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F.No.15/27/2004-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti-Dumping & Allied Duties)

**NOTIFICATION**

New Delhi, the 12<sup>th</sup> November, 2007

**Final Findings**  
**(New Shipper Review)**

**Subject: New Shipper Review (under Rule 22 of AD Rules) of anti-dumping duty imposed on imports of Compact Fluorescent Lamps (CFL) requested by M/s Osram China Lighting Ltd., China PR.**

**15/27/2004-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**

1. The procedure described below has been followed:
  - (i) The Designated Authority received a request from M/s. Osram China Lighting Limited, China(hereinafter referred to as New shipper) to initiate under Rule 22 of above mentioned Rules a review of notification No 34/1/2001 dated 14<sup>th</sup> November, 2002 for determination of individual dumping margin. The applicant submitted declarations that they are not related to any of the exporters and producers in China PR subject to the anti dumping measures in force with regard to the product concerned. Furthermore, they declared that they have not exported the product concerned during the period of investigation of the original investigation. The Authority examined the information submitted by the applicants and considered prima-facie sufficient to justify the initiation of a review in accordance with the provisions of the Rule 22 of Anti-dumping Rules.
  - (ii) The Authority initiated the New Shipper Review on the basis of request made by M/s. Osram China Lighting Limited ,China

(producer and exporter) under Rule 22 of AD Rules, vide notification No. 15/27/2004-DGAD, dated 15<sup>th</sup> February, 2005

- (iii) The aforesaid New Shipper Review was initiated in the matter of import of Compact Fluorescent Lamps(CFL) falling under Chapter 85 of the Customs Tariff Act, 1975 originating in or exported from China PR where the Designated Authority vide its Final Findings No 34/1/2001 dated 14<sup>th</sup> November, 2002 had come to the conclusion that:
- (a) CFL originating in and exported from the People's Republic of China and Hong Kong have been exported to India below normal value resulting in dumping,
  - (b) The Indian industry has suffered material injury from exports of CFL from People's Republic of China and Hong Kong ;
  - (c) The injury has been caused cumulatively by the dumped imports from the People's Republic of China and Hong Kong,
  - (d) In case of exports of CFL with choke by M/s Phillips & Yaming. PRC , causal link could not be established as the landed value of such exports was more than the Non-Injurious Price .
- (iv) The Central Government imposed anti-dumping duty vide Notification No. 138/2002-Customs, dated 10.12.2002, in the original investigation on imports of Compact Fluorescent Lamps from China PR and Hong Kong falling under Chapter 85 of Customs Tariff Act, with effect from the date of imposition of the provisional anti dumping duty i.e., 2<sup>nd</sup> November, 2001;
- (v) The Authority recommended provisional assessment of all exports of Compact Fluorescent Lamps made by M/s. Osram China Lighting Co. Limited ,China P.R. (producer and exporter) till the completion of the New Shipper review in accordance with Rule 22 of AD Rules and having regard to the Notification no.138/20032-Cus dated 10.12.2002;
- (vi) Ministry of Finance issued Notification No. 7/2006-Customs, dated 13<sup>th</sup> February, 2006, which inter-alia provided that pending the outcome of the review by the Designated Authority, exports of Compact Fluorescent Lamps, falling under Sub-heading 853931 of the first schedule of the said Customs Tariff Act. by M/s. Osram China Lighting Co. Limited ,People's Republic of China, when imported into India would be subjected to provisional assessment till the review was completed. It was further provided that the provisional assessment may be subject to security or guarantee as the assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, deems fit for payment of deficiency, if any, in case a definitive anti dumping duty is imposed retrospectively, on completion of the investigation by the Designated Authority. In case of recommendation of Anti-Dumping Duty after completion of the said review by the Designated Authority

, the importer shall be liable to pay the amount of such duty recommended on review and imposed on all imports of Compact Fluorescent Lamps into India, exported by M/s Osram China Lighting Co. Limited, People's Republic of China, when imported into India, from the date of initiation of the said review.

