

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

New Delhi, the 9th April 2003

**FINAL FINDINGS**

**Subject:** - Anti-dumping investigation concerning imports of Ferro Silicon originating in or exported from the South Africa and Macedonia

**No. 14/8/2002-DGAD** - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

**A. PROCEDURE:**

2. The procedure described below has been followed:
  - i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Indian Metals and Ferro Alloys Ltd, Bhubaneswar on behalf of the domestic industry, alleging dumping of Ferro Silicon originating in and exported from South Africa and Macedonia (hereinafter referred to as subject countries / territories);
  - ii. The Authority notified the Embassies of South Africa and Embassy of Macedonia in India (Through Embassy of India in Sofia, Bulgaria) about the receipt of fully documented petition made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
  - iii. The Authority issued a Public Notice dated 11th April 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Ferro Silicon falling under Chapter heading 72 of Schedule I of the Customs Tariff Act.
  - iv. The Authority sent questionnaires, to elicit relevant information, to the following known exporters from South Africa and Macedonia:
    - a. Macedonia  
M/s. Jugochoram, 91215-Juguncvce, Republic of Macedonia

b. South Africa

M/s. Samancor Chrome, 6, Hollard Street, Johannesburg 2001

M/s. Nimag Limited, 37, Lincoln Street, Woodmead East, Gauteng, South Africa.

- v. The Embassies of South Africa and Macedonia were informed about the initiation of the 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, non-confidential petition and questionnaire sent to the exporters was also sent to them, along with the name and addresses of the exporters.
- vi. A questionnaire was sent to the known importers of Ferro Silicon in India calling for necessary information in accordance with Rule 6(4).
- vii. The Designated Authority issued Preliminary Findings vide notification dated 11th July 2002 and forwarded a copy of the preliminary finding to the known exporters and industry associations and gave them an opportunity to make their views known in writing within 40 days from the date of the letter;
- viii. The Authority provided a copy of the preliminary findings to the Embassy of South Africa and Macedonia with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;
- ix. Additional information regarding injury was sought from the petitioner, which was also received;
- x. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file as per Rule 6(7) and kept it open for inspection by the interested parties. All parties who made request for inspection, in writing, were allowed to inspect the public file;
- xi. The Authority sought and verified information deemed necessary for the investigation, and the investigations were carried out at the premises of Petitioner's as well as other domestic industry.
- xii. The Authority also conducted cost investigation to work out optimum cost of production and cost to make and sell subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the petitioner.
- xiii. The Authority provided an opportunity to all interested parties to present their views orally on 18.09.2002. All parties presenting views orally were requested to file written submissions, of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- xiv. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and

comments received on the same have been addressed suitably in the final findings.

- xv. Cost investigations were conducted to work out optimum cost of production to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) on the information furnished by the petitioners so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xvi. \*\*\*\* In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xvii. Investigations were carried out for the period 1st April 2001 to 31st December 2001.

Views of Petitioners, Exporters, Importers and Other Interested Parties:

## **B. Product under Consideration and Like Article**

### **(a) Product under Consideration**

3. The product under consideration is Ferro Silicon which is an alloy of iron and silicon containing calcium, aluminum, carbon, sulphur and phosphorous as impurities. Silicon constitutes the major proportion in Ferro Silicon.(hereinafter referred to as subject goods). The size of Ferro Silicon is generally described in terms of millimeter of the outer dia of the product.

Ferro Silicon is primarily used as a deoxidiser in the production of steel and alloy steels. Ferro Silicon is also used in the manufacturing of power rectifiers and welding electrodes. The various users of Ferro Silicon can be described as under:

- Deoxidiser in the production of steel,
- As an alloying element for steel,
- In the making of electrical grade steel,
- In the production of anti-corrosive and acid resistant steel,
- In the manufacturing of power rectifiers,
- In the manufacturing of welding electrodes,
- It is added to cast iron as graphitising agent,

Ferro Silicon is classified under Customs sub-heading Nos. 7202.21 and 7202.2100 of Chapter 72 of the Customs Tariff Act, 1975. For the purpose of investigation, the Authority has taken Ferro silicon as the one containing by weight more than 55% of silicon. The Authority confirms the preliminary findings on Product under consideration.

## **(b) Like Article**

### Views of the Domestic Industry:

4. (i) There is no difference in the Ferro Silicon produced by Indian Industry and those exported from the subject countries, which can have an impact on price. The Ferro Silicon produced by the Indian industry and imported from the subject countries is comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. Consumers of Ferro Silicon have used the two interchangeably. Therefore Ferro Silicon produced by the petitioner and those imported from the subject countries should be treated as like articles in accordance with Anti Dumping rules.

(ii) There is no known significant difference in the technology adopted by the Indian Industry and the manufacturers in the exporting countries. The technology employed throughout the world is the smelting process. The process adopted by the Indian industry is comparable with the technology adopted by the manufacturers of Ferro Silicon in the subject countries.

