

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

NOTIFICATION

NEW DELHI, The February 25, 2004

FINAL FINDINGS

Sub: Anti-Dumping Investigation concerning imports of Plastic Ophthalmic Lenses from People's Republic of China and Chinese Taipei.

No.14/16/2002-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

The procedure described below has been followed with regard to the investigation:

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s Techtran Polylenses Limited, Hyderabad, a member of Indian Plastic Ophthalmic Lenses Association (IPOLA), Karnataka (hereinafter referred to as petitioner) on behalf of the domestic industry, alleging dumping of Plastic Ophthalmic Lenses (hereinafter also referred to as subject goods) originating in or exported from People's Republic of China and Chinese Taipei (hereinafter referred to as subject countries). The petition is also supported by M/s Indian Plastic Ophthalmic Lenses Association whose other members are M/s Indian Ophthalmic Lenses Manufacturing Co. Pvt. Ltd., Karnataka and M/s Prakash Plastic Industries (Madras) Pvt. Ltd., Chennai.
- ii. The Authority on the basis of sufficient evidence submitted by the petitioner issued a public notice dated 27.8.2002 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under Customs Code 9001.50 Schedule I of the Customs Tariff Act, 1975 as amended in 1995 originating in or exported from the subject countries in accordance with the sub-Rule 5(5) of the Rules.

iii. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):

- M/s Wenzhou East Optical Glasses Co. Ltd., PR China
- M/s Wenzhou Wuzhou Group Co. Ltd., PR China
- M/s Wenzhou Mingda Optical Glasses Co. Ltd., PR China
- M/s Bin Shyh Enterprises Co. Ltd., Chinese Taipei
- M/s Daily Glasses Enterprise Co. Ltd., Chinese Taipei
- M/s Y & S (Tianjin) Industries Ltd., PR China

iv. Response/information to the questionnaire/notification was filed by the following exporters/producers:-

- M/s Wenzhou East Optical Glasses Co. Ltd., PR China
- M/s Wenzhou Wuzhou Group Co. Ltd., PR China
- M/s Wenzhou Mingda Optical Glasses Co. Ltd., PR China
- M/s Y & S (Tianjin) Industries Ltd., PR China

None of the exporters/producers from Chinese Taipei responded to the initiation notification.

- v. The Authority conducted spot verification and investigation of the cost data of the domestic industry to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner.
- vi. Investigation was carried out for the period starting from 1st April 2001 to 31st March 2002 i.e. the period of investigation (POI). For the purpose of determination the authority analyzed data from 1st April 1999 to 31st March 2002 (Injury Period)
- vii. On the basis of preliminary investigation and evidence the Authority notified its Preliminary Findings vide Notification Number 14/16/2002-DGAD Dated 11.08.2003.
- viii. The Authority forwarded copies of the Preliminary Findings to known interested parties, and the governments of the exporting countries who were requested to furnish their views, if any, on the Preliminary Findings within forty days.
- ix. The Authority also forwarded copy of the Preliminary Findings to the Embassies/High Commissions/Representatives of subject countries in New Delhi with a request to furnish their views on the Preliminary Findings.
- x. The Authority held a public hearing on 13th October 2003 to hear the interested parties orally, which was attended by representatives of the domestic industry, importers and exporters from subject countries. The parties attending the public

- hearing were requested to file written submissions of views expressed orally. The written submissions thus received from interested parties have been considered by Designated Authority in these finding;
- xi. The Authority also conducted spot verification of the Cooperating Exporter's production facilities and data in China to the extent possible and the verified data has been taken into account for the final determination.
 - xii. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7);
 - xiii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties vide general disclosure and confidential disclosures to parties involved dated 22nd January 2004. Comments to the disclosure received from the interested parties have also been duly considered in these findings;
 - xiv. **** In the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

For the purpose of brevity the issues already discussed in the preliminary findings of the authority are not repeated here.

B. PRODUCT UNDER CONSIDERATION AND 'LIKE ARTICLE'

B.1 The product under consideration is Plastic Ophthalmic Lenses, which are used in spectacles to correct Eye Vision of Human beings. These lenses are imported in finished, Uncut form, ready to mount in spectacle frames. The ITC (HS) classification of the products is 9001.50

B.2 Views of Petitioners, exporters, importers and other interested parties

B.2.1 Petitioner's views

The imported product is Plastic Ophthalmic Lenses, which are used in spectacles to correct Eye Vision of Human beings. These lenses are imported in finished, uncut form, ready to mount in spectacle frames. The ITC (HS) classification of the products is 9001.50 which attract peak Customs duty of 30% (2002 budget). The lenses are made out of Bis Allyl Di-carbonate, generically known as CR-39 with Refractive Index of 1.498 and Abbe number of 50 plus. These lenses are basically modern day lenses substituting age old, glass lenses. It has been clarified by the petitioners that the

lenses meant for protective purposes and sunglasses are outside the scope of the present petition and investigations.

Plastic Ophthalmic Lenses are primarily produced with two raw materials viz. Bis Allyl Di-carbonate (generically known as CR-39) and Polymethyl Methacrylate (PMMA). In addition to these two raw materials, there are other materials also which can be used for production of Plastic Ophthalmic Lenses. Plastic Ophthalmic Lenses produced with any raw material whether CR 39, PMMA or other, are within the scope of the product under consideration. The petitioner produces Ophthalmic Lenses using CR-39. Plastic Ophthalmic Lenses are modern day lenses substituting age old, glass lenses, which would break easily on impact.

Plastic Ophthalmic Lenses produced with Polymethyl Methacrylate (PMMA) or acrylic lenses used for corrective purposes are not different from CR-39 lenses used for corrective purposes. It has been argued by various interested parties that acrylic lenses imported from the subject countries were not meant for corrective purposes. Petitioner has disputed the claim and requested the Authority to direct the concerned importers to file relevant import documents and other information as is required to be provided in accordance with the Importers Questionnaire. Petitioners claim that if this data were collected, It would be seen that these importers have declared that the lenses imported were meant for corrective purposes. This becomes obvious from the fact that the lenses imported for protective purposes attract countervailing duties while corrective lenses can be imported without payment of countervailing duties. Further, the importers have resold the material in the market. The importers and resellers may be directed to disclose the invoices of such resale and establish whether the exporter's invoice, importer's invoice and reseller's invoice show that the lenses imported were meant for protective purposes or corrective purposes.

The petitioners manufacture Single Vision and Bifocal lenses, similar to the imported products from Chinese Taipei and China. The member companies also produce semi-finish products of Single Vision and Bifocal, even though the volumes are small.

B.2.2 Views of the Exporters

a) M/s Y&S(Tianjin) Ltd. P.R. of China

M/s Y&S Industry, one of the responding exporters of CR39 lenses from China have contended that the product under consideration is far too wide as it includes within its purview, other types of lenses, which are not manufactured by the domestic industry. As the Indian producers manufacture only CR –39, there exists domestic industry only for this item. Therefore, for purposes of like article and causal injury, the investigations are required to be confined to CR 39 and can not include other types of

lenses. It may be relevant to mention that acrylic lenses and CR 39 are distinguishable with regard to the process of manufacture and the principal raw material. To the best of their information, none of the domestic producers have ever produced acrylic lenses and also do not have the facility to do so. The investigation is therefore; to be confined to CR 39 and acrylic lenses are required to be excluded for the purpose of standing and injury.

b) M/s Wenzhou East Optical Glasses Co., Ltd, M/s Wenzhou Mingda Optical Glasses Co., Ltd., and M/s Wenzhou Wuzhou Group Imp. & Exp. Co., Ltd., of PR China.

