

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)

FINAL FINDINGS NOTIFICATION

New Delhi, the. 14th November,.2002

Subject:- Anti-dumping investigation concerning imports of Compact Fluorescent Lamps (CFL) from China PR and Hong Kong –Final Findings.

No.34/1/2001-DGAD. - The Government of India having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE:

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

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received written application from M/s. Indo Asian Fusegear Ltd. and M/s Osram India Ltd., on behalf of the domestic industry, alleging dumping of Compact Fluorescent Lamp originating in or exported from China PR and Hongkong ;
- ii. The Authority, on the basis of sufficient evidence submitted by the Petitioner, decided to initiate investigations against imports of Compact Fluorescent Lamp from China PR and Hongkong. The Authority notified the Embassy of subject countries in New Delhi, India & HKSAR, HK and about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the Rules;
- iii. The Authority issued a public notice dated 16th August, 2001 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations and issued Preliminary Findings vide notification dated 2nd November, 2001 concerning imports of subject goods, classified under heading 8539.31 of Schedule I of the Customs Tariff Act, 1975 and No.8539.31.00 under Indian Trade Classification (Based on Harmonised Commodity Description and Coding System) originating in or exported from China PR & Hongkong. The classification is, however indicative only and in no way binding on the present investigations;

- iv. The Authority forwarded a copy of the preliminary finding to the known exporters and industry associations and gave them an opportunity to make their views known in writing within 40 days from the date of the letter;
- v. The Authority forwarded a copy of the public notice to the known importers of Compact Fluorescent Lamp in India and advised them to make their views known in writing within forty days from the date of the letter;
- vi. The Authority provided a copy of the preliminary findings to the Embassy of China PR in New Delhi, India and Trade Officer HKSAR, HK, with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;
- vii. The Authority sent questionnaire to the known exporters of Compact Fluorescent Lamp from China PR and Hongkong to elicit relevant information, in accordance with the rule 6(4);
- viii. Department Of Revenue, Ministry of Finance, vide OM No 354/205/2001 TRU dated 12.8.2002 granted extension upto 15.11.2002 to complete the investigation.
- ix. Additional information regarding injury was sought from the petitioner, which was also received;
- x. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. All parties who made request for inspection, in writing, were allowed to inspect the public file;
- xi. The Authority sought and verified information deemed necessary for the investigation, and the investigations were carried out at the premises of Petitioner's as well as Two Exporters from China PR.
- xii. The Authority also conducted cost investigation to work out optimum cost of production and cost to make and sell subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the petitioner.
- xiii. The investigations covered the period of 1st April, 2000 to 31st March, 2001 (12 months);
- xiv. The Authority provided an opportunity to all interested parties to present their views orally on 11.4.2002. All parties presenting views orally were requested to file written submissions, of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- xv. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings is being disclosed to known interested parties and comments received on the same would also be duly considered in Final Findings.

- xvi. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
- xvii. Following abbreviations have been used in the findings:

- Compact Fluorescent Lamp :CFL
- CMEC Engineering Machinery Import & Export Co.Ltd. CMEC
- M/s Philips and Yaming Lighting Co.Ltd. Shanghai P&Y
- M/s Hangzhou Feihua Lighting & Electrical Appliance Co. Ltd. Feihua
- Hongkong HK
- China PR China

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

2.1.Views of Domestic Industry

The exporters are reported to be resorting to the following methods of circumvention:

- a. They export the product in CKD/SKD condition. They export bulb/glass part and the choke/plastic parts separately, i.e. in the case of CFLs without choke, the glass tube and the cap are imported separately. Upon importation, the tube is inserted into the cap and the CFL without choke is ready for sale. Similarly, in the case of CFL with choke.
- b. Even some of the EOU/EPZ units have resorted to large-scale imports of CFLs in CKD/SKD condition. These EOU/EPZ units manufacture other lighting products and export a majority of their production. They have earned substantial entitlement for DTA sale against export of other lighting products. However, they have not been selling those products in the DTA. Instead, they import CFLs in CKD/SKD condition; insert the tube into the cap/adaptor and clear the CFL for sale in the DTA. By this method, they are circumventing the anti dumping duty completely.
- c. The exporters from China and Hong Kong are first exporting their goods to SAARC countries like Sri Lanka and Nepal. From these countries, CFLs are exported to India and thereby the provisional anti dumping duties are effectively circumvented.
- d. As for Imports by domestic industry is concerned, the domestic industry has stated that, of the two petitioner companies, one M/s. Osram India Ltd. had imported 6.67 lakh pieces of CFLs from Germany during POI. The average price of import comes to Rs. 162.83 which is a much higher price than the dumped imports from China PR and Hong Kong. Further, they have stated that any imports of the product in question would not result in exclusion of the

petitioner-importer from the definition of 'domestic industry', but only the imports from the subject countries may result in exclusion.

- e. Hon'ble CEGAT has held in the case of Birla Ericsson Ltd. Vs. DA (2001 (127) ELT 363) that alleged dumped article can only be the article imported from the subject countries. In the present case, one of the petitioner has imported from Germany which is not a country subjected to investigation. Therefore, the question of exclusion of the said petitioner from the definition of domestic industry does not arise. For removal of doubts it is again reiterated that the petitioners have not imported the subject goods from the subject countries.

2.2 Price Undertaking Proposal by M/s. Xiam Top Star Co.Lighting Ltd., China

M/s. Xiam Top Star Co. Lighting Ltd. (Topstar), who are the producers and exporters of CFL have not responded in the prescribed questionnaire in the present anti dumping case. However, M/s. GE Lighting India Pvt. Ltd., Bangalore have brought the proposal that they have been importing CFL from their main entity, namely, M/s. Topstar and the producers/exporters would like to undertake an price undertaking.

2.3 Views of M/s. Phillips & Yaming and M/s. Feihua:

1. In Initiation of Investigation : The evidence and analysis provided by the Petitioners were based on erroneous and misleading data, which by no means satisfies the requirement of "accuracy" and "adequacy"; therefore, they have submitted that this investigation has been wrongly initiated.
2. They have submitted that the DGCIS data is the accurate record of imports of CFL into the country. DGCIS data must be the source of determining the standing and calculating the injury to the domestic industry.
3. Imports of Components: It s being made about the imports of components in to India and the same is being passed off as circumvention of the anti dumping duties. It is submitted the imports of components for assembly by Indian manufacturers cannot be termed as circumvention.

Imports of components are being carried out in accordance with the policy of the Government of India. Customs duties are being paid and excise on the manufacture of the CFL are also being paid. More crucially, the components are being assembled in India, creating jobs for Indians and helping to alleviate the chronic unemployment situation in the country. It is submitted that this forum can only intervene if there is dumping of the components.

