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駐印度代表處經濟組　函

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主旨：有關印度商工部貿易救濟局(DGTR)公布對自我國進口之壬基苯酚(Nonyl Phenol)反傾銷第2次落日複查案終判報告，報請鈞察。

說明：

一、依據印度商工部貿易救濟局(DGTR)本(2021)年1月7日F. No.7/20/2018-DGAD通知辦理。

二、謹查DGTR於2019年1月11日公布旨案終判報告指出，調查期間印度國內產業並未出現嚴重損害或損害之虞，且經營績效良好，無證據顯示取消反傾銷稅可能再度發生損害，爰建議無須繼續對本案課徵反傾銷稅。惟印商Si Group India Private Limited對該報告不服，向印度關稅、消費稅及服務稅法庭(Customs, Excise & Service Tax Appellate Tribunal，CESTAT)提出上訴，該法庭於11月28日裁定不同意DGTR終判報告之結論及建議，要求該局分析相關數據重新計算自我國進口之涉案產品應課徵之反傾銷稅。我國涉案廠商包括和益化學工業股份有限公(Formoa Union Chemical Corporation)及中國人造纖維股份有限

公司(China Man Made Fibre Company)。

三、DGTR對我國出口之涉案產品重新計算傾銷差額、損害差額、產能、出口價格、印度國內需求、產能利用率、生產技術等因素後認為，傾銷仍持續發生並低於生產成本，且美國、加拿大、歐盟、中國大陸等國對我國出產品採取之限制措施可能導致我國產品轉向印度，如取消反傾銷稅將導致損害再度發生，爰建議對自我國進口之涉案產品(HS 29071300)課徵每公噸52.56美元之反傾銷稅，為期5年(請參閱報告第34頁)。

四、檢送旨揭報告影本1分，併請鈞察。

正本：經濟部國際貿易局
副本：經濟部工業局 電子公文交換章 2021/01/12 15:44:22

部國際章 騎縫章

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

F. No. 7/20/2018-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

Dated: 7th January, 2021

Subject: Final Findings in the Second Sunset Review of Anti-Dumping investigation concerning imports of Nonyl Phenol originating in or exported from Chinese Taipei – CESTAT Remand Case.

File No. 7/20/2018-DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 and thereafter (hereinafter also referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter also referred as the Anti-Dumping Rules or Rules), the Director General (hereinafter also referred to as the Authority) had initiated 2nd sunset review of anti-dumping investigation concerning imports of 'Nonyl Phenol' (hereinafter also referred to as the subject goods), originating in or exported from Chinese Taipei (hereinafter referred to as the subject country).

A. BACKGROUND

1. Whereas, the original investigation concerning imports of the subject goods originating in or exported from Chinese Taipei was initiated by the Authority on 29th June, 2006. The Authority, vide Final Findings No. 14/13/2005-DGAD, dated 25th June, 2007, recommended imposition of anti-dumping duty on the import of the subject goods from the subject country, which was given effect to vide Notification No. 94/2007 – Customs dated 22nd August, 2007.
2. Whereas upon expiry of applicable duties at five years, the Authority initiated a sunset review, and vide Final Finding Notification No. 15/1007/2012-DGAD dated 8th November, 2013 recommended continuation of duty. The findings of the Authority were implemented by the Ministry of Finance (TRU) vide Notification No. 5/2014 dated 16th January, 2014.
3. Whereas M/s SI Group India Private Limited (hereinafter also referred to as the petitioner) filed an application requesting initiation of sunset review of the anti-dumping duties earlier imposed and seeking continuation of duties against imports from Chinese Taipei. The request was based on the grounds that the expiry of the measure was likely to result in continuation of dumping of the subject goods and consequent injury to the domestic industry.
4. In view of the duly substantiated application with prima facie evidence of likelihood of dumping and injury filed on behalf of the domestic industry and in accordance with Section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated the second sunset review investigation vide Notification No. 7/20/2018-DGAD dated 12th

June, 2018 to review the need for continued imposition of the anti-dumping duties in respect of the subject goods, originating in or exported from Chinese Taipei, and to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

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

6. Vide Final Findings Notification No. 7/20/2018-DGAD dated 11th January, 2019, the Authority concluded as under.

> *"i. The financial and economic parameters of Domestic Industry (both volume and price) are stable and not evidencing deterioration requiring extension of anti-dumping duty.*
> *ii. The Petitioners have performed well during the injury period including the POI in terms of its financial parameters.*
> *iii. Petitioners have not been able to establish likelihood of dumping and injury to the Domestic Industry in the event anti-dumping duty were to be revoked on the subject goods.*
> *iv. Capacity, production, domestic sales and overall profitability of the industry do not indicate existence of injury or a deteriorated economic condition.*
> *v. The factors submitted by the Petitioners on likelihood of recurrence of injury on withdrawal of ADD are not supported by the price realizations and price trends of the subject goods during the POI."*

The Authority, thus, found that the continuation of anti-dumping duty was not warranted and accordingly, did not recommend extension of anti-dumping duty on imports of subject goods from the subject countries.

7. The aforesaid findings dated 11th January, 2019 were challenged by the domestic industry in appeal under Section 9C of the Act. The Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT) allowed the said appeal vide its Final Order No. 51566/2019 dated 28th November, 2019. The Hon'ble CESTAT examined the impugned findings of the Authority and evidence on record, and found that the conclusions reached by the Authority were not appropriate. Accordingly, Hon'ble CESTAT remanded the matter with a direction that DA shall analyse the relevant data and after determining the anti-dumping duty which needs to be levied on the subject goods when imported from Chinese Taipei recommend the same to the Government of India. The relevant extract of the decision of the Hon'ble CESTAT is reproduced below:

> *"24. In view of above, we do not agree with the conclusions and the recommendations of the Designated Authority dated 11.01.2019. The same is liable to be set aside and consequently we set aside the conclusions and recommendations and remand the matter to the Designated Authority to calculate the appropriate anti-dumping duty while taking note of overall circumstances of the case. Since, we have set aside the conclusions and recommendation of the DA on merit, hence discussion of other ancillary issues raised in the Appeal would be more of academic, hence not delved into.*

25. In the result, the Appeal is allowed and the matter is remanded with a direction that DA shall analyse the relevant data and after determining the anti-dumping duty which needs to be levied on the subject goods when imported from Chinese Taipei, recommend the same to Government of India. The Miscellaneous Applications stand disposed of accordingly."

8. While the said decision of Hon'ble CESTAT came on 28.11.2019, the anti-dumping duty which was earlier imposed through Customs Notification no. 05/2014-Cus (ADD) dated 16.01.2014 had already expired on 15.01.2019. This resulted in a gap and in view of the same a clarification was sought from Hon'ble CESTAT by moving miscellaneous application to clarify that whether anti-dumping duty can be imposed after expiry of original duty notification in view of decision of the Hon'ble Delhi High Court in the matter of ***Forech India Ltd Vs Designated Authority*** with regard to extension of duty after expiry of existing duty. In the said judgement it has been held that "*.... the Act has fixed a period for completion of Sunset Review within one year from the date of expiry of the initial five year levy and it is in this one year period that the Government must form a view that the cessation of duty would lead to continuation or recurrence of dumping and injury. Therefore, it is only within this period that it may extend i.e. without breaking the continuity of the previous duty or its modified version, for a further period of five years....* "

9. The Hon'ble CESTAT vide its Miscellaneous Order No. 50114/2020 dated 21st February, 2020 disposed the Miscellaneous Application No. 50109 of 2020 for clarification and held as under:

"*25. In this view of the matter, the decision of the Delhi High Court in Forech India would not be applicable to the facts of the present case in as much as the said decision relates to the original determination by the Designated Authority and not to a determination when a remand is made by the Appellate Tribunal. The contention of the learned Counsel appearing for the importers cannot also be accepted for the same reason.*

26. The Application, accordingly, stands disposed of with the aforesaid clarification."

10. The present findings are therefore being issued pursuant to the orders of the Hon'ble CESTAT dated 28th November, 2019, and 21st February, 2020.

