

## **Extracts from Customs Tariff Act, 1975**

9A. Anti-dumping duty on dumped articles. – (1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation. - For the purposes of this section, -

(a) “margin of dumping”, in relation to an article, means the difference between its export price and its normal value;

(b) “export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) “normal value”, in relation to an article, means -

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

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

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the

country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such antidumping duty exceeds the margin as so determined:-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section

(2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless, —

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Explanation. — For the purposes of this sub-section, the expression “hundred per cent export-oriented undertaking” shall have the meaning assigned to it in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944).

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously under-mine the remedial effect of the antidumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any antidumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer : (6A)

Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

9AA Refund of anti-dumping duty in certain cases. – (1) Where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty:

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A.

Explanation - For the purposes of this sub-section, the expressions, “margin of dumping”, “export price” and “normal value” shall have the meanings respectively assigned to them in the Explanation to sub-section (1) of section 9A.

(2) The Central Government may, by notification in the Official Gazette, make rules to -

(i) provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1);

(ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and

(iii) provide the manner in which the excess duty referred to in sub-section (1) shall be -

(A) determined by the officer referred to in clause (ii); and

(B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, after such determination.

9B. No levy under section 9 or section 9A in certain cases. – (1) Notwithstanding anything contained in section 9 or section 9A,-

(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;

(b) the Central Government shall not levy any countervailing duty or anti-dumping duty -

(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under subsection (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:

Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;

(c) the Central Government may not levy -

(i) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy

or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

9C. Appeal. – (1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Gold Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal).

(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(1B) Every application made before the Appellate Tribunal -

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.

CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND COLLECTION OF ANTIDUMPING DUTY ON DUMPED ARTICLES AND FOR DETERMINATION OF INJURY) RULES, 1995.

Notification No. 2/95-Cus. (N.T.), dated 01.01.1995 as amended by Notification No. 44/95-Cus. (N.T.), dated 15.07.1999, Notification No. 28/2001-Cus. (N.T.), dated 13.05.2001, Notification No. 1/2002-Cus. (N.T.), dated 04.01.2002, Notification No.101/2003-Cus. (N.T.), dated 10.11.2003, Notification No.15/2011-Cus. (N.T.), dated 01.03.2011, Notification No.86/2011-Cus. (N.T.), dated 01.12.2011 and Notification No.6/2012-Cus. (N.T.), dated 19.01.2012.

In exercise of the powers conferred by sub-section (6) of section 9A and sub-section (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975) and in supersession of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

(2) They shall come into force on the 1st day of January 1995.

2. Definitions.- In these rules, unless the context otherwise requires-

(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975),

(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term "domestic industry" may be construed as referring the rest of the producers.

Provided that in exceptional circumstances referred to in sub-rule (3) of Rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry, if -

(i) the producers within such a market sell all or almost all of their production of the article in question in that market; and

(ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;

Explanation. - For the purposes of this clause,-

(i) producers shall be deemed to be related to exporters or importers only if,-

a) one of them directly or indirectly controls the other; or

b) both of them are directly or indirectly controlled by a third person; or

c) together they directly or indirectly control a third person subject to the condition that are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

(ii) a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.

(c) "interested party" includes -

(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;

(ii) the government of the exporting country; and

(iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;

(d) "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 an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;

(e) "provisional duty" means an anti dumping duty imposed under sub-section (2) of section 9A of the Act;

(f) "specified country" means a country or territory which is a member of the World Trade Organization and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

(g) all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. Appointment of designated authority. - (1) The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government may think fit as the designated authority for purposes of these rules.

(2) The Central Government may provide to the designated authority the services of such other persons and such other facilities as it deems fit.

4. Duties of the designated authority. - (1) It shall be the duty of the designated authority in accordance with these rules-

a. to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;

b. to identify the article liable for anti-dumping duty;

c. to submit its findings, provisional or otherwise to Central Government as to-

(i) normal value, export price and the margin of dumping in relation to the article under investigation, and

(ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries.

d. to recommend to the Central Government –

(i) the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, after considering the principles laid down in the Annexure III to these rules; and

(ii) the date of commencement of such duty;

e. to review the need for continuance of anti-dumping duty.

5. Initiation of investigation. - (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by evidence of -

(a) dumping

(b) injury, where applicable, and

(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -

(i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a casual link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

(4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo moto if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause(b) of sub-rule (3).