2.4 Views of Importers / Users

M/s. Crompton Greaves, Mumbai

They have stated that they are the importers of CFL and producers of other types of Fluorescent lamps.

1. They have been represented by Mr. Aditya Chitale, Advocate, Mumbai. They requested for a copy of written petition, documents, papers etc. filed by the petitioners to give their comments
2. Notice be issued to the representative industries' association ELCOMA.

2.5 M/s. Wipro Consumer Care & Lighting, Bangalore-35

1. The importers have stated that they oppose the imposition of provisional anti dumping duty.
2. Wipro cannot be compared with such importers who are selling the product at a very depressed price in the domestic market.
3. The importers have stated that the proposal to levy anti dumping duty on uniform basis against all the importers is highly unjustified and also unreasonable since it equates all the importers irrespective of fact whether they are causing any injury to the domestic industry by dumping the product in the domestic market or not. The comparative price analysis between the petitioners and themselves clearly and decisively establishes the fact that the price difference in the domestic market is so minimal that it cannot cause any injury to the domestic market.
4. Effective from 1.3.2001, the importers are paying customs duties at very high level after the amendment in section 3 of Customs Tariff Act which provides for MRP based levy to additional duty of customs.
5. In view of the above, they have requested that anti dumping duty should not be imposed on imports of CFL from China and Hongkong.

2.6 M/s. All India Electric Lamps Traders Association

1. They have stated that they represent All India Electric Lamps Trading Association. They have also stated that the members of Association met in Bangalore recently to discuss issues relating to sales tax, octroi and many other matters including anti dumping duty on CFL.
2. The Indian CFL manufacturers are engaged in malpractice.
3. The cost of Indian manufacturers is same like China and Hongkong.
4. The Indian manufacturers want to stop the imports of Chinese routes to earn money. This bad practice is to be stopped immediately and do justice with the Indian general public. The general public is benefited by getting CFL lamps at low prices, less electricity bills and low consumption etc.

5. The Association has requested the Authority not to impose anti dumping duties on CFL lamps.
6. It is noted that the postal address, FAX no. etc of the Association is missing in their submission made to the Authority;

2.7 Views of M/s. GE Lighting India Pvt Ltd.

1. The country at large is facing acute power problem. Energy saved is energy generated. Under the circumstances, CFL has offered tremendous scope for energy saving in the Country.
2. Given the low level of per capita income in the Country, the need of the hour is to encourage more and more use of energy saving devices.
3. The need of the hour is, therefore, to save power, for which CFLs at affordable price is a must.
4. The present case is a peculiar case, as the product in the country is being largely made by an MNC company (the other company has much smaller share in Indian Production). Thus, an MNC company in the Country is trying to restrict imports by other MNC companies. The national interest and public interest are not a relevant consideration to the present petitioners.
5. The peculiarity of the petition is further proved by the fact that the petitioners itself continued to import, suspended the same for some time, then filed the petition, got an investigation period fixed and then again started importing the product. While we appreciate the legal provisions in this regard, the question remained to be answered is that if the petitioners are producing like product to what is being imported in the country, then why the petitioners themselves are importing.
6. The present case is not a case wherein the imports had taken away the domestic industry's share. The present case is a case where imports created a huge demand in the Country made the public at large in the country start using the CFLs and now the domestic industry intends to grab the demand created by the imports.
7. The petitioners have not claimed "material retardation to their establishment. Petitioners have claimed "material injury". However, when the newly created capacities have not been fully made use of, an issue remains to be answered by the petitioners is whether they can demand a protection based on those expenses incurred by them (and charged in the books of accounts) for which they have not drawn significant benefits in terms of production.

2.8 Federation of Industries of India, New Delhi

M/s. Indian Electrical and Electronics Mfrs. Association, New Delhi (IEEMA) In the representation addressed to Designated Authority, following issues have been raised with regard to import of CFL into India.

1. It has been stated that CFLs in CKD/SKD form after assemblies are being cleared to importers in India (who were importing CFL's in further form from China before imposition of Anti-dumping duty).
2. Import of items in CKD/SKD form is causing great revenue loss to the Government.
3. The Government of India has exempted 100% EOUs from levy of Anti-dumping duty with basic understanding that such EOUs actually manufacture goods in their factory to export the same when such EOUs clear goods which have been actually manufactured by them to Domestic Tariff Area (DTA). This is misutilisation of the benefits/facilities extended to EOUs.
4. Since the imposition of Anti-dumping duty, CFLs from China PR and Hongkong, imports have started routing through third countries like Indonesia, Singapore, Thailand and Sri Lanka etc. This should be stopped immediately.

2.9 M/s. Surya Roshini Ltd., Lighting Division:

1. They have stated that they are manufacturers of lighting products such as GLS lamps, Fluorescent Tube Lamps, High Pressure Sodium and Mercury Vapour Lamps, etc. In addition they have effected substantial imports of CFL of good quality comparable to the best being manufactured within the country.
2. They are fully aware that a few unscrupulous importers` indulge in unfair practices and not only brought in cheap products of dubious quality into the country. The imposition of anti dumping duty is not in the interest of consumers.
3. The reference price has been assumed by the Authority for the purpose of imposing anti dumping duty on import of CFL are too high and the reference price fixed for the purpose of the calculation of anti dumping duty should commensurate with the fair prices for which type and wattage of the CFLS and as such should be in line with the prices prevalent within the country.
4. The reference prices may be changed to floor price method with respect to various types and wattage of CFL.
5. They have effected substantial imports of CFL of good quality comparable to the best being manufactured within the country. All the transactions were at arms length and had been recognised to be so by the custom. However, the actual anti dumping duty imposed on import of CFL from China & Hongkong have not been done in the interest of consumer.
6. The energy saving Compact Fluorescent Lamps contributes substantial in the demand side management of the energy sector.

7. The overseas vendors and their Indian importers/customers should also be allowed to operate in a level playing field. The domestic industry should be made to compete in quality and price with global players.

2.10 M/s. Indian Society of Lighting Engineers, New Delhi (ISLE)

1. They have stated that the society is affiliated to the World Body of Lighting and International Commission of Lighting, (CIE) in Austria. The objectives of society are to encourage good practices and standards in lighting.
2. They have stated that it has been brought to their notice that some unscrupulous traders may be circumventing the anti dumping provisions by importing SKD parts and simply assembling the lamp locally with negligible value addition.
3. Some Chinese manufacturers have started to export the product from neighbouring countries, and in particular Taiwan, Malaysia, Thailand and Indonesia.
4. That they are also fears of these lamps being routed through SAARC countries such as Sri Lanka and Nepal with lower custom duties.
5. ISLE are also a party to the framing of a standard on CFL shortly issued by the BIS.

