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**F. No. 6/21/2019-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi -110001**

Dated 30th December, 2020

NOTIFICATION

FINAL FINDINGS

Case No. CVD-07/2019

Subject: Anti-subsidy investigations concerning imports of “Styrene Butadiene Rubber” originating in or exported from Korea RP – Final Findings.

F. No. 6/21/2019-DGTR: - Having regard to the Customs Tariff Act 1975 as amended (hereinafter referred as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, (hereinafter referred as the “Anti-Subsidy Rules” or “Countervailing Rules” or “Rules”) as amended from time to time.

A. BACKGROUND OF THE CASE

1. M/s Indian Synthetic Rubber Private Limited (ISRPL) and M/s Reliance Industries Limited (RIL) (hereinafter also referred to as the “Applicants”) filed an application before the Authority in accordance with the Act and the Rules for initiation of Anti-Subsidy investigation concerning imports of the Styrene Butadiene Rubber (hereinafter also referred to as the product under consideration or the subject goods) from Korea RP (hereinafter also referred to as the subject country).
2. And whereas, in view of the duly substantiated application filed by the applicants, the Authority in accordance with Section 9 of the Act read with Rule 6 of the Rules, initiated the anti-subsidy investigation vide Notification No. 6/21/2019-DGTR dated 29th October, 2019, published in the Gazette of India, to determine the existence, degree and effect of the alleged subsidization of the subject goods and to recommend the amount of anti-subsidy duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The procedure described below has been followed with regard to the investigation:
 - a. The Authority notified the Embassy of the subject country in India about the receipt of the anti-subsidy application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 6 supra.
 - b. The Authority sent invitation for consultations to the Government of Korea ("GOK") on 09.10.2019 and thereafter on 15.10.2019 with the aim of allowing GOK to clarify the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement on Subsidies and Countervailing Measures. However, the Korean Government did not respond to the invitation for consultation.
 - c. The Authority issued a public notice dated 29th October 2019 published in the Gazette of India Extraordinary, initiating anti-subsidy investigation concerning imports of the subject goods from Korea RP.
 - d. The Authority sent a copy of the initiation notification dated 29th October, 2019 to the embassy of the subject country in India, the known producers and exporters from the subject country, known importers and other interested parties, as per the available information. 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.
 - e. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassy of subject country in India in accordance with Rule 7(3) of the Rules supra.
 - f. The Embassy of the subject country in India was also requested to advise the exporters/producers from their country 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 along with the names and addresses of the known producers/exporters from the subject country.
 - g. The Authority sent questionnaire to the Government of subject country in order to seek relevant facts/information with regard to various schemes/ programs where countervailable benefits might have been conferred by the Government. Governments of Korea RP has filed a questionnaire response, which has also been considered.
 - h. The Authority forwarded a copy of the public notice initiating anti-subsidy investigation to the following known producers/exporters in the subject country and provided opportunity to make their submissions known in writing within forty days in accordance with the Rules 6(2) and 6(4) of the Rules:
 - i. M/s Kumho Petrochemical Company Limited
 - ii. M/s LG Chem. Limited
 - i. In response to the above notification, following exporters/producers have responded to or submitted exporter questionnaire responses:
 - i. M/s Kumho Petrochemical Company Limited

- ii. M/s Posco International Corporation Limited
- iii. M/s LG Corporation Limited
- iv. M/s Pantos Logistics Company Limited
- v. M/s S&I Corporation Limited
- vi. M/s Seetec Company Limited
- vii. M/s ServeOne Company Limited
- viii. M/s LG Chem. Limited
- j. The Authority sent Questionnaires to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.
 - i. M/s JK Tyres and Industries Limited
 - ii. M/s Birla Tyre Limited
 - iii. M/s Apollo Tyres Limited
 - iv. M/s CEAT Limited
 - v. M/s MRF Limited
 - vi. M/s Ralson (India) Limited
 - vii. M/s Poddar Tyre Limited
 - viii. M/s Oriental Rubber Industries Private Limited
 - ix. M/s Hindustan Rubber Industries Private Limited
 - x. M/s Agarwal Rubber Limited
 - xi. M/s Exel Rubber Private Limited
 - xii. M/s Tega Industries Limited
 - xiii. M/s Phoenix Conveyor Belt India Private Limited
 - xiv. M/s Forech India Limited
 - xv. M/s Garware Bestrech Limited
 - xvi. M/s Paragon Polymer Product Private Limited
 - xvii. M/s Oriental Rubber Industries Limited
 - xviii. M/s Midas Rubber Private Limited
 - xix. M/s Sempertans Nirlon Private Limited
 - xx. M/s Metro Tyres Ltd
 - xxi. M/s Balakrishna Industries Limited
 - xxii. M/s ATC Tires Private Limited
 - xxiii. M/s Goodyear India Limited
 - xxiv. M/s Bridgestone India Private Limited
- k. In response to the above, following importers/users filed response: -:
 - i. M/s CEAT Limited
 - ii. M/s MRF Limited
 - iii. M/s JK Tyre and Industries Limited
 - iv. M/s Apollo Tyres Limited
- l. Additionally, the following interested parties filed submissions responding to the initiation notification:
 - i. M/s Kumho Petrochemical Company Limited
 - ii. Automotive Tyre Manufacturers' Association

- m. Information provided by the Applicants and other interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to the applicants or the other interested parties. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- n. Wherever an interested party has refused access to, or has otherwise not provided necessary information in the form and manner prescribed during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative.
- o. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide transaction-wise details of imports of subject goods for the past three years and the period of investigation, which has been received by the Authority. The Authority has relied upon DGCI&S transaction-wise data for the required analysis after due examination of the transactions.
- p. The period of investigation for the purpose of present investigation is 1 April, 2018 to 31 March, 2019. The injury period includes 2015-16, 2016-17, 2017-18 and the period of investigation.
- q. In accordance with Rule 7(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 9th September 2020. All the parties who had attended the oral hearing were advised to file written submissions of the views expressed orally. The parties were shared the nonconfidential submissions of the opposing parties and were given liberty to offer their rebuttals.
- r. Verification of the information provided by Applicants to the extent deemed necessary was carried out. Only such verified information with necessary rectification, wherever applicable, has been relied upon.
- s. The Non-Injurious Price (hereinafter referred to as 'NIP') based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-Dumping Rules has been worked out so as to ascertain whether anti-subsidy duty lower than the subsidy margin would be sufficient to remove injury to the domestic industry.
- t. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed.
- u. 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 disclosure statement on the basis of the facts available.
- v. In accordance with Rule 16 of the Rules, a Disclosure Statement containing all essential facts in this investigation which forms the basis of the present final finding was issued to the interested parties on 13th November 2020. The post disclosure

statement submissions received from various interested parties have been considered, to the extent found relevant, in this Final Finding. 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 this final finding.

- w. The Authority has considered arguments raised and information provided by the interested parties, to the extent the same are supported with evidence and considered relevant to the present investigation.
- x. ‘****’ in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- y. The exchange rate adopted by the Authority for the subject investigation is 1 US \$= 70.82 Rs.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

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

“ Product under consideration in the present investigation is Emulsion Styrene Butadiene Rubber (hereafter referred to as “E-SBR”) limited to SBR 1500 and SBR 1700 series.

It is derived from two monomers namely styrene and butadiene. The polymerization of the two monomers is done through two processes namely, solution (S-SBR) and emulsion (ESBR). The product under consideration in the present investigation is limited to the SBR that comes out from emulsion process i.e. E-SBR.

The product finds its primary usage in the production of tires and tire retread compounds. The other areas of usage of E-SBR include house ware mats, drain board trays, shoe sole and heels, chewing gum, food container sealants, tires, conveyor belts, sponge articles, adhesives and caulks, automobiles mats, brake and clutch pads, hose, V-belts, flooring, military tank pads, hard rubber battery box cases, extruded gaskets, rubber toys, molded rubber goods, shoe soling, cable insulation and jacketing, pharmaceutical, surgical, and sanitary products, food packaging, etc.

The product under consideration is classified under Chapter 40 of Customs Tariff Act, 1975 under subheading 400219. The customs classification is only indicative and not binding on the scope of the investigation.”

C.1 Submissions made by the Domestic Industry

5. The submissions made by the Domestic Industry with regard to product under consideration and like article are as follows:

- a. The product under consideration in the present investigation is Styrene Butadiene Rubber. Styrene Butadiene Rubber (SBR) describes family of synthetic rubbers derived from styrene and butadiene.
- b. SBR is derived from two monomers, styrene, and butadiene. The mixture of these two monomers is polymerized by two processes – from solution (S-SBR) or as an emulsion (E-SBR).
- c. E-SBR is produced by emulsion polymerization is initiated by free radicals. Reaction vessels are typically charged with the two monomers, a free radical generator, and a chain transfer agent, such as an alkyl mercaptan. The product under consideration is an E-SBR.
- d. The majority of SBR is consumed in the manufacture of tyres. Thus, demand for SBR is quite dependent on the demand in the automotive sector.
- e. Emulsion polymerized styrene-butadiene rubber (E-SBR) is one of the most widely used polymers of the world. There is a large variety of E-SBR types based on the styrene content, polymerization, temperature, staining or non-staining antioxidants, oil and carbon black content. Each of these basic classifications include a variety of SBR polymer variations with respect to Mooney viscosities, coagulation types, emulsifier type, oil levels, and carbon black types and level. The basic groups of E-SBR are 1000, 1500, 1600, 1700, 1800, 1900.
- f. SBR 1500, 1700 and 1900 series are produced in India. The exporter/producers have the capacity to interchangeably produce SBR 1500, 1700 and 1900 series. However, the domestic industry is incapable of producing the 1900 series and hence 1900 series is not included in the scope of product under consideration.
- g. The foreign products can possibly interchangeably produce SBR 1500, 1700 and 1900 series, the petitioners cannot produce SBR 1900 series. Neither Reliance nor ISRPL (the other producer of subject goods) can produce SBR 1900 series. The plant commissioned by them cannot produce SBR 1900 series. Further, consumers of SBR 1500 and 1700 series cannot consume SBR 1900 series product.
- h. The interchangeability of various grades of SBR is possible between grades falling under two different series. For example, 1712 grade of SBR can be substituted with 1500 grade and many other grades of rubber falling under 1500 & 1700 series even in tyre tread application. Similarly, 1502 grade of SBR can be substituted with 1500 grade and many other grades of rubber falling under 1500 and 1700 series in various applications.
- i. The present petition pertains to SBR 1500 series and SBR 1700 series. SBR 1900 series is specifically excluded from the scope of the product under consideration.
- j. The product under consideration is classified under Chapter 40 of Customs Tariff Act, 1975 under subheading 400219. The customs classification is only indicative and not binding on the scope of the investigation. The product under consideration has been imported under 40021910, 40021990, 40021920, 40021930 & 40022000.
- k. There is no known difference in the product produced by the petitioner companies and exported from subject country.

C.2 Submissions made by Other Interested Parties

6. No submissions have been made by any other interested party with regard to product under consideration and like article

C.3 Examination by the Authority

7. The submissions made by the Domestic Industry with regard to the PUC related issues are examined and addressed hereunder.
8. The product under consideration in the present investigation is Emulsion Styrene Butadiene Rubber (hereafter referred to as “E-SBR”) limited to SBR 1500 and SBR 1700 series.
9. SBR is derived from two monomers – styrene and butadiene. Polymerization of these two monomers is done through two processes namely, solution (S-SBR) and emulsion (ESBR). The product under consideration in the present investigation is limited to emulsion SBR. Solution SBR is beyond the scope of the present investigation.
10. SBR finds its primary usage in the production of tires and tire retread compounds. The other usage of E-SBR include houseware mats, drain board trays, shoe sole and heels, chewing gum, food container sealants, tires, conveyor belts, sponge articles, adhesives & caulks, automobiles mats, brake & clutch pads, hose, V-belts, flooring, military tank pads, hard rubber battery box cases, extruded gaskets, rubber toys, molded rubber goods, shoe soling, cable insulation and jacketing, pharmaceutical, surgical, and sanitary products, food packaging, etc. However, the product is predominantly used in production of tires.
11. The product is classified under Chapter 40 of Customs Tariff Act, 1975 under subheading 400219. Imports of the product have however been reported under customs classification 400220. These imports have been included in determining volume and value of imports for the purpose of present determination. The customs classification is only indicative and not binding on the scope of the present investigation.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1 Submissions of the Domestic industry

12. Following submissions have been made by the Applicants with regard to the domestic industry and standing:
 - i. The Applicants are the sole producers of the product under consideration and thus account for the entire Indian production.
 - ii. The Applicants have not imported the product under consideration from the subject country.

- iii. The Applicants are neither related to the producers/exporters of the product under consideration in the subject country nor related to any of the importers of the product under consideration in India.
- iv. The application satisfies the requirements of the rules.

D. 2 Submissions of the other interested parties

- 13. The other interested parties have not made any submissions in regard to constitution of the domestic industry and its standing.

D. 3 Examination by the Authority

- 14. Rule 2(b) of the Anti-subsidy Rules defines domestic industry as under:
“domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article 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 subsidized article, or like article from other countries or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry”
- 15. The application has been filed jointly by both the producers of the subject goods in India namely, M/s Indian Synthetic Rubber Private Limited (ISRPL) and M/s Reliance Industries Limited (RIL). The Applicants declared that neither have they imported the subject goods from the subject country nor are they related to any importer/exporter of the subject product. There is no dispute to the claim made by the Applicants. The import data does not show any import of the product under consideration by the applicant companies from Korea RP. The Authority considers that the Applicants constitute domestic industry under Rule 2 (b) of the Rules and the application meets the criteria of standing under Rule 6 (3) of the Rules.

E. MISCELLANEOUS SUBMISSIONS

E.1. Submissions of the Domestic Industry

- 16. Following miscellaneous submissions have been made by domestic industry:
 - i. CVD margins do not materially change with the investigation period, unlike dumping margin. Most recent period is therefore not a need of an investigation in a CVD case and from CVD margin point of view.
 - ii. There was no law or rule governing the scope of period of investigation at the time of initiation of investigation. The manual only provides guidelines.
 - iii. Dumping margin determined for the responding producers in the anti-dumping investigation was lower as compared to the injury margin determined by the Authority.

- iv. Neither of the applicants are engaged in the business of manufacturing tyre where SBR finds usage therefore there can be no captive consumption.
- v. Trade notice referred by interested parties is applicable to anti-dumping investigations. Reference of the same to the countervailing duty is inappropriate .

E.2. Submissions of the other interested parties

17. Following miscellaneous submissions have been made by other interested parties:

- i. There is a gap of 7 months between the initiation and the end of period of investigation. As per Manual and rule, period of investigation cannot be older than 6 months on the date of initiation.
- ii. Anti-dumping duty and countervailing duty put-together cannot exceed the injury margin.
- iii. The applicants have claimed excessive confidentiality with regards to Formats A to L, data on grades of SBR-1500 and SBR-1700, report mentioned for subsidy, manufacturing process, name of raw material, captive consumption, inventory as number of days of sale or production, NIP and R&D expense.
- iv. No justification table, as required under the Trade Notice indicating reasons for confidentiality, has been provided as part of the petition.
- v. Domestic industry is required to provide a nonconfidential copy of its secondary source of import data.
- vi. The petitioner has been approaching different forums and seeking undue protection by way of Anti-Dumping and CVD measures through Ministry of Commerce.
- vii. Domestic industry is getting protection since 2001 in the form of levy of Anti-dumping duty which is still on-going and is applicable till 2022.

E.3. Examination by the Authority

18. With regard to confidentiality of information, Rule 8 of Anti-Subsidy Rules provides as follows:

“Confidential information. (1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule (1) of rule 6 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 authorisation of the party providing such information. (2) The designated authority may require the parties providing information on confidential basis to furnish nonconfidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information 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 subrule (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 generalised or summary form, it may disregard such information.

19. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing nonconfidential version of evidence submitted by various interested parties for inspection.
20. The Authority considers a party is not obliged to disclose such information, confidentiality of which is protected under the law. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.
21. As regards the submission that there is a gap of 7 months between the initiation of the investigation and the period of investigation, the Authority notes that there was no bar or rule proscribing initiation of investigations if the gap is more than six months. The only time limits were with regard to filing of application and the same have been complied with. Further, since the present investigation is a CVD investigation, the Govt. of Korea was afforded opportunity for consultation. The GOK was sent invitation for consultation on 09.10.2019 and again on 15.10.2019. However, GOK did not respond on two invitations. Therefore, the POI considered by the Authority is appropriate in the facts and circumstances of the case. Therefore, the Authority considers that the period of investigation in the present investigation is appropriate.
22. As regards to imposition of both anti-dumping and countervailing duty on the import of a product from specific countries, the Authority notes that Section 9B(a) provides that no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization. The Authority therefore considers that there is no bar either under Indian laws or WTO Agreements to impose both dumping and countervailing duty on the product imported from subject countries. The only bar is that no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping and export subsidization.

23. Export subsidies received by the exporter enables the exporter to lower the export price. Thus, export subsidies increase the difference between normal value and export price and results in higher dumping margin. Anti-dumping duty, which can be imposed to the full extent of dumping margin, remedies the distortion in the export price caused by export subsidies. In such a case, there is no further requirement to remedy this distortion caused by export subsidies by imposition of countervailing duties.
24. Anti-dumping duty was imposed on Styrene Butadiene Rubber to the full extent of dumping margin and therefore there is no requirement to recommend imposition of countervailing duty on export subsidization. The Authority has analyzed the nature of each subsidy programs. The Authority has segregated subsidies into subsidies contingent on export performance i.e. export subsidies and subsidies that are not contingent on export performance i.e. domestic subsidies. To ensure that there is no double remedy in the instant case while determining total countervailing duty, the Authority should not add subsidy margin for countervailable subsidy programs that are contingent on export performance. However, there are no countervailable export subsidies in the present investigation. Authority has accordingly determined subsidy margin for domestic subsidies for the purpose of determining countervailing duty.
25. Moreover, both dumping and countervailing duty law provides that the Designated Authority shall recommend the amount of duty, which, if levied, would be adequate to remove the injury to the domestic industry. The Authority is required to ensure that total quantum of anti-dumping duty and countervailing duty should not exceed injury margin.
26. Therefore, the Authority has ensured that anti-dumping duty determined in the previous AD investigations and countervailing margin determined in this Anti subsidy/CVD investigations do not exceed injury margin determined by the Authority in the previous AD investigations as well as present Anti Subsidy investigations.
27. As regards both anti-dumping and countervailing duty, the Authority notes that Section 9B(a) provides that no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization. Further, since both dumping and countervailing duty law provides that the Designated Authority shall recommend the amount of duty, which, if levied, would be adequate to remove the injury to the domestic industry. The product is attracting anti-dumping duty and it is noted that the quantum of anti-dumping duty is upto the extent of dumping margin. The Designated Authority has also considered the injury margin determined in the previous investigation and present investigation while evaluating the quantum of countervailing duty (CVD).
28. As regards duties in force since 2001, it is noted that the duties levied on imports of Styrene Butadiene Rubber originating in, or exported from Japan, Taiwan, Turkey, France, U.S.A., Germany and Korea RP vide customs notification number 107/99 -

Customs, dated the 24th August, 1999. Duties on imports of SBR of 1500 and 1700 series were removed with the final finding of the mid-term review investigation concluded vide DGTR notification dated 3rd July 2001 and customs notification no. 56/2002 dated 31st May 2002. Therefore, there were no duties on the imports of subject goods thereafter and prior to the anti-dumping duty imposed in 2017.

F. SUBSIDY AND DETERMINATION OF SUBSIDY MARGIN

29. The petition filed by Domestic Industry provided prima facie evidence of existence of countervailable subsidies in the subject country to initiate the instant investigation prior to initiation of investigation. The Government of Korea RP (GOK) was invited for consultation; however, they chose not to respond to the invitation sent by the Authority. The producers and exporters of the subject goods in the subject country as well as GOK was advised to file response to the questionnaire and were given adequate opportunity to provide verifiable evidence on the existence, degree and effect of alleged subsidy program for making an appropriate determination of existence and quantum of such subsidies, if any.
30. Kumho Petrochemicals Co., Ltd. (hereinafter “KKPC” or “Kumho”) is a limited liability company established under the Commercial Laws of Republic of Korea. KKPC is engaged in the production and sale of synthetic rubbers, synthetic resins, specialty chemicals, electronic chemicals, energy, building materials and advanced materials as its core business. Kumho is a producer and exporter of subject goods from Republic of Korea. Subject Goods produced by Kumho are exported to India directly by Kumho to Indian customers, and also through, POSCO. KKPC has direct/indirectly exported 29,622 MT of the PUC to India in the POI. Both these companies filed questionnaire response and provided information regarding the benefits availed by them.
31. Authority has considered the information provided by Kumho and POSCO to the extent possible based on desk study, and determined subsidy margin for programs for which benefit was received or accrued during the POI. The Authority determined that the subsidy programs resulted in the provision of financial contribution in the form of loans, grants and revenue foregone which was otherwise due. As a result, benefit was conferred to Kumho and POSCO as a recipient of these grants. Subsidy program was also specific because they were limited to certain enterprise including Kumho and POSCO, Korea RP.
32. It is noted that the LG Chem. Limited (herein after also referred to as LG), has filed questionnaire response. M/s LG Chem Ltd., is a producer/exporter of the subject goods who has exported subject goods to India directly during Period of Investigation. Further, it is noted that the following related parties of LG have also filed their questionnaire response: -
 - i. LG Corporation
 - ii. Pantos Logistics Company Limited
 - iii. S&I Corporation
 - iv. Seetec Co., Ltd.
 - v. Serve One Co. Ltd.

33. The questionnaire response has also been received from Government of Korea.

General overview of the alleged Subsidy Programs

F.1. Submissions of the Domestic industry

34. The submissions made by the domestic industry with regard to subsidies are as follows:

- a. Under Program 1, entity which undergoes process of corporate restructuring is eligible for extension of repayment of loans, reduction or discharge of debtor obligation for the principal and interest, or conversion of loans into investment.
- b. Under Program 2, the exporter is allowed duty drawback on duty paid on an imported input that is consumed in the production of the exported product.
- c. Under Program 3, the Government of Korea provides various subsidies in form of grants to the producers and exporters in Korea RP.
- d. Under Program 4, an enterprise engaged in renewable energy sector is provided with tax benefits and loans.
- e. Under Program 5, an eligible entity gets benefit in the form of tax deductions and grants.
- f. Under Program 6, enterprises are eligible for loans at low rate of interest and various other export benefits such as export financing, guarantee and bill discounting.
- g. There is sufficient evidence which shows that exporters in the subject country received subsidies in the form of grants, loans, tax incentives, equity infusion, export credits at concessional rates, goods & services at less than adequate remuneration which confer benefits to the recipients and such benefits are generally not granted to all the companies in Korea.
- h. These programs constitute actionable subsidies as per ASCM and the Rules.
- i. Kumho Polychem, Kumho Mitsui Chemicals, Kumho Trading, Kumho T&L and Korea Energy Power Plant are related to Kumho International and thereby related to Kumho but have not filed response.
- j. Whether a particular company has not provided services or inputs or funds is a matter of fact and can be investigated only when complete information about each and every affiliated company is provided by the exporter.
- k. All the affiliates of LG as reported in their Annual Report have not filed the response.
- l. The response filed does not provide any information which establishes how a producer of goods in the subject country is entitled to a duty drawback when it itself has not exported the product.
- m. The fact that out of the 13 banks that provided loans to Kumho in the Arrangement, 3 banks named KDB, KEBIK and IBK are government banks, which shows that the scheme is operated by entities which constitute public body.
- n. LG has filed incomplete response and has not provided information whether it has received corporate debt restructuring (CDR) benefit as alleged. The CDR scheme

is not granted to a particular product. Therefore, the response filed by LG is required to be rejected on the ground that they merely stated that the company has not availed CDR for subject goods during the POI or Average Useful life (AUL).

- o. Since both the government and the exporters who have filed the response have not provided information required to establish that the conditions laid down under the ASCM for refund of duty paid on inputs are met, the claim that the drawback system allows rebate of only customs duty paid on inputs is required to be rejected.
- p. Any grant that is given by the government to the company has effect on all the products produced by the company. Therefore, a responding exporter is required to establish that benefit of various grants received is not linked at all to the product under consideration.
- q. Korea Energy Power Plant, one of the affiliates of the Kumho, must have availed benefit under Program 4 but has not filed the questionnaire response.
- r. Both LG and Kumho have admitted receiving benefits under the Program 5.
- s. GOK has not provided any information with regard to Reduction in local tax for real estate in industrial complex
- t. Kumho has received conditional loan and the loan received by them for any product or operations are required to be considered for the present purposes as well.
- u. Kumho and GOK have failed to report various local tax reduction under RSLTA in their responses making their response liable to be rejected.
- v. Both LG and Kumho have failed to report the benefits given by local government on exports made through Pohang Yeongil and Gwangvang ports.
- w. GOK has failed to report subsidies in relation to labor cost assistances in the submission making it countervailable subsidy. Further, Kumho and LG have not reported this scheme in their response making it liable to be rejected.

F.2. Submissions of other interested parties

35. The submissions made by the other interested parties with regard to subsidies are as follows:

- i. Benefits received by related entities not involved in the production and export of PUC and have not supplied raw material to the respondents are irrelevant and therefore are not required to file a response.
- ii. The AUL should be based on the response filed by the GOK and the respondents and not as claimed by domestic industry of 18 years.
- iii. The CVD duties cannot be recommended on the exports as the lower export price has been remedied by the imposition of ADD. Any price difference between the Korean producers' normal value and export price, arising out of export subsidies has already been addressed by the Authority by way of anti-dumping duty. Recommendation of duties arising out of Program 2 and Program 6 will result in double remedy.
- iv. As per SCM Agreement, the remission of such taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy. As per the Refund of Customs Duties Act, if goods have been used for export, the custom

- officer shall refund the customs duties, etc. on the raw materials for export, which are used for such goods.
- v. In case of drawback is alleged to be in excess of import charges, the Authority is required to consider Para 1 of Part -2 (II) of Annexure II of CVD.
 - vi. Remission in the Duty Drawback scheme is by way of two methods: simplified fixed amount refund method and individual method. The respondent cannot avail the remission under the simplified fixed amount method as it is only available to small to medium size enterprise whose duty drawback amount is less than 600 million KRW. However, the respondent is eligible under individual method which as determined by USDOC in Coated Free Sheet Paper from Korea that individual method of duty drawback does not provide countervailable subsidy.
 - vii. The restructuring process carried out as per the terms of 'Company creditor voluntary agreement' CVA does not result in financial contribution by the govt.
 - viii. Domestic industry has not specifically identified the impugned program/scheme which are conferring countervailable subsidies to the PUC nor has provided evidence of the impugned programs/ scheme which is conferring a benefit to the product under consideration but has made mere assertions without any positive evidence. Further, the subsidy margin has not been quantified in the petition.
 - ix. Corporate Restructuring Promotion:
 - a. The present legislation for Corporate Restructuring Promotion does not confer a countervailable subsidy.
 - b. Financial institutions like KEXIM, KDB, KoFC are not public bodies – Appellate body in US- Carbon Steel (India) has been referred.
 - c. Contrary to the allegations made, CPRA does not classify the companies into any category.
 - d. Requirement of Article 2.1(b) have been specified for CPRA and thus does not amount to subsidy.
 - x. Duty Drawback
 - a. ASCM only prohibits drawback of import charges in excess of the amount levied/ accrued.
 - b. The DDB legislation of Korea mandates the collection of excess rebates, in case any excess rebates of duty and it also provides a process in this regard. Since, the scheme fulfils the requirements of validity under the ASCM, the same cannot be countervailed.
 - c. The report (Study for Improving the Duty Drawback System) given by the domestic industry does not give any information about the excess refund received by Kumho and LG.
 - d. The Decision Memorandum of Coated Free Sheet Paper from Korea RP is for another product and hence cannot be relied upon as evidence of duty drawback scheme of Korea RP.
 - xi. Renewable Energy Set-up Policy

- a. Since a tax deduction is not a direct transfer of funds, the question of benefit being conferred by the government in this manner does not arise.
- b. The concerned legislation (Section 25(1) (2) of RSTA 2018 and 25-2 of RSTA 2017) are not enterprise or sector specific as it includes SMEs and MSEs as a large number of enterprises panning across multiple sectors.
- c. Article 10-2 of RSTA – tax deductions under this program are applicable to all companies who have kept R&D assets in separate accounts, and present program cannot be construed to confer a countervailable subsidy to PUC.
- d. Article 11 of RSTA - tax deductions under this program are applicable to all companies which have invested in expansion of infrastructure, and present program cannot be construed to confer a countervailable subsidy to PUC.
- e. Article 12 of RSTA - tax deductions under this program are applicable to all SMEs and individuals who transferred patent rights and knowhow. Therefore, present program cannot be construed to confer a countervailable subsidy to PUC
- f. Article 12-2 of RSTA - tax deductions under this program are applicable to all companies in the Special Research and Development Zone.
- g. Article 18 of RST A - tax deductions under this program are applicable to foreign nationals working in Korea RP and does not relate to PUC.
- h. Article 26 of RSTA - tax deductions under this program are applicable to all SMEs, 'transitioning companies' and any other company fulfilling the abovementioned criteria. present program cannot be construed to confer a countervailable subsidy to PUC.
- i. With regard to transactions with related companies reported in Annual Report of LG Chem, it has been submitted that M/s LG Chem Ltd., has procured services from its service providers namely M/s LG Corporation (Related Investment Company), M/s Pantos Logistics Company Limited (Logistic Service Provider Company), M/s S&I Corporation (Procurement Service Provider Company), M/s Serveone Company Limited (Procurement Service Provider Company) and M/s Seetec Company Limited (Utility Supplier Company) from Korea RP.

Examination by the Authority

F.3. Calculation Methodology

36. Article 14 of Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the “SCM”), provides guidelines and methodology for calculating the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 of the SCM and further provides that any method used by the investigating authority to calculate the benefit to the recipient shall be transparent and adequately explained. Further, any method used by the investigating authority to calculate the benefit to the recipient shall be provided for in their national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. In accordance with the requirement, the Rules lay down the methodology of determination

of quantum of subsidization. The determination in this investigation is in accordance with these guidelines.

SUBSIDY PROGRAMS ALLEGED IN THE PETITION

Following six subsidy programs have been specifically alleged in the petition and are mentioned in the notice of initiation.

Program No. 1- Corporate Restructuring/ Debt Restructuring

Submissions by Petitioners

37. The Petitioners have alleged this subsidy program under corporate restructuring / debt restructuring. As per Article 4 of Corporate Restructuring Promotion Act (CRPA) 2014 and Article 2(6) of 2016 "defines the term "enterprise" means an enterprise which has obtained credit from a creditor financial institution and the total amount of credit reaches or exceeds 50 billion won (hereafter referred to as "reference amount" in this subparagraph). In such cases, if an enterprise showing signs of insolvency has reduced the total amount of credit below the reference amount through readjustment of claims, repayment of debts, etc., such enterprise shall also be deemed an enterprise." Under article 2(7) of CRPA 2016, the term "enterprise with a sign of insolvency" means an enterprise that its principal creditor bank discovers, based on credit risk assessment having difficulties to perform its obligations in the normal course of business, such as repayment of a loan borrowed from a financial creditor (hereinafter referred to as 'a sign of insolvency'), without an additional cash inflow from outside in addition to ordinary borrowings". As per the scheme there are 4 types of Debt restructuring

a. Creditors - company voluntary agreement

b. Workout- (restructuring led by creditors)

a. Court - led insolvency proceedings

d. Special act on Corporate revitalization

Companies are eligible as per the financial risk and type of seriousness in which they are categories.