- (vii) The product under consideration covered by the current review is the same as in the original investigation, i.e. 'Compact Fluorescent Lamps'.
- (viii) The Authority sent a copy of exporter's questionnaire and Market Economy Treatment (MET) questionnaire to M/s. Osram China Lighting Co. Limited, China P.R. (producer and exporter). The authority sought information it deemed necessary for the purpose of determination of dumping margin. The Authority conducted verification of the data furnished by M/s. Osram China Lighting Co. Limited, (producer and exporter) at their premises.
- (ix) The authority sought information from M/s Osram India, an importer, with regard to imports, related expenses and sales to first independent buyer. Information provided by the importer was verified at their premises.
- (x) The period of investigation in this new shipper investigation is for 6 months i.e., 1<sup>st</sup> January, 2005 to 30<sup>th</sup> June, 2005 for dumping determination.
- (xi) The authority officially intimated the authority of the exporting country of the initiation of the New Shipper Review and gave opportunity to all the interested parties concerned to make their views known in writing within 40 days from the expiry of the POI (i.e. 1<sup>st</sup> January, 2005 to 30<sup>th</sup> June, 2005).
- (xii) The Authority provided an opportunity to all interested parties to present their views orally in the public hearing held on 02.02.2006. All parties presenting their views orally were requested to file written submissions of the views expressed verbally.
- (xiii) The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.
- (xiv) In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received thereon have also been duly considered in the findings.
- (xv) \*\*\*\* in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules. The information concerning prices and

costing filed by the applicant were claimed confidential and these were treated as confidential by the Authority;

## **B. PRODUCT UNDER CONSIDERATION**

2. The Authority decided to continue with the description of product under consideration as Compact Fluorescent Lamps as determined in the original case. Certain issues with regard to product under consideration and like article have been raised by some of the interested parties.

### **Views of M/s. Indo-Asian Fuse Gear Ltd, (b) M/s. Phillips India Ltd and (c) M/s. Havells India Ltd.**

3. It has been submitted that

- (a) Neither the application nor the written submissions filed on behalf of the new shipper state that the scope of the new shipper review is restricted to certain types of CFLs only and not to all types of CFLs. It is undisputed that the types of CFL that Osram India is intending to import into India are direct substitutes of the types of CFLs that are being manufactured and sold in India. Further, the other domestic producers have the capability to produce these twisted and miniaturized CFLs, though they have not so far manufactured them. The imports of those types of CFLs into India would severely and adversely affect the Indian market for CFLs. This is because these new generation CFLs would cut into the market of the existing CFLs.
- (b) During the hearing the counsel for the new shippers stated emphatically that the scope of the review is limited to miniaturized and twisted CFLs [T3 lamps].
- (c) However, no such declaration has been given in the written submissions. The new shippers may be directed to categorically state whether they seek the new shipper review for all types of CFL or it is restricted to only certain types of CFLs. If it is restricted to certain types of CFLs, the name, description and complete specifications of those types of CFLs may be furnished immediately.
- (d) The petitioners in their request letter dated 22.11.2004, has stated that they manufacture miniaturised and twisted CFL at Osram, China, and they intend to export these miniaturised and twisted CFL from China to India. It is not known whether Osram China is also engaged in the manufacture of CFLs other than miniaturised and twisted CFLs. It is also not known whether the new shippers are desirous of covering all types of CFLs or they seek new shipper review only for the restricted category, i.e. miniaturised and twisted CFL.
- (e) From the original investigation records it may be seen that Osram India had imported CFLs from Germany during the period of investigation. It is not known whether these CFLs were manufactured at the factory of Osram China or they were of Germany or any other make. This question needs to be examined in detail.
- (f) It has been stated by the exporter that one of their Chinese related company M/s. Chung Tak Lighting Control Systems (PANOU) Ltd. Osram

China produces different types of CFL and names them as CFL I, CFL II, CFL III, etc. It is not known whether the related company is engaged in the manufacture of other types of CFLs i.e. CFL-OII, CFL-III etc. It must be noted that the investigation covers each and every type of the product concerned. There cannot be any exception or exclusion from the scope of the product concerned, by describing the product as CFL-I, CFL-II etc. The authority needs to examine whether the exporter had imported the product concerned to India during the investigation period irrespective of whether the said product is categorised as CFL-I or not.

