

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

NOTIFICATION

NEW DELHI, The 6th July 2005

FINAL FINDINGS

Sub: Anti-Dumping Investigation concerning imports of certain Rubber Chemicals (MBT, MBTS, and CBS) from People's Republic of China.

No.14/9/2004-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

2. WHEREAS M/s National Organic Chemicals Industries Ltd. (herein after referred to as NOCIL or applicant) filed an application before the Designated Authority (hereinafter referred to as this Authority), in accordance with the Act, and Rules, alleging dumping of Certain Rubber Chemicals namely MBT, MBTS, CBS and PVI originating in or exported from the People Republic of China (herein after referred to as subject country) and requested for initiation of an investigations for levy of anti dumping duties on the subject goods.

3. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the petitioner, i.e., M/s National Organic Chemicals Ltd. on behalf of the domestic industry, issued a public notice dated 7th July 2004 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the above goods originating in or exported from the subject country in accordance with the sub-Rule 5(5) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which if levied would be adequate to remove the injury to the domestic industry.

A. PROCEDURE

3. Procedure described below has been followed with regard to this investigation after issuance of the public notice notifying the initiation of the above investigation by the Authority.

- i. The Designated Authority notified the Government of Republic of China in terms of Rule 5 (5) of the Rules and copies of initiation notifications dated 7th July, 2004 were sent to the Embassy of Peoples Republic of China in India, known exporters from the subject country, importers and the domestic industry as per the information available with it and requested them to file questionnaire responses and make their views known in writing within 40 days of the initiation notification.
- ii. Copies of the non-confidential version of the petition filed by the domestic industry were made available to the known exporters and the Embassy of China PR in accordance with Rules 6(3) supra.
- iii. The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2) with a request to advise the exporters/producers from their countries/territories to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporter was also sent to the Embassy of subject country along with a list of known exporters/ producers.
- iv. The Authority sent questionnaire, to elicit relevant information, to the known exporters from subject countries/territories in accordance with the rule 6(4):-
- v. In response to the above notification the following exporters from China PR filed their questionnaire responses alongwith their Non-Market Economy questionnaire responses.
 - a. M/s Nanjing Chemical Factory, China PR (CBS)
 - b. M/s Shandong Shanxian Chemical Co. Ltd, China PR (MBT, MBTS, CBS, and PVI)
 - c. M/s Shanxian Yanggu Ltd (PVI)
- vi. Preliminary deficiencies noticed in the questionnaire response, including NME responses were communicated to the parties. The revised responses and clarifications filed by the exporters were taken on record.
- vii. Questionnaires were sent to known importers and Consumers of subject goods in India calling for necessary information in accordance with Rule 6(4). While M/s MRF Ltd and M/s Birla Tyres Ltd filed their importer's questionnaire response on confidential basis Automotive Tyres Manufacturer's Association (ATMA), All India Rubber Industries Association and All India Federation of Rubber Footwear Manufacturers filed only legal arguments during the course of the investigation.

- viii. The views of the all interested parties, including the exporters, importers and other interested parties, to the extent they are relevant, have been taken on record and examined by the Authority at appropriate places, without reproducing the comments of individual interested parties.
- ix. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods for the past three years, including the period of investigations;
- x. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xi. The Authority verified the data of the domestic industry and injury information submitted and optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the petitioner on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- xii. Authority conducted on the spot investigation and verification of the exporters responses to the extent possible in order to determine the normal value and export price in the country of export.
- xiii. Vide letter dated 16th May 2005 the domestic industry withdrew its application for imposition of the antidumping duty on one of the products under consideration i.e. PVI. In accordance with Rule 14 (a) of the said Rules the Authority terminated the investigation as much as it covered the product PVI only and continued with the investigation in respect of other three products named i.e. MBT, MBTS and CBS (herein after referred as subject goods). The Authority notes that M/s Shanxian Yanggu Ltd filed its questionnaire response only in respect of PVI investigations against which has been terminated. Therefore, the submissions made by this exporter have been removed from the records of this proceeding.
- xiv. The Authority issued disclosure statements on 15th June 2005 to all interested parties intimating the essential facts placed before it, which has formed the basis of the findings of the Authority. The comments of the interested parties, to the extent they are relevant, have been examined by the Authority in this finding.
- xv. The Authority has examined the confidentiality claims of various interested parties in respect of the data submitted by them. The information, which are by nature confidential, or which have been provided on a confidential basis by the interested parties alongwith non-confidential summary thereof have been treated confidential. *** in this Notification represents information furnished

by the petitioner on confidential basis and so considered by the Authority under the Rules;

xvi. Investigation was carried out for the period starting from 1st January 2003 to 31st December 2003 (POI).

B. PRODUCTS UNDER CONSIDERATION

4. The products under consideration are certain specific rubber chemicals used in manufacture of rubber products, namely: Accelerators: MBT, MBTS, and CBS
Detailed chemical names of the products are as follows:-

Generic Name	Chemical description	Other trade names
MBT	2-Mercapto Benzothiazole	Accelerator M,
MBTS	Dibenzothiazole disulphide	Accelerator DM
CBS	N-cyclohexyl-2-benzothiazole sulphenamide	Accelerator CZ/ Accelerator HBS

1. **MBT** - MBT is produced by reacting aniline, carbon disulphide and Sulphur under high temperature and pressure of Hydrogen Sulphide gas formed during the reaction.
2. **MBTS** - MBTS is manufactured by oxidation of sodium salt of MBT using suitable oxidizing agents.
3. **CBS** -- CBS is manufactured by reacting sodium salt of MBT, Cyclohexyl amine using suitable oxidizing agents.
4. The products are mainly used in automotive tyre and tubes industry and also in conveyor belting and footwear industry amongst others. Other rubber chemicals used in various other uses are not covered within scope of the product under consideration.

B.1 Classification

6. The Authority notes that there is no dedicated ITC HS Classification for the subject goods and products under consideration are classified under various subheadings of customs classification heads 38.12.10, 38.12.20 and 38.12.30 as well as under 29.34.20 and 29.25.20 (at six digit levels) of the Customs Tariff Act and ITC HS classification. The Customs and ITC HS classifications are however, indicative only and are in no way binding on the scope of the present investigation.

B.2 Views of the Exporters, importers and other interested parties

7. The interested parties, including the responding exporters from China and the Automotive Tyre manufacturers Association, have argued that the Designated

Authority should not have initiated a combined investigation covering four distinctive and separate rubber chemicals i.e. MBT, MBTS, CBS and PVI in a single investigation. They have argued that the Authority ought to have treated each of the four Rubber Chemicals separately as the markets; exporters, importers, producers and users may be different for each of these products. Therefore, taking them together would exclude meaningful cooperation from a number of parties in India, which would distort the facts. They have also argued that it is not possible to reach any determination on injury or volume/price effects without disaggregating the import data separately for each of the chemicals covered by the concerned tariff head. They have further argued that domestic industry has itself admitted that the four rubber chemicals are four different products which are not *inter se* substitutable. It was therefore incumbent upon the Designated Authority to initiate four different investigations so that the dumping, injury and causal link analysis can be done in a meaningful way.

8. The domestic industry has argued that the subject goods are broadly used in treating rubber and rubber compounds and there is a great amount of commonality with regard to producers and consumers. Therefore, a common investigation was more appropriate than investigating all the products separately as long as all analysis are conducted separately for the products under consideration. They have further argued that there are past precedence where the Authority had investigated multiple products in a single investigation.

B.3 Examination by the Authority

9. The Authority notes that neither the Agreement nor the Antidumping Rules prohibits in any manner investigation of multiple products in one investigation. As long as the individual domestic products and the individual export products are like articles and the injury determination can be conducted against individual products there is no explicit restriction to limit the investigation to single product as has been argued by the interested parties.
10. The Authority further notes that the products under consideration, in the present investigation, are three distinct yet same general category of rubber chemicals used as Accelerator Rubber Chemical, used in the rubber industry. The domestic industry is same for these rubber chemicals, which manufactures all these chemicals in the same manufacturing facilities. Therefore, initiation of a combined investigation was most ideal in this situation to optimize use of resources for such investigations.
11. The Authority also notes that the initiation notification has amply clarified that both dumping and injury investigations are to be carried out in respect of individual products in addition to overall impact examination on the domestic

industry as a whole. The Authority also notes that the standing requirement of the domestic industry has also been examined with respect to individual products. Therefore, the arguments of the interested parties in this respect do not appear to be valid.

