

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

**NOTIFICATION**

New Delhi, the 16th January 2003

**PRELIMINARY FINDINGS**

**Subject:** Anti-dumping investigation concerning imports of Non Brass Metal Flashlight originating in or exported from the China PR - Preliminary Findings,

**No. 14/27/2002-DGAD** - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

**A. PROCEDURE:**

2. The procedure described below has been followed:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s. Eveready Industries India Limited, Kolkata, on behalf of the domestic industry, alleging dumping of Non Brass Metal flashlight (hereinafter referred to as subject goods) originating in and exported from China PR (hereinafter referred to as subject country);
- ii. The Authority notified the Embassy of China PR in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iii. The Authority issued a Public Notice dated 9th September, 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Non-brass metal flashlights of Schedule I of the Customs Tariff Act.
- iv. The Authority forwarded copy of the said public notice to the known exporters, importers, industry associations and to the complainant and gave them an opportunity to make their views known in writing.

- v. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Embassy of subject country in India.
- vi. The Authority sent questionnaires, to elicit relevant information, to the following known exporters from China PR.

M/s. Guangzi Wuzhou City Light Industrial Products I/E Corp, 4th Floor, 88 Bethuan Road, Wuzhou Guangzi, China

M/s. AIK International, Flat F, 3/F, Far East Mansion, 5-6, Middle Road, T.S.T. Kowloon, Hong Kong.

None of the above exporters have responded to the Exporters' Questionnaire.

- vii. The Embassy of China PR in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time; M/s. Guangxi Wuzhou Boyee Trading Ltd. Guangxi, China PR, has responded to the petition. M/s M/s. Guangxi Wuzhou Boyee Trading Ltd. Guangxi, China PR, made a request for extension of time for filing exporters questionnaire, which was granted by the Authority.
- viii. The Ministry of Foreign Trade, (MOFTU) Beijing, Govt. of China PR was also informed about the initiation of investigation and requested to advise the exporters /producers from their countries to respond to the questionnaire within the prescribed time.
- ix. The questionnaire was sent to the following known users/importers of subject goods:-
  1. M/s.S.K. Traders, Faridabad
  2. M/s.Sanskriti International, Delhi...
  3. M/s.Pratyaksh International, New Delhi.
  4. M/s. Sai Trading Company, New Delhi.
  5. M/s. D.P. Trading Company, Calcutta.
  6. M/s. Lucky Sales Corporation, Faridabad.
- x. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
- xi. \*\*\*\* in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xii. The investigation covered the period from 1st July 2001 to 31st March 2002;

- xiii. Additional details regarding injury were sought from the petitioner, which were also furnished.
- xiv. The Authority conducted on the spot investigation of the domestic industry to the extent considered necessary.
- xv. The cost of the production of the domestic industry was also analysed to work out the optimum cost of the production and the cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the petitioner so as to ascertain if anti Dumping duty lower than dumping margin would be sufficient to remove injury to the domestic Industry.
- xvi. Copies of initiation notice were also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

## **B. PETITIONER'S VIEWS:**

3. The petitioner, M/s. Eveready Industries India Limited, Kolkata has made the following points in their submissions: -

- i. The product under consideration in the present petition is Non Brass Metal Flashlights, which is also known as Torches. The flashlight is primarily divided into two segments i.e. Metal and plastic. Metal segment is further divided into two sub-segments i.e. Brass and Non-Brass. Non-brass metal torches and plastic are in the economy category. Non-brass torches are generally made of aluminium and sheet metal. Indian manufacturers generally produce aluminium torches because of superior quality though the costs are similar. The costs and prices of brass flashlights are significantly higher than that of Non brass flashlights. The dumped imports from China have very adversely affected the market of Non-brass metal flashlights. Imports of plastic flashlights are not significant. The present petition does not include imports of plastic flashlights. The present petition is against Non-brass metal flashlights.
- ii. While components of subject goods are not included in the present scope of the petition, imports of the subject goods in semi-knocked down conditions is included in the scope of the present petition.
- iii. The product is not classified under dedicated customs classifications, as all types of flashlights, except some exceptions, are classified under one classification. Petitioner has collected information from secondary sources, which contain information with regard, inter alia, description of the flash lights being imported. While both 2-cell and 3-cell batteries have been imported in India, imports are largely in 2 large cells categories. Petitioner has enclosed a statement showing production and sales of various types of flashlights by the petitioner. It would be seen that production (and sales) of 3 large size cells

flashlights is very limited. Same is the trend with regard to imports. Still, petitioner has attempted to classify the imports into three categories in which imports are taking place (a) 2 cell large; (b) 2 cells small; and (c) 3 cells large. Even though the petitioner has divided the imports into these three categories based on the best available information in the import information, petitioner submits that (a) the imports from China are largely in the category of 2 cells; (b) imports are at such a low prices that even if highest price is adopted for all the three categories, dumping margin are too significant.

