

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

**NOTIFICATION**

NEW DELHI, the 14th October, 2003

**PRELIMINARY FINDINGS**

**Sub:** Anti-Dumping Investigation concerning imports of Metallurgical Coke originating in or imported from Japan

**No.14/41/2002-DGAD** - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

**A. PROCEDURE**

- i. The procedure described below has been followed with regard to the investigation:
- ii. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from Indian Metallurgical Coke Manufacturer's Association (IMCOMA), (hereinafter referred to as petitioner) on behalf of domestic industry, alleging dumping of Metallurgical Coke (Metcoke, hereinafter also referred to as subject goods) originating in or exported from Japan. The following domestic producers of Metallurgical Coke are party to this petition:

- M/s BLA Industries Ltd., Mumbai
- M/s Durgapur Project Ltd., Kolkatta
- M/s Antai Balaji Coke Ltd., Kolkatta
- M/s Saurashtra Fuels Pvt. Ltd., Mumbai
- M/s Southern Fuels Ltd., Bangalore
- M/s Sesa Kembla Coke Co. Ltd.
- The petition is also supported by M/s Gujarat NRE Coke Ltd., Kolkatta.

- iii. Preliminary scrutiny of the application filed by the petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iv. The Authority on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of subject goods from Japan. The authority notified the Embassy of Japan in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Antidumping Rules.
- v. The Authority issued a public notice dated 20th March, 2003 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of Metallurgical Coke classified under custom Code 27.04 of Schedule I of the Customs Tariff Act, 1975 and under ITC HS Classification Rule 2704.00, originating in or exported from Japan (hereinafter referred to as subject country).
- vi. The Authority forwarded copies of the public notice to the known exporters (whose details were made available by petitioner) and gave them an opportunity to make their views known in writing within forty days from the date of the letter in accordance with Rule 6(2) supra.
- vii. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):
  - 1. M/s Mitsubishi Corporation, Tokyo, Japan
  - 2. M/s Sumitomo Corporation, Tokyo, Japan
- viii. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by petitioner) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with Rule 6(2).
- ix. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
- x. The Embassy of the subject country in New Delhi was informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise all concerned exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the known exporter was also sent to the Embassy of the subject country in accordance with Rule 6(3). A copy of the non-confidential petition was also provided to other interested parties, wherever requested.
- xi. A questionnaire was sent to the following known importers/user-associations of the subject goods for necessary information in accordance with Rule 6(4):
  - M/s Gujarat Heavy Chemicals Ltd., Ahmedabad, Gujarat

- M/s Jayaswal Neco Ltd., Kolkata
- M/s Southern Iron & Steel Co., Coimbatore, Tamil Nadu
- M/s Sathavahan Ispat Ltd., Hyderabad
- M/s Kirloskar Ferrous Industries, Pune
- M/s Unimetal Ispat Ltd., Secunderabad
- M/s Malvika Steel Ltd., Sultanpur
- M/s Lanco Industries Ltd., Secunderabad
- M/s Tisco Ltd., Bombay
- M/s Vishveseraya Iron & Steel, Bhadravati, Karnataka
- M/s Unimetal Alloys Ltd., Secunderabad
- M/s Gujarat Heavy Chemicals, Ahmedabad, Gujarat
- M/s Association of Indian Mini Blast Furnaces, New Delhi
- M/s Indian Ferro Alloy Producers Association, Mumbai

xii. Various interested parties requested for extension of time for filing their responses to the Initiation notification. Accordingly, extension was granted to all the interested parties upto 15th May, 2003.

xiii. Response/information to the questionnaire/notification was filed by the following exporters/producers:-

- M/s Mitsubishi Corporation, Japan
- M/s JFE Steel Corporation, Japan

M/s Sumitomo Corporation, Tokyo, Japan, the company originally named in the petition, also responded to the initiation notice and has informed that they did not export any Met Coke from Japan to India during 1st April 2001 to June 2002.

However, M/s JFE Steel Corporation, Japan, who is the actual producer of the subject goods in the subject country has filed a response *suo moto* and has agreed to co-operate in the investigation. Two major producers of Metcoke in Japan i.e., M/s NKK Corporation and M/s Kawasaki Steel have merged to form new corporation called M/s JFE Steel Corporation w.e.f. 1st April 2003.

xiv. Response/information to the questionnaire/notification was filed by the following importers/user Associations.

1. M/s Indian Ferro Alloys Producers Association, Kolkata
2. M/s Association of Indian Mini-blast Furnaces
3. M/s Electrosteel Castings Ltd.
4. M/s Aparant Iron & Steel Pvt. Ltd.,
5. M/s Hindustan Zinc Ltd
6. M/s Saurashtra Chemicals Ltd.
7. M/s Fairdeal Suppliers Pvt. Ltd.,

8. M/s Jayaswal Neco Ltd
  9. M/s Usha Beltron Ltd
  - 10.M/s Ispat Metallics India Ltd.
  - 11.M/s TISCO
  - 12.M/s Kalyani Ferrous India Ltd.
  - 13.M/s Kirloskar Ferrous Industries Ltd.
  - 14.M/s Usha Ispat Ltd.
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- xv. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained for this purpose and kept it open for inspection by the interested parties as per Rule 6(7).
  - xvi. The Authority conducted on-the-spot investigation at the premises of the petitioners to the extent possible. Cost investigation was also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner.
  - xvii. On the request of various interested parties, the Authority held a public hearing to understand various issues raised by the parties and the written submissions made after the hearing and rejoinders thereof have been incorporated into this finding.

\*\*\*\*in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

Investigation was carried out for the period starting from 1st April 2001 to 30th June 2002 i.e. the period of investigation (POI).

## **B. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES**

### **1. PETITIONER'S VIEWS**

#### PRODUCT UNDER CONSIDERATION

The product for which this petition has been filed is Metallurgical Coke (Metcoke) with an ash content of less than 18% (eighteen percent) which is being dumped in the Indian market by the exporters from Japan. The petitioner have contended that the subject Metcoke imported from Japan uses coking coal having ash content of less than 13% and therefore Subject Metcoke of only up to 18% is being imported into India.

The petitioners contend that coal having high ash content is primarily found in the Indian subcontinent. Whereas, the imported subject Metcoke is manufactured from low ash content coal and, therefore, would not exceed 18% in ash content. Subject Metcoke is produced by destructive distillation of Metallurgical coking coal in the absence of oxygen at high temperature, generally ranging around 1000 degrees centigrade, without burning the coal.

The properties of the resultant Subject Metcoke are directly dependent on the input of the coal. Any Metcoke comprising of ash content of less than 18% would require coal input having a natural ash content of less than 13% for which the coal is imported. Indian coal generally has a natural ash content in excess of 20%.

Metcoke produced is mainly carbon along with some mineral and residual volatile material. Metcoke is used as a primary fuel in industries where a uniform and high temperature is required in kilns or furnaces.

Metcoke is classified under chapter 27 (under sub-heading 27.04) of the Customs Tariff Act, 1975. The classification, manufacturing process and usage of the product indicated herein are, however, indicative only and are in no way binding on the scope of the product under consideration.

Metcoke (including Subject Metcoke) is used in various industries including pig iron, foundries, ferro alloys, chemical, integrated steel plants and others.

Given that the product under consideration is Subject Metcoke having an ash content of less than 18%, the producers of Subject Metcoke having an ash content of above 18% are excluded by the petitioners from their petition.

#### **a. Like Product**

The petitioners contend that there is no noticeable difference in the imported product and the petitioners' products. The subject Metcoke produced by the petitioners in India is directly interchangeable with imported subject Metcoke from Japan.

### **C. INDIAN INDUSTRY PROFILE**

The producers of Subject Metcoke in India may be broadly categorized in three groups. First, those who are primarily integrated steel plants such as TISCO, Rashtriya Ispat Nigam Limited and SAIL who captively consume the Subject Metcoke they produce, as well as resort to large scale imports from other countries including Japan. Second, stand-alone Subject Metcoke producers who produce Subject Metcoke from imported Low Ash Coal, and third, stand-alone small scale

sector producers located in Bihar, Bengal and Jharkhand, who are represented by Industries and Commerce Association (ICA). The latter generally uses Indian coal to produce Metcoke and by and large produces Metcoke having an ash content of above 18%.