2.11. Views of Counsel of Energy Efficiency Co.s' and Linear..Technologies India Pvt.Ltd.

1. These interested parties have expressed concern that low priced CFL's have come into the country in substantial quantities and have stated that national standards for CFL products should be implemented as early as possible. The product which do not meet the national standards should be faced out of the market.
2. They have stated that all CFL manufacturers in India are only manufacturing CFL tubes and all electronic components are bought out by them.
3. They have stated that the imports should not be classified into those made by organised sector and unorganised sector.
4. They have also stated that calculations of normal value for Hongkong based on normal value for China is wrong. Hongkong is a trading centers without any manufacturing facilities. The majority of their exports of CFL in to India are of Chinese horizon.

2.12. M/s. Madras Electric Trade Association, Chennai-1

1. The Association has submitted that CFLs or energy saving lamps are a paramount necessity in view of which energy crises that the nation is facing.

2. These lamps also work on low voltage. The domestic industry do not have the capacity to meet even 25% of the total demand of the Indian market.
3. Such a high reference price for CFL imports from China and Hongkong is prohibitive and not comparative. It does not encourage Indian industry to become efficient and compete to make a product as per international quality and price requirement.
4. The Association fully supports that quality of lamps coming into India should be maintained and controlled as there are various international agencies to do so.

2.13 VIEWS OF INTERESTED PARTIES ON DISCLOSURE STATEMENT

Following interested parties have submitted their comments before the stipulated date:

2.13.1 Domestic Industry: They have stated that

1. Categorisation of CFLs: They agree that the product under consideration being categorised into two basic types, namely, CFL without choke and CFL with choke.

2. Price undertaking proposal by GE Lighting India Pvt. Ltd, Bangalore: In Para 1.6 of the Disclosure Statement, Authority has held that M/s. Xiam Top Star Co. Lighting Ltd, China (Top Star), who is a producer-exporter of CFL from China did not respond in the prescribed Questionnaire. In the absence of response to the exporter's questionnaire, the said exporter has to be treated as a non-cooperating exporter.

3. The Authority has determined individual dumping margins for M/s. Philip & Yamming Lighting Co. Ltd and M/s. Hangzhou Feihua Lighting and Electric Appliances Co. Ltd. (Feihua) through CMEC (trading house), Shanghai.

4.1 Feihua shall not be treated as a cooperating exporter: According to the preliminary finding, there were only two co-operating exporters from China namely M/s. Philips & Yaming Lighting Co Ltd and M/s. Zhejiang Yankon Lighting Co. The name of Feihua does not appear anywhere in the preliminary finding. No mention about Feihua was made during the public hearing held subsequent to the preliminary finding.

4.2 A perusal of the non-confidential version of the response of M/s. Feihua and their undated submission. these documents indicate that the response could never have been treated as complete.

5.1 Recently, China became a WTO member. At the time of accession to WTO, China signed a protocol of accession. The said protocol of accession provides, *inter alia*, the

methodology to be followed by other member countries while considering price comparability in determining subsidies and dumping investigations.

5.3 They have submitted that the authority shall not grant market economy status to Feihua unless they satisfy the above requirements provided for in the Protocol of Accession to WTO signed by China.

5.4 In the absence of an authentic translation of the relevant portions of the Chinese law, it is not correct to rely on the submissions. Since the exporter has submitted only an unauthenticated version, that too belatedly, the submissions shall be ignored by the authority.

6. As regard to Injury and Causal link they have agreed with the Authority that the domestic industry have suffered material injury during the period of investigation as a result of dumped imports from China and Hong Kong.

7. The Authority has confidentially disclosed the non injurious price arrived at, for the domestic industry. They have requested the Authority to disclose the detailed calculations showing which factors have been accepted or rejected in arriving at the non injurious price.

2.13.2 Comments of Co operative Exporters :M/s Phillips & Yaming and M/s Feihua:

They have stated that:

1. The use of the Petitioner's data results in an inflated Non Injurious Price. This inflation is, inter alia, due to the decision to replace German imports by addition to capacity, which Osram India failed to utilise and by Fusegear's overoptimistic expectations of the market in the future, without being able to serve that market.
2. The preliminary findings has failed to consider all injury factors, as the Indian Government has demanded from the European Community in Bed Linen and as confirmed by the WTO as minimum requirements. This omission is a serious infringement on WTO rule.
3. The information from non-cooperating producers in India has not been reported/verified by the DA. That is directly in conflict with the Indian Government's own position taken in Bed Linen.
4. Taking into account all these relevant factors, Philips and Yaming and M/s Hangzhou Feihua Lighting and Electric feel entitled to claim that their dumping margins be reduced to zero.

2.13.3 Comments on behalf of M/s Topstar:

The FAX dated 5.11.02 received on 5.11.02 is without the enclosures. The hard copy with comments have reached on 6.11.02. They have stated that brought out by them on behalf of M/s Xiamen Topstar Lighting company have not been dealt in the disclosure statement. However, they have reiterated their willingness to execute the price undertaking.

2.14.0 Comments of Importers and Users:

2.14.1 M/s Walden Corporation, New Delhi

1. They have stated that manufacturers like Osram and Phillips are marketing their products at MRP of Rs 225 per piece but the identical product which have been imported by them are price MRP 32 per pc
2. Effective from 1.3.2001 the importers are paying customs duty at very high level after the amendment of Custom Tariff Act which provides MRP based levy.
3. Given the low level of per capita income in the country, the need fo the hour is to encourage more and more use of energy saving devises at affordable prices.
4. In order to place more evidence before the Authority, they have requested two week extension of time to furnish information.

2.14.2 M/s Southern India Rajastani Chember of Commerce and Industry, Chennai

They have requested for two weeks time to reply to the disclosure statement

2.14.3 M/s Sha GMR International, Chennai

They have requested to forward a copy of final finding recommendations.

2.14.4 M/s Strategic Law Group, Delhi.

They have stated that the disclosure statement has not addressed any of the submissions other than the opening paras of their written submissions , and they are not in a position to offer any comments.

It is also noted that the consultant have not indicated which is the interested party/ parties they represent in the response to the disclosure;

2.14.5 M/s Surya Roshni Ltd, New Delhi:

They have stated that Authority has to ensure that the anti dumping measure are finally in the interest of the consumers and a means of unbridled profiteering by the domestic industry;

The product differentiation should be done in broader manner with aspects of wattage, number of tube bending, shapes of covers etc.

