

NOTIFICATION

New Delhi, the 19th March, 1998

FINAL FINDINGS

Subject: Anti dumping investigations concerning imports of newsprint from USA, Canada and Russia - Final Findings

21/ADD/96 -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 notified Preliminary Findings vide Notification no. 21/ADD/IW dated the 11th June, 1997 and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- ii. The Authority forwarded a copy of the preliminary findings to known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter;
- iii. The Authority also forwarded a copy of the preliminary findings to the Embassy of the United States of America, and Russia and High Commission of Canada in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;

A number of interested parties requested for extension of time to file comments on the preliminary findings, which was, in case the request for extension was made in time, allowed up to 25.7.1997;

- iv. The Authority provided an opportunity to all interested parties to present their views orally on 7th Aug., 1997. The following parties attended the oral hearing:
 - Ananda Bazar Patrika
 - Daishowa Sales Ltd.
 - Daishowa Inc.
 - The Tribune Trust
 - General Trading & Sales Corpn.
 - Hindustan Times
 - Valia Bros (P) Ltd.

- Manipal Printers and Publishers
- Kasturi & Sons
- Amarchand & Mangaldas
- Indian Newsprint Manufacturers Association
- Newsprint Sales Corporation
- Newsprint Trading and Sales Corpn. ..
- Indian Agro Paper Mills Association
- Overseas Trading
- Indian Paper
- Mysore Paper Mills
- IAPMA
- AISPMA(All India Small Paper Mills Association)
- Sandesh Ltd.
- Parikh Paper Agencies (P) Ltd.
- Mekor Int. Consortium Moscow
- Russian Trade Representation
- Ushodaya Publication
- Canadian High Commission
- Indian Express
- Irinco Exports
- Ushodaya Enterprises
- Malayala Manorama
- Times of India
- Rajinder Narayan and Company.
- Indian Newspaper Society
- Aaj
- J. Sagar and Associates
- Express Publication (Madurai) Ltd.

All parties presenting the 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 were requested to offer their rebuttals, if any. The Authority allowed a number of interested parties, upon request, to present their views orally after 7th Aug., 1997 also;

- v. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and were allowed to offer their comments, if any. Comments received on the same have also been considered in these findings;
- vi. A number of parties requested for inspection of the public file maintained by the Authority. All parties who made request for inspection, in writing, were

- allowed to inspect the non-confidential version of the evidence submitted to the Authority by various interested parties;
- vii. A number of interested parties requested for copies of the evidence submitted by various interested parties. All parties who made request for specific documents were supplied the same;
 - viii. Abitibi Consolidated Inc. requested that the confidential information furnished by them to the Authority should not be divulged to any party in the Government of India, including Ministry of Finance and it should be used only for the purpose of determination of normal value, export price and dumping margin by the Authority;
 - ix. The Authority made available only the non-confidential version of the evidence presented by one interested party to the other interested parties. Information furnished on confidential basis by one interested party has not been made available to any other interested party(ies).
 - x. Subsequent to the appointment of new Designated Authority by the Central Government on 17th Dec., 1997, all interested parties were advised to indicate if they would like to explain orally the submissions made by them, which were already on record, in accordance with Rule 6(6). The interested parties were informed that they could appear, before the Authority on 12th Feb., 1998, if so desired to explain their case orally. The disclosure made by the then Designated Authority vide its letter dated 6.11.97, was examined independently by the new Designated Authority, who concluded that the essential facts disclosed in the communication dated, 45.11.97 will form the basis of her final findings also. No further disclosure of essential facts was, therefore, considered necessary.
 - xi. The Authority held an oral hearing on 12th Feb., 1998. It was clarified that no new issues could be brought up and that the arguments should be limited to issues already presented before the previous Authority. No written statements were taken on record.
 - xii. The investigations have been concluded within the time limit extended by the Central Government, i.e., 19th March, 1998.
 - xiii. Confidential information has been suppressed in this public version of the order and the same has been shown as " " or " ",
 - xiv. The arguments made by various interested parties have, to the extent possible, been brought out at respective places in these findings, alongwith the examination of the same by the Authority. Other arguments and the arguments raised by the petitioner have been brought out separately in these findings, alongwith the examination of the same by the Authority. The arguments raised by the interested parties have been brought out as "arguments raised" and the examination thereof by the Authority has been shown as "Authority's position"
 - xv. The information furnished by the petitioner and co-operative exporters were verified by the Authority, to the extent deemed necessary, in accordance with

- the Rules. Information furnished by Abitibi, Stone Consolidated, Avenor, Kondoponga, Balakhana, Solikams, MPM, TNPL, HNL and Nepa was, in particular, verified by the Authority;
- xvi. GATT/WTO agreement referred to in these findings refers to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994;
- xvii. Abbreviations: The following abbreviations have been used in these findings:

Word Used for

- Abitibi Abitibi-Price Inc.
- Avenor AvenorInc.
- Authority Designated Authority
- Balakhana JSC Volga (Balakhana Paper Mills)
- Solikamsk JSC Solikamskprom
- Kondoponga Pulp and Paper Mill
- Rules The Rules made under Customs Tariff Act supra
- INS Indian Newspaper Society
- INMA/petitioner Indian Newsprint Manufacturers Association
- HNL Hindustan Newsprint Ltd.
- TNPL Tamil Nadu Newsprint Ltd.
- Nepa Nepa Ltd.
- MPM Mysore Paper Mills Ltd.
- Universal Universal Paper Export Co
- SGA Selling, general and administrative expenses
- Express Publications Express Publications (Madurai) Ltd.

B. VIEWS EXPRESSED BY THE PETITIONER :

2. The views expressed by the petitioner i.e. INMA on various issues are as under:
- a. The investigation period fixed by the Authority is 6 months prior to the filing of complete petition and is in accordance with standard international and domestic practice where investigation period range from six months to one year.
 - b. The petitioner satisfies the standing with regard to filing of petition, as various manufacturers of newsprint in India are its members. Four of the largest manufacturers are also petitioners before the Authority. Petition is neither motivated nor for the benefit of a handful of persons wanting protection. The Rules contains adequate safeguards in this regard, as there are several threshold hurdles that have to be crossed before a petition is entertained by the Authority.

- c. The newsprint produced by the domestic industry and imported from the subject countries is being used interchangeably. The two are like articles within the meaning of the Rules even though there may be variation in the quality of domestic newsprint and imported newsprint. The definition of like article is wide enough.
- d. Normal value: Though the petitioner claimed normal value based on copies of invoices/quotations in the domestic market, the Authority has determined normal value on the basis of the information furnished by the exporters, ignoring the data supplied by INMA.
- e. Export Price: Export price was claimed on the basis of quotations/ invoices-, but the Authority adopted the data furnished by the exporters.
- f. International prices have no relevance for the purpose of deciding dumping and these investigations.
- g. Injury: The domestic industry has suffered and is suffering injury as a result of dumping and the findings of the Authority in this regard are reiterated and referred to.
- h. Real revenue of the newspapers is from the advertisements. In January, 1996, when the price of import was US \$ 750 pmt, the advertisement rate per column per cm. in a leading newspaper was Rs. 2150/-. When the import price declined to US \$ 430 pmt, the advertisement ,rates increased to Rs. 2400/-. No injury would be suffered by the newspaper industry if anti-dumping duty is imposed. Imposition of anti-dumping duty would only give a level playing field to the domestic manufacturers. The lower .duty principle adopted by the Authority takes care of inefficiencies of the domestic industry, if any. The importers are thus not made to pay for inefficiency of the domestic manufacturers.
- i. With regard to long term contracts referred to by the importers, it is pointed out that the long term contracts are not fixed price contracts, and there can be dumping even in case of long term contracts, so long as the export price is lower than the normal value.
- j. With regard to increase in export price after the investigation period, it is well settled that what is relevant for the purpose of the present investigations are the factors during the investigation period. The question with regard to increase in sales prices subsequent to the investigation period was raised before the European commission also in the Ball Bearing case wherein the, Commission observed that the price increase had occurred after the investigation period and, therefore, had to be ignored. To hold otherwise would " allow exporters to manipulate the results by short-lived price increases", the Commission observed. In Nippon Seiko and Too Bearing case the Court in EU upheld this reasoning (of Commission) by ruling that it Is essential that the investigation period is a limited and a specified duration, and that it was impossible to accept the argument that the proceedings must be terminated or duties not levied

merely because the companies which were subject to duties have,' made price increases after the investigation period. .

- k. Even Germany with its fully matured economy has' deemed fit and proper to impose a total ban on import of Canadian newsprint. EU has restricted the import of newsprint from Canada to 50,000 MT per month by imposing a tariff on any quantity imported beyond this limit. Even the WTO allows a tariff upto 25% to counter inequalities in conditions and obtaining. circumstances.
- l. The newspapers have comfortably survived when international prices ruled around US \$ 1000 pmt. There is, therefore, no reason why the newspaper industry should be affected by imposition of anti-dumping duty.
- m. All the newsprint mills are incurring heavy losses whereas newspapers are reaping windfall profits.
- n. Liberalisation of import of newsprint has benefited only 5-6 major newspapers. Small newspapers are at a disadvantage.
- o. The future of entire newsprint and paper industry is at stake, affecting direct employment of 2,00,000 people and indirect employment of over 10,00,000 people.0
- p. Continued dependence on imports for the consumers will result in paying much higher prices in the long run and the newsprint industry will become sick.

B. VIEWS EXPRESSED BY THE INTERESTED PARTIES AND EXAMINATION BY AUTHORITY:

3. The views expressed by various interested parties, opposing imposition of anti-dumping duties, on scope of investigations, like article, domestic industry, dumping, injury and causal link have been discussed at appropriate places in these findings alongwith examination of the same by the Authority.

4. The views expressed by the interested parties on other issues are as follows:

i. On justification of duties on newsprint in the light of the Supreme Court decision:
Arguments raised:

a) The attention of the Authority is drawn to paras 63, 68, 67, 68, 80, 82, 83, 87, 88 and 101 of the Supreme Court judgement in the Indian Express Newspapers vs. Union of India case. The propositions which emerge from this judgement are as follows:

The executive notification levying custom duty has to be issued after taking into consideration all relevant factors on the reasonableness of levy on newsprint.

The Government should strike a just and reasonable balance between the need for ensuring the right to freedom of expression and need to impose social control on the business of a newspaper. The Government should be cautious of the fact that it is dealing with an activity protected by Article 19(1)(a) of the Constitution of India.

In deciding the reasonableness of the restrictions imposed, the Govt. should take into account the following:

- The nature of the right alleged to have been infringed;
- The underlying purpose of the restrictions imposed;

The disproportion of the imposition;

The prevailing conditions at the relevant time.

A duty on newsprint is regarded as a restriction on the right of newspaper.

The effects of any measure which force the newspaper to cut down the pages or increase the prices would be violative of Article 19(1)(a).

A tax on newsprint should be capable of being justified as a reasonable levy. The Authority has not determined the impact of its recommendations on the newspapers which import the newsprint. While in every other case the investigation may be limited to be impact of the import, in case of newsprint, the impact of the recommendations on the newspapers ought to be considered in making the recommendations. The recommendations of the Authority will have a direct bearing on the cost of newsprint, which will have direct impact on the freedom of newspapers protected under Article 19(1)(a) of the Constitution of India. The anti-dumping duty is effectuated by Notification U/S 25 of the Customs Act in public interest. While it is indisputable that the newspaper industry should also bear its due share of the total burden of taxation alongwith the rest of the Community, when any taxes specially imposed on newspaper industry, it should be capable of being justified as a reasonable levy.

Authority's position:

The Authority notes that the concept of anti-dumping duty needs to be appreciated in its proper perspective. It appears that the anti-dumping duties are being considered as custom duties by the interested parties. The Authority observes that while anti-dumping duties are collected as duties of customs, the purpose of anti-dumping duties is to ensure that goods are not imported into the Country below their normal values

unlike of duties of customs which provide a general protection to the domestic industry. In other words, the nature of anti-dumping duty is to deal with an unfair trade practice and offset the injurious effect of price discrimination resorted to by exporters. Further, it is important to emphasise that anti-dumping duties are not in the nature of tax in as much as the Authority is also empowered to suspend these duties in case of an exporter offering a price undertaking. Anti-dumping duties are exporter specific or country specific and cannot be linked or compared with custom duties either under the law or in the economic sense. There are several safeguards to ensure that interests of an interested party(ies) are not affected in case dumping has ceased or the position has materially changed.

An analysis of circulation figures of Express Publications between April, 1995-Dec., 1996 shows the following:

Year	Newsprint Price (Nos.)	Copies Rs.	Price	Net price after commission (Rs.)
Apr-June, 95	27606	267137	2.25	1.74
Jul-Sep., 95	31496	263054	2.25	1.74
Oct-Dec, 95	34342	263054	2.25	1.74
Apr-June, 96	24535	274011	2.25	1.74
Jul-Sept, 96	20735	27,4011	2:25	1.74
Oct-Dec., 96	17208	284112	2.25	1.74

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The Authority notes that the newspaper prices are inelastic to the cost of newsprint, as the same remained at Rs. 2.25 per copy even when the price of the imported newsprint ranged from Rs. 34342 pmt to Rs. 17208 pmt. The Authority concludes that imposition of anti-dumping duties, which is necessary to prevent injury to the domestic industry, on exports from the subject countries will not result in serious implications on the newspapers, particularly when imports from other countries, supplies from Indian producers and imports from the subject countries at fair prices are not proposed to be restricted by these measures.

The Authority holds that the anti-dumping duty being recommended is appropriate, justified, reasonable and consistent with the decision of the Hon'ble Supreme Court referred to above.

