

MINISTRY OF COMMERCE & INDUSTRY
(Department of Commerce)
Directorate General of Anti Dumping & Allied Duties

Notification

New Delhi, the 7th December, 2001

FINAL FINDINGS

Subject: Anti-dumping investigation concerning import of Lead Acid Batteries originating in or exported from Japan, Korea, China and Bangladesh – Final Findings

No. 67/1/2000-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

2. The procedure described below has been followed:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Exide Industries Limited and M/s. Amara Raja Batteries Ltd., on behalf of the domestic industry, alleging dumping of Lead Acid Batteries (hereinafter referred to as subject goods) originating in or exported from Japan, Korea, China and Bangladesh (hereinafter referred to as subject countries):
- ii. The investigations were initiated vide initiation notification dated 12th January, 2001 and the Preliminary findings were notified on 21st March, 2001.
- iii. The Designated Authority sent copies of notifications to the Embassies of Japan, Korea, China and Bangladesh in India, the exporters, importers, the domestic industry and other interested parties who were requested to make their views known in writing within 40 days of the notification.
- iv. The Authority provided opportunity to all interested parties to present their views orally in a public hearing held on 10.5.2001. The parties presenting their views were requested to file written submissions of the views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;

- v. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request;
- vi. Argument raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in 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. The period of investigation in the present investigation is 1.1.2000 to 30.9.2000.

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

3. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paras herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

4. The product under consideration is "lead acid batteries" falling under Chapter Sub Heading 8507 of the Customs Tariff Act. It has been argued that 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". It has further been stated that 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. It has also been argued that 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 be substituted.

5. In the Preliminary Findings the Authority has already divided the batteries into two categories, i.e. automotive and industrial. Also in the course of investigation and on the basis of arguments made by some of the interested parties, the Authority is convinced that the automotive batteries should be further sub-divided into two categories, viz. automotive and motorcycles. 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 chemical 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. Also there are instances of two types of batteries being used interchangeably. 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. ASSESSMENT ON THE BASIS OF WEIGHT:

6. In the Initiation Notification as well as in the Preliminary Findings, the argument given by the domestic industry regarding the use of lead content and weight of the batteries for assessing various parameters was considered. It was 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 be misleading because different models have different power, capacity and value. 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 as there is a correlation between power and lead content of the battery which also gets reflected in terms of value or price. Further, the direct correlation between the lead content in the battery and its associated costs and prices is also quite significant. An almost linear 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.

7. Subsequent to the Preliminary Findings, 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.

8. 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 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.

9. It is, however, clarified that the Authority has made comparison of normal value and export price separately for each type of battery and arrived at dumping margin individually for each type. Thereafter, overall dumping margins for industrial, automotive and motorcycle lead acid batteries separately for individual exporters or residual category has been calculated by taking weighted average of these individual model wise dumping margins. After arriving at dumping margins for industrial, automotive and motorcycle batteries separately, the reference prices have been

calculated using the information relating to the weights of the batteries exported to India.

E. DOMESTIC INDUSTRY:

10. It has been stated earlier that the petition for initiation of anti dumping investigation was filed by M/s Exide Industries Ltd and M/s Amara Raja Batteries Ltd., on behalf of the domestic industry. On the basis of the evidence available before the Authority, it was determined that both the petitioners account for a major proportion of the production in India and have the standing to file the petition on behalf of the domestic industry. Also subsequent to initiation, M/s Amco Batteries also supported the petition and provided the relevant information.

11. It was stated by the petitioners that M/s Amara Raja Batteries Ltd have made import of certain models of lead acid batteries from the subject countries which they themselves are not manufacturing and the volume and the value of the imports is quite insignificant as compared with the annual production and sales of the subject goods. It was, therefore, decided to ignore the imports made by M/s Amara Raja Batteries and include the company in the definition of domestic industry for the purpose of filing the petition because the value of imports was less than 0.1% of the turnover of the company and 0.25% of the total imports into India of subject goods. However, during the verification visit to the premises of M/s Amara Raja Batteries, it came to the notice that the imports made by them during the period of investigation are not from the subject countries under investigation but from other countries. Therefore, M/s Amara Raja Batteries clearly falls within the definition of domestic industry as per Anti Dumping Rules.

12. 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".

13. 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 but none of the interested parties has come up with any evidence 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 provided by the administrative Ministry and other sources corroborates the claim of the petitioner companies of accounting for more than 25% of the 'domestic industry' as defined in the Anti Dumping Rules. The Authority, therefore, determines that the petitioner companies account for a major proportion of the domestic industry and have the standing in terms of the provisions of the Anti Dumping Rules.

