

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

New Delhi the 24th December 2009

Final Findings

Subject:- Anti-Dumping Investigations concerning imports of ‘Carbon Black used in rubber applications’ originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand.

No. 14/21/2008-DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred as the AD Rules);

A. INITIATION

1. The Designated Authority (hereinafter referred to as the Authority), having regard to the Customs Tariff Act, 1975, as amended from time to time, (hereinafter referred to as ‘the Act’) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter referred to as ‘the AD Rules’), received a written application from the Association of Carbon Black Manufacturers on behalf of the domestic industry, alleging dumping of ‘Carbon Black used in rubber applications’ (hereinafter also referred to as the subject goods); originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand (hereinafter also referred to as the subject countries).

2. Having satisfied on the basis of positive evidence submitted by the domestic industry, the Authority vide Notification No.14/21/2008-DGAD dated 26th December 2008 published in the Gazette of India, Extraordinary, initiated Anti-dumping Investigation concerning imports of ‘Carbon Black used in rubber applications’, originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand.

B. PROCEDURE

3. The procedure described herein below has been followed:

- I. The Authority notified the High Commissions/Embassies of the subject countries in India about the initiation of investigation in accordance with sub-rule (5) of Rule 5 of the AD Rules.

- II. The Authority sent copies of initiation notification dated 26th December 2008 to the known exporters from the subject countries, known importers and other interested parties, and the domestic industry, as per the information available with it, and requested them to make their views known in writing within 40 days of the initiation notification. Parties to this investigation were requested to file questionnaire responses and make their views known in writing within the prescribed time limit. Copies of the letter, application and questionnaire sent to the exporter were also sent to the High Commissions/Embassies of the subject countries along with a list of known exporters/ producers with a request to advise the exporters/producers from the subject countries to respond to the questionnaire within the prescribed time.
- III. Request for extension of time to file the questionnaires' response was received from some interested parties. The Authority granted the time extension, keeping in view the time constraints.
- IV. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the High Commissions/ Embassies of the subject countries in India in accordance with Rule 6(3) supra.
- V. The High Commissions/Embassies of the subject countries in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise the exporters/producers from their country to respond to the questionnaires within prescribed time limit. A copy of the letter and questionnaires sent to the exporters was also sent to them along with the names and addresses of the known exporters.
- VI. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject countries in accordance with Rule 6(4) of the AD Rules:

Carbon Black Producers/Exporters in Australia

1. Continental Carbon Company Sir Joseph Banks Drive Kurnell NSW 2231.	2. Cabot Australia Pty. Ltd P.O. Box 829, Torquay, Victoria 3228, Australia
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Carbon Black Producers/Exporters in China PR

1. Hebei Daguangming Industry Group Co., Ltd., Western Side, Donghuan South Road, Shahe City, Hebei Province. P.R.China.	2. Shanghai Kargos International Trade Co., Ltd., T2-12F, No. 2601 Xietu Rd, Shanghai, P. R. China
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3. Hebeijing country xinyuan rubber Chemical Co Ltd., Shengli road Guangsha district 31-1-101, Hengshui city, Hebei province, P.R.China	4. Hebei Yonghui Chemical Industries Import and Export Co., Ltd., No.199, Xinhua Road, Shijiazhuang, Hebei, P. R. China
5. Gansu Jinshi Chemical Co., Ltd., 109 #, West suburb, Minle County, Gansu, P. R. China	6. Shandong Shuangyan Chemical Co., Ltd., NO.787 Donger Road Dongying City, Shandong, P.R.China
7. Weifang Longzhou Industry and Commerce Co., Ltd., Luo Cheng Town, Shouguang City, Shandong Province. P.R.China	8. Laiwu Taishan Carbon Black Co., Ltd., Gaozhuang industrial zone, Laicheng, Laiwu, P.R.China
9. Qichang Chemical Co., Ltd., Beichenwang, tangyin County, Anyang City, Henan Province, P. R. China	10. Jiangxi Black Cat Carbon Black Co., Ltd., Liyao, Jingdezhen City, Jiangxi Province, 333000, P.R.China
11. Suzhou Boahua Carbon, Xushuguan Suzhou, P.R. China-21515	12. Tianjin Dolphin Carbon Black Ltd., East of Railway, North of Yinheqiao Beichein District, Tianjin, P.R.China 300400

Carbon Black Producers /Exporters in Iran

1. Doodeh Sanati Pars Company, No. 49, Padidar Alley, Africa Ave., Tehran - 15188 Iran	2. Simorgh Carbon Black Mfg. Co. Unit 9, No. 11, East Nahid St Africa Ave., Tehran
3. Iran Carbon Company, International Private company, Box 14155-1333, Tehran, Iran	

Carbon Black Producers/Exporters in Malaysia

1. Paradise Polymers And Chemicals Malaysia, 470 Taman Muhibbah Jaya, Sungai Siput (Utara), Perak , Malaysia – 31100	2. Segfield Carbon Industries (M), Sdn Bhd, Lot 149675, Igb International Industrial Park, Ipoh, Perak Malaysia – 31100
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Carbon Black Producers/Exporters in Russia

1. Omsktechuglerod OJSC, 644049, barabinskaya Street, 20,Omsk, Russia	2. Amtel Holding Company, Amtel House 45 Kutuzovsk, Prospekt,121170 Moscow, Russia.
3. Severgazprom, 39/2 Lenin Street Ukhta Komi, Republic Russian Federation	4. Nizhnekamsk Carbon Black Plant 423570 Nizhnekamsk , Prombaza Republic of Tartarstan
5. Yaroslav, ltekuglerod, 150053 Yaroslavl	

Carbon Black Producers/Exporters in Thailand

1. Thai carbon Black, 44 Moo1, Ayuthaya -Anghong Highway, Tambol Pasa, Amphur Muang, Anghang 14000	2. Bridgestone Carbon Black (Thailand) Co., Ltd., Rojana Industrial Park, Ban Khai District, Rayong Province, Thailand
3. Thai Tokai Carbon Product Co., Ltd. 9th Floor, Harindhorn Tower, 54 North Sathorn Road, Silom, Bangrak, Bangkok 10500, Thailand	

VII. In response to the above notification, following exporters/ producers/
Association have responded:

S.No.	Name of Interested Party	Country
1.	M/s Continental Carbon Australia Pty Ltd.	Australia
2.	M/s Ningbo Detai Chemical Co. Ltd.	China PR
3.	M/s Hebei Daguangming Juwuba Carbon Black Co., Ltd.	China PR
4	M/s Longxing Chemical Stock Co., Ltd.	China PR
5.	M/s Ningbo Sheen – All Chemical Co., Ltd.	China PR
6.	M/s Jiangxi Black Cat Carbon Black Co., Ltd (“Black Cat”)	China PR
7.	China Rubber industry Association	China PR
8.	M/s Suzhou Baohua Carbon Black Co., Ltd.	China PR
9.	M/s. Yaroslavskiy Tekhnicheskii Uglerod	Russia
10	M/s Omsktechuglerod Ltd.	Russia
11.	M/s Trigon Gulf FZCO	UAE
12.	M/s Thai Tokai Carbon Product Company Ltd. (“TCP”)	Thailand

M/s Omsktechuglerod Ltd. did not file the response as per the questionnaire.

VIII. Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

1. M/s JK Tyres, Link House, 3, Bahadurshah Zafar Marg, New Delhi - 110 002	2. M/s Birla Tyre, Shivam Chambers 53, Syed Amir Ali Avenue, Kolkata-700 019, West Bengal.
3. M/s Apollo tyres, Apollo House 7, Institutional Area, Sector-32, Gurgaon - 122001 (Haryana)	4. M/s CEAT Ltd., CEAT Mahal, 463, Dr. Annie Besant Road, Worli, Mumbai 400 030
5. M/s MRF Ltd., 124 Greams Road, Chennai-06	6. M/s Ralson, Plot No: 3, New Industrial Area, Mandideep. Distt. Raisen, M.P. - 462046
7. M/s Poddar Tyre, GT Road Jugiana, Ludhiana (PB) 141420	8. M/s Oriental Rubber Industries, 525 Koregoan Bima Pune Nagar Road, Pune
9. M/s Hindustan Rubber, 1 Janki Center OFF Veera Desai Road Andheri(W) Mumbai-53	10 M/s Agarwal Rubber, 15-1-503/49/A, Ashok Market, Siddiamber Bazar, Hyderabad 500 01, Andhra Pradesh
11. M/s Exel Rubber, Flat no. 507, Sai Sadan Apts, Opp. SBI Balkampet, S.R. Nagar, Hyderabad - 500038	12. M/s Tega Industries, First floor, No 210, 5th Main Road Vijay Nagar 2nd Stage Banglore 560040
13. M/s Phoenix Yule, Ideal Plaza, 4th Floor, 11/1, Sarat Bose Road, Kolkatta 600 02, West Bengal	14. M/s Monotona Tyres, Mumbai, Mumbai 422 01, Maharashtra
15. M/s TVS Srichakra, Perumalpatti road Velaripatti Road, Melur Taluq Madurai-625122	16. M/s Ahuja Continental, 1109 Mittal Towers MG Road Bangalore
17. M/s Midas Rubber, P. John Zachariah Buildings, Kottayam, Kerala, 686001	18. M/s Tolins, M.C. Road, Kalady-683 574, Kerala
19. M/s TM Tyres, 5-35, Survey No, 305 & 321 Kalakal Village Medak - 502320, Andhra Pradesh	20 M/s Hartex Rubber, 6-3-865, Madhupala Towers, Ameerpet, Hyderabad- 500 016

IX. In response thereof, following have responded:

S.N.	Name of Interested party
1.	M/s Apollo Tyres Ltd.
2.	M/s J. K. Tyre & Industries Ltd.
3.	M/s Goodyear South Asia Tyres Pvt. Ltd.
4.	M/s Goodyear India Ltd.
5.	M/s Cabot India Ltd.
6.	M/s General Rubbers

7.	Automotive Tyre Manufacturers' Association (ATMA), India
8.	All India Rubber Industries Association, New Delhi
9.	M/s Gem Polytech Industries Pvt. Ltd

M/s General Rubbers, M/s Apollo Tyres Ltd., M/s Cabot India Ltd., M/s. Goodyear India Ltd, M/s J. K. Tyre, have filed their importer's questionnaire providing details of the imports of the subject goods by them.

- X. 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;
- XI. Investigation was carried out for the 12 months period starting from 1st Oct 2007 to 30th September, 2008 (POI) and the injury analysis has been done for the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and the POI. For assessing the threat of material injury, post POI data for the quarter immediately following the POI has also been considered.
- XII. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- XIII. The Authority, having regard to the Act and the AD Rules vide Notification No. 14/21/2008-DGAD dated 25th May 2009 recommended imposition of provisional Anti Dumping duty on imports of subject goods from the subject countries. The provisional Anti Dumping duty on imports of subject goods from the subject countries were imposed vide Customs notification No. 83/2009-Customs dated 30th July 2009.
- XIV. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 3rd August 2009. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. Interested parties were provided opportunity for rejoinder submissions on the views expressed by opposing interested parties.
- XV. The arguments made in the written submissions/ rejoinders received from interested parties have been considered, wherever found relevant, in this disclosure;
- XVI. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry and the co-operating producers/exporters.

- XVII. In accordance with Rule 16 of the AD Rules, the essential facts considered by the Authority have been disclosed to the known interested parties and comments received on the same have been duly considered in these findings.
- XVIII. Information provided by 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.
- XIX. 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 recorded these findings on the basis of the facts available.
- XX. *** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

Misc. procedural issues

4. Some interested parties have stated that the Authority has used DGCI&S import data while the application contained IBIS data and that in view of Rule 6(7) of AD Rules the revised import statistics should be placed in the public file. Besides, they have raised a few procedural issues, which are addressed as follows:
- (a) Maintenance of Public file: It is clarified that the Authority has maintained public file as per the AD Rules, which was kept open for inspection and was in fact inspected from time to time by several interested parties. The public file contained injury submissions made by the domestic industry after initiation and after inclusion of information relating to M/s Hi Tech. The Authority notes in this regard that the obligation of the Authority after initiation is to make evidence available through public file. The Rules do not envisage forwarding various submissions made by the domestic industry from time to time to other interested parties. It is for the interested parties to inspect the public file and to obtain copies.
 - (b) Provisional duties: Some interested parties have disputed the recommendation of provisional duties. It is, however, noted that the information on record shows that imposition of provisional duties was justified in view of situation relating to the domestic industry.
 - (c) Revision of data: Some interested parties have argued that the domestic industry kept revising data. It is, however, noted that anti-

dumping investigations is a process where quality of data improves as the investigation improves. Thus, the data undergoes changes/refinement at each stage of the investigation.

