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F.No. 6/3/2020-DGTR
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi

Dated 28th January, 2021

NOTIFICATION

FINAL FINDINGS

Case No: ADD-(OI) 02/2020

Subject: Final Findings of Anti-dumping Investigation concerning imports of "Phenol" into India originating in or exported from Thailand and United States of America.

Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the 'Act') and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the 'Rules'), thereof.

A. BACKGROUND OF THE CASE

1. M/s. Deepak Phenolics Ltd., M/s. Hindustan Organics Chemicals Ltd. and M/s. SI Group India Pvt. Ltd. (hereinafter also referred to as the "Applicants") filed an application before the Designated Authority (hereinafter also referred to as "the Authority") in accordance with the Customs Tariff Act, 1975 as amended from time to time (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 (hereinafter also referred as the "Rules") for imposition of anti-dumping duty (ADD) on imports of "Phenol" (hereinafter also referred to as the "Product under Consideration" or "PUC" or "subject goods") from Thailand and United States of America (USA) (hereinafter also referred to as the "subject countries").

2. The Authority, on the basis of sufficient prima facie evidence submitted by the Applicant, issued a public notice vide notification No. 6/3/2020-DGTR dated 25th February, 2020, published in the Gazette of India, initiating the investigation in accordance with Section 9A of the Act read with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods originating in or exported from the subject countries and to recommend the amount of ADD, which if levied, would be adequate to remove the alleged injury to the Domestic Industry.

3. The Authority having regard to the Act and the Rules, considered it appropriate to recommend interim duties and issued preliminary findings vide Notification No.

6/3/2020- DGTR dated 20th August, 2020, recommending the imposition of provisional anti-dumping duties on the imports of the subject goods, originating in or exported from China PR. However, vide Office Memorandum No. 354/121/2020-TRU dated 21st October, 2020, the Central Government decided not to impose the provisional ADD.

B. PROCEDURE

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

a. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.

b. The Authority issued a public notice dated 25th February, 2020 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of subject goods from subject countries.

c. The Authority sent a copy of the initiation notification dated 25th February, 2020, to the Embassies of the subject countries in India, the known producers and exporters from the subject countries, known importers, importer/user Associations, the Domestic Industry, and other interested parties, as per the addresses made available by the Applicants. The interested parties were advised to provide relevant information in the form and manner prescribed and make their submissions known in writing within the prescribed time-limit, in accordance with Rules 6(2) and 6(4) of the Rules.

d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Government of the subject country, through its Embassy in India in accordance with Rule 6(3) of the Rules supra.

e. The Embassies of the subject countries in India were also requested to advise the exporters/producers from their respective countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.

f. The Authority, upon request made by the interested parties, granted extension of time to the interested parties to file their response as well as submissions. Vide communication dated 4th April, 2020, the time was extended up to 24th April, 2020. Vide communication dated 23rd April, 2020, the time was extended up to 10th May, 2020 and vide communication dated 11th May, 2020, the time was further extended up to 20th May, 2020. Any submission made by interested parties even after the due date had been taken into account to the extent considered relevant and appropriate for the purpose of preliminary determination. Further, the Authority has considered all submissions made by interested parties during the course of present investigation for the purpose of final determination.

g. The Authority sent questionnaires to the following known producers/ exporters in the subject countries in accordance with Rule 6(4) of the Rules:

   i. M/s. AdvanSix, USA;
   ii. M/s. Deckota Gasification Company, USA;
   iii. M/s. Dow Chemical Co., USA;
   iv. M/s. Georgia Gulf, USA;
   v. M/s. INEOS Phenol, USA;
   vi. M/s. PTT Phenol Company Limited, Thailand;
   vii. M/s. Shell Chemicals, USA.

h. In response to the above notification, the following producers/exporters have responded and submitted exporter's questionnaire responses and/or legal submissions:
   i. M/s. Kempar Energy Pte. Ltd. (Kempar), Singapore;
   ii. M/s. Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP), Singapore;
   iii. M/s. Mitsui & Co. Ltd. (MBK), Japan;
   iv. M/s. PTT Phenol Company Limited (PPCL), Thailand.

i. The Authority sent questionnaires to the following known importers and users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
   i. M/s. Acron Enterprises;
   ii. M/s. Bleach Marketing Pvt. Ltd.;
   iii. M/s. Centrum Metalics Pvt. Ltd.;
   iv. M/s. C.J.Shah and Company;
   v. M/s. Farmson Pharmaceutical Gujarat Ltd.;
   vi. M/s. Haresh Kumar & Co.;
   vii. M/s. High Polymer Labs Ltd.;
   viii. M/s. India Glycols Ltd.;
   ix. M/s. Kailash Polymers;
   x. M/s. KantilalManilal& Co. Pvt. Ltd.;
   xi. M/s. Karmen International (P) Ltd.;
   xii. M/s. Khetan Brothers;
   xiii. M/s. Krishna Antioxidants Pvt. Ltd.;
   xiv. M/s. Kundan Rice Mills Ltd.;
   xv. M/s. Meghdev Enterprises;
   xvi. M/s. Naiknavare Chemicals Limited;
   xvii. M/s. National Plywood Industries Ltd.;
   xviii. M/s. NGP Industries Ltd.;
   xix. M/s. Paras Dyes & Chemicals;
   xx. M/s. PCL Oil & Industries;
   xxi. M/s. Rainbow Colours & Chemicals;
   xxii. M/s. Resins & Plastic Ltd.;
   xxiii. M/s. Satguru International;
   xxiv. M/s. Shubham Dyes & Chemicals Limited;
   xxv. M/s. Singh Plasticisers and Resins (I) Pvt.;
   xxvi. M/s. Sonkamal Enterprises;
   xxvii. M/s. Torrent Pharmaceuticals Limited;
   xxviii. M/s. United Phosphorus Ltd.;
   xxix. M/s. Wonder Laminates Pvt. Ltd.

j. In response to the above notification, following importers or users have responded and submitted importer/user questionnaire responses:
   i. M/s. Aica Laminates India Private Limited;
   ii. M/s. Akin Chemicals Pvt. Ltd.;
   iii. M/s. Atul Ltd.;
   iv. M/s. Clean Science & Tech Pvt. Ltd.;
   v. M/s. Greenlam Industries Limited;
   vi. M/s. Meghmani Organics Ltd.;
   vii. M/s. Virgo Laminates Ltd.

k. The following importers/users have filed legal submissions/registered as interested parties in response to the initiation notification:
   i. M/s. Agrow Allied Ventures Pvt. Ltd.;
   ii. M/s. Akin Chemicals Pvt. Ltd.;
   iii. M/s. Atul Ltd.;
   iv. M/s. Cedar Décor Pvt Ltd;
   v. M/s. Cent Ply;
   vi. M/s. Clean Science & Tech Pvt. Ltd.;
   vii. M/s. DCM Shriram Industries Ltd;
   viii. M/s. Gitanjali Chemicals Pvt. Ltd.;
   ix. M/s. Haresh Petrochem Pvt. Ltd.;
   x. M/s. Hwatsi Chemical Pvt. Ltd.;
   xi. M/s. Meghmani Organics Ltd;
   xii. M/s. Supriya Lifescience Ltd;
   xiii. M/s. Tradex Corporation.

l. The Authority sent a copy of the initiation notification to the following known Associations of the subject goods in India:
   i. Indian Laminate Manufacturers Association (ILMA);
   ii. The Institute of Indian Foundrymen (IIF).

m. In response, the following user Associations have filed submissions:
   i. Indian Laminate Manufacturers Association;
   ii. The Institute of Indian Foundrymen;
   iii. Federation of Indian Plywood and Panel Industry.

n. The Authority made available the 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.
o. The period of investigation (POI) for the purpose of present investigation is 1st July, 2019 to 31st December, 2019 (6 months). The injury examination period has been considered as the period from 1st April, 2016-31st March, 2017; 1st April, 2017-31stMarch, 2018, 1st April, 2018-30th June, 2019 and the period of investigation.
p. The Authority obtained transaction-wise import data from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems & Data Management (DGS) for subject goods for the injury period, including the POI, and analysed the data after due examination of the transactions.
q. The non-injurious price (hereinafter referred to as "NIP") based on the cost of production and reasonable profits to sell the subject goods in India, having regard to the information furnished by the Domestic Industry in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules, has been worked out so as to ascertain whether ADD lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
r. Additional/supplementary information was sought from the applicants and other interested parties to the extent deemed necessary. The information provided by the Applicant was examined by the Authority by way of a table study, to the extent deemed necessary. Only such information with necessary rectification, wherever applicable, has been relied upon.
s. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the

Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

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

u. Provisional ADD on the import of the subject goods from the subject countries were recommended vide the Preliminary Findings issued on 20th August, 2020. However, the provisional ADD was not imposed.

v. As recorded in the Preliminary Findings, the Authority invited comments on the same and the views of the interested parties on the preliminary determination has been considered and addressed to the extent possible for the purpose of Final Findings.

w. In accordance with Rule 6(6) of the Rules, the Authority also provided an opportunity to all interested parties to present their views orally in a hearing held on 9th October, 2020. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.

x. The submissions made by the interested parties during the course of this investigation, including in response to the Preliminary Findings, wherever found relevant, have been addressed by the Authority, in these Final Findings.

y. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported by evidence and considered relevant to the present investigation.

z. In accordance with Rule l6 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 7th January, 2021 and comments received thereon, considered relevant by the Authority, have been addressed in these Final Findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.

aa. '***' in these Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

bb. The exchange rate adopted by the Authority for the subject investigation is US$1 = ₹71.67.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. At the stage of initiation, the product under consideration was defined as:

"The product under consideration in the present investigation is "Phenol". The product is marketed in two forms i.e. bulk and packed. Bulk sales are normally in loose form, whereas packed sales can be of much smaller container loads and are generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc.

This product is classified under Customs Tariff heading no. 2907.11. The Customs classification is, however, indicative only and in no way binding on the scope of the present investigation."

6. The Authority provisionally had held in the Preliminary Findings that the subject goods produced by the Domestic Industry are like article to the product imported from subject countries in terms of Rule 2(d) of the Rules.

C.1 Submissions of the Domestic Industry

7. The submissions made by the Domestic Industry with regard to the PUC and like article and considered relevant by the Authority are as follows:
   a. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms- bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc.
   b. This product is classified under Customs Tariff heading no. 2907.11.
   c. The goods produced by the Applicants are like article to the PUC imported from subject countries as they are comparable in terms of chemical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods, and are technically and commercially substitutable. There is no known significant difference in the technology employed by the Domestic Industry and the producers in subject country. The Applicants have produced like article to the imported products.

C.2. Submissions of other interested parties

8. No submissions have been made by the exporter/ producer/ other interested parties regarding PUC.

C.3. Examination by the Authority

9. The PUC in the present investigation is "Phenol".

10. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms - bulk (in loose) and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc.

11. The product is classified under Customs Tariff heading no. 2907.11. The Customs classification is, however, indicative only and in no way binding on the scope of the present investigation.

12. It has been noted from the information available on record that the product produced by the Domestic Industry is like article to the PUC imported from subject countries. The product produced by the Domestic Industry, and subject goods imported from subject countries is comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions and uses, product specifications,

pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The contention of the Applicant has not been disputed by the other interested parties. Therefore, the Authority holds that the subject goods produced by the Domestic Industry are like article to the product imported from subject countries in terms of Rule 2(d) of the AD Rules.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1. Submissions of the Domestic Industry

13. The Domestic Industry has made the following submissions with regard to the scope of Domestic Industry and standing:
    a. The Applicants, namely, Deepak Phenolics Ltd., Hindustan Organics Chemicals Ltd. and SI Group India Pvt. Ltd., constitute 100% of the domestic production for the subject goods in India.
    b. The Applicants have not imported the subject goods in the POI from the subject countries.
    c. The Applicants are not related to any exporters in the subject countries or importers of the subject goods in India.
    d. In response to the argument of the Respondents that SI Group imported from South Africa and hence cannot be considered as eligible domestic industry, the Applicants submitted that the imports made by the Domestic Industry from South Africa is not relevant in the present case. Even so, the imports by SI Group from South Africa was made under advance license, in low volumes, for its export products and is not significant so as to disentitle it from being treated as eligible domestic industry. In previous findings of acetone and phenol, the Authority has considered SI Group as eligible domestic industry when they had imported the PUC under advance license.

D.2 Submissions of other interested parties

14. Other interested parties have made the following submissions with regard to the scope of Domestic Industry and standing:
    a. SI Group must not be considered as a constituent of the Domestic Industry as they are an importer of the PUC from South Africa which is a subject country in an ongoing sunset review investigation. SI group omitted to provide the proportion of imports made in relation to total imports from South Africa to India. If imports of the PUC made by SI Group from South Africa are significant in relation to the total imports from it into India, then it must be excluded from the scope of the Domestic Industry. Unless allegation of dumping exists against a country and domestic producer has imported from the country is admitted or proved, they cannot be part of the Domestic Industry and must be excluded from scope.

D.3. Examination by the Authority

15. Rule 2(b) of the Anti-Dumping Rules defines Domestic Industry as under:

"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total

domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers".

16. The application has been jointly filed by Deepak Phenolics Ltd., Hindustan Organics Chemicals Ltd. and SI Group India Pvt. Ltd. The Applicants account for 100% of Indian production, as there is no other producer of the subject goods in India, apart from the Applicants. The Applicants have claimed that neither they have imported the PUC from the subject countries in the POI nor they are related to any exporter or producer of PUC in the subject countries or any importer of the PUC in India.

17. The Authority considered the arguments of the interested parties regarding imports of product by SI Group from South Africa, one of the applicant companies. The Authority notes that the same is not relevant in the present investigation as the imports have not been made from the present subject countries. The volume of imports by SI Group is negligible. Imports have been made under advance license for which there is an obligation to export those products manufactured using the imports made under advance license. The products so produced were not intended for consumption within the country. Being under advance licence, these imports were exempted from payment of ADD. The Authority considers that such imports made under advance licence should not disentitle a domestic producer from being treated eligible Domestic Industry under Rule 2(b). Therefore, the Authority holds that it would not be appropriate to exclude SI Group from the scope of the Domestic Industry solely for this reason.

18. Accordingly, the Authority holds that the Applicants constitute Domestic Industry within the meaning of Rule 2(b) of the Rules, and considers that the application satisfied the criteria of standing in terms of Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1. Submissions of the Domestic Industry

19. The Domestic Industry has made the following submissions with regard to confidentiality:
    a. The Applicants have submitted that information otherwise available in the public domain has been claimed as confidential by PPCL and MBK in the exporters' questionnaire responses. Further, the exporters have claimed excessive confidentiality in excess of the provisions of the Authority's Trade Notice No. 10/2018 dated 7th September, 2018. MBK has not submitted Part IV of the exporters' questionnaire response.
    b. The users/importers have also disregarded the Authority's Trade Notice No. 10/2018 dated 7th September, 2018 in their claims of confidentiality.
    c. Only an information can be claimed confidential by the interested parties, while claims/submissions/arguments of the interested parties cannot be claimed as confidential. However, it would be seen from the responses filed by the responding exporter, even the claims have been claimed as confidential.

d. None of the claims of the normal value have been provided by the exporters in the non-confidential version of the exporter questionnaire response, and therefore such claims are required to be rejected.
e. PPCL, MAP and MBK in their exporter questionnaire responses have claimed information regarding details of shareholders, company structure, list of products sold, production facilities and process, related party information, Annual Reports, contractual links and joint ventures, etc. as excessively confidential.
f. The Authority has rightfully not considered submissions of ILMA and IIF in the Preliminary Findings as they have failed to comply with the directions of the Authority in the initiation notification and specific directions given to them through the mail dated 13th May, 2020 and the same was admitted through an e-mail dated 6th September, 2020 which was suppressed in the writ petition filed in the Hon'ble High Court. ILMA and IIF had failed to serve all their submissions to the Domestic Industry thereby violating the rights of the Domestic Industry to defend its interests.
g. The Applicants have submitted that the users/importers in their user/importer questionnaires have claimed excessive confidentiality without due consideration of the requirements of the Trade Notice 10/2018
h. The non-confidential version of responses filed by exporters, and users do not provide a meaningful understanding of information claimed confidential.
i. The responses should be disregarded and the exporters must be declared as non-cooperative by denial of individual treatment since the Domestic Industry is handicapped from offering comments and defending its interests in the absence of even indexed information, thereby violating principles of natural justice.
j. In response to the contention that arguments of excessive confidentiality by the Domestic Industry have not been addressed, the Applicants have submitted that the same has been analysed by the Authority in Paragraphs 20 and 21 of the Preliminary Findings.