C. LIKE ARTICLES

12. The applicant has claimed that each individual product included in the application is a stand-alone product and does not have inter se substitutability with other rubber chemicals. These are specific chemicals used in specific recipe used for manufacture of different types of rubber products and cannot be substituted for other chemicals though they are generally known as accelerators and inhibitors. Moreover, the rubber chemicals included in the present application are also not inter se substitutable or inter se like products as these materials are used for specific end applications. Therefore, dumping margins and all other analysis, including injury to the domestic industry will be done on individual products.
13. These individual products are known by their chemical, as well as trade names world-over and there is no difference between the product manufactured by them and the import products. There is no difference in the products produced by the domestic industry and imported from subject country. The products are being directly imported by the tyre industry and also by traders for supply to other industries. The consumers are using the domestic and corresponding import products interchangeably.
14. The individual products produced by the domestic industry and imported from subject country are identical in all essential characteristics and therefore, like articles within the meaning of the term as per the Rules

D. DOMESTIC INDUSTRY

D.1 Views of the exporters, importers and other interested parties

15. The interested parties have argued that the standing of the domestic industry should have been examined vis-a vis the production by other Indian producers. They have argued that the Authority 'may' and not 'shall' exclude the producers having imports in their name or related to importers from the scope of domestic industry. Hence, the Authority must first decide whether it will include or exclude producers, who may also be importers, from the scope of domestic industry. It is only then that the domestic industry standing of NOCIL may be determined. They have also questioned the statement of the domestic industry that the other producers of the subject goods have either stopped

production or turned traders. The domestic industry has argued that these producers have substantially exited from the production of the subject goods and resorted to imports.

16. ATMA and the responding exporters from China in their post disclosure submissions have reiterated their views on the standing of the domestic industry and have argued that since entire production of MBT has been outsourced from its ancillary unit, which has a separate legal entity, the applicant cannot be treated as the producer of the subject goods and therefore, cannot be regarded as the domestic industry in terms of the Indian Antidumping Rules.

D.2 Examination by the Authority

17. The application for the investigation has been filed by M/s. NOCIL, Mumbai. M/s Bayer India Ltd., M/s ICI Ltd. and M/s Merchem Ltd. are the other manufacturers of some of these products under consideration. However, it has been argued by the domestic industry that all of them have either ceased to produce the subject goods because of the dumped imports and turned themselves into importer of the subject goods, or substantially reduced their production. All the three companies were asked by the Authority to provide necessary information on their capacity, production sales and imports of the subject goods and also to confirm their support or opposition to the application. However, no response was received from these producers except from M/s ICICI who opposed the investigation.

18. However, transaction-wise import data provided by DGCI&S and other sources show that ICI and other two companies have substantial imports of these products during the period of investigation. As far as Bayer India is concerned, the Company is related to M/s Bayer GmbH, a major producer and exporter of the subject goods to India from its manufacturing facilities located at different locations. However, to a specific request from the Authority seeking information from them and their support or opposition to the application, prior to initiation of the investigation, no response was received from these producers except ICICI. Therefore, the Authority concluded that there is no viable opposition to the investigation from any other domestic producers and in view of their importers status these domestic manufacturers do not qualify to be included in the domestic industry domain in terms of Article 4.1 (i) of the Agreement.

19. As far as the outsourcing of one of the product (MBT) is concerned, the Authority notes that the applicant gets one stage processing done from the ancillary unit on job-work basis for which NaMBT, the previous stage material is supplied by the applicant. The job-worker is paid a processing fee, which

includes its costs, depreciation and profit. It is also noted that the entire capacity of the ancillary unit from which the applicant gets the MBT processed on job-work basis is fully dedicated to NOCIL. The Authority also notes that this practice of job working on long-term processing agreement basis is not uncommon in the processing industry world over. This practice is widely followed in the western countries by large producers of Rubber Chemicals like Flexys. The Authority also notes that the definition of domestic industry under Rule 2 (b) covers 'manufacturer of the like article' and 'any activity connected therewith'. Therefore, the Authority is of the view that partial processing done by the applicant on its intermediate product to final stage would not disqualify it to be regarded as the domestic industry.

20. ATMA and responding exporters from China have argued that the Authority should have collected information from other domestic producers for the purpose of injury examination. They have further argued that all the correspondence with other domestic producers should also be placed in the public folder. In this connection, the Authority notes that a detailed exercise has been undertaken to ascertain the standing of the applicant before initiation of the investigation and disclosed to the interested parties. Since other domestic producers did not cooperate, except brief information provided by ICI on confidential basis, Authority had no option but to proceed with best information available. As far as placing the correspondence of the Authority in the Public folder is concerned, the Authority notes that Rule 6(7) only obligates the Authority to make available the evidence presented to it by one interested party to other interested parties, participating in the investigation subject to the confidentiality requirements under Rule 7.
21. The applicant is a multi-product manufacturer of organic chemicals. The Authority notes that the plant capacity of the petitioner, for the individual products under consideration, is dedicated. Taking into consideration the production of the individual chemicals of the petitioner company and after disallowing the production of the producers who have substantial imports of respective products, the applicant company commands a major proportion of the total domestic production of the products under consideration. In view of the above the Authority holds that the applicant commands the standing and fulfils the requisite criteria to represent the domestic industry, as required under Rule 5(a) and (b) and Rule 2(b) of AD Rules.

E. De Minimis Limits

22. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary

sources the imports of the individual products from the subject country are above the de minimis level.

F. Other submissions and issues raised

23. M/s Shanxian Chemicals has argued that determination of dumping can only be for the POI concerned and the Hon'ble Authority lacks jurisdiction in respect of any issues prior to the POI for dumping determination. They have argued that the data/information sought for the 2 prior years is to be used only for purposes of comparison with the POI and cannot be used or taken cognizance of in respect of the dumping margin determination during the POI. It has also been argued by the exporter that since the NME issue does not concern issues such as injury, causal link, public interest, standing, like article etc., but concerns only the information on the basis of which dumping margins are to be determined it is clear that even in the absence of any explicit restrictive language, the NME issue can only be looked at with respect to ascertaining the status during the POI and not earlier to enable determination of the dumping margin. They have argued that there can be no concern of status prior to the POI.
24. The issue raised by the interested parties has been examined by the Authority. As far as over lapping periods are concerned the POI has been taken as one calendar year in order to keep the POI as close as possible to the time of initiation without being affected by availability of data. Since the data of 12-month periods are being examined a three-month overlap of the last year would not significantly distort the data. However, the Injury investigation period usually extends two to three financial years prior to the POI to examine the trend of various parameters and indices that may indicate injury to the domestic industry.
25. As far as the dumping determination and status of the exporters for determination of NME issues are concerned, the interested parties have argued that the Authority has no jurisdiction to look at the status of the exporters and dumping prior to POI. While the Authority is not examining whether dumping existed prior to the POI, Para 8 (ii) of Annex I requires the Authority to examine whether the production cost and financial situation of such firms are subject to significant distortion carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write offs, barter trade and payment via compensation of debts. The Authority also notes that the responding exporters have been State-owned Enterprise for a long time before being privatized. They have also admitted in their submissions that China is an economy in transition and the exporters in question have also transformed themselves from state ownership to private ownership during the

lest few years. Therefore it is essential to examine the mechanism of transformation from state-owned enterprises to claimed privatization to understand whether the privatization process correctly reflects the true cost of assets and liabilities which in turn affect the cost of production and prices of the subject goods and whether the cost and prices of the exporter have been affected by significant state interference in the commercial activities. Therefore, the Authority is of the view that arguments of the interested parties in this respect cannot be accepted.

G. DUMPING DETERMINATION

26. In response to the initiation of the investigation three responses were received from China i.e., M/s Nanjing Chemicals Ltd. (for CBS); M/s Shandong Shanxian Chemicals Ltd (for MBT, MBTS, CBS, PVI) and M/s Shandong Yanggu Ltd (for PVI). However, after termination of the investigation in respect of PVI, the proceedings against M/s Yanggu stands terminated. In view of the non-market economy presumption in respect of the Peoples Republic of China, the Authority examined the market economy claims by the individual exporters mentioned above. In this connection the Authority has examined whether these exporters are operating under market signals and their commercial operations are not affected by any significant state intervention.

