

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

NOTIFICATION

FINAL FINDINGS

New Delhi: 31st January, 2003.

Subject: Anti-dumping investigation concerning import of Lead Acid Batteries originating in or exported from Taiwan, Singapore and Hong Kong - Final Findings.

No. 59/1/2001-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE

1. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide Notification No. 59/1/2001-DGAD dated the 5th April, 2002 with regard to Anti Dumping investigations concerning imports of Lead Acid Batteries originating in or exported from Taiwan, Singapore and Hong Kong and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- ii. The Authority forwarded a copy of the Preliminary Findings to known interested parties, who were requested to furnish their views, if any, on the Preliminary Findings within forty days of the date of the letter;
- iii. The Authority also forwarded copy of the Preliminary Findings to the Embassies/High Commissions/Representatives of subject countries in New Delhi with a request to furnish their views on the Preliminary Findings;
- iv. The Authority held a public hearing on 22nd July 2002 to hear the interested parties orally, which was attended by representatives of the domestic industry, importers and exporters from Taiwan. The parties attending the public hearing were requested to file written submissions of views expressed orally. The

- written submissions thus received from interested parties have been considered by Designated Authority in this finding;
- v. The Authority made the public file available to all interested parties containing non-confidential version of the evidence submitted by various interested parties, for inspection, upon request;
 - vi. Arguments raised by interested parties before announcing of Preliminary Findings, which have been brought out in the Preliminary Findings notified earlier have not been repeated herein for sake of brevity. However, arguments raised by the interested parties have been appropriately dealt with in the Preliminary Findings and/or these findings;
 - vii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings;
 - viii. Investigation was carried out for the period starting from 1st October 2000 to 30th September 2001;
 - ix. **** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY:

2. VIEWS OF DOMESTIC INDUSTRY:

- i. A number of parties who can not claim to be an interested party have been participating in the present investigation. The preliminary findings nowhere discloses participation by these interested parties before the preliminary findings were recorded
- ii. Relief has been granted in the preliminary findings to M/s. Panasonic Industrial Asia Pte. Ltd., Singapore and B B Battery Co. Ltd., Hong Kong, which is unjustified.
- iii. The provisions made under the Customs Tariff Act are uniformly applicable for all parties, whether domestic industry, exporters, importers or others. Exporters have resorted to unjustifiable claims on confidentiality.
- iv. The responding exporters/producers have not provided full information and have suppressed vital information from the Designated Authority. The action of the exporters tantamount to significantly impeding the investigations. Moreover, the action of the exporters is deliberate, conscious and willful. Under the circumstances, the Designated Authority is fully justified in

disregarding the responses filed by the exporters and proceeding further on the basis of best available information.

- v. The exporters are trying to prevent the petitioners from effectively defending its interests by resorting to filing deficient information or claiming confidentiality to the information.
- vi. Petitioners have repeatedly demanded annual reports of the responding exporters. However, the same have not been made available to the petitioners. Principles of equity and natural justice demand that all interested parties should be provided the same level of defense. Petitioners have not been provided even complete non-confidential version of the responses filed by the exporters. Even letters filed by some of the parties have not been made available to the petitioners for offering their comments

3. VIEWS OF EXPORTERS:

(a) M/S.PILOT BATTERY CO., LTD., TAIWAN:

- i. The exporter has submitted that the sealed maintenance free (SMF) batteries and ordinary type are different. There is no comparison between the two types. Accordingly both the types may be treated as separate classifications and material injury needs to be determined individually for both types.
- ii. They produce about 50 types of industrial batteries, which are not made by the Domestic Industry.
- iii. 80% of the companies worldwide have reported lower profits so does it conclude that there is worldwide dumping on all product groups.
- iv. No separate data has been submitted by the petitioners regarding imports and production of sealed maintenance free industrial batteries without which the material injury cannot be proved and this investigation remains incomplete.
- v. With large scale imports of SMF batteries by one of the petitioners, it is proved beyond doubt that the Domestic Industry cannot cater to the demand in the market of this type of SMF battery and their claim of 'material injury ' for this type of battery was false.
- vi. The anti dumping levies have been imposed on all types and sizes of industrial sealed maintenance free batteries even though 85% of the international sizes are not manufactured in India.

(b) M/S CSB BATTERY CO. LTD., TAIWAN AND TAIWAN YUASA BATTERY CO., TAIWAN:

(i) ACCURACY AND ADEQUACY OF INFORMATION AT THE TIME OF INITIATION:

- a. Rule 5 (2) provides that an application under sub-rule (1) shall be in the form as may be specified by the Designated Authority and the application shall be supported by evidence. The application which by law is required to be submitted in the prescribed Proforma only, has to be complete in all respects as the Proforma is prescribed under the Rules.
- b. Vital information had been kept as confidential in violation of the instructions and Rules. Essential information with regard to the volume of imports had not been furnished to the Designated Authority. Further, the unit of measurement adopted by them was also not clarified. The comparative figures for the preceding years as well as the period of investigation were also not supplied to the Designated Authority.
- c. Annexure I-9.1 though claimed to be enclosed was not been annexed to the application.
- d. The inadequacy of the data is further reflected by the fact that the exporters are not able to make out from the non-confidential version of the petition as to what criterion has been adopted for determining the import statistics. It appears that varying criteria have been used by the domestic industry in the petition which clearly establishes that the petition was neither adequate nor accurate for the Hon'ble Designated Authority to have started an anti-dumping investigation.
- e. Crucial information about the volume and value has been withheld. In the event, this information has been provided in the confidential version, the domestic industry ought to have given the non-confidential version of the same to them.
- f. The petitioners have not answered Question No. 5 of Part II by not giving the size, description, models, etc. of the batteries produced by them.
- g. In response to Question Nos. 7 & 8 of Part II, the petitioners have not provided adequate information. It needs to be appreciated that this information was absolutely essential particularly when the entire case has been made out on the basis of weight. Submissions of the domestic industry could not have been accepted on their face value in the absence of adequate information or prima facie evidence in support thereof.
- h. The exporters have claimed that the non-confidential version of the petition was ambiguous. The copy of the petition made available to them appears to be on the basis of the data relating to six countries whereas the initiation was done only for three countries. If the application made available to them contains information in the context of six countries, then all their arguments and submissions would be rendered meaningless. In the absence of clarification and the right non-confidential version of the petition, their interests were seriously prejudiced. It was clarified that their request was only with respect to the non-

confidential version of the petitioners and not to the initiation notification or the preliminary findings.

(ii) CONFIDENTIALITY :

Anti-Dumping procedures require that at each and every stage of the investigation process, the participating parties with opposing interest are given an opportunity to comment upon and confront other interested parties. In fact, Rule 6 and 7 enshrine this fundamental principle of the conduct of proceedings. The petitioners have been permitted to keep several crucial aspects of the investigation confidential without either putting an adequate summary in place or an expressed ruling by the Honorable Designated Authority. In particular, the most glaring misuse of this shroud of confidentiality is the product under consideration itself despite the fact that the domestic industry had the advantage of knowing the mind of the Designated Authority by virtue of the preliminary findings in the LAB-I case against Japan, Korea, China and Bangladesh.

ASSESSMENT ON THE BASIS OF WEIGHT:

- i. The Authority has deemed it appropriate to recommend provisional anti-dumping duties on a weight basis in this particular case. The apparent reasons in support of this seem to be that Lead is a vital input and accurately reflects the cost of production of batteries and that the DGFT/DEPB practice is to provide incentive on weight basis.
- ii. The approach is erroneous as the DEPB basis of providing incentives on a weight basis cannot provide the basis for justifying imposition of Anti-Dumping Duty on a weight basis. The DEPB is an incentive scheme set up to promote exports from the Indian Industries and the same is granted on weight basis as the sole purpose is to reimburse the manufactures/exporters for the duty on lead which is chargeable on weight basis. Furthermore, from a Value Basis, the DEPB incentive has migrated to a Quantity basis. Thus, incentives are provided on a quantity basis. To extrapolate this in to calculations of normal value and landed price in for anti-dumping purposes is inappropriate.
- iii. It would be pertinent to note that the Indian Standard Specifications for lead acid battery refer to the voltage and ampere-hour of the batteries. Imposition of anti dumping duty on the basis of weight is not appropriate, as the battery is an accumulator of power. The amount of power contained in a battery is expressed by its ampere hour capacity. A 12Volt 100Ah battery has a higher power capacity than a 12Volts 65Ah battery. Since, it is a storehouse of power, the obvious question is how long (in hours) can the battery drive a particular load (current in amperes). This parameter is expressed as the rate of discharge over a specified period of time and is referred as the discharge period.

(c) M/S AIK KOON TYRE & BATTERY CO. PTE. LTD., SINGAPORE:

M/s Aik Koon Tyre & Battery Co. Pte. Ltd., Singapore, have given their replies to the Designated Authority and have stated that they have never exported Lead Acid Batteries to India before.