Arguments raised:

b) The Authority should consider the impact of the levy on the newspaper. The Express Publications (Madurai) Ltd. referred to its profit/loss in this regard, which are as follows:

Year	Profit/loss (Rs. in lacs)
1993-94	343.94
1994-95	352.06
1995-96	877.00 (Loss)
1996-97	486.00 (Loss)

(First half year)

INS also furnished two statements to show the impact of the recommendations made by the Authority on the newspapers. A scrutiny of the statements reveals that INS has furnished loss suffered/fall in profits and likely financial burden on account of the antidumping duty recommended and its impact on the profits of the newspaper establishment.

Authority's position:

The Authority notes that no correlation has been established by Express Publications between loss incurred and the customs duty of ten percent as the said duty was levied only on 27th Oct., 1996 while the loss in 1996-97 is lesser than the loss indicated in 1995-96. No impact of duty on Express Publications can, therefore, be established. With regard to argument raised by INS, the Authority notes that INS has apparently furnished as to how much its members will have to pay extra, considering that its members continue to buy from the same source and the same volume. It also appears that some of the INS members have considered the impact of ten percent duty also in these statements. INS has, however, not revealed the impact of this assumed extra burden on overall profitability of the publishers, nor has INS or any other interested party(ies) established that the proposed levy would result in an unreasonable restriction. On the contrary, the Authority is of the opinion that the imposition of the

proposed antidumping duty would be in the longer and larger interests of the Indian newspaper industry, as brought out in the preliminary findings also. Such duties are also relevant and is required to be imposed to ensure that the Indian newsprint consumers are provided a long term source for their requirement of newsprint.

II) On the petition filed by INMA:

Arguments raised:

- a. The petition is silent as to the exact figures and details of dumping with regard to individual exporters and confines itself to estimates and averages of dumping, though five Canadian and eight Russian exporters have been named therein. The Authority has fallen into error in entertaining such a petition and arrived at preliminary findings on the basis of the figures mentioned therein.
- b. The petition is replete with assumptions and presumptions, for instance, with regard to extra expenditure allegedly incurred by the exporters towards ocean freight and insurance, agents commission, clearing, handling and landing charges etc.
- c. The petitioner has relied upon a number of letters to establish dumping. None of these letters constitutes authentic material on which any arguments or facts can be founded.
- d. The reliance placed on pulp and paper week is erroneous in view of the footnote on it.
- e. Quotations can provide no assistance in so far as valuation of dumping and its extent are concerned. What is relevant are the actual sales figures. The petitioner has relied upon freight rate quotations of continuous shipments from American President lines whereas newsprint^{4s} shipped from Russia in break bulk only.

Authority's position:

The Authority has made preliminary determination of dumping on the basis of the information furnished by the exporters and other information available with the Authority, in case of exports from USA and Canada. In case of exports from Russia, the Authority had to determine normal value on the basis of the best available information in view of non-co-operation by the producers from Russia. The argument that the Authority has relied only on the information furnished by petitioner on dumping is not correct as the Authority has based its findings on the information provided by the co-operating exporters from the said countries.

III) On procedure adopted for preliminary determination:

Arguments raised:

a) Indian Express, Mumbai wrote that it had not received a copy of the preliminary findings.

Authority's position:

The Authority had forwarded a copy to the company and the findings were published in the Gazette of India, extraordinary. The argument of the interested party(ies) on this account is, therefore, without merit.

b) Some of the members came to know about the initiation much later and hence asked for extension of time for filing the response. The Authority, however, did not accept extension beyond 28.2.97.

Authority's position :

As brought out in the preliminary findings also, the notice of initiation was published in the Gazette of India, extraordinary on the day the investigations were initiated, and therefore, argument of the interested party(ies) is without merit.

c) The preliminary findings notified will have the effect of retrospective application of anti- dumping duties, as the investigation ,period wis April-October 1996. This is not permitted under law.

Authority's position:

The argument is factually and conceptually incorrect. The investigation period is chosen to investigate the allegation and no duty would be payable for the period of investigation, unless otherwise specified. The anti-dumping duties in this case are not proposed on retrospective basis. The Authority has not recommended imposition of duty on retrospective basis and, therefore, the contention of the party is factually incorrect.

d) Prices charged by different foreign suppliers were the same at given point of time. It is further presumed that in free market conditions prevailing in the western countries selling prices there too would have tended to be more or less the same at the given point of time. That being so, it seems anomalous that dumping margin for different suppliers should be so different as worked out by the Authority in its preliminary findings. The significantly different levels of anti-dumping duties recommended by the Authority on Canadian exporters are not justified.

Authority's position:

The Authority has determined actual level of dumping margin and injury margin for individual exporters. Normal values and export prices of individual exporters need not be the same. The argument of the interested party(ies) about normal values and export prices of different exporters is full of presumptions. Information furnished by different exporters reveal that the export price of different exporters at the same point of time were different and not all the parties exported in the whole of the investigation period, resulting in different level of duties.

e) Based on selective data and information made available by the petitioner and others, the Authority has passed the preliminary findings.

Authority's Position:

The argument is factually incorrect. The preliminary findings, as brought therein, are based on the information furnished by the interested parties.

f) The preliminary findings of the Authority recommending imposition of Anti-dumping duties, provisionally, would result in a serious crisis, more so in view of the following.

Newsprint Newsprint is a primary and critical raw material that accounts for 50/60% of the total costs of publishing a newspaper;

White levying a ten percent customs duty, the Govt. set a trigger price of US \$ 575 pmt, at which point of time, even the ten percent custom duty should be withdrawn. The Govt. thus made it clear that US \$ 575 is a fair selling price at which the domestic industry is expected to compete and retain its market share. Since the international prices have almost reached this level, the ten percent customs duty should also .be withdrawn.

Suddenly and quite inexplicably, the Authority issued the notification, recommending imposition of Anti-dumping duty of over US \$ 140 pmt.

The preliminary findings are one-sided,. unfair, against principles of natural justice and have been made without giving a hearing inspite of written requests.

No category of newspaper, especially the small and medium ones will be able to bear the burden of Anti-dumping duty.

Authority's position:

The above arguments are presumptive with regard to reasonableness of the levy. A large number of interested parties, including INS, were aware of the investigations being conducted by the Authority. The Authority initiated investigations on 20.12.1996 and a number of interested parties submitted information and/ or their views, which have been considered by the Authority before arriving at these findings, in accordance with the law. The findings are, therefore, not one-sided, unfair or against the principles of natural justice. The Rules provide for review of anti-dumping duty being recommended in case the circumstances in the post-investigation period have materially changed. The arguments are, therefore, rejected being devoid of merits.

g) By making the recommendations, the Authority has attempted to give a go-by to the age old principles of demand and supply which governs the price of a commodity, has curtailed the right of the consumers to choose its source of supplies and will render the readers of the papers to suffer the extra levy imposed.

Authority's position:

The recommendations are in accordance with the law, and the above argument of the interested parties is without merit.

h) The Authority while following the procedure laid down in the law has completely ignored the aspect of being fair to all interested parties and being seen to be fair to all. This is borne by the following facts:

Many interested parties have not been given extension despite delayed communication;

Responses filed by many users have not been considered by the Authority while announcing preliminary findings;

The preliminary findings were received by many interested parties only in the last week of June and therefore these parties could not reply in time;

The preliminary findings is published after almost three and a half months after the last date for submissions.

Authority's position:

The above arguments are without merit and/or are factually incorrect in view of the following:

- i. The preliminary findings were sent by Speed Post to a large number of interested parties, including INS. The preliminary findings were published in the Gazette of India, extraordinary immediately on the day of the findings. A number of leading newspaper carried information about the recommendations. INS even took up the matter appropriately immediately upon the recommendations.
- ii. Those interested parties who requested extension with reasonable cause before the due date were given extension.
- iii. There is no time limit for completing the preliminary and/or final determination after receipt of information (except for the time limit for completing the investigations), nor does the time gap between the receipt of information and publishing of findings confer any right on an interested party(ies) to file information at a subsequent date. The Authority is required to collate the voluminous data before carrying out the analysis and examination of the information. It would not be feasible to accept the information after the prescribed date as it would make the process on going exercise which may delay the final findings. It may, however, be added that all submissions have been taken into account for these final findings.

i. Imposition of anti-dumping duty may result in retaliation by the subject countries in other directions.

Authority's position:

The argument is presumptive. Under the GATT agreement, no country is allowed to take any retaliatory action against any member country which proposes anti-dumping action. The interests of Government of India are adequately safeguarded in this regard,

j) On oral hearing: The procedure with regard to oral hearing adopted by the Authority is not in consonance with the settled and well established principles of fair play and natural justice. The interested parties were not provided an opportunity of full and proper representation and copies of the representation were not provided before the parties were heard. The order of the Authority that oral hearing would precede the exchange of pleadings and filing of rejoinders also requires re-consideration.

Authority's position:

Under Rule 6(6), the Authority may allow an interested party to present the information orally, but such oral information can be taken into account by the Authority only when it is subsequently reproduced in writing. The Authority notes it is not obligatory on its part to allow any interested party(ies) to present information

orally before the preliminary findings. The oral hearing may be given anytime during the course of the investigations.

The contention of the interested parties with regard to the process of conducting oral hearing is also untenable in view of the Rule referred to above, which very clearly provides that the Authority may allow an interested party to present the information, orally. The Authority is not obliged to provide copies of documents to all interested parties save as provided in the Rules. Moreover, the interested parties also had the opportunity to inspect the public files as per their convenience. Therefore, the argument that the interested parties did not have opportunity to inspect the documents is not correct. The fact is that hardly any interested party inspected the public file, before preliminary findings. The Authority, therefore, at its own discretion, allowed opportunity to all those interested parties present in the first oral hearing to inspect the public file and request another oral hearing before expiry of time limits for filing written submissions, if considered necessary. A large number of interested parties inspected the public files, made written submissions and were heard orally. Even during the course of these hearings, these interested parties were allowed to file written submission of the views expressed by them at the time of second hearing before the last date for filing written submissions announced on 7.8.1997. Some of the interested parties filed another set of written submissions before the due date, which were duly exchanged by the Authority and have been considered while arriving at these findings. Subsequent to the appointment of new Designated Authority by the Central Government on 17th Dec., 1997, all interested parties were advised to indicate if they would like to explain orally the submissions made by them before the previous Authority, which were already on record, in accordance with Rule 6(6). The interested parties were informed that they could appear before the Authority on 12th Feb., 1998, if so desired to explain their case orally. The Authority held another hearing on 12th Feb., 1998. It, therefore; cannot be said that any interested party did not have opportunity to present its views orally.

On confidentiality: Any interested party claiming confidentiality has to claim the same based upon articulate and cogent reasons. The basis for confidentiality can only be overwhelming public interest, e.g. public interest affecting paramount national interest like interest in the field of national defence, national security, communal harmony., etc. The Authority is under a statutory obligation to examine the reasons, if any, given by a party claiming confidentiality and allow the claim only if the Authority is satisfied. In any event a complainant cannot claim confidentiality because it is the complainant's case which has to be met by the interested parties opposing the imposition. Unless the facts and figures relied upon by the petitioner and the source is made available to the interested party(ies) opposing the levy, it is impossible for any interested party to rebut the case of the petitioner. In the absence.of transparency and

availability of pleadings and data the fundamental principle of rule of law that justice should not only be done but seem to be done would be compromised. Frivolous claims of confidentiality will result in every party claiming confidentiality, a situation which is present in the present case wherein the exporters, the Indian agents of the exporters, newspapers and the petitioner claim confidentiality. The Authority should, therefore, formulate clear and cogent guidelines to deal with the issue of confidentiality. Kasturi & Sons contended at the time of hearing on 12.2.1998 that Indian Express was in possession of the confidential documents filed by the petitioner, viz. INMA.

Authority's position:

The above contention of the interested parties with regard to confidentiality is liable to be rejected in view of the following:

- The Authority has a well formulated policy and guideline to allow confidentiality, which is in conformity with the GATT agreement.

Though the Indian rules are not specific with regard to the nature of information which can be claimed and accepted as confidential, the same has been clearly mentioned in the GATT agreement. Article 6.5 clearly provides that any information which is by nature confidential, for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom the person acquired the information, or which is provided on confidential basis by parties to an investigation shall be treated as such by the Authority. It is also noted that the type of information which can be claimed confidential listed in the GATT agreement is not of exhaustive type but is of an indicative type.

- The Authority understands that non-disclosure of confidential information by the Authority is a practice being followed largely by a number of investigating authorities world-over. In fact, the Authority finds that the investigating authorities in USA in some case relating .to injury determination suppressed even the name of the country who was also found to be exporting the goods to USA.

The Authority has not disclosed any confidential information to any party. The parties are, however, free to share information relating to them with any other. party.

I) The Authority has left a number of vital statistics blank in the preliminary findings. Without this vital information being clearly mentioned in the Order, the Authority could not come to any conclusion on the merits of the matter.

Authority's Position:

The Authority has passed a detailed order and only the information which is accepted as confidential, or analysis and findings based on such confidential information, has not been mentioned in the order. The Authority is required to maintain confidentiality, as granted to the interested parties under the law. The Authority further notes that there is sufficient disclosure made in the preliminary finding in regard to the information which is considered confidential. Mere non-disclosure of such confidential information has, in no way, curtailed the rights of an interested party(ies) to defend its interests by providing its own case with all relevant information and arguments.

IV) On disclosure of essential facts:

Arguments raised:

The information sought to be furnished under Rule 16 by the Authority does not disclose the essential facts which form the basis of the decision. The various contentions made by them have not been considered by the Authority in the disclosure made. The disclosure does not disclose any facts.

Authority's position:

The contentions which the interested parties have argued as not having been considered in the disclosure statement are in the nature of arguments raised to establish (or disprove) a fact. The interested parties have failed to distinguish between arguments and facts. Facts are different from arguments and since Rule 16 covers disclosure of essential facts (and not of essential arguments), the Authority has disclose only the essential facts. Further, the purpose of Rule 16 is to provide an opportunity to the interested parties to confirm the facts claimed by them and which the Authority proposes to consider to arrive at a just and fair decision. Neither the Authority is required to make up its mind about acceptance or rejection of the facts claimed before receiving comments on the disclosure, nor disclosure of these facts should construe as an acceptance of the claims by the Authority or the methodology to be adopted by the Authority for arriving at a decision. .