B. PROCEDURE

11. The procedure described herein below had been followed by the Authority with regard to the subject investigations before it was challenged in the CESTAT:
    i. The Director General, under the Anti-Dumping Rules, received a written application from the petitioner on behalf of the domestic industry, requesting for continuation of anti-dumping duties against the imports of subject goods from Chinese Taipei.
    ii. On receipt of a duly substantiated application, the Authority issued Initiation Notification No. 7/20/2018-DGAD dated 12th June, 2018, published in the Gazette

of India, Extraordinary, initiating second sunset review of anti-dumping duty imposed on imports of the subject goods originating in or imported from Chinese Taipei.

iii. The Embassy of the subject country in New Delhi was informed about the initiation of the sunset review investigations in accordance with Rule 6(2) along with the copy of the initiation notification and non-confidential version of the petition.

iv. The Authority forwarded copies of the Notification to the following known producers / exporters in the subject country (whose names and addresses were made available to the Authority by the petitioner) and provided opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2) and Rule 6(4) of the Anti-Dumping Rules.

a. Formosan Union Chemical Corporation, 14F, No. 206, Nanking East Road, Sec. 2, Taipei, Taiwan.
b. China Man Made Fibre Company, 10F, No. 50, Sec. 1, Hsin Sheng Road, Taipei, Taiwan.

v. Whereas none of the producer/ exporters have filed a response to the exporters' questionnaire.

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

a. India Glycols Limited
b. M/s Micro Inks Limited
c. Manali Chemicals
d. M/s C.J. Shah & Company
e. Leo Chemoplast Pvt. Ltd.
f. Lexicon Chemicals Pvt. Ltd.
g. Akshya Industries
h. Samnman Trade Impex Pvt. Ld.
i. M/s Sterling Auxiliaries Pvt. Ltd.
j. M/s Krishna Antioxidants Pvt. Ltd.
k. Star Orechem International Pvt. Ltd.
l. Jay Chemical Industries Ltd.
m. Unitop Chemicals P. Ltd.
n. Indian Chemicals Council

Only one user, namely, M/s India Glycols Limited filed the response to the users' questionnaire and also participated in the oral hearing and subsequently filed written submissions.

vii. The period of investigation (POI) for the purpose of the present review is January – December, 2017 (12 months). However, injury analysis period covers 2014-15, 2015-16, 2016-17 and the period of investigation.

viii. Transaction-wise imports data for the period of investigation and preceding three years was procured from the Directorate General of Commercial Intelligence and

Statistics (DGCI&S) and the same has been relied upon for the purpose of analysis in this investigation.

ix. The submissions made by interested parties have been made available in the public file and also addressed appropriately in this final findings. Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.

x. The Authority has examined the information furnished by the domestic industry to the extent possible, on the basis of guidelines laid down in Annexure III of the Rules, to work out the cost of production and the non-injurious price of the subject goods.

xi. In accordance with Rule 6(6) of the Anti-Dumping Rules, the Authority also provided opportunity to the interested parties to present their views orally in an oral hearing held on 5th September, 2018. The parties were requested to file written submissions of the views expressed orally, followed by rejoinder submissions. The Government of Chinese Taipei, through the Taipei Economic and Cultural Centre in New Delhi also participated in the oral hearing and subsequently filed written submissions.

xii. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this final findings.

xiii. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of this final findings to the extent possible and verified the data / documents given by the domestic industry to the extent considered relevant and necessary.

xiv. A Disclosure Statement was issued on 24.12.2018 containing essential facts under consideration of the Designated Authority, giving time up to 02.01.2019 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.

xv. Information provided by the interested parties on confidential basis were examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

xvi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded this final finding on the basis of the facts available.

xvii. '***' in these final findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.

xviii. The exchange rate adopted by the Authority for the subject investigation is 1US$= Rs. 66.07.

xix. In compliance with the direction of the Hon'ble CESTAT, the Authority has determined the appropriate amount of anti-dumping duty, after re-analysing the relevant data as per CESTAT orders.

C. SCOPE OF PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

Views of the domestic industry

12. The domestic industry has made the following submissions with regard to the scope of the product under consideration and like article:
    a. The product under consideration for the purpose of the present investigation is the same as in the earlier investigations, that is, Nonyl Phenol, which is also known as Para Nonyl Phenol.
    b. It is a clear viscous liquid without sediments. The chemical formula and structure of Nonyl Phenol is $C_{15}H_{24}O$. It is produced from alkylation reaction of phenol with nonene.
    c. As noted in the previous investigations, the product produced by the petitioning domestic industry is like article to that imported from the subject country.

Views of the opposing interested parties

13. No submissions were made by the other interested parties with regard to the product under consideration or like article.

Examination by the Authority

14. The product under consideration in the present sunset review investigation is Nonyl Phenol, commonly known as Para Nonyl Phenol.

15. Nonyl Phenol is a clear viscous liquid without sediments. The chemical formula and structure of Nonyl Phenol is C15H24O. It is used in the manufacture of nonyl phenol-ethylene oxide condensates for application as non-ionic surfactants after subsequent sulphonation, of oil soluble phenolic resin, of derivatives applied as corrosion inhibitors in lubricating oils and of ingredients for agro-chemical formulations. It is also used in flame-retardants and plasticizers.

16. Nonyl Phenol is classified under Chapter 29 of the First Schedule to the Customs Tariff Act, 1975 under the tariff code 2907 13 00. It is noted from the DGCI&S data that the product is also imported under other tariff codes. However, classification is indicative only and is in no way binding on the scope of the investigation.

17. The Authority notes that none of the interested parties have contested the meaning and scope of the product under consideration and the present investigation being a sunset review investigation, the scope of the product under consideration remains the same as that in the earlier investigations.

18. With regard to like article, as noted in the earlier investigations, there are no significant differences in the subject goods produced by the Indian industry and that exported from the subject country. They are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing, and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties have disputed the claims made by the domestic industry in this regard.

19. The subject goods produced by the petitioner companies are being treated by the Authority as like article to the subject goods imported from the subject country, within the meaning of Rule 2(d) of the Anti-Dumping Rules.

D. DOMESTIC INDUSTRY AND STANDING

Views of the domestic industry

20. The domestic industry submitted as follows with regard to scope of domestic industry and standing:
    a. The application was filed by M/s SI Group India Private Limited. The applicant is the sole producer of the subject goods.
    b. The applicant accounts for 100% of the domestic production. Therefore, the applicant company constitutes eligible domestic industry, as defined in Rule 2(b) of the Anti-Dumping Rules.
    c. The applicant is not related to a producer/exporter of the product under consideration in subject country or an importer in India.

Views of the opposing interested parties

21. No submissions were made by the other interested parties with regard to the domestic industry or its standing.

Examination by the Authority

22. The petition has been filed by M/s SI Group India Private Limited. The applicant is the sole producer of the subject goods in India, accounting for 100% production of the subject goods. The applicant certified that it is not related to any producer or exporter of the product under consideration in subject country or an importer in India. Further, the applicant certified that it had not imported the subject goods into India. The Authority, therefore, considers that the applicant company constitutes eligible domestic industry within the meaning of Rule 2 (b) of the Anti-Dumping Rules and the application satisfies the criteria of standing in terms of Rule 5 (3) of the Rules.

E. ISSUES RELATING TO CONFIDENTIALITY

Views of the domestic industry

23. With regard to confidentiality, the data of the domestic industry has been adequately disclosed as trends, consistent with the requirements of Trade Notice No. 10/2018 dated 7th September, 2018. As regards the normal value, same being based on the cost of production of the domestic industry cannot be disclosed.

Views of the opposing interested parties

24. In view of excess confidentiality claimed by the domestic industry, it is very difficult to analyze whether the imports of product under consideration are on account of a demand supply gap.

25. The claims of confidentiality by the domestic industry are against the provisions of the Anti-Dumping Rules and without any justifiable reason. Instances of confidentiality are wages, constructed normal value, raw material, landed price, profit /loss trend, cost of production, net selling price.

Examination by the Authority

26. The Authority has examined the confidentiality claims of the interested parties. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. With regard to confidentiality of information, Rule 7 of Anti-Dumping Rules provides as follows: -

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

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

(3) Notwithstanding anything contained in sub-rule (2), if the Designated Authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information.

27. The provision for disclosure of essential facts before giving final findings has been laid down at Rule 16 of the Anti-Dumping Rules. Even under Rule 16, the confidential facts are required to be disclosed to "respective interested parties" only, while non-confidential facts are required to be disclosed to all interested parties. At no stage the Director General is empowered to disclose the confidential information to the parties with competing and conflicting interests.

