

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 27th August, 1998

FINAL FINDINGS

Sub: Anti- dumping investigation concerning import of Metallurgical Coke from the People's Republic of China- Final Findings.

8/2/97- ADD—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 subsequent to the preliminary findings:
 - i. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide notification dated the 20.3.98 with regard to anti- dumping investigations concerning imports of metallurgical coke (also referred to as China and China PR hereinafter), 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 the 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 a copy of the preliminary findings to the Embassy of the People's Republic of China in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;
 - iv. The Authority provided an opportunity to all interested parties to present their views orally on 8.6.98. All parties presenting views orally were requested to file written submissions of the views expressed orally. 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 and arguments made by

- various interested parties. All parties who made request for inspection, in writing, were allowed to inspect the public file;
- vi. Arguments 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 have been appropriately dealt 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 same has been duly considered in these findings;
 - viii. **** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

2. The following abbreviations have been used:

- Metcoke/ Coke Metallurgical coke
- PIMA Pig Iron Manufacturers Association
- China PR/China The People's Republic of China
- Authority Designated Authority
- MBF Mini Blast Furnace
- ICA Industries and Commerce Association, Dhanbad
- LAMC Low Ash Metallurgical Coke
- PMI The Permanent Mission of India in Geneva
- CPA Certified Public Accountant

B. PRODUCT UNDER CONSIDERATION:

3. The product under the scope of the present investigation is Metallurgical Coke (also referred to as metcoke).

4. Metallurgical Coke is produced by destructive distillation of Metallurgical (coking coal) in the absence of oxygen at high temperature generally ranging around 1000 degrees centigrade without burning the coal. The Metallurgical Coke produced is mainly carbon along with some mineral and residual volatile material. The metcoke is used as a primary fuel in industries where a uniform and high temperature is required in kilns of furnaces.

5. Metallurgical Coke is classified under Chapter 27 (under sub- heading 27.04) of the Customs Tariff Act. 1975. The classification, manufacturing process and usage of the product indicated herein are, however, indicative only and are in no way binding on the scope of the product under consideration.

6. Metcoke is used in various industries including pig iron, foundries, ferro alloys, chemical, integrated steel plants and others.

7. It has been argued by the importers that the product under consideration at the time of initiation of investigation was "Metallurgical coke made out of low ash coal" but the product described in preliminary findings is "Metallurgical Coke" and thus the Authority has enlarged the scope of investigation. However, it can be seen that all interested parties to the investigation have all throughout agreed that the Chinese coke alleged to have been dumped into India has low ash content. The Authority, therefore, considers that there is no enlargement of the scope of the investigations and all metallurgical coke originating in or exported from China PR is covered under the scope of the present investigations.

C. LIKE ARTICLE

8. Views of the Petitioners: The submissions of the petitioners with regard to the issue of "like article" are as follows:

8.1. The domestic uses of metcoke and industry specifications are as under:-

- a. Pig Iron Ash content 18-30%
- b. Foundries Upto 40% ash
- c. Ferro Alloys Low sulphur, low phosphorous
- d. Chemicals Upto 38% ash
- e. Other Coke of any ash content

8.2. The metcoke manufactured is directly dependent on the type of coal used as input. Depending on the requirement of user industry coal is suitably blended prior to using it as an input in the process of manufacture. Indian coal which typically has a higher ash content, is very low in sulphur and phosphorous. On the other hand, imported coal has very low ash content. Metcoke is used in several industries ranging from the steel mills to non- industrial use and domestic use for generation of heat. Depending on the eventual use and the special requirement of each individual user metcoke can be and is specifically manufactured. Although Indian coal, contain high percentage of ash, there are several billion tonnes of low ash coal in India. Chari Committee report states the total coal resumes are in excess of 27 billion tonnes.

8.3. The production process for high ash coke or low ash coke is identical notwithstanding the type of coal used. Indian coke manufactures can even convert imported coal for specific industry in their existing plants without any modification. There is no restriction, technical or otherwise to manufacture coke in India using imported coal. Therefore, prima-facie, it is erroneous and misleading to state that coke

produced in China is not identical to coke produced in India. The petitioner has quoted the case of NBR wherein it was held that although identical grades of NBR were not being manufactured in India, there were no restrictions in manufacturing the same. Indian plants are fully capable of manufacturing coke with imported coal and this is in fact being done at several plants all over India.

8.4. Indian coke and Chinese coke are used interchangeably. The argument of the pig iron manufacturing association that Indian coke is unsuitable for their plants is factually incorrect. Even Steel Ministry has stated that indigenous coke manufactures will need to be encouraged to meet the domestic demand generated by new Mini Blast Furnaces (MBF) which are coming up in India. Thus, Indian raw material is to be used in the manufacture of pig iron in India.

8.5. Tata Korf is the pre- dominant technology used by nearly 90% of pig iron plants in India. In 1989, Tata Korf presented a paper stating that MBF can use medium grade coking coal with ash content up to 30% and coking coal with ash content of 30% will produce coke with ash content between 40% to 45%. The paper also states that coke can be imported or could be produced in India using imported coal. Alternatively, this better quality coke can be mixed with coke from Indian source. However the cost of imported coal/ coke is more expensive and will increase the overall cost of production of pig iron. Indian ore contain 66.5% iron. In order to obtain sufficient 'slag and flow' approximately 18% ash is required. Since Chinese coke has less ash than Indian coke, Indian pig iron manufactures are compelled to add quartzite (a form of ash) in the process of manufacture.

8.6. Indian met coke is having characteristics closely resembling to the metcoke from China and hence coke imported from China is a "like article" to Indian metcoke and it is "commercially and technically" substitutable.

8.7. The petitioner has argued that factors which compare Indian coke with Chinese coke are:

- Physical Characteristics (size, chemical composition and raw material)
- Manufacturing process and technology
- Function and uses
- Product specification
- Pricing, distribution and marketing
- Substitutability

8.8. Many of the consumers from foundries, pig iron producers, chemical producers, ferro- alloy producers, and other industrial and non-industrial users have been procuring metcoke from ICA (Industries and Commerce Association) members in the

past. They have shifted to Chinese coke because it is being dumped. The argument of PIMA that "it is technology and commercially not suitable to use high ash coke in the blast furnace" is incorrect as the ash in the coke of the steel plants of SAIL ranges from 20-25%. The true and correct determining factor of the of the "like article" is as to whether the article produced by domestic industry "has characteristics closely resembling to the dumped article" i.e. whether the article produced by domestic industry has been and/ or can "technically and commercially substitutable" to the dumped article and, conversely, whether the dumped article has "technically and commercially substituted" the articles produced by the domestic industry. The fact that the dumped article is of better quality than the one produced by domestic industry is not relevant and cannot be the basis for determining whether the produce of the domestic industry is "like article". The replacement and/or substitution of metcoke is a result of dumping and is not done for quality purpose but for price purpose.

9. Views of the Exporters/Importers: The views of the exporters/ importers and other parties are as under:

9.1. Two qualities of Metcoke are produced in India:

- i. Metcoke made of imported coking coal, and
- ii. Metcoke made of Indian coking coal.

9.2 Metcoke produced from Indian coking coal is not comparable to metcoke produced from imported coking coal or imported metcoke. The distinguishing factor in the metcoke manufactured from Indian coking coal and imported coking coal or imported metcoke is the ash content. The coke produced out of Indian coking coal is appropriately termed as High Ash Metcoke (HAMC) whereas the coke produced out of imported coking coal or imported metcoke is termed as Low Ash Metcoke (LAMC). The physical and chemical properties of the two types of coke are as under:

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Quality of metcoke made from coking coal	Quality of imported coking coal	Quality of imported metcoke/ metcoke produced from Indian coking coal
Moisture 5-15%	< 5%	Ash 29-40%
12-14%	Volatile matter 2-4.5%	< 1.6%
Fixed carbon 52-65%	84-88%	Sulphur 1% Max < 0.6%
Max Phosphorous 0.30%	0.03%	M 40 70-75%
80%	Minimum M 10	10-15%
8%	Maximum Ash fusion temp. 12400C	13500C

9.3. Due to these different chemical properties the two type of coke are not comparable and hence cannot be termed as like articles.

9.4. The petitioner is claiming that while the coal used in China and that used in India are not identical, there is no restriction to manufacture coke in India using imported

coal. However, this argument has no relevance whatsoever to the question whether the metcoke with ash content up to 15% imported from China is a like or not like article to metcoke produced by ICA, which has an ash content of 27-40%. The issue is not whether the ICA member could manufacture metcoke with low ash content from imported coal but whether the coke manufactured by them from high ash Indian coke could be used as a substitute to low ash coke in Mini Blast Furnaces (MBFs). The petitioner had relied on a paper presented by Tata Korf Engg. Services Ltd. in Sept 1989 stating the MBF can use medium grade coking coal with ash content up to 30%. However, the importers in response have submitted a letter from Tata Korf Engineering Services Ltd. that ash content in the coke for use in MBF should be limited to about 12%. One of the reasons for difference in opinion in 1989 and in 1998 given by M/s Tata Korf for non- suitability of high ash coke is that Tata Korf had no experience of operating Mini Blast Furnace in India and now they are recommending coke with ash content of about 13%. Tata Korf Engineering Services Ltd., has further stated that they have designed its mini blast furnaces to operate with technical parameters with respect to coke rate, productivity, slag volumes etc. whereby the process will be technically and economically viable and can produce hot metal of suitable grade. These plants are designed basically for cost effective technology for which it is essential to use LAMC having the following parameters: -

- The coke ash should be limited to about 13%.
- The volatile matter of coke should be around 1%.
- CRI value should be between 20-29%.
- CSR should be between 58-64%.
- M10 value should be 8% Maximum.
- M 40 value should be 80% Minimum.
- Sulphur content of coke should be around 0.4 to 0.5%.
- Phosphorous content should be less than 0.035%.