These exporters from China are primarily manufacturers/ exporters of PMMA lenses. They have submitted that as per the Petition, the Petitioner has alleged that the imported product is "Plastic Ophthalmic Lenses' which are used in spectacles to correct eye vision of human beings. Further, the Initiation Notification also describes the product involved in the present Investigation as "Plastic Ophthalmic Lenses (also referred as "subject goods" hereinafter) originating in or exported from the subject countries and are classified under Chapter 90 of the Custom Tariff Act (Custom head 9001.50). Plastic Ophthalmic lenses are used in spectacles to correct eye vision of human beings. These lenses are in finished uncut form, ready to mount in spectacle frame. The lenses are made out of Bis Allyl Di-carbonate, generally known as CR-39 with Refractive Index of 1.498 and Abbe number of 50 plus".

These exporters from China have contended that as per the Petition the scope of the subject goods was limited to Plastic Ophthalmic Lenses used in spectacles to correct eye vision of human beings. However, the Authority has wrongly broadened the scope of the present Investigation to include non-prescriptive and non-corrective lenses.

The lenses manufactured from raw material PMMA Polymethyl Methacrylate (hereinafter referred to as "**PMMA**") are used for protective and/or cosmetic use only and not for prescriptive, corrective and therapeutic purposes. The subject goods produced from CR-39 are called Hard Resin Lenses while those produced from PMMA are called Acrylic Plastic Lenses. The said Acrylic Plastic Lenses, are neither technical nor commercial substitutes of the subject goods produced by the Petitioner and thus the category of subject goods manufactured from PMMA ought to have been excluded from the scope of the present Investigation.

It has also been submitted that M/s Wenzhou East, Mingda and Wuzhou have provided the Hon'ble DA with actual samples of Acrylic Plastic Lenses (PMMA) during the course of the present Investigation and also at the time of Public Hearing. Even as per the test of a layman, the said samples clearly depict the dissimilarities in physical properties and characteristics between the Acrylic Plastic Lenses (PMMA)

produced and exported by East, Mingda and Wuzhou and the Hard Resin Lenses (CR-39) manufactured by the Petitioner.

Further, the Hon'ble DA has wrongly held that Plastic Lenses are imported under Custom Head Classification No. 9001.50 and hence lenses manufactured out of PMMA can also be used as prescriptive lenses to compete with lenses made out of CR-39. It is submitted that although the lenses manufactured out of PMMA and CR-39 are both classified under the Custom Head Classification Number 9001.50 – Spectacle Lenses of other material, they are completely different products, having different properties, raw materials, manufacturing process and end use.

That "Plastic Ophthalmic Lenses" covers very broad range of products which are made out of different raw materials such as, PMMA (Polymethyl Methacrylate), PC (Polycarbonate), CAB (Cellulose-Aceto Butyrate) and CR-39 (Bis Allyl Di-Carbonate) and all are classified under the Custom Head 9001.50 "Spectacle Lenses of other material" as they are not glass lenses and cannot be classified under 9001.40 "Spectacle Lenses of Glass". Thus even though they are all classified under the Custom Head 9001.50 all the said products are produced from different raw materials, are completely different and/or not commercially substitutable and used for different applications, considering the aspects such as use of raw material manufacturing process, property etc. In view of the above, it is submitted that the Custom Heads cannot be used as a standard to identify the "like Article" and the same are only indicative and cannot be the basis of the Investigation.

B.2.3 Views of Importers and other Interested Parties

Federation of all India Optical Associations (FAIOA); M/s R. K. Optical Ltd.; and M/s Enterprise Trading Company; and M/s Indian Optics have responded to the petition as interested parties and submitted their written submissions.

M/s Indian Optics Ltd., which has claimed to be a manufacturer of CR 39 ophthalmic lenses and had started manufacture of C 39 during the period of investigation have also joined as an interested party and also by virtue of this fact, they have claimed to form part of the domestic industry. They have partially supported the petition, while opposing the quantum of duty and inclusion of PMMA and other specialty lenses within the scope of the petition.

The views of the importers and other interested parties have been summarized as follows:

That CR 39 is manufactured from ADCA/NS 200 whereas Acrylic Lenses are manufactured from Poly Methyl Metreate Acrylic (PMMA). CR 39 is manufactured

through casting process, whereas acrylic lenses are manufactured by a process of injection moulding. The injection moulding process consists of heating plastic granules and the raw material mix, and placing this in the mould. The entire process of manufacture takes only a matter of minutes. In the casting process, the main material mix is placed in certain moulds having rubber gaskets which are then placed in ovens for polymerization over a period of 8 to 16 hours. As a consequence, with the injection moulding process large quantities of identical products can be produced in a short time. Whereas, in the casting process, small quantities of different types of lenses can be manufactured. The casting process is therefore, inherently more suitable for corrective lenses;

That in the casting process, first moulds are prepared, and then the lenses are cast. Therefore, only smaller quantities of lenses can be manufactured. The moulds used in the casting process are of glass and cost less than Rs200/- a piece, whereas in the injection moulding process, the cost of the mould is not less than Rs2 to 3 lakhs per piece. On the other hand Injection moulding process has certain fixed costs. But a large quantity is necessarily to be manufactured. This technology (injection moulding) is therefore not suitable for manufacture of corrective lenses in smaller quantities;

That there is a substantial difference in cost of production not only on account of the process of manufacture but the cost of the principal raw material. NS 200 is priced at about US \$4.50 per Kg. whereas the price of PMMA is only US \$1.5 kg. Moreover, the associated costs of PMMA are lower as it is in a granular form and can be stored in ordinary bags, whereas the monomer for CR 39 is in liquid form and can only be stored in controlled conditions. Different raw material and process results in a very different end product – the cost of CR 39 is significantly higher than that of acrylic lenses, as they are very different products and are not having commercial and technical substitutability.

That corrective lens are commonly used for 800 powers – the criteria being astigmatic plus or minus / non-astigmatic plus or minus, prismatic lenses, bi-focal round / bi-focal D shape, spherical, cylindrical numbers, etc. Since there are many variables for corrective lenses, they can not be manufactured by the injection moulding process.

That lenses have lower resistance to scratches and are breakable – making them unsuitable for use as corrective lenses, which require regular wear. CR 39 has better resistance to scratches, lower impact of dust, and longer life, which make them suited for corrective lenses. The critical difference is on account of scratch resistance, stress cracking resistance, solvents and chemical resistance, welding sparks resistance, plasticizer migration resistance, ageing resistance, gamma radiation resistance. Therefore, the different properties affect the ultimate use and substitutability of the two products;

That the optical properties of CR 39 are superior to the optical properties of acrylic lenses. The main difference arises due to a lack of uniformity in the refractive index of acrylic lenses. As against this, there is a great homogeneity in the refractive Index. – CR 39 properties ideally suited for corrective lenses.

