

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

NEW SHIPPER REIVEW NOTIFICATION

New Delhi, the 27th April 2004

SUBJECT: New Shipper Review of Anti-Dumping duty imposed on imports of Lead Acid Batteries requested by M/s. Yuasa Battery Guangdong Co. Ltd. China PR – Final findings.

No. 14/30/2002-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, the Designated Authority initiated New Shipper Review of anti-dumping duty imposed on Lead Acid Batteries produced by M/s. Yuasa Battery Guangdong Company Ltd. China PR, and exported by M/s. Yuasa Corporation, Japan prescribed under Rule 22 of the rules supra, vide notification No. 14/30/2002-DGAD, dated the 27th August 2002.

A. PROCEDURE:

Preliminary scrutiny of the application filed by the petitioners revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.

2. This New Shipper Review was initiated vide notification No. 14/30/2002-DGAD, dated the 27th August 2002 in the matter of import of Lead Acid Batteries falling under Chapter 85 of the Customs Tariff Act, 1975 originating in or exported from China PR where the Designated Authority vide its final findings published in the Gazette of India Extraordinary, Part I Section I, dated the 7th December 2001 had come to the conclusion that;

(i) Lead Acid Batteries exported to India from China PR, Korea RP, Japan and Bangladesh is below its normal value during the period of investigation;

(ii) The Indian industry has suffered material injury and is further being threatened with material injury;

(iii) The injury has been caused by the dumped imports from China PR, Korea RP, Japan and Bangladesh;

3. On the basis of the aforesaid findings of the Designated Authority, the Central Government had imposed anti dumping duty vide notification No. 1/2002–Customs dated the 2nd January 2002 published in the Gazette of India.

4. As stated above M/s. Yuasa Battery Guangdong Company Ltd., China PR had requested for a review in terms of Rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping duty on dumped articles and for Determination of Injury) Rules 1995 in respect of exports being made and the Designated Authority vide notification No. 67/1/2000-DGAD dated the 7th December 2001 published in the Gazette of India, Extraordinary, Part I, Section I, had initiated the review on 27th August 2002 and recommended provisional assessment of all exports of Lead Acid Batteries falling under chapter 85 of Gazette schedule to the Customs Tariff Act, 1975 made by M/s. Yuasa Battery Guangdong Company Ltd. China PR, as difference between the amount mentioned in Col. No. 5 and landed value of imports per Kg. of the Lead Acid Batteries till the completion of the review.

5. Further, in exercise of the powers conferred under sub-rule (2) of the Rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping duty on dumped articles and for Determination of Injury) Rules 1995, the Central Government after considering the aforesaid findings of the Designated Authority, and its notification no.1/2002-Customs dated 2nd January 2002 decided that pending the outcome of the said reviews by the Designated Authority, no anti dumping duty shall be levied on exports of Lead Acid Batteries by M/s. Yuasa Battery Guangdong Company Ltd. China PR when imported into India & further provided that Lead Acid Batteries exported by M/s. Yuasa Battery Guangdong Company Ltd. China PR when imported into India shall be subjected to provisional assessment and a guarantee for the amount of duty calculated at the rate of as the difference between the amount mentioned in Col. No. 5 and landed value of imports per Kg. of the Lead Acid Batteries vide notification no.110/2002-Customs.

6. In case of recommendation of anti-dumping duty after completion of the said reviews by the Designated Authority, the importer should be liable to pay the amount of duty imposed on all imports into India of Lead Acid Batteries from M/s. Yuasa Battery Guangdong Company Ltd., China PR from the date of initiation of said review.

7. The Authority received a request to initiate a ‘new Shipper’ review of notification no 67/1/2000 dated 7th December, 2001, pursuant to the Rule22 of Anti-dumping Rules, from the Chinese producer M/s. Yuasa Battery Guangdong Company Ltd.,

China PR (hereinafter referred to as ‘the company concerned’). This company claimed that it is not related to any of the exporting producers in China PR subject to the anti dumping measures in force with regard to the product concerned. Furthermore, it claimed that it has not exported the product concerned during the original period of investigation. The Authority prima-facie examined the evidence submitted by the Chinese producer concerned and considered sufficient to justify the initiation of a review in accordance with the provisions of the Rule 22 of Anti-dumping Rules.

