	***	***	***	60-70

	RP	Ltd					
	Kumho Petrochemicals Company Ltd, Korea RP	Daewoo International Corporation, Korea RP	***	***	***	***	60-70
	Non cooperating exporters from Korea RP		***	***	***	***	80-90

### Injury Margin in case of non-cooperating exporter

Particular	Unit	PX-13	TDQ	PVI	TMT	MBT	CBS
		China PR					
Non-Injurious Price (NIP)	Rs./KG	***	***	***	***	***	***
Landed Value of imports	Rs./KG	***	***	***	***	***	***
Injury Margin	Rs./KG	***	***	***	***	***	***
Injury Margin	%	***	***	***	***	***	***
Injury margin (Range)	%	70-80	20-30	30-40	30-40	25-35	20-30

### **Conclusion**

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

- (i) The subject goods from the subject countries are entering the Indian market at dumped prices and dumping margin is significant. It is also seen that the subject goods continue to be exported to India at dumped prices despite the existing anti-dumping duties and there is a likelihood of its continuation should the existing anti-dumping duties be allowed to expire.
- (ii) Without the anti-dumping duties, the price undercutting and price underselling are significant from the subject countries. The Domestic Industry continues to suffer material injury on account of continued dumping of subject goods from the subject countries during the period of investigation and there is likelihood of deterioration in the operating performance of domestic industry in the event of cessation of anti-dumping duties.

## **J. POST DISCLOSURE STATEMENT SUBMISSIONS BY THE INTERESTED PARTIES**

122. The Authority noted that the comments on the Disclosure Statement offered by the interested parties are merely repetitive. In brief, the interested parties have submitted the comments on the Disclosure Statement as under:

### **J1. Post Disclosure Statement submissions by the opposing Interested Parties**

123. Following are in brief the post Disclosure Statement submissions made by the opposing Interested Parties:

- i) The applicant does not have the requisite standing to represent the Domestic Industry in India.
- ii) The initiation in the present case was bad in law. The anti-dumping duty on the subject goods expired on May 4, 2013 according to the sunset clause in Notification No. 92/2011–Cus dated 20th September, 2011. It was only on 5th July, 2013 that the duty was extended vide Notification No.17/2013-Customs (ADD). Therefore, because the duty had expired before the extension, the present review was infructuous inasmuch as there was no anti-dumping duty in existence to review.
- iii. The Respondent submits that firstly, as a matter of law, the Authority cannot discard the actual data on cost of 4-ADPA incurred by the Respondent in the present case. Secondly, the Authority has offered no legitimate factual basis to reject the data on cost of 4-ADPA. In this case, it is not an issue that the Respondent's records are not in accordance with Korea GAAP. Therefore, our submission focuses on the legal error committed by the Authority in concluding that the Respondent's records do not reasonably reflect the cost associated with production and sale of the article under consideration. In particular, the Respondent submits that the Authority has committed the following legal errors in computing the Normal Value for the Respondent exporter.
  - a. The Authority has rejected the Respondent exporter's procurement price of 4-ADPA without any legal basis.
  - b. The Authority has erroneously used the price of procurement of 4-ADPA by Lanxess India from Lanxess Germany.
- iv. Comparing the import price of 4-ADPA into India from Germany will not present an accurate picture and result in an incorrect analysis. This is because costs such as freight will differ considerably when considering the price from Germany to India as opposed to the correct price. Import price is subject to various adjustments and additions such as freight charges, insurance, bank charges etc. All such adjustments vary with distance between the respective ports. The price

adopted will not present the true and correct picture and should not be adopted.