The Designated Authority had in the earlier case, involving Metcoke from China, for the purposes of demarcating Domestic Industry, excluded those producers who captively produce and consume the product under consideration. This fact was confirmed by the Hon'ble CEGAT. To the best of the Petitioners knowledge no producer produces Metcoke with an ash content of less than 18% for captive consumption. In any event, these captive consumers should be excluded in keeping with the decision of the Hon'ble Designated Authority and the Hon'ble CEGAT.

## **PRODUCTION PROCESS**

In the coke-making processes, bituminous coal, containing Volatile Matter (VM), is fed, usually after processing operations to control the size and quality of the feed, into a series of ovens which are sealed and heated at high temperatures in the absence of oxygen, typically in cycles lasting 14 to 36 hours depending upon the quality of coal and its VM content. There are primarily two kinds of Processes to Manufacture Metcoke:

### **b. Non Recovery Process**

In the Non Recovery Process, Volatile compounds that are driven off the coal due to heating are fully combusted inside the ovens and the solid carbon remaining in the oven is coke. It is taken to the quench tower, where it is cooled with a water spray or by circulating an inert gas (nitrogen), a process known as dry quenching. The coke is screened into different sizes and sent to a blast furnace or to storage.

### **c. Byproduct Recovery Process**

In the By-product Recovery Process, Volatile Matter is collected. Coke oven gas is cooled and by-products are recovered. Flushing liquor, formed from the cooling of coke oven gas and liquor from primary coolers contain tar and are sent to a tar decanter. An electrostatic precipitator is used to remove more tar from coke oven gas. The tar is then sent to storage. Ammonia liquor is also separated from the tar decanter and sent to waste water treatment after ammonia recovery. Coke oven gas is further cooled in a final cooler. Naphthalene is removed in the separator on the final cooler. Light oil is then removed from the coke oven gas and is fractionated to recover benzene, toluene and xylene. Some facilities may include an onsite tar distillation unit. The Claus process is normally used to recover sulfur from coke oven gas. The

coke oven gas is also directly used as fuel in power plants and for heating after stripping it of noxious elements. The recovery value of the coke oven gas generally depends upon its calorific value and volume of recovery in standard cubic meters.

Among the petitioners and their supporters, only M/s Durgapur Projects employ the Recovery Process. Based on the actual experience of M/s Durgapur Projects Ltd., the recovery is approximately \*\*% of the cost of manufacturing coke.

1. The petitioners also contend and emphasize that the capital cost of installing a recovery coke over plant is significantly higher than the cost of a non-recovery plant and therefore actual recovery gain is much less taking capital cost into account.
2. During the coke quenching, handling and screening operation, coke breeze is produced. It is either reused on site (e.g. in the sinter plant) or sold off site as a by-product. This is under both processes.

#### **d. Users of Metcoke**

**Iron Foundries:** Iron Foundries use coke in the Cupola to melt iron for casting it into various shapes as per application. The iron foundries in India are spread out throughout the country.

**Steel Foundries:** Steel foundries use coke to provide additional carbon content to the molten metal depending upon the specification of the casting.

**Non ferrous metal castings;** Foundries that make castings of Copper and Brass use Coke for melting the metal.

**Lead and zinc Smelters:** Coke is a prime ingredient in the process of lead and Zinc smelting.

**Secondary Steel Producers:** ‘Mini’ steel plants that produce steel from recycled steel scrap and sponge irons require coke.

**Chemical Plants;** Some soda ash plants and calcium carbide producers require coke in their process.

**Ferro Alloy Plants:** Ferro alloy producers require coke for their production. Coke is used as a reducing agent in this process.

Pig Iron Producers: Production of pig iron requires coke. In India small pig iron producers require coke and buy the coke from the open market. Typically larger steel producers have their own plants and therefore, are not in the market to buy coke.

#### e. Import of Metcoke

Import of Subject Metcoke 1999-2002			
	Japan	Other countries	Total
<b>1999-2000</b>			
Quantity In MT	329472	1989931	2319403
Value in Rupees	1119654298	6793571892	7913236690
Rate Rs/PMT	3398	3414	3412
<b>2000-2001</b>			
Quantity In MT	200309	2184129	2384438
Value in Rupees	86190399	8187752510	9849655809
Rate Rs/PMT	4303	4115	4131
<b>2001-2002</b>			
Quantity In MT	371018	1912991	2284009
Value in Rupees	1494552853	7670211501	9170764354
Rate Rs/PMT	4028	4013	4015

Imports from other countries except Russia and China are de minimis and therefore not being considered as being dumped in India. Imports from China, which is about 50.51% of total imports, are subject to antidumping duty since 1998.

#### f. Dumping and Normal value

The petitioners claim that in the absence of any useful information, besides the cost of coal, in the public domain they have not been able to get the selling price of the subject Metcoke in the domestic market of the exporting country. Accordingly, they have constructed the normal value of the subject Metcoke as Rs\*\*\*\*\* based on the international price of coal imported by Japan from Australia, China and Canada and costs from Indian manufacturers using the recovery and non-recovery processes with appropriate modifications.

#### Estimates of Export Price

1. The Export Price for the subject goods from Japan has been worked out on the basis of the import figures of the DGCI&S. Since the DGCI&S figures are on CIF basis, adjustments towards ocean freight, Marine insurance, Inland transport charges, Port handling charges in Japan, trading house commissions have been made.

2. The adjusted ex-factory export price after the above adjustments has been worked out by the petitioners as Rs\*\*\*\*\*.
3. On the basis of the above constructed normal value and export price the petitioners have indicated the Dumping margin as 64.06%, both in terms of Rupee and Dollar.

**g. Injury**

The petitioners contend that margin of dumping from, the subject country is more than the 2% limit expressed as % of export price. Also the volume of import from the subject country is more than the de-minimis.

The petitioners also contend that the domestic industry is suffering material injury on account of dumping as would be revealed from various economic and financial parameters discussed as follows:

The industry was relieved after imposition of antidumping duty on imports of subject Metcoke from China in 1998 and drew up a plan of capacity expansion. However the dumped imports from Japan are creating fresh problems for the industry.

That the imports from the subject country in comparison to the total imports have increased substantially from 8.40 % in 2000-2001 to 22.62% during the period of investigation.

Year	Imports from Subject Country (MT)	Total Imports	% share
1999-2000	329472.00	2319403.00	14.21%
2000-2001	200309.00	2384438.00	8.40%
POI	660753.00	2921303.00	22.62%

Source: DGCI&S

Further, imports from the subject country, in comparison to the total demand in the country, have also increased from 6.49% in 2000-2001 to 20.28% during the period of investigation.

That as against an average price of Rs. 4303/- per MT in the year 2000-2001, the imports from subject country for the period of investigation came at an average price of Rs. 4188/- per MT.

That though the domestic industry has increased the capacity during the POI by about 328% over 1999-2000, the increase in the market share of the domestic industry has to be viewed in the context of the addition of the new capacity in the country. The

demand has also grown from 26,88,499 MT in 1999-2000 to 32,58,344 during the POI.

The complainant domestic industry tried its best to hold on to the customers. Yet the fact that 6,60,753 MT of dumped imports arrived into India during POI is adequate evidence that it lost potential customers.

It may be seen that the production by the petitioners in quantitative terms went up during the period of investigation over the preceding financial year. However this is essentially because of increase in capacity of the domestic industry. After the imposition of duty from China, domestic industry was on the road to recover, however dumping from Japan and subsequently resumption of dumping from China have thwarted these efforts.

That despite increased production in quantitative terms there has been a marginal increase in the capacity utilization of the domestic industry to the extent of about \*\*\*% in the period of investigation over the preceding financial year.