8. The product covered by the current review is the same as in the original investigation, i.e. ‘*lead acid batteries*’.

9. The authority sent an exporters questionnaire and also an additional questionnaire concerning their claim for Market Economy Treatment. The exporter filed the questionnaire within the extended time period. The authority sought and verified all information it deemed necessary for the purpose of determination of dumping and carried out a verification visit at the premises of the exporting producer concerned,

10. As no request for a review of the findings on injury was made in this investigation, the review is limited to determination of dumping only.

11. The investigation of dumping covered the period from 1st September 2002 to 28th February 2003.

12. The authority officially intimated the authorities of the exporting country of the initiation of the New Shipper Review and gave opportunity to all the interested parties directly concerned to make their views known in writing within 40 days from the expiry of the POI (i.e., 1st September 2002 to 28th February 2003). Subsequently the Authority also provided opportunity to all interested parties to present their views orally, in a public hearing held 27th August 2003. All the interested parties presenting their views were requested to file written submissions of the views expressed, which were filed by them.

13. The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.

14. The Authority conducted on spot verification of the data furnished by M/s. Yuasa Battery Guangdong Company Ltd., China PR.

15. In accordance with Rule 16 of the anti dumping Rules supra, the essential facts/basis considered for these findings were disclosed on 9/12/2003 and on 3/3/2004

to known interested parties and comments received on the same have also been considered in these findings;

16. **** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

B. Product Under Consideration:-

17. The Authority has decided to continue with the description of product under consideration as Lead Acid Battery as determined in the original case. There is no argument on the product under consideration and like article by any of the interested parties. The Authority notes that the lead acid batteries produced by the petitioners are 'like articles' to lead acid batteries being imported from the subject country within the meaning of the Rules.

18. In view of the foregoing the Authority holds that product under consideration in the present investigations is "industrial lead acid batteries", classifiable under Customs Tariff 8507 *within Chapter 85 of the Custom Tariff Act. The batteries are described as electric accumulators under the Customs Tariff Act and are classified under customs sub heading Nos. 8507.10 and 8507.20 of the Customs Tariff Act. The Custom classification is indicative only and not binding on the scope of investigation*".

Views of Domestic Industries

19. The views of the domestic industry after the initiation of the New Shipper Review till the comments on disclosure statement have been summarized and reproduced in para 20 to 36.

20. The Companies seeking new shipper review and the companies who have exported the product under consideration are separate legal entities from different countries, both of them (countries) having their own normal value. The producer has claimed that it has not exported any material in the period originally investigated. However, the producer has not exported any material even in the present POI. The exporter being a separate legal entity in different country which has its own normal value and which is attracting anti dumping duty. Exports effected by the New Shipper can not be claimed as exports of the producer.

21. Normal value for exporter (trader) from Japan and for the producer from China PR is different, as the two are in different countries and both countries having their own normal value. In fact, the exporter from Japan is already attracting residual duty by virtue of the anti dumping investigation against China PR, Korea RP, Japan and Bangladesh.

22. The trader having exported the product under consideration, has neither joined in the present petition, nor has certified that it has not exported the material in the past POI, nor has it certified that it is not related to any producer/exporter who exported in the earlier POI. In fact, the trader had exported the material in the past POI and is related to a producer who had exported the material in the past POI.

23. Rule 22 has used the words producer and exporter at the same time. It can not be argued, therefore, that the word producer and exporter imply the same meaning. Clearly, the Rules have distinguished between the two words. This is further established by the anti dumping investigations relating to CFL, wherein the Designated Authority has recommended anti dumping duty on exports from Hong Kong in spite of clear admission of the petitioner itself that Hong Kong did not produce the subject goods. At the same time, Designated Authority has recommended separate anti dumping duty and dumping margin in respect of traders. Such being the case, it can not be claimed by the domestic industry that the trader and producer should be seen together.

24. Assuming that the word producer and exporter are required to be seen together and exports made by the exporter must be seen as exports made by the producer, it follows that producer can not claim status of new shipper, as in such an event, the producer can not satisfy that it was not related to any producer/exporter who exported the material in the previous POI.

25. While the petition was filed by producer, the questionnaire response has been filed by a trader from a different country and the petitioning producer. Thus, without any application, the trader has introduced itself at the stage of questionnaire response, that too, without any letter, authorization, and certification. In fact, it can be said that there is no legal authority for the Designated Authority to consider the information provided by the trader.

