

MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING AND
ALLIED DUTIES
UDYOG BHAWAN, NEW DELHI

FINAL FINDINGS

New Delhi, the 23rd October, 2001

Sub: REVIEW OF ANTI-DUMPING DUTIES CONCERNING IMPORTS OF HARD FERRITE RING MAGNETS (HFRM) FROM PR CHINA - FINAL FINDINGS

No. 65/1/2000-DGAD – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE

1. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received from M/s DGP Hinoday Industries Ltd., Pune and M/s G.P. Electronics Limited, Nashik, (also referred to as petitioner in this notification), a request for review of Anti-Dumping duty imposed on imports of Hard Ferrite Ring Magnets (HFRM) (hereinafter referred to as subject goods) originating in or exported from PR China (hereinafter referred to as subject country).
- ii. The Authority on the basis of sufficient evidence submitted by the petitioner, decided to initiate review investigations against imports of HFRM from PR China. The Authority issued a public notice dated 23.12.2000 published in the Gazette of India, Extraordinary, initiating review investigations concerning imports of HFRM originating in or exported from PR China.
- iii. The investigations concluded by the Authority vide notification dated 12.7.1999 have been referred to as "the previous investigations" in this notification.
- iv. Request was made to the Central Board of Excise and Customs (CBEC) to furnish details of imports of HFRM in India during the period of investigation considered in the review investigation

- v. The Authority notified the Embassy of the subject country in New Delhi before proceeding to initiate the review investigation in accordance with sub-Rule 5(5) of the Rule.
- vi. The Authority held a public hearing on 2.7.2001. The parties attending the oral public hearing were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were requested to offer their rebuttals./rejoinder.
- vii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained and kept open for inspection by any interested party.
- viii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to all known interested parties on 16.9.2001 and comments received on the same have also been duly considered in these findings to the extent they are relevant and have bearing on the case.
- ix. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by petitioner and were available earlier during the previous investigation) of HFRM in India and advised them to make their views known in writing within forty days from the date of issue of the letter.
- x. The Authority provided a copy of the petition to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra. A copy of the petition was also provided to other interested parties, wherever requested.
- xi. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers from the subject country in accordance with the Rule 6(4):
 1. M/s China Ningbo International Cooperation Group Company Ltd., China
 2. M/s Zhejian Dongyang Magnetic Enterprise Group Company Industry Zone,
 3. M/s China National Electronics Import & Export Sanghai Company, China
 4. M/s China National Electronics Import & Export SHENZHEN Company
 5. M/s China Greatwall, China
 6. M/s O.K. Gidumal & Watumullt., Hong Kong
 7. M/s Dongyong Magnetic Enterprise Group Corporation, China
 8. Mr Jawahar, 37-41, Shan Mei Street, Flotan Shatin, Hong Kong

The response to the questionnaire/notification was filed by none of the exporters/producers However, China Chamber of Commerce for import and export of machinery and electronics product have responded to the Disclosure Statement dated 14.9.2001 and cost of production provided by M/s China National Imports and Exports Ziejiang company.

- i. The Embassy of the subject country in New Delhi were informed about the initiation of the review investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to the Embassy, alongwith a list of known exporters/producers.
- ii. A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):
 1. Mr Naresh Uppal, Delhi
 2. M/s Prince Electronics, Delhi
 3. M/s G.M. Ovefrseas, New Delhi
 4. M/s S.K. Trading, Delhi
 5. M/s Rama Krishna Sales Corporation, Delhi
 6. M/s JRC Industries, Mumbai
 7. M/s Ankit Electronics, Delhi
 8. M/s Goodwill Electronics
 9. M/s Gaurav Electronics, Delhi
 10. M/s Rollet Industries, Delhi
 11. M/s S. Mehta & Company, Mumbai
 12. M/s Kalwar Exports, Mumbai
 13. M/s Salora International, New Delhi
 14. M/s Ahuja Radio, New Delhi
 15. M/s Karismatic Sounds, New Delhi
 16. M/s Magnet User's Association, New Delhi

Response to the questionnaire/notification was filed by the following Importers/user Associations:

1. M/s Salora International(through Strategic Law Group)
 2. M/s Ahuja Radio (through Strategic Law Group)
 3. M/s Karismatic Sounds(through Strategic Law Group)
 4. M/s Magnet User's Association
 5. M/s JRC Industries, Mumbai
- i. Information regarding injury and imports of the subject goods was sought from the domestic producers Viz M/s_DGP Hinoday Industries Ltd. And M/s G.P Electronics Limited
 - ii. Cost investigation was also conducted for domestic industry so as to work out optimum cost of production and cost to make and sell HFRM series in India on the basis of Generally Accepted Accounting Principles (GAAP).

- iii. ****in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
- iv. Review investigation was carried out for the period 1.4.1999 to 30.6.2000 i.e. the period of investigation (POI) for the review.

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY

The views expressed by the various interested parties have been stated in the disclosure statement. The views raised in response to the disclosure statement are discussed in the relevant paras herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paras herein below.