- v. There is no likelihood or recurrence of dumping and injury. The Respondent reiterates the following contentions regarding injury factors and the causal link in earlier submissions:
  - a. If we were to analyse the import data of PX-13 from Korea, it can be inferred that imports from Korea RP have shown a consistent decline over the years, which has been accompanied by a consistent increase in the import of PX-13 (6PPD) from China PR. The volume of imports from Korea declined from 6030 MT in 2009-10 to 4504 MT in 2011-12.
  - b. There is no injury to the applicant on account of sales, which has undergone an increasing trend throughout the injury period as well as the POI, with an increase from 100 indexed points in 2009-10 to 118 indexed points in the POI. The inter-se competition could have been a cause of injury. The performance of the domestic industry has improved in respect of some parameters. The domestic industry is an incapable and inefficient producer.
- vi. The exchange rate adopted by the Authority in the disclosure statement is 53.69. However, the prevailing rate of USD, as per the RBI, is currently 60.71. The Authority arrived at a price undercutting of 20-30% considering the exchange rate of 53.69. However, if the prevailing exchange rate is considered, which would present the most accurate picture, the level of price undercutting would be reduced significantly. The Authority is requested to take this factor into consideration while evaluating the likelihood of recurrence or continuance of dumping and injury.
- vii. There exists a demand supply gap for the PUC in India and the DI in spite of enjoying duty protection for the last 8 years has not increased production to meet the demand of the user industry in India.
- viii. All the economic indicators clearly establishes that DI is performing exceedingly well on almost all of the injury parameters and therefore no causal link exists between the claim of injury to the DI on account of import of TDQ and CBS from China PR.
- ix. As far as PX-13 is concerned, the increase in import of PX-13 from the subject countries in the POI was miniscule and the parameters like production, domestic sales, capacity utilization, import volume, market share, CIF price etc. lead to break-in of the causal link between the claim of injury by the DI and import of PX13 from China PR and Korea RP.
- x. The DI exports significant part of its production and which clearly establishes that the decline in production of the DI is on account of export sales.
- xi. The Authority has observed in the disclosure report that a simultaneous imposition of anti dumping and safeguard duty should not lead to dual protection. However, in order to avoid dual protection, the DI cannot provide same injury figures for all the economic parameters in both the anti dumping and safeguard investigation as the same would not lead to segregation of injury.
- xii. The name of the exporter from Korea RP and product description of PX-13 should

- be corrected.
- xiii. The data of imports of 4-ADPA into India during POI shows that the imports of 4-ADPA have come from both China PR and Germany. While the Authority has considered the import price of 4-ADPA from Germany for the purpose of ascertaining reasonable cost of 6-PPD produced in India, it has ignored the import price of 4-ADPA from China PR, which is against the ratio of the decision of CESTAT in the case of Suzhou Dawnrays Pharmaceutical Co. Ltd., vs DGAD [2012 (282) ELT 433 (Tribunal – Delhi)].
  - xiv. The Authority is requested to adopt the import price of Vulcanox, a brand of 4-ADPA from China PR instead of the import price of 4-ADPA of the same brand imported from Germany in view of the fact that the exporter of 4-ADPA is from China PR. It has been further submitted that the imports of 4-ADPA from Germany are in fact related party transactions and therefore cannot be relied upon for a true and correct picture.
  - xv. The co-operating exporter vide their email dated 26.4.2014 informed the Authority that in the meantime, Director General of Safeguards has issued its findings on the imports of PX-13 and therefore, the Authority needs to examine some of its analysis made in the disclosure statement already issued by it.
  - xvi. Post-disclosure of essential facts, the Korean Government has stated the following:
    - (a) It is inappropriate to reject the purchase price of the raw material by KPC on the ground that the said material has been procured from a NME country.
    - (b) The calculation of dumping margin for KPC made by the Indian Authority is not line with the provisions of Article 2.1 and 2.2 of the Agreement on Antidumping.
    - (c) There is insufficient evidence on the alleged injury to the domestic industry as the domestic sales of the domestic industry increased and its market share remained stable during POI.
    - (d) Imposition of higher duties will have a negative impact on the related industries in India.

## **J2. Post Disclosure Statement submissions by the Domestic Industry**

124. Following are in brief the post Disclosure Statement submissions made by the domestic industry:

- i. There was no demand supply gap in the country with respect to subject rubber chemicals. The Indian industry was capable of meeting entire demand of the country. Imports have not been made for this reason. As regards CBS, the Indian industry could have catered to 80% of total demand in India, whereas the industry catered much lower demand.
- ii. Imports of the Rubber Chemicals viz. MBT, CBS, TDQ, PVI, and TMT from China and PX-13(6PPD) from China and Korea RP have increased since the base year of the original investigation.