38. Corporate restructuring is carried out as per Corporate Restructuring Promotion Act (CRPA) for enterprise showing signs of insolvency. Government of Korea controlled banks namely Korea Development Bank, Korea Financial Corporation (KoFC), KEXIM, Industrial Bank of Korea (IBK), participated as creditors in corporate restructuring.. Kumho was eligible for the benefit under this program under one of the types of debt restructuring i.e. creditors-company voluntary agreement 2010-2012 (CVA) for a period of 3 years. LG group is also eligible for benefit under this program.

39. Non-recurring benefit was granted to the enterprise under corporate restructuring program in the form of postponed payments of debts, stable interest rates from 2010 to 2015, purchase of Convertible bonds etc.

Submissions by Government of Korea/Other interested parties

40. Companies under investigation, including Kumho & LG Chem, did not undergo the workout proceedings under the CRPA. Instead, Kumho underwent workout proceedings pursuant to a private agreement entered into by and among them and its creditors. Workout proceeding is intended to allow creditors to maximize debt recovery by stabilizing the company. It is voluntarily undertaken by the company and its creditors. The creditors led workout proceedings are not administered by any governmental agencies or authorities. The creditors will form a committee of creditor banks that will administer the restructuring procedures. The restructuring proceedings pursuant to the workout proceedings are not administered by any governmental agency or authority. The procedures are led by the creditors of the company.
41. CVA is not governed by CRPA or any other law in Korea. Therefore, there is no direct or indirect involvement of government in the restructuring process. The decision to extend support by creditors was a commercial decision and was an action to protect creditors' own interest. There was no role or direction by the government of Korea in this entire restructuring process.
42. In their response, M/s Kumho has explicitly given out all the differences between CVA & the restructuring program under CRPA in the questionnaire response to show absence of any direct or indirect involvement of the Government of Korea. The exporter further clarified that insolvency has been resolved and at the 7th Council of Financial Creditors, CVA was terminated on 28/12/2012 i.e. before the POI. Upon termination, Creditor banks allowed to distribute repayment of loan over a period of three years till end of 2015. Thus, there is no receipt or accrual of financial contribution by the Government during the POI. Restructuring process under the CVAs is independently determined by creditor's resolution, which requires involvement of all creditors' and 100% consensus. Therefore, there is no question of receipt of any benefit from the Government under any applicable law or regulation.
43. It has been submitted that under the program, LG Chem did not carry out any type of Corporate restructuring / Debt restructuring. Since establishment, LG Chem has been running its business without any crisis. LG Chem is excellent in its financial stability and there are no bank loans existing other than some of outstanding corporate bonds. Considering the situation, there was no corporate restructuring that has been carried out for company as a whole, and the same can be verified from LG Chem's Audit Report. The Audit Report does not mention any facts about corporate restructuring.

Examination by the Authority

44. The Authority notes that the program was governed under Article 6 of the Corporate Restructuring Promotion Act 2007 and Article 2(8) of the Corporate Restructuring Promotion Act 2016.
45. The Authority notes that the program has been earlier examined by other investigating authorities in the past, which also proves its existence. For example, countervailability of

this program has been established by the US authorities in US- Certain Corrosion Resistant Steel Products.

46. The program provides financial contribution in the form of revenue forgone and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to enterprise that undertake corporate and debt restructuring.

Kumho:

47. Information provided in the questionnaire response of Kumho shows that Kumho has undertaken corporate restructuring under this program.
48. Under this program, restructuring is carried out for enterprise showing signs of insolvency. Under this program, resolutions are agreed by Council of Financial Creditors and enterprise undergoing restructuring process. The restructuring process under this program was through Creditors-Company Voluntary Agreement and was not governed by CRPA. Resolutions passed by financial creditors provided for different types of measure namely, i) grace period for repayment of outstanding loan (ii) Increase in limit of USANCE L/C (iii) Lending new loan and (iv) Purchase of convertible bond.
49. Creditor banks involved in the restructuring process involve three government owned banks namely, Korea Development Bank, Export-Import Bank of Korea & Industrial Bank of Korea.
50. Article 1 of Export-Import Bank of Korea Act provides that the purpose of bank is to promote the sound development of the national economy by providing finance required for the overseas economic cooperation, such as export and import, overseas investment and exploitation of overseas resources or through the incorporation of the Export-Import Bank of Korea. Article 18 of the Act provides that bank shall provide funds for (i) promotion of export, (ii) imports important to national economy (iii) export and importation by small and medium enterprises (iv) promotion of foreign investigation (v) duties deemed to be necessary by the Government (vi) industrial development of specific region. The Act also requires approval of Minister of Strategy and Finance while performing these functions. Operation plan, business manual of bank is also to be approved by Ministry of Strategy and Finance. Article 39 of the Act provides that Ministry of Strategy and Finance shall supervise the operation of the Bank.
51. Article 1 of the Korea Development Bank Act provides that the purpose the Bank is to contribute to sound development of the financial industry and national economy, by establishing the Korea Development Bank which supplies and manages funds necessary for the development and fostering of industries, expansion of infrastructure, regional development, stabilization of the financial market, facilitation of sustainable growth, etc. Article 18 of the Act provides that KDB shall provide funds for development of industries, infrastructure, energy, small and medium enterprises and any other sector which the government deems necessary. Article 22 of the Act provides that Financial Services Commission grants approval for business plan, where priority consideration shall be given to the provision of funds to a sector for small and medium enterprises. The Financial Services Commission shall supervise the function of bank. The Financial Services Commission is a Government of Korea agency with the statutory authority over financial policy and regulatory supervision.

52. Article 1 of the Industrial Bank of Korea Act also provides for promotion of independent economic activities of small and medium proprietors to enhance their economic status which contributes to the establishment of an efficient credit system for the small and medium proprietors. Industrial Bank of Korea also functions under the supervision of Financial Services Commission in terms of Article 46 of the Act. Article 33 of the Act provides that it shall provide loans to SMEs and shall perform other functions entrusted by Government.
53. The Authority determines that government owned banks are public bodies because they are owned by Government and are vested with the Governmental Authority to carry out governmental functions. Measures regarding i) grace period for repayment of outstanding loan (ii) increase in limit of USANCE L/C (iii) lending new loan and (iv) purchase of convertible bond by these government owned banks are acts of public body.
54. The Authority also notes that all banks were acting under common CVA and acts of privately-owned banks in terms of (i) granting grace period for repayment of outstanding loan (ii) increase in limit of USANCE L/C (iii) lending new loan and (iv) purchase of convertible bond is not distinguishable from the acts of government owned banks. Analysis of loans, USANCE and purchase of convertible bonds shows that there is no essential difference between the practice followed by government owned banks and other creditor banks that are not owned by government. There is no information or evidence to support that the decisions regarding loans, increase in limit of USANCE and purchase of convertible bonds by creditor banks that were not government owned were based on market principles. Therefore, the Authority determines that all other privately-owned banks involved in restructuring process were entrusted or directed to adopt measures regarding i) grace period for repayment of outstanding loan (ii) increase in limit of USANCE L/C (iii) lending new loan and (iv) purchase of convertible bond.
55. Restructuring under CVA for Kumho took place between 2010 to 2012 i.e. within the AUL period of 10 years. Most of loans under CVA were repaid and terminated by 2015 and few loans graced by CVA were extended and repaid until 2017.
56. The amount of benefit in case of new and extended loans and loans through USANCE credit facility under CVA is determined by calculating the difference between the interest charged by these banks and the interest rate charged on a comparable commercial loan. The benchmark-interest rate charged on corporate bond of companies with equivalent credit rating at that time is considered for this purpose. The difference between the amount of interest paid on all these loans under CVA and the total interest amount payable as per benchmark interest rate was treated as one-time non-recurring benefit. The benefit amount was allocated over the AUL period to determine benefit accrued for the POI.
57. In case of convertible bond, convertible bonds of Kumho were purchased by banks under CVA restructuring process. Interest was payable to banks as per specified interest rates. The convertible bonds were converted into shares and were sold at market price in 2015 i.e. prior to the POI.
58. For determining the benefit in case of convertible bond, the Authority considered the credit rating of Kumho at the time of sales of corporate bonds. The Authority also considered the fact that the purchase of bond of Kumho by banks was part of the corporate restructuring process. Moreover, unlike loans and USANCE credit facility, purchase of

convertible bonds of Kumho by banks cannot be considered as normal commercial function of banks.

59. Conversion of convertible bonds into share and resale of shares by banks subsequently after the end of restructuring process is also not relevant for determining the amount of benefit received by Kumho. The Authority determines that these convertible bonds of Kumho would not have been purchased by other private banks/entities based on market principles and as part of their normal commercial operations during restructuring process. Thus, the total benefit in case of purchase of convertible bond by banks is equal to the price paid by banks to Kumho for purchasing these convertible bonds. This total benefit amount was allocated over the AUL period to determine benefit accrued for the POI.
60. Questionnaire response filed by Kumho provides information regarding the amount of new loans, extended loans, loans through USANCE and the issuance of convertible bonds under this program. The Authority has determined that countervailing duty should be imposed against this program based on the information provided in the questionnaire response.
61. The Authority determines that provision of loans, increase in limit of USANCE by these banks in the restructuring process amounts to financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The subsidy is also specific because it is limited to the enterprise undergoing restructuring process. Therefore, the Authority holds that countervailing duty should be imposed against this program

LG Chem, Ltd.

62. However, LG Chem, has not received benefit under this subsidy program. Petitioners have also not provided any evidence to show that benefit was received under this program by LG Chem, Ltd. who exported ESBR to India during the POI.
63. Therefore, the Authority holds that no countervailing duty should be imposed against this program.

**Program No 2: Duty draw back –Refund of customs duties on raw materials for exports/
Duty Drawback on Non-Physically Incorporated Items and Excess Loss Rate**

Submissions by the Petitioners

64. Exporting companies obtain a refund of Customs duty paid on imported raw material when the export is made within two years of import declaration. The program is governed as per Act on *Special Cases Concerning the refund of Customs Duties*. Refund is granted as per (i) simplified fixed amount refund method or as per (ii) individual refund method. The benefit under this program exists to the extent the amount of drawback exceeds the amount of import charges on the imported inputs which have been consumed in the production of the exported product after making normal allowances for wastes.

Submissions by Government of Korea/Other Interested parties

65. The duty drawback program does not allow for remission or drawback of custom duties in excess of those actually levied on inputs that are consumed in the production of exported goods. The governing act provides two methods for determining the refund amount of custom duties: i) the individual refund method & ii) the simplified fixed amount refund method. The individual refund method of the duty drawback program is the only method that is applicable to the companies under investigation. There is no benefit conferred under the impugned scheme because refund amount is calculated as per actual use of raw material in the exported product. In the absence of 'excess' refund, the refund of tax accrued on imported material used in exported product cannot be considered as 'subsidy' in terms of the Customs Tariff Act & the SCM Agreement.
66. Anti-dumping duty is already imposed on the import of subject goods from Korea RP. Duty drawback program is contingent on export and results in export subsidization. Article VI (5) of GATT & Section 9B(1)(a) of Customs Tariff Act provides that a product shall not be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.
67. It has been submitted by the cooperating producers/exporters that there was no refund of custom duties in excess of those levied on imported inputs that are consumed in the production of the exported product, such as "Non-Physically Incorporated Items" and "Excess Loss Rate" received.

Examination by the Authority

68. The Authority notes that the program was governed under Act on Special Cases Concerning the refund of Customs Duties - Article 12 of Act 10817, Jul. 14, 2011 (Certificate of Tax Payment on Basic Raw Materials, etc.) and Article 9 of Presidential Decree on Special Cases Concerning the refund of Customs Duties, <Amended by Act No. 13559, Dec. 15, 2015>
69. Authority notes that the alleged subsidy program provides for refund of import duty paid on raw materials used in exported product. There are two methods of duty drawback under this program namely, (i) the individual refund method & ii) the simplified fixed amount refund method. Participating producers/exporters are not eligible for simplified fixed amount refund method and therefore have received duty drawback as per individual refund method.
70. Under the individual refund method, Special Cases Concerning the Refund of Customs Duties levied on Raw Materials for Export Act ("The Act") provides that imported raw material must be used in exported product (Article 3). Export of the product using the imported raw material should occur within a period of 2 years (Article 9). The producer/exporter is required to apply for refund within 2 years from the date of filing a declaration for export.
71. Participating producers/exporters have submitted that the Act requires that "imported raw material has to be physically or chemically combined with relevant export goods". Producers/exporters have also submitted usage report and raw material matching table to

show that producers/exporters availing duty drawback have to link their raw material and export by using “usage report”.

72. The assessment by the Authority with regard to both the participating/cooperating producers/exporters show that there is no excess remission of import duty, and that amount of duty drawback will not exceed the amount of duty paid on raw materials used in production of exported goods.
73. The Authority determines that countervailing duty should not be imposed against remission of import duty on raw materials and therefore no countervailing duty is required to be imposed against this subsidy program.

Program No 3: Various government grants as per the Annual report of SBR producers or manufacturers Ad-hoc Subsidies

Submission by the Petitioners

74. The petitioner submitted that under this subsidy program, various government grants as per the Annual report of SBR producers or manufactures Ad-hoc Subsidies. General strategic policies to advance the industries by providing grants and other tax exemptions or reductions in order to encourage certain projects. Grants are provided by Korean government to its enterprises. Grants may be either related to assets or income which are provided at subsidized price as per the annual report of LG Company Ltd. Petitioners understands that Kumho Petrochemical Co., Ltd and LG group are eligible for the said benefit.

Submissions by Government of Korea/Other interested parties

75. Petitioners have failed to provide any meaningful explanation regarding the program and therefore it is not possible to identify the relevant program. There are no grant programs except for grant programs prescribed under Article 11 of Industrial Technology Innovation Promotion Act.
76. Under the program, LG Chem received small amount of R&D related government grants during the POI. However, the grants received are not related to production nor sales of PUC. In addition, other grant reported in consolidated cash flow statement of LG Chem, belong to its subsidiary company (LG Chem Nanjing, LG CNJ) located in Nanjing, China. It has been submitted that the grant is received from Chinese government, not Korean government, and the subsidiary company is not in any form or manner involved in production or sales of PUC. Therefore, there is no grant received by the respondent with relation to production or sale of PUC under the program.

Examination by the Authority

77. Authority notes that the Government supported R&D projects are prescribed in Article 11 of Industrial Technology Innovation Promotion Act. Based on this Act, government plans and specifies industries and R&D activities to be supported annually and issue public announcement.

78. A company may submit the application for R&D project and once the company's R&D project gets selected under the government review and approval, it will conduct R&D project based on agreed project plan with the government.
79. Grant is provided by the Government for approved R&D projects. Companies and government manage bank account for the R&D project which is earmarked for that project. Business plan specifies the amount of government and corporate contribution for the project. Companies and government transfer assigned amount to bank account. When the company makes a certain amount of expense for R&D projects during R&D period, government grant is transferred to the company's bank account.
80. The program provides financial contribution in the form of direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is also specific because it is available to selected enterprises and activities.
81. Questionnaire response filed by Kumho shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program on Kumho.
82. LG Chem, Ltd. however have not received benefit under this subsidy program. Petitioners have also not provided any evidence to show that benefit was received under this program by LG Chem, Ltd. who exported ESR to India during the POI. Therefore, the Authority holds that no countervailing duty should be imposed against this program on LG Chem..

