

**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**(DEPARTMENT OF COMMERCE)**  
**DIRECTORATE GENERAL OF ANTI DUMPING &**  
**ALLIED DUTIES**  
**UDYOG BHAWAN, NEW DELHI**

**NOTIFICATION FINAL FINDINGS**

Dated the 22nd December 2004

**Subject:** Anti-dumping investigation concerning import of Mica pearl pigment originating in or exported from China PR, Japan, USA and EU - Final Findings.

**No. 14/22/2003-DGAD** - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

**A. PROCEDURE**

1. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as Authority), received an application filed by M/s Sudarshan Chemicals Industries Ltd. (hereinafter referred to as SCIL) on behalf of the domestic industry, alleging dumping of Mica Pearl Pigment originating in or exported from China PR, Japan, USA and EU (hereinafter referred to as subject countries).
- ii. Preliminary scrutiny of the application filed by the applicant revealed certain deficiencies, which were subsequently rectified by applicant. The application was, therefore, considered as properly documented.
- iii. The Authority on the basis of prima-facie evidence submitted by the applicant considered to initiate the investigation against imports of subject goods from subject countries/ territories. The Authority notified the embassies/representatives of subject countries in New Delhi about the receipt of the dumping allegation before proceeding to initiate the investigation in accordance with Sub-Rule 5(5) of the AD Rules.
- iv. The Authority forwarded a copy of the public notice of initiation to all the known exporters, importers and industry/user associations (whose details were made available by applicant) providing them an opportunity to make their

- views known in writing in accordance with the Rule 6(2), 6(3) and 6(4) respectively. The Authority also forwarded copies of MET (Market Economy Treatment) questionnaire to known Chinese exporters as per Annexure-I of AD Rules.
- v. The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version submitted by interested parties for inspection, upon request.
  - vi. The Authority made a request to the Central Board of Excise and Customs (CBEC) and Director General Commercial Intelligence & Statistics (DGCI&S), Kolkata to arrange details of imports of the subject goods during past three years, including the period of investigation.
  - vii. The Authority held an oral hearing on 29/4/2004 to hear the interested parties, which was attended by representatives of the interested parties. The parties attending the public hearing were requested to file written submissions of views expressed orally. Designated Authority considered these submissions as such received from interested parties in these findings.
  - viii. Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) on the information furnished by the applicant.
  - ix. The Authority verified the information provided by the domestic industry to the extent considered necessary.
  - x. The Authority also verified the information provided by the importer to the extent considered necessary.
  - xi. The Authority conducted on-spot verification at the premises of the cooperative exporters from China PR and EU.
  - xii. In accordance with Rule 16 of the anti dumping Rules supra, the essential facts considered for these findings were disclosed on dated 30th November, 2004 to known interested parties and provided time upto 12th December 2004 to file their comments. Comments received on the same have also been duly considered in these findings.
  - xiii. The Authority considered the period of investigation (POI) of eighteen months from 1st April 2002 to 30th September 2003 and injury analysis was carried out for the periods 2000-2001 and 2001-2002 along with the dumping period of investigation i.e, April, 2002- September, 2003.
  - xiv. \*\*\*\* in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the AD Rules.

## **B. Product under consideration AND LIKE ARTICLE:**

2. In the initiation notification the product was considered and described as “certain inorganic pigments/colouring agents giving lustrous/shinning/frosted effects, such pearl scent effects, metallic effects, commercially known in the market place as Titanium Dioxide or Iron Oxide coated Mica Pearl Pigment or Pearl Luster Pigments or Pearl Pigment”. During the course of investigation the issue regarding the product under consideration has been raised by the exporter and importer and requested for exclusion of automotive and cosmetic grades of Mica Pearl Pigment. Mica Pearl Pigment is manufactured and used for three applications mainly automotive, cosmetic and industrial applications. Mica pearl pigments are available in three grades;

- a. industrial grade used for textile printing, plastic industries and many more industrial applications,
- b. cosmetic grade used in colour cosmetics and toiletries, and
- c. automotive grade used for manufacture of automotive paint and other paints.

3. The exporter has submitted that automotive grade Mica Pearl Pigment has neither been produced nor sold by M/s Sudarshan Chemicals Industries Ltd during the POI. They have further submitted that the florida test certification, which is mandatory for commercial production of automotive grade, was not available with the domestic industry during the POI. Hence, automotive grade needs to be excluded from the product under consideration in this anti dumping investigation. They have also argued that they sell various grade/shades of cosmetic pigments for various cosmetic applications. The domestic industry does not have the range that Merck offers and it is important to note that the price of Merck products is higher than the domestic industry. They offer the same quality as sold in their domestic market whereas the domestic industry sells industrial grade pigments as cosmetic grade in the domestic market. Since they have not produced the cosmetic grade, the same may be excluded from the product under consideration in this investigation.

4. Domestic industry has rebutted the argument of the exporter and stated that it is incorrect to say that they are not capable of producing automotive grade Mica Pearl Pigment. The domestic industry has already successfully completed trial production of auto grade pigment. Since “Florida Test” is required to be performed before the commercial trading, the domestic industry is at present conducting this test.

5. The arguments of the interested parties were examined and found that automotive grade Mica Pearl Pigment could be sold only if the product has undergone through a specialised test called florida test, which requires the product to be tested for a certain minimum period. During the course of domestic verification, the applicant has stated that florida test has not been completed of its automotive grade. They have further stated that florida test is an essential requirement for commercial selling of the product even if the automotive grades are produced.