Though the volume of sales by the petitioners went up during the period of investigation over the preceding financial year, the industry is not realizing the price in the period of investigation as against the price in 1999-2000. Because of the pressure on prices from imports from subject country, the domestic industry is not able to realize a fair price or a reasonable rate of return, as would be seen from the table below:

Year	Sales Volume (MT)	Sales value (Rs. In lakhs)	Unit price (Rs./MT)
1999-2000	100.00*	100.00*	100.00*
2000-2001	213.81*	192.41*	89.99*
2001-2002	328.40*	313.59*	95.49*

\* Indexed Figure

- **Inventories:-** The inventories of the Petitioners have decreased from \*\*\*\*\* MT at the end of March 2001 to \*\*\*\*\* MT as on 31.03.2002.
- **Employment:-** Due to increased capacity of the domestic industry, there has been an increase in the employment. Thus, injury to the domestic industry cannot be judged on the basis of employment.
- **Wages:-** No impact on wages as wages are determined according to the Labour Laws. The wages cannot be changed according to the financial health of the petitioner companies.
- **Profitability:-** To retain its market share, the Domestic Industry had no option but to reduce its price to unremunerative levels.

- **Return on Investment (Capital Employed):-** As enumerated above the industry is operating at a loss and thus the domestic industry has not been able to earn any return on its investments.
- **Price Underselling:-** The landed value of the product under consideration from Japan (Rs4397) is much lower than the prices the domestic industry ought to have realized on the sales of the subject goods. The injurious effect of this high level of price underselling has had a direct and deleterious effect on the financial performance of the domestic industry.

Japan		
1.	Desirable Selling Price of Domestic Industry (Excluding Excise Duty)	***
2.	Landed Value of Imported product	4397
3.	Extent of Underselling	***
4.	% of Underselling (3/1)	***

Based on 31.03.2002 Figures

- **Price Undercutting:-** The effect of the injury to the domestic industry due to dumped imports is further accentuated by the fact that not only the subject goods are being undersold, the exporters from the subject country are also indulging in price undercutting. The landed value (i.e., the CIF price plus customs duty) of the dumped imports has been much below the selling price of the domestic industry during the period of investigation. Thus there is a constant pressure on the domestic industry to bring down their prices lower than even the current prices, which are not at all remunerative.
- That the domestic industry has not been able to earn even nominal returns on the capital employed. Hence, there is a considerable impact on cash flows coupled with the fact that the inventory levels in this industry are quite high.
- That due to the nominal returns in the industry and continued dumped imports, the domestic industry is not in a position to grow in the national interest despite the fact that it is meeting only a small portion of the domestic demand.

## C. Views of exporters, Importers and other interested parties

### 1. Exporter's views:

#### i) Period of investigation

The period of investigation (POI) considered by the Designated Authority in the present investigations is unsupported by the guidelines issued by the Designated

Authority as also practice being followed by the Designated Authority in India and other Investigating Authorities world over, on, inter-alia, the following grounds:

- a. Guidelines issued by the Designated Authority provide that investigation period should be as recent as possible. The period considered in this case is not as recent as possible at the time of initiation.
- b. Investigation period fixed in Other Cases was much more recent than this case.
- c. Designated Authority has in fact directed the domestic Industry (in other cases) to update the petition when it is found that the period in the petition is quite old and the data may be stale.
- d. There is a significant increase in the prices of the Metcoke after the close of the present investigation period. At the same time, the cost of production has largely remained in the similar band. This is due to a very major change in the Metcoke market dynamics. The petitioner has quietly suppressed the fact from the Designated Authority before initiation of investigations only to perhaps allege subsequently during the course of the investigations that this changed scenario is a post investigation period phenomenon.
- e. Availability of data/information does not support the period fixed. On the date of initiation, data in respect of imports had become available at least till Oct 2002. Further, it is understood that it is the practice of the Directorate to extend the investigation period to three months beyond the period in the petition in case it is found that the period in the petition is old and stale.
- f. Respondent exporters understand that the Designated Authority has very recently recognized that vital post POI factors cannot be ignored, provided that they may have significant impact on the entire case. In the instant case, increase in the prices to a level of US\$140-150 per metric ton (FOB), when the prices in the POI were in the region of US \$ 90-100 per metric ton, is a very vital fact which cannot be ignored, more so when the petitioner has deliberately chosen a very old POI. It should be noted in this regard that increase in the prices of the Metcoke is universal and significant. This price increase, having been triggered due to closure of plants in the China, is not temporary in nature.

ii) Standing of the domestic Industry:

The respondent exporters contend that the standing requirement has not been satisfied as the manufacturing capacities of the captive producers and small-scale producers in Bihar, Bengal and Jharkhand (represented by the Industry and Commerce association-ICA) have not been taken into account. They argue that the petition contains a lot of conjectures with regard to production by various producers and no evidence has been presented. There is no evidence in the petition that ICA members produce the Metcoke with above 18% ash content. In fact, they produce the Metcoke with ash content of below 18%. Further, there was no evidence in the petition with regard to

imports by certain parties. The petitioner has excluded captive producers referring to the finding of the Designated Authority in the matter concerning Metcoke from China as well as CEGAT decision. However, as held by the WTO in the matter of United States: Hot Rolled Steel Products from Japan, merely because some company consumed the material for captive purposes, such production can not be excluded.

The petitioner has excluded production by some producers on the grounds that they produce for captive purposes only. However, Rule 5(3) read along with other relevant Rules make no distinction with regard to captive production and merchant production. With the amendment in definition of Rule 2(b), exclusion of a producer related to importer or a producer himself importing is not automatic. There should be sufficient grounds for such exclusion. Further, such an exclusion can only be done by the Designated Authority and not by the petitioner.

iii) Product under consideration:

The product under consideration in the investigation against China covered the Metcoke up to 15% ash content. In the present petition, the Metcoke up to 18% ash content has been considered. There is no reasoning or justification given in support of this extension of the product under consideration. Interestingly, at the same time, the petitioner has stated that the Metcoke being imported from Japan contains 13% ash content. It is not understood why the ash content of the Metcoke under consideration should be kept up to 18%, while the imported Metcoke has ash content of only up to 13%.

The exporters submit that the petitioner has not given complete description of the product involved. The following parameters describe the Metcoke: -

- a. Moisture;
- b. Ash;
- c. Size;
- d. Volatile Matter;
- e. Fixed Carbon;
- f. Sulphur;
- g. Phosphorus;
- h. M 40;
- i. M 10; and
- j. Ash fusion temp.

The petitioner has recognized only ash content as a parameter.

While the issue of Ash content and its criticality in the product and its use has already been recognized and settled by the Designated Authority, the issue of moisture content in the Metcoke and its relevance requires to be recognized.

"Moisture" in the Metcoke is an inevitable fact, from not only production but also sale point of view. At the same time, higher moisture content implies higher water in the material and lower quantity of the Metcoke. Thus, while the consumers would ideally like to buy the Metcoke with zero moisture content. However, certain minimum moisture content is inevitable in the product. So much is the relevance of moisture content that in case moisture content exceeds beyond the maximum limits, the producers have to pay penalties in terms of deductions from the sale value consideration.

#### iv) Dumping and Injury

The export price to India must take into account the moisture content and generation of fines due to multiple handling. Exports of the Metcoke from Japan involve the following minimum handling: -

1. Stacking after production;
2. Loading of the material on ship at the loading port;
3. Unloading of the material at discharging port;
4. Shifting of the material from discharging port to the consumer's storage; and
5. Shifting from storage to production department.

As against this, domestic sale of the material in Japan involves only 1, 4 and 5 steps. Thus, exports of the material involve at least two additional handling. Since the number of handling is more in case of exports, the generation of fines is resultantly higher. Export price to India or any other market must take this vital factor into account.

- That the Indian Producers can meet hardly 20% of the domestic Metcoke demand. This leaves the consumers with no option but to import, regardless of price. This fact is established by continued imports, even after payment of Anti Dumping Duty from China.
- That the cost of coal, the primary raw material for manufacturing coke has not undergone any significant change in last several years and that the production of Indian Producers have significantly increased over the last five years. Given these two favourable factors with the Indian Producers, it follows that the cost of production of metcoke should not have increased significantly for the Indian Producers.