F. ADEQUACY AND ACCURACY OF INFORMATION AND ISSUE OF CONFIDENTIALITY:

14. It has been argued by a number of interested parties that the Authority did not satisfy itself about the adequacy and accuracy of information submitted by the Domestic Industry and the petition filed was not in the form and manner prescribed. Also it has been argued that the vital information and a number of vital documents have been kept confidential by the petitioner companies depriving the opposing interested parties of the right to challenge the information and make meaningful submissions to the Authority.

15. The petition filed by the petitioner contained sufficient information on various parameters evidencing existence of dumping, injury and causal link. However regarding the information being made available to the opposing interested parties the provisions regarding confidentiality have to be kept in mind. Rule 7 of the Anti Dumping Rules provides for submission of information by the interested parties on confidential basis subject to the conditions laid down therein. The non confidential summary of the information submitted on confidential basis is placed in the Public File which is available for inspection by all interested parties in terms of Rule 6(7) of the Anti Dumping Rules. In this case also non-confidential summary of the confidential submissions made was placed in the public file accessible to all the interested parties.

G. PROVISIONS OF SAPTA

16. It has been argued by some of the interested parties that export of lead acid batteries from Bangladesh is covered under SAARC Preferential Trading Arrangement(SAPTA) of which India is also a signatory. It has further been stated that the Article 14 of SAPTA Agreement provides for specific procedure for safeguard measures in the event of concession with respect to preference under the SAPTA Agreement causing or threatening to cause any injury to the Member Countries. It has been submitted that the procedures of SAPTA should be exhausted before initiating procedures under any other forum. It has also been submitted that if the consultative and dispute settlement provisions of SAPTA is not adhered to by the contracting States, the efficacy of the legal regime established through the SAPTA will be destroyed. It is further submitted that adhering to the dispute settlement procedures of SAPTA is imperative because the lead acid batteries are exported from Bangladesh to India under the provisions of SAPTA and hence the consultation procedures of SAPTA should be adhered to in settling disputes arising out of exports under SAPTA.

17. The investigation is for determination of whether exports are being made to India by the subject countries below the normal value on the basis of evidence available before the Authority. There is no allegation or averment by the domestic industry of injury being suffered on account of concessions under SAPTA and no request for withdrawal of concession on lead acid batteries under SAPTA by the domestic industry. The anti dumping investigation was initiated under the Anti Dumping Rules of India which are compatible with the WTO Agreement on Anti Dumping Practices. The SAPTA does not prohibit any such action by the SAARC Member Countries and the provisions of Article 14 of SAPTA are also not applicable in the present case. Also there is no provision under Anti Dumping Rules to exempt member countries of SAPTA from anti dumping investigations.

H. CORRECTNESS OF FIGURES OF IMPORTS IN INDIA FROM BANGLADESH

18. The Authority notes that the exporters from Bangladesh and the importers of subject goods from Bangladesh have argued that the information provided by the Directorate General of Commercial Intelligence & Statistics(DGCI&S) regarding imports from Bangladesh is not reliable. In their submissions Bangladesh Accumulator and Battery Manufacturers Association (BABMA) have stated that number of pieces and value of exports from Bangladesh to India (volume 275480 pieces, value Rs.26239814) as given in the petition on the basis of the DGCI&S data is incorrect. They have stated that the actual exports from Bangladesh to India have

been 54203 pieces for a total value of US\$789745 during the period of investigation which is 1st January, 2000 to 30th September, 2000. Here the Authority notes that the figures mentioned in the petition relate to the period 1st April, 1999 to 31st March, 2000 and are thus not comparable with the figures mentioned by BABMA. However for the purpose of determination, the Authority has used the information given by BABMA regarding the number of pieces and the value of exports from Bangladesh to India.

I. DEMINIMIS VOLUME:

19. As per Rule 14(d) of the Anti Dumping Rules, the investigations are to be terminated only if the volume of dumped imports, actual or potential, from a particular country accounts for less than three per cent of the imports of the 'like product'. The de minimis limit is with respect to total volume of import and not with respect to the volume of locally manufactured product as claimed by some of the interested parties.

20. In the Preliminary Findings on the basis of information compiled by DGCI&S, it was found that the imports from Bangladesh accounted for less than 3 per cent of the value/volume of import of the subject goods to India and therefore, for the purpose of preliminary findings, the imports from Bangladesh were determined as *de minimis* pending further investigation. It was also stated that number of batteries is not a good indicator of the volume of imports, there being batteries of various sizes and types, it is only in terms of value that the *de minimis* criteria can be applied.