E.2. Submissions of other interested parties

20. Other interested parties have made the following submissions with regard to confidentiality:
    a. The exporters, importers, users and other interested parties have submitted that the Applicants have claimed excessive confidentiality and have not fulfilled the guidelines prescribed in the Trade Notice No. 10/2018 dated 7th September, 2018.
    b. If the Applicants have made arguments on retrospective imposition in the confidential version of the application, it is a clear violation of confidentiality provisions, since the same has not been provided in the non-confidential version. The inability of the Applicants to provide the arguments in non-confidential version hinders the ability of the interested parties to provide meaningful comments on the same and defend their interests on this crucial issue.
    c. The non-confidential version of the application does not allow for a reasonable understanding of the allegations contained therein. The non-confidential version of the application clearly violates the requirements specified in Rule 7 of the Rules.
    d. In the Preliminary Findings, the Authority has summarily dismissed the arguments of the exporters in terms of excessive confidentiality claimed by the Applicants, without providing any reasons for the same. The Authority must assess claims of confidentiality on a case-by-case basis and provide reasons as to

why a particular party's objection regarding confidentiality has been denied. A decision of a quasi-judicial body like the Authority, must be in accordance with the principles of natural justice, and therefore, reasons for arriving at its decision must be disclosed by the Authority.

e. The Authority failed to provide reasoned order and dismissed the exporter's claims of excessive confidentiality by Domestic Industry which is in contravention of Trade Notice 10/2018.
f. Exporters have provided sufficient reasons for claiming information as confidential in questionnaire responses and addressed claims of petitioners in Exhibit 3 of comments to Preliminary Findings.
g. The Authority has to disclose the facts and basis on which normal value and export price has been determined and the actual normal value and export price as normal value can also be considered as a benchmark under reference form of duty and since the normal value and export price for all other non-cooperating producers/ exporters cannot be considered confidential. Further, the Applicants themselves have disclosed the normal value and export price for subject countries in their petition based on facts available. The same should also be disclosed to customs authorities so that ADD can be determined on a real time consignment to consignment basis.
h. Information on installed capacity, production, capacity utilization, sales quantity, sales value, employees, productivity per day, inventory, PBIT, NIP, etc. has not been provided as required by Trade Notice, neither has good cause been shown for claims of confidentiality.
i. The non-confidential version violates requirements under Rule 7 of the Rules and the Trade Notice 1/2013 dated 9th December, 2013. The rights of defence of interested parties could not be fully exercised. Significant data in non-confidential version of the Application has not been properly indexed. Part-VI has not been provided and therefore, the Application is incomplete. Formats A-L have been kept confidential for which no reasonable justification has been provided. The Authority should direct the Domestic Industry to provide the summary of the documents and indexed data in non-confidential version for comments.
j. Computation of NIP, normal value, dumping margin and other data should be disclosed.
k. Information disclosed and filed with other authorities or accessible to an ordinary shareholder in public cannot be held confidential.
l. The Authority has not clarified what the form of duty will be and the reasons for selecting the same.

E.3. Examination by Authority

21. With regard to confidentiality of information, Rule 7 of the Rules provide as follows:

"Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

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

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

22. The Authority examined the confidentiality claims of the interested parties and on being satisfied allowed the claim on confidentiality. The Authority considers that any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, should be treated as such by the authority. Such information cannot be disclosed without specific permission of the party submitting it.

23. The Authority has considered the claims of confidentiality made by the Applicants and the opposing interested parties and on being satisfied about the same, the Authority has allowed the claim on confidentiality. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

24. As regards the arguments of retrospective imposition of duties not in the non-confidential version of the application, it is noted that Applicants requested for imposition of retrospective form of duties through letters filed after the filing of application. The non-confidential versions of the letters have been circulated by the Applicants to all interested parties.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions by the Domestic Industry

25. The following submissions have been made by the Domestic Industry with regard to various issues:
    a. The parameters laid down under the law for retrospective imposition of duty are fully met in the present case. There is a long history of dumping in the country evident from investigations being conducted since 2002. Further, the dumping margin is significant throughout the POI and such a level of dumping has caused adverse effects on the Domestic Industry as inventories have piled up, and there is significant decline in profits, PBIT, cash profits and return on investment. Therefore, it is vital to consider (a) imposition of ADD on a retrospective basis; and (b) import assessments are made provisional pending outcome of the investigation.
    b. Since there is significant intensified injury within POI, which intensified further post-POI, the Domestic Industry has requested the Authority to consider the

imposition of benchmark form of duty in order to address the intensified injury. During the POI, it can be seen that there is a presence of dumped and un-dumped imports. In such a situation, benchmark form of duty is most appropriate. There are imports into the country that are injurious and non-injurious during the POI. The import prices have significantly declined over the injury period and the POI. There is a high volatility in the prices of imports from subject countries over the injury period, within the POI, and within same time. The Authority's Office Memorandum dated 18th June, 2019 states that the reference price system may be recommended in situations of high price volatility.

c. There is no bar as per WTO Agreement or Rules against recommending different forms of duties for the same product against different countries. The quantum and form of ADD will depend on facts of a particular case and this does not tantamount to differential treatment.
d. In response to the argument that the Authority failed to provide reasons for the form of duty, the Applicants have submitted that there is no such legal requirement. There is no violation of principles of natural justice since the opposing parties are given opportunity to comment on the Preliminary Findings.
e. In blatant abuse of trade notices issued by the Authority and global practices applied, a lot of parties participated in the Oral Hearing without filing any factual submissions within the prescribed time limit, and even without being registered as an interested party; and, in any case, without filing questionnaire response. Principles of natural justice also demand that a party exercises its rights well within time limits. The Domestic Industry requests the Authority to record a reasoned determination on this.
f. While Rule 2(c) does not provide for participation of users, Rule 6(5) says that users can participate when the PUC is sold at retail level Therefore, User Associations such as ILMA and FIPPI cannot participate and further, they have submitted no information. Submissions cannot be considered as information.
g. The law does not allow for associations of users to be considered as interested parties. The user associations in this case should be considered as non-cooperative as they have not provided their Registration Certification, by-laws & Memorandum of Association, lists of members, details of the executive body/Managing Structure, copies of the minutes of the meeting in which it was resolved by the Association to oppose an anti-dumping application on behalf of some/all of its members and lists of members who supported, opposed of remained neutral with regard to the application.
h. Prior to the issuance of Preliminary Findings on 20th August, 2020, ILMA deliberately did not comply with DGTR's direction dated 13th May, 2020, for serving their submissions onto all the interested parties and the investigation team. Instead, as late as on 6th September, 2020, the legal representative of ILMA replied to DGTR's e-mail dated 13th May, 2020, stating that the submissions of ILMA and IIF were inadvertently not enclosed in his earlier e-mail dated 13th May, 2020, whereby he had circulated the submissions of three other interested parties.
i. It would be seen that not only PPCL has related raw material supplier but also related utility suppliers. Therefore, the prices of raw material and utility, as claimed by the exporters are required to be rejected as they are not at arm's length.
j. The exporters have intentionally refrained from providing adequate information sought by the Authority as to whether the raw materials for production have been

purchased from a related supplier or captively produced. The information as to whether the procured raw material prices are reflective and representative of a fair market price have also been kept confidential.

k. While the trend of import price decline continues, the raw material prices did not show a corresponding decline and that due to the continued price pressures faced due to imports, the Domestic Industry was forced to reduce their prices.

l. The parties other than those listed in the Preliminary Findings should not be considered as interested party since only they filed information within time limits. These parties are PTT Phenol Company, Thailand, MAP, MBK, Kempar Energy Pte. Ltd., Aica Laminates India Private Limited, Greenlam Industries Limited, Clean Science & Tech Pvt. Ltd., Meghmani Organics Ltd, Akin Chemicals Ltd., Atul ltd., and Virgo Laminates Ltd.

m. The users have failed to provide relevant information in the form of questionnaires and therefore, the authenticity of mere statements cannot be established. Any arguments made without filing responses are liable to be rejected.

n. Parties who are not specified as interested parties under Rule 2(c) have to seek liberty from Authority to be treated as one and the same cannot be assumed.

o. Century Ply, Haresh Petrochem and Gitanjali Chemicals Pvt. Ltd. cannot be considered interested parties as they have not filed responses or submissions.

p. Exim Corp cannot be considered as interested party as it did not register itself nor has it filed any information, submissions or questionnaire responses.

q. Trade Notice No. 11/2018 and the Manual of Operating Practices state that if the parties have neither registered themselves nor filed any questionnaire responses, they cannot be allowed to participate further in the investigation.

r. Increase or decline in raw material prices is not a consideration of form of duty. Further, the weighted average import price over the injury period i.e. April 2016 to June 20 is 1068 (CIF), which is in fact higher than the reference price in the Preliminary Findings. Further, there is a fluctuation in export price and no significant fluctuations in the domestic price.

s. In response to the argument that the Office Memorandum does not constitute Trade Notice, the disclaimer in the Manual clearly stated that it is not intended to replace any Trade Notice/Circulars/Instructions and the Office Memorandum is an instruction. In case the argument of the respondents is accepted, the Office Memorandum also forms part of the Manual and hence forms established practice.

t. Rule 12 of the Rules and Article 7 of the Anti-Dumping Agreement provide that Preliminary Findings can be issued in appropriate cases and that countries like US and EU issue the same as a matter of rule.

u. In response to the argument of the Respondents that the case of Digital Offset Printing Plates was unusual with regard to a short POI, it has not been established as to how the same is not applicable in the present case.

v. With regard to the argument that importers had no knowledge of dumping by exporters, the legal requirement under Section 9A(3) is to prove either history of dumping or knowledge of importer that exporter practices dumping and not both. Imposition of duty against the subject country in itself establishes history of dumping. Further, whenever ADD is imposed on one set of countries, the dumping shifts to other sources. This shows that importer is well aware.

w. In response to the argument that rare and extraordinary situations must exist, the argument is legally incorrect and the parties are trying to impose additional conditions not required by law.
x. It is the established practice of the Authority to calculate NIP in INR. However, when comparing the same with the landed price of the PUC, it is required to be converted into US$.
y. The purpose of ADD is to eliminate injury and re-establish a situation of open and fair competition. It would not restrict imports from subject countries in any way or the availability of products to consumers.
z. In response to the argument that the Authority has not recommended retrospective levy previously even on the request of the Domestic Industry, the Applicants have submitted that non-imposition in other cases is not a ground to reject claims of DI.
aa. ADD is not a form of protection and instead addresses unfair pricing. Extensions have been sought only due to continued dumping and the Authority in all previous investigations has conducted elaborate investigations before imposition as has also been done in the instant case before initiation. Further, the exporters are habitually dumping and even though the Domestic Industry can cater to the existing demand, it is prevented from doing so. The opposing interested parties have not provided any instances as to how the domestic industry is not fulfilling the legal requirement.
bb. In response to the argument that the Authority has actively disallowed 6 month POI in previous investigations, the Applicants have submitted that in a number of cases such as Acrylic Fibre, Dry Batteries, viscose staple Fibre, penicillin G Potassium 6 APA, lead batteries from Japan, Korea, China and Bangladesh, etc., the Authority has allowed a 6 month POI.
cc. In response to the argument of the Respondents that Post-POI data is to be considered, it is submitted that in a fresh investigation, the same cannot be considered. In this regard, the Domestic Industry has referred to the Findings issued in SBR wherein the Authority refused to terminate the investigation despite finding that the sole domestic producer had suspended production after the POI, stating that the same fell outside the investigation period. The price trends of imports during the POI are relevant for quantum of duty determination and not beyond the POI. Further, the impact of COVID- 19 has no relevance.
dd. In response to the argument that IIF and ILMA have adhered to the prescribed formats it is submitted that the public file does not contain such information of the association or its members.
ee. In response to the argument that the landed price of imports declined due to raw material decline, the Applicants have submitted that the argument cannot be accepted as the landed price of imports is below the cost of the Domestic Industry.
ff. With regard to the argument of the Respondent regarding inconsistencies, the Applicant has submitted that information of both the consolidated period (April 18-June 19) as well as bifurcated period (2018-19 and Apr-June, 2019).
gg. With respect to the argument of the Respondents referring to the trigger price of Acetone, the Applicants have submitted that the same is an SSR case wherein post-POI data was examined for likelihood. The same is not relevant in the present case.

F.2. Submissions of other interested parties

26. The following submissions have been made by the exporter/ producer/ other interested parties with regard to various issues:
    a. The Applicants have not made any arguments requesting for the imposition of retrospective ADD in the application. No documents in the public file show such arguments either.
    b. There is no requirement to levy ADD retrospectively. The basic principle of taxation law is certainty and predictability for the tax-payer and, therefore, taxes and duties are prospective in nature. Retrospective imposition is against the norm in ADD as well. It causes prejudice to the bona-fide importer and the user. Section 9A(3) of the Act merely carves out an exception for rare and extraordinary situations with conditions, (a) history of dumping and (b) massive dumping in short period of time. No evidence has been provided by Applicants to substantiate the claim. The 'history of dumping' should be specific to the countries against whom the investigation in ongoing. Retrospective duty has been requested by the DI in multiple investigations, however, no such duty was imposed by the Authority, showcasing clear that it is a provision which mandates extraordinary conditions to exist and must be used. The Domestic Industry has not established the extraordinary circumstances. The Authority has to ascertain the fulfilment of the requisite conditions prior to the recommendation of a retrospective levy of duty. The onus to prove that the conditions are met lies upon the Applicants and the non-confidential petition does not provide any averments.
    c. The Domestic Industry has failed to substantiate whether importers had any knowledge regarding alleged practices of dumping by exporters. Reference has been made to submissions by importers/users dated 30th May, 2020 where they contested awareness of exporters of alleged dumping.
    d. The Authority has not provided any reasons for adopting such a short POI, and the initiation notice is, therefore, in clear violation of the Rules. The Authority has consistently rejected shorter POI in multiple investigations previously and initiated investigations on POI longer than the POI proposed by the Applicants. A POI of 6 months for a commodity product like Phenol is highly erratic and that has prejudiced the Preliminary Findings by causing distortion of facts
    e. M/s. Deepak Phenolics Ltd. must be facing start up difficulties and technical problems. The plant was also shut due to internal reasons.
    f. The Domestic Industry has been consistently availing unfair advantage in way of extreme protection through various trade remedies available in India. There is no further requirement to conduct one more anti-dumping investigation to assess dumped imports of Phenol and material injury or threat of material injury to the Domestic Industry. The Authority has conducted 14 anti-dumping investigations/ sunset reviews on Phenol and Acetone in the last 17 years. In 2019, M/s. Deepak Phenolics Ltd. had approached the Authority for imposing a Safeguard duty on Phenol which was later withdrawn by them. M/s. Deepak Phenolics Ltd. had filed an application for inclusion of product phenol in the Restrictive list of Imports. However, the same was dismissed by the Ministry of Chemicals.
    g. The user industry is dependent on imports as there is a demand-supply gap.
    h. The Applicants have failed to provide any compelling reasons for the Authority to conduct a monthly analysis. The DGTR Manual prescribes scenarios where such an analysis may be undertaken where there are wide variations in cost of production due to raw material price fluctuations. As acknowledged, there is

insignificant decline in raw material prices. For a monthly dumping assessment, monthly cost data has to be called, which is an expansive exercise. The Authority may kindly issue an official notification and thereafter provide time for such information.

i. If ADD is levied on imports of Phenol, then the import price will increase from US$ 550-600 per ton up to US$ 950 per kg, creating a huge price difference and an increase of prices of Phenol in the domestic market and also in the price of exports which use Phenol as a raw material.

j. The Preliminary Findings have recommended unwarranted and unreasonable quantum of ADD. The reference form of ADD recommended by the Authority in the Preliminary Findings shall lead to irreparable damages to the users of Phenol in India. The imposition of ADD will kill the users, viz. domestic MSMEs, which are currently providing revenue and employment, despite the pandemic situation.

k. A duty in the form of reference price is excessively punitive towards importers and users in India. The recommendation of provisional ADD in the Preliminary Findings, based on reference price, is totally against the legitimate interest of the users for the primary reason that the landed price of imports have substantially comedown during the current period on account of reduction in key raw material price which is a crude based product. Raw material prices of the PUC, i.e. Benzene and Propylene, have fallen sharply in the last 3 months which has a bearing on the fixation of duty which is not addressed in the Preliminary Findings.

l. Certain parameters have been acknowledged by the Authority to be relevant while determining whether or not ADD ought to be recommended in reference price form. Some of these factors are summarized below:

   i. Reference price is considered more appropriate when the Authority is convinced that there is a need to protect the interests of the downstream industry;

   ii. Reference price may also be appropriate when the user industry imports specific grades of PUC, which is not available in the country or the Domestic Industry is manufacturing only certain price range of goods but the same cannot be distinguished as a separate product;

   iii. Reference price is not desirable where major raw materials are liable to significant price fluctuations - if the price of the principal raw material have declined, then the Domestic Industry gets extra protection and exporters/ importers get unnecessarily penalized even though they may not be indulging in dumping or causing injury; and

   iv. Reference price becomes ineffective in a rising market and overly protective and punitive in a falling market.