26. Such being the case, the whole investigations being conducted with regard to the two petitioning exporter are required to be terminated on the grounds,

- a. the petitioning producer do not satisfy the requirements under Rule 22;
- b. petitioning producers can not claim to have their own export price in respect of exports made in the current POI;
- c. normal value can not be determined with reference to the country of origin when the country of exports has its own normal value;
- d. Company who has exported the material has not filed any petition nor has given necessary statutory declarations as required under the Rules.

27. The exporter has taken a significant time to file its questionnaire response.

28. The period considered for the present investigation is prospective whereas in the various cases initiated earlier, the POI was fixed as a past POI for fresh investigations under Rule 5 and for Review under Rule 23. The propriety of a prospective POI is not understood by the Indian producers particularly when a future investigation period is fixed with a view to determine dumping margin in respect of such future exports. In case of prospective POI, there are greater possibilities with regard to the fact that the exporter can export the material at doctored prices to get lower dumping margin and the quantity exported may not be representative. Thus, the authority must ensure that there must be certain volumes which the exporter must have exported before dumping margin can be assessed in relation to such exports and it need to be ensured in some justifiable and equitable manner that the export price is representative. Before accepting the export price, the factors such as (a) association/existence of some compensatory arrangements; (b) resale price of the product; (c) the price at which the importer purchased like article from other sources; (d) any affiliation between the seller and buyer-legal or contractual, need be examined.

29. The exporter must satisfy on the basis of information and evidence that they satisfy the market economy treatment (MET) and the domestic industry had not received even a single document/information/evidence to justify and support their claim on this account. It was a great discovery to Indian producers at the time of public hearing that the exporter had filed some confidential documents in this regard. Non-confidential version filed by the exporter is grossly inadequate and insufficient.

30. It is the condition in a new shipper review that the exporter must not be related to an exporter/producer who has been found to have dumped the goods.

31. Once again the domestic industry in its comment on disclosure stated to terminate the investigation on the grounds of failure of the petitioner to disclose the information appropriately in the non-confidential manner. They have also stated that the normal value is required to be assessed on lines of the Non Market Economy principle and further supplemented that even they have been entitled for Market Economy Treatment, normal value should have been assessed on the basis of other responding petitioner under investigation.

32. The normal value is required to be determined in country of origin and the goods are being merely transshipped from the country of export, then the exporter and producer must be seen together for the purpose of New Shipper Review requirements. In case the petitioner claims that exporter and producer are in different countries and are separate legal entities, then the normal value is required to be determined in the country of export.

33. The trader having exported the product under consideration, has neither joined in the present petition, nor has certified that it has not exported the material in the past POI, nor has it certified that it is not related to any producer/exporter who exported in the earlier POI. In fact, the trader had exported the material in the past POI and is related to the producer who had exported the material in the past POI.

34. Petitioner has resorted to excessive confidentiality of the information. Such is the extent of confidentiality resorted by the petitioner that the entire submissions with regard to market economy treatment are based on confidential submissions. Such being the case, the present investigations are proceeding without providing adequate opportunity to the Indian producers and with complete disregard to the principles of natural justice.

35. With regard to scope of the product under consideration, the disclosure statement states as under:-

"In view of the foregoing the Authority holds that product under consideration in the present investigation is "industrial lead acid batteries", classifiable under Customs Tariff 8507 within Chapter 85 of the Custom Tariff Act. The batteries are described as electric accumulators under the Customs Tariff Act and are classified under Customs sub heading Nos. 8507.10 and 8507.20 of the Customs Tariff Act. The Custom classification is indicative only and not binding on the scope of investigation".

36. It appears that the above reference is only with regard to types which have been exported from India and for which dumping margin has been worked out. As regards scope of the duty, as held by the Designated Authority in the first two investigations, the scope of duty remains "all types of lead acid batteries".

Views of Exporter

37. The views of the domestic industry after the initiation of the New Shipper Review till the comments on disclosure statement have been summarized and reproduced in para 38 to 48.

38. M/s. Yuasa Battery Guangdong Company Ltd., China PR was asked to file their replies to the questionnaire on the subject. In their replies, it is stated that the company has not made any exports to India prior to the period of investigation.