That as sunglasses do not need stringent optical properties and the life cycle for sunglasses (non-corrective lenses) is shorter due to fashion and cosmetic value, acrylic lenses are more suitable – acrylic lenses suitable for non-corrective applications.

That CR 39 lenses are used for application which require better optical quality, such as camera filters, navigation instruments, welding shields, instrument windows, including scientific, aerospace and nuclear applications, etc. Acrylic lenses are used for applications requiring less optical quality such as automobile taillights, meter display panel covers, nameplates, lamp covers, aquariums, sunglasses ornamental items and parts. Difference in properties – superior properties of CR 39 *vis a vis* acrylic and higher cost of manufacture, make CR 39 optimal for high end applications, that is applications which require superior optical properties, whereas acrylic are optimal for lower end applications.

That the customs tariff heading is only indicative and does not in any way define the scope of the investigations. The Customs Tariff is based on the Harmonized System Nomenclature devised by the World Customs Organization. The scope of the headings have not been prepared keeping in regard the likeness of articles as defined under Section 9A of the Act;

That if a product, which is imported, is not manufactured by the domestic industry; it must be examined whether the product manufactured by the domestic industry is a 'like article' to the product under consideration. The aspect of like article is required to be considered in the context of the critical parameters which define CR 39 – whether such critical parameters are equally present with regard to acrylic lenses and specialty lenses or exclusion is warranted;

For the aforesaid reasons, it would be erroneous to treat CR 39 as a like article to acrylic lenses. The petitioners have agreed in principle during the Public Hearing that tinted Plano lenses do not come under the purview of their petition.

Exclusion of Specialty Lenses

The interested parties have further argued that the domestic manufacturers do not manufacture lenses having special type of coatings such as:

Anti-reflection multi-coating – Normal lenses have the ability to transmit light to the extent of 92%, after the application of such coating this ability is increased to 99%, providing vision almost near to that of the naked eye.

Hydrophobic coating 0- by this coating, the lenses repel water and consequently dust does not stick to the lenses, reducing the chances of scratches.

Anti-EMI coating – By this coating Electro magnetic interference generated from computers, television, microwave ovens, etc. is eliminated.

Since the domestic industry has neither manufactured, nor has the facilities to manufacture the aforesaid lenses, they are required to be excluded from the scope of product under consideration.

B.3 Examination by the Authority

Authority has carefully considered the views of the petitioners, exporters and importers, and other interested parties on the issue of the product under consideration and the like article. The Authority notes that the investigation was initiated for Plastic Ophthalmic lenses originating in or exported from the subject countries classified under Customs Head 9001.50. These lenses are used in spectacles to correct eye vision of human beings. The lenses are made out of Bis Alloy Di-carbonate, generally known as CR-39 with Refractive Index of 1.498 and Abbe number of 50 plus. However, the initiation notification also stated that the investigation covers all type of Plastic Ophthalmic lenses. The purpose of covering all plastic lenses was to identify the domestic as well as the foreign 'like products' for the purpose of investigation for imposition of duty.

For the purpose of this investigation the product under consideration was 'Plastic Ophthalmic lenses used for corrective or therapeutic uses only' as mentioned in the original petition as well as the initiation notification. The moot point for the Authority was to decide the domestic and the foreign like products for the purpose of inclusion or exclusion within the scope of the investigation of dumping and injury.

The investigation has revealed that there are two distinct categories of lenses manufactured out of various plastic materials (CR-39, and PMMA being two major materials) depending upon their usage i.e. Corrective, prescriptive or therapeutic use, and non-corrective (i.e., protective lenses and sunglasses). The authority notes that lenses manufactured by the domestic industry are clearly for corrective purpose only and therefore, for the purpose of determination of the domestic, as well as foreign like products, only the corrective lenses are required to be considered. The petitioners themselves have confirmed that their intention is not to include the non-corrective or

protective lenses in the scope of this investigation. Now the issue to be decided is whether corrective lenses can be manufactured out of PMMA and other plastic materials (other than CR-39) and if so, can they technically and commercially substitute the CR-39 lenses manufactured by the domestic industry.

In this regard, Authority turns to Article 2.6 of the Agreement on Antidumping. As per Article 2.6 of the Agreement read with Rule 2 (d) of Antidumping Rules "the term 'like article' shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product which, although not alike in all respects; has characteristics closely resembling those of the product under consideration". Therefore, while considering whether an article is a like article compared to the product under consideration the Authority has to look at their technical and physical characteristics and technical and commercial substitutability.

The Authority also notes that the spot verification conducted by the Authority in the manufacturing facilities of the exporters in China revealed that at least one of the manufacturers/exporter i.e. M/s Wenzhou East Optical Co, Wenzhou produces corrective lenses made out of PMMA through the injection moulding process. These lenses are being used for making reading lenses and other corrective spectacles for their domestic market as well as other developing country markets. Therefore, the contention of the exporters, importers and other interested parties that the PMMA lenses are used only for non-corrective and protective purpose and not suitable for corrective purpose is not correct. The interested parties have brought to the notice of the Authority that in the earlier cases (Acyclic Alcohol), the Authority had examined the following critical parameters to determine the like articles: i) Technical and Commercial substitutability; ii) Function and uses of the products; iii) Resemblance of the physical and/ or chemical characteristics; iv) User's perception of switching over from one product to another; v) Similar production process; and vi) End product substitutability. Authority has carefully examined these aspects in deciding the issue of like article in this case. Though the corrective lenses manufactured out of the PMMA has a different production process and have a different cost structure, the end use of the product is for vision corrective use. The physical characteristics of both the products closely resemble though the chemical composition and production processes are different. The users would not differentiate the products unless they are well informed about the difference in quality of the products. It is therefore, difficult to accept the argument that they are not technically and commercially substitutable product for the product under consideration.

The Authority notes that raw material content is neither an essential feature nor the description of the product. It is the end use, which is most critical. Plastic Ophthalmic Lenses meant for corrective purposes are the "product under consideration". The

petitioners have further clarified that lenses made out of CR-39 are primarily used for corrective purposes and Coloured Plano Acrylic Lenses are neither an issue of contention nor covered under the scope of investigation as confirmed by the petitioners.

It has also been brought to the notice of the Authority that the non-corrective lenses manufactured out of PMMA are mostly coloured sunglasses where the coloured pigments are mixed with the plastic raw materials at the time of injection. On the other hand CR 39 lenses cannot be coloured like the PMMA lenses. They are generally provided tinges through coating process after the lenses are cast and cured. Due to the curvature that is required to be given to a corrective lens which distorts the colour given to PMMA lenses at the time of injection, PMMA corrective lenses are also white lenses. This is one of the major distinguishing features of corrective lenses, which separates them from non-corrective sunglasses.

Considering the arguments put forward by all the interested parties to the investigation and the investigation conducted by the Authority, the Authority is of the view that all plastic plano coloured glasses used for non-corrective or protective use are not technical and commercial substitute of the product under consideration and therefore not 'like articles'. However, all plastic corrective lenses (other than the plano coloured glasses), irrespective of the raw material used, whether coated or uncoated are technical and commercial substitutes of the product under consideration and therefore are 'like articles' for the product under consideration.