C. PRODUCT UNDER CONSIDERATION AND DOMESTIC LIKE ARTICLE

5. The product under consideration is 'Carbon Black used in rubber applications'. It is an inorganic chemical used in production/ processing of rubber (including tyres), as reinforcing filler. Carbon Black is also known as acetylene black, channel black, furnace black, lamp black, lampblack, thermal black, and noir de carbone. Carbon black can be divided into two categories – rubber and non-rubber applications Carbon black. Carbon black for rubber applications is the Carbon black that is used in production/ processing of rubber (including tyres), as a reinforcing filler. The present investigation is in respect of Carbon black used in rubber applications. Carbon black used in non-rubber applications, such as inks in copiers and computer printer cartridges, paints, crayons and polishes, is not within the scope of the present investigation.

6. The subject goods fall under Chapter 28 of the Act under subheading no. 28030010. The customs classification is indicative only and is in no way binding on the scope of the present investigation.

Views of the Domestic Industry

7. The domestic industry has submitted that even in a situation where the domestic industry does not offer like article, it would not be appropriate to restrict the scope of the product under consideration. It is not proper to define the scope of product under consideration by considering like article produced by the domestic industry for the simple reasons that (a) product under consideration should be decided what is being exported to India during the relevant period, (b) the first step involved in an anti dumping investigations is defining the product under consideration. Having defined the product under consideration, the Designated Authority is required to identify like article, (c) even if it is admitted that domestic industry has not offered like article, the same only implies denying protection to the domestic industry in respect of such product type. The domestic industry should, however, be entitled to seek review and inclusion of such product through subsequent review. Since the Designated Authority has held on different occasions that a review cannot be conducted for the purpose of including in the product scope a type of product that was earlier excluded, the present legal understanding is leading to a situation where the domestic industry is left with no choice but to file a fresh petition for the excluded product.

8. Issues raised by Other interested parties

- i. All India Rubber Industries Association, New Delhi has, *inter alia*, stated that Thermal Black is not produced in India and thus, should be kept out of the scope of the investigation.

- ii. M/s Gem Polytech Industries Pvt. Ltd, has, *inter alia*, contended the following:

Specialised grades of carbon Black (HS code: 28030010) meant for semi conductive compound application give superior processing characteristics, low sulphur content and good electrical conductivity. These grades are not manufactured in India; they attract premium price and are not used in rubber application as reinforcing filler. They are used in plastic application as electrostatic discharge (ESD) & semiconductor (SC). Their structure is different from the PUC. Thus, these grades be included in non rubber application including cables, films, injection moulded products for electronic application.

Examination by the Authority

9. **Thermal black** –The domestic industry has contended that Thermal black is nothing but Carbon black and has added that the domestic industry has not produced N880, N990 and N991 grades during the POI and is at present also not producing these grades.

10. Further investigation and verification conducted at the premises of the domestic industry and foreign producers establishes that the domestic industry has not produced these grades during the investigation period and these grades have been imported in India. The grades being produced and supplied by the domestic industry cannot substitute these grades. There is no evidence on record that the consumers have used these grades with some other grades interchangeably. Nor the consumers of other grades can interchangeably use these grades. Since the market for these grades is altogether different, the Authority has excluded these grades of Thermal Black from the ambit and scope of the product under consideration.

11. **Carbon black for semi conductive compound applications** – It is learnt that this is not the grade of Carbon black meant for rubber applications; therefore the Authority excludes these grades from the ambit and scope of the product under consideration.

12. With the exclusion of carbon black for thermal applications (N880, N990 and N991) and Carbon black for semi conductive compound applications, the Authority has carried out entire analysis for the present purpose after excluding these grades – both for dumping and injury analysis.

13. With regard to like articles, Rule 2(d) of the AD Rules provides as under: -

"like article " means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;

14. With regard to the possible difference between the product sold by the exporters in the Indian market and the product sold by the domestic industry, the Authority notes that there is no dispute by the exporters that there is any difference in the two products. After considering the information on record, the Authority holds that there is no known difference in product under consideration exported from subject countries and the product

produced by the Indian industry. The subject product produced by the domestic industry are comparable to the Product under consideration in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

15. Thus, the Authority holds that the subject product produced by the applicant domestic industry is like article to the Product under consideration, in accordance with the AD Rules.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

16. Rule 2(b) of the AD Rules defines domestic industry as under:-

“Domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry”.

17. The Application has been filed by Association of Carbon Black Manufacturers on behalf of the domestic industry. M/s. Phillips Carbon Black Limited and M/s. Hi-Tech Carbon have provided injury information, whereas M/s. Continental Carbon India Limited has supported the application.

Issue raised by the Interested Parties

18. M/s Jiangxi Black Cat Carbon Black Co., Ltd (“Black Cat”) has, *inter alia*, contended that the applicant does not have standing in view of relationship of M/s Hi-Tech carbon India with M/s Liaoning Birla Co. Ltd (China) and M/s Thai Carbon Black Public Company Ltd. (Thailand). Further, Phillips Carbon is also ineligible in view of imports made by M/s Ceat Ltd., which is their related company.

Views of the Domestic Industry

19. The Domestic Industry has submitted that Rule 2(b) had been amended for the reason that a discretion was required to be provided to the Designated Authority to include or exclude a company who is found to be related to a foreign supplier or an Indian importer or who itself imported the material. Since the fact of imports or relationship does not automatically imply exclusion and further since the ordinary/general rule is to include all parties, it is required to be established by the interested parties seeking exclusion that such exclusion is indeed necessary in the facts and circumstances of the present case. However, barring mere claim, no factual material has been provided by the interested parties justifying exclusion of these two companies. M/s Ceat Ltd. and

M/s Phillips Carbon Black Ltd. are not related companies. The Applicant has further submitted that even though the interested parties have not justified the need for exclusion, facts of the case do not justify exclusion of either company. The applicant has made reference to text books on anti-dumping and practices of other investigating authorities in this regard and has contended that there is no justification whatsoever for exclusion of either companies. The two companies have not reduced their production and have not turned to trading. In fact, in case of M/s Hi-Tech Carbon, the related Thai company has exported the entire material only under advance licence (whereas there is no import from the Chinese related company). In case of M/s Ceat Ltd. also, majority of the imports are under advance licence. The Applicant has also claimed that the volume of exports made from Thailand by related company of Hi Tech Carbon is significantly low in terms of total imports and consumption of the product in India. Similarly, the imports made by M/s Ceat Ltd. constituted a very small proportion in its total sales.

Examination by the Authority

20. The Authority notes that M/s Hi Tech Carbon is related to M/s Thai Carbon Black Public Company and M/s Liaoning Birla Co. Ltd. M/s Hi Tech Carbon has claimed that M/s Liaoning Birla Co. has not exported carbon black in Indian market. Even though M/s Thai Carbon Black Public Company Ltd. has exported the subject goods to India, the entire volume of exports is only 2178 MT, out of total of 515350 MT in POI. Some interested parties have reiterated their argument regarding inclusion of M/s Hi Tech in view of exports by their related entity. The Authority, however, notes that the exports made by the Thai related company are not so significant and not under such condition to take a view that M/s Hi Tech should be considered ineligible to be considered as a part of the domestic industry. The Authority notes that the Hi Tech Carbon has not turned to importing and trading. The focus of the company remains substantially on production. Further, there is no evidence on record to show that M/s Phillips Carbon Black Ltd. and M/s Ceat Ltd. are related companies. Even though ATMA has participated in the present investigations as an interested party and M/s Ceat Ltd. is their member, there is no evidence on record to show that M/s Ceat Ltd. has imported significant volumes of the product under consideration from the subject countries after payment of customs duties.

21. The Authority notes that the volume of exports made by M/s Thai Carbon Black is too insignificant in relation to production and consumption in India. Besides, it has not been established that M/s Hi Tech Carbon should be excluded from the purview of domestic industry because of exports made by the related company. The Authority considers it appropriate to include M/s Hi Tech Carbon within the scope of the domestic industry. With regard to eligibility of M/s Phillips Carbon, the Authority notes that the interested parties have not provided sufficient evidence to justify its exclusion.

22. As per the evidence available on record, production of M/s Phillips Carbon Black Ltd. and Hi-Tech Carbon account for a major proportion of the domestic production of like article, being significantly more than 50% of Indian production. Further, the petition is supported by M/s Continental Carbon. The application thus satisfied the requirements of Rule 2(b) and Rule 5(3) of the AD Rules. Further, M/s Phillips Carbon Black Ltd. and

M/s Hi-Tech Carbon are being treated as “domestic industry” within the meaning of Rule 2(b) read along with Rule 2(d) of the AD Rules for the present purpose.

SUBJECT COUNTRIES

23. The investigation was initiated concerning imports of the subject goods originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand on the basis of IBIS data relied upon by the Applicant. However, the Authority had requested the DGCI&S to provide the relevant data on the subject, which was received. A perusal of the data shows that imports of the subject goods from Iran are below the *de-minimis* limits prescribed. On examination of the data from Malaysia, it was found that there is a negative injury margin *vis a vis* imports of the subject goods from Malaysia. Therefore, the Authority hereby terminates the investigations concerning imports of the subject goods originating in or exported from Iran and Malaysia. Thus, further examination is restricted to imports of the subject goods originating in or exported from Australia, China PR, Russia and Thailand.

Other issues raised by the Interested Parties

24. It has been, *inter alia*, contended that:

- Selection of the subject countries is on discriminatory basis as volume of import from some of non-subject countries is neither negligible nor the import price is lower.
- Russia should be the appropriate analogue country instead of Thailand as primary raw material for manufacturing Carbon black is feed stock in Thailand whereas in China PR it is Coal tar, which is more economical raw material for manufacturing Carbon black.
- The Authority should make the comparison on a monthly or if it is not practical, on quarterly basis, as per Article 2.4 of the WTO Anti-dumping Agreement that this comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time.
- No injury exists before April 2008 as per their own website, thus injury margin calculation should be based on data on the third and fourth quarter. Further quarterly determinations may be carried out for both injury and dumping determination due to the extreme volatility in prices and cost during the POI.
- Some interested parties have contended that there is no justification for retrospective imposition of anti dumping duties.

Examination by the Authority

25. The Authority notes that, in addition to the subject countries, volume of imports beyond 3% was reported only from UK. The applicant claimed that (a) there is no production facility in UK, (b) imports from UK are transshipment, (c) imports from UK

include substantial sales of off spec material. None of the interested parties has refuted this claim of the applicant.

26. The Authority notes that the primary reason advanced for consideration of Russia as an appropriate market economy third country is similarity of raw material, viz coal tar. However, the AD Rules require that an appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. The Authority does not have on record any reliable information in this regard. Therefore, the Authority has considered cost of production in India, duly adjusted, for determination of normal value in China PR. As already recorded in the preliminary findings, one of the Chinese co-operating producer, namely M/s Jiangxi Black Cat Carbon Black Co., Ltd (“Black Cat”), *inter alia*, has claimed price difference between coal-based tar and oil-based tar used as a raw material for the subject goods. For this purpose, it has provided the Chinese Customs export statistics in respect of coal-based tar for the period of investigation. It was submitted that China exports coal-based tar to Japan, Taiwan, Korea and Mongolia, among which Japanese imports takes a high majority. The exports of coal-based tar to Japan on a monthly basis were provided as mentioned below:

Summary of Chinese Customs Export Statistics of Coal-based Tar during the POI				
HS Code	<u>Importing country: Japan</u>			
27060000	Export QTY in KG	Export Value FOB in USD	Unit price per Ton including VAT	Net unit price per Ton net of VAT in USD
Oct-07	15,502,298	5,333,260	344	294
Nov-07	11,698,655	4,148,016	371	317
Dec-07	14,560,343	5,399,859	397	339
Jan-08	11,029,308	4,374,271	399	341
Feb-08	8,324,216	3,319,458	420	359
Mar-08	12,838,507	5,395,734	443	379
Apr-08	11,910,519	5,281,898	426	364
May-08	16,366,168	6,969,834	426	364
Jun-08	11,194,695	5,241,809	468	400
Jul-08	13,408,305	7,080,159	528	451
Aug-08	7,859,734	5,006,943	637	544
Sep-08	4,659,025	3,206,600	688	588
total	139,351,773	60,757,841	436	373

The exporter also requested that the above market price of coal-based tar be considered as benchmark for price comparison.

27. The Authority notes that domestic industry too has requested for comparison of Normal value with Export price on quarterly basis. Considering the significant variations in prices and costs during the POI, the Authority has already undertaken a quarterly analysis of the data received from various interested parties and has followed the same in the present findings as well.

28. The Authority has noted that the domestic industry has not claimed that it has suffered no injury till April, 2008. On the contrary, the domestic industry has stated that deterioration in their profitability started with quarter ending March, 2008 and the same has continued. Moreover, if dumping margin and injury margin are determined only based on last two quarters, it would lead to reducing the period of investigation to just two quarters. While quarter by quarter comparison/analysis may be desirable, it has not been established that information for any particular quarter is required to be excluded or the period of investigation itself is required to be reduced. Comparison of normal value with export price on quarterly basis, or assessment of injury to the domestic industry on quarterly basis does not imply restricting the period of investigation itself to a quarter or six months.

