

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

New Delhi, the 23 July 2003

FINAL FINDINGS

Subject: - Anti-dumping investigation concerning imports of Non Brass Metal Flashlight originating in or exported from the China PR

No. 14/27/2002-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE:

2. The procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Eveready Industries (India) Ltd on behalf of the domestic industry, alleging dumping of Non Brass Metal flash light originating in and exported from China PR (hereinafter referred to as subject country / territory) ;
- ii. The Authority notified the Embassy of subject country about the receipt of fully documented petition application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iii. The Authority issued a Public Notice dated 9th September 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Non Brass Metal Flashlight falling under Chapter heading 85131001 and 85131005 of Schedule I of the Customs Tariff Act.
- iv. The Authority forwarded copy of the said public notice to the known exporters, importers, industry associations and to the complainant and gave them an opportunity to make their views known in writing.
- v. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Diplomatic Mission of subject countries in India.

- vi. The Authority sent questionnaires, to elicit relevant information, to the known exporters from China PR

M/s. Guangxi Wuzhou Boyee Trading Ltd, China PR, have responded to the questionnaire.

- vii. The Embassy of China PR in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- viii. In addition to the list of importers mentioned in the preliminary findings, importers questionnaire was sent to the known users/importers of subject goods as per letters received by them
 - M/s. Impex International Trading company, New Delhi.
 - M/s. Durga Trading corporation, Delhi.

None of the users/importers have responded to the questionnaire after preliminary findings and public hearing. M/s Durga Trading corporation have participated in the public hearing and have submitted arguments which have been suitably dealt in the disclosure and the final findings.

- ix. The Designated Authority issued Preliminary Findings vide notification dated 1st October 2002 and forwarded a copy of the preliminary finding to the known exporters and industry associations and gave them an opportunity to make their views known in writing within 40 days from the date of the letter;
- x. The Authority provided a copy of the preliminary findings to the Embassies of subject countries with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;
- xi. Additional information regarding injury was sought from the various interested parties, which was also received;
- xii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file as per Rule 6(7) and kept it open for inspection by the interested parties. All parties who made request for inspection, in writing, were allowed to inspect the public file;
- xiii. The Authority sought and verified information deemed necessary for the investigation, and the investigations were carried out at the premises of Petitioner.
- xiv. The Authority also conducted cost investigation to work out optimum cost of production and cost to make and sell subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the petitioner.
- xv. The investigations covered the period of 1st July 2001 to 31st March 2002 (9 months);

- xvi. The Authority provided an opportunity to all interested parties to present their views orally on 11.03.2003. All parties presenting views orally were requested to file written submissions, of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- xvii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have been addressed suitably in the final findings.
- xviii. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;

Most of the issues brought out in the Preliminary Findings have not been repeated here for the sake of brevity. Arguments raised by interested parties after the notification of the preliminary findings and thereafter at the time of the oral hearing and disclosure statement are reflected in these Final findings to the extent that they are considered relevant to this investigation

B. Product Under Consideration

Views of M/s Durga Traders, Importers

2. It is stated that the subject goods, i.e., non-brass metallic flashlights are manufactured only in China. The subject goods are not manufactured by the Applicant in India or by other manufacturers in other countries. Boyee states that the subject goods, i.e., non-brass metallic flashlights are manufactured only in China. It is submitted that to the best of the said Importer's knowledge, China exports at least 21 models of the subject goods, non-brass metallic flashlights. To the best of the said Importer's knowledge, the Applicant, on the other hand, manufactures/ sells only two models, namely, Jeevan Sathi (3773) and Jeevan Sathi (3744), that have a non-brass metallic exterior, out of the total 26 other models of various flashlights that has been manufactured and sold during the Period of Investigation (hereinafter referred to as the "POI"), i.e., from 1st July 2001 to 31st March 2002. However, in the said two models also, brass is used for the inner lining and during the POI the said two models were sold in India as "Brass Torches" and not as the subject goods, i.e., non-brass metallic flashlights.

3. It is stated that the Applicant has only submitted information with respect to flashlights as whole or according to cells required and not according to distinct categories including the subject goods.

Views of the Domestic Industry

4. The Product under consideration in the present investigation is Non Brass Metal Flashlight. Flashlights are used as a source of light in the case of emergency and also as a need in the dark places. These flashlights are primarily of two types i.e. plastic and metal flashlights. Amongst the metal flashlights, there can be a flashlight made up of brass or it may contain Aluminum or sheet metal.

5. The product under consideration in the present investigation covers non-brass metal flashlights made out of non-brass metals, which may be Aluminum, Sheet metal or any other metal. Present investigation includes all forms of non-brass metal flashlights including 2-cell small, 2-cell large and 3-cell large either in compact form or in SKD conditions. Subject goods are classified under Customs Tariff Act No. 85131001 and 85131005 and are imported under OGL conditions attracting a basic customs duty of 35%.