G.1 Examination of Market Economy claims of responding exporters

G.1.1 M/s Shandong Shanxian Chemicals Co. Ltd

27. M/s Shandong Shanxian Chemicals Co. Ltd. made a claim for market economy treatment and accordingly filed a detailed submission in terms of para 7 & 8 of the Annexure-I of the Antidumping Rules. Additional information was also called for from the applicant on its claim of market economy status. The information submitted was also verified during the spot verification conducted by the Authority in China, to examine the claim of market economy status of the exporter. The result of verification was communicated to the exporter through a detailed verification report and comments thereof were also examined in the disclosure statement issued to the exporter. The Authority inter alia observed that the state-owned enterprise in the name of M/s Shanxian Organic Chemicals Factory was transformed into a joint stock Company in 1998-99 and the new enterprise was named M/s Shandong Sanxian Chemical Industry Co. Ltd. and transfer of assets and liability of the former enterprise took place through a complex process of various understandings between the parties.

28. The Authority also observed that the value at which the assets of the state-owned entity were transferred to the private ownership and the manner in which the liabilities have been adjusted or written off, distorts the cost of production of the products manufactured from this plant.
29. The exporter in its submissions has repeatedly argued that the scope of NME is limited to dumping margin determination and that the jurisdiction of the Hon'ble Authority is limited to the period of investigation (POI). Thus, determination of market economy treatment must necessarily be on the basis of the facts extant during the POI and not prior periods. They have further argued that neither domestic industry nor the Authority has cited any precedent in any leading jurisdiction for determination of NME during POI on the basis of status prior to the POI or events prior to the POI. They have argued that the scope of review of process and valuation is beyond the competence of the Hon'ble Authority.
30. Quoting Article 15 of the Protocol of Accession of China to WTO the exporter has inter alia argued that in determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China.
31. It has also been submitted that the rubber chemicals business sector in China has not been found to be operating under non-market economy conditions in any anti-dumping investigation in any other jurisdiction. It has been further submitted that these rubber chemicals have not been identified in the Annex 2A2 to the said Protocol as a business sector under state control or influence. Therefore, they have argued that there is, *prima facie*, no reasonable basis to assume that the said rubber chemicals business sector in China operates, as a NME and thus Shanxian should be excluded from being deemed to be operating under NME conditions.
32. They have further argued that against a public invitation to bid for the earlier company as a whole or any of its businesses only most of the present shareholders and management responded to the public notice and bid for the rubber chemicals business. Since the business had been operating at a loss for many years there were understandably no other bidders. As far as debt rescheduling and write offs are concerned the exporter has argued that debt rescheduling including some write off is a common feature of privatization of loss making businesses in market economies and is believed to be the best practice in such privatizations as an option to winding up.
33. The Authority notes that Para 8 of Annex I of the Rules requires the Authority to examine whether the cost of production and prices of the subject goods in the exporting country are determined by the market signals are affected by

significant state interference. The Authority also notes that allocation towards value of assets, and plant and machineries as well as the liabilities at the time of transfer of the entity from the Government control to private management determines the cost of the product.

34. Para 8 (3) (b) also requires the Authority to examine whether the production costs and financial situation of such firms are subject to significant distortion carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write offs, barter trade and payments via compensation of debts. Therefore, it is essential to examine the process of transformation and how the assets and liabilities of the entity have been valued for the purpose of the privatization. Hence the argument of the exporter that the Authority cannot look beyond the period of investigation to find the status and the process of privatization is not tenable.
35. In addition to the above examination of the process of transformation and its effects of the cost of production the Authority also examined the other parameters laid down in the Para 8 of Annex-I to the Rules to determine whether the decisions of the exporter regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investments, are made in response to market signals reflecting supply and demand and without significant state interference in this regard, whether costs of major input substantially reflects market value.
36. The exporter, in its post disclosure submissions, has reiterated its stand on the non-market economy issue. While admitting that valuation of assets is a one-time event and has a 'one time subsidy' effect the exporter has argued that this one time subsidy effect on account of the valuation will diminish with the passage of time.
37. The Authority has examined the arguments of the exporter and the parameters set out for determination of market economy status of the exporter and notes that the manner in which the process of privatization has taken place and the fixed and financial assets of the erstwhile SOE has been transferred to the new Company appears to have significantly affected the cost of the products under consideration. Therefore, the Authority is of the opinion that the production costs and financial situation of the exporter are subject to significant distortion carried over from the former non-market economy system therefore, prices in the domestic market do not reflect the correct price of the product for the purpose of determination of its normal value.

G.1.2 M/s Nanjing Chemical Factory

38. M/s Nanjing Chemical Factory (NCF) also filed a detailed questionnaire response and made a claim for market economy treatment. Accordingly the

exporter filed a detailed submission in terms of para 7 & 8 of the Annexure-I of the Antidumping Rules. Additional information was also called for from the applicant on its claim of market economy status. The information submitted was also verified by the Authority during the spot verification conducted in China, to examine the issue of market economy status of the exporter.

39. The examination by the Authority indicates that the manufacturing facility i.e. Nanjing Chemical Plant has been transferred from a Government Department to another State-owned enterprise and therefore, remains a state-owned enterprise for all practical purposes. The legal entity of the Company is known as 'China Petrochemical Corporation Nanjing Chemicals Plant' (NCP) and as per the Business Licence of Enterprise Legal body dated 13th September 2000 it is State-owned enterprise. As it is today is a legal person as a wholly owned subsidiary of SINOPEC named in Annexure 2A2 to the Protocol of Accession of China to WTO. The entity is engaged in several activities including manufacture and sale of organic and inorganic chemicals. The status of the enterprise as a State-owned enterprise has also been admitted by the Company in its submissions.
40. The business entity is managed by a Board of Directors consisting of 5 members who are firstly elected by the congress of staff and workers, secondly appointed by SINOPEC. The Directors are required to act on behalf of the shareholder and related parties. It is however, noted that the State holds 100% shares of the Company through SINOPEC. The company also claimed that neither SINOPEC nor related parties can intervene in the decisions of the directors of NCP concerning operational and financial decisions.
41. However, the exporter has have argued that in spite of the fact that they are a state-owned enterprise, the Authority is required to examine whether there is a substantial state interference in their commercial activities which affect the costs and prices of the goods under investigation. However, ownership and control by ownership are very vital elements of examination of the involvement of the owners in the commercial decision making process of the Company. The above examination indicates that the exporting entity remains under state control and considerable management control by the State through SINOPEC remains, in spite of the fact that the workers congress has a role in the selection of the management of the entity.
42. The Authority also examined the process of transfer to see whether the current costs and prices of the business entity is affected or influenced by the process of transfer, asset valuation and write off of liabilities etc. It was noticed that at the time of merger or transfer of NCP to SINOPEC, the assets, liabilities and the equities of NCP were recognized using 'pooling of interest' method with consolidated profits and losses not confirmed. It has been clarified by the exporter that the acquisition of NCP by SINOPEC was achieved through the

use of equities. The combined assets of the merged entity were consolidated using book value, as opposed to the purchase method. The merging entities financial results were combined as though the two entities have always been a single entity. It was also confirmed that no proper revaluation of those assets, liabilities and equities were conducted at the time of transfer. It was clarified at the time of verification that the transfer was from one Government department to another government department. Therefore, the transfer was done on the basis of the book value at the time of transfer and no valuation of the assets and liabilities and equities was required.

43. The Authority notes that there was in fact no process of privatization of NCP. It still continues as a state-owned entity. However, through number of book adjustments and write offs carried out by the entity after its merger in SINOPEC, the entity has shown net profit in the POI, whereas it also has carried forward accumulated losses in its account. Therefore, the process of merger and allocation of various elements of costs effected through various adjustments and write offs carried out seems to have significant distorting effect on the cost of production and prices of the products.
44. In addition to the above examination of the process of transformation and its effects of the cost of production the Authority also examined the other parameters laid down in the Para 8 of Annex-I to the Rules to determine whether the decisions of the exporter regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investments, are made in response to market signals reflecting supply and demand and without significant state interference in this regard, whether costs of major input substantially reflects market value.
45. The Authority examined the process of procurement of raw materials, and state intervention, if any, in the procurement process. The main raw material in the production of rubber chemicals is Benzenen which is procured from one of their associated Companies i.e. M/s Shangdong Petrochemicals, a subsidiary of M/s SINOPEC, China. Verification was also conducted in the premises of M/s Shanghai Petrochemicals to examine whether the transactions between the related parties are at arms length.
46. The exporter has claimed that the transactions between Shanghai Petrochemicals and Nanjing Chemical Factory, are at arms-length and the price structure of the material are purely market based in spite of the fact that both are related parties through their common holding company. It was argued that the Company is responsible to its share holders and their interests and its overseas shareholders would not allow any kind of compensatory trade with any other company which would affect their profitability. The average price at which Benzene was procured from Shanghai Petrochemicals is RMB **** per

MT. The Company claimed that weighted average price of benzene in the China open market was RMB **** per MT.