29. The Authority considered whether retrospective imposition of duty is called for. Views of various interested parties have been taken into account considering the legal requirements for imposition of anti dumping duty on retrospective basis. It is noted that the parameters laid down for imposition of anti dumping duty on retrospective basis are not satisfied in this case. The Authority therefore concludes that the anti dumping duty is not required to be imposed on retrospective basis in the instant matter.

E. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

NORMAL VALUE

30. The Authority sent questionnaire to the known exporters from subject countries, advising them to provide information in the form and manner prescribed. Response to the questionnaires were received from the following companies –

S.N.	Name of Company	Country
1.	M/s Ningbo Detai Chemical Co. Ltd.	China PR
2.	M/s Hebei Daguangming Juwuba Carbon Black Co. Ltd.	China PR
3.	M/s Longxing Chemical Stock Co. Ltd.	China PR
4.	M/s Ningbo Sheen – All Chemical Co. Ltd.	China PR
5.	M/s Jiangxi Black Cat Carbon Black Co., Ltd (“Black Cat”)	China PR
6.	M/s. Yaroslavskiy Tekhnicheskij Uglerod,	Russia
7.	M/s Continental Carbon Australia Pty Ltd.	Australia
8.	M/s Thai Tokai Carbon Product Co. Ltd.	Thailand

31. The Authority has noted that no difference has been claimed by any producer/exporter regarding the product under consideration that has been sold to India and like articles that has been sold in their domestic markets. The exporters have claimed Normal values on the basis of grades of the subject goods sold in their domestic market. Some of the exporters and domestic industry have claimed that the Normal value and Export price should be compared on the basis of monthly or quarterly averages. The submissions to conduct a quarterly analysis have been accepted and the Authority has compared Normal value with Export price on the basis of quarterly averages. However, in the case of China PR, as elaborated herein below, there remained significant un-addressed issues of market economy determination in respect of the responding exporters, as elaborated herein below. Therefore, the Normal value in China PR has been determined on the basis of Para-7 to Annexure-I to the Rules.

Normal value in case of China PR

32. Para 7 of Annexure I of the AD Rules provides that

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

33. It was stated, in the initiation notification that the applicant claimed that China PR is a non-market economy and Thailand could be considered as a market economy as an appropriate surrogate country. The Authority invited comments from all interested parties in accordance with para 7 of Annexure I. One of the Chinese exporters, namely M/s Jiangxi Black Cat Carbon Black Co., Ltd (“Black Cat”), without claiming market economy treatment, , *inter alia*, contended that Russia be treated as an appropriate market economy third country for the purpose.

Issues raised by interested parties

34. It has been contended that consideration of single country normal value for calculating constructed normal value is in violation of AD Agreement.

35. M/s Longxing has submitted that it does purchase one of the raw materials from State-owned companies, such average purchase prices are similar to average export price of that raw material.

36. It has been contended that while considering the export price from China to Japan, only the export price excluding VAT should be taken.

Views of the domestic industry

37. In support of their claim, the domestic industry has, *inter alia*, made the following contentions –

- i. Unless Chinese exporters establish that they pass the test of market economy status for each and every parameters laid down under the Rules, market economy treatment cannot be given to them.
- ii. The responding exporters have not established how they are entitled for market economy status in terms of, *inter-alia*, ownership & control, acquisition of plants, raw material prices and accounting standards.
- iii. All responding companies either continue to have a major shareholding by the State owned entities, or these have been recently acquired by private entities (in which case the process of transformation become relevant). Further, some of the responding companies are part of a group and the response has not been filed by the entire group as a whole.
- iv. The prices of major input, coal based tar in China do not substantially reflect market values. Raw material commands anywhere between 75-85% of total cost of production and therefore this is most vital condition. Further, there is no VAT refund on export sales in subject goods. Therefore, the normal value must be determined by adding VAT to the selling price or cost of production. It is inappropriate to reduce the export prices by the amount of VAT for the reason that the quantum of dumping margin is understated unless normal value is adjusted for VAT.
- v. The Authority should verify export price from the customs data as well. Verification at the premises of exporters is insufficient to establish that all export transactions have been disclosed by an exporter.

Examination of Market Economy claims in respect of China PR

38. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules.

39. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether-

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

40. The Authority notes that some Chinese exporters have submitted their questionnaire responses including the market economy questionnaire responses and sought to rebut the non-market economy presumption except M/s Jiangxi Black Cat Carbon Black Co. Ltd ("Black Cat"). The questionnaire responses and the market economy responses of the responding producers and exporter have been examined for determination of Normal value of the responding producers/exporter of the subject goods from the subject country as follows:

Submissions made by Chinese exporters/producers

M/s Jiangxi Black Cat Carbon Black Co., Ltd ("Black Cat")

41. In its response to the Questionnaire, the exporter did not answer the questions of part D, E, F, G, I, J & K and Appendix 1 of the Questionnaire on the ground that these parts were related to either domestic sales or production cost. It was made clear by them that they did not apply for market economy treatment, therefore their Normal value should be determined on the basis of price or cost in a third market economy analogue country in accordance with the AD Rules.

42. The exporter also claimed price difference between coal-based tar and oil-based tar used as a raw material for the subject goods. For this purpose, it provided the Chinese Customs export statistics in respect of coal-based tar for the period of investigation. It was submitted that China exports coal-based tar to Japan, Taiwan, Korea and Mongolia,

among which Japanese imports takes a high majority. The exports of coal-based tar to Japan on a monthly basis were provided as mentioned below:

Summary of Chinese Customs Export Statistics of Coal-based Tar during the POI				
HS Code 27060000	<u>Importing country: Japan</u>			
	Export QTY in KG	Export Value FOB in USD	Unit price per Ton including VAT	Net unit price per Ton net of VAT in USD
Oct-07	15,502,298	5,333,260	344	294
Nov-07	11,698,655	4,148,016	371	317
Dec-07	14,560,343	5,399,859	397	339
Jan-08	11,029,308	4,374,271	399	341
Feb-08	8,324,216	3,319,458	420	359
Mar-08	12,838,507	5,395,734	443	379
Apr-08	11,910,519	5,281,898	426	364
May-08	16,366,168	6,969,834	426	364
Jun-08	11,194,695	5,241,809	468	400
Jul-08	13,408,305	7,080,159	528	451
Aug-08	7,859,734	5,006,943	637	544
Sep-08	4,659,025	3,206,600	688	588
Total	139,351,773	60,757,841	436	373

43. The exporter has requested that the above market price of coal-based tar be considered as benchmark for price comparison. Besides, it also requested the Authority to compare the prices of coal-based tar with oil-based tar prices, which the Authority is able to obtain in the course of investigation of exporters of other countries. In addition, the exporter claimed the price difference on account of coal-based tar and oil-based tar.

Examination by the Authority

44. As already stated, since China PR has been treated as a NME for the purposes of anti-dumping investigations, the prices of raw-materials procured in the Chinese domestic market cannot be said to be reflecting the international prices, particularly in the context that the exporter has provided that data in respect of the exports of a major raw material, namely coal-based tar to Japan, which is significantly higher than the price at which the material has been purchased by the Carbon black producers in China PR.

Therefore, the Normal value has been constructed as explained in the relevant section of these findings. As regards the export price, the information/ data provided by the exporter has been accepted.

M/s Longxing Chemical Stock Co. Ltd.

45. On a perusal of the response from the exporter, a deficiency letter was sent to them, *inter alia*, seeking certain clarifications therein. The exporter responded to the letter. It has been noted that M/s Longxing was restructured from Hebei Shahe Carbon Black factory, a collectively owned enterprise. However, during the verification, no asset evaluation report on restructuring was shown. The company was also requested to provide data of monthly procurement prices of major raw materials *vis a vis* their international prices. But the company expressed its inability to provide the same.

Examination by the Authority

46. It has been observed that no assets valuation exercise was undertaken by the company at the time of its restructuring. Besides, it was seen that major raw-materials have been procured from State-owned companies, and no evidence has been provided to establish that the input prices reflect the market conditions. It is also noted that one of the exporter has provided that data in respect of the exports of a major raw material, namely coal-based tar to Japan, which is significantly higher than the price at which the material has been purchased by the Carbon black producers in China PR. Therefore, the Normal value is being constructed as explained in the relevant section of these findings. As regards, the export price, the information/data provided by the exporter has been accepted.

M/s Ningbo Sheen – All Chemical Co.

47. On a perusal of the response from the exporter, a deficiency letter was sent to them, *inter-alia*, seeking certain clarifications therein. The exporter responded to the letter. M/s Ningbo Sheen – All Chemical Co. is a Chinese trading company involved in the export of subject goods to India.

Examination by the Authority

48. A perusal of the response showed that the respondent had a related company, namely M/s HHUI, who in fact had exported the subject goods to India; though the company claimed that it was the real exporter. Without going into the merits of this contention, it was also noted that it had predominantly procured the subject goods from M/s Longxing Chemical Stock Co. Ltd. The other supplier of the subject goods to them, namely M/s Jiangxi Heibao Carbon Black Co. Ltd. has not co-operated in this investigation. Since M/s Longxing Chemical Stock Co. has not been given the MET status, the same cannot be also extended to the company, because M/s Longxing Chemical Stock Co., *inter alia*, procured major raw-materials from State-owned companies, which cannot be stated to be reflecting the market conditions. Besides, M/s Longxing was also requested to provide data of monthly procurement prices of major raw materials *vis a vis* their international prices. But the company expressed its inability to provide the same. It is also noted that one of the exporter has provided that data in respect of the exports of a major raw material, namely coal-based tar to Japan, which is significantly higher than the price at which the material has been purchased by the Carbon black producers in China PR.

Therefore, the Normal value has been constructed as explained in the relevant section of these findings. As regards, the export price, the information/data provided by the exporter has been accepted.

M/s Ningbo Detai Chemical Co. Ltd.

49. On a perusal of the response from the exporter, a deficiency letter was sent to them, *inter alia*, seeking certain clarifications therein. The exporter responded to the letter. Besides, it has been contended by the respondent that average purchase prices of raw material by DETAI are similar to the average export price of that raw material to Japan. Therefore the Authority should not conclude that the input prices are not market driven

Examination by the Authority

50. A perusal of the response showed that the company was formed in 2005 by four shareholders including M/s Santai Electrical Co. Ltd. However, M/s Santai Electrical Co. Ltd. is no more the shareholder of the respondent since 2006 and hence the details of the shareholding of the company were not available. A copy of the business licence attached with the response showed that the same is in the name of M/s Santai Electrical Apparatus factory, instead of M/s Santai Electrical Co. Ltd.

51. Besides, it has also been contended by the company that there are no international prices of the major raw materials used in the production of the subject goods and that the raw materials were procured in domestic market at market driven prices. Since, China PR has been treated as a NME for the purposes of anti-dumping investigations, the prices of raw-materials procured in the Chinese domestic market cannot be said to be reflecting the international prices.

52. Therefore, the Normal value has been constructed as explained in the relevant section of these findings. As regards, the export price, the information/data provided by the exporter has been accepted.

M/s Hebei Daguangming Juwuba Carbon Black Co. Ltd.

53. The response filed by the exporter was perused and certain deficiencies were observed. Accordingly a deficiency letter was sent seeking clarifications. Though the exporter responded to the deficiency letter but did not appropriately answer all the queries raised therein.

Examination by the Authority

54. It was noted that the company did not appropriately answer the issue regarding acquisition of the plant and machinery. It was also observed that it purchases the raw material and other inputs in the domestic market according to the prevailing market

price. The company was also requested to provide data of monthly procurement prices of major raw materials *vis a vis* their international prices. But the company expressed its inability to provide the same.

55. As already stated, since China PR has been treated as a NME for the purposes of anti-dumping investigations, the prices of raw-materials procured in the Chinese domestic market cannot be said to be reflecting the market values, particularly in the context that one of the Chinese producers has provided that data in respect of the exports of a major raw material, namely coal-based tar to Japan, which is significantly higher than the claims made by the company.

56. Therefore, the Normal value has been constructed as explained in the relevant section of these findings. As regards, the export price, the information/data provided by the exporter has been accepted.

Determination of Normal value in respect of Exporters/Producers from China PR

57. The Authority notes that the exporters have not provided any evidence to establish that prices of basic inputs substantially reflect market values. The producers have named the raw materials suppliers and identified their legal status. The companies have not provided any evidence to establish that the inputs have been procured at prevailing international prices. As China PR has been treated as a NME for the purposes of anti-dumping investigations, the prices of raw-materials procured in the Chinese domestic market cannot be said to be reflecting the market values, particularly in the context that one of the Chinese producers has provided the data in respect of the exports of a major raw material, namely coal-based tar to Japan, which is significantly higher than the claims made by the companies.