(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

6. Principles governing investigations.- (1) The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following:-

(i) the name of the exporting country or countries and the article involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

- (iv) a summary of the factors on which the allegation of injury is based;
- (v) the address to which representations by interested parties should be directed; and
- (vi) the time-limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to -

- (i) the known exporters or to the concerned trade association where the number of exporters is large, and

- (ii) the governments of the exporting countries:

Provided that the designated authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing.

(4) The designated authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.

Explanation : For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organizations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.

(6) The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the

investigation.

(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

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

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

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

8. Accuracy of the information. - Except in cases referred to in sub-rule (8) of rule 6, the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.

9. Investigation in the territory of other specified countries. - The designated authority may carry out investigation in the territories of other countries, if the circumstances of a case so warrant.

Provided that the designated authority obtains the consent of the person concerned and notifies the representatives of the concerned government and the concerned government does not object to such investigation.

10. Determination of normal value, export price and margin of dumping- An article shall be considered as being dumped if it is exported from a country or territory to India at a price less than its normal value and in such circumstances the designated authority shall determine the normal value, export price and the margin of dumping taking into account, inter alia, the principles laid down in Annexure I to these rules.

11. Determination of injury. - (1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if-

(i) there is a concentration of dumped imports into an isolated market, and

(ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

12. Preliminary findings. - (1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain:-

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the article which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(2) The designated authority shall issue a public notice recording its preliminary findings.

13. Levy of provisional duty - The Central Government may, on the basis of the preliminary findings recorded by the designated authority, impose a provisional

duty not exceeding the margin of dumping:

Provided that no such duty shall be imposed before the expiry of sixty days from the date of the public notice issued by the designated authority regarding its decision to initiate investigations:

Provided further that such duty shall remain in force only for a period not exceeding six months which may upon request of the exporters representing a significant percentage of the trade involved be extended by the Central Government to nine months.

14. Termination of investigation. - The designated authority shall, by issue of a public notice, terminate an investigation immediately if -

(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;

(b) it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;

(c) it determines that the margin of dumping is less than two per cent of the export price;

(d) it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three per cent of the imports of the like product, unless, the countries which individually account for less than three per cent of the imports of the like product, collectively account for more than seven per cent of the import of the like product; or

(e) it determines that the injury where applicable, is negligible.

15. Suspension or termination of investigation on price undertaking –

(1) The designated authority may suspend or terminate an investigation if the exporter of the article in question, -

(i) furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or

(ii) in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated:

Provided further that the designated authority shall complete the investigation and record its finding, if the exporter so desires, or it so decides.

(2) No undertaking as regards price increase under clause (ii) of the sub-rule

(1) shall be accepted from any exporter unless the designated authority had made preliminary determination of dumping and the injury.

(3) The designated authority may, also not accept undertakings offered by any exporter, if it considers that acceptance of such undertaking is impractical or is unacceptable for any other reason.

(4) The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain inter alia, the non-confidential part of the undertaking.

(5) In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of section 9A of the Act for such period the undertaking acceptable to the designated authority remains valid.

(6) Where the designated authority has accepted any undertaking under sub-rule (1), it may require the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data:

Provided that in case of any violation of an undertaking, the designated authority shall, as soon as may be possible, inform the Central Government of the violation of the undertaking and recommend imposition of provisional duty from the date of such violation in accordance with the provisions of these rules.

(7) The designated authority shall, suo moto or on the basis of any request received from exporters or importers of the article in question or any other interested party, review from time to time the need for the continuance of any undertaking given earlier.

16. Disclosure of information. - The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.

17. Final findings. - (1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding -

(a) as to, -

(i) the export price, normal value and the margin of dumping of the said article;

(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any

industry established in India or materially retards the establishment of any industry in India;

(iii) a casual link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:

Provided that the Central Government may, in its discretion in special circumstances extend further the aforesaid period of one year by six months:

Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year,

(b) recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry after considering the principles laid down in the Annexure III to these rules.

(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding-

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) Considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation: Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be

made in consultation with and with the consent of the exporters, producers or importers concerned:

Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

(4) The designated authority shall issue a public notice recording its final findings.

18. Levy of duty. - (1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17.

(2) In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to sub-rule

(3) of rule 17, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed -

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value/ the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined:

Provided that the Central Government shall disregard for the purpose of this sub-rule any zero margin, margins which are less than 2 per cent expressed as the percentage of export price and margins established in the circumstances detailed in sub-rule (8) of rule 6. The Central Government shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation as referred to in the second proviso to sub-rule (3) of rule 17.