   Based on the above parameters, reference price would not be the appropriate form of duty in light of the commercial factors pertaining to the PUC and associated market. This is particularly so because in the present case the prices of the PUC have declined in the post-POI period. Further, the decline in price is also accompanied by decline in raw material costs.

m. Anti-dumping measures against other countries are in form of fixed duties. Inconsistent forms of duty between different sets of subject countries will lead to a difference in the final cost to the importers, practically preventing the present subject countries from selling the PUC to India due to unjustified differential treatment compared to other WTO members. Treating two countries differently to

all other sources of imports would be in violation of the axioms underlying the Most Favoured Nation principle.

n. The Authority in the present investigation has failed to provide any reasons or point to any facts or circumstances that justify the application of reference price form of duty, in deviation from its past practice of applying fixed duty in investigations concerning the subject goods. In the absence of any reasoning provided by the Authority for recommending reference price of duty, the Preliminary Findings also violates the principles of natural justice.

o. Where a product faces price volatility and/or is known to experience market fluctuations, recommending reference price form of duty by the Authority. Thus, the Authority is requested to rescind the OM dated 18th June, 2019, as even a suggestion that reference price form of duty must be recommended in situations of high price volatility would be in essence in contravention of the statutory Rules. The idea that reference price as a form of duty is incompatible with products that face price volatility is also recognized by other anti-dumping authorities.

p. Phenol and Acetone are joint products and the cost of these two products is not of any significant difference though the price is a factor of demand and supply.

q. Benchmark price of Acetone shows the Phenol duties are unrealistically high.

r. There is material inconsistency between the injury period considered in the application, especially the updated injury information following initiation, and the Preliminary Findings. The initiation had a fixed injury period and POI as 2016-17, 2017-18, April 2018-June 2019 (Annualized), POI-July to December 2019 (Annualized) and this has been adopted in Preliminary Findings also. However, the updated information of dumping and injury supplied by the Applicants after the initiation contains the period 2016-17, 2017-18, 2018-19, April 2019-June 2019 (Annualized), POI July to December 2019 (Annualized), which is inconsistent with the initiation.

s. The injury analysis period prior to the POI needs to be uniform in order to facilitate an objective analysis. In the present case, a highly unusual timeframe of 15 months has been assumed within the injury analysis period. The Domestic Industry's contention in the Oral Hearing that there was no dumping during the period is to be rejected.

t. A six-month POI will not give a clear picture of the imports and the injury caused to the domestic market. The annualized data will be distorted, and indices can also be misleading. In previous investigations, the Authority has actively disallowed a 6 month POI.

u. The contention that import prices were higher in April – June 2019 and therefore, dumping must have been absent, is fallacious and deserves to be rejected outright as the same is a mere assertion not backed by any evidence.

v. The Preliminary Findings do not show any material injury suffered by the Domestic Industry which warrants interim protection.

w. COVID-19 has created huge damages to the user industry. ADD at this juncture shall force many user units to close down. Duties are against public interest.

x. The Authority did not take cognisance of submissions made by IIF and ILMA and recorded in the Preliminary Findings that no submissions had been received.

y. In the Preliminary Findings, the Authority has not included the name of PPCL as one of the parties which made legal submissions, although some of the issues raised by PPCL in the legal submissions have been included in the Preliminary Findings.

z. The Preliminary Findings have not addressed the following issues raised by PPCL in their legal submissions:
   i. Excessive confidentiality;
   ii. Erroneous methodology used to calculate dumping;
   iii. The Applicants have not suffered any material injury;
   iv. Incomprehensible Adjustments made to Injury figures for HOCL;
   v. Determination on injury margin excluding non-injurious price imports;
   vi. The Applicants have improved with respect to other economic parameters;
   vii. The Applicants face no threat of Material Injury.

aa. The Authority has incorrectly indexed the values for POI and the annualized POI for several data points, creating a misleading picture of the injury assessment.

bb. The Authority in its Preliminary Findings must explain the facts or circumstances that it deemed appropriate to issue Preliminary Findings imposing provisional duties. The Rules require circumstances to be exigent. Reference has been made to Article 7.1 of AD Agreement wherein it is provided that provisional duty is to be recommended only if necessary, to prevent injury caused during investigation.

cc. In the Preliminary Findings, the Authority has failed to provide reasons as to why it considers that possible demand-supply gap may not be a reason for depriving a Domestic Industry from seeking redressal against dumped imports causing injury. By failing to provide reasons for its findings the Authority, a quasi-judicial body, failed to comply with the principles of natural justice.

dd. Both price of the PUC and the price of the raw materials suffer from a great degree of price volatility. Unlike what is submitted by the Domestic Industry, the decline in prices of the PUC is also accompanied by decline in raw material costs and in fact, there is a corresponding decline in the price of raw materials.

ee. The objections raised by the Applicants to the participation by certain parties have no legal oral factual substance and the parties here are clearly interested parties. ILMA is an association of laminate manufacturers who are users of Phenol in India and the other companies being represented here are importers/users of the product who are also members of ILMA. Phenol holds about 20-25% share in the cost of the users here who are laminate manufacturers and it is essential for the Authority to consider the views of such users in the course of this investigation.

ff. The Domestic Industry has failed to substantiate whether importers had any knowledge regarding alleged practices of dumping by exporters. Reference has been made to submissions by importers/users dated 30th May, 2020 where they contested awareness of exporters of alleged dumping.

gg. Inconsistent forms of duty between different sets of subject countries will lead to a difference in the final cost to the importers practically preventing the present subject countries from selling the PUC to India due to unjustified differential treatment compared to other WTO members.

hh. The Authority in the present investigation has failed to provide any reasons or point to any facts or circumstances that justify the application of reference price form of duty, in deviation from its past practice of applying fixed duty, and therefore against principles of natural justice.

ii. An Office Memorandum does not constitute Trade Notice. Hence, Office Memorandum dated 18th June, 2019 does not supersede DGTR Manual. Respondents have referred to the disclaimer in the Manual which stated that trade notices and circulars will prevail over Manual. The language of Office Memorandum is not mandatory and is merely recommendatory. It does not bind

the Authority to recommend reference form of duty in a situation where there is a heterogeneous product with large number of PCN and high volatility.

jj. Phenol faces high price volatility and may lead to a situation where the duty is above the dumping margin.

kk. The Domestic Industry's claim for retrospective levy is based on erstwhile POI and not actual POI and updated data dated 17th April, 2020 further diminishes the need for the same. Dumping margins are as low as 0-10%. The Authority has rejected retrospective levy in cases where dumping margin was over 40% to 100%.

ll. Section 9A(3) state that rare and extraordinary situations must exist and present factual circumstances do not justify retrospective levy and will not address alleged injury by Domestic Industry.

mm. The NIP for the Domestic Industry is to be calculated in INR as production, sale of like article and bill of entry filed by importers are in Indian Rupee and therefore unaffected by exchange rate fluctuations.

nn. The user industry is mostly MSMEs which constitute only 31% of both India's GDP and employment against 50% and two-thirds respectively at a global level. Increased costs of such inputs will negatively impact the economic recovery and growth of capacities vis-à-vis employment. The falling prices of phenol is due to recession set in since October last year. The impact of COVID-19 will continue on MSMEs for 3 to 5 more years. ADD has achieved its intended purpose and hence imposition is against public interest.

oo. Reference price as per the Preliminary Findings is US $989 to $1,007 per MT. The current import price of Phenol from USA and Thailand ranges between US$ 650 - 750 per MT. Such a price change is market-driven and is based on the fluctuation of prices in the raw materials. Thus, importers would be required to pay approximately USD 250 per MT - USD 350 per MT ADD on imports of Phenol, which is higher than dumping margin and therefore inconsistent with the Section 9A(1) of the Act, Rule 13 of the Rules and Article 9.3 of the AD Agreement.

pp. Post-POI data should be considered in the present case.

qq. If ADD is imposed, the import price will increase, leading to an increase in phenol prices in the domestic market. There would be an increase in the export price of their 2, 4-D series herbicides. Acetone (by product of 2, 4-D series) is not scrape or waste material as pointed out by the Domestic Industry in the Oral Hearing. Acetone has realization value in market. The contention of the Domestic Industry that certain interested parties have no credentials or submissions are not applicable to IIF. Foundry industry contributes to engineering exports. Phenol is a key raw material for Phenolic Resins used to make casting for engineering sector and holds 60-65% share in the cost. ADD will have direct effect on cost of such users. Phenol holds 20-25% share in cost of laminate manufacturers and therefore, views are to be considered.

rr. IIF and ILMA have filed responses to the extent feasible in prescribed formats. The Authority has been accommodative in including views of "interested parties".

ss. The Respondents have requested that the Preliminary Findings be recalled and a new Preliminary Finding be issued as the user is burdened with unreasonable quantum of duties and the duties are against legitimate interests of users since landed price of imports has reduced to $600 MT due to reduction in raw material price triggered by drop in crude price.

tt. The form of duty will kill fair competition and users will be forced to shut down operation as they cannot compete in end product with such high cost.

uu. The difference in 16% in imports at the time of initiation and in the Preliminary Finding should lead to termination of present case.

vv. The Preliminary Findings failed to address that raw material prices have fallen in last 3 months as a result of crude glut due to COVID-19.

ww. The Preliminary Findings/interim duties recommended in the present matter when imports fell from 110,557 MT in the base year to 87,410 MT as annualized in the POI which is a fall of almost 21% but ironically the Authority found the present case as a fit case to recommend Preliminary Findings.

xx. COVID-19 has impacted entire global matrix and an AD measure applied "in the ordinary course of trade" cannot be applied to commodities not traded in ordinary course of trade.

yy. The investigation should be terminated as the applicants have reported sufficient profits to SEBI and public filings in the stock exchange.

zz. The Authority exceeds its rights and permissions at the cost of consumers for the gains of applicants. Trade remedial measures are being grossly abused by the Authority to promote private vested interests in the guise of fair trade, thereby violating constitutional guarantee of fair share in development.

aaa. The fundamental principle underlying any quasi-judicial proceeding is that all evidences and facts are available to affected parties by way of notice to show cause and opportunity of 'personal hearing'. Reference has been made to Shri Govind Misra alias Misir v. Shri Jyotish Chandra Roy where it was held that the copy of the application must be supplied along with notice. Reference was also made to Baransing Bolwary v. Tura Municipal Board wherein it was held that rights of persons adversely and prejudicially affected is entitled to pre-decisional notice irrespective of the nature of proceeding.

bbb. Import of commodities from several countries on international pricing and freely available to consumers without any discrimination cannot be termed as dumping or unfair trade.

ccc. Indian capacity is not upto the mark and ADD is an effort to kill MSMEs.

F.3 Examination by the Authority

27. The Authority has considered the views of the interested parties, as follows-

a. Regarding the selection of 6 months as POI, the Authority notes that the adoption of 6 months as POI is not inconsistent with the Rules, provided the Applicants substantiate the need for such a time period, and the same is accepted by the Authority. In this case, the Applicants substantiated the need for considering 6 months as the POI by providing reasons that dumping commenced in this period and the injury to the Domestic Industry intensified during the POI. The Applicants claimed that the six months POI is appropriate in view of the fact that China PR had imposed ADD on subject countries in May, 2019, which has led to a significant drop in import prices from the subject countries to India. The product was exported at a much higher price in the month of April and May, 2019. The inclusion of April and May, 2019 would have implied inclusion of a "period of no dumping". It would not be appropriate to fix a period for which there is no allegation of dumping.

b. The arguments submitted by the Applicants were examined by the Authority. It is noted that the purpose of an AD investigation is to examine whether the product

has been dumped and whether such dumping has caused material injury to the Domestic Industry. It is further noted that the Rules have been amended vide Notification No. 9/2020-Customs(N.T.) dated 2nd February, 2020, wherein Rule 2(da) and Explanation to Rule 22 have been inserted incorporating the following provisions:

"the period of investigation shall,-

(i) not be more than six months old as on the date of initiation of investigation.

(ii) be for a period of twelve months and for the reasons to be recorded in writing the designated authority may consider a minimum of six months or maximum of eighteen months."

c. After examining the arguments of the Applicants, the Authority has considered appropriate for selection of 6 months as POI given the justification provided by the Applicants as mentioned above as it would not be appropriate to fix a period for which there is no allegation of dumping.
d. As regards consideration of fifteen months as the preceding period, the Authority notes that there is no bar in considering 15 months as the preceding period.
e. As regards arguments of M/s. Deepak Phenolics Ltd. facing start-up costs and technical problems, it is noted that M/s. Deepak Phenolics Ltd. has fully capitalized its startup cost and the same have not been included in the injury data. Further, the company achieved good capacity utilization even within 2018-19 and hence the cost of production of the company could not have been higher due to possible underutilization of new production facilities.
f. As regards the argument that the Domestic Industry is approaching various forums and seeking relief, it is noted that it is the prerogative of the industrial enterprise to seek recourse under various statutory or regulatory provisions.
g. With reference to the argument of demand-supply gap, the Authority considers that a possible gap may not be a reason for depriving the Domestic Industry from seeking redressal against dumped imports causing injury.
h. As regards the contention of the parties about the form of duty, the Authority notes that as per the Rules, the mandate of the Authority is to determine the existence, degree and effect of the alleged dumping and to recommend the amount of ADD, which, if levied, would be adequate to remove the injury to the Domestic Industry. The Authority notes that the form of duty is determined after evaluating all facts relevant for the present investigation and the form of duty shall depend on such facts. The form of duty is relevant to achieve the intended purpose of any duty and the apprehensions of the users have been examined in this backdrop. The form of duty is fixed in view of facts of each and every case and the form of duty adopted in some other investigation may not be of any relevance to the present investigation. Accordingly, the suitability of the form of the anti-dumping measure is decided by taking into consideration the facts of a case.
i. The injury analysis has been done for the injury period by comparing annualised figures, and not on a monthly basis. The injury margin, dumping margin and price undercutting have been determined for the POI and for the PUC as a whole.
j. Regarding interested parties and the participation of those parties in the Oral Hearing which had not registered within the prescribed time limit and/or had not made submissions, the Authority notes that as per Trade Notice No. 11/2018 dated 10th September, 2018 even if a party has not registered and/or not submitted questionnaire responses or legal submissions within the prescribed

time-frame, the Authority reserves the right to include any other entity as an interested party if it is in the larger interest of the investigation impacting the findings in any way.

k. As regards the claim of the Applicants that certain parties participated for the first time in the Oral Hearing, without registering themselves as interested parties, and made significant factual submissions during the course of the Oral Hearing, the Authority notes that submissions of these parties made pursuant to the Oral Hearing have been taken into consideration for the purpose of the present investigation and the Applicants have been given the opportunity to file rejoinders, if any, to these submissions and the same has also been considered by the Authority.

l. The Authority notes that the Preliminary Findings took cognisance of all submissions made in response to the Authority's direction dated 13th May, 2020.

m. As regards non-consideration of submissions made by some interested parties in the Preliminary Findings, the Authority notes that a clear direction was issued to all interested parties for serving their submissions to opposing interested parties. It is noted that despite the directions, the submissions were not circulated by some interested parties before the Preliminary Findings. In any case, the Authority has now considered submissions made by all interested parties in the present determination.

n. As regards the contention of ILMA and IIF about the need to treat them as interested parties, the Authority notes from the submissions of ILMA that ILMA represents the interest of a section of users of Phenol in India and to that extent, the contentions of the Association and its members are considered and addressed.

o. As regards the contention that ADD in the present case is unwarranted and will affect the users at large when there is a demand-supply gap, the Authority notes that ADD is imposed for a limited purpose of removing injury caused by dumping and no way intends to stop imports as such. The facts also show the demand-supply gap has considerably reduced and imports at fair price shall not be restricted.

p. As regards the submission of the interested parties that the present case does not warrant issue of Preliminary Findings, the Authority has issued Preliminary Findings after considering the facts and circumstances of the case.

q. As regards to the argument that post-POI data is to be considered, the Authority notes that there is no legal requirement to consider post-POI data in a fresh investigation. As a matter of practice, the Authority does not consider post-POI data in fresh investigations.

r. The Authority notes that claims made by the user associations have not been substantiated with sufficient concrete evidence so as to quantify the impact of the duties on their members. The Authority notes that the purpose of imposition of ADD is not to prevent imports into to the country, but to address trade distortion caused by unfair practices and remedy the injury caused to the Domestic Industry due to these imports. Therefore, imposition of ADD will in no way prejudice the imports in any manner nor will it affect the availability of the product to consumers. Rather, ADD only re-establishes fair and open competition in the country.

s. As regards the calculation of NIP, the Authority notes that the determination has been made as per the Rules laid down and the prevailing practice of the Authority.

t. The Applicants have requested for retrospective imposition of duties in the present investigation on the ground that the PUC is being dumped by subject countries in the present case have also been dumped by subject countries and there is a long history of dumping of the PUC. Further, it has also been contended that imports from subject countries have gone up significantly and subsequent to the imposition of ADD, the dumping shifts from one source to another. Further, the Applicants have also contended huge dumping within a short period of six months. The Domestic Industry has also alleged that dumping has caused adverse effect on the domestic industry. Taking into consideration the contentions by the Applicants and the Respondents, the Authority notes that there is insufficient evidence and justification to warrant retrospective levy of ADD.

u. As regards the contention that the recommendation of reference price of duty is a deviation from past practice of applying fixed duty on the subject goods, the Authority notes that that the very first recommendation for imposition of ADD on the product was in the form of reference price wherein the Authority had issued final findings No. 14/04/2002-DGAD dated 13th February, 2003 and the Customs Authorities issued notification No.47/2003 dated 24th March, 2003.

v. The Authority has considered phenol and acetone as joint products and has apportioned the joint cost incurred upto the point of separation between the two products on the basis of respective turnover consistent with the practice adopted by the Authority in this regard.

w. As regards the argument that Indian capacities being not upto the mark, and Covid-19 impacting the global matrix, it is noted that the same cannot justify dumping of the product in India.

x. As regards the argument regarding making available evidences and facts to all interested parties, it is noted that during the investigation the Authority had sent an e-mail to all interested parties requesting them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic. E-mail addresses of all interested parties were made available to all. Further, a list of all interested parties, along with their e-mail addresses is available on DGTR's website. As regards personal hearing, the same is granted on request, which was not received from any of the interested parties in the present case. However, in accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 9th October, 2020. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.

y. The fact of dumping has already been established in the relevant paragraphs of these findings after due verification of the information.