4. VIEWS OF IMPORTERS:

Some of the importers and users such as M/s Union Sales Pvt. Ltd., M/s Monto Motors Ltd., M/s Orchid Electronics Ltd., M/s Kinetic Motor Co. Ltd., M/s Caterpillar India Pvt. Ltd., M/s Toyota Kirloskar Motor, M/s Birla Yamaha Ltd., and M/s Ashok Leyland Ltd., have responded to the questionnaire sent by the Designated Authority. Some of the views given by them are as follows:

- i. India make batteries are not competitive in pricing as well as quality. It costs 30% to 40% more as compared to batteries available in Thailand – comparison made is on landed cost basis. We did not make any comparison of prices prevailing in Taiwan, Singapore and Hong Kong.
- ii. Indian battery makers need to improve the competitiveness both in terms of price and quality and to be more competitive in the International Market. Automobile market is subjected for severe competition globally and hence inputs need to be competitive also.
- iii. Domestic battery industry may get temporary relief or protection by way of imposing anti-dumping duty on imports, but in the long term will not help the industry. Such protection may not help to face global competition.
- iv. Domestic battery industry should accept the competition and improve competitiveness for the survival and as not many players are in this field, volume should not be an issue for economic scale of operations.

C. VIEWS OF INTERESTED PARTIES ON DISCLOSURE STATEMENT ISSUED BY THE DESIGNATED AUTHORITY:

5. VIEWS OF DOMESTIC INDUSTRY:

- a. Product under consideration is "Lead Acid Batteries" and therefore anti dumping duty is required to be imposed on any other form of lead acid batteries in addition to automotive and industrial types on which duties have been recommended in the preliminary findings. Such residual duty has to be at the highest level, keeping in view the principle of residual duty being applied by the Directorate. The word "automotive" and " industrial" while being

extensively used in commercial parlance, do not appear in the customs definition. Therefore, the meaning of these words need be clarified in the final findings in order to prevent any abuse or misuse. No type of lead acid batteries is required to be excluded from the scope of anti dumping duty, as the domestic industry is offering like article to what is being imported.

- b. The Designated Authority in the previous investigations on this product as also in the Preliminary Findings in the present investigations has recommended anti dumping duty on "automotive" and "industrial" batteries. However, even when anti dumping duty has been recommended on two types of lead acid batteries, no anti dumping duty has been recommended on the product under consideration itself. It has been the practice of the Designated Authority to recommend anti dumping duty on the residual form of the product under consideration in those cases where in the anti dumping duty is recommended on specific product types. It is, therefore, submitted that antidumping duty is required to be recommended on "residual" form of the product and such anti dumping duty is required to be kept at the highest level, keeping in view the principle of residual duty adopted by the Designated Authority.
- c. No anti dumping duty can be recommended in respect of trading companies. In any event, anti dumping duty on the combination of producers and trader have to be given on the basis of "producers and trader" rather than "producers or trader". The decisions of the Directorate in other cases is relevant in this regard.
- d. Petition satisfies standing under the Rules. Opposing interested parties have, at best, made some unsubstantiated and unsupported claims, whereas the petitioners have established standing even after adopting adverse propositions.
- e. The responses filed by CSB and Pilot have to be rejected given that the responses are incomplete and information filed inadequate. Under the present circumstances, the Designated Authority can not accept the cost of production claimed by the exporter and can not establish that the sales made were in ordinary course of trade. More disturbing is the reasons advanced by the exporter for not providing relevant information. Neither the argument of the exporter can be accepted as a justified claim nor the exporter has accorded due respect to the process being followed by the Designated Authority . In fact, the discourtesy extended to the Designated Authority alone is sufficient to declare the exporter non- cooperative.
- f. From the Disclosure Statement , it is very clear that M/s Pilot Batteries have not fully cooperated with the Designated Authority. The exporter has not furnished the data in the form and manner prescribed. The data provided, therefore, can not serve the purpose of determination of Normal Value. The exporter has not furnished transaction-wise details clearly showing models involved in each transactions. Moreover, the exporter has not sufficiently substantiated its cost of production. Such being the situation, it can be stated

that the exporters has not sufficient cooperated with the Designated Authority and, therefore, the Designated Authority is fully justified in rejecting the response of the exporter, particularly with regard to determination of Normal Value .

- g. Various parameters relating to injury to the Domestic Industry collectively and cumulatively establish that the Domestic Industry has suffered material injury and further that the imports are posing a threat of material injury to the Domestic Industry.
- h. The Preliminary Findings granted exemption to Panasonic and National Trading in case these companies exported batteries produced in China . Such exemption is illegal, as the Normal Value is now required to be ascertained with reference to the price prevailing in Singapore and / or Hong Kong and not with reference to the price prevailing in China. However, since these companies have not cooperated with the Designated Authority, the Designated Authority cannot determine Normal Value in respect of these companies. Thus, it has not been established by these companies that there was no dumping in respect of exports made by these companies. Such being the situation, no exemption can be granted to these trading companies in the present investigations.

6. VIEWS OF IMPORTERS:

M/S. KINETIC MOTOR COMPANY LIMITED:

They have not imported the Lead Acid Batteries from the countries under investigation, i.e. Taiwan, Singapore and Hong Kong. The decision in the present investigation may be taken considering justification to the Domestic Industry.

7. VIEWS OF EXPORTERS:

(i) M/S. CSB BATTERY CO. LTD., TAIWAN:

- a. The observation of the Hon'ble Designated Authority to declare CSB as a not fully cooperative party is incorrect. The exporter has claimed they have submitted all the information in the prescribed format from time to time to the Officers of the DGAD.
- b. The exporter has denied the contents of para 2.2 (a) of the Disclosure Statement by stating that the costs claimed by them is based on actuals and only selling expenses, R&D, Admin cost, Finance and Interest cost are based on the percentage allocation of the budgeted sales. The exporter has further submitted that the difference in the actual and budgeted cost are not apportioned to the respective heads but are adequately reflected in the annual financial statements

under heading "Operating Expenses". It is claimed by the exporter that so far as the raw material and manufacturing expenses are concerned the statement supplied to the visiting team reflects the actual cost. The raw material break up in terms of lead and lead alloys was indeed supplied to the visiting team. The exporter has further stated that since the entire investigation was carried out on the basis of weight of the battery and lead content, the information supplied by CSB would have served the purpose of carrying out the ' Ordinary Course of Trade' test.

- c. The Authority has not informed the criteria adopted for determining the standing of the Domestic Industry to file petition.
- d. The exporter has observed that M/s Exide has acquired 100 % of Chloride Batteries South Asia Pte, Ltd. in Singapore and it appears that this fact was suppressed from the Designated Authority. The said Company is admittedly a producer/exporter of the subject goods from Singapore, which is a country under investigation.
- e. The Designated Authority has not addressed the issues raised by CSB that the ratios of the lead content and the weight of the battery vary significantly from producer to producer due to technological differences.
- f. On the issue of weight , the Authority has completely failed to address our suggestion that the appropriate method would be to impose duties in terms of VAH (Volt X Ampere Hour) and not weight.
- g. No information has been provided till date regarding the details of the calculations and how the final figures have been arrived at in respect of Normal Value and the Export Price .
- h. It is incumbent upon the Hon'ble Designated Authority to carry out the injury analysis separately for industrial, MF automotive, NMF automotive and motorcycle batteries.
- i. It has also been indicated that the rate of growth of imports of subject goods is more than the rate of domestic production. This analysis is not only irrelevant but is also not envisaged as one of the 15 factors for injury analysis under para (iv) of Annexure II.
- j. From the balance sheet of Exide as well as Amara Raja, it is abundantly clear that both companies are doing exceedingly well on almost all parameters of financial performance except that there is a marginal fall in gross profit for Exide.
- k. It may also be observed that Exide has increased new investments substantially in the year 2000-2001. It would, therefore, be commercially unacceptable for the Domestic Industry to expect a high or even the same rate of return in the first year of its new investments. The Authority has not considered this aspect in the injury analysis.

- l. As regards the so-called increase in inventories, it has not been clarified whether the same have increased in terms of value, weight or piece basis.
- m. There is not even a whisper nor any indication in the Disclosure Statement about the market share of the imports or of the Domestic Industry which is an vital part of the injury analysis.
- n. It has been indicated in the Disclosure Statement that there is threat of material injury for two reasons. First, during the period of investigation imports from the subject countries have increased at a significant rate. Second, there is also likelihood of substantially increased imports from these sources in view of huge production in these countries. Designated Authority is not permitted to make a case simultaneously for material injury as well as threat of material injury in terms of the opening para of Annexure II.