28. The Authority notes that the information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.

F. MISCELLANEOUS SUBMISSIONS

Views of the opposing interested parties

29. The following other miscellaneous submissions have been raised by the opposing interested parties:

a. The domestic industry has not established that the expiry of duty is likely to lead to continuation or recurrence of dumping as well as injury. The consequences of expiry of duty must be based on facts and not merely based on presumptions, assumptions and conjectures.
b. The duties imposed on two major products of the company, Phenol and Nonyl Phenol have helped the domestic industry to perform well. The company is trying to create a monopolistic position in the market by enjoying the protection of anti-dumping duty.
c. Anti-dumping duty on Phenol is allowing the domestic industry to gain an undue advantage in dumping the product under consideration in China PR. The compulsion of domestic industry to dump in foreign market is not understood, when they are performing well in the protected Indian market.
d. The petitioner has made some self-serving sketchy analysis of potential impact of expiry of duty on them which is not of any basis. The DI is dumping the material in China PR and wants the duty in India to be continued so that they can control the export markets with a protected domestic customer base. As against the conclusions on likelihood drawn by the petitioner, it is our submission that expiry of duty will not lead to recurrence of any dumping and injury.
e. The domestic industry is stage managing their business with the help of anti-dumping duty on the goods produced by them and is engaging in dumping in the foreign market, while the users have to pay more for the subject goods, leaving them uncompetitive in their business.
f. The domestic industry has raised a legal argument on mandatory nature of sunset review, without mentioning the judgment of Hon'ble Delhi High Court. The party has no choice to ignore a binding judgment irrespective of their privileges to make submission of their choice.
g. The petition does not contain any information to enable the Director General to decide that the expiry of duty is likely to lead to continuation or recurrence of dumping or injury.
h. The intent of the domestic industry is to unfairly curb imports and monopolize domestic market in India.

Views of the domestic industry

30. Responding to the arguments of the opposing interested parties, the domestic industry submitted as follows:
    a. There is no basis in the allegation that the domestic industry is trying to create monopolistic position as the duty does not operate as a ban on imports.
    b. In response to the contention of the interested parties that the domestic industry is gaining undue advantage due to duties in force against Phenol and Nonyl phenol, by dumping the subject goods in China, it was submitted that the argument was without merit. An anti-dumping duty levied by China on imports from India is based on their investigations and the facts pertaining to that country and therefore have no relevance to the present investigations as far economic parameters. In any case, there can be no benefit drawn by the petitioner from the duties imposed by China.
    c. There is no evidence to show that the imposition of duty has rendered the users uncompetitive as their profits have increased during the period of investigation, when they had purchased the subject goods only from the domestic industry.
    d. The argument of the interested parties regarding claims as to compulsory initiation of sunset reviews was irrelevant, as the Director General had noted in the Initiation Notification that the Authority prima facie satisfied itself regarding likelihood of continuation or recurrence of dumping and injury.

Examination by the Authority

31. The specific submissions made by the opposing parties and considered relevant, are addressed by the Authority as under:
    a. The Authority notes that the law clearly envisages that the anti-dumping duty can be extended further from time to time, if it is found that dumping and consequent injury to the domestic industry is likely to recur in the event of cessation of anti-dumping duty. The Authority recommends anti-dumping duty only after following the requirements prescribed under the laws.
    b. Insofar as the arguments regarding the monopolistic position of the domestic industry in the market is concerned, the Authority notes that the anti-dumping duty measure is to rectify unfair trade practices and the imposition of anti-dumping measures does not prevent or stop imports. The imports would continue to be available at fair prices and anti-dumping duty would help to maintain availability of wider choices to the consumers and to re-establish a situation of open and fair competition in the domestic market. Therefore, there is no question of monopoly of the domestic industry.
    c. With regard to contention regarding the undue advantage taken by the domestic industry due to duties in force against phenol and Nonyl phenol in India, it is baseless and without any merits.

G. METHODOLOGY AND DETERMINATION OF NORMAL VALUE, EXPORT PRICE & DUMPING MARGIN

Views of the domestic industry

32. The domestic industry's submissions with regard to the determination of normal value, export price and dumping margin are summarized below:
    a. Since there is no response from any exporters, the normal value may be based on available facts and evidence.
    b. To calculate the net export price, ocean freight, marine insurance, commission, bank charges, port expenses and inland freight should be adjusted.
    c. The dumping margin is not only positive, but also significant. Further, the dumping margin calculated is higher than that in the earlier investigations.
    d. There is continued dumping of the subject goods from the subject country, as noted in the earlier investigations and the dumping margin is positive over the entire injury period.
    e. India being the biggest market for the exporters and the only reason that they have not cooperated in the present investigation is that they have absorbed the existing duties and are thus, indifferent to continuation thereof; or that they are aware that the dumping margin is actually higher.
    f. In the case of Automotive Tyre Manufacturer's Association Vs. Designated Authority, the Tribunal held that normal value at the time of initiation can be determined on the basis of cost of production of domestic industry.

Views of the opposing interested parties

33. With regard to normal value, export price and dumping margin, the other interested parties submitted that the domestic industry has determined substantial dumping margin on a hypothetical basis and has failed to prove the likelihood aspect based on the dumping margin determined in the original investigation and the current investigation.

Examination by Authority

34. The Authority sent questionnaires to the known producers/exporters from the subject country, advising them to provide information in the form and manner prescribed. However, none of the producers/exporters from Chinese Taipei have filed the response to the questionnaire, therefore the Authority is constrained to proceed, based on the principles of best available information. Therefore, the normal value and export price are determined as under:

I. NORMAL VALUE

35. The Authority has determined the normal value on the basis of the best available information, in terms of Rule 6(8) of the Anti-Dumping Rules. Accordingly, the normal value has been constructed considering optimum consumption norms of the domestic industry for raw materials and utilities, and best estimates of conversion costs, interest, selling, general and administrative expenses including reasonable profit on the cost of production.

II. EXPORT PRICE

36. The Authority has determined the export price in respect of imports from the subject country on the basis of best information available in accordance with the Rules. For this purpose, the Authority has adopted the transaction-wise data procured from the DGCI&S and determined the export price considering all imports of the product under consideration in India. The export price has been adjusted for ocean freight, marine insurance, commission, port expenses and inland freight expenses to determine ex-factory export price of the product under consideration.

III. DUMPING MARGIN

37. Considering the normal value and export price as above, the dumping margin for all exporters of the subject goods from the subject country is determined as below:

Particulars	Unit	Amount
Normal value	USD/MT	***
Export price	USD/MT	***
CIF	USD/MT	***
Dumping margin	USD/MT	***
Dumping margin	%	***
Dumping margin	Range	15-25%

38. It is seen that the dumping margin is positive and above the *de-minimis* levels.

H. METHODOLOGY FOR INJURY DETERMINATION

Views of the domestic industry

39. The domestic industry has submitted as follows with regard to injury and causal link:
    a. There is continued injury to the domestic industry. While production, sales, capacity utilization of the domestic industry increased, resulting into increase in market share of domestic industry, this had been achieved at cost of reduced profitability, return on investment and cash profits.
    b. The import volume in the period of investigation has dropped down as compared to preceding year, such decline is on account of the domestic industry constraining its prices to increase its sales. However, in the event of cessation of duties, the imports are likely to increase once again as the producers in the subject country are highly export oriented.
    c. Despite the decline in imports, they occupy an important place in the market as they account for about one-fourth of consumption and are about one-third in relation to production.
    d. Inspite of the domestic industry selling below the fair selling price, the imports are undercutting its prices. This clearly brings out that in the event of cessation of anti-dumping duty, the imports are likely to continue undercutting the prices of the domestic industry.
    e. The imports have suppressed and depressed the prices of the domestic industry. When compared to 2015-16, it would be seen that the cost of sales has not changed in the

period of investigation. Nevertheless, the landed price of imports declined, compelling the domestic industry to reduce its prices as well.

f. The landed price of imports is much below the non-injurious price. In the event of cessation of duty, the imports are likely to enter the market at injurious prices.
g. While the production, sales and capacity utilization have increased, in order to achieve the increase in sales, the domestic industry has been forced to sell at non-remunerative prices.
h. The capacity of the domestic industry is underutilized.
i. While the market share of the domestic industry has increased, in the event of expiry of duty, the imports would increase and the domestic industry would lose its place in the market.
j. Apart from underutilized capacity, the domestic industry has also suffered in terms of accumulation of inventories.
k. The profits of the domestic industry peaked in 2015-16, but have declined thereafter.
l. Likewise, the cash profits have declined by 60% and the return on investment of the domestic industry is one-third of the level in 2015-16.
m. Throughout the injury period, the domestic industry has not been able to earn adequate profits or returns.
n. There is no basis in the argument that if injury continues despite duties, it is self-inflicted. Such argument is contrary to facts, law and dumping margin in present and past cases. The fact that Section 9A (5) refers to likelihood of continuation or recurrence of dumping and injury makes it evident that the law recognizes that injury may continue despite duties.