(3) Notwithstanding anything contained in sub-rule (1), where a domestic industry has been interpreted according to the proviso to sub-clause (b) of rule 2, a duty shall be levied only after the exporters have been given opportunity to cease exporting at dumped prices to the area concerned or otherwise give an undertaking pursuant to rule 15 and such undertaking has not been promptly given and in such cases duty shall not be levied only on the articles of specific producers which supply the area in question.

(4) If the final finding of the designated authority is negative that is contrary to the evidence on whose basis the investigation was initiated, the Central Government shall, within forty-five days of the publication of final findings by the designated authority under rule 17, withdraw the provisional duty imposed, if any.

19. Imposition of duty on non-discriminatory basis. - Any provisional duty imposed under rule 13 or an anti-dumping duty imposed under rule 18 shall be on a non-discriminatory basis and applicable to all imports of such articles, from whatever sources found dumped and, where applicable, causing injury to domestic industry except in the case of imports from those sources from which undertaking in terms of rule 15 has been accepted.

20. Commencement of duty. - (1) The anti-dumping duty levied under rule 13 and rule 19 shall take effect from the date of its publication in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1) -

(a) where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty;

(b) in the circumstances referred to in sub-section (3) of section 9A of the Act, the antidumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty:

Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation:

Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking.

Provided also that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied from the date of violation of the undertaking or such date as the Central Government may specify in each case.

21. Refund of duty. - (1) If the anti-dumping duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.

(2) If, the anti-dumping duty fixed after the conclusion of the investigation is

lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

(3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

21A Determination of amount paid in excess of actual margin of dumping. (1) Where an importer is of the opinion that he has paid any anti-dumping duty imposed under sub-sections (1) or sub-section (1A) of section 9A of the Act on any imported goods, in excess of the actual margin of dumping in relation to such goods, he may file an application for determination of the actual margin of dumping in relation to such goods before the designated authority in such form and accompanied by such documents as the said authority may specify in this behalf.

(2) Where the application referred to in sub-rule (1) is found to be deficient in any material particulars, the same shall be returned to the importer pointing out deficiencies within one month of the receipt thereof and the importer may, after making good the deficiencies, resubmit the application to the designated authority within one month thereafter.

(3) On receipt of the application with complete information, the designated authority shall initiate an investigation to determine the actual margin of dumping in relation to such goods.

(4) In determining the actual margin of dumping, when the export price is constructed in accordance with these rules, the designated authority shall take into account any change in normal value, costs incurred between importation and resale and any movement in the sale price which is duly reflected in the subsequent selling price.

(5) While calculating constructed export price, referred to in sub-rule (4), no deduction shall be made for the amount of anti-dumping duties paid when conclusive evidence of the same is provided.

(6) Where the designated authority finds that there is change in,-

(a) costs incurred between importation and resale, and

(b) movement in the sale price which is duly reflected in the subsequent selling price, the actual margin of dumping may be determined in accordance with the provisions of sub-rules (4) and (5).

(7) The designated authority shall, after investigation under sub-rule (3), determine the actual margin of dumping for the goods and if the anti-dumping paid on the goods is in excess of the margin of dumping so determined, the authority shall make recommendation to the Central Government within nine months and in no case more than 12 months, from the date of receipt of the

application, complete in all respects, to refund the difference between the two to the importer

22. Margin of dumping, for exporters not originally investigated. - (1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the antidumping duties on the product.

(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.

23. Review. - (1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

(2) Any review initiated under sub-rule (1) shall be concluded within a period

not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9/10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.

24. Dumping causing injury to a third country. - (1) The designated authority may initiate investigation into any dumping alleged to be taking place into India and causing injury to the domestic industry of any third country which is a member of the World Trade Organisation.

(2) The designated authority in such cases shall follow the procedures laid down in Article 14 of the Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade, 1994, as contained in the Final Act of Uruguay Round Multilateral Trade Negotiations.

25. Circumvention of anti dumping duty. - (1) Where an article subject to anti dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti dumping duty in force if, -

(a) the operation started or increased after, or just prior to, the anti dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and

(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

Explanation I. – ‘Value’ means the cost of assembled, complete or finished article less value of imported parts or components

Explanation II. - For the purposes of calculating the ‘value’, expenses on account of payments relating to intellectual property rights, royalty, technical know-how fees and consultancy charges, shall not be taken into account.

(2) Where an article subject to anti dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti dumping duty in force if the alteration of the description or name or composition of the article subject to anti dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any.