Program No. 4- Renewable Energy Projects Set-Up Policy

Submissions by the Petitioners

83. Petitioner submits that under this subsidy program, i.e. renewable energy projects set-up policy, in form of fund, Korean government through its Renewable Energy Center of Korea Energy Agency provides incentives in form of funds for installation, and production of renewable energy sector, Operation fund are mainly provided to small-sized companies in order to promote business operation of renewable energy facility. Tax reduction, as per Article 25-2 and Article 118 of Restriction of Special Taxation Act provides benefits in form of tax reduction for energy sector.
84. Petitioner understands that Enterprises which are engaged in renewable energy sector such as wind power generation facility, solar heat energy, geothermal facility, bio facility, photovoltaic module production line, wind power turbine production line are eligible for the said benefit.

Submissions by Government of Korea/Other Interested Parties

85. GOK provides long-term loans for investments in energy saving facilities in order to rationalize energy use and to reduce greenhouse gas emissions. This program was established in 1997 and the Korea Energy Agency administers this program according to the Guidelines for the Financing of Energy Use Rationalization Projects.

86. Under the program, LG Chem did not receive any subsidies (or grants) in forms of fund from Korean government nor through Renewable Energy Center of Korea Energy Agency during the POI (including AUL period). And, there was no tax reduction received under Article 25-2 and Article 118 of RSTA during the POI regarding Renewable Energy Projects Set-up Policy. Only a small amount (6.5 million KRW / 0.000028% of total company revenue) of tax reduction was made under Article 25-2, but the tax reduction is related to Energy Use Rationalization, not Renewable Energy Projects Set-up Policy.
87. GOK confirmed that LG Chem only received small amount of tax reduction under Article 25-2, but the tax reduction under the Energy Use Rationalization program, not Renewable Energy Projects Set-up Policy was among the following 4 types of assistance under the program
- *i. Financial Support for Energy Saving Facilities,*
 - *ii. Subsidization, etc. for Invested Expenses Regarding the Creation and Facilitation of Use of Smart Grids*
 - *iii. Tax Credits for Investment in Energy-Saving Facilities*
 - *iv. Restriction of Special Taxation Act Article 118: Reduction of Customs Duties*
88. GOK clarified that the Guidelines for the Financing of Energy Use Rationalization Projects do not limit the eligibility of this program to certain sectors, regions, enterprises, industries, or group of enterprises or industries. Any enterprise investing in energy saving facilities is allowed to apply for long-term loans under this program. Therefore, this program lacks the specificity that is required to be considered a subsidy program

Examination by the Authority

89. The program provides long-term loans and grants to enterprises that install energy saving facilities to rationalize energy use and promote efforts to reduce greenhouse gas emissions. The program is extended only to enterprises which install energy saving facilities as defined in Article 14 of Energy Use Rationalization Act and Article 27 of Enforcement Decree of Energy Use Rationalization Act.
90. The Authority notes that the program provides for financial contribution in the form of preferential loans and grants (direct transfer of funds). The amount of benefit in case of loan is equal to the difference between the amount of interest payment to be made on loans granted pursuant to this subsidy program and the amount of interest payment to be made on any other comparable commercial loan. The amount of benefit in case of grant is equal to the amount of grant attributable to the POI. The program is also specific because it is limited to companies investing in energy saving facilities. Therefore, the Authority holds that countervailing duty should be imposed against this program.
91. Questionnaire response filed by Kumho shows that benefit is received by them under this subsidy program. Therefore, the Authority determines that countervailing duty should be imposed against this program.

92. Questionnaire response filed by LG Chem, Ltd. Shows that it has received benefit under this subsidy program but covered under Energy Use Rationisation Program. Therefore, the Authority determines that countervailing duty should be imposed against this program.

Program No. 5: Research & Development Projects Support Policy / Corporate Tax Exemption/Reduction for Companies within Special R&D Zones

Submissions by the Petitioners

93. Petitioner submitted that under this program, Research & Development Projects Support Policy / Corporate Tax Exemption/Reduction for Companies within Special R&D Zones. The said program aims to facilitate Korean corporate investment in research and development activities through a reduction of taxes payable for eligible expenditures. As per (Article 10 to 12, 1B), the Restriction of Special Local Taxation Act (Article 26), and the Enforcement Decree of the Income Tax Act (Article 12) provides various tax credits for R&D investment such as:
- (1) Reduction in local tax for real estate used for corporate research centers*
 - (2) Tax credit for transfer, acquisition, and licensing of technology*
 - (3) Income tax reduction for foreign engineers*
 - (4) Special taxation on contributions related to research and development*
 - (5) Corporate tax exemption/reduction for companies within special research and development zones*
 - (6) Tariff reduction*
94. The Korean company who performs its own R&D project, are eligible for the said benefits. It has been submitted that Enterprises which are engaged in Autonomous vehicles, electric vehicles, Artificial intelligence, internet of things, cloud, big data, wearable smart devices, IT convergence, Advanced software, security, Experiential contents, Advanced semi-conductors/sensors, OLED, 3D printing, 5G communication, ultra-high definition (UHD), Bio/health are eligible for the said benefit.

Submissions by Government of Korea/Other interested parties

95. Korean taxation system is broadly classified in two types of taxes namely, i) National & ii) Local Tax. The National Tax consists of i) Corporate tax for enterprise, ii) income tax for individuals & iii) value added tax. Local tax includes taxes imposed by local government.

There are six types of tax credits under Restriction of Special Taxation Act:

1. Tax Credits for Research & Human Resources Development Expenses (Article 10)

2. Tax Credits for Investment in Facilities for Research & Human Resources Development Expenses (Article 11)
3. Tax Credits for Investment in Energy – Saving Facilities (Article 25-2)
4. Tax Credit for Investment etc. in Facilities for Environmental Conservation (Article 25-3)
5. Tax Credits for Investment, etc. in Safety Facilities (Article 25)
6. Tax Credits for Investment, etc. in Facilities for Improving Productivity (Article 24)
96. Under the program, LG Chem received small portion of Research & Development related corporate tax exemption/reduction (hereafter, Corporate Tax Credit) under the RESTRICTION OF SPECIAL TAXATION ACT (hereafter, RSTA) during the POI. LG Chem also reported total amount of corporate tax credit received during the POI with details of tax credit amount in its tax return. However, total amount of corporate tax credit (including R&D related corporate tax credit) is relatively small in total company revenue. Furthermore, most of the tax exemption/reduction is not related to production nor sales of PUC.
97. LG Chem also received R&D related local tax reduction under the article 46 of RESTRICTION OF SPECIAL LOCAL TAXATION ACT (hereafter, RSLTA) during the POI, and AUL with related to non-recurring program. However, like corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.
98. GOK has provided various information related to the R&D support policy program including corporate tax reduction under RSTA and local tax reduction under RSLTA.

Examination by the Authority

99. The Authority notes that under this program, when an enterprise incurs R&D, Human Resources Development, Environment Conservation, Energy Saving, Safety & Productivity expenses as defined in Restriction of Special Taxation Act, the enterprise can apply tax credit at specified rate. Enterprise is entitled to deduct tax credit amount from the Corporate Tax for the taxable year in which such expenses are incurred.
100. The program provides for financial contribution in the form of revenue foregone which is otherwise due and benefit is thereby conferred. The benefit is the difference between the corporate tax paid and the corporate tax payable in absence of these tax credits. The program is also specific because it provides benefit to specific enterprises incurring expenses for specified purposes.
101. Questionnaire response filed by Kumho and LG Chem. shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this subsidy program.

Program No. 6- Preferential Lending by Industrial Bank of Korea

Submissions by the Petitioners

102. The Petitioner submitted that under this program, preferential lending by Industrial Bank of Korea. Industrial Bank of Korea has provided loans at low interest rate which are slightly lower than commercial banks irrespective of government's economic and industrial policy, In order to encourage SMEs (small and medium enterprise) are eligible for the said benefit. Interest rate has ranged from 1.75% to 3.7% under straight line method. Korea EXIM Bank has provided financial guarantee support for exports. On default of the company KEXIM repays entire credit amount with principal and interest. Industrial Bank of Korea or Korea EXIM Bank has provided Export& Import Factoring, Overseas Investment Credit Program and Trade Bill Discounting with low rate of interest. Petitioner understands that that Kumho Petrochemical Co., Ltd and LG group are eligible for the said benefit.

Submissions by Government of Korea/Other interested parties

103. Loans and loan guarantees are provided by banks as per commercial terms. Banks are operating as independent entities. There is no government involvement or direction to these banks. Submission by the participating exporters provides complete details of all loans received from government owned banks. Participating exporters have not received any loans at lower interest rates from the government and there is no benefit accruing to them from such loans.
104. LG Chem did not take any loan, nor utilize any financial services from the bank mentioned in the petition, such as the Korea Development Bank (KDB), Industrial Bank of Korea (IBK), and The Export-Import Bank of Korea (KEXIM). GOK confirmed that LG Chem did not take any loan, nor utilize any financial services from the bank mentioned in the petition, such as the Korea Development Bank (KDB), Industrial Bank of Korea (IBK), and The Export-Import Bank of Korea (KEXIM).
105. GOK submitted that LG Chem did not take any loan, nor utilize any financial services from the bank mentioned in the petition, such as the Korea Development Bank (KDB), Industrial Bank of Korea (IBK), and The Export-Import Bank of Korea (KEXIM).

Examination by the Authority

106. Authority notes that Government owned banks provide different types of loans under this program such as (i) operating loans (ii) long term loans for energy usage rationalisation (iii) short term limit loan etc. to meet varying financial needs of enterprises.
107. Korea Development Bank and Export-Import Bank of Korea are government owned banks and have provided loans to participating producers/exporters from Korea RP.
108. Authority has already determined that these government owned banks are public bodies. Accordingly, the loans provided by government owned banks are financial contribution in the form of direct transfer of funds by a public body. The benefit conferred on the recipient is in the form of difference between the amount of interest charged by these banks and the amount of interest charged on a comparable commercial loan. The program is also specific because it is either contingent on export or is limited to enterprise that meets the other specified criteria for loan.

Kumho

109. Questionnaire response filed by Kumho shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this subsidy program to Kumho.

L G Chem

110. LG Chem did not take any loan, nor utilize any financial services from the bank mentioned in the petition, such as the Korea Development Bank (KDB), Industrial Bank of Korea (IBK), and The Export-Import Bank of Korea (KEXIM). Therefore, neither any financial contribution nor any benefit was conferred to LG Chem during the POI. The Authority determines that countervailing duty should not be imposed against this subsidy program to LG Chem.

Program No. 7: Other Subsidy

Other programmes availed by cooperating producers and exporters

111. Following subsidies are identified as ‘other subsidy program’ because these subsidies have not been specifically claimed by the domestic industry in its petition and are not mentioned in the notice of initiation but information about these subsidies have been provided by participating companies in their questionnaire response, and also upon queries raised by the Authority to cooperating /participating producers and exporters.

Other Subsidy : Kumho

112. The Petitioner has not submitted any program other than above Program No. 1 ~ No. 6.

Program 7.1.1 – Reduction in Local Tax for Real Estate in Industrial Complexes

Submissions by Government of Korea/Other Interested Parties

113. Participating producers/exporters have received tax reduction for acquisition tax on real estate acquired by construction or expansion of an industrial building under Article 78(4) (Reduction for Industrial Complexes, etc.) for factories located in industrial complexes.

Examination by the Authority

114. When an enterprise acquires real estate, it is obligated to pay acquisition tax. Acquisition tax is imposed on a corporate who has acquired real estate defined in Article 7 of Special Local Tax Act. Under this program, an enterprise is entitled to get a certain amount of tax reduction for acquisition tax when it acquires real estate located in industrial complexes.

When the enterprise acquires real estate located in industrial complexes which are defined under Article 78(4) of Special Local Taxation Act, it could avail tax reduction.

115. The Authority notes that the program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. Amount of benefit is equal to the tax payable under Act and the tax paid after deduction. The program is also specific because it is limited to enterprises who acquire specified real estate.
116. Questionnaire response filed by Kumho shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed for this program.

Program 7.1.2 – Conditional Loans/Loans by Korea Energy Agency

Submissions by Government of Korea/Other Interested Parties

117. Conditional loans are granted by Korea Energy Agency for the overseas exploration business project.

Examination by the Authority

118. Authority notes that the Korea Energy Agency (KEA) is a governmental agency that carries out national energy policies for energy efficiency.
119. Relevant laws governing the programs are Overseas Resources Development Business Act & Energy and Resources Special Account Act. Article 10 of the Overseas Resources Development Business Act provides that for promotion of the development of overseas resources, the Government may help with expenses as prescribed. Article 11 of the Overseas Resources Development Business Act provides that the Government may furnish funds to an overseas resources developer to facilitate the overseas resources development. Energy and Resources Special Accounts Act provides for special accounts for funds established for projects related to energy and resources including overseas resources.
120. Under this program, loans are granted to enterprises by Korea Energy Agency for Overseas Exploration business project. Enterprise must correspond to the Overseas Financing Standard of Resources Development Business Fund from Ministry of Trade Industry and Energy. Approval, Issuance and repayment of loans are governed by this announcement by Ministry of Trade, Industry and Energy. Under this program, repayment of loan obligation arises if overseas exploration business project begins to run commercially.
121. Accordingly, Authority determines that the loan provided by Korea Energy Agency is a financial contribution in the form of direct transfer of funds by a public body.
122. The benefit conferred on the recipient is in the form of the amount of loan waived and in case of repayment of loan, the difference between the amount of interest charged by these banks and the amount of interest charged on comparable commercial loan. The program is also specific because it is either contingent on export or is limited to enterprises that

meet the other specified criteria for loan. Questionnaire response filed by Kumho shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this subsidy program.

Program 7.1.3 - Establishing and expanding a workplace infant care centre

Submissions by Government of Korea/Other interested parties

123. Grant was received in 2015 for a workplace infant care center and was paid to POSCO International by the Korea Workers' Compensation & Welfare Service. The amount of the original grant is being depreciated over four (4) years.
124. It has been claimed by LG Chem that it received *** KRW amount of Labor cost assistances during POI for operating a workplace, infant care center. However, all the amount received is directly transferred to infant care center that the respondent believes there is no benefit received from the labor cost assistances program for operating a workplace infant care center. It has been claimed that there is no subsidy available for construction of workplace and nursery. Establishment/Construction of Workplace Child-Care Centers is regulation on duty for the business owner who operates a workplace in a size larger than that prescribed by Presidential Decree. Only the benefit received from construction of workplace and nursery is property tax reduction and acquisition tax reduction for Child Care Center under "RSLTA-Article 19 (Reduction or Exemption for Child Care Centers and Kindergartens)". Details of the tax reduction received have already been provided as response to "Other Program:

Examination by the Authority

125. The Authority notes that under this program grant is provided by Korea Workers' Compensation and Welfare Services, which is being depreciated every four years.
126. The Authority determines that the grant provided by the government is a financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The subsidy program is also specific because it is specific to certain enterprises having an infant care center.
127. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program during the AUL period. The Authority determines that countervailing duty should be imposed against this program.

Program 7.1.4 – Grant for R&D Assets

Submissions by Government of Korea/Other interested parties

128. Certain one-time grants received from different government agencies were recorded in the financial statements of companies.

Examination by the Authority

129. Authority notes that under this program, grants were received for R&D Assets such as tools and moulds and for steel processing machinery as part of the grants received towards property, plant and machinery.
130. The Authority determines that the grant provided by the government is a financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The subsidy program is also specific because it is specific to certain enterprises engaged in R&D activity. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program during the AUL period. However, the Authority notes that the benefit is tied to non-PUC. Therefore, the Authority determines that no countervailing duty should be imposed against this program.

Program 7.1.5 – Corporate Tax exemption

Submission by Government of Korea/Other interested parties

131. Tax credit obtained by companies pursuant to various investment expenses and other expenses can be identified from the annual tax return filed by the company.