- iii. Producers and exporters from the subject countries are continuing to export the product under consideration to India at dumped prices.
- iv. Cost of production of Korea Kumho cannot be determined considering the procurement cost of 4ADPA in view of special relationship between the two parties.
- v. Normal value in the case of Korea is required to be determined on the basis of weighted average of the imported product price and domestic supplier's price. Normal value assessed based solely on Korea Kumho data would be highly distorted as it does not reasonably reflect cost associated with the product.
- vi. Imports from subject countries are undercutting the prices of the domestic industry in each of the subject rubber chemicals. Resultantly the imports are suppressing or depressing the prices of the domestic industry. The domestic industry is continuing to suffer material injury as a result of continued dumping. The profits, cash profits, PBIT, return on investments of each of the subject rubber chemicals have declined.
- vii. There is clear likelihood of continued dumping and injury on account of significant dumping margins found by this Authority in previous investigations, the situation of the Chinese rubber chemicals industry which has seen increased capacities and new sites, the trend in import volumes from the original period, the freely disposable capacities with the subject countries' producers and their export orientation, the price attractiveness of the Indian market evidenced by price undercutting, the vulnerability of the Indian market in terms of price sensitivity, loss in market share and the demand and supply situation in exporting markets.
- viii. This being a sunset review, what is relevant is the likelihood of continuation of dumping and consequent injury. It is submitted that this is clearly established in these and previous submissions.

### **J3. Examination by the Authority**

125. The Authority notes that the above submissions of the interested parties are repetitive and have already been dealt with elsewhere in this finding. However, some of the major issues raised by them are examined as under:
- i) With regard to the submission of the opposite interested parties that the applicant does not have the requisite standing the Authority notes that the production of each of the subject goods of NOCIL during POI is more than 50% of the production of the domestic producers and therefore the applicant has requisite standing.
  - ii) With regard to the submission of the opposite interested parties that the domestic industry has not filed the application 90 days prior to expiry of the duty, the Authority notes that the applicant has filed a petition for initiation of the Sunset Review in January, 2013 with POI of October, 2011 to September, 2012. Subsequently, on 9<sup>th</sup> April, 2013, the applicant has filed a revised application with POI as January, 2012 – December, 2012. The Authority, therefore, holds that the applicant has filed the application within the prescribed time limit.
  - iii) The detailed reasons for not adopting the purchase price of 4-ADPA by KPC have been brought out in this present Findings. The Authority further holds that the rules oblige the Authority to ensure that the cost of production adopted reasonably reflects

the costs associated with production and sale of the product under consideration. The exporter has not established that the cost of production claimed by him reasonably reflects the costs associated with production and sale of the product. With regard to rejection of procurement price of 4-ADPA from Solutia by KPC, the Authority notes that the reasons for the same have already been explained in the disclosure statement and in this findings as well.

- iv) The Authority notes the argument of the KPC that expenses associated with import of the product vary with the distance involved. Based on the best information available, the Authority has appropriately adjusted the price for the difference in freight between freight from Germany to India and freight from China to Korea RP. The price of 4-ADPA has, therefore, been reduced by an amount of US\$ 0.06 per Kg.
- v) With regard to the submission of KPC for consideration of duty drawback refund for determination of export price, the Authority notes that the normal value for PX-13 exported by KPC has been determined on the basis of its associated cost of production plus reasonable profit. The Authority further notes that while computing the cost of 4-ADPA, the customs duty paid by KPC has not been considered and therefore, the question of considering the refund of customs duty as part of export price does not arise.
- vi) With regard to the argument that performance of the domestic industry has improved in respect of some parameters, the Authority notes that the rules do not provide that the domestic industry should have suffered injury in respect of each and every parameter.
- vii) With regard to the argument that the domestic industry is still earning profits in the domestic sale of some of the rubber chemicals, the Authority notes that the profits of the domestic industry had declined over the period, which clearly shows that the performance of the domestic industry has deteriorated in respect of profits.
- viii) With regard to the argument that the inter-se competition could have been a cause of injury, the Authority notes that no verifiable evidence has been provided to establish that the performance of the domestic industry deteriorated because of inter-se competition.
- ix) With regard to the arguments that the price undercutting is to be worked out based on current exchange rates as compared to the rates prevailing during POI, the Authority has determined the price undercutting as per its consistent practice by considering the exchange rate prevailing during POI.
- x) With regard to the submission that there is huge demand supply gap, the Authority notes that the demand for the product has been determined on the basis of imports from all sources and sales by all domestic producers. Further, the Indian demand is required to be met by all the domestic producers. It would, therefore, not be appropriate to compare Indian demand with the capacities of the domestic industry only.
- xi) With regard to the argument that the injury to the domestic industry is in respect of exports, the Authority notes that it has assessed the injury on account of domestic sales by appropriately excluding the profitability of exports.