A) Product under consideration and Like Article

1. M/s DGP Hinoday Industries Ltd., Pune and M/s G.P. Electronics Limited, Nashik have made the following submissions:-

- i. The production under consideration is Hard Ferrite Ring Magnets, which finds its application in loudspeakers/ PA System/Telecommunications and various other applications.
- ii. Strontium grade HFRM is more expensive and used for higher applications and its usage in the Indian market is less than 1%. Within the barium grades, the cost difference to an extent of 30% to 40% as indicated by the importers is ridiculous. We have excluded Hard Ferrite products like magnets and motor magnets.
- iii. The constructed cost given by the domestic industry is of Barium Ring magnets and the strontium magnet cost is categorically excluded.

2. M/s Strategic Law Group representing (M/s Salora International, M/s Ahuja Radio and M/s Karismatic Sounds) and the Magnet User's Association have made the following submissions:

- i. HFRM have several uses and are of different qualities. They range from Y8 to Y35 grade and have widely different costing. The Petitioners seek imposition of anti-dumping duties on both Barium and Strontium for which the costs are fundamentally different. In addition to these, hard ferrite magnets came in shapes other than rings also, which do not fall within the scope of the

investigation. Difference between the cost between Y8 and Y35 is as high as 35-45%. Normally, HFRM produced by strontium ferrite is more expensive than that produced by barium ferrite by about 20-25%.

- ii. In fact, in HFRM-1(original investigation), the Hon'ble Designated authority specifically did not include Strontium HFRM. Thus, it is not open now to widen the scope of the product under consideration in this review Petition.
- iii. A review by definition is more limited than a new investigation and must be restricted to only those parameters, which have changed from the initial period. In original investigation(HFRM-1) the DA had accepted that Chinese producers have 25% cost advantage, which the petitioners had themselves conceded. The methodology adopted by DA was not challenged by the domestic industry before the Hon'ble CEGAT and therefore DA at this stage can only examine the change in numbers and would be logically restricted in changing the basis

In response to the Disclosure, M/s Strategic Law Group(SLG) has made the following submissions.

- a. It is important to note that the petitioners have themselves in their application have given the technical specifications corresponding to the Y-25 grade. This would unambiguously imply that the scope for the product under consideration for review purposes is restricted to the Y-25. The review, therefore, should be restricted only to the Y-25 grade and cannot be extended to any other grade.
- b. The Petitioners sought to include Strontium grade HFRM in the review. However, it seems that now they are withdrawing the case for alleged dumping against Strontium grade HFRM.
- c. The statement by domestic industry regarding the price difference between the various grades of magnets is ridiculous. It may be observed that the price difference in the various barium grades is to the extent of 30 to 40% has been backed up with data of Y -25 magnets imported by M/s Salora and Ahuja Radios. Import data of Y-20 grade imported by M/s Karishmatic Sounds was also provided showing a price difference 15 to 20% between the Y-25 and the Y-20 Grade. It is apparent that the Y-8 and Y-15 grades would be significantly cheaper than the Y-25 grade and Y-30, Y -35 grades would be significantly more expensive than the Y-25 grade. Thus, the difference between the Y-35 and Y-8 grades would be approximately 40%.
- d. The assertion by the Petitioners that Strontium grade magnets comprised of less than 1% of the Indian market is completely misleading, rather its usage contributes 15% to 20% of the market If the Hon'ble Designated Authority has taken into consideration only 1% for the purpose of calculation of NIP, it would give a totally wrong and highly inflated NIP. We would request the Designated Authority to kindly ensure that the attempt by the domestic industry to increase

its cost for the purpose of calculation of NIP does not succeed. We request to let us have the non-confidential version of the disclosure statement dealing with NIP calculations so as to offer our comments on the same.

- e. The Consuming industry while noting that the product under consideration remains unchanged in the Review wishes to point out that the magnets other than Ring magnets of only Y-25 grade should be excluded from the purview of the Anti dumping duty.
- f. With reference to reduction of all sizes to a common denominator for comparison purposes, the consuming industry requests that the Hon'ble Designated Authority consider that the cost differential based on grades is not amenable to this, and each grade should be treated differently. Notwithstanding the fact that there is no co-operation from the exporters, the data produced by the importers should suffice in this analysis. The exporters from China have submitted to Hon'ble Designated Authority the production cost data of Y-25 grade magnets which should also be taken into account as a part of the best information available, and data should be considered for construction of cost from China and can be got verified if required.

3. EXAMINATION BY AUTHORITY

The Authority notes the submissions made by various interested parties and keeping in view the fact that the present investigation is only a review considers it appropriate to confirm the scope of investigation with respect to product under consideration as given in Para C(3) of Final Findings dated 12.7.99. The product under consideration is Hard Ferrite Ring Magnets used in manufacture of loud speakers, public address systems, magnetic assemblies etc.. The product is made from Barium Carbonate and Strontium Carbonate also. The Ring magnets are of varying sizes in terms of outer diameter ranging from 22 mm to 280 mm and inner diameter from 12 mm and 180 mm and having thickness 12 mm to 180 mm depending upon required use. HFRM is classified under Customs head 8505 of Schedule 1 of Customs Tariff Act, 1975. The subject goods imported in unmagnetised form also are covered in the scope of investigation.