- There are two processes for production of the Metcoke. These are (a) recovery type, and (b) non-recovery type. In a recovery type plant, coke oven gas, Coal Tar (and its derivatives like Pitch, Crude Benzene etc.) and Chemicals like Ammonia, Ammonium Sulphate etc., generated in the production process are recovered and used by the producers elsewhere (in steel making in an Integrated Steel Plant). However, a stand-alone producer of the Metcoke (who does not produce steel) can not use the coke oven gas to its fullest extent, even though recycling for own utilities requirement is feasible in a limited way. This vital difference in production technology between the Japanese producers and Indian Producers is resulting in huge difference in cost of production of the Metcoke. The exporters consider that Indian Producers are suffering due to this technological difference.
- In view of the foregoing the exporters contend that Mitsubishi Corporation or JFE Steel has not resorted to dumping of the material in India and exports made by MC and JFE have not and could not have caused injury to the Indian Producers, given that the imports were necessitated due to inability of the Indian Producers to supply the material. Prices of the Metcoke have very significantly increased and Indian Producers face no threat of injury.

#### **g. Importers' and other interested parties' Views**

Views of the importers and other interested parties are summarized as follows:

- That the Period of Investigation mentioned in the Initiation Notification does not reflect the true and fair picture because of the fact that there has been hardly any shipment from Japan since the last 9 months, and if at all any shipment has been effected they have been effected at exorbitant prices. The Domestic Industry has very conveniently chosen this period to misguide the authorities, to remove and negate any competition with the sole intention of large scale profiteering.
- The Chinese Met Coke forms over 75 to 80% of the total imports into India and imports from Japan form a tiny part in the total import of Metallurgical Coke into India. The Metallurgical Coke exported from Japan is mainly Steel Plant rejects and the size of the coke ranges between 20mm – 60mm. This very size restriction imposes a lot of limitations and can be used only by limited user industries.
- As against this, the Indian Manufacturers can generate only about 20 to 25% of its total production in this size range (20-60mm) in a normal production cycle, whatever be the process; either Recovery Type and/or Non-Recovery Type. For additional quantities, they need to use Disintegrators, which leads to dusting and greater breakage losses resulting in higher costs.

- Japan has only one dedicated cokery and it exports almost 90% of its produce to USA, Europe and South America. Other than the aforesaid cokery all the coke being exported from Japan including the alleged dumped imports are rejects of their integrated Steel Plants.
- The article under investigation has been fixed taking into account only one of the parameters of the chemical composition i.e., the ash content, whereas the Bureau of Indian Standards has prescribed 8 different types of physical and chemical properties that are to be tested if the coke can be considered as a Like Article.
- That the Domestic Industry which has almost doubled its production capacity since the imposition of Dollar Term Anti Dumping Duty on Imports of Metallurgical Coke from China, claim that there has been injury on account of Low price of imports from Japan. Losses to the industry on account of unremunerative selling price, price under selling, price under cutting, negative returns on capital employed are totally baseless and erroneous.
- That the benefits of the imposition of Anti Dumping Duty on Coke from China can be very well seen from the capacity expansion being made by the Domestic Industry. On the contrary, the user industry which is dependant on Low Ash Metallurgical Coke are being held to ransom by the Domestic Industry by having to pay exorbitant prices and dictated payment terms.
- The claim of the Domestic Industry that there is dumping of Coke from Japan, exported at prices below the Normal Value, is incorrect. It is well known that the International prices of Low Ash Metallurgical Coke has sky rocketed and the demand for the coke is in excess over the supply position.
- The Domestic Industry has tried to create an impression that the Coke Industry is reeling under the effect of Dumping, whereas in reality they are already earning hefty margins on the Coke being sold, and it is the User Industry which is being forced into increasing its input costs and in turn increasing their cost of production.
- That the average CIF value of imports of Metcoke from Japan during the POI was US\$\*\*\* (Rs\*\*\*\*) PMT (@ the Exchange Rate of \*\*\*\*) and not Rs4188/- PMT as claimed by the petitioners.
- On the basis of the above average CIF value landed cost of imported Metcoke from Japan works out to Rs\*\*\*\*\* PMT. As against this, the average cost of manufacture for the Domestic Industries, inclusive of all expenses would be Rs\*\*\*\* PMT.
- In spite of the input costs being more, because of higher freight cost for import of coal compared to Indian manufacturers, the Japanese Manufacturers; based on better technology and efficient operations, can supply the material at competitive rates, in addition to higher quality.

- That the material so imported from Japan has been sold at prices above Rs. \*\*\*\* PMT during the POI and presently, the CIF cost itself is about US\$ \*\*\* PMT for the Subject Met Coke.
- It is clear from the above that the Japanese material is not used to under-cut the prices of the Local Manufacturers. On the contrary, the said Sales Price gives ample opportunity and leeway to the Domestic Industry for increasing their prices substantially, if so desired.
- That the coke manufactured by the Indian Metcoke manufacturers can not be treated as like product vis-a vis the Metcoke imported from Japan because of its characteristics in terms of other parameters like sulphur and Phos content, hardness, porosity, reactivity etc. which are very important factors from the point of view of the user industries' requirements. Because of the special characteristics of Japanese Metcoke it is used in specific industries and command higher price. Percentage of Ash alone cannot be a sole criterion for judging the two materials to be alike.
- That the cost of raw material, which is over 85% of the total cost of production, has been more or less stable for the past 3 to 4 years including the POI.
- That there is a tremendous growth in demand of Metcoke in the exporting countries themselves and in other importing countries and the demand far exceeding available supply, there can not be any dumping; going by the actual market scenario.
- In addition to the above general views of the interested parties the Association of Indian Mini-blast furnaces and Indian Ferro Alloy Producers' Association has also made the following submissions:

**Association of Indian Mini-blast furnaces:**

- That the CIF price of Metcoke (with about 12.5% Ash content) has increased from US\$ 80 in October 2001 to over US\$ 145 in March 2003. At the present price level there is no injury to the domestic industry, especially when there is no significant change in price of low ash coal used for low ash metcoke manufacturing.
- In the present scenario of shortage of Metcoke world over there is no possibility of dumping by Japan or any other country.
- With a view to produce Pig Iron indigenously and to make secondary steel sector viable and competitive, the Government encouraged setting up of Mini Blast Furnaces leading to use of indigenous Iron ore and substantial saving of power in steel making. Mini Blast Furnaces with a capacity of over 3.5 million tons of hot metal per annum have been set up over the last decade with an investment of over Rs3000/- crores employing over 100,000 people.

- Low ash metallurgical coke having low sulfur and low phosphorus is the basic input for Mini Blast Furnace Industry. It constitutes above 60-70% of the cost of production of Steel/Pig Iron through blast furnace route. Mini Blast Furnace Industry requires annually in excess of 2.5 million tonnes of low ash metallurgical coke of desired chemistry. The desired quantity of metallurgical coke required by the blast furnace industry being highly insignificant from indigenous sources, the mini blast furnace industry is totally dependent on imports of metallurgical coke.
- Mini Blast Furnace Industry has never been a part of domestic coke producers' market and principal customer of domestic industry. In the meeting taken by the Steel Secretary on the 26th November 1999 Indian Metallurgical Coke Manufacturers Association (IMCOM) explained that the blast furnace units were not the principal markets of the coke producers. It was also agreed by IMCOM that the exemption of the blast furnace units from anti dumping duty was vital for the survival of the mini blast furnace industry. IMCOM expressed that they had no objection if the government exempts the blast furnace industry from the purview of anti dumping duty. Considering these facts, the government while issuing the notification No. 69/2000-Cus dated 19.05.2000 excluded the Steel or Pig Iron Manufacturers using Blast Furnaces, from the purview of anti dumping duty on metallurgical coke of Chinese origin provided it follows the procedure set out in the Customs (Import of Goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996. This facility was also extended to manufacturers of steel using COREX technology vide Notification No. 100/2002-Customs dated 01.10.2002.
- In the context of the facts prevailing at present concerning Low Ash Metcoke required by the Mini Blast Furnace Industry, imposition of anti dumping duty on Metcoke of Japanese origin is neither necessary nor desirable. It causes severe damage to Mini Blast Furnace Industry and at the same time does not provide any protection to the Domestic Industry. Mini Blast Furnace Industry and Steel Producing units under COREX technology should be excluded from the purview of Anti Dumping Duty. Mini Blast Furnace Industry requires Metcoke of a special variety and therefore, the specification of Metcoke have to be detailed while deciding the 'like article' as the quality of Metcoke depends on a number of parameters.