V) AUTHORITY'S POSITION ABOUT THE INVESTIGATION PROCEDURE ADOPTED :

The Authority has followed due-process of law under the Act and the Rules. All provisions of Rule 6 have been duly complied with. The Authority notes that:

- a. Under Rule 6(2), the Authority is required to forward a copy of the public notice to the known exporters and the Governments of the exporting countries. This has been complied with.
- b. Under Rule 6(3), the Authority is required to provide a copy of the petition to the known exporters and the Governments of the exporting countries. This has been complied with.
- c. The Authority is required to make available a copy of the petition to any other interested party who makes a request thereof in writing. The Authority is, therefore, not bound to suo motto forward a copy to all interested parties. The Authority provided a copy of the petition to those interested parties who made a request in writing.
- d. Under Rule 6(4), the Authority may call for information from the exporters, foreign producers and other interested parties and the same is required to be furnished within 30 days from the receipt of the notice. It is no! obligatory on the part of the Authority to call for information from all interested parties, nor is the Authority required to await responses from all those parties who are interested in offering information and/or comments. The Authority is required to give its final recommendations within one year from the date of initiation of the investigations and, therefore, entire investigations have to be completed in a time-bound manner. ;
- e. Under Rule 6(5), the Authority is required to provide opportunity to the industrial users to furnish information. This has also been complied with. .
- f. Under Rule 6(6), the Authority may allow an interested party(ies) to present information orally. This has also been complied with, as brought out above in detail.
- g. Under Rule 6(7), the Authority is required to make available the evidence available with it to all interested parties. Authority maintained a public file, which was kept open for inspection and the same was inspected by a number of parties. The Authority understands that the maintenance of the public file is not a unique practice by the investigating authorities in India. The practice is being followed by a large number of investigating authorities world over. In any case, all interested parties participating in the investigations and who showed their desire to inspect the documents were duly allowed to do so even after the preliminary findings.
- h. The Authority has not passed the preliminary and/or the final order without considering the information furnished on confidential basis. Confidential information has merely been suppressed from the public version of the order passed by the Authority. The confidential version of the order passed by the Authority contains all confidential information. Arguments of the interested party(ies) on this account are factually incorrect. Rule ;2(2) and 7(4), provide that the Authority shall issue a public notice recording its preliminary findings

and/or final findings. It is this public notice, which has been circulated to all the interested parties and which does not contain the information furnished on confidential basis.

- i. Arguments that some of the interested parties were not even aware of the investigation being carried out by the Authority or there was a considerable delay in getting a copy of preliminary findings deserves to be ignored. There is ample evidence on record to show that the user industry association and a large number of other interested parties were fully aware of the investigations being conducted. Moreover, a public notice was issued in the Gazette of India, Extraordinary, notifying the initiation of the investigations. Some of the newspapers also carried stories on the initiation by the Authority immediately after the initiation. In view of above, the claim of the publishers that they were not even aware of the investigations being conducted can not be appreciated. With regard to non-receipt of the preliminary findings and request for extension of time to file comments, the preliminary findings were published in the Gazette of India Extraordinary and were simultaneously dispatched by Speed Post to the known interested parties.

Under Rule 6(4) the Authority is required to allow thirty days time to respond to the notification and the letters are deemed to have been delivered within seven days of the date of despatch. Since the Authority allowed forty days time to respond to the initiation notification and/or preliminary findings, it is incorrect to say that sufficient time was not allowed to any interested party(ies). Further, the Authority allowed time upto 27.2.1997 (more than nine weeks, as against about five weeks allowed under the law) for responding to the notice of initiation. 'Extension was also allowed to respond to the preliminary findings in cases where requests were received before the due date.

VI) On investigation period:

Arguments raised:

- a. The investigation period is usually taken as 12 month preceding the month in which Investigations commence. Analysis of normal value "d export price for a short period of 7 months is likely to give distorted pictures. If the longer period of 1991-92 to October 96 could no taken to determine the injury, that longer period could well be taken as the period .. Investigation.
- b. The Authority has looked into the figures of import volumes, market share, production and capacity utilisation from 1991-92 upto October 96. Having taken this period into consideration, the Authority could not restrict this investigation to a limited period of months.

Authority's position:

It is a well settled practice that the dumping investigations are based on the detailed analysis and investigation for a well defined period and cannot be left open-ended. Further, the Authority is required to determine injury objectively, as per the principles laid down in Annexure li to the Rules. The determination of injury under these principles involve assessment over a period of time.

SCOPE OF INVESTIGATIONS:

5. The product considered in the present investigation is newsprint, other than glazed newsprint, originating in or exported from USA, Canada and Russia. Newsprint having ash content above 8%, commonly known as glazed newsprint, is not included in the scope of the present investigations. Newsprint is an uncoated paper of a kind used for the printing of newspaper, of which not less than 65% by weight of the total fibre content consists of wood fibre obtained by a mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness Parker Print Surt (1 Mpa) on each side exceeding 2.5 micro meter (micron), weighing not less than 40 gsm and not more than 65 gsm. Newsprint is classified under custom code 48.01 of Schedule I of the Customs Tariff Act, 1975.

6. The following arguments have been raised with regard to the scope of investigations:

The anti-dumping investigations being conducted by the Authority are discriminatory in as much as the investigations covers only Canada, USA, and Russia; and Scandinavians and Europeans, whose prices in some cases were even lower, have been excluded. To illustrate, Indian Express (Madurai) Ltd. imported newsprint from Sweden at price of Rs. 19635 pmt., which was the lowest price at which newsprint was sourced by them during the entire investigation period. Some other parties have argued that newsprint has been sourced from Italy, Brazil, South Africa, Germany and Korea RP at prices much lower than the prices from the subject countries.

Authority's position:

The Authority notes that dumping occurs when the export price of an exporter is lower than normal value of the goods prevailing in the domestic market of the exporting country or territory. Mere lower prices from a country do not imply dumping. Neither the petitioner has furnished any information with regard to normal value of newsprint in these countries (countries other than Canada, Russia, and USA), nor made a complaint to the Authority at the time of initiation of the investigations. The Authority is also not under an obligation to suo-motu examine dumping from other countries while deciding on initiation. It was, therefore, not even prime-facie established that imports from other sources were also at dumped prices at the time of

initiation. Moreover, Rule 19 of the Rules regarding non-discrimination becomes operational only for imposition of anti-dumping duty "in case the products are found to be dumped from a number of sources" and the Central Govt. decides to impose duties on some of these sources (leaving some sources without imposing duties). Since the Authority has not even investigated imports from other sources, it cannot be held that the Authority proceeded on a discriminatory basis.

E. LIKE ARTICLES, STANDING AND DOMESTIC INDUSTRY

7. Under Rule 2(d) "like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

8. The following arguments have been raised with regard to like article:

- a. In the instant case, the Articles identified for comparison are imported newsprint versus indigenously produced newsprint and, therefore, the first part of the definition of -like article under the Rules applies, according to which the requirements is that the imported newsprint and domestically produced newsprint should be alike "in all respects". Inter changeability of newsprint is one respect and not all respects. Quality, texture and durability are other essential characteristics which will determine likeness or dissimilarity.
- b. The policy followed by US and EU is that if price adjustments on account of differences in the product exceeds 20% of the total cost of manufacture then the product will not be considered as a like product. The domestic newsprint differs from the imported in view of the following:
 - Reduction upto 20% in daily printing time in case of imported newsprint,
 - Difference in raw-material used for manufacture,
 - Durability in terms of texture and quality in the imported newsprint,
 - The Indian newsprint producers produce newsprint from agricultural waste, printed newspapers and other sub-standard raw material and not from wood pulp. It is believed that the newsprint produced by the private mills in India do not even conform to the ISI specifications. Use of different raw materials by the foreign producers and domestic producers affect the texture and durability of the produce.
- c. The quality of newsprint produced by the Indian industry is not comparable with the newsprint imported from the subject countries.

- d. As regards the grammage of the newsprint, the domestic paper mills always have inconsistency and the grammage is always on higher side of the tolerance allowed by the standards.
- e. The preliminary findings do not provide any evidence to support that the petition has been made on behalf of the domestic industry. The Canadian High Commission requested the Authority to examine the issue of standing carefully and to ensure that the requirements of Article 5.4 of the Agreement have been met.

Authority's position:

The Authority notes that arguments have also been raised by some consumers that the quality of newsprint produced by some of the domestic producers, such as TNPL and HNL is acceptable. It has not, however, been disputed by any interested party(ies) that the articles produced by the domestic industry were substitutable by the articles imported from the subject countries -- both commercially and technically. The Authority further notes that the basic raw materials used bar, all the producers in the subject countries is not the same. For instance, newsprint is produced by the Canadian producers also using waste paper. Use of a particular type of raw material over other types has, however, not been considered as a critical factor, either by the producers or by the consumers.

9 In order to establish that the newsprint produced by the domestic industry is a like article to the newsprint exported from the subject countries, the Authority took into account such characteristics as physical characteristics (size, chemical composition, raw materials), manufacturing process and technology, functions and uses, product specifications, pricing, distribution & marketing, and tariff classification of the goods with regards to the newsprint produced by the other producers. The Authority is required to compare the characteristics of the newsprint produced by the domestic industry, i.e., MPM, HNL, TNPL and Nepa and the characteristics of the newsprint produced and sold by other newsprint producers are irrelevant. The Authority notes that the newsprint produced and sold by the domestic industry has characteristics closely resembling to the newsprint-exported from the subject countries, even though some of the factors may not be identical. The Authority, therefore, holds that the criteria prescribed in the definition under Rule 2(d) are adequately satisfied and newsprint produced by the domestic industry is a like article to the newsprint exported from the subject countries.

10. INMA satisfies the conditions laid down with regard to standing to file the petition. The petition has been filed by INMA, which is represented by the newsprint manufacturers in India. There is no opposition to the petition by any newsprint producer, and production of MPM, TNPL, HNL, Nepa constitutes a major proportion

of the total domestic production of newsprint in India. MPM, TNPL, HNL, and Nepa have not only individually signed and endorsed the petition filed by INMA, but also furnished such further information as was requested by the Authority and offered themselves for any verification conducted by the Authority.

11 The Authority confirms the preliminary findings with regard to the standing of the petitioner to file the petition, status of domestic industry and confirms that newsprint produced by the domestic industry is a like article to the product under consideration i.e.. newsprint exported to India, originating in or exported from the subject countries within the meaning of the rules supra.

F. DUMPING

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

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

13. The arguments raised by the parties opposing the recommendation and examination of the same by the Authority are as under:

- a) When the Authority has referred to the figures prior to April 96 with regard to import volumes, market share, production and capacity utilisation, there is no reason

why the international market prices and fluctuations therein for a period prior to April 96 should not be looked into.

Authority's position:

The Authority notes that dumping margin has been defined under the Rule, which states that the same is the difference between export price and normal value. Dumping margin, therefore, has to be worked out for the investigation period. Annexure-II relating to Injury to the domestic industry states that the Authority shall carry out an objective examination with regard to the volume of the dumped imports, effect thereof on prices in the domestic market for the like article and the consequent impact of these imports on the domestic producers of such products. The Rules provides that the Authority shall consider whether there has been a significant increase in dumped imports or the imports have resulted in a significant price undercutting or price suppression or depression in the Indian market. The Authority is further required to examine all relevant factors and indices having a bearing on the state of the domestic industry, including decline in sales, production, profits, capacity utilisation etc. As already discussed, injury to the domestic industry has to be assessed for the period of injury considered, which is larger than the dumping period.

b) The dumping margin has to be determined with regard to every exporter and every importer as every transaction of import may or may not be uniform.

Authority's Position:

Arguments have also been raised that the Authority should not determine the normal value for individual exporter, and should determine only one normal value for one country. The Authority, however, notes that the normal value has been well defined under the law and has to be determined accordingly. Dumping is exporter specific and the Rules require that the Authority determine individual dumping margin for each known exporter. The Authority has, therefore, determined individual dumping margin for each co-operative exporter.

c) The expectation in the USA was that the demand for newsprint would rise substantially, which did not materialise. The excess production planned by the mills in USA and Canada could not be sold except in the Asian markets at prices determined by competitive forces.

Authority's position:

The Authority is not required to investigate the reasons for the lower export price. The Authority is required to investigate existence of dumping in accordance with the law.

The argument of excess production resulting in lower export price does not alter the position regarding dumping.

d) The Authority has based its findings, inter-alia, on the prices published in a journal in New York.

Authority's position:

The contention is incorrect and the factual position has been brought out in the preliminary findings as well as these findings. The Authority has determined normal value on the basis of claims made by the exporters and subsequently verified by the Authority.

e) Domestic industry exported to Thailand in 1995-96 at FOB export price of US \$ 727 which was the prevailing international price. This establishes that irrespective of the domestic price within India, Indian newsprint producers had to export at or around the prevailing international prices. Same is true for imports in India in 1996-97 also.

Authority's position:

The price at which Indian industry exported to Thailand or the prices prevailing in Thailand are irrelevant to decide the existence of dumping.

f) Mekor submitted that exports from Canada were more than 180,000 MT in 1996, which was 4-5 times of the volumes shipped by Solikamsk (who had shipped 40000 MT). Consequently, the exporter argued that the exporters from Canada defined the level of prices for imported newsprint in the Indian market. The exporter further stated that in view of existing differences in quality of paper produced by the company and the paper produced by the exporters from Canada and USA and the level of services provided, all attempts to increase the prices by the exporter were unsuccessful.