B) DOMESTIC INDUSTRY

The Authority notes that there are no submissions made by any of the interested parties on the standing of the petitioner. The Authority further notes that out of the five domestic producers who filed the previous petition, three of the units are closed and at present there are only two producers viz. M/s DGP Hinoday Industries Ltd, Pune and M/s G.P. Electronics Limited, Nasik of HFRM in the country who constitute the domestic industry within the meaning of the Rule 2(b)

C. DUMPING, NORMAL VALUE AND EXPORT PRICE

The Authority notes that the following submissions were made by different interested parties in response to the initiation of the investigation:

1. M/s DGP Hinoday Industries Ltd., Pune and M/s G.P. Electronics Limited, Nashik have made the following submissions:

- i. We had earlier agreed to the cost benefits to the Chinese producers on account of automation, cheap labour, cheap power, higher productivity and economies of scales as compared to the scale in India. As China has been presumed to a non-market economy, normal value is not required to be determined on the basis of domestic prices in China. As such the benefits given earlier while calculating the normal value based on the domestic prices in China is no longer relevant in this case. Since exporters from China have decided not to cooperate, information given by the petitioner becomes the best available information. We also submit that in the CEGAT Judgment it is only the exporters who can challenge the normal value and the importers have no right to challenge the same.
- ii. We have worked out export price from import transactions taken from import data collected from the private agencies as evidence of export price. The same could not be collected from DGCIS, since their data classified under Chapter 8505.19 has variety of magnets. We have worked out the export price as ** Rs/kg. We request DA to ask the interested parties to submit their complete details of imports giving quantities in a number of pieces as well as the corresponding net weight of imports. The information given by the petitioners may be relied upon rather than the importers who have resorted to practice of bunching and thereby evading anti-dumping duties.
- iii. The cost advantage on factors such as automation, cheap labour and power, high productivity and economies of scale were granted without taking into account the different kind of subsidies. As per anti-dumping rule 44/99-CUS N.T.) dated 15.7.99 and 27/2001 – CUS N.T. – 31/5/2001, the cost advantage given to China are no longer relevant. India was considered as Surrogate country in the past. As Chinese exporters have not cooperated, the provisions of Annexure I Para 7 and 8 of the anti-dumping rules be applied to determine the normal value.
- iv. The adjustments of ocean freight, commission, insurance, inland transportation and port expenses. be considered for evaluating ex-factory export price.

In response to the disclosure, following submissions have been made:

- i. Unlike the earlier findings, the Authority has proposed to construct Normal value on the basis of international raw material prices completely ignoring the present law with respect to constructing of Normal value for Non Market Economies like China.
- ii. On the one hand the Authority says that, "as this a review investigation it proposes to adopt methodology and consider adjustments on cost advantage as done in the earlier findings", and on the other hand it has changed the methodology for constructing Normal value by taking international prices of raw materials which is clearly contradictory.
- iii. It is a well-settled law that though Exporter has a right to question the determination of Normal value, the importers/ users do not have such right. The authority though on the one hand says that the exporter has not cooperated in the Investigation but on the other hand has accepted the argument given by the importers/user that the cost advantage of 25% as given in the earlier findings should be retained. This approach of the Authority is in clear contradiction to the law on this matter.(CEGAT judgement reference no AIIGMA Vs. DA 2000 (119)(E.L.T)333.
- iv. The Authority has stated that the review investigation has been carried out as per Rule 23 of the Anti Dumping Rules. Rule 23 *inter alia* states as under:

"The provisions of rules 6,7,8,9,10,11,16,17,18,19 and 20 shall be mutatis mutandis applicable in the case of review."

Annexure 1 to Anti Dumping Rules has been amended vide Notifications dated 15.7.99 and 31.5.2001 (as accepted by the authority in the disclosure statement). The Authority while constructing the Normal value has completely ignored the fact that for Non Market Economies like China the methodology for constructing Normal value is clearly given in Paragraph 7 & 8 to Annexure 1 of the Anti Dumping Rules (Details given below in para 5) as it stands today and thus its proposal to continue with the cost advantage of 25% is in clear contradiction of Rule 23, which states that the provisions shall mutatis mutandis be applicable and thus the Normal value has to be constructed as per the present law on this subject.

In this connection we would also like to refer to the provisions of Rule 10 which relates to the determination of Normal value, Export Price and Margin of Dumping. In accordance with the Provisions of Rule 23, the Normal value has to be reworked under Rule 10 and the same should be determined considering the law prevailing at the time of final findings and the other factors related to it.

- v. China is presumed to be a Non Market Economy and the Normal value has to be calculated as per amended Paragraph 7 and 8 to Annexure 1 of the Anti

Dumping Rules. As per Paragraph 7, Normal value should be determined as under :-

- a. on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or
- b. Where it is not possible, 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.

As per Paragraph 8 to Annexure 1 of the Anti Dumping Rules, unless it is shown on the basis of sufficient evidence in writing by the exporter in China that market conditions prevails in their economy, no other method for constructing the Normal value can be followed except that which is mentioned above in Paragraph 7 to Annexure 1 of the Anti Dumping Rules. As such we have strong reservations to the mode of constructing Normal value on the basis of international prices of raw materials which would only be an estimate. When the law permits for the construction of Normal value on the basis of price actually paid or payable in India then why should the Normal price be constructed on an estimated basis.