In response to the disclosure statement the interested parties have again argued for exclusion of non-coloured non-corrective plano lenses also from the purview of the investigations. But authority has already noted above that colouring is one of the most crucial element to distinguish corrective lenses from non-corrective lenses and therefore do not find any merit in this argument.

As far the specialty lenses are concerned, the Authority has applied the same technical and commercial substitutability criteria. These special coated lenses are manufactured out of the basic lenses through the process of coating after the lenses have been cast and cured. But the process is incremental only and end use is basically same. Only the cost may vary because of the cost involved in coating. As far as technical and commercial substitutability and end use is concerned these lenses are clearly the 'like article' for the product under consideration.

The interested parties have again raised the issue of exclusion of specialty lenses in their submission to the disclosure statement on the grounds that coated lenses are not manufactured by the domestic industry and the product of the domestic industry cannot substitute the imported coated lenses. This contention of the parties does not

appear to be correct. The domestic industry has coating lines in the production facilities except for M/s Prakash Plastics and they have substantial production of coated lenses. Secondly the substitutability of the domestic lenses by the imported lenses is also to be examined. The authority has examined the technical and commercial substitutability, function & uses of the products, resemblance of the physical and chemical characteristics, user's perception of switching over from one product to another, similar production process, end product substitutability as argued by the parties and holds that the coating requirement in these specialty lenses are only incremental activity and might have specific uses but it can easily substitute a marginally inferior product if price is comparable. Therefore authority holds that imported specialty lenses can substitute the coated lenses manufactured by the domestic industry and therefore, should be treated as 'like product'.

C Initiation and standing of the domestic industry

C.1 Views of the Exporters, Importers and other Interested Parties

The interested parties to the investigation have submitted that the petitioners in this case i.e. M/s Techtran Polylenses and M/s Indian Ophthalmic Pvt. Ltd, have imported the subject goods and therefore, do not qualify to be treated as the domestic industry as per the definition under Rule 2. It has been therefore requested, that by virtue of these imports, the aforesaid producers should be excluded and the domestic industry standing be examined with regard to the remaining manufacturers – that is M/s Prakash Industries and M/s India Optics.

The interested parties further contend that M/s Indian Ophthalmic Lenses Manufacturing Co. Pvt. Ltd. is a company having significant foreign shareholding. Its principal shareholders are Essilor which is a French Multinational and M/s Sola Optical Lens Marketing Pvt. Ltd., which is a wholly owned subsidiary of an Australia based Multinational. The anti-dumping proceedings are being used by the multinationals for their benefit. Such companies should not be considered as falling within the purview of domestic industry. For these reasons, the aforementioned manufacturers should not be included in the definition of domestic industry for the purpose of the present proceedings.

The interested parties have reiterated their stand on this point in their response to disclosure statement.

C.2 Views of the Petitioners

M/s Techtran Polylenses has confirmed that they have not imported the subject goods during the POI. However, their subsidiary undertaking M/s Techtran Ophthalmic Pvt.

Ltd. has imported only 2300 Pairs of lenses purely on experimental basis for study purpose. M/s Indian Ophthalmic has also confirmed that they imported only 1949 pieces of lenses during this period for testing and bench marking purpose and not for commercial activity.

C.3 Examination by the Authority

As per Rule 2(b) of the Anti Dumping Rules, "domestic industry means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry."

The standing of petitioners has been examined by the authority in the light of the above issues raised by the interested parties and the submissions of the petitioners. The Authority notes that import of finished product in small quantities by the manufacturers for testing and benchmarking against international standards is a normal practice world over. The provision under Rule 2 referred above does not apply to such insignificant and non-commercial imports to disqualify them to approach the Authority under antidumping provisions.

As far as foreign holding in M/s Indian Ophthalmic is concerned, the Authority notes that it is an Indian company registered under Indian Company Law which permits certain level of foreign holding. Authority also notes that neither the Agreement nor the Indian Antidumping Rules have made any specific provision to debar such companies with foreign holdings to seek relief from unfair trade practices. Only the domestic sale entitlement of M/s Techtran Polylenses has been taken into consideration for the purpose of domestic capacity and determination of major proportion of domestic producers approaching the Authority. Therefore, the Authority is of the view that the petitioners command required standing to file the above petition on behalf of the domestic industry.

D. De Minimis Limits

The investigation based on DGCIS data reveals that exports of the subject goods from China constitute about 75% of total imports of the like article. However, imports from Chinese Taipei are below de minimis level of 3% and therefore, the authority has excluded Chinese Taipei from the dumping and injury investigation. This has also

been confirmed by the petitioners themselves in their response to the disclosure statement.

E. Other issues raised

The interested parties to the petition have submitted that the cost structure of the most efficient domestic industry may be taken into consideration for working out the NIP for the Domestic industry. The interested parties have quoted M/s Prakash Plastics Chennai and M/s Indian Optics, New Delhi as the efficient producers of the subject goods. The authority conducted verification of these two producers' data and to the extent possible M/s Prakash Plastics data has been taken into account in the determination as a part of the Domestic industry.

The submissions of M/s Indian Optics have also been taken into account and the Authority also conducted a verification of its production facility at Gurgaon as well as its cost of production on its own request during the public hearing. However, the Authority notes that the said producer did not have any production during the POI. Moreover, this company is primarily an importer of plastic lenses and has started production only recently. Therefore, the company does not qualify for being considered as a part of the domestic industry within the scope and meaning of the term as defined in the Rules. However, the Authority has taken note of some of the aspects of production and costs of this company in its best practices examination to the extent possible

F. Determination of Normal Value, Export Price and Dumping Margin

F.1 The following exporters from China have responded to the initiation notification and have fully cooperated in the investigation process:

1. M/s Y&S Tianjin Industry (M/s Golden Dragon)
2. M/s Wenzhou east Optical
3. M/s wenzhou Mingda
4. M/s Wenzhou wezhou Group

a) M/s Y&S (Tianjin) Industry (M/s Golden Dragon)

M/s Y&S (Tianjin) Industry (supporting manufacturer M/s Golden Dragon) is a producer/ exporter of CR39 lenses from China and produced its cost of production and export data for verification. They have submitted that their cost of production is low because of availability of local raw materials (initiators) at a very cheap price and

other factors of production are also cheap. The authority has taken into account the verified data of this exporter to the extent possible

b) M/s Wenzhou East Optical, M/s Wenzhou Mingda and M/s Wenzhou Wezhou Group

This exporter in its questionnaire responses and subsequent supplementary submissions made a plea that they manufactured and exported PMMA sunglasses only during the POI. They also claimed that PMMA sunglasses are a different product and should not be treated as like product. During the exporter verification the Authority noted that this manufacturer exporter produces PMMA sunglasses through injection moulding process. However, it was also observed that this company manufactures PMMA sunglasses, corrective lenses made of PPMA and CR-39 lenses in the same premises. The exporter has however submitted that they did not export any PMMA corrective lenses to India during the POI or thereafter and the entire production of these reading glasses are for their home market and African Markets. CR-39 production line is also a recent addition and there was no export of this product to India during the POI. Therefore, they have not provided any cost information for PMMA corrective lenses and CR39 lenses.