21. Subsequent to the Preliminary Findings, the Domestic Industry as well as the exporters from China and Korea have argued that the volume of imports from Bangladesh to India during the period of investigation was more than de-minimis especially in the automotive sector which is only type of lead acid battery being exported to India from Bangladesh even as per the admission of BABMA. They have argued that not only as a percentage of total import of lead acid battery is import from Bangladesh more than 3% but if only imports of automotive lead acid batteries are taken into account, Bangladesh accounts for a very large share of the imports of automotive batteries into India.

22. The Authority sought detailed transaction-wise information from DGCI&S, containing therein information with regard to, inter-alia, Bill of Entry number, date, name of importer, quantity, value of imports, port of consignment etc.. At the same time, the exporter from Bangladesh has also provided transaction-wise information on 31st May, 2001 with regard to its exports through BABMA. Using the information provided by BABMA with regard to exports made from Bangladesh, the Authority

notes that the value of exports made by Bangladesh are more than de-minimis. The value of exports from Bangladesh was US\$789745 during the period of investigation which is equivalent to Rs.3.5 crores approximately. As a percentage of total imports into India during the period of investigation of Rs.53 crores, this comes to 6% which is more than the de-minimis limit of 3%. The figure of total imports is based on DGCI&S data duly adjusted for import data for Bangladesh.

J. DUMPING :

23. As brought out in the preliminary findings, the Designated Authority sent questionnaires to known exporters of the subject goods in subject countries. The Authority makes the following observations on the submissions made by the exporters in this regard.

24. Exporters from Japan: From Japan, M/s Yuasa Corporation had made their submissions and furnished relevant information. However, it was stated in the preliminary findings that the information provided by M/s Yuasa Corporation was deficient on a number of grounds such as absence of information on the domestic sales of lead acid batteries, incomplete details in Appendix 3 & 7 non submission of details regarding marketing arrangements with the trading company etc.. However, no submissions have been received from M/s Yuasa Corporation, Japan subsequent to the preliminary findings. Thus Rule 6(8) is attracted in case of the exporters from Japan and the Designated Authority is fully justified in proceeding with investigation on the basis of best information available for the purpose of calculation of dumping margin.

25. Response filed by exporters from Bangladesh: On the initiation of investigation, copy of the questionnaire along with the initiation notification was sent to the High Commission of Bangladesh in India and two exporters from Bangladesh whose addresses were provided by the domestic industry. These two exporters informed the Authority that they have not exported lead acid batteries to India during the period of investigation. In the communication addressed to High Commission of Bangladesh a request was made to inform all the exporters of subject goods from Bangladesh about the investigation and request them to file information in the prescribed questionnaire within forty days of the initiation of the investigation. Information was received from M/s Bangladesh Accumulator & Battery Manufacturers Association(BABMA), Dhaka, Bangladesh who informed that M/s Rahimafrooz Batteries Ltd., one of their members has been exporting lead acid batteries to India. No information was received in the prescribed format from M/s Rahimafrooz Batteries within forty days time limit after initiation. Even after the Preliminary Findings which were issued on 21.3.2001, required information was not submitted within the 40 days time limit prescribed. However, information in the prescribed questionnaire regarding the exports made by

M/s Rahimafrooz Batteries along with the other details was submitted by Bangladesh Accumulator and Battery Manufacturers Association on behalf of the exporter, M/s Rahimafrooz Batteries on 31.5.2001 which was incomplete and deficient. Both the Association and the exporter were informed of the deficiencies in the submissions and requested to complete their submission by furnishing the required information alongwith the documentary evidence and copies of the financial statements such as profit and loss account, balance sheet, annual report etc.. Also, the exporters were requested to give their consent for on the spot verification of information submitted by the Authority at their premises.

26. In reply to the request for information made by the Authority, the exporter from Bangladesh stated that disclosure of such information will put them in a serious disadvantageous position because their strategic plan will be revealed through the financial statement to their competitors. Also they have further stated that provision of WTO Agreement do not explicitly give any authority to the Member States to require exporters to provide financial statements. It was also stated that since the complainant domestic industry has not provided similar information, they are not going to make this available to the Authority. The exporter also expressed reservations regarding giving their consent for verification visit by the verification team of the Authority to their premises for on the spot verification of the information submitted by them.