6. We would also like to mention that the subject good is not classified under dedicated customs classifications as it contains all types of flashlights with or without battery, plastic, non-brass metal as well as brass.

Response of the domestic industry after the Disclosure

The Domestic Industry would like to mention that the subject goods is not classified under dedicated Customs Classification. They have further added that even though the product is well described in the petition and preliminary findings, it is requested that it may be clarified that the product under consideration is all metal flashlights other than brass flashlights.

Examination by the Authority

7. The Authority notes that the petition has been filed by M/s Eveready Industries on behalf of the domestic industry alleging dumping of Non Brass Metal flash Light originating in or exported from China PR. The Authority observes that these flashlights are used as a source of light in the case of emergency and also as a need in the dark places. The Petitioner has claimed that these flashlights are primarily of two types i.e. plastic and metal flashlights. Amongst the metal flashlights, there can be a flashlight made up of brass or it may contain Aluminium or sheet metal on the basis of economy. These flashlights have been reported to be imported under ITC classification 851301 and 851305, which attracts a basic customs duty of 35% (2002 budget). The petitioner has requested that while components of subject goods are not included in the present scope of the petition, imports of the subject goods in semi-knocked down conditions may be included in the scope of the present petition.

8. The Authority in this regard also notes the claim of the exporter and importer that Non Brass Metal flashlight has only been produced in China PR from low cost local steel in a range of different models. The exporter has further claimed that applicant manufactures models that have a non-brass metallic exterior and inner lining made from brass.

The Authority has noted the submissions made by the exporter, importer and also by the domestic industry on the product under consideration and holds that the present investigation covers non-brass metal flashlights made out of non-brass metals, which may be Aluminium, sheet metal, or other non brass metals. The Authority also holds that plastic flashlights are not within the scope of the investigation. Amongst metal flashlights, brass flashlights are also not under the scope of the investigation. As regards the claim of the domestic industry to include this product in SKD forms, the Authority holds that the product under consideration in this investigation is non-brass metal flashlights in all its forms including 2-cell small, 2-cell large and 3-cell large either in compact form or in SKD conditions. However, components used in this product individually are not within the scope of this investigation and hence are not product under consideration. As the product under consideration does not have exclusive Customs classification, the authority has relied on the information about import of subject goods from secondary sources, which contain information with regard, inter alia, description, beam length and size in terms of small, medium and large flashlights.

10. As regards the plea of the domestic industry about clarifying the product under consideration, the Authority notes that the product under consideration is clearly defined at the time of initiation and in preliminary findings and there is no need for further clarification. Therefore the authority holds that product under consideration is Non-brass metal flashlights also known as torches either in compact form or in CKD condition which could be either 2-cell small, 2-cell large and 3-cell large, made out of non brass metals which may be Aluminium, sheet metal or others (referred to as subject goods hereinafter) . The product is classified under Customs Act No. 85131001 and 85131005 and are imported under OGL conditions attracting a basic customs duty of 35% (2002 Budget). The Authority, therefore, confirms the product under consideration as defined during provisional determinations.

C. LIKE ARTICLE

Views of the M/s Durga Traders

11. China is virtually the only producer of the subject goods, i.e., non-brass metallic flashlights in the world and the subject goods are not manufactured significantly by the Applicant in India or by other manufacturers in other countries during the POI.

12. Thus, by definition the subject goods exported from China cannot in law be deemed to be "like articles" with the other categories of flashlights sold by the Applicant. It may be mentioned here that the subject goods exported from China by Chinese exporters under the "Flying Eagle" brand during the POI are made from low cost local Chinese cold rolled steel, resulting in lighter weight while the metal/ brass flashlights sold by the Applicant ordinarily uses brass metal as the basic raw material. However, is submitted on closer scrutiny, even the said models too contain brass sings and an inside lining of brass and in fact were marketed in India by the applicant as brass Torches during the POI . It is further submitted that the subject goods may also be differentiated according to various criteria including raw materials used, weight, size, cells used, models and features including, inter alia, the configuration of components, range, switch and gear, and aperture adjustment and according to the market segment served or targeted.

13. It is also pertinent to note that the Chinese subject goods mainly use 2 cells and have a 3 gear switches compared to the single gear switch ordinarily found in the Applicants flashlights, and the aperture adjustment of the said subject goods exported from China during the POI is by wheeling the head of the subject goods while in the flashlights sold by the Applicant the aperture adjustment is by pushing the tail of the flashlight.

14. Further, the Applicant sells it flashlights in consumer packing whilst the Chinese exporters sells the subject goods in the bulk packing.

15. The Applicant also claims superior quality and admits that brass is a relatively more expensive raw material whilst the Chinese exporters primarily serve the low-income market segments

Views of M/s Impex International Trading Company, New Delhi

16. They state that they are the dealers of the Non Brass metal flashlights imported from China PR and to their best of the knowledge, the petitioner did not manufacture or sell the said Non Brass metal flash lights in India during POI. They have requested the present investigation to be terminated, as petitioner is not the domestic industry for the subject goods.