### Examination by the Authority

5. (i) Rule 2(d) of the Anti-dumping Rule specifies that like articles mean an article, which is identical and alike in all respects to the product under investigation or in the absence of such an article, another article having characteristics closely resembling those of the articles under examination

(ii) Ferro Silicon is an alloy of iron and silicon containing calcium, aluminum, carbon, sulphur and phosphorous as impurities. There is however no significant difference in terms of process, equipment or technology for the production of Ferro Silicon. Ferro Silicon is primarily used as a deoxidiser in the production of steel and alloy steels. Ferro Silicon is also used in the manufacturing of power rectifiers and welding electrodes. In order to establish that Ferro Silicon produced by the domestic industry is a Like Article to that exported from subject countries, characteristics such as technical specifications, manufacturing process, functions and uses and tariff classification have been considered by the Authority. M/s TISCO has pointed out that there are some specialized grades like high and semi high purity Ferro Silicon which locals producers find it difficult to produce as they invest very less into the R&D and gain the expertise to compete within this niche. However no evidence has been adduced by them to indicate that imported Ferro silicon is not substituting the domestically produced Ferro silicon either technically or commercially.

(iii) The Authority finds that there is no substantiative argument disputing the fact that Ferro Silicon produced by the domestic industry has characteristics closely resembling the imported material and is substitutable by Ferro Silicon imported from the subject country both commercially and technically. In view of the above the Authority holds that Ferro silicon produced by the domestic industry and those being imported from the subject countries are like articles within the meaning of the rules.

### **C. Initiation, Standing and Domestic Industry:**

6.(i) The petition has been filed by Indian Metals & Ferro Alloys Ltd (IMFA), Bhubaneswar on behalf of the domestic industry. The petitioners have claimed that they account for almost 47% of the total Indian production of the subject goods. M/s. Hitech Electro Thermics and Hydro Power Limited, New Delhi with a standing of 9.92% of the domestic production has supported the petition filed by the Petitioner. The Authority also notes that subsequent to the provisional findings, another domestic producer M/s VBC Ferro Alloys, Hyderabad with a production share of 15.6% have also expressed their support to the petitioner. As per 5(3) of the anti dumping rules, DA shall not initiate any investigations pursuant to the application made under sub rule (a) unless it determines on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product that the application has been made by or on behalf of the domestic industry provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than 25% of the total production of the like article by the domestic industry. It has also been explained in the sub rules that the application is deemed to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like article produced by that portion of the domestic industry expressing, either support for or opposition as the case may be to the application.

(ii) The Authority has examined the contention made by the petitioner. As per the information given by Indian Ferro Alloys association, the petitioner represents 46.89% of the total Indian Production. The petitioner and the supporters account for 72% of the total Indian Production.

(iii) Thus, the Authority holds that petitioners satisfy the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra, for the purpose of preliminary finding. The Authority also considers these petitioner companies as 'domestic industry' within the meaning of Rule 2(b) supra.

### **D. Period of Investigation**

7. The Authority has taken POI from 1st April 2001 – 31st December 2001 being the most recent period for the investigation when this case was initiated on 11th April 2002. This period was also taken because of the closing of the quarters and the feasibility of getting the complete data. The Authority confirms that nine months time is adequate and just for Anti Dumping Investigation since it also synchronizes with the three quarters for which the relevant data could be available.

## **E. De Minimus Limits**

8. As regards ascertaining that the imports from the subject countries during the period of investigation (POI) are above de-minimus levels, the Authority has referred to the DGCI&S published data for the POI.

| Country Name | Quantity (MT) | %Age share in imports |
|--------------|---------------|-----------------------|
| South Africa | 552           | 3.92                  |
| Macedonia    | 1902.68       | 13.53                 |

Thus, the Authority finds that the imports from the subject countries during the POI are above de-minimus levels.

### **9. Other Views: Views of Indian Ferro Alloys Producers Association (IFAPA)**

- i. As regards to our views on Anti-Dumping Investigations into imports of Ferro-Silicon from South Africa and Macedonia into India, we would like to inform you that the Ferro Silicon Industry has been suffering for last few years due to heavy and cheap imports from countries like China, Russia, Ukraine and now from South Africa and Macedonia.
- ii. The total capacity available in the country is approximately 1,75,000 tonnes. We may mention here due to increase in imports from the above said countries the present production in India has come down to less than 70,000 tonnes. Almost 50% of the units are closed and the present production is hardly about 40% of the total capacity.
- iii. Ferro Silicon producers like Visvesvaraya Iron & Steel Ltd. and Sandur Manganese & Iron Ores Ltd. have closed down their operations, as they were unable to compete with low import prices. Producers like Nava Bharat Ferro Alloys Ltd. Ispat Alloys Ltd. and Anjaney Ferro Alloys Ltd. have stopped production of Ferro Silicon due to the reasons mentioned above. Another major producer M/s. VBC Ferro Alloys Ltd. has been closed from 1st April 2002.
- iv. This Association has, time and again, discussed with Government the problems faced by the Ferro Silicon producers and is very much concerned about the dumping of Ferro Silicon, which is flooding this country. Of late, imports from South Africa and Macedonia are of serious concern.

- v. Producers of Ferro Silicon are facing steep increase in cost of production in view of increase in power tariff and all other inputs, including logistics and labour costs. Cheap imports coming into the country have prevented Indian producers from effecting legitimate price increase.
- vi. This Association representing manufacturers of Ferro Alloys in the country, support that the Anti-Dumping Duty provisionally implemented vide Notification No.7/2002-Cus dated 13th August 2002, be finally determined on all imports of Ferro Silicon, originating in or exported from the above mentioned countries viz. South Africa and Macedonia, to enable Indian producers to regain viability.