6. The argument of the exporter regarding exclusion of cosmetic grade Mica Pearl Pigment was examined and found that the domestic industry is producing the product for the cosmetic application and selling in the market at a different price than the Merck. The exporters have argued that the quality produced by the domestic industry is inferior and cannot be used for the cosmetic applications, whereas Merck products are being sold to reputed cosmetic and toiletries industries. In support of their argument they have enclosed evidence for its exclusion. The argument of the exporter was examined in the light of prevailing price structure of the cosmetic grades imported into India and the domestically produced subject goods. During the course of verification of M/s Merck, Germany and M/s Merck, India, it was found from their records that Mica Pearl Pigments for cosmetic application are imported into India at much higher prices and catering different market segments. The selling price of cosmetic grade for the domestic industry was verified and found that Mica Pearl Pigment for the cosmetic application is sold at much lower prices than the average landed value of imports for this grade.

7. M/s. Merck in their comments to the disclosure statement has stated that the Authority has rightly restricted the scope of product under consideration by excluding cosmetic and automotive grades of mica pearl pigment. They have further stated that it may also be ensured that the cosmetic and automotive grades are not inadvertently included in the list of imports attracting anti-dumping duty. The domestic industry has submitted in the comments to the disclosure statement that it would be extremely difficult for customs to distinguish the difference between automotive, cosmetic and industrial grades. The Designated Authority has differentiated the industrial and cosmetic grade on the basis of prices. Hence the domestic industry suggested that minimum import price of cosmetic grade may kindly be notified as benchmark price to avoid clearance of imports under industrial grade. The Authority examined the concerns of the interested parties and considered for notifying the duty for the product under consideration i.e., Mica Pearl Pigment excluding cosmetic and automotive grades.

8. In view of this the Authority holds that Mica Pearl Pigment for automotive and cosmetic applications are required to be excluded from the scope of the product under consideration. Hence, the product under consideration in this investigation is Mica Pearl Pigment excluding automotive and cosmetic grades. The product under consideration in the present application is “certain inorganic pigments/colouring agents giving lustrous/shinning/frosted effects, such pearl scent effects, metallic effects, commercially known in the market place as Titanium Dioxide or Iron Oxide coated Mica pearl pigment or Pearl Luster Pigments or Pearl Pigment excluding automotive and cosmetic grades”. It is a colouring agent, which gives pearl scent effect. Inorganic pigments have metal compounds which include Cadmium Sulfite

Pigments, such as Lead Carbonate Pearls, Titanium Dioxide or Iron Oxides Pearl Mica Pigments. Pearl pigments are used as pigments for decorative purposes to bring in special pearl scent or lustrous effect on the product. It is possible for any producer to supply pigments with different particle size. Similarly, it is feasible for a producer to supply tailor made pigments to suit specific end consumer requirement. Costs and prices vary with mean size and colour of the pigment. Mica pearl pigments are classified under Chapter 32 of the Customs Tariff Act,1975.

9. There was no difference found between the subject goods manufactured by the domestic industry and the imported product from subject countries. The subject goods produced by the applicant are commercially and technically substitutable to the imported product and hence conditions of like article are satisfied. The Authority found that the domestic subject goods is similar to the imported product based on the information received from the exporters. The Authority, therefore, held that the goods produced by the domestic industry and those exported from the subject countries are like article within the meaning of the rules 2(d) of AD Rules.

### **C. DOMESTIC INDUSTRY**

10. The application has been filed by M/s. Sudarshan Chemicals Industries Ltd. on behalf of the domestic industry. It is a multi product company and is involved in production of number of products. The applicant has not imported the subject goods in the past three years and exporting the subject goods to number of countries.

11. It is submitted by the exporter that the applicant has furnished information only for one of the item of industrial grade of Mica Pearl Pigments, i.e., 4179; and the normal value, export price and dumping margin has been calculated for all the grades taking the unit price of the item code of 4179 of industrial grade Mica Pearl Pigments. The domestic industry has intentionally defined the product in the widest possible way so as to block the imports of all the grades which are not even manufactured by them. Thus, the applicant lacks standing to file the present application in respect of all the grades of the Mica pearl pigments.

12. The Authority examined the argument of the interested parties and notes that the applicant has provided the costing / financial information of the subject goods along with the costing/financial information for the equivalent grades of imports, to establish the claim of domestic industry. The applicant company is the sole manufacturer of subject goods under investigation and they represent the 100% domestic production of the subject goods. The Authority, therefore, held that M/s. Sudarshan Chemicals Industries Ltd. represents the domestic industry within the meaning of Rule 2(b) of AD Rules.

## **D. OTHER ISSUES**

### **D.1 SUBMISSION OF NON-CONFIDENTIAL INFORMATION**

13. The domestic industry has submitted that the exporter has resorted to excessive use of confidentiality. The information provided by the exporter on non-confidential basis does not permit any understanding of the substance of information provided on confidential basis. They have further stated that entire submissions have been filed by the exporters with complete disregard to the requirement of non-confidential version. The exporters have also argued that the application does not provide adequate summary of non-confidential version enabling the exporters to effectively and meaningfully defend their interest thereby violating Article 6.5.1 of the WTO Anti-dumping Agreement.

14. Both the domestic industry and exporters have argued that the non-confidential version of their respective responses were inadequate and number of informations / data were kept confidential. The interested parties once again in the comments to the disclosure statement have raised that confidentiality have been maintained with disregard to providing meaningful non-confidential summaries of their confidential submissions. The arguments of the interested parties were examined and it is noted that the non-confidential responses provided by the interested parties were kept in the public file and were made available to all the interested parties. The number of information concerning prices and costing of their submissions was kept confidential by respective interested parties and these were treated as confidential by the Authority.

### **D.2 INADEQUATE AND INACCURATE INFORMATION**

15. The exporter has stated that no uniform unit or basis has been adopted by the applicant for calculating export price, normal value, dumping margin and injury analysis. They have further stated that the applicant has selectively chosen data from various sources for establishing a prima-facie case for initiation of the present anti dumping investigation against subject countries. Even the data from DGCI&S, IBIS and Chemical Trade Intelligence has been selectively utilized to mislead the Authorities. The present application suffers from insufficiency of disclosure, concealment of material facts and various legal infirmities.