(ii) M/S PILOT BATTERY CO. LTD., TAIWAN:

- a. It seems that the Authority had already decided that anti dumping duties must be imposed and does not wish to actually investigate the genuine grievances of the interested parties.
- b. Under Industrial batteries, Sealed Maintenance Free batteries has to be classified separately. It is definitely not a "Like Article". We would like the Authority to appoint an expert technical committee to give their opinion on this matter.
- c. The Petitioners and the Authority had directed all the investigations and notices regarding Taiwan only to CSB Battery Co. and Taiwan Yuasa Battery Co. The exports to India by Pilot were too negligible to warrant any action. They also gave unrestricted entry for the Authority to investigate all their books and were subjected to very intense scrutiny in our Taiwan Office. It is not fair that the authority takes advantage of their voluntary co-operation.
- d. The entire matter of 'dumping' arises from the low unit value of imports and not from any particular country. The petitioners are being shielded for no genuine reason.
- e. There are about 59 sizes of sealed maintenance free batteries produced by them , which are not in the manufacturing range of the petitioners. But unfortunately the Authorities have been led to believe otherwise by the petitioners. They request the Authorities and challenge the petitioners to publish actual production records/sales records of such sizes pertaining to the ' period of investigation'.
- f. The petitioners also claim that all sizes of SMF batteries are interchangeable. This is totally false. They are misleading the Authority. We request the Authority to kindly let us know which locally produced SMF battery can be

interchanged with a 2.3 ah – 12 v or a 1.2 ah- 12 V battery used in a ‘heart-lung’ machine.

(iii) M/S. TAIWAN YUASA BATTERY CO., TAIWAN:

If the Authority felt that the information provided was not as per the prescribed format the same could have been pointed out and they would have remedied the situation if an effective opportunity was provided. We also offer ourselves for verification by our team at any mutually convenient time. The information/evidence provided to this Hon’ble Designated Authority together with our reply to the petition, and rejoinder submissions be taken into consideration before recording Final Findings. Taiwan Yuasa Battery Co., have not dumped any of the subject goods to India. We are interested in fully cooperating with the Designated Authority in this regard and are still ready and willing to supply any information required under the Rules.

8. EXAMINATION BY THE AUTHORITY:

The submission made by the exporters, importers, domestic industry and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter. However, certain crucial issues raised by different interested parties have been examined as under:-

- i. On the issue of confidentiality raised by the interested parties it is clarified that the information which is in the nature of confidential information can be claimed confidential. In line with the practice being followed by the Authority such information which has been claimed as confidential has been, allowed and treated as confidential information. Further information which has been claimed confidential and disclosure of which can cause significant adverse effect on the person supplying the information has also been treated as confidential,.
- ii. With regard to the ambiguity of the non confidential version of the petition it is evident from the Initiation notification that the petitioner have filed petition against a number of countries, however, the Authority found that the volume of imports from some of these countries was de minimus. Accordingly investigations were not initiated against all those countries against which the petition was filed.
- iii. It is noted that statistics in the case of lead acid batteries are compiled in terms of number of units. But denoting the volume in terms of number of units may not be quite meaningful information because different models/types of the batteries have different cost and prices. It was further stated that there is a correlation between the lead content and the weight of the battery and its associated costs, prices and performance characteristics such as power capacity,

rate of discharge etc. Therefore, apart from denoting the product in terms of unit and value, it will be useful to have the information on the product in terms of lead content and weight of the battery as there is a correlation between power and lead content of the battery which also gets reflected in terms of value or price. An almost direct relationship between the weight of the battery, its power and the cost of production were other factors that led to the decision of taking the weight of the battery for determination of the reference price/value for the purpose of calculation of applicable anti dumping duty recommended by the Authority in the Preliminary Findings.

- iv. It has been argued that the standard practice in the battery industry is to classify lead acid battery in terms of number of types/models on the basis of specifications such as dimension, number of plates, voltage, ampere hour (AH), length of life etc.. The specifications vary depending on AH rating, voltage, discharge characteristics, and discharge period. As the specification or capacity vary, so does the weight of the battery including its lead contents. It has also been argued that this standard practice is followed by the petitioners also in the commercial transactions and they have misguided the Designated Authority to assess the anti dumping duty on weight basis. In making comparison between two batteries, the AH capacity, voltage, discharge period, discharge characteristics, charging characteristics, life of battery, climatic conditions and nature of use have to be taken into consideration. Further, it has been stated that the prices of batteries also vary according to specifications and also cost per Kg. of automotive battery weight falls as the size (capacity) of a battery increases.
- v. As stated above, there are a large number of parameters effecting the cost, price and performance of batteries of different specifications. The interested parties have brought in about ten such parameters. Also there are a large number of types/models of automotive and industrial batteries having different specifications that are produced and sold. It is not possible to recommend duties separately for each of these types/models of the battery being produced or likely to be produced in future. However in the course of investigation and verification of the facilities of the manufacturers, it was confirmed that lead weight and battery weight are two important parameters for any battery which can be used as common denominators for the purpose of comparison and calculation. Other criteria such as discharge characteristics, life of the battery etc., are not easily quantifiable and have the problems of comparison. On the basis of the evidence available before the Authority, the Authority holds that assessment of different types of batteries in terms of weight for the purpose of imposition of duty is most appropriate and has decided to continue with its earlier determination on the basis of the weight.

- vi. With regard to the claim of M/s Taiwan Yuasa Battery Co., regarding submission of complete information, the Authority notes that the exporter has not submitted complete information as solicited in the exporter's questionnaire. The exporter not furnished information with regard transaction wise sale in the domestic market as also export to India required under Appendix 1 & 2 which is a pre condition to assess the Normal Value and Export Price and consequently the Dumping Margin. No information in Appendix 7 is provided. The cost of production provided in Appendix 8 was not in the prescribed format. Accordingly the Authority holds that the information filed by the exporter is grossly insufficient and inadequate to determine individual dumping margin and is constrained to treat the exporter as non cooperative.
- vii. With regard to the claim of M/s CSB Battery Co. Taiwan on submission of the cost data on actual basis to the Authority and its verification by the visiting team the Authority holds that the statement is not based on facts. From the responses received so far from the exporter it is not clear whether the exporter has furnished cost information for the period of investigation or for the Annual Financial period which was different from the period of investigation. The exporter in its response has claimed that the selling exps, R&D, Admin cost, Finance and Interest are based on percentage allocation of the budgeted sales meaning thereby that the cost of these elements is not even based on actual sales. If the exporter has not absorbed and reflected the variance between the actual cost and the cost based on budgeted sales to different models how it can be claimed that the cost of different models is based on actuals. The exporter did not provide element wise break-up of different materials used in the manufacture of different models of batteries. The Material cost and other elements of costs has been reflected only as a percentage of the sales realisation . It was never shown to the investigation team how the costs so indicated in the cost sheet has been arrived at from the books of account / profit & loss account of the company. The exporter also could not provide satisfactory reply to the verification team as to whether the cost claimed in the Appendix 8,9 and 10 is based on the records for the period of investigation or based on the data for a different period. Mere statement at the end of the verification that the cost so indicated is based on actuals cannot conclude that the cost is so based as it is obligatory on the part of the exporter to get the same verified to the verification team from the books of accounts / profit & loss for the period of investigation. This was never done by the exporter during the course of verification. In response to the Disclosure Statement the exporter has still not clarified that the cost so claimed by him is for the period of investigation or not. In view of the reasons given above it is concluded that the exporter has not co-operated with the Authority during the course of verification at their premises and hence in the absence of basic cost data for the period of investigation the Authority

could not assess whether the sales made by the exporter in the domestic market was in ordinary course or not.

- viii. With regard to the observation of M/s. CSB regarding acquisition of Chloride Batteries South Asia Pte. Ltd, Singapore by M/s Exide the Authority holds that this issue has been raised by the exporter first time. Clarifications in this regard from M/s. Exide Industries Ltd. and M/s. Chloride Batteries show that although M/s. Chloride is a 100% subsidiary of M/s. Exide but the same has no manufacturing facility and have not exported any lead acid storage batteries to India since April, 2000 till today except two pieces of sample batteries. Therefore the Authority holds that this affiliation does not debar M/s Exide from filing this petition

D. Product under consideration AND LIKE ARTICLES:

9. VIEWS OF DOMESTIC INDUSTRY:

- i. The product under consideration in the present investigation is "Lead Acid Batteries" irrespective of its capacity, size, type etc. Further, the issue of product under consideration has already been discussed at length by the Designated Authority in the previous investigations. Such being the case, there can not be any argument on this issue.
- ii. Goods produced by the domestic industry are like article to the goods imported from the subject countries.
- iii. Exclusion of certain types demanded by Pilot is uncalled for as:
 - a. some of these batteries have not been exported to India by the company in the investigation period;
 - b. the domestic industry makes either identical or closely resembling models to the models exported by Pilot in the investigation period;

10. VIEWS OF EXPORTERS:

M/S. CSB BATTERY CO. LTD., TAIWAN AND M/S. TAIWAN YUASA BATTERY CO., TAIWAN

- a. The domestic industry has been wrongly allowed to define the product under consideration in the broadest possible manner, without identifying the sub-grouping i.e., Industrial and Automobile (Maintenance Free and Non-maintenance Free) and Motorcycle
- b. For the purpose of this anti dumping investigation, product under consideration and like article, each type of battery should be taken separately because "like product" means "identical product", "alike in all respects" which can be

substituted in commercial transaction and in practical use. It has further been argued that for all practical purposes, each type of lead acid battery is a separate "product". The Authority has erred in accepting the argument of the petitioners that the battery of all types should be amalgamated into one category of lead acid battery by calculating the lead content of the batteries and weight. By accepting all types of batteries which are not commercially substitutable there has been a serious error on law and on fact on the part of the Designated Authority in determining the "product" under investigation and further that each type of battery within the broader category of automotive and industrial battery should have been taken separately considering that each can not be commercially and technically substituted.