9.5. Due to extremely high consumption of high ash indigenous coke in the mini blast furnace, the cost of hot metal will be high. Tata Korf has now recommended that only LAMC be used in Tata Korf mini blast furnace. Tata Korf has further stated that the technical paper which was presented by Tata Korf in 1989 and which talks or suitability or indigenous high ash coke made from indigenous coking coal having high ash content for pig iron manufacture, was presented when Tata Korf had no experience of an operating mini blast furnace in India. The first Tata Korf mini blast furnace was based on operation of the mini blast furnaces of very small sizes having very low capital cost in Brazil with Brazilian iron ore where most of the mini blast furnaces were operating on charcoal. There were no operating data available at that time on the performance of MBFs with high ash indigenous coke. Till date, Tata Korf has designed 15 mini blast furnaces in India, 13 of which are under operation. With

the experience gained during 1992 to 1998, it is recommended use of only low ash metallurgical coke for Tata Korf mini blast furnaces as the use of indigenous high ash coke will increase the slag volume to such an extent that hearth design will require change and a slag notch will have to be provided to drain only extra slag. The heavy amount of slag will bring down the hot metal temperature which may not be suitable for further treatment and subsequent conversion into quality products. Further, the productivity of the furnace with the use of high ash indigenous coke will come down substantially (reduction of productivity of 2% for every 1% increase in ash content) to a level which in no way can be compared with the present productivity levels of 1.5-2.0 t/m³/d being achieved by the various Tata Korf mini blast furnaces in India. The productivity levels would be even higher when operating with agglomerates like sinter of pellets. Also the high ash coke will lead to very coke rate (increase of 2% coke rate for every 1% increase in ash content) in the blast furnace. The quality of hot metal will be poorer with the use of high ash coke with regard to temperature, phosphorous content. Cost of indigenous high ash coke on fixed carbon basis is not proportionate to the cost of imported low ash coke also on fixed carbon basis. Therefore, due to extremely high consumption of high ash indigenous coke in the mini blast furnace, the cost of hot metal will be exorbitantly high. It may be noted that the integrated steel plants are also using imported coal with much lower ash content to produce blast furnace coke and not directly using 100% indigenous high ash coke in their burden. All the above factors will result in a totally unviable mini blast furnace operation leading to closure of the mini blast furnaces in India. The capital cost of Tata Korf mini blast furnaces designed in India, based on actual experience, is much higher than anticipated earlier and as compared to the Brazilian mini blast furnaces due to additional features such as slag granulation system, power plants, etc. Therefore, Tata Korf built the mini blast furnaces only for imported coke operation.

9.6. Quartzite is not being added in the burden in the mini blast furnace operating on low ash imported coke and producing basic grade low silicon iron for steel making. Small amount of quartzite is added by these MBF operators who are producing very high silicon (2.0-3.0%) pig iron for foundries. It would be appropriate to mention here that quartzite is not a form of ash function wise quartzite cannot be substituted by the silica contained in the coke. The addition of quartzite is necessary to produce high silicon foundry grade iron since quartzite is pure form of silica (above 97% SiO₂) which has better mechanism of silicon transfer to hot metal inside the blast furnace. Quartzite plays an important role in maintaining the bosh slag (primary slag) basicity. The silica of quartzite combines with CaO to form the primary slag at the bosh region. Whereas, if high ash coke is used, the SiO₂ of coke ash is released only in the tuyere region, thus making the bosh slag viscous, which hinders in blast flow through the burden. Silicon transfer to hot metal cannot be easily achieved through the use of high ash coke which on the other hand brings adverse effects on productivity, coke rate, slag

volume, etc. Moreover, high ash coke will lead to higher alumina input, thereby making the slag viscous. To take care of such a situation, more silica in the form of quartzite needs to be added. This calls for high requirement of fluxes and consequently higher slag volume, which can be encountered by combustion of more coke to keep the slag molten. Obviously this has compounding effect on unfavorable coke rate, slag volume and productivity. In view of the above it has been recommended that only low ash metallurgical coke is used in Tata Korf mini blast furnaces.

9.7. Thus it is argued that for use in MBFs, the high ash content coke produced by is not substitutable with Chinese low ash coke. Thus high ash coke produced by some members of ICA is not a like product to low ash coke imported from China and hence the producers of high ash coke should be excluded for evaluating material injury and for determination of standing.

9.8. The petitioner argument that in order to obtain sufficient "slag and flow" in the manufacturing process, approximately 18% ash is required. Since Chinese coke has less ash than Indian coke, pig iron manufactures are compelled to use quartzite (a form of ash) in their manufacturing process. However the importers have argued that this assertion of the petitioner is misconceived and erroneous as quartzite is added not for the purpose of increasing the slag and flow but for the purpose of reduction of high alumina content in the blast furnace slag while producing pig iron using iron ore mined in India.

9.9. The petitioner has argued that metcoke with ash content higher than 20% has been purchased from them by those who produce pig iron, ferro- alloys, chemical and other industries. It is argued by the importer that such purchase orders were placed between August 1993 and Sep 95 and not during 1996-97. The only order during the period of investigation was of Wellman for low ash coke which, however, is a like product to the allegedly dumped coke from China. Petitioner has given reference to purchase orders and it is not clear whether such purpose orders were executed or not. Some of such purchases were on trial basis and since high ash content metcoke was found unsuitable during trial, it was given up. The suppliers of low ash coke are not able to supply in the desired quantities. A number of members of Pig Iron Manufactures Association, ferro alloy producers, steel furnace association had explored the feasibility of obtaining low ash coke from members of ICA. All their efforts have failed as none of the coke producers of ICA was in a position to supply coke of the required quality and specifications. Thus the purchases of coke with 20% wastage were on trial basis and as they did not yield the required results, they were blended with coke of low ash. However, further purchases of high ash content coke have completely stopped. The contention of the petitioners that high ash content coke can be used in MBFs is therefore technically and factually incorrect. Also such

purchases were much prior to the period of investigation. Some small quantities were taken from ICA to meet exigencies and that too mostly on conversions basis by making available low ash content coal.

9.10. Hindustan Zinc Ltd. has stated that for their plant, coke is an essential & most critical input. Quality of coke is very important for the operation and it directly affects economics of plant due to increased slag production in case of high ash coke.

9.11. In the input output norms published by Ministry of Commerce for production of pig iron (blast furnace route) one of the input shown is low ash metallurgical coke (with ash content below 15%). Thus metcoke with ash content of 27-40% is not a like article to metcoke imported. The high ash content coke produced by Indian coke producers hampers productivity, increases the rate of consumption with cascading effect on cost of production. The viability of MBF operation is based on the presumption that high quality of Chinese coke would be available at economic prices.

9.12. When the petitioner themselves are distinguishing these two products i.e., low ash metcoke and high ash metcoke, how the Designated Authority has come to the conclusion that the products are substitutable both technically and commercially. Where an identical article which is alike in all respect with the article under investigation exists, it will constitute like article. There are manufactures of metcoke in India who produce LAMC out of imported coal. Such LAMC is identical in all respect and thus it will constitute a like article. If such article was not being manufactured in India, then the Authority should look for whether the article produced by domestic industry is having characteristics closely resembling those under investigation. Thus the product produced by ICA, Dhanbad should be excluded.

9.13. Also the domestic coke produced by petitioners have high level of sulphur and phosphorous content which are not suitable for efficient blast furnace operations. The metcoke imported from China contain about 0.035% of phosphorous whereas the coke out of Indian coal contains about 0.26%. Due to extremely high percentage of ash and phosphorous in the coke manufactured in India out of Indian coal, it is not all capable of being used for various industrial applications where LAMC with very low phosphorous content is required.

9.14. In the opinion of experts in blast furnace technology, the coke produced from W3 & W4 grades of coal supplied to the cookerries in Dhanbad region is neither suitable nor economical due to heterogeneous in composition, inferiority and inconsistent quality. Due to lower temperature of carbonisation, the coke produced from such coal does not possess the required physical strength for use in blast furnace. Due to poor quality of indigenous coal, SAIL & RINL went in for large scale import of low ash coal to produce the desired quality of coke in blast furnace.

9.15. LAMC is a different commercial commodity as compared to high ash metcoke and these two are known dealt, treated and regarded in the market as distinct commercial product. Even Ministry of Commerce has indicated while issuing licence regarding the Ash content as "ash content not excluding 15% ". Ministry of Finance has also along recognized the said difference with reference to the percentage of ash as well as with percentage of phosphorous. The function, industries in which there are used, are different in both type coke and hence they cannot be termed as like article. The coke manufactured by ICA has ash content of 28 to 40% and 0.26% or more of phosphorous and it is simply not possible and feasible to use the said coke as a substitute to LAMC imported from China. The coke produced in India from indigenous coal is of poor quality and pig iron cannot use indigenous coke as there technologies don't permit it as ash content of 20 to 40% as against imported Chinese coke which has ash content of 12 to 15%. If pig iron producers are forced to use this coke it will result in increased consumption at 1000kg per tonnes of pig iron as against the standard norm of 800 kg per tonne in the case of low ash imported coke. Thus it involves and extra cost of production and the industry cannot afford it. Besides use of indigenous coke will hamper productivity of blast furnace and erode their efficiency.

9.16. The ferro alloys industry has stated that the coke required for ferro alloys industry has a different specification. They require coke only in the size range of 10 to 30 mm and with a phosphorous content not exceeding 0.0166%. The coke produced from Indian coal has a phosphorous content of 0.15% and it cannot at all be used by the ferro alloys produced. The coke produced by ICA Dhanbad is neither suitable for pig iron manufacturers because of ash content nor suitable for ferro alloys producers because of high ash and phosphorous content. The local ferro alloys industry require low ash, low phosphorous, low sulphur metcoke having stringent sufficient specification which is not available for indigenous sources. Manufacture of ferro alloys is a continuous process and as such the plant has to be operated continuously without any interruption and stoppage. For this, the industry has to import low phosphorous, low ash, low sulphur metcoke from China as the indigenous metcoke cannot be used.

EXAMINATION OF THE ISSUES RAISED ON "LIKE ARTICLE"

10. As per Rule 2(d), "Like Article" has been defined as under: -

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

11. With regard to the issue of "like article", it has been contended by the exporters and the importers that the metcoke produced by the Industries and Commerce Association (ICA) has very high ash content and, therefore, the same cannot be called as a like article to the metcoke imported from China. It has also been mentioned that the other technical specifications are also different to an extent that the user industries cannot substitute the Chinese coke with the metcoke produced by ICA.

12. On the other hand, detailed representations have been made by the petitioners that the two products are technically and commercially substitutable and therefore like articles within the scope of the definition. The Authority, however, observes that both the petitioner industries as well as the importers and exporters have agreed that one of the main features of metcoke is its ash content. Coke made out of Indian coal has high ash content ranging from 20% to 40%, while the coke made out of imported coal and imported coke by themselves have low ash content. Therefore, it is the admitted position from both sides that metcoke can be broadly divided into two categories namely, coke produced from Indian coal and imported coke/ coke produced from imported coal. In fact, the Authority observes that PIMA has, in its return submissions, also made the above categorization.

13. The Authority also observes that the production process for both the above categories is same and the ash content of the metcoke depends upon the blend of the coal used for the purpose. Blending of different varieties of coal is done to arrive at the desired level of ash content in the finished product i.e. metcoke. The Authority observes that there have been instances where the blast furnace have used the high ash content metcoke also even though they have mainly preferred to use the imported Chinese coke with low ash content. The claims made by the domestic industry that the pig iron manufacturers were using coke made from Indian coal in the past, particularly in the period prior to 1992, remains uncontroverted.