Moreover constructing Normal value on the basis of international prices of raw materials does not satisfy the condition of weighted average Normal value as have been contemplated in law and proposed by the Authority. The weighted average Normal value is determined taking into account the cost of production during the entire period of investigation which when divided with the actual production gives the weighted average cost of production and thus the weighted average Normal value.

- vi. In the disclosure statement it is also mentioned that the Authority proposes to adopt the methodology and consider adjustments on cost advantage (i.e. 25%) as done in the earlier finding. Since exporters in China have chosen not to participate in the investigation process and are presumed to be a Non Market Economy and thus cost advantage of 25% given in the earlier findings cannot be considered this time for the following reasons:
 1. The Normal value can only be constructed as per Paragraph 7 to Annexure 1 of Anti Dumping rules as per the amendments to the Anti Dumping Rules made vide anti dumping rule 44/99 – CUS N.T dated 15.7.99 and 27/2001- CUS N.T dated 31.5.2001.
 2. The investigation period has changed and thus Normal value should be constructed in accordance with Paragraph 7 & 8 to Annexure 1 of the Anti Dumping Rules taking into account the actual cost of production during the changed investigation period rather than on the estimated basis.

3. In a Non Market Economy like China, the various parameters of production leading to lower cost of production are the results of different kind of government subsidies and not because of any productivity factors as was mentioned earlier.

We therefore urge the Authority to make necessary alterations in its proposal, as the method proposed to be followed is neither in accordance with the provisions of Rule 23 nor in consonance with the spirit of Anti Dumping Investigation which needs to be based on actual facts to be considered on the basis of best available information as against the mere estimates.

EXPORT PRICE

The Authority has proposed to construct weighted average of all such import transactions whose details are available from all the sources. We would like to invite the attention of the Authority to our letter dated 23rd July, 01 wherein we have given the details of some of the import transactions during the period of Investigation.

The perusal of these transaction reveals that how the same product can be imported from the same country at the same time at a substantially different prices. Such transactions cannot be considered to have been made in the ordinary course of international trade. We request the Authority to verify the supporting documents and evidences produced by these parties to ensure their genuineness before considering them for working out the weighted average export price or else otherwise they should be completely disregarded.

2. M/s Strategic Law Group (representing M/s Salora International, M/s Ahuja Radio and M/s Karismatic Sounds) and Magnet Users Association have made the following submissions:

- i. The Petitioners have constructed a single normal value and are claiming a baseless and unreliably low export price to seek the imposition of one flat anti-dumping duty.
- ii. Clubbing of different types and qualities of magnets meant for a wide range of applications is not in accordance with the practices and the jurisprudence on the subject. The requirement of 'Fair Comparison' demands that comparison need to be made on an apple-to-apple basis, and all factors, which affect price comparability, should be taken into account. It would therefore be legal and logically appropriate if at least the cost of production and the different prices of raw materials are duly reflected while calculating the dumping margin as well as the injury margin. We, therefore, request that the range of products in terms

- of size, quality and grades must necessarily be taken into account while calculating the cost of production for the domestic industry
- iii. Cost of the production of subject goods in PR China have been provided by the importers.
 - iv. The import data supplied by the petitioners is incorrect and prejudicial, which is either by way of duplicate entries or is outside the POI.
 - v. Magnet User's Association have collected import data of about 724.6 Mt, which the DA can audit.

In response to the Disclosure following submissions have been made:

- a. The Consuming Industry notes that the principles of 'non-market economy' as envisaged in the notification dated 31.5.2001 would not be applicable, as the case was initiated before the amendment in the Rules. We submit that the Designated Authority may therefore, kindly avoid any reference to the said notification.
- b. Furthermore, we understand that the methodology of costing would remain unchanged adopting the same principles as were done in HFRM-I, including the admitted cost advantage. We also understand that only the internationally prevailing raw material prices and costs would be applied. It is requested that the Hon'ble Designated Authority may make no "appropriate adjustments" that would differ from HFRM-I if they are to the prejudice of the consuming industry, unless disclosed to the importers.
- c. It is also noted that the Hon'ble Designated Authority will rely on data produced by the importers and the Department of Revenue (Customs Authorities). It is understood that the data of the Customs Authorities is reproduced by DGCI&S.
- d. It is requested that in the event that this data is different, the same needs to be disclosed to the importers.

EXAMINATION BY AUTHORITY

NORMAL VALUE

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 same article in the country of origin along with reasonable addition for administrative, selling and general costs and for profits, as determined in accordance with the rules made under sub-section (6);

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

The Authority notes the submissions made by various interested parties as above. The Authority also notes that none of the exporters has cooperated through a proper structured questionnaire response though cost of production of Y 25 grade of HFRM was provided by China National Electronics Import and Export, Zhejiang Company for the year 1999-2000 and not exactly for the POI. This information is also not as per the format of response sought for and is not complete. The Authority has, therefore, under such circumstances constructed the normal value as per Rule 6(8) on the basis of the best available information. The Authority also notes that the petitioner has submitted that in view of the amendment notified vide Customs Notification dated 31.5.2001 on provisions of non-market economy in respect of certain countries including China, the normal value should be considered on the basis of price of subject goods paid/payable in India without granting any cost advantage to the exporter as these advantages are on account of subsidies prevailing in China and that international raw material prices also need not be referenced as it is only the price payable in India which is relevant as per the amended rules. Further, it has also been indicated by the petitioner that such an approach is justified since none of the exporters from China have cooperated.