Examination by the Authority

132. Authority notes that under this program, company can claim tax credit for investment and other such expenses incurred by it at the time filing annual tax return.
133. The Authority notes that the program provides for financial contribution in the form of revenue foregone, which is otherwise due. The benefit is equal to the difference between corporate tax paid and the corporate tax payable in absence of the tax credits obtained under this program. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this program.

Program 7.1.6 - Labor cost assistances for operating a workplace infant care center

Submissions by Government of Korea/Other Interested Parties

134. Government encourages companies to have a workplace infant care center for its employees' welfare and assists them by arranging labor costs of kindergarten teachers. Such assistances are recurring because the benefits must be given on a monthly and regular basis considering the number of kindergarten teachers hired by the workplace infant care center. Also, such benefits are directly transferred to the banking account of the workplace infant care center and are restricted to be spent only for the labor cost.

Examination by the Authority

135. The Authority notes that under this program grant is provided to an enterprise by the government for labor cost expenses of infant care center at workplace.
136. The Authority determines that the grant provided by the government is a financial contribution in the form of direct transfer of funds and benefit is thereby conferred. The subsidy program is also specific because it is specific to certain enterprises having an infant care center.

137. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this program.

Program 7.1.7-Loans from government invested banks other than International Bank of Korea (“IBK”)

Submissions by Government of Korea/Other Interested Parties

138. Companies undertake loans from government invested banks such as Korea Energy Agency, Korea Development Bank, Korea, The Export-Import Bank of Korea (KEXIM), Korea Rural Community Corporation (KRC) which are not only utilized for PUC related business but may also be used for their general operation cash flow or non-PUC businesses such as petroleum and natural mineral, and food resource development project.

Examination by the Authority

139. Under this program, loans are provided by government owned banks in Korea to enterprises for conducting general operations and for operations not relating to the production of subject product.
140. Authority has already determined that these government owned banks are public bodies. Accordingly, the loans provided by government owned banks are financial contribution in the form of direct transfer of funds by a public body. The benefit conferred on the recipient is in the form of difference between the amount of interest charged by these banks and the amount of interest charged on comparable commercial loan. The program is also specific because it is limited to enterprise that meets the specified criteria for loan. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this subsidy program.

Program 7.1.8-Usage incentives received for using Port facilities

Submissions by Government of Korea/Other Interested Parties

141. Companies receive Port Usage Incentives from Pohang Yeongil Port Authority in order to boost the Port’s utilization. The local government provides incentives to consignors or forwarders who handle shipping container cargo at the Port. This incentive is provided based on the cargo volume of containers using the Port.
142. Such incentives are recurring because they are regularly measured by the local government after every half year. The incentive amount is so small that it provides a negligible benefit.

Examination by the Authority

143. The Authority notes that under this program grant is provided by the local government to consignors, forwarders and others handling shipping cargo at the port.

144. The Authority determines that the program provides for direct transfer of funds by the local government in the form of grant which results in financial contribution and benefit is thereby conferred. The subsidy program is also specific to enterprises that use port facilities. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program. The Authority determines that countervailing duty should be imposed against this program.

Program No. 7.1.9 – Assistance received for R&D on Electric Vehicles

Submissions by Government of Korea/Other Interested Parties

145. Grant received by company for electrical vehicles and module commercialisation technology before the POI.

Examination by the Authority

146. Authority notes that the grant is provided for research and development of (i) module commercialization technology & (ii) for small and medium commercial electric vehicles based on IoT Technology.

The Authority determines that the program provides for direct transfer of funds by the government in the form of grant which results in financial contribution and benefit is thereby conferred. The subsidy program is also specific to certain enterprises. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program. However, the Authority notes that the benefit is tied to non-PUC. Therefore, the Authority determines that no countervailing duty should be imposed against this program.

Program 7.1.10-Assistance for an overseas research project in food & agriculture industry

Submissions by Government of Korea/Other Interested Parties

147. Companies can avail assistances for their research projects in the food and agriculture industry. This program is unrelated to the production or export of PUC and is thus not countervailable.

Examination by the Authority

148. The Authority notes that under this program grant is provided for overseas research projects in the food and agricultural sector.

149. The Authority determines that the program provides for direct transfer of funds by the government in the form of grant which results in financial contribution and benefit is thereby conferred. The subsidy program is also specific to certain enterprises. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program. However, the Authority notes that the benefit is tied to non-PUC. Therefore, the Authority determines that no countervailing duty should be imposed against this program.

Program 7.1.11- Assistance for a research project in copper mine development in Australia

Submissions by Government of Korea/Other Interested Parties

150. Grant received for conducting feasibility study about acquisition of shares of a copper mine in Australia. This program is unrelated to the production or export of PUC and is thus not countervailable.

Examination by the Authority

151. The Authority notes that under this program grant is provided by the government for overseas mining project.
152. The Authority determines that the program provides for direct transfer of funds by the government in the form of grant which results in financial contribution and benefit is thereby conferred. The subsidy program is also specific to certain enterprises. Questionnaire response filed by POSCO shows that benefit is received by them under this subsidy program. However, the Authority notes that the benefit is tied to non-PUC. Therefore, the Authority determines that no countervailing duty should be imposed against this program.

Kumho and Posco (Producer/Exporter)

153. Kumho is a producer and exporter of subject goods from Republic of Korea. Subject Goods produced by Kumho are exported to India directly by Kumho to Indian customers, and also through, POSCO. Both these companies filed questionnaire response and provided information regarding the benefits availed by them.
154. Authority has verified the information provided by Kumho and POSCO to the extent possible based on desk study, and determined subsidy margin for programs for which benefit was received or accrued during the POI. The Authority determined that the subsidy programs resulted in the provision of financial contribution in the form of loans, grants and revenue foregone which was otherwise due. As a result, benefit was conferred to Kumho and POSCO as a recipient of these grants. Subsidy program was also specific because they were limited to certain enterprise including Kumho and POSCO.
155. The table below provides name of the subsidy programs, and the corresponding subsidy margin.

Subsidy Margin Summary Table : Kumho Petrochemical Co. Ltd. And Posco

Program No.	Name of the Program	Subsidy margin as % of CIF	Brief description	Subsidy Margin Range
Programs alleged in the Petition				
Kumho				
(1)	Corporate Restructuring (Loans, Grace Period on Loans, USANCE)	***	Loan/grant	0-5%

1(2)	Corporate Restructuring (Convertible Bond)	***	Loan/grant	0-5%
3	Government Grant for R&D Projects	***	Loan/grant	0-5%
4(1)	Renewable Energy Project Setup Policy (Loans)	***	Loans	0-5%
4(2)	Renewable Energy Project Setup Policy (Grants)	***	Grant	0-5%
5	Research & Development Project Support Policy (Tax Credit /Revenue foregone) under Restriction of Special Taxation Act	***	Tax credits/Revenue forgone	0-5%
6	Preferential lending by Industrial Bank of Korea	***	Loans	0-5%
7.1.1	Reduction of local tax for real estate in industrial complexes	***	Tax credits/Revenue forgone	0-5%
7.1.2	Conditional loans	***	Loan/grant	0-5%
Total for Kumho		***	***	0-5%
POSCO				
7.1.3	Grant for establishing and operating a workplace infant care center	***	Grant	0-5%
7.1.5	Corporate Tax Exemption, Tax credit for investment and other expenses	***	Tax credits/Revenue forgone	0-5%
7.1.6	Labour cost assistance for operating a workplace infant care center	***	Grant	0-5%
7.1.7	Loans from government invested banks other than IBK	***	Loans	0-5%

7.1.8	Usage incentive received for Pohang Yeongil and Gwangyang Port	***	Grant	0-5%
Total for POSCO		***		0-5%

Weighted average for Kumho and POSCO		***		0-5%

156. The Authority notes that subsidy margin for Kumho and Posco is more than de-minimis.

Other Subsidy:

157. Petitioners did not submit any subsidy program other than above Program No. 1 to 6 as mentioned above. However, the responding producers/exporters from Korea RP have submitted during the investigations that they have availed following benefits/subsidies under other programs.

LG Chem Ltd

158. The following are other subsidies which have been submitted by the producer/exporter during the process of investigations.

LG Chem Ltd

Program No. 7.2.1: Other Subsidy – Reduction for Industrial complexes, etc.

a. Submission by the Government of Republic of Korea/other interested parties

159. With regard to **Reduction in Local Tax for Real Estate in Industrial Complexes**, it has been submitted that while preparing the questionnaire responses, LG Chem found that various local tax reductions had been received under RSLTA during the POI. It has also been submitted that LG Chem received other various local tax reduction under the article 19, 47(2), and 78 of RESTRICTION OF SPECIAL LOCAL TAXATION ACT (hereafter, RSLTA) during the POI, and AUL with related to non-recurring program.
160. Under the article 78 of RSLTA - Reduction for Industrial Complexes, etc., LG Chem received small amount of local tax reductions. As a recurring program, LG Chem received 68.8 million KRW of property tax reduction during the POI. And, as a non-recurring program, LG Chem received 15,668 million KRW of acquisition tax reduction during the AUL.
161. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.

162. GOK provided information with related to other Subsidy – property tax reduction for Industrial complexes, etc. including several local tax reductions under RSLTA during the on-line verification.

b. Examination by Authority

163. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise. LG Chem, Ltd. have received benefit under this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(i) Program No. 7.2.2 Other Subsidy – Acquisition Tax Reduction for Industrial Complexes, etc. from Seosan City

a. Submission by the Government of Republic of Korea/other interested parties

164. Under the article 78 of RSLTA - Reduction for Industrial Complexes, etc., LG Chem received small amount of acquisition tax reductions. As a non-recurring program, LG Chem received 3,045 million KRW of acquisition tax reduction during the AUL.

165. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.

166. GOK provided information related to other Subsidy – Acquisition Tax Reduction for Industrial Complexes, etc. from Seosan City during the on-line verification.

b. Examination by Authority

167. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise.

168. LG Chem, Ltd. have received benefit under this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(i) Program No. 7-3: Other Subsidy – Property Tax Reduction for Buildings Certified as Green Architecture

a. Submission by the Government of Republic of Korea/other interested parties

169. Under the article 47(2) of RSLTA - Reduction for Buildings Certified as Green Architecture, LG Chem received small amount of property tax reductions. As a recurring program, LG Chem received 4.5 million KRW of property tax reduction during the POI.

170. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.

171. GOK provided information related to other Subsidy – Property Tax Reduction for Buildings Certified as Green Architecture during the on-line verification.

b. Examination by Authority

172. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise.

173. LG Chem, Ltd. have received benefit under this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(ii) Program No. 7-4: Other Subsidy – Acquisition Tax Reduction for Buildings Certified as Green Architecture from Seoul City

- a. Submission by the Government of Republic of Korea/other interested parties**
174. Under the article 47(2) of RSLTA - Reduction for Buildings Certified as Green Architecture, LG Chem received small amount of acquisition tax reductions. As a non-recurring program, LG Chem received 240.0 million KRW of acquisition tax reduction during the AUL.
175. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.
176. GOK provided information related to other Subsidy – Acquisition Tax Reduction for Buildings Certified as Green Architecture from Seoul City during the on-line verification.

b. Examination by Authority

177. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise.
178. LG Chem, Ltd. have received benefit under this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(iii) Program No. 7-5-1: Other Subsidy – Property Tax Reduction for Child Care Centers and Kindergartens from Daejeon City

- a. Submission by the Government of Republic of Korea/other interested parties**
179. Under the article 19 of RSLTA - Reduction or Exemption for Child Care Centers and Kindergartens, LG Chem received small amount of property tax reductions. As a recurring program, LG Chem received 1.0 million KRW of property tax reduction during the POI.
180. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.
181. GOK provided information related to other Subsidy – Property Tax Reduction for Child Care Centers and Kindergartens from Daejeon City during the on-line verification.

b. Examination by Authority

182. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise.
183. LG Chem., Ltd. have received benefit under this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(iv) Program No. 7-5-2: Other Subsidy – Property Tax Reduction for Child Care Centers and Kindergartens from Seoul City

- a. Submission by the Government of Republic of Korea/other interested parties**

184. Under the article 19 of RSLTA - Reduction or Exemption for Child Care Centers and Kindergartens, LG Chem received small amount of property tax reductions. As a recurring program, LG Chem received 2.0 million KRW of property tax reduction during the POI.
185. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.
186. GOK provided information related to other Subsidy – Property Tax Reduction for Child Care Centers and Kindergartens from Seoul City during the on-line verification.

b. Examination by Authority

187. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise.
188. LG Chem, Ltd. have received benefit under this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(v) Program No. 7-6-1: Other Subsidy – Acquisition Tax Reduction for Child Care Centers and Kindergartens from Seoul City

a. Submission by the Government of Republic of Korea/other interested parties

189. Under the article 19 of RSLTA - Reduction or Exemption for Child Care Centers and Kindergartens, LG Chem received small amount of acquisition tax reductions. As a non-recurring program, LG Chem received 89.5 million KRW of acquisition tax reduction during the AUL.
190. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.
191. GOK provided information related to other Subsidy – Acquisition Tax Reduction for Child Care Centers and Kindergartens from Seoul City during the on-line verification.

b. Examination by Authority

192. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise.
193. LG Chem, Ltd. have received benefit under this subsidy program. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(vi) Program No. 7-6-2: Other Subsidy – Acquisition Tax Reduction for Child Care Centers and Kindergartens for Daejeon City

a. Submission by the Government of Republic of Korea/other interested parties

194. Under the article 19 of RSLTA - Reduction or Exemption for Child Care Centers and Kindergartens, LG Chem received small amount of acquisition tax reductions. As a non-recurring program, LG Chem received 36.5 million KRW of acquisition tax reduction during the AUL.

195. However, just same as corporate tax credit under the RSTA, total amount of local tax reduction is relatively small in total company revenue. Furthermore, only a small portion of the local tax reduction is related to production and sales of PUC.
196. GOK provided information related to other Subsidy – Acquisition Tax Reduction for Child Care Centers and Kindergartens for Daejeon City during the on-line verification.

b. Examination by Authority

197. The program provides financial contribution in the form of revenue forgone and direct transfer of funds and hereby confers benefit to the recipient of such financial contribution. The program is specific because it is limited to certain enterprise.
198. LG Chem, Ltd. have received benefit under this subsidy program.
199. Therefore, the Authority holds that countervailing duty should be imposed against this program.

(vii) Program No. 7-7: Other Subsidy – Labor cost assistances for operating a workplace infant care center

a. Submission by the Government of Republic of Korea/other interested parties

200. LG Chem also received Labor cost assistances for operating a workplace infant care center, However, all the amount received was directly transferred to infant care center. It was submitted that the respondent believes there is no benefit received from the labor cost assistances program for operating a workplace infant care center.
201. GOK provided information related to other Subsidy – Labor cost assistances for operating a workplace infant care center including relevant regulations during the on-line verification.

b. Examination by Authority

202. The program provides financial contribution in the form of direct transfer of funds however, it does not confer benefit to the recipient of any financial contribution.
203. LG Chem, Ltd. have not received benefit under this subsidy program. Therefore, the Authority holds that no countervailing duty should be imposed against this program.

(viii) Program No. 7-8: Other Subsidy – K-Sure Export related credit guarantee

a. Submission by the Government of Republic of Korea/other interested parties

204. It was submitted that LG Chem utilizes the K-SURE credit guarantee for its export sales. LG Chem bears additional expenses for the same. Expenses incurred for utilizing the K-SURE credit guarantee is total company-wide and in export sales of PUC to India market are provided as part of verification package. It was further submitted that there was no default of trade receivables regarding export sales of PUC to India market. Hence, no financial contribution was received under the export related credit guarantee of K-SURE.
205. GOK provided information related to other Subsidy – K-Sure Export related credit guarantee including relevant regulations during the on-line verification.

b. Examination by Authority

206. LG Chem, Ltd. have not received benefit under this subsidy program. Therefore, the Authority holds that no countervailing duty should be imposed against this program.
207. The table below provides details of the subsidy programs, and the corresponding subsidy margin in respect of LG Chem, Ltd. Korea RP.