39. The Indian producers do not have any locus standing to raise any objection as all the submissions were made by the exporter after seeking proper extension of time from the Authority. This is, notwithstanding the fact that no prejudice can be caused to the Indian producers as the delay in fixing the individual dumping margin can only

affect the interests of the exporter. The representative of the Indian producers has not considered the fact that extensions were taken in view of the SARS problem which prohibited people to travel in that part of China PR.

40. The representative of the Indian producers has indicated that they have gone through the earlier cases initiated by the Designated Authority and observe that the POI was earlier being fixed for the past period. The Indian producers have not indicated even one such case where the POI is for the past period only. In view of this, the argument is totally unsubstantiated and cannot be commented upon appropriately. The so-called representative of the Indian producers has also not drawn the attention of the Authority to any provision of law or even the WTO provision which contemplates or mandates only a past period in case of a New Shipper Review. The reference to Rule 5 and Rule 23 is irrelevant, as these Rules apply to a fresh investigation or a mid-term review. It may be appreciated that the New Shipper Review is carried out with a limited purpose of determining individual dumping margin for the exporter who fulfills the conditions prescribed under Article 9 (5) of the WTO Agreement or under Rule 22 of the Anti dumping Rules. In fact, this practice is followed by a large number of countries including the US, EC, Argentina, Venezuela and Brazil. Apprehensions and conjectures made by the Indian producers are of no consequence in a proceeding that is wholly in accordance with law. The suggestion by the Indian producers are wholly extraneous to the anti dumping Rules. The Hon'ble Designated Authority is bound by the provisions of the Customs Tariff Act being a creature of the same statute and has to examine the case within the provisions of Rule 22 of the Anti dumping Rules.

41. The new shipper has claimed market economy status and has submitted extensive evidence to support its case. The laws are available in public domain whereas information relating to purchase of raw material, costs, sales prices etc. are by their very nature confidential. The exporters also mentioned that they would also like to place on record that the domestic industry in the original investigation refrained from providing crucial information to other interested parties without even claiming confidentiality on the same despite repeated requests and reminders by the cooperating exporters. The domestic industry failed to provide even the details of the domestic production to support their claim of having the standing to file the petition. The Indian producers cannot claim different standards to be followed in the very same case.

42. With regard to the claim that the dumping margin for Yuasa is very substantial, it has been contended that the representative of the Indian producers has given some imaginary figures about the export price of Yuasa to India and has vaguely alleged substantial dumping by them. The claim that they are selling below their associated direct costs is also baseless which can be verified by the Designated Authority.

43. On the issue of the need to issue preliminary findings, it has been submitted that it is a settled principle of anti dumping law that the scope of the investigations is restricted to determination of the individual dumping margins for the applicant exporters. The demand for preliminary findings is not only against the scheme of anti dumping Rules but only an attempt by the Indian producers to delay the legitimate claim of the exporters.

44. The attention of the Hon'ble Designated Authority has also been drawn on the ruling of the Hon'ble Mumbai High Court in the case of H & R Johnson Vs. Ministry of Finance and Others. This decision of the Hon'ble High Court is directly applicable to the facts of the case and the judgment of this case will be applicable to this New Shipper Review for determination of individual dumping margin.

45. On the issue of relationship of the New Shipper with the exporter who has been attracting anti dumping duty in the earlier investigations, it is submitted by the exporter that the New Shipper is required to demonstrate whether he is related to any exporter/producer in the exporting country in question. In this regard representative of the exporter has cited some of the decisions of the European Commission.

46. In the council regulation (EC) No. 496/2002 of 18th March 2002, it is inter-alia stated "*further more, according to documentary evidence submitted the company was able to satisfactorily demonstrate that it did not have any links direct or indirect, with any of the Indian exporting producer subject to the anti dumping measures in force with regard to the product concern.* The original Council Regulation No. 2604/2000 of 27th November 2000 was against various countries including India but the issue of relationship has been examined only in the context of exporting country in question in.

47. In the Council Regulation No. 2570/2000, of 20th November 2000, it was stated "*further more, according to documentary evidence submitted the company was able to satisfactorily demonstrate that it did not have any links direct or indirect, with any of the Chinese exporting producer subject to the anti dumping measures in force with regard to the product.*" In the original Council Regulation No. 393/98 of 16th February 1998 states that original investigation was against various countries including China but the issue of relationship has been examined only in context of exporting country in question.