47. The Authority also examined the procurement of utilities, investment decisions, compensatory and barter trade, if any, application of bankruptcy and property laws and exchange rate conversion.
48. In its post disclosure submissions the exporter has reiterated that as a state-owned enterprise they are also an independent market entity in its operational and financial decisions and state-owned enterprise does not mean non-market economy. They have further argued that the cost of production remains undistorted through transfer to SINOPEC.
49. The Authority has examined all the arguments and facts before it and finds that the exporting entity continues to remain a fully state-owned enterprise and considerable state intervention in the management control, investments and cost and price decisions of the exporter exists; and the production costs and financial situation of such firms are subject to significant distortion carried over from the former non-market economy system. Therefore, the Authority holds that the costs and prices of the exporter cannot be accepted for determination of its normal value

G.2 Determination of Normal value

50. The Authority notes that the cooperating exporters from China have provided their domestic sales transaction details for the purpose of determination of normal value in the country of exports in respect of the products under consideration. However, in view of significant distortion in the cost and prices influenced by the process of privatization or merger of the exporters concerned, the Authority is of the opinion that carry over of significant distortions from the former non-market economy system in respect of these exporters cannot be ruled out and therefore, the costs and prices of the products in the domestic market are not determined by true market signals. Therefore, the Authority has constructed the normal values of the products in China PR in terms of para 7 of Annex-1 to the Rules.
51. Para 7 of the Annex-1 provides that in case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy thord country, or the price from such a third country to other countries, including India, or where it is not possible, 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. An appropriate market economy third country shall be selected in a reasonable manner [keeping in view the level of development of the country concerned and the product in question] and due account shall be

taken of any reliable information made available at the time of selection. Account shall also be taken within time limits, where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”

52. The interested parties, including the responding exporters and ATMA have argued that under the scheme of para 7, the normal value is required to be determined under the first set of methods i.e., based on the price or cost of production in an appropriate third country and the Authority can resort to second set of methods i.e. price paid or payable in India, only when it is not possible to determine the price under the first set of methods. In other words, the Designated Authority must exhaust the first method before moving to the alternative procedure. They have also argued that selection of appropriate third country should have been intimated to the exporters and their comments obtained before any determination of constructed normal value is made.
53. The exporters have further argued that India is an inappropriate choice as a surrogate economy since it does not have the raw materials, clustered development, capacities, and infrastructure; and logistics advantages/resources available to Chinese producers. They have argued that, the cost of production and exports in China is much lower than in India and India is not a comparable economy with China and thus an inappropriate choice for a surrogate economy.
54. The Authority has examined the above arguments of the interested parties with reference to the Rules quoted above and notes that sufficient reliable information on cost of production and prices of the subject goods in any comparable third country was not available for selection of an appropriate third country for determination of normal value. Therefore, it was not possible to use the first set of methods indicated by the interested parties. Neither the responding exporters, nor other interested parties have placed any reliable and verifiable information before the Authority, at the time of questionnaire response or subsequent submissions, for selection of an appropriate third country. On the other hand domestic industry's applications clearly indicated that the normal value construction done by them is based on the price paid or payable in India.
55. The Authority has, therefore, constructed the normal value based on the 'price paid or payable in India' duly adjusted for reasonable profit margin as the most reasonable method for determination of normal value in China in terms of para 7 of Annexuer 1 of the Rules. Accordingly, the constructed normal values of the products under consideration has been determined as US\$**** Per Kg for MBT, US\$**** Per Kg for MBTS, and US\$**** Per Kg for CBS.

G.3 Export Prices

56. The cooperating exporters from China have submitted the details of their exports of the subject goods to India and the Authority has verified the data in respect of these exports including their claims of different adjustment to arrive at net-export prices. Accordingly, the export prices has been determined as follows:

G.3.1 M/s Shandong Shanxian Chemicals Ltd. China

MBT

57. The exporter exported *****MT of MBT to India during the POI at an average CIF price of US\$*****per MT. The export price has been adjusted towards, ocean freight, inland freight, insurance and handling charges as per the records of the exporter which works out to US\$ *****per MT. No Commission, rebate of discount was found payable on these transactions. Accordingly, the net ex-works export price is proposed to be determined as US\$ *****Per MT after allowing the adjustments as above.

MBTS

58. As far as MBTS is concerned the exporter exported *****MT of this product to India during the POI at an average CIF price of US\$ *****per MT. The export price has been adjusted towards, ocean freight, inland freight, insurance and handling charges as per the records of the exporter which works out to US\$ *****per MT. No Commission, rebate of discount was found payable on these transactions. Accordingly, the net ex-works export price is proposed to be determined as US\$ *****Per MT after allowing the adjustments as above.

CBS

59. The exporter exported *****MT of MBT to India during the POI at an average CIF price of US\$ *****per MT. The export price has been adjusted towards, ocean freight, inland freight, insurance and handling charges as per the records of the exporter which works out to US\$ *****per MT. No Commission, rebate of discount was found payable on these transactions. Accordingly, the net ex-works export price is proposed to be determined as US\$ *****Per MT after allowing the adjustments as above.

G.3.2 M/s Nanjing Chemicals

60. M/s Nanjing Chemicals filed its questionnaire response in respect of only one product i.e. CBS. The exporter has exported ***** MT of CBS to India during the POI at an average CIF value of US\$ *****MT. The export price has been adjusted towards, Commission, ocean freight, inland freight, insurance and handling charges as per the records of the exporter which works out to US\$*****per MT. Accordingly, the net ex-works export price has been determined as US\$ *****Per MT after allowing the adjustments as above.

G.3.3 All other exporters from China

61. Net export prices of the non-cooperating exporters from China has been determined on the basis of lowest transaction value of cooperating exporters duly adjusted for level of trade adjustment based on facts available.

G.4 Dumping Margins

62. The weighted average net-export prices of individual products have been compared with the respective constructed normal values and the dumping margins proposed to be adopted works out as follows:

	Shanxian			Nanjing	All Other Exporters		
	MBT	MBTS	CBS	CBS	MBT	MBTS	CBS
CNV Rs Per KG	*****	*****	*****	*****	*****	*****	*****
EP Re per KG	*****	*****	*****	*****	*****	*****	*****
Dumping Margin	*****	*****	*****	*****	*****	*****	*****
Dumping Margin %	39%	32%	36%	32%	43%	37%	38%

63. The dumping margin so determined have been found to be significant and above the de minimis levels.

H. INJURY AND CAUSAL LINK

64. Having determined that the subject goods from the subject country are entering the Indian market significantly below its normal value the Authority has examined the injury, if any, caused to the domestic industry as follows:

H.1 Views of the Exporters, imports and other interested parties

65. The interested parties have argued that no injury has been suffered by NOCIL during the POI that can be attributed to alleged dumping by Chinese exporters. The arguments of the interested parties have been summaries *inter alia* as follows:

- That in its application itself NOCIL admits improvements in a number of key parameters like capacity, capacity utilization, sales and sales realization in respect of specific rubber chemicals;
- That the Petitioner has increased capacity though less than increase in demand;
- That Capacity utilization appears to have fallen marginally in POI for CBS and MBTS only and remained constant for MBT;
- That any decline in market share was due to low inventories and thus poor availability on demand for products and increase in exports;
- That cumulative decline in domestic profits is far less than the trend of decline in export profits; and similarly the cumulative profits trend for the Subject Goods is better than the overall profits trend for the Rubber Chemicals Division as a whole;
- That the Authority must evaluate not only 1 or 2 indices (like market share) but a number of *indicia* when considering whether or not there is any injury suffered by the domestic Industry;
- That many improvements are admitted and injury is only claimed in respect of market share, profits, cash flows and returns on investments. Any decline in market share was due to higher growth in demand than capacity, admittedly high exports, and admittedly low inventories leading to poor availability on demand for domestic market as most users have switched to just-in-time procurement. The alleged decline in profits, cash flows and returns are only in respect of MBT/MBTS and not in respect of CBS;
- That the injury appears to be due more to increased exports with poor sales realizations;
- That NOCIL's Annual Report up to September, 2003 indicates that the Rubber Chemicals Division is showing improvement and is expected to do well and problems are identified with the petrochemicals division that is proposed to shut down;
- That NOCIL has been able to borrow funds from the market, indicating no difficulty in raising capital and also no attributable injury.
- That since NOCIL, a multi-product company, has not filed product specific data for the other products, the injury analysis cannot be done as required on the basis of the subject goods vis-à-vis other products of NOCIL.
- That in case of allegations of threat of injury the Authority must exercise 'special care' and hold the Petitioner to a higher standard of proof than in the case of alleged material injury.
- That there is no volume effect of imports or the "volume effect" may be far less than alleged.
- That there is no "price effect" as no price suppression or price depression or price underselling or price undercutting has been shown.