Views of the Domestic Industry

17. There is no significant difference in the non-brass metal flashlights produced by the domestic industry and those imported from China PR. These are comparable in terms of their features such as physical characteristics, manufacturing process and technology, functions and uses, specifications, distribution and marketing, pricing and tariff classification of goods. The consumer can use the flashlights imported from the subject country and flashlights produced by the domestic industry interchangeably. We, therefore, submit that non-brass metal flashlights produced by the domestic industry and those imported from China PR are like article within the meaning of the Rules.

18. One of the importers present at the time of oral hearing argued that the subject goods are not produced by the petitioner. Petitioner submits as under in this regard: -

- a. Petitioner is in production of non brass metal flashlights for the past several years (since 1958). Under the circumstances, to state that the petitioner does not produce subject goods lacks total appreciation of Indian Market;
- b. Plant of the petitioner at Lucknow has been visited by the Officers from the Directorate. They have physically seen the goods being produced in that plant. The situation of the plant would also vouch the fact that the plant has been producing the subject goods for a long;
- c. A copy of the Excise Return filed by the petitioner has been provided to the Directorate, which establishes that the goods are being produced by the domestic industry;
- d. The importer had brought and shown brass flashlight to the Designated Authority at the time of oral hearing. Such brass flashlight is made of brass and is priced much higher than the non brass metal flashlight. The MRP of the brass flashlight brought by the importer was Rs. 145 per pc. As against typical non brass metal flashlight which has an MRP of about Rs. 85/ per pc.
- e. The brass metal flashlight produced by the petitioner is sold under the brand name "Jeevan Sathi". The non brass metal flashlight is produced and sold under the brand names "Mashal", "Citylite", "Ashwini", "Searchlite", "Minilight" etc. Importer who attended the oral hearing appears to have been dealing in this product for a fairly long period. The market would confirm that Non Brass Metal flashlights are being sold in the Country for a fairly long period.
- f. We are willing to provide invoices for the investigation period and previous years or price lists of these types in respect of sales of Marshal flashlight on confidential basis, should the Designated Authority consider the same relevant (the information has already been verified by the Directorate). These would again establish that the goods are being sold by the petitioner in the market.

19. In view of the above, petitioner submits that there is no truth in the argument advanced by the importer. At the same time, it is worth mentioning that the importer

has not been able to bring any evidence to establish that the goods are not being produced by the petitioner in the Country.

Examination by the Authority

19. Rule 2(d) of the Anti Dumping rule specifies that Like Article is an article, which is identical and alike in all respects to the product under investigation or in absence of such an article, another article having characteristics closely resembling those of the articles under examination.

21. The Authority notes that the Petitioner has claimed that the goods produced by them are like articles to the goods originating in or exported from subject country. The petitioner has further submitted that non-brass metal flashlights are technically and commercially substitutable between them and are used interchangeably. The exporter has claimed that petitioner's flashlight utilised brass for inner lining and hence may not be called non-brass metal flashlight. The exporter and now the importer have further claimed that they mainly use two-cell and have three gear switches compared to the single gear switch ordinarily found in the applicant's flashlight and the aperture adjustment of the subject goods from China is by wheeling the head of subject goods while in the flashlights sold by the applicant the aperture adjustment is by pushing the tail of the flashlight. The exporter and importer have further claimed that subject goods exported from China are made from low cost local Chinese cold rolled steel resulting in lighter weight while the metal/brass flashlight sold by the applicant ordinarily uses brass metal as the basic raw material.

22. The petitioner has claimed that there is no major difference in the characteristics of non-brass metal flashlights produced by the domestic industry and those imported from China PR. These are comparable in terms of their features such as physical characteristics, manufacturing process and technology, functions and uses, specifications, distribution and marketing, pricing and tariff classification of goods. The consumer can use the flashlights imported from the subject country and flashlights produced by the domestic industry interchangeably.

23. The Authority observes that issues like 3-gear switches and aperture adjustment by head wheeling does not render the imported product as unlike product as they can be easily substituted with single gear switch and aperture adjustment by tail pushing. As regards the claim of exporter that the subject goods manufactured by applicant has brass lining on inside, the Authority observes that the Non-brass metal flashlight manufactured by the petitioner does not have brass linings on its inner side. However the petitioner does use some brass strips for switch strip, switch contact strip and eyelet. The Authority holds that by using these components from brass, the flashlight cannot be termed as Brass Flashlight as claimed by the exporter. Similarly, the cooperating