2.14.6 M/s JG Impex (P) Ltd, Delhi:

They have stated that they received the communication on 1.11.02 and due to intervening Sunday / holidays, they not in a position to give comments and have requested for two weeks extension of time to submit their comments;

2.14.7 M/s Madras Electric Trades Association, Chennai-1

They have stated that :

With the imposition of anti dumping duty, the consumer is the big loser;

The petitioners constitute a very small percentage of total market;

The product cannot be classified into only two broad classifications;

The anti dumping duty is prohibitively high;

2.15 **Examination by the Authority :**

The authority has examined the submissions made by the interested parties with regard to the treatment of the cooperating exporters as Non Market/ Market economy entities in China PR. Relevant Rules governing such treatment are as under:

"15. Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- a. 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 based on the following rules:*

- i. If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
 - ii. The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*
- b. In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*
- c. The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*
- d. Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.*

Position Under Indian Law at time of initiating matter:

8. The term "non market economy country" subject to the Note to this paragraph means every country listed in that note and includes any country which the Designated Authority determines and which does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect

the fair value of the merchandise. While making such determination, the designated authority shall consider as to whether, -

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

Provided that in view of the changing economic conditions in Russia and in the Peoples' Republic of China, where it is shown on the basis of sufficient evidence in writing on the factors specified in this paragraph that market conditions prevail for one or more such firms are subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

Note :- For the purposes of this paragraph, the list of non market economy countries is Albania, Armenia, Azerbaijan, Belarus, Peoples' Republic of China, Georgia, Kazakstan, North Korea, Kyrghyzstan, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. Any country among them seeking to establish that it is a market economy country as per criteria enunciated in this paragraph, may provide all necessary information which shall be taken due account by the designated authority.]

Position Under Indian Law Post 4th January 2001:

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

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO

member country during the three year period preceding the investigation is a non-market economy country.

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

(3) The designated authority shall consider in each case the following criteria as to whether :

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

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph".

The Authority notes that the WTO gives the option of treatment of China for the purposes of application of Anti Dumping or subsidy measures to the Member state.

1. A perusal of the entire clause above show that there is nothing to preclude a WTO Member from granting full market economy treatment to China or partial market economy treatment to companies or exporters from China. In fact, a Member is also empowered to grant market economy status to China as a whole.
2. The Indian law clearly provides that the companies operating in China can be treated as Market Economy if they satisfy the conditions laid down under the Rules.

3. With the onus shifted on the party claiming the market economy status, the Indian law, clearly prescribes the criteria prior to any company/entity getting market economy status from a Non-Market economy.
4. On each of the four criteria as per para 8 of Annexure I of Anti dumping Rules, the exporters provided detailed submissions which were verified by the Authority.
5. In light of the above, giving market economy treatment and accepting the cost of production supplied by the cooperating exporter from China, who has fulfilled the criteria for market economy treatment in accordance with the laws of India is fully within the powers of the Designated Authority and compatible with India's commitment to the WTO.

The Authority has examined the status of two cooperative exporters from China PR in light of the above.

2.16. M/s Philips & Yamming

P &Y is newly established Joint Venture Company with equity contributed by two partners, i.e. Philips Electronics China BV (60%) and Shanghai Yaming Lighting Factory (40%). Philips Electronics China BV, a wholly owned subsidiary of Philips Electronics N.V., duly organized and existing under the laws of the Netherlands. Shanghai Yaming Electric Lamp Works, duly organized under Chinese laws and registered at the Industrial and commercial Administration Bureau of Shanghai, China P.R. The company is incorporate under the PRC Sino Foreign Equity Joint Venture Law. The above law vest the right to the company to conduct business independently in the joint venture, with all major decisions being vested in the Board of Directors, who will operate and manage the firm independently i.e. without any direct interference by the State. However such operation is to be within the frame work of the Chinese Laws and Regulations. Similarly Article 51 and 52 allows full independence to the Joint Venture firm in the matters of purchase of required machinery, equipment, raw materials, fuel, parts, means of transport and office equipment and other inputs and materials. Article 53 in the matter of sales and investment encourages the Joint Venture to sell its products internationally and without State interference. The Joint Venture has the right to decide the avenue by which it would export its products.

The Company is subject to audit by Certified Public Accountant in accordance with Standard of Independent Auditing of China P.R. The Auditor certificate indicates that the financial statement are in conformity with the accounting standard for the enterprises and accounting regulation of the PRC for foreign investment enterprises.

It has been observed that Philips & Yaming is governed by the PRC civil procedures court which deals with Procedure For Bankruptcy And Debt Repayment of Enterprises With Legal Personality. The provisions of this Code guarantee legal certainty and stability in the operation of the firm Article 199, by granting recourse to the Courts of law, ensures a measure of protection to creditors, in case of any major losses suffered by the Exporter. In like manner Philips & Yaming too, can approach the Peoples' Court to obtain a declaration of bankruptcy, in the event of its inability to pay off its debts. In this way the right and claims of creditors are protected, as they would similarly be protected in market economy country.

It has been observed that the company procures raw materials and utilities at market rate not influenced by any state interference. The sales price are also decided after negotiations. The cost of inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without any State interference in this regard, and that cost of major inputs substantially reflect market values. There seem to be no distortions in the production costs and financial situation of Philips & Yaming in particular in relation to depreciation of assets, other write-offs, etc.

The People's Bank of China announces the exchange rate of Renminbi against major currencies on the basis of the prevailing exchange rates in the inter- bank foreign exchange market.

The above factors conclude that M/s. Philips & Yaming is operating in market economy conditions as laid down under Rule 8.

2.17. M/s.Hangzhou Feihua Lighting & Electrical Appliance Co., Ltd.(Feihua)

M/s. Feihua was incorporated and registered according to PRC Company Law and is entirely owned by Chinese citizens, therefore it is a private company by definition. The facilities of the company are not located in any special economic zone. The company being incorporated and registered under the PRC Company Law its actions are regulated by the law and shareholders have the right to make all major decisions affecting the functioning of the company. The company has sourced its raw materials from different sources after negotiations without any interference by the State. make its decisions regarding purchase of raw materials. The base records show that the company give incentives and overtime in addition to the basic wages. The selling price is negotiated between the buyer and seller without the state interference. All contribution made by the shareholders were evaluated by certified public accountant before incorporation. The company is subject to state income tax, urban construction tax and education tax.

It has been observed that M/s Feihua is governed by the PRC civil procedures court with deals with Procedure For Bankruptcy And Debt Repayment of Enterprises With Legal Personality. The provisions of this Code guarantee legal certainty and stability in the operation of the firm Article 199, by granting recourse to the Courts of law, ensures a measure of protection to creditors, in case of any major losses suffered by the Exporter. In like manner the company too, can approach the Peoples' Court to obtain a declaration of bankruptcy, in the event of its inability to pay off its debts. In this way the right and claims of creditors are protected, as they would similarly be protected in market economy country.

In addition to this Feihua has received ISO-9002 certificate from independent agencies.

The People's Bank of China announces the exchange rate of Renminbi against major currencies on the basis of the prevailing exchange rates in the inter- bank foreign exchange market.