- iv. The present petition is being filed by M/s. Eveready Industries India Limited., having its head office at Kolkata and plant at Lucknow in Uttar Pradesh. The petition has been supported by a number of small-scale producers of subject goods in India, even though the petitioner alone satisfies the requirement of standing under the Rules. There are two producers of subject goods in India in the organized sector. These are Eveready and Shervani (also known as GEEP). Apart from these two companies in the organized sector, there are a number of small scale units producing metal flashlights, collective production of which does not exceed 5,00,000 flashlights per year.
- v. As stated earlier, there is no major difference in the characteristics of Non Brass metal flashlights produced by the domestic industry and Non Brass Metal flashlights imported from China PR. Petitioner in India and producers in China produce Non Brass metal flashlight with same technology. Non Brass Metal flashlights imported from China are comparable to Non Brass metal flashlights produced in India in terms of their features such as physical characteristics, manufacturing process & technology, functions and uses, specifications, distribution and marketing, pricing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers can use Non Brass metal flashlights imported from the subject country and non-brass metal flashlights produced by the domestic industry interchangeably. Non Brass Metal flashlight produced by the petitioner is a like article to the Non Brass metal flashlight imported from subject countries under anti-dumping Rules.
- vi. There are two producers of metal flashlight in Indian in the organized sector. They are Eveready & GEEP. Production of Eveready alone is more than 77% of Indian production. Eveready, therefore, satisfies the standing to file the present petition and constitute domestic industry within the meaning of the anti dumping Rules
- vii. While the petitioner has done best possible analysis of the transaction wise information (summary information provided by the DGCI&S does not reveal any meaningful information with regard to export prices), the petitioner submits that the import prices are so low that even if export price in all the

three cases are considered at the highest level, the dumping margins are still very significant).

- viii. As regards the determination of normal value in the case of subject country, the petitioner has drawn the attention of the Authority towards the amended Para 8 of the Annexure I of the anti dumping rules wherein the non-market economy country has been defined. The petitioner maintains that China is a non-market economy and has been treated as non-market economy by European Country and United States in the past three years. In India also the Designated Authority has treated China as non-market economy in practically in all the investigations initiated against China. The petitioner has added that the normal value in China can be determined on any of the following basis:
- a. The price in market economy third country;
  - b. Constructed value in market economy third country
  - c. The price from such a third country to other countries including India;
  - d. The price actually paid in India adjusted to include a reasonable profit;
  - e. The price actually payable in India adjusted to include a reasonable profit margin.

The petitioner has determined normal value on the constructed cost of production of the subject goods.

- ix. Comparison of normal values with export prices establishes significant dumping margin. It may be seen that the dumping margins are not only more than de-minimus, but also significantly high, causing material injury to the Indian industry, as discussed in Part IV of this petition.
- x. The petitioner has submitted an account of various economic parameters affecting the domestic industry. The import statistics during the Period of Investigation shows that import from China have increased in absolute terms and their share in the total import has also increased significantly. The petitioner has claimed that share of China PR in the demand of the subject goods has also increased significantly while the share of domestic industry has declined.
- xi. The production, capacity utilisation and sales of the domestic industry have drastically declined during the POI as compared to previous year. The petitioner is faced with the increasing inventory levels of the subject goods. The petitioner has further added that the imports from the subject country are undercutting the price of the domestic industry and the domestic industry is facing severe price suppression/depression. They have further added that a number of plants are leading to closure in small-scale sector. Thus the petitioner adds that imports from subject country collectively and cumulatively

establish that the domestic industry has suffered material injury due to dumped imports from subject country.

## **C. EXPORTERS, IMPORTERS' AND USERS' VIEWS:**

### **4. EXPORTERS**

Response has been received from the following exporters:

- i) M/s. Guangxi Wuzhou Boyee Trading Limited, Wuzhou, Guangxi, PR China.**
  - a. M/s. Guangxi Wuzhou Boyee Trading Limited, Wuzhou, Guangxi, PR China, is a Private Limited Company incorporated under the company regulation of PR China. They have submitted the list of factories involved in the production of products. The exporter has submitted appendices mentioned in the exporters questionnaire from one manufacturer M/s Guangxi Wujhou City Flashlight Industry Company.
  - b. The exporter has submitted that they have not exported to India or to any third country during the period of investigation and even prior to that. The exporter has further submitted that it does not have domestic sales during POI but in a spirit of cooperation they have submitted the confidential data with respect to domestic sales in the PR China of the one manufacturer, M/s. Guangxi Wuzhou City Flashlight Industry Company. China PR.
  - c. The exporter submits that there is no equity holding by any state/govt. owned entities and it fulfils the criteria to be treated as a market economy company. It does not receive any subsidies and maintains its accounts consistently in accordance with international norms/practice.
  - d. The exporter states that the subject goods are manufactured only in China PR and it exports about 21 models of subject goods. The exporter has further submitted that the applicant goods have a non-brass metallic exterior. However, brass is used for the inner lining for the said two models sold in India by the petitioner and these were sold as brass torches and not as the subject goods and, therefore, not like articles.
  - e. The exporter has further added that subject goods exported from China by other Chinese exporters are made from low cost local Chinese cold rolled steel resulting a lighter weight while the metal/brass flashlights sold by the applicant, ordinarily, uses brass metal as the basic raw material.
  - f. Other differences include three gear switches and two cells ordinarily used in the Chinese goods as against single gear switch found in the applicant's flashlights.

- g. Since the investigation is limited to a category of flashlights, it is only the data with respect to the said subject goods that should be taken cognizance of by the Hon'ble D.A. and not information with respect to other categories of flashlights manufactured and sold in India by the applicant.
- h. As there is no confirmed data beyond December 2001, the POI should not have been extended beyond that period and the present investigation is wrongly initiated.
- i. With regard to non-market economy the exporter has submitted that the decisions of Boyee and other concerned companies in China with respect to 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 the costs of the inputs reflect market values. They have further submitted that there is neither any State regulation of costs or prices of these inputs in China or any system of 'administered prices'. They add that there is no distortion of production costs and financial situation as Boyee is an entirely private company as described in the Response to the Questionnaire. They have further stated their company M/s. Boyee is subject to China's Bankruptcy Laws/winding up proceedings and there are number of bankruptcies/winding up proceedings in China of similar firms/companies. They have mentioned that as in India the exchange rate is based on the market rate as determined by the China Central Bank as is reflected in the confidential data furnished along with the said Confidential Response to the Questionnaire.
- j. As regards injury, the exporter submits that the subject goods are not like articles with the other types of flashlights produced by the Applicant and thus there can be no injury caused to the Applicant by imports of the subject goods from China during the POI. Any injury, if proven could only be from either other products of the Applicant or from imports, whether dumped or otherwise, of flashlights other than the subject goods from other countries. This would indicate that there are other causes that have led to alleged poor performance of the applicant and the economic slowdown in India during the POI. Further, since the prices of the subject goods have not decreased during the POI, there has been no depression of domestic prices as alleged. They have further submitted that there can be no non-injurious price with respect to the subject goods that were neither manufactured nor sold by the applicant during the POI.
- k. As regards selling price and price undercutting, the exporter has submitted that the landed price cannot be worked out and compared with the applicant's selling price or cost of production as they are not like goods. As regards inventories also the exporter has submitted the similar arguments. As regards profitability the exporter has requested that all indices should be considered in

establishing material injury as none of these factors are decisive and the totality must be considered as per the international best practice.

#### 5. IMPORTERS AND USERS:

None of the importers and users in India has made submissions for these investigations.

### **D. EXAMINATION AND FINDING BY AUTHORITY:**

6. The submission made by the domestic industry, exporters and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

### **E. PRODUCT UNDER CONSIDERATION:**

7. The Authority notes that the petition has been filed by M/s Eveready Industries on behalf of the domestic industry alleging dumping of Non Brass Metal flash Light originating in or exported from China PR. The Authority observes that these flashlights are used as a source of light in the case of emergency and also as a need in the dark places. The Petitioner has claimed that these flashlights are primarily of two types i.e. plastic and metal flashlights. Amongst the metal flashlights, there can be a flashlight made up of brass or it may contain Aluminium or sheet metal on the basis of economy. These flashlights have been reported to be imported under ITC classification 851301 and 851305, which attracts a basic customs duty of 35% (2002 budget). The petitioner has requested that while components of subject goods are not included in the present scope of the petition, imports of the subject goods in semi-knocked down conditions may be included in the scope of the present petition.

The Authority in this regard also notes the claim of the exporter that Non Brass Metal flashlight has only been produced in China PR from low cost local steel in a range of different models. The exporter has further claimed that applicant manufactures models that have a non-brass metallic exterior and inner lining made from brass.