exporter has also given an account of the raw material used in the product being manufactured by one manufacturer from China PR and they also have confirmed that they use small quantities of brass flakes as their raw materials for their Non Brass metal flashlight. The cooperating exporter M/s Guangxi Wuzhou Boyee Trading Ltd, China PR has also supplied information from one of the manufacturers from China PR whose product lines indicate that they manufacture and export Non brass metal flash light with various FT's indicating length of beams. Investigation by the Authority from product brochure of subject country made available by the domestic industry have further revealed that Non Brass Metal flash lights are produced in a large number of Models/Sizes in the subject country. However these large number of models/sizes could be grouped and classified in terms of 2 cell small produced by the domestic Industry and corresponding to 200FT to less than 350 FT being exported from China PR. Similarly 2 cell large and 3 cell large Non Brass Metal flashlights have been grouped and classified as ranging from corresponding to 350FT to less than 500 FT and 500 FT or more respectively. None of the importers mentioned in the petition have responded with any information (the only importer participated in the public hearing has also not submitted replies to importers questionnaire) and no contrary information has been placed before the Authority to suggest or dispute petitioner's information regarding import of subject goods. The Authority, in view of the submissions, made by the exporters and the domestic industry and keeping in view the substitutability and inter changeability of the Non Brass Metal Flash Light from subject country and those produced by domestic industry considers the subject goods and domestically produced as like products per Rule 2(d) and therefore, confirms the preliminary findings in this regard.

D. Period of Investigation :

23A : The Authority has taken POI from 1st July 2001 – 31st March 2002 being the most recent period for the investigation when this case was initiated on 9th September 2002. This period was also taken because of the closing of the quarters and the feasibility of getting the complete data. The Authority confirms that the nine months time is adequate and just for Anti-Dumping Investigation since it also synchronizes with the three quarters of which the relevant data could be available.

E. Domestic Industry

24. The petition has been filed by M/s. Eveready Industries India Limited, Kolkata. The exporter and importers have claimed that production data submitted by the petitioner comprises of all the flashlights produced by it and hence should not counted for the purpose of standing. The Authority has verified the production data of the petitioner with regards to Non brass metal flash light only and observes that they

account for almost 77% of total Indian production of subject goods in India. Accordingly, the petitioner satisfies the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra.

F. DUMPING

NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN:

25. Under Section 9A(1) I of the Customs Tariff Act 1975, Normal value in relation to an article means:

1. 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

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:-

2. 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
3. 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)";
4. 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 transshipped 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.

CHINA PR:

26. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). Only one of the exporters from China PR i.e. M/s. Guangxi Wuzhou Boyee Trading Ltd. China PR., has responded to the Authority with replies to the appendices mentioned in the Exporter's Questionnaire. However, the exporter has claimed that they have not exported the subject goods to India or in the domestic market or to the third countries during the POI. However, they have submitted the details of domestic prices of

subject goods in China sold by other manufacturer. They have requested to the Authority that the normal value of the subject goods may be determined in accordance with the domestic sales price of the subject goods in China of other producers/companies.

27. The Authority observes that since the exporter has neither sold the subject goods in the domestic market and nor they have exported to the other countries including India, the normal value and the dumping margin for the cooperating exporter cannot be determined as per Section 9(A)1(c). The cooperating exporter M/s M/s. Guangxi Wuzhou Boyee Trading Ltd. China PR may get their case investigated through New Shipper Review as per Rule 22 of the Anti Dumping Rules under the Customs tariff Act 1975.

Other Exporters from China PR

28. The Authority provided opportunity to the known exporters from China PR to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassy of China in India also. However, no exporters from China PR have responded to the Authority's request for information. The claim made by the petitioner with regard to the determination of normal value has also not been disputed by the other interested party (ies).

29. Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR.

30. The Normal value determined by the Authority for all exporters from China PR comes to US\$ ****, US\$**** and US\$ **** for 2 cell small, 2 cell large and 3 cell large for 1000pcs.

EXPORT PRICE:

31. The Authority has taken into account the transaction wise data furnished from secondary sources M/s Asis Infotech Pvt Ltd, Mumbai for calculating the quantum of exports and their value from China PR to India as no transaction wise data was made available by the DGCI&S for the POI. The Authority has further culled out data pertaining to Non Brass Metal flashlight from the transaction wise data submitted by the petitioners from the secondary sources and these have been further grouped into

subject goods having beam lengths (200-350FTs), (350-500FTs) and more than 500 Fts. The Authority has compared these subject goods with 2-cell small, 2 cell large and 3 cell large Non Brass Metal Flashlight being manufactured by the domestic Industry.

32. For working out ex factory price at the FOB level, the Authority has made adjustments towards inland freight, insurance, overseas freight and insurance as indicated by the petitioner and being the best information available in the absence of any response from any other interested parties. The Authority accepts these adjustments for calculating the net export price at ex factory level from China PR to India. After adjustments, the net export price at ex factory level comes to US \$ *****/unit for Non Brass Metal Flashlight (2 cell small) and US \$ *****/unit (For Non Brass Metal Flashlight (2 cell large) and US\$ *****/unit for Non Brass metal flashlight (3 cell large) (Unit being 1000 pcs)

G. DUMPING MARGIN:

33. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. As the cooperating exporter has not exported any subject goods to India nor have they sold it in their own country or to other countries, Dumping margin cannot be determined for M/s M/s. Guangxi Wuzhou Boyee Trading Ltd. China PR. However as elsewhere mentioned, they may come to the Authority for a New Shipper Review under Rule 22 of Anti Dumping Rules. The dumping margin for other exporters of subject goods from China PR is proposed to be assessed by the Authority at US \$ *****/unit or. ...% of the export Price for Non Brass Metal Flashlight (2 cell small), and US \$*****/unit or ..% of the export price for Non Brass Metal Flashlight (2 cell large) and US\$*****/unit or 798% of the export price for Non Brass Metal Flashlight (3 cell large) .