- c. The case should have been made out separately for the replacement market as the replacement and the OE markets are two separate and distinct markets. Evidence was provided to show that the investigations have been done by other authorities in the world on the same basis.
- d. The Hon'ble Designated Authority has consistently followed this practice that actual exports are required prior to imposing anti-dumping duties. A consistent approach in the law requires that a similar findings on batteries not manufactured in India should also be made in the present case.
- e. Accordingly, the scope of the present investigation be necessarily limited to the types of batteries manufactured in India and exported to India.

11. EXAMINATION BY THE AUTHORITY:

- a. The initiation notification issued on 02-11-2001 states as under:-

"the product under consideration is 'lead acid batteries'.Lead Acid Batteries fall within Chapter 85 of the Custom Tariff Act under the sub-heading 8507. The batteries are described as electric accumulators under the Customs Tariff Act and are classified under customs sub heading Nos. 8507.10 and 8507.20 of the Customs Tariff Act. The Custom classification is indicative only and not binding on the scope of investigation".

- b. In the Initiation Notification, it was also mentioned that the statistics in case of lead acid batteries are compiled in terms of number of units and value. But denoting the volume in terms of number of units or value alone may not provide quite meaningful information because different models/types of the batteries have different power capacity, rate of discharge, value, etc. It was further stated that there is a correlation between the lead content and the weight of the battery and its associated costs, prices and performance characteristics such as power capacity, rate of discharge etc. Therefore apart from denoting the product in terms of number of units and value, it will be useful to have the

information on the product in terms of lead content, weight and power capacity also. The information on the characteristics mentioned above will be required for the purpose of calculation and comparison of various parameters.

- c. In the Preliminary Findings, the Authority has divided the batteries into two categories, i.e. automotive and industrial. The automotive batteries were further sub-divided into three categories, viz. maintenance free, non maintenance free and motorcycle. However, as stated in the Para above that within automotive and industrial batteries, there are large number of models/types but these types are comparable in terms of physical and electrical characteristics, manufacturing process, technology, functions and uses, specifications, distribution and marketing arrangements and tariff classifications and hence fall within the definition of 'Like Article'. Even within the two broad categories of automotive and industrial batteries, in the course of verification at the premises of the manufacturers, it was found that in some cases the facilities for manufacture of industrial batteries were being used for production of automotive batteries in commercial volumes. The Authority, therefore, has decided to continue with the description of product under consideration as Lead Acid Battery as determined in the Preliminary Findings and also that the Lead Acid Batteries produced by petitioner companies are like articles to the Lead Acid Batteries being imported from subject countries within the meaning of the Rules.
- d. The petitioners had claimed that the goods produced by them are like article to the goods originating in or exported from subject countries. There is no argument to the contrary stating that the goods being manufactured in subject countries and imported into India from the subject countries are not substituting the lead acid batteries being produced by the domestic industry, except to the argument that certain types of batteries being produced by the exporters are not being produced by the domestic industry. On the basis of evidence available, the Authority therefore determines that the lead acid batteries produced by the petitioners are 'like articles' to lead acid batteries being imported from the subject countries within the meaning of the Rules.
- e. With regard to claim of exclusion made by certain interested parties, the Authority notes that the claim can not be accepted as in case of certain types of lead acid batteries as claimed to be produced by the exporters, it was found that even though batteries meeting the same specification with regard to voltage and ampere hours is being not produced by the domestic industry, yet, the domestic industry has produced another types of batteries, which are comparable and are substitutable, technically and commercially.
- f. It is also noted by the Authority that in respect of certain types, the price at which the batteries were imported in the investigation period were above the bench mark fixed by the Authority. At the same time, weighted average

dumping margin in respect of the exporter is found more than de-minimus. Thus, the Authority holds that it would not be appropriate to exclude any of these types from the purview of anti dumping duty.

In view of the foregoing the Authority holds that product under consideration in the present investigations and proposed anti dumping duty is all types of "lead acid batteries", classifiable under Customs Tariff 8507. The various types of lead acid batteries are classified into (a) automotive batteries; and (b) industrial batteries . While both the types of batteries have been further divided into maintenance free and non maintenance free, automotive batteries used in motorcycle have also been separately classified. It is clarified that " automotive batteries" are those types of lead acid batteries which are used for starting piston engine, as defined under customs sub heading 8507.10.

E. DOMESTIC INDUSTRY:

- i. As per Rule 2(b) of the Anti Dumping Rules, "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 shall be deemed not to form part of domestic industry."
- ii. The definition of Domestic Industry given above is further clarified by Rule 5 of Rules which reads as follows:-

"----- 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 percent 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.

12. VIEWS OF EXPORTERS:

M/S. CSB BATTERY CO. LTD., TAIWAN AND M/S. TAIWAN YUASA BATTERY CO., TAIWAN

- a. The petitioners have tried to establish their standing on the basis of production volume as well as value. It has been stated that not only production volume but also the production value is an equally important criterion to decide standing of

the Petitioners. Further, the Designated Authority has accepted value as a criterion for the purpose of determination of standing. It is submitted that methodology adopted to determine standing of the petitioners is not supported by the legal provisions or the jurisprudence on the subject. Subsequent submissions with regard to standing will not cure the defect, which have occurred prior to or at the time of initiation. In other words, standing of the domestic industry to initiate a case has to be judged prior to initiation.

- b. The representative of the small scale battery manufacturers made a categorical statement that they represent 48% of the total production of lead acid batteries in India. As per the petition submitted by the domestic industry, Exide alone represents over 50% of the domestic production, which would imply that the other companies outside the small scale sector account for less than 2% of the total production in the country. Therefore, the figures supplied by the domestic industry with regard to their share in the total production in India are clearly incorrect.
- c. On the determination of standing, since the Designated Authority has proceeded on the basis of the statements made by the domestic industry in their application, it is abundantly clear that the Hon'ble Designated Authority has been misled by the domestic industry in its determination of the standing of the domestic industry to file the petition. Apparently, the Designated Authority did not have the information about the production by the small scale sector (application is silent on this aspect) nor did it have the accurate information about the production by the petitioners. It is clear that the determination of the standing was based on incomplete and inaccurate information, and therefore, cannot be sustained. The Authority's own position before various courts has been that the standing has to be determined prior to initiation of the investigation. This position has also been settled in several WTO panel decisions. Since this important obligation under the Anti-dumping Rules has been violated, the case needs to be terminated on this ground alone.
- d. The standing of the domestic industry has been attempted to be established on the basis of conjectures and surmises and on presumptions and assumptions. It is based on some calculation of the lead consumption in the country which only the domestic industry is aware of. The legal requirement is that hard facts and figures are required to be submitted which has not been done in the instant case.

13. EXAMINATION BY THE AUTHORITY:

- a. It was stated in the Initiation Notification that the petition has been filed by M/s. Exide Industries Limited, M/s. Amara Raja Batteries Limited and M/s Amco Batteries Limited on behalf of the domestic industry. However as per the

records available before the Designated Authority M/s Amco Batteries Limited have imported significant quantities of lead acid batteries from the countries against whom petition for initiation of anti dumping investigation has been filed. The Authority, therefore, had decided to exclude M/s Amco Batteries Limited from the definition of the Domestic Industry as per the Anti Dumping Rules.