(3) Where an article subject to anti dumping duty is imported into India through exporters or producers or country not subject to anti dumping duty,

such exports shall be considered to circumvent the anti dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or producers or country not subject to anti dumping duty.

Explanation.- For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely:-

(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;

(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.

26. Initiation of investigation to determine circumvention.- (1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti dumping duty levied under section 9A of the Act , upon receipt of a written application by or on behalf of the domestic industry.

(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo-motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 ( 52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti dumping duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the antidumping duty in force where it is satisfied that imports of the article circumventing an anti dumping duty in force are found to be dumped:

Provided that, the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule.

(6) Any such investigation shall be concluded within 12 months and in no case more than 18 months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.

27. Determination of circumvention.- (1) The designated authority, upon

determination that circumvention of anti dumping duty exists, may recommend imposition of anti dumping duty to imports of articles found to be circumventing an existing anti dumping duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the antidumping duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, extend the anti dumping duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

28. Review of circumvention.- (1) The designated authority may review the need for the continued imposition of the duty, where warranted, on its own initiative or provided that a reasonable period of time has elapsed since the imposition of the measures, upon request by any interested party which submits positive information substantiating the need for the review.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of review.

#### Annexure- I (See Rule 8)

Principles governing the determination of normal value, export price and margin of dumping

The designated authority while determining the normal value, export price and margin of dumping shall take into account inter alia, the following principles –

1. The elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or producer under investigation, provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records reasonably reflect the cost associated with production and sale of the article under consideration.

2. Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price. The designated authority may disregard these sales, in determining normal value, provided it has determined that-

(i) such sales are made within a reasonable period of time (not less than six months) in substantial quantities, i.e. when the weighted average selling price of the article is below the weighted average per unit costs or when the volume of the sales below per unit costs represents not less than twenty per cent of the volume sold in transactions under consideration, and

(ii) such sales are at prices which do not provide for the recovery of all costs within a reasonable period of time. The said prices will be considered to provide for recovery of costs within a reasonable period of time if they are above weighted average per unit costs for the period of investigation, even though they might have been below per unit costs at the time of sale.

3. (i) The said authority in the course of investigation shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer provided that such allocation has been historically utilized by the exporter or producer, in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditure and other development costs.

(ii) unless already reflected in allocation of costs referred to in clause (1) and subclause (i) above, the designated authority, will also make appropriate adjustments for those non-recurring items of cost which benefits further and/or current production, or for circumstances in which costs during the period of investigation are affected by start up operation.

4. The amounts for administrative, selling and general costs and for profits as referred to in sub-section (1) of section 9A of the Act, shall be based on actual data pertaining to production and sales in the ordinary course of trade, of the like article by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realized by the exporter or producer in question, in respect of production and sales in the domestic market of the country of origin of the same general category of article;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like article in the domestic market of the country of origin; or

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by the exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

5. The designated authority, while arriving at a constructed export price, shall give due allowance for costs including duties and taxes, incurred between importation and resale and for profits.

6. (i) While arriving at margin of dumping, the designated authority shall make a

fair comparison between the export price and the normal value. The 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 possibly the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and in terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability.

(ii) In the cases where export prices is a constructed one, the comparison shall be made only after establishing the normal value at equivalent level of trade.

(iii) When the comparison under this para requires a conversion of currencies, such conversion should be made by using the rate of exchange on the date of sale, provided that when a sale on foreign currency on forward markets is directly linked to the export sale involved the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the exporters shall be given at least sixty days to have adjusted their export prices to reflect the sustained movements in exchange rates during the period of investigation.

(iv) Subject to the provisions governing comparison in this paragraph, the existence of margin dumping during the investigation phase shall normally be established on the basis of comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to the prices of the individual export transactions if it is found that the pattern of export prices which differs significantly among different purchasers, regions or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of weighted average- to-weighted average or transaction-to-transaction comparison.

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

8. (1) The term “non-market economy country” means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph (3).

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country.

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether:

(a) the decisions of the concerned firms in such country 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.

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph”.

(4) Notwithstanding, anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph (3), has been, by publication of such evaluation in a public document, treated or determined to be treated as a

market economy country for the purposes of anti dumping investigations, by a country which is a member of the World Trade Organization.”