- xii) With regard to the argument that there is no evidence that the surplus capacities shall be diverted to Indian market, the Authority notes that the existence of surplus capacities is more relevant in order to determine likelihood of injury. Further, the opposite interested parties have not provided any information to establish that there are no surplus capacities or the surplus capacities shall be used to cater to other markets.
- xiii) With regard to the argument that concurrent imposition of anti-dumping duty and safeguard duty is leading to dual protection, the Authority notes that while imposing safeguard duty earlier, the Government of India had reduced the same by the quantum of anti-dumping duty so that the injury already addressed by the anti-dumping duty is not addressed again by imposition of safeguard duty. It has not been established that the same injury is being remedied twice.
- xiv) With regard to the submission of KPC for adoption of import price of 4-ADPA from China PR in accordance with the ratio of the decision of CESTAT the Authority notes that the facts of the case referred to in the decision of CESTAT are different from the present one. In that case the domestic industry itself was importing the said raw material from China PR at the price comparable with the purchase price of the petitioner producer in China. CESTAT has therefore ruled that the Authority cannot discard such price while constructing normal value. The Authority further notes that in the present investigation the domestic industry has not imported 4-ADPA from China PR.
- xv) Since the price of 4-ADPA at which KPC had procured from China PR is not found to be reasonable, the Authority has considered the price at which such material was imported from Germany. The imports of 4-ADPA by Lanxess India from Lanxess Germany are between related companies situated in two different market economy countries and therefore could be presumed to have taken place at arm's length basis unless any evidence to the contrary has been brought to the notice of the Authority. Further, as per transfer price rule prevailing in India purchase of goods from related companies outside India are to at arm's length basis.
- xvi) In view of the above, the Authority holds that the methodology adopted by it in determination of the reasonable cost of imports of 4-ADPA made by KPC is appropriate and does not require any revision as requested by KPC.
- xvii) With regard the submissions of the Korean Government, the Authority notes that issue of not considering the purchase price of 4-ADPA of KPC have been dealt with in the heading 'Determination of Normal value for Korea' in this finding. The Authority further notes that as explained elsewhere in the findings that it had made an objective analysis of various economic parameters and came to the conclusion that the dumped imports have caused significant injury to the domestic industry.
- xviii) With regard to the submission of Korean Government that imposition of duty would be against public interest the Authority notes that imposition of antidumping measure is to stop the unfair trade practice of dumping followed by the exporter and to bring a healthy completion between the domestic producers on one hand and the exporters on the other hand providing long term benefits to the consumers of the subject goods.

- xix) With regard to the review of data/analysis made by the Authority in the light of Director General of Safeguards' findings dated 24th April, 2014, the Authority notes that the antidumping investigations are conducted under different rules and the purpose of imposition of antidumping measure is to stop the unfair trade practice of dumping.

## K. CONCLUSION AND RECOMMENDATION

126. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority and on the basis of above analysis including analysis of likelihood of continuation of dumping and injury and post Disclosure Statement submissions made by the interested parties, the Authority concludes that the dumped imports from the subject countries are causing injury to the domestic industry and also there is likelihood of dumping and injury to the domestic industry if the existing duties on the subject goods being imported from the subject countries are allowed to expire.

127. It is noted that in the subject investigation the cooperating producers and exporter from China PR are related to each other and form a group of related companies. It has been the consistent practice of the Authority to consider related exporting producers or exporting producers belonging to the same group as one single entity for levy of one rate of antidumping duty. The Authority holds that grant of individual rate of antidumping duty might enable the related exporting producers to channel their exports to India through the company with the lowest rate of duty and circumvent the anti-dumping measures, thus rendering them ineffective. Accordingly, the Authority has recommended one rate of antidumping duty for the related co-operative producers/exporters belonging to the same group. Besides the above, the antidumping duty has also been recommended for a producer exporting the subject goods through various channels (through different exporters).

128. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive antidumping duty as per the amount specified in Column 9 of the table below is recommended to be imposed by the Central Government, on all imports of the subject goods originating in or exported from the subject countries.