48. The exporter has cited some more findings of European Commission wherein it is stated that the New Shipper investigation was initiated provided the company was able to satisfactorily demonstrate that it did not have any links, direct or indirect with any of the exporters/producers in the country of new Shipper subject to anti dumping measures in force with regard to the product concern. It is further stated that the EC

examined the relationship of New Shipper only with the exporter or producers from the country in question but not with the producers or exporters from subject countries to the original or any other anti dumping investigations.

C. EXAMINATION BY AUTHORITY;

49. In the instant case, the Authority had extended the time for the submission of the Exporters Questionnaire response on sufficient cause being shown by the exporter. The authority notes that the exporter had filed all the responses within the extended time. The contention of the Domestic Industry regarding the undue delay by the exporter in submitting the response does not have any merit.

50. The Designated Authority initiated new shipper review keeping in view the provisions of the anti dumping rules, which are reproduced below:

"Rule 22: (1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti dumping duties on the product.

(2) The Central Government shall not levy anti dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee form the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of initiation of the review".

51. Rule 22 clearly specifies the circumstances under which a new shipper investigation can be carried out for the purpose of calculating individual dumping margin. Individual dumping margin in respect of an exporter from the exporting country in question can be determined provided the two conditions are satisfied. These are: (a) that the exporter has not exported during the period of investigation and, (b) that exporter or producer shows that they are not related to any of the exporter or producer in the exporting country who are subject to the anti dumping duties on the product. The Designated Authority in the present investigation finds that the exporter has not exported product under consideration during the period of investigation.

Individual dumping margin in respect of an exporter from the exporting country in question can be determined provided the above conditions are satisfied. The Designated Authority in the present case prima-facie on the basis of declarations of the exporter initiated the New Shipper Review

52. As regards the validity of considering a prospective period of investigation, it would be pertinent to refer to the first proviso to Rule 22(2). This proviso confers the power on the Central Government to provisionally assess the imports in the context of a new exporter if the Designated Authority so recommends. Further, it is important to note that there is nothing in Rule 22 or any other part of the anti dumping rules to suggest that the period of investigation as envisaged under Rule 22 cannot be for a prospective period. It has also been brought to the notice of the Authority that the laws and practice of other members also support the view that there is no bar on a prospective period of investigation in case of New Shippers. Considering the above, the Authority notes that there is no infirmity in its taking the period of investigation prospective to the initiation notification. The Authority also notes that the contention of the domestic industry regarding the reference to Rule 5 and Rule 23 are irrelevant as those Rules apply to a fresh investigation or other reviews.

53. The domestic industry has also expressed its apprehension that by taking a prospective period of investigation the exporter would be in a position to manipulate their prices resulting in lower dumping margins. The Authority finds it difficult to accept this proposition, which is based on presumptions and apprehensions. The Authority has gone into the details of the costing, prices, sales pattern, invoices etc of the exporter to arrive at the present findings which were verified during the on spot verification.

54. The Authority further examined the provisions of New Shipper Review contained in Article 9.5 of Anti Dumping Agreement and Rule 22 of the Anti Dumping Rules and notes that the relationship test has to be carried out under Article 9.5 of Agreement between exporters and the producers in the exporting country and not between exporters and producers in different exporting countries whose product is subjected to anti dumping duty. The Authority, therefore, is of the view that it may not be appropriate to exclude Yuasa, China from New Shipper Review on the ground that it is related to Yuasa, Japan as new shippers relationship is to be examined in the same country, i.e., China PR.

55. As regards, the judgment of the Hon'ble Bombay High Court in the matter of M/s. H & R Jonhson Vs. Ministry of Finance and Others, the Hon'ble Court has given guidelines on different parameters under Rule 22 regarding the declaration of the exporter, if the producers and exporters are not from the same country. In the instant case the issue has been raised regarding the relationship of the New Shipper with the

exporter in a different country who is attracting anti dumping duty. The Authority notes that the judgment of Hon'ble High Court is not relevant in this present case. The Authority is of the view that the relationship test has to be carried out under Article 9.5 of Agreement between exporters and the producers in the exporting country and not between exporters and producers in different exporting countries whose product is subjected to anti dumping duty.