#### Comments on Disclosure statement

9 A. The petitioner supports the disclosure statement with regard to product under consideration, like article and standing of the domestic industry.

## **F. Dumping Margin**

### **10. Views of Importer M/s Tisco, Kolkatta**

- i. We deeply regret that South African exporters have not given data to substantiate the domestic prices to arrive at the normal value. However, consideration of assured cost (constructed on the basis of figures provided by the petitioners) is not correct. A better alternative is provided under WTO, if we compare export prices from South Africa to other destinations, we find these are in fact same or even lower than that for India. The price at which South Africa has exported Ferro Silicon to the USA, Japan and Europe during the Period of Investigation, is less than the 523/MT (average weighted CIF price of Rs.24859/MT at 1 US \$ = Rs.47.50 as mentioned in the preliminary findings). Thus, if we consider the price at which Ferro Silicon is exported from South Africa to third countries then it is established beyond doubt that, apart from minor variation on account of ocean freight etc. the export prices to India are comparable to that for third parties, and, therefore, there is no question of the said product being dumped India.
- ii. Normal value constructed on the realistic cost base of US \$ 336/MT, after adding incidence of ocean freight, inland freight, port expenses, selling and general expenses, and normal profit, is well below the export price of US \$ 523 per MT (CIF). Hence, the contention of the petitioners that South Africa is dumping Ferro Silicon into India by export at prices lower than the normal value does not hold true, and establishes without doubt that there is no dumping.

## **11. Views of the Domestic Industry**

- a. As regards normal value determination from South Africa and Macedonia, efforts were made to obtain information with regard to the prices of the subject goods prevailing in the domestic market in the subject countries. The petitioner adds that they had not been able to get any authentic information in this regard. The petitioner tried to obtain the prices at which the exporters from South Africa and Macedonia are exporting the subject goods to other countries. However, no published information could be traced in this regard. Therefore, the petitioner has constructed normal value on the basis of standard consumption norms for the major raw materials and utilities. The petitioner has referred to the earlier cases where normal value has been determined on the basis of constructed value from the same subject countries
- b. As regards export price calculation, the petitioner has taken the information from DGCI&S with regard to actual volume imported and their prices from the subject countries during POI. The petitioner has calculated the ex factory export price after making adjustments. The petitioner has arrived at dumping margin for Macedonia and South Africa.
- c. The Designated Authority had earlier investigated dumping of the product by the exporters from Russia, Ukraine and China. The same resulted in imposition of anti dumping duties, which are now in force. With the imposition of anti dumping duties on these sources, the domestic industry has been able to increase its production, capacity utilization and sales volumes. However, the producers in the subject countries have started dumping the subject goods, which has prevented the domestic industry from raising the prices to optimum level. The petitioner adds that injury to the domestic industry may be examined in the light of injury earlier suffered by the domestic industry.
- d. None of the exporters from Macedonia and South Africa have responded to the Designated Authority. The exporters have thus preferred non-cooperation in the present investigation. The Authority is therefore fully justified in proceeding with the best information available in accordance with the Indian Anti Dumping Rules.

### **11A. Comments by the Domestic Industry to the Disclosure Statement.**

The petitioners supports the Disclosure Statement with regard to dumping. With regard to the argument of TISCO, the petitioner submits that TISCO as an importer cannot advance arguments on dumping determination. If the South African exporters consider it unnecessary to respond to the Designated Authority, TISCO cannot plead that there is no dumping, considering the price at which goods might have been exported from South Africa to other countries.

## 12. Examination by the Authority

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

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

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

- iii. The Authority notes that none of the exporters from South Africa and Macedonia has submitted any information regarding annexure attached with the exporters questionnaire. As no information about domestic sales price structure of the subject goods, its cost of production in South Africa and Macedonia and other information as per the questionnaire has been furnished, the Authority has proceeded to rely upon the best available information for determination of normal value. The petitioners have claimed normal value in respect of South Africa and Macedonia on the basis of constructed cost of production. The Authority finds that none of the exporters have given any information to enable it to determine the normal value based on the domestic sales price. The Authority confirms, in the absence of any response from the exporters from subject countries in the form and manner prescribed, having made the findings with regard to exports from subject countries on the basis of the facts available to it as per rule 6(8) supra.
- iv. Accordingly, the Authority has constructed the normal value on the basis of facts available with the applicable adjustments. The normal value so

determined for South Africa and Macedonia is US\$\*\*\*\*/MT and US\$\*\*\*\*/MT respectively.