#### **Views of the New Shipper**

4. The OSRAM group through its Indian operations continues to make investments in the CFL business in India. As stated earlier, as per group policy goods from OSRAM company in one country is exported to other countries. M/s Osram India Ltd. exports several products, including lamps to other countries.

M/s OSRAM India Ltd. does not intend to import and the Applicant will not export any CFL made by its group company to India.

#### **Examination by the Authority**

5. The product under consideration in the original investigation was Compact Fluorescent Lamps (CFL) with or without choke or ballast, with one or more glass tubes and which have all lighting elements, all electronic components and cap integrated in the lamp foot, originating in or exported from China PR. The product is classified under custom tariff heading 8539.31. The classification is, however, indicative and in no way binding on the investigation. The present investigation is only New Shipper Review (NSR) under Rule 22 of AD Rules for determination of individual dumping margin for the applicant M/s Osram China Lighting Ltd., China PR, therefore, the description of product under consideration for the purpose of this investigation is same as in original investigation as manufactured and exported by M/s Osram China Lighting Ltd.

### **C. VIEWS EXPRESSED AT/AFTER INITIATION AND THEIR EXAMINATION**

#### **Views of various interested parties**

6. Views of M/s. Indo-Asian Fuse Gear Ltd, (b) M/s. Phillips India Ltd and (c) M/s. Havells India Ltd. have been summarised below:

#### **NSR Application is malafide and hence the investigation is liable to be terminated without any further action**

7. M/s Osram India, as a domestic producer, filed a petition along with Indo-Asian and got the existing measures imposed. Now M/s Osram India is seeking a new shipper review for its related company. This indicates pre-planned attempt on the part of Osram India to restrict import of CFLs from all manufacturers from China and subsequently they are trying to exclude their

related company, leading to a situation where Osram China has a distinct competitive edge over other producers from China.

8. The entire exercise appears to be malafide. Therefore, the authority shall not continue the investigation and terminate the same without any further action.

#### **Initiation is faulty**

9. The Designated Authority has relied upon one line statement for initiating the NSR. The exporter has to provide evidence before the Authority to show that he has not exported the goods to India during the relevant year. The Application did not contain any evidence in support of the claim that the applicant has not exported the product to India during the relevant period.

10. The exporter is required to show that they are not related to any other producer or exporter in the exporting country who are subject to Anti Dumping Duties. The new shipper did not produce any evidence to show that they are not related to any producer or exporter of the product concerned during the relevant period. Therefore the initiation is faulty.

#### **New Shipper Review is not the appropriate proceeding in the facts and circumstances of this case**

11. In terms of Rule 22, the scope of a NSR is restricted to determination of dumping margin for the new shipper. No issues relating to injury, status of domestic industry, etc need to be examined.

12. However, when a domestic producer after getting the anti-dumping measures imposed, starts causing injury to itself by importing the product into India, the authority has to examine whether there is a justification to continue the duty at all. The authority cannot simply conduct a new shipper review under Rule 22 that is restricted to dumping aspects only.

13. In terms of Rule 2(b), when domestic producers are related to the exporters or importers of the alleged dumped article or are themselves the importers thereof, such producers may be deemed not to form part of the domestic industry. Once a domestic producer or its related exporter seeks a new shipper review and starts importing the subject goods from the subject country, the question of whether the said producer shall be deemed to be a part of the domestic industry or not, assumes greater significance. If the authority decides that the said producer shall not form part of the domestic industry, then the existing measures need to be reviewed for determining the correct degree and extent of injury suffered by other domestic producers.