Views of the opposing parties

40. The submissions made by the opposing interested parties with regard to injury are as follows:
    a. Decline in price of imports is in line with decline in cost of domestic industry.
    b. If the producers in Taiwan had unutilized capacities, the exports from Taiwan would not have declined.
    c. Share of import in relation to production and also consumption declined and there is no imminent likely injury on these parameters if the duties expire.
    d. Capacity utilization of domestic industry is not reflective of injury as the domestic industry has a common plant and plant utilization has improved.
    e. Decline in selling price was less than decline in cost, indicating that there was no price suppression. Further, the profitability of the domestic industry improved and the return on capital employed was in the range of 0-10%.
    f. The profitability of the domestic industry spiked in 2015-16, despite the import price showing a decline in the period.
    g. Productivity of the domestic industry has declined in the period of investigation.
    h. The data filed by the domestic industry demonstrates that there is no injury due to imports from the subject country.
    i. The amount of capacity remaining unutilized with the domestic industry cannot be a reason for continued imposition of duty.
    j. The petition shows no actual information about imports from subject country and therefore, claims of substantial market share held by the imports are not tenable.

k. The market share of the domestic industry has increased.
l. If the domestic industry has suffered injury after imposition of dumping, such injury is self-inflicted.
m. Contrary to the guidelines under Anti-Dumping Agreement as well as Section 9A(5) regarding likelihood of continuation or recurrence of dumping and injury, the domestic industry has claimed that imports have continued to be dumped in India. However, the data filed by the domestic industry shows that it is in a healthy and profitable state.
n. The imports from Taiwan have declined during the period.
o. The reason for the decline in capacity utilization is reduction in production of DOP.
p. The domestic industry is earning more than reasonable return on investment and cash profits are higher during the period of investigation.
q. The domestic industry has been able to earn non-injurious price during the period.
r. The claims of the domestic industry as regards its installed capacity does not match its annual report.
s. Since the domestic industry is captively manufacturing phenol, the actual cost of phenol should be charged to the cost of production of the subject goods.
t. The non-injurious price needs to be determined as per para (4) of the Annexure – III to the Anti-Dumping Rules.
u. Claims of decline in capacity utilization are erroneous as the domestic industry has been able to sell almost what it has produced.

Examination by Authority

41. The injury analysis made by the Authority hereunder addresses the various submissions made by the other interested parties.

42. Rule 11 of the Anti-Dumping Rules read with its Annexure – II thereto provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, ".... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....". While considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

43. Rule 23 of the Rules provide that the provisions of Rule 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall apply mutatis mutandis in case of a review. In case the performance of the domestic industry shows that it has not suffered injury during the current injury period, the Authority shall determine whether cessation of the present duty is likely to lead to recurrence of injury to the domestic industry.

44. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of

imports from the subject country. For this purpose, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization and the magnitude and margin of dumping in accordance with Annexure – II of the Rules.

I. ASSESSMENT OF DEMAND

45. The Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product concerned in India as the sum of domestic sales and captive consumption of the applicant and imports from all sources. Exports made by the applicant have been excluded from the computation in order to ascertain apparent consumption. The demand so assessed is given in the table below:

Particulars	UOM	2014-15	2015-16	2016-17	POI
Sales of domestic industry	MT	8,250	8,702	10,100	12,632
Imports from subject country	MT	7,246	6,826	6,145	4,512
Imports from other countries	MT	45	1,265	970	285
Captive Consumption	MT	***	***	***	***
Total demand	MT	***	***	***	***
Trend	Indexed	100	108	111	113

46. It is seen that the demand for the product under consideration has increased throughout the injury period.

II. VOLUME EFFECTS OF DUMPED IMPORTS

i. Import volumes and market share of imports

47. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the transaction wise import data procured from DGCI&S.

Particulars	UOM	2014-15	2015-16	2016-17	POI
Import Volume					
Subject country	MT	7,246	6,826	6,145	4,512
Other countries	MT	45	1,265	970	285
Total imports	MT	7,292	8,091	7,115	4,796
Subject Country Imports in relation to					
Indian production	%	81.01	62.00	53.21	32.39
Demand	%	46.62	40.65	35.70	25.89

48. It is seen that:
    a. Imports from the subject country have decreased throughout the injury period.
    b. Imports form subject country in relation to Indian production and consumption has also decreased with decrease in import volume.

III. PRICE EFFECT OF DUMPED IMPORTS

49. With regard to the effect of the dumped imports on prices, lays down as follows:

> *"With regard to the effect of the dumped imports on prices as referred to in sub rule (2) of rule 18 the Director General shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the 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."*

50. In terms of Annexure II (ii) of the Rules, the Director General is required to consider the effect of the dumped imports on domestic prices in terms of price undercutting, price underselling, price suppression and price depression, if any.

i. Price Undercutting

51. In order to determine whether the imports are undercutting the prices, the domestic industry has given information for comparison between the landed value of the product and the average selling price of the domestic industry net of all rebates and taxes, at the same level of trade. Accordingly, the domestic prices and margin of undercutting is shown as per the table below:

Particulars	UOM	POI
Landed price of Imports	Rs/MT	96,361
Net sales realization of domestic industry	Rs/MT	***
Price Undercutting	Rs/MT	***
Price Undercutting	%	***
Price Undercutting	Range	0-10%
Average ADD	Rs/MT	16193
Landed Price after ADD	Rs/MT	1,12,554
Price Undercutting after ADD	Rs/MT	***
Price Undercutting after ADD	%	***
Price Undercutting	Range	NEGATIVE

52. It is noted that price undercutting is negative when calculated after taking into account the anti-dumping duty and is positive when calculated without anti-dumping duty. However, the difference is very minimal and is not considered to be creating any price pressure on the pricing process of the Domestic Industry

ii. Price Suppression and Depression

53. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the domestic industry has given information for the changes in the costs and prices over the injury period as below:

Particulars	UOM	2014-15	2015-16	2016-17	POI
Landed price of Imports with ADD	Rs/MT	1,36,329	1,22,757	99,105	1,12,554
Trend	Indexed	100	90	73	83
Landed price of Imports without ADD	Rs/MT	1,20,136	1,06,564	82,912	96,361
Trend	Indexed	100	89	69	80
Cost of sales of domestic industry	Rs/MT	***	***	***	***
Trend	Indexed	100	79	69	79
Selling price of domestic industry	Rs/MT	***	***	***	***
Trend	Indexed	100	86	73	80

54. It is seen that the landed price (with ADD) of the imports is above the selling price as well as the cost of the Domestic Industry. It is also seen that the cost of sales, selling price and import price declined till 2016-17 as compared to the base year but the same increased in the period of investigation. However, comparison of landed value without taking into account anti-dumping duty shows that the import prices are lower than the selling price

55. In order to properly evaluate whether there has been price suppression or depression, the Authority has also considered the cost to sales ratio over the injury period.

Particulars	UOM	2014-15	2015-16	2016-17	POI
Cost to sales ratio	%	***	***	***	***
Trend	Indexed	100	92	94	99

56. It is seen that the cost to sales ratio in the period of investigation is moving in the same band and therefore, cannot be considered to be having any negative impact on the Domestic Industry.

iii. Price Underselling or Injury Margin

57. The price underselling has been evaluated by comparing the non-injurious price with the landed value of the subject goods to arrive at the extent of price underselling.

Particulars	UOM	Chinese Taipei
Import Volume	MT	4512
Landed price of Imports with ADD	Rs/MT	1,12,554
Non-Injurious Price	Rs/MT	***
Price Underselling	Rs/MT	***
Price Underselling	%	***
Price Underselling	Range	(5-15)

Particulars	UOM	Chinese Taipei
Landed price of Imports without ADD	Rs/MT	96,361
Price Underselling	Rs/MT	***
Price Underselling	%	***
Price Underselling	Range	0-10%

58. From a comparison of the landed value with the non-injurious price, it is noted that the price underselling is positive without adding anti-dumping duties and negative after adding anti-dumping duties.