14. In view of the above, the Authority concludes that there is considerable evidence to suggest that the variation in the technical composition, particularly the ash content, does not make it technically impossible for all the user industries to use the high ash content metcoke. The argument that the user industry has not placed any orders during the period of investigation does not have any bearing on the aspect of technical substitutability of the Indian metcoke with the Chinese metcoke. Even the opinion of the technical experts does not categorically state that the substitution of the two categories of metcoke is not possible. The opinions expressed by the experts merely indicate that use of high ash content metcoke in the production of pig iron will lead to high slag generation etc., and that the commercial viability of the MBFs is entirely dependant upon the use of low ash content Chinese metcoke. The Authority observes that for determining the "like article", it is the substitutability which is of paramount

importance and not the actual substitution, the latter may be a relevant factor from the injury point of view.

15. Some user industry groups like manufactures of ductile iron pipes, ferro alloys have indicated that the metcoke required by them has to have some other physical as well as chemical properties. For instance, it has been indicated by the ductile iron pipes industry that the phosphorous content in the metcoke required by them should be less than 0.035%. While it is appreciated that certain industries may have special requirements, anti-dumping rules do not permit analysis on the basis of specific end users when there is a high degree of substitution possible among different types of user industries. The Authority therefore is not in a position to make any separate categorisation for users with special requirements.

16. In view of the above, the Authority holds that even through the members of ICA mainly produce metcoke which is not substitutable to the low ash content metcoke for some uses, these producers are capable manufacturing low ash content metcoke depending upon the quality and source of coal used by them. However, it is also observed that the members of ICA had not produced significant quantities of low ash content metcoke either from good quality India coal or imported coal. However, the petitioner BLA Industries Ltd. has produce significant quantities of Low Ash Content Low for a specific segment of end users in the domestic market.

17. The Authority, therefore, holds that it is only the production of low ash content metcoke which is "like article" to the imported Chinese coke. The contention of the exporter/importers that high ash content metcoke should not be considered as like articles, has considerable force and is accepted in view of the facts and circumstances of the case.

18. In addition to above, the Authority also observes that the standard input- output norms of the Directorate General of Foreign Trade wherein for production of pig iron (blast furnaces), one of the inputs shown is low ash content metcoke (with ash content below 15%). The Authority is inclined to agree with the exporters/importers that only metcoke with ash content of 15% and below, irrespective of its producer in India, is a "like article" to the imported Chinese coke. The Authority, therefore, concludes that metcoke with an ash content of 15% and below, irrespective of its producer in India is a "like article" to the imported Chinese coke.

D. DOMESTIC INDUSTRY

19. Petitioners Views

The views of the petitioners are as follows:

19.1 The petitioner has submitted that domestic manufacturer of metcoke comprises of the following:

- Tata Iron and Steel Co. Ltd. (TISCO)
- Steel Authority of India (SAIL)
- Bharat coking coal Ltd., (BCCL)
- Rashtriya Ispat Nigam Ltd., (RINL)
- Durgapur Project Ltd., (DPL)
- Wellman Incandescent Ltd. (Wellman)
- BLA Industries Ltd., (BLA)
- Southern Fuels Ltd. (Southern)
- Fertilizer Corpn. of India (FCI)
- Sesa Goa (Sesa)
- Usha Udyog (USHA)
- Gujarat NRE Coke (Gujarat NRE)
- Industries and Commerce Association (ICA)

19.2. TISCO, Sesa Goa, Usha Udyog, SAIL should be excluded on the ground that they either directly or through related companies have imported metcoke to India during period of investigation. Further RINL is related to SAIL as it is under the administrative control of Steel Ministry and thus is related to SAIL under the definition of "Related" as contained in the WTO agreement of anti-dumping duty. Both of them are directly controlled by a third person i.e., Ministry of Steel and hence related. It is submitted that RINL be excluded on the basis of relationship with SAIL. RINL first supported the petition, then withdrew their support and remained neutral, and subsequently opposed the imposition of anti-dumping duty. These changes has been brought about by the pressure exerted by the Steel Ministry. Had the Steel Ministry not been the common shareholder with administrative control of SAIL and RINL, RINL would not have withdrawn their support and begun to oppose the imposition of anti-dumping duty.

19.3. RINL must also be excluded from the domestic industry as their production is consumed internally within their process of production and negligible amount reaches the merchant market. Under the proviso to Rule 2(b) read with Rule 11(3); the producers who produce and market metcoke and those who produce and captively consume, constitute two competitive markets and each one of them must be treated as a separate domestic industry. Since RINL is a consumer of metcoke and its produces metcoke for its captive consumption it is an intermediary product and not as an end product for the purpose of excise duty or sales tax or any other purpose. Further the exclusion of captive consumption is common in GATT practice world over.

19.4. Considering above point, BLA Industries Ltd. and ICA constitute 45% at the time of initiation and at present express support for the petition is 67.81%. The statutory requirement of locus standing in respect of Domestic Industry have been fully complied with.

19.5. The repeated argument of the importer/exporter that WTO has clarified to the Ministry of Commerce in 1994, that for standing purpose only captive production must be included in the preview of domestic industry has never been substantiated. There is no question of "WTO" having issued any clarification to any query pertaining to the technical aspect of dealing with "captive production" unless all member states give ascent to such a clarification.

20. Views of the importers: The views of importers on Standing of Domestic Industry are as follows:

20.1. The Authority has not taken into account the production of metcoke by Rashtriya Ispat Nigam Ltd. (RINL) even though it had been brought to the notice of Authority about the clarification issued by WTO that production, predominately for captive consumption should be taken into account for the purpose of determining the standing of petitioner. With reference to WTO clarification, for the purpose of determination of standing, production is important and not consumption. For the purpose of determination of injury, those producers who produce mainly for captive consumption should get little attention. The argument of the petitioner that GATT practice world over to exclude captive consumption is incorrect. It is claimed by importer that practice in US & Europe supports their views and captive consumption be excluded in injury analysis.

20.2. The petitioner has argued that as per proviso to Rule 2(b) and Rule 11(3) would imply that there are two competitive market of Metcoke and each one of them must be treated as a separate domestic industry and those producer producing the Metcoke for captive consumption be treated as separate industry and those producing Metcoke for sale in the market must be treated as another industry. This argument is erroneous and has been made without proper appreciation of the legal position because such separation can be invoked only where there has been a concentration of dumped imports into a certain area and the producers within that area sell all their production in that area and the demand in that area is not supplied by producers located elsewhere in the territory to any substantial degree.

20.3. The argument of petitioner that RINL should be excluded from the purview of domestic industry on the basis that RINL is under the administrative control of Ministry of Steel is not correct. SAIL is also under the administrative control of Ministry of Steel and has been excluded as Visvesvariya Iron & Steel Ltd. (VISL),

which is a subsidiary of SAIL, has imported the Metcoke. The petitioner has argued that since RINL and SAIL are under the administrative control of Ministry of Steel and thus related to each other. It is stated in Article VI that producers shall be related to importers if one of them directly or indirectly controls the other, or both of them are directly or indirectly controlled by a third person or together they directly or indirectly controls a third person.

20.4. It is argued that the question whether RINL directly or indirectly controls VISL has to be answered in negative as RINL is neither legally nor operationally in a position to exercise restraint or direction over VISL. The converse is also true. RINL is not legally or operationally in a position to exercise restraint or direction over SAIL and vice versa hence RINL and VISL are not related. On the date of initiation of investigation, there was no express support from RINL. If RINL questionnaire response is to be treated as support to the petition, then their subsequent opposition to imposition of anti-dumping duty are also to be considered. The petitioner did not have the express support of RINL on the date of initiation and hence did not satisfy the 25% requirement under the proviso to Rule 5(3)(a) and the standing had to be determined only with reference to the support existing on the date of initiation.

20.5. The claim of the petitioner that the stage for determining the standing of the domestic industry is, before the Designated Authority decided to initiate the investigation, and not thereafter, is not correct.

20.6. P!MA has pointed out that even after excluding the production of SAIL & TISCO whose subsidiaries had imported the Coke, the petitioner M/s BLA Industries ICA account for 18.1% of the total production of Metcoke and hence do not have standing to file petition.

20.7 The petitioners who filed the petition did not indicate the names of other producers of Metcoke. To this extent the information furnished by petitioner was insufficient incorrect and misleading. It is the duty of Designated Authority to satisfy itself that the petitioner who made the application satisfy the statutory requirements on standing to file petition. These conditions have to be satisfied at the time of initiation of the investigation. If a producer who at the time of initiation of investigation did not support the petition but later on support the petition after initiation of investigation, that cannot be taken into account to validate the initiation of the investigations, if the original initiation was not in order. Since the petitioner had not given the details of production of RINL or BCCL, the Designated Authority was missed. Wellman Incandescent Ltd.. on 24.4.98 submitted to Authority that it is suffering injury. However, in the letter they are not expressly indicating any support to petition, BCCL expressly supported the petition on 22-5-98. RINL has filed response in 28.11.97 however there is no indication about the express support. The said letter has been

withdrawn on 15.5.98 and vide the letter dated 1.6.98, they are opposing the petitions. Thus even if BCCL support is taken into account which should not be taken into account, the percentage of productions of supporter and opponents of applications is 25.28% which is less than the statutory requirement of 50%. Thus the petitioners have no standing to file the petition nor maintain it and consequently the Designated Authority has no jurisdiction to initiate or continue the investigations.

20.8 The Authority has excluded the production of SAIL for determination of domestic industry on the ground that it is producing the coke for captive consumption and one of the subsidiary namely Visvesvaraya Iron and Steel is an importer. Under Rule 2(b) there is no provision to exclude the production of producing who produce for captive consumption. The excluded category covers the persons who are "themselves" the importers of the articles in questions. The expression "themselves" is of almost importance and refers to the producers/manufactures of article in question. There is no provision anywhere in Rule 2(b) for excluding the figures of production on the ground that the domestic manufacturer itself is not an importer but one of its subsidiary company is an importer. Hence the petitioner and its supporters accounts for 4.2% domestic production and have no standing. Even if the figures of SAIL is excluded their share is 18% and they do not have standing to file petition.

20.9. There are only two producers BLA Industries Ltd. and Gujarat NRE Coke Ltd., among petitioners alleging dumping of coke, who have facilities to produce low ash coke with 12-15% Ash from imported coking coal. However they can not cater to the requirement of Pig Iron/ Steel producers.