- b. It was also argued that M/s Exide Industries Ltd. have made import of certain models of lead acid batteries from China and, therefore, should be excluded from the purview of domestic industry. In this context that Authority notes that M/s. Exide has imported Lead Acid Batteries from China after the period of investigation. It is, further noted that China is not the subject country under investigation in the present case. In view of the above, the imports from China by M/s. Exide after the period of investigation and date of initiation of this case does not debar the company from forming part of the Domestic Industry.
- c. It was recorded in the Initiation Notification that "it has been stated by the domestic industry that the statistics in the case of lead acid batteries are compiled in terms of number of units. But denoting the volume in terms of number of units may be misleading because different models have different power capacity and value. Apart from denoting the product in terms of units and value, it will be useful to have the information on the product in terms of lead content as there is a direct correlation between power and lead content of the battery which also gets reflected in terms of value or price. The direct correlation between the lead content in the battery and its associated costs and prices is also quite significant. It will, therefore, be meaningful to assess the volume, value as well as lead content of the product for the purpose of calculation and comparison of various parameters".
- d. It has been stated that the arguments given by the petitioners for the purpose of determination of their standing to file the petition on behalf of the domestic industry, are erroneous and full of presumptions. It has been stated that there is no relationship between lead production and consumption in India and the actual production of lead acid batteries in India. Also the petitioners may use or may not use domestic lead for battery production, as lead produced in India may not be technically suitable for battery production. On this basis, it is argued that the petitioner relied on assumption, presumption and not reliable and verifiable data and figures to qualify themselves as domestic industry in the anti dumping proceedings. Though arguments have been made disputing this claim of standing of the petitioners on domestic industry, none of the interested parties has come up with any evidence with justifiable data proving that the petitioner companies do not have the standing to file the petition. Here, it may be mentioned that the Authority has also used the information provided by sources other than the petitioner companies for arriving at a decision regarding

the standing of the petitioners to file the petition on behalf of the domestic industry. The information with regard to consumption of lead is not based on petitioners own data, but is provided by the petitioners from independent sources. Moreover, the Authority has correlated this information with the other published information, which further establishes that the claim of the petitioners on this account, at best, can be described as conservative estimate. The Authority, therefore, determines that the petitioner companies account for a major proportion of the domestic industry and have the requisite standing in terms of the provisions of the Anti Dumping Rules.

F. NORMAL VALUE,EXPORT PRICE AND DUMPING MARGIN:

14. Under Section 9A(1)(c), normal value in relation to an article means:-

- i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. When there are no sales of the like article in the ordinary course of trade in 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 or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. The cost of production of the same 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.

The Authority provided opportunity to the exporters from subject countries to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassies/High Commissions/Representative of subject countries in India also. The Authority sent

questionnaires to all the known exporters for the purpose of determination of export price and normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. Responses were received from the following exporters from Taiwan:-

- a. M/s CSB Battery Co. Ltd., Taiwan,
- b. M/s Pilot Battery Co. Ltd., Taiwan,
- c. M/s Taiwan Yuasa Battery Co. Ltd. Taiwan.

15. TAIWAN:

(a) M/S CSB BATTERY CO. LTD., TAIWAN:

NORMAL VALUE:

- i. In response to the questionnaire M/s. CSB Battery Co. Ltd., Taiwan has submitted invoice-wise details of sales of different types of lead acid batteries in the domestic market. The exporter has also furnished the cost of production of different types of batteries as per Appendix –8,9 and 10 of the exporter questionnaire. Further, during the course of verification the exporters was asked to explain the cost of production indicated in Appendix-8,9 and 10 and reconcile the same with the books of accounts/ profit and loss account for the period of investigation. The exporter was also requested to give the break up of the material and utility cost. However, it was explained by the exporter that the cost of production so indicated in these appendices is based on standards. The exporter could not substantiate the costs indicated under different heads as required under these Appendices. The exporter also explained that since the elements of raw materials reflected in the total cost so determined by them is highly sensitive it will not be possible for them to disclose the same to the investigating team. On being pointed out during the course of verification that the cost of production claimed was not actual cost of production and was not for the investigation period, the exporter has not denied the same.
- ii. Since the exporter could not provide reconciliation of the cost of production with the books of accounts/ profit & loss account for the period of investigation it is not possible to assess whether the domestic sale of the exporter are in ordinary course of trade or not. Authority holds that consideration of actual cost of production and for the investigation period is first and foremost requirement in examining whether the domestic sales are in the ordinary course of trade. Moreover, the argument of the exporter with regard to sensitivity of information can not be appreciated by the Authority. Accordingly, Authority holds that the exporter has not fully cooperated with the Authority and has not provided all relevant information.

- iii. There is no other exporter from Taiwan who has cooperated with the Authority. Under these circumstances the only option available with the Designated Authority is to assess the normal value in case of this exporter based on best available information in accordance with Rule 6(8) supra. The Authority has assessed the Normal Value as US \$ **** per kg. of lead acid battery.

EXPORT PRICE:

In response to the questionnaire, the exporter has furnished invoice-wise/ model-wise details of exports made to India during the period of investigation in Appendix-2. The exporter has also furnished sample copies of invoices in support of the same. The exporter has exported maintenance free lead acid batteries to India during the period of investigation. Adjustment in Appendix-4 have been claimed with regard to inland freight, storage handling, insurance, shipping charges etc., have been considered and allowed to arrive at the ex-factory export price to India. The Authority has thus determined the ex factory export price as US \$ **** /kg of lead acid battery for the Final Findings.

Considering the normal value and export price as detailed above, dumping margin has been determined.

(b) M/S PILOT BATTERY CO. LTD., TAIWAN

NORMAL VALUE:

- i. M/s Pilot Battery Co. Ltd., is manufacturing and exporting only the industrial lead acid batteries. During the course of verification it was observed the company has not furnished complete details (Invoice/ transaction-wise) of domestic sales both for the batteries similar to batteries exported to India and for those batteries which were not exported to India. In the absence of same it was not possible to assess the ex-factory domestic sales realisation of different batteries. The company has furnished monthly total of domestic sales, export to other countries and export to India of different types of batteries as per Appendix-3. The exporter has also submitted the photocopy of their sale ledger for the period of investigation which reflects transaction-wise/invoice-wise details of the sales but does not segregate the same in battery type wise for domestic sales and exports etc separately. Further, during the course of investigation the exporters was asked to explain the cost of production indicated in Appendix-8,9 and 10 and reconcile the same with the books of accounts/ profit and loss account for the period of investigation. It was explained by the exporter that the cost of production so indicated in these appendices is based on standards and past experience of the management. The

exporter could not reconcile the cost indicated under different heads as required under these Appendices from the books of accounts/ profit & loss account. The exporter also explained that since the elements of raw materials reflected in the total cost so determined by them is highly sensitive it will not be possible for them to disclose the same to the investigating team. However, the exporter vide their letter dated 6th November, 2002 submitted the total cost of different models/sizes of batteries manufactured by them during the period of investigation without giving duly reconciled the break up of the same with books of accounts .

- ii. In view of the non submission of transaction wise details duly segregated into different models / types for exports to other countries and in the domestic market and reconciliation of the cost of production with the books of accounts/ profit & loss account for the period of investigation it is not possible to assess the domestic sale of the exporter and whether those sales are in ordinary course of trade or not. Accordingly, Authority holds that the exporter has not fully cooperated with the Authority and has not provided all relevant information. There is no other exporter from Taiwan who has cooperated with the Authority. Under these circumstances the only option available with the Designated Authority is to assess the normal value in case of this exporter based on best available information in accordance with Rule 6(8) supra. The Authority has assessed the Normal Value as US \$ **** per kg. of lead acid battery.

EXPORT PRICE:

In response to the questionnaire, the exporter has furnished invoice-wise/ model-wise details of exports made to India during the period of investigation in Appendix-2. The exporter has also furnished sample copies of invoices in support of the same. The exporter has exported maintenance free lead acid batteries to India during the period of investigation. Adjustments as claimed by the exporter in Appendix-4 with regard to inland freight, storage handling, insurance, shipping charges etc. have been considered to arrive the ex-factory export price to India. The Authority has thus determined the ex factory export price as US \$ **** /kg of lead acid battery for the Final Findings.

(c) M/S TAIWAN YUASA BATTERY CO. LTD. TAIWAN:

- i. In their submissions made to the Authority, the exporter has given details regarding total quantity and sales amount in last three years, cost of batteries and copy of invoices relating to exports to India in 2001. The information required to be given as per the Exporter's Questionnaire, in the prescribed format, was not been given. Also, non confidential summary of the submissions made to be placed on the Public File, has not been given.

- ii. Authority holds that the exporter has not fully cooperated with the Authority and has not provided all relevant information. There is no other exporter from Taiwan who has cooperated with the Authority.
- iii. With regard to the argument that the Authority has not disclosed dumping margin in respect of the exporter and the same was mandatory even if the exporter has not fully cooperated with the Authority, the Authority notes that the argument lacks merit. The disclosure statement issued by the Authority contained disclosure on the methodology adopted by the Authority for assessment of dumping margin. This disclosure has been made to all interested parties. In so far as the issue of disclosure of calculations of dumping margin is concerned, the Authority notes that the exporter has not provided sufficient information both for normal value and export price determination. Thus, the exporter has prevented the Authority in assessing its normal value and export price based on data relating to the exporter. Such being the case, there was no individual calculation of dumping margin in respect of the exporter which could be disclosed to the Authority.
- iv. Under these circumstances the only option available with the Designated Authority is to assess the normal value and export price in case of this exporter based on best available information in accordance with Rule 6(8) supra and at the same level as has been done in respect of other exporters from Taiwan. The Authority has assessed the Normal Value and export price as US \$ **** per kg. of lead acid battery.