- v. Though the petitioner has submitted information regarding imports of subject goods from subject countries, the Authority has relied on the data received from DGCI&S for imports from subject countries. The Authority notes that the South Africa has exported 552 MT during the POI at a price of US\$ 288833.7. The weighted average CIF price as per the information available with the authority (DGCI&S) is determined at Rs 24859 /MT. The ex-factory export price has been determined after admitting US\$ \*\*\*\*/MT as ocean freight, \*\*\*\* % as marine insurance charges and US\$ \*\*\*\*/MT for port expenses and transportation charges (inland). Commission @ \*\*\*\*% for the Indian indenting agent has been disallowed by the authority for want of documentary evidence. After adjustments on these accounts, the ex-factory FOB price is estimated at Rs\*\*\*/MT or US\$ \*\*\*/MT at an average exchange rate of Rs 47.51 = 1US\$.
- vi. As regards determination of export price from Macedonia, the Authority notes that the Macedonia has exported 1902.68 MT during the POI at a price of US\$775389. The weighted average CIF price as per the information available with the authority (DGCI&S) is determined at US\$ 407.52/ MT. The ex-factory export price has been determined after admitting US\$ \*\*\*\*/MT as ocean freight, \*\*\*\*% as marine insurance charges and US\$\*\*\*\*/MT for port expenses and transportation charges (inland). Commission @ \*\*\*\*% for the Indian indenting agent has been disallowed by the authority for want of documentary evidence. After adjustments on these accounts, the ex-factory FOB price is estimated at Rs\*\*\*/MT or US\$ \*\*\*/MT at an average exchange rate of Rs 47.51 = 1US\$.
- vii. The Dumping Margin for South Africa comes to US\$ \*\*\*\* or 39.38 % of export price and dumping margin for Macedonia comes to US\$\*\*\*\* or 95.48 % of export price.

| Dumping Margins                       |              |           |       |
|---------------------------------------|--------------|-----------|-------|
| Countries/Exporters                   | Normal value | Export pr | D.M%  |
| South Africa: All producers/Exporters | ****         | ****      | 39.38 |
| Macedonia: All Producers/Exporters    | ****         | ****      | 95.48 |

## G. INJURY

### 13. Views of the Importer M/s TISCO

- i. The domestic producers not having access to cheaper source of captive power, are faced with the threat of injury not because of the fact that several countries, (Russia, Ukraine and China) and now South Africa and Macedonia are "Dumping" Ferro Silicon to India, but because of the fact that due to the very

high cost of power in India (almost 5/6 times that of South Africa), the production of Ferro Silicon (which consumes over 9000 KWH per MT) is not at all competitive in global terms.

- ii. Further, the international prices of Ferro Silicon have been decreasing over the years, as a result of which, the Indian producers, already plagued with high cost of power, are no longer globally competitive, and are, therefore, faced with the threat of injury, even though Ferro Silicon is being imported (and not dumped) at the prevalent market prices. Therefore, it stands established there is no Causal Link (As provided in Annexure-2 of the Anti-Dumping Rules), between the imports of Ferro Silicon from the subject countries, and the injury to the domestic producers.
- iii. Therefore, if Anti-Dumping Duty is imposed on the subject countries, then the importers will have no choice but to explore alternative locations, till they run out of possible sources. This in effect, is the intention of the petitioner company, to ensure that more and more countries are covered under the gambit of ADD and the Indian market is isolated from the pressures of globalization. Thus, the petitioner company is aiming to create a protected market place, wherein it can continue to exploit the consumers and make huge profits.

#### **14. Views of the Importer M/s Jindal Strips Ltd**

1. It is observed from the application as well as the preliminary findings that the application has been filed by the petitioners who have claimed to represent the domestic industry. The petitioner's account for 46.89% of the production during the period of investigation while the supporter's account for 9.92% of the domestic production. It is respectfully submitted that while the petitioners may have the standing to file to application on behalf of the domestic industry, it does not follow that the petition has provided the requisite information for examination of various injury parameters like market share, prices and the causal link.
2. Without prejudice to the above, we wish to submit that the domestic industry has not suffered any injury on account of imports from the subject countries. The injury parameters do not show the existence of any injury. At the same time, there is hardly any factor indicating the existence of causal link, which is a prerequisite for imposition of even the provisional duties.
3. Injury parameters like sales, output and capacity utilization show an increase as compared to previous years and their inventories have also declined significantly during the POI since previous years. Besides there is no comment on the other injury parameters like employment, wages, cash flow, growth and ability to raise investments. Additionally, while the market share of the imports have been compared with total imports, no such comparison have been made

with regards to changes in the share of domestic industry to total consumption over the years. As mentioned in the Directors report, their financial performance has got affected by adverse and depressed market conditions and situation of loss can be attributed to imports from subject countries. Further, the petitioner has not submitted any analysis of factors affecting domestic prices beyond saying that their prices are affected by imports.

4. The importer has voiced its concern that losses to the petitioner could be because of factors other than dumping. The petitioner's entire attempt has been to block the supplies from all sources so as to allow them to charge monopolistic prices. They have emphasized that an analysis of the injury data of the petitioner establishes a complete absence of causal link.

#### 14A. Comments to the Disclosures by M/s. Jindal Strips Limited.

- i. All the parameters of Injury pertaining to the domestic industry has shown improvement over the preceding period and it is unconceivable that any injury has been caused to the domestic industry. As regards the losses, it may be appreciated that the domestic industry was incurring losses even prior to the alleged dumping and their position has only improved during the period of investigation. In this connection, it is only also submitted that price under-selling which has been considered as a prime and only factor of injury, is in fact, not a factor of injury as envisaged under annexure II of the Anti-Dumping Rules. It is respectfully submitted that it would not be permissible to make an inference of injury on the ground of its inability to realize the NIP.
- ii. The price under-cutting analysis proposed to be done by the Designated Authority appears to be defective as the price under-cutting is required to be done country-wise. There is also complete absence of causal link between the alleged dumped imports and the alleged but non-existent injury to the domestic industry.
- iii. As regards market share, the domestic industry has been able to improve its market share and this cannot be a possible cause of injury to the domestic industry.