27. Exporters were informed by the Authority that "there is a provision for submission of required information on confidential basis along with non-confidential summary. The claim of confidentiality on the information submitted by interested party imposes an obligation on the investigating authorities not to disclose such information to any other party including the opposite parties. If they require certain information to be kept confidential and not made accessible to the competitors, they may submit accordingly. Non-submission of required information including financial statements is considered as non-cooperation and the investigating authority has the option to make determination on the basis of the facts available as per the Article 6.8 of the WTO Anti Dumping Agreement. Regarding the consent for on the spot verification, their attention was invited to Article 6.7 of the WTO Agreement on Implementation of Article VI of GATT wherein it is stated that in order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question and unless that Member objects to the investigation. The procedures described in Annex I of the Agreement applies to investigations carried out in the territory of other Members".

28. Apart from the deficiencies mentioned above, the exporter has not replied at all to the descriptive part of the questionnaire and has not furnished information relating to

legal form of the company, details of owners/shareholders, information on the incentive given by the Government etc.. Also the transaction-wise details of the sales in the home market with a break-up in terms of type of batteries, specification details of the batteries being exported, details regarding the cost of production in the format C(2) and C(3) of the Questionnaire, description of the accounting practices followed, etc. have not been given. Exporter has refused to furnish the information relating to the two years preceding the period of investigation and provide copies of profit and loss statement and balance sheet and annual reports to the Authority.

29. Even though the exporter has provided information on capacity, production, sales and stock, the same has become redundant and useless in the absence of other information in terms of Appendices 1 to 3. Further, this information provided by the exporter is in respect of all the batteries combined without identifying the various types of batteries. Thus, while they have argued at length about non-comparability of various types of batteries, the exporter has preferred to give information on cumulative basis at some places and battery-wise at other places.

30. Information on sales price structure provided by the exporter vide Appendices 4 and 5 are unsubstantiated. Other data (such as Appendix 2) cannot support this data, since other data provided by the exporter does not identify type of battery involved. It is thus not feasible to reconcile the information in Appendices 4 & 5 with various other information provided by the exporter. Since home market sales have not been provided, the sale price structure for sales in the home market remains unsubstantiated. Appendices 4 and 5 thus merely become statement, unsubstantiated with relevant evidence and unsupported with other data/information provided by the exporter. Further, the exporter has not extended its willingness to offer itself for verification as stated above.

31. In Civil Appeal No. 487 of 2000 (Designated Authority vs. M/s Haldor Topsoe A/S), the Hon'ble Supreme Court has determined that refusal of the exporter to give required information amounts to non-cooperation and the Authority is justified in proceeding to determine the normal value on the basis of the 'best judgment assessment' as contemplated under Rule 6(8) of the Anti Dumping Rules. Rule 6(8) of the Anti Dumping Rules reads as follows: *'In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances'*.

32. Article 6.8 of WTO Agreement on Implementation of Article VI of the GATT 1994 (Agreement on Anti Dumping Practices) also reads as *'In cases in which any interested party refuses access to, or otherwise does not provide, necessary*

information within a reasonable period or significantly impedes the investigation, preliminary and final determination, affirmative or negative, may be made, on the basis of facts available’.

33. The exporters from Bangladesh have not responded to the questionnaires within the prescribed time limits, have failed to provide the information called for and also have refused access to necessary information, as requested by the Authority. In view of the above, the Authority considers them as non-cooperative and has made the determination on the basis of best information available in terms of Rule 6(8) of Rules supra.

34. M/s Shenyang Matsushita Storage Battery Co.

Ltd.(SLMB),China: Subsequent to Preliminary Findings, M/s Shenyang Matsushita Storage Battery Co. Ltd., China(SLMB) have given information for all the models of lead acid batteries being manufactured by them as requested by the Authority. Also the information regarding the domestic sales including for those models not being exported to India has also been furnished. The respondent has manufactured and exported only industrial lead acid batteries during the period of investigation. The exporter has furnished the information for all the domestic sales to all the customers during the period of investigation in the prescribed format. The exporter has also furnished the required information for Appendices 1, 2 3 & 7 which has been verified and reconciled. The exporter has also furnished information regarding the details of expenses incurred by M/s Asia Matsushita Electric (s) Pte. Ltd., through which exports have been made to India. Also details of group companies through which the sales are being made in China have been furnished. The company has claimed adjustments on account of VAT, insurance, freight, duty drawback, handling charges, shipping charges on the basis of actual expenses which have been verified and allowed. Adjustments claimed on account of credit expenses have not been allowed as it was not possible for the exporter to give a clear apportionment of the same among various models and sales. Details regarding cost of production of each model have also been provided which have been verified. Sales for each model are above cost of production taking into account all elements of cost and thus are in the ordinary course of trade. The company has also furnished non-confidential summary of the information submitted. The export price and normal value of the exports have been worked out on the basis of the information furnished and verified by the Authority. The export price and normal value after adjustments of each model exported to India have been compared individually for arriving at individual dumping margin and then a weighted average of these individual margins has been taken for calculating overall average dumping margin. It has been represented to the Authority with sufficient evidence that the name of M/s Asia Matsushita Electric (S) Pte. Ltd., has been

changed. Now the exports of industrial lead batteries of M/s SLMB are being done through the new company M/s Panasonic Industrial Asia Pte. Ltd., Singapore.