Program No.	Name of the grant program	Brief Description/ Comment	Subsidy margin as % of CIF	Subsidy Margin Range %
			%	
Program No. 4	Renewable Energy Projects Set-up Policy	Loan/Grant	***	0-5%
Program No. 5	Research & Development Projects Support Policy / Corporate Tax Exemption/Reduction for Companies within Special R&D Zones	Tax credits/Revenue forgone	***	0-5%
Program No. 7-1	Property Tax Reduction for Industrial Complexes, etc	Tax credits/Revenue forgone	***	0-5%
Program No. 7-2-1	Acquisition Tax Reduction for Industrial Complexes, etc. from Seosan City	Tax credits/Revenue forgone	***	0-5%
Program No. 7-2-2	Acquisition Tax Reduction for Industrial Complexes, etc. from Seoul City	Tax credits/Revenue forgone	***	0-5%
Program No. 7-3	Property Tax Reduction for Buildings Certified as Green Architecture	Tax credits/Revenue forgone	***	0-5%
Program No. 7-4	Acquisition Tax Reduction for Buildings Certified as Green Architecture from Seoul City	Tax credits/Revenue forgone	***	0-5%
Program No. 7-5-1	Property Tax Reduction for Child Care Centers and Kindergartens from Daejeon City	Tax credits/Revenue forgone	***	0-5%
Program No. 7-5-2	Property Tax Reduction for Child Care Centers and Kindergartens from Seoul City	Tax credits/Revenue forgone	***	0-5%

Program No. 7-6-1	Acquisition Tax Reduction for Child Care Centers and Kindergartens from Seoul City	Tax credits/Revenue forgone	***	0-5%
Program No. 7-6-2	Acquisition Tax Reduction for Child Care Centers and Kindergartens for Daejeon City	Tax credits/Revenue forgone	***	0-5%
Total			***	0-5%

208. The Authority notes that subsidy margin for LG Chem, Ltd. is more than de-minimis.

Other producers and Exporters from Korea RP

209. Countervailing duty for all other producers/exporters from Korea RP has been determined based on the highest of the subsidy margins for the cooperating parties.

Descriptions	Subsidy Margin % of CIF	Subsidy Margin Range
Program No 1-6 as alleged by the domestic industry	***	0-5%
Other subsidies availed by the cooperating producers and exporters	***	0-5%
Total Subsidies	***	0-5%

The Authority notes that subsidy margin for LG Chem, Ltd. is more than de-minimis.

G. EXAMINATION OF INJURY AND CAUSAL LINK

G.1 Submissions of the Domestic Industry

210. Following submissions have been made by the domestic industry with regard to injury and causal link:
- ISRPL had commenced its trial production in November 2013 and declared the commercial production in February 2014.
 - RIL had commenced trial production in October 2014 and declared the commercial production in October 2016.

- iii. Since the industry has established manufacturing in the recent period, its production and sales show a natural improvement over the injury period.
- iv. Partial improvement in performance of the domestic industry is additionally because of dumping duties imposed by the Govt. earlier.
- v. There is a difference in the delivery time for the Indian and the foreign producers which impacts the price comparability.
- vi. The profits of the domestic industry may be calculated after adjusting for underutilization of the production capacities because of new plant operations.
- vii. With fresh capacities in the country getting commercialized and optimized, imports show a natural decline in relation to the production and consumption in India. However, the Korean imports continue to lead the prices in the market.
- viii. The subject imports have prevented the domestic industry from charging reasonable price.
- ix. The landed price of imports is below the cost of sales of the domestic industry.
- x. The production, sales and the capacity utilization of the domestic industry have improved because of multiple facts – (a) the domestic industry was in nascent stage in the earlier years, (b) production process is such that the industry optimizes the production.
- xi. The capacity with the domestic industry is significant enough to force the domestic industry to sell the product in competition to the imported product.
- xii. The domestic sales have increased only because the industry has sold the product in competition to imports.
- xiii. The domestic industry has been forced to sell at a price much below its cost of production thereby significantly impacting long-term financial viability of its operations.
- xiv. The domestic industry was earning profits in 2016-17 but has started to suffer financial losses in 2017-18 which further deteriorated significantly in the period of investigation.
- xv. The cash profits and profit before interest earned by the domestic industry were positive in 2016-17 and 2017-18 but have turned negative in the period of investigation.
- xvi. In spite of the domestic industry selling at losses, the level of inventories with the domestic industry is significant.
- xvii. The domestic industry recorded a positive growth in terms of production, sales, capacity utilization and market share whereas a negative growth in respect of price parameters.
- xviii. Imports have impacted the ability of the domestic industry to raise capital as the domestic industry is operating in losses.
- xix. Applicants have made investments of more than Rs 3000 cr to set up capacities in the country.
- xx. Anti-dumping duties imposed have not been able to address the injurious effect of low-priced imports.
- xxi. Imports were necessary earlier but since the domestic industry has established itself, now the imports are unnecessary.

- xxii. The list of injury parameters provided in the CVD Rules is not exhaustive which is also accepted in the Manual. If the domestic industry has identified some other parameter showing injury to the domestic industry, the Authority should consider the same while assessing injury to the domestic industry.
- xxiii. Domestic industry has been forced to export at adverse prices which shows that it is suffering in the domestic market. The Authority should consider less remunerative exports by the domestic industry as a parameter showing injury.
- xxiv. Unremunerative prices in the export market has been noted as a sign of injury by Authority in the past investigation.
- xxv. Authority is required to consider all other actual or potential economic parameters which have an impact on the performance of the domestic industry.
- xxvi. The fact that the domestic industry is in the process of recovering from the past ill effect of dumping should be considered as a relevant injury parameter in the present case.
- xxvii. Even the European Union Law specifically require considering whether an industry is in process of recovering from the past effects of dumping or subsidization. Considering the non-exhaustive nature of various injury parameter, the Authority should consider all such other injury parameters, as were brought before the Authority.
- xxviii. The price undercutting should be determined by considering the import price and domestic price at the same point of time. Since there is significant difference in the prices within the investigation period, an average basis comparison is highly flawed. The Authority should consider monthly comparison. Further, while considering import price and selling price in a particular month, it must be ensured that the import represents those sales which were made in that month. The comparison would be highly misleading if selling price of the domestic industry in a particular month is compared with the import price which does not correspond to same month. Further, month of sale is required to be considered on the basis of date when material terms were frozen. Mere consideration of month of invoice is inappropriate. Further, merely undertaking monthly analysis is not sufficient unless both the domestic sale and export price pertain to the sale made in the same month.
- xxix. Imports have declined from all the sources. Imports from subject country are still significant in volume.
- xxx. Price suppression analysis is required to be undertaken from 2016-17 as the production in the previous years was quite low due to which the costs were high.
- xxxi. Domestic industry was forced to match the import prices in order to establish itself in the market. Negative price undercutting is due to price suppression which has been accepted by the Authority in the various investigation.
- xxxii. Domestic industry is still operating with idle capacities and is forced to undertake unviable exports and is faced with rising inventories.
- xxxiii. There is a significant gap between the targeted production and sales and the actual production and sales.
- xxxiv. The domestic industry is suffering loss before interest. Therefore, there is no reason to attribute injury to high interest cost of the domestic industry.

- xxxv. Cash profits are not adequate to ensure that business operations pertaining to the product under consideration can function smoothly.
- xxxvi. The increase in depreciation is due to reason that RIL capitalized its plant on 30th September 2016 and there was no depreciation till September 2016 in case of RIL.
- xxxvii. Domestic industry does not keep record of expenditure incurred by it on research and development at product level, nor the domestic industry has claimed any injury on this account, nor this is a prescribed injury parameter.
- xxxviii. The slowdown referred in the annual reports is in terms of volume and not prices and implies that automobile sector has not increased, as projected.
- xxxix. While injury to the domestic industry is being attributed to slowdown, the users of the subject goods are enjoying profits.
- xl. Applicants have submitted sufficient evidence why date of sale as per DGCI&S data cannot be relied upon in the present investigation. However, other interested parties have not made any claims, besides mere conjecture.
- xli. Even as per Manual, reliance can be placed on secondary source of data in exceptional cases.
- xl.ii. The raw material prices of the applicants are in line with international prices and therefore there is no reason why losses suffered can be due to transfer pricing.
- xl.iii. The other interested parties have not been able to bring forward any substantive evidence for any other reason of injury being suffered by the domestic industry. Therefore, there is no requirement to conduct any attributive analysis.
- xliv. Responding to argument of public interest, the domestic industry has submitted that while the domestic industry is suffering financial losses, the users of the subject goods are in profits. There is no adverse public interest involved in the present case. While referring to the public interest, the consumers are in fact talking about consumer interest. Consumers interest cannot be protected at the cost of the domestic industry suffering. Further, the impact of duties on eventual tyre would be highly insignificant.
- xl. v. Anti-dumping or anti subsidy duties are not protectionist measure but are levied to check unfair trade practice.
- xlvi. Injury examination is required to be conducted for the domestic industry as a whole, and not selectively for a producer.
- xl. vii. The profits earned by ISRPL are insignificant considering the capital investment made by it.
- xl. viii. The other interested parties have not been able to bring forward any substantive evidence for any other reason of injury being suffered by the domestic industry.
- xl. ix. Responding to the submissions with regard to selling price of the domestic producers, the domestic industry has submitted that price offered by the domestic industry is provided by it in the costing formats. The same may be verified and relied upon instead of some unauthenticated source of information provided by the respondents.

G.2 Submissions of other interested parties

211. The submissions made by the interested parties with regard to injury are as follows:

- i. There is no special consideration required for time lag in imports for the purpose of undercutting. All the import transactions in the international trade require time for opening of LC, issuing of BoL, etc. The Authority in the past ADD investigations of PBR and SBR had also not considered it.
- ii. The domestic industry has not claimed material retardation because it is already established. Authority is required to evaluate only material injury.
- iii. As per Para (2) of Annexure 1, the Authority is required to consider if there has been a significant increase in the subsidized imports. However, the imports have declined in absolute terms and in relation to production and consumption.
- iv. In the CVD investigations of New Pneumatic Tyres and Castings, even when there was AD duties imposed, there was an increase in the imports. The domestic industry cannot claim that the requirements of increase in imports must be disregarded as there was ADD in force.
- v. There is no price impact on the domestic industry due to the imports. Price of subject imports are higher than the prices of the domestic industry. The import prices should be compared after addition of ADD. There is no price suppression or depression based on comparison of trends. Price of imports has increased in line with the increase in cost of sales of the domestic industry.
- vi. The loss incurred by the domestic industry for domestic sales has declined significantly over the period of injury.
- vii. Despite no increase in capacity, the interest and depreciation costs of the domestic industry have increased.
- viii. The petitioners have failed to provide data pertaining to R&D costs. However, the Annual Report of RIL for 2018-19 show that significant innovation has been undertaken pertaining to the subject goods.
- ix. The petitioners have failed to account for the injury caused due to the slowdown in the automotive industry whereas the same has been recorded in the Annual Report of RIL.
- x. Domestic industry has admitted that imports of the product from Korea has been declining due to increase in the domestic production thus clearly evidencing that domestic industry has been able to sell its production. Imports from Korea have fallen in absolute terms and in relation to production.
- xi. Import price has significantly increased in the period of investigation.
- xii. The domestic cost of sales of PUC has increased by only 21 indexed points in POI when compared to the base year (2015-16) whereas the domestic selling price of the PUC has increased by 41 indexed points during the same period. There is no price suppression.
- xiii. The selective manual approach used by the domestic industry to segregate the product into different grades is liable to falsification and is required to be revisited by the Authority.
- xiv. There is no price undercutting in the period of investigation.
- xv. The actual domestic prices of the product would be lower than the prices considered for analysis of price undercutting.

- xvi. The Authority had concluded that there is no positive evidence of lag in exports in the earlier anti-dumping investigation.
- xvii. The production, capacity utilization and the domestic sales have significantly increased.
- xviii. The domestic industry is also planning to expand their installed capacity with respect to the product by 0.15 million ton per annum. If a producer is suffering losses, it won't go for expansion.
- xix. The total sales value has increased significantly during the injury period and the period of investigation, which clearly implies that the domestic industry prices have increased.
- xx. Usual practice of RIL to use predatory pricing to enter the market, gain dominance and consequently eliminate competition.
- xxi. When compared in relation to the DI's production level of the PUC, the average inventory level has in fact declined from 12% in 2015-16 to 6% during the POI.
- xxii. The inventory-turnover ratio increased from 19 times in the base year (2015-16) to 32 times in the POI.
- xxiii. From the date of commencement of the plant, domestic industry has been able to capture a significant share of the demand.
- xxiv. The losses suffered by the domestic industry is attributable to increase in raw material cost, depreciation and finance cost payment.
- xxv. The increase in cost of raw material may also be attributable to the transfer pricing adopted by the domestic industry.
- xxvi. The annual report of the domestic industry states that the performance of the petrochemical sector has improved.
- xxvii. Economic data shared by the domestic industry pertains to the petrochemical products manufactured by it and not SBR alone.
- xxviii. Domestic industry is suffering from internal issues such as losses due to fluctuation of raw material prices, increase in depreciation of capital investments, high loan balances and the balance sheet being skewed due to heavy capital investments made by the domestic industry in the petrochemical sector, stray incidents like a major fire at the domestic industry's production facility in Vadodara, Gujarat could have also resulted in loss to the domestic industry.
- xxix. Continued loss incurred in the export market further evidence that imports from Korea RP have no impact on the loss caused to the domestic industry in the domestic operations.
- xxx. Prices of SBR are also affected by continued slump in auto sector industry.
- xxxi. Levy of duties will be contrary to the public interest.
- xxxii. Domestic industry had admitted in the oral hearing that its performance in volume and price trends is desirable.
- xxxiii. Import price has significantly increased which implies that there is no price effect. No price suppression or depression.
- xxxiv. Prices offered by domestic industry are available in the public domain for March 15. Considering them along with indexation shows that there is no price undercutting.

- xxxv. The domestic industry has provided no evidence of lag of data. Reliance cannot be placed on secondary source data as per the Manual.
- xxxvi. Authority is required to perform non attributive analysis for injury suffered by the domestic industry due to other factors.
- xxxvii. The figures as presented in the petition have no co-relation with ISRPL's Annual reports and the financial statements uploaded on the website of Ministry of Company affairs.
- xxxviii. The domestic industry cannot rely on data from 2016-17 to claim existence of injury in the period of investigation and argue that anti-dumping duty levied in past are not sufficient to address the injurious affect.

G.3 Examination by Authority

- 212. The Authority has taken note of various submissions of the domestic industry and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.
- 213. Rule 13 of Anti-Subsidy Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "... involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products. ...". With regard to the volume of the subsidized imports, the designated authority shall inter alia consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the subsidized import on prices, the designated authority shall, consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the subsidized 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 subsidy, etc. have been considered in accordance with Annexure I of the Anti-Subsidy Rules.
- 214. As regards the submission that the domestic industry is suffering due to high transfer pricing of the raw material, it is clarified that the Authority has examined the data provided by the domestic industry. It is seen that the consumption price considered for the present purposes is as per the financial records maintained by the two petitioning companies.
- 215. As regards the claim of the domestic industry and other interested parties that the domestic industry is suffering in export sales as well, it is noted that it exported at unremunerative prices due to its inability to sell in the domestic market which reflects the injury suffered by the domestic industry due to the imports.

216. As regards the submission that the domestic industry is affected by the slump in the automobile sector, it is noted that the demand of the subject goods has increased across the injury period.
217. As regards the claim that it is usual practice of Reliance Industries Limited to charge predatory pricing in order to enter market, gain dominance and consequently eliminate competition, the Authority considers that the imposition of duties will not lead to elimination of competition in the market. Rather, it will ensure fair competition in the market.
218. As regards the claim that the ISRPL is in profits, it is noted that injury analysis is required to be done for both the applicants constituting the domestic industry.
219. The Authority has taken note of various submissions made by the Domestic Industry and other Interested parties on injury and causal link and has analyzed the same considering the facts available on record and applicable laws. The injury analysis undertaken ipso facto addresses submissions made by the domestic industry and other interested parties.