#### 15. Views of the Domestic Industry

1. The petitioner has represented that imports of Ferro silicon have increased substantially from the subject countries in absolute terms as well as in relation to the imports of subject goods in India, and in relation to the production of the domestic industry and also in relation to the demand of the subject goods in India. They have cited significant decline in the export price from subject countries which are below the selling price of the domestic industry and which has resulted in price undercutting. The export price is below the cost of the

production of the domestic industry and also below the non-injurious price of the domestic industry and below the landed price of imports from all countries attracting Anti Dumping duties.

2. The petitioner adds that increase in the production of the domestic industry and capacity utilization has to be seen along with selling price and cost of production of the domestic industry, efforts of the domestic industry to produce more to reduce fixed overheads and imposition of Anti dumping on a number of countries. The domestic industry has been forced to suffer losses in spite of significant improvement in production. Similarly increased sales volume must be seen in the context of imposition of anti dumping duties on a number of countries. They add that the domestic industry has not been able to raise the prices to the expected levels in spite of increase of production and sales of subject goods. They add that the domestic industry continues to suffer financial losses in spite of imposition of anti dumping duty on a number of sources. Some parameters like production, capacity utilization, sales, stocks and losses per unit do show improvement due to reason that improvement of these parameters was due to the imposition of anti dumping duty on a number of sources.
3. As regards the arguments of the Jindals that losses of the petitioner industry have gone down by 58% over last year when actually import prices have gone down over the last year, the petitioner represents that fallacy in the table given by Jindal is established by the reworked out table given below.

Year Import from Macedonia Import from South Africa Total Imports

| Q.MT Value Rate . |               | Q.MT Value Rate |            |       | Qty MT Value Rate |        |       |
|-------------------|---------------|-----------------|------------|-------|-------------------|--------|-------|
| Rs.Lac            | Rs/MT         | Rs.Lacs         | Rs.MT      |       | Rs.Lac            | Rs/MT  |       |
| 1999-0            |               | 20              | 4.03       | 20150 | 20                | 4.03   | 20150 |
| 2000-01           | 54 11.86      | 21963           | 54.6 28.52 | 52234 | 108.6             | 40.38  | 37182 |
| POI               | 1902.7 371.91 | 19546           | 552 137.22 | 24859 | 2454.7            | 509.13 | 20741 |

4. It would be seen that the table shows ferro silicon having been imported at a rate of Rs.52.23 per kg. Would Jindal argue that ferro silicon has been imported into India (and Jindal would buy the material) at an average CIF price of Rs.52.23 free of customs duties! Jindal has simply ignored the possible error in the data.
5. Fallacy in the table and argument put by Jindal is further established once the information with regard to other countries is also examined. Information with

regard to imports from various countries was earlier provided by the petitioner. It would be seen that the dumped imports at much lower prices were available from various countries (which are now attracting duties). Thus, it would not be appropriate to argue that import price from South Africa declined from Rs.52 to Rs.25 whereas the losses of the domestic industry also declined. Losses to the domestic industry in the previous year were due to dumped imports from other countries.

6. ROI for the domestic industry continues to be negative and in spite of the improvement of productivity, the domestic industry has suffered financial losses due to sub optimal prices prevailing in the market due to dumping. The company has option but to increase the wages of the employees given statutory regulations. Considering the present situation, the domestic industry cannot think to raise further capital issue for expansion and investment.

### **Comments of the Domestic Industry to the Disclosure.**

15A. With regard to improvement in a number of injury parameters, argument of M/s. Jindal Strips Limited lacks appreciation of the market situation. It has been conveniently ignored by Jindal that the earlier period with which Jindal has drawn comparison and conclusion itself was a period of injury to the domestic industry from dumped imports. We have provided a decision of EC in the matter of Ferro Silicon Manganese from China PR (Counsel Reference NO. 495/98 dated 23rd February 1998) wherein it has been clearly held that it has to be kept in mind while evaluating injury to the domestic industry that the industry was recovering from earlier dumping of the product in the market.

### **EXAMINATION BY AUTHORITY**

16. Analysis of injury to the domestic industry has been done on the basis of the information available on record and the verification done by the officials of the Director general of Anti Dumping and Allied Duties. As regards the observation made by certain importer, the Authority has determined the injury information with respect to M/s IMFA, Bhubaneshwar and M/s VBC Ferro Alloys, Hyderabad, which now constitute 62% of the domestic industry. In order to fully assess the evolution of the various injury parameters, the fact may be borne in mind that the domestic Industry was confronted with a growing Ferro Silicon demand, which had to be met in terms of production and Anti Dumping duty is presently in force against imports originating in or exported from Russia, China PR and Ukraine. The particular impact of these types of measures has been taken into consideration while analyzing various injury factors for the time period after 1998-99. The following parameters have been analyzed for the purpose of assessment of injury to the domestic industry.