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

G.1. Submissions of the Domestic Industry

28. The following submissions have been made by the Domestic Industry with regard to the normal value, export price and dumping margin:

a. For determining Normal Value, the Applicants have considered ICIS bulletin for monthly prices in South East Asia for Thailand and US Gulf for USA. Relevant adjustments have been made to CFR prices to determine ex-factory prices.

b. The Applicants have adjusted the CIF price for ocean freight, marine insurance, commission, port expenses and inland freight to determine the export price.
c. The dumping margin is positive and significant for both the subject countries.
d. The responding exporter has not raised any argument in its written submissions regarding "particular market situation" or "any other aspects of normal value.
e. The questionnaire responses filed by PTT Phenol Company is deficient. Mitsui India Pvt. Ltd, a related importer as stated in Preliminary Findings has not filed the non-confidential version of Part IV of the questionnaire response nor has it filed any separate response. Unrelated companies namely, Tradechem International FZE (Tradechem) and Riveredge International Pte. Ltd. (Riveredge) have not filed questionnaire responses. Considering paragraphs 12.17, 12.18, 12.20, 12.20(ii) and (iv) of the Manual of Operating Practices, the response of the exporter must be rejected since the unrelated trading companies have not filed responses. The share of exports of these unrelated exporters is to be examined and if their share is above 30%, the responding exporter is to be considered non-cooperative.
f. There is a significant difference in prices of different export transactions with time period and it would not be appropriate to determine weighted average normal value and compare it with the weighted average export price. There is no consistent pattern in export price, unlike in the case of normal value. Therefore, a comparison of weighted average normal value to weighted average export price will significantly distort the dumping margin. Hence, it would be most appropriate to determine weighted average normal value and compare with individual (transaction/transaction basis) export price.
g. The raw material price of the responding exporter cannot be accepted as it does not reflect the actual price in the market. The exporter has intentionally refrained from providing adequate information as to whether raw materials for production has been purchased from a related supplier or captively produced. The information as to whether the procured raw material prices are reflective and representative of a fair market price have also been kept confidential. The Domestic Industry has relied upon the ruling by Ministry of Commerce of People's Republic of China on anti-dumping investigation of imported phenol from United States, European Union, South Korea, Japan and Thailand involving the same exporter wherein it was found that the company's related purchase price was lower than the market average price, therefore, not credible and South East Asian open market price was considered as related purchase price.
h. Adjustments regarding price comparability have been kept confidential by the exporter in the questionnaire response.
i. The international price of raw material is to be considered for computation of normal value. The Authority may direct the responding exporter to provide adequate information regarding valuation of raw material in the non-confidential version; in the absence of which, the best available information is to be relied upon.
j. None of the exporters from USA responded and therefore, the normal value calculated in the Preliminary Findings is to be confirmed. Normal value for USA to be considered while keeping in mind the findings of the Chinese Authority since exporters in USA had responded to that investigation.
k. Normal value of responding Thai exporter is to be considered based on price prevailing in Thailand.
l. ICIS reports are acceptable material and reliable for normal value. CESTAT case referred to by the interested parties is not relevant in the present case as in the said case, the prices were rejected since it was based on one figure of a related product

mentioned in an article. ICIS LOR is a monthly report and the same has been relied upon to prima facie establish the existence of dumping. Further, the Authority has repeatedly relied on prices published in international journals in the past for calculation of normal value.

m. Price adjustments in export price have been made as per experience, conservative estimates and established practice of the Authority. The Domestic Industry has provided best available information.

n. The dumping margin is required to be calculated month-wise and separately for bulk and packed.

o. China has imposed ADD on imports of subject goods from subject countries into China. The producers are not only dumping in India but also in other countries. The dumping margin determined by the Chinese authorities based on exporter responses is significant. In the present case, even though none of the US producers have filed responses, the dumping margin (10-20%) is still lower than that of China.

G.2. Submissions of other interested parties

29. The following submissions have been made by the exporter/ producer/ other interested parties with regard to normal value, export price and dumping margin:

a. Exports from Thailand to India are only bulk, but domestic sales are in both bulk and packed. The Authority is requested to make necessary adjustments to enable fair comparison.

b. The Applicants have failed to provide any legitimate calculation or rationale with respect to adjustments made when arriving at normal value for Thailand.

c. The Applicants have not specified the adjustments undertaken to determine the ex-factory price for Normal Value from the ICIS Reports. The validity of the ICIS Reports relied upon is unclear. It is not evident whether the ICIS Reports calculates prices in the domestic markets of the subject countries. If ICIS Reports specify local prices domestic prices, then Applicants have wrongly adjusted Ocean Freight for calculation. If the ICIS Reports do not specify local prices, then the Authority cannot rely on such a basis.

d. The adjustments with respect to ocean freight, marine insurance, inland freight have been sought in order to calculate export prices at ex-factory level. However, the Applicants have failed to provide adequate information and rationale regarding adjustments made in the export price and hence dumping shown in frivolous.

e. In the original application, the export price of packed Phenol was wrongly shown as less than export price of bulk Phenol, whereas in the updated application, separate prices have not been mentioned. The accuracy and reliability of the calculations and evidences, therefore, need to be checked by the Authority.

f. Separate dumping margins have been calculated for bulk and packed Phenol. However, no separated normal value has been calculated. Moreover, separate export prices have only been calculated in the original application. It is unclear how such separate dumping margins have been created. The Authority may determine the individual margins of dumping based on the responses filed by the exporters.

g. The prices of South East Asia have been adopted for Thailand which is unsustainable as the normal value is country-specific and general prices purportedly prevailing in the entire region which include a number of other countries cannot be adopted as the normal value of a specific country. Similarly, prices prevailing in the US Gulf cannot be assumed as the normal value specific to USA. The decision in Dye Stuff Manufacturers Association of India vs. Government of India is relied

upon wherein it was held that acceptable facts for normal value determination have to be authentic and relevant to the subject country and the POI.

h. Prices in publications cannot form the basis for constructing normal value as they are always based on certain assumptions and presumptions and cannot be considered to correctly reflect the actual prices of producers and exporters in the subject countries.

i. Exporters did not at any point request the Authority to disregard their domestic price for the normal value calculation.

j. On the issue of the related importer in India, PPCL has submitted that the sales made to Mitsui India account for only ***% of the sales made to India during the POI. Further, it is also crucial to bear in mind that the price at which the goods were sold to the related importer is within a ***% range of the price at which goods were sold to various unrelated importers, whereby it cannot be said that this price is unreliable. In any event, the Authority has considered the channel through the related importer to be non-cooperative and the lowest representative export price has been considered for calculating the dumping margin of the non-cooperative channel. In light of the above, the Domestic Industry's allegations ought to be rejected since the non-participation of Mitsui India has had no beneficial impact for the exporters, and the appropriate adverse effects of non-cooperation from Mitsui India have already been incorporated into the dumping margin calculation.

k. As regards the unrelated exporters, it is submitted that a majority of PPCL's unrelated exporters have participated.

l. The responding producer PPCL has provided all the relevant details with respect to raw material prices to the Authority in the confidential version of the questionnaire response and has also cooperated with the Authority with respect to any follow up queries on the questionnaire response.

m. The Domestic Industry has failed to meet the dual criteria set out under Annexure I of the Rules and Article 2.4.2 of the Antidumping Agreement that allows normal value established on a weighted average basis may be compared to the prices of the individual export transactions. The Domestic Industry's suggestion of determining weighted average normal value and comparing with individual export price can be adopted only when:

    1. The Authority finds that the pattern of export prices differs significantly among different purchasers, regions or time periods; and
    2. An explanation is provided as to why such differences cannot be taken into account appropriately by the use of weighted-average -to-weighted average or transaction-to-transaction comparison.

n. Dumping margin to be calculated month-wise and separately for bulk and packed if it has been done so for price undercutting.

o. There is no import restriction or unfair trade restriction in Thailand. The license restriction is only for occupational health and safety.

p. Arguments of interested parties regarding methodology used to calculated dumping has not been taken into consideration.

q. Normal value should be published in currency of the exporter as it is specific to the exporter and specific to country of home market of the exporter.

r. Notification of recommendation without incorporation of 'dumping margin established' during POI is violation of obligations to restrict collection of duty to limit of established dumping margin.

G.3. Examination by the Authority

30. Under section 9A (1) (c) of the Act, "normal value" in relation to an article, means:

i. the comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or

ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

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

(b) Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

31. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have co-operated in this investigation by filing the prescribed questionnaire responses:

i. PTT Phenol Company Limited (PPCL), Thailand;
ii. M/s. Mitsui & Co (Asia Pacific) Pte. Ltd. (MAP), Singapore;
iii. M/s. Mitsui & Co. Ltd. (MBK), Japan;
iv. M/s. Kempar Energy Pte. Ltd. (Kempar), Singapore.

32. It is noted that PPCL is a producer and exporter, based in Thailand. During the POI, PPCL sold its products directly to customers in India and also to all the other three parties, who are trading companies which have sold the products to customers in India. MAP, MBK and Kempar were not involved in the domestic sales of the PUC in the Thailand market. The Authority notes that PPCL and the Domestic Industry have requested for due adjustments to be made due to the differences in the bulk and packed forms of Phenol. For the purpose of Preliminary Findings, the Authority had considered all domestic sales of PPCL as bulk/loose, pending further examination during the course of the investigation. Subsequently, in view of the averments made, and desk verification, the margin comparison for the final determination has been conducted on a bulk-to-bulk basis for both injury and dumping margins, as all exports to India had been made on bulk basis.

33. There is no questionnaire response from any producer in USA. Accordingly, the normal value and export price for all the producers/exporters from the subject countries have been determined as below.

34. With regard to the argument about normal value being exporter specific, the Authority notes that the details of the normal value, as calculated in the Preliminary Findings, were shared with the exporters concerned, and the comments received thereafter have been incorporated in the disclosure statement.

G.4 Determination of normal value

Thailand

Normal value for PPCL, Thailand

35. From the data filed by the cooperating producer and exporter from Thailand i.e., PPCL, it is noted that during the POI, domestic sales have been made to unaffiliated customers. The questionnaire response has been examined and it is noted that the respondent has provided domestic sales price details of the subject goods in respective Appendices with proper costing data for mandatory tests. As regards normal value, the Authority notes that ***MT was sold in the domestic market at a price of US$ ***/MT. The Authority notes that the domestic sales are in sufficient volumes when compared with volume of exports to India. Therefore, domestic sales have been considered for the purpose of determining the normal value. The Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to cost of production of subject goods. In case profit-making transactions are more than 80% then the Authority considers all the transactions in the domestic market for the determination of the normal value. Where the profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value. Based on the ordinary course of trade test, profitable domestic sales have been taken into account for determination of normal value, since the profitable sales were less than 80% by volume. Further, PPCL has claimed Inland Freight, Storage Cost, Credit Cost, Surveyor Cost and other related adjustments as post factory expenses. Claims made by PPCL have been examined, and after desk verification, the response filed has been accepted. It is noted that PPCL had also claimed an adjustment in its normal value on account of the differences between bulk and packed, which was provisionally accepted in the preliminary finding. However, since the dumping margin and injury margin comparison has now been made only for bulk products, the Authority has removed this adjustment from the Normal Value calculation. With regard to the claims made against PPCL regarding raw material procurement price from related parties, the Authority notes that PPCL has disclosed all the relevant information, including related party purchases of raw material and utilities specified in Appendices 6 and 11 of the questionnaire response.

36. Normal Value of PPCL so determined is mentioned in the dumping margin table below.

Normal Value for Non-Cooperative exporters in Thailand

37. The Authority notes that no other exporter/producer from Thailand has responded to the Authority in the present investigation. It is also noted from a perusal of import information received from DGCI&S that all imports of subject goods are in bulk/loose form only, and hence no separate Normal Value determination has been made for

packed/drum Phenol. For all the non-cooperative exporters/producers in Thailand, the Authority determines the normal value on the basis of facts available and the same is mentioned in the dumping margin table below.

Normal value for all producers and exporters in USA

38. The Authority notes that no exporter/producer from USA has filed questionnaire response in the present investigation. It may be noted that the Applicant had determined the normal value in USA on the basis of ICIS reports. None of the interested parties have provided any other information with regard to normal value in USA, nor have provided any evidence to show that this evidence is not appropriate. It is also noted from a perusal of import information received from DGCI&S that all imports of subject goods are in bulk/loose form only, and hence no separate Normal Value determination has been made for packed/drum Phenol. The normal value in US has, therefore, been determined on the basis of facts available i.e. prices reported in ICIS reports. The Normal Value so determined is mentioned in the dumping margin table below.

G.5. Determination of export price

Export Price for PPCL, Thailand

39. In their questionnaire response, PPCL has declared that the company has exported the product to India directly as well as through unrelated foreign traders namely Mitsui & Co., Ltd ("MBK"), Mitsui & Co (Asia Pacific) Pte Ltd. ("MAP"), Kempar Energy Pte. Ltd. ("Kempar"), Tradechem International FZE ("Tradechem") and Riveredge International PTE Ltd (Riveredge). The Authority notes that some of the exports were made by MAP through a related importer namely Mitsui & Co. India Private Limited, who has not filed a separate questionnaire response. The export price at which subject goods have been sold by PPCL to MAP, MBK and Kempar; and the price at which MAP, MBK and Kempar have exported to India have been examined, after taking into account the associated expenses incurred by MAP, MBK and Kempar. The Authority notes that PPCL has exported ***MT of the PUC to India during the POI, and out of ***MT, ***MT has been exported to India through the cooperating channel of trade.

40. It is noted that MAP, MBK and Kempar have exported the product at a price above costs, after taking into account the expenses incurred by them. There is no evidence of any compensatory arrangement, nor any other reason to justify rejection of producer's price and adoption of trader's price. All the trade channels of exports to India are found to be profitable, therefore, the Authority has considered the prices of PPCL, the producer, to determine the ex-factory export price. Further, the producer has claimed Shipping Cost, Surveyor Cost, Handling Charges, Storage Cost, Commission, Credit Cost and Bank Charges as post factory expenses for making exports to India. The claims made by PPCL have been accepted after examining the information submitted, and after desk verification.

41. The Authority notes that two traders, namely, Tradechem International FZE, and Riveredge have not submitted the exporters questionnaire response containing the requisite information for the said *** MT quantity exported to India during the

POI. In accordance with provisions of Explanation (b) to sub-section (1) and sub-section (6A) of Section 9A of the Customs Tariff Act, 1975, and Rule 6(8) of the Rules, the export price for ***MT for which the complete chain of responses containing the requisite necessary information has not been submitted to the Authority, has been determined based on facts available. The Net Export Price for PPCL has been determined on a weighted average basis after taking into account all exporting channels as mentioned above (cooperating as well as non-cooperating) and weighted average Net Export Price, as shown in the dumping margin table below.

Non-cooperative Exporters from Thailand

42. The export price for the non-responding producers/exporters from Thailand has been determined on the basis of facts available taking into account the export transactions of the responding exporter.

Export Price for USA

43. None of the exporters/producers from USA have filed questionnaire response. Due to this non-cooperation, the Authority has determined the export price for all the exporters from USA based on the imports reported in the DGCI&S, and adjustments as per facts available under 6(8) of the Rules.

G.6 Determination of dumping margin

44. Considering the normal value and export price for subject goods, the dumping margins for the subject goods from subject countries have been determined as follows:

Producer	Normal Value/ CNV	Export Price	Dumping Margin		
	(US$/MT)	(US$/MT)	((US$/MT)	(%)	(Range)
PPCL, Thailand	***	***	***	***	10-20
Other exporters from Thailand	***	***	***	***	20-30
All producers/ exporters from USA	***	***	***	***	10-20

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submissions of the Domestic Industry

45. The following submissions have been made by the Domestic Industry with regard to the injury and causal link:
    a. Due to the imposition of ADD by China, countries have shifted their exports to India.
    b. In view of the fact that prices of Phenol declined very substantially over the proposed POI despite no or insignificant decline in cost on account of raw material, month-wise analysis during the POI is requested.
    c. Demand for the PUC has increased over the injury period.
    d. The imports from the subject countries, in absolute terms as well as in relation to production and consumption, first declined and thereafter, increased in the POI.

e. Imports are undercutting the prices of the Domestic Industry and are depressing the prices of the Domestic Industry.
f. Production, capacity, and capacity utilization of the Domestic Industry have increased with commencement of production by M/s. Deepak Phenolics Ltd.
g. The inventories of the Domestic Industry are piling up.
h. The profitability declined severely over the injury period and the Domestic Industry was in losses during the POI.
i. The PBIT and ROCE were negligible during the POI.
j. Imports are impacting the ability of Domestic Industry to raise capital investment.
k. Imports from subject countries pose a threat of material injury to the Domestic Industry.
l. Exporters in the subject countries have excess and freely disposable capacities and also maintain high export orientation and the producers are dependent on exports to maintain revenues and turnover of their companies. There is a global surplus of capacities with capacity expansions in South Africa, China PR and Thailand.
m. Thailand has imposed restrictions on import of the PUC, thereby closing the market for global exporters, making India a lucrative market.
n. Factors other than dumping are not causing injury to the Domestic Industry.
o. Price undercutting being caused by the dumped imports has led to the decline in selling prices of the Domestic Industry.
p. Despite existence of sufficient demand, the Applicants have to undertake exports at losses.
q. The Applicant submitted that it should be considered that there is no demand supply gap at present as Deepak Phenolics has started production, thereby making available significant material in the domestic market. Imports of about 80,000-100,000 MT is being made under advance license, which will be continued by consumers. Imports under advance licence is exempted from ADD and basic customs duties. The net demand is 2.5-2.6 lacs which the Domestic Industry is well equipped to meet.
r. The Applicants submitted that the decline in raw material prices is not corresponding to the trend of import price decline. The injury was so significant that one of the Applicants were forced to export even below the variable cost. The decline in prices has gone even below raw material costs. The Domestic Industry was forced to reduce its prices due to continued price pressures by imports.
s. Since HOCL suffered injury in 2016-17 and 2017-18 due to other factors than dumped imports, in view of the rules which provide for segregation of such injury, the Applicants considered the unit cost of production, profit/loss, cash flow and return on investment of HOCL in 2016-17 and 2017-18 by considering capacity utilization at 80%. However, for the sake of completeness, the Domestic Industry has provided information with regard to actual profit/loss suffered by the domestic industry during the relevant period. The method of treatment of expenses of HOCL during the two year partial plant shutdown period also is to be considered.
t. The Applicants submitted that price undercutting and injury margin should be determined only considering those import transactions whose landed price of imports is below selling price and NIP of the Domestic Industry. The concern is against injurious imports and not against non-injurious imports. The WTO Report in European Communities – Anti-Dumping Duties on Malleable Cast iron Tube or Pipe Fittings from Brazil has been relied upon by the Applicants for the same. Reference has also been made to Kothari Sugars & Chemicals Limited v.