58. Considering that the cost of the raw-material form a significant portion of the cost of the subject goods, the Authority is unable to grant market economy treatment to the Chinese exporters.

59. In view of the above, whether the prices of raw materials reflect market values, their impact on the cost and prices of the subject goods, accounting issues etc, the Authority is of the view that the producers/exporters from China PR have not been able to rebut the Non- market economy presumption.

Methodology adopted for constructing Normal Value in case of China PR

60. The Authority has constructed the Normal value for the Chinese producers on the following basis –

- a. Prices of major input, coal based tar considered on the basis of the price at which this material has been claimed to have been exported from China PR to Japan.
- b. Consumption of raw materials have been adopted on the basis of information/data of efficient respondent from China PR.
- c. Conversion costs have been adopted on the basis of information/data of efficient producer of the domestic industry.

- d. Selling, general & administrative costs have been taken on the basis of information/data of efficient producer of the domestic industry.
- e. Profit has been taken @ 5% of ex-factory cost excluding interest.

61. For the purposes of conducting a fair comparison, separate Normal value has been calculated for each grade of subject goods produced and sold and separate Normal value has been calculated for each quarter of the Period of investigation. However, the dumping margins so arrived have been weighted averaged for the entire 'period of investigation' and for the 'product under consideration' as a whole thereafter.

Normal value in case of Australia, Russia and Thailand

62. Response to questionnaire were filed by the following companies:

S.N.	Name of Company	Country
1.	M/s Continental Carbon Australia Pty Ltd.	Australia
2.	M/s. Yaroslavskiy Tekhnicheskii Uglerod,	Russia
3.	M/s Thai Tokai Carbon Product Co. Ltd.	Thailand

63. The methodology adopted for determination of their Normal values is as follows:

The Authority notes that some interested parties have disputed the determination of one normal value for the exporting country as a whole. The Authority has, however, determined the normal values on the basis of records maintained by the respective respondents for the purpose of these findings to the extent their records could be relied upon.

General methodology followed for the responding exporters for determination of Normal Values

64. It was first seen, whether the domestic sales of the subject goods by the responding exporters in their home markets were representative and viable for permitting determination of Normal values on the basis of domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by the respondents. In their responses, the respondents have provided transaction-wise details of sales made in their home markets. The information so provided has been relied upon to determine separate weighted average domestic selling price for each grade/type of the subject goods to the extent feasible. For the determination of the ordinary course of trade test, the costs of production of the product concerned have been accepted. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. It was also seen whether the loss-making transactions account for over 20% of the sales or not.

65. Considering that there have been significant variations in the prices of major raw-material, the applicant and one of the Chinese exporters has requested the Authority to assess the impact of dumping on the basis of quarterly comparisons.

66. The Authority considers that there is merit in the above submissions and has observed significant changes in the cost of production and selling price from quarter to quarter for the same grade and therefore has assessed the dumping margin on a quarterly basis for ensuring a fair comparison.

M/s Continental Carbon Australia Pty Ltd., Australia

67. The Normal value has been determined as per methodology mentioned in the earlier paragraphs based on the domestic selling price of the subject goods of the respondent. The adjustments have been made on account of discount and inland transport as claimed by the respondent.

M/s. Yaroslavskiy Tekhnicheskiv Uglyerod,

68. On examination of the respondent's response, certain deficiencies were noted and the respondents was requested to provide necessary information/clarification, including the information as mentioned in Appendix 1 of the response. Sufficient opportunity was provided to the respondent to submit the complete data, whereupon supplementary information was received. The Normal value has been determined as per methodology mentioned in the earlier paragraphs based on the domestic selling price of the subject goods.

M/s Thai Tokai Carbon Product Co. Ltd,

69. The Normal value has been determined as per methodology mentioned in the earlier paragraphs based on the domestic selling price of the subject goods of the respondent. However, on examination of the exporter's response, certain deficiencies were noted and the exporter was requested to provide necessary information/clarification, including information relating to certain transactions as mentioned in Appendix 1 of the response. Clarifications regarding certain transactions were sought vide the deficiency letter, however, the same was not responded to by the exporter; hence the Authority was constrained to proceed further after ignoring these transactions. Barring these transactions, the claims made by the exporter have been accepted. The adjustments have been made on account of discount and inland transport as claimed by the exporter.

Determination of Normal value in respect of Non-Co-operative Exporters / Producers

70. Since, no other response has been received from any other producer/exporter of the subject goods; the Authority has decided to determine their Normal Value as per facts available in terms of Rule 6(8) of the AD Rules.

EXPORT PRICE

Export price for the responding exporters

71. The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by these interested parties.

M/s Continental Carbon Australia Pty Ltd., Australia

72. Separate weighted average export price to India has been determined for each grade/type of subject goods, as explained above. The adjustments have been made on account of inland freight, ocean freight, port handling charges, customs fees, and commission as claimed by the exporter.

M/s. Yaroslavskiy Tekhnicheskij Uglyerod,

73. M/s. Yaroslavskiy Tekhnicheskij Uglyerod had initially filed an incomplete response. On examination of their response, certain deficiencies were noted and the respondent was requested to provide necessary information/clarification, including relating to information as mentioned in Appendix 2 of the response. Sufficient opportunity was provided to the respondent to submit the complete data, whereupon supplementary information was received. Initially it was conveyed that the company does not directly export the subject goods to India, but supplies the subject goods through M/s Trigon, its agent. However, it was subsequently learnt that M/s Trigon has procured the subject goods not only from M/s Yaroslavskiy Tekhnicheskij Uglyerod but from other companies as well. This material information was not shared by the company at all with the Authority. Infact, even during the verification visit, the DGAD team was led into belief that Trigon Gulf Fzco is merely an agent of M/s Yaroslavskiy Tekhnicheskij Uglyerod. Besides, on further examination of the data significant inconsistencies have been noted between the responses received from the exporter, namely, M/s Trigon Gulf Fzco and M/s Yaroslavskiy Tekhnicheskij Uglyerod, leading the Authority to disregard the export price data. Hence, the Authority is constrained not to rely on their response and establish the export price on the basis of facts available.

74. Thus, separate weighted average export price to India has been determined for each grade/type of subject goods based on imports reported in India as per the DGCI&S data. The adjustments have been made on account of inland transportation charges on road and rail, re-stuffing, warehousing and demurrage charges, ocean freight, bank charges, commission etc as per the submissions made by M/s Trigon Gulf Fzco.

M/s Thai Tokai Carbon Product Co. Ltd,

75. Separate weighted average export price to India has been determined for each grade/type of subject goods, as explained above. The adjustments have been made on account of commission, freight, shipping and insurance as claimed by the exporter.

M/s Jiangxi Black Cat Carbon Black Co., Ltd (“Black Cat”)

76. Separate weighted average export price to India has been determined for each grade/type of the subject goods, as explained above. The adjustments have been made on account of inland transportation, overseas transportation, overseas insurance, credit, bank charges and export packing as claimed by the exporter. Besides, it is noted that the other exporters from China PR have made adjustments on account of VAT as well; but M/s Jiangxi Black Cat Carbon Black Co., Ltd has not done so. Therefore, the adjustment on account of Vat is also being made to the export price.

M/s Longxing Chemical Stock Co. Ltd.

77. Separate weighted average export price to India has been determined for each grade/type of the subject goods as per data provided by the exporter in Appendix 2 of the response. The adjustments have been made on account of overseas freight, overseas insurance, output VAT, export packing, inland freight, handling, credit and bank charges as claimed by the exporter.

M/s Ningbo Sheen – All Chemical Co.

78. Separate weighted average export price to India has been determined for each grade/type of the subject goods as per data provided by the exporter in Appendix 2 of the response. The adjustments have been made on account of overseas freight, overseas insurance, output VAT, handling, and bank charges as claimed by the exporter. Besides, the adjustments claimed by the producer M/s Longxing Chemical Stock Co. Ltd., the principal supplier of the subject goods to M/s Ningbo Sheen – All Chemical Co., have been made on account of inland freight, packing and credit.

M/s Ningbo Detai Chemical Co. Ltd.

79. Separate weighted average export price to India has been determined for each grade/type of the subject goods as per data provided by the exporter in Appendix 2 of the response. The adjustments have been made on account of overseas freight, overseas insurance, output VAT, export packing, inland freight, handling, credit and bank charges as claimed by the exporter.

M/s Hebei Daguangming Juwuba Carbon Black Co. Ltd.

80. Separate weighted average export price to India has been determined for each grade/type of the subject goods as per data provided by the exporter in Appendix 2 of the response. The adjustments have been made on account of Customs declaration, port charges, inland transportation, overseas transportation, insurance, and bank charges as claimed by the exporter. Besides, it is noted that the other exporters from China PR have made adjustments on account of VAT as well; but M/s Hebei Daguangming Juwuba Carbon Black Co. Ltd. has not done so. Therefore, the adjustment on account of Vat is also being made to the export price.

Determination of Export Price in respect of Non-Co-operative Exporters/Producers

81. Since, no other response has been received from any other producer/exporter of the subject goods; the Authority has decided to determine their Export Price as per facts available in terms of Rule 6(8) of the AD Rules. The data has been collated as per the information provided by the applicant and the information provided by the co-operative exporters.

Dumping Margin – comparison methodology

82. It is noted that Carbon black for rubber applications is produced and sold in several grades. Information on record shows that there are significant differences in associated costs and prices of various grades, even though all the grades are employed for the same general purpose and perform the same function. In view of the same, the Authority has worked out a dumping margin separately for each grades of Carbon black by making a comparison between the Normal values and Export prices of the different grades at ex-

factory level. Weighted average overall dumping margin has been determined by computing the dumping found on each grade and associated volumes, without zeroing negative dumping found in individual grades.

83. Besides, information filed by the domestic industry and responding foreign producers show that there were significant differences in the prices of the product within the Period of Investigation. The Domestic industry submitted that there was significant increase in basic feedstock prices during the Period of Investigation, resulting in increase in the prices of the subject goods during the Period of Investigation. The domestic industry therefore requested that the Authority should consider Normal value and Export price at as nearly as possible same time. Some of the responding exporters also agreed that the comparison of Normal value with Export price on the basis of weighted average for the Period of investigation may not be appropriate.

84. Thus, considering the principles of fair comparison and distinctive facts of the present case, the Authority has compared Normal value with Export price on the basis of quarterly averages, which have thereafter been computed further to determine a single Dumping Margin for the product under consideration as a whole for the entire POI without zeroing negative dumping, if any. The comparison showed existence of dumping of the subject goods during the POI. The weighted average dumping margin, expressed as a percentage to the export price has been determined as positive and significant.

Issues raised by Interested parties:

85. Some interested parties have demanded disclosure of consumption norms. The Authority however noted that such norms can only be disclosed to the interested party whose data has been adopted. Such norms cannot be disclosed to other interested parties.

DUMPING MARGIN

86. Considering the Normal values and Export prices as determined above separately for product subject to investigation, the dumping margins have been determined as follows:

Exporter	Country	Dumping Margin US\$ per Kg	Dumping Margin as %
M/s Continental Carbon Australia Pty Ltd.	Australia	***	38.36%
Non Co-operative producers/exporters	Australia	***	61.19%
M/s Jiangxi Black Cat Carbon Black Co., Ltd	China PR	***	20.93%
M/s Ningbo Detai Chemical Co. Ltd.	China PR	***	24.61%

M/s Hebei Daguangming Juwuba Carbon Black Co. Ltd.	China PR	***	28.77%
M/s Longxing Chemical Stock Co. Ltd.	China PR	***	31.50%
M/s HHUI / Ningbo Sheen – All Chemical Co	China PR	***	29.34%
Non Co-operative producers/exporters	China PR	***	93.72%
M/s. Yaroslavskiy Tekhnicheskij Uglerod through M/sTrigon Gulf Fzco	Russia	***	27.29%
Non-Co-operative producers/exporters	Russia	***	79.62%
M/s Thai Tokai Carbon Product Co. Ltd	Thailand	***	21.27%
Non Co-operative producers/exporters	Thailand	***	43.49%

F. INJURY AND CAUSAL LINK

Injury Submissions made by interested parties

Submissions made by China Rubber industry Association, and M/s Suzhou Baohua Carbon Black Co. Ltd., China

87. Detailed submissions regarding injury to the Domestic industry have been made and it has been, inter alia, contended that the following table clearly establishes that the performance of the Domestic Industry has improved during the period of investigation as compared to the base year.