## Volume and Market Share of Dumped Imports

17. The Authority has examined the information regarding the volume of exports from the subject countries during the period of investigation and the preceding years. During the POI the imports from the two subject countries taken together were 2454 Mt and 3272MT(Annualized). During the year 2000-2001 these imports were 108 MT (as per DGCI&S data). These imports from the subject countries accounted for a market share of 0.1% in 1999-2000, 0.61% during 2000-01 and 17.47% during POI. When compared to the previous year 2000-01 the share in the market had shown a quantum increase during the POI. The Authority notes that the markets share of the domestic industry have gone down during the Period of Investigation as compared to previous years. Though the market share improved from 1999-00 to 2000-01, namely, after the imposition of definitive measures against imports originated in Russian, Ukraine and China PR, it has, however, been noted that this increase has not allowed the domestic industry to regain the position it had before the injurious dumping from the subject countries.

| Increase in Imports |      |       |       |       |          |
|---------------------|------|-------|-------|-------|----------|
|                     | Unit | 98-99 | 99-00 | 00-01 | POI Annl |
| Macedonia           | MT   | 0     | 0     | 54    | 2537     |
| South Africa        | MT   | 100   | 20    | 55    | 736      |
| Subject countries   | MT   | 100   | 20    | 109   | 3273     |
| Countries with AD   | MT   | 2615  | 9857  | 6617  | 2686     |
| Others              | MT   | 1660  | 10847 | 11196 | 12779    |
| Total               | MT   | 4375  | 20719 | 17921 | 18738    |

| Market share in Imports |      |       |       |       |          |
|-------------------------|------|-------|-------|-------|----------|
|                         | Unit | 98-99 | 99-00 | 00-01 | POI Annl |
| Subject countries       | %    | 2.29  | 0.1   | 0.61  | 17.47    |
| Countries with AD       | %    | 59.78 | 47.58 | 36.92 | 14.34    |
| Others                  | %    | 37.94 | 52.33 | 62.47 | 68.2     |
| Total                   | %    | 100   | 100   | 100   | 100      |

| Market share in Demand |      |       |       |       |          |
|------------------------|------|-------|-------|-------|----------|
|                        | Unit | 98-99 | 99-00 | 00-01 | POI Annl |
| Subject countries      | %    | 0.16  | 0.03  | 0.13  | 3.64     |
| Countries with AD      | %    | 4.24  | 12.8  | 7.76  | 2.98     |
| Others                 | %    | 2.69  | 14.08 | 13.13 | 14.2     |
| Domestic Industry      | %    | 45.58 | 37.86 | 42.36 | 41.68    |

|                 |   |      |       |       |       |
|-----------------|---|------|-------|-------|-------|
| Indian Industry | % | 92.9 | 73.09 | 78.98 | 79.17 |
|-----------------|---|------|-------|-------|-------|

## **Production and Capacity utilization**

18. The Authority notes that the production of the domestic industry has increased over the years. With capacity of domestic industry remaining same, higher production has led to higher capacity utilization for the domestic industry. Nevertheless, even this increase of rate of capacity utilization remains at a sub optimal level in view of increase in demand of the subject goods and imposition of anti dumping duties from other sources.

## **Sales Volumes**

19. The Authority notes from the information available that sales volume of the company has increased over the years. The Authority notes that increase in sales volumes has to be seen in the light of the fact that consumption of the subject goods has increased. The domestic industry has, therefore, derived some advantage from this positive market situation. Profitability, however, still remains in a negative situation. It is, further noted that with increased sales, the domestic industry has been suffering financial losses as they have not been able to raise the price up to a level which would have permitted even recovery of full cost of production.

## **Price Undercutting and Price Underselling**

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

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

## **Price Undercutting from Subject countries**

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the landed value of imports of subject goods from subject countries

during the POI with the net sales realization and has found that there has been a price under-cutting by the dumped imports cumulatively from the subject countries. The landed value of imports has been found to be lower than the domestic industry's net sales realization.

### Price Underselling from Subject countries

21. The Authority has also examined the claim of the domestic industry that the domestic industry is suffering injury on account of financial losses. The Authority notes that price underselling is an important indicator to make an assessment of injury. The Authority has worked out a fair selling price and compared the same to the landed value to arrive at the extent of price underselling. The Authority notes that the imports were having significantly suppressing/ depressing effect on the prices in the domestic market, as the domestic industry has not been able to raise its selling price to non-injurious level in view of the dumped imports from both the subject countries. The Authority thus concludes that the selling price of the domestic industry is significantly below the price, which would have permitted the domestic industry, a fair recovery of its cost of production and earn a reasonable return.

| Injury parameters      |       |        |        |          |          |
|------------------------|-------|--------|--------|----------|----------|
| Parameters             | Units | 98-99  | 99-00  | 00-01    | POI Annl |
| Capacity*              | MT    | 60,000 | 60,000 | 60,000   | 60,000   |
| IMFA                   | MT    | 45000  | 45000  | 45000    | 45000    |
| VBC                    | MT    | 15000  | 15000  | 15000    | 15000    |
| Production*            | MT    | 32792  | 37796  | 40829    | 45704    |
| IMFA                   | MT    | 22319  | 26731  | 30763    | 33391    |
| VBC                    | MT    | 10473  | 11065  | 10066    | 12313    |
| Capacity Utilistion*   | %     | 54.65  | 62.99  | 68.05    | 76.17    |
| Sales*                 | Index | 100    | 103.77 | 128.58   | 133.43   |
| Opening Stocks*        | Index | 100    | 44.89  | 64.75    | 28.43    |
| Closing stocks*        | Index | 100    | 144.26 | 63.33    | 42.52    |
| Cost of production*    | Index | 100    | 96.1   | 96.76    | 95.19    |
| Net sales realisation* | Index | 100    | 97.34  | 95.39    | 96.77    |
| Profit*                | Index | 100    | 73.44  | 121.71   | 66.45    |
| Profit for product*    | Index | -100   | -74.31 | -140.437 | -101.934 |
| Salary & Wages         | Index | 100    | 103    | 122      | 126      |
| Cash Profit            | Index | -100   | -55.3  | -170     | -78.82   |
| Return on capital*     | Index | -100   | -59.18 | -124.9   | -92.94   |
| Employement*           | Index | 100    | 101.97 | 98.09    | 94.10    |
| Productivity*          | Index | 100    | 113.04 | 126.93   | 148.12   |
| Growth in sales*       | %     |        | 3.77   | 23.9     | 3.77     |