### **Indian Ferro Alloy Producers' Association:**

While reiterating most of the arguments put forward by other interested parties as far as the product under consideration, capacity constraints of the domestic industry, captive consumption, post POI price structure etc. are concerned, the Association has made the following further submissions specific to the Ferro Alloy industry.

- That the specific low Ash and low Phos coke is not available domestically and the Ferro Alloy Producers have to depend on imports for the same.
- That the Indian Metcoke producers have earlier conceded that imports by Ferro Alloy Producers and Pig Iron producers do not cause them any injury and Govt. of India has earlier exempted the imports made by these users through two notification from the Antidumping Duty in the case of China. On account of this alone there is no causal links for the injury caused to the domestic industry.
- In any event, the Designated Authority has been recommending antidumping duty on variable basis (reference price basis) and such benchmark pricing should ensure that the Indian Consumers are not made to import the material at unreasonably higher prices.

## **D. EXAMINATION BY AUTHORITY**

The foregoing submissions made by the exporters, importers and the petitioner, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

### **1. PRODUCT UNDER CONSIDERATION**

The product, as described in the petition under investigation, is Metallurgical Coke (also referred to as Metcoke) with ash content less than 18%, originating in or exported from Japan.

Metcoke produced is produced by destructive distillation of Metallurgical (coking) coal in the absence of oxygen at high temperatures, (generally ranging around 1000 degrees centigrade) without burning the coal. It mainly contains carbon along with some mineral and residual volatile material. Metcoke is used as primary fuel in industries where a uniform and high temperature is required in kilns or furnaces.

Metcoke is classified under chapter 27 (under sub-heading 27.04) of the Customs Tariff Act, 1975. The subject Metcoke can be imported under OGL and attracts a basic customs duty of 15% (2002-2003). The classification, manufacturing process and usage of the product indicated herein are, however, indicative only and in no way binding on the scope of the product under consideration. Metcoke (including Subject Metcoke) is used in various industries including pig iron, foundries, ferro alloys, chemical, integrated steel plants and others.

The Authority notes the contentions of the petitioners that the subject Metcoke imported from Japan uses coal having ash content of less than 13%. In the process of coking, the volatile matter in the coal gets burnt or extracted and thus the ash content in the residual coke increases by same percentage as the volatile matter in the coal.

Thus coal with 13% ash content and about 24-25% VM will generate coke with 18% ash content and Subject Metcoke of only up to 18% is being imported into India. Therefore, Metcoke with ash content less than 18% should be subjected to investigation in this case.

However, the Authority also notes that the coke imported from Japan contains only around 13% ash. The domestic producers and the petitioners in this case also manufacture coke with ash content less than 15% only. The domestic industry can plead for inclusion, within the product under consideration, what has actually been imported and caused injury. In this connection the Authority recalls the detailed examination and deliberation in the preliminary and final findings concerning antidumping investigation of Metcoke from China (vide notification No. 8/2/97-ADD dated 27th August 1998. In the said findings the Authority, after taking into account all views expressed, and technical opinions on the use of low ash Metcoke and also the input-out norms of DGFT, concluded that ash content of 15% or less is the appropriate indicator for separating the low ash Metcoke from Metcoke produced from domestic coal, which contains higher percentage of ash. Therefore, the Authority does not find any reason as to why the present investigation should extend to Metcoke with ash content up to 18%. The reason extended by the domestic industry for covering Metcoke with less than 18% ash content does not appear to be based on any additional facts and reasons. Merely because Japanese producers use coal with ash content up to 13% does not prove that the coke exported from Japan will have ash content up to 18% and therefore, should be treated as the product under consideration.

Therefore, the authority holds that the product under consideration in the present investigation would cover low ash Metcoke with ash content less than 15%, originating in or exported from Japan (herein after referred to as subject Metcoke).

## **2. LIKE ARTICLE**

Having decided to restrict the investigation to Low Ash Metcoke with ash content below 15%, the Authority proceeds to determine the 'Like Article' for the purpose of deciding the standing of the domestic industry and also for the purpose of determining the 'Normal value' in the exporting country.

Rule 2(d) of the Antidumping Rules define "Like Article" as an article which is identical or alike in all respect to the article under investigation for being dumped in India or in absence of such article, another article which although not alike in all respect, has characteristics closely resembling to those articles under investigation.

The Product under consideration in this case is Low Ash Metcoke with ash content below 15%. The domestic industry contends that they produce low ash Metcoke from

imported coal (mainly from Australia). The Metcoke produced by other producers who are members of the ICA, either use domestic coal, which contain very high percentage of ash, or blend it with imported coal. The resultant coke is high in ash content (above 15%). The imported coke from the subject country contains less than 15% ash, and is technically and commercially substitutable for the domestic coke produced by the petitioners and therefore, is to be considered as the like product. The Authority also notes the claims of the petitioners that they can produce all types and grades of low ash Metcoke. The petitioners have also claimed that there is no difference between the Metcoke produced by the domestic industry and that exported from the subject country, which can have impact on price.

However, the exporters and importers and other interested parties contend that Low Ash Metcoke produced by the Indian industry and imported from the subject country are not comparable on many technical parameters like Moisture content, Volatile Matter (VM), Sulphur, Phos, M40 and M10 strength etc. Therefore, they are not truly technical and commercial substitutes. The technical specifications of Metcoke required for various uses, particularly, sulphur and phosphorous content in it, vary. The domestic producers have not been able to produce the right kind of Metcoke (low Phos and low sulphur) and of right sizes for industries like, Ferro Alloys and Pig Iron Manufacturers. However, the petitioners claim that the consumers have used the Metcoke produced by them interchangeably and for blending with imported Metcoke.

The Authority notes that Metallurgical coke is manufactured by destructive distillation of coking coal in coke ovens and the quality of coke depends upon the coal, which is the only raw material in the process. The ash content, sulphur as well as phosphorous content in the coke depends upon the coal being used and content of these material in the coal. There is no other technology-related issue as far as the quality of coke is concerned except in some recovery plants where stamping devices are used for making blocks of coal for horizontal feeding into these ovens. This permits better coking of the coal and higher strength of the resultant product. The recovery plants collect the volatile matters in the coal, which varies depending upon the coal being used. The coke oven gas so collected is further processed for extraction of various by-products or can be simply used, after extraction of noxious substances, as fuel for heating the coke ovens, power generation etc. However, the ash contents, as well as other chemical, like sulfurs and Phosphorous, in the resultant coke depends upon the type of coal being used.

The Authority, in this connection, recalls detailed deliberation on the issue of 'like article' in the final findings in the matter of Metcoke from China vide Notification No. 8/2/97-ADD dated 27th August 1998. After a detailed deliberation in that case the Authority held that..."it is only the production of low ash content Metcoke which is "like article" to the imported Chinese coke. The contention of the exporters and

importers that high ash content Metcoke should not be considered as like article has considerable force and is accepted in view of the facts and circumstances of the case."

"In addition to the above, the authority also observes that in the standard input-output norms of the Directorate General of Foreign Trade, where for production of pig iron (blast furnaces) one of the inputs shown is low ash content metcoke (with ash content below 15%). The Authority is therefore, inclined to agree with the exporters/importers that only metcoke with ash content of 15% and below, irrespective of its producer in India, is a "like article" to the imported Chinese coke. The Authority, therefore, concludes that metcoke with an ash content of 15% and below, irrespective of its producer in India is a "like article" to the imported Chinese coke".

Considering the manufacturing process of the metcoke and the issues settled earlier by the authority in a similar case, the authority holds that metcoke with an ash content of 15% and below, irrespective of its producer in India is a "like article" to the imported Japanese coke with similar ash content.

The Authority however, notes the arguments of Indian Mini Blast Furnaces and Indian Ferro alloys Industry that the coke required by these industries and thus imported by them are different from the coke being manufactured by the domestic industry and therefore, should be exempted from the antidumping duty.