The Authority has noted the submissions made by the exporter and also by the domestic industry on the product under consideration and holds that the present investigation covers non-brass metal flashlights made out of non-brass metals, which may be Aluminium, sheet metal, or other non brass metals. The Authority also holds that plastic flashlights are not within the scope of the investigation. Amongst metal flashlights, brass flashlights are also not under the scope of the investigation. As regards the claim of the domestic industry to include this product in SKD forms, the

Authority holds that the product under consideration in this investigation is non-brass metal flashlights in all its forms including 2-cell small, 2-cell large and 3-cell large either in compact form or in SKD conditions. However, components used in this product individually are not within the scope of this investigation and hence are not product under consideration. As the product under consideration does not have exclusive Customs classification, the petitioner has collected information about import of subject goods from secondary sources, which contain information with regard, inter alia, description, beam length and size in terms of small, medium and large flashlights. Therefore the authority holds that product under consideration is non-brass metal flashlights also known as torches. These could be mainly either 2-cell small, 2-cell large and 3-cell large made out of non-brass metals, which may be Aluminium, sheet metal or others. The product is classified under Customs Act No. 85131001 and 85131005 and are imported under OGL conditions attracting a basic customs duty of 35% (2002 Budget).

The Authority observes that the product under consideration in this investigation is Non Brass Metal Flash Light. Plastic and brass torches are not included in the investigation. It is further observed that the product is not classified under dedicated customs classifications, as all types of flashlights with or without battery, plastic, non-brass metal as well as brass, except some exceptions, are classified under ITC HS subheading 85131001 and 85131005. The product under consideration carries a basic customs duty of 35% (2002). Thus the Authority observes that the product under consideration is Non brass Metal flashlight with various sizes in terms of 2 cell small, 2 cell large and 3 cell large either in compact form or in SKD conditions.

## **LIKE ARTICLE**

Rule 2(d) of the Anti Dumping rule specifies that Like Article is an article, which is identical and alike in all respects to the product under investigation or in absence of such an article, another article having characteristics closely resembling those of the articles under examination.

The Authority notes that the Petitioner has claimed that the goods produced by them are like articles to the goods originating in or exported from subject country. The petitioner has further submitted that non-brass metal flashlights are technically and commercially substitutable between them and are used interchangeably. The exporter has claimed that petitioner's flashlight utilised brass for inner lining and hence may not be called non-brass metal flashlight. The exporter has further claimed that they mainly use two-cell and have three gear switches compared to the single gear switch ordinarily found in the applicant's flashlight and the aperture adjustment of the subject goods from China is by wheeling the head of subject goods while in the flashlights sold by the applicant the aperture adjustment is by pushing the tale of the flashlight.

The exporter has further claimed that subject goods exported from China are made from low cost local Chinese cold rolled steel resulting in lighter weight while the metal/brass flashlight sold by the applicant ordinarily uses brass metal as the basic raw material.

The petitioner has claimed that there is no major difference in the characteristics of non-brass metal flashlights produced by the domestic industry and those imported from China PR. These are comparable in terms of their features such as physical characteristics, manufacturing process and technology, functions and uses, specifications, distribution and marketing, pricing and tariff classification of goods. The consumer can use the flashlights imported from the subject country and flashlights produced by the domestic industry interchangeably.

The Authority observes that issues like 3-gear switches and aperture adjustment by head wheeling does not render the imported product as unlike product as they can be easily substituted with single gear switch and aperture adjustment by tail pushing. As regards the claim of exporter that the subject goods manufactured by applicant exporter has brass lining on inside, the Authority observes that the Non-brass metal flashlight manufactured by the petitioner does not have brass linings on its inner side. However the petitioner does use some brass strips for switch strip, switch contact strip and eyelet. The Authority holds that by using these components from brass, the flashlight cannot be termed as Brass Flashlight as claimed by the exporter. Similarly, the cooperating exporter has also given an account of the raw material used in the product being manufactured by one manufacturer from China PR and they also have confirm that they use small quantities of brass flakes as their raw materials for their Non Brass metal flashlight. The cooperating exporter M/s Guangxi Wuzhou Boyee Trading Ltd, China PR has also supplied information from one of the manufacturers from China PR whose product lines indicate that they manufacture and export Non brass metal flash light with **various FT's indicating length of beams**. Investigation by the Authority from product brochure of subject country made available by the domestic industry have further revealed that Non Brass Metal flash lights are produced in a large number of Models/Sizes in the subject country. However these large number of models/sizes could be grouped and classified in terms of 2 cell small produced by the domestic Industry and corresponding to 200 FT to less than 350 FT being exported from China PR. Similarly 2 cell large and 3 cell large Non Brass Metal flashlights have been grouped and classified as corresponding to ranging from 350Ft to less than 500FT and 500FT or more respectively. None of the importers mentioned in the petition have responded with any information and no contrary information has been placed before the Authority to suggest or dispute petitioner's information regarding import of subject goods. The Authority, in view of the submissions, made by the exporters and the domestic industry and keeping in view the substitutability

and inter changeability of the Non Brass Metal Flash Light from subject country and those produced by domestic industry considers the subject goods and domestically produced as like products per Rule 2(d) for the purpose of preliminary determination.