Designated Authority wherein transactions above NIP was allowed for calculation of injury margin.

u. In response to the argument of the Respondents that the Authority must rely on unadjusted data of the Domestic Industry to determine injury, the Applicants submitted that they have objection in relying on unadjusted data to determine injury and segregating injury caused due to HOCL to refute the claims of other interested parties.

v. In response to the argument that separate injury margin is to be determined for bulk and packed phenol and therefore, the Domestic Industry is to provide necessary cost information to determine NIP separately, the Applicants have submitted that separate information including costing information for bulk and packed phenol have been provided.

w. In response to the argument that the data in the Preliminary Findings have been incorrectly indexed, the Applicants have submitted that the indexation has been done as per the established practice of the Authority. Further, the Applicants also submitted that they have not claimed injury with respect to employment, wages and productivity.

x. In response to the argument that there is no volume injury to the Domestic Industry and that its capacity, production and sales increased, the Applicants submitted that since Deepak Phenolics commenced production during the POI, these parameters have improved compared to previous years. The Domestic Industry is selling the product at sub-optimal prices in order to maintain its volumes and sustain in the market.

y. In response to the argument that imports in relation to production and demand declined, the Applicants submitted that since the establishment of a new large scale facility by Deepak Phenolics, significant material have been made available on the market thereby resulting in some fall in imports which is its natural consequence, while previously imports were necessitated due to demand-supply gap in the country. However, imports from subject countries has increased in relation to total imports.

z. In response to the argument that the import prices from subject countries increased and domestic prices decreased more than the cost of sales, the Applicants submitted that the landed price of the imports was below the cost of production in 2016-17 and 2017-18 while the same was much above cost of production in April, 2018 - June 2019. However, the landed price of imports declined below cost of production in the POI. The landed price of imports was below the cost of Domestic Industry which forced it to reduce its prices more than cost decline leading to price depression.

aa. In response to the argument that factors other than dumping is causing injury and that the Authority overlooked non-attributive factors, the Applicants have submitted that the legal requirement is for "a" causal relationship and not "the" causal link between dumped imports and injury.

bb. In response to the argument that Deepak Phenolics suffered injury due to a 14-day plant shutdown, the Applicants have submitted that the planned shutdown was part of the business activity and since the customers preferred dumped imports, DPL was forced to shutdown earlier due to the presence of dumped imports. Further, a 14-day plant shut down cannot refute the claim of material injury to the Domestic Industry for the entire POI.

cc. In response to the arguments regarding injury to HOCL caused due to other factors than dumped imports, the Applicants have submitted that the injury claimed is for

the POI while the reports referred to by the interested parties is that of 2018-19. The findings are based on 2016-17 data.

dd. As regards the argument of feed stock prices higher in India, the Applicants have relied upon M/s. Nippon Zeon Co. Ltd., Japan & Others v. Designated Authority, wherein Hon'ble CESTAT has taken the view that while imposing anti-dumping duty the position that has to be considered is not in the context of ideal conditions but in the specific circumstances of the domestic industry.

ee. As regards plant shut downs and consequent decline in production, it was submitted that no injury was claimed injury due to decline in production. Further, the company is not facing any such issues in the period of investigation as is evident from annual report for the POI. In response to the argument of the Respondents that downturn of automotive sector in POI led to decline in demand for foundry resin and that the injury caused by demand-supply fluctuations is not attributable to imports, the Applicants have submitted that decline in demand during POI, has made the Domestic Industry vulnerable. Imports from subject country at dumped prices have aggravated the injury to the already vulnerable domestic industry.

ff. In response to the argument that the petitioner companies' performance has improved in 2018-19 and POI, the Applicants have submitted that the statements in the annual report do not provide any guidance with regard to deterioration in performance over the injury period of an anti-dumping case since the same is being used by interested parties to show injury due to other factors and that there is no injury at the same time. Public statements in the Annual Report do not alter the conclusion that dumping of the product has contributed to injury to the Domestic Industry.

gg. In response to the arguments of the Respondents that non-injurious transactions cannot be excluded, the Applicants have submitted that opposing parties have not objected the interpretation of the Domestic Industry and rather conceded that it was one of the methods to assess effect of price undercutting.

hh. In response to the argument that 22% ROCE cannot be accepted, the Applicants have submitted that the Authority has a practice to allow 22% return in all situations and, therefore, principles of equity demand that the same is applied to all situations.

ii. In response to the argument that import prices from subject countries is higher than other countries, the Applicants have submitted that imports from other countries are either attracting ADD or at de-minimus levels or are at higher prices. As regards imports from Saudi Arabia, while the imports are more than de-minimus levels, the pattern of imports over the injury period and proposed POI shows that (a) there is significant decline in imports, (b) during POI, imports occurred only in one month. It cannot, therefore, be said that the imports from other countries have also caused injury to the Domestic Industry.

jj. The imports from subject countries are entering the Indian market below cost, which has resulted in price depression and as regards the profitability, the Domestic Industry is suffering losses in the POI due to price depression caused by the dumped imports. While interest and depreciation has increased due to the newly set up DPL plant, the Domestic Industry is unable to earn reasonable return on investment when DPL is excluded.

kk. Volume of imports in relation to total imports have been examined by the Authority consistently in all its findings.

ll. In response to the argument that the safeguard application previously filed by the Domestic Industry is contradictory on parameters of profitability, the Applicants have submitted that the POI is different and in the instant case 2018-19 is not included due to absence of dumped imports. In the safeguard investigation, the Applicant claimed increase in imports from all sources which was causing injury to the Domestic Industry. Dumped imports from US and Thailand and increase in imports from all sources may impact the domestic industry differently.

mm. In response to the argument that there is no causal link between increase in imports and profitability of the Domestic Industry, the Applicants have submitted that injury is due to low priced imports causing price depression and resulting in losses and low return on investments.

nn. In response to the argument on profitability, the Applicants submitted that profits declined in 2017-18 because the landed price of imports were below cost. The profits increased because in the entire injury period, the landed price of imports were above cost only in the period Apr 18-June 19. The landed price of imports again declined below the cost in the POI and resultantly, the Domestic Industry suffered losses.

H.2. Submissions of other interested parties

46. The following submissions have been made by the producer/ exporter/ other interested parties with regard to Injury and causal link are as follows:

a. No reliable evidence has been provided for claim of 12,009 MT of the goods imported in April-May 2019, which were lying in stock in the POI.

b. Domestic Industry had made obscure and inaccurate submissions regarding the import volume in the Safeguard investigation against imports of Phenol into India.

c. The facts available on record reveal that the Applicants have exaggerated the increased import of the subject goods and deliberately invented injury to the Domestic Industry. Any injury allegedly suffered by the Domestic Industry has been caused by factors other than imports from subject countries. During the Oral Hearing, the Domestic Industry had admitted to the fact that HOCL was facing operational constraints during the injury analysis period which was not attributable to dumping and it was requested that such injury was to be adjusted while examining injury to the Domestic Industry in India.

d. The consistent practice of the Authority is to take all import transactions from a country into account for determination of price undercutting, not merely the positive transactions only. As per the submission of Domestic Industry, even if there is one single positive undercutting transaction, the determination should be positive based on the transaction. The Domestic Industry has relied on the WTO Panel Report dated 14th November, 2001 in the case of European Communities – ADD on Malleable Cast Iron Tube or Pipe Fittings from Brazil. The claim of the Domestic Industry is incorrect. The European Union did not rely only on undercutting import transactions for determining price undercutting. They calculated the consequence of disregarding non-undercutting sales as well. The difference between the two calculations was marginal and did not affect the determination materially. The same might not be the case in the current investigation and will lead to highly distorted results.

e. The Domestic Industry has also stated that the injury margin should also be determined by taking into account only the injurious transactions, i.e. where the landed value is lower than the NIP. The Domestic Industry has submitted that EU,

which also follows the principle of lesser duty rule, determines injury margin after excluding non-injurious export transactions. Since the practice has not been challenged in the WTO, the Authority should also consider only those transactions that are below NIP. The Domestic Industry has made reference to the Hon'ble Tribunal's order in the matter of Kothari Sugars & Chemicals Ltd. Vs. Designated Authority. Just because the practice has not been challenged in the WTO yet, does not automatically make the practice valid. ADD can be levied based on the injury margin if injury margin is lower than the dumping margin. If the Domestic Industry's argument is accepted, there would not be any cases where injury margin would be negative resulting in nil duty for the exporter. Any unwarranted exclusions of transactions from injury margin will directly have an impact on the quantum of ADD. The EU had clarified that the undercutting margin determined by excluding non-injurious imports was also 'one of the methodologies' to assess the effect of price undercutting. The Domestic Industry has incorrectly relied on the decision of Hon'ble Tribunal in Kothari Sugars & Chemicals Ltd. vs. Designated Authority to substantiate its claim. The Hon'ble Tribunal in this case did not lay down any blanket legal proposition or rule that import transactions that are above NIP should be excluded for the purpose of injury margin calculation.

f. There is no increase in imports from subject countries in absolute terms or relative to consumption or production in India. In the face of the huge increase in production by the Domestic Industry, the subject imports are insignificant in nature. The Domestic Industry has claimed that the USA, EU, Korea RP, Japan and Thailand diverted their exports from China PR to India after the imposition of a provisional ADD by China PR in May 2019. However, data indicates that imports have reduced after May 2019. The imposition of a provisional ADD by China PR has clearly not affected the imports coming into India. Further, the determination made by the Chinese investigating authority pertains to a different POI and therefore, the same cannot be relied upon for making any determination in the present investigation.
g. Price undercutting from the subject imports was negative for April, 2018-June 19(A) and POI(A) in the case of imports from the USA, which negates any claim made on price effect. Further, the import price has moved in consonance with the cost of sales of the Domestic Industry.
h. The domestic selling price has moved commensurately with the shift in cost of sales. No claim of price suppression or depression can be made by the Domestic Industry on this count.
i. An analysis of relevant economic parameters shows that the Domestic Industry has shown improvement in the performance in almost all relevant economic parameters including capacity, production, sales and market share as seen from the updated application, Annual Reports and Preliminary Findings.
j. The Domestic Industry has rapidly been increasing its market share over the injury period, despite the rise in demand.
k. Deepak Phenolics Ltd. alone holds around 55% of the share in a market. It is obvious that the share of subject imports in the market would be insignificant in nature.
l. The Domestic Industry has faced no injury in terms of employees, wages and productivity per day.
m. The profitability of the Domestic Industry in the POI is not affected by the domestic sales, but by the high interest and depreciation costs incurred by it.

n. Injury, if any, caused to Deepak Phenolics Ltd. is due to start-up difficulties resulting from delay in commencement of commercial production and unfair pricing policy.
o. There is no mention of 'dumped imports' in the report presented by Deepak Phenolics Ltd. in its investor communication.
p. The absence of co-relation between import volume and profit parameter of the Domestic Industry shows that there is no causal link between imports and injury to the Domestic Industry.
q. There are strong prima facie reasons to believe that the data furnished by the Applicants is not validated with the actuals on the published final accounts in the terms of the Balance Sheet in order to validate the claim on NIP, injury and alleged dumping.
r. One of the producers in India is known to have been exporting its Phenol at price below US$ 750 in recent times and yet claims injury from imports into India on a comparable or similar price added with the protection of Basic Customs Duty.
s. There must be a transparent determination of NIP based on at least one key raw-material pricing, i.e. Benzene. The present methodology employed by the Applicants skews the NIP in favour of the domestic producers and destructs the consumer industries. International prices of Benzene and Polypropylene are volatile and are falling at all time low levels.
t. The methodology employed by the Authority by way of a reference price converted in US$ or fixed ADD are both inappropriate distortions of Rule 17(1)(b).
u. The Applicant has not provided supporting evidence with regard to the free disposable capacities in exporting countries.
v. The Annual Report of M/s. Hindustan Organics Chemicals Ltd. indicates high interest, depreciation and employee wages cost as cause of injury. The Report has acknowledged that the company achieved record production for Phenol and that feed stock prices are higher in India compared to other exporting countries and the Indian producers are at competitive disadvantages due to higher overhead costs.
w. The consistent practice of the Authority is to analyse the Post-POI data for threat of material injury claims. However, latest information of M/s. Deepak Phenolics Ltd. shows no threat of material injury. The results for the last quarter of 2019-20 as per the Audited Financial Report for M/s. Deepak Nitrite Ltd. show 33% rise in PBIT from 40.5 Crores to 63.60 Crores. Year on year comparison shows PBIT and Revenue have become almost double in 2019-20 as compared to 2018-19. For M/s. Deepak Phenolics Ltd., the overall sales revenue of the company increased by 23% from Q2 to Q3 and overall profit has increased significantly from Q2 to Q4 showing no threat of Material injury. Recent import data also shows a declining trend in the import volumes for 2018-19 compared to annualized figures for April, 2019 to January, 2020. It is mandatory for the Authority to consider existence of all the factors enumerated for the purposes of concluding threat of material injury/likelihood.
x. The method of adjustment with regard to injury considering Hindustan Organics Chemicals Ltd.'s capacity utilization at 80%, provided by the Applicants is non-transparent and appears to be deliberately obfuscated to prevent the interested parties from commenting meaningfully.
y. The Authority has also noted the problem faced by Hindustan Organics Chemicals Ltd. on account of availability of raw material in an anti-dumping investigation on imports of Acetone from Japan and Thailand.

z. If the only remaining Domestic Industry member is Deepak Phenolics Ltd., then it should have made an allegation on material retardation rather than material injury.

aa. No reason has been provided for adjusting the data for only 2016-17 and 2017-18 as opposed to the entire injury period. To show inflated injury, the Applicants have tried to present combined figures and taken a base year of 2016-17 even though they have readily acknowledged that the injury suffered by other Domestic Industry members is on account of extraneous factors.

bb. While the volume of imports from Thailand has decreased, the profitability of the Domestic Industry has also decreased. The volume of imports from Thailand has not adversely affected the profitability of the Applicants.

cc. Owing to the strong sales and profitability performance, the claims with regards to inventories are unsubstantiated.

dd. A mandatory BIS certification requirement, as notified by the Government, will act as a deterrence with respect to increased imports in the foreseeable future.

ee. The Applicants experienced their largest decline in profitability in April–June, 2019, a period in which the price undercutting for Thailand was negative. Thus, no evidence that price undercutting from Thailand can be linked to the Applicants' significant drop in profits.

ff. The Authority should scrutinize the poor performance of M/s. Hindustan Organics Chemicals Ltd. and find that any alleged injury suffered by M/s. Hindustan Organics Chemicals Ltd. is a consequence of their own continued inefficiencies and not attributable to the subject imports.

gg. There is a break in causal link between alleged undercutting and performance of the Domestic Industry. Also, the Applicants have failed to provide any reasoning beyond mere conjecture that the import restrictions from Thailand will lead to more imports being directed to India.

hh. Continued injury of the Indian industry despite the presence of duties, indicates that any injury suffered by the Domestic Industry must be due to extraneous factors.

ii. The reason for the increase of imports from subject countries from 2016 to 2019 is not dumping, but the growth of the Indian market demands following development of downstream industry.

jj. The facts of the case as emerged in the Preliminary Findings show that the case warranted no duty as the gap between NIP and Landed price is very negligible and any material injury has been totally absent. But the Authority opted benchmark duty so that the price of Phenol at the time of import is fixed at a very high level which is highly arbitrary and has gone against the fair market principles of demand and supply. The Authority is requested to review the form of duty adopted in the Preliminary Findings. The users are still compelled to import the PUC as the capacity in India falls significantly short of demand and bench mark duty is highly inappropriate in such a scenario.

kk. DPL is the key producer of Phenol in India now and though the company started production of Phenol in the last year, it has already reached high levels of profits. HOCL had historically been suffering losses for its inherent issues and been added to the present case to show some inferior financial situation, which is not the real situation of Phenol industry in India. Thus, none of the injury parameters shows any material having been suffered by the DI on account of imports of subject goods from subject countries.

ll. NIP of the Domestic Industry must be considered in INR and NIP, Normal Value and Export Price must be disclosed if ADD is recommended on reference price

basis. If the NIP of the Domestic Industry is assumed in USD, then it would result in a situation where the ADD payable by the Indian importer today would be higher than the NIP calculated on the basis of exchange rate which was assumed at INR 71.67 per USD for the POI. NIP in Indian currency should be published in order to enable customs officer to make proper assessment of appropriate ADD.

mm. NIP has been determined without proper verification or validation of costs actually incurred by the Applicants as required by law.