Authority's position:

The Authority notes that the fact of dumping and not the reasons thereof is the purpose of the present investigations.

g) There was considerable decline in the prices for pulp and paper products, which resulted in the decline in the prices of newsprint.

Authority's position:

As brought out in preliminary findings and as mentioned above, the fact of dumping and not the reasons thereof is the purpose of the present investigations. Decline in the prices of pulp would affect the cost of production and would apply equally to both the markets, i.e., exports to India and sales in the home market.

h) The anti-dumping duty is ordinarily on prospective basis except in the circumstances mentioned in Section 9A(3). It was neither the case of the petitioners nor the finding of the Authority that the fact and circumstances attracted provisions of Section 9A(3). In the circumstances the Authority could only record a finding as to the existence of dumping on the date when he gave his findings and not as to whether there was any dumping in the past period. The change of circumstances has to be taken into account and cannot be ignored at the time of arriving at a finding.

Authority's position:

The argument is legally untenable. The Authority is required to give a finding with respect to existence of dumping during the investigation period. As brought out elsewhere in these findings, the factors subsequent to the investigation period are irrelevant to decide the existence of dumping and, in case the factors in the post investigation period have materially changed, an interested party(ies) may request review in accordance with the law. The argument of title interested party(ies) is untenable even procedurally, conceptually and methodologically for giving finding of dumping "on the date" of recording the finding.

i) In the present circumstances, comparable representative price of newsprint, when exported from the said countries or an appropriate third country or the cost of production has to be taken as the normal value. The price at which newsprint has been exported from the subject countries were at around the same price at which such imports have been made from other European countries. The present case is not a case where there are no sales or low volume of sales in the domestic market of the exporting country. It is a case where there is a peculiar market situation, and, therefore, domestic sales do not permit a proper comparison. The whole approach with regard to determination of normal value is erroneous and not in conformity with the Act.

Authority's position:

The argument is legally untenable. The price at which newsprint has been exported from third country(ies) is irrelevant to decide dumping from the subject countries. For dumping, only the normal value and export price of the exporter in the subject country(ies) are relevant. As regards the determination of normal value, it has not been brought out by the concerned interested parties as to why the definition of

"normal value" under section 9A should not be accepted and why there is a case of "particular market situation".

j) Consumption of newsprint in India is not more than 1.2% of world demand and there is no reason for any exporter to dump its material in India.

Authority's Position:

Under the anti-dumping provisions, the effect of the volume of trade is to be viewed only in the context of the domestic market (including imports) of the importing country and the reference to consumption of newsprint as compared to the world demand is of no relevance.

k) Imports from Abitibi were on the basis of (long term) contractual agreement which had definitive linkage with the US market transacted price. There is no question, therefore, of dumping by Abitibi.

Authority's position:

As brought out in the preliminary findings, the argument is irrelevant. Further, the claim that imports from Abitibi were on the basis of contractual agreement is also incorrect as Abitibi had exported to a number of parties, which were not under long term contracts.

Domestic price of newsprint in Russia has never been more than in North America.

Authority's position:

The argument is irrelevant to decide the present investigations. Price of newsprint in Russia and the price at which newsprint has been exported from Russia to India are the only relevant factors to decide dumping by Russia and the prices prevailing in North America are irrelevant.

m) Overseas mill afford to sell at lower prices because of immaculate production planning, marketing, customer support.

Authority's position:

The evidence available with the Authority establish that the profitability of the exporters from Canada and USA declined sharply in the investigation period and some of the exporters in these countries were forced to sell at prices significantly below the cost of production in the Quarter 4, 1996, in both the markets, i.e., exports

to India and sales in the home market. The argument of the interested party(ies) is, however, irrelevant to decide the present investigations, the only relevant factors being the normal value and export price.

DETERMINATION OF DUMPING:

14. The methodology adopted for determination of dumping margin and the claims allowed by the Authority with regard to individual exporters are as follows:

I STONE CONSOLIDATED:

a) Export price:

- i. The exporter furnished, in response to the questionnaire sent by the Authority, a detailed month-wise statement of quantity of newsprint exported to India, alongwith the C&F price, commission, inland/ocean freight, and inland freight from mill to port. During the spot investigations the exporter furnished a statement of overseas sales for each of the month in the investigation period, indicating therein the grade of newsprint, exporter to whom exported, volume of newsprint shipped, unit price, freight, commission and net selling price.
- ii. While submitting response to the questionnaire through M/s. J. Sagar & Associates, Stone Consolidated had mentioned under Appendix 3A(2) that the amount of overseas freight was *****. Appendix 3A(2) relates to sales price structure for exports to India and requires the exporter to give the list price alongwith adjustments which they may like to claim to arrive at the ex-factory export price.
- iii. It is pertinent to note that the questionnaire sent by the Authority clearly indicates that the adjustments claimed from the export price should be based on the actual expenditure incurred by the exporter. Since no remark was added to the element of overseas freight under appendix 3A(2), it was presumed by the Authority that this amount is the actual amount incurred by the exporter on overseas freight. It was observed that the element of overseas freight mentioned in appendix 3A(2) did not tally with the statement of "customers by grade newsprint exported" by Stone Consolidated, furnished by the company at the time of verification. Nor was this disclosed in the verification report dated 29.10.97 furnished by the exporter subsequent to the visit to the investigating team. However, subsequent to the disclosure statement, J. Sagar & Associates furnished an explanation that the customers by grade exports statement submitted by Stone Consolidated indicated only the notional ocean freight. Notwithstanding the incorrect claim made by the exporter, the representatives of J. Sagar & Associates explained that the claim of freight is on account of lower ocean freight which Universal was "able to obtain" on some exports done

through Universal. The contention of the exporter cannot be accepted, as the exporter did not furnish any evidence to establish the linkage of supplies made to Universal for ultimate sale to the Indian importers. The photocopies of the four Bills of Lading show Universal as the shipper but crucial information regarding the weight of the consignment was not indicated either in the response or to the verification team. The exporter did not submit any evidence whatsoever to establish that the difference of about *'''''' was actually credited in the books of accounts of Stone Consolidated. No evidence is also shown to the verification team to establish their contention with regard to a saving of *'''''' on account of ocean freight element. The contention of J. Sagar & Associates in their response dated 13.11.97 that the issue of lower freight which Universal was able to obtain, was explained to the verification team at Montreal is misleading. On the contrary, the verification team had clearly indicated to the exporter as well as to the representatives of J. Sagar & Associates, Shri V. Laxminkumaran and Shri R. Parthasarthy, assisting the verification team that in order to claim the benefit of lower freight as an adjustment in the export price, it would be incumbent upon them to establish the saving in the books of accounts of Stone Consolidated. The accounting practice followed by the exporter is such that even additional discounts paid by him to the consumers (which are paid at the end of the period, after establishing the volume lifted by the consumer during the relevant period) are adjusted in the statements. Under these circumstances, the claim of the exporter that it accounted for the "notional" expenditure in the statement (and did not rectify the same, after the payment of ocean freight) is not appreciated. Since this evidence has not been submitted at any point until the point of verification of even thereafter, the Authority is constrained to reject this claim of the exporter as a mere statement not substantiated with an evidence.

- iv. Since the statement furnished by the exporter during the spot investigations represents the records maintained by the exporter with regard to its operations, the export price has been considered on the basis of this statement of overseas sales. Further, since the statement gives the mill net prices at ex-works, after adjusting for commission, freight and other charges, the same are proposed to be considered as the export price.
- v. Commission: The exporter has, in the questionnaire response, argued that it pays commission to Universal, and all exports whether they are made directly or through Universal attract commission. For determination of normal value, the exporter claimed an adjustment on account of SGA from the selling prices in the home market. During spot investigations, it was, however, found that the claim of the exporter with regard to SGA is not based on the difference in the expenses incurred on these accounts in the two markets, i.e., home market and exports to India. The exporter, however, after the spot investigations, argued

that the export price need not be adjusted for the commission paid to Universal in order to do a fair comparison between the normal value and the export price. On the basis of the facts on record, it is clear that Stone Consolidated had paid a commission on their exports to India, and, therefore, the export price is required to be arrived at after adjusting the element of commission.

- vi. The authority recognises that the exporter is entitled to claim expenses which are incurred solely on account of sales made in the domestic market as an adjustment to arrive at the normal value. The argument that the commission should not be deducted to arrive at the export price in view of the fact that no SGA expenses have been claimed as adjustments in the normal value is not acceptable, as the determination of export price and normal value is required to be done, for all factors affecting price comparability, independent of each other after making admissible adjustments in each one of them based on the evidence.
- vii. Credit Sales: Since the sales in the home market involves lower credit terms compared to exports to India, the Authority has made an adjustment on account of higher credit in case of exports on the basis of differential credit period.
- viii. The export price, as determined above has been considered as ex-works export price.

b.) Normal value:

- i. The exporter furnished a statement of customer-wise sales made in the domestic market, alongwith a detailed invoice/transaction wise and customer wise sales statement, giving therein the grade of newsprint sold, order number, invoice no. and date, gross volume shipped, unit price, and amounts towards gross sales value, freight, discount, commission, other expenses and receivable amount. A detailed scrutiny of the statement for the month of July and August, 1996 revealed that the discount amounts claimed by the exporter in the questionnaire response did not tally with the discount amounts claimed by the exporter in the detailed sales statement furnished during the course of the spot investigations. The exporter revised its statement of Sale Price Structure for Domestic Sales, after the spot investigations, and clarified that the amounts of discount shown in the original questionnaire response included off-invoice discounts also. The exporter further clarified that the off-invoice discounts were offered to the large customers in Canada by credit notes later (i.e., after completing sale of goods) and availability of discounts was known (to the customer) at the time of purchase.
- ii. Volume discount: The exporter claimed that its exports to India were primarily to two customers, M/s. Bennett Coleman and a consortium of consumers in South India. Volume of sales made to these customers being very large, the

exporter has claimed an adjustment on this account. The claim on this account has been made by the exporter after the preliminary findings. The exporter has, however, after the spot investigations and in response to the disclosure statement argued that the Authority may alternatively determine normal value based on the selling prices to the large customers only.

- iii. Scrutiny of the claim made by the exporter revealed that the exporter has identified its large and small customers in the home market. The exporter had one large and eight small customers in the home market in the investigation period. The exporter has worked out average selling price to these small customers and the same has been used to work out the difference in its selling price to the small and large customers. Considering the difference in the selling prices to the small and large customers, the exporter has claimed an adjustment of ***** towards the same.
- iv. The claim of the exporter with regard to volume discounts is not tenable as the Authority is required to determine normal value and export price on comparable levels. The Authority, however, recognises that the selling price to the large customers should be considered for determination of normal value in view of association of large export volumes. Though the exporter is inconsistent with regard to the methodology to be adopted for determination of selling prices in the home market and has argued varied claims, the Authority considers it appropriate to determine the selling prices on the basis of the prices to the large customers. The Authority has, therefore, determined the selling price on the basis of the selling prices to the large customers in the home market for each of the month in the investigation period and has ignored the sales made to the small customers, on the basis of the claims made by the exporter. Discounts have been allowed on the basis of actual discounts allowed at the time of invoicing. Additional discounts given by the exporter after sale, by way of credit notes, have not been allowed, as no evidence has been shown to indicate that either the incidence or the quantum were determinable at the time of sale.
- v. Freight: The exporter has claimed freight on the basis of the freight paid by the exporter on each sale made, details of which are given in the transaction wise sales statement. The freight claimed has been allowed.
- vi. Equalised freight: The exporter has claimed an adjustment on account of equalised freight, which represents expenses incurred by the exporter on account of warehousing of newsprint and freight paid on shipments from mill to warehouses. No evidence has been furnished by the exporter that the customers in CEMada have been shipped from the warehouses maintained by the exporter, whereagY there is sufficient evidence available to show that the customers in US have been shipped from these warehouses. Adjustment on account of storage cost (warehousing) cannot be allowed as the same is neither

attributable to product costs, accounting for difference in prices, nor are they related to any function/activity which is carried exclusively in respect of sales in either of the two markets. The exporter has, further, not separated the expenses incurred (including freight) on sales made in Canada on this account. The adjustment on account of equalised freight has not, therefore, been allowed.

- vii. Selling, General and Administration Expenses: It was found during the spot investigations that the claim of the exporter on this account is based on SGA expenses incurred by the exporter on services which are either common to both the activities (exports to India and sales in the home market) or are not directly related to either of them. The exporter has not been able to substantiate that the SGA expenses, as claimed, were incurred exclusively on sales made in the home market. Since the exporter has not furnished details of expenses incurred exclusively on this account, even after the spot investigations, no adjustment on this account is feasible.
- viii. Continuous/batch production: The exporter had claimed an adjustment of ***** on account of batch production for sales in the home market as against continuous production in case of exports to India. The exporter has not offered any verification for the same, nor has exporter pressed for adjustment on this account after the preliminary findings (the Authority had disallowed this adjustment in the preliminary findings). In view of the above, the Authority has not considered any adjustment on this account in the final findings also.
- ix. The normal value, as determined above has been considered as ex-works normal value.

II. ABITIBI-PRICE, CANADA:

a.) Export price:

- i. The exporter furnished a detailed transaction-wise statement of exports made to India, "Off-shore Newsprint Net Sales", giving therein details of, inter-alia, volume of newsprint exported, unit price, total sales value, discount, and freight (inland and overseas). Each of these reports gave region-wise the export of newsprint from all the mills in Canada to different countries in the world. The all-mill report was supported by statements containing the sale of newsprint overseas by each mill. Exports to India were made from the Chandler and Grand Falls. Export price has been determined on the basis of this statement. Adjustments on account of commission and freight are also allowed on the basis of the actual expenses as shown in the statement of off-shore newsprint net sales.
- ii. Credit Sales: Since the sales in the home market involves lower credit terms compared to exports to India, the Authority has made an adjustment on account

of higher credit in case of exports on the basis of differential credit period and interest rate.