**Duty Table**

S. No.	Heading/ Sub-heading	Description of goods	Specific ation	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	2902, 2907, 2909,	Rubber chemical PX-	S No.1 of	China PR	China PR	Shandong Sinorgchem	Jiangsu Sinorgchem	1.55	Per Kg	US\$

	2917, 2921, 2925, 2930, 2933, 2934, 2935, 2942, 3811, 3812, 3815	13	Table below			Technology Co. Ltd.	Technology Co. Ltd.			
2	-do-	-do-	-do-	China PR	China PR	Sinorgchem Co. Tai'an	Jiangsu Sinorgchem Technology Co. Ltd.	1.55	Per Kg	US\$
3	-do-	-do-	-do-	China PR	China PR	Any combination of Producer and Exporter other than at S. No.1 & 2 above		1.84	Per Kg	US\$
4	-do-	-do-	-do-	China PR	Any Country	Any other than above	Any other than above	1.84	Per Kg	US\$
5	-do-	-do-	-do-	Any country other than Korea RP	China PR	Any other than above	Any other than above	1.84	Per Kg	US\$
6	-do-	-do-	-do-	Korea RP	Korea RP	Kumho Petrochemicals Co Ltd.	Kumho Petrochemicals Co Ltd.	1.33	Per Kg	US\$
7	-do-	-do-	-do-	Korea RP	Korea RP	Kumho Petrochemicals Co Ltd.	Daewoo International Corporation	1.33	Per Kg	US\$
8	-do-	-do-	-do-	Korea RP	Korea RP	Any combination of Producer and Exporter other than at S No.6 & 7 above		1.63	Per Kg	US\$
9	-do-	-do-	-do-	Korea RP	Any Country	Any other than above	Any other than above	1.63	Per Kg	US\$
10	-do-	-do-	-do-	Any country other than China PR	Korea RP	Any other than above	Any other than above	1.63	Per Kg	US\$
11	-do-	Rubber chemical MBT	S No.2 of Table below	China PR	China PR	Any	Any	0.70	Per Kg	US\$
12	-do-	-do-	-do-	Any country	China PR	Any	Any	0.70	Per Kg	US\$
13	-do-	-do-	-do-	China PR	Any country	Any	Any	0.70	Per Kg	US\$
14	-do-	Rubber chemical TDQ	S No.3 of Table below	China PR	China PR	Any	Any	0.55	Per Kg	US\$
15	-do-	-do-	-do-	Any country	China PR	Any	Any	0.55	Per Kg	US\$
16	-do-	-do-	-do-	China PR	Any country	Any	Any	0.55	Per Kg	US\$
17	-do-	Rubber chemical TMT	S No.4 of Table below	China PR	China PR	Any	Any	0.62	Per Kg	US\$
18	-do-	-do-	-do-	Any country	China PR	Any	Any	0.62	Per Kg	US\$
19	-do-	-do-	-do-	China PR	Any country	Any	Any	0.62	Per Kg	US\$
20	-do-	Rubber chemical CBS	S No.5 of Table	China PR	China PR	Any	Any	0.85	Per Kg	US\$

			below							
21	-do-	-do-	-do-	Any country	China PR	Any	Any	0.85	Per Kg	US\$
22	-do-	-do-	-do-	China PR	Any country	Any	Any	0.85	Per Kg	US\$
23	-do-	Rubber chemical PVI	S No.6 of Table below	China PR	China PR	Any	Any	1.24	Per Kg	US\$
24	-do-	-do-	-do-	Any country	China PR	Any	Any	1.24	Per Kg	US\$
25	-do-	-do-	-do-	China PR	Any country	Any	Any	1.24	Per Kg	US\$

The specifications indicated in the following table shall be applicable for the specifications referred to in Column 4 of the table given above.

<i>S No</i>	<i>Generic name</i>	<i>Chemical Description/Other trade name/brand names</i>
1	6PPD	N- (1, 3-dimethyl butyl)-N' Phenyl – p –phenylenediamine, or 6C , or Pilflex 13, Antooxide 4020, Kumanox 13, Vulcanox 4020
2	MBT	2-Mercapto Benzothiazole, or Accelerator M, Accelerator MBT
3	TDQ/TMQ	Polymerized 2,2, 4-Trimethyl-1,2-dihydroquinoline, or TDQ or Antioxidant RD
4	TMT	Tetramethylthiuram Disulfide, or Accelerator TMTD, Thiuram C
5	CBS	N-cyclohexyl-2-benzothiazole sulphenamide, or Accelerator CZ. Accelerator HBS, CBS
6	PVI	N-(Cyclohexylthio)phthalimide, or Anti Scorch Agent CTP , PVI

129. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

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

**(J S Deepak)**  
**The Designated Authority**