IV. ECONOMIC PARAMETERS OF DOMESTIC INDUSTRY

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

i. Production, Capacity, Capacity Utilization and Sales Volumes

60. The performance of the domestic industry with regard to production, domestic sales, capacity and capacity utilization is as follows:

Particulars	UOM	2014-15	2015-16	2016-17	POI
Capacity	MT	24,315	24,315	24,315	24,315
Production	MT	8,945	11,008	11,550	13,928
Capacity Utilization	%	36.79	45.27	47.50	57.28
Domestic Sales	MT	8,250	8,702	10,100	12,632

61. It is seen that the capacity of the domestic industry has remained constant, while the production and capacity utilization of the domestic industry has increased throughout the injury period. The domestic sales of the domestic industry have also increased throughout the injury period.

ii. Market Share in Demand

62. The effects of the dumped imports on the market share in demand of the domestic industry have been examined as below:

Particulars	UOM	2014-15	2015-16	2016-17	POI
Sales of Domestic Industry	%	53.08	51.82	58.67	72.48
Imports from Subject Country	%	46.62	40.65	35.70	25.89
Imports from Other Countries	%	0.29	7.53	5.63	1.63
Total Demand	%	100	100	100	100

63. It is seen that the market share of domestic industry has increased over the injury period, while the share of imports from the subject country in demand has declined throughout the injury period.

iii. Inventories

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

Particulars	UOM	2014-15	2015-16	2016-17	POI
Inventory as No. of days of Production	MT	***	***	***	***
Trend	Indexed	100	58	80	74

65. The Authority notes that the inventory as a number of days of production has decreased in the POI as compared to the base year.

iv. Profit or Loss, Cash Profits and Return on Investment

66. The profit/loss, cash profits and return on investment of the domestic industry are as follows:

Particulars	UOM	2014-15	2015-16	2016-17	POI
Profit/Loss	Rs Lacs	***	***	***	***
Trend	Indexed	100	1,164	856	290
Profit/Loss	Rs/MT	***	***	***	***
Trend	Indexed	100	1,103	699	190
Cash Profit	Rs Lacs	***	***	***	***
Trend	Indexed	100	504	397	200
Return on Capital employed - NFA	%	***	***	***	***
Trend	Indexed	100	935	998	291

67. It may be seen from the above table that the profits have decreased but are positive throughout the injury investigation period. As regards the trend relating to cash profit, it is noted that, it has increased and reached to a level of 200 during the POI as compared to the base year. The trend of Return on capital employed has also increased to a level of 291.

v. **Employment, Wages and Productivity**

68. The employment and wages are below:

Particulars	UOM	2014-15	2015-16	2016-17	POI
No of Employees	Nos	***	***	***	***
Trend	Indexed	100	97	95	97
Wages per Unit	Rs/MT	***	***	***	***
Trend	Indexed	100	103	99	102
Productivity per employee	MT/Nos	***	***	***	***
Trend	Indexed	100	127	135	161
Productivity	Kg/Person/Day	***	***	***	***
Trend	Indexed	100	127	135	160

69. It is seen that the number of employees has remained more or less constant throughout the injury period. The wages and wages per unit have remained in almost same region throughout the injury period. However, the productivity per employee and the productivity per day have increased throughout the injury period with the increase in production. However, they are not indicative of injury.

vi. **Magnitude of Dumping**

70. It is noted that the dumping margin is positive and above *de-minimis*.

vii. **Growth**

71. The Authority notes that the growth of the domestic industry in terms of production, domestic sales volume, capacity utilization and market share is positive as well as growth in terms of profits, cash profits and return on investment are also positive throughout the injury investigation period.

I. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY

Views of the domestic industry

72. The submissions made by the Domestic industry with regard to the likelihood of continuation or recurrence of dumping and injury are as follows:
    a. From the annual reports of the producers in the subject country, it is evident that the subject goods hold an important place for these exporters and that they are highly dependent upon exports.
    b. The domestic demand in the subject country is sufficient to utilize only 13% of the capacity of the producers therein.

c. Further, nearly 40% of the capacities of the producers in the subject country are unutilized.
d. The idle capacities of the foreign producers are 24,376 MT, which is sufficient to take over the Indian market, having a demand of only 17,215 MT.
e. There are restrictions on the export of subject goods to other markets, including USA, Canada and European Union. Therefore, the producers in the subject country can find market only in Asia.
f. While China PR was a major market for the producers in Taiwan, it imposed anti-dumping duty on the goods exported from Taiwan. It may be noted that China PR has initiated second sunset review in March, 2018 against the imports from Taiwan.
g. Moreover, in 2011, China PR added the subject goods to the list of severely restricted toxic substances.
h. Taiwan is a hub of Asian transportation routes, which allows it to enjoy certain geographical advantages in terms of lower shipping cost of bulk shipping.
i. Other Asian countries such as Singapore and Malaysia do not offer a steady market for exports from the subject country.
j. Contrary to the claims of the interested parties, Korea does not offer a significant demand for the subject goods.
k. While the exports to USA have increased, the volume thereof is not comparable to the export volumes to India.
l. With the loss of China PR as a market, the producers in the subject country suffered a setback as the exports thereto fell from around 15,000 MT in 2010 to around 1,500 MT in 2016 and 2017.
m. Even with the decline in exports by 8,000 MT between 2010 to 2012, the exporters in the subject country nevertheless expanded capacity by 5,000 MT.
n. The importance of India as a market is accentuated by the fact that the demand in India is a growing one, as the per capita consumption of surfactants is expected to increase.
o. Imports to declined only because of the enhancement of duties.
p. The exporters were dumping not only in the earlier investigations, but there is continued dumping over the entire injury period. In fact, the dumping margin is higher than that in the earlier investigation.
q. 99% of the exports from Taiwan to other countries have been made at dumped prices. Further, the landed price of 87% of the exports is below the fair price, and 80% of the exports have been made at prices below the selling price in India. This brings out the pricing behavior of the exporters in that they resort to unfair competition.
r. If the potential impact of expiry of duties is seen, it would be seen that the imports are likely to increase both in absolute terms, as well as in relation to production and consumption. Further, the imports are likely to undercut and suppress or depress the prices of the domestic industry. In such a situation, the sales and market share of domestic industry are likely to decline, forcing the domestic industry to reduce production. The lower capacity utilization and lower prices are also likely to impact the profitability of the domestic industry, and it is likely to be forced into losses.
s. Responding to the allegations in this regard, it was submitted that the petitioner has provided all details establishing likelihood of continuation or recurrence of dumping or injury.

Views of the opposing interested parties

73. The submissions of the other interested parties, with regard to the likelihood of continuation or recurrence of dumping and injury are summarized hereunder:

a. The domestic industry has determined substantial dumping margin on a hypothetical basis and has failed to prove the likelihood aspect based on the dumping margin determined in the original investigation and the current investigation.
b. Domestic industry could not show any unutilized excess volume lying idle in Taiwan which may be diverted to India in the event of expiry of present duties. In fact, the petitioner claimed that the per capita consumption of surfactants in India is only 0.4Kg per person whereas the global average is 3.5Kg. This clearly shows that the subject goods which go into surfactants etc. will have a higher demand in rest of the world and it cannot be accepted that India is going to be the largest market for subject goods and Taiwanese exporters will send more material to India. Moreover, while the petitioner claims 39% idle capacity, the exports from Taiwan declined significantly in the last few years to India and also to the world. If the claims of such freely disposable capacities are true, then there was no reason for the exports to go down in the past few years. Taiwan exported much higher to India when AD duties were applicable in the past and the reduction in exports should be seen as a factor suggesting paradigm shift in the nature of exports to India from Taiwan which does not show any likelihood of dumping and injury.
c. It is claimed that the exporters of PUC in Taiwan are highly export oriented. The submission, however, does not establish likelihood as the exports from Taiwan to India and also world has decreased significantly in the last 4 to 5 years based on the data submitted by the petitioner itself. As against a claim of 54000 MT of exportable capacity, Taiwan was exporting less than 30000 MT in 2017 which shows the estimates given by the domestic industry are not reliable.
d. It is claimed that the exporters of PUC in Taiwan are impacted because of restrictions on use of nonyl phenol in various export market. The fact is that none of the countries have banned the use of nonyl phenol. In fact, the petitioner itself submitted that the world demand and also Indian demand for nonyl phenol will grow further. Certain regulations imposed on the use of the product are meant to avoid environmental issues and not to ban the product per se. Thus, the claims are unfounded.
e. Had India been a preferred destination, then export to India should have increased when the overall exports declined. In any case, exports to Korea, Malaysia, Singapore and USA increased substantially in this period, demonstrating that India is not the only location where demand is significant.
f. While the exports from Taiwan to world came down from 43,533 MT in 2010 to 29,264 MT in 2017, the exports to India came down from 7,477 MT to 4,893 MT. The trend of export to India is comparable to the rest of the world.