35. M/s BB Battery Co. China: M/s BB Battery Co. China has rectified deficiencies in the information submitted. They have furnished information regarding all the models and also for all the customers to whom the lead acid batteries have been sold. Also the information regarding National Trading Ltd., i.e., the trading company that owns M/s BB Battery and exports lead acid batteries to India has been furnished. Further information on the installed capacity in terms of Appendix 7, technical specifications of the various models and types of lead acid batteries being manufactured by the company have also been furnished. The respondent has manufactured and exported only industrial lead acid batteries during the period of investigation.

During the verification of the company, it was observed that the company is 100% export unit and even the sales within China are either against import permit or to other export units using lead acid batteries for manufacture of export products. Such sales cannot be taken as domestic sales for the purpose of arriving at normal value. As per Section 9A(1)(C) of Customs Tariff Act, the normal value has to be determined on the basis of the comparable price in the ordinary course of trade for the Like Article when meant for consumption in the exporting country or territory. However, when there are no sales of Like Article in the ordinary course of trade in the domestic market of the exporting country or territory or under such conditions as specified, the normal value shall be either export price to appropriate third country or a price based on the cost of production of the said article in the country of origin along with reasonable addition for administration, selling and general costs and for profits. In the instant case, there are no domestic sales by the exporter i.e., M/s B.B. Battery Co. The price of the domestic sales of other exporters from China cannot be considered as representative comparable price as the product is a branded product and each brand represents a particular image in the minds of the customer because of differences in performance, technology etc.. Hence, it will not be appropriate to compare the export price of M/s BB Battery Co., with the domestic sales price of other manufacturers of industrial lead acid batteries in China. After considering facts of the case and the circumstances, the Authority has decided to determine the normal value in case of these exporters in terms of option available to it under Section 9A(1)(C)(ii)(b) i.e., on the basis of cost of production of the concerned exporter. The Authority has, therefore, decided to use the constructed normal value for the purpose of comparison with net export price and arriving at dumping margin.

In the export price, the company has claimed adjustments on account of inland freight, overseas freight, overseas insurance and clearance & handling charges on the basis of actual expenses which have been allowed after verification. It has been explained by

the exporter that variation in overseas freight, insurance etc., for different types of batteries is because of different market lot. The comparison of normal value and export price has been done individually for each model exported to India and weighted average of these individual dumping margins has been taken for arriving at average overall dumping margin.

36. M/s Shenzen Senry Battery Co. Ltd., China: In their submissions, subsequent to preliminary findings, exporter has explained that M/s Shenzen Centre Power Tech. Co. Ltd., which is holding their shares, is not allowed to export but has the rights to make supplies to the Government departments in China. M/s Shenzen Senry Battery Co., Ltd., is manufacturing batteries and exporting to India alongwith other countries apart from selling in the domestic market. However, for sales to the Government departments in China, the sales are made through M/s Shenzen Center Power Tech Co Ltd..

The exporter has also complied with other deficiencies pointed out in the preliminary findings, i.e., giving all the details in Appendices 1 to 3 & 7 and reconciled the same, providing technical details on different types of lead acid batteries and furnishing annual financial statements. Non-confidential version of their submissions has also been furnished. The respondent has manufactured and exported only industrial lead acid batteries during the period of investigation.

In the export sales, adjustments have been claimed on account of inland freight and handling charges on the basis of actual expenses which have been allowed. No adjustments have been claimed in the domestic sale for arriving at the normal value. Since M/s Shenzen Centre Power Tech Co. Ltd. is a company related to exporter, for the purpose of normal value, resale price of M/s Shenzen Centre Power Tech Co. Ltd to independent buyer has been taken as the actual selling price. Since all the sales are above cost of production, these are being considered as being in the ordinary course of trade. The comparison has been made for each model separately and weighted average of these individual margins has been taken for arriving at overall average dumping margin. The export price and normal value have been calculated on the basis of revised information submitted by the exporter and verified by the Authority.