M/s Wenzhou Mingda Optical Company responded to the initiation notification as a manufacture of the subject goods, exported through M/s Wenzhou Wezhou Group Company, which is a trading Company and has exclusive manufacturing arrangement with Mingda. Verification revealed that both the companies deal only with PMMA sunglasses.

F.2 Assessment of Dumping Margin –Methodology and Parameters

F.2.1 China

a) Normal Value

In response to the initiation notification of the Designated Authority M/s Y & S (Tianjin) Industries Ltd filed its response as an exporter of the CR-39 lenses along with their cost data, export sales invoices and domestic sales data. This exporter also claimed market economy status for the purpose of determination of normal value. However, during the verification of the exporters data on their request it was noticed that the above company is not a manufacturer, but a trading company for various products and the optical division of this company has an exclusive manufacturing arrangement (vide an agreement dated January 1, 2000) with one M/s Golden Dragon optics Ltd. Jiangsu, China. The production facility of M/s Golden Dragon was shifted to Danyang in 2003 which was visited and verified by the Authority. This

manufacturer produces only Corrective lenses out of CR-39 and other hard resins. The manufacturer has no domestic sales. As per the exclusive agreement entire production of this manufacturer is traded through M/s Y & S (Tianjin) as an intermediary. TVA invoices of M/s Golden Dragon are raised in the name of M/s Beijing Kaishengao Import & Export Co. Ltd. (KSA), which is a Government agency. Import & Export permits of this company are used by the exporter for the purpose of obtaining TVA rebates and duty refunds on exports. This Intermediary Company is supposed to operate on Commission basis but details of their transaction etc. were not available for verification. Final export invoices are raised by M/s Y&S Industries and payment is made to the manufacturer through this intermediary agency. However, as the manufacturer exports its entire production through the cooperating exporter through exclusive supporting manufacturing arrangement and maintained the production data, their data was duly verified and accepted to the extent admissible.

However, the exporter has submitted a misleading questionnaire response as a manufacturer whereas it is only an exporter of the subject goods though they had a valid tie up agreement for manufacturing the subject goods. The exporter and the manufacturers did not have an export permit during the POI and had to route all their exports through a Government Agency. The transaction details and arrangements between these intermediaries could not be verified. Therefore, the export pricing decision of the exporter does not seem to be entirely free from Govt. intervention though the production facility is in the private control, as the role of the Govt. agency involved in the sales transactions is not clear. There is no domestic sale of the subject goods and third country exports are also routed through these intermediaries. In view of the facts stated above, market economy status and individual treatment for the purpose of dumping margin determination cannot be granted to the exporter in this case. Therefore, the authority proposes to construct the normal value for the whole of China as a single economic entity. However, to the extent data has been verified the same is proposed to be used for construction of normal value of the subject goods.

The production process and consumption norms and certain cost elements of the manufacturer, as verified, of the manufacturer i.e., M/s Golden dragon has been used to work out the normal value for. For the determination of the Normal value the Authority had adopted the cost of manufacturing of the cooperating exporter from China to the extent the data could be verified and found to be acceptable for construction of the normal value. However, as there is no domestic sales of the subject goods by the cooperating exporter, the normal value has been constructed. However, as far as SAG expenses are concerned the exporter's data could not be verified because of the involvement of two intermediaries. Therefore, Domestic industry's data has been used for SAG component. However, domestic industry's data contains production cost of finished as well as coated lenses and also capacity utilization of the

domestic industry is very low. Therefore, this data has been normated at appropriate level and added to the manufacturing cost determined based on the exporter's verified data to arrive at the constructed cost for the domestic industry. A reasonable profit margin of **% has been added to this to arrive at Constructed normal value. The constructed Normal works out as follows:

Uncoated
Lenses
r 1000 Pairs)

(Pe

i) Manufacturing cost (Based on verified data of

The
exporter/manufactures)
RS

a. Material Costs based on Manufacturer/ Exporter's

Verified Consumption and Purchase
Records:

(b)
Utilities

(c)
Packing

(d) Direct Labour (Including Welfare
Expenses)

ii. Administrative and Selling and General Expenses

(Including Finance cost, Interest, Depreciation
etc.)

(Normated data of the Domestic industry)

Total Cost of
Production

Add Reasonable profit
(5%)

Normal Value (Ex-works)
(Rupees)

Rs *****

Normal Value (Ex-works)
(US\$)

US\$*****

Exchange
Rate

(*****)

Coated lenses

		US\$	RS
Cost of Uncoated Lenses	Per 1000 Pairs	*****	*****
Plus Coating Charges	Per 1000 Pairs		
% of uncoated lenses as per Techtran's Data	***%	**	
Cost of Coated Lenses			
Total Cost		*****	
Plus Profit	**%	*****	
Normal Value for Coated Lenses		*****	

Weighted Average Normal value for all lenses	*****
--	-------

In response to the disclosure statements the exporter has submitted that since they have cooperated and submitted information on their cost of manufacturing and SGA expenses the same should have been fully accepted and there was no reason for determining the SGA expenses on the basis of domestic industry's data. In this connection the Authority has clearly recorded the reasons for partial acceptance of the exporter's data in the disclosure statement and the preceding paragraphs. While the authority was fully justified to reject the entire data of the exporters in view of the misleading response filed by them, authority has taken their production data to the

extent verified and found reasonable. Therefore, the authority do not find any merit in the arguments of the exporter in this regard and confirms the normal value determined as above.

b) Export Price

Weighted average Ex-works export price has been worked out on the basis of DGCIS data. All the export transactions of hard resin plastic ophthalmic lenses exported from China have been taken from the DGCIS data. For this purpose identification of the hard resin lenses from the DGCIS data, lenses with such description and imported in pairs have been taken into account. The export prices to India has been worked out after allowing adjustments to Ex-works price after making level of trade adjustments with respect to Ocean Freight, Port Handling Charges, Inland Freight, Commission and other expenses. For the purpose of these adjustments actual costs as reflected in the cooperating exporter's invoices have been taken. Accordingly the ex-works export prices work out as follows:

Export Price

Per thousand pairs

	RS	US\$
C & F value Per Thousand Pairs	*****	*****
Less Ocean Freight and inland Freight	*****	
Less Commission	*****	
Total deductions	*****	
Ex-Works Price	*****	*****
Exch rate US\$1=Rs *****		

The petitioners in their response to the disclosure statement have argued that the export price worked out on the basis of the import data appears to be skewed because some of the imports of these lenses appear to have entered the Indian market under different descriptions and therefore, actual export price should be much less than what has been worked out by the authority. However, the authority notes that the weighted average export price has been worked out on the basis of the data provided by DGCIS after identifying the Hard resin lenses imported in pairs from the consolidated data of the DGCIS and find no reason to disregard the same. Therefore, the export prices worked out above are confirmed.

c) Dumping Margin

The weighted average normal value so arrived at has been compared with the weighted average ex-works export price to arrive at the Dumping margin

	US\$
Weighted Average Normal value (constructed)	*****
Weighted Average Export Price as per DGCIS data	*****
Weighted Average Dumping margin	*****
DM In %	7.18%

F.2.2 Chinese Taipei

Since the volume of imports of subject goods from Chinese Taipei is below de minimus level of 3% as confirmed by the petitioners themselves, the Authority has excluded this country from the antidumping investigation.