- That the capacity for each of the individual rubber chemicals has consistently increased during the period of investigation but the investment in the plant and machinery of the domestic industry does not commensurate with the increase in capacity.
- That NOCIL cannot meet present demand let alone future demand.

66. In addition to the above the interested parties have argued that neither dumping nor injury is a sufficient condition for recommending levy of any anti-dumping duties. They have argued that Germany is also a possible exporter to India that may benefit more than NOCIL if any anti-dumping duty is levied. Export Prices from Germany (that is not included in the Subject Countries in the said Investigations) appears to be lower than the prices from China during the POI. Thus, they are likely to be causing injury if the higher priced imports from the Subject Countries cause injury and their exports are likely to increase rather than NOCIL's sales increase in case of imposition of any anti-dumping duty on exporters from China. Thus an anti-dumping duty would serve only to deny market access to the exporters from China rather than remove any injury to NOCIL.

67. It has also been argued that increased exports at lower prices than in India during the POI also *prima facie* indicates an alternate cause of injury and absence of a causal link. NOCIL also closed own petrochemicals division and may have to absorb losses in the other divisions primarily due to unpaid debts of the petrochemicals particularly for costly naphtha and the retrenchment costs of workers and absorbing excess workers that were not retrenched.

H.2 View of the Domestic Industry

68. The domestic industry has contested the arguments of the interested parties that the domestic industry does not suffer any material injury on account of the dumped imports from China and injury if any, is due to factors other than the dumped imports. They have argued that in case of MBT increase in the prices by the domestic industry and decline in landed price of imports has directly resulted in decline in the sales volume and market share of the domestic industry. In case of MBTS and CBS the dumped imports have caused reduction in selling price of domestic industry in spite of rising costs; significant price undercutting; loss of market share and decline in profitability. Therefore, the domestic industry argues that there is a significant material injury caused to them due to the dumped imports from China.

69. In their post disclosure submissions the domestic industry has disputed the computation of Non-Injurious price and the net sales realization for the domestic industry on several grounds. The Authority has examined the claims

of the domestic industry in this respect and errors in the computation have been rectified for the purpose of injury analysis.

H.3 Examination by the Authority

70. Having examined the degree and extent of dumping from China the Authority has examined the injury caused to the domestic industry, if any, and the causal link between the dumped imports and injury so suffered by the domestic industry. The Authority holds that the applicant Company i.e. NOCIL constitutes major proportion of Indian production of the subject goods during the period of investigation. Therefore, for the purpose of injury determination the applicant company has been held to constitute the domestic industry within the meaning of the Rules.
71. Rule 11 of Antidumping Rules read with Annexure –II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
72. The Authority notes that the investigation covers three distinct rubber chemicals used in the rubber industry. Therefore, for the purpose of injury determination also these products have been treated as three different and distinct products and injury caused to the domestic industry on account of individual products have been examined separately.
73. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.
74. The arguments of the domestic industry regarding the determination of NIP and net sales realization has been examined by the Authority and to the extent the argument and computation methodology suggested was found acceptable, necessary corrections have been incorporated. Possible effect of de-merger of the petrochemical division has also been examined by the Authority while analyzing the effects of dumped imports on the performance of the domestic industry.

H.3.1 Comparison methodology adopted

75. The products under consideration i.e. MBT, MBTS, and CBS are three distinct products and are not *inter se* like products within the meaning of Rule 2(d). Therefore, Authority has assessed injury to the domestic industry individually for each of the subject rubber chemicals. The injury examination has been carried out considering data for the years 2000-01, 2001-02, 2002-03 and Jan-Dec 2003 (POI). The Authority notes that the domestic industry is found to be having significant export activities. However, for the purpose of the injury analysis the performance of the domestic industry has been assessed only in respect of domestic market and injury if, any caused to the domestic industry on account of its export performance has not been attributed to the dumped imports.

H.3.2 Import data and other issues

76. With regard to the volume of the dumped imports, the Designated Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production and consumption in India.

77. Volume of imports for each of the subject rubber chemical from China has been analysed based on the data received from DGCIS and also reported in the secondary source (IBIS). The transaction-wise data reported IBIS for all Rubber Chemicals have been compared with DGCI&S data for identifying individual products and compilation of data for the individual products. However, it is noticed that either DGCI&S data does not reflect correct description of the products or several entries are missing due to misclassification. While IBIS data reports only imports through selected major ports, it shows higher volume of imports than the DGCIS data after pruning them for unrelated products. Therefore, for the purpose of the injury determination the data reported in IBIS has been relied upon and used after pruning the same for unrelated products to the extent possible.

H.4 Injury and Causal Links

78. The Authority has examined the mandatory injury parameters to determine whether the domestic industry suffers material injury. All economic parameters affecting the Domestic Industry as indicated above such as production, capacity utilization, sales volume etc. have been examined as under:-

H.4.1 Volume Effects of Dumped Imports: Import volumes and market share

H.4.1.1 MBT

a) Import Volumes

79. On the basis of the examination the import data import volume of MBT works out as follows:

Qty in MT

MBT	2000-01	2001-02	2002-03	POI
Dumped Imports (China)	9	21	138	155
Trend	100	233	1534	1722
Total Imports CBS	10	22	139	162
Trend	100	210	1347	1574

80. The above data indicates that the dumped imports from China have increased substantially over the base year and the dumped imports constitute more than 95% of total imports of this product.

b) Effects on Capacity, Production and Capacity Utilization

81. The authority has also examined the effect of the imports on the capacity, production and capacity utilization of the domestic Industry.

MBT	2000-01	2001-02	2002-03	POI
Capacity (MT)	*****	*****	*****	*****
Indexed	100	107	121	129
Production (MT)	*****	*****	*****	*****
Indexed	100	78	71	76
Capacity utilization (%)	87.35	63.97	51.38	51.76

82. However, it has been brought to the notice of the Authority that the entire production of MBT is outsourced by NOCIL from its ancillary unit, under exclusive production agreement, for which all the raw materials, including the basic raw material NaMBT, are supplied by NOCIL and only processing is done by the processors on job-work basis. Therefore, the capacity indicated above is not the own capacity of the domestic industry though the capacity of the processor is dedicated for NOCIL's production only. It has also been brought to the notice of the Authority that the capacity of the processor was limited by the dryer capacity and by improvement in dryer productivity the total capacity of this product has improved to *** MT during the POI without much capital investment. But the production has fallen drastically over the injury period in response to fall in sales volume in the domestic market.

However, it has been argued by the interested parties that since the production capacity is not of the applicant, injury if any, due to fall in production and capacity utilization is not suffered by the applicant.

c) Actual and potential effect on sales:

83. The effect of dumped imports on the sales and market share of the domestic industry in respect of the above product has been analysed as follows:

MBT	2000-01	2001-02	2002-03	Qty in MT
Domestic Sales	*****	*****	*****	*****
Trend	100	114	83	79
Captive Consumption	*****	*****	*****	*****
Trend	100	90	80	75
Exports	*****	*****	*****	*****
Trend	100	128	151	282
Sales others	*****	*****	*****	*****
Trend	100	95	107	128
Total Domestic Sales	*****	*****	*****	*****
Trend	100	104	95	104
Imports	10	22	139	162
Trend	100	210	1347	1574
Total Domestic Demand	920	964	998	1093
Trend	100	105	108	119
Dumped Imports	9	21	138	155
Trend	100	233	1534	1722
Share of dumped imports in total imports	87	97	99	95
Market Share in Demand				
Domestic Industry	*****	*****	*****	*****
Dumped Imports	*****	*****	*****	*****
Others	*****	*****	*****	*****
Indexed				
Domestic Industry	100	109	77	66
Dumped Imports	100	223	1414	1451
Others	100	91	99	108

84. The above data shows that the domestic sales, as well as captive consumption of MBT, have fallen sharply, by about 21% over the injury period. The domestic industry's market share has also dropped by 34% compared to the base year while the market share of dumped imports has increased by about 15 times. However, of the domestic industry has tried to compensate part of its loss in volume in the home market by increased exports of the subject goods,

which have increased substantially during this period. However, the dumped imports still constitute less than 15% of the market share and volume as well as market share of other domestic producers of the subject goods have shown improvement.