S. No.	Particulars	Comments on purported injury to Domestic Industry
1	Actual and potential decline in sales	Sales of Domestic Industry has increased in absolute terms. Domestic Industry is operating at its peak capacity.
2	Actual and potential decline in profits	Profitability has improved. Petitioners are making huge profits as compared to the base year when there was no allegation of dumping.
3	Actual and potential decline in output	Output has increased with increase in

		production and capacity utilization
4	Actual and potential decline in market share	All domestic producers have gained market share by 19%.
5	Actual and potential decline in productivity	Productivity has improved. There is no sign of deterioration in productivity.
6	Actual and potential decline in return on investment	Return on investment has improved during the period of investigation as compared to the base year when the same was negative.
7	Actual and potential decline in capacity utilization	Capacity utilisation has increased by more than 13%. Domestic Industry is operating at its peak capacity.
8	The magnitude of margin of dumping	Margin of dumping claimed is hypothetical.
9	Actual and potential negative effects on cash flow	Cash flow of the Domestic Industry has improved during period of investigation as compared to base year.
10	Actual and potential negative effects on inventories	There is no change in the overall position of average stock if considered in link with the number of day sale/ production. Domestic Industry is maintaining stock below the industry norms.
11	Actual and potential negative effects on employment	Number of employees has remained stable. There is no negative effect on employment.
12	Actual and potential negative effects on wages	Wages have increased even more than normal increase in the industry.
13	Actual and potential negative effects on growth	There is no negative effect on growth.
14	Actual and potential negative effects on ability to raise capital	The Domestic Industry has launched major expansion projects. This shows that they are able to raise capital easily.
15	Actual and potential negative effects on investments	The Domestic Industry has launched major expansion projects. This shows that there are no negative effects on investments because of alleged dumping.

88. It has been contended that the above table shows that the Domestic Industry is not affected on any of the mandatory injury parameters laid down under the Anti Dumping Agreement. Profits of the Domestic Industry have increased. Its capacity utilization including its enhanced capacity has increased. All injury parameters are showing signs of improvement during the period of investigation as compared to the base year. There is no causal relationship between alleged dumped imports and purported injury to the Domestic Industry.

89. Besides, it has been contended that the Domestic Industry is in expansion mode since 2007-08 due to improved performance and good profits. Various press releases issued by PCBL from time to time have been quoted. It has been contended that from this it is clear

that the PCBL is increasing its capacities by making huge investments. These expansion programs clearly show that the business environment for the Domestic Industry in respect of Carbon Black is excellent and this has resulted in launching expansion programs by the Domestic Industry. This also shows that the Domestic Industry is in good health and wants to make use of the favourable conditions for increasing its profitability. There is no adverse effect on the Domestic Industry due to alleged dumped imports.

90. As regards, the Threat of Material Injury, it has been contended that the Threat of injury and material injury are generally considered in the alternative, as the threat of injury implies material injury in the imminent future, rather than material injury in the present. It has been contended that the claim of the Domestic Industry with regard to threat of injury is based on simple assertion and not based on facts. It has been contended that there is neither material injury to the Domestic Industry nor a threat of injury to the Domestic Industry.

91. Besides, it has been, *inter alia*, contended that:

- (a) The Authority in Preliminary Finding has excluded certain grade i.e. Thermal Black and semi-conductive compound applications grades from the scope of product under consideration. The Designated authority has been requested to exclude these grades from import Statistics for injury analysis, as the same cannot have any impact on Indian domestic industry. Otherwise, analysis would suffer from error of having including non-product items.
- (b) The Authority should make the comparison on a monthly or if it is not practical, on quarterly basis as per Article 2.4 of the WTO Anti-dumping Agreement.
- (c) The Authority has determined the dumping margin and injury margin separately for different grades of subject goods. The Authority should determine and make available the Non-injurious Price and Injury Margin separately for each grade and recommend the duty, if any, separately for each grade.
- (d) Selection of the subject countries is on discriminatory basis as volume of import from some of non-subject countries is neither negligible nor the import price is lower.
- (e) No injury exists before April 2008 as per their own website, thus injury margin calculation should be based on data on the third and fourth quarter. Further quarterly determinations may be carried out for both injury and dumping determination due to the extreme volatility in prices and cost during the POI.
- (f) M/s PCBL has suffered loss due to sharp depreciation in value of Rupees. It is not known whether this fact has been considered while arriving at the Non-Injurious Price and causal link.
- (g) As a result of depreciation of INR, cost of import increased by 15-20%, which is more than the injury margin except for non-cooperative producers/exporters. The

Designated Authority should recommend duty on reference price basis instead of fixed duty.

- (h) There is no adverse volume effect and price effect during the POI as the financial condition of the Domestic Industry has improved in comparison with base year as well as previous year.
- (i) Since the Domestic Sales Realization has increased consistently year after year, and the increase in landed value has been higher than the increase in the average domestic sales price, the price effect does not exist.
- (j) The Domestic Industry's Market Share has dropped by only 4.66% and they still occupy 65.28% and the total Indian Industry's share is 87.24%. The decline in market Share of the domestic industry is due to the capacity constraint only. Import has become essential to make up the sudden increase in demand.
- (k) Information obtained from public domain shows with regard to injury to the domestic industry shows contrary to the preliminary findings. Financial performances of Phillips Carbon Black for the Quarters Oct-Dec. 2007, Jan-March 2008, April-June 08, reflects benefit of operational efficiency and robustness of the revised business model, which have mitigated the increase in feedstock cost. Highest sales volume have been achieved, PBIT of carbon black segment has also increased, operating margin of the company increased. Exports were curtailed due to increase in domestic demand.
- (l) The domestic industry has not suffered any significant injury within the POI due to imports. The fall in profitability during July 08 – Sep 08 is due to the reasons like abnormal rise in feedstock prices, depreciation in the value of the Rupee against foreign currency as a result of which the net profit have declined significantly. The losses suffered by the Domestic Industry have been because of the global financial crisis.
- (m) Evidence on record is insufficient to establish existence of causal link between the imports and injury suffered by the domestic industry.
- (n) Despite healthy performance of all the economic parameters during whole POI, Designated Authority has focused only on the trend analysis on quarter-by-quarter basis during the POI and the quarter post POI. The analysis is partial and not complete.
- (o) The Authority has considered 22% as a reasonable ROI for arriving at Non-Injurious Price whereas Phillip Carbon's ROI is 40%. Therefore there is no injury to the Domestic Industry.
- (p) The Authority has used post POI data to examine threat of injury. However post POI statistics has not been considered for analyzing injury. Selective use of

- different time period is not justified. Use of different period for different injury factors is inconsistent with the obligation to carry out an objective examination of injury.
- (q) The domestic industry themselves have admitted in their annual report the low demand is due to global recession.
 - (r) The Authority has stated that ATMA has not established that the domestic industry suffered financial losses in the period of investigation due to higher cost of raw material. Annual report of Hi-Tech Carbon and PCBL clearly states that the operating profits were severely impacted due to consumption of high prices CBFS. The bulk purchased carried out by domestic industry was the real reason for the fall in the profitability and this should not be attributed to import.
 - (s) The prices of the Domestic Industry which have increased by 47% are proportionate to the increase in cost (which is 42%). The Domestic Industry cannot be said to have suffered from price suppression.
 - (t) CBFS prices have come down in post POI period, as a result which the Non-Injurious Price for Domestic industry shall be low. If such an adjustment is not made to Non-Injurious Price, the domestic industry would get undue protection at very high level that is not warranted.
 - (u) Since the non-injurious price and net sales realisations are almost similar, there is no material injury.
 - (v) There is no evidence of significant freely disposable capacity in the exporting countries except the statement based on Chinese Customs data.
 - (w) The claim of threat of material injury is based on bald statements and without any supporting evidence.
 - (x) The threat of material injury should not be concluded merely based on the decline in some of the injury parameters in the quarter post POI, especially when some of the injury parameters have steadily increased during the whole investigation period which covers Apr 2005 to Sept. 2008.
 - (y) The Authority should consider the import data up to May 2009 in order to find out actual threat of material injury.
 - (z) While taking the data beyond POI, and while including Hi-tech Carbon, who did not submit information before initiation, the Authority has failed to fulfill its obligations under Art. 6.1 of the AD Agreement pertaining to Notice of Information and Submissions and those under Art. 6.2 of the AD Agreement pertaining to giving opportunity of being heard for defense.

- (aa) Increase in import volumes from subject countries seems significant due to the low import volumes in the base year. The increase in absolute and relative terms is actually slight.
- (bb) The imports from subject countries have increased as the Domestic Industry is already operating at the optimum level of Capacity utilisation and it cannot further increase it.
- (cc) The Authority has compared the sales volume of the last three quarter to the sales volume of the last quarter of the POI, as a result of which the injury analysis has remain confined within the POI.
- (dd) SME industrial users account for a significant proportion of the total demand for Carbon black in India. The Rubber market is a low margin market and since the cost of input plays vital role, imposition of anti-dumping duty will unjustly harm the industry.
- (ee) Carbon black has been shifted to restricted list vide notification 81 (RE-2008)/2004-2009. Consequently imports have already shrunk.

Submissions made by ATMA

92. ATMA has advanced elaborate submissions on various injury parameters, pleading non existence of injury to the domestic industry.

Views of the Domestic Industry:

93. The domestic industry has made the following submissions:–

- Considering the judgment of the Hon'ble Supreme Court in the matter of Reliance Industries vs. Designated Authority [2006(202) E.L.T. 23 (sc)], the Authority should consider domestic producers as a whole for the purpose of injury determination. In fact, the Designated Authority has been directing the petitioners and/or Indian Producers in a large number of cases to provide information for non-participating companies. Therefore, in a situation where one of the other domestic producers has provided injury information, the same is required to be considered for injury assessment. The scope of domestic industry should therefore be redefined to include Philips carbon and Hi-tech carbon. The domestic Industry also referred to the WTO Panel decisions of Argentina – Definitive Anti-Dumping Duties On Poultry From Brazil (WT/DS241/R), and EC — Bed Linen in support of its argument.
- The scope of the domestic industry gets redefined at each stage of the proceeding having regard to information on records. Quality and quantity of evidence in an anti dumping investigation progresses as an investigation progresses.

- The dumping margin, injury margin and eventual duty should be one for the product under consideration as a whole. The Appellate Body report in the matter relating to European Communities – Anti-Dumping Duties On Imports of Cotton-Type Bed Linen From India (WT/DS/141/AB/R) has been referred in this regard.
- Performance of the domestic industry has deteriorated in terms of profits, return on investments, cash profit, inventories and market share. Parameters such as production, sales volumes, and capacity utilization improved till Dec., 2007, but declined thereafter. The deterioration is more pronounced in terms of quarterly performance within the investigation period. Further, the domestic industry was threatened with material injury and the same is evidenced by a number of parameters relating to Oct.-Dec., 2008 period. The deterioration in performance is significant and material. The domestic industry has thus suffered material injury. In fact the post POI data also shows the existence of threat of material injury. The difference between the import price of the subject goods and that of the domestic industry prices is quite significant.
- The imports are entering at such prices that the same are having a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.
- There is no basis for the argument that appreciation or depreciation of INR impacts only the price. In fact, the appreciation or depreciation of INR impacts the costs of the domestic industry as well.
- The domestic industry has provided injury information in respect of parameters for the period Oct-Dec.08. Notwithstanding, while injury examination under Article 3.4 must be carried out in respect of or listed parameters, the Rules do not provide for all these parameters must be necessarily be examined for assessment of threat of material injury. Further, the domestic industry is willing to provide any further information required by the authority.
- The volume of imports subsequent to Nov., 2009 in the context of the import policy modified in November 09 must be considered quite significant. If imports would have increased to such an extent in spite of the fact that the product was transferred into restricted list, it follows that the volume of imports would have been significantly higher if the product had not been transferred to restricted list.
- The information contained in public domain cannot be directly co-related to the performance of the domestic industry with regard to product under consideration for the reasons (a) public domain information in respect of company operations and not product performance; (b) even in respect of product performance, the pricing information is with respect to only domestic operations, whereas the company information is in respect of domestic and export information, (c) the data provided by the domestic industry shows improvement till December 2007 and therefore actual performance reported in annual report is not contrary to the claims, (d) the injury to the domestic industry is required to be seen collectively to the domestic industry as a whole whereas the annual reports referred only to individual companies specific performance, (e) it is well settled position under the

law for performance of the domestic industry as a whole and not individual companies must be considered by the Authority.