\* M/s IMFA, Bhubaneshwar and M/s VBC Ferro Alloys, Hyderabad

Thus, the dumped imports have prevented the domestic industry from effecting legitimate price increase to realize a reasonable price. The industry has suffered material injury on account of depressed selling prices resulting in non-recovery of cost of production and thereby suffering financial losses. The selling price of the domestic industry marginally increased during the POI as compared to year 2000-01. However, the same has been below the non-injurious price (NIP) on account of dumped imports.

### **Employment and Wages**

22. The Authority notes that there is no significant change in the employment level of the domestic industry. The wages/salary have increased over the years

### **Inventories**

23. The inventories have declined over the periods. Here the Authority notes that period being compared with the POI is a period of dumping faced by the industry with changed sources.

### **ROI and Cash profit**

24. The domestic industry has been suffering a negative cash profit for the past 4 years and its cash flow position remains adverse.

### **Growth, Return on Capital and Ability to raise capital**

25. The company has been able to register a growth rate of 3.7% during the POI over the previous years. It is also noted that capital employed has increased over the years due to higher utilization of facilities for production and sale of the product concerned. However, in spite of increase in capital employed, the domestic industry has suffered losses during the POI and earlier years. It is also noted that return on the capital employed has not further deteriorated and the same has shown marginal improvement. However, this may be seen along with the fact that the capital employed itself has significantly increased. The Authority concludes that cash flow, ROI and profitability of the domestic industry – all remains negative, which would adversely affect the ability of the domestic industry to raise fresh capital.

### **Closure of Other Units.**

26. It is claimed by M/s IFAPA that a number of companies have one after another suspended production of subject goods due to continued dumping of the material in the Indian market. It is also noted that a significant number of the units have closed down their production due to dumping from the subject countries. It is also noted that

another domestic producer M/s. Hi tech Electrothermics & Hydropower Limited is also incurring substantial losses on account of the production of the subject goods as reported in the balance sheet. Though the Authority has discarded the costing information of the said firm because of the incomplete and insufficient data, it is noted that the said company is incurring significant losses.

27. In brief, it can be concluded that

1. Imports of subject goods from subject countries have increased significantly in absolute terms. These imports have also increased in relation to total imports of subject goods in India.
2. Imports from the subject country have increased in relation to the production of the domestic industry and also in relation to the demand of subject goods in India.
3. Export prices have declined significantly and Imports from subject countries are undercutting the prices of the domestic industry.
4. The petitioner is suffering from price underselling also as landed price of subject goods are below the Non Injurious price or fair selling price of the domestic industry.
5. Dumped imports are preventing the domestic industry from effecting price increase up to a level of Non Injurious price. The profitability of the domestic industry remains sub optimal in view of the continued dumping from a large number of sources. The petitioner is suffering from price suppression/ depression, as weighted average landed price of the subject goods from subject country are less than cost of production of the domestic industry.
6. In view of the aforesaid observations, the Authority notes that various parameters listed above clearly indicate that imports have increased in absolute terms and also in relation to production of the domestic industry and in relation to the demand in India. With the decline in the export price from subject countries, imports are cumulatively undercutting the prices of the domestic industry and are preventing it to effect legitimate price increase to the level of Non injurious Price determined by the Authority. Imports are resulting in price underselling by the domestic industry and profitability of the domestic industry has remained sub optimal in spite of imposition of anti dumping duty on a number of sources.
7. Regarding observation made by the user industry that domestic industry is having their own source of power and hence any further benefit in the form of anti dumping duty is uncalled for, the Authority, after going through the records kept by IMFA, notes that the petitioner is getting power from its sister concern at a much cheaper rate than the tariff normally charged by State

Electricity Boards. However even after getting power at a cheaper cost, the domestic industry has not been able to recover its cost of production.

## **H Cumulative Assessment of Injury**

27A As per annexure-II (iii), in cases where imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that (a) the margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article --- and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%. The Authority has also found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article and has found that there is a cumulative effect of injury by imports of subject goods on the domestic industry.

The above economic parameters cumulatively and collectively establish that domestic industry has suffered material injury on account of dumping.

## **I. Examination by the Authority on Causal Link**

28. Annexure-2 (v) of Anti-Dumping rules states that it must be demonstrated that dumped imports are, through the effects of dumping as set forth in Para 2 and 4 of said annexure above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports, which at the same time are injuring the domestic industry, and the injury caused by these factors must not be attributed to dumped imports. Factors which maybe relevant in this respect include inter- alia, the volume and price of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.