nn. Causal link is bogus as domestic producers are able to sell its entire product easily at remunerative prices.

oo. While assessing the volume effect of dumped imports, the Authority is supposed to consider whether there has been a 'significant' increase in the volume of dumped imports, either in absolute terms or in relation to production and consumption in India. A mere increase in the volume of dumped imports in absolute terms and in relation to production and consumption in India is not sufficient to arrive at a finding that volume effect of dumped imports exist. Similarly, with respect to the price parameters also, the price undercutting needs to be significant or in the alternative, it must be shown that the prices of imports have had a suppressing or depressing effects on the selling prices of the Domestic Industry.

pp. The Domestic Industry has claimed that after China imposed ADD on inter-alia USA and Thailand, these countries have diverted their exports to India. However, there is a decline in imports from the subject countries rather than an increase.

qq. Neither the Authority in its Preliminary Findings, nor the Domestic Industry in their application has explained why or how prices were suppressed and depressed due to imports from the subject countries and not to imports from other countries when the latter was entering the country at prices which were considerably lower than from the subject countries.

rr. In the Preliminary Findings, the Authority concluded about the Domestic Industry's material injury that the volume of imports from subject countries has increased in relation to total imports. However, an increase in volume of imports in relation to total imports is not a relevant economic factor pertaining to the condition of the Domestic Industry and there is no correlation between the two whatsoever.

ss. The Authority has not explained how imports from other countries which were at lower prices than the subject imports were not the cause of the alleged price suppression and depression and neither has injury caused by such other imports been segregated from the impact of the subject imports.

tt. The method of 'adjustment' adopted by the Domestic Industry for calculation of imports is unclear, non-transparent and has led to double counting. As per the methodology, imports should have decreased for POI, but instead increased substantially. The consistent practice of the Authority is to rely on DGCI&S and DGS data in trade remedy investigations. If the argument of adjustment is accepted, the problem would arise in every investigation.

uu. The Authority is required to examine factors other than the dumped imports, which at the same time are injuring the Domestic Industry, and the injury caused by these other factors must not be attributed to the dumped imports. However, in the present case, the Authority instead of excluding such injury to HOCL from being attributed to the subject imports has sought to modify the performance parameters of HOCL by considering the capacity utilization achieved in the POI, in respect of profits, cash profits and return on investments. This is not what is prescribed under the law. The Authority cannot arbitrarily choose to evaluate the performance of HOCL

considering the capacity utilization level achieved in the POI. There are no reasons justifying such an adjustment other than the fact that it helps the Domestic Industry demonstrate a steeper decline in injury parameters.

vv. The Authority has failed to also explain its reasons for making any adjustment to the data of the Domestic Industry and has failed to explain the methodology adopted with respect to adjustment for HOCL. The Authority is requested to firstly rely upon the unadjusted data of the Domestic Industry for the determination of injury. Either unadjusted data is to be relied upon or exact methodology has to be clarified. The Respondents have referred to Reliance Industries Ltd. v. Designated Authority and Ors. wherein it was held that absence of reasoning by the Designated Authority affects the right to appeal.

ww. The Authority has considered all domestic sales of PPCL as bulk/loose form of phenol as specified in the Preliminary Findings. It is submitted that the domestic sales of the PUC made by PPCL are in both bulk and packed form. In this regard, the PPCL would like to clarify that transaction reflected as "truck" under column Form of Sales in Appendix 4A are in fact "packed" phenol sales, whereas transactions referred to as "pipeline" are in fact, "bulk/loose" phenol sales. In view of the difference in prices between bulk and packed phenol, the Authority is requested to make necessary adjustments to enable a fair comparison of domestic prices of subject countries with export prices to India. The exporters have already provided an appropriate adjustment, which appears to have been taken into consideration by the Authority.

xx. The exporters submit that a separate injury and dumping margin is determined for bulk and packed sales in line with the previous practice of the Authority. Based on the data placed on record, it appears that the Applicants have not furnished their cost information separately for bulk and packed despite acknowledging differences in the prices. The Authority is requested to direct the Domestic Industry to provide the relevant information to determine NIP separately for bulk and packed sales of the PUC and calculate separate NIPs for bulk and packed sales.

yy. There is no volume injury to the Domestic Industry on account of imports from subject countries. The increase in the domestic sales of the Domestic Industry has clearly outpaced the demand of the subject goods in the country demonstrating a lack of volume injury to the Domestic Industry. There is no injury suffered by the Domestic Industry on account of the volume of imports from the subject countries. The Net Sales Realization of the Domestic Industry is largely in line with the import prices indicating the lack of price undercutting by the imports from the subject countries. Prices are neither suppressed nor depressed on account of imports from the subject countries.

zz. The Preliminary Findings issued by the Authority concluded that Domestic Industry is facing injury without comprehensively considering factors other than dumped imports that may have contributed to the alleged injury, if any, caused to the Domestic Industry. It appears that non-attributive factors put forth by Exporters in its Preliminary Submissions have been overlooked by the Authority.

aaa. HOCL has acknowledged in its annual report for FY 2018-19 that feed stock prices are higher in India compared to other exporting countries and the Indian producers are at competitive disadvantages due to such higher overhead costs. With higher raw material prices, there is bound to be an adverse impact on price suppression / depression as well as the non-injurious price calculation. The above extract is therefore an inadvertent admission by HOCL that price injury is not on account of

imports but on account of inherent problems such as availability of raw materials at competitive price and their inability to control the overheads costs.

bbb. The Authority is requested to scrutinize the poor performance of HOCL and find that any alleged injury suffered by HOCL is a consequence of their own continued inefficiencies and not attributable to the subject imports.

ccc. An assessment of SI Group's financial statements revealed that during the injury period revenue of Phenol increased.

ddd. There is no adverse price effect caused by the subject imports.

eee. Exclusion of non-injurious transactions is contradictory to the past practices of the Authority. The Respondents have referred to Anti-Dumping Investigation concerning imports of Caustic Soda originating in and exported from Japan and Qatar wherein the argument was rejected on the ground that undercutting is to be calculated considering DGCI&S data and not selected transactions. Further, zeroing is unreasonable and violation of AD Agreement as has been held by the WTO Body in EC – Bed Linen.

fff. The data provided in the Preliminary Findings in terms of injury analysis do not correspond to the adjusted or the unadjusted data provided in the updated petition filed by the Applicants on 17th April, 2020. This is evident because the Authority has admittedly considered the capacity utilization achieved in the POI as stated in paragraph 51 of the Preliminary Findings.

ggg. The Authority has not taken into consideration arguments relating to exclusion of non-injurious price imports to determine injury margin, improvement in economic parameters of the DI and threat of material injury.

hhh. Data for POI and POI (A) in the Preliminary Findings have been incorrectly indexed. The indexed values for POI and POI (A) are the same for employment, wages and productivity. Profitability, cash profits and ROCE have also been incorrectly indexed.

iii. There is no volume injury to the Domestic Industry. The sales of the Domestic Industry has increased by 472% in POI (A) while demand for PUC has increased only by 14%. The imports from subject countries declined by 21 indexed points and 27 indexed points when compared to previous year of Apr'18-Jun-19(A). Capacity, production and domestic sales of DI has increased significantly.

jjj. Imports in relation to production and demand declined by 220% and 12% respectively.

kkk. Net Sales Realization of Domestic Industry is in line with import prices. Negative price undercutting for USA with landed price of 72,085 MT and positive for Thailand with landed price 69,574 MT and price difference is a mere 3.5%, the price undercutting to the Domestic Industry can be deduced to be insignificant for imports from Thailand.

lll. Import prices from subject countries has increased by 8 indexed points and Domestic Industry prices have decreased by 13 points while cost of sales decreased only by 4 points. There is no price suppression or depression to the domestic industry due to imports but due to some other reasons perhaps its own policies and pricing mechanism.

mmm. Deepak Phenolics suffered injury due to temporary 14-day plant shutdown as mentioned in the Investor Communication for second quarter of FY 2020 due to which there was a decline in revenue and EBITDA.

nnn. Price injury to HOCL is due to inherent problems such as availability of raw materials at competitive price, inability to control overhead costs and lack of modernization of facilities. Annual Reports of HOCL state that the company has

shortage of working capital due to continuous loss and non-availability of working capital finance. Further, the Annual Report for FY 2019-20 state that there was a decrease in production due to 48 day shutdown and 8 days due to shortage of benzene and a 7 day lockdown. The Domestic Industry should demonstrate how the issues in the Reports have been accounted for in the POI.

ooo. HOCL declared a sick unit and Rashyani Unit shut down since 2013. The production at Cochi unit suspended since Mid-2015 due to working capital problems.

ppp. There was improvement in performance during 2018-19 and the POI in reference to HOCL and DPL Annual report 2018-19. SI group's financial statements show increase in revenue of Phenol during the injury period by 6 points in 2018-19.

qqq. There is no threat of material injury as the imports from subject countries have decreased and there is no likelihood of increase, the Domestic Industry did not provide any verifiable evidence of capacities and inventories in subject countries, there is a break in causal link between undercutting and performance of domestic industry and no reasoning by the Domestic Industry as to import restrictions from Thailand will increase imports into India.

rrr. The assumption of 22% as reasonable ROCE is not justified.

sss. The 22% ROCE was adopted at a time when the bank rate of interest (PLR) was 18% but it is substantially lower now (7-10%). The 22% predetermined and fixed rate is no more "reasonable" as per the Anti-Dumping Agreement. In present case, funds are borrowed overseas at 2.5% LIBOR, bank borrowing in India are at 7% to 10%. Currency fluctuation is capitalized and depreciation is claimed. It should be decided on a case to case basis taking into consideration the real costs of finance and investment in any business.

ttt. The Authority must assess whether the 15 economic factors show an actual or potential decline. Furthermore, mere decline of the economic parameters in Para (iv) without the conditions of Para (ii) being present cannot result in a finding of injury.

uuu. Unlike as stated in the Preliminary Findings, the capacity of the Domestic Industry is not a requirement under law for the volume effect analysis. Volume of subject imports in total imports cannot show volume effect as it has no impact on Domestic Industry.

vvv. The Applicants have not provided any evidence for their claim on warehousing of imports. If at all true, then even imports in POI would be warehoused and not consumed. The methodology should hence be rejected.

www. The import price of the subject countries is higher than imports from other countries, whether attracting ADD or not. Imports from other countries which constitute 31.48% of total imports into India are coming in at prices which are considerably lower than the subject countries. No explanation provided as to why price depression or suppression is due to subject imports and not other imports.

xxx. Even if transaction-by-transaction import prices are to be considered in making a price undercutting analysis, the Domestic Industry's selling prices must also be considered on a transaction-to-transaction basis which are similar in point of time to the imports being compared. Fair comparison has to be ensured.

yyy. In the instant case, the DI has not provided any facts on how individual transactions of price undercutting in proximate time had the potential of affecting the prices of the subject goods in the market as a whole. CESTAT decision in Kothari Sugars & Chemicals Limited versus Designated Authority is unreliable since Korea- Pneumatic Valves was not taken into consideration.

zzz. The profitability in the POI was affected by the depreciation costs incurred rather than price suppressing or depressing effects of imports from the subject countries. Any adverse effect on profitability may be attributed to other lower priced imports.

aaaa. Increase in volume of imports in relation to total imports is not a relevant economic factor pertaining to the condition of the Domestic Industry and there is no correlation between the two whatsoever.

bbbb. The Authority is requested to examine the effect of crack spread on the pricing of the subject goods in India.

cccc. The safeguard application filed by the same Applicants on 27th August, 2019 contradicts with the AD application on parameters related to profitability.

dddd. There is no causal link between imports and performance of domestic industry in terms of profits as volume of imports in 2018-19 was highest at 123,727 MT and DI made highest profits in 2018-19. Import volume was also lower in POI (A) than in 2018-19 and DI's PBIT had fallen. There is no coincidence between increase in imports and profitability of DI. Reference has been made to safeguard Investigation concerning Uncoated Copy Paper.

eeee. Recovery in profits in not on account of anti-dumping duties and a fall during 6 months is not a reasonable ground to invoke anti-dumping duties.

ffff. The gap between NIP and landed price is negligible and material injury is absent.

gggg. The Preliminary Findings show that profitability of DI moved from 100 to 567 in the previous year and declined to -61 in the POI, while the petitions shows profitability has moved from 100 to 245 in previous year and declined to -61 in the POI, showing significant fluctuation.

hhhh. Injury margin for Thailand is insignificant (0-10%).

iiii. The Authority should call for import data made under Advanced License and the duty for such imports not to be payable by the users.

H.3. Examination by the Authority

47. The Authority has taken note of the arguments and counter-arguments of all the interested parties with regard to injury to the Domestic Industry. The injury analysis so made by the Authority hereunder addresses the various submissions made by the interested parties.

H.3.1 Cumulative assessment

48. Annexure-II para (iii) of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:
    a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and
    b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

49. The Authority notes that:
    a. The subject goods are being dumped into India from the subject countries. The margins of dumping from each of the subject countries are more than the de minimis limits prescribed under the Rules.
    b. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
    c. Cumulative assessment of the effects of import is appropriate as the exports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the Domestic Industry in the Indian market. It is noted that the consumers who are buying from the domestic industry are also importing from amongst the subject countries.

50. As regards the issue of cumulative assessment in terms of para (iii) of the Annexure-II of the Rules, it is noted that the imports from subject countries fully satisfy the criteria of para (iii) of the Annexure-II. Therefore, the contention of the other interested parties about cumulative assessment are not correct.

51. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from the subject countries on the Domestic Industry.

52. Rule 11 of the Rules, read with Annexure II, provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, "… taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles…". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a 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 or prevent price increases, which otherwise would have occurred. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.

53. With regard to import volumes and prices, the Authority has relied upon the import information of DGCI&S and information provided by the cooperating producers and exporters from Thailand.

54. As per the consistent practice of the Authority, all import transactions have been taken into account for determination of price undercutting and for determining injury margin.

55. The Authority notes that M/s. Hindustan Organics Chemicals Ltd. had very low production in 2016-17 and 2017-18. The company admitted that this was due to working capital problems faced by the company. The Authority considers that the reasons for low production by the company during this period were not attributable to dumping in the country and were due to "other factors". The Authority has, therefore, evaluated the performance of Hindustan Organics Chemicals Ltd. in respect of profits,

cash profits and return on investments, considering the capacity utilization achieved in the POI.

56. With respect to the issue raised that the data furnished by the Applicants is not validated with the actuals on the published final accounts in the terms of the Balance Sheet, and the same should not validate the claim on NIP, injury and alleged dumping, it is noted that the Authority has examined the information furnished by the domestic Iindustry which has been verified and accepted, and the information submitted by the producers and exporters for normal values and export price have also been verified and accepted. It may be added that desk verifications of information submitted by interested parties have been made due to the present COVID-19 situation.

57. As regards the argument that NIP is required to be calculated in INR, it is noted that it is a consistent practice of the Authority to calculate the NIP in INR. However, while comparing the same with the landed price, NIP is converted in USD. This is consistent with the Hon'ble CESTAT order in the matter of Pig Iron Mfrs. Asscn. Versus Designated Authority, Min. of Commerce, wherein CESTAT held that anti-dumping duty should be fixed in dollar terms so that erosion of the quantum of protection does not take place on account of changes in the exchange rate

58. With respect to the argument that the method of 'adjustment' adopted by the Domestic Industry for calculation of imports is unclear, non-transparent and has led to double counting, it is noted that volume of import of subject goods and its prices have been determined from DGCI&S data, and information furnished by the producer and exporters from subject countries.

59. As regards the submission that alleged injury to the Domestic Industry is due to other reasons and there is no injury as per statements in annual reports of the constituents of the Domestic Industry, the Authority notes that the injury analysis carried out hereunder is self-explanatory to establish that the dumping from subject countries has caused injury to the Domestic Industry.

60. As regards the submission of the interested parties that 22% returns on capital employed is not acceptable, the Authority notes that such is the consistent practice of the Authority in all previous investigations conducted.

61. All other submissions of all interested parties with regard to injury analysis have been addressed in the following paragraphs.

H.3.2 <u>Volume effect of dumped imports on Domestic Industry</u>

a) **Assessment of demand**

62. The Authority has taken into consideration, for the purpose of the present investigation, demand for the product in India as the sum of domestic sales of Indian Producers and imports from all sources.

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Sales of Domestic Industry	MT	42,604	53,129	193,675	154,940	121,821	243,642
Trend	Indexed	100	125	364	364	572	572
Subject imports	MT	110,557	108,800	146,446	117,157	43,705	87,410
Trend	Indexed	100	98	106	106	79	79
Imports attracting ADD	MT	98,657	105,275	68,332	54,665	17,283	34,566
Trend	Indexed	100	107	55	55	35	35
Other Countries imports	MT	72,660	74,011	57,028	45,623	2,825	5,650
Trend	Indexed	100	102	63	63	8	8
Total Demand	MT	324,477	341,215	465,481	372,385	185,634	371,268
Trend	Indexed	100	105	115	115	114	114

63. It is seen that the demand for the subject good has consistently increased during the injury period, with a marginal decline in the POI. The overall demand of subject goods has increased during the POI.

b) **Import Volumes from the subject countries**

64. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been an increase in dumped imports, either in absolute terms or relative to production or consumption in India.