34. Dumping Margin:

Dumping Margin Calculation for Non Brass Metal Flashlight (NBMFL) for imports from China PR (US\$) Unit=1000pcs					
All Producers/Exporters from China PR (Without battery)	Description	NV	EP	DM	DM%
	NBMFL 2 cell small	****	****	****	693
	NBMFL 2 cell large	****	****	****	468
	NBMFL 3 cell large	****	****	****	798

H. INJURY

35. Views of the Importer

1. It is submitted that since the applicant neither produces nor sells the like article/ subject goods, there can be no injury to the applicant with respect to a category of goods not produced by it.
2. It may be noted that the applicant, a multi-product, multi- division, multi-location company, admits that the scope of the Investigation may best be limited to 2 cells large flashlights and is only alleging injury on this account. The injury by such imports, even if dumping were found, would be inherently limited to division producing such 2 cells non-brass metallic flashlights and would need to be established by comprehensive data across the range of products, divisions and locations.
3. Moreover, the Applicant only alleges injury by 2 cell models and thus all 3 or 4 cell models may, in any case, be excluded.
4. It is further submitted that determination of material injury must be based on the evaluation of a large number of indices that include but are not limited to: decline in output, loss of sales, loss of market share, reduced profits and return on investment, decline in production and capacity utilization, price effects, cash flow, inventories, employment, wages, growth, investment, ability to raise capital etc. None of these factors is decisive and the totality must be considered. In the present Investigation it may be seen that only increasing inventories levels and slight decline in market share appear to be the detailed injury alleged during the POI.
5. It is further submitted that the Applicant has collected information from secondary sources, which contains information with regard, inter alia, description of the flash lights being imported.
6. Moreover, the applicant has also filed data based on secondary sources rather than DGCI&S for the period from December 2001 during which it alleges that the maximum 'surge in imports' of the subject goods from China took place.
7. Further, it is submitted that if any Anti-Dumping Duty on the subject goods is imposed by the Hon'ble DA, there be outflow of foreign exchange as the importers of the subject goods will be forced to import the same at higher prices and the revenue would lose out in case of decline of imports.

I. Views of the Domestic Industry

36. We have already provided sufficient information, which shows that the domestic industry has suffered material injury due to dumping of subject goods from subject country. Following parameters establish injury to the domestic industry. We have earlier provided detailed information on various injury parameters which is relied upon. These have been reflected by the Designated Authority in the preliminary findings also.

Substantial increase in volume of dumped imports

1. Imports of flashlights have increased substantially from the subject country in absolute terms. The imports have drastically increased from Oct., 2001. In fact, the actual volume of imports is much more than what has been shown in the statements enclosed with the application.

Export price from China

2. So low is the export price from China that it passes any comprehension as to how it can be produced and sold at these prices. None of the exporters and importers have responded to the Designated Authority. This is evidently to suppress the vital facts.
3. Petitioner submits that the export price from China is so low that the same could not have permitted recovery of even material cost to any producer of the subject goods.

Economic Parameters Affecting The Domestic Industry

Production And Capacity Utilization

4. Production of the domestic industry has declined drastically over the years. Decline in the production resulted in decline in capacity Utilization.

Natural and potential decline in sales

5. Sales volumes of domestic industry have declined drastically, both in absolute terms as also relative to demand in the Country. Petitioner has shown sales in the previous years, investigation period and post investigation period. From the information earlier provided, it was shown that the sales have continued to decline even after the investigation period. Should the present trend of decline in imports continue, the petitioner would have no option but to suspend the production, which would result in idling of capacities (while some facilities can be used for production of other types of flashlights, some facilities can not be used at all).

Profits

6. The profits of the domestic industry have very seriously eroded as is evident from the information earlier provided. Prices at which the Non Brass Metal Flashlights are being imported are so low that it can not permit recovery of

even raw material cost. Therefore, the domestic industry can not even imagine selling the product at matching prices.

7. Market share

- a. Imports have increased significantly in absolute terms.
- b. Imports have increased significantly in relation to the production of the domestic industry.
- c. Imports have increased significantly in relation to the demand of the product in the Country.
- d. Share of the domestic industry has declined significantly.

Productivity:

8. Productivity of the domestic industry has significantly declined due to decline in production.

Return on investments

9. Return on investments have very significantly declined. The domestic industry has been forced to a situation of losses from a situation of profit, resulting in negative return on investment in the investigation period.