56. (i) The Authority has examined the determination of normal value after a through examination and analysis of exporters information/data provided during the course of investigation and further verified and reconciled during the on-spot verification.

(ii) It has also been argued that the vital information kept confidential by the interested parties depriving the opposing interested parties of the right to challenge the information and make the meaningful submissions to the Authority. However, regarding the information being made available to the opposite interested party has been dealt as provision regarding the confidentiality. The Rule 7 of the Anti Dumping Rules provides for submission of information by the interested parties on confidential basis subject to the condition laid down therein. The non-confidential summary of the information submitted on the confidential basis is placed in the public file, which is available for the inspection, by all the interested parties in terms of Rule 6 (7) of the Anti Dumping Rules. In this case non-confidential summary of the confidential submissions made was placed in the public file accessible to the interested parties.

D. Assessment of Normal Value, Export Price and methodology for calculation of Dumping Margin

Views of Domestic Industry

57. The present investigation is required to be conducted in accordance with the amended Rules on NME. The exporter must satisfy on the basis of information/evidence that they satisfy the Market Economy Treatment. The non-confidential version of the exporter is grossly inadequate and insufficient to allow any understanding of the substance of information filed by the exporter. They have further submitted that several decisions of the EC wherein the claim of Market Economy Treatment has been rejected on the ground even if few of the conditions laid down under the rules are not satisfied.

Views of Exporter

58. The exporter in this case has claimed Market Economy status and has submitted extensive evidence in that support. The Laws are available in the public domain

whereas information relating to purchase of raw materials, costs, sales prices etc. by their very nature are confidential. They have produced the details on each and every parameter with supporting document for their claim to treat them as Market Economy and determine the normal value as per the Para 1 to 6 of Annexure I of Anti Dumping Rules.

Examination by the Authority

59. In the instance case, China is proposed to be investigated a non-market economy. The domestic industry in the original investigation has claimed that European Commission and United States have treated China as non-market economy in the past three years. Therefore, determination of normal value in respect of China is to be carried out in accordance with the Rules relating to non-market economies as contained in Para 7 & 8 of Annexure-1 of Rules as amended vide Notification dated 4.1.2002.

60. As communicated to the exporter and to the Embassy of China, the Authority proposed to examine the determination of normal value in the light of Para 7 & 8 of Annexure 1 of anti dumping Rules as amended. The Authority notes that para 7 of Annexure 1 of anti dumping rules, *inter-alia* provides that:

"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin....."

Further Para 8 of Annexure 1 of the Rules Supra (as amended) provides that:

"8 (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph(3)

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country,

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

61. The Authority notes that the exporter has furnished necessary information/ evidence as mentioned in sub Para 3 of the Paragraph 8 of Annexure 1 of anti dumping Rules to enable the Designated Authority to consider the following criteria as to whether

- a. the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values:
- b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts:
- c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
- d. the exchange rate conversions are carried out at the market rate;

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

62. In proceedings involving Non-Market Economy countries the Authority begins with a presumption that all companies within the country are subject to Government control and thus should be assigned a single anti dumping rate unless an exporter can affirmatively demonstrate in absence of government control both in Law and in fact with respects to its sales – both domestic and export. In this review the new shipper M/s. Yuasa Battery Guangdong Company Ltd., China PR has requested for a company specific determination.

63. Whether a company is sufficiently independent in its export activities from government control to be entitled for a separate, company specific rate, the Authority examined the exporting entity in a NME country under test established as per anti dumping rules. The Authority focuses the examination on control over investment, pricing and decision making process at the individual company specific level.

Accordingly the Authority analyzed to determine whether this producer/exporter is independent from government control or not.

64. The Authority considers the following criteria in determining whether an individual company may be granted a separate rate due to prevalence of market economy,

- i. an absence of restrictive stipulations associated with an individual exporters business and export licenses
- ii. any legislative enactments decentralizing control of companies, and
- iii. any other formal measures by the Government decentralizing control of companies,

65. M/s. Yuasa Battery Guangdong Company Ltd., China PR has placed number of documents to demonstrate absence of State interference and control i.e., company law, labour law, joint venture law and accounting rules or law. The Authority examined,

- i. Whether a respondent is subject to government control in their sales and procurement activities,
- ii. whether the export price is set by or subject to the approval of a governmental authority,
- iii. whether the respondent has authority to negotiate and signed contracts and other agreements,
- iv. whether the respondent has autonomy from the government in making decisions regarding the selection of its management and
- v. finally whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses
- vi. The company was able to show to satisfaction of the Authority that management and control of the factory regarding production, marketing and pricing were in the hands of the management of the company, which were significantly independent from the state intervention.