16. The domestic industry has submitted that entire submissions made by these interested parties with regard to adequacy and accuracy are misplaced and untenable on both facts and law. The interested parties have referred to Panel Report in

Guatemala Cement case selectively and without bringing the full facts and circumstances of that case.

17. M/s. Merck, in the comments to the disclosure statement has submitted that the Authority has not considered the import statistics of the DGCI&S. They have relied upon the data provided by domestic industry from the secondary sources and some import data and methodology of segregating of import data of dumped imports from total imports have not been indicated. They have also stated that the exclusion of Japan from this investigation is justified whereas exclusion of China PR is not appropriate as the petitioner is suffering injury due to dumped imports. The Authority examined and found that the import volumes on China PR is de-minimis and imports from Japan is not the subject goods under consideration. It is noted that the Authority has assessed the import volume on the basis of assessment of demand and import details made available from different sources. For the purpose of this investigation undumped imports have been segregated and only dumped imports have been considered for injury analysis

18. The Authority has examined these arguments and found that DGCI&S data on imports of Mica Pearl Pigment is not dedicated as number of other inorganic pigments are also reflecting under the same heading. The information based on secondary sources was also not complete as it has not captured the import of Mica Pearl Pigment from all the Customs ports. Therefore, complete reliance either on the DGCI&S data or on the secondary sources could not be appropriate. The domestic industry has stated that the demand of this product is ranging between 1000 to 1200 MT during the POI whereas the statistical import data from DGCI&S is showing imports of more 17000 MT. In this situation, it was found appropriate to assess imports on conservative assessment of demand and information made available from different sources including the import volumes from the responding exporters for the purpose of this investigation.

## **E. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN**

### **E.1. VIEWS OF THE DOMESTIC INDUSTRY**

19. The views of domestic industry have been summarised below;

- i. M/s. Merck has responded in respect of its exports from USA, Japan and Europe. Non confidential version of the responses filed by the exporter are grossly incomplete that the same permit no understanding of the substance of information filed by the exporters on confidential basis.

- ii. There is no information with regard to affiliations between the various companies contained in the submissions. The domestic industry understands that there exists a compensatory arrangements between the exporters having plants in different countries and the corporate headquarter of Merck.
- iii. The dumping margin may be determined for the product under consideration on the basis of determination for the grade representing a significant proportion of the imports of the product under consideration. At the same time, applicant provided information with regard to imports in respect of all the grades imported in India.
- iv. The Authority has correctly constructed export price on the basis of price at which the imported product were first resold to independent buyers as per the provisions of AD Agreement and Indian AD Rules. It may be feasible for M/s. Merck, Germany to sell the material at any price to M/s. Merck, India on the policy of booking higher profits in any of their affiliates throughout the world.

## **E.2 VIEWS OF THE EXPORTER**

20. The exporter has submitted that buyer in India is not particular to the specific shade of the pigment that they procure as compared to buyers abroad,. This results in non-selling of specific graded pigments in Europe due to shade variations (off-spec industrial pigments), but the same is accepted easily in India. Hence, the selling prices for these “off-spec” industrial pigments are lower in the Indian market compared to the local market for Merck.

## **E.3 EXAMINATION BY THE AUTHORITY**

21. The Authority sent a copy of the questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A (1)(c). Responses have been received from the following producer/exporters;

- i. M/s EMD, USA
- ii. M/s Merck, Japan
- iii. M/s Merck, Germany, and
- iv. M/s Taizu Group Co. Ltd.

22. M/s BASF, Germany has stated vide its letter dated 27th January,2004 that they have decided not to file the exporters questionnaire as the volume of imports are too small. The Authority has considered M/s BASF,Germany as non-cooperative.

23. The exporter has argued that they have exported off speck material to India which are not sold in their domestic markets. The Authority notes that the grade exported by the exporter in the Indian market is the grade sold by the exporter in its home market,

with the only alleged difference of quality. It is also noted that there could be a possible difference between the exported product and domestic product, the same could have at best called for a possible price adjustment under Article 2.4, for which the exporter has failed to provide quantifiable and verifiable information. It is noted that any price adjustment under Article 2.4 is not automatic, the same has to be claimed on the basis of quantifiable and verifiable data/information.

24. The share of imports from China PR is 2.59% in the total imports of the subject goods. The imports volume is de-minimis from China PR as it is less than 3% in the total imports of Mica Pearl Pigment. Therefore, China PR has been excluded from the subject countries in this investigation and their volume of imports has been segregated from dumped imports for the purpose of injury examination.

25. M/s. Merck, Japan did not file the response in the form and manner required to be submitted. They did not file information on cost of production for the exports to India, domestic sales and exports to third countries. They have only given statement regarding their exports to India which contains the details of grade wise of imports of Mica Pearl Pigment. It is found that they have exported only automotive grade of Mica Pearl Pigment which has been excluded from the product under consideration. Therefore, Japan has been excluded from the subject countries as imports of automotive grade of Mica Pearl Pigment do not constitute the subject goods for this investigation. The volume of imports from Japan has been segregated from dumped imports for the purpose of injury examination.

26. In view of the above, China PR and Japan have been excluded from the subject countries in this investigation. Henceforth, only EU and USA shall constitute as subject countries in this investigation wherever it is referred.

## **USA**

### **NORMAL VALUE**

27. M/s EMD, USA did not file the complete submission in the exporter questionnaire. They did not provide information regarding the cost of production of exports, domestic sales and exports to third countries. They also did not file information regarding the domestic sales in their home market during the period of investigation. Therefore, M/s. EMD, USA has been treated as non-cooperative exporter. Since none of the exporters/producers from USA has fully cooperated, the normal value has been constructed as US\$ \*\*\*\*\*/Kg for all producers/exporters from USA as per rule 6(8) of AD Rules.