### **De Minimus Limits:**

The petitioner has submitted the import data of subject goods from subject country for the period of investigation from the DGCI&S and also from the data taken from the secondary sources. The Authority observes that since the customs sub heading as mentioned in the product under consideration is not exclusive to the subject goods, the volume shown in the DGCI&S import would also reflect torches other than subject goods (plastic or brass). The Authority has examined the transaction wise data submitted by the petitioner through secondary sources and has further culled out the import data of the subject goods .The data from these sources indicate that the import of subject goods from China PR during the POI is above the de minimus levels.

## **F. DOMESTIC INDUSTRY:**

8. The petition has been filed by M/s. Eveready Industries India Limited, Kolkata. The exporter has claimed that production data submitted by the petitioner comprises of all the flashlights produced by it and hence should not counted for the purpose of standing. The Authority has verified the production data of the petitioner with regards to Non brass metal flash light only and observes that they account for almost 77% of total Indian production of subject goods in India. Accordingly, the petitioner satisfies the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra.

## **G. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN:**

9. Under Section 9A(1) (c) of the Customs Tariff Act 1975, 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 transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

#### 10. CHINA PR:

The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). Only one of the exporters from China PR i.e. M/s. Guangxi Wuzhou Boyee Trading Ltd. China PR., has responded to the Authority with replies to the appendices mentioned in the Exporter's Questionnaire. However, the exporter has claimed that they have not exported the subject goods to India or in the domestic market or to the third countries during the POI. However, they have submitted the details of domestic prices of subject goods in China sold by other manufacturer. They have requested to the Authority that the normal value of the subject goods may be determined in accordance with the domestic sales price of the subject goods in China of other producers/companies.

The Authority observes that since the exporter has neither sold the subject goods in the domestic market and nor they have exported to the other countries, the normal value and the dumping margin for this exporter cannot be determined as per Section 9(a) 1(c) . The cooperating exporter M/s M/s. Guangxi Wuzhou Boyee Trading Ltd. China PR may get their case investigated through New Shipper Review as per Rule 22 of the Anti Dumping Rules under the Customs tariff Act 1975.

### **H. Other Exporters from China PR**

11. The Authority provided opportunity to the known exporters from China PR to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassy of China in India also. However, no exporters from China PR have responded to the Authority's request for information. The claim made by the petitioner with regard to

the determination of normal value has also not been disputed by the other interested party (ies). Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR.

Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR.

The Normal value determined by the Authority for all exporters from China PR comes to US\$ \*\*\*\* , US\$\*\*\*\* and US\$ \*\*\*\* for 2 cell small, 2 cell large and 3 cell large.

#### **EXPORT PRICE:**

The Authority has taken into account the transaction wise data furnished from secondary sources M/s Asis Infotech Pvt Ltd, Mumbai for calculating the quantum of exports and their value from China PR to India as no transaction wise data was made available by the DGCI&S for the POI. The Authority has culled out data pertaining to Non Brass Metal flashlight from the transaction wise data submitted by the petitioners from the secondary sources and these have been further grouped into subject goods having beam lengths (200-350FTs), (350-500FTs) and more than 500 Fts. The Authority has compared these subject goods with 2-cell small, 2 cells large and 3 cell large Non Brass Metal Flashlight being manufactured by the domestic Industry.

For working out ex factory price at the FOB level, the Authority has made adjustments towards inland freight and insurance and overseas freight and insurance as suggested by the petitioner. The Authority has accepted these adjustments for the limited purpose of preliminary determination for calculating the net export price at ex factory level from China PR to India subject to further examination and verification. After adjustments, the net export price at ex factory level comes to US \$ \*\*\*\*/unit for Non Brass Metal Flashlight (2 cell small) and US \$ \*\*\*\*/unit (For Non Brass Metal Flashlight (2 cell large) and US\$ \*\*\*\* /unit for Non Brass metal flashlight (3 cell large)

#### **DUMPING MARGIN:**

12. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. As the cooperating exporter has not exported any subject goods to India nor have they sold it in their own country or to other countries, Dumping margin cannot be determined for M/s M/s. Guangxi Wuzhou Boyee Trading Ltd. China PR. However as elsewhere mentioned, they may come to the Authority for a New Shipper Review under Rule 22 of Anti Dumping Rules. The dumping margin for other exporters of subject goods from China PR is assessed by the Authority at US \$ \*\*\*/unit or. 693% of the export Price for Non Brass Metal Flashlight (2 cell small), and US \$ per unit or 468% of the export price for Non Brass Metal Flashlight (2 cell large) and US\$... or 798% of the export price for Non Brass Metal Flashlight (3 cell large) .