M/s Strategic Law Group representing importers viz. M/s M/s Salora International, M/s Ahuja Radio and M/s Karismatic Sounds) has mentioned that Customs Notification dated 31.5.2001 cannot be applied retrospectively. The Authority after examining these submissions notes that since there has been no structured response to the questionnaire from any of the exporters/producers from PR China, the normal value of subject goods in the subject country would need to be constructed on the basis of best available information. The Authority also notes that though the initiation of the anti dumping investigation was done prior to amendment in anti dumping rules,

the Authority is well within the provisions of the rules to adopt a reasonable basis to construct

the normal value even as provided under the amended rules. Therefore, the Authority has adopted a reasonable basis which would include appropriate adjustments on cost advantage as earlier claimed by the petitioner and raw material at international prices to construct the normal value. The Authority notes that the present investigation being the review, the methodology on adjustments on cost of production to an extent of 25% granted to exporters in PR China in the earlier investigation are also appropriate for admission now since the petitioners have not to the contrary brought out any reasonable basis/evidence for withdrawal of the same. The Authority has, therefore, constructed the normal value by considering cost of production of the subject goods provided by the domestic industry and as verified by the investigation in the POI with raw materials considered at the international prices and 25% cost advantage on costs other than raw material. The weighted average normal value of the subject goods in the subject countries in the POI comes to xxx Rs.per kg.

EXPORT PRICE

The Authority notes the submissions made by the petitioner, M/s Strategic Law Group (SLG) and M/s Magnetic User's Association on adopting the sources of import data for the subject goods. The Authority has verified the data provided by M/s Salora International, M/s Ahuja Radio and M/s Karismatic Sounds. It was indicated by the petitioners that M/s Karismatic Sounds have imported two consignments of subject goods dated 9.2.2000 and 8.3.2000 at exorbitant prices. These details were requested by the petitioner to be verified before adopting data provided by the importers. The Authority has verified documents pertaining to these import consignments and noted that imports have been made at prices which are comparable to the other normal export transactions. Therefore, the submissions of the petitioners are not found to be tenable. The Authority has, therefore, discarded in respect of these imports, the data provided by the petitioner from the secondary sources and has adopted the import data as verified by the Authority in respect of M/s Salora International, M/s Ahuja Radio and M/s Karismatic Sounds . The Authority also notes that the petitioner has from three secondary sources viz. World Trade Centre, Mumbai Bureau of Commercial Intelligence and Statistics and Impex Statistical Services, Mumbai, provided import prices of subject goods to an extent 724 Mts. The Authority has also received the import data from Customs and also from M/s JRC Industries, Mumbai. The Authority has adopted the relevant data of Customs and M/s JRC Industries for evaluating the import price. The Authority also notes that the petitioner has provided the import data in respect of relevant sizes and subject goods where the weight of subject goods was available to an extent of Rs.225 MT. All relevant import data from different sources as indicated above has been adopted. The Authority also notes that the DGCIS data

does not have a dedicated Head as has also been indicated by the petitioner and the other interested parties. The Authority, therefore, does not consider it appropriate to reference the DGCIS data. The weighted average CIF price of subject goods is evaluated at POI Rs. xxx Rs/kg. In order to arrive at the ex-factory export price, the Authority has considered adjustments on account of ocean freight, ocean insurance, commission, inland freight and port expenses to an extent xxx, xxx, xxx, xxx Rs.per kg respectively on the basis of the data provided by the petitioners and also the data provided by the importers. The weighted average ex-factory export price of all grades of subject goods in POI comes to xxx Rs./kg.

DUMPING MARGIN

The rules relating to comparison provides as follows:

"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

The Authority has carried out comparison of weighted average normal value with the weighted average ex-factory export price for evaluation of dumping margin.

The Authority notes that M/s SLG has requested for a grade to grade comparison for evaluating dumping margin. The Authority notes that in the earlier investigation, weighted average approach for evaluating dumping margin was adopted. In the present review, the Authority notes that the Product Under Consideration remains the same and that none of the exporters have cooperated by providing grade wise information in the structured questionnaire sent to the exporters. The Authority, therefore, on the basis of the best available information and also keeping in view the methodology as adopted in the earlier initial investigation has in the present review evaluated the dumping margin by comparing the weighted average normal value of all grades of HFRM with the weighted average ex-factory export price of all grades of HFRM in the POI. The dumping margin comes as under.