### **EXPORT PRICE**

28. The exporter has filed the information regarding the exports of subject goods into India during the POI. The export price claimed by the exporter has been considered and adjustments claimed by the domestic industry have been allowed to arrive at the ex-factory export price. The ex-factory export price is determined as US\$ \*\*\*\*/Kg for all exporters/producers from USA.

## **EUROPEAN UNION**

### NORMAL VALUE

29. M/s. Merck, Germany has filed response in the exporters' questionnaire. They have filed information with regard to mainly two grades of industrial Mica Pearl Pigments namely iriodin 100, iriodin 111 which constitutes 92% of the total exports of subject goods to India and the domestic industry has also considered these facts and provided costing/financial information respectively for the comparable grades produced by them. During the course of verification the domestic sales were verified from their record. The cost of production of the subject goods was verified from their records and it was also reconciled from the profit and loss account for the period of investigation. The domestic selling price was found to be in the ordinary course of trade. The normal value has been determined for both the grades separately on the basis of domestic sales and arrived at the weighted average normal value for the subject goods. In view of the above, normal value has been determined as US\$\*\*\*\*/Kg.

### EXPORT PRICE

30. The exporter has provided invoice wise details of exports of subject goods made to India for both the industrial grades of Mica Pearl Pigment i.e, iriodin 100 and iriodin 111 during the period of investigation. M/s. Merck, Germany was exporting directly to their affiliate M/s. Merck, India. The export price was found to be unreliable as it was exported to their affiliate. In this situation export price has been constructed on the basis of the price at which the imported products are first resold to independent buyers. The adjustments with regard to M/s. Merck India to the independent buyers and M/s. Merck India to M/s. Merck Germany have been verified. The adjustments with regard to their claim have been considered on the basis of verified data to arrive at ex-factory export price to India for both the grades iriodin 100 and iriodin 111 separately during the period of investigation. The ex-factory export price for the subject goods is determined as US\$ \*\*\*\*/Kg.

31. The dumping margin has been determined for both the grades separately and then the weighted average dumping margin for the subject goods was arrived.

## **OTHER EXPORTERS/PRODUCERS FROM EU:**

### NORMAL VALUE:

32. It is noted that none of the other exporters/producers from EU have responded. Since there were no other responding exporters/producers from EU, the normal value for all other exporters/producers has been constructed on facts available as per Rule 6(8) of AD Rules. The normal value is, therefore, determined as US\$\*\*\*\*/Kg. for all other exporters/producers from EU.

### EXPORT PRICE

33. The export price is determined on the basis of lowest selling price to the independent buyers by M/s Merck, India. To arrive at ex-factory export price, adjustments have been considered as adopted for the cooperative exporters. The ex-factory export price is determined as US\$\*\*\*\*/Kg. for other exporters/producers.

## **DUMPING- MARGIN**

34. Based on the normal value and export price as determined above, the Authority assessed the dumping margin as under:

Exporter/Producer	Normal Value (US\$/Kg)	Export Price (US\$/Kg)	Dumping margin as % of Export Price
M/s Merck,EU	****	****	184.68%
Other exporters/producers from EU	****	****	195.06%
All exporters/producers from USA	****	****	87.38%

## **F. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK**

### **F.1 VIEWS OF THE DOMESTIC INDUSTRY**

35. The views of domestic industry have been summarised below;

- i. The domestic industry has submitted that no exhaustive information with regard to imports of the product under consideration is publicly available, therefore demand has been assessed based on the import volumes from different sources. Imports from subject countries are very significant in absolute terms and it is significant in relation to both production and demand of the subject goods in India.

- ii. The landed value of imports from the subject countries has below the net sales realization of the domestic industry, thus resulting in significant price undercutting and depressing the prices of the domestic industry.
- iii. The exporters from the subject countries have significantly reduced their prices in respect of exports to India whereas they continue to sell the material at higher prices in their domestic markets. The domestic industry is forced to reduce the domestic selling prices of the subject goods to compete with the landed value of imports.
- iv. The production of the domestic industry has increased. They have set up a new plant in 2001-02 in view of rising demand of the product, which commenced commercial production from February, 2002. However, domestic industry could not optimize its capacity of the new plant. In spite of increase in production and sufficient demand, capacity utilization has declined.
- v. Sales volume of the domestic industry increased between 2000-01 and 2001-02 consequent to rising demand of the subject goods. It has declined in the POI as compared to previous year. The domestic industry had anticipated much higher sales volumes in view of rising demand of the product in the Country. However, imports from the subject countries have prevented increase its sales volumes to expected levels. The sales have rather declined in POI, whereas the same should have registered an increase.
- vi. Average stocks of the domestic industry have increased over the years. This increase was witnessed in spite of significant increase in demand and is due to decline in sales volumes in the domestic market.
- vii. The domestic industry was forced to reduce its selling price inspite of increase in its unit cost of production. The imports have had severe adverse price effect on the domestic industry and are suppressing the prices in the market. Due to price suppression, the average prices of various types of pigments have declined, rather prices in respect of various grades also have declined.
- viii. The domestic industry was making profits till 2001-02. They enhanced its capacity with the projections that it would post higher profits and returns. However, due to dumping from subject countries, the domestic industry is now facing severe financial losses.
- ix. The Domestic industry was forced to curtail its employment level due to dumped imports in a situation where the domestic industry has been expanding and should have rather increased employment. The wages has declined after increasing in 2002-03 with a decline in employment level.
- x. Since, several grades of subject goods are being produced and sold, it would not be feasible to have one bench mark price for all the product types due to wide variation in prices. Therefore, Anti-dumping duty may be recommended as fixed amounts.