37. M/s Global & Yuasa Battery Co Ltd., Korea: In the revised submission made after the preliminary findings, complete information has been given by M/s Global & Yuasa Battery Co Ltd., Korea for all the models of lead acid batteries being manufactured and also for all the customers in the domestic market as well as export to India and third countries. The details regarding technical specifications of the batteries have also been given and non-confidential summary of the confidential submissions has also been submitted.

The domestic sales of all the models have been made above cost of production and are in the ordinary course of trade. Average domestic sale price for each model has been taken for purpose of arriving at normal value for that model. Exporter claimed adjustments on account of physical differences, VAT, packing charges, inland freight, volume rebate, advertising, warranty claim, installation cost, selling expenses, credit expenses, cash compensation, duty drawback and commission. These adjustments have been allowed on the basis of actual expenses or receipts and have been verified and allowed by the Authority. The dumping margins have been calculated separately for each model being exported to India and weighted average of these individual dumping margins has been taken for the purpose of arriving at an overall dumping margin.

As per para 6(i) of Annexure I to Anti Dumping Rules, which outlines the Principles governing the determination of Normal Value, the Export Price and Margin of Dumping, *"Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability"*. In the instant case, the adjustments have been claimed on account of the actual physical differences in the models in the automotive segment being exported to India and being sold domestically. Other adjustments like packing cost, inland freight, volume rebate and due allowances incurred due to differences in trade level from Indian customers and conditions & terms of sales like advertising and sales promotion expenses, warranty claim expenses, delivery installation costs, credit expenses and selling expenses. M/s Global & Yuasa Batteries performs advertising and sales promotional activities in the domestic market only and also claims responsibilities for warranty claim amount for domestic customers which is not done for Indian customers. Similarly, for industrial users, in home market, M/s Global & Yusasa Batteries, performs installation of industrial batteries to their locations. Also for domestic market, M/s Global & Yusasa Batteries, deals directly with the wholesalers who are scattered throughout the country and the company has to maintain its head sales office, regional sales office, warehouses and after sales centres, expenses of which have been claimed as selling expenses which is not the case for the export sales to India. Also the sales to the domestic customers is mostly on credit terms, which is not the case for sales to Indian customers. Regarding the volume rebate, M/s Global & Yusasa Batteries, has long term volume rebate agreement with the dealers in the domestic market which is known in advance. All these adjustments have been allowed on the basis of actuals after verification.

38. M/s Delkor Corpn., Korea: M/s Daewoo International Corporation, Korea through whom all the exports have been made to India by M/s Delkor Corporation.,

Korea, have furnished a price undertaking for maintenance free automotive lead acid batteries which has been accepted by the Authority. The undertaking is binding on M/s Daewoo International Corporation, Korea for the export to India of automotive lead acid batteries manufactured by M/s Delkor Corporation., Korea. In view of the acceptance of the price undertaking, the investigations against M/s Delkor Corporation., Korea have been suspended.

39. M/s NB Corporation, Korea: In the revised submission by M/s NB Corporation, Korea, after the preliminary findings, all the details of transaction wise sales in the domestic market, technical specifications of different types of lead acid batteries, information regarding installed and utilised capacities have been furnished. The exporter has complied with the deficiencies pointed out in the preliminary findings. The respondent has manufactured and exported only industrial lead acid batteries during the period of investigation.

The sales of different models are above cost of production and hence, in the ordinary course of trade. The domestic selling price, therefore, has been used for arriving at normal value. The exporter has claimed adjustments on account of ocean freight, ocean insurance and duty drawback which had been allowed on actual basis after verification. However, adjustments claimed on the domestic selling price on account of credit sales, volume discount, commission, warranty claims, etc., have not been allowed as specific allocation & apportionment for each model could not be established by the exporter. The normal value and export price of each model has been calculated separately and compared for the purpose of arriving at individual dumping margin. Weighted average of individual dumping margins have been taken for arriving at overall dumping margin.

40. Assessment of non-cooperative exporters from China & Korea.: For exporters other than those who have cooperated with the Authority, it has been decided to make recommendation

regarding imposition of duty on the basis of best information available in terms of Rule 6(8) of Anti Dumping Rules. For the export price, the information provided by the importers and Directorate General Commercial Intelligence & Statistics(DGCI&S), Kolkata has been used. The constructed normal value has been compared with the adjusted export price for arriving at the dumping margins.