Exporters/Producers	Normal Value	Export Price	Dumping Margin (%)
All Producers/exporters of China PR	***	***	47.44

D. INJURY, CAUSAL LINK AND DETERMINATION OF INJURY

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

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

The following submissions have been made by various interested parties:

1. M/s DGP Hinoday Industries Ltd. Pune and M/s G.P. Electronics Limited, Nasik.

- i. The review should be carried out as per Rule 23 of the Anti-Dumping Rules. All critical parameters in the review investigation need to be established as per the period of investigation. Domestic industry has not been able to realize its fair selling price and that it may close for timely action not being taken.
- ii. Out of the five major producers who were a party to the petition filed by the domestic industry on 17.2.1998, three producers namely M/s Ferro Magnets & Allied Products Ltd., M/s Magnetix India Ltd and M/s Permanent Magnets Ltd have closed down their operations as they could not withstand the pressure of the declining selling prices on account of unfair dumping of subject goods from China.
- iii. The petitioners have been informed that employment potential is one of the reasons why the Chinese Government is subsidizing this industry there. If the decline of selling prices from China is not reversed by levying anti dumping duty, the entire HFRM industry will be closed.
- iv. The cost of Barium carbonate has increased due to imposition of anti-dumping duty on it in November 1999, which has resulted in along with other factors increase in the cost of production of HFRM. M/s DGP Hinoday Industries Ltd

has retrenched 100 workers and the incentive of the remaining workers has gone down. The industry employment to HFRM industry which was 2500 in 1998 has come down to 700 now.

- v. The share of imports in the total market has grown from 1462 Mts in 1998-99 to 1767 in 1999-2000. On the other hand, the share of domestic industry has declined from 5342 Mts in 1998-99 to 5242 Mts in 1998-99 to 5205 Mt in 1999-2000. The domestic selling prices have not increased though they were meant to increase after imposition of anti-dumping duty As against the selling price of Rs.50 per kg at the time of filing the first petition in 1998, the current selling price has decreased to Rs.34 per kg this year on account of the following reasons:-
 - a. Importers have indicated ring magnets are magnets only if a speaker or any other product is made and that anti dumping duty cannot be levied on HFRM as they were not magnets at all.
 - b. The Hard Ferrite Ring Magnets are imported in bunch with the other components being under invoiced so as to avoid anti dumping duty on the subject goods.
 - c. Magnets made in China are routed through other countries
- vi. The domestic plants which have been closed were making operating profits and it was only on account of dumping that they suffered and started making losses. The domestic petitioners are suffering from price erosion while they can bear the cost of over capacity, they need protection from dumping. The point of over capacity and internal competition as raised by the users is irrelevant and that the domestic industry has suffered substantial losses on production.

In response to the disclosure, the following submissions have been made

The Authority has though on the one hand proposed to adopt for this review investigation the weighted average approach for determination of normal value, export price and dumping margin irrespective of the different sizes and grades of HFRM being produced and imported in view of the insufficient information with no cooperation from the exporter, but on the other hand has proposed to consider the issue of different grades while recommending the type of duty. It is not mentioned as to on what basis the same has been considered. We request the Authority to please clarify the same.

The determination of NIP at Rs.xxx per kg is much lesser than Rs.xxx as has been asked by us in our petition. We request the Authority to allow us to see further details on the basis adopted for arriving at the NIP of Rs.xxx. We reserve our right to comment on the same.

2. M/s Strategic Law Group (representing M/s Salora International, M/s Ahuja Radio, M/s Karismatic Sounds) and M/s Magnet User's Association have made the following submissions:

- i. Several domestic plants were based on the export projections. In fact even today with only two manufacturers of HFRM in India, there is gross over capacity in the Indian context.
- ii. The closure of the three petitioners has not been on account of any alleged dumping but rather on account of severe internal competition within the industry in India. M/s Magnetics India Ltd. have accumulated loss of Rs.16 crores prior to the commencement of imports of HFRM. The unit was a "sick" unit as defined under the SICA way back in 1996. At the time of HFRM-1, M/s Ferro-Magnets was already making losses. This was primarily on account of the unviable size of the plant. M/s Permanent Magnets had unreasonably high overheads and had also other ventures such as real estate projects and partnership firms unrelated to the manufacture of HFRM. The company had taken loans against non-existent stocks and the lenders forced its closure. Thus, it is clear that the three other producers of HFRM closed for various reasons unrelated to any alleged dumping.
- iii. There has been no declining trend on imports of HFRM and there is sufficient evidence to show this. The global HFRM industries has several players including a number of private enterprises in China and other countries such as Taiwan, Korea, Malaysia and Indonesia all of whom sell at similar prices globally.
- iv. The prices of Barium Carbonate as the main raw material for HFRM in case of M/s G.P. Electronics has decreased.
- v. The claim of petitioners that they are compelled to reduce employment in the industry should be looked into in view of the increased automation. In the petition itself, the petitioners have stated that the employment has gone up from 420 in 1998-99 to 426 in 1999-2000.
- vi. If the petitioners were selling good quality magnets at Rs.34/- per kg., then why would the importers import magnets at the landed cost of which is between Rs.40/- to Rs.45/- per kg. It is imperative that the D.A. examines the issue fully and conclusively.

In response to the disclosure, the following submissions have been made

- a. It may be mentioned that the domestic industry has itself highlighted the fact that they are suffering injury on account of imports from various countries / sources including China. This amply proves that the domestic industry is also of the clear view that the injury, if any, is caused to them due to imports from other countries. The role of china is non-existent as anti-dumping duties are

already in place. Thus, there is an absence of causal link even as per the admission of the domestic industry itself. Since the essential ingredients for imposition of anti-dumping duties are not satisfied, the Hon'ble Designated Authority should drop the review proceedings on this ground alone.