- xi. In the instant case, the various grades share the same capacity. Therefore, it would be appropriate to assess the injury to the domestic industry for like article as a whole. The domestic industry has rebutted the argument of exporters that injury analysis must be done separately for each grade is misplaced.

## **F.2 VIEWS OF THE EXPORTER / IMPORTER**

36. The views of exporter/importer have been summarised below;

- i. They have submitted that the selling price of Merck product is always higher than the Indian products in India. This indicates that the price suppression / depression has been implemented by Indian producers and they are responsible for depressing the overall market.
- ii. The sales, production, market share, ROI has shown a improving trend during the POI. The exporter claims that the injury, if any, to Indian industry does not exist due to dumping but on account of internal reasons and reasons other than dumping.
- iii. It is submitted that M/s Merck, India does not operate as a trader, rather It has a team of product specialists to educate the customers in India about the technology and product application.
- iv. The domestic industry has gone for unstable expansion programme in year 2001-2002, when the market was depressed, and is now staking a claim that their financials are affected by dumping. The domestic industry has invested a huge capital for increasing the plant capacity at Mahad in years 2001-2002 which was based on a feasibility study considering exports projections and is now staking claims of being impacted by dumping. High investments has resulted in higher borrowings and impacted the interest costs, contributing for its poor financials, if any.
- v. The exporter has submitted that the recession in textile printing industry has impacted the domestic industry due to displaced demand of about 250 tons. The textile industry recession had forced many of the master batch manufacturers and printers to shut down business. This reduction in demand is being mistakenly attributed as volume effect of dumping by Merck. One of the largest sellers of cosmetic products (Hindustan Lever Limited, a user of cosmetic grade pigments) had decided to discontinue the usage of pearl pigments from year 2002-2003. This might have affected the business of pigments. The loss of pearl coating by Hindustan Lever Limited and textile industry recession has adversely affected the domestic industry by more than 25%, resulted in reduction in volume demand to the extent of 400 MT p.a.
- vi. The exporter claimed that the Cosmetic grade pigments sold by them are of superior grade and serve extended applications compared to M/s Sudarshan

Chemicals Industries Limited. The domestic industry does not produce similar product under the cosmetic grade pigments compared to Merck, which is evident from the price list of the domestic industry. It is important to note that leading users (Modi, Revlon, Avon) of cosmetic grade pigments have stated that the cosmetic grade pigments available in the Indian markets are not meeting the required standard and hence they use Merck grade pigments for cosmetic applications.

vii. In the comments to the disclosure statement the following issues have been raised,

- the domestic sales and the export sales volumes has increased.
- the capacity utilisation has declined due to increase in capacity and shrinkage of demand mainly due to change in pattern of consumption by printing textile industries and cosmetic industries. The additional capacity coupled with lower plant utilisation resulted in higher incidence of fixed costs.
- The period of injury analysis should have been three years prior to investigation for the proper understanding and an analysis of trend of growth. The domestic industry is the sole producer and trying to consolidate its monopolistic position by increasing capacity and capturing domestic market in auto and cosmetic grades with the help of anti dumping duties.
- The undercutting of the domestic prices should be examined at which M/s. Merck, sells their product to independent buyers not with the landed value of imports.
- The non-injurious price has been determined for a large number of grades of product under consideration. The price underselling should be the difference between the non-injurious price and net sales realisation.
- Decline in return on investment is due to additional investments made by the company.
- The profit has declined due to unutilised capacity.

### **F.3 EXAMINATION BY THE AUTHORITY**

#### Cumulative assessment of injury:

37. As per annexure-II (iii) of AD Rules, in cases where imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that (a) the margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article -- and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of complication between the imported article and the like domestic

article. The Authority has found that the margin of dumping in respect of subject countries is more than 2%. The volume of imports from these subject countries collectively are more than 95% of total imports.

38. On examination of information, the Authority found that the prices of the subject goods coming from subject countries are almost comparable and do not vary significantly. These have been imported under the same tariff classification. The user industry for the imported product and the domestic product is the same. The Authority has, therefore, found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article in the light of conditions of competition between the imported products and the conditions of competition between the imported products and domestic like product. It is appropriate to examine cumulatively the effect of injury by imports of subject goods from subject countries on the domestic industry in this investigation.

39. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down,

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

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

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

#### Volume and market share in dumped imports

40. The imports from subject countries have increased in absolute terms during the POI. It has also increased in comparison to production and demand of the domestic industry during the POI. In terms of market share in imports, the share of subject countries has increased from 92.96% during 2000-2001 to 97.41% during the POI. The market share in imports from other countries has decreased from 7.04% in 2000-2001 to 2.59% during the POI.

	2000-2001		2001-2002		POI	
	Volume	Value	Volume	Value	Volume	Value
	Kg.	Rupees	Kg.	Rupees	Kg.	Rupees
<b>Share in total imports (%)</b>						
EU	92.61		88.51		89.85	
USA	0.35		0.00		7.56	
Subject countries	92.96		88.51		97.41	
Other countries	7.04		11.49		2.59	
Total	100.00		100.00		100.00	

### Market share in demand

41. The import volumes have been considered on the basis of data provided by the responding exporters, the Authority has assessed the demand on the same. It is also relevant to note that none of the interested parties has disputed the demand assessed by the Authority and the domestic industry has itself assessed demand in this region of 1000MT to 1200MT. The volume of share of domestic industry in demand has decreased from 63.78% during 2000-2001 to 57.86% during the POI whereas the share of dumped imports has increased in demand has increased from 33.67% in 2000-2001 to 41.05% during the POI (annualised). The demand has increased from 784 MT during 2000-2001 to 1100 MT during the POI (annualised).