14. This is a fit case for reviewing whether there is a need to continue or withdraw the existing measures after considering both dumping and injury. However, the scope of a new shipper review investigation is restricted to dumping aspects only. Therefore, new shipper review is not an appropriate proceeding in the facts and circumstances of the case. It needs to be terminated immediately without any further action.

## **STATUS OF OSRAM INDIA NEEDS TO BE DETERMINED IN THIS CASE**

15. In written submissions, Osram India has given a long list of 10 factors that are required to be considered by the authority regarding the status of Osram India as a constituent of the domestic industry. Osram India has not given any information with regard to the 10 factors listed out by them. Without giving any information whatsoever, listing out the factors alone, would serve no purpose. Further, if the authority has to considered the status of Osram India as a constituent of domestic industry, these 10 factors alone are not sufficient. The authority may require substantive information in respect of a number of other factors.

16. An examination is unavoidable in this case, but under Rule 22 Designated Authority does not have the powers to conduct an examination of such issues in a new shipper review.

17. If the authority decides to continue with the new shipper review, it is necessary to obtain full details about all the relevant factors about the status of Osram India. Without such a detailed examination, an unbiased and objective decision cannot be arrived at in this new shipper review.

## **REASONS FOR CLAIMS OF CONFIDENTIALITY NOT PROVIDED**

18. The new shipper has claimed confidentiality to a significant portion of the information submitted in the exporters' questionnaire response. The new shipper is under obligation to provide information which shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. This is an important element incorporated in Rule 7 (2) which reflects the balance struck by the rules between the need to protect the confidentiality of certain information, on the one hand, and the need to ensure that all parties have a full opportunity to defend their interests. It is submitted that the information provided by the New Shipper is inadequate to appropriate respond in the matter.

19. The questionnaire response filed by the present applicants does not give any reason whatsoever. Therefore, the questionnaire response filed by the new shippers may be rejected or the new shippers may be directed to file a revised non-confidential version of the questionnaire response giving reasons as to why confidentiality is required in respect of every item/data/ information for which they have claimed confidentiality.

## **EXPORTERS QUESTIONNAIRE RESPONSE IS HIGHLY INADEQUATE**

20. The questionnaire response filed by the new shipper is highly inadequate. The NME questionnaire response is in the old format. It shall be given in the new format. The new shipper does not seem to have filed the Memorandum and Articles of Association of the company alongwith the NME questionnaire.

21. The response to the main questionnaire is highly incomplete. Number of deficiencies have been pointed out. The information furnished in the response is not consistent between various part of the questionnaire. In view of the number of deficiencies pointed out the accounting system as well as record keeping system of the exporter does not appear to be reliable.

### **EXPORT PRICE IS NOT RELIABLE**

22. Export price to India is not reliable on account of (a) it is to a related party in India; and (b) export price to third countries are significantly lower than the export price to India.

23. It appears that Osram China has indicated an unreasonably high export price that does not reflect the market reality for the purposes of getting a favourable result in this new shipper review. Further, in the original non-confidential version of the questionnaire response submitted on 03.10.2005 they had expressly mentioned that the future orders depend upon the results of the new shipper review. This statement clearly shows that the export price is only for the purposes of this investigation and is not a regular price at which it would be exported in the normal course.

24. Section 9A (1) which states that the export prices shall be constructed in cases where there is no export price or where the export price is unreliable because of association between the exporter and the importer. The said explanation further provides that in such cases export price may be constructed on the basis of the price at which imported articles are first resold to an independent buyer. The provisions of explanation B to Section 9A (1) are clearly applicable to the facts of this case and therefore the authority shall construct the export price as required under the rules.

### **OTHER ISSUES**

25. In response to the NME questionnaire, the new shippers have stated that they do not have any loans. However, their accounts show significant financial expenses. If they had taken loans earlier that have been repaid before the completion of the period of investigation, the authority shall obtain the details of such loans and see whether such loans have been obtained under market conditions.