G.3.1. Volume Effect of Subsidized Imports on Domestic Industry

a. Assessment of Demand / Apparent Consumption

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

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
1	Sales of Domestic Industry	MT	102,155	134,936	173,699	191,325
2	Trend	Indexed	100	132	170	187
3	Other Indian Producers	MT	-	-	-	-
4	Trend	Indexed	-	-	-	-
5	Subject Imports	MT	83,358	61,549	50,843	45,914
6	Trend	Indexed	100	74	61	55
7	Imports from countries attracting ADD other than Korea	MT	38,471	37,468	27,016	23,963
8	Trend	Indexed	100	97	70	62
9	Import from Other Countries	MT	5,986	4,248	6,314	4,566

10	Trend	Indexed	100	71	105	76
11	Demand/ Consumption	MT	229,970	238,202	257,872	265,768
12	Trend	Indexed	100	104	112	116

221. It is seen that the demand for the product has increased consistently during the injury period.

b. Imports in absolute and relative term

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

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
1	Imports from Korea	MT	83,358	61,549	50,843	45,914
2	Other imports	MT	44,457	41,716	33,330	28,529
3	Total Imports	MT	1,27,816	1,03,265	84,173	74,443
4	Subject Imports in relation to					
A	Total Imports	%	65	60	60	62
B	Trend	Indexed	100	92	92	95
C	Indian Production	%	74	38	27	21
D	Trend	Indexed	100	52	37	28
E	Indian Demand	%	36	26	20	17
F	Trend	Indexed	100	71	54	48

223. It is seen that:

- a. The imports from Korea in absolute terms have declined over the injury period. The domestic industry submitted that the same was because of addition of significant fresh green field production facilities in the Country.
- b. The subject imports have declined in relation to production and consumption in India.

224. The Authority notes that the decline in imports is attributable to the facts that the domestic industry began production in the recent period (base year was the second year of production) and the Designated Authority had earlier recommended anti-dumping duty

which was imposed on 30th August, 2017. The domestic industry further explained that the production process is such that the efforts have to be made to optimize the production. As the domestic industry kept increasing its production, the imports kept declining from Korea and other countries.

G.3.2 Price Effect of the Subsidized Imports on the Domestic Industry

225. With regard to the effect of the subject goods on the prices of the domestic industry, it is required to be examined whether there has been a significant price undercutting by the subsidized 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, to a significant degree.

a. Price Undercutting

226. For the purpose of price undercutting analysis, the selling price of the Domestic Industry has been compared with the landed value of imports of subject goods from the subject country. The comparison has been done separately for 1500 series and 1700 series.

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
A			SBR-Total			
1	Landed Price	₹/MT	88,032	1,04,786	1,15,631	1,17,548
2	Trend	Indexed	100	119	131	134
3	Price Undercutting	₹/MT	***	***	***	***
4	Trend	Indexed	***	***	***	***
5	Price Undercutting	%	***	***	***	***
6	Price Undercutting	Range	(0-10)%	0-10%	(0-10)%	(0-10)%
B			SBR-1500			
1	Selling Price	₹/MT	***	***	***	***
2	Trend	Indexed	100	136	133	141
3	Landed Price	₹/MT	86,591	1,05,358	1,17,651	1,20,095
4	Trend	Indexed	100	122	136	139
5	Price Undercutting	₹/MT	***	***	***	***
6	Trend	Indexed	***	***	***	***
7	Price Undercutting	%	***	***	***	***
8	Price Undercutting	Range	(0-10)%	0-10%	(0-10)%	(0-10)%

C			SBR-1700			
1	Selling Price	₹/MT	***	***	***	***
2	Trend	Indexed	100	143	137	144
3	Landed Price	₹/MT	88,195	1,00,329	1,09,914	1,14,030
4	Trend	Indexed	100	114	125	129
5	Price Undercutting	₹/MT	***	***	***	***
6	Trend	Indexed	***	***	***	***
7	Price Undercutting	%	***	***	***	***
8	Price Undercutting	Range	(10-20)%	0-10%	(0-10)%	(0-10)%

227. It is seen that the price undercutting is negative in POI and over the injury period.

b. Price Suppression and Depression

228. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period, were compared as below. It is seen that the cost of sales considered for the present purposes is as per the financial records and certificate issued by the chartered accountant.

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
1	SBR 1500					
A	Cost of Sales	Rs/MT	***	***	***	***
B	Trend	Indexed	100	117	115	120
C	Selling Price	Rs/MT	***	***	***	***
D	Trend	Indexed	100	136	133	141
E	Landed Price	Rs/MT	86,591	105,358	117,651	120,095
F	Trend	Indexed	100	122	136	139
2	SBR 1700					
A	Cost of Sales	Rs/MT	***	***	***	***
B	Trend	Indexed	100	114	113	127
C	Selling Price	Rs/MT	***	***	***	***

D	Trend	Indexed	100	143	137	144
E	Landed Price	Rs/MT	88,195	100,329	109,914	114,030
F	Trend	Indexed	100	114	125	129
3	SBR-Total					
A	Cost of Sales	Rs/MT	***	***	***	***
B	Trend	Indexed	100	115	114	121
C	Selling Price	Rs/MT	***	***	***	***
D	Trend	Indexed	100	137	134	141
E	Landed Price	Rs/MT	88,032	104,786	115,631	117,548
F	Trend	Indexed	100	119	131	134

229. It is noted that selling price has not declined during the injury period. Thus the domestic industry has not suffered price depression.
230. However, it is noted that the average landed price of the subsidized imports has remained lower than the cost of sales of the domestic industry across the injury period. As a result, the domestic industry has been unable to charge remunerative prices and is suffering losses in both the grades. The imports of subject goods from subject country has prevented price increases which otherwise would have occurred due to increase in cost of production.

Price underselling

231. The Authority has also examined price underselling if any, suffered by the domestic industry on account of dumped imports of subject goods from the subject countries. It is noted that the landed value of imports of subject goods from subject countries is significantly below the non-injurious price of the domestic industry resulting in price underselling: -

Particulars	Unit	
Import Volume	MT	45,914
Non-Injurious Price (NIP)	Rs/MT	***
Landed Value	Rs/MT	117548
Price Underselling/Injury Margin	Rs/MT	***

Price Underselling/Injury Margin	%	***
Price Underselling/Injury Margin	Range	0-10%

G.3.3. Economic Parameters of the Domestic Industry

232. Annexure I to the Anti-Subsidy Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on domestic producers of such products. With regard to consequent impact of dumped imports on domestic producers of such products, the Anti-Subsidy Rules further provide that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, ; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

a. Production, Capacity, Capacity utilization and Sales

233. The position of the domestic industry over the injury period with regard to production, capacity, capacity utilization, domestic sales and export is as under:

SN	Particulars	Unit	2015-16	2016-17	2017-18	2018-19
1	Capacity	MT	2,61,000	2,61,000	2,61,000	2,61,000
2	Trend	Indexed	100	100	100	100
3	Production	MT	1,13,317	1,61,581	1,88,344	2,23,343
4	Trend	Indexed	100	143	166	197
5	Capacity Utilization	%	43%	62%	72%	86%
6	Trend	Indexed	100	143	166	197
7	Domestic Sales	MT	1,02,155	1,34,936	1,73,699	1,91,325
8	Trend	Indexed	100	132	170	187

234. It is seen that-

- One of the constituents of domestic industry declared its commercial production in the beginning of the injury period.

- b. The domestic industry has capacity to cater a significant share of the demand of the subject goods in India. The domestic industry submitted that it can meet entire demand of the product in the Country, if demand being met through duty free imports is excluded.
- c. Production, sales and the capacity utilization of the domestic industry shows improvement over the period. The same is because of the fact that the petitioners were in nascent stage in the earlier years. Domestic industry submitted that given capacities created by the domestic industry and production compulsions, the domestic industry has no option but to benchmark its prices with imports and sell the product in the market.

b. Market Share

235. Market share of the domestic industry over the injury period is shown in table below-

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
1	Subject Country	%	36%	26%	20%	17%
2	Trend	Indexed	100	71	54	48
3	Other Countries attracting ADD other than Korea	%	17%	16%	10%	9%
4	Trend	Indexed	100	94	63	54
5	Other Countries	%	3%	2%	2%	2%
6	Trend	Indexed	100	69	94	66
7	Domestic Industry	%	44%	57%	67%	72%
8	Trend	Indexed	100	128	152	162
9	Total	%	100%	100%	100%	100%

236. It is seen that the market share of the domestic industry has increased with the increase in production, sales and imposition of ADD. The share of subject imports in demand has reduced. However, share of Korea is significant, considering the share of various countries.

c. Profitability, return on investment and cash profits

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

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
1	Selling price	₹/MT	***	***	***	***
2	Trend	Indexed	100	137	134	141
3	Cost of sales	₹/MT	***	***	***	***
4	Trend	Indexed	100	115	114	121
5	Profit/(Loss)	₹/MT	***	***	***	***
6	Trend	Indexed	(100)	(21)	(27)	(31)
7	Profit/(Loss)	₹ Lacs	***	***	***	***
8	Trend	Indexed	(100)	(28)	(46)	(59)
9	Cash Profits	₹/MT	***	***	***	***
10	Trend	Indexed	(100)	16	13	(1)
11	Cash Profits	₹ Lacs	***	***	***	***
12	Trend	Indexed	(100)	21	23	(2)
13	PBIT	₹/MT	***	***	***	***
14	Trend	Indexed	(100)	2	(13)	(7)
15	PBIT	₹ Lacs	***	***	***	***
16	Trend	Indexed	(100)	3	(22)	(14)
17	ROCE	%	***	***	***	***
18	Trend	Indexed	(100)	3	(23)	(14)

238. It is seen that-

- The domestic industry has been suffering financial losses over the injury period.
- Loss per unit of the domestic industry decreased in the year 2016-17 but increased in the following year and in POI.
- The losses of the domestic industry have increased by 26% in the period of investigation as compared to the losses of previous year.
- The domestic industry suffered cash losses in the beginning. It started earning cash profits from 2016-17. The domestic industry once again suffered cash loss in the POI.
- The domestic industry had negative return on capital employed in the base year. Its ROI improved thereafter, and the domestic industry earned positive ROI in 2016-17. The domestic industry however suffered negative ROI in 2017-18 and POI.
- As regards the argument that injury to the domestic industry is due to high interest and depreciation cost, it is seen that noted that domestic industry has recorded cash

loss as well as a loss before interest. Therefore, the decline in the profits in the POI cannot be due to increase in the interest and depreciation cost. Further, it is also seen that one of applicant companies commenced commercial production in the beginning of the injury period, leading to increase in the depreciation costs.

d. Employment, Wages and Productivity

239. The information relating to employment, wages and productivity is as per below table-

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
1	No of Employees	Nos	320	329	339	338
2	Trend	Indexed	100	103	106	106
3	Productivity per day	MT/DAY	324	462	538	638
4	Trend	Indexed	100	143	166	197
5	Productivity per Employee	MT/Nos	354	491	556	661
6	Trend	Indexed	100	139	157	187
7	Salary & Wages	₹ Lacs	***	***	***	***
8	Trend	Indexed	100	103	112	124
9	Salary & Wages	₹/MT	***	***	***	***
10	Trend	Indexed	100	72	67	63

240. It is seen that: -

- Number of employees with the domestic industry has marginally increased over the injury period.
- Productivity per day and per employee has increased over the injury period.
- Salary and wages have also increased over the injury period but as the production of the domestic industry increased, per unit cost on this account declined. Therefore, wages could have not impacted the profitability of the domestic industry.

e. Inventories

241. Inventory position with the domestic industry over the injury period is given in the table below:

SN	Particulars	Unit	2015-16	2016-17	2017-18	POI
1	Opening Stock	MT	18,869	7,632	16,587	9,808
2	Closing Stock	MT	7,632	16,587	9,808	16,871
3	Average Inventory	MT	13,251	12,110	13,198	13,340
4	Trend	Indexed	100	91	100	101

242. It is seen that the average inventories with the domestic industry declined in 2016-17 but have increased towards the end of period of investigation. It is seen that the domestic industry undertook significant exports at losses in order to prevent pile up of inventories. Despite this, the closing inventories in the POI increased once again. Further, had the domestic industry not undertaken additional exports, the inventories with the domestic industry would have been higher.

f. Growth

243. The trend of volume and profit parameters of the is as per table below-

SN	Particulars	Unit	2016-17	2017-18	2018-19
1	Production	Y/Y	43%	17%	19%
2	Domestic Sales	Y/Y	32%	29%	10%
3	Market Share	Y/Y	28%	19%	7%
4	Profit/(Loss)	Y/Y	72%	-68%	-26%
5	Cash Profits	Y/Y	121%	8%	-110%
6	PBIT	Y/Y	103%	-831%	39%
7	ROCE	Y/Y	103%	-848%	41%

244. It is seen the domestic industry's growth in terms of production, sales and market share was positive over the injury period. However, whereas growth in profits, cash profits and ROI was largely positive in 2016-17, the same became negative in the POI. The domestic industry continued to suffer financial losses and negative ROI, even after establishing itself fully in the market in respect of product and volumes.

g. Ability to Raise Capital Investment

245. The domestic industry has been suffering financial losses across the injury period. With the competition being faced by the domestic industry because of the subsidized imports,

the operations of the product has impacted affecting product's ability to raise capital investment.

h. Injury margin for cooperative producers/exporters

246. The injury margin for cooperative producers/exporters are evaluated as under:

Producer/Exporter	NIP	Landed Price	Injury Margin	Injury Margin	Injury Margin
	US \$/MT	US \$/MT	US \$/MT	%	Range
LG Chem. Ltd.	***	***	***	***	0-10
Kumho Petrochemicals Ltd	***	***	***	***	0-10
Others	***	***	***	***	30-40

i. Conclusion on Injury

247. On the basis of information on record, the Authority concludes on the injury to the domestic industry as mentioned below.

- Imports of the product under consideration have declined over the period, in both absolute terms and in relation to production and consumption in India.
- The industry commenced commercial production recently (ISRPL in February 2014 and RIL in October 2016). As the domestic industry increased production (and resultantly, domestic sales), the subject imports declined. However, the volume of imports is significant enough to cause adverse effect on the prices of the product in the market and consequently the domestic industry.
- Korean imports command largest share in imports in India.
- The price undercutting on the basis of methodology followed by the domestic industry is negative.
- The landed price of imports is below cost of production of the domestic industry.
- The subject imports have suppressed the prices of the domestic industry. The domestic industry has not been able to increase its prices in proportion to increase in the costs.
- The domestic industry suffered financial losses over the entire injury period. The financial losses suffered by the domestic industry declined in 2016-17 and increased thereafter significantly upto POI.
- Performance of the domestic industry improved in 2016-17 and deteriorated thereafter upto POI in respect of cash profits and ROI.
- While the petitioning domestic industry has been able to achieve a positive growth in volume parameters, the growth was negative in respect of price parameters.

- j. Inventories with the domestic industry fluctuated over the injury period and increased once again towards end of the POI.

G. CAUSAL LINK

248. The Authority has examined whether other know factors could have caused injury to the domestic industry as follows-

- a. **Volume and prices of imports from third countries**

- b. Imports from other major countries are already subject to anti-dumping duties. Landed price of imports from Korea is lowest as compared to imports from rest of world, after adding prevailing customs duty and anti-dumping duty.

- c. **Changes in the pattern of consumption**

249. There have been no material changes in the pattern of consumption of the product under consideration. Hence, changes in the pattern of consumption have not caused injury to the domestic industry.