H.4.1.2 MBTS

a) Import Volumes

85. As per the import data volume of imports of MBTS works out as follows:

MBTS	2000-01	2001-02	2002-03	POI	Qty in MT
Dumped Imports (China)	27	64	116	201	
Trend	100	237	430	744	
Total Imports	62	82	119	209	
Trend	100	133	194	340	

86. The above data indicates that total imports and dumped imports of the subject good from the subject country have increased substantially during the injury examination period. The growth in import volume from the subject country is significantly higher than the growth in total imports. During the POI the dumped imports constituted almost 98% of the total imports thereby displacing all other competitors.

b) Effects on Capacity, Production and Capacity Utilization

87. The authority has also examined the effect of the imports on the capacity, production and capacity utilization of the domestic Industry.

MBTS	2000-01	2001-02	2002-03	POI
Capacity (MT)	*****	*****	*****	*****
Indexed	100	122	161	161
Production (MT)	*****	*****	*****	*****
Indexed	100	91	143	132
Capacity utilization (%)	88.33	65.45	78.14	72.34

88. It was brought to the notice of the Authority that the domestic industry achieved higher capacity during 2001-02 from 900 MT per year to 1100 MT per year through process improvements and time cycle reduction in the production line. However, keeping in view the market demand capacity was added in 2002-03 to increase the actual capacity of MBTS from 1100 MT to

1450 MT per year. During this period the demand has gone up by about 40%. There is also a significant increase in production by about 32% compared to the base year, though not commensurate to the capacity increase. The capacity utilization therefore, has fallen by about 15%.

c. Actual and potential effect on sales:

89. The effect of dumped imports on the sales and market share of the domestic industry in respect of the above product has been analysed as follows:

MBTS				Qty in MT
Domestic Sales of DI	*****	*****	*****	*****
Trend	100	120	127	128
Captive Consumption of DI	0	0	0	0
Trend				
Exports of DI	*****	*****	*****	*****
Trend	100	152	261	270
Total sales + Captive Cons of DI	*****	*****	*****	*****
Trend	100	128	161	164
Sales others	*****	*****	*****	*****
Trend	100	103	110	122
Total Domestic Sales	925	1039	1102	1160
Trend	100	112	119	125
Total Imports	62	82	119	209
Trend	100	133	194	340
Demand	987	1121	1221	1369
Trend	100	114	124	139
Dumped Imports	27	64	116	201
Trend	100	237	430	744
Share of dumped imports in total imports	43.89	78.13	97.38	96.18
Market Share in Demand				
Domestic Industry	*****	*****	*****	*****
Dumped Imports	*****	*****	*****	*****
Others	*****	*****	*****	*****
Indexed				
Domestic Industry	100	106	103	92
Dumped Imports	100	209	347	536
Others	100	91	89	88

90. The above data shows that the production of the domestic industry has increased by 32% and its sales of in the domestic market has also registered a rise of 28% while the total domestic demand has gone up by about 40%. The

domestic industry still has more than 25% spare capacity to meet the domestic demand, which is currently met by the dumped imports. Dumped imports have displaced the share of the domestic industry in the Indian market by about 3%. A part of the production has been utilized for export sales, which has more than doubled, compared to the base year.

91. The above examination shows that the production, domestic sale and total sales of domestic industry have increased in absolute term. But in relation to the rise in demand their market share has marginally declined by about 4% and the capacity utilization has fallen by about 15%, in spite of the efforts of the domestic industry to utilize this capacity for export production, which has increased significantly in absolute term. However, actual and potential effect of the dumped imports on the volume of sales of the domestic industry has been marginal on the face of healthy demand and growth of the domestic sales of the domestic industry.

H.4.1.3 CBS

a) Import Volumes

92. The import data import volume of MBT works out as follows:

Import volumes (MT)	2000-01	2001-02	2002-03	POI
CBS				
Dumped Imports (China)	86	88	214	332
Trend	100	102	249	386
Total Imports CBS	203	145	287	426
Trend	100	71	141	209

93. The above data indicates that total imports and dumped imports of the subject goods from the subject country have increased by about 300% during the injury examination period. The growth in import volume from the subject countries is significantly higher than the growth in total imports. In fact dumped imports account for about 80% of the total imports of CBS into India.

b) Effects on Capacity, Production and Capacity Utilization

94. The effect of the imports on the capacity, production and capacity utilization of the domestic Industry has been examined as follows:

CBS	2000-01	2001-02	2002-03	POI
Capacity (MT)	*****	*****	*****	*****
Indexed	100	100	110	110
Production (MT)	*****	*****	*****	*****

Indexed	100	104	113	110
Capacity utilization (%)	90.0	93.20	92.64	89.9

95. It was brought to the notice of the Authority that the marginal capacity improvement of 10% in CBS production was achieved by the domestic industry during 2002-03 through improvement of the throughput of the dryer without any capital investment. The production has also improved by 10% retaining the capacity utilization at 90% level.

c) Actual and potential effect on sales:

96. The volume of domestic sales and effects of dumped imports on the domestic sales have been examined in terms of sales of the domestic industry, demands and market shares

Qty in MT

CBS	2000-01	2001-02	2002-03	POI
Domestic Sales of DI	*****	*****	*****	*****
Trend	100	118	138	129
Captive Consumption of DI	0	0	0	0
Trend				
Exports of DI	*****	*****	*****	*****
Trend	100	147	120	119
Total sales + Captive Cons of DI	*****	*****	*****	*****
Trend	100	126	132	126
Sales others	*****	*****	*****	*****
Trend	100	106	93	96
Total Domestic Sales	1390	1539	1541	1520
Trend	100	111	111	109
Total Imports	203	145	287	426
Trend	100	71	141	209
Total Domestic Demand	1593	1684	1828	1946
Trend	100	106	115	122
Dumped Imports	86	88	214	332
Trend	100	102	249	386
Share of dumped imports in total imports	42.31	60.72	74.53	77.99
Market Share in Demand				
Domestic Industry	*****	*****	*****	*****
Dumped Imports	*****	*****	*****	*****
Others	*****	*****	*****	*****
Indexed				
Domestic Industry	100	111	120	106
Dumped Imports	100	97	217	316

97. As far as CBS is concerned there is a substantial increase in the demand in the domestic market (22%) and the sales of the domestic industry also shows substantial increase in absolute volume terms (29%). The data also shows that the domestic industry has gained marginal market share though the market share of the dumped imports has more than doubled compared to the base year. However, the dumped imports appear to have cornered the space vacated by the other suppliers in the market than the applicant. Therefore, there is no actual or potential effect of dumped imports on the volume of sales of the domestic industry.

H.4.2 Price effect of dumped imports

98. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider 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 or prevent price increases, which otherwise would have occurred, to a significant degree.

99. In this connection the Authority has determined net sales realization of the domestic industry considering selling price, excluding taxes & duties, rebates, discounts & commissions and freight & transportation. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The domestic industry in its post disclosure submissions has pointed out certain discrepancy in the NSR calculation for the POI. Accordingly, the Authority has examined and revised the NSR for the POI and the price effects of the dumped imports on individual products have been analysed as follows:

H.4.2.1 MBT

a) Decline in import Price

MBT	2000-01	2001-02	2002-03	POI
Landed Value China	94.70	97.05	94.40	82.98
CIF price China	69.45	71.18	71.9	65.73
% decline Landed price	-	-2.49	2.73	12.10

100. The data shows that the CIF value of imports from China after a marginal increase has shown a significant fall in the POI compared to the previous year.

b) Price undercutting and underselling

MBT	2000-01	2001-02	2002-03	POI
Net Sales Realisation of DI	*****	*****	*****	*****
Indexed	100	100.59	115.14	114
NIP				*****
Cost of Sales	*****	*****	*****	*****
Indexed	100	98	99	99
Landed Price China	94.70	97.05	94.40	82.98
Indexed	100	102	100	88
Price undercutting	*****	*****	*****	*****
Undercutting (%)	*****	*****	*****	10 to 20%
Price Underselling				*****
Underselling (%)				10 to 20%

101. The above examination indicates that while the unit cost to make and sell the product for the domestic industry remains almost constant, the sales realization per unit has increased by about 15%. However, the Authority notes that the sales realization in the base year was significantly below the cost of production. The domestic industry has argued that they have tried to increase the prices to the realistic level to recover the cost. However, this increase in prices and unit sales realization appears to be at the cost of drastic reduction in sales volume and market share. Though the trend of the import price indicates that the import prices have fallen substantially, thereby undercutting the prices of the domestic industry, the increase in the net sales realization of the domestic industry indicates that the dumped imports did not have significant effect on the prices of the domestic industry, which is being decided by other factors, not related to dumped import prices.

c) Price suppression and Depression

102. The above table also indicates that there is no price depression. However, it also indicates that the domestic industry has increased its prices in order to minimize per unit loss in the domestic sales of the subject good at the cost of volume and market share in the domestic market.