- iii. The export price, as determined above has been considered as ex-works export price.

b.) Normal value:

- i. The selling price in the home market has been claimed by the exporter on the basis of a detailed statement of invoice wise listing, giving therein the amounts towards gross sales value, discounts, freight and the net sales value. The selling price has been determined after deducting discounts allowed at the time of sale and actual freight incurred for all the sales made in the home market.
- ii. Additional discounts: The exporter has given additional discounts by way of credit notes, after the sale of the goods, on completing certain conditions towards volume of newsprint purchased by the customers. Since the additional amounts were not known at the time of sale, either in terms of incidence or quantum, the Authority has not allowed claim of additional discounts.
- iii. Volume discounts: The exporter has contended that the exports to India were made in large volumes (15000 - 20000 MT). In case of sales in the home market, one large customer lifted 30000 MT as against small customers who averaged about 1000 MT. The exporter has, therefore, claimed adjustment of ***** on account of difference in the selling prices to small and large customers in the home market.
- iv. The Authority notes that the company was selling in the home market in substantial quantities and the same were at profit for the major period in the investigation period.

The profitability of the company, however, declined in every quarter in 1996 to such an extent that the company incurred financial losses in quarter 4, 1996 from a situation of substantial profits in the quarter 1, 1996.

- v. The Authority would have determined the normal value in case of Abitibi also on the same basis as has been done in case of Stone Consolidated in so far as the issue of large customer is concerned. However, Abitibi has neither claimed determination on these lines, even after the disclosure (even though the response in case of Stone Consolidated and Abitibi has been filed by the same company, i.e., Abitibi Consolidated Inc.), nor the company disclosed the prices to the large customers in each of the month in the investigation period. Complete details of the month-wise sales made to the large customers have also not been furnished. The Authority is precluded from determining the selling prices on the basis of the sales made to the large customers. The Authority has, therefore, determined selling prices in the home market on the basis of the total

sales made in the home market. The claim of the exporter with regard to the volume discounts has not been allowed as the selling price considered for determination of normal value is based on weighted average of the selling price to large as well as small customer, and therefore, is already adjusted towards the lower selling price to the large customers. The Authority notes that even the exporter has done calculation of dumping margin "without taking into account the volume discount".

- vi. Deduction on account of SG&A expenses: Abitibi has also claimed adjustment on account of selling, general and administration expenses on the same lines and reasoning as has been done by Stone Consolidated. The exporter has not been able to offer substantiate that the SGA expenses, as claimed, were incurred exclusively on sales made in the home market. Since the exporter has not furnished details of expenses incurred exclusively on this account in the two markets, even after the spot investigations, no adjustment on this account is feasible.
- vii. The normal value, as determined above has been considered as ex-works normal value.

III. Abitibi-Price, USA:

Abitibi indicated at the time of spot investigations in Canada that further information in respect of US mills of the company were not forthcoming and the company did not seem willing to co-operate further in the investigations. The Authority has, therefore, proceeded with the determination of normal value and export price on the same lines as has been done in the preliminary findings.

IV. Avenor Maritimes: In case of Avenor Maritimes, the exports to India have been made by Avenor Inc., whereas the newsprint was produced by Avenor Maritimes, which is a subsidiary of the former. Avenor Inc. has a number of mills producing newsprint. The company, however, claimed that Avenor Inc. and Avenor Maritimes are separate legal entities and activities of Avenor Inc. could not be linked to Avenor Maritimes.

a.) Export price.

- i. Avenor Maritimes furnished a detailed transaction-wise statement of newsprint shipped to India. It was explained by the exporter that the statement included shipment of standard newsprint including trim newsprint.
- ii. An analysis of sales of trim and good newsprint to India reveals as under:
 - Analysis of date-wise exports made to India reveals that the selling prices of trim and good newsprint are different at nearly same point of time. For

instance, trim selling prices in the month of April 1996 were ***** as against ***** for good newsprint. However, the difference was ***** in the month of July, and ***** in the month of Sept. It is, therefore, concluded that though the selling price of trim and good newsprint differs, the difference was not uniform.

- An analysis of date wise exports made to India reveals that the selling prices of good newsprint declined sharply from ***** (Apr., '96) to ***** (Sept., '96). The selling prices in case of trim declined from ***** (Apr. '96) to ***** (Sept., '96).
 - An analysis of customer-wise and date-wise exports made to India reveals that there is no correlation suggesting that a consumer in India has been sold good newsprint at a lower price because of association of sale of trim newsprint. The claim of the party is that specificity of the Indian market allowed the exporter to sell trim newsprint to its regular customers and derive substantial benefits. The exporter has sold good newsprint to some customer (say customer 1) and sold trim newsprint to another customer (say customer 2). The claim of the exporter is, therefore, that it has sold at lower prices to customer 1 because it has sold trim newsprint to customer 2 (and thus made up the lower realisation from customer 1).
- iii. The exporter was requested to furnish the details of total production of newsprint bifurcated into trim and good. The exporter expressed its inability to furnish the same, pleading non-availability of such a system permitting separate recording and reporting. The exporter was, therefore, suggested to alternately furnish the details of total sales of newsprint bifurcated into good and trim. The exporter has furnished the statement, which reveals that the trim sales represents 3.4% of the total sale of the exporter. The sale of trim newsprint to India during the investigation period constituted 20.9% of the total sales of the exporter.
- iv. In view of the above, trim newsprint exported to India has been identified in the transaction wise import statement and disregarded for the purpose of export price determination.
- v. Commission: The exporter has paid a commission in case of exports to India, which has been deducted from the export price.
- vi. Inland Freight: The exporter has sometimes incurred inland freight on exports made to India. Though the plant of the exporter is located near sea port, it has been explained by the exporter that sometimes it has to incur inland freight for loading newsprint on the ship.
- vii. Ocean Freight: The exporter has charged ocean freight on the basis of actual expenditure incurred by it and therefore, the same has been allowed.

b) Normal value:

- i. Avenor Inc. claimed that the sales made by it in the home market cannot be considered for determination of normal value for Avenor Maritimes, as the two are separate legal entities. Avenor Inc. has, therefore, not furnished details about sales made by Avenor Inc., even though the Authority suggested the same at the time of verification.
- ii. Sales Volumes: Volumes sold by Avenor Maritimes in various markets are as under:

Market Volume	Percentage of Total Sales Exports to India		
Home Market	194	0.15	2.25
Exports to India	8546	6.88	--
Exports to Other Countries	115490	92.97	1351

- iii. Avenor Inc has contended that the sales of Avenor Maritimes in the home market cannot be considered for determination of normal value for the following two reasons:
 - The sales are in negligible quantities (1.8% of exports to India) and, therefore, cannot form basis for determination of normal value in accordance with Article 2.2 of GATT.
 - The exporter has put up the plant at New Brunswick (in the name of Avenor Maritimes) only for the international market and does not sell in the Canadian market. Even the small volumes sold in the Canadian market represents new products testing.
- iv. It is found that Avenor Inc. has exported newsprint to India produced in Avenor Maritimes (which is a subsidiary company of Avenor). Avenor has a number of other plants producing newsprint, from which it has sold newsprint in its home market. Normal value has been defined under section 9A(1)c(i) to mean the comparable price for the like article when meant for consumption in the exporting country or territory. Since the exporter has other plants in Canada, it could have claimed normal value based on the domestic prices for the sales made from other plants. The exporter has, however, not proposed determination of normal value based on plants of Avenor Inc. in Canada. Even the sales information in respect of other plants of Avenor Inc. has not been furnished by the exporter in spite of specific request by the Authority.
- v. From the details of exports made to third countries furnished by Avenor Inc., it is found that Avenor Maritimes has exported to a number of countries. The exporter had not furnished country-wise details of exports made by it in the

response filed by it after the preliminary findings. During the spot investigations, the investigating team found that separate details with regard to volumes, prices and cost differentials for the exports made to various countries were available with the exporter. Avenor Inc. was, therefore, requested to furnish details of exports made by Avenor Maritimes to various countries, including the volumes exported, the selling price and expenses incurred by Avenor Maritimes exclusively on exports made to various countries. Avenor Inc. has furnished the statement, month-wise, for the investigation period, scrutiny of which reveals that Avenor Maritimes has exported to the following countries:

Country

Bangladesh

Bermuda

Chile

Columbia

France

Hong Kong

India

Israel

Italy

Jamaica

Japan

Netherlands

Portugal

Puerto Rico

Singapore

Taiwan ROC

Thailand

UK

Total

Avenor Inc. has argued that export price of Avenor Maritimes to other countries cannot be relied upon for determination of normal value as Article 2.2 of WTO states that the use of third country prices requires a "comparison with a comparable price of the like product when exported to an appropriate third country provided that this price is representative". The exporter has, in view of the foregoing and para 9A(c)(ii)a of the Indian Rules, argued that the export price to third country cannot be relied upon for determination of normal value. The exporter has advanced the following reasons in support of its contention:

Grade/type: The exporter has contended that the countries, such as Japan, UK, Netherlands, Portugal, Singapore cannot be considered for determination of normal value, as the exporter has exported 45 gsm newsprint to these countries (exports to India are of 48.8 gsm newsprint).

Bermuda, Jamaica and Puerto Rico: The exporter has contended that export price to these countries cannot be considered for the following reasons

There is no local production (in these countries); The volume of sales involved is low; The port of Bermuda has limited unloading facilities, resulting in higher ocean freight; Avenor supplies only to one company in these countries making the price to these countries unrepresentative;

In Puerto Rico, the market traditionally and historically pays a premium over the US market. Further, 54% of the exporter's shipments are destined to a customer where Avenor is the sole supplier. Traditionally, publishers using a sole supplier will pay a premium that in exchange will guarantee deliveries even when newsprint is in shortage.

The customer in Colombia has to pay premium in view of political risks in the country;

- Chile: Production of newsprint in Chile is four times than the consumption. The publishers import newsprint to protect themselves from being at the mercy of local producers, in exchange of which they have to pay premium over other

markets. Sales to Chile is expensive and requires quarterly presence of technical and marketing staff. Further, Avenor serves only one customer in Chile, making the prices unrepresentative.

- Bangladesh, Hong Kong, Taiwan and Thailand: Although the market conditions in Bangladesh, Hong Kong, Taiwan and Thailand are similar to the Indian market, shipments to these countries are made solely by containers, which represents a premium. Further, cumulative shipments from these countries were 1.3 % of the total sales of Avenor Maritimes.
- vii. Avenor Inc. has, in view of the foregoing, argued that its sales price to any other country cannot be considered as comparable and representative. Avenor Inc. has therefore, worked out normal value based on cost of production of Avenor Maritimes.
- viii. The claim of the exporter that its normal value cannot be determined on the basis of export price to third countries deserves to be rejected on the following grounds:
- Section 9A(1)c(ii)(a) provides for determination of normal value on the basis of comparable representative price of like article when exported from the exporting country to an appropriate third country. Definition of like article covers, in its scope, not only identical goods, but also, in its absence, goods having characteristics closely resembling the product under consideration. Resorting to the basis of cost of production, pleading non availability of appropriate third country to whom "like article" has been exported, is not acceptable.
 - Annexure I to the Rules, dealing with the principles governing the determination of normal value, export price and dumping margin provides for due allowance for the differences which affect the price comparability, including differences in conditions and terms of sales, level of trade and any other differences which are demonstrated to affect price comparability.
 - It is recognised that no two markets are the same. In fact, no two customers may be the same and sales price to two customers even in the same market may vary in view of a number of factors. Avenor could have claimed, in view of its contentions of differences in terms and conditions of sales in exports to India and exports to other countries, price adjustment which account for the differences in the conditions and terms of sale. Avenor has, however, not claimed any such price adjustment and has instead claimed that the export price to any other country is not representative.
- ix. The argument of the exporter that the normal value cannot be determined on the basis of export price to third countries is not acceptable and deserves to be

rejected. An analysis of the cost of production for exports made to India and exports made to third countries furnished by the company reveals as follows:

- a. The claim of the exporter is that its export Price to India was higher than its cost of production and, therefore, there is no dumping;
- b. Avenor has claimed different raw materials cost for the newsprint sold to India and the newsprint exported to other countries. The exporter has claimed a higher raw materials cost in case of exports to other countries, which represents, according to Avenor, the difference in the material exported to India and Japan;
- c. The cost of production statement furnished by the exporter does not include interest costs, commission to Avenor Inc. paid by Avenor Maritimes and reasonable profit, which Avenor Maritimes is supposed to have made on the exports made to India;
- d. The claim of the exporter that it has exported to India above costs is after considering the trim sales made to India, cost of which has been considered as comprising of raw material cost only. Avenor has argued that trim is usually recycled within the paper machine as it is otherwise difficult to sell. In case of its exports to India, the exporter has argued that it has sold trim in substantial volumes. The exporter has argued that the cost of trim comprises of only variable cost in newsprint production, i.e., costs of fibres, pulp, power, chemicals and other misc. costs. The exporter has claimed that there are no costs involved with regard to the following in so far as the trim production is concerned:
 - Semi-variable costs - such as labour, maintenance, power and others;
 - Fixed costs - such as manufacturing administration, selling, administration, depreciation and others.

It is found that the exporter considers trim production as saleable production. In the cost sheet submitted by the exporter, the exporter has determined cost of production on the basis of total saleable production (i.e., including trim production). It can therefore be concluded that whereas the cost of production determined by the exporter is based on the total saleable production (including trim production), the exporter has argued that the cost of trim product comprises of only variable costs.

The break up of the cost of production of newsprint furnished by the exporter is as follows.

Exports to India Exports to third

Good Trim Countries

Newsprint

Sales (MT)	****	****	****
Variable costs	****	****	****
Semi-variable costs	****	nil	****
Fixed costs	****	nil	****
Overheads costs	****	nil	****
Total costs	****	****	****

Less: Credit for Trim

sold to India * ****

Net cost of production ****

* Based on total trim sale to India.