20.10. Rashtriya Ispat Nigam Ltd., (RINL) has requested to examine the possibilities of imposing duty on Metcoke on 28.11.97. However this letter was withdrawn on 15.5.98 On 1.6.98 they submitted another letter wherein they have opposed the petition to levy anti- dumping duty. They have stated that the coke production at RINL is primarily for its captive consumption and only surplus quantities have been sold in domestic market. They have also stated that their letter dated 28.11.97 had no clearance from the management and it was given unauthorized. It is also stated that content of the letter do not reflect the philosophy of Policy of RINL and they are taking suitable action internally for sending such an unauthorised letter. They requested to treat the letter dated 28.11.97 as withdrawn and as null and void. Thus RINL has opposed the petitioner.

EXAMINATION OF THE ISSUES OF DOMESTIC INDUSTRY & STANDING

21. The term "Domestic Industry" is defined under Rule 2(b). It reads as

"Domestic Industry" means the domestic producers as a whole engaged in the manufacture of like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion are related to exporters of importers of the alleged dumped articles or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry.

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

- i. the producers within such a market sell all or almost all of their production of the article in question in that market and
- ii. the demand in the market is not is any substantial degree supplied by producers of the said article located elsewhere in the territory.

23. Rule 11(3) reads as under: -

"The Designated Authority may, in exceptional cases, give a finding as to the existence of injury even where substantial portion of the domestic industry is not injured if –

- i. there is a concentration of dumped imports into an isolated market, and
- ii. the dumped article are causing injury to the producers of all or almost all of the production within such market."

24. From the definition of domestic industry, as mentioned above, the Designated Authority is required to evaluate the scope of the term "Domestic Industry" in the context of the domestic producers who are engaged in the manufacture of "like article" and any activity connected therewith. Rule 5(a) clearly states that the Authority is required to examine the degree of support for or opposition to the application expressed by the domestic producers of the "like article". The proviso further states that no investigation shall be initiated if the domestic producers expressly supporting the application account for less than 25% of the total production of the "like article" by the domestic industry.

25. It is clear from the above that for the determination of domestic industry, only the producers of "like article" have to be taken into account. The Authority, having already determined the scope of the term "like article" in para 18 above, is required to take into consideration the total production of only the "like article" i.e. metcoke of ash content up to and below 15% only for the purposes of determining the threshold

limits of 25% and 50%. The authority, therefore, proceeds to determine, on a factual basis, as to which of the producers constitute the domestic industry of India:

Name of the company	Ash content	Production during period of investigation (in MT)
BLA Industries	Less than 15%	119337
Industries & Commerce Association	More than 15%	543603
Southern Fuel Ltd.	Less than 15%	10623
Bharat Coking Coal Ltd.	More than 15%	215500
Wellman Incandescent India Ltd,	Less than 15%	59425
Gujarat NRE Coke Ltd.	Less than 15%	50860
Durgapur Projects Ltd.	More than 15%	323701
Fertilizer Corpn. Of India	More than 15%	102000
Rashtriya Ispat Nigam Ltd. **	More than 15%	1895273
Steel Authority of India Ltd. **	Related to importer	9957431
Tata Iron & Steel Co. Ltd. **	Related to importer	2018800
Sesa Kembla Coke Co. Ltd. **	Related to importer	160547
Usha Udyog **	Related to importer	77283

Note- **** above indicates those companies who produce metcoke primarily for captive consumption.

26. From the above table M/s SAIL, TISCO, SESA Goa and Usha Udyog happen to be importers/ related to importers of metcoke and, therefore, they have to be excluded from the scope of the term "Domestic Industry". It has been argued that for the purpose of exclusion, the producers should be "themselves" importers. The Authority observes that the definition of "Domestic Industry" under Rule 2(b) is abundantly clear that not only the producers who import themselves are to be excluded but also those who are related to such importers. The findings of the Authority in the preliminary notification regarding the status of SAIL, TISCO, SESA and Usha Udyog are, therefore, confirmed that they do not form a part of the "Domestic Industry" for the purpose of these investigations.

27. It has also been noticed that the members of ICA and RINL are producers of metcoke of above 15% ash content. Therefore, these units are not the producers of like articles for the purpose of these investigations. Subsequent to the disclosure of essential facts, it has been stated by the importers that it would not be correct to state that RINL is producing coke with ash content of above 15% in view of the fact that some tolerance is to be allowed in the stated figure of 15%. The Authority notes that the production figures of RINL and their average ash content was provided by RINL itself on a monthly basis. These figures clearly indicate that RINL, by its own admission, had never produced metcoke of less than or upto 15%. Moreover, the facts stated in the disclosure statement have not been disputed by RINL itself. The contention of the importer, therefore, cannot be accepted. This is without prejudice to

the finding of the Authority that the production of RINL which is meant for captive consumption is not to be included for the purpose of either the determination of domestic industry or for the purpose of standing.

28. The Authority understands that BCCL, DPL, and FCI, are producers of high ash content coke. There is no evidence produced before the Authority that they produce LAMC (upto 15% ash content) which is a like article in this case. Hence, the Authority on the basis of best information available with it determines that BCCL, DPL, and FCI do not form part of domestic industry.

29. The contention of the petitioners that RINL and SAIL should be considered as related as they are both under the administrative control of the Steel Ministry cannot be accepted. After making necessary inquiries, the Authority is satisfied that these two companies are run by independent Boards of Directors and the Ministry of Steel has not exercised any kind of control specifically in the metcoke case.

30. The final position with regard to the producers who are being considered as a part of the "Domestic Industry" is as follows:

BLA 119337MT

Southern Fuels 10623MT

Wellman 59425MT

Gujarat NRE 50860MT

TOTAL 240245MT

31. An issue has been raised that the production by the domestic industry for captive consumption should also form a part of the total domestic production as there is no provision for exclusion of the same under the Indian law. In this context, the learned counsel for the exporters has also repeatedly mentioned that there is WTO advice with the Ministry indicating that the production meant for captive consumption should not be ignored for the purpose of determination of "Domestic Industry".

32. Subsequent to the disclosure, a number of importers have annexed a copy of a communication received from the Permanent Mission of India at Geneva (PMI) with regard to the issue of including the production meant for captive consumption for the purpose of standing. None of the parties has, however, enclosed copies of the letter dated 10th June, 1998, seeking clarification from the PMI. The said communication

dated 20.7.98, which was submitted to the Authority on 10.8.98 (the last date of submitting response to the disclosure statement), reads as under:

PERMANENT MISSION OF INDIA

GENEVA

No. GEN/ PMI/ WTO/...

20 JULY 98

TO: MR. R. PARTHASARTHY, EX.IA&AS

M/s LAKSHMI KUMAR & SRIDHARAN

FAX: 00-91-11-6197578

FROM: S. PRIYADARSHI, COUNSELLOR

Please refer to your letter dated 10 June 1998 addressed to Ambassador Narayanan regarding certain provisions of the Agreement on the implementation of anti-dumping measures.

As desired by Ambassador, I had spoken to the concerned officer in the WTO Secretariat who has clarified that while the Agreement does not provide clarity on whether domestic producers who produce only for captive consumption should be included while calculating the support for any anti-dumping application, the presumption has been that irrespective of the end use, all production shall be taken into account when calculating any specific percentage of support.

With regards,

Signed

(S. PRIYADARSHI)
COUNSELLOR

33. The Authority sought details and certain clarifications from the Ambassador in the PMI about the source of such clarification and also the legal basis, economic rationale and the jurisprudence on the issue. A reply dated 11.8.98 was received from PMI and certain relevant extracts from the letter are reproduced below.

This is in response to your fax message of yesterday.

It is my feeling that the question of inclusion or non- inclusion of production meant for captive consumption in determining 25% yardstick provided for in Article 5.4 of the Anti- dumping Agreement is a grey area in the Anti- dumping Agreement. One WTO Secretariat Officer as well as one eminent legal professional whom I have consulted today in the matter, have confirmed that the Anti- dumping Agreement is not at all clear on this aspect of the Agreement. I also understand that this issue has not been a subject for consideration in the dispute settlement process under the old GATT or the present WTO, at any point of time. Therefore, it is obvious that the issue is wide open and quasi- judicial authorities are entitled to interpret the provisions of the Agreement, in any manner they like as long as such an interpretation meets the criteria of reasonableness, consistency and good faith.

Regarding the message sent by Counsellor in the WTO Mission, I would like to clarify that in response to a specific request made for clarification he has sent this message on the basis of the informal consultations he has had with one particular WTO Secretariat officer. By no stretch of imagination can it be argued that this message of Counsellor in the WTO Mission constitutes an authoritative interpretation and that it is binding. In fact, I find that Mr. Priyadarshi has clearly indicated that WTO Secretariat had acknowledged that the Agreement itself does not provide clarity on whether the domestic producers who produce only for captive consumption should be included while calculating the support for any anti- dumping application.

In the light of the above it is clear that the message of the Counsellor (WTO) conveying the presumption of a WTO Secretariat officer, that too with the preface that there is an absence of clarity in the Agreement, can have no binding value.

Therefore, you can proceed on the basis that there is no binding decision/ jurisprudence on the question of including or excluding captive consumption while calculating support for an anti- dumping application.

34. Notwithstanding the fact that the Authority is not bound by the personal or official opinions of the WTO Secretariat officials, no legal or economic analysis, reasoning or case law has been cited to arrive at the said opinion. In this respect, no credence can be attached to the said clarification nor can it be said to have even any persuasive value. The Authority observes that, as per its consistent practice, production meant for captive consumption need not be included for the purpose of defining "Domestic Industry" or the standing of the petitioners. The Authority considers that goods meant for captive consumption do not enter into the markets where the merchant goods are competing with the alleged dumped goods. In any case, the Authority observes that in the instant case, there is no producer of metcoke of upto 15% ash content, who is otherwise eligible to be covered under the scope of "Domestic Industry". The Authority also observes that the practice of European Commission and the US

authorities cited by the exporters counsel that goods meant for captive consumption are not excluded, is not factually correct.

35. The Authority observes that the total production of metcoke of upto 15% ash content (like article) by the "Domestic Industry" is 240245 MT during the period of investigation. The petition has the support of the all producers who account for 100 per cent of the total production of the "like article" by the "Domestic Industry". The Authority therefore concludes that the petition has the requisite support as envisaged under the law.

36. An issue has been raised that the Authority has to determine the standing on the date of initiation and any subsequent support to the petition should not be taken into account. The Authority observes that even though it is required to determine the support of opposition to a petition at the time of initiation of investigations, such determination is based only on the basis of examination of the evidence available at that point of time. Further, the Authority should and can go into the issues of scope of "Domestic Industry" and "like article" only after the investigations are initiated. The details of whether any producer is also an importer of the alleged dumped goods can only be established after a proper investigation is initiated following the due process of law. Similarly, the precise scope of the term "like article" can also be determined after the Authority gets an opportunity to carry out detailed investigations, and after giving due opportunity to all the interested parties. On the basis of detailed information and an in- depth analysis, the scope of the terms "Domestic Industry" and "like article" is determined by the Designated Authority, which has a direct bearing on the standing issue. A final determination of any aspect at the pre- initiation stage itself is, therefore, not contemplated either in the Indian laws or in the GATT Agreement nor would such a process be consistent with the principles of natural justice.