H.4.2.2 MBTS

a) Decline in import Price

Rs per KG

MBTS	2000-01	2001-02	2002-03	POI
Landed value	101.20	111.33	107.60	98.79
CIF price	74.22	81.65	81.95	78.25
% decline Landed price		-10.01	-0.37	4.51

103. The landed prices as well as CIF price of imports from China of the above product, after showing substantial increase, has shown significant fall during the POI

b) Price undercutting and underselling

Rs per KG

MBTS	2000-01	2001-02	2002-03	POI
Net Sales Realisation of DI	*****	*****	*****	*****
Indexed	100	92	90	90
NIP				*****
Cost of sales	*****	*****	*****	*****
Indexed	100	98	99	100
Landed Price China	101.20	111.33	107.60	98.79
Indexed	100	110	106	98
undercutting	*****	*****	*****	*****
undercutting (%)	*****	*****	*****	10 to 20%
Underselling				*****
Underselling (%)				10 to 20%

104. The above examination indicates that though the cost to make and sale remains almost constant the sales realization of the domestic industry has declined by almost 9% during the injury period. Landed price of the imports from China has declined by only 2% over the base year but 8 % compared to the previous year. The price undercutting and underselling is significant.

c) Price suppression and Depression

105. The above table also indicates that the domestic industry has responded to the decline in imports prices of the dumped imports by reducing its prices in order to retain its market share.

H.4.2.3 CBS

a) Decline in import Price

Rs per KG

CBS				
Landed Value China	143.06	146.34	135.00	125.97
CIF price China	104.92	107.33	102.82	99.78
% decline Landed price	-	-2.30	7.75	6.69

106. The landed prices as well as CIF price of imports from China of the above product, after showing increase, has fallen significantly during the POI.

b) Price undercutting and underselling

Rs per KG

CBS				
Net Sales Realisation of DI	*****	*****	*****	*****
Indexed	100	94	90	90
NIP				*****
Cost of Sales	*****	*****	*****	*****
Indexed	100	96	97	98
Landed Price China	143.06	146.34	135.00	125.97
Indexed	100	102	94	88
undercutting	*****	*****	*****	*****
undercutting (%)	*****	*****	*****	15-25%
Underselling				*****
Underselling (%)				5 – 15%

107. The above data shows that the unit sales realization of the domestic industry has fallen by 9% while the cost to make and sale has fallen by only 2%. However, during the same period the import price has also fallen by 12%. There is a significant price undercutting and underselling by the dumped imports from China. But the sales realization of the domestic industry is close to the non-injurious price determined by the Authority indicating that the dumped imports have cut into its profit margin rather than actually causing injury in terms of loss in its domestic operations.

c) Price suppression and Depression

108. The above table also indicates that the domestic industry has responded to the decline in imports prices of the dumped imports by reducing its prices. However, the price response of the domestic industry has also resulted in improvement in its volume of domestic sales as well as market share.

H.5 Examination of other Injury factors

109. After examining some of the injury factors i.e. capacity, production and capacity utilization, actual and potential decline in sales and market share, actual and potential increase in volume of imports etc. in the previous section the Authority has examined the other mandatory injury parameters as follows:

i) Actual and Potential decline in Profits

110. Profits earned by the domestic industry from the sales of the subject goods in the domestic market were as follows:-

Profits	2000-01	2001-02	2002-03	POI
MBT				
Rs/kg	(*****)	(*****)	*****	*****
Indexed	(100)	(81)	24	21
MBTS				
Rs/kg	*****	*****	*****	*****
Indexed	100	57	40	37
CBS				
Rs/kg	*****	*****	*****	*****
Indexed	100	85	65	62

111. It is seen that per unit profitability of the domestic sales of MBT has improved due to increase in prices. There is only a marginal decline in profitability during the POI over the previous year.

112. As far as MBTS is concerned though the domestic industry realizes a positive profit margin the same has declined by over 60% over the injury period. The decline in profitability is material and significant.

113. In the case of BCS per unit sales realization is still above the cost to make and sale and the domestic industry is still having positive profit margin. But per unit profitability has declined substantially over the injury period in spite of higher production and sales volumes achieved by the domestic industry over this period. However, applicant continues to earn reasonable positive returns on this product.

ii) Employment and Wages

114. The Authority notes that the applicant is a multi-product company with several rubber chemical products manufactured within the same facility. However, the applicant has submitted information on allocation of labour and wages to individual products. No major change in employment and wages as far as these specific products are concerned was noticed. Wages paid by the

company and incidence of wage per unit of production shows that overall wages per kg have reduced marginally due to higher labour productivity and higher production.

iii) Cash Flow, Profitability and Return on Investment

115. ROI has been calculated by considering capital employed in each rubber chemical and profit before interest on domestic sales, which shows as under:-

MBT	2000-01	2001-02	2002-03	POI
Capital Employed on domestic sales (Rs in lakhs)	*****	*****	*****	*****
Indexed	100	94	70	62
Profit from Domestic sales	(*****)	(*****)	*****	*****
Indexed	(100)	(93)	20	17
ROI	(****)%	(****)%	*****%	*****%
Indexed	(100)	(98)	28	27
Cash Profit from Domestic Sale	(*****)	(36.83)	*****	*****
Indexed	(100)	(95)	34	30
ROI	(****)%	(****)%	*****%	*****%
Indexed	(100)	(101)	48	49

116. The above data shows that the domestic industry has improved its cash flow and return on investment in its domestic sales of MBT, in spite of loss in volume and market share.

MBTS	2000-01	2001-02	2002-03	POI
Capital Employed on domestic sales (Rs in Lakhs)	*****	*****	*****	*****
Indexed	100	102	93	86
Profit from Domestic sales	*****	*****	*****	*****
Indexed	100	68	51	47
ROI	*****%	*****%	*****%	*****%
Indexed	100	67	55	55
Cash Profit from Domestic Sale	*****	*****	*****	*****
Indexed	100	74	56	54
ROI	*****%	*****%	*****%	*****%
Indexed	100	73	61	62

117. As far as MBTS is concerned the cash flow, profitability and return on investment have declined in spite of increase in production and sales and the decline is significant and material.

CBS	2000-01	2001-02	2002-03	POI
Capital Employed on domestic sales (Rs in Lakhs)	*****	*****	*****	*****
Indexed	100	102	109	97

Profit from Domestic sales	*****	*****	*****	*****
Indexed	100	100	89	80
ROI	*****%	*****%	*****%	*****%
Indexed	100	98	82	82
Cash Profit from Domestic Sale	*****	*****	*****	*****
Indexed	100	100	90	81
ROI	*****%	*****%	*****%	*****%
Indexed	100	98	82	84

118. The above data shows that CBS continues to be a profitable business for the applicant in spite of marginal decline in the cash flow, profitability and rate of return on investments made.

iv) Inventories

119. Examination of the inventory of the products under consideration shows significant improvement in the inventory level as follows:

Inventory	2000-01	2001-02	2002-03	POI
CBS	100	130	75	65
MBT	100	102	41	51
MBTS	100	108	84	68

120. However, the Authority also notes that the domestic industry has significant exports of the products under consideration. Inventory levels of the product under consideration are therefore not reflective of any consistent pattern and are influenced by export shipments.

v) Productivity

121. It may be seen that productivity of the domestic industry significantly improved, which has helped in keeping the unit cost of production under check. No adverse effect on the domestic industry on account of productivity or production loss could be noticed.

vi) Growth

122. The examination of the production and sales as well as other parameters indicate that the growth of the domestic industry in terms of parameters, such as capacity, production, sales, productivity have been positive. However, in terms of market share the domestic industry has experienced negative growth in MBT and MBTS, while CBS shows positive growth. In terms of profitability,

MBT shows positive growth in terms of cash-flow and profitability whereas other two products have negative growth in these parameters.

vi) Ability to raise fresh Investment

123. Even though the domestic industry has made fresh investments in each of the subject goods, the Authority notes that the investments made in the injury period are more an indicator of past profitability and future expectations of demand and market share.