66. According to the New Shipper, it is a limited company under the Law of People's Republic of China on foreign capital enterprises and there has been no change in its legal form since its inception. They have further claimed that there is no government participation in finalizing by export/domestic price. The management is free to finalize the sales contracts. There is no binding on the Authority/management to notify any government authorities regarding the selection in their management. The company is free to decide regarding its use of revenue without taking permission or intimating the government. The Authority further notes that the analysis, of the details furnished by the exporter, does not reveal any existence of government control.

67. During the course of verification the data furnished were verified and reconciled with their accounts and as regards the existence of state interference. The Authority observed that Govt. of China is not influencing in taking decision relating to inputs, selling price/costs etc. as envisaged in paragraph 8(3)(a) of Annexure I of anti dumping rules.

68. The Authority on the basis of examination of the pricing and cost of raw material, is of the view that no production cost and financial situation of the company was found to reflect any distortion as verified from their books of accounts, articles of association etc.

69. The bankruptcy and property laws were also discussed with the management and found that the companies in China are free to acquire property, however in the government specified area the law of the territory is regulated on the industries. The bankruptcy law is applicable to a firm when a firm become bankrupt and the details regarding the settlement of the dues is governed by law maintained under bankruptcy law.

70. The exchange rate conversions were also verified from their books of accounts and the export transactions. The Authority notes that all conversions have taken place on the existing rate, which is more or less stable.

71. The authority also notes that the company is free to purchase, raw and semi process materials, fuels and other materials either in China or source it from other parts of the World. Presently the company is buying major raw materials in China itself. It is further seen that they have procured the lead at different rates from different sources and it has been bought from different suppliers at the internationally prevailing prices.

72. All the employment decisions are taken by the company and employees are hired through newspaper advertisement, private agencies etc. There is a full freedom to the company with regard to its mode of hiring employees and the average salary paid to the different classes of workers is given along with the performance incentive. The Chinese Government does not provide any benefit like housing, medical care etc. but the company provides accommodation to all and the cost of the same reflected in the books of accounts as an expense.

73. There is no state involvement in price/quantities to be sold in the domestic/export market and all such decisions are taken on purely commercial basis. There is no price list either for domestic or export sales as it varies from customer to customer and reflected on the basis of demand and supply conditions of the market.

74. The books and records of the company are maintained in mandarin and figures are denoted in Renmin (RMB). The accounting rules and the principle applicable to the foreign joint venture are as per the law. The accounting standards and rules are prescribed by Ministry of Finance of People's Republic of China.

75. All assets of company have been obtained from the open market on purely commercial basis. No assets were provided by the state or any third company free or on other than commercial principles. All assets other than the land are owned by the company whereas land has been obtained on a long term lease of 15 years. The company has fully been financed by the shareholders. There is no subsidy scheme either for loans or electricity supply of which the benefit is available to the company.

76. There is no restriction on the company with regard to foreign exchange transactions. There is one single exchange rate for purchase of inputs, conversion of the proceeds of export sales and repatriation of profits. The profit is distributed among the shareholders in accordance with the accounting regulations and there is no restriction on the distribution/repatriation of the profits for the capital invested.

77. The Authority in view of the information provided by the exporter on the issue of market economy with evidence in the light of Custom Notification No. 28/2001 dated 31st May 2001 and No. 1/2002 dated 4th January 2002 on the anti dumping in respect of issue of Market Economy under anti dumping Rules Supra and the fact that the cost of production of the subject goods as per market forces has been made available by the exporter hence the Authority considers to treat this individual exporter operating in the market economy. During the course of meeting with the officials of MOFCOM (Ministry of Commerce of the People's Republic of China, it was conveyed that there is no control of state in the matter of its operation and management which was actually verified with the records available with the exporter. The company was able to show to satisfaction of the Authority that management and control of the factory regarding production, marketing and pricing were in the hands of the management, which were significantly independent from the state intervention. In the light of above examination it was considered to grant Market Economy treatment to the new shipper and determine normal value in line with para 1 to 6 of Annexure 1 to the Anti Dumping Rule.