The above factors concludes that M/s. Feihua is operating in market economy conditions as laid down under Rule 8.

2.18 Authority position on other issues

As regards to extension of time to furnish comments on disclosure statement, it may be mentioned that the investigations are time bound hence , no extension was considered.

As regards to issue raised by domestic industry, regarding inclusion of M/s Fiehua as a cooperative exporter, it is clarified that the submission by the exporters was received before the preliminary findings. The exporters (both M/s Phillips and M/s Fiehua) were represented by M/s Economic Law Practice, Mumbai., and the information was received on 20.10.01. As was indicated in our preliminary finding recommendations, M/s Phillips information was rejected as it was deficient in many respect and so also M/s Fiehua. After the preliminary findings additional/ supplementary information was sought from the exporters and verification of the same was carried out at their factory premises in China PR. The Authority hold that both M/s Phillips and M/s Hongzhou Feihua Lighting & Electrical Appliance Co. Ltd (M/s Feihua) Accordingly there is no justification to disregard the information submitted by the exporter.

Other issues raised by the interested parties have been examined and issues with reference to the rules and having a bearing on the case, have been considered and dealt with at appropriate place in the notification.

3.0 PRODUCT UNDER INVESTIGATION:

The product involved in the petition is Compact Fluorescent Lamp (CFL) originating in or exported from China PR and Hong Kong. The product is classified under Customs Tariff Heading 85.39.31 under HS Classification and 85.39.31.00 under Indian Customs Tariff Classification. The classification is, however, indicative only and in no way binding on the present investigation. The product covered in this investigation is Compact Fluorescent Discharge Lamps (CFL) with one or more glass tubes and which have all lighting elements, all electronic components and cap integrated in the lamp foot. Compact Fluorescent lamps without choke or ballast are also included.

3.1 Views of M/s. Phillips & Yaming and M/s. Feihua:

Product under Investigation:

1. There are primarily two types of CFL. The first is with choke and ballast (CFL integrated) and the second is without choke and ballast. These two products are fundamentally different and not substitutable and cannot under any circumstances, be used interchangeably. In fact, the CFL without choke and ballast product requires a special fitting which is inbuilt into the lamp.
2. In addition to the "with and without choke/ballast" CFLs can further be classified on the basis of Watt, Lifetime, Number of tube bendings and the position on the base, Form of the cover etc.

3.2 Views of M/s. GE Lighting India Pvt Ltd.

On Product under Consideration:

The preliminary findings have merely differentiated between the CFL with choke and CFL without choke. Other parameters like wattage, life of CFL, number of bends, cover etc. having been ignored, products significantly different in price have been combined .

4.0 LIKE ARTICLE

Definition of Like Article states as under:

"Like Article means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation."

4.1 The Authority finds that CFL produced by the domestic industry has characteristics closely resembling the imported material and is substitutable by CFL imported from the subject countries both commercially and technically. In view of the same CFL produced by the domestic industry has been treated as Like Article to the CFL exported from China PR & Hongkong.

5.0 DOMESTIC INDUSTRY

The petition has been filed by M/s. Indo Asian Fusegear Ltd, New Delhi and M/s. Osram India Ltd, Gurgaon on behalf of the domestic industry. The petitioners account for about 59% of the production during the period of investigation and therefore, have the standing to file the petition on behalf of the domestic industry. It has been reported that there are three other producers of subject goods, namely, M/s. Phoenix Lamps India Ltd., Export Processing Zone, Phaze-II, Noida-201 305, and M/s. Starlite Lighting Limited, Satpur, Nasik which are mainly export oriented units and M/s. Punjab Anand Lamp Industries Ltd, Mohali has negligible production of CFL.

5.1 In light of the foregoing, the Authority holds that the petitioner has the standing to file the petition on behalf of the domestic industry under the rules.

6. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

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

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

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of

export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin".

6.1 Views of Domestic Industry

- i. Determination of Normal Value based on 'best information available' is correct.
- ii. Rejecting the Export Price of M/s. Philips & Yaming is correct
- iii. On Calculation of Dumping Margin for Hong Kong
- iv. The Authority has not determined the dumping margin for CFL's with choke originating in or exported from Hong Kong. This appears to be an oversight error. Hong Kong does not have any manufacturing facility. The normal value for Hong Kong has been determined based on the normal value determined for China. Further, normal value and export prices are based on best available information. The dumping margin for CFL without choke from Hong Kong is the same as that applicable to China. In view of the above, the dumping margin for CFLs with Choke as determined for China may be applied to Hong Kong also.
- v. Regarding Application of Non-Market Economy (NME) Rules to China, the Petitioners have argued that M/s. Philips & Yaming cannot be given Market Economy Status. Further, it must be noted that granting market economy status to a company operating in China PR, which is declared to be a NME country should be done only after careful consideration and independent verification of all the facts and circumstances furnished by the exporter. The authority should not grant market economy status to an exporter based only on the statements made by the said exporter that are not supported by adequate evidence.

6.2 Views of M/s. Phillips & Yaming

- i. Market Economy Status should be granted to M/s. Phillips & Yaming :
- ii. The accounts in respect of the company are maintained and audited in accordance with the accounting regulations of China for enterprises with foreign investments.
- iii. The company is a newly incorporated joint venture with no carry over of liabilities from previous operations;
- iv. As per the provisions of PRC Civil Procedure Code, the company is subject to the bankruptcy and property laws;
- v. The company is governed by the PRC Regulations on foreign exchange control;
- vi. The accounts of their parent country in Netherlands i.e. namely M/s. Phillips follows Dutch GAAP and is listed on Amsterdam, New York Stock Exchange.

The accounts of M/s. Phillips ,China are amalgamated in the accounts of Dutch parent company.

- vii. On Non-Market Economy Provisions they have stated that M/s Philips and Yaming is a Sino Foreign Joint Venture under the laws of China.

6.3 Views of M/s Feihua:

- i. The company has acquired ISO 9001: 2000 standard
- ii. M/s Feihua is subjected to urban construction tax and other local taxes;
- iii. The company is managed by Zhu Family. Workers are paid basic salaries, incentives and overtime allowances.
- iv. There is no State interference in the functioning and management of the company;
- v. The production cost and financial accounting are as per PRC GAAP;
- vi. The company is subject to PRC Bankruptcy and Property Laws;
- vii. All relevant data on market economy status and operations of the company demonstrate that from the inputs to pricing and policies the company operates on market economy conditions;

6.4 Examination by the Authority:

Only two exporters viz M/s Philips & Yaming, Shanghai and M/s Hangzhou Feihua Lighting and Electric Appliances Co Ltd,(Feihua) from China PR have co-operated with the investigation and none from Hongkong has responded to this anti-dumping investigation.