16. OTHER EXPORTERS FROM TAIWAN:

No other exporter from Taiwan has responded to the investigation. The Authority has assessed the normal value for other exporter based on best available information under Rule 6(8). The export price as determined by adopting the export statistics compiled by DGCI&S for the period of investigation has been adopted. Accordingly the Authority has determined the ex-factory export price of the subject goods as US \$*****per kg.

17. SINGAPORE:

NORMAL VALUE:

Exporters Questionnaire was sent to the known exporters from Singapore. None of the exporters from Singapore furnished any information in response to the initiation notice. In view of non submission of information by producers/ exporters from Singapore , the Authority has treated the exporters from Singapore as non cooperative. Under these circumstances the only option available with the Designated Authority is to assess the normal value in case of all exports from Singapore based on best

available information in accordance with Rule 6(8) supra. The Authority has assessed the Normal Value as US \$ *** .

EXPORT PRICE:

As there is no response from any exporter from Singapore, the Designated Authority adopted the Export Price based on the data compiled by DGCI&S, Kolcutta in respect of all exporters from Singapore. Accordingly the Authority has determined the ex-factory export price of the subject goods as US \$*****per kg.

18. HONG KONG:

NORMAL VALUE:

Exporters Questionnaire was sent to the known exporters from Hong Kong. None of the exporters from Hong Kong furnished any information in response to the initiation notice. In view of non submission of information by producers/ exporters from Hong Kong, the Authority has treated the exporters from Hong Kong as non cooperative. Under these circumstances the only option available with the Designated Authority is to assess the normal value in case of all exporters from Hong Kong based on best available information in accordance with Rule 6(8) supra. The Authority has assessed the Normal Value as US \$ **** per kg. of lead acid battery.

EXPORT PRICE:

As there is no response from any exporter from Hong Kong, the Designated Authority has adopted the Export Price based on the data compiled by DGCI&S, Kolcutta in respect of all exporters from Hong Kong. Accordingly the Authority has determined the ex-factory export price of the subject goods as US \$*****per kg.

G. DUMPING–COMPARISON OF NORMAL VALUE AND EXPORT PRICE:

19. The rules relating to comparison provides as follows:

- a. "While arriving at the margin of dumping, the DA 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 ex-works level, and in respect of sales made at as nearly possible the same time.
- b. Due allowance shall be made in each case, on merits, for differences which affect price comparability, including differences in conditions and terms of

sales, taxation, levels of trade, quantities, physical characteristics and any other differences which are demonstrated to affect price comparability"

- c. As there is a wide variety of models and types of batteries, these need to be brought into a common denominator for the purpose of calculation and comparison. As mentioned in the Preliminary Findings and also as stated above, there is a direct co-relation between power, lead content and weight of the battery, which also gets reflected in terms of value or price. Further, the direct co-relation between the lead content and weight of the battery and its associated costs and prices is also quite significant. The Authority has, therefore, denoted the normal value as well as the export price in terms of weight of the batteries for the purpose of their comparison and arriving at a dumping margin. The dumping margin for all the exporters and manufacturers of each country separately for industrial batteries, automotive maintenance free (MF) sealed batteries, automotive other than maintenance free (NMF) dry batteries and motorcycle batteries have been worked out separately.
- d. The Authority has followed the consistent policy of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I of the Anti Dumping Rules. Based on the Normal values and Export prices as indicated above the Authority assessed the Dumping Margins in case of all exporters from the subject countries as given in the table below:-

Type of battery	Producers/Exporters	Dumping Margin(%)
Singapore		
1. Industrial	All exporters	250%
2. Automotive (NMF)	All exporters	70%
3. Automotive (MF)	All exporters	70%
4. Motorcycle	All exporters	80%
Hong Kong		
1. Industrial	All exporters	271%
2. Automotive (NMF)	All exporters	182%
3. Automotive (MF)	All exporters	182%
4. Motorcycle	All exporters	19%
Taiwan		
1. Industrial	a. CSB Battery Co, Ltd., b. Pilot Battery c. All other exporters	17.71% 70.19% 44.87%
2. Automotive (NMF)	All exporters	23.81%
3. Automotive (MF)	All exporters	23.81%
4. Motorcycle	All exporters	23.81%

The above Dumping Margins are above the de-minimus limits.

Here, it is clarified that " MF" means "Maintenance Free" i.e., filled with electrolyte and ready to use. " NMF" stands for "non- maintenance free".

H. INJURY AND CAUSAL LINK:

The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that:

- i. A determination of injury shall involve 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 like article and (b) the consequent impact of these imports on domestic producers of such products.
- ii. While examination 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 effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 19 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.

I. CUMULATIVE ASSESSMENT OF INJURY:

Annexure II (iii) under Rule 11 supra further provides that "in case 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 the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual country is less than three percent ,the imports cumulatively accounts for more than seven percent of the imports of like article, and cumulative assessment of the imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles".

20. VIEWS OF DOMESTIC INDUSTRY:

Following parameters establish that material injury has been caused to the domestic industry from dumped imports from the subject countries.

- a. The imports have increased in absolute terms.
- b. The value of import of the subject goods from subject countries has increased.
- c. The imports have increased significantly in relation to production and consumption in India.
- d. Production and hence capacity utilization of the domestic industry has increased in terms of number of batteries, value of batteries produced and lead consumption.
- e. Share of import from subject countries in the import of subject goods in India increased from 24% in 1998-99 to 39 % during the period of investigation (in terms of value of imports). In terms of number of batteries also, the share has increased from 21% (98-99) to 48% (investigation period).
- f. Sales volume has increased.
- g. Productivity of the domestic industry has remained more or less stagnant.
- h. Return on investment declined for the domestic industry.
- i. Profitability of the domestic industry has significantly deteriorated.
- j. Dumped imports are causing price undercutting, price suppression, price depression and price underselling in the Indian market resulting in erosion of profitability and reduction in the return of investment for the domestic industry.
- k. Average debtors with the domestic industry have increased.
- l. Average inventories with the domestic industry has increased.
- m. The domestic industry has no option but to increase wages as per prevailing ruled in the country.
- n. Cash profit of the domestic industry declined significantly in the period of investigation.
- o. Significant decline in profitability of the domestic industry directly resulted into significant decline in cash flow from operations of the domestic industry.
- p. Productivity, even though has increased in terms of number of batteries produced per employee, the same has declined in terms of value of batteries (as also in terms of lead) produced per employee.
- q. Employment has increased due to increase in capacity by one of the petitioner companies.
- r. Even though the domestic industry has shown positive growth, the same is less than market opportunity (growth in the demand).
- s. Apart from the injury being suffered by the domestic industry, there is a threat of further injury being caused to them on account of dumped imports.
- t. In all the subject countries, capacities created are much higher than domestic demand. Further, due to collapse of telecom sector in international market, India has become a lucrative market for the exporter from subject countries and exporters are forced to export material even at significant dumped prices.

- u. During the period of investigation imports from subject countries have increased at a significant rate which is causing further threat of material injury to the domestic industry;
- v. Manufacturers and exporters from the subject countries are holding substantial surplus capacities and stocks.
- w. Serious concern of domestic industry is on the price at which the product is being imported. The price at which the material is being exported is a dumped price. Further, the material is entering the market at prices much below the selling prices of the domestic industry.

It would thus be seen that the domestic industry has suffered material injury. The imports are further causing threat of material injury.

21. VIEWS OF EXPORTERS:

M/S CSB BATTERY CO. LTD., TAIWAN AND TAIWAN YUASA BATTERY CO., TAIWAN:

- a. The Anti Dumping Rules require that an independent assessment on injury for each segregable product category – i.e., Automotive and Industrial Batteries must be undertaken, particularly in view of the categorization made by the Designated Authority in the LAB-I case.
- b. Preliminary findings do not indicate any information or analysis on the market share of the domestic industry. This is an essential requirement of the injury analysis.
- c. Entire injury analysis has been done on the basis of comparing the figures of the period of investigation with those of 1998-99. No reason has been advanced as to why the same have not been compared to the immediately preceding period particularly when according to the petition submitted by the domestic industry, dumping started only in the month of October 2000. It is obvious that the comparisons have been done in this particular manner erroneously to attain dramatic effects.
- d. It has been stated that ‘While the production of the domestic industry during the period of investigation increased by 35% as compared with that in 1998-99, the sales have increased only by 14% over the same period. This has resulted in lower per unit sales realization and reduction in the profitability of domestic industry". It can be seen that the conclusion so arrived in the second part of the extracted above has no relevance with the facts/basis given in the first part of the same para.
- e. There is absolutely no analysis or reasoning to support the conclusions and reliance has been placed by the Hon'ble Designated Authority on bald statements made by the domestic industry with regard to these issues

undercutting, and price depression. The absence of proper explanation is entirely contrary to the Anti-dumping Rules and India's obligations under the WTO Agreement.