### **VIEWS OF THE NEW SHIPPER**

#### **Proof of non-export of CFL to India during the original period of investigation:**

26. Within the factual matrix of the case at hand, the Applicant in the new shipper review are related to a constituent of the Domestic Industry in the original investigation. In fact they are from the same group. As per group policy and practice exports from one Osram Company are done only to Osram group companies in another country.

27. During the original investigation, it was clearly stated that Osram India had no imports of CFL in the original period of investigation. This was further investigated by the Hon'ble Designated Authority in that investigation and was confirmed.

28. At the outset of this new shipper review, it was categorically stated by the Applicant that the exports will only take place within the OSRAM group. In fact the exports made during the New Shipper Period of Investigation were made to OSRAM India who have duly filed an importers questionnaire which has been verified by the Hon'ble Designated Authority.

29. The Applicant has affirmed that no CFL exports have ever been made to India and the same can be ascertained from the detailed submissions already on record, as well as verified during the verification visit; for which the Applicant reiterates its offer for full and complete cooperation.

30. It is submitted that the interpretation of the decision of the Hon'ble CESTAT in the case of H.R. Johnson India Ltd. v/s. Designated Authority is erroneous and overly burdensome. Given that the law India's WTO commitments, the provisions of the Customs Tariff Act and past jurisprudence all provide for new shipper reviews. The CESTAT provided guidance on how these provisions must not be abused by those with vested interests. This cannot be interpreted as being so burdensome so as to do away with all New Shipper Reviews. Indeed the Interested Opposing Parties by requiring conclusive evidence that the Applicant's provide conclusive proof that they are related to any exporter/producer during the original period of investigation are propounding an interpretation which is impossible to meet. To further elaborate this, with due respect, even the Hon'ble Designated Authority is unable to identify every exporter in the original investigation, as it may be likely that some did not cooperate or others exported through trading companies or other third parties. Consequently proving the negative as the interested opposing parties are demanding is well near impossible .

31. On the other hand, the Applicant is publicly traded, duly audited enterprise. To meet the requirement by the law the Applicant has disclosed:

- All its related Companies
- All its exports
- Stated under oath that its disclosures are full and complete and
- Is inviting the Hon'ble Designated Authority to verify all of the above and any other appropriate data.

32. In light of the above, it is respectfully submitted that the standard of proof imposed by the Hon'ble Designated Authority in the facts of this case is appropriate and in accordance with the law.

### **Confidentiality Claims**

33. As per the requirement of the Hon'ble Designated Authority the Application had given reasons for its request for confidential treatment.

Subsequently a detailed letter providing detailed reasons for requesting confidentiality was provided once again and the same is placed on record with the Hon'ble Designated Authority.

### **Inaccuracy of Data and the Incomplete MET Questionnaire**

34. As per the request of the Designated Authority dated 14<sup>th</sup> February, 2006, the Applicant has provided detailed data clarifying several issues, including those raised by the Interested Opposing Parties and the same is on record.

### **Export Price**

35. With reference to the allegation of unreliable export prices, the Hon'ble Designated Authority had considered this issue in the original investigation concerning the same product and the Applicant believes that the same will be an appropriate within the factual matrix of the case.

### **EXAMINATION BY THE AUTHORITY**

36. The Designated Authority initiated new shipper review keeping in view the provisions of the anti dumping rules, which are reproduced below:

- (a) *“Rule 22: (1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti dumping duties on the product.*
- (b) *The Central Government shall not levy anti dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:*
- (c) *Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of initiation of the review”.*

37. Rule 22 clearly specifies the circumstances under which a new shipper investigation can be carried out for the purpose of calculating individual dumping margin. Individual dumping margin in respect of any exporter or producer from the exporting country in question can be determined provided the following two conditions are satisfied;

- (a) that the exporter or producer has not exported the product under consideration during the period of investigation and,
- (b) that exporter or producer shows that they are not related to any of the exporters or producers in the exporting country who are subject to the anti dumping duties on the product concerned.