The Authority notes that M/s Philips & Yaming and M/s Feihua have furnished information in the questionnaire prescribed for exporters and supplementary information called for furnished, after the preliminary findings.

M/s P&Y has furnished information with regard to Normal value and Export Price through their related entities and sales to independent customer in domestic market as well as export market. Adjustments claimed with respect to Commissions, Marketing and Selling expenses for domestic sales and all adjustments claimed in respect of export sales to India are proposed to be considered for determination of normal value and ex factory export price to independent buyer. They have also pleaded that the product under consideration may be divided into two separate categories, namely, CFL without choke and CFL with choke, though they have furnished information watt(range) wise.

Normal Value in case of M/s. Philips & Yaming:

M/s. Philips & Yaming (P&Y) sells its product in the domestic market through M/s. Petsco a subsidiary company of M/s. Philips, Netherlands. Since Philips, Netherlands has contributed 60% of the equity in Philips & Yaming and M/s. Petsco is a subsidiary of M/s. Philips, Netherlands it cannot be concluded that the sale to the related companies is at arms length. Accordingly first sale to independent buyer by M/s. Petsco has been taken as the basis to assess the normal value. All expenses incurred by M/s. Petsco after ex-factory delivery by M/s. P&Y has been deducted from average sales realization of different types / wattage of CFL sold in the domestic market by M/s. Petsco. The same has been compared with the average cost of production (typewise/wattagewise). It has been observed that the average ex-factory sales realisation of different types of CFLs is more than the average cost of production. In accordance with Rule 9(a) the same has been proposed to be adopted. This gives weighted average normal value as under:-

Export price M/s. Philips & Yaming(P&Y):

M/s. P&Y has furnished invoice-wise detail of exports of CFL to India. M/s. P&Y has exported the subject goods to Philips India in India which is considered to be related companies. Accordingly, the sale between two companies cannot be considered at arms length. In line with the Anti Dumping rules the sale by M/s. Philips India to an independent buyer has been considered and the ex-factory export price has been arrived at by deducting all expenses incurred by M/s. Philips India and M/s. P&Y after ex-factory level. This gives the ex-factory export price and the normal value as under

Normal value in case of M/s Feihua:

M/s Feihua has furnished information with regard to Normal value and Export Price through M/s CMEC Engineering Machinery Import Export Co. Ltd (**CMEC**) (a trading house) to independent customer in domestic market as well as export market. Adjustments claimed with respect to Commissions, Marketing and Selling expenses for domestic sales and all adjustments claimed in respect of export sales to India are proposed to be considered for determination of normal value and ex factory export price to independent buyer. The company has exported CFL with choke only during the period of investigation.

The company has also furnished duly reconciled detailed break up of cost of production (type-wise/wattage-wise). A comparison of cost of production and ex-factory domestic sales realisation shows that sale is in ordinary course trade. The ex-factory domestic sales realisation of the same type exported to India has been proposed to be considered as normal value. This gives the wieghted average normal value as indicated below.

Export price in case of M/s Feihua:

M/s. Feihua has furnished complete detail of its sale(invoice-wise) to M/s. CMEC who in tern sells the subject goods to Phlips India Ltd. Since M/s. Feihua does not have required export licence, sale is made through CMEC who has the required export licence under the Chinese Law. The company has exported only 14 watt CFL with Choke during the period of investigation. The weighted average ex-factory export price has been determined after making suitable adjustment. This gives the weighted average ex-factory export price, normal value and dumping margin as assessed is given below

6.5 In absence of cooperation from any of the exporter from Hong Kong, the Authority has relied on the best information available with it in accordance with Rule 6(8) supra. However the Authority could obtain segregated data in respect of imports of CFL with Choke from Hong kong. Based on the same the Authority has determined a dumping margin of 93% for CFL with choke and 214% for without choke.

6.6 The petitioners have submitted import information based on secondary source viz. M/s IMPEX Statistic Service giving segregated information on import of CFL (without choke and with choke) in to India from the subject countries. This information for period investigation is relied upon for determining of export price for ‘other exporters’ from subject countries. Normal Value is determined based on the best information available on records.

6.7 Dumping Margin:

For the purpose of fair comparison between normal value and export price the Authority has considered the information furnished by the petitioners, cooperative exporters, other interested parties and other published information available with the Authority.

The dumping margins determined for the purpose of final finding are as under : ---

Name of the Country/ Exporter	Normal Value US \$	Export Price US \$	Dumping Margin US \$	Dumping Margin %
Without Choke				
CHINA PR				
M/s Philip & Yaming Lighting Co. Ltd. Shanghai	****	****	****	Deminimus
All Other Exporters	****	****	****	214%
With Choke				

CHINA PR				
M/s Philip & Yaming Lighting Co. Ltd. Shanghai	****	****	****	36.50%
M/s Hangzhou Feihua Lighting and Electric Appliances Co Ltd,(Feihua) Through CMEC (Trading House), Shanghai	****	****	****	9.73%
All Other Exporters	****	****	****	168%
Hong Kong				
All Exporters				
With Choke	****	****	****	
Without Coke	****	****	****	93% 214%

H. INJURY:

7.0 Under Rule 11 supra, Annexure-II, When a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...."

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree;

Rule (iii) of the Annexure II to the Rules requires that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, The Authority will cumulatively assess the effect of such imports. Such assessment can be, however, made only if it is determined that:

- a. the margin of dumping in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the import of the like article in India, and
- b. the cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.

7.1 The argument raised by the various interested parties is as under:

7.2 Views of Domestic Industry

They have submitted that the determination of material injury to the domestic industry by the authority is correct.

Causal Link between dumped imports and injury to the domestic industry is obvious:

Imports from the subject countries constitute 94.15% of the total imports of CFL into India. They are entering the country at prices, which are far below the costs of the domestic industry. There are no other factors that affect the prices of the domestic industry. The causal link is fully established.

7.3 Views of M/s. Phillips & Yaming and M/s. Feihua:

- i. It has been submitted that the data as concocted by the Petitioners is blatantly self-serving and cannot be used by the Designated Authority for an objective analysis of the injury parameters.
- ii. Imports from Countries other than China and Hong Kong must be cumulated:
- iii. As seen from the table of DGCIS data for the period of investigation, there are several countries, which must be considered to be dumping in India, and whose value and volume need to be factored in to the injury analysis, specifically with reference to the causal link. Clearly, countries such as Hungary, EU (Germany), Singapore and Taiwan need to be considered.
- iv. Comparison of "Like Products" for the purposes of Injury:
- v. While the Hon'ble Designated Authority in its wisdom has clubbed the Product under Consideration as one, it has been submitted that this cannot be done for the injury analysis.