G. INJURY DETERMINATION

G.1 Views of the Interested Parties

The interested parties to the investigation have submitted inter-alia that Clause (v) of Annexure II, to the Rules provides that injury caused by other factors must not be attributed to the imports. The list of factors considered relevant for this purpose included the productivity of the domestic industry. The anti-dumping law does not wish to subsidize or encourage the inefficiencies of the domestic producers,. Therefore, for the purpose of fixation of the Non-Injurious Price, the cost of production to be adopted should be of the most efficient and cost effective manufacturer. It has been submitted that such an exercise has not been carried out and the cost of production of M/s Techtran has been simply adopted. It has been requested that the cost of manufacture of other producers such as M/s Prakash Industries and M/s Indian Optics Ltd. should also be ascertained, for an appropriate fixation of non-injurious price. The present NIP allegedly includes the cost of inefficiency and over-manning of M/s Techtran.

The interested parties have also submitted that there is a total absence of causal link between the imports and injury if any to the domestic manufacturers. The findings do not indicate any volume or price effect of the imports on the domestic producers. The sales have increased as has the production and the sale price. Therefore, the realizations have increased during the POI. In the petition itself, it is shown that the profitability has increased. Thus, there is neither any injury nor any causal effect between the imports and the injury claimed by the petitioner. The interested parties have iterated their stand in respect of injury and causal link in their responses to the disclosure statement.

G.2 Views of the Domestic Industry

The views of the domestic industry have been dealt in the preliminary finding in fair detail and are not repeated here for the sake of brevity. However, the petitioners in their response to the disclosure statement have raised the following points:

(a) VOLUME EFFECT:

The petitioners have argued that the imported volumes as reported in the disclosure statement are understated due to the fact that several major importers have imported CR-39 under the descriptions of " CR-39, Hard Resin, Plastic Lenses and Spectacle Lenses", thereby misleading the statistics. They have further argued that only the resale invoices and the resale customer's names would confirm that they are CR-39 lenses. Indian market for corrective plastic lenses is growing fast but the Domestic Industry is unable to participate in that growth. The corrective lens total demand has increased from 2000-2001 to 2001-2002 by 10,98,462 lenses, out of which increase China has seized substantial amount of 5,74,568 pieces or 52% of the market growth. The Domestic Industry is unable to benefit from the Domestic growth rate fully, primarily due to price undercutting and dumping of Chinese lenses. While Chinese imports grew at a rate of 48% from 2000-01 to 2001-02, the Domestic Industry grew at less than half of that rate, to be exact 23%.

b. SALES OF DOMESTIC INDUSTRY:

The petitioners further argue that the Domestic Industry sales have increased from 1999-00 to 2001-2002, primarily due to restart of SRF shut-down unit by the new owner, M/s Indian Ophthalmic Lenses Manufacturing Company, Bangalore in the year 2000 and ramping up production in 2001. They have been operating under heavy losses just to obtain some market share in the expanding domestic market. M/s Techtran Polylenses, another member of petitioners, has experienced sale volume reduction during the period of investigation as compared to year before, by 7.3%. In spite of new additional capacity coming on line, the total Domestic Industry growth rate remained at half of that of Chinese Imports growth rate.

(C) PRICE EFFECT:

The petitioners have reiterated their stand that the landed value of Chinese imports is overstated, due to probably, non inclusion of CR-39 lenses disguised under various names of Plastic Lenses, Spectacle Lenses etc. The price undercutting is, in the view of the petitioners, far steeper than recorded. The Domestic Industry is able to improve its efficiencies and reduce cost of production. Further, they argue that discerning Indian Optician/consumer is slowly and steadily coming to appreciate the superior quality of domestic product as against the dumped seconds of Chinese and is willing to pay some premium, resulting in increase of sales realization per unit. But however,

the sales realization of Domestic Industry is still much lower than the non-injurious price, contributing to heavy losses of the Domestic Industry.

G.3 Examination by the authority

Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the Volume effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

Injury analysis of the domestic industry has been done afresh as the injury caused to the domestic industry on account of the dumped imports of Corrective (CR-39 and other hard resin lenses) lenses alone is required to be taken into account. However, the data submitted by the domestic industry along with the petition appears to be based on the import data of all type of plastic lenses. The injury data of the domestic industry was also based on the data of only one petitioner i.e. M/s Techtran Polylenses. The injury analysis has been done afresh with reference to 15-point parameter as laid down in Appendix II to the Rules, taking into account Corrective plastic lenses import as per DGCIS data and the combined injury data of the domestic industry. As far as the accuracy of data concerning the imports from China as raised by the petitioners are concerned, the Authority has examined the data provided by DGCIS for the entire injury determination period and does not find any merit in the arguments of the petitioners in respect of its accuracy or reliability. Hard resin lenses imported in pairs and identified thus in the DGCIS data has been taken into account for all such analysis, including determination of export price.

For the purpose of injury analysis the Authority has examined the volume and price effects of dumped imports on the domestic industry and its effect on the prices and profitability to establish injury and causal links between the dumping and injury, if any. Since positive dumping margin has been established for the exports from China, entire exports from that country has been treated as dumped imports for the purpose of injury analysis and causal links.

G.3.1 Volume Effect of dumped imports and Impact on domestic Industry

a. Demand, Output and Market share

Nos. in Pieces

	1999-00	2000-01	2001-02
Installed Capacity for domestic sales	5150000	5250000	5250000
Production	1201317	3027990	3562530
Total Imports	249392	278060	919078
Domestic sales	865869	1990956	2448400
Total Demand (sales + imports)	1115261	2269016	3367478
Imports from Subject country (China) (dumped imports)	139178	140178	714746
Imports from Other countries	110214	137882	204332
Total Import as % of total Demand	22.36%	12.25%	27.29%
Import from China as % of total demand	12.47	6.17%	21.22%
Imports from other Countries as % of total Demand	44.19	49.59	22.23
Capacity utilization	NA	58%	68%
Sales as a % of production	72.07%	65.75%	68.72%
Market Share of DI as % of total Demand	77.63%	87.75%	72.71%
Profit/Loss (Rs in Millions)	(10.34)	(70.91)	(58.91)

The above data shows that the volume of dumped imports from China is significant and has increased substantially over the years. This has resulted in truncating the sales of the domestic industry and its share in total demand. The market share of the DI has fallen from 87% in 2000-01 to 72% during the POI. The rise in inventory is also evident from the fact that sales as a percentage of production remains low and has fallen from 72% in 1999-00 to 69% in 2001-02. Capacity utilization of the Domestic Industry has improved over the years but remains uneconomically low.

G.3.2 Price Effect of the Dumped imports on the Domestic Industry

The table below shows the weighted average cost of production of the DI, weighted average Net Sales Realization and the Non-injurious Price as worked out by the costing division after normating the costing information of the DI.