38. The Designated Authority in the present case on the basis of information filed by the applicant found that the exporter or producer has not exported the product under consideration during the period of investigation in the original investigation and provided certification that they are not related to any of the exporters or producers in the exporting country who are subject to anti dumping duties. The applicants in their response to the questionnaire claimed that they had no affiliated/related companies engaged in production or sale of the product concerned. However, at the time of spot verification, on being asked regarding related companies, it was clarified that the promoter company has number of related companies engaged in production Raw materials required for manufacture of CFL. With regard to the issue whether any of these affiliates had exported the product concerned to India, it was claimed and clarified that none of the affiliates from China PR had exported the subject goes to India during the original period of investigation. The Authority notes nothing adverse could have been assumed against the claim of the new shipper applicant and no such evidence was found in this regard.

39. During the investigation the Authority neither found any evidence of relationship with any of the exporters and producers in China PR who are subjected to anti-dumping duty nor any material evidence in this regard was brought before the Authority by any interested parties. The Authority, therefore, notes that the New Shipper Review investigation was initiated as per provisions laid down in Rule 22 of the anti-dumping rules which is in conformity with article 9.5 of the WTO AD Agreement.

40. The basic requirements for initiating the New Shipper Review under Rule 22 are that (a) the subject goods or the product must be subjected to anti-dumping duty, and (b) the exporters or producers who are seeking determination of individual margin of dumping must not have exported the subject goods to India during the period of investigation and they must show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. The new shipper applicant who is seeking review, apart from making a declaration in the application that he fulfils the above conditions set out in Rule 22, cannot adduce any evidence that he had not exported the goods during the period investigation or that he is not related to the exporters in the exporting country who are subject to anti-dumping duty on the subject goods. For prima facie satisfaction though Authority is not required to conduct a detailed enquiry before initiating new shipper review, if there is material evidence to contradict the statements made in the application, then the Authority can refuse to initiate the new shipper review. In the present case, on the date of initiation of new shipper review, there was no material on record to show that the statements made by M/s. Osram China Lighting Co.Limited ,China PR(Producer and exporter) were not correct. Therefore, it cannot be said that there was no prima facie satisfaction on the part of Authority

before initiating the new shipper review and the initiation of the new shipper review is in order.

41. It is argued by the domestic industry that the exporter has kept the vital information confidential depriving the opposing interested parties of the right to challenge the information and make the meaningful submissions to the Authority. However, regarding the information made available to the opposite interested party the Authority has dealt with it as per provisions regarding confidentiality. Rule 7 of the Anti Dumping Rules provides for submission of information by the interested parties on confidential basis subject to the condition laid down therein. Certain information which are either business proprietary information or any other information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it. In this review certain business sensitive information has been kept as confidential mainly information pertaining to corporate structure, marketing and selling arrangements, accounting and financial practices, and other sensitive information disclosure of which would have been of significant competitive advantage to a competitor and would adversely affect the business of the company. The non-confidential summary of the information submitted on a confidential basis is placed in the public file, which is available for the inspection, by all the interested parties and copies of the same were provided as and when requested in terms of Rule 6 (7) of the Anti Dumping Rules.

#### **D. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN**

##### **VIEWS OF VARIOUS INTERESTED PARTIES**

42 Views of M/s. Indo-Asian Fuse Gear Ltd, (b) M/s. Phillips India Ltd and (c) M/s. Havells India Ltd. have been summarised below:

##### **Issue relating to Market Economy Status claims**

43. Osram China was started with 3 shareholders namely Osram Germany, FELCE- a Chinese company and a Hong Kong based company. Subsequently, the Chinese company transferred its shares to Osram, Germany. The details of terms and the valuation adopted at the time of transfer of shares have not been furnished at all.