Examination by Authority

74. The Authority has examined the likelihood of continuation or recurrence of dumping and injury in case of cessation of anti-dumping duty, in terms of Annexure II (vii) of the Rules and other factors as below:

a. In relation to the annual reports of the producers in the subject country, it is noted that there is no evidence to prove that the excess capacities will be diverted into India in the event of revocation of anti-dumping duties.

b. In relation to the domestic sufficient demand in the subject country and huge unutilized capacity, it is noted that in the absence of any evidence that the same will be utilized to dump goods into India, no adverse impact can be drawn against the exporters from subject country.

c. In relation to exports restrictions by USA, Canada and European Union and therefore, Asia being the only market available, it is noted that in the absence of any evidence that the same will be utilized to dump goods into India, no adverse impact can be drawn against the exporters from subject country.

d. In relation to anti-dumping measures by China and its market share for exporters from Taiwan, it is noted that the facts and circumstances of both the investigations are different and therefore, both cannot be equated without appreciating the facts of that case.

e. In relation to Taiwan being hub of Asian transportation routes, which allows their exporters to enjoy certain geographical advantages in terms of lower shipping cost of bulk shipping, it is noted that the same cannot be held against them.

f. In relation to the submission of the Domestic Industry, that contrary to the claims of the interested parties, Korea does not offer a significant demand for the subject goods, it is noted that same do not have any impact on the financial situation of the Domestic Industry.

g. That the importance of India as a market is accentuated by the fact that the demand in India is a growing one, as the per capita consumption of surfactants is expected to increase. Therefore, revocation of duties will have no adverse impact.

h. From the above, it is noted that in case duties are revoked, it would be seen that the imports are not likely to increase both in absolute terms, as well as in relation to production and consumption.

J. CAUSAL LINK

Views of domestic industry

75. The submissions of the domestic industry, with regard to causal link are summarized hereunder:

a. In case of a sunset review, there is no requirement to establish a causal link between likely dumping and likely injury.

b. The injury to the domestic industry is not attributable to any other factor, and is attributable to dumping from the subject country.

c. The causal link is evident from the fact that the market shares of imports declined only because domestic industry reduced its selling price to match the landed price of imports.

d. Despite the decline, the imports continue to hold a major share of the market.
e. The increased sales of the domestic industry came at the cost of reduced profitability.
f. In the event of cessation of duty, the domestic industry is likely to suffer injury and its production, sales, capacity utilization, profits and other economic parameters are likely to deteriorate.

Views of the opposing parties

76. The submissions of the other interested parties, with regard to causal link are summarized hereunder:
   a. There is absence of causal link between the subject imports and the injury to the domestic industry.
   b. The profitability of the DI has shown some unusual spikes in the 2015-16 period. Profitability moved to a level of 1103 indexed points in 2015-16 from a 100 basis point. This shows the profitability is not directly driven by imports and such growths cannot be linked to import price. In fact, such profit was registered when the import price declined to Rs. 97/- per kg in 2015-16 from a level of Rs110/kg in the year 2014-15. This indicates existence of other reasons having a bearing on the performance of the DI which negates the causal link claims of the DI

Examination by the Authority

77. The Authority has examined the submissions on causal link as follows:

   a. In relation to the submission that in case of a sunset review, there is no requirement to establish a causal link between likely dumping and likely injury, it is noted that the Authority as a matter of practice examines causal link in sunset review investigation also.
   b. It is also noted that the performance of the Domestic Industry has improved, and price attractiveness of the Indian market is negative. Market shares of imports have also declined.

   c. From the above analysis that it is noted that there is nothing to suggest that the Domestic Industry will suffer injury in case duties ceased to exist.

K. POST –DISCLOSURE COMMENTS

Views of domestic industry

78. The Domestic Industry submitted letters / emails dated 27th December, 2018 and 1st January, 2019 and also submitted comments on disclosure statement. The submissions made by the domestic industry are summarized hereunder:

   a. That the certain essential facts, which would form basis of the decision of the Designated Authority, have not been disclosed in the Disclosure Statement. In view thereof, Domestic Industry requested the Authority to disclose constructed normal value, dumping margin, conclusion of the Authority on likelihood of dumping, injury, causal link and facts of injury. It is further submitted that in the absence of adequate

disclosure, the Domestic Industry is prevented from offering any meaningful comments.

b. That the Authority has not fulfilled the requirements of Rule 16 of the Customs Tariff Rules 1995. To substantiate their submissions, Domestic Industry has submitted certain WTO judgements and decisions of CESTAT and High Courts.

c. That the Authority should consider the communications sent directly by the petitioner company post issuance of disclosure statement.

d. That the Designated Authority may kindly seek extension of present anti-dumping duties as the period of existing duties are expiring soon. It is further submitted by the Domestic Industry that in the event the Authority decides to extend the period by five years, then in that case higher authorities would not be left with enough time to extend the period.

e. That the facts submitted by the Domestic Industry have not been properly appreciated in the disclosure statement, having regard to the totality of facts and circumstances. Therefore, the Domestic Industry has provided its own interpretation of the essential facts disclosed by the Authority in the disclosure statement.

f. That the as per Article 6.9 of the Anti-Dumping Agreement and Rule 16 of the Anti-Dumping Rules "the authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures." Therefore, the Authority should have disclosed its conclusion in terms of causal link and likelihood of dumping and injury. Domestic Industry has cited WTO decisions and High Court decision in support of their contention.

g. That the Authority has not considered certain submissions made by the Domestic Industry in relation to intensified and continued dumping, price depression, reduced profitability, pricing behavior of exporters, potential volume and value impact on Domestic Industry and its profitability.

h. Similarly, Domestic Industry has submitted that the Authority has not examined its submission relating to relevance of causal link analysis in sunset review investigations. Therefore, Domestic Industry is not in position to offer its comments on the conclusion of the Authority.

i. That the domestic industry submits that the only reason for the exporters to not cooperate is either that they have been able to absorb the duties or that the actual dumping margin is in fact higher. Therefore, the non-cooperation of the exporters clearly demonstrates that the quantum of duties levied is in fact low and there is a need of continuation of duties.

j. That the Authority has overlooked the situation post expiry of the duties by merely comparing the injury parameters of POI by base year. It is also submitted that after

revocation of duties, dumping will intensify and due to that pressure on the domestic prices will increase.

k. That although the domestic industry gained in terms of market share, its profitability has suffered. Therefore, if the duties will not be continued, the imports are likely to affect the economic and financial viability of the domestic industry.

l. That the Authority should consider freely disposable capacities present with the foreign producers, and their high export orientation and their exports to third country before it makes its final conclusion.

m. That the Authority has not appreciated the fact that decline in import volume is due to the increased duties and exporters from subject countries are still dumping the subject goods in India. Further, Domestic Industry has submitted that the exporters of subject goods resort to dumping, in case duties are revoked.

n. That since no conclusions have been drawn with regard to likelihood of continuation or recurrence of dumping or injury in the Disclosure Statement, the domestic industry is at a loss to understand the facts being considered in totality by the Designated Authority. The domestic industry reserves its right to make further submissions once all essential facts have been disclosed having regard to the provisions of Rule 16 of the Anti-Dumping Rules.

Views of the opposing parties

79. The submissions of the other interested parties, made post disclosure are summarized hereunder:

a. That as per the disclosure statement the domestic industry has a capacity of about 24,315 MT which is more than the demand in the country. Further, even assuming that Domestic Industry will cater complete demand in India, they will be left with unutilized capacity in the tune of 30%. Therefore, such unutilized capacity should not be considered to extend the anti-dumping period by further five years.

b. That even after such excess capacities, and after segregation of performance into domestic and export, the Domestic Industry is doing substantially well. Therefore, the Domestic Industry is not vulnerable to any injury from imports in the event of expiry of present duties.

c. That the purpose of anti-dumping duties is not to indemnify the excess capacities created by the Domestic Industry to cater to the foreign market. Further, the imports did not create any consequence on the performance of the Domestic Industry.

d. That the present investigation being an SSR likely injury margin determined is very important which is seen as not substantial in the facts of the present case. The

Domestic Industry has been performing well in the entire injury period and the trend just continues even after the POI.

e. That the reduction in import coincided with decline in landed price was lower than the reduction in cost of Domestic Industry demolishes the theory of excess capacities in the subject country causing threat to the Domestic Industry. It is further submitted that if the theories of excess capacities waiting to be directed to India in the event of expiry of present anti-dumping duties were true, then India would have witnessed much higher imports at a lower price already with the given facts. The import price and volume during the injury period do not depict any such pressure on the exporters which rules out any likelihood of dumping and injury in the event of expiry of present duties.

f. That the Domestic Industry has recovered fully from the adverse situation found earlier and the DI is fairy placed to compete in the market. It is also submitted that the current anti-dumping duties should be allowed to expire in such a scenario. In-fact the DI is seeking further protection to cover its excess capacity so that they can target the export market which is not the intended purpose of ADD.