- f. On the issue of inventories, it has not been made clear as to what is the unit to assess whether the inventories have gone up or not. This is without prejudice to the contention that all the factors of injury analysis ought to have been indexed to provide an opportunity to comment on the same.
- g. The case of the domestic industry with regard to the threat of injury is based entirely on conjectures and surmises. It has been presumed that there is threat of injury to the domestic industry. None of the parameters to claim threat of injury has been analyzed, let alone substantiated or evidenced.
- h. The threat of injury has been assessed on the ground that the exporters have failed to rebut the same with evidence. It will be contrary to all principles of judicial process that while the petitioners have not discharged even their prima facie burden of proof to prove threat of injury, the Designated Authority has shifted the onus on to the exporters to provide the facts failing which it will be presumed that the threat of injury exists. This is obviously an incorrect proposition of law.
- i. M/s Exide Industries, one of the petitioners has imported huge quantities of batteries from China. It was further submitted that the Designated Authority is required to go into the status of the domestic industry irrespective of the timing of the imports. It may be recalled that China was one of the alleged dumped sources in the LAB-I case.

22. EXAMINATION BY THE AUTHORITY:

- a. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limit prescribed above. Cumulative assessment of the effect of the imports from Taiwan, Hong Kong and Singapore is appropriate since the export prices from these countries were directly competing with the prices offered by the Domestic Industry in the Indian market and displacing domestic producers here.
- b. For the examination of the impact of the imports on the domestic industry in India, the Authority considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the Rules supra.`
- c. A number of interested parties opposing the anti dumping investigation have given their views regarding injury being suffered by domestic industry and the casual link between dumping and injury. It has been argued that both the petitioner companies i.e., M/s Exide Industries Ltd., and M/s Amara Raja

Batteries Ltd., are enjoying growth and prosperity and there is no evidence of loss of contracts. It has been argued that sales volume of the domestic industry has increased and the profitability is being maintained. Also it has been argued that the quality of the domestic industry is poor as compared with the batteries being imported from the subject countries. It has also been argued that M/s Exide Industries Ltd., is selling batteries in the OEM market at very low prices and in the replacement market these are being sold at almost three times the price of OEM market. Also M/s Exide Industries Ltd. is selling under DGS&D Rate Contract at prices significantly below the import price. It has also been argued that the domestic industry is operating at far above its installed capacity and is unable to meet the requirement of the Indian market, especially in some of the ranges which are not being produced by them at all. The other arguments are that imported batteries are preferred, especially in the UPS segment due to their better performance, range, service and reliability as compared to the Indian batteries and also the importers are paying very high rates of customs duties. It has also been stated that due to decline in the automotive segment especially in the tractor and commercial vehicle segment, there has been a fall in demand causing injury to the domestic industry. The contraction in demand due to industrial recession in the economy and the change in the pattern of consumption are the causes of injury to the domestic industry in addition to a number of company specific parameters.

- d. The Authority has taken into account all indices regarding injury while doing the final determination. This would involve all relevant facts viz., volume of dumped imports, their effect on price in the domestic market and its subsequent effect on domestic producers, production, capacity utilisation, profitability, net sales realisation etc. While determining the non-injurious price for the like article for the domestic industry, the Authority considered the optimum cost of production for the domestic industry which would take into account the normated best consumption norms and would also take into account the actual price of the raw materials during the period of investigation which go into the production of the product under consideration.
- e. With regard to separate assessment of injury, the Authority holds that separate assessment has been done for different types of batteries to the extent information is separately maintained by the domestic industry. The Authority also notes that Annexure II(vi) provides the effect of the dumped imports should be assessed in relation to the domestic production of the like article when available data permits separate identification of that production on the basis of such criteria as the production process, producers sales and profits. If such separate identification is not possible, the effects of dumped imports need be assessed with reference to the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

The Authority also confirms that the calculations of non injurious price and injury margin have been done by determining separate non injurious price for various categories, such as automotive maintenance free, automotive non maintenance free, motorcycle, industrial maintenance free, industrial non maintenance free batteries.

23. MATERIAL INJURY:

The following parameters reveal that the domestic industry has suffered material injury from the dumped imports and also that there is threat of further injury being caused by dumped imports:

(i) IMPORTS AND THEIR MARKET SHARE: -

Based on the information provided by the DGCI&S and Secondary Sources, the imports from subject countries in value as well as number of batteries have increased significantly as compared to previous years. The same is reflected in the following table:

	1998-99		1999-00		2000-01		Oct-00-Sept 01	
	Nos.	Value	Nos.	Value	Nos.	Value	Nos.	Value
Imports								
Taiwan	164607	654.24	112942	412.58	606559	1893.26	623420	2353.47
Hong Kong	32553	22.33	53478	38.66	193100	247.98	663213	337.48
Singapore	237084	318.41	115269	313.79	253371	707.47	79522	407.25
Subject Countries	434244	994.97	281689	765.03	1053030	2848.71	1366155	3098.20
Trend	100	100.00	64.87	76.89	242.5	286.31	314.61	311.39
Other Countries	1589691	3155.68	1763171	3397.34	2386833	6004.21	2010138	5053.62
Trend	100	100.00	110.91	107.66	150.14	190.27	126.45	160.14
Total Imports	2023935	4150.65	2044860	4162.37	3439863	8852.92	2855587	8010.91
Market share in Imports								
Subject Countries	21.46	23.97	13.92	18.43	30.61	32.18	47.84	38.67
Other Countries	78.54	76.03	86.08	81.57	69.39	67.82	70.39	63.08

b. Imports of the subject goods in relation to production of the domestic industry, both in terms of number of batteries as also value of batteries have been as under: -

	1998-99	1999-00	2000-01	POI
Imports in relation to production				
Number of batteries	7.88	3.84	13.87	18.24
CIF value of imports	1.08	0.75	2.76	3.13

It is evident from the above that the imports have increased in relation to production of the domestic industry. It is also to be noted that while the value of imports considered above is CIF import price. Should the value of imports be considered be considered after including basic import duty, the share would still be higher.

- c. Imports of the subject goods in relation to demand of the product have been as under: -

	1998-99	1999-00	2000-01	POI
Assessed Demand Share of	100.00	108.14	114.38	115.22
Imports from subject countries	100.00	70.02	250.32	270.26
Imports from other countries	100.00	99.56	166.35	138.99
Domestic industry	100.00	100.21	97.62	98.06

It is evident from the above that the share of imports in demand of the product in the Country has also increased significantly.

- d. The above tables shows that there has been a significant increase in imports in a relatively short time and also rate of growth of dumped imports from subject countries is significant, given the short time in which imports have taken place.
- e. The rate of growth of imports of subject goods is more than the rate of growth of domestic production.

(ii) ECONOMIC PARAMETERS RELATING TO THE DOMESTIC INDUSTRY :

The Authority has analyzed various parameters relating to the domestic industry. The same are tabulated below: -

	1998-99		1999-00		2000-01		Oct-00-Sept 01	
	Nos.	Value	Nos.	Value	Nos.	Value	Nos.	Value
Production	100	100	123.34	108.36	137.82	111.65	140.75	112.98
Lead Consumption	100	100	115.06	114.57	120.68	118.00	122.58	121.58
Sales	100	100	125.85	106.75	141.79	110.44	144.46	114.39
Cost of Sales		100		110.57		114.87		115.96
Production value		100		108.36		111.65		112.98
Inventories	100	100	99.43	108.59	85.94	114.89	107.2	148.73
Employees	100		101.12		109.08		109.7	
Productivity per employee	100		121.97		126.34		128.3	
Productivity per employee		100		107.16		102.36		102.99
Profit/Loss		100		79.41		70.15		66.21
Return on investment		100		66.49		53.04		50.95
Cash Profit		100		89.44		86.50		82.89
Wages per employee		100		140		156		156

Growth (% increase over previous year)			25.85	6.75	12.67	3.45	1.88	3.58
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From the above, the Authority notes that: -