Utilization of capacity

10. Capacity utilization of the domestic industry has very significantly declined as a result of decline in sales volume and consequent reduction in production volumes.

Should the present trend of dumping continue, the domestic industry would have no option but to suspend the production completely, which would imply idling of significant capacities in the Country. It is relevant to note here that the petitioner constitutes a very significant proportion in the production of the subject goods in India.

Factors affecting domestic prices

11. Price undercutting

The landed price of imports is very significantly below the selling price of the domestic industry, resulting in severe price undercutting. So severe is the extent of price undercutting that the domestic industry can not think of selling at

matching prices. The landed price of imports is below even the material costs involved.

Price suppression/depression

12. Landed value of the dumped imports is significantly below the cost of production of the domestic industry. Imports are having severe suppressing/depressing effect on the domestic industry.

The magnitude of the margin of dumping

13. The dumping margin from China is not only more than de-minimus but also very significant. The impact of dumping on the domestic industry is significant.

Actual and potential negative effects on cash flow

14. The cash flow of the domestic industry deteriorated. Cash profits from the subject goods has very seriously declined.

Inventories

15. Stocks increased significantly in Period of Investigation. Further, number of days for which production is in stock has increased significantly. The increase in inventories is in spite of reduction in production by the domestic industry.

Employment

16. The employment level with the domestic industry declined as the industry has been forced to curtail the employment levels. While a number of employees with the domestic industry have been retiring, the domestic industry cannot think of recruiting new staff.

Wages

17. The wages per employee have declined.

Growth

18. While the domestic industry was earlier having positive growth, the same has become negative, given increase in the demand of the product on the one hand and decline in sales volume for the domestic industry on the other hand.

Ability to raise capital investments

19. The domestic industry anticipates difficulties in raising fresh capital, should the present trend of dumping continue.
20. All the parameters, collectively and cumulatively, establish that the domestic industry has suffered material injury from the dumped imports. In view of the foregoing, it is submitted that the preliminary findings is required to be confirmed subject to the above.

J. Examination by the Authority

37. Under Rule 11 supra, Annexure –II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

38. For the examination of the impact of the imports on the domestic industry in India, the Authority considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the Rules supra.

39. Analysis of Injury to the domestic industry has been done on the basis of the information available on record and the verification done by the officials of Directorate of Anti-Dumping & Allied Duties.

Absolute increase in Quantum of Imports from China PR

40. To ascertain the quantum of imports, the Authority has considered the import statistics of the subject goods made available by DGCI&S, and data from secondary sources. As the customs sub classification of this subject good is not exclusive, the Authority has taken into account transaction wise information made available through secondary sources for working out the imports from China PR and countries other than China PR

41. The domestic industry has claimed that imports from China PR have increased in absolute terms and their share has also increased significantly. The Authority has examined the import statistics during the POI and two years prior to it and concludes

that there has been a rapid increase of imports from China PR in absolute terms. The Authority observes that imports have also increased in relation to the production of the domestic Industry. Thus, the authority concludes that there has been a very significant increase in imports from China PR for the subject goods during the POI as compared to the previous years.

	Import of Subject goods during the POI source DGCIS				
	Units	99-00	00-01	2001-2002	POI
Subject C	000 pcs	600	1193	2248	1974
Others	Do	204	973	581	262
Total Imp	Do	804	2166	2829	2236

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Import of Subject goods during the POI: Data from Secondary Sources					
	Units	99-00	00-01	2001-2002	POI
Subject C	000 pcs	600	797	2723	2689
Others	Do	204	-	38	37
Total Imp	Do	804	797	2761	2726

Market share of Imports:

42. The Authority observes that the share of China PR in the total imports of Non Brass Metal Flashlight has increased and as a consequence, the share of Domestic industry has declined significantly.

43. Market Share of Imports from China PR in Total Imports (%)

Market share in Imports					
	Units	99-00	00-01	2001-2002	POI
Subject C	%	75	100	99	99
Others C	%	25	0	1	1
Total	%	100	100	100	100

The market share of imports from China PR in total imports have gone up substantially from 99-00 and during POI, it is 99% of the total imports of the subject goods The Authority concludes that the domestic industry has suffered material injury with the increase of market share of imports from subject country.

44. Share of imports from subject countries as a proportion to demand.

The Authority has calculated the total demand in the country by adding the total imports to the sales of the domestic industry of the product under consideration. The

Authority notes that the share of China PR in total demand of the subject goods has increased during the POI while the share of other imports has increased marginally. The share of the domestic industry in the total demand has decreased POI as compared to previous year. Thus, the Authority concludes that there has been a significant rise in the market share of imports of the subject countries as a share of total demand and it has increased significantly during the POI as compared to previous years.