- The decline in CBFS price is far less than the decline in import price. In other words, injury to the domestic industry has further increased in the most recent period.
- Injury to the domestic industry is evident in terms of market share and adverse price effect.
- Performance of the domestic industry has steeply deteriorated during the investigation period. In fact, period of investigation on stand-alone basis shows steep deterioration in performance on quarter-by-quarter basis.
- Profitability and return on investment in period of investigation as a whole were lower than profitability and return on investment in 2007-08.
- Return on investment was at the level considered reasonable by the authority in Oct-Dec., 07 period. Further, the same declined thereafter significantly.
- The fact that import volumes were low in base year itself establishes that the volume of imports increased over the injury period. The subsequent increase is due to dumping.
- The 4.66% decline in market share of the domestic industry cannot be described as immaterial. The AD Rules provide for a determination with regard to actual and potential negative effects or actual and potential decline in respect of certain parameters. Therefore, so long there is a material decline in one or more parameters, a positive finding of injury must be rendered. The term “material” has been interpreted as something not immaterial, not inconsequential and not insignificant etc. Thus decline in market share by 4.66% cannot be described as immaterial.
- As regards high market share, the AD Rules do not provide for a positive finding of injury only when the share of domestic industry is low. The AD Rules only provide for a determination with regard to possible decline.
- Non-injurious price and Net Sales Realization are not in the same region. There is significant difference in the two figures. Furthermore, price undercutting and price underselling must be seen together in order to understand the impact of dumping. As the data would show, the injury margin is quite significant in the present case.
- In a situation where profitability of the domestic industry first improved and then declined must be considered significant deterioration.

Examination by the Authority

94. In view of the arguments of the interested parties to exclude information relating to other types of Carbon black produced by the domestic industry, the Authority has determined the injury by considering data in respect of Carbon black to the extent the

same was feasible, having regard to provisions of Annexure II to the AD Rules in this regard.

95. With regard to evidence of freely disposable production capacities, the Authority notes that the relevant evidence is contained in the questionnaire responses of the responding exporters and the information provided by the domestic industry.

96. Some parties referred to the performance of the domestic industry in the most recent quarter and claimed that the situation was improving. The Authority notes that only performance in the period of investigation and immediately succeeding quarter have been considered in assessing material injury and the threat of material injury respectively to the domestic industry. The interested parties have not provided evidence to show permanent nature of changes in the post investigation period.

97. Some interested parties have cited high volume of imports under advance licence and have argued that the domestic industry could not have suffered injury in view of low volume of imports under duty paid category. The Authority notes that the imports under advance licence are clearly relevant for assessing injury to the domestic industry as the Advance licence holder has an option to source the subject goods sought to be imported under the Advance Licence through indigenous sources as well.

98. Since the Authority has examined all injury parameters, the same addresses the views expressed by ATMA as well. Additionally, the Authority has following observations on the issues raised by ATMA.

- a. Price undercutting – the Authority is not recommending anti dumping duty in case of imports from Malaysia and Iran. But the volume of imports reported in DGCI&S data has been found to be understated in case of Thailand. The information made available by the responding Thai exporter shows positive price undercutting. With regard to remaining countries, the Authority notes that the price undercutting is positive. The fact that the said undercutting amount was reducing, at best, addresses the claim of the domestic industry that it was trying to reduce the gap between the imported and domestic product and resultantly volume of domestic sales did not decline.
- b. Price suppression/depression – the Authority notes that the impact of dumped imports on the domestic industry needs to be ascertained within the period of investigation itself as well. This is so particularly in a case, where the increase in the cost of production within the period of investigation itself is significant as is seen from the quarterly analysis of the data. It is noted that within the period of investigation, the increase in the cost of production was more than the increase in the selling price. Further, in Oct.-Dec., 08 period, this difference accentuated leading to losses to the domestic industry.
- c. Losses in Oct.-Dec.,08 period – the Authority notes that ATMA has not established that the domestic industry has suffered financial losses in this period due to higher cost of raw materials. In any case, the Authority considers the actual cost structures of the domestic industry. In a situation

where the input prices are rising, the Authority does not consider prevalent input prices for undertaking injury analysis but relies on the actual data. Thus, it would not be appropriate to assess injury based on prevailing input prices. Further, it is observed that whereas the sales volumes of the domestic industry declined significantly, those of imports showed an increase in this period.

- d. Normal value – While stating that the prices of the product or inputs are readily available, the Authority notes that ATMA has not provided any such information to the Authority. The purpose of evidence of Normal value in the application is to establish that there is sufficient prima facie evidence justifying initiation of the investigation. But the quality and quantity of the investigation improves gradually during the course of the investigation, as the investigation progresses. The responses received by the Authority show that the dumping margins are significantly positive except against imports from Malaysia and Iran. In fact, the Authority is not recommending anti dumping duty in case of imports from Malaysia and Iran, notwithstanding that no response has been received from any exporter/producer from these countries. It is also noted that there are various grades of the feedstock and coal-based tar. Carbon black feedstock and the subject goods fall under the same customs classification and therefore summary customs data in any case is not useful. Besides, coal-based tar has wide range of grades that differ significantly in associated applications and prices.
- e. The Authority is in agreement with ATMA' s submission that the Normal value is required to be determined on the basis of cost of production in the country of origin. In fact, the applicant has determined Normal value based on cost of production in the country of origin. This has, however, been constructed based on best available information.
- f. Injury information in the Application – the Authority notes that the Application filed before the Authority contains information in respect of all mandated injury parameters. However, it notes that existence of information on all injury parameters and claim of the domestic industry with regard to presence or absence of injury on account of some injury parameters should not be mixed up. While the Applicant is required to provide information on all mandated injury parameters, it is not necessary that the Application claims injury in respect of each and every injury parameter. In any case, it is an accepted position that all mandated injury parameters need not establish injury to the domestic industry.
- g. Recommendation and imposition of preliminary anti dumping duties-- With regard to the conditions precedents for recommendation and imposition of preliminary anti dumping duties, the Authority notes that injury for this purpose need not be restricted only to material injury. Moreover, the Authority has recorded a positive preliminary finding of material injury as well, This has further aggravated in Oct.-Dec., 08 period, when situation in respect of a number of economic parameters has drastically deteriorated indicating threat of material injury as well.

- h. Contraction in demand – the Authority notes that demand for the product has not declined till Sept., 2008. While ATMA has claimed that import volumes steeply declined in Oct.-Dec., 08 without providing any evidence, information made available by the domestic industry from IBIS data shows that import volumes in fact substantially increased during this period. Further, while it is appreciated that vehicle production (and consequently all inputs to that industry, which in turn implies subject goods as well) declined steeply, a situation where demand for the product declines but import volumes increases, apparently shows injury being aggravated by the dumped imports.
- i. Raw materials prices – The Authority notes that spot and long term contracts have their own associated advantages & disadvantages.
- j. Difference in IBIS data – The Authority notes that while alleging that IBIS data provided by the Applicant and procured by ATMA are at variance; it is seen that ATMA has not established the variance. In any case, the Authority has now procured data from DGCI&S and has recorded the present findings based on the same.

99. Issues raised by the interested parties after the Disclosure Statement:

Some interested parties have filed their response to the disclosure statement. However, only additional issues raised therein and found pertinent to the investigation are being mentioned herein below:

- Post POI un-audited results of M/s PCBL for establishes that after March 2009 when the demand of Carbon Black picked up the profitability improved dramatically, which resulted into Domestic Industry making abnormal profits. After the global meltdown has eased the Domestic Industry has started making bumper profits. During the quarter ending June 2009 and Sept 2009 the Domestic Industry's EPS has been even higher than that during the POI.
- The Authority has observed in an anti-dumping investigation the data undergoes changes at each stage. However any such refinement of data appears to have taken place after the Public File was closed.
- The increase in cost of sales is because of the increase in wage cost of the DI. The increase in selling price has been higher than the increase in cost of sales.
- The Hon'ble Authority ought to disclose the company specific injury margins of the cooperating exporters from each Subject Country.
- Even in the case of constructed NV based Dumping margin, the Authority should have disclosed in confidence to Black Cat the detailed grade wise export price and dumping margin calculations and the adjustments for each grade.

- The data verified by the Authority is the data pertaining to the POI. Since the post-POI data has not been verified by the authority, the same should not be relied upon.
- A number of figures including the landed price of dumped imports, P&L per Unit and ROI have been revised. The interested parties should be provided with the details of these revisions.

100. Examination by the Authority

- The Authority has considered the injury period till September 2008. The period Oct.-Dec., 2008 has been considered for assessing threat of material injury to the domestic industry. Any period thereafter is irrelevant to determine injury as envisaged under the AD Rules in the present case. Consideration of any subsequent period data will require full data with regard to dumping and injury analysis, which is neither feasible nor required in the present matter. The Authority further notes that subsequent period developments are addressed through the review mechanism as envisaged under the AD Rules and the Act.
- It is incorrect to state that public file was closed; in fact the public file has been inspected by interested parties from time to time during the investigation process. Further, the information relied upon in the present findings is not a new information; only the quality of information has improved due to verification conducted by the Authority and the nature or period of information has not undergone a change.
- It is seen that the domestic industry has claimed that entire increase in the cost of production is not due to increase in the wage costs. In fact, incidence of increase in the wage cost is quite insignificant as compared to decline in profitability.
- The information to the extent that is required to be disclosed; has been disclosed to the responding interested parties.
- The Authority is of the view that information that is based on confidential business information of other interested parties cannot be disclosed to other interested parties participating in the investigation.
- The verification of information is for the satisfaction of the Designated Authority. Although, none of the interested parties demanded that the data relating to post POI relied upon in the preliminary findings should be verified, yet the Authority has satisfied itself with regard to correctness of the data before adopting the same.
- The disclosure statement contains full details of the figures adopted. Any revision in the figures is a part of the investigation process, where the quality

of evidence improves during the investigation process. Even the figures of the producers/exporters may undergo a change as a result of verification conducted. However, it does not imply that the Authority should intimate such changes to the interested parties immediately thereafter. The information/data being relied upon in these findings have been duly disclosed through the disclosure statement as envisaged under the AD Rules.

101. The Authority has taken note of various submissions of the interested parties on injury to the domestic industry and has analyzed injury to the domestic industry considering the facts available on record and the applicable law as follows:

Cumulative assessment

102. The analysis shows that the subject goods are being dumped into India from the subject countries. Attention is invited to Annexure II para (iii) of the AD Rules which provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -

- a. the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like article or where the export of individual countries is less than three per cent, the imports collectively accounts for more than seven per cent of the import of like article and
- b. cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

103. The Authority observes that:

- The margins of dumping from each of the subject countries are more than the limits prescribed above;
- The volume of imports from each of the subject countries is more than the limits prescribed except from Iran as already recorded in relevant section of these findings);
- Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market. This is evident from the following:
 - a. The domestic industry produces various grades of the subject goods. Similar grades are being produced by producers from the subject countries and supplied to India. The subject goods manufactured by the producers from the subject countries *inter-se* and in comparison to the product manufactured by the domestic industry has comparable

properties. In other words, the subject goods supplied from various subject countries and by the domestic industry are *inter-se* like articles.

- b. There are common parties who are resorting to use of imported material from various sources and domestic material. Imported and domestic materials are, therefore, being used interchangeably and there is direct competition between the domestic product & imported product and *inter-se* imported product.
- c. The exporters from the subject countries and domestic industry have sold the same product in the same periods to the same set of customers. The sales channels are comparable.
- d. Volume of imports from each of the subject countries is significant.
- e. Consumers make purchase decision on the basis of prices offered by various suppliers.

104. In view of the above, the Authority considers it would be appropriate to assess injury to the domestic industry cumulatively from Australia, China PR, Russia and Thailand.

105. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

106. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states as follows:

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

Demand and market share

107. Demand of the product in the Country has been assessed as the sum of domestic sales of the domestic producers and imports from all sources.

	Unit	2005-06	2006-07	2007-08	POI
Demand in India	MT	406557	437385	500273	515350

It is noted that demand for the product has shown significant and consistent increase over the injury period.

Import volumes and market share

108. The Applicant has provided information with regard to imports based on IBIS data for the entire injury period. The Authority requested the DGCI&S for the import data, which was received. Further, a number of producers/exporters from subject countries and Indian consumers/ importers have responded to the Authority. The Authority collated all imports information and compared the same in order to assess the volume of imports during the period. It is noted that the actual volume of exports reported by responding exporters in case of Thailand and Australia is higher than the volume reported in DGCI&S or IBIS data. Further, the volume of imports reported in DGCI&S data is significantly higher than the volume of imports reported in IBIS data. Therefore, in case of Thailand and Australia, the Authority has adopted the actual volume of exports reported by the responding exporters from Australia and Thailand. In all other cases, the volume of imports reported by DGCI&S has been adopted. It is seen that: -

- i. Imports from subject countries have increased significantly in absolute terms.

Imports	Unit	2005-06	2006-07	2007-08	POI
Australia	Mt	2,142	2,094	5,905	6,655
China PR	Mt	1,342	6,221	11,565	12,580
Russia	Mt	16,194	8,379	25,008	26,391
Thailand	Mt	125	3,932	5,731	7,888
Subject countries	Mt	19804	20627	48209	53514
Other countries	Mt	4081	10043	14858	13645
Total import	Mt	23,885	30,670	63,066	67,159

- ii. Imports from subject countries have increased in relation to production and consumption in India as compared to the base year.