Examination by the Authority

80. The examination of post-disclosure comments is as under:

a. In relation to the submission made by the Domestic Industry that the Authority has not disclosed all the essential facts in the disclosure statement in terms of Rule 16, it is noted that it was not disputed by the Domestic Industry that the submissions made by them or by any other interested parties are not recorded as essential facts under consideration by the Authority in the disclosure statement in terms of Rule 16. Therefore, the contention of the Domestic Industry that the Authority has not disclosed essential facts is based on incorrect appreciation of facts and law, as the whole object of Rule 16 is to disclose all the facts gathered by the Authority deemed essential for its final conclusion in terms of Rule 17.

b. It is further noted that the object and purpose of disclosure under Rule 16 is to seek comments on disclosure statement and undertake necessary changes thereto based on such comments. It was also noted from the submission of the Domestic Industry through its legal representative or directly by them, that they want the Authority to communicate its decision on extension of duties. They have also sought information like constructed normal value, dumping margin which was never disclosed to interested parties as a settled practice of the Authority in order to protect confidentiality of the information used by the Authority from the confidential information submitted by the interested parties. Therefore, the interpretation that is being resorted to by the Domestic Industry, that the disclosure statement should be exact replica of the final findings would frustrate the object and purpose of disclosure statement. Further, such an interpretation is unfounded in the Rules and also against

settled principles of statutory interpretation. In any case, the interpretation given to Rule 16 by the Domestic Industry is neither legally nor logically correct.

c. In relation to the submissions sent directly by the petitioner company, it is noted that the same have been addressed at appropriate places in the final findings. Further, in relation to the WTO cases and judgements of the CESTAT and High Courts submitted by the Domestic Industry, it is noted that the WTO cases and judgements of Hon'ble High Courts and CESTAT cited by the Domestic Industry cannot be made *pari-materia* applicable to the facts and circumstances of the instant investigation, as the Authority has disclosed all the essential facts to all the interested parties as deemed essential in terms of Rule 16.

d. In relation to the submissions relating to Article 6.9 of the Anti-Dumping Agreement and Rule 16 of the Anti-Dumping Rules "the authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures, it is noted that the Authority has appropriately disclosed all the essential facts to be considered for its conclusion in final findings.

e. In relation to the submission of the Domestic Industry that the Authority has not considered certain submission made by the Domestic Industry, it is noted that the Authority has considered all the submissions of the Domestic Industry. It is also noted that the Domestic Industry was expecting final conclusion in the disclosure statement about extension of the duties, which is nowhere stipulated by the Rules. Therefore, there is no merit in the request of the Domestic Industry that the Authority should disclose its decision on extension of duties at the stage of disclosure statement. It is also important to note that, the Authority can reach to any conclusion, only after receiving comments on the disclosure statement by all interested parties and after satisfying itself on the facts and figures to be used for making final determination.

f. In relation to facts pertaining to likelihood of dumping and injury submitted by all the interested parties, it is noted that the same has been appropriately recorded in the final findings and therefore, no prejudice can be caused to any interested parties including Domestic Industry.

g. In relation to the submissions of the Domestic Industry that by not disclosing the conclusion by the Authority, purpose of the disclosure statement is defeated, it is noted that it would be inappropriate to disclose any conclusion without ascertaining the correctness and completion of the facts, which eventually would form basis of the conclusion. Moreover, the sole purpose of Rule 17 i.e. to submit the Final Findings, gets defeated and disclosure of such information at the stage of disclosure statement would defeat the object and propose of Rule 16 of AD Rules, 1995. Precisely, for this reason Rule 16 has provided provision of disclosing only essential facts under consideration by the Authority which will form the basis of its decision.

h. In relation to the submission of the Domestic Industry that the Authority has not examined its submission relating to relevance of causal link analysis in sunset review investigations, it is noted that the purpose of the disclosure statement is to seek comments on the appropriateness of the facts recorded by the Authority and the examination have been done at appropriate places in the final findings issued under Rule 17.

i. In relation to the submission of the Domestic Industry that the Authority has overlooked the situation post expiry of the duties, it is noted that the Authority has based its determination based on the facts and data submitted by the interested parties during the course of the investigation. The same has been appropriately disclosed in the disclosure statement. Therefore, contention of the Domestic Industry that the Authority has overlooked post expiry situation is factually incorrect.

j. In relation of the submission of the Domestic Industry that in case of revocation of the duties, their market share, profitability will suffer, it is noted that the Authority has based its conclusion based on the submissions made by all the interested parties and after appreciating the law and logic of the said submissions. Therefore, it would be incorrect to state that the Authority has not appreciated the facts in relation to financial condition of the Domestic Industry in the event of revocation of duties.

k. In relation to freely disposable capacities submitted by the Domestic Industry, it is noted that the Authority has appropriately analyzed the capacities freely disposable at appropriate place in the final findings.

l. In relation to the submissions relating to excess capacity and its impact on cost and likelihood, it is noted that the Authority has dealt with this issue at appropriate places in the final findings.

m. In relation to submission that the Domestic Industry is doing substantially well and is not vulnerable to any injury from imports in the event of expiry of present duties, it is noted that the same is analyzed at appropriate places in the final findings.

n. In relation to the submission that the purpose of anti-dumping duties is not to indemnify the excess capacities created by the Domestic Industry to cater to the foreign market, it is noted that the purpose of the anti-dumping duties is to create a level playing feel and in the sunset review investigation, the obligation of the Authority is to determine the likelihood of dumping and injury to the Domestic Industry in the event of cessation of anti-dumping duties. In view thereof, the contention of interested parties is misplaced.

o. In relation to the diversion of excess capacities to India, it is noted that the Authority will not solely base its determination on the availability of the excess capacity. Further, examination of excess capacities has already been made at appropriate places in the final findings.

p. In relation to the submissions that the Domestic Industry has fully recovered from the adverse situation, it is noted that the Authority has analyzed the same at appropriate places in the final findings.

L. EARLIER CONCLUSIONS AND RECOMMENDATIONS IN FINAL FINDINGS DATED 11TH JANUARY, 2019

81. Having examined the contentions of various interested parties and on the basis of the above facts, circumstances, and analysis, the Authority had earlier concluded in its Final Findings dated 11th January, 2019 that continuation of antidumping duty is not warranted and accordingly did not recommend extension of antidumping duty on the imports of subject goods from the subject countries.

M. CHALLENGE IN CESTAT AND CESTAT ORDERS

82. The aforesaid findings dated 11th January, 2019 were challenged by the domestic industry in appeal under Section 9C of the Act.

83. The Hon'ble CESTAT observed with regard to likelihood of continuation or recurrence of dumping and injury as under;

19. On the issue of likelihood of continuous or recurrence of dumping and injury in case of cessation of Anti-dumping duty, the DA observed that there is no evidence to prove that the excess capacities available with the exporters of the subject country would be diverted into India in the event of revocation of anti-dumping duty. Also, he has observed that insufficient demand in the subject country and un-utilised capacity will be utilised to dump goods into India cannot be a factor to draw adverse inference against the exporters from such country. Further, he has observed that export restrictions by USA, Canada and European Union on the subject goods would make Asia being the only market available and the goods would be dumped in India, in the absence of evidence cannot lead to an adverse impact against the exporters. With regard to anti- dumping measures initiated in China and its market for exporters from Chinese Taipei it is noted that the facts and circumstances of investigations are different, therefore cannot be equated in deciding the present case. He has also commented that being the hub of Asia transport routes Chinese Taipei enjoys lower shipping cost or bulk shipping cannot be held against them. Further he has observed that importance of India as a market is accentuated by the fact that the demands in India is growing and is expected to increase, therefore revocation of duty will have no adverse impact. He has finally observed that imports are not likely to increase both in absolute terms as in relation to production and consumption in the event of anti-dumping duty is removed.

20. The domestic industry, on the other hand, has contended that dumping margin has been determined by the authority in the range of 15-25% when the duties were in

force. Thus, there is likelihood on the expiry of the duty, the dumping of goods would further intensify. It is their contention that the domestic industry had not earned adequate profit even during the period when the dumping duty is in force as they had to match and manage the sales prices with the landed price of the imported goods even though the market share has been slightly improved. It is their contention that the profit is meagre at 2% while the returns on capital employed is merely 5% during the POI, when 22% on such return is considered as normal. Further, they have argued that in the circumstance of undercutting of the prices of domestic industry, the importers in India would have clear preference for the imported product being dumped which would result in surge in import. They have submitted that even though there is marginal improvement on certain fronts in the performance of the domestic industry, but if the duty is withdrawn, negative effect on production would be immediate and whatever benefit obtained would be wiped out. Further, laying emphasis on the surplus capacity with foreign exporters in absence of alternative market, they have argued that it is sufficient indicator in favour of likelihood of increase in dumping of goods in India on expiry of duty.