The Authority after noting the above submissions observes the following:

- i. Production of subject goods by domestic industry has decreased from 5843.20 MT in 1998-99 to 5108.8 in POI (annualised)
- ii. Sales of subject goods by domestic industry has decreased from 5843.20 MT in 1998-99 to 5363.28 MT in POI (annualised)
- iii. Capacity utilisation of domestic industry has decreased from 50.85% in 1998-99 to 41.55% in POI
- iv. The Net Sales Realisation (NSR) has decreased from Rs.41.42/kg to Rs.39.13/kg..
- v. The NSR in POI is below the Non Injurious Price (NIP) as evaluated in the review period of investigation thereby leading to financial losses to the domestic industry.
- vi. The Authority notes that demand has not been a contributing factor to the injury caused to the domestic industry and that in order to remove effect of any inefficiencies on the evaluation of price undercutting caused by dumped imports on the selling price of the domestic industry, the Authority has appropriately normated the cost of production of the subject goods by benchmarking best utilisation norms on raw materials, utilities etc.

The above factors collectively and cumulatively indicate that the dumped imports have continued to keep the prices depressed in the Indian market causing injury by way of depressed net sales realisation leading to financial losses to the domestic industry and that continuance of anti dumping duties is warranted to protect domestic industry from the injury caused by price depression due to dumped imports.

Other issues

The following submissions have been made:

1. M/s DGP Hinoday Industries Ltd and M/s GP Electronics Limited

- i. The DA should increase the non-injurious price, fix anti dumping duty on fixed basis, and in dollar terms.
- ii. The total cost of HFRM in the PA System is less than 2% and cannot be waived as reason for destruction of PA industry.

In response to the disclosure, the following submissions have been made

- i. The purpose of levying anti dumping duty is to provide protection to the domestic industry against the dumping by exporters. In this case the domestic industry had the experience of the effects of levying anti dumping duties in different manner i.e. both on the fixed and variable basis. Based on the experience of the domestic industry when originally the anti dumping duty had been levied on fixed basis, the imports were restricted and the sales of the domestic industry increased. However when at the time of final findings the duty was changed to variable basis, the imports again increased and the effect of duty was neutralized and three out of the five companies in the domestic industry had to close down their operations. The Domestic Industry understands that the importers/traders are manipulating the import prices because of their strong nexus with the exporters. This is clear from the various transactions during the period of investigation as mentioned above. The contention of the petitioner that there has been no effect of anti dumping duty levied on variable basis can be substantiated from the fact that the present market price of HFRM is Rs.34 per kg as against the landed cost ceiling fixed at Rs.36 per kg as determined in the earlier final findings.
- ii. The levying of the anti dumping duty on fixed basis shall leave no scope for the importers to benefit from over invoicing and or under invoicing and shall serve the real purpose of levying anti dumping duty. To substantiate our claim we are enclosing herewith a press release published in Financial Express dated 20th September,2001 wherein DRI has expressed concerns over the commercial frauds in international trade.
- iii. We have already in our several communications to the Authority strongly urged to fix the Anti Dumping Duty on fixed basis rather than Variable Basis as this can only save the industry from further injury as the imposition of Anti Dumping Duty on variable basis have failed to give due protection to the Domestic industry against the unfair dumping of imported subject goods.

2. M/s Strategic Law Group representing Salora International, M/s Ahuja Radio and M/s Karismatic Sounds and Magnet Users Association have made the following submissions:

- i. It is conceded that the data as compiled by DGCIS is not suitable for HFRM importers. The private source from which petitioners have compiled data has been kept confidential. As per consistent practice of the DA and for the sake of equity proceedings between the interested parties are always held in an adversarial manner with each party having the opportunity to examine and comment upon the information provided by the opposing party. By with

holding the source of information, the fundamental tenet is being denied to the consumer industry.

- ii. The product is not conducive for the imposition of fixed duties, given the several varieties of HFRM and that it is a settled principle that reference value is a better method when imports might be under valued or the real threat is from cheap imports.
- iii. The standard input output norms are not available for most of the electronic products and the consuming industry depends on DEPB for which there is no waiver of anti dumping duties for exports.
- iv. The same petitioners prior to the availability of imports resorted to cartel pricing as was so elaborately stated in HFRM-1.
- v. The Indian domestic producers sell HFRM globally at the same price, which was admitted at the time of public hearing. Therefore, the Indian domestic consumers should not be compelled to pay higher prices to subsidize HFRM exports by the petitioners. The high HFRM prices will jeopardize the Indian exports for PA systems and amplifiers system that need competitive priced HFRM in the absence of advance license benefit.

In response to disclosure, the following submissions have been made

- a. The Importers must stress that the Hon'ble Designated Authority cannot look at dumping duties in isolation without the impact on exports. The Hon'ble Designated Authority is an arm of the same Ministry and having one action deter exports, in an otherwise export promotion environment of the Ministry and the Government of India is devastating. It may be noted that cost of HFRM as pointed by the petitioners at 2% in PA systems is totally misconceived and incorrect and it could be as high as 15% to 20%.
- b. It is urgently and sincerely requested that the Hon'ble Designated Authority take in to account the impact of enhanced duties on a stable export industry.
- c. The disclosure statement indicates that the Honourable Designated Authority "proposes to look at the issue of different grades, efficacy of the reference value and as to whether the domestic industry has got the desired protection, consistent practice of such cases for recommending the type of duty".