	Unit	2005-06	2006-07	2007-08	POI
Dumped imports in relation to Indian production	%	3.97	3.89	8.55	9.10

production					
Dumped imports in relation to demand in India	%	4.87	4.72	9.64	10.38

- iii. While market share of the subject countries have increased, that of the domestic industry has declined as compared to the base year and has marginally increased over the immediately preceding year as may be seen from the following table:

Market Share in demand as %	Unit	2005-06	2006-07	2007-08	POI
Subject countries	%	4.87	4.72	9.64	10.38
Other countries	%	1.00	2.30	2.97	2.65
Domestic industry	%	69.84	68.25	65.55	65.96
Supporter companies	%	12.97	12.16	10.45	9.95
Other Indian Producers	%	11.31	12.57	11.39	11.06
Share of Indian Industry	%	94.13	92.99	87.39	86.97

109. It is thus seen that the market share of imports from the subject countries have significantly increased, whereas that of the domestic industry has declined over the injury period. The marginal decline in POI as compared to 2007-08 could be due to overlapping period as well.

Price effect of imports

110. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

111. It is seen that the landed price of imports of the subject goods are significantly below the selling prices of the domestic industry, resulting in significant price undercutting. For the purpose, the Authority notes that there is significant difference in the prices of different grades. Further, there was significant increase in the input cost over the injury period, thus leading to increase in the prices within the Period of investigation. Therefore, the Authority has compared landed price of imports with the selling price of the domestic industry for comparable grades on a quarterly basis. Thus, weighted average price undercutting has been determined after considering associated import volumes. It is seen that the landed price of imports of the subject goods are significantly below the

selling prices of the domestic industry, resulting in significant price undercutting the position is as follows:

Country	Price undercutting (Rs/Mt)	Price undercutting as %
Australia– Continental	***	4 to 8%
China PR	***	8 to 12%
Russia	***	5 to 9%
Thailand – TCP	***	1 to 4%
Subject countries	***	3 to 8%

112. The Authority has determined price undercutting for the responding exporters in case of Thailand and Australia using their data instead of DGCI&S because the volume of exports reported by the responding exporters is higher than the volume reported in DGCI&S.

Economic parameters of the domestic industry

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

114. The various injury parameters relating to the domestic industry are discussed below:

Sales volumes

115. Sales volumes of the domestic industry were analysed over the injury period. The position is as follows

Period	Domestic Sales volume	
	for the period	per quarter
	Mt	Mt

2005-06	283,934	70,984 (Average)
2006-07	298,522	74,631(Average)
2007-08	327,922	81,980(Average)
POI	339,937	84,984(Average)
Oct-Dec07	89,301	89,301(Actual)
Jan- Mar08	80,227	80,227(Actual)
Apr- Jun08	85,989	85,989(Actual)
Jul- Sep08	84,421	84,421(Actual)
Oct.-Dec.08 (Post POI)	63,664	63,664(Actual)

116. It is seen that the domestic sales volume have increased till Dec., 2007. The sales volumes declined in Jan.-March, 2008 period. Though the same increased once again in subsequent quarter, but this increase was less than the decline in previous quarter. The sales volumes thereafter declined in July-Sept., 08 and further declined in Oct.-Dec., 08 period. It is noted that the decline in sales volumes in Oct.-Dec., 2008 was significant.

Capacity and Plant Utilization

	Capacity	Production	Plant utilization
Unit	Mt	Mt	%
2005-06	440,000	394,279	90.01
2006-07	440,000	423,833	97.17
2007-08	485,000	459,361	96.00
POI	500,000	481,702	97.61
Oct-Dec07	125,000	121,723	98.78
Jan- Mar08	125,000	120,106	97.31
Apr- Jun08	125,000	120,678	97.51
Jul- Sep08	125,000	119,194	96.85
Oct.-Dec.08 (Post POI)	125,000	78,767	63.99

117. It is seen that production and plant utilization improved till Dec., 2007 over the injury period. However, it is noted that the utilization has gradually declined thereafter. Further, production and the utilisation declined significantly in Oct.-Dec., 08 period.

Factors affecting prices:

118. It is seen that imports are undercutting the domestic prices. Comparison of cost of production and selling price of the domestic industry along with landed price of imports shows that the imports are also suppressing prices of the domestic industry.

	Selling price	Cost of production	Contribution margin	Landed price of dumped imports

Unit	Rs. Mt (Indexed)	Rs. Mt (Indexed)	Rs. Mt (Indexed)	Rs/Mt
2005-06	100	100	100	29,214
2006-07	125	119	135	41,046
2007-08	121	113	144	36,999
POI	147	143	144	43,608
Oct-Dec07	128	117	170	36,076
Jan- March 08	134	128	147	39,916
Apr- June 08	149	147	136	45,733
July- Sept 08	179	182	123	52,516
Oct-Dec, 08 (Post POI)	192	234	1	64,226

119. It is observed that the landed price of imports of the subject goods is below the selling price of these products by the domestic industry except during the April-June quarter. Apparently, the domestic industry has not been able to increase the prices of the product in proportion to the cost increases. As a result of price difference between the imported products' price and domestic industry' price, some consumers have increased their procurement of dumped imports, as seen from some of the responses to importer's questionnaire. The Authority notes that response to questionnaire was received from some of the importers/consumers of Carbon Black in India. The Authority analyzed information provided by these parties and compared sourcing of these parties from imports and domestic market. The table below summarizes the position:

	Subject Goods imported			Subject goods purchased from Domestic producers		
	2006-07	2007-08	POI	2006-07	2007-08	POI
Apollo	***	***	***	***	***	***
JK	***	***	***	***	***	***
Cabot India	***	***	***	***	***	***
Goodyear India	***	***	***	***	***	***

Goodyear SA	***	***	***	***	***	***
General Rubber	***	***	***	***	***	***

120. It is seen that sourcing of Apollo Tyres from domestic sources has marginally increased in the POI and imports declined. In case of J. K. Tyres, while sourcing from domestic market declined, sourcing from imports went up. The Authority determined price difference between domestic and imported product in case of Apollo Tyres and JK Tyres. The table below summarizes:

	Apollo	JK
Import volume (MT)	***	***
CIF import price per MT	***	***
Landed price of imports per MT	***	***
Purchase price from domestic industry per MT	***	***
Price undercutting per MT	***	***

121. Even though the above is on average basis, it is seen that the imports were significantly cheaper than the prices of domestic industry in case of JK Tyres. At the same time, while volume of imports by JK Tyres increased, volume of domestic sourcing declined. In case of Apollo Tyres, the import prices and domestic prices were somewhat comparable. The import volumes increased and domestic sales stagnated. However, in Period of investigation, the import volumes by Apollo slightly declined and domestic sales almost proportionately increased. The Authority thus notes the difference in the domestic and import prices directly impacted the decision of the consumers regarding their procurement of the subject goods. The Authority, however, notes that such analysis could be carried out only in respect of limited customers in view of insufficient responses from the importers/ consumers.

Profit/Loss, return on investment and cash profits

122. The position with regard to Profit/Loss, return on investment and cash profits was as follows

Period	Profit/Loss Rs. per MT (Indexed)	Return on investment as % (Indexed)	Cash profits Rs. per MT (Indexed)
2005-06	100	100	100

2006-07	243	205	185
2007-08	291	186	216
POI	231	132	179
Oct-Dec07	353	189	252
Jan-Mar08	255	136	196
Apr-Jun08	205	122	163
Jul-Sep08	107	81	103
Oct-Dec., 08 (Post POI)	(732)	(184)	(401)

123. It is observed that the profitability was improving till Dec., 2007. However, the profitability started declining thereafter significantly to such an extent that the profitability was below the levels of 2006-07 from April, 2008. Return on investment and cash profits have followed the similar trend as that of profitability. Return on investment and cash profit per unit increased up to Dec., 2007 and declined thereafter even beyond the levels registered in 2006-07. Further, profitability declined to such an extent in Oct.-Dec., 08 that the domestic industry suffered significant financial losses. Return on investment and cash profits became negative in this quarter. It is, however, noted that the profitability in the POI was better than profitability in 2005-06. Therefore, the profitability of the domestic industry was scrutinized further in 2005-06. It was found that while one of the constituents of the domestic industry had better profitability in 2005-06 (as compared to last two quarters of the POI), the other company had very low profitability (in fact, the other company suffered financial losses). Information provided by this company showed that the company suffered financial losses in this period due to other factors. Company claimed that lower profits suffered by the company in 2005-06 due to other factors must be segregated having regard to Annexure II in order to establish its profitability for the present purpose. The segregated profitability claimed by the company showed that the company had better profitability, in line with other company, in 2005-06 as compared to last two quarters of the POI.

124. On the spot investigation carried out at the premises of one of the petitioner companies showed that the determination of profits by the domestic industry was on incorrect basis. Accordingly, the company was directed to recompute the profitability, which has been adopted for the purpose of the present findings.

Inventories:

125. Data relating to inventories shows as follows

	Unit	2005-06	2006-07	2007-08	POI	Oct-Dec07	Jan-March 08	Apr-June 08	July-Sep08	Oct-Dec 08
Opening	Mt	10649	8361	8528	12322	12322	10049	9841	10228	16190

Closing	Mt	8361	8528	10024	16190	10049	9841	10228	16190	15164
Average	Mt	9505	8444	9276	14256	11186	9945	10034	13209	15677
Stock										

126. It is noted that inventories have increased in the POI. The increase in the last quarter of the POI was significant in spite of reduction in production, which further worsened in the October-December 2008 period. Increase in inventories by about 6000 MT is valued at about Rs. 35.16 crores considering the prices prevailing in that quarter, which is quite significant.

Employment, wages and productivity

127. Data relating to employment, wages and productivity show as follows

	Unit	2005-06	2006-07	2007-08	POI
Number of employees-Nos	Indexed	100.00	100.00	100.44	98.86
Wages-Rs.Lacs	Indexed	100.00	115.32	140.90	147.21
Wages per unit of production-Rs./MT	Indexed	100.00	106.78	119.81	119.38
Productivity per employee-MT	Indexed	100.00	108.07	117.00	124.78

128. It is seen that there was some decline in number of employees. Wages paid and productivity show improvement.

Dumping Margin:

129. It is observed from the section pertaining to Dumping Margin above that dumping margins in respect of the subject countries are significantly positive.

Growth

130. It is noted that the growth of the domestic industry was positive till Dec., 2007. The growth has however started becoming negative thereafter, as would be seen from the table below showing growth in various parameters.

	Unit	2006-07	2007-08	POI	Oct-Dec07	Jan-March08	April-Jun08	July-Sep08
Production	%	7.96	8.89	4.83	6.09	(1.50)	0.21	(0.68)
Sales volume	%	5.28	9.83	3.93	9.28	(10.04)	6.62	(1.42)
Profit/(Loss) per unit	%	143.02	19.88	(20.52)	21.27	(27.76)	(19.55)	(47.96)
Return on investment	%	11.42	(2.06)	(5.86)	0.29	(5.72)	(1.51)	(4.44)
Average stock	%	(11.16)	9.85	53.69	20.59	(11.09)	0.90	31.64

Ability to raise funds:

131. It is noted that the ability to raise funds has not got affected so far.

Threat of material injury

132. Besides the above, the claim of threat of material injury was also examined. For this purpose, the Authority also considered situation of the domestic industry for the quarterly period immediately following the POI.

- a. The imports of the subject goods in India have been increasing. The volume of imports beyond the POI for the October-December 2008 period is also significant.
- b. The difference between the import price of the subject goods and that of the domestic industry prices is significant. The imports are entering at such prices that the same are having a significant suppressing effect on domestic prices and are likely to increase demand for further imports. While the input prices were increasing till Sept., 2008 and the imports were suppressing the prices of the domestic industry, the input prices have started declining thereafter. Resultantly, the prices of the subject goods have also fallen. It is however seen that the decline in the domestic industry's product prices is more than the decline in the input costs (as established by the decline in contribution).
- c. The Applicant has provided information which suggests that demand for the subject goods in the subject countries has significantly fallen. From the data of Chinese Customs with regard to exports of Carbon black and tyres (majority of subject goods gets consumed in production of tyres), it is noted that export volumes of these countries have shown significant decline. Based on the information released by China customs, the applicant has claimed significant decline in exports of tyres from China PR, as shown in table below. The Applicant has claimed that even if it is assumed that the Chinese domestic demand has not declined, it would be evident that the consumption of Carbon black in China PR alone has so materially declined that the same is significantly higher than the gross consumption in India.