21. We find merit in the contention of the Advocate for the Appellant. In our view there is a fundamental fallacy in the approach of the DA in the determination of likelihood of recurrence of dumping and injury post removal of the duty on the subject goods from the subject country. There is no dispute of the fact that evidence of past and present circumstances is relevant and necessary to arrive at a reasonable and logical determination of continuation of same scenario in future warranting continuation of antidumping duty or otherwise. However, it is impractical and also illogical to insist on the positive evidences on future events, for determination of the likelihood of dumping and injury in future on removal of duty. The parameters to reach at the conclusion on likelihood of dumping and injury adopted in the Sunset Review proceeding by various countries mentioned above are: to name a few, current dumping and injury, significant production capacity and inventories of exporters, existence of barriers for import of such goods in other countries, failure of respondents to participate in review proceeding, declining demand in exporters domestic market, high degree of dependence on export market by exporters, etc.. We also find that more or similar parameters are appearing under the Annexure-II of the Anti-Dumping Rules, 1995.

22. In this back drop, we find that the Appellant domestic industry could reasonably establish through present and past evidence that most of these parameters are satisfied in the present case. The dumping margin is in the range of 10-15% and is positive and above de-minimis. Despite anti-dumping duty, the earning of domestic industry is meagre 2% and return of capital is around 5% against the normal return of 22%. The landed value of import without anti-dumping duty are below the cost of production of domestic industry. The Appellant was able to show that there is a demand of around 17,216 MT in domestic market, whereas the ideal capacities of foreign exporters are around 24,376 MT. Export restrictions are placed on subject goods in other international markets viz. USA, Canada and European Unions, leaving major market only in Asia. The subject goods restriction in China PR being added to the list of restricted toxic substance would find its way in Indian market. There is

growing Indian market in the sense that per capita consumption surfactant is expected to increase. Further, they could show that the export from Chinese Taipei to other countries have been made at dumped prices. Besides, the most important factor is that there has been no participation/response by the exporters of the subject goods on the proposed continuation of anti-dumping duty. Therefore, cumulatively considering all these parameters which are normally adopted internationally and also in line with Annexure II(vii) of the Anti-Dumping Rules, 1995, in Sun Set Review proceedings, we are of the view that on removal of the anti-dumping duty there will be likelihood of recurrence of dumping and injury to the domestic Industries."

84. While the said decision of Hon'ble CESTAT came on 28.11.2019, the anti-dumping duty which was earlier imposed through Customs Notification no. 05/2014-Cus (ADD) dated 16.01.2014 had already expired on 15.01.2019. This resulted in a gap and in view of the same a clarification was sought from Hon'ble CESTAT by moving miscellaneous application to clarify that whether anti-dumping duty can be imposed after expiry of original duty notification in view of decision of the Hon'ble Delhi High Court in the matter of ***Forech India Ltd Vs Designated Authority*** with regard to extension of duty after expiry of existing duty. In the said judgement it has been held that "*.... the Act has fixed a period for completion of Sunset Review within one year from the date of expiry of the initial five year levy and it is in this one year period that the Government must form a view that the cessation of duty would lead to continuation or recurrence of dumping and injury. Therefore, it is only within this period that it may extend i.e. without breaking the continuity of the previous duty or its modified version, for a further period of five years....*"

85. The Hon'ble CESTAT vide its Miscellaneous Order No. 50114/2020 dated 21st February, 2020 disposed the Miscellaneous Application No. 50109 of 2020 for clarification and held as under:

> "*25. In this view of the matter, the decision of the Delhi High Court in Forech India would not be applicable to the facts of the present case in as much as the said decision relates to the original determination by the Designated Authority and not to a determination when a remand is made by the Appellate Tribunal. The contention of the learned Counsel appearing for the importers cannot also be accepted for the same reason.*
>
> *26. The Application, accordingly, stands disposed of with the aforesaid clarification.*"

86. The Authority has re-examined the likelihood of continuation or recurrence of dumping and injury in case of cessation of anti-dumping duty in terms of the paragraph (vii) of Annexure-II, and observations made by the Hon'ble CESTAT vide its order dated 28.11.2019.

N. CONCLUSIONS

87. Having regard to the contentions raised, information provided and submissions made by the interested parties, facts available before the Authority and observations and analysis of the Hon'ble CESTAT in the judgment as recorded above in respect of likelihood of recurrence of dumping and consequent injury, wherein the Hon'ble CESTAT has held as under:

Para 21. "it is impractical and also illogical to insist on the positive evidences on future events, for determination of the likelihood of dumping and injury in future on removal of duty."

Para 22. In this back drop, we find that the Appellant domestic industry could reasonably establish through present and past evidence that most of these parameters are satisfied in the present case. The dumping margin is in the range of 10-15% and is positive and above de-minimis. Despite anti-dumping duty, the earning of domestic industry is meagre 2% and return of capital is around 5% against the normal return of 22%. The landed value of import without anti-dumping duty are below the cost of production of domestic industry. The Appellant was able to show that there is a demand of around 17,216 MT in domestic market, whereas the ideal capacities of foreign exporters are around 24,376 MT. Export restrictions are placed on subject goods in other international markets viz. USA, Canada and European Unions, leaving major market only in Asia. The subject goods restriction in China PR being added to the list of restricted toxic substance would find its way in Indian market. There is growing Indian market in the sense that per capita consumption surfactant is expected to increase. Further, they could show that the export from Chinese Taipei to other countries have been made at dumped prices. Besides, the most important factor is that there has been no participation/response by the exporters of the subject goods on the proposed continuation of anti-dumping duty. Therefore, cumulatively considering all these parameters which are normally adopted internationally and also in line with Annexure II(vii) of the Anti-Dumping Rules,1995, in Sun Set Review proceedings, we are of the view that on removal of the anti-dumping duty there will be likelihood of recurrence of dumping and injury to the domestic Industries", the Authority concludes that:

i. There is continued dumping of the subject goods from the subject country.
ii. The imports are below the cost of production of the domestic industry.
iii. The idle capacity with the foreign exporters is significant, and more than total demand of subject goods in India.
iv. On account of Export restrictions placed on subject goods in other international markets viz. USA, Canada and European Unions, and now China PR, the subject goods are likely to find its way in Indian market.
v. There is growing Indian market in the sense that per capita consumption surfactant is expected to increase. Further, the export from Chinese Taipei to other countries have been made at dumped prices.
vi. There has been no participation/response by the exporters of the subject goods on the proposed continuation of anti-dumping duty.
vii. Despite anti-dumping duty, the return on capital employed of domestic industry is meagre 5% during the POI.
viii. The expiry of duty is likely to lead to continuation of dumping and consequent injury to the domestic industry.

88. In accordance with the observations of the Hon'ble Tribunal, the Authority, after cumulatively considering all these parameters, concludes that there is likelihood of recurrence of dumping and injury to the domestic industry in the event of expiry of anti-dumping duty.

O. RECOMMENDATIONS

89. Having re-examined the likelihood of continuation/recurrence of dumping and injury to the domestic industry in case of expiry of the current measure in place, in view of the directions of Hon'ble CESTAT, and foregoing conclusions, the Authority recommends continuation of anti-dumping duty in force on imports of the product under consideration from the subject country. Having regard to the lesser duty rule followed by the authority, the Authority recommends continuation of definitive anti-dumping duties equal to the lesser of margins of dumping and margins of injury so established, so as to remove the injury to the domestic industry, in the form and manner described in the table below. The Authority, thus. considers it necessary to recommend continuation of definitive antidumping duty as modified, on all imports of the subject goods from the subject country, as per column 7 in the duty table below, for a further period of five years.

DUTY TABLE

SN	Tariff Heading *	Description of goods	Country of origin	Country of export	Producer	Duty amount	Currency	Unit Of Measurement
1	2	3	4	5	6	7	8	9
1	2907 13 00	Nonyl Phenol	Chinese Taipei	Any	Any	52.56	USD	MT
2	2907 13 00	Nonyl Phenol	Any country other than Chinese Taipei	Chinese Taipei	Any	52.56	USD	MT

P. FURTHER PROCEDURE

90. An appeal against this notification shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with Section 9C of the Customs Tariff Act, 1975.

(B.B Swain)
Special Secretary and Director General