- x. The Authority observes that the exporter has claimed credit for trim sales on the basis of trim exports made to India during the investigation period. Since the exporter has exported trim production and good production to different consumers in India and/or at different point of time, the exporter has sought to get the benefit of significantly higher price realisation from sale of trim newsprint while determining profitability of good newsprint exported to India.
- xi. The Authority notes that normal value has to be determined as provided under Section 9A(1)c, as detailed above. The said section provides that the normal value shall be the comparable price for the like article when meant for consumption in the exporting country in case sales of the exporter in the domestic market are not sufficient to determine the normal value, the same may be determined on the basis of selling prices (of other producers) in the domestic market of the exporter. In the instant case, where Avenor Inc. has several mills in Canada selling newsprint in the domestic market; normal value could have been claimed on the basis of selling prices of these mills. Further, the exporter could have claimed normal value based on the export price to third countries, after making adjustments towards the differences in the terms and conditions of sales. Even this has not been claimed by the exporter. Under the circumstances, the Authority considers it appropriate to determine normal value for Avenor Maritimes on the basis of monthly average selling price of other co-operative

exporters from Canada, i.e. Stone Consolidated and Abitibi. The normal value in case of Avenor Maritimes has been, accordingly determined on the basis of normal values of Stone Consolidated and Abitibi.

V. EXPORTERS FROM RUSSIA:

- a. None of the exporters from Russia furnished any factual information with regard to present investigations before the preliminary findings. Balakhana, Kondoponga and Solikams, however, furnished some information after the preliminary findings. The methodology adopted for determination of dumping in respect of these exporters is discussed hereinbelow:
- b. The Authority, immediately upon initiation, requested the exporter to furnish information in the form and manner prescribed. The Authority requested to furnish, inter-alia, the following information in particular:
 - A certificate that the information furnished was true, complete and correct;
 - Willingness of the exporter to offer itself to any verification that the Authority may carry out at their premises;
 - General information about the company, including details about the principal shareholders, etc.;
 - Details of the plants/factories of the exporter;

List of incentives given on exports or domestic sales in the form of concessions, exemptions, subsidised inputs, utilities, etc.;

Transaction wise details of exports made to India as per the prescribed proforma; Statement with regard to sale of newsprint by the company for three years including investigation period (Proforma 2A);

Statement with regard to sale of newsprint by the company month-wise for the investigation period (Proforma 2B);

Statement of newsprint exported to India, classified according to the type of the customer i.e. wholesaler/retailers/others(Proforma 2C);

Statement of domestic sales, classified according to the type of the customer, i.e., wholesaler/retailers/others(Proforma 2D);

Statement of exports to countries other than India, classified according to the type of the customer, i.e.s wholesale r/retailers/others(Proforma 2E);

Statement of sales price structure for exports to India (Proforma 3A), giving therein the list price, price adjustments and net ex-works price; Statement of sales price structure for domestic sales (Proforma 3B), giving therein the list price, price adjustment and net ex-works price; Statement of sales price structure for exports to countries other than India (Proforma 3C), giving therein the list price, price adjustments and net ex-works price; Statement showing licensed capacity, installed capacity, production and sales (Proforma 4A); - Statement showing element-wise cost of production for exports made to India, sales made in the home market and exports made to countries other than India (Proforma 4B, C, D);

Annual: accounts and financial statement for the past three years, including the investigation period.

c) The claims made by Solikams, Balakhana and Kondoponga have been discussed hereinbelow. The methodology adopted by the Authority with regard to determination has also been discussed hereunder.

VI. BALAKHANA:

i) Balakhana has argued the following:

- a. The exporter has fully co-operated with the Authority and furnished all information requested by the Authority;
- b. The exporter was willing to offer itself for verification;
- c. The Authority gave a very short time for spot investigations;
- d. The exporter offered a detailed verification, including the manufacturing process, calculation of cost of production for the investigation period as well as for the post and pre-investigation period;
- e. Balance Sheet and Statement of Income and Operations alongwith their schedule were shown to the investigating team, though the copy of the same could not be given for want of Board Approval (which could not be obtained in view of non-availability of the competent authority). The same were, however, submitted after the spot investigations by the investigating team;
- f. The normal value should be calculated based on the selling prices in the home market. The selling prices in the home market were well above the average cost of production.
- g. In view of the above and the disclosure statement made by the Authority, Balakhana argued that full co-operation has been extended by the exporter and full verification offered to the investigating team.

Authority's position:

ii) The above arguments of the exporter are factually incorrect, more so in view of the following:

- a. Balakhana furnished, inter-alia, the following information:
 - Statement of sales made in the home market and exports to India during the investigation period;
 - Quantities exported to third countries during the investigation period, -
 - Calculation of newsprint cost, month-wise for the investigation period;
 - Comparison of average price, ex-mill for sales in the domestic market and exports to India;
 - Details of vessel-wise newsprint exported to India, giving therein the details of vessel, bill of lading date, quantity booked and quantity received;
- b. The Authority, immediately upon initiation, requested the exporter to furnish information in the form and manner prescribed. The exporter was, informed of the intentions of the Authority to verify any information deemed necessary: The obligation to furnish full and complete information rests with the exporter. Not only that the exporter did not file complete information, but also the details were not shown to the investigating team, as is evident from the above.
- c. The exporter was requested to furnish supporting information with regard to cost of production, such as raw material consumption norms and reconciliation of the cost statements with the financial statements. These were also not furnished.
- d. The investigating team discovered during the course of the verification that the exporter has three paper machines, PM 5,6, and 8 and the cost of production claimed by the company was for its PM 8 machine only. This fact was not brought out in the response to the questionnaire. The exporter was requested to make available cost sheets for the other two paper machines, which were also not furnished to the investigating team or to the Authority. It was merely clarified that PM 5 and PM 6 are used only after PM 8 is operating at full capacity (and the company needs more production).
- e. The investigating team desired details of production of the company for the past three years, including the investigation period. No details of production were furnished to the investigating team, even though the details of despatches, that too for the investigation period only, were made available. The company claimed that there were no changes in inventory and the production was equal to the sales/ despatches. The company furnished its production during 1996 first time in response to the disclosure statement and the same were neither furnished with the response not provided at the time of verification. It is, however, found that the company has claimed a total production of *****, which is significantly higher than the capacity of PM 8 machine (the capacity

of PM 8 has been claimed at *****. It is thus evident that the company produced in significant volumes from the remaining two paper machines, costs of which have not been disclosed. This becomes all the more important in view of the fact . that the financial accounts are maintained by the company on consolidated basis for all the three machines and no separate financial records are maintained by the company for individual machines.

- f. The information furnished by the company did not enable the investigating team to verify detailed element-wise costs. It was not clear whether the cost of production included elements of costs such as depreciation on fixed assets, interest, etc. In fact the understanding given to the investigating team was that generally there is no provision for mandatory audit in Russia, nor was it mandatory to provide for depreciation on fixed assets. It is, however, found from the annual accounts for 1996 filed by the exporter after the spot investigations that both the Balance Sheet and Statement of Income and Expenditure are after considering depreciation on fixed assets.
- g. Some of the information, such as reconciliation of production, sales and stocks has not been filed by the exporter. The exporter has determined cost of production on the basis of its production and has apparently assumed that sales were equal to the production. Scrutiny of the Statement of Income and Expenditure reveals that the finished goods inventory increased significantly as on 31.12.1996 as compared to 1.1.1996. This apparently implies that the sales volumes were significantly lower than the production (which would result in higher cost of production than the amounts claimed by the exporter). Similarly, the details of "Other Income (Expenses)" furnished by the exporter reveal that there was significant foreign currency transaction gains, the interest expenses are possibly net of interest income (which could be from non-operational sources). The Long Term Debt, less Current Portion as on 31.12.1996 were ***** cost of which comes to well above US \$ ***** , whereas the company has charged an expenditure of US \$ ***** in its financial statement. It is not known to the Authority whether the company has access to interest free loans to the interest expenses shown in the financial statement are net of any substantial interest income from some sources. None of these details have been furnished by the exporter, which have a critical bearing on the cost of production.
- h. The claim of the exporter that the information to the extent available/ possible was furnished to the investigating team is also not acceptable. The information filed by an interested party(ies) is verified during the course of the spot investigations. The investigating team did not request any information which could be termed as a new requirement. The team merely requested the information which has been prescribed in the questionnaire. Even this request by the investigating team was made as a part of yet another opportunity by the

Authority to those exporters who are willing to co-operate with the Authority, who furnished certain minimum information with regard to normal value and export price. There is no obligation on the part of the Authority to request such information at the time of verification.

- i. The claim of the exporter that total average cost of production (derived from the unit cost of production and total production quantities) plus the net profit for the period is more or less equal to total sales revenue earned by the mill is far from Generally Accepted Accounting Principles. In making the claim, the exporter has overlooked the underlined principles of "production and the expenses for the production", for working out cost of production. The apparent fact that there was substantial stock increase in the period (resulting in significantly lower sales volumes compared to production) and the company catered to a number of different markets have been completely overlooked by the exporter.
- j. The Authority notes that the exporter filed the details with regard to production during 1996 in response to the disclosure statement, and the same were not filed either in response to the questionnaire or at the time of verification.
- k. With regard to the sales made in the home market, the exporter was requested to furnish details evidencing total sales in the home market. The exporter has not furnished any statement showing details of all sales transaction in the home market, and merely made available a large number of invoices (which were claimed to contain all invoices relating to the sales in the home market). The Authority notes that the exporter has till now not furnished any such details which establishes details of all sales transactions in the home market.

VII. KONDOPONGA:

i) Kondoponga has argued the following:

- a. The entire spot investigations was conducted without sufficient time. The investigating team did not have sufficient time to visit the mill;
- b. The company furnished whatever information was requested by the investigating team, including audited Balance Sheet and Profit & Loss Account, which shows gross earnings of ***** It is not clear what information was not filed by the exporter and what information was found incomplete.
- c. With regard to the observation of the Authority that the details of sales made in the home market are on some date, it is clarified that the mill change its prices periodically (and till then the prices remain constant for all purchasers). The company submitted copies of the invoices drawn on each occasion when the price was changed during the investigation period.

Authority:s position:

ii) The above arguments of the exporter are factually incorrect, more so in view of the following:

- a. Kondoponga furnished, inter-alia, the following information:
 - Details of newsprint exported to India, newsprint sold in the home market, giving therein the selling price;
 - Details of cost of production;
 - Willingness to offer itself to verification.
- b. The Authority, immediately upon initiation, requested the exporter to furnish information in the form and manner prescribed. The exporter was informed of the intentions of the Authority to verify any information deemed necessary. The obligation to furnish full and complete information rests with the exporter. Not only that the exporter did not file complete information, but also the details were not shown to the investigating team, as is evident from the above.
- c. As observed in case of Balakhana, the request for information was made immediately after the initiation of the investigations, and the claim of the exporter that it has filed complete information or the Authority did not allow sufficient time for filing information or the information was shown to the investigating team are without merit. The Authority finds that the exporter has not furnished its audited Balance Sheet and Profit & Loss Account even after the spot investigations. Further, the claim of the exporter that the annual accounts shown to the investigating team were audited is contradictory to the claim made by Balakhana that there is no provision for statutory audit in Russia. With regard to changes in prices periodically in the home market, the Authority observes that the same is without any supporting evidence. The obligation of the exporter is not to furnish the information in the format suitable to the company, but to furnish the same in the form and manner required by the Authority. The Authority required details of all the sales made in the home market and the average price for sales made in the home market on the basis of all the sales made in the home market. While the claim of the exporter with regard to uniform pricing for a certain period is rejected for want of supporting evidence, the claim made with regard to the selling prices is rejected in view of improper and inconsistent determination of selling prices made by the exporter.

VIII. SOLIKAMS:

i) Solikams has argued the following:

- a. The entire spot investigations was conducted without sufficient time. The investigating team did not have sufficient time to visit the mill;

- b. The company furnished whatever information was requested by the investigating team, including Balance Sheet and Profit & Loss Account, duly certified by a chartered/independent accountant under the Russian Laws which shows huge profit during 1996. It is not clear what information was not filed by the exporter and what information was incomplete.

ii) Authority's position:

- a. Solikams furnished, inter-alia, the following information:
 - Details of newsprint exported to India, newsprint sold in the home market, giving therein the selling price;
 - Details of cost of production;
 - Willingness to offer itself to verification.
- b. As observed in case of Balakhana, the request for information was made immediately after the initiation of the investigations, and the claim of the exporter that it has filed complete information or the Authority did not allow sufficient time for filing information or the information was shown to the investigating team are without merit. The Authority finds that the exporter has not furnished any Balance Sheet and Profit & Loss Account even after the spot investigations. Further, the claim of the exporter that the annual accounts shown were certified by a chartered/independent accountant under the Russian Laws is contradictory to the claim made by Balakhana that there is no provision for statutory audit in Russia and claim made by Kondoponga that the financial statements are audited. The Authority has been prevented from ascertaining factual position till date. The Authority further finds that the exporter has furnished a statement, showing its income and expenditure for 1996. No details and supporting statements with this statement whatsoever have been filed by the company.
- c. As regards the time allowed, it needs to be mentioned that anti-dumping investigations are to be completed within a strict time frame. It is also important to note that it were the exporters from Russia who submitted their response after almost 6 months whereas the statutory time limit is only 40 days. Even though the responses were not received within 40 days, the Authority has considered the information supplied by them to arrive at a fair decision.