	2000 –2001	2001 –2002	POI	POI (annualised)
<b>Imports (MT)</b>				
EC	263	208	624.92	416.61
USA	1	-	52.6	35.07
Imports from subject countries	264	208	677.52	451.68
Imports from other countries	20	27	18	12
Total imports	284	235	695.52	463.68
Domestic sales	500	638	955	637
Demand	784	873	1651	1100
<b>Share in demand (%)</b>				
Subject countries	33.67	23.83	41.05	41.05
Other countries	3	3	1	1
Domestic industry	63.78	73.08	57.86	57.86

### Actual and potential decline in sales

42. The sales of domestic industry have increased from 100 during 2000-2001 to 115.03 during the POI (annualised). The export sales have increased from 100 to 225.91 during the respective period. The overall sales of the domestic industry has increased from 100 during 2000-2001 to 127.34 during the POI.

Sales	Unit	2000-01	2001-02	POI	POI (Annualised)
<b>Quantity Indexed</b>					
Domestic sales		100	128.01	172.55	115.03
Export sales		100	124.37	338.86	225.91
Total		100	127.60	191	127.34

### Production & Capacity Utilisation

43. The installed capacity of the domestic industry has increased from 900MT during 2000-2001 to 1500MT during the POI(annualized). The installed capacity of the domestic industry has increased during 2002-2003 as additional capacity has been added with a creation of a new manufacturing unit at Mahad. The production of the domestic industry has increased from 100 during the 2000-2001 to 125 during the POI (annualised). The capacity utilization of the domestic industry has decreased from 100 during 2000-2001 to 75.17 during the POI(annualized) in the increased demand. The domestic industry has increased their installed capacity by 66.6% whereas the production has increased by 25% only in the increasing demand of the subject goods.

	Unit	2000-01	2001-02	POI	POI (Annualised)
Indexed					
Capacity utilisation		100.00	133.81	75.17	75.17
Production		100	141	188	125

### **Growth**

44. The sales volume of the domestic industry has decreased from 28.01% during 2001-2002 to -9.18% during the POI (annualised) whereas in value terms it has decreased from 35.26% during 2001-2002 to -8.93% during the POI (annualised). During the same period the production of the domestic industry has declined from 41.25% in 2001-2002 to -6.37% during the POI (annualised). In the similar situation the share of imports from the subject countries has increased from 92.96% to 97.41% during the POI (annualised). It is evident from the above that the growth of the domestic industry has hampered due to the dumped imports from subject countries.

	Unit	2000-01	2001-02	POI	POI (Annualised)
Domestic sales (volume)	%		28.01	36.23	-9.18
Domestic sales (Value)	%		35.26	36.60	-8.93
Production	%		41.25	40.45	-6.37

### Price undercutting

45. With reference to the argument raised by the exporter it is clarified that the Authority has considered resale price of M/s Merck, India and worked backward to determine CIF export price by deducting expenses incurred by Merck, India. It is noted that the resale price of Merck India would not be relevant for comparing with net ex-factory selling price of domestic industry, excluding discounts & commission, freight & transportation, taxes & duties. The Authority has compared the landed value based on resale price of Merck with net sales realization of the domestic industry. The undercutting has been evaluated for both the grades, which constitute more than 90% of the total imports, and it was found that the weighted average undercutting is significant. The undercutting margin was within a range of 9% to 18% during the POI.

### Price Underselling

46. Price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producers by appropriately considering the cost of production for the product under consideration during the POI. In order to eliminate inefficiencies, capacity utilisation has been normated.

47. The analysis shows that the weighted average landed value based on the constructed export price of the subject goods from subject countries is less than the non injurious price determined for the domestic industry during the period of investigation. In the instant case, it is found that there is significant price undercutting by the dumped imports, the imports are depressing the prices of the domestic industry and that the dumped imports are forcing the domestic industry to undersell the product. The Authority has determined the underselling for both the grades of the subject goods and it was found that weighted average landed value of imports from subject countries undersells the non injurious price significantly determined for the domestic industry. The underselling margin was within a range of 31% to 42% during the POI.

### Factors affecting domestic prices

48. The Authority noted that the selling prices of the domestic industry are linked to the raw material cost and prices of the subject goods from subject countries. The landed value based on constructed export price from subject countries is less than the selling prices and the non-injurious price determined for the domestic industry impacting the prices of the domestic industry. It is noted that the selling price of the domestic industry is suppressed due to dumped imports from subject countries as they could not raise it due to landed value of dumped imports. It is also observed that the cost of production of subject goods has increased whereas selling price of the subject

goods for the domestic industry has declined resulting in price suppression due to dumped imports.

### Magnitude of margin of dumping

49. It is noted that the magnitude of margin of dumping of subject goods from subject countries is significant. With regards to determination of dumping, the Authority has considered resale price of M/s Merck, India to the independent buyers in India. Since export price has been constructed, all expenses incurred by Merck, India have been considered to determine ex-factory realization of Merck, Germany.

### Evidence of lost contracts

50. The domestic industry did not produce any evidence regarding loss of order or contract due to dumped imports of subject goods from subject countries.

### Inventory

51. It has been observed that the inventory of the domestic industry has increased during the POI in absolute numbers and value. It is also found that in terms of months' sales quantity and months' sales value, the inventory has increased during the POI (annualised) as compared to the base year.

	Unit	2000-01	2001-02	POI	POI (Annualised)
Indexed					
Inventory as month's sales					
Quantity		100	200.70	107.26	160.90
Value		100	239.29	249.98	249.25

### Return on Investment and ability to raise capital

52. The return on capital employed for domestic industry has decreased from 5.94% during 2000-2001 to -4.33% during the POI (annualised). It is observed that the industry which was having positive return on capital employed during 2000-2001 has entered into negative growth on return during the POI(annualised).