**13. Dumping Margin:**

Dumping Margin Calculation for Non Brass Metal Flashlight for imports from China PR (US\$)					
All Exporters from China PR (Without battery)	Description	NV	EP	DM	DM%
	NBMFL 2 cell small	****	****	****	693
	NBMFL 2 cell large	****	****	****	468
	NBMFL 3 cell large	****	****	****	798

**I. INJURY:**

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

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

**Views of the Petitioners:**

1. Petitioner submits that there are three possible types in which the goods have been imported. Statement of production and sales of various types for the petitioner for the past three years would show that production and sales of 3 large cells subject goods is less than 10% of the total production.
2. Imports of Flashlights from China have increased significantly in absolute terms. It is submitted that the actual volume of imports is much higher than what is shown here. Petitioner has given every benefit of doubt with regard to import information to the exporters and has reported lowest possible volumes. However, petitioner is fully aware that the actual volume of imports is much more than what has been shown here.
3. The share of imports from China in imports of Flashlight in India increased significantly. Share of imports is actually more, but for the most conservative approach adopted by the petitioner with regard to assessment of import volumes.
4. It could be observed that the production and capacity utilization of the domestic industry has drastically declined. The decline in production levels is in spite of significant decline in the production levels of the SSI units.
5. Sales volumes of the domestic industry declined significantly. As a direct consequence, the production and capacity utilization got adversely affected.
6. It would be seen that the selling prices have not materially declined. This is due to the fact that there is very low margin available to the domestic industry. The product is sold at retail level, through a long chain of distribution. As such the domestic industry could not afford to reduce the prices.
7. Landed price of imports is very significantly lower than the selling price of the domestic industry. Resultantly, the domestic industry has lost significant sales volume and market share. Some of the companies in the SSIs have already closed their plants. Should the present trend continue, the profitability of Eveready would be seriously affected.
8. Landed price of imports is significantly below the cost of production of the domestic industry. Resultantly, the domestic industry is facing severe price suppression/depression.
9. Landed price of imports is so low that the petitioner cannot even think of reducing the prices to push the sales volumes.
10. In spite of reduction in production, the domestic industry is faced with increasing inventory levels as per the data submitted.
11. Profitability of the domestic industry has got eroded as may be seen from the statistics submitted by the petitioner. While companies in SSI could not face the brunt, companies like Eveready are also finding difficult to survive in this sector viz. Metal Flashlights.

## **J. EXAMINATION BY THE AUTHORITY**

15. Analysis of Injury to the domestic industry has been done on the basis of the information available on record and the verification done by the officials of Directorate of Anti-Dumping & Allied Duties.

**Volume Injury**

**1. Absolute increase in Quantum of Imports from China PR**

To ascertain the quantum of imports, the Authority has considered the import statistics of the subject goods made available by DGCI&S, and data from secondary sources... As the customs sub classification of this subject good is not exclusive, the Authority has taken into account transaction wise information made available through secondary sources for working out the imports from China PR and countries other than China PR

The domestic industry has claimed that imports from China PR have increased in absolute terms and their share has also increased significantly. The Authority has examined the import statistics during the POI and two years prior to it and concludes that there has been a rapid increase of imports from China PR in absolute terms. The Authority observes that imports have creased in relation to the production of the domestic Industry. Thus, the authority concludes that there has been a very significant increase in imports from China PR for the subject goods during the POI as compared to the previous years.

Import of Subject goods during the POI source DGCIS					
	Units	99-00	00-01	2001-2002	POI
Subject C	000 pcs	600	1193	2248	1974
Others	Do	204	973	581	262
Total Imp	Do	804	2166	2829	2236
Import of Subject goods during the POI source Secondary Sources					
	Units	99-00	00-01	2001-2002	POI
Subject C	000 pcs	600	797	2723	2689
Others	Do	204	-	38	37
Total Imp	Do	804	797	2761	2726

**ii) Market share of Imports:**

The Authority observes that the share of China PR in the total imports of Non Brass Metal Flashlight has increased and as a consequence, the share of domestic industry has declined significantly.