15. METHODOLOGY ADOPTED BY THE AUTHORITY WITH REGARD TO SOLIKAMS, BALAKHANA AND KONDOPONGA:

- a. As brought out in detail in the foregoing paragraphs, the information furnished by Solikams, Balakhana and Kondoponga is insufficient to determine normal

value of these exporters on any of the basis provided in the law. The cost of production details furnished by these exporters is also insufficient to determine normal value, as detailed in the foregoing paragraphs. In view of the above, the Authority has determined normal value based on fair cost of production in case of Balakhana. The cost of production has been reworked out on the basis of the information furnished by Balakhana, after considering fair interest cost of debts shown by the company in the statements furnished. Other expenses shown by the company in the statement furnished has also been included for determination of fair cost of production. Fair return has been allowed on the cost of production to work out normal value. The Authority has determined export price on the basis of claims made by the exporter, which were also verified by the Authority. Since the exporter furnished ex-works export price, the same has been relied upon.

- b. In case of Solikams and Kondoponga, since the information furnished by the exporters is insufficient to determine even fair cost of production, the Authority is prevented from determining normal value on the basis of cost of production. The Authority, however, notes that normal value under the Act supra has been defined as the prices in the domestic market of the exporting country. It would, therefore, be appropriate, as discussed in the paras relating to Avenor Inc. Also, to determine dumping based on the normal value available for Balakhana. Further, as discussed in detail in the para relating to final findings, these two exporters have furnished price undertaking and the same has been accepted by the Authority, no specific duty has been recommended by the Authority against these exporters. The Authority, has determined export price on the basis of claims made by these exporters, which were also verified by the Authority. Since the exporters furnished ex-works export price, the same has been relied upon.

16. PRICE UNDERTAKING:

Solikams and Kondoponga have offered price undertaking to the Authority, through their respective agents. The Authority considers it appropriate to allow the said exporters to clear the goods in terms of said undertaking so long their c&f prices are not below the prices mentioned below:

(Rs. per MT)

- a) JSC Solikamskprom 20280
- b) Kondoponga Pulp and Paper Mill 20280

17. OTHER PRODUCERS FROM CANADA/USA/RUSSIA: The Authority has not determined separate dumping margins in respect of the following exporters for the reasons set out below:

a) Alliance Forests Products Inc.: The company claimed that it had sold in Indian market at fair market prices, maintained high quality standards and cannot be accused of dumping. The company further claimed that it has not exported any newsprint during the investigation period and therefore, has not furnished information requested by the Authority.

Authority's position:

The exporter did not furnish information requested by the Authority in the prescribed form and manner and, therefore, the claim of the exporter with regard to exports at fair price cannot be accepted. In case the exporter has not exported during the investigation period, it may request for review under Rule 22.

b) Kamsk Pulp and Paper Mills, Russia: The company requested for its exclusion on the ground that it did not supply any newsprint in the investigation period.

Authority's position:

The Authority notes that since the exporter has not exported newsprint during the investigation period, it attracts Rule 22. The exporter may accordingly file request under Rule 22.

c) The Daishowa Inc.: The company stated that selling price to Far East, South East Asia, Central and South America and China were at similar or lower than the export price to India. The aggregate export price of Daishowa to India during the investigation period was US \$ 612.21 pmt which compares to Canadian and US pricing. Daishowa's export price to India during the said-period were not lower than the domestic prices and were marginally higher than shipments to other world markets.

Authority's position:

The Authority notes that Daishowa Inc. has not furnished information, in the form and manner requested by the Authority, with regard to normal value. The exporter has merely furnished information with regard to the prices in North America.

d) Finlay Forest Industries Inc.: Trans World Exports, New Delhi argued that Finlay Forest Industries Inc., Vancouver, Canada manufactures high, bright newsprint and

had not exported any newsprint to India. The exporter has not, therefore, dumped any material in India.

Authority's position: The Authority notes that since the exporter has not exported newsprint during the investigation period, it attracts Rule 22.

e) Price & Pierce: With regard to imports through Price & Pierce, some interested party(ies) have argued that the Authority has erroneously taken the normal value prevailing at the time of initiation i.e. December, 1996. The Authority has compared the normal value of Indian producers prevailing in December 1996 and compared it with the export price during the investigation period.

Authority's position: The above argument is factually incorrect, as the Authority has not taken normal value prevailing at the time of initiation in the preliminary findings for any exporter, including Price & Pierce. The Authority has not determined separate dumping margin in case of Universal Paper Export Company, Canada, Price & Piece, USA and Price & Piece, Singapore, as they are not manufacturers of newsprint and have exported newsprint produced by other producers.

f) Corner Brook: The company claimed that it has not directly exported newsprint to India, nor the company has furnished any response directly to the Authority.

Authority's position: Price & Piece furnished information with regard to normal value and export price, which relates to Corner Brook. The Authority, however, found that the company has not furnished essential and sufficient information with regard to its normal value and, therefore, separate dumping margin cannot be determined.

g) Abitibi-Consolidated Inc.: The company claimed that with effect from 30.5.1997, Stone Consolidated and Abitibi have merged and a new company called Abitibi-Consolidated Inc. has been formed. The new company has not exported any newsprint to India during the investigation period. Therefore, exports from the new company should not be subject to any anti-dumping duty. The exporter comes under the category of new shipper and, therefore, should be reviewed under Rule 22.

The exporter, however, after disclosure of essential facts argued that even though the company came into existence on 30.5.1997, it should be treated as an exporter of newsprint to India during the investigation period, since the new company is composed of two erstwhile companies which had furnished information to the Authority. The exporter requested that the Authority should recommend a single anti-dumping duty on this company by combining the details contained in the individual responses.

Authority's position: With regard to the claim, made by Abitibi Consolidated Inc. for separate duty to be made applicable to them, the Authority notes that initially request was made by the company for treating them as a new shipper. Subsequently, it was submitted that since the new company is composed of two erstwhile companies, the duty on the new entity should be recommended by combining the details of the individual companies. The argument of the company as a new company under Rule 22 is not acceptable as the company, namely, Abitibi Consolidated Inc. comprises of two erstwhile companies, namely, Stone Consolidated and Abitibi-Price, which are being subjected to these investigations. The fact that the new company came into existence only ter the period of investigation is of little consequence, as according to Rule 22, the company should not be related to any of the exporters or producers who are subjected to investigations. Further, since the new company, Abitibi Consolidated Inc. has a choice of exporting goods from any of its plants belonging to the erstwhile two companies, namely, Stone Consolidated and Abitibi-Price, the Authority considers it appropriate to recommend anti-dumping duty which is higher of the duties being recommended for Stone Consolidated and Abitibi-Price.

E. COMPARISON:

18. The arguments raised by various interested parties and the position of the Authority are as under:

a) The Authority has ignored the current market realities, while issuing the notification, that the current prices are around US \$ 550

Authority's position:

As brought out in the preliminary findings also, the Authority has considered the factors during the investigation period, as per its consistent practice. The understanding of the Authority is that this is the practice being followed by investigating authorities all over the world as considering the factors beyond the period of investigation would make it an ongoing exercise. In fact, while upholding the decision of the investigating authority in the European Commission on the issue of development in the post investigation period, the court held that it is essential that the investigation period is of limited and specified duration and that it was impossible to accept the argument that the anti-dumping proceedings must be terminated or a decision to impose duties may not be adopted merely because the companies have made price increases after the investigation period. Furthermore, as -discussed in the para relating to Final Findings, the Authority has recommended anti-dumping duty, which varies depending upon the export price. Higher export price than the export price in the investigation period implies lower incidence of anti-dumping duty.

b) Zero or negative margins cannot be omitted: A number of interested parties have argued that determination of dumping margin by the Authority in the preliminary findings appears to be incorrect, as the Authority has not taken into consideration the zero and negative dumping margins. The interested parties have argued that conversion of month-wise-dumping margin. to a single dumping margin for the investigation period necessarily involves set-off of positive and negative dumping margins and there is no statutory or legal basis for the action of the Authority in ignoring the zero margins and negative margins.

It has been further argued that the action of the Authority disregarding zero and negative dumping margin appears to be influenced by the practice followed in the EU. The interested party(ies) have argued that the Authority has, however, not followed the EU's past practice of taking into account the CIF export price of all transactions during the investigation period in the denominator. Thus, assuming that the negative margins have to be imputed at zero margin, the CIF export price of all the months is to be taken into account while working out dumping margin.

Authority's position:

The argument raised by the interested parties that the negative dumping margins have to be necessarily off-setted against the positive dumping margin is without any statutory or legal basis. The action of the Authority in disregarding such negative dumping margins is in accordance with the law. The law provides for comparison of normal value with export price on the following basis:

- Weighted average normal value to weighted average export price;
- Normal value with export price on transaction to transaction basis;
- Weighted average normal value with individual export transactions.

In case the negative margins are not ignored, the results obtained by using any of the above method will be the same. In view of the above three types of comparison provided in the law, it is evident that the same prescribe for ignoring the negative dumping margins, as otherwise the provision for three types of comparison in the law becomes unnecessary. It is well recognised that the legislator has made provision for each and every word in the legislation with some purpose and nothing can be said to be redundant. In fact, Stone Consolidated and Abitibi have confirmed that the procedure adopted by the Authority is consistent with the practice followed by the EU.

In so far as the issue of considering all export volumes for determination of average dumping margin is concerned, the Authority has also determined the average dumping margin considering all exports volumes in the denominator in these findings.

c) Comparison on month to month basis:

A number of interested parties have argued that the determination of dumping margin by the Authority in the preliminary findings is incorrect in so far as the Authority has done comparison of normal value with export price on the basis of monthly averages of normal values and export prices. The interested parties have argued that world-over the dumping margin is determined only on the weighted average basis and the same has been done by the Authority also in all the cases so far. In the US and the EU, transaction-by-transaction method is used only in unusual circumstances, such as when there are a very few sales of the subject merchandise, the parties have argued. Since the volume of sales in the domestic market was twice the volume of exports to India, the statute permits the Authority to determine dumping margin only on the basis of weighted average normal value and weighted average export price for the investigation period, Stone Consolidated has further argued. The conclusion drawn by the Authority in the preliminary findings with regard to comparison does not flow from the observation made by the Authority that the prices in the home market and exports to India were declining. In cases where both the markets witness simultaneous increase or decrease in the prices, the weighted average is tailor made to adjust for such fluctuations, Stone Consolidated has argued. Further, the determination of dumping margin on a month to month basis is not warranted by law.

Stone Consolidated has further argued, without prejudice to its submission that comparison must be made on the basis of weighted averages of normal value and export price, that since Stone Consolidated follow a system of quarterly pricing for its export transactions, the appropriate period for determination of weighted averages can, if at all, be only on a quarterly basis.

Authority's position:

The above arguments with regard to the comparison are factually, conceptually and legally incorrect. The Authority has also determined the dumping margin on "weighted average basis". However, the weighted average normal values and export prices have been worked for each of the month in the investigation period. The Authority has done comparison on this basis in view of significant decline in both the normal value and export price during the investigation period. It was noted by the Authority that there were very high sales volumes in some month Whereas there were no exports to India in some other month. For instance, Stone Consolidated has not exported to India during the months of April and Oct., 1996. Determination of normal value on the basis of weighted average of normal values for the whole of the investigation period in this case and comparison of the same with export price (which represents export price for the sales made in only five out of seven months) would be in appropriate, unfair and could even be misleading. In a situation where there are

exports to India only in one month in the investigation period, say Oct., 1996, and the prices declined in the investigation period, as in the present case, the results drawn using weighted average basis for comparison may be quite misleading and may show dumping whereas there may not be any dumping. Converse is also true. Since there are no exports to India in case of Stone Consolidated and Avenor in some of the months in the investigation period, the comparison on the basis of month-wise averages is more appropriate than a single average for the entire investigation period. It would also be inappropriate to adopt different comparison methods for different exporters. Moreover, it has not been demonstrated by any interested party(ies) how the comparison of normal value with export price on month-to-month basis has resulted in distortions, if any, in the comparison.

19. The dumping margin in respect of individual exporters are as under:

S No.	Name of exporter	Dumping margin (% of export price)
-------	------------------	---

A. Exports from Canada

- | | | |
|----|---------------------------|-------|
| a. | Stbne Consolidated | 23.85 |
| b. | Abitibi-Price Inc., | 6.45 |
| c. | Abitibi Consolidated Inc. | 23.85 |
| d. | Avenor Maritimes Inc. | 20.44 |

B. Exports from USA

- | | | |
|----|---------------------|-------|
| a. | Abitibi-Price Inc., | 36.34 |
|----|---------------------|-------|

C. In case of Russia

- | | | |
|----|-------------------------------------|-------|
| a. | JSC "Volga" (Balakhana Paper Mills) | 15.88 |
|----|-------------------------------------|-------|

F. INJURY

20. The views expressed by various interested parties on injury to the domestic industry and the observations of the Authority are as under:

Arguments raised:

a) The prices of newsprint in India of the Indian industry were higher than the import prices from the subject countries during the investigation period. In such circumstances, there can be no question of injury.

Authority's position:

The argument is conceptually and legally untenable, as the very contention advanced by the importers substantiates the argument of the domestic industry that it was forced to reduce its prices because of cheaper imports available from the subject countries, thus resulting into a situation of price undercutting in the Indian market. This also establishes that the injury to the domestic industry was caused due to dumping.

Arguments raised:

b) There will be no material injury to the domestic industry if it has made profits and if it does not produce newsprint equal to the demand of newsprint in the country.

Authority's position:

The above arguments are not supported by law. Para (iv) of annexure II clearly states that decline in profits is also an indicator of injury. Therefore, there may be injury to the domestic industry even in a situation when the domestic industry has made profits. In the instant case, however, the domestic industry has incurred losses in the investigation period from a situation of profits before the investigating period, as brought out by the Authority in the preliminary findings. Further, there is right provision to suggest that the domestic industry should be in a position to meet the demand of the country before it can seek any relief under the law. The conditions with regard to standing of 'a petitioner to file a petition are well laid down in the rules. In so far as the demand-supply situation is concerned, the domestic producer could have capacity excess or short of the demand. The argument that no duty can be imposed for the quantity imported, which is in excess of the newsprint produced in the country is unsupported by law, as the purpose of anti dumping is not to impose any quantitative restrictions but to ensure a situation of fair competition with regard to prices alone.