- d. **Trade restrictive practices**

250. The Authority notes that there is no trade restrictive practice, which could have caused injury to the domestic industry.

- e. **Change in technology**

251. The Authority notes that technology for production of the product has not undergone any change. Developments in technology are, therefore, not a possible factor of injury.

- f. **Export performance**

252. The Authority has considered data for the domestic operations only. Any possible deterioration in the export performance of the domestic industry, therefore, cannot be a cause for the injury to the domestic industry.

- g. **Performance of other products**

253. The Authority has considered the data relating to the performance of the subject goods only. Therefore, performance of other products produced and sold by the petitioners are not a possible cause of the injury to the domestic industry.

H. Conclusion on Causal Link

254. The Authority concludes as below.

- a. Subsidized imports from subject country are entering into India in substantial volumes.
- b. The imports have decreased both in relative and absolute terms. However, imports occupy a significant share in the market to cause adverse price effect.
- c. The landed value of subject goods from subject country is not only below the NIP but also the cost of sales of the domestic industry during the injury period.
- d. Landed price of imports from various countries shows that the selling price of the domestic industry are impacted by the landed price of Korean imports.
- e. Performance of the domestic industry deteriorated once again in respect of profits, cash profits and return on capital employed.

I. POST DISCLOSURE COMMENTS

Comments by Domestic industry

255. Following submissions have been made by domestic industry on the disclosure statement issued by the Authority.
- a. Domestic industry has not filed comments on the disclosure, requesting disclosure of following information
 - i. Format-B, Format-D normation;
 - ii. Calculations of capital employed.
 - iii. Details of expenses allowed & disallowed.
 - iv. The linked files have not been given and the NIP given is a paste special. With this information and disclosure, it is not possible for the domestic industry to understand what the Designated Authority has accepted/rejected out of the various information provided by the domestic industry.
 - b. Disclosure of NIP requires disclosing complete files of the domestic industry.
 - c. Butadiene consumption price of RIL was accepted by Authority in Anti-dumping investigation concerning imports of PBR and Anti-dumping investigation concerning imports of SBR and in all PTA cases.
 - d. It is inconsistent and discriminatory approach to allow consumption price in one case and reject in other case.

Comments by Other interested parties

256. Following submissions have been made by the other interested parties on the disclosure statement issued by the Authority.

Product under consideration

257. Solution SBR is beyond the scope of the present investigation.

Miscellaneous

258. It is an established principle that the period of investigation cannot be older than 6 months on the date of initiation

Subsidy Programme

General

259. The extant laws and regulations concerning Countervailing Duty ('CVD') investigations along with the relevant jurisprudence aptly provide that a DS should contain the findings of the DGTR on the essential facts which would form the basis for the decision whether or not to apply definitive measures (*see*, Rule 18 of Indian CVD Rules). However, The Authority has given its conclusion in the subsidy margin determination.

260. Merely because banks involved in the corporate restructuring are government- owned, these banks do not become "public bodies". No evidence has been provided to show that banks are under effective control, regulation and supervision of the Government of Korea.
261. Government owned banks acted in same way as private commercial banks. Terms of participation are on commercial basis determined by market forces and required agreement of 100% creditors. Therefore, the decision was purely commercial.
262. Authority has not supported examination to show that these banks have participated in the corporate restructuring process on the basis of government instruction. KDB participated only as an ordinary creditor.
263. USANCE L/C limit was increased in proportion to Kumho's existing bond ratio for each creditor bank. Actual applied interest rate of KDB's USANCE interest rate was higher than other commercial banks. There is no benefit.
264. Additional issuance of short-term loans is a common practice followed by all commercial banks and not typical a measure taken by a public body. Further, the applied interest rates at which second creditor's agreement was entered into is for all commercial banks.
265. Purchase of convertible bond was not mandatory but optional to creditors and IBK and KEXIM did not purchase any convertible bond. Entitlement to purchase convertible bond was either relinquished in favour of other creditors or foregone.
266. Purchase of convertible bonds is a commonly resorted business decision made in the ordinary course of trade by commercial banks as part of the restructuring process.
267. Financial support was provided only as necessary to reasonably recover from bankruptcy. Banks decision was purely commercial decision supported by due diligence report issued by independent consultancy M/s PricewaterhouseCoopers.
268. Kumho underwent restructuring much before period of investigation, and all repayment obligations arising out of restructuring process were also resolved prior to period of investigation. Therefore, any benefit to the Respondent cannot be countervailed in the present investigation.
269. CRPA 2016 had not even been enacted when Kumho initiated and completed corporate restructuring. Therefore, Authority's stand that program was governed by Corporate Promotion Act 2016 is a complete misstatement.
270. Authority has failed to prove that terms of financing offered were based on a non-commercial basis. Terms of financing provided to Kumho by its creditors indicate that corporate restructuring was on commercially reasonable basis.
271. Program includes large number of enterprises spreading across multiple sectors and is not limited to certain enterprises or sectors.

Program 3

272. Funding program under Industrial Technology Innovation Promotion Act ('ITIPA') includes a large number of Research institutions, universities, institutions, organizations, enterprises, etc that are spread across multiple sectors and is thus not limited to certain enterprises or sectors.

Program 4

273. Under program 4, tax benefits and long-term loan program are spread across multiple sectors and available to all companies and individuals who meet eligibility criteria. There is no specificity.

Program 5

274. Program No. 5 includes a large number of enterprises that spread across multiple sectors and is thus not limited to certain enterprises or sectors.

Program 6

275. Program – 6 is in nature of export subsidy and Authority has countervailed the same. This is in direct contradiction to its stand that that no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization.

Program 7

276. Benefit under Program 7.1.1, 7.1.2, 7.1.3, 7.1.8 and 7.3 is available to all enterprises irrespective of sector, region or industry and is thus not countervailable.
277. Program No. 7.1.2 is an investment decision in consistent with usual investment practice in resource development sector. If the business succeeds, a portion of the profit (based on the loan) should be returned to the GOK.
278. Government of India maintains programs which mandates workplaces having 50 employees or more to establish a crèche and provides contribution. If Authority finds Program No. 7.1.3 to be countervailable, similar schemes run by Government of India may also be countervailed before other trade remedial forums abroad.
279. Grant given to under Program No. 7.1.4 has not been found countervailable for LG Chem and Kumho as it is directly transferred to account maintained for the infant care center. Mechanism is mandated under law and applies to all beneficiaries under. Thus, program should not be countervailable against POSCO or any other exporters/ producers from GOK.
280. There is no benefit under Program No. 7.1.5 as it only provides relief to Korean corporate taxpayer from incidence of double taxation on corporate tax paid on income earned in foreign jurisdictions.
281. Authority has only calculated subsidy margin in Program 7.1.5 at the overall level, however, subsidy margin must be attributed to exports of the product by POSCO to India. The resulting subsidy margin for POSCO would be negligible.
282. Loans under Program No. 7.1.7 are provided for conducting general operations and are not related to production of subject goods.
283. Authority has erred in calculation of subsidy margin under the Program No. 7.1.7 for POSCO.
284. Programs no. 7.5 are social welfare measures pursued by government and there is no benefit accruing to the business, industry, or entity with regard to its business activities.
- Misc.
285. Entire subsidy margin determined cannot be attributed to entire export volume produced by KKPC and exported to India during the period of investigation. Subsidy margin for

both export channels needs to be separately determined and allocated over the export volumes through each channel and the weighted average subsidy margin must be awarded by the Authority to KKPC.

286. The disclosure statement is silent on how domestic industry has satisfied minimum evidentiary standard prescribed under Article 11.2 of the ASCM reflected in in Rule 6(3)(b) of the Indian CVD Rules, 1995.
287. Impugned programs/ schemes lack relevant and sufficient evidence and should not be found to be countervailable. Programs fail to meet the requirements under the relevant laws to constitute countervailable subsidies. None of the programs/schemes meet the said standards of specificity.
288. There is an obligation to consider comments of the responding interested parties to the disclosure statement. In the present case, Authority has skipped essential requirement and has concluded on countervailability without giving an opportunity to the respondents to comment on the facts being considered.
289. DGTR has acknowledged that existing ADD on PUC remedies distortion in the export price caused by export subsidies.

Injury and causal link

290. There is no merit in the observation that the imports of the PUC from Korea RP remain significant.
291. Applicants being in nascent stage in earlier years is irrelevant to the examination of the domestic industry's operational performance.
292. All injury indicators except profitability in disclosure statement itself establish that domestic industry has not suffered any injury. As held by CESTAT's in Bridge Stone Tyre Manufacturing (Thailand) v. Designated Authority, mere impact on profitability is insufficient to make conclusion regarding material injury.
293. Examination done by Authority to establish absence of inflated transfer pricing is insufficient. Authority in calculation of NIP should compare raw material prices claimed by domestic industry with raw material prices prevalent in market.
294. Injury on account of export sales is not subject to determination in a domestic trade remedial investigation. Scope of examination of trade restrictive effects is restricted within domestic market.
295. In Indian Spinners Association v. Designated Authority, CESTAT and Bridge Stone Tyre Manufacturing (Thailand) v. Designated Authority held that a 22% return cannot be uniformly applied across sectors and is subject to variation. Return of 22% is common in synthetic rubber manufacturing industry

Examination by Authority

296. On the submission made by the domestic industry on computation of non-injurious price and disclosure thereof, non-injurious price has been determined **and disclosed** in accordance with Annexure III of the Rules and the consistent practice of the Authority.

297. It has been contended that the determination lacks sufficient evidence. It is noted that the applicant had provided sufficient and adequate evidence of subsidies to justify initiation. The Authority provided ample opportunity to the Government of Korea for consultation. However, the Government of Korea did not respond to the same. The claims of the respondent were therefore left undisputed. The Authority initiated the investigation only after being satisfied about the minimum evidentiary standards. The questionnaire response filed by the participating producers and the Government of Korea too shows existence of subsidies. Specificity and countervailability of the program has already been disclosed in the disclosure statement and the present findings. It may also be added that after the issuance of disclosure statement, confidential copy of methodologies of determination of subsidies margin proposed in the disclosure statement, along with subsidy margins were disclosed to both the producers and exporters from subject country, and comments received from them are examined in this finding.
298. With regard to the argument pertaining to the use of the word 'determined' by the Authority in the disclosure statement, the Authority notes that the usage of the phrase "determine" does not mean that it is a final determination. When read with Rule 16, the Authority has only disclosed the essential facts and proposed determinations and has invited comments from all interested parties on all aspects of a disclosure statement. Therefore, "determination" in its true sense shall be final only when the final findings are issued and not at the stage of disclosure statement.
299. As regards the submission that the banks are not public bodies, it is noted that the banks are acting at the direction or superintendence of agency who are government owned or controlled. With regard to the argument pertaining to KKPC not availing a benefit under the Corporate Restructuring Program, the Authority has provided the calculation of benefit availed by KKPC in detail in the relevant paragraphs of the final findings.
300. As regards specificity of corporate restructuring program, it has been admitted that the sole purpose of the program was to provide financial support to reasonably recover from bankruptcy. The benefit was not available to everyone but only limited to certain specific entities thus making the program specific in nature.
301. With regard to the argument pertaining to KKPC not availing a benefit under the Corporate Restructuring Program, the Authority has provided the calculation of benefit availed by KKPC in detail in the relevant paragraphs of the final findings.
302. With regard to argument that subsidy margin for both export channels needs to be separately determined and allocated over the export volumes through each channel and the weighted average subsidy margin must be awarded by the Authority to KKPC, it is noted that the Authority has determined weighted average subsidy margin after allocating subsidy margin through each channel.

303. With respect to claims that some of the subsidies taken into account by the Authority are export subsidies, and thus they could not be countervailed, it is noted that all subsidies taken into account for the purpose of determining the subsidy margins are production subsidies only, and no export subsidies have been taken into account by the Authority.
304. It is noted that under the Program 7.1.5 corporate tax exemption program, an eligible enterprise gets tax credit on various investment expenses incurred by it. The information with respect to this program has been taken from the response filed by the Government of Korea RP and POSCO. The response filed by POSCO shows that benefit is received by them under this subsidy program.
305. The present investigation has not shown any export subsidies received by the Korean producers. The CVD margins determined by the Authority does not contain any margin on account of possible export subsidies. The Authority has taken note of existence of anti-dumping duty on the product under consideration. It is noted in this regard that the existing anti-dumping duty is at the level of margin of dumping. The injury margin determined in the anti-dumping investigation was significantly higher than the dumping margin determined, and anti-dumping duty imposed. Since the injury margin determined was higher, the domestic industry was not protected to the extent of injury suffered by the domestic industry from imports, as the law restricts imposition of anti-dumping duty only to the extent of dumping. In such situations, the domestic industry is entitled to protection to the extent of margin of subsidies, in case it is found that the foreign producers are getting countervailable subsidies. However, while the CVD cannot exceed the margin of injury in view of the bar under the Act and of the Rules. It is also considered desirable that the sum of anti-dumping duty and CVD does not exceed the margin of injury now established.
306. The table below shows the subsidy margin & injury margin assessed in the present investigation and dumping & injury margin determined in the previous investigation. It is seen that the sum of CVD margin and dumping margin is lower than the injury margin assessed now in the present CVD investigations or determined at the time of earlier Anti-dumping investigations on the same product from Korea RP.

Particulars	Dumping margin (DM) (US\$/MT)	Dumping margin %	Subsidy margin (SM) (US\$/MT)	Subsidy margin %	DM and SM margin (US\$/MT)	D.M % + SM%	Injury Margin AD investigations (US\$/MT)	Injury margin AD investigation %	Injury margin Subsidy investigation (US\$/MT)	Injury margin Subsidy investigation %
Kumho	***	***	***	***	***	***	***	***	***	***
LG Chem	***	***	***	***	***	***	***	***	***	***
Others	***	***	***	***	***	***	***	***	***	***

307. In view of the above, the Authority concludes that it is appropriate to impose CVD in the present case. Further, existence of anti-dumping duty on the product and imposition of CVD would not lead to dual remedy. The anti-dumping duty imposed and CVD proposed to be imposed are intended to address different situations. The total quantum of protection does not exceed the injury margin determined by the Authority.

J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

308. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of countervailing duty would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

K. CONCLUSION & RECOMMENDATIONS

309. 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 that has been exported to India from the subject country is subsidized.
- b. The domestic industry has suffered material injury.
- c. Material injury has been caused by the subsidized imports of the subject goods from the subject country.

310. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of subsidy, injury and causal link. Having initiated and conducted the investigation into subsidy, injury and causal link in terms of the provisions laid down under the Anti-Subsidy Rules, the Authority is of the view that imposition of duty is required to offset subsidization and injury. Therefore, Authority considers it necessary and recommends imposition of anti-subsidy duty on imports of subject goods from the subject country.

311. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of countervailing/anti-subsidy duty equal to the lesser of margin of subsidy and the margin of injury, so as to remove the injury to the Domestic Industry. Accordingly, the Authority recommends imposition of anti-subsidy/countervailing duty on imports of subject goods, originating in or exported from subject country, from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below.

DUTY TABLE

SN	Heading/ Sub heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty Amount as a % of CIF
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	400219	Emulsion Styrene Butadiene Rubber (E-SBR) of 1500 Series and 1700 Series	Korea RP	Any Country including Korea RP	Kumho Petrochemical Co., Ltd	1.89
2	-do-	-do-	Korea RP	Any Country including Korea RP	LG Chem, Ltd.	2.04
3	-do-	-do-	Korea RP	Any Country including Korea RP	Any producer other than SN 1 and 2 above	4.06
5	-do-	-do-	Any country other than Korea RP	Korea RP	Any	4.06

CIF value means the assessable value as determined under section 14 of Customs Act, 1962 (52 of 1962).

312. Landed value of imports for the purpose of this Notification shall be the assessable value as determined under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

313. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.



(B.B. Swain)

Special Secretary and Director General