The ferro alloys industry has submitted that the coke required by them is of a different specification. They require coke only in the size range of 10-30 mm and with a phosphorus content not exceeding 0.0166%. The coke produced from Indian coal has a phosphorous content of above 0.15% and the Ferro alloys producers cannot at all use it. The coke produced by the petitioners from imported coal and other producers i.e. members of ICA Dhanbad from domestic coal is not suitable for Ferro alloys producers because of high ash and phosphorus content. Manufacture of Ferro alloys is a continuous process and as such the plant has to be operated continuously without any interruption and stoppage. The Ferro alloys industry requires low ash, low phosphorous, low sulphur metcoke having stringent specification which is not available from indigenous sources. Because of this, the industry has to import low phosphorus, low ash and low sulphur metcoke from different countries, including the subject country, as the indigenous metcoke can not be used for Ferro Alloy production..

Association of Indian Mini-Blast Furnaces has also made a similar plea for exemption from the antidumping duty on the grounds that size requirement for the mini-blast furnaces is different and the domestic industry is unable to cater to the volume demand of this sector. The demand constraint aspect has been dealt separately in this finding.

The short point under consideration for the purpose of determination of 'like article' is, whether the coke being exported from the subject country and imported by these users are technically and commercially substitutable for the coke being manufactured by the domestic industry and therefore, fall within the definition of 'like product'.

As far as the requirement of the Ferro Alloy Industry is concerned, the coke being imported by this industry is of low ash as well as low phosphorous and low sulphur content. These industries cannot use any coke, which does not match the stringent specification, particularly, of phosphorous content. It is the case of the Ferro Alloy Industry that low phos and low sulphur metcoke of desired specification is not being produced by the domestic industry and they have to import it, in spite of antidumping duty. They contend that almost 98% of their requirement is imported even when there is antidumping duty on Chinese Metcoke, simply because Indian producers do not produce this Metcoke. The Domestic Industry has argued that the coke used by the Ferro Alloy Industry can be produce by them as the quality of coke and the ash, as well as phosphorous and sulphur content in it is directly related to the quality of coal being used and no other technological issue is involved in it.

The Authority notes that though it is technically possible for the domestic industry to produce the coke of the grade required by the Ferro Alloys Industry, it has not produced any substantial quantity of metcoke of this grade and import data shows that most of these metcoke has been imported in the past, even when antidumping duties were in force. The fact also remains that the grade of metcoke imported by these users can not be substituted by the metcoke being produced by the domestic producers, in any significant manner. Authority also notes that total metcoke (of low ash and low phos) requirement of this segment is very low and it may not be commercially viable for the domestic producers to import coal of specific grade to manufacture metcoke of this grade.

Attention of the Authority was also drawn by various interested parties to the deliberation in the previous case involving import of Metcoke from China. The issue of specific requirements of certain users was deliberated in the previous case and the authority noted that: "some user Industry groups like manufacturers of ductile iron pipes, Ferro alloys have indicated that the metcoke required by them has to have some other physical as well as chemical properties. For instance, it has been indicated by the ductile iron pipes Industry that the phosphorus content in the metcoke required by them should be less that 0.035%. While it is appreciated that certain Industries may have special requirements, anti-dumping rules do not permit analysis on the basis of specific end users when there is a high degree of substitution possible among different types of user industries. The Authority therefore, is not in a position to make any separate categorization for users with special requirements".

In this connection the Authority notes that the arguments in the previous case was for an end-use based exemption for specific industries and Authority had rightly held that it had no authority under the Rules to provide for end use based exemption. However, the argument of the Ferro Alloy Industries on the Like Product issue has considerable force and therefore, the Authority is inclined to accept the argument of these parties that the product used by them is not technically and commercially substitutable by the product manufactured by the domestic industry and therefore, should be excluded from the scope of the investigation.

Therefore, the Authority holds that the metcoke containing low ash (up to 15%) and low phos (up to 0.035%) and low sulphur (up to 0.5%) mainly used by the Ferro Alloys Industries and imported from the subject country is not a technically and commercially substitutable product for the domestically produced metcoke and should not be treated as 'like product' within the meaning of the term as defined under the Rules.

### **End-Use Based Exemption**

As far as the Indian Mini Blast Furnaces are concerned, their entire argument is based on end use based exemption on the grounds that because of the demand supply gap the domestic industry is unable to supply the quantity and quality required by this segment and therefore, these importers should not be treated as causing injury to the domestic industry. In this connection they have quoted the minutes of an agreement reached by the Domestic industry and the Mini Blast Furnaces to exclude these segment from Antidumping Duty. The users have argued that on the basis of this agreement and to promote the Indian Mini Blast Furnaces, Govt. had, in the earlier case, exempted this sector from the antidumping duty on actual user basis, vide notification No. 69/2000 Dated 19.5.2000 under Section 25(1) of the Customs Act. However, the domestic industry has argued that it may have been prudent in the national interest at relevant time to exempt blast furnaces and ferro alloy users when there was a capacity constraint initially. But there can be no doubt that this exemption has contributed to the injury being faced by the domestic industry today. It has resulted in slowing down the process of capacity addition. Now that the domestic industry has added significant capacity and setting up of new coke plants are in the pipeline there is no case to exempt ant segment on the grounds of capacity constraints. The petitioners have also argued that the Authority does not have the powers to exempt certain classes of users while recommending Antidumping duty, as Rule 19 of the Antidumping Rules state that any duty imposed under Rule 13 or 18 shall be on a non-discriminatory basis and applicable to all imports of such article, from whatever sources found dumped and where applicable, causing injury to domestic industry except in the case of imports from those sources from which undertaking in terms of Rule 15 has been accepted.

The authority notes that the Mini Blast Furnaces require low ash Met Coke (with ash content less than 15%) of sizes between 20-50mm. The coke manufactured by the domestic industry does match these specifications and therefore, is both commercially and technically substitutable with the subject Metcoke being imported from the subject country. The Authority also notes that the exemption from Antidumping duty granted to a section of the industry in the earlier case by the department of Revenue, within sovereign jurisdiction of the Government of India, under relevant provisions of the Customs Act, has no bearing on the instant case.

The Authority, therefore, for the purpose of preliminary determination, pending final determination, holds that the subject goods produced by the domestic industry and those exported from the subject country except for the low ash, low phos coke used by the ferro alloy industry as stated above, are like article within the meaning of the Rule 2(d).

### **3. DOMESTIC INDUSTRY AND STANDING**

The petition has been filed by Indian Metallurgical Coke Manufacturer's Association (IMCOMA), on behalf of the domestic industry. Six domestic producers are party to the petition and M/s Gujurat NRE Coke ltd has supported the petition. These units manufacture Low Ash Metcoke with Ash content below 15% and combined output of these units (during the POI) was \*\*\*\*\*MT.

In addition to this, there are other manufacturers of Metcoke (Members of ICA) who manufacture coke with higher ash content and therefore do not qualify to be included in the domestic industry within the meaning of producers of 'like article'. There are also other producers i.e. integrated steel plants who produce metcoke of various ash content depending upon their own requirement for captive consumption. In this connection the Authority notes that the definition of the "domestic industry under Rule 2(b) reads as follows:

"Domestic Industry" means the domestic producers as a whole engaged in the manufacture of like article and any activity connected therewith or those whose collective output of the said article constitutes a major, proportion of the total domestic production of that article, except when such producers are related to exporters or importers of the alleged dumped articles or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry".

"Provided that in exceptional circumstances referred to in sub Rule (3) of Rule 11, the domestic industry in relation to the article in question shall be deemed to comprise

two or more competitive markets and the producers within each such market a separate industry if;

- i. the producers within such a market sell all or almost all of their production of the article in question in that market; and
- ii. the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory."

The coke produced by these ISPs or captive producers are basically captive raw material production of these units and do not enter the commerce of the domestic market and therefore, does not constitute a part of the domestic industry within the meaning of sub rule 3 (i) and (ii) above. Their production at best constitute a separate market within the meaning of the Rules quoted above and has to be kept outside the purview of the domestic industry for the subject product. Moreover, some of these units also import the subject metcoke for supplementing their consumption.

The Designated Authority and the Hon'ble CEGAT have held in earlier cases that captive producers, who consume their entire production, are not to be considered as a part of the domestic industry. Accordingly the production and capacity of these producers have not been taken into account for determining the standing of the domestic industry.

Therefore the Authority concludes that the petitioners constitute major proportion of the domestic production of the subject metcoke and have the standing to file this petition under relevant Rules.