	Apr-Sept., 08	Oct-Dec.,08	Jan-Feb., 09
Average monthly export of Tyres (Nos.)	3,622,818	2,675,376	1,284,561
Average monthly Carbon black consumption (MT)	50,719	37,455	17,984
Decline in monthly Carbon black consumption (MT)		13,264	32,736

- d. The Applicant has claimed that Chinese customs was earlier reporting figures in terms of numbers, whereas the same has been changed to weight w.e.f. January 2009 and therefore they have assumed average weight of tyre as 50 kg and average Carbon black consumption as 14 kg per tyre for the above analysis].

133. The Applicant also provided information to show that the demand for tyres in the domestic and export markets of some of the subject countries has significantly declined. Since majority of product under consideration is consumed in tyres production, this indicates creation of significant surpluses with the producers in these countries.

134. **Examination of other issues raised by the interested parties**

- With regard to changes in exchange rates subsequent to the POI, the Authority notes that actual exchange rates for the period of investigation have been adopted for the present purpose. Thus, it cannot be concluded that changes in exchange rate subsequent to the period of investigation unilaterally impact the import price.
- Some interested parties have argued that the published reports of the constituents of the domestic industry do not show injury. It is noted in this regard that the published annual reports show performance of the company, whereas the Authority is required to consider performance of the domestic industry in respect of the domestic operations relating to the product under consideration. While the interested parties have not established that performance of the company and performance of the domestic industry in domestic operations for the product under consideration alone are the same; the applicant has provided information establishing that performance in respect of domestic operations has deteriorated.
- As regards consideration of post POI data, the Authority observes that use of post POI data for the assessment of threat of material injury to the domestic industry is fully consistent with the AD Rules.
- With regard to the argument on global recession, the Authority observes that the POI in this case is up to 30th September 2008 and the demand for the product shows improvement. Further, even if it is considered that the demand for the product is suffering due to global recession, the impact of recession cannot be selectively felt on the domestic industry.
- As regards impact of increase in CBFS prices, the Authority observes that the AD Rules require an assessment whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree. Therefore, if the domestic industry is unable to increase its prices in a situation of increase in the input costs due to dumped

imports, the same would establish injury being caused to the domestic industry due to dumped imports.

- As regards concerns of SME consumers, the Authority notes that adverse impact of imposition of anti dumping duty has not been established with any quantified information. Further, the purpose of imposition of anti dumping duty is to remove unfair practice of dumping and redress consequent injury caused to the domestic industry. It is also noted that the applicant has claimed that majority of the product under consideration is consumed by tyre industry, which cannot be considered as SME.
- Some interested parties have argued that capacity utilization and market share of the domestic industry is quite high and imports have necessitated due to demand in the Country. The information on record, however, shows that even though the decline in capacity utilisation is not very significant, the domestic industry would have sold much higher volumes in the absence of imports. Further, the decline of about 3.88% market share needs to be seen along with less profitable exports of the domestic industry. Given less profitable exports, the domestic industry would naturally prefer to sell more in the domestic market, which has been prevented by the dumped imports.
- Some interested parties have argued that the Authority has focused on quarterly performance during the period of investigation. The Authority notes that injury to the domestic industry has been examined by considering the performance for the entire period of investigation. The purpose of analyzing data for the injury period is to determine whether performance of the domestic industry in the period of investigation could be described as injurious, having regard to the performance over the injury period. The analysis of impact of the dumped imports on a quarterly basis reflects the actual impact of dumped imports on the performance of the domestic industry and the same is fully consistent with the AD Rules.
- The verified information does not show that the return on investment for the domestic industry was 40%, as claimed by some interested parties.

Conclusion on material injury and threat of material injury

135. It is seen that performance of the domestic industry has deteriorated in terms of profits, return on investments, cash profit, inventories and market share. Parameters such as production, sales volumes, and the plant utilization improved till Dec., 2007, but declined thereafter. The deterioration is more pronounced in terms of quarterly performance within the period of investigation. Further, the domestic industry was threatened with material injury and the same is evidenced by significant price undercutting, freely disposable production capacities in the exporting countries, significant increase in the imports over the current injury period, inventories with the domestic industry and a number of parameters relating to Oct.-Dec., 2008 period. The deterioration in performance is significant and material. The domestic industry has thus

suffered material injury. The post POI data of the quarter immediately following the POI shows threat of material injury as well.

Causal Link

136. As per the AD Rules, the designated authority is, *inter alia*, obligated to also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.

137. It was examined whether these other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It was noted that

- a. **Imports from Third Countries:** - The Authority notes that imports from third countries beyond de-minimis limits have been reported only from UK. The applicant has stated that there is no production facility in UK and imports from UK largely represent sales of off specs material. Other interested parties have not disputed this claim.
- b. **Contraction in Demand:** - The Authority notes that there is no contraction in the demand during injury period. On the contrary, overall demand for subject goods has shown significant positive growth during the injury period. It is, however, noted that there is some decline in demand in Oct.-Dec., 2008 period. While it is appreciated that there was a decline in demand in this period and the same would have had its own adverse impact on the domestic industry in terms of sales and consequently production & capacity utilization, it is noted that the import volumes increased further in this quarter. Thus, while the domestic sales (and consequently production & the plant utilization) declined significantly in this quarter, the imports increased in this quarter.
- c. **Pattern of consumption:** - No significant change in the pattern of consumption has come to the knowledge of the Authority, nor any interested party has made any submission in this regard.
- d. **Conditions of competition:** - the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry.
- e. **Developments in technology:** - the investigation has not shown that there was any significant change in technology which could have caused injury to the domestic industry.
- f. **Export performance of the domestic industry:** - While the export volumes of the domestic industry have increased, the price and profitability in the domestic and export market has been segregated by the Authority for the purpose of present injury assessment. Therefore, the analysis on injury is not misrepresentative due to possible inclusion of export performance.

138. The Authority notes that while listed known other factors do not show injury to the domestic industry, following parameters show that injury to the domestic industry has been caused by dumped imports:

- a. Whereas feedstock prices increased significantly over the injury period, the import prices did not increase in proportion to such increase in the feedstock prices. The landed prices of imports were lower than the selling price of the domestic industry. As a result of price undercutting, the consumers have resorted to higher volume of imports, thus leading to loss of potential sales and decline in market share.
- b. Decline in market share has prevented the domestic industry from raising their production and plant utilization. It is observed that the production and the utilization declined after Dec., 2007 due to presence of dumped imports.
- c. Landed price of imports were undercutting the prices of the domestic industry. Resultantly, lower import prices appear to have prevented the domestic industry from increasing their prices.
- d. Price suppression effect of the imports has directly resulted in deterioration in profitability of the domestic industry and consequently the return on investment and cash profits. Thus, the decline in profits, return on investments and cash profits is apparently due to presence of dumped imports in the market.
- e. Significant deterioration in performance of the domestic industry in Oct.-Dec., 08 period is apparently due to presence of dumped imports in the market.

139. The Authority is of the view that material injury to the domestic industry has been caused by dumped imports. The data along with the data of Oct.-Dec., 08 period shows threat of material injury as well.

Magnitude of injury and injury margin

140 The Authority has determined non-injurious prices of different grades of subject goods for the domestic industry taking into account cost of production of the domestic industry. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports to determine injury margin. The injury margins have been worked out as follows:

Country	Exporter	IM US\$ per Kg	IM%
Australia	M/s Continental Carbon Australia Pty Ltd.	***	12.91%
Australia	Non Co-operative producers/exporters	***	34.55%
China PR	M/s Jiangxi Black Cat Carbon Black Co., Ltd	***	10.56%

China PR	M/s Ningbo Detai Chemical Co. Ltd.	***	11.42%
China PR	M/s Hebei Daguangming Juwuba Carbon Black Co. Ltd.	***	8.38%
China PR	M/s Longxing Chemical Stock Co. Ltd.	***	15.68%
China PR	M/s HHUI / Ningbo Sheen – All Chemical Company	***	9.41%
China PR	Non Co-operative producers/exporters	***	51.70%
Russia	M/s. Yaroslavskiy Tekhnicheskij Uglerod through M/s Trigon Gulf FZCO	***	12.89%
Russia	Non Co-operative producers/exporters	***	49.62%
Thailand	M/s Thai Tokai Carbon Product Co. Ltd	***	6.95%
Thailand	Non Co-operative producers/exporters	***	17.67%

H. Conclusions:

141. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

- (a) The product under consideration has been exported to India from the subject countries below associated Normal values, thus resulting in dumping of the product under consideration.
- (b) The domestic industry has suffered material injury in respect of the subject goods . Besides, there is a case of threat of material injury to the domestic industry as well.
- (c) The material injury and threat thereof has been caused by the dumped imports from subject countries.

I. Indian industry's interest & other issues

142. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers.

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

J. Recommendations

144. In view of the foregoing, the Authority considers it necessary to recommend definitive anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

145. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty as per amount specified in Col 8 of the table below is recommended to be imposed from the date of this notification in the event of acceptance of these recommendations by the Central Government, on all imports of subject goods originating in or exported from the subject countries.

S.N	Heading/ Subheading	Description of goods *	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	28030010	Carbon Black used in rubber applications	Australia	Australia	M/s Continental Carbon Australia Pty Ltd.	M/s Continental Carbon Australia Pty Ltd.	0.138	Per Kg	US\$
2.	28030010	'Carbon Black used in rubber applications'*	Australia	Australia	Any combination other than at Sr. No.1		0.330	Per Kg	US\$
3.	28030010	'Carbon Black used in rubber applications'*	Australia	Any country other than Australia	Any	Any	0.330	Per Kg	US\$
4	28030010	'Carbon Black used in rubber applications'*	Any country other than countries attracting Anti-dumping duty	Australia	Any	Any	0.330	Per Kg	US\$

5	28030010	'Carbon Black used in rubber applications'*	China PR	China PR	M/s Ningbo Detai Chemical Co. Ltd	M/s Ningbo Detai Chemical Co. Ltd	0.143	Per Kg	US\$
6	28030010	'Carbon Black used in rubber applications'*	China PR	China PR	M/s Hebei Daguangming Juwuba Carbon Black Co., Ltd.	M/s Hebei Daguangming Juwuba Carbon Black Co., Ltd.	0.089	Per Kg	US\$
7	28030010	'Carbon Black used in rubber applications'*	China PR	China PR	M/s Longxing Chemical Stock Co., Ltd.	M/s Longxing Chemical Stock Co., Ltd.	0.168	Per Kg	US\$
						M/s Ningbo Sheen All Chemical Co. Ltd through M/s Hhui Chemical Co., Ltd	0.101	Per Kg	US\$
8	28030010	'Carbon Black used in rubber applications'*	China PR	China PR	M/s Jiangxi Black Cat Carbon Black Co., Ltd	M/s Jiangxi Black Cat Carbon Black Co., Ltd	0.121	Per Kg	US\$
9	28030010	'Carbon Black used in rubber applications'*	China PR	China PR	Any combination other than at Sr. nos. 5,6,7 & 8.		0.423	Per Kg	US\$
10	28030010	'Carbon Black used in rubber applications'*	China PR	Any country other than China PR	Any	Any	0.423	Per Kg	US\$
11	28030010	'Carbon Black used in rubber applications'*	Any country other than countries attracting Anti-dumping duty	China PR	Any	Any	0.423	Per Kg	US\$
12	28030010	'Carbon Black used in rubber applications'*	Russia	Russia	M/s. Yaroslavskiy Tekhnicheskiy Uglerod	M/s Trigon Gulf FZCO	0.136	Per Kg	US\$
13	28030010	'Carbon Black used in rubber applications'*	Russia	Russia	Any combination other than at Sr. No.12.		0.391	Per Kg	US\$
14	28030010	'Carbon Black used in rubber applications'*	Russia	Any country other than Russia	Any	Any	0.391	Per Kg	US\$
15	28030010	'Carbon Black used in rubber applications'*	Any country other than countries attracting	Russia	Any	Any	0.391	Per Kg	US\$

			Anti-dumping duty						
16	28030010	'Carbon Black used in rubber applications'*	Thailand	Thailand	M/s Thai Tokai Carbon Product Company Ltd.	M/s Thai Tokai Carbon Product Company Ltd.	0.084	Per Kg	US\$
17	28030010	'Carbon Black used in rubber applications'*	Thailand	Thailand	Any combination other than at Sr. No.16.		0.186	Per Kg	US\$
18	28030010	'Carbon Black used in rubber applications'*	Thailand	Any country other than Thailand	Any	Any	0.186	Per Kg	US\$
19	28030010	'Carbon Black used in rubber applications'*	Any country other than countries attracting Anti-dumping duty	Thailand	Any	Any	0.186	Per Kg	US\$

*Note: - Thermal Black and Carbon black grades meant for semi conductive compound applications are excluded from the scope of the product under consideration.

146. Subject to the above, the Authority confirms the preliminary findings dated 25th May, 2009. However duty recommended in para 8 above would be applicable from the date of imposition of provisional anti dumping duty as per Section 9A(2) of the Custom Tariff Act 1975.

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

R Gopalan
The Designated Authority