37. In view of the above discussions, the Authority also holds that based on the information available to it at the time of initiation, the petitioners had the standing to file the petition on behalf of the domestic industry. As stated earlier, after redefining the scope of "like article" and admitting the argument of the importers/ exporters that the high ash content metcoke producers should be excluded, the Authority holds that the petition has the support of producers accounting for 100% of the production of "like article". On the date of initiation the petition was filed by M/s BLA Industries Ltd. And ICA and was supported by Southern Fuels Ltd. These producers collectively accounted for more than 25% of "Domestic Industry" known as producers of metallurgical coke at that point of time. As such, the petitioners had the standing to file the petition on behalf of the Indian "Domestic Industry" on the date of initiation of investigations.

F. NORMAL VALUE

This section has been divided into the following:

- Claims of the exporters
- Views of the petitioners
- Views of the exporters/ importers
- Examination by the Authority

CLAIMS OF EXPORTERS

38. Shanxi Coal Import Export Group Corpn: The said exporter has not any other information after the preliminary findings were notified. Thus the claims of above exporter in the preliminary findings stand and there is no change.

39. Ningxia Xiacheng Import & Export Corpn: The said exporter has not submitted any other information after the preliminary findings were notified. Thus the claims of the above exporter in the preliminary findings stand and there is no change.

40. China National Import/ Exports Hebei Co.:

40.1. It is stated that their export sales are to traders. Their domestic sales are of manufacturer who supplied export cargo to India. The manufacturer is Shiziazhnag. It has also been stated that they are not selling this grade of coke to other country.

40.2 Price adjustments have been claimed on account of discount (penalty for quality deviations affected in invoice) commission, inland freight and handling charges in the export price to India. The exporter has submitted the agency agreement wherein the commission percentage as claimed is indicated. In support of inland freight the exporter has submitted invoice from Railways and a certificate from the Railway Bureau of Beijing, Shiziazhnang Station dated 9.7.98 wherein it is certified that during the period from April 96 to April 97, the freight rate has not changed. Regarding the handling charges the exporter has submitted invoice raised by handling agent. The exporter has revised its claim from **** to **** in respect of handling charges. Further, the domestic price has been shown as ****. The exporter has not claimed any deduction to arrive at the ex- factory price as they have stated that domestic customers take the delivery at the factory gate and bear all further expenses and the list price is only the base price, taxes and other additions are extra.

40.3. In support of domestic price claimed, the exporter has submitted copy of sales ledger for the relevant period. The exporter has submitted invoices for July 96, Oct 96 and Nov 96, Feb 97 to show the prevailing domestic price. Cost statement of the

producer claiming that domestic sales were profitable which are certified by the CPA showing that the production and sales of coke of the concerned size are at profit has also been submitted.

41. China National Coal Industry:

41.1. The exporter has stated that there is no domestic sales and it is not exporting this grade of metcoke to any other country. It is also indicated that the company is not providing any other financial assistance to their customers and payments are usually by an irrevocable letter of credit on sight payment terms. Hence no interest cost is incurred.

41.2. The company has further stated that it had exported four consignments to India during the period of investigation. Out of four consignments, three export consignments were purchased from company A and one was purchased from company B. In respect of export through company A, the exporter has revised its claim on inland freight and loading charges. In respect of exports through company B, no deduction is claimed as the port is stated to be located at the backyard of cokery.

41.3. The exporter has submitted the invoices in respect of inland freight and loading charges. Thus the ex- factory price in respect of exports is as under: -

(In US\$) Exports from Exports from

Company A Company B

Price *****

Inland freight *****

Loading cost *****

***** -----

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***** *****

41.4. The exporters have submitted the domestic invoice in respect of company A. The exporter has submitted invoices for the month of April 96, Dec 96 and March 97 and expressed inability to provide invoice for other months due to short time given. The exporter has also submitted the Profit & Loss Statement. It is observed that they are getting subsidy and also incurring losses. However it is not clear whether the

exporter has adjusted the effects of subsidy. The exporter has however stated that coke oven gas is to be sold at prices fixed by Government and the Government of China subsidises the losses incurred on this count. The subsidy has nothing to do with Metcoke. The exporter has claimed that it has made profits on all the grades of coke. It has also claimed the domestic price of company A as ****, which establish no dumping. It is further claimed that in respect of company B, the domestic price is****, and hence there is no dumping.

42. China North Industries Corpn.:

42.1. The exporter has stated that it had exported only one consignment of metcoke to India in Feb. 97. M/s. Shanxi Linfex Ping Yang Cockery factory is the producer. The exporter has claimed that is has exported the consignment on C & F basis and has claimed price adjustment on account of discount/commission, inland freight, storage, loading cost, SGS inspection charges and ocean freight in the export price to India. It has submitted copy of agreement to claim commission. It has submitted one invoice showing the inland freight claimed. The exporter has submitted the copy of agreement showing ocean freight claimed. Evidence has also been furnished showing the claim on account of storage and loading cost. The ex-factory export price claimed is ****. Regarding domestic price, the exporter has submitted one invoice of Feb., 97 showing the domestic price. The exporter has further stated that it is not in a position to supply the details of domestic sales as the record of manufacturer had been taken over by the Government for investigation. The exporter has produced a letter from Shanxi People High Court in this regard. On the basis of this invoice, the domestic price claimed is ****. The exporter has thus claimed de-minimus dumping margin. It is also claimed that the cost of production is **** and the sales are above cost. In support of the cost claimed, the exporter has submitted a certificate by CPA showing the production cost.

43. China National Mineral Import & Edxport Corpn. (Mimetal Gropup):

43.1 The exporter has claimed that Geng Yang Cocking Plant producers coke and supplies its entire to Minmetal, which is then exported to India or other countries. It is also claimed that the producer did not sell subject goods within China, and the export to third countries were not from the producer whose production was sold to India. Thus the exporter has proposed to discard the details of export to other countries. The exporter has further submitted that normal value by way to domestic price or by way of export price to third country is not available and therefore the same be constructed on cost of production basis. The exporter has claimed the price adjustment on account of inland freight, storage (warehouse), handling (loading from warehouse to berth) and SGS inspection charges on the export price to India. The exporter has also claimed that the sales are above cost. It has submitted a sheet showing cost calculation for the year 1996 certified by CPA that the cost is ***. It is claimed that producer sold

the goods to Minmetal at ***, who in turn exported to India at ***, and thus there is no dumping. The exporter has submitted evidence in respect of deductions claimed from export.

44. Shanghai Pacific Chemical Corporation: The exporter has claimed that it manufactures the coke. It is claimed that their cookery is at the backyard of the port and the coke produced is directly conveyed by belt to the port site where it is stored and loaded on the vessel. Thus there is no inland freight involved. The exporter has claimed price adjustment on account of storage charges in the export price to India and submitted some invoice claiming the storage charges. The export price on ex-factory basis is ***. The exporter has claimed that it is selling the product within China and has claimed deduction of VAT @ 17%, which is shown in the invoice also. It has been claimed that the delivery of coke for domestic sales is on ex-factory basis and the customer incurs the expenses for transporting the coke from the factory of the manufacturer premises. No expenditure is incurred separately on account of packing, storage and handling in case of domestic sales. The exporter has claimed the domestic price on ex-factory basis after VAT as *** as compared to the domestic price of ***. The exporter has thus claimed de-minimus dumping margin. The exporter has stated that the number of domestic invoice runs into more than 20000 and in view of large number of invoice and short time available. It has been unable to trace out and make photocopies of all the invoices. The exporter has submitted a copy of its ledger showing the invoice wise sale of coke for May, June, August, Oct & Nov 1996 and Jan. & March 1997 (corresponding to the eight months in which there were export transaction). The exporter has submitted all the invoice for the month of Oct 96 and sample invoices in respect of other months. The company has submitted its cost statement for 1996 and 1997, certified by Shanghai Region Certified Public Accountant and has claimed that it had made profits on production and sale of coke both in the year 1996 and 1997 and therefore domestic sales price reported within China should be considered viable and should be used for determination of the normal value.

45. Some exporter have submitted a few copies of the purchase invoices of coal. The English translation of these invoice is woefully inadequate in as much as the ash content of coal is also not given. The other commercial details have also not been translated. In any case, the Authority refrains from accepting any fresh evidence at this stage, as it would be a denial of natural justice to the other side who would not have an opportunity to rebut any additional evidence at this late stage. As stated earlier, the exporter failed to provide sufficient evidence in support of their claims despite several opportunities.

46. View of Petitioner:

The views of the petitioners on Normal value determination are as under:

46.1 The coal mining industry in China is primarily supported by the state as a means for generating employment. It is also largely unregulated and often illegal. The cost of coal is unrealistically low as labour and other social factors are totally ignored. Thus it makes the fundamental cost of coke unreliable. Selected article reveals that several thousand lives are lost over a year in coal mining activity.

46.2 There is a complex web of licensing requirement and thus all these companies are related and collectively involved in large scale of dumping.

46.3 China is a non-market economy and in India Designated Authority has recognised China as a non-market economy in several anti dumping cases. Mere submission of certain invoices in domestic transaction, does not suffice in providing that coke is sold domestically within China at free market rate. State, in China, still remain the owner of most enterprises and a complex web of licensing requirement is used to maintain total control. Thus normal value cannot be taken on the basis of domestic sales. Chinese metcoke manufacture have neglected to provide the domestic price on coal and they seem to rely on reverse accounting of 'normal value'. Since normal value cannot be accepted on the basis of domestic prices, it is to be constructed.

46.4 Coal accounts for over 70% of the cost of coke and thus accurate cost of coal is fundamental to any construction of price of coke. Best and most accurate method of doing so is when a country having abundant natural resources would pay for the same natural resources from other countries. Thus c.i.f. price of coal imported by China should be taken as cost of coal.

46.5 As per the responses of exporters, there has been a 100% variation in the price of coke in China by different supplier. If they are selling coke at US\$ 33.8 PMT, the price of coal has to be free. None of the exporter have their own domestic sales but provided information of domestic sales from other producers. Some of the exporters have claimed deduction on VAT, whereas others have not. Thus the information submitted by exporters are incorrect and should not be taken into consideration. None of the exporters have submitted the price of coal. On the other hand, several attempts were made to derive the cost of coal by reverse calculation. This strengthen the view that price of coal be taken as the price at which Chinese and importing coal from Australia. In China, coal companies are selling coal below cost and thus domestic coal price in China are non reflective of fair cost and is cross subsidized by Government in several cases.