- a. Production and sales volumes of the domestic industry has increased both in terms of number of batteries and value of production. However, it is found that in spite of increase in production and sales volumes, the profitability of the domestic industry has significantly deteriorated. Thus, increase in production and sales volumes have not helped the domestic industry in improving their profits.
- b. While cost of sales, production value and sales value have also increased, the increase in the cost of sales is more than increase in the sales value. This has directly resulted in decline in the profits of the domestic industry.
- c. Inventories of the subject goods with the domestic industry have increased.
- d. Profits of the domestic industry have significantly declined. The decline in the profits is in spite of increase in the production and sales volumes.
- e. Number of employees have marginally increased.
- f. Productivity of the domestic industry has improved due to increase in production. However, in spite of increase in productivity, the cost of sales have increased more than increase in the sale value, thus, adversely affecting the profits of the domestic industry.
- g. Return on investment has significantly declined.
- h. Cash profits of the domestic industry have also declined, thus, adversely affecting the cash flow.
- i. Wages per employee have increased. However, this increase is more due to the prevailing labor laws in the Country. Further, the increase in the wages has resulted in further increase in the cost of sales, whereas the domestic industry could not maintain its profits, in spite of increase in productivity and sales volumes.
- j. Growth of the domestic industry has declined.
- k. Domestic industry has lost significant sales volumes to other the imports from the subject countries. It is found that one of the customers, M/s. ***** who was catering its 100% requirement from the domestic sources, had started purchasing from the exporters in the subject countries. In fact, the domestic industry has represented that the entire requirement of this company was being met.
- l. The Authority analyzed the landed price of the exports made by the Cooperating Exporters, sales realization, cost of production, non injurious price and profit/loss of the domestic industry of similar models of Lead Acid Batteries. The results are in the tables below.-

(iii) SIGNIFICANT DECLINE IN THE SELLING PRICE:

- a. The Authority notes that those types of industrial lead acid batteries which were exported by the responding exporters, the selling price of the domestic industry has very materially declined, as may be seen from the table below:-

Battery Type	1998-99	1999-00	2000-2001	2001-2002	POI
EP SERIES					
EP 4 - 6	100.00	94.41	98.60	88.11	87.69
EP 7 -12	100.00	73.85	67.89	57.57	68.59
EP 10 - 6		100.00	94.41	97.35	91.10
EP 15 - 12	100.00	71.39	79.45	94.30	74.92
EP 24 - 12	100.00	103.61	55.92	-	55.32
EP 26 - 12	100.00	94.73	94.38	91.29	92.86
EP 38 - 12	100.00	102.19	-	-	49.66
EP 42 - 12	100.00	83.92	91.87	94.31	92.45
EP 65 - 12	100.00	85.43	98.46	90.14	93.19
EP 80 - 12			100.00	-	102.00
EP 100 - 12		100.00	85.46	85.37	82.62

- b. A comparison of the selling price of the domestic industry with the landed price of imports showed that the imports were significantly undercutting the prices in the market. Those imported batteries which were undercutting the prices in the domestic market and which have been examined by the Authority are shown below: -

	CSB	Pilot
6V-1.3 AH		****
6V 3.3AH		****
EP 4 - 6		****
EP 7 -12	****	****
EP 10 - 6		****
EP 24 - 12		****
EP 26 - 12	****	****
EP 42 - 12	****	****
EP 65 - 12	****	****
EP 100 - 12	****	****

- c. The Authority further analyzed the selling price of the domestic industry alongwith cost of production of the particular type as also the non-injurious price determined by the Authority on the basis of weighted average costs for different types. The results are given below:-

	Profit/Loss %	Is Price above NIP based on average cost
EP 4 - 6	(****)	****
EP 7 -12	(****)	****

EP 10 - 6	(****)	****
EP 15 - 12	(****)	****
EP 24 - 12	(****)	****
EP 26 - 12	****	****
EP 38 - 12	(****)	****
EP 42 - 12	****	****
EP 65 - 12	****	****
EP 80 - 12	(****)	****
EP 100 - 12	(****)	****

- d. The Authority notes that the domestic industry is selling most of those models which are being imported from the subject countries at a loss. Most of these models were below the non-injurious price determined by the Authority on average basis.
- e. The Authority analyzed what percentage these models constituted in terms of total sales of one of the domestic industry in respect of industrial maintenance free batteries. It is found that these batteries (wherein the imports have been made) constituted about ****% (in numbers) and ****% (in terms of turnover) of total industrial maintenance free batteries. At the same time, the domestic industry, for which detailed analysis was carried out, suffered a net loss in these types of batteries, whereas the company made overall profits in industrial segment.
- f. The above analysis leads the Authority to conclude that those types of batteries wherein the imports are being made, the domestic industry is either suffering losses or its profitability has significantly deteriorated. At the same time, possibly, the domestic industry is making profits in those types of batteries wherein there are no imports.
- g. There is also likelihood of substantially increased imports from these sources in view of huge production in these countries. It is further noted that there is surplus capacity available in the subject countries, which could be a matter of concern to the financial performance of the Domestic Industry if the same is utilized for exports to India at dumped prices. Further, existence of significant price undercutting would result in significant increased importation, should the imports continue at dumped prices. Loss of order by one of the major Indian Producers to the imports from the subject countries is a clear evidence in this direction.
- h. The Authority notes that in considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. For the examination of the impact on the domestic industry in India, the Authority considered such further

indices having a bearing on the state of industry as production, sales, stock, profitability, net sales realization etc. There are a number of parameters evidencing injury and threat of further injury, should the imports be allowed at the present dumped prices. The rate of increase of imports during the period of investigation from subject countries and the corresponding fall in the sales realization and profits of the domestic industry are the parameters clearly showing the injury being suffered by the domestic industry. On the basis of the evidence available before the Authority, it is determined that the domestic industry has suffered injury and is suffering further threat of injury during the period of investigation.

J. CAUSAL LINK:

24. In determining whether injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts: -

- i. Substantial imports of subject goods from Taiwan, Hong Kong and Singapore at dumped prices forced the domestic industry to reduce its selling prices to unremunerative level, which has resulted in a situation of price undercutting in the Indian market.
- ii. The imports from Taiwan, Hong Kong and Singapore suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.
- iii. The imports from subject countries have forced the Domestic Industry to reduce the selling price, which has adversely affected its profitability.

25. The Authority, therefore, notes from the above that the imports from the subject countries have been at a price below the selling price of the domestic industry. Further, the imports into India have been at a price lower than the non-injurious price for the Domestic Industry. As a consequence thereof the Domestic Industry has not been able to earn a reasonable return. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

K. INDIAN INDUSTRY'S INTEREST:

26. The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

27. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. 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 subject goods.

28. The Authority notes that the imposition of anti dumping measures would not restrict imports from Taiwan, Hong Kong and Singapore in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

L. CONCLUSIONS:

29. The Authority has, after considering the foregoing, come to the conclusion that:

- i. Lead Acid Batteries have been exported to India from Taiwan, Hong Kong and Singapore below its normal value;
- ii. The Indian industry has suffered material injury and facing threat of further injury;
- iii. The injury has been caused cumulatively by the imports from the subject countries.

30. The Authority considers it necessary to impose an anti dumping duty on all imports of Lead Acid Batteries from subject countries in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority recommend 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. For the purpose of determining injury, the landed value of imports has been compared with the weighted average non-injurious price of the Petitioner Companies determined for the period of investigation.

31. Accordingly, the Authority recommends that definitive anti dumping duties as set out below be imposed from the date of notification to be issued in this regard by the Central Government on all imports of lead acid batteries falling under customs code 8507 originating in or exported from subject countries. For the purpose of calculation of anti dumping duty, the Authority has converted the normal value and the export price calculated per kg weight of the dry battery in the case of automotive batteries other than the maintenance free batteries and per kg of gross weight of the filled and

sealed battery in the case of maintenance free automotive and industrial batteries. In case of industrial batteries, since no evidence of imports of dry lead acid batteries is available the duties as applicable to maintenance free sealed batteries shall apply to dry lead acid batteries also. The anti dumping duty shall be the difference between the amount mentioned in column 3 and landed value of import per kg of the battery for all exporters/manufacturers from the countries named in column 1 of the table below:-

Type of battery	Producers/Exporters	Amount in US\$ per kg
Singapore		
1. Industrial	All exporters	2.99
2. Automotive (NMF)	All exporters	2.11
3. Automotive (MF)	All exporters	2.03
4. Motorcycle	All exporters	3.69
5. All other Lead Acid Batteries/accumulators	All exporters	3.69
Hong Kong		
1. Industrial	All exporters	2.99
2. Automotive (NMF)	All exporters	2.10
3. Automotive (MF)	All exporters	2.03
4. Motorcycle	All exporters	3.69
5. All other Lead Acid Batteries/accumulators	All exporters	3.69
<u>Taiwan</u>		
1. Industrial	a. CSB Battery Co, Ltd.,	2.99
2. Automotive (NMF)	d. Pilot Battery	2.99
3. Automotive (MF)	e. All other exporters	2.99
4. Motorcycle	All exporters	2.11
5. All other Lead Acid Batteries/accumulators	All exporters	2.03
	All exporters	3.69
	All exporters	3.69

Here, it is clarified that " MF" means "Maintenance Free" i.e., filled with electrolyte and ready to use. " NMF" stands for "non- maintenance free".

32. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

33. Subject to the above, the Authority confirms the Preliminary Findings dated 5th April, 2002.

34. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, supra.

(L.V. SATHARISHI)
DESIGNATED AUTHORITY