In order to reach its conclusions on the cause of the injury suffered by the domestic industry and in accordance with rule V of the Annexure II of the Anti Dumping Rules,

the Authority examined the impact of all known factors and their consequences on situation in that industry. Known factors others than the dumped imports, which could, at the same time, have injured the domestic industry, were also examined to ensure that the possible injury caused by these other factors was not attributable to the dumped imports.

**(i) Effect of the dumped imports**

Between 1998-99 and POI, dumped imports from the subject countries as a proportion to total imports increased significantly in volume (57.44% to 98.34%) and from 0.16% in 1999-99 to 3.64% in the POI to the to total share in demand. As regards the export prices, they decreased during the whole period and undercut the domestic industry prices during POI on average by \*\*\*\*% (from subject countries). Moreover, undercutting figures did not show the full impact of the dumped imports, since domestic industry prices were depressed. Price of the dumped imports was below those of the domestic industry throughout the POI and exerted a pressure on them, which forced the domestic industry to decrease prices. It is, therefore, considered that the dumped imports caused material injury to the domestic industry.

(ii) Other factors: Performance of other producers: It has been claimed by interested parties that a number of industries manufacturing Ferro silicon have closed down due to dumping of the subject goods. The Authority notes that some of these industries had been closed prior to the POI and continued dumping from a number of sources could be one of the reasons for the closure of these units.

**(iii) Imports from Non Subject countries**

The Authority has analyzed the volume and price of the imports from Non subject countries from 98-99 and POI and notes that market share of non subject countries (other than subject countries and countries attracting duty) have risen from 37.94% in 98-99 to 68.20% during the POI but the prices from these countries have been much higher. It is noted that these imports could not have caused injury to the domestic industry.

**(iv) Contraction of demand and other factors**

The Authority observes that there is a single market for the subject goods where dumped imports compete directly with the goods produced by the domestic industry. Decline in demand is not a factor causing injury to the domestic injury. The imported subject article and the domestically produced goods are like articles and are used for the same applications/end uses. Thus, pricing becomes the most important factor determining purchase of the article from either imported sources or domestic sources.

(v) The Authority notes that imports of Ferro Silicon from the subject countries increased tremendously during the POI as compared to previous years. The reduction in the export price from the subject countries resulted in low landed price of the subject goods and the domestic industry in its attempts to match the dumped import prices was forced to sell below its Non injurious price and the domestic industry has not been able to recover from the losses it is incurring every year despite imposition of anti dumping duty on a number of sources.

(vi) The Authority could not find any evidence of contraction of demand, change in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers. It is also noted that developments in technology has not been a cause for injury to the domestic industry. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

29. The landed value has been determined for the subject goods after adding onto the weighted average c.i.f. export price, the applicable level of customs duties (except duties levied under Section 3, 3(A), 8B, 9, 9(A) and 1% towards landing charges.

30. While determining the non-injurious price for the like articles for the domestic industry, the Authority has used the actual cost of production of the subject goods of two major producers of the subject goods i.e. M/s. IMFA, Bhubaneswar and M/s VBC Ferro Alloys, Hyderabad to determine optimum cost of production for the domestic industry which would take into account the normated best consumption norms and the actual price of the raw materials which are consumed for the production of the subject goods during the period of investigation. The Authority has considered the costing information submitted by M/s. Hi Tech Electrothermics and Hydropower Limited, as incomplete and insufficient and has, therefore, discarded the data submitted by the said firm. For calculation of injury margin, the ex-factory non-injurious price determined for the period of investigations has been compared with the landed value of the imported goods.

#### **Duty up to dumping margin:**

31. The Authority recommends the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry.

#### **J. INDIAN INDUSTRY'S INTEREST:**

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

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

The Authority notes that the imposition of anti dumping measures would not restrict imports from South Africa and Macedonia in any way, and therefore, would not affect the availability of the product to the consumers.

## **K. CONCLUSIONS:**

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

- i. Ferro Silicon has been exported to India from South Africa and Macedonia below its normal value;
- ii. The Domestic industry has suffered material injury.
- iii. The material injury has been caused cumulatively by the dumped imports from subject Countries/territory.
- iv. The Authority considers it necessary to impose definitive anti dumping duty on all imports of Ferro Silicon from subject countries in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is compared with the Non Injurious Price of the domestic industry determined for the period of investigation.
- v. Accordingly, the Authority recommends that the definitive Anti dumping duties be imposed by the Central Government on all imports of Ferro Silicon falling under Custom Heading 7202.21 originating in or exported from South Africa and Macedonia. The Anti-Dumping duty shall be the difference between the amount mentioned in column 3 of the following table and the landed value of imports per MT on all the imports of subject goods falling under Chapter 72 of the Customs Tariff, originating in or exported from the subject territory/countries mentioned below: -

|   |                                       |        |
|---|---------------------------------------|--------|
| A | South Africa: All Producers/Exporters | 728.44 |
| B | Macedonia: All Producers/Exporters    | 728.44 |

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

34. Subject to the above, the Authority confirms the preliminary findings dated 11th July 2002.

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

**(L.V.SAPTHARISHI)**  
DESIGNATED AUTHORITY