46.6 The importers have not disputed that normal value may be computed by constructing the cost of production, They have opposed the workings as submitted by petitioner and inter alia, they have opposed, cost of coal as the landed price of imported Australian coal into China. The petition has never claimed that all the coal used for coke making in China is imported from Australia. It is not denied by importers that China has imported coking coal from Australia and imports must necessarily make economic sense and thus the cost of Australian coal in China can be considered as the cost of coal in coke plants in China.

46.7 The petitioner have denied that cost of manufacturing in China is exaggerated. It is estimated in China based on competitive cost in India. Chinese accounting standards are not upto standard. Thus neither the cost of production nor domestic prices as submitted by Chinese exporters can be relied upon.

46.8 The importer have failed to account for "specific density of coke Vs coal". In layman terms, this means that more coal will fit into same size of bucket than coke and thus transportation cost of 1 tonne of coal will be cheaper than the transport cost of 1 tonne of coke. This ratio of coke is to coal is 1:1.81 on these basis, the price of coke produced in India would be cheaper as compared to Chinese coke.

47. Views of Exporters/Importers:

47.1 The Authorities had concluded in the preliminary findings that none of the seven co-operating exporter/producer from the China had provided any evidence/clear evidence in support of deductions or domestic price structure. However this is incorrect. The findings of the Authority was contrary to the detailed submission and evidence made available to Authority by exporters. The Authority had not issued any deficiency letter to the exporters calling for any further evidence/ clear evidence in respect of even one exporter. The exporters has expressed their "no objection to the verification of their claims at site in China." The findings to discard all responses on the ground of absence of evidence/clear evidence shows a pre. Conceived decision to recommend provisional duties.

47.2. The determination of dumping margin of 118.53% and recommendation of an anti-dumping duty of Rs. 1800/- PMT is nor clearly borne cut by the facts and satisfactory and illegal.

47.3. China has produced 1280 million tonnes of coal in 96-97 and has produced 80 million of coke as per petitioner. Thus the quantity of coal required for producing this coke is 120 million tonnes of coking coal which China has produced domestically China imported 2.51 lacs tonnes of coking coal from international source for trial purpose which contributes 0.2% of coking coal used by China. Thus the import of

coking coal by China during 1996-97 has been negligible when compared to its domestic production of coking coal. The import of 0.2% of coking coal can not be made the basis of calculation of normal value of Chinese coke as shown by applicant.

47.4. The price of imported LAMC from Australia and Japan are also similar to that of Chinese coke exported to India. When these are claimed non-dumped: the alleged dumping from China is not justified. The volume of imports from so ceiled non-dumping source is also not insignificant.

47.5. The petitioner's claim that domestic sale within China are not in the ordinary course of sale, is not supported by any evidence. Hence this submission deserves to be rejected.

47.6. The exporter in their responses have submitted their cost sheets showing the cost of coal, various expenses which should be taken while arriving at the cost of coke. The claim of the petitioner, that cost of coal is unrealistically low as labour and other social cost are ignored, is incorrect.

47.7. The claim of petitioner that China is a non market economy is not correct. China has developed into a market economy since long. The evidence submitted by Chinese exporter support this. The Indian legislation on anti-dumping does not provide for the treatment of a country as "non market economic country". The assertion of the petitioner that Designated Authority had treated China as a non market economy in several anti-dumping cases is factually incorrect. Wherever there was no co-operation at all from Chinese exporters, the Authority had gone by the best information available and the said best information may be based on cost constructed either from those prevailing in India or in certain other countries.

47.8. There can not be two opinion that domestic invoices are the most formidable evidence of the domestic sales transaction. If invoices can not prove the transaction, it is highly improbable that any other documents can be relied upon. The contention of petitioner that mere submission of certain invoices of domestic transaction, will not suffice in proving that coke is sold domestically within China at free market rate, is not correct. Thus domestic price of coke should be considered in arriving at the normal value.

47.9. In the present case, co-operating exporters have made available the details of normal value, being sale within the domestic market in China, as also the cost of production to show that the domestic prices are viable. This being the case, the resort to constructed cost or to determine the normal value with reference to any other hypothetical factor is unwarranted.

47.10. PIMA has pointed out that even by considering the figures in petition, it can be established that there is no dumping by exporters from China. Assuming that FOB cost of Chinese coal is same as that in Australia (in fact it is much lower), the cost of coal for a Chinese coking plant at its factory gate will be US\$ 18.02 (deduction from FOB of US\$ 51.02, US\$ 8 on account of stevedoring and US\$ 25 for inland transportation). The cost of coke at the conversion rate of 1.5 times would work out to be US\$ 27.03. If the manufacturing cost as indicated in petition, US\$ 29.17 is added, the cost of coke in China would work out to be US\$ 56.20 PMT. The export price has been more than this domestic cost. The cost shown by petitioner US\$ 206 PMT is highly exaggerated. One of the importer has also pointed out that, conversion cost of coal into coke is normally about Rs.450/- PMT and there is absolutely no scope to take the manufacturing cost at Rs. 1050/- PMT. The petitioner has claimed the ocean freight as US\$ 22, which in fact should be US\$ 17. Thus the c.i.f. value of metcoke should be US\$ 87 PMT and this is based upon petitioner own facts. The export price is about US\$ 97 on c.i.f. basis and thus there is no dumping.

47.11. Some of the importers have, however submitted that, on the basis of information available in the petition, the dumping margin works out to be Rs.502/- and therefore the duty is liable to be reduced to Rs. 502/-. However it is submitted, that this is based on certain assumption and without admitting that any dumping is being done by Chinese exporters. It is also submitted that landed cost has not been calculated correctly and it requires revision.

47.12. The exporters have submitted that their response to questionnaire sent after the initiation of investigation contained all information required by Designated Authority to arrive at a prima facie view that such exporters are not dumping metcoke in India. The Authority could have supplemented this prima facie view by the verification at site of the exporter and producer as the exporter/ producer had shown their willingness for such verification. The Authority had discarded the information on the basis that no evidence/ clear evidence have been submitted. The Authority had also observed that it appeared that the goods have been sold by exporters who did not produce goods and it was not clear whether the claims made pertained to the exporter or to the producer and thus the Authority was prevented from determining the export price as the price of producers to the exporters was not available and the normal value of the producers can not be compared with the export price of the exporter. It is now submitted by the exporters that export of goods from China is to be made only by the Organisation which hold an export licence. All producers do not hold export licence and hence sell their goods to the export companies holding an export licence who in turn export the goods to various countries. Thus the exporters had responded to the questionnaire and providing at the same time the details of the cost of production and the domestic sales of the producer to enable the Authority to determining the dumping

margin for the export corporation and the connected producer. As it was not required to submit all the evidence, the exporters claims, that they submitted sample invoices and it was presumed that all the other invoices and evidence would be looked at by the Authority during verification. Regarding the submission of evidence to cost statement, it is argued by the exporter that, there was no requirement in the questionnaire to support the cost statement with any further evidence. The cost of product is a matter for verification site. Thus the exporters argued that levy of anti- dumping duty has caused serious prejudice to their interest.

48. Examination by the Authority:

48.1. The Authority notes that even though all the producers in China have adopted the same manufacturing process and technology, their claims with regard to cost of production of metcoke differ substantially. Considering the costs for each element of input for Shanghai Pacific at a notional point of 100, costs claimed by the other three producers/ exporters who have given figures/ information in the format requested by the Authority has been indexed, which shows as follows:

SHANGHAI CHINA CHINA CHINA

PACIFIC NORTH NATIONAL NATIONAL

Raw material 100 31.17 52.39 35.57

Direct Labour 100 63.33 63.33 80.33

Utilities 100 12.91 13.17 22.29

Overheads:

-Manufacturing 100 1.51 10.54 0.00

-Depreciation 100 5.80 16.91 17.51

-Interest 100 6.74 157.87 21.91

Packing Costs 100 0.00 0.00 0.00

SGA 100 48.25 24.56 354.39

Less: By Products 100 0.00 0.00 0.00

Total Net Cost of

Production 100 58.79 89.49 66.19

· · · Note: 1. Indexation for Special Tax not done as it is claimed by only one exporter.

2. The table does not include information relating to other China PR exporters who have not furnished information in the prescribed format as above.

- It is seen from the above that cost for no item of inputs is comparable amongst the four exporters analysed by the Authority. Moreover, the variations are also quite significant. It is also noted that while one exporter has claimed substantial cost towards "special tax" (M/s.China North), no other exporter has claimed any cost on this account. The claims of the exporters do not appear to be based on Generally Accepted Accounting Principles. The Authority had, therefore, requested detailed information on cost of production, for which a proforma was also provided to the exporters to enable them to furnish relevant information. However, none of the exporters furnished detailed costing information requested by the Authority. The argument of the exporters that their sales in the home market were above costs and the same is evident from the profits made by them (for which the exporters have furnished some evidence also) is also misleading. The Authority notes that one of the exporters has furnished information, which suggests that the exporter has claimed profits on the sales in the home market, while it has claimed substantial losses in the sales of by products. Authority had requested specific information on the following:
 - Transaction- wise list of all sales made in China covering all sales and should be supported by the relevant invoices.
 - Transaction- wise list of all exports made to India covering all sales supported by the relevant invoices. In case, the goods have not been exported directly by the exporter, matching information linking the exports with the prices at which goods have been exported was to be furnished, along with all relevant invoices raised on Indian importers.
 - Transaction- wise list of all exports made to countries other than India (country- wise) covering all sales supported by the relevant invoices.
 - The basis of adjustments claimed from sales made in the home market or exports to India with reference to appendix 3A and 3B of the questionnaire supported by relevant evidence.
 - Details on cost of production of metcoke as per proforma "I" enclosed with the latter sent to the exporters. In case any by- product is being recovered during production of metcoke, information was sought as per enclosed proforma, which included information on the following:

- Name of the by- product

- Total quantity of by- product generated
- · - Utilisation of by- product generated giving therein separately (in volume and value) by- product consumed captively and sold outside
- Balance of by- product in stock with the company volume and value
 - Total production of metcoke
 - A copy of profit and loss account, balance sheet and such other financial other financial statements to indicate the operations as well as financial performance of the company, for the last three years including the investigation period.

48.3. It was mentioned that all information must be in English or accompanied by an English version. All documents should be certified by the Chief Executive of the company concerned as true, complete, correct and presenting true and fair view. All information and documents should also be certified by a practicing Chartered Accountant as true, complete and correct.