H.5 Non-Injurious Price and Injury Margins

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

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

MBT: Rs ***** per Kg

MBTS: Rs ***** per Kg

CBS: Rs ***** per Kg

126. The non-injurious price so determined has been compared with the landed price of imports from China to determine the injury margin and the injury margin works out as follows:

Rs Per Kg

	NIP	Landed Value	Injury Margin	Injury Margin %
MBT	*****	*****	*****	10 to 20%
MBTS	*****	*****	*****	10 to 20%
CBS	*****	*****	*****	5 to 15%

127. For the purpose of determination of Landed value Customs duty and landing charge of 1% has been added to the CIF value of imports from the subject country.

I. Conclusion on Injury

128. The examination of Injury parameters and causal analysis in terms of volume and price effects of dumped imports have been summarized as follows:

MBT

129. The examination of injury parameters in respect of MBT indicate that production, sales and capacity utilization and market share of the domestic industry has significantly declined over the base year; while dumped imports in absolute term as well as in relation to total demand has significantly increased. But the volume of dumped imports and its share in the total demand is still low. While the landed value of imports have fallen and cost of production has remained constant compared to the base year, the net sales realization of the domestic industry has increased and cash flow, profitability and return on investment shows significant improvement. Therefore, loss of market share and volume is directly correlated to the price increase rather than increase in volume, or the price of dumped imports which remained more or less constant except for the POI. The Authority also notes that the even when there was no or insignificant import of the subject good from any country in 2000-01 and 2001-02; and the applicant had a very significant sale they had substantial loss on account of this product because the cost of production remained high even when the capacity utilization was about 90%. The domestic industry has submitted that the earlier loss was due to domestic competition from other producers, which have exited from the market now. Authority notes that sale by other domestic producers is still substantial and the applicant has been able to increase its prices on the face of competition both from within and outside the

country. The Authority also notes that the entire quantity of this product has been job-worked from outside. Therefore, volume injury is caused to the ancillary unit rather than the applicant domestic industry. Though the trend of the import price indicates that the import prices have fallen substantially, thereby undercutting the prices of the domestic industry, the increase in the net sales realization of the domestic industry indicates that the dumped imports did not have significant effect on the prices of the domestic industry, which is being decided by other factors, not related to dumped import prices.

130. In view of the above analysis the Authority concludes that though the domestic industry suffers injury in respect of this product in terms of loss of volume and market share, the injury cannot be treated as being caused by the dumped imports.

MBTS

131. Examination of the injury parameters in respect of this product indicates that production; domestic sale and total sales of domestic industry have increased in absolute term. However, in relation to the rise in demand the market share of Domestic industry has declined by about 4%, which has been cornered by the dumped imports. Capacity utilization has fallen by about 15% even when the domestic industry has tried to utilize a part of its capacity for export production. Though the cost to make and sale remains almost constant the sales realization of the domestic industry has significantly declined during the injury period keeping in pace with the decline in the landed value of dumped imports. The profitability of the applicant has declined compared to the base year though the volume of sales has gone up. Therefore, improvement in productivity has not resulted in improvement in financial terms due to drop in unit sales realization.

132. In view of the above the Authority concludes that the domestic industry has suffered material injury in terms of decline in capacity utilization, market share, profitability, cash flow and return investment.

CBS

133. Examination of the injury parameters in respect of this product indicates that though the volume of dumped imports has increased in absolute terms and also in relation to imports into India the domestic industry has improved its sales, production and market share and there is no adverse effect on the capacity utilization. However, unit sales realization of the domestic industry has fallen by 9% while the cost to make and sale has also fallen by 2%. No price suppression or depression effect of the dumped imports could be found in respect of this product. The net sales realization is above the Non-injurious

Price determined by the Authority and cash flow, as well as profitability of the domestic industry in respect of this product remains good though there is a decline in the same. The other injury parameters examined by the Authority do not show significant injury. Therefore, the Authority concludes that the domestic industry does not suffer material injury in respect of this product within the meaning of the term.

J. Other factors and Causal Link

134. The Authority has noted these arguments of the interested parties and examined injury if any, caused to the domestic industry due to other factors in terms of Article 3.5 of the Agreement as follows:

- a. **Volume and value of imports not sold at dumping prices:** - The Authority has examined the data on volume and value of imports from all countries, including countries under investigation and countries not under investigation. The volume of imports from other countries is very small and dumped imports from China constitute more than 95% of imports of the subject goods to India. Import price from other countries are significantly higher than the import price from China. It also appears that dumped imports from China have forced the other countries also to reduce their prices or to exit the market. However, prices from these countries are higher than Chinese prices, and petitioner's prices are not benchmarked on the basis of these prices. Thus, imports from other countries have not contributed to the injury to the domestic industry.
- b. **Contraction in demand:-** As per the information available with the Authority the demand for the products under consideration have registered healthy growth. Thus, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.
- c. **Changes in the patterns of consumption:-** The pattern of consumption with regard to the product under consideration has not undergone any change. In fact the demand pattern shows a favourable consumption pattern for the products under consideration. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.
- d. **Trade restrictive practices of and competition between the foreign and domestic producers:** - The Authority did not find any trade restrictive practices followed by other Indian producers or other competing foreign producers supplying the goods in the domestic Indian market, which could have contributed to the injury to the domestic industry.
- e. **Developments in technology:-** Technology for production of the products has not undergone any change. Developments in technology are, therefore, not a factor of injury.

- f. **Export performance of the domestic industry:-** The Authority notes that the export performance of the domestic industry in terms of export volumes have improved mainly due to improvement in its capacities and its inability to sell the additional production in the domestic market. While the export volumes of the domestic industry have increased, the price and profitability in the domestic and export market has been segregated. Therefore, injury, if any caused due to higher exports has not been attributed to the performance of the domestic industry in its domestic market.
- g. **Productivity:-** Productivity of the domestic industry, as measured in terms of production per manpower has increased. This should have helped in reduction in cost of production. However, the profits of the petitioner have significantly declined.

135. In addition to the above mandatory factors the Authority has also examined the arguments of the interested parties that the injury caused to the domestic industry is due to the loss made by the erstwhile Petrochemical Division of NOCIL which has since de-merged. The Authority notes that the de-merger process is now almost complete and no expenses of the petrochemical unit have been attributed to the Rubber Chemical business in this investigation.

136. As far as MBT is concerned, the Authority notes that the injury in terms of drop in volume of sales is directly related to the price increase effected by the applicant during 2002-03. The sales by the applicant have declined whereas other domestic producers have increased their sale in the domestic market. Therefore, though the dumped imports have affected the applicant's sale in the domestic market, other factors like sale by other domestic producers also have a significant effect on the domestic sales and prices. Therefore, the Authority concludes that the injury suffered by the applicant in respect of MBT is not caused by the dumped imports.

137. As far as MBTS is concerned, the injury suffered by the applicant in terms of decline in capacity utilization and market share, decline in sales realization and profitability, decline in cash flow and return on investment is significant and material and caused by significant price undercutting, underselling and depression effects of dumped imports from the subject country

138. As far as CBS is concerned, the Authority concludes that the applicant continues to get a reasonable profit in this product and the injury suffered by the domestic industry in terms of decline in profitability and return on investment is not material and significant.

J. Conclusion

139. After examining the issues raised and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of dumping and injury the authority concludes that:

- i. Imports of the subject goods (MBT, MBTS, CBS) from China are entering the Indian market at dumped prices and the dumping margin in respect of the individual products are above de minimis level;
- ii. The dumped imports of MBT and CBS from China were not found to be causing material injury to the domestic industry.
- iii. However, as far as MBTS is concerned, the dumped imports from China have caused material injury to the domestic industry.

K. Indian industry's interest & other issues

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

L. Recommendation

141. Having concluded that import of MBTS from China has caused material injury to the domestic industry, the Authority recommends imposition of antidumping duty in the form and manner prescribed below.

142. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping or margin of injury whichever is lesser, so as to remove the injury to the domestic industry. Accordingly, definitive antidumping duty equal to the amount indicated in Col 9 of the duty table is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of MBTS, originating in or exported from China PR.

Duty Table

Sl.No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)		
1	38.12. 29.34. 29.25.	-do-	NIL	China PR	Any	M/s Shandong Shanxian Chemicals Co Ltd.	Any	0.402	KG	US\$
2	-do-	-do-	NIL	China PR	Any	Any	Any	0.464	KG	US\$
3	-do-	-do-	NIL	Any	Any	Any	Any	0.464	KG	US\$

M. Further Procedures

143. An appeal against the order of the Central Government arising out of this determination shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

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

Christy L. Fernandez
Designated Authority