41. Dumping Margins : The dumping margins calculated as per the methodology and information mentioned above for exporters and manufacturers of subject countries for industrial and automotive (Maintenance Free i.e. MF, Non Maintenance Free i.e. NMF and Motorcycle) are as follows :

Peoples Republic of China

Type of battery	Exporter/manufacturer	Dumping margin(%)
1. Industrial	1.M/s Shenyang Matsushita Storage Battery Co. Ltd(SLMB)	-2.758
	2.M/s BB Battery Co.	
	3.M/s Shenzen Senry Battery Co. Ltd.	-5.780
	4.Other exporters/manufacturers.	-0.007
2. Automotive	All exporters	107.41
(i) NMF	All exporters	46.41
(ii) MF	All exporters	46.41
(iii)Motorcycle		46.41

Republic of Korea

Type of battery	Exporter/manufacturer	Dumping margin(%)
1. Industrial	1. M/s Global & Yuasa Battery Co. Ltd.,	-5.460
	2. M/s NB Corporation	-3.766
	3. Other exporters/manufacturers.	107.97
2. Automotive	1.M/s Global & Yuasa Battery Co. Ltd	3.600
	2.Other exporters/manufacturers	121.53
(i) NMF	1.M/s Global & Yuasa Battery Co. Ltd	2.891
(ii) MF	2. M/s Delkor Corpn.,	-
	3. Other exporters/manufacturers	121.53
(iii) Motorcycle	All exporters	121.53

Peoples Republic of Bangladesh

Type of battery	Exporter/manufacturer	Dumping margin(%)
1. Industrial	All exporters	32.00
2. Automotive		
(i) NMF	All exporters	32.00
(ii) MF	All exporters	29.68
(iii) Motorcycle	All exporters	32.00

Japan

Type of battery	Exporter/manufacturer	Dumping margin(%)
1. Industrial	All exporters	42.07
2. Automotive		
(i) NMF	All exporters	53.77

(ii) MF	All exporters	53.77
(iii) Motorcycle	All exporters	53.77

Here it may be mentioned that if a particular type of battery was not exported from a particular country during POI, the maximum dumping margin determined, of types of battery exported has been indicated as the margin of dumping for that type as well.

K. INJURY AND CAUSAL LINK

42. A number of interested parties opposing the anti dumping investigation have given their views regarding injury being suffered by domestic industry and the causal 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, specially 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.

43. The Authority has taken into account all indices regarding injury while doing the final determination. This involves 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 has considered the optimum cost of production for the domestic industry which takes into account the normated best consumption norms and also takes into account the actual price of the raw materials during the POI which go

into the production of the product under consideration. Also, while arriving at the injury margin, the Designated Authority has taken account optimum capacity utilisation for arriving at a fair selling or non injurious price.

44. In addition to the material injury inflicted by the dumped imports on the domestic industry, the Authority has examined the allegation of dumped imports causing threat of material injury to the domestic industry. The parameters examined relating to threat of material injury are

- a. Whether there is a significant increase in the imports in a relatively short time and whether there was a significant rate of increase in the dumped imports from subject countries indicating the likelihood of further imports;
- b. Whether the imports were causing severe price undercutting in the market;
- c. Whether the exporters from subject countries have significant freely available capacities;
- d. Whether the exporters are holding significant inventories of the subject goods and whether inventories of the subject goods are rapidly increasing with the domestic industry and their stockists/dealers.

45. **Cumulative Assessment of Injury :** The conditions for cumulative assessment of effect of dumped imports as specified in Annexure II to the Anti Dumping Rules are satisfied in this case. Since the volume of import from Bangladesh is more than the prescribed de minimis limit, the imports from Bangladesh have also been included for the cumulative assessment of injury suffered by domestic industry alongwith the imports from China, Korea and Japan as done in the Preliminary Findings.

46. **Material Injury & Threat of 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 have increased in absolute terms from Rs. 23.5 crores in 1998-99 to approximately Rs. 30 crores (Rs. 40 crores annualized) in the investigation period.
- ii. The rate of growth of imports of subject goods is more than the rate of growth of domestic production.
- iii. Though there has been an increase in production and the sales volume in absolute terms of the domestic industry, but the market share of domestic industry in the Indian market has declined on account of substantial increase in imports from subject countries. There has been decline in the market share of the domestic industry both in the automotive as well as industrial segments. The domestic industry has lost substantial sales to imports from subject countries.

- iv. Inventories of the subject goods with the domestic industry have increased. The increase in inventories is found with both the petitioner companies.
- v. The average collection period of outstanding petition companies increased during the period of investigation.
- vi. One of the petitioner companies introduced Voluntary Retirement Scheme for its employees and reduced employment.
- vii. Profitability of both the petitioner companies has significantly declined during the period of investigation which is also reflected in the fall in return on investments.
- viii. The domestic industry had to reduce the selling prices to match the prices of dumped imports. There has been a fall in the average sales realisation of the petitioner companies.
- ix. The dumped imports were severely undercutting the prices of the domestic industry. The undercutting is found in both the automotive and industrial segments.
- x. There has been a significant increase in imports in relatively short time and also rate of growth of dumped imports from subject countries has been increasing.
- xi. Exporters from subject countries are having surplus unutilised capacities.