Arguments raised:

c) Express Publications argued that Indian producers increased the prices in line with import prices and did not reduce the prices when the international prices came down. The company furnished a comparison of imported newsprint prices C&F Indian ports and ex-Indian mill prices, which shows as under to establish its argument:-

(Rs. Per MT)

Period	Canadian Prices C&F	Price charged by the Indian producers		
		HNL	TNPL	MPM
Apr-June, 1995		27606	27000	27925 27875
Jul.-Sep., 1995	31496	27000	27925	27875
Oct.-Dec., 1995		34342	27000	27925 27925
Jan.-Mar., 1996		30915	27000	27925 27875
Apr.-Jun., 1996		24535	27000	27925 27875
Jul.-Sep., 1996	20735	23000	24210	23000
Oct.-Dec., 1996		17208	21000	21820 21800

Authority's position:

The Authority observes from the above that the contention of the interested parties that Indian producers increased the prices in line with import prices and did not reduce the prices is not established. It rather establishes that the domestic industry was forced to reduce its prices far lower than its fair selling price in view of declining import prices, thus resulting in a situation of price undercutting in the Indian market. The table also indicates that the Canadian prices were coming down even though the Indian prices were constant during the period Apr, 1995-June, 1996.

Arguments raised:

d) Production of newsprint requires bamboo, eucalyptus wood and salai wood. Except bamboo there is prohibition on falling of wood of any type in India w.e.f. 12.12.96. In view of this, the Authority should investigate how the domestic industry would cater to its requirement of raw materials.

Authority's position:

Anti dumping provisions under the Indian requires that the duty shall be restricted to the amount which is found sufficient to remove the injury to the domestic industry. Injury on account of factors other than dumping (including the increase in the cost of production due to non-availability of raw-material), are not considered for determination of the quantum of anti dumping duties. Moreover, an interested party

can approach the Authority for a review in case it is shown that the circumstances have changed substantially after the period of investigation.

Arguments raised:

e) The Authority took into account the fall in profits or losses by Indian mills without going into a justifiability of the prices charged by the domestic industry before the dumping period. The Authority has not compared the price quoted by the exporters to India and other world market. Without such comparison the conclusion that the exporters price has injured the Indian newsprint industry is not fail.

Authority's position:

It is not within the legislative framework of anti-dumping laws nor is it the purpose of present investigations to investigate the justifiability of prices charged by the domestic industry, prior to the investigation period.

Arguments raised:

f) The preliminary findings does not address whether the Indian newsprint market is increasing, decreasing or remaining constant. An increased demand for imports in a growing market cannot be considered an indicative of injury being suffered by domestic industry from imports.

The fall in the selling prices of the domestic industry is from the peak prices not from the normal prices.

The petitioner makes an unsupported statement that some mills in India have suspended production because of dumping. Without further information and analysis, it is not possible to link the same with dumping.

The purchasers did not depend on Indian mills for their source of supply and chose to import from a foreign reliable supplier, in view of reliability of the exporters.

Authority's position:

The purpose of anti dumping duties is not to restrict the imports from any particular source. The consumers are still free to chose their source for supplies. The argument with regard to increased demand of newsprint is also without merit as the Authority has given its finding with regard to the changes in the market share.

g) In view of petitioners' view that despite a reduction in selling prices by domestic industry, sales were still being lost to imports, the possibility that the injury was being caused by factors other than dumping cannot be ruled out. Examples of such factors include quality, differences, reliability, timeliness and dependability of supply.

Authority's position:

The argument is presumptive. As brought out later In these findings, there is enough evidence to Indicate that the preference to the newsprint imported from the subject countries was because of the price and not other factors.

FINDING OF AUTHORITY ON INJURY TO THE DOMESTIC INDUSTRY:

21. The factual information mentioned by the Authority in the preliminary findings with regard to the injury to the domestic industry arid various economic indicators affecting the domestic industry has not been disputed by any party. A number of interested parties have advanced arguments justifying the changes in the parameters relating to imports, market share, and factors affecting the domestic industry. The Authority observes that the analysis has to be done within the framework of antidumping provisions. Annexure II to the Rules states as under:

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

The Rules further provides that:

"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

It is evident from the above that the reasons for the behaviour have to be looked into to establish whether the injury to the domestic industry has been caused by the dumped imports. The Authority further notes that the Authority is required to examine all factors, which are considered relevant, and, therefore, any factor which is not considered as relevant may be ignored.

22. In view of the above, the Authority analysed the injury to the domestic industry for these final findings. In addition to the details brought out in the preliminary findings, the following details are being relied upon to hold that material injury has been caused to the domestic industry. Market share of imports from the subject

countries in the total imports and compared to consumption in India were as follows:
Market share in total imports: Market share of imports of newsprint from the subject countries in comparison to total imports of newsprint in India has been as follows:

The Authority notes that market share of imports from the subject countries in total imports of newsprint in India increased significantly. There is distinct evidence to suggest that importers switched to these countries.

ii) Market share in total demand: Market share of imports of newsprint from the subject countries in comparison to consumption of newsprint in India has been as follows:

The Authority notes that the market share of subject countries in the total imports and total consumption in India has increased significantly in case of imports from Russia.

23. The argument of the interested parties that the demand of newsprint has increased and the same is the reason for increase in the imports in India is irrelevant, as the Authority has analysed imports from the subject countries, both in absolute terms and in relation to production/consumption of newsprint in India. It may be appreciated that all parameters relating to imports and domestic industry need not reflect injury to the domestic industry and even a single parameter, such as price effects, may be sufficient to establish injury to the domestic industry.

24. While analysing the injury to the domestic industry, the Authority is not required to assess the reasons for the changes in the indices. The reasons for the changes have to be looked into while establishing causal link between dumping and injury. Arguments raised by the interested parties with regard to the production, capacity utilisation and sales in absolute terms relate to the reasons for the increase or decrease in the indices.

None of the interested parties has, however, disputed the preliminary findings in so far as the observation of the Authority on these indices are concerned. The preliminary findings with regard to production, capacity utilisation and sales in absolute terms are, therefore, confirmed.

25. Price undercutting and price suppression:

A comparison of average export prices from the three countries and the net sales realisation of the domestic industry (excluding Nepa) shows as follows:

Period	Average	Net Sales"	Difference
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	landed price		Realisation
	(Rs. pmt)	(Rs. pmt)	(Rs. pmt)
	(a)	(b)	(b-a)
1994-95	15615	20119	4504
1995-96	28709	27556	-1153
1996-97			
April, '96	28740	27906	- 803
May, '96	26207	27722	1515
June, '96	23984	27559	3575
July, '96	24629	25817	1188
Aug., '96	21945	22192	247
Sept., '96	21758	21955	197
Oct., '96	21458	21137	- 321
Average	23685	25132	1447

** without considering Nepa, i.e., sales realisations of TNPL, HNL and MPM only.

26. The above comparison of average landed prices from the three countries and the net sales realisation of the domestic industry (excluding Nepa) shown above establish that the exports from the subject countries were undercutting the prices of the domestic industry to the extent of 6.11% and further suppressed the selling prices of the domestic industry in the Indian market.

27. In view of the above, the Authority notes that the exports from the subject countries resulted in price undercutting and price suppression towards the end of the investigation period to such an extent that the exporters started exporting newsprint to India at prices below their own cost of production, resulting in losses to them. Further, the price depression for the domestic industry was to such an extent that it was forced to sell newsprint at prices significantly lower than its cost of production, resulting in financial losses. The Authority further notes that the imports from the subject

countries resulted in price undercutting and price depression to such an extent that some of the exporters in Canada started exporting to India at prices below cost of production resulting in financial losses to them in the quarter 4, 1996.

28. Arguments have been advanced about the quality of newsprint produced by Nepa. None of the interested parties has, however, demonstrated the impact of quality of newsprint produced by Nepa and no price adjustment, whatsoever, has been claimed by any interested parties. It is however, found that the sales realisations of Nepa are significantly lower than the sales realisations of the remaining three companies comprising domestic industry. It may be concluded that there are other factors also affecting the sales realisations of Nepa. The Authority has therefore, ignored the cost of production of Nepa while arriving at the fair selling price for the domestic industry.

29. An analysis of circulation figures of Express Publications between 1990-96 shows the following:

Year	Newsprint Price (Nos.)	Copies .Rs.	Price	Net price after commission (Rs.)
Apr-June, 95	27606	267137	2.25	1.74
Jul-Sep., 95	31496	263054	-12.25	1.74
Oct-Dec, 95	34342	263054	1,2.25	1.74
Apr-June, 96	24535	274011	2.25	1.74
Jul-Sept, 96	20735	274011	2.25	1.74
Oct-Dec., 96	17208	284112	2.25	1.74
		(1.50 Bangalore)		1.16

The Authority notes that the newspaper prices are inelastic to the cost of newsprint, as the same remained at Rs. 2.25 per copy even when the price of the imported newsprint ranged from Rs. 34342 pmt to Rs. 17208 pmt. The Authority concludes that imposition of anti-dumping duties, which is necessary to prevent injury to the domestic industry, on exports from the subject countries will not result in serious implications on the newspapers, particularly when imports from other countries, supplies from Indian producers and imports from the subject countries at fair prices are not proposed to be restricted by these measures.

G. CAUSAL LINK:

30. The views expressed by various interested parties and the observations of the Authority are as under:

Arguments raised:

a) The Authority has not separated the injury, if any, to the domestic industry arising as a result of the withdrawal of the quota restriction of 2:1, and therefore, the causal link between dumping and injury has been perfunctory.

Authority's position:

The Authority appreciates that withdrawal of the quota restriction of 2:1 might have resulted in increase in imports in absolute terms. However, the findings of the Authority on injury to the domestic industry and causal link thereof with dumping is not based on increase in the imports in absolute terms. As discussed in detail in the para relating to injury, market share of imports from the subject countries increased in relation to total imports of newsprint in India. Further, the findings of causal link are based on the effect of these imports on the prices of newsprint in the Indian market. The findings of the Authority with regard to price realisation, price undercutting are relied upon while holding that injury to the domestic industry has been caused by the dumped imports.

Arguments raised:

b) Rule 5(2) with regard to initiation of investigation states that the application shall comprise of evidence with regard to dumping, injury, a causal link. The Rule further states that the application shall contain evidence with regard to injury and causal link "where applicable".

Authority's position:

The Authority is required to give a finding with regard to the injury to the domestic industry and causal link between dumping and injury in case of imports of specified country, and accordingly the Authority has given its findings on injury to the domestic industry and causal MR between dumping and injury.

C) The case of petitioners themselves is that "dumping of newsprint, coupled with the fall in the international prices, has injured the Indian industry". It is thus evident that dumping alone has not caused injury to the industry. It is the fall in the international prices which has caused the injury. Levy of anti-dumping duty will make foreign

supplier wary of selling in Indian market. They will artificially increase their prices. The imposition will not be in the public interest. There is no evidence in the preliminary findings which links the lost sales directly to imports from the subject countries. With regard to the volume of dumped imports, the Notification does not identify individual import levels 09m each of the named countries. In view of the criteria with regard to de-minimus volume of dumped imports, the Authority should determine the level of imports from Canada and in case the same is found lower than 3%, ie Authority has a WTO obligation to terminate investigation against Canada.

Authority's position:

With regard to the volume of dumped imports, the same are above de-minimus limits, as brought out in the para relating to injury. With regard to the factors other than dumping causing injury to the domestic industry, the Authority holds that the injury to the domestic industry has been restricted by considering optimum cost of production and allowing fair return thereon. The Authority notes that the lesser duty provision in Indian legislation (by virtue of which it is obligatory on the part of the Authority to recommend a duty lower than the dumping margin, if found sufficient to remove injury to the domestic industry and which is not an obligation either in GATT agreement or in the anti-dumping legislation in some countries) takes care of the other problems being faced by the domestic industry. In so far as the injury to Nepa because of its inability to fetch the price which the other constituents of domestic industry are fetching, the Authority has not included the cost of production of Nepa while arriving at the cost of production and fair selling price. The injury to Nepa because of other factors is, therefore, not considered.

I. FINAL FINDINGS

31. The Authority , after considering the foregoing, concludes:

- a. Newsprint originating in or exported from USA, Canada and Russia has 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 the exports originating in or exported from USA, Canada and Russia.

32. 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 newsprint originating in or exported from the subject countries. The duty shall be the difference between the reference prices mentioned in column 2 and

the landed value of imports, except in case of M/s JSC Solikamskprom and Kondoponga Pulp and Paper Mill.

33. In case of M/s JSC Solikamskprom and Kondoponga Pulp and Paper Mill, no anti dumping duty shall be collected, as the Authority has accepted price undertaking from these exporters in accordance with Rule 14. However, in case any exports are made by the said exporters below, the prices mentioned in para no. 16 relating to dumping above, anti-dumping duty as applicable to any other exporter from Russia, shall be chargeable on such exports.

34. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and the prevailing level of Basic Customs Duty at the time of clearance.

SI. No.	Name of the Exporter y	Reference Price for
(1)	calculation of applicable duties	(Rs. per MT)
(2)		
A.	Exports from Canada	
	1. Stone Consolidated Corpn.	26696
	2. Abitibi-Price Inc.,	25786
	3. Abitibi Consolidated Inc.	26696
	4. Avenor Maritimes Inc.	26642
	5. Any other exporter	26696
B.	Exports from USA	
	1. Abitibi-Price Inc.,	26696
	2. Any other exporter	26696
C.	Exports from Russia	

1. JSC "Volga" (Balakhana Paper Mills) 22958

2. Any other exporter 22958

35. Subject to above, the Authority confirms the preliminary findings dated 11.6.1997.

36. 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