7.4 Views of M/s. GE Lighting India Pvt Ltd.

- a. On Injury and Injury Margin :There is no evidence of injury to the domestic industry in the petition. Further, the bench mark (non-injurious price) fixed in the preliminary findings are unrealistically higher.
- b. The importers have urged the Authority to kindly examine the project report of the company who has enhanced the capacity to such an extent that the additional capacity created is more than the original capacity. The situation is not enhancement of capacity.
- c. whether both the companies suffered decline in profitability and have reported losses or only one of the company who has added significant capacity has reported significant losses.
- d. Whether the company who has reported losses and who has added huge capacities has charged all fixed expenses, including interest and depreciation for the whole year of 2000-01, even when the company commenced commercial production in Aug.2000.

- e. In case the newly acquired capacity have not been put to significant commercial production, whether such expenses towards additional capacity between the period Aug.00-March, 01 can be considered relevant for assessing the profitability of the domestic industry.
- f. Total loss in revenue claimed by the domestic industry, as a whole is Rs.350.71 lac. Considering sale volume of 29.95 lac. This implies a decline of about Rs.11.71 per piece in the selling price of the domestic industry.
- g. On Cost of Production :It is given to understand that the petitioners are not running the plant all the three shifts. Yet, fixed expenses have been still incurred and charged to books of account. The issue, therefore, to be answered by the petitioners is that whether the consumers should bear that idle time cost for which the company did not produce any material.
- h. They have submitted that there is total lack of injury and causal link between the injury and causal link.

7.5 The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above. Cumulative assessment of the effects of imports is appropriate since the export prices from the subject country were directly competing with the prices offered by the domestic industry in the Indian market.

7.6 For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry such as quantum of Imports production, capacity utilisation, sales quantum, stock market share, profitability, net sales realisation, the magnitude and margin of dumping etc. in accordance with Annexure II (iv) of the rules supra.

7.7 The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above. Further, the authority notes that the imported products from the subject countries directly compete with the like products offered by the domestic industry in the Indian market. In the light of such a competition between the imported article and the like domestic article, the conditions for cumulative assessment are satisfied. Therefore, the authority has decided to cumulatively assess the effect of imports from China and HongKong.

Assessment of Injury

7.8 For the examination of the impact of imports on the domestic industry in India, the Authority has considered (a) the volume of dumped imports, (b) the effect of dumped imports on prices in the domestic market for like article and (c) the consequent impact of these imports on domestic producers of such articles. The findings of the Authority are given below:-

(a) Volume of dumped Imports

(Lakh Units)

Particulars	1998-99	1999-2000	2000-2001
Imports from subject countries	18.25	46.74	153.99
Imports from other countries	26.95	65.12	9.57
Total imports	45.20	111.86	163.56
Domestic Sales	24.26	32.21	29.95
Total Demand	69.42	144.07	193.51
Market share of subject countries in total imports.	40%	42%	94%
Market share of subject countries in total demand	26%	32%	80%
Market share of Domestic industry in total demand	35%	22%	15%

From the above table, it is seen that the volume of dumped imports has increased from 46.74 lakh pieces in the year 1999-2000 to 153.99 lakh pieces in the year 2000-2001. Thus the volume of imports has recorded an increase of 107.25 lakh pieces in absolute terms during the period of investigation as compared to the previous year. Similarly, the dumped imports have registered a substantial increase in relative terms also as the share of the dumped imports in the total Indian demand has increased from 32% in the year 1999-2000 to 80% in the year 2000-2001.

(b) Effect of dumped imports on prices in the domestic market for like article

The imports from the subject countries are undercutting the prices of domestic industry by over 50% for both CFLs without Choke and with choke. Thus, the prices of domestic industry were affected by both price depression and price suppression. In view of the above, the authority determines that the dumped imports adversely affected on the prices of the domestic industry.

(c) Consequent impact of dumped imports on the domestic producers

In terms of paragraph (iv) of Annexure II to the Rules, the examination of dumped imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

7.9 The authority has evaluated each of the factors mentioned above. The evaluation of each factor is given below:

1. **Decline in sales:** The sales of the domestic industry has declined from 30.35 lakh units in the year 1999-2000 to 30.03 lakh units in the year 2000-2001.
2. **Decline in market share:** The market share of the domestic industry has declined from 21% in the year 1999-2000 to 16% in the year 2000-2001.
3. **Production:**

(Lakh Units)

Particulars	1998-99	1999-2000	2000-2001
Installed Capacity	90	92	152
Production	27.35	37.26	48.97
Capacity utilisation	30%	41%	32%

The installed capacity of the domestic industry increased from 92 lakh units to 184 lakh units during the year 2000-01 in line with the growing market demand. Despite an increase in the installed capacity, actual production of the domestic industry increased by 11.71 lakh units.

4. **Utilisation capacity:** Though the capacity was increased from 92 lakh units to 184 lakh units, the increased capacity came into production only in August 2000. Therefore, the capacity for the year 2000-2001 has been taken as 152 lakh units. Based on this increased capacity, utilisation declined in 2000-2001 compared to each of the two previous years. The increased capacity could not be utilised by the domestic industry (a) due to fall in the market share of the domestic industry and (b) due to significant increase in the quantum of dumped imports from China PR and Hong Kong.
5. **Profits:** The decline in the volume of sales coupled with increased costs and falling prices have adversely affected the profitability of the domestic industry. The industry has suffered a loss of Rs. *** lakhs compared to a profit of Rs. ****lakhs during the previous year 1999-2000. The profitability has eroded by over 149% in just one year.
6. **Return on investment:** The return on investment was negative for the domestic industry during 2000-01 as compared to positive return during the year 1999-2000.
7. **Inventory**

(lakh units)

Particulars	1998-99	1999-00	2000-01
Sales	18.99	30.35	30.03
Closing stock	1.32	4.21	10.31
Average stock		2.77	7.26

Closing Stock in terms of No. of days sales	25	51	125
Average Stock in terms of No. of Days' sales		33	88

As may be seen from the above table, the inventory levels for the domestic industry have gone up significantly during the year 2000-2001. The closing stock represented 51 days' sales during the year 1999-2000 and 125 days' sales during the year 2000-01. Average stock during the year 1999-00 represented 33 days' sales whereas it increased to 88 days' sales during the year 2000-01.