49. The Authority notes that none the exporters furnished above information in spite of specific request made by the Authority. The Authority is thus not in a position to satisfy itself whether the claim made by the exporter with regard to adjustment towards by- product is justified. The claim of the exporter on account of by- product recovery assumes importance in view of the arguments raised by the other interested parties. While the petitioner has furnished information suggesting that the recoveries on account of by- products does not exceed US\$ 8 (based on the recoveries made by one of the largest producers of metcoke in India having by- product recovery type manufacturing process), one of the importers has conceded that the recoveries does not exceed US\$ 3. The claim of the exporter is nowhere close to the claims made by other interested parties and the exporter has suppressed specific information requested by the Authority on this account. The exporter has thus not co- operated with the Authority in so far as material information requested by the Authority has not been furnished.

50. With regard the argument that Authority could have asked for information required before notifying the preliminary findings or the Authority could have verified the information at the premises of the exporters, the Authority observes that the purpose of sending questionnaire to the interested parties is to allow them to respond in the form and manner prescribed. There is no obligation on the Authority to point out deficiencies in the responses submitted, particularly when the Authority is required to notify the findings, preliminary or final, within the time limits prescribed.

51. The argument of the exporter that the Authority could have verified the claims made by the exporter cannot also be appreciated as the purpose of spot verification is to verify the information furnished by an interested party and not collection of information. In fact, Annex I to the Anti Dumping Agreement provides that the information should be collected prior to verification. Verification of information by the Authority at the premises of the exporters can not substitute submission of information by the interested parties. In fact, when the information requested has not been submitted in the form and manner prescribed the verification visits may also not serve any useful purpose.

52. In view of the above, the Authority is constrained to disregard the claim of the exporter with regard to by- product recoveries. By- product recoveries have been provided on the basis of independent information available with the Authority, which is based on recoveries made by one of the largest producers of metcoke in India employing recovery type process. It is found, after making adjustment on account of recovery, that the cost of production of the exporter is significantly higher than the selling prices in the home market. The selling prices in the home market, therefore, are not in the ordinary course of trade by reason of price and have to be disregarded.

53. In view of the foregoing, the Authority has determined the normal value based on the cost of production in accordance with Section 9A(1)c. The cost of production claimed by the exporter has been reworked after making adjustment for by- product recoveries. Due allowance has been made for the selling, general and administrative expenses on the bases of the expenses claimed by the exporter. Fair return has been provided @ 5% as per the consistent practice and in view of insufficient information from the exporters from China PR.

54. From the foregoing paragraphs the Authority observes that the exporters were required to submit adequate and sufficient information on export prices. Domestic prices and costing while responding to the questionnaire. This information is essential to determine the normal value, export price and dumping margins. The Authority observed in the preliminary findings that information submitted by exporters was sketchy and insufficient and the Authority was not in a position to determining the normal value on the basis of such information.

55. After the issue preliminary findings, five exporters out of seven exporters responded and submitted additional information on domestic price, export prices and costing data. The Authority observed that even this information was grossly insufficient to determine the normal value in accordance with the Rules. Therefore, the Authority vide letter dated 30.6.98 (details already given in para 48.2) requested the exporters to provide necessary information as detailed in the letter. The Authority reiterated its requirements regarding furnishing of such information by the exporters

in a subsequent letter. Thus, sufficient opportunity was provided to exporters for providing necessary information on several occasions.

56. Five exporters submitted information on 20.7.98 in response to letter dated 30.6.98 issued by the Authority. On examination, the Authority observed that information on prices as asked for was not provided. The Authority observes that critical information on costing data was also not submitted. As detailed in letter dated 30.6.98, the exporters were required to submit the costing information on raw material cost, utilities, appropriation and allocation of overheads for various products, cost sheet, balance sheet and profit & loss account, costing information of by-products. The Authority observes that none of the exporters has given sufficient details/evidence to verify the cost claimed by the exporters. Such details/evidence are of paramount importance as the cost on different items such as raw material, labour, overheads, and other expenses varies significantly in the cost data submitted by exporters and highlighted in para 48.1. The costing data is critical to determine whether the domestic price are above the cost or not. Under the Rules, if the domestic prices are below cost, such domestic price cannot be accepted for the purpose of determination of normal value. It is also observed by the Authority that exporters/producers have claimed that they have made profits on sale of coke. However, the Authority notes that such exporters are incurring significant losses on the sales of by-products such as gas. The basis of allocation of cost between coke and such other by-product is not clear and the details, though specifically called for, have not been provided for. The Authority also notes that by-product generated per unit of coke and the details of such by-product are not submitted.

57. The Authority thus observes:

- a. The costing data submitted by various exporters are not comparable and therefore cannot be relied upon.
- b. The complete information in respect of costing data are not submitted. For this purpose, as already detailed above in para 48.2, the Authority requested to submit data in the prescribed formats, which were neither adhered to nor the required information submitted.
- c. Regarding by-products, none of the exporters has submitted the required information as detailed in letter dated 30.6.98. The exporters have claimed profits on sales of coke, but there are significant losses on other by-products and basis of allocation of cost is not submitted.

58. The Authority, however, has constructed cost of coke in China on the basis of information submitted by M/s. Pacific, who appears to be the largest producer and exporter of metcoke in China amongst those who have responded to the questionnaire. The Authority notes that even though M/s. Shanghai has not provided sufficient

information, it has submitted better information as compared to other exporters. Also as the largest producer, their costs can be considered representative of costs in this sector in China. Thus the Authority considers that the costing information submitted by M/s. Shanghai Pacific as the 'best available information' in the instant case and therefore can be considered for the purpose of determination of normal value on the basis of constructed cost of production. Thus while constructing the cost of production in China, the Authority accepts the raw material, labour and overheads cost as submitted by M/s. Shanghai Pacific. It is however, observed that M/s. Shanghai is recovering by-product, many of which are being sold at losses, in the absence of basis of allocation of cost and evidence/details, the cost allocated to by-products cannot be accepted as claimed by the exporter. The Authority attempted to find out the norms for recovery by products and notes that assuming the gross cost as 100, the information on recovery on by-product is as under: -

Claimed by

Shanghai SAIL Importer Kirk Othmer*

Gross cost 100 100 100 100

Less:

By products 47.54 19.44 6.23 17.51

Coke 52.46 80.56 93.77 82.49

* Kirk Othmer Encyclopaedia on Chemical Technology.

59. The Authority, considering that recovery percentage in the case of SAIL is reasonable and reliable, allows the recovery on by-products in the cost as claimed by Shanghai. The constructed cost is thus calculated as under: -

US\$

Raw material, utilities overheads and expenses

As claimed by Shanghai ****

Less: by-products @ 19.44% ****

..... -----

Total cost ****

Add reasonable profit @ 5% ****

Normal Value ****

60. Thus the Authority concludes that normal value of metcoke in China is ****.

61. Some interested parties have argued that the Authority is not justified to calculate the cost of coke on the basis of imported Australian coal. It may be mentioned that the Authority has not calculated the cost on the basis of Australian coal.

62. The Authority has allowed adjustments in the export price to India as well as the export price at ex- factory level as claimed by the said exporter in order to maintain consistency in the calculations of all commercial costs.

63. DUMPING MARGIN: The comparison of normal value and the export price shows the dumping margin of 28.95%.

G. INJURY ANALYSIS

64. Submissions of Petitioner:

64.1. There has been a reduced off- take of BLA coke, suppression of sales price, increase in stocks and closure of capacity. More than hundred workers have been retrenched. In Dhanbad, thousand of workers have lost their livelihood, and production in several units have come to a stand still. In the case of Wellman, the entire plant is closed down and company has been registered as sick by BIFR. Durgapur projects, Southern Fuels and Gujarat NRE have partially closed down their plants as well. Several companies have shelved indefinitely their expansion plans.

64.2. Domestic industry has the capacity, reserves and quality to meet the growth and demand. However their growth is almost stagnant for 4 years whereas the Chinese imports have grown up by 916% from 93- 94 to 96- 97. The growth of imports from other country is comparatively low at 173%. The increase in Chinese imports are on accounts of dumping. The domestic users have migrated from Indian metcoke to Chinese metcoke.

64.3. The Authority has levied anti- dumping duty at a lower rate. Instead of duty Rs. 1800/- PMT the duty should have been Rs. 4147 i.e. 118.53%(Dumping margin in preliminary finding) of Rs. 3499 (c.i.f. export price).

64.4. The authority should levy the duty retrospectively. There is a clear history of dumping from china as china is appearing in many of the anti- dumping investigations causing injury to the domestic industry.

64.5. Injury is caused by imports from china. The import of coke from non- dumped sources is not causing injury as majority of such imports were by TISCO who is a captive consumer. The purchase from the ‘ merchant coke’ market by TISCO was minimal. Whereas the imports from other countries have remained stagnant; imports from china have grown significantly.

65. Views of Importers & Exporters On injury:

65.1. The injury analysis has not been done objectively. ICA (Dhanbad) do not form domestic industry and should be excluded from the injury analysis also. In the preliminary findings; there is no indication as to who are all the domestic manufactures whose economic indicators were taken into account.

65.2. The injury margin calculations of the petitioner are not correct. The cost claimed by the petitioner deserves careful scrutiny, and the saving that would result from an optimum blend of various type of coal by others should be taken into account. If such cost savings are also taken into account, as they ought to be, the injury margin will disappear. The injury margin worked out in the preliminary findings is on the higher side.

65.3. The user industry of metcoke is under severe strain and is operating currently at less than 50% of the installed capacity. The pig iron industry has reduced the prices. The cost of metcoke constitute about 40% of the cost of production of pig iron. Any increase in cost of LAMC is bound to increase the final cost of pig iron resulting in the inability of pig iron manufactures to sell their products. Any anti- dumping duty on LAMC will result in the complete closure of all the pig iron units and will result into loss of direct and indirect employment.

65.4. The cost of production by domestic industry is high as compared to others who are able to tap the by- products and produce electricity and steam. The petitioner are not recovering the volatile substance to produce valuable by products. This is the main reason for suffering the injury and not the alleged dumping from China.

65.5. The total availability of LAMC out of imported coal is less than 5 lac tonnes whereas the requirement is more than 2 million tonnes. Pig Iron Manufactures have to necessarily import and it does not make sense to impose duty on such huge volumes. Any protection to the domestic manufactures of LAMC will result in serious injury to the pig iron manufactures.

65.6. There is no evidence to suggest or establish that any closure of units in India took place by reason of any alleged dumping of metcoke. The allegation made by petitioner are vague and are totally unsubstantiated.

65.7. Increase in import of Chinese coke was due to the increase in the requirement of met coke over the years. The allegation with regard to profitability of domestic industry and capacity utilisation are totally misconceived.