Indexed data (Rupees Per Piece)

	1999-00	2000-01	2001-02
Landed value of Exports from China	100	89.0059	86.09941
Landed value of exports from other countries	100	91.34454	86.68067
Net sales realization of Domestic Industry	100	109.9409	122.5852
Cost of Production of Domestic Industry	100	102.1129	94.33871
NIP of Domestic Industry			*****
Price Under Cutting (NSR - Landed Price)	100	151.8267	196.1767
Price Under cutting as % of the NSR	100	138.111	159.9276

Price Underselling (NIP - Landed value)		*****
Price Underselling as a % of Landed Value		150 to 170%

For the purpose of price underselling and price undercutting the authority has compared the weighted average values of all transactions as reflected in the table above. The above data shows that the dumped imports from China undercuts as well as undersells the prices of the domestic industry to a very substantial extent. The Authority worked out the landed value of the imports from the subject country by adding 1% landing charges and the applicable basic customs duty to the CIF import price. For the purpose of determination of Net sales realization of the domestic industry rebates, discounts and commissions and Central Excise duty paid has been excluded.

G.3.3 Price suppression and depression effects of the dumped imports:

The graph above shows that the NSR of the domestic industry has shown some improvement during the POI but still remains below the Cost of production and Non Injurious Price. The improvement in the NSR of the domestic industry has been mostly due to change in product mix and product improvement. On the face of dumped imports the domestic industry has increased its production of semi-finished lenses which fetches higher realization whereas finished lenses segment remains depressed. The cost of production also shows gradual improvement and moves towards the normated NIP. However, as stated above the improvement in NSR and COP is mostly due to change in the product mix of the domestic industry, moving towards more of semi-finished and coated lenses, which fetches higher prices. Therefore, the figures above might be showing improvement during the POI but the fact is that the dumped imports have forced the Domestic Industry to depress its prices in order to protect their market share by keeping their prices lower than their cost of production to meet their prices to the low priced dumped imports. The competition from imports is mostly at the lower end un-coated and coated lenses where the prices have remained depressed. The price suppression effects of the dumped imports are also evident from the fact that the dumped imports have prohibited the domestic industry from raising its prices to recover its full cost.

Having examined the volume and price effect of the dumped imports on the domestic industry and its prices through price undercutting, underselling, price suppression and price depression effects and the dumping margin the authority examined the injury parameters to find material injury or threat of injury, if any, to the domestic industry.

G.3.4 Injury Parameters

(i) Output and Capacity utilization

The output level of the domestic industry has remained much below the installed capacity and the capacity utilization is low. In fact one of the major producers i.e., M/s Indian Ophthalmic is operating only half a shift per day in order to avoid accumulation of inventory. Inventory level of M/s Techtran on its domestic sales entitlement and IOML is also very high. Inventory level of M/s Techtran at the end of 2001-02 was ***** against ***** at the end of 2000-01. The improvement in capacity utilization is primarily on account of restarting of the SRF unit by its new owners i.e., M/s Indian Ophthalmic Ltd. in spite of accumulation of losses in an attempt to establish themselves in the Indian market.

(ii) Market share and Growth of the industry

There is a good demand for the product in the domestic market as is evident from the fact that total demand for the product has grown almost by 200% between 1999-2000 and 2001-02. Though potential for growth exist as plastic lenses continue to replace the age-old glass lens segment, the market share of the domestic industry has fallen during the comparable periods. The growth in demand has been mostly cornered by the imports from China as can be seen from the table in the earlier section. Share of Chinese imports has increased substantially from 12% to 22%. The Domestic Industry is unable to benefit from the Domestic growth rate fully, primarily due to price undercutting and underselling of dumped Chinese lenses. While Chinese imports grew at a rate of 48% from 2000-01 to 2001-02, the Domestic Industry grew at less than half of that rate. There has been no substantial capacity expansion during this period as the profitability remains low.

(iii) Productivity

Productivity of the domestic industry has increased over the period against which the injury is being analyzed. This is also reflected in the COP of the industry. The industry has been trying to reduce the cost and improve productivity of the resources employed through changes in product mix and improvements in production process to meet the challenges of low priced imports.

iv) Profits, and Actual and Potential Effects on the cash flow

The domestic units have been suffering heavy cash loss as reflected in the balance sheets of the petitioners. One domestic unit set up by SRF incurred heavy losses and could not operate economically resulting in distress sale to a multi-national subsidiary, Indian Ophthalmic Lenses Manufacturing Co. Pvt. Limited. The reorganized unit is functioning at reduced capacity. Techtran Polylenses Ltd. is struggling to service the debt burden and continues to remain as non-performing asset to the financial institutions. Forbes Gokak Ltd., a TATA subsidiary, had set up a plastic lens

manufacturing facility at Aurangabad and closed after incurring accumulated losses of Rs.700 Million and loss of employment of some 250 person. However, through the process of product improvement and changes in product mix the domestic industry has been able to reduce its losses marginally during the POI but the losses still remain substantial as the Net sales realization remains much below the cost of production due to price suppression and depression effects of the dumped imports from the subject country.

v) Employment and wages

As stated above there has been substantial employment loss due to closure of certain units in the past though the employment loss in respect of the petitioners, during the injury investigation period has been marginal. However, employment and wages are governed by the labour law of the Govt. and can not have a direct impact due to the dumped imports, unless the units become sick or close down. The fact that the units like IOML are operating even for less than a shift per day indicates that there is a potential threat of job loss to the industry.

(vi) Return on investment and ability to raise capital

The industry has a negative return on investment **in** all the three years because of the cash loss on its domestic sales. As a result of which the original promoters of IOML have exited through distress sale of the unit to a multi-national subsidiary, Indian Ophthalmic Lenses Manufacturing Co. Pvt. Limited. The reorganized unit is functioning at reduced capacity. Techtran Polylenses Ltd. is struggling to service the debt burden and continues to remain as non-performing asset to the financial institutions.

v. Investment

There has been no significant fresh investment and capacity addition in this product segment as the prices remain depressed and profitability remains negative.

v. Magnitude of Dumping and factors affecting prices

The prices in the market are not affected by any other factor, other than the demand and quality of the products. The domestic industry has been able to cut the prices in lower end segment and revised the product mix to remain in business in spite of huge loss. The margin of dumping determined has been found to be Substantial and above de minimus.