8. **Productivity:** For one of the petitioners, normal plant yield as certified by the supplier of plant and machinery was ***. However, they had achieved a higher plant yield during the period of investigation. As per information available on record, there is no significant difference in the production process between the domestic industry and the manufacturers of the imported products in the subject countries. Therefore, the authority does not consider this factor relevant for the purposes of determining injury.
9. **Magnitude of the margin of dumping:** The authority considers that the margins of dumping determined in this investigation for the cooperating exporters are quite significant and has the effect of causing both price suppression and price depression on the domestic like products.
10. **Cash flow:** The profit before depreciation of the domestic industry has significantly come down during the year 2000-01 as compared to 1999-00, which clearly shows a negative effect on cash flow of the domestic industry.
11. **Factors affecting domestic prices:** Both the petitioner companies determine their prices based on prevailing market conditions. The market prices were driven down by the lower prices of dumped imports as the share of the dumped imports as a percentage of total imports increased from 42% in 1999-00 to 94% during 2000-01. Based on the records available, no other factor appears to have affected the domestic prices.
12. **Employment:** The capacity utilisation of the domestic industry is a meager 32%. As and when utilisation level improves, the domestic industry will be in a position to provide employment to a larger number of people than the present level.
13. **Wages:** As the domestic industry is incurring losses, its ability to increase their wage bills is severely affected.
14. **Growth:** CFL is an energy saving lamp. According to the petitioners, for a developing country like India, there is huge potential for such energy saving lamps. They set up additional capacity of 92 lakh units during the year 2000-2001 and thereby increased the total installed capacity to 184 lakh units. Yet, their capacity utilization was a mere 32%. The actual quantity produced after addition of capacity was lower than the actual production before addition of capacity. The growth of the domestic industry has been severely affected.

15. Ability to raise capital investments: The authority notes that the ability to raise capital or investments will depend on a number of factors including current losses incurred in the business, low level of capacity utilisation, and intense competition from imported goods from the subject countries. However, the authority finds that ability to raise capital investments is not a major factor relevant for determining material injury.

Based on the evaluation of each of the 15 factors mentioned above, the authority determines that the Indian domestic industry manufacturing CFL has suffered material injury during the period of investigation.

8.0 CAUSAL LINK

In terms of paragraph (iv) of Annexure II to the Rules, it must be demonstrated that the dumped imports are, through the effects of dumping, causing injury to the domestic industry. The volume of dumped imports as a percentage of total imports has increased from 42% in 1999-00 to 94% during 2000-01. The share of dumped imports in total consumption in India increased from 33% in 1999-00 to 80% in 2000-01. The market share of the domestic industry fell from 21% in 1999-00 to 16% in 2000-01. Thus, the volume effect is established. The dumped imports were coming into India at prices that significantly undercut the prices of the like domestic product. The prices of dumped imports have caused both price depression and price suppression on the prices of like domestic product. Thus, the price effect is also established.

The authority finds that 94% of the total imports were from subject countries. The volume and value of imports from other sources were not significant. There was no contraction in demand for the product concerned in India. According to the records available, there were no changes in the patterns of consumption. No trade restrictive practices or competition between domestic and foreign producers were brought on record by any of the interested parties. The product is well developed and no changes in technology are on record. Only one petitioner exported the domestic like product during the period of investigation and the preceding two years. The exports quantity was too meager, constituting less than 0.5% of the total production. As already stated, productivity of the domestic industry is not a major factor in determining injury to the domestic industry. Thus, none of the factors other than dumping have caused injury to the domestic industry.

In view of the above, the authority determines that the dumped imports, through the effects of dumping, have caused material injury to the domestic industry. However after careful examination of the cost of production and determination of non injurious price for the Domestic Industry and landed value of subject goods from M/s Philips & Yaming, China, the Authority notes that the average landed value of CFL with choke

exported to India by them during the period of investigation is more than the non injurious price so determined. Accordingly, Authority concludes that causal link could not be established between the export of CFL with choke by M/s Philips & Yaming and material injury caused to the domestic industry.

9.0 Conclusion on Injury and Causal Link:

From the above, it is clearly established that:

- The imports of CFL into India from subject countries have increased quite significantly both in absolute terms and relative to consumption in India;
- The domestic sale prices are suffering from both price suppression and price depression due to dumped imports from subject countries;
- The production has increased during period of investigation. However, sales of the domestic industry has not increased;
- Closing stocks has gone up during period of investigation over previous year;
- The capacity utilisation during the period of investigation was low .
- The domestic industry has suffered losses during the period of investigation;
- Landed value of exports of CFL with choke by M/s Philips & Yaming being more than the non injurious price of the domestic industry is not causing any injury to them.

10. PRICE UNDERTAKING

10.1 Rule 15 relating to Suspension or termination of investigation on price undertaking provides that the designated authority may suspend or terminate an investigation if the exporter of the article in question furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated.

10.2 M/s Xiemen Topstar Lighting Co. Ltd, China

One of the exporters, M/s. Xiemen Topstar Lighting Co. Ltd, China had extended its willingness to offer price undertaking. The offer was examined in detail and the Designated Authority found that the undertaking offered by the exporter cannot be accepted as the the exporter M/s Topstar has not cooperated with the Authority during the investigation.

INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

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

11.2 It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of CFL. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

12.0 CONCLUSION:

It would be seen, after considering the foregoing, that:

- a. Compact Fluorescent Lamps originating in or exported from China PR and Hongkong have been exported to India below Normal Value, resulting in dumping;
- b. The Indian industry has suffered material injury from exports of subject goods from China PR and Hongkong.
- c. The injury has been caused cumulatively by the dumped imports from China PR and Hongkong. It is considered necessary to impose definitive anti-dumping duty, on all imports of Compact Fluorescent Lamps originating in or exported from China PR and Hongkong.
- d. In case of exports of CFL with choke by M/s Philips & Yaming, China PR, causal link could not be established as the landed value of such exports was above the non injurious price.

13.0 To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority relied upon reasonable selling price of CFL in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilization for the domestic industry.

14.0 It was considered whether a duty lower than the dumping margin would be sufficient to remove the injury. The average landed value of the imports, for the purpose, was compared with the weighted average non-injurious price for the petitioners company, determined for the period of investigation. Wherever the

difference was less than the dumping margin , a duty lower than the dumping margin is recommended.

15.0 Accordingly, the Authority recommends definitive anti-dumping duty as indicated below be imposed by the Central Government on all imports of CFL originating in or exported from China PR and Hong Kong. The anti-dumping duty shall be the difference between amount mentioned in Col. 3 and the landed price of imports per unit in US \$, on all imports of CFL under Chapter 85 of the Custom Tariff Act, 1975.

Countries	Name of the Producer / Exporter	Amount in US \$ Per unit	
		With out Choke	With choke
CHINA PR	M/s Philip & Yaming Lighting Co. Ltd.	Not applicable	Not applicable
	M/s. Hangzhou Feihua Lighting & Electrical Appliance Co.Ltd. (Through M/s CMEC Engineering Machinery Import &Export Co. Ltd)	1.256	1.845
	All other exporters	1.256	3.125
HONGKONG	All exporters	1.256	3.125

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

17.0 Subject to above , the Authority confirms the preliminary findings dated 2nd November, 2001.

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

L.V. Saptharishi,
Designated Authority