Return on Investment	Unit	2000-01	2001-02	POI	POI (Annualised)
Return on Capital Employed	%	5.94	5.77	-4.33	-4.33
Indexed		100	92.22	-72.85	-72.85

### Profitability

53. The profitability of the domestic industry has declined when the production has increased during the POI(annualized) in the increased demand. The cost of production has increased from 100 during 2000-2001 to 113.15 during the POI (annualised) whereas the selling price has declined from 100 during 2000-2001 to 92.51 during the POI (annualised). It is observed that the cost of production has increased whereas the selling price of the product has declined in the same period and because of this reason the industry which was earning a profit in the base year started incurring losses from 2001-2002.

Rs/Kg	2000-2001	2001-2002	POI	POI (annualised)
<b>Indexed</b>				
Selling price	100	100.95	92.51	92.51
Cost of production	100	100.67	113.81	113.81
Profit / loss	100	-91.41	-775.45	-775.45

### Employment

54. The domestic industry has improved its productivity due to curtailment in the number of employees during the POI (annualised) compared with the base year and increase in production during POI. The domestic industry has claimed that the number of employees have been reduced as a cost cutting measure to improve the productivity and reduce the losses suffered by them. It is noted that change in level of employment has not caused any injury to the domestic industry.

Employees	Unit	2000-01	2001-02	POI	POI (Annualised)
<b>Indexed</b>					
No. of employees		100	102.8	93.1	62
Productivity per employee		100	141.25	125.29	125.29

### Productivity

55. Productivity of the domestic industry, as reflected in terms of production per employee, has improved during the POI. It can not, therefore, be said that the domestic industry has suffered injury due to decline in productivity.

Productivity	Unit	2000-01	2001-02	2002-03	POI (Annualised)
<b>Indexed</b>					
No. of employees		100	102.8	93.1	62
Productivity per employee		100	141.25	125.29	125.29

### Wages & Salary

56. The Wages and salary per employee of the domestic industry has increased during the period of investigation. It has increased from 100 during 2000-2001 to 106 during the POI (annualised).

Wages & Salary	2000-01	2001-02	POI
Indexed	100	87	106

### Cash Flow

57. The domestic industry is a multi product company involved in production of other products also. Cash flow of domestic industry is reflective of operations relating to company as a whole. However, the Authority has examined the performance of the domestic industry in terms of cash profit in relation to product under consideration. The cash profits of the domestic industry in relation to the product under consideration has been given below.

	2000-2001	2001-2002	POI	POI (Annualised)
Index	100	129.47	38.68	25.78

### Conclusions on Injury

58. On examination of injury parameters, the following conclusions are made by the Authority regarding injury suffered by the domestic industry.

- a. Imports from the subject countries have increased significantly in absolute terms.
- b. Imports are significantly undercutting the selling prices of the domestic industry
- c. The profitability of the domestic industry has been eroded resulting into financial losses.
- d. The petitioner is suffering from price suppression as cost of production of the subject goods has increased whereas the selling price of the domestic has declined and the dumped imports have suppressed the domestic selling price of the domestic industry.
- e. The petitioner is suffering from price underselling as landed price of the subject goods are below the non injurious price of the domestic industry.
- f. The domestic industry has suffered material injury.

### Causal Link And Other Factors

59. The authority has examined the submissions made by interested parties in respect of the issue of causal link. A detailed examination was made by the Authority with

regards to the issues pertaining to the material injury to the domestic industry and causal link between the material injury to the domestic industry and dumped imports. Paragraph (v) of Annexure II of the Anti-dumping Rules reads as under:

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

60. The Authority notes that market share of the domestic industry has decreased from 63.78% during the 2000-2001 to 57.86% during the POI( annualised) in increased demand of the subject goods. In examining the price effect whether the dumped imports have significantly undercut the price of the like product in India, the Authority found that the landed value of the subject goods from subject countries was lower than the net selling price of the domestic industry thereby undercuts the selling price of the domestic industry significantly. Moreover, undercutting to the domestic prices did not show the full impact of the dumped imports since the domestic prices were depressed due to low landed value. It is found that the price undercutting and the pricing behaviour of landed value of imports has forced the domestic industry to reduce the prices even less than the cost of production, resulting in financial losses to the domestic industry. The domestic industry could not increase the selling price as a result of increase in the cost of production due to dumped imports and suffered financial losses during the POI. This undercutting along with price depression in effect eroded the profitability of the domestic industry. It is noted that dumped imports were causing material injury to the domestic industry.

61. The import from other sources is de-minimis, hence imports from other countries has neither volume nor price effects on the domestic industry. The demand of the subject goods has registered a positive growth. The assessed demand of the subject goods has increased from 784 MT in 2000-2001 to 1100 MT during the POI in the increased production. Thus, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry. The pattern of consumption with regard to the product under consideration has not undergone any change.

Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.

62. The exports of subject goods have increased in proportion to the production of the subject good. The growth in exports is higher than the increase in production and domestic industry is able to maintain its production due to increase in exports other wise production in period of investigation would have declined much more if the domestic industry would not have exported. Hence, possible deterioration in export performance is not the cause for injury to the domestic industry. There is no trade restrictive practice, which could have contributed to the injury to the domestic industry. Technology for production of the product has not undergone any change. Developments in technology is, therefore, not a factor of injury.

63. Productivity of the domestic industry has increased. However, applicant has faced higher financial losses in spite of increase in productivity. It has been observed that even at the lower level of productivity applicant was earning profits in the base year, whereas at higher level of productivity applicant is suffering financial losses.