#### **4. Period of Investigation**

The Period of Investigation (POI) in this case was fixed for 15 months beginning 1st April 2001 to 30th June 2002. The exporters, importers and other interested parties have argued that an old/ stale POI has been accepted by the Authority to investigate the case. In this connection the Authority notes that the petition in this case was filed in September 2002 with the data up to 31st March 2002. It was on the insistence of the Authority to update the data set with more recent data, the petitioners submitted data up to 30th June 2002, as complete data was available up to that period only. The Authority notes that there is no specific provision in the Agreement or in the Antidumping Rules to suggest a specific POI. However, Note of WTO Agreement (Art 2.2.1) suggests that the period of investigation should not be less than 6 months. As such there is no prescription or restriction with reference to the period of investigation in the respective provisions of Antidumping Law. However, the relevant guidelines for fixing the period of investigation (POI), adopted by the Authority provide that the period taken into consideration for detailed investigation into

dumping and injury should be as representative and as recent as possible. The most desirable period of investigation is a financial year, provided there is reasonable proximity between the end of the financial year and the filling of the application. The Authority therefore, holds that on the date of submission of the petition most recent data set available was up to 30th June and accordingly the POI was correctly fixed. Therefore, there is no need for altering the POI and admission of post POI data for the current investigation.

## **5. NORMAL VALUE & EXPORT PRICE**

In terms of Section 9A(1)(c), of the Antidumping Rules normal value in relation to an article means:

1. 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
2. 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);

In terms of the above provisions the normal value and ex-factory export price determination is illustrated below.

### **NORMAL VALUE**

#### **a. M/s JFE Steel Corporation Japan**

The Authority notes that M/S JFE Steel Corporation (JFE) is the producer and exporter of the subject Metcoke from Japan and also exports the products through M/s Mitsubishi Corporation and other Trading Companies. JFE is an Integrated Steel Producer (ISP) and produces Low Ash Metcoke for its own consumption out of imported coal from Australia and other countries. The coke being released for merchant trading, either in the domestic market or for export sales, are the steel plant

rejects i.e. of particular sizes, which can not be used in their own blast furnaces. JFE employs recovery type coke ovens for producing low ash metcoke and the recovered coke oven gas is used in steel making and for other commercial uses. The producers have provided details on the installed capacity and cost of production of the subject goods during the Period of Investigation.

JFE has provided the details of quantity and value of sale of subject goods in the home market during the Period of Investigation. The producer has also indicated that their records are in accordance with the Generally Accepted Accounting Principles and has claimed that the normal value be determined on the basis of their domestic selling price. In this respect the rule position (Sub-rule 2, Annexure 1) is as follows:

"Sale of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price."

The Authority has examined the cost of manufacturing of the subject goods, Selling and general administrative expenses (SGA) and the recoverable cost of the by-products generated in the recovery type coke oven of the producer. However, Authority notes that the producer has allocated a very low proportion of their total SGA expenses to the Metcoke exports compared to the total turnover. The Recovery cost indicated by the producers for their recovery type coke ovens are much on the higher side compared to similar coke ovens of integrated steel plants in India. Therefore, for the purpose of preliminary determination pending verification and final determination, the authority has appropriately normated SGA expenses of the producers on the basis of turn over ratio. The recovery cost has also been normated on the basis of efficient ISP in India. In this connection the Authority recalls its own decision in the case of Metcoke from China, where the Recovery factor of SAIL was taken as the basis for allowing cost recovery for the foreign producers. Therefore, for the purpose of preliminary findings the authority proceeds to adopt the same factor of recovery to work out the cost of manufacturing in this case also, pending final verification and determination. The Authority also notes the contention of the petitioners that the cost recovery of by products from a recovery type coke oven is largely offset by the capital cost of setting of a recovery plant and downstream facilities. However, pending verification and final determination, the Authority adopts the recovery factor as 19.44% as fixed earlier and proceeds to calculate the cost of manufacturing and SGA as follows:

**Manufacturing Expenses: (Japanese YEN per MT)**

**Raw Materials Coal @ \*\*/ MT of Coke \*\*\*\*\***

Others : @***%	*****
Consumables and Stores	*****
Utilities	*****
Direct labour	*****
Manufacturing Overheads	*****
Depreciation	*****
Total	*****
By Product Recovered @ 19,44%	(-) *****
SGA Expenses on Turn over basis	*****
Total Cost to make and sell	*****

This average cost to make and sell has been compared with the domestic selling prices and most of the transactions were found to be below the average cost to make and sell. Therefore, for the purpose of preliminary determination pending verification and final determination, the Authority disregards the domestic sale data and proceeds to work out the normal value on the basis of the cost of manufacturing and a reasonable profit margin of \*\*%. Accordingly, the normal value is worked as JYEN\*\*\*\*\* i.e. US\$ \*\*\*\*\* Per MT @ the exchange rate of JYEN \*\*\*\*\*=US\$1.00.

## **EXPORT PRICE**

The Authority notes and the producer M/s JFE Corporation has indicated that the subject goods manufactured by them have been exported to India through different traders like Mitsubishi Corporation and Daichu etc. The producer has provided the data on their sale invoices to these trading companies who have exported these goods on back to back basis to the Indian importers. On the basis of these invoice values the average net export price is worked out as US\$\*\*\*\*\* PMT on Dry basis. Since the export price indicated have been claimed to be at the ex-works level, no adjustments for packing, inland freight, insurance, storage, handling, sales charges, overseas freight, overseas insurance, clearance and handling and port charges have been necessitated, pending verification and final determination. The Authority, for the purpose of preliminary determination, has considered the net ex-works export price as claimed by the exporter/ producer on dry basis as US\$\*\*\*\*\*/PMT.

b. M/s Mitsubishi Corporation, Japan

**Normal Value**

M/s Mitsubishi Corporation, Japan has submitted that it is only a Trading Company and has no manufacturing facility for the subject goods. They have, however, referred to the cost data of M/s JFE steel who is the primary producer of the subject goods, which are traded by them for exports to India. Therefore, the Authority proceeds to work out the normal value for this exporter based on the cost of manufacturing and selling by the primary producer and the domestic selling price of this exporter.

Cost of manufacturing plus SGA of the producer plus a reasonable profit (@\*\*%) for the manufacturer on its sell to the unrelated trader works out to JYEN\*\*\*\*/PMT. This has been compared to the Domestic selling price of the Exporter in Japan. Since the Domestic selling price of the subject goods by the Exporter in Japan are below the Cost of manufacturing plus SGA of the producer, the Authority proceeds to disregard these selling prices and construct the normal value after adding a reasonable profit margin for the trader @\*\*% to the above. The normal value for this exporter therefore, works out to be JYEN \*\*\*\*\*/PMT i.e. US\$\*\*\*\*\*/PMT at the exchange rate of JYEN124.1698=US\$1.00.

**Export Price**

The exporter has produced the export data on the basis of which net export price has been worked out as US\$\*\*\*/PMT, net of packing, inland freight, insurance, storage, handling, sales charges, overseas freight, overseas insurance, clearance and handling and port charges etc.

(c) All other Exporters/Producers in Japan

**Normal value**

No other exporter/producer except the above have responded to the questionnaires and the Authority notes that there is only one stand alone producer of Metcoke in Japan, other than the integrated steel plants, who exports almost all its production to the North America. Therefore, for the purpose of Preliminary determination, the Authority has worked out the normal value of the non-cooperative exporters from Japan by adding a commission amount @\*\*% to the normal value of M/s Mitsubishi Corporation. Accordingly the normal value for all non-cooperative exporters from Japan work out as US\$\*\*\*\*\*/PMT, for the purpose of preliminary determination.

**Export Price**

Since other exporters from Japan have not provided any data on the normal value and export prices, the Authority proceeds to determine the lowest export price from the data produced by the importers and works out the export price as US\$\*\*\*\*/PMT.

### **DUMPING MARGIN-Comparison of Normal Value & Export Price**

The rules relating to comparison provides as follows:

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

The authority has carried out weighted average normal value comparison with the weighted average ex-factory export price in Period of Investigation, for evaluation of the dumping margin for all the exporter/producers of the subject country.