45. Market Share of Imports in total Demand (Absolute and Percentage share)

Share in Demand					
	Units	99-00	00-01	2001-2002	POI
Domestic Industry	%	63.46	60.23	32.38	26.54
Other producers	%	18.49	17.74	12.15	10.48
Imp Subject Coun	%	13.48	22.02	54.7	62.12
Imp from Other Coun	%	4.57	.01	.76	.85

Production, Sales Volume and Capacity Utilization:

46 The authority notes that the overall production and capacity utilization of the domestic industry in respect of subject goods have decreased during the POI as against previous year. The sales volume of the subject goods of the petitioner shows a significant decline during the POI as against previous year. It is also noted that capacity utilization of the domestic Industry has declined as a result of decline in the sales volume. The Authority concludes that the domestic industry has suffered injury on account of loss of production, sales volume and decline in the capacity utilization.

Price Undercutting, underselling, and suppression/depression.

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

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

48. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the

dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has also examined the claim of the petitioner that the domestic industry is suffering on account of the losses from the sale of Non Brass Metal Flashlight .The Authority notes that price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the Non-injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling.

49. The authority notes that for subject goods the selling prices of the domestic industry is significantly below the price, which would have permitted the domestic industry, a fair recovery of its cost of production and earn a reasonable return. Additionally, the imports were having significant suppressing/ depressing effect on the prices in the domestic market, as the domestic industry had not been able to raise its selling price in view of the dumped imports of the subject goods. The Authority has determined the extent of price undercutting by comparing the landed price of the subject goods with the net selling price of the subject goods by the domestic Industry during the POI and concludes that the domestic industry has suffered significant price undercutting and price underselling during the POI because of import from the subject country.

Price Undercutting during POI			
CHINA PR	Net selling Price petitioner	Landed Price from subject country	Price Undercutting
2 cell Small NBMFL	****	****	****
2 cell Large NBMFL	****	****	****
3 cell Large NBMFL	****	****	****
Price Underselling during POI			
CHINA PR	Non Injurious Price of petitioner	Landed Price from Subject country	Price Underselling
2 cell small NBMFL	****	****	****
2 cell large NBMFL	****	****	****
3 cell Large NBMFL	****	****	****

Selling Price, Profitability & Productivity:

50. The Authority observes that the sales realization of the subject goods have not increased during the POI and in fact these are at the same level as during AM 2001 and AM 2000. The Authority observes that the petitioner has been incurring losses on the sale of the subject goods during the POI. It is also noted that the productivity of the domestic Industry has gone down during the POI as against previous years. The Authority concludes that the Domestic Industry has suffered material injury due to decline in productivity and losses from this production.

Return on Investment and Cash flow

51. The Return on the Investment has declined during the POI as compared to previous year. The cash profits from the subject goods have declined during the POI as against previous periods. The Authority confirms that the Domestic Industry has suffered material injury due to decision in ROI and cash flow.

Inventories

52. There is a marked rise in the closing stocks of finished goods during POI indicating that there is a significant change in the inventory position of the domestic industry during the period of investigation as compared as previous year. The authority notes that increase in inventories is in spite of reduction of production by the domestic industry. The Authority confirms that the Domestic Industry has suffered material injury on account of rise in the Inventories.

Wages and Employment

1. The wages of the employees have declined during the POI as compared to previous year. The employment with the domestic industry has declined as the domestic industry has curtailed its employment levels. The Authority could not conclusively determine injury on account of wages and employment.

Injury parameters					
	Units	99-00	2000-01	2001-02	POI Ann
Capacity of all types	K Pcs	3500	3500	3500	3500
Prod of Subject goods	Index	100	83	76	71
Cap Utilisation	%	100	83	76	71
Sales Domestic	Index	100	77	57	54
Closing stock Volume	Index	100	114	194	194
Closing stock Vol	Index	100	113	193	194
Employment	Index	100	100	92	91
Productivity	Index	100	83.10	82.61	78.74
Wages Per Employee	Index	100	119	93	93
Sales over base Yr	Index	-100	-115	-101	-115
Sales increase over prev Yr	Index	-100	-92.55	-105.61	-118.26
Total Profits	Index	100	141	-7	-93
Working capital	Index	100	96.4	79.64	79.64
Cash profit	Index	100	103	59.44	37.11

Growth and Ability to raise Investments

1. The domestic industry is experiencing a negative growth rate in spite of increase in the demand of the subject goods. In the current scenario, the Authority notes that ability of the firm to raise investments remains adverse.

55. Conclusions on Injury

From the foregoing, the following conclusions are made by the Authority regarding injury suffered by the domestic industry

1. Imports from the subject country of subject goods have increased significantly in absolute terms.
2. Imports from subject country have increased in relation to total imports of Non Brass Metal Flashlight in India.
3. Imports from the subject country have increased in relation to the demand of Non Brass Metal Flashlight in India.
4. Imports are significantly undercutting the selling prices of the domestic industry.
5. The petitioner is suffering from price underselling also as landed price of subject goods are below the Non Injurious price or fair selling price of the domestic industry.
6. The petitioner is suffering from price suppression/ depression as landed price of the subject goods from subject country are less than cost of production of the domestic industry.
7. The domestic industry has suffered losses on account of sales on subject goods. In fact, they have incurred losses during the POI along with their loss of sales volume during the same period.
8. On the basis of the foregoing, the Authority observed that the domestic industry has suffered volume as well as price injury. On the whole, the domestic industry has suffered material injury.