47. Causal Link : The factors affecting the performance of domestic industry and the resultant injury such as contraction of demand specially in the automotive segment, change in the pattern of consumption, the consumption preference for maintenance free batteries as compared with non-maintenance free batteries etc., have been considered while making analysis of the causal link between the injury being suffered by the domestic industry and dumping of the subject goods from subject countries. In determining whether injury to the domestic industry was caused by the dumped import, the Authority has taken into account the factor that it is the dumped import at dumped prices which has forced the domestic industry to reduce its prices. Therefore, the causal link between the dumped imports of subject goods from China, Korea, Japan and Bangladesh and injury suffered and threat of injury being faced by the domestic industry is clear. The Authority, therefore, concludes that there is a causal link between the dumping of subject goods from China, Korea, Japan and Bangladesh & injury suffered and threat of injury being faced by the domestic industry during the period of investigation.

48. Landed Value: 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 and 9A of the Customs Tariff Act, 1975.

L. FINAL FINDINGS:

49. After considering the foregoing the Authority concludes that

- i. Lead Acid Batteries exported to India from China, Korea, Japan and Bangladesh are below its normal value during the period of investigation;
- ii. The Indian industry has suffered material injury and is further being threatened with material injury;
- iii. The injury has been caused by the dumped imports from China, Korea, Japan and Bangladesh;

50. The Authority proposes to 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 price of imports is proposed to be compared with the non injurious selling price of the petitioner companies determined for the period of investigation.

51. The Authority recommends imposition of definitive anti dumping duty on all imports of lead acid batteries falling under Custom Code 8507 originating in or exported from China, Korea, Japan and Bangladesh. As already determined in the preliminary findings, anti dumping duty shall be the difference between the amount mentioned in Column 3 of table given below and landed value of import per kg of the lead acid battery for the exporters/manufacturers from the China, Korea, Japan and Bangladesh:

Peoples Republic of China

Type of battery	Exporter/manufacturer	Amount in US \$ per kg.
1. Industrial	1.M/s Shenyang Matsushita Storage Battery Co. Ltd(SLMB) manufacturer or exports through trading company namely, M/s Panasonic Industrial Asia Pte. Ltd., Singapore.	N.A.
	2. M/s BB Battery Co., manufacturer or exports through trading company, namely, M/s National Trading Ltd., Hong Kong.	N.A.
	3. M/s Shenzen Senry Battery Co. Ltd.	3.192
	4. Other exporters/manufacturers.	2.532
2. Automotive	All exporters	2.121
(i) NMF	All exporters	3.930
(ii) MF	All exporters	
(iii) Motorcycle		

Republic of Korea

Type of battery	Exporter/manufacturer	Amount in US \$ per kg.
1. Industrial	1. M/s Global & Yuasa Battery Co. Ltd., 2. M/s NB Corporation 3. Other exporters/manufacturers.	N.A. N.A. 3.192
2. Automotive		
(i) NMF	1. M/s Global & Yuasa Battery Co. Ltd 2. Other exporters/manufacturers	2.216 2.532
(ii) MF	1. M/s Global & Yuasa Battery Co. Ltd 2. M/s Delkor Corpn., 3. Other exporters/manufacturers	1.904 N.A. 2.121
(iii) Motorcycle	All exporters	3.930

Peoples Republic of Bangladesh

Type of battery	Exporter/manufacturer	Amount in US \$ per kg.
1. Industrial	All exporters	3.192
2. Automotive		
(i) NMF	All exporters	2.532
(ii) MF	All exporters	2.121
(iii) Motorcycle	All exporters	3.930

Japan

Type of battery	Exporter/manufacturer	Amount in US \$ per kg.
1. Industrial	All exporters	3.192
2. Automotive		
(i) NMF	All exporters	2.532
(ii) MF	All exporters	2.121
(iii) Motorcycle	All exporters	3.930

Here, it may be mentioned that "MF" means "Maintenance Free" i.e., filled with electrolyte and ready to use "NMF" stands for "non-maintenance free" and "N.A." means "Not Applicable".

52. 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 levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

53. Subject to the above, the Authority confirms the preliminary findings dated 21.3.2001.

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

L.V. SAPTHARISHI,
Designated Authority