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Subject Countries	MT	1,10,557	1,08,800	1,46,446	1,17,157	43,705	87,410
Trend	Indexed	100	98	106	106	79	79
Thailand	MT	57,688	87,568	96,022	76,818	30,749	61,498
Trend	Indexed	100	152	133	133	107	107
U S A	MT	52,869	21,232	50,424	40,339	12,956	25,912
Trend	Indexed	100	40	76	76	49	49
Countries attracting ADD	MT	98,657	1,05,275	68,332	54,665	17,283	34,566
Trend	Indexed	100	107	55	55	35	35
Others	MT	72,660	74,011	57,028	45,623	2,825	5,650
Trend	Indexed	100	102	63	63	8	8
Total Imports	MT	2,81,874	2,88,087	2,71,806	2,17,445	63,813	1,27,626
Trend	Indexed	100	102	77	77	45	45
Subject Imports in relation to							
Total imports	%	39	38	54	54	68	68
Trend	Indexed	100	96	137	137	175	175
Indian Production	%	254	203	72	72	34	34
Trend	Indexed	100	80	28	28	13	13
Indian Demand	MT	34	32	31	31	24	24
Trend	Indexed	100	94	92	92	69	69

65. The following is observed:

a. Compared to the base year, overall volume of subject imports has declined in absolute terms and in relation to production and consumption in the country in the POI. The Domestic Industry submitted that this decline in imports was a natural consequence of addition of capacity to the extent of 54% of Indian demand. The Authority considers that the decline in overall imports was a natural consequence of such an increase in capacities in the country in a situation where there was a demand-supply gap in the country. As against the established demand of 3.71 lacs MT during the present POI, the installed capacity for the product in the country

before commencement of production by Deepak Phenolics Ltd. was only 76,750 MT.

b. The volume of subject imports has increased in relation to total imports in India. Whereas the subject imports constituted below 40% of total imports in India in 2016-17 and 2017-18, its share increased to 54% in April, 2018-June, 2019 period and further to 68% in the present POI. Imports from subject countries, thus, constitute the majority of the imports in India.

c. However, the volume of imports of subject goods from subject countries declined in relation to production and consumption in the country.

H.3.2 Price effect of the dumped imports

66. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the Domestic Industry on account of the dumped imports from subject countries has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the NIP of the Domestic Industry have been compared with landed price of imports of the subject goods from the subject countries.

a) **Price undercutting**

67. For the purpose of price undercutting analysis, the net selling price of the Domestic Industry has been compared with the landed value of imports from the subject countries.

Particulars	**Unit**	**2016-17**	**2017-18**	**April, 2018-June, 2019**		**POI**	
Subject Countries				**Actual**	**Annualised**	**Actual**	**Annualised**
Net Sales Realisation	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed Price	Rs./MT	65,223	72,599	99,262	99,262	70,318	70,318
Trend	Indexed	100	111	152	152	108	108
Price undercutting	Rs./MT	***	***	***	***	***	***
Trend	Indexed	***	***	***	***	***	***
Price undercutting	%	***	***	***	***	***	***
Price undercutting	Range	20-30	20-30	(10)-0	(10)-0	0-10	0-10
Thailand							
Net Sales Realisation	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed Price	Rs./MT	69,264	73,139	1,01,345	1,01,345	69,574	69,574
Trend	Indexed	100	106	146	146	100	100
Price undercutting	Rs./MT	***	***	***	***	***	***
Trend	Indexed	***	***	***	***	***	***
Price undercutting	%	***	***	***	***	***	***
Price undercutting	Range	10-20	20-30	(10)-0	(10)-10	0-10	0-10
USA							
Net Sales Realisation	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed Price	Rs./MT	60,813	70,371	95,295	95,295	72,085	72,085
Trend	Indexed	100	116	157	157	119	119
Price undercutting	Rs./MT	***	***	***	***	***	***

Trend	Indexed	***	***	***	***	***	***
Price undercutting	%	***	***	***	***	***	***
Price undercutting	Range	30-40	20-30	(10)-0	(10)-0	(10)-0	(10)-0

68. It is seen that the imports from subject countries are entering at a price below the domestic selling price of the Domestic Industry, resulting in positive price undercutting.

b) **Price suppression and depression**

69. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period. The table below shows factual position:

Particulars	**Unit**	**2016-17**	**2017-18**	**April, 2018-June, 2019**		**POI**	
				Actual	**Annualised**	**Actual**	**Annualised**
Cost of sales	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	115	113	113	96	96
Selling price	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed price	Rs./MT	65,223	72,599	99,262	99,262	70,318	70,318
Trend	Indexed	100	111	152	152	108	108

70. It is seen that whereas the cost of sales & selling price of the Domestic Industry and landed price of imports increased till April, 2018-June, 2019, the same declined thereafter. However, the decline in selling price and landed price of imports was far more than the decline in cost of sales resulting in price suppression. It is also noted while the landed price of the imports were below the cost of production in 2016-17 and 2017-18, the same were much above cost of production in April, 2018-June, 2019. However, the landed price of imports declined below cost of production in the POI. It is thus noted that subject imports are depressing the prices of the Domestic Industry in the market.

c) **Price Underselling**

71. The Authority has also examined price underselling suffered by the Domestic Industry on account of dumped imports from the subject country. For this purpose, the NIP determined based on average NIP for the Domestic Industry has been compared with the landed price of imports as obtained from the DGCI&S import data.

72. It is noted that the landed price of imports was below the non-injurious price of the Domestic Industry. The Authority notes that the Domestic Industry has suffered price underselling during POI due to dumped imports of the subject goods from the subject country.

Particulars	**Thailand**		**USA**	
	Rs./MT	USD/MT	Rs./MT	USD/MT
Landed Value	69,577.95	970.81	72,089.27	1,005.85
NIP	***	***	***	***
Price Underselling Margin	***	***	***	***

Price Underselling (%)	***	***
Price Underselling (Range in %)	0-10	(10)-0

H.3.3 Economic parameters of the Domestic Industry

73. Annexure II to the Rules provides 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 below

74. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

i. Production, capacity, capacity utilization and sales

75. The capacity, production, sales and capacity utilization of the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Capacity	MT	76,750	76,750	3,45,938	2,76,750	2,76,750	2,76,750
Trend	Indexed	100	100	361	361	361	361
Production	MT	43,524	53,490	2,02,461	1,61,969	1,29,280	2,58,560
Trend	Indexed	100	123	372	372	594	594
Capacity Utilization	%	57	70	88	88	93	93
Trend	Indexed	100	123	156	156	165	165
Domestic Sales	MT	42,604	53,129	193,675	154,940	121,821	243,642
Trend	Indexed	100	125	364	364	572	572

76. The installed capacity with the Domestic Industry increased over the injury period. This is due to the setting up of a new plant with an installed capacity of 2,00,000 MT for phenol and 1,20,000 MT for Acetone by Deepak Phenolics at a gross investment of Rs. 1,200 crores. The plant commenced commercial production in November, 2018. The installed capacity in the Country were 76,750 MT against demand of more than 3 lacs. The Domestic Industry submitted that this investment was justified considering the demand-supply gap for the product in the Country.

77. As a result of setting up of fresh capacity, production and sales of the Domestic Industry has increased over the injury period.

ii. Market share in Demand

78. Market share of the Domestic Industry is shown in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Domestic Industry	%	13.13	15.57	41.61	41.61	65.62	65.62
Trend	Indexed	100	119	317	317	500	500
Subject Countries	%	34.07	31.89	31.46	31.46	23.54	23.54
Trend	Indexed	100	94	92	92	69	69
Countries attracting ADD	%	30.40	30.85	14.68	14.68	9.31	9.31
Trend	Indexed	100	101	48	48	31	31
Other countries	%	22.39	21.69	12.25	12.25	1.52	1.52
Trend	Indexed	100	97	55	55	7	7
Total	%	100.00	100.00	100.00	100.00	100.00	100.00

79. The following is noted:
    a. The Domestic Industry had a meagre market share earlier. The same was due to the absence of production capacities in the country and curtailment of production by Hindustan Organics Chemicals Ltd. due to working capital shortage.
    b. With Hindustan Organics Chemicals Ltd.'s production resuming to reasonable levels and Deepak Phenolics Ltd. commencing production in its new plant, the sales of the Domestic Industry increased. Consequently, the market share of the Domestic Industry increased over the injury period.
    c. Whereas market share of imports from various sources declined over the injury period, as far as subject countries are concerned, the market share declined in April-June, 2019 and increased thereafter in the POI.
    d. The Domestic Industry has contended that the increase in the market share should also be seen along with the fact of addition of new capacities, and the price at which the Domestic Industry is selling the product.

iii. **Inventories**

80. Inventory position with the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Opening	MT	***	***	***	***	***	***
Closing	MT	***	***	***	***	***	***
Average	MT	***	***	***	***	***	***
Trend	Indexed	100	110	340	340	556	556
Inventory as no of days production	Days	***	***	***	***	***	***
Trend	Indexed	100	89	91	91	94	94
Inventory as no of days sales	Days	***	***	***	***	***	***
Trend	Indexed	100	88	93	93	91	91

81. It is seen that the average inventories with the Domestic Industry have increased over the period.

iv. **Profitability, cash profits and return on capital employed**

82. Profitability, cash profits and return on investment of the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Cost of sales	₹/MT	***	***	***	***	***	***
Trend	Indexed	100	115	113	113	96	96
Selling price	₹/MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Profit per unit	₹/MT	***	***	***	***	***	***
Trend	Indexed	100	71	120	120	(8)	(8)
Total Profit/(Loss)	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	90	567	567	(61)	(61)
Cash Profit	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	88	776	621	127	127
Profit before Interest	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	97	450	360	159	159
Return on Capital Employed	%	***	***	***	***	***	***
Trend	Indexed	100	81	25	25	13	13

83. It is seen that:
    a. The Domestic Industry was earning profits up to April, 2018-June, 2019. While profit per unit increased in April, 2018-June, 2019, the same declined thereafter to such an extent that the Domestic Industry suffered financial losses in POI.
    b. Cash profit, Profit before interest and return on capital employed followed the same trend as that of profits. Cash profits, PBIT and return on investment increased in April, 2018-June, 2019 and declined thereafter till the POI.
    c. The Domestic Industry contended that the deterioration in performance of the Domestic Industry was continuous throughout the investigation period. It is noted that profits, cash profits and return on investments have declined during the injury period.

v. **Employment, wages and productivity**

84. Employment, wages and productivity of the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
No. of Employees	Nos.	***	***	***	***	***	***
Trend	Indexed	100	97	173	173	183	183
Salaries & Wages	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	115	188	188	223	223
Productivity per day	MT/Day	***	***	***	***	***	***
Trend	Indexed	100	123	372	372	594	594

85. It is seen that performance of the Domestic Industry has improved in respect of employment, wages and productivity. The Domestic Industry submitted that these parameters are not relevant to show the impact of dumping on the Domestic Industry.

vi. **Growth**

86. The growth of the Domestic Industry in terms of production, capacity utilization domestic sales volume, inventories, profits, cash profits and return on investment is as given in the table below:

Particulars	**Unit**	**2017-18**	**April, 2018-June, 2019 (A)**	**POI**
Production	Y/Y	23	203	60
Domestic Sales	Y/Y	25	192	57
Capacity Utilisation	Y/Y	23	27	6
Average Inventory	Y/Y	10	210	64
Market share of Domestic Industry	Y/Y	19	167	58
Profit/Loss	Y/Y	(10)	526	(111)
Cash Profit	Y/Y	(12)	606	(79)
PBIT	Y/Y	(3)	273	(56)
Return on Capital Employed	Y/Y	(20)	(68)	(51)

87. It is seen that the growth of the Domestic Industry was positive in respect of volume parameters (production and sales) and negative in respect of price parameters (cost of sales, selling price, profits, and return on investment).

vii. **Magnitude of Dumping Margin**

88. Magnitude of dumping is an indicator of the extent to which the imports are being dumped in India. The investigation has shown that dumping margin is positive in the investigation period.

viii. **Ability to raise capital investment**

89. Significant investment was recently made in the PUC. The Domestic Industry is suffering financial losses in the POI. With the competition being faced by the Domestic Industry because of dumped imports, the operations of the industry have been impacted which has affected its ability to raise capital investment. The Domestic Industry is a multi-product company and, therefore, the ability to raise capital investment is not governed based on the performance of the product alone.

ix. **Factors affecting domestic prices**

90. Import prices are directly affecting the prices of the Domestic Industry in the market. It is noted that the landed value of the subject goods from subject countries is not only below its net selling price but also below the NIP of the Domestic Industry. Further, the landed prices of subject imports have depressed the prices of the Domestic Industry leading to financial losses. The imports of subject goods from third countries are either attracting ADD or are de-minimis or are at higher prices. Dumped imports are impacting the prices of the product in the market. Thus, it is concluded that the principal factor affecting the domestic prices is the dumped imports of subject goods from the subject countries.

H.3.4. Injury Margin

91. The Authority has determined the NIP for the Domestic Industry on the basis of principles laid down in Anti-Dumping Rules read with Annexure III, as amended. The

NIP of the PUC has been determined by adopting the information/data relating to the cost of production provided by the Domestic Industry and duly certified by the practicing cost accountant for the period of investigation. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials by the Domestic Industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the PUC was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.

92. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on facts available.

93. Based on the landed price and NIP determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below:

Country	**Name of Producers/ Exporters**	**Non-Injurious Price (US$/MT)**	**Landed Value (US$/MT)**	**Injury Margin US$/MT**	**Injury Margin (%)**	**Injury Margin % (Range)**
Thailand	PTT Phenol Company Limited	***	***	***	***	0-10
Thailand	Other Producers and Exporters	***	***	***	***	0-10
USA	All Producers and Exporters	***	1,005.85	***	***	(10)-0

H.3.5 <u>Conclusion on Injury</u>

94. The examination of the imports of the subject product and performance of Domestic Industry shows that:

a. The volume of imports from subject countries has increased in relation to total imports.
b. The imports from subject countries are undercutting the prices of the Domestic Industry and the price underselling is also positive.
c. Though both the selling price and cost of sales have declined during the injury period, the decline in selling price and landed price of imports was far more than the decline in cost of sales resulting in price suppression.
d. The imports from subject countries have depressed the prices of the Domestic Industry.
e. Though the production, sales and capacity utilization has increased over the injury period, the performance of the Domestic Industry has deteriorated in respect of profits, cash profits and return on capital employed. The Domestic Industry has suffered financial losses in the period of investigation. On the basis of above, it is concluded that the domestic industry has suffered material injury on account of dumped imports from subject countries.

I. Causal Link & Non Attribution Analysis

95. Under Section 9A (5), the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the PUC during the review investigation period or not. It has been examined below whether factors other than dumped imports could have contributed to the injury to the Domestic Industry:

a. Volume and value of Imports not sold at dumped prices

96. The imports from other countries are either attracting ADD or are de-minimus or are at higher prices. While volume of imports from Saudi Arabia are more than negligible, the pattern of imports over the injury period, and POI show that there is a decline in imports, and during POI, imports occurred only in one month. Thus, imports from other countries do not appear to have caused injury to the Domestic Industry.

b. Contraction in demand

97. The Authority notes that there is no contraction in demand as the demand of the subject goods in the country has consistently grown throughout the injury period. Thus, the Domestic Industry has not suffered any injury on this account.

c. Changes in Pattern of consumption

98. There have been no material changes in the pattern of consumption of the PUC. Hence, changes in the pattern of consumption have not caused injury to the Domestic Industry.

d. Conditions of Competition and Trade Restrictive Practices

99. The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the Domestic Industry.

e. Developments in Technology

100. No evidence has been brought by any interested parties about existence of significant changes in the technology that could have caused injury to the Domestic Industry.

f. Productivity

101. The Authority notes that the productivity of the Domestic Industry has increased over the injury period. Therefore, the Domestic Industry has not suffered injury on this account.

g. **Export Performance of the Domestic Industry**

102. The Authority has considered data for the domestic operations only for the injury analysis. Therefore, export performance is not the cause for the injury to the Domestic Industry.

h. **Performance of Other Products of the Company**

103. The Domestic Industry has provided the injury data of PUC performance and the same has been adopted by the Authority for the purpose of injury analysis. Therefore, performance of other products produced and sold by the applicant is not a possible cause of the injury to the Domestic Industry.