The dumping margin for exporter/producers comes as under:

<b>Exporter</b>	<b>Normal value(NV) \$/MT</b>	<b>Export Price(EP) \$/MT</b>	<b>Dumping Margin</b>	<b>Dumping margin as % of CIF Value</b>
1. M/s JFE Steel Corporation, Japan	*****	*****	*****	39.63%
2. M/s Mitsubishi Corporation Japan	*****	*****	*****	39.89%
3. All other exporters/ producers in Japan	*****	*****	*****	53.56%

### **6. INJURY AND CAUSAL LINK**

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

For the examination of the impact of the dumped imports on the domestic industry in India, such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. are to be considered in accordance with Annexure II (iv) of the rules supra.

As regards the threat of injury, the Authority notes that the Anti-Dumping Rules states as follows:

"A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the DA shall consider, inter-alia, such factors and;

- a. significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;
- c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and,
- d. Inventories of the article being investigated.

Keeping in view the above position the Authority notes and observes the following economic parameters in the case of domestic producers-

### **1. Capacity and Domestic sale:**

The domestic Industry has increased its capacity from about 5.00 lakh tonnes to about 11 lakh tonnes i.e. an increase of about 220% between 1999-and 2002. However, this increase in capacity is mainly due to the process of recovery of the industry after imposition of antidumping duty on dumped import from China, which was injuring the industry. However, the Capacity utilization during the same period remained between \*\*\*\* to \*\*\*\*%, marginally increasing during 2001-2002. Total demand went up by approximately 16%, from \*\*\*\*\*MT to \*\*\*\*\*MT during the same period and the share of the domestic industry also went up from about 13% to 26%. However, though the domestic capacity is about 37% of total demand, its market share remained below 26%.

## **2. Increased Imports from the Subject Country:**

The share of imports from the subject country in comparison to the total imports has increased substantially from \*\*\*% in 2000-2001 to \*\*\*% during the period of investigation. And during the same period the market share of the imports from this country has also increased from \*\*\*% to \*\*\*%. The increased import and market share coincides with the drop in the export price of the subject goods from the subject country, which fell from Rs4303/- PMT to Rs4188/- PMT during the identical periods.

## **3. Price Undercutting and Under selling:**

The imports from the subject countries have entered the Indian market at a price, which is below its normal value and the non-injurious price of the domestic industry at which the domestic price can produce and sell the subject goods and earn a reasonable return on its investment. Unit price realisation compared to the 1999-2000 price of the domestic industry fell to 95.5% during the POI. Average Non Injurious price of the domestic industry has been worked out to Rs\*\*\*\*PMT, whereas the average selling price of the domestic industry was Rs\*\*\*\*/PMT during the POI, leading to price under selling to the extent of \*\*%. The average landed value of the imported subject goods was Rs\*\*\*\*PMT during POI resulting in price undercutting of about \*\*%. Thus the Net Sales Realization in the POI has been below the Non-Injurious Price, leading to financial losses.

## **4. Profitability**

Total sale value of the subject goods increased by 213% compared to the same in 1999-2000, but the cost to make and sale also increased by 302% during the same period. This indicates that the domestic industry was selling at unremunerative level in order to remain in business and the investment was unprofitable at this level of prices.

## **5. Return on investment and cash flow**

The return on investment by the domestic industry has been negative during the POI and there has been a considerable impact on the cash flow.

## **6. Net Sales Realisation**

The Net Sales Realisation has been Rs\*\*\*\* PMT in 1999-00 which fell to Rs\*\*\*\* PMT in 2000-01 and marginally increased to Rs. \*\*\*\* PMT during the POI

## 7. Demand and potential for growth for domestic industry

The demand of the subject goods has increased by about 16% from 1999-2000 to 2001-2002. Therefore, demand has not been a factor for causing injury to the Domestic Industry. But negative return on investment for a considerable period due to dumped imports from the subject country has scuttled the growth of the domestic industry, though there is a tremendous scope for growth as has been seen from the growth during the last three years, when protection of antidumping was available against dumped imports from China.

## 8. Inventory of domestic industry

The domestic industry has improved its inventory position during the period of investigation and therefore, it is not a factor for causing injury to the industry.

## 9. Employment and Wages

Due to increase in capacity there has been increase in employment. Wages have not been affected by the market condition due to the Labour Laws. These factors can not therefore, be considered to be contributing to the injury of the domestic industry.

## 10. Magnitude of Dumping and injury

The dumping margin, calculated as a % of the export price, is significantly high for all the exporters from the subject country. The margin of injury has also been calculated as the difference between provisional non-injurious price for the domestic industry, worked out on the basis of cost data of the domestic producers as follows:

### (a) JFE Steel Corporation:

NIP: Rs \*\*\*\*\* US\$\*\*\*\*\*

(Exch. Rate \*\*\*\*\*)

Landed value of Imports: US\$\*\*\*\*\*

Injury Margin: US\$\*\*\*\*\*

Injury Margin as % of CIF 24.55%

### (b) Mitsubishi Corporation

NIP: Rs\*\*\*\*\* US\$\*\*\*\*\*

Landed value of Imports:	US\$*****
Injury Margin:	US\$*****
Injury Margin as % of CIF	18.25%

(c) Others

NIP: RS*****	US\$*****
Landed value of Imports:	US\$*****
Injury Margin:	US\$*****
Injury Margin as % of CIF	28.57%

### 11. Capacity of the exporters

The Authority also notes that the capacity of the exporter M/s JFE Steel Corporation is very significant compared to the available demand in that country and total market demand in India. Therefore, the quantity of the subject goods being dumped from the subject country, leading to price suppression, is an imminent threat of injury to the Domestic Industry. The domestic producers in view of such dumped prices will not be able to retain their domestic selling price above a reasonable level which otherwise would accrue to them if there was no such dumping.

The Authority also notes that the exporter i.e. M/s JFE Steel Corporation imports Metcoke of appropriate quality from China for its own consumption and its own surplus from its coke ovens, which it can not consume in its own blast furnaces, are being exported to India at dumped prices. The authority notes that generation of different sizes of Metcoke in the coke ovens is a normal phenomenon and by supplementing its own requirement through imports from China, the exporter is in a position to continue to dump the subject goods in the Indian market. Therefore, keeping in view the present available capacity and the price undercutting by the recent dumped imports, the Authority provisionally holds that the exports from Japan are materially injuring and threat to cause material injury to the domestic producers of the subject goods in India.

### Causal Links

After examining all the factors as laid down and discussed above, the Authority provisionally holds that the dumped import from the subject country has caused

material injury to the domestic industry and no other factor can be attributed to the injury suffered by the domestic industry. The domestic industry also faces threat of material injury due to continued dumped imports from the subject countries as the exporter in the subject country has sufficient capacity to continue dumping. The potential growth and establishment of the domestic industry has also been affected by the dumped imports.

## **7. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

The Authority holds that 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.

The Authority also recognizes that though 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 these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers. Imposition of anti-dumping measures would also not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

## **8. LANDED VALUE**

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

## **D. CONCLUSIONS:**

The Authority, after examining the issues involved, and arguments of all the interested parties provisionally holds that:

- a. The subject goods in all forms originating in or exported from the subject country have been exported to India below its normal value.
- b. The domestic industry has also suffered material injury by way of financial losses due to depressed Net Sales Realization (NSR) on account of price depression caused by low landed prices of the dumped subject goods.

- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject countries.
- d. The Authority recommends provisional anti-dumping duty on imports of subject goods falling under Chapter 27 originating in or exported from the subject country.
- e. It was considered to recommend the amount of anti-dumping duty equal to the margin of injury so as to remove the injury to the domestic industry accrued on account of dumping. Accordingly, it is recommended that provisional anti dumping duties equal to the difference between the amount indicated in the column 9 of the table annexed to this notification, and the landed value of subject goods, in US\$/PMT, be imposed, from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from subject country under Chapter 27 of Customs, sub-heading 270400, pending final determination.

## **E. FURTHER PROCEDURE**

The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, Importers, Petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the despatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would conduct verifications to the extent deemed necessary;
- d. The Authority would provide opportunity to all interested parties for oral submissions, for which the date and time shall be communicated to all known interested parties separately;
- e. The Authority would disclose essential facts before announcing final findings.

**(L V SAPTHARISHI),**  
Designated Authority