K. CAUSAL LINK:

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

- i. In establishing that the material injury to the domestic industry has been caused by the dumped imports from the subject country, the Authority holds that the increase in the quantum of import from the subject country resulted in the curtailment of market share of the petitioner. In considering the effect of dumped imports of Non Brass Metal Flashlight, the Authority has found that based on the close resemblance of their physical, chemical characteristics and

usage, domestically produced subject goods are like article to the imported Non Brass Metal Flashlight from subject country. Import of Non Brass Metal Flashlight from the subject country had the effect to displace the demand of domestically produced Non Brass Metal Flashlight. The Authority holds that substantial increase in imports of subject goods have contributed to the increase in imports in absolute terms. This had the effect of undercutting the prices of domestic industry to sell below its fair selling price of the subject goods and this has been accompanied with the reduction in sales volumes of the subject goods. The Authority has also examined the volume of imports of subject goods from countries other than China PR and after examining the transaction wise data, it is observed that market share of countries other than China PR is only 1% of the total imports into the country during the POI.

- ii. The imports from China PR suppressed the prices of the product Non Brass Metal Flashlight in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India. The Authority could not find any evidence of contraction of demand, change in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers. It is also noted that developments in technology has not been a cause for injury to the domestic industry.

These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

L. INDIAN INDUSTRY'S INTEREST:

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

The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods.

The Authority notes that the imposition of anti dumping measures would not restrict imports from China PR in any way, and therefore, would not affect the availability of

the product to the consumers. The consumers could still maintain two or even more sources of supply.

M. CONCLUSIONS:

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

- i. Non Brass Metal Flashlight or product under consideration has been exported to India from the subject country below its normal value.
- ii. The Domestic Industry has suffered material injury;
- iii. The injury has been caused by the dumped imports from Subject Country.

59. The Authority considers it necessary to impose a definitive anti dumping duty on all imports of Non Brass Metal Flashlight (2 cell small, 2 cell large and 3 cell large) in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is compared with the non-injurious price of the petitioner company determined for the period of investigation.

Accordingly, the Authority recommends that the definitive anti dumping duties be imposed by the Central Government on all imports of Non Brass Metal Flashlight either in compact or in SKD conditions on types ranging from 2 cell small, 2 cell large, 3 cell large(exclusive of the value of batteries, if any) falling under Custom Heading 851310 originating in or exported from Peoples Republic of China. In the event of description of subject goods not specifically indicated while importation, the highest duty would be applicable to such categories. The Anti Dumping duty is proposed on the goods, the description of which is specified in column (3) of the Table below, falling under sub-heading of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), the specification of which is specified in column (4) of the said Table, originating in the countries as specified in the corresponding entry in column (5), and produced by the producers as specified in the corresponding entry in column (7), when exported from the countries as specified in the corresponding entry in column (6), by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at a rate which is equivalent to the difference between, the amount as specified in the corresponding entry in column (9), in the currency as specified in the corresponding entry in column (11) and per unit of measurement as specified in the corresponding entry in column (10), of the said Table, and the landed value of such imported goods,

exclusive of the value of batteries, if any, in like currency per like unit of measurement.

TABLE

S.No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	2 cell small, conforming to battery size AA,	Peoples Republic of China	Any country	Any producer	Any exporter	672.29	Thousand pieces	USD
2.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	2 cell small, conforming to battery size AA,	Any country except Peoples Republic of China	Peoples Republic of China	Any producer	Any exporter	672.29	Thousand pieces	USD
3.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	2 cell large, conforming to battery size D	Peoples Republic of China	Any country	Any producer	Any exporter	820.63	Thousand pieces	USD
4.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	2 cell large, conforming to battery size D	Any country except Peoples Republic of China	Peoples Republic of China	Any producer	Any exporter	820.63	Thousand pieces	USD
5.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	3 cell large, conforming to battery size D	Peoples Republic of China	Any country	Any producer	Any exporter	1608.08	Thousand pieces	USD
6.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	3 cell large, conforming to battery size D	Any country except Peoples Republic of China	Peoples Republic of China	Any producer	Any exporter	1608.08	Thousand pieces	USD
7.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	Other than those specified at S.No.1-6 above	Peoples Republic of China	Any country	Any producer	Any exporter	1608.08	Thousand pieces	USD
8.	8513 10	Non-brass metal flashlights (in compact or SKD condition)	Other than those specified at S.No.1-6 above	Any country except Peoples Republic of China	Peoples Republic of China	Any producer	Any exporter	1608.08	Thousand pieces	USD

59A. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

60. Subject to the above, the Authority confirms the preliminary findings dated 16th January 2003.

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

(L.V.SAPTHARISHI)
DESIGNATED AUTHORITY