J. POST-DISCLOSURE COMMENTS

J.1. Views of the Domestic Industry

104. The following submissions have been made by the Domestic Industry on the Disclosure Statement:

a. There are continuous arrivals of low cost, unwarranted, high volumes of imports from the subject countries to the tune of 75,000 MT – 80,000 MT annually from Thailand and 45,000 MT – 50,000 MT from USA annually as well as during the POI.

b. The imports from subject countries are entering at a price far below the domestic selling price of HOCL which resulted in price suppression and had to suffer heavily on margins which caused material injury to HOCL.

c. The Domestic Industry submits it has not received the legal submissions submitted by M/s. Cedar Décor Pvt. Ltd., M/s Cent Ply, M/s. DCM Shriram Industries Ltd., M/s. Hwatsi Chemical Pvt. Ltd., M/s. Supriya Lifescience Ltd., M/s Tradex Corporation and as a result, the Domestic Industry has not been able to offer comments on these submissions.

d. There is no bar in considering 15 months as preceding period.

e. There is no demand-supply gap at present. The net demand available to the Domestic Industry is in the region of 2.5 -2.6 lacs since imports of about 80,000-1,00,000 MT are being made under advance licence. The Domestic Industry is well equipped to meet this demand, with the commencement of a new large scale facility by Deepak Phenolics.

f. The Domestic Industry submits that the increase in market share is due to the addition of new capacities.

g. The NIP revised is significantly low and is in stark difference to the NIP determined at the stage of initiation and Provisional Findings. There was no reason for the domestic industry to believe that the methodology adopted by the Directorate earlier is incorrect or inapt. In the present investigation, the Authority had issued provisional findings. The domestic industry has not been asked to justify why the NIP should be computed after including entire sales of SIG. This sudden change has led to a negative injury margin for USA.

h. The volume of captive consumption of Phenol would have either been used by the producer itself or by the consumer and thus had to be included in determining the domestic consumption. Had SIG not been integrated, the production of subject goods now being featured as captive would have been featured in domestic sales. If SIG had not created capacity for Phenol, the requirement of Phenol in the domestic market

would have been met by other producers. Similarly, had SIG not created facilities for other products, SIG would have sold phenol in the market. In fact, company keeps switching its purchase of phenol both from its own production and imports for the other products. Thus, in either situation, the volume of captive production would have been included in the "domestic production".

i. There cannot be two different treatment of captive consumption. When captive consumption is relevant for injury examination, it cannot be excluded from the determination of non-injurious price.

j. We request the Authority to kindly reconsider considering the captive consumption in NIP determination.

k. It is submitted that for normation, utilities for the year 2018-19 is considered which is already included in the year Apr18-Jun19. The utility for the year 2017-18, which is Rs 20,865 needs to be taken for normation purposes and not 2018-19.

l. It is submitted that the negative injury margin is because of exclusion of a significant portion of sale made by SIG on the grounds of its being captive. Whereas the rules provide for consideration of respective share of "domestic production" for computation of weighted average for the domestic industry as a whole, the "production for domestic sales" has been considered for determination of non-injurious price. In other words, "production for domestic sales" has been treated as "domestic production"

m. While calculating NIP for DPL, for normation, raw material utilization for the year 2018-19 is considered which is already included in the year Apr18-Jun19. The raw material utilization for the year Apr18-Jun19, which is Rs 52458 per Mt, needs to be taken for normation purposes and not 2018-19.

n. Non-injurious import transactions to be excluded while determining price undercutting and injury margin.

o. The disclosure statement does not address the issue raised by the Authority regarding raw material prices not in arm's length. The Chinese Authority provided a specific finding in this regard and rejected the claims of the responding exporter.

p. It is submitted that not only the exporter has related raw material supplier but also related utility supplier. Therefore, the prices of raw material and utility, as claimed by the exporters are required to be rejected as they are not at arm's length.

q. The Domestic Industry submits that it should be considered that there is no demand supply gap at present. Even though the capacity in the country is below the gross consumption, it must be considered that imports to the tune of about 80000-100000 MT are being made under advance license.

r. Anti-dumping duty is not a protection to the industry, but rather a means of price correction.

J.2. Views of Other Interested Parties

105. The submissions of other interested parties on the Disclosure Statement are as follows:

a. Alleged dumped imports have been of no adverse consequences on the DI and imports have been largely withdrawing from the market as a result of increase in capacity in India. No ADD is essential in such a scenario.

b. Some imports shall be necessary to ensure fair competition in the Indian market and any ADD in the present scenario will impact the trade balance and the DI will use the situation for profiteering.

c. Subject imports have declined in absolute terms and also in relation to production and consumption in India. This alone shows the present case warrants no duties to further obliterate such declining imports.
d. No ADD is warranted when the imports have been declining in relation to production and consumption and such import evidently did not create any injury.
e. Injury margin, price undercutting, suppression and underselling from USA have been negative and it cannot be said that the import volumes from Thailand was of injurious effects to the DI either as the price from USA and Thailand were comparable at delivered level in India.
f. The argument that a minor positive injury margin from Thailand caused material injury to the DI to the extent claimed is totally ungrounded.
g. The Authority has adopted cumulative assessment of injury in this matter and the Disclosure contains no examination of facts considering facts of imports separately for Thailand to say that the alleged injury was on account of imports from Thailand alone. Termination of the investigation against USA alone is not sufficient and the case should be terminated against both the subject countries.
h. When the price from USA is found to be at negative injury margin level, a comparable price from Thailand also should be found as of not having any injurious effect on the DI in reality and case should be terminated against both the countries in view of such facts.
i. The difference in landed price from the subject countries has not been significant.
j. Even though the injury margin in case of Thailand is slightly positive in the POI as per Disclosure, the prices have further increased in the post POI period and the performance of the DI also has sky rocketed. Phenol produced by the Applicants currently is not facing any unfair competition from imports and any duty for another 5 years or so is totally unjustified in such an event.
k. Overall facts of the present case show decline in imports and improvements in the performance of the DI and the cause of very imports itself in the past was demand supply gap which is negated much now.
l. The price of imports has gone up substantially in the post POI period and this factor should be considered while deciding the matter.
m. Any alleged injury being suffered by the domestic industry is not due to the subject imports or the domestic sales at all, but due to high costs incurred by the domestic industry.
n. The Authority has failed to provide any reasons as to why it was satisfied with respect to the claims of confidentiality raised by the parties, particularly in those instances where the claims are in contravention of the applicable law and trade notice.
o. Disclosure Statement fails to identify the Exporters as having filed legal submissions/registered as interested parties in response to the initiation notification.
p. The Authority is requested to rescind OM dated 18 June 2019, as an even suggestion that reference price form of duty must be recommended in situations of high price volatility.
q. We request the Authority to recommend duties in ad valorem. In case, the Authority is unable to recommend ad valorem duties, we request the Authority to recommend a fixed form of duty. In case the Authority choose not to recommend any of these, then we request the Authority to consider a reference price form of duty with a trigger price mechanism, where a fixed or ad valorem duty will be liable to be paid if the import price of the subject goods from the subject countries is below the trigger price.

r. The Disclosure Statement issued has breached the confidentiality of PTT Phenol Company, Mistsui & Co. Ltd. and Mitsui & Co. (Asia Pacific Pte. Ltd.).

s. There exists no injury to the Domestic Industry and even if it is accepted (though not conceded) that there is injury to the Domestic Industry, such injury cannot be attributed to the imports from the subject countries.

t. SI Group is liable to be excluded from the present investigation.

u. The Authority has failed to take into consideration the submissions of PTT Phenol Company, Mistsui & Co. Ltd. and Mitsui & Co. (Asia Pacific Pte. Ltd.), regarding the incomprehensible adjustments made to HOCL and injury to the DI.

v. In the event that the Authority does not terminate the investigation before issuance of the Final Findings, no anti-dumping duty must be recommended insofar as USA is concerned as the price underselling from it is negative.

w. The Applicants had not included the April 2019 to June 2019 within the POI since addition of the same would have resulted in a higher weighted average export price and consequently, lower dumping margin of the subject goods. The injury analysis period cannot be cherry picked and the same must be uniform unless exceptional circumstances warrant departure from the same.

x. The Authority must disclose the facts considered for this purpose of determining normal value and in the case of Thailand so as to enable the interested parties to comment on the same.

y. We request the Authority to discard ICIS reports from consideration while determining the normal value for USA.

z. The Authority must disclose the quantum of adjustments made with respect to ocean freight, marine insurance, commission, inland freight, and port expenses as well as the actual export price.

aa. The Authority must disclose dumping margin determined for USA and Thailand.

bb. Since the Authority has found pursuant to the said sunset review that dumping continued from South Africa, SI Group is liable to be excluded from the present investigation.

cc. In the Disclosure Statement, the price underselling by imports from USA have been disclosed as negative. Therefore, It is inappropriate to include the imports from USA within injury analysis.

dd. The claim of price suppression or depression is unfounded, and no price effect can be attributed to the imports from the subject countries.

ee. It is submitted that while addition of capacity may usually result in increased production and sales, it may be noted that capacity utilization of the Domestic Industry has also increased despite addition of massive capacity which clearly evinces the fact that it could replace imports effectively in the domestic market and indicates the preference of users for domestically produced goods over imports. Therefore, there is clearly no injury on this front.

ff. Improvement in employment, wages and productivity should be taken into consideration while determining whether the Domestic Industry of the like article in India is suffering as a result of dumped imports.

gg. The impact of high depreciation and interest costs incurred by the Domestic Industry along with price suppression and depression, if any, caused by lower priced imports from other countries must be segregated and not attributed to imports from the subject countries.

hh. It is submitted that the relevant parameter to gauge an adverse impact on inventories when capacity, production, and capacity utilisation has increased is to consider inventories as number of days of production and sales rather than in absolute terms.

When viewed in that perspective, it is evident that inventories have actually decreased in terms of both number of days of production and sales and the DA is requested to consider the same.

ii. It is submitted that while the growth in volume parameters has been rightly observed, the purported deterioration in the profitability must be examined more closely by reconciling the same with the financial reports published by the company for the relevant quarters of 2019-20 comprising the POI.

jj. Ability to raise capital for further investments has not been affected as they are multiproduct companies as admitted by the Applicants.

kk. We request the Authority to segregate the injury caused by lower prices from other countries in order to make an objective determination regarding the extent of injury caused by imports from the subject countries.

ll. It is submitted that the NIP of the Domestic Industry must be calculated in INR and not in USD.

mm. It is submitted that the normal value in the country of export is specific to the producer/exporter and the country being the price in the home market of the exporter. We request the Authority to convert the price in the home market of the exporter for the purpose of comparison of data during the period of investigation.

nn. Since normal value can also be considered as a benchmark under reference price form of duty, the same is required to be disclosed for the subject countries as the same would be relevant for determining the ADD payable by importers.

oo. The Authority may note that the price of imports has gone up substantially in the post POI period and this factor should be considered while deciding the matter. ILMA has raised serious concern about the reference form of duty recommended in the PF. However, by this time the prices have gone up further and any fixed form of duty shall even more disastrous for the users. The Authority may consider these aspects as well while taking a final view in the matter.

J.3. Examination by the Authority

106. The Authority has examined the post-disclosure submissions made by the interested parties including reiterations which have already been examined suitably and addressed adequately in the relevant paras of these final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.

a. With regard to the modification of NIP from initiation, and Preliminary Findings, it is noted that NIP at the stage of initiation is computed on prima facie basis, and the same has been determined after Preliminary Findings based on documents submitted by the Domestic Industry, and duly verified by the Authority after desk verification. It is also noted that the Authority has determined the NIP in accordance with Annexure III of the AD rules.

b. The Applicants have stated that captive consumption is to be taken for determining the domestic sales for the purpose of determination/computation of weighted average NIP. The issue has been examined, and it is noted that the captive consumption is the transfer of PUC from one unit to another unit of the same applicant. Since the price of captive consumption is not determined by the demand and supply in the open market, and it is determined by the Applicants as suitable to them, therefore, the injury due to captive consumption is self-inflicted, and cannot be attributed to dumping.

c. With regard to issues raised about non-injurious import transactions to be excluded while determining price undercutting and injury margin, the Authority notes that the Authority has taken into account all transactions as per the Authority's established practice.
d. As regards argument on methodology for normation is considered, the Authority has considered the submissions of the domestic industry and made the appropriate changes as per principles laid down under Annexure III.
e. With regard to submissions by some of the exporters that their legal submissions have not been acknowledged, it is noted that the same has been correctly acknowledged, and examined in the final findings.
f. With regard to the Domestic Industry's submission that they had not received the legal submissions of some of the other interested parties, the Authority notes that vide e-mail dated 9th October, 2020, the Authority had shared the e-mail addresses of all interested parties and requested all the interested parties to share the non-confidential versions of their submissions with all other parties. Further, the e-mail addresses of all interested parties are available on the website of DGTR.
g. As regards legal submissions of M/s. Cedar Décor Pvt. Ltd., M/s Cent Ply, M/s. DCM Shriram Industries Ltd., M/s. Hwatsi Chemical Pvt. Ltd., M/s. Supriya Lifescience Ltd., M/s Tradex Corporation, not circulated to the other interested parties including domestic industry despite clear instructions by the Authority, it is noted these have been circulated subsequently to all interested parties.
h. As regards argument that injury to the domestic industry is due to start up difficulty of Deepak Phenolics Ltd, it is noted that M/s. Deepak Phenolics Ltd. had commenced its commercial production in November, 2018 and has already achieved 96% capacity utilisation and, therefore, established itself as a leading producer of subject goods in India.
i. As regards the names of the exporters missing in 4(k), the same has been added in the relevant paras.
j. As regards injury margin of USA, the same is negative in view of the modifications made in the NIP of the domestic industry.
k. As regards the issue of cumulative assessment in terms of para (iii) of the Annexure-II of the Rules, it is noted that the imports from subject countries fully satisfy the criteria of para (iii) of the Annexure-II. Further injury margin of a subject country is not a requirement for cumulative assessment under para (iii) of the Annexure-II and therefore the argument of the interested parties linking cumulative assessment with injury margin is not accepted.
l. As regards arguments on injury it is noted that the Authority has examined the injury parameters objectively taking into account the facts and arguments in the submissions. All parameters of injury need not show deterioration. While some parameter may show deterioration, some may show improvement. The Designated Authority has considered all injury parameters and thereafter concluded whether the domestic industry has suffered injury or not. The overall position of the domestic industry has been evaluated, in light of all the relevant factors having a bearing on the situation of that industry.
m. As regards appropriateness of ICIS reports for normal value is concerned, it is noted that the Authority has an established practice for considering prices reported in journals which are periodically released and is considered appropriate. Reference to Dye Stuff Manufacturers Association case is misplaced since the facts and circumstances of that case was different since prices adopted in that case was of non PUC.

n. As regards impact of China case, it is clarified that the Authority has made determination in accordance with the rules and without considering the impact of ADD imposed by China.
o. As regards increase in import price in post-POI period, the Authority considers that post-POI data cannot be considered for determination in the present case and post-POI parameters cannot be selectively considered by the Authority. Consideration of post-POI data implies de-facto updation of all relevant information and thereafter full examination thereof, including verification. Therefore, the Authority considers that it would not be appropriate to consider post POI data in the facts and circumstances of the present case.
p. The authority notes that while some interested parties have contended that reference price duty is not appropriate in the present case, some have contended that fixed form of duty would be disastrous to users. Notwithstanding contrary arguments of the interested parties, the authority has considered it appropriate to recommend reference price form of duty in the fact and circumstances in the present case.
q. As regards price adjustments in export price determination, the same has been appropriately disclosed to the extent necessary to the cooperating producer and exporter who has supplied the information to the Authority on the confidential basis.
r. As regards eligibility of domestic producers to constitute eligible domestic industry, the same has been appropriately examined and considered in the present finding.
s. As regards depreciation cost of the domestic industry, the Authority has adopted the same consistent with the provisions of Annexure III of the rules.
t. It is clarified that the cost incurred by the Deepak Phenolics while setting up new capacities have been determined as per the standard practice of the Authority, and consistent with the provisions laid in Annexure III of the Rules.
u. The Authority notes that the demand-supply gap in the country does not bar the Domestic Industry from seeking redressal from dumped imports.
v. The issues raised regarding POI, confidentiality, normal value, calculation of NIP in INR, injury, price effect, adjustments made, the form of duty and exclusion of SI Group from the ambit of Domestic Industry have already been addressed in the relevant paragraphs above.
w. Since the POI is not of 12 months, in order to ensure that the actual/indexed figures are directly comparable with preceding years, the actual/indexed data has been "annualised" and mentioned in these Final Findings. Since the POI in the present case is six months, the figures have been multiplied by 2 to make them comparable to the previous years. For this reason, the indexed figures for the POI actual and annualised show the same figures in these Final Findings.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

107. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The Interested parties have not established that imposition of duties is going to adversely impact the public interest.

108. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

L. CONCLUSION & RECOMMENDATIONS

109. After examining the submissions made by the interested parties and issues raised therein, and considering the facts available on record, the Authority concludes that:
    a. The product under consideration has been exported to India from subject countries below its normal value.
    b. The Domestic Industry has suffered material injury.
    c. The material injury has been caused by the dumped imports of subject goods from the subject countries.
    d. As injury margin in respect of USA is negative, no ADD is recommended against USA.

M. RECOMMENDATIONS

110. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that imposition of Anti-Dumping duty is required to offset dumping and injury.

111. In terms of provision contained in Rule 4(d) of the Rules, the Authority recommends imposition of ADD equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the Domestic Industry. As injury margin in respect of USA is negative, no ADD is recommended against USA. Taking into account the factual matrix of the case, and having regard to information provided, and submissions made by interested parties, it is considered appropriate to recommend benchmark/reference form of anti-dumping duties. The Authority recommends imposition of definitive anti-dumping duties on import of subject goods originating in or exported from Thailand from the date of notification to be issued in this regard by the Central government, as the difference between the landed value of subject goods and the reference price indicated in column 7 of the table below, provided the landed value is less than the value indicated in column 7.

112. The landed value of imports for this purpose shall be assessable value as determined by the Customs under Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 8B, 9, 9A of the Customs Tariff Act, 1975.

Duty Table

SN	Heading	Description	Country of Origin	Country of Export	Producer	Reference Price	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	290711	Phenol	Thailand	Any country including Thailand	PTT Phenol Company Limited	990.83	MT	US$
2	290711	Phenol	Thailand	Any country including Thailand	Any producer other than Serial Number 1	990.83	MT	US$
3	290711	Phenol	Any country other than country attracting anti-dumping duty	Thailand	Any	990.83	MT	US$

113. Subject to the above, the Preliminary Findings notified on 20th August, 2020 is hereby confirmed.

N. FURTHER PROCEDURE

114. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Exercise and Service tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(B.B. Swain)
Special Secretary and Designated Authority