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

- i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the

particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –

- a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

NORMAL VALUE:

79. The Authority sent exporter questionnaire to **M/s. Yuasa Battery Guangdong Company Ltd**, for the purpose of determination of normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. In response to the questionnaire the new shipper submitted the information in exporter questionnaire. The company sells all the comparable models of the subject goods in the domestic market which has been exported to India also. They have exported three models of lead acid industrial batteries and the detailed information regarding the domestic sales in their home market have been provided. The normal value as per Section 9A (1) (c) is comparable price in the ordinary course of trade for the like article which is meant for consumption in the exporting country. They have also provided the cost of production of all three models which have been exported to India during the period of investigation. The transaction wise domestic sales were verified from their records during the course of on-spot verification. The element wise cost of production was verified and reconciled from the books of account with the records available with the company. An analysis of the profit and loss account of the company shows that the company has made an overall profit on the sale of subject goods during the period of investigation and calendar year and it was found that ex-factory domestic sales is above the cost of production and forms the basis of determination of normal value. The domestic sales price is the basis for determination of normal value as it is found in the ordinary course of trade.

80. The company has exported three models of Industrial batteries to India during the period of investigation. The battery wise ex-factory normal value is referenced as ****, ****, and ****US\$ per battery of the Industrial Lead Acid Batteries.

EXPORT PRICE:

81. In response to the questionnaire, the exporter has furnished invoice-wise/ model-wise details of exports made to India during the period of investigation in Appendix-2.

The exporter has also furnished sample copies of invoices in support of the same. The exporter has exported maintenance free industrial lead acid batteries to India during the period of investigation. Adjustment as claimed by the exporter in Appendix-4 with regard to inland freight, storage, handling, insurance, shipping charges etc., have been considered after duly verified and allowed to arrive at the ex-factory export price to India. The exports to India by M/s Yuasa, China PR are carried out through M/s. Yuasa Corporation, Japan who finally exported the goods to India.

82. All adjustments have been calculated backwardly to arrive at the ex-factory export price. In this regard the invoices pertaining to M/s. Yuasa Battery China to M/s. Yuasa Corporation, Japan and finally M/s. Yuasa Corporation, Japan to Indian customers were verified and reconciled along with the adjustments claimed by them. During the course of investigation it is found that the goods were shipped from the Chinese port only whereas the invoices were raised from M/s. Yuasa, China to M/s. Yuasa Corporation, Japan and M/s. Yuasa Corporation, Japan to Indian customers. The details regarding their adjustments were verified and reconciled from the records available with the company.

83. The battery wise export price comes to US \$****, ****, **** per battery of industrial lead acid battery exported to India by the company during the period of investigation.

DUMPING MARGIN:

84. As there is a wide variety of models and types of batteries, these need to be brought into a common denominator for the purpose of calculation and comparison. As mentioned above, there is a direct co-relation between power, lead content and weight of the battery, which also gets reflected in terms of value or price. Further, the direct co-relation between the lead content and weight of the battery and its associated costs and prices is also quite significant. The Authority, therefore, considers denoting the normal value as well as the export price in terms of weight of the batteries for the purpose of their comparison and arriving at a dumping margin. The weight has been considered based on the technical details furnished by the exporter and verified during the course of investigation. Considering the normal value and export price as detailed above, dumping margin for **industrial lead acid battery** has been determined as de-minimis.

E. Final Findings of the Review

85. After considering the foregoing the Authority concludes that

- i. Lead Acid Batteries exported to India produced by M/s. Yuasa Battery Guangdong Company Ltd, China PR and exported from M/s. Yuasa Corporation, Japan is above its normal value during the period of investigation and dumping margin is de-minimis,
- ii. The Authority, therefore, does not recommend anti dumping measures on imports of lead acid batteries falling under Custom Code 8507 originating in or exported by M/s. Yuasa Battery Guangdong Company Ltd, China PR and M/s. Yuasa Corporation, Japan if produced by M/s. Yuasa Battery Guangdong Co., Ltd., China PR **as the dumping margin is de-minimis.**
- iii. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of customs except duties levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.
- iv. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Act, supra.

(ABHIJIT SENGUPTA)
DESIGNATED AUTHORITY