G.4 Other Known factors and Causal Links

None of the interested parties have brought to the notice of the Authority any other factor that might be causing injury to the domestic industry. However, to the extent possible the following factors have been examined by the Authority to identify and exclude other factors and not to attribute them to the injury caused by dumped imports as per the non-attribution clause of the ADA.

i. Volume and prices of imports from other sources

Volume of imports from other sources has been shown in the table earlier. However, dumped imports from China constitute almost 75% of total imports and therefore, have an overwhelming effect on prices. Imports from other sources are at a marginally higher price compared to Chinese imports and have not contributed significantly to the injury of the domestic industry.

ii. Contraction in demand and / or change in pattern of consumption

The demands of the subject goods have been on the rise and there is no symptom of contraction of demand in the domestic market. Moreover, the preference for plastic lenses over glass lenses is also on the rise and therefore, the consumption pattern is favorable towards the subject product and therefore, cannot be a cause of injury to the domestic industry.

iii. Trade restrictive practices of and competition between the foreign and domestic producers

The subject goods are freely importable and there are no trade restrictive practices in the domestic market. Since the petitioners constitute almost 100% of the capacity in the country, there is no unfair competition amongst them. The volume of trade from other sources is small and widely dispersed compared to Chinese imports and prices are also quite comparable for the same segment. Therefore, there is no unfair competition amongst various foreign producers for Indian market.

iv. Development of technology and export performance

The domestic industry, particularly M/s Techtran and M/s IOML have state-of-the-art, fully automated plants and produce the subject goods of very high quality. Compared to the technology adopted by the Chinese manufacturers these domestic manufacturers have better technology and production process though the raw material used is same. Therefore, technology is not a factor, which could be attributed to the injury. M/s Techtran is an export-oriented unit and has been fulfilling its export obligations. M/s IOML has also been exporting substantial quantities through its foreign principals in

the high-end segment. Therefore, performance in exports segment cannot be attributed to the injury of the domestic industry.

v. Productivity of the Domestic Industry

Total output and capacity utilization of the domestic industry has been low due to depressed prices. However, the fixed cost and overhead expenses of the domestic industry (including SGA expenses, interest payment/finance cost) have been very high which is partially contributing to the injury of industry. But had the industry been able to achieve full capacity utilization, per unit SGA expenses and the fixed cost would have been reduced substantially. However, while normating the cost of production in its Non-injurious price determination the Authority has neutralized the effects of these higher cost elements by adopting an optimum capacity level and therefore, the effects of these inefficiencies have been eliminated and not attributed to the injury caused by the dumped imports.

G.5 Determination of Non-injurious Price of the Domestic Industry

The authority determined a Non-injurious Price for the subject goods after a detailed analysis and scrutiny of information provided by the domestic industry and verified by the authority.

The cost information on all relevant factors concerning the production and the production process were called in the prescribed pro-forma for the period of investigation and for the preceding years. The actual cost of production of the subject goods for the domestic industry has been used to determine optimum cost of production on the basis of Generally Accepted Accounting Principles (GAAP). In the determination of Non-injurious price for the domestic industry, the Authority has examined and analyzed, in detail, all the relevant factors including cost of raw materials used in the production of subject goods, the consumption thereof, the cost of utilities viz. Power, water etc., interest cost, cost of labour, depreciation cost and selling and administrative expenses. The factors such as investments made in Plant and the capacity utilisation have also been examined in the cost analysis. All these factors have been determined with reference to the basic books of accounts and production and financial statements. The Non-injurious price for the domestic industry has been determined by addition to the cost of production of a reasonable profit margin on the capital employed by the petitioner.

Accordingly, weighted average Non-injurious price for the domestic industry has been determined by the Authority as Rs.***** per piece of Plastic Ophthalmic Lenses.

G.6 Magnitude of Injury and injury margin

The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted average landed price of the exports from China has been arrived as follows:

Injury Margin Calculation		Rs Per 1000 Pairs
Weighted Average C & F Price as per DGCIS data		*****
Plus Landing Charge	1%	*****
Assessable Value		*****
Plus basic customs duty	30%	*****
Weighted Average Landed price		20440.00
NIP		*****
Injury Margin		About 150–170%

Injury margin expressed as a % of landed value works out to about 150–170% and is found to be significant.

G.7 Conclusion on injury and causal links

On the basis of the above analysis the authority concludes that

- i. The dumping margin of the subject goods imported from China is substantial and above de minimis;
- ii. The domestic industry has suffered material injury in the form of low capacity utilization, low market share, and cash loss as the prices of the subject goods remains depressed due to price undercutting, price underselling, price suppression and depression effects of the dumped imports from China and the injury margin as calculated by the Authority is also positive;
- iii. No other known-factors have been found to contribute to the injury of the domestic industry, except the higher fixed cost and SGA expenses of the domestic industry. The fixed cost and the SGA expenses have been normated in the NIP and in the constructed the normal value of the exporter. Therefore, the injury caused by this factor has not been attributed to the dumping from China.
- iv. There is a clear causal link between the dumped imports and the injury suffered by the domestic industry and the injuries caused by other factors have not been attributed to the injury suffered by the domestic industry. Thus volume and prices of imports from China at dumped prices have contributed to the material injury of the domestic industry.

H. INDIAN INDUSTRY’S INTEREST & OTHER ISSUES

The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

The Authority notes that the product under consideration is a product which is directly used by the consumers and does not go into further processing to a substantial extent. While recognizing that though the imposition of anti-dumping duties might affect the price levels of the product to the consumers it will have no other effect like competitiveness of the product manufactured by the downstream industry, as no such industry exists in this case. However, there exists a huge intermediary network of the spectacle opticians and there is a good margin between the cost of lenses and the finished spectacles. Therefore, the effect of such a measure will be marginal on the consumers. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers.

Importers of the subject goods i.e. the intermediary traders have argued that the imposition of anti dumping measures would encourage illegal imports of these lenses through couriers and other means due to the very nature and weight of the product itself and this will have a harmful effect on the domestic producers and even to the interest of consumer. However, the authority is of the view that the objective of the antidumping law is to protect the domestic industry against unfair trade and not against illegal trade for which different legal and administrative mechanisms are available.

I. CONCLUSIONS

After examining the issues raised and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings the authority concludes that:

- i. The subject goods originating in or exported from the subject country have been exported to India below its normal value.
- ii. The domestic industry has suffered material injury
- iii. The injury has been caused to the domestic industry both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject countries.

Having concluded the existence of dumping from the subject country is injury to the like product domestic industry and causal link between the dumping and injury as established herein the Authority considers it necessary and recommends anti-dumping duty on imports of subject goods in the form and manner described hereunder and falling under chapter 90, classified under Customs Code 9001.50 Schedule I of the Customs Tariff Act, 1975 as amended in 1995, originating in or exported from the subject country

Having regards to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping so as to remove the injury to the domestic industry accrued on account of dumping. Considering the nature of the product and broad price differentiation the Authority is of the view that imposition of antidumping duty on ad velorem basis on the assessed value of the subject goods upon importation into India would be appropriate measure to neutralize the effects of dumped imports. Accordingly, it is recommended that definitive anti dumping duties on ad velorem basis as indicated in the column 3 of the table below be imposed, from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from subject countries under Chapter 90 Customs sub-heading 9001.50 the Customs Tariff.

Sl.No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	9001.50	Corrective Plastic Ophthalmic Lenses	Excluding Plano Coloured Lenses	People's Republic of China	Any Country	Any Producer	Any Exporter	7.18%
2	9001.50	Corrective Plastic Ophthalmic Lenses	Excluding Plano Coloured Lenses	Any Country	People's Republic of China	Any Producer	Any Exporter	7.18%

Subject to the above, the Authority confirms the Preliminary Findings dated 8th August 2003.

I.1 An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the relevant provisions of the Act, supra.

I.2 The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act, supra and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party within the time limit stipulated for this purpose.

Abhijit Sengupta
Designated Authority