65.8. The provisional anti- dumping duty @ Rs 1800 PMT levied threatens the very survival of MBF industry MBF capacity of over 3 million tonnes per annum has been sat up dung past 5 years involving an investment of Rs. 3000 crores and employment of over one lakh people. The impact of anti- dumping duty on cost of pig iron/ steel works out to Rs. 1400. At this level, imports of pig iron are more attractive. Thus will spell closure for the pig iron producers and drain of foreign exchange for import of pig iron. Domestic metcoke cannot be used by MBF for quality reasons and thus anti-dumping duty does not really help the domestic coke producers.

65.9. It is submitted by importer that there in no injury to domestic industry. The production and capacity utilisation has increased and also the demand for LAMC has increased over the years. In fact, the production and sales are inadequate to meet the local demand. The installed capacity is inadequate the meet the demand. The import of LAMC by companies who are excluded for the purpose of domestic industry, should be excluded for injury purpose: It is also argued that there is no causal link between decline in market share and import of LAMC. Domestic manufacturer are able to recover their full cost of production along with reasonable profit and are able to obtain more than a far selling price of the product.

INJURY ANALYSIS BY THE AUTHORITY

66. Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...' 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 article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

67. 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 countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

68. The Authority notes that the margin of dumping and quantum of imports from subject country are more than the limits prescribed above. Cumulative assessment of the effects of imports is appropriate since the export price from the subject country were directly competing with the prices offered by the domestic industry in the Indian market.

69. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further 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.

69.1. Volume and market share of dumped imports: The volume of dumped Chinese coke in absolute terms increased rapidly. The following tables will illustrate this:

Year Tonnes

1993-94 79452

1994-95 562451

1995-96 96493 6

1996-97 741100

69.2. From the above it is observed that the import of Chinese coke into the Indian market has increased from 79452 tonnes in 93-94 to 741100 tonnes in 96-97, showing an increase of 834%. There is, however, a decline in the year 1996-97 over the previous year. The Authority observes that even though there is decline in the overall market in 1996-97, total import volumes from subject country have increased.

69.3. Market Share: The following table gives a summary of market share of low ash metcoke domestic producers as against that of dumped Chinese goods:

Year	96-97	95-96	94-95
Total market of metcoke in India (tonnes)	1244818	1415391	796922
Production of petitioners (BLA)	119337	115862	87512
Production of Others	120908	122026	41345
Total production of "Domestic Industry"	240245	237888	128857
Market share of domestic producers	19.30%	16.8%	16.2%
Imports from China	741100	964936	562451
Market share of imports from China	59.5%	68.2%	70.6%
Imports from Countries (other than China)	263473	212567	105614
Market share of other countries	21.2%	15.0%	13.2%

69.4. Profitability of petitioners: It is observed that there is a decline in gross contributions of petitioner shown below:

Year Cost of sales Selling price Contribution

. . . . Rs. PMT Rs. PMT Rs. PMT

1994-95 *****

1995-96 *****

1996-97 *****

It is also observed that in last quarter Jan- 97, the petitioner has reduced their selling price to *****, whereas the cost of production was *****. Thus they incurred a loss of ***** during the period. Analysis of average selling prices and profit/ loss during the investigation period shows as under:

YEAR/MONTH

69.5. M/s. Wellman Incandescent India has stated that dumping from China has forced them to seek registration with Bureau of Industrial Finance and Reconstruction (BIFR), as their net worth is eroded due to accumulated losses. BIFR has passed an order on 5.5.98, wherein they have observed that one of the reasons cited by the company has been the dumping of goods from China. It is also observed that petitioner has shut down its 1/3 capacity with effect from April 97. The Authority further observes that M/s. Gujarat NRE Coke Ltd. had capacity utilisation of only 50.8% in 1996-97. Similarly, M/s Wellman Incandescent India showed a decline in their capacity utilisation from 63.65% in the year 1995-96 to 61.90% in 1996-97.

Further, due to withdrawal of orders by customers, they had repeated closure of their plant causing heavy financial losses.

69.6. Increase in closing stock: There is a substantial increase in closing stock of metcoke of the petitioner which is as under:

Year Stock of Coke (MT)

1993-94 1215

1994-95 3051

1995-96 13861

1996-97 13150

69.7. Domestic Industry's Capacity Utilisation: It is observed that the capacity utilisation of the petitioner is as under:

Year Capacity utilisation

1994-95 62.51%

1995-96 82.76%

1996-97 85.24%

69.8. Retrenchment of workers – There is a decrease in the number of people employed and industry has retrenched 296 workers in 1996-97 and 295 workers in 1997-98 as part of their production capacity shut down.

H. CONCLUSION ON INJURY AND CAUSAL LINK

70. The circumstances warrant consideration of injury for imports of coke from China. The import of Metcoke has increased significantly in absolute terms from China over the years. Export of metcoke from China forced the domestic industry to keep its price of Metcoke to unremunerative levels and prevented the domestic industry from recovering its fair selling price resulting in decrease in profits/ losses. Various indicators relating to domestic industry such as average sales realisation, stock, and decline in profits/ losses collectively and cumulatively establish that the "Domestic Industry" has suffered material injury.

71. In establishing that the material injury to the domestic industry has been caused by the imports from China, the Authority has considered that exports of metcoke from China forced the domestic industry to keep its price to unremunerative levels, and prevented it to recover its fair price, resulting in decrease in profits/ losses.

I. INDIAN INDUSTRY INTERESTS AND OTHER ISSUES

72. Anti Dumping Duties are levied, in order to arrest dumping which causes injury to domestic industry and to re- establish a situation of open and fair competition in the domestic market. It aims to redress the unfair advantages gained by dumping practices and prevent the decline of the domestic industry. Imposition of such duties would not restrict imports from the subject countries nor would they effect the availability of the product to the consumers. Normally fair competition on the Indian market is not reduced by the anti- dumping measures, particularly if the levy of the anti- dumping duty is restricted to an amount necessary to redress the injury to the domestic industry.

73. It is however recognised that the imposition of anti- dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have an affect on the relative competitiveness of these products or industries producing such products.

74. The Authority in an Anti- Dumping investigation is required to expressly investigate to establish the presence of dumping, material injury to the industry and the causal link of such injury from imports from the subject country. The affect on the relative competitiveness of any other industry if anti- dumping duties are levied is beyond the purview of the Authority's investigation.

75. Hence, certain information brought to the notice of the Authority during such investigation concerning import of Met Coke from the Peoples Republic of China and said to affect the Indian Iron and Steel Industry have not been expressly commented upon or taken note of by the Authority in these findings. The Authority has only taken note of the imports of Met Coke from China PR and its effect on dumping, material injury to Indian producers of Like Article and accordingly recommended levy of anti dumping duties.

76. The information placed before the Authority by various sectors of the Industry and others is summarized below: -

- a. The producers of Like Article in the "Domestic Industry" will not be able to meet the LAMC requirements of the user industries in India.
- b. LAMC is a base Raw Material widely consumed directly or indirectly by the Pig Iron Industry, SS Iron Casting Industry, Ferro Alloys Industry, Foundries

having cupolas and the Base Metal Industry particularly Zinc. These industries, in the core sector of the Indian economy add significant value to a primary raw material, contribute to export earnings, account for substantial employment and fulfill the requirement of inputs of a variety of infrastructure and consumer durable industries. Imposition of high levies of duties have the effect of making these industries and related industry sectors uneconomic and uncompetitive. This view has also been supported by the Ministry of Steel, Govt. of India.

- c. The Pig Iron industry itself has a Rs.3000 crores investment and a Rs.1140 crores investment in the pipeline. There is a high order of investment from IDBI, IFCI, ICCI and UTI. The Ministry of Steel supported the establishment of the Pig Iron Industry and from a position of net importers of Pig Iron, India today produces 3 million tonnes of Pig Iron and has exported 1 million tonnes of pig iron worth US \$ 140 million in 1997-98. The industry employs 30,000 persons directly.
- d. The SS Iron Casting Industry has exported products worth US\$ 160 million in 1997-98.
- e. The provisional duty levied has led to the closure of Mini Blast Furnaces and such duties will cause irreparable damage to the Pig Iron industry. As a result the Indian Industry would have to import Pig Iron instead of Met Coke.

77. The Authority has already observed that investigation into representations of various sectors of the Iron and Steel Industry is not within the purview of the Anti Dumping investigations concerning LAMC from China PR.

78. The Authority however notes that India's total requirements of Met Coke were met with imports (as per DGCIS data) to the extent of :-

12,37,359 Mt in 1996-97

20,15,169 Mt in 1997-98 (15,11,377 MT in April- Dec, 1997 and 5,03,792 MT in Jan-March, 1998)

79. The domestic industry as defined in Para 30 of this order was able to meet 19.42% of such requirements with a production of 240245 MT in 1996-97. The total installed capacity of domestic industry is 4.08,000 MT and even if there is full capacity utilisation they would be able to meet only 20.25% of industry requirements as per 1997-98 figures of import. Coal is imported from Australia, China PR and other countries for the production of LAMC. The total investments in this industry is just over Rs.100 crores approx. and it employs about 2100 persons. The industry caters only to be domestic market and does not export its product.

J. FINAL FINDINGS

80. The Authority in view of foregoing concludes that:

- Irrespective of the fact that the members of ICA can produce metcoke with less than 15% ash content, the Authority is inclined to agree with the exporters/ importers that only metcoke with ash content of 15% and below is a like article to the metcoke imported from China RP.
- Based on the information available with the Authority at the time of initiation, the petitioner had the standing to file the petition on behalf of the domestic industry. The petitioner satisfied the criterion for standing at the time of preliminary findings, considering the scope of the "like article", as defined in the preliminary findings. Petitioner now has support of 100% of those producers production of whose constitutes "like article".
- The Authority has constructed the normal value of metcoke in China PR based on the information furnished by the co- operative exporters and the information available with the Authority in view of incomplete and insufficient response by the exporters/ producers from China PR in spite of specific requests for information.
- Metcoke originating in or exported from China PR has been exported to India below its normal value.
- The domestic industry has suffered material injury.
- Injury has been caused to the domestic industry by the exports originating in or exported from the subject countries.

81. The Authority confirms the preliminary findings with regard to imposition of Anti-dumping duty and recommends imposition of definitive anti-dumping duties on all imports of metallurgical coke originating in or exported from the People's Republic of China. The anti dumping duty shall be the difference between Rs.4673 and the landed price of imports per MT.

82. 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 and 3A of the Customs Tariff Act, 1975.

83. Subject to above, the Authority confirms the preliminary findings dated 20.3.1998.

84. An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act. Supra.

RATHI VINAY JHA,
Designated Authority.