**iii) Market Share of Imports from China PR in Total Imports (%)**

Market share in Imports
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	Units	99-00	00-01	2001-2002	POI
Subject C	%	75	100	99	99
Others C	%	25	0	1	1
Total	%	100	100	100	100

**(iv) Share of imports from subject countries as a proportion to demand.**

The Authority has calculated the total demand in the country by adding the total imports to the sales of the domestic industry of the product under consideration. The Authority notes that the share of China PR in total demand of the subject goods has increased during the POI while the share of other imports has increased marginally. The share of the domestic industry in the total demand has decreased POI as compared to previous year. Thus, the Authority concludes that there has been a significant rise in the market share of imports of the subject countries as a share of total demand and it has increased significantly during the POI as compared to previous years.

**Market Share of Imports in total Demand (Absolute and Percentage share)**

Share in Demand					
	Units	99-00	00-01	2001-2002	POI
Domestic Industry	%	63.46	60.23	32.38	26.54
Other producers	%	18.49	17.74	12.15	10.48
Imp Subject Coun	%	13.48	22.02	54.7	62.12
Imp from Other Coun	%	4.57	.01	.76	.85

Production and Sales Volume:

v) The authority notes that the overall production and capacity utilization of the domestic industry in respect of subject goods have decreased during the POI as against previous year. The sales volume of the subject goods of the petitioner shows a significant decline during the POI as against previous year

PRICE EFFECT

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

“The examination of the impact of the dumped imports on the domestic Industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity; factors affecting domestic prices, the magnitude of margin of dumping;

actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments.”

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the landed value of imports of subject goods from subject countries during the POI with the net sales realization and has found that there has been a significant price under-cutting by the dumped imports. The landed value of imports has been found to be significantly lower than the domestic industry’s net sales realization.

The Authority has also examined the claim of the petitioner that the domestic industry is suffering on account of the losses from the sale of Non Brass Metal Flashlight .The Authority notes that price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the Non-injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis shows a significant level of incidence of price underselling causing injury to the domestic industry. Additionally, the imports were having significant suppressing/ depressing effect on the prices in the domestic market, as the domestic industry had not been able to raise its selling price in view of the dumped imports of the subject goods. Thus examination of the available evidence shows that the domestic industry as a whole has suffered injury on its sales of subject goods during POI. The Authority has determined the extent of price undercutting during the POI and concludes that the domestic industry has suffered significant price undercutting and price underselling during the POI because of import from the subject country.

Price Undercutting in Non Brass Metal Flash Light (in Rupees) for 1000 pieces

2 cell small

POI	
Landed V	****
Sell Price	****
Price UC	****

2 cell large

POI	
Landed V	****

Sell Price	****
Price UC	****

### 3 cell large

<b>POI</b>	
Landed V	****
Sell Price	****
Price UC	****

### Selling Price & Profitability:

17. The Authority observes that the sales realization of the subject goods have not increased during the POI and in fact these are at the same level as during AM 2001 and AM 2000. The Authority observes that the petitioner has been incurring losses on the sale of the subject goods during the POI.

The authority notes that for subject goods the selling prices of the domestic industry is significantly below the price, which would have permitted the domestic industry, a fair recovery of its cost of production and earn a reasonable return. Thus, the dumped imports have prevented the domestic industry from effecting legitimate price increase to realise a reasonable price. The industry has suffered material injury on account of depressed selling prices resulting in non-recovery of cost of production and thereby suffering financial losses.

18. Other injury parameters evaluated by the authority are as follows:

- a. The Return on the Investment has declined during the POI as compared to previous year.
- b. There is a marked rise in the closing stocks of finished goods during POI indicating that there is a significant change in the inventory position of the domestic industry during the period of investigation as compared as previous year.
- c. The wages of the employees have declined during the POI as compared to previous year.

<b>Other Injury parameters</b>					
	<b>Units</b>	<b>99-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>POI</b>
Capacity of all types	K Pcs	3500	3500	3500	3500
Prod of Subject goods	Index	100	83	76	71
Cap Utilisation	%	77	64	59	56
Sales Domestic	Index	100	77	57	54
Closing stock Vol	Index	100	113	193	194

Employment	Index	100	100	92	91
Productivity	Index	100	100	108	97
Wages Per Emp	Index	-	100	77	77
Increase in sales/previous	Index	100	<b>77</b>	<b>57</b>	<b>54</b>
Total Profits	Index	100	141	-7	-93

## Conclusions on Injury

From the foregoing, the following conclusions are made by the Authority regarding injury suffered by the domestic industry