64. The exporters have argued that other factors would have caused injury to the domestic industry. They have further stated that domestic industry has been suffering financial losses in Agro Division. Domestic industry rebutted the arguments of the exporters stating that they maintain separate accounting information with regard to product under consideration. The Authority examined the arguments of the interested parties and found that the domestic industry has provided the information for the product under consideration and findings have been made on the basis of verified data of the domestic industry for the subject goods. As regards the argument of exporter that the domestic industry suffering injury due to decline in demand, the Authority examined and found that the sales volume of the domestic industry has infact increased in increased demand scenario. Therefore, decline in sales volume in these sector as argued by the exporters was not a possible reason of injury to the domestic industry.

65. The domestic industry in their comments to the disclosure statement has submitted that the non-injurious price assessed for the domestic industry is grossly inadequate without considering the costs associated in production and sale of such products. M/s. Merck has argued that the methodology of calculating non-injurious price has not disclosed. They have also stated that depreciation cost, interest cost, assets under consideration for the product under consideration and non feasible investment plans to enhance capacity would be the major reasons for high input / manufacturing cost and corresponding non-injurious price of the product. However, it is clarified that the Authority had taken note of the elaborate submissions of Merck on possible high costs on account of interest, depreciation, and assets under consideration. In view of the

argument of the exporter, it is noted that the non-injurious price is determined taking into consideration of all the relevant factors including costs of raw material used in production of subject goods, the consumption thereof, the cost of utilities, interest cost, cost of labour, depreciation cost and selling & distribution expenses and cost of investments. It is also noted that the non-injurious price for the product has been determined at normated level of capacity utilisation.

66. The exporter has submitted that plant utilization of the domestic industry has been low during the POI. The domestic industry argued that the POI was the first full year of commercial production of Mahad plant and the capacity utilisation of the company for the subject goods has been low as compared to previous years. This issue was examined during the course of verification. The investigation has shown that an increase in production capacity has occurred during 2001-2001 and POI. It is found that the company has achieved capacity utilisation of 74% in 2001-2002 and additional capacity has been created in view of increasing demand scenario and export potential for the subject goods. The domestic industry has argued that in this type of product higher utilisation level is not possible for such industries as in the field of petrochemicals, particularly when a number of different grades of the subject goods are to be produced. The impact lower capacity utilisation would have felt on higher incidence of overhead cost per unit of production and it could have impacted the financial loss to the domestic industry. It is also noted that the capacity utilization has been normated to negate the higher incidence of cost and inefficiency due to other reasons. The non-injurious price for the product has been determined at normated level of capacity utilisation and it is found that the domestic industry suffered injury as a result of dumped imports. It is also observed that the dumped imports undersells the non-injurious price determined for the domestic industry significantly even when the normated capacity utilization of the domestic industry has been taken for determination of non-injurious price. It is thus noted that the impact of lower capacity utilization in terms of higher allocation of fixed cost and injury (self inflicted) has been segregated on this account.

67. The domestic industry has submitted that the Authority has constructed the export price for the purpose of dumping margin, therefore anti dumping duty either in terms of variable duties or ad-valorem duties will not be appropriate. They have further argued that in a situation where the export price has been constructed for the purpose of dumping and injury analysis, a reference price or ad-valorem duties is not desirable in a situation when the export price itself has been found unreliable, which will not address the injury to the domestic industry. Since there are large number of grades under the industrial segment having price variation, one single benchmark reference price will not appropriate. In this situation the domestic industry has submitted that a fixed duty may be considered. The exporters have argued that a variable duty in the

form of reference price may be considered for the product under consideration. The Authority examined the arguments raised by the interested parties regarding the form of duty to be considered in this investigation. It is noted that different forms of duties have different implication on a case to case basis. However in this case since the product under consideration is having different grades of mica pearl pigment excluding cosmetic and automotive grades at a varying prices, it is considered appropriate to recommend fixed duty for the product under consideration.

## **INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

68. The Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition.<sup>69</sup> The Authority also recognizes that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and would help in maintaining availability of wider choice of the subject goods to the consumers.

## **LANDED VALUE**

70. The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

## **CONCLUSIONS:**

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

- a. Subject goods originating in or exported from subject countries have been exported to India below its normal value.
- b. The domestic industry has suffered material injury.
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject countries.
- d. The Authority thus considers necessary to recommend anti-dumping duty on imports of subject goods falling under Chapter 32 originating in or exported from the subject countries.

72. Accordingly the Authority recommends the definitive anti dumping duty be imposed on all imports of subject goods originating in/or exported from subject countries. The anti dumping duty shall be the amount mentioned in Col. 9 of the following table to be imposed from the date of notification to be issued in this regard by the Central Government on all the imports of subject goods falling under Chapter 32 of the Customs Tariff Act originating in or exported from the countries mentioned below:-

Sl. No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	Chapter 32	Mica pearl pigment excluding cosmetic and automotive grade		EU	EU	M/s. Merck, Germany	M/s. Merck, Germany	1.25	Kg.	US\$
2.	Chapter 32	Mica pearl pigment excluding cosmetic and automotive grade		EU	EU	M/s. Merck, Germany	Any exporter	1.25	Kg.	US\$
3.	Chapter 32	Mica pearl pigment excluding cosmetic and automotive grade		EU	Any country	Any producer	Any exporter	1.25	Kg.	US\$
4.	Chapter 32	Mica pearl pigment excluding cosmetic and automotive grade		USA	USA	M/s. Merck, USA	M/s. Merck, USA	2.27	Kg.	US\$
5.	Chapter 32	Mica pearl pigment excluding cosmetic and automotive grade		USA	USA	M/s. Merck, USA	Any exporter	2.27	Kg.	US\$
6.	Chapter 32	Mica pearl pigment excluding cosmetic and automotive grade		USA	Any country	Any producer	Any exporter	2.27	Kg.	US\$

73. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

**(Christy Fernandez)**  
Designated Authority