In this connection, we would respectfully submit that since this is only a review petition, it would not be appropriate to change the mode or type of duty. This would also be consistent with the approach adopted by the Designated Authority in this very case with regard to the dumping margins. We, therefore, urge that the reference value in rupee terms must continue in view of the above submission alone. Further, the reference value is perfectly justified in this case where the Designated Authority proposes to reduce the various sizes as well as grades to a common denominator on weight basis. Obviously, it cannot be the objective of the Designated Authority to

charge the same amount of anti-dumping duty on goods which are coming at vastly different prices. By changing the mode to a fixed duty would only mean that the low priced as well as the high priced magnets will bear the same amount of duty, which would go against the principle of natural justice.

- d. With reference to the imposition of duties on the prevailing \$ rate of exchange, it is submitted that the Hon'ble Designated Authority refrain from this action in this review petition, especially in light of the fact that import costs have already spiralled given the recent slide of the rupee and the fact that the DEPB scheme does not re-imburse anti-dumping duties.

E. Landed value

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

F. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

The Authority notes that the review has been initiated on the representation of the domestic industry regarding increased dumping and thereby consequential injury to the domestic industry. The user industry has indicated the effect of anti dumping duties on the export competitiveness of the PA Systems which use the subject goods. The Authority notes that the user industry has indicated non-refund of anti dumping duties under the DEPB route of the EXIM Policy. The Authority notes that the submissions on DEPB incentive of the user industry need to be considered under the ambit of EXIM Policy appropriately by the concerned authority. The Authority recognises that the continuance of anti dumping duties might affect the price levels of the subject goods and would therefore also have an effect on the products manufactured using these subject goods, however, the continuance of levy of anti dumping duties would lead to fair competition in the Indian market as the purpose of levy of anti dumping duties is to redress the injury caused to the domestic industry on account of advantage gained by the exporters through unfair trade practices of dumping. The restoration of fair play in Indian market would also prevent decline of domestic industry and help to maintain availability of wider choice of subject goods to users and consumers. The continuance of levy of anti dumping duties would in not restrict imports of subject goods from the subject country in any way. The Authority notes the submissions on circumvention of anti dumping duties by way of misdeclaring country of origin, clearing subject goods by calling unmagnetised

HFRM as not magnets and phenomena of bunching being resorted to thereby overinvoicing. The Authority notes that in view of these, the domestic industry has requested for levy of fixed duty rather than the variable duty. The Authority notes that the HFRM even in unmagnetised form would fall under the subject goods category since it is a technical requirement to supply subject goods in unmagnetised form and therefore even the unmagnetised HFRM are the subject goods under consideration as also clarified in the para B(A)(3). As regards misdeclaration on country of origin is concerned, this phenomena needs to be checked carefully at the time of import by the Customs Authority and changing type of duty cannot arrest the two types of circumvention phenomena as indicated above. As regards bunching of subject goods and consequential over invoicing of subject goods to escape anti dumping duties is concerned, the Authority has in the foregoing para C, indicated that the contention of the petitioner on certain consignments of subject goods being imported prices supposedly exorbitant price was not found to be tenable after verification. The Authority also notes that the petitioner's net sales realisation (both domestic producers) in the POI is above the reference level price, which indicates that the reference level as fixed by the Authority has been effectively able to keep net sales realisation above the level fixed earlier. Also in view of the fact that these are variety of grades with different prices and that weighted average approach on dumping margin has been adopted, it would be appropriate to levy the anti dumping duties by a variable form of duty as done in the earlier investigations.

G. CONCLUSIONS:

It is seen, after considering the foregoing that:

- a. The subject goods exported from the subject country have been exported to India below its normal value.
- b. The domestic industry has suffered material injury by way of depressed Net Sales Realization (NSR) on account of price suppression caused by low landed prices of the dumped subject goods from the subject country leading to financial losses.
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject country. The authority recommends anti-dumping duty on imports of all forms/grades of subject goods falling under Chapter 85 originating in or exported from the subject country. HFRM of any grade with sizes as indicated in para B (A) (3) would also attract the anti-dumping duties.
- d. It is also felt that withdrawal/discontinuance of anti dumping duty will further accentuate dumping and consequential injury to the domestic industry.

- e. It was considered to recommend the amount of anti-dumping duty equal to the margin of dumping or less so as to remove the injury caused to the domestic industry. Accordingly, it is proposed that definitive anti dumping duties equal to the difference between the landed value and amount as indicated in column 3 below be imposed, by the Central Government on all grades of subject goods originating in or exported from PR China falling under Chapter 85 of the Customs sub-heading 8505.19 of the Customs Tariff.

Sl. No.	Name of the exporter/producer	Product	Amount (US\$/MT)
1.	PR China All exporters/producers	HFRM of all grades and sizes as indicated in Para B(A)(3)	1123.8

An Appeal against this order shall lie to the Customs, Excise, Gold (Control) Appellate Tribunal in accordance with the Act supra.

(L V SAPTHARISHI)
DESIGNATED AUTHORITY