Note :- For the purposes of this paragraph, the list of non market economy countries is Albania, Armenia, Azerbaijan, Belarus, Peoples' Republic of China, Gerogia, Kazakstan, North Korea, Kyrghyzstan, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukaraine, Usbekistan and Vietnam. Any country among them seeking to establish that it is a market economy country as per criteria enunciated in this paragraph, may provide all necessary information which shall be taken due account by the designated authority.

#### Annexure- II (See Rule 9(2)) Principles for Determination of Injury

The designated authority while determining the injury or threat of material injury to domestic industry or material retardation of the establishment of such an industry, hereinafter referred to as “injury” and casual link between dumped imports and such injury, shall inter alia, take following principles under consideration-

(i) A determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the affect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.

(ii) While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the affect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the designated authority shall consider whether there has been a significant price under cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree.

(iii) In cases where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when 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 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.

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

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

(vi) The effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

(vii) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the designated authority shall consider, inter alia, such factors as:

(a) a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;

(b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;

(c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(d) inventories of the article being investigated.

### ANNEXURE III [See rule 17(1)]

#### Principles for determination of non-injurious price

(1) The designated authority is required under sub-rule (1) of rule 17 to recommend the amount of anti-dumping duty which, if levied, would remove the injury where applicable to the domestic industry.

(2) For the purpose of making recommendation under clause (1), the designated authority shall determine the fair selling (notional) price or non-injurious price of the like domestic product taking into account the principles specified herein under.

(3) The non-injurious price is required to be determined by considering the information or data relating to cost of production for the period of investigation in respect of the producers constituting domestic industry. Detailed analysis or examination and reconciliation of the financial and cost records maintained by the constituents of the domestic industry are to be carried out for this purpose.

(4) The following elements of cost of production are required to be examined for working out the non-injurious price, namely: —

(i) The best utilisation of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilisation of raw materials.

(ii) The best utilisation of utilities by the constituents of domestic industry, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of utilities.

(iii) The best utilisation of production capacities, over the past three years

period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities.

(iv) The Propriety of all expenses, grouped and charged to the cost of production may be examined and any extra-ordinary or non-recurring expenses shall not be charged to the cost of production and salary and wages paid per employee and per month may also be reviewed and reconciled with the financial and cost records of the company.

(v) To ensure the reasonableness of amount of depreciation charged to cost of production, it may be examined that no charge has been made for facilities not deployed on the production of the subject goods, particularly in respect of multi-product companies and the depreciation of re-valued assets, if any, may be identified and excluded while arriving at reasonable cost of production.

(vi) The expenses to the extent identified to the product are to be directly allocated and common expenses or overheads classified under factory, administrative and selling overheads may be apportioned on reasonable and scientific basis such as machine hours, vessel occupancy hours, direct labour hours, production quantity, sales value, etc., as applied consistently by domestic producers and the reasonableness and justification of various expenses claimed for the period of investigation may be examined and scrutinised by comparing with the corresponding amounts in the immediate preceding year.

(vii) The expenses, which shall not to be considered while assessing non-injurious price include,—

- a) research and development Provisions (unless claimed and substantiated as related to the product specific research);
- b) since non-injurious price is determined at ex-factory level, the post manufacturing expenses such as commission, discount, freight- outward etc.at ex-factory level;
- c) excise duty, sales tax and other tax levies on sales;
- d) expenses on job work done for other units;
- e) royalty, unless it is related to technical know-how for the product;
- f) trading activity of product under consideration; or
- g) other non-cost items like bad debts, donations, loss on sale of assets, loss due to fire, flood, etc.

(viii) A reasonable return (pre-tax) on average capital employed for the product may be allowed for recovery of interest, corporate tax and profit. The

average capital employed is the sum of "net fixed assets and net working capital" which shall be taken on the basis of average of the same as on the beginning and at the end of period of investigation. For assessment of reasonable level of working capital requirement, all the elements of net working capital shall be scrutinised in detail. The impact of revaluation of fixed assets shall not be considered in the calculation of capital employed. Interest is allowed as an item of cost of sales and after deducting the interest, the balance amount of return is to be allowed as pre-tax profit to arrive at the non-injurious price.

(ix) Reasonableness of interest cost may be examined to ensure that no abnormal expenditure on account of interest has been incurred. Details of term loans, cash credit limits, short term loans, deposits and other borrowings taken by the company and interest paid thereon may be examined in detail along with the details of assets deployed.

(x) In case there is more than one domestic producer, the weighted averages of non-injurious price of individual domestic producers are to be considered. The respective share of domestic production of the subject goods may be taken as basis for computation of weighted average non-injurious price for the domestic industry as a whole