1. Imports from the subject country of subject goods have increased significantly in absolute terms.
2. Imports from subject country have increased in relation to total imports of Non Brass Metal Flashlight in India.
3. Imports from the subject country have increased in relation to the demand of Non Brass Metal Flashlight in India.
4. Imports are significantly undercutting the selling prices of the domestic industry.
5. The petitioner is suffering from price underselling also as landed price of subject goods are below the Non Injurious price or fair selling price of the domestic industry.
6. The petitioner is suffering from price suppression/ depression as landed price of the subject goods from subject country are less than cost of production of the domestic industry.
7. The domestic industry has suffered losses on account of sales on subject goods. In fact, they have incurred losses during the POI along with their loss of sales volume during the same period.
8. On the basis of the foregoing, the Authority observed that the domestic industry has suffered volume as well as price injury. On the whole, the domestic industry has suffered material injury.

## K. CAUSAL LINK:

19. In determining whether injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts: -

- i. In establishing that the material injury to the domestic industry has been caused by the dumped imports from the subject country, the Authority holds that the increase in the quantum of import from the subject country resulted in the curtailment of market share of the petitioner. In considering the effect of dumped imports of Non Brass Metal Flashlight, the Authority has found that

based on the close resemblance of their chemical characteristics and usage these are like article to the domestically produced Non Brass Metal Flashlight. Import of Non Brass Metal Flashlight from the subject country had the effect to displace the demand of domestically produced Non Brass Metal Flashlight. The Authority holds that substantial increase in imports of subject goods have contributed to the increase in imports in absolute terms. This had the effect of undercutting the prices of domestic industry to sell below its fair selling price of the subject goods and this has been accompanied with the reduction in sales volumes of the subject goods. Thus, the Authority has found that Substantial imports of subject goods from China PR at dumped prices forced the domestic industry to reduce its selling prices of Non-Brass Metal Flashlight to unremunerative level, which has resulted in a situation of price undercutting in the Indian market. Also with regard to subject goods, the landed price of imports from subject country is well below the selling price of the domestic industry, which is resulting in price undercutting in the Indian Market. The Authority has also examined the volume of imports of subject goods from countries other than China PR and after examining the transaction wise data, it is observed that market share of countries other than China PR is only 1% of the total imports into the country during the POI.

- ii. The imports from China PR suppressed the prices of the product Non Brass Metal Flashlight in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.

20. The Authority, therefore, notes from the above that the imports of subject goods from the China PR have been at a price below the non-injurious price for the domestic industry. Imports from other countries form a very insignificant proportion of the market share of total imports into the country. The Authority could not find any evidence of contraction of demand, change in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers. It is also noted that developments in technology has not been a cause for injury to the domestic industry. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

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

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

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

The Authority notes that the imposition of anti dumping measures would not restrict imports from China PR in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

## **M. CONCLUSIONS:**

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

- A. Non Brass Metal Flashlight or product under consideration has been exported to India from the subject country below its normal value.
- B. The Indian industry has suffered material injury;
- C. The injury has been caused by the dumped imports from Subject Country.

23. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of Non Brass Metal Flashlight (2 cell small, 2 cell large and 3 cell large) in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is proposed to be compared with the non-injurious price of the petitioner company determined for the period of investigation.

Accordingly, the Authority recommends that the provisional anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Non Brass Metal Flashlight either in compact or in SKD conditions on types ranging from 2 cell small, 2 cell large, 3 cell large (all without battery) falling under Custom Heading 851310 originating in or exported from Peoples Republic of China pending final determination. In the event of description of subject goods not specifically indicated while importation, the highest duty would be applicable to such categories. The Anti-Dumping duty shall be the

difference between the amount mentioned in column 3 of the following table and the landed value of imports per thousand pieces. to be imposed from the date of Notification to be issued in this regard by the Central Govt on all the imports of subject goods falling under Chapter 29 of the Customs Tariff, originating in or exported from the countries mentioned below: -

Serial Number	Country/Exporter	Description	Amount (US \$ Per Thousand piece)
	China PR	Non Brass Metal flash Light (2 cell small Conforming to Battery size AA without battery)	680
	All Exporters	Non Brass Metal flash Light (2 cell large Conforming to Battery size D without battery)	838
		Non Brass Metal flash Light (3 cell large Conforming to Battery size D without battery)	1608
		Non Brass Metal Flashlight (Unspecified) Without battery	1608

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

## **N. FURTHER PROCEDURE:**

25. 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 preliminary findings. 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 provide opportunity to all the interested parties for making oral submissions, which have to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary.
- e. The Authority would disclose essential facts before announcing final findings.

**L.V.SAPTHARISHI**  
DESIGNATED AUTHORITY