44. As on date, it is claimed that Osram, China is held by Osram GmH and M/s. Prosperity Lamps & Components (Hong Kong) Limited. It is not known who owns Osram GmbH or the other Hong Kong based company. If the shareholders of any of these 2 companies are Chinese nationals, whether government interference can be ruled out, needs to be carefully examined. The new shippers may be directed to file the details of the shareholders of the

corporate entities that own the shares in the new shipper and their status may be examined by the authority.

45. The new shipper has stated that they have purchased materials during the period of investigation from related suppliers. In an anti dumping investigation where inputs are procured from related entities the relevant related entity is required to file a detailed questionnaire response giving the cost of production of those inputs. In this case, no details relating to the cost of production of the inputs by the related suppliers have been filed. The authority may direct the new shippers to file detailed questionnaire responses indicating the cost of production of related suppliers.

46. Further, it is also not known whether such related suppliers are located in China or in any other country. If such suppliers are in China or in any other non-market economy country, their cost of production would have to be subjected to further examination i.e. whether the costs and the transfer prices reflect market values or not, is to be examined in detail.

47. The primary ground on which the MES claim stands is that they have been held to be operating under Market Economy Conditions by EC in an investigation relating to the same product. A similar plea was raised in Induction Hardened Forged Steel Rolls originating in or exported from Russia, Ukraine and Korea R.P. In that case, the exporters argued before the Hon'ble CESTAT that USA has declared Russia as a market economy country and therefore they shall be granted market economy treatment. However, the Hon'ble CESTAT did not agree with such a view. The Hon'ble CESTAT held that the exporter should provide the information and evidence to the Designated Authority as required under the Indian rules and the authority shall examine the evidence as required under the rules before granting market economy status. Market economy treatment shall not be granted just for the asking.

48. The present investigation is required to be conducted in accordance with the amended Rules on NME and normal value should be determined as per para 7 of the annex-I of AD Rules. The exporter must satisfy the Authority regarding its claim of Market Economy Treatment. The non-confidential version of the exporter is grossly inadequate and insufficient to allow any understanding of the substance of information filed by the exporter. In the note to the notification No. 28/2001-Customs (N.T.), China has been listed amongst the non-market economy countries.

#### **VIEWS OF EXPORTER/PRODUCER(NEW SHIPPER)**

49. Views of exporter and producer (new shipper) have been summarised below:

50. The new shipper has claimed market economy treatment (MET) and has submitted evidence to substantiate the same.

- i) Bankruptcy Law of Peoples Republic of China PR has an appropriate legal and regulatory framework for the operation of the firms and the firms can freely be declared bankrupt according to the related laws and regulations.
- ii) The major raw materials required for the manufacture of CFL is available in China PR. Company is free to procure the raw materials and other relevant inputs from the open market based on market prices set by demand and supply. No state or local authority has any say, in any manner, in setting the prices or costs of the raw material or the final product. There are no restrictions or conditions, either direct or indirect, on imports of raw materials used but the company not imported any raw materials from abroad.
- iii) The utilities are charged at normal rates without any special or subsidized rates. Electricity is being supplied by the State owned company however, water is supplied by private company. Water and electricity have been charged according to the consumption pattern and the prevailing prices charged by the concerned supply companies.
- iv) As regard to labour, firms have the freedom to organize and remunerate their labour. The only condition is that the firm has to ensure that the minimum wage levels are guaranteed. The company provides the housing facilities to the workers in the factory.
- v) According to the accounting principles in China, the firm has to maintain basic accounting records and the firms have their accounting records audited by independent auditing firms. The normal corporate financial accounting period is from January to December. The accounting practices of the applicants are in accordance with the Generally Accepted Accounting Principles (**GAAP**) of China
- vi) Land, buildings and machines are used for the production and commercial purposes. The company owns these facilities . Chinese laws protect property ownership. Natural and legal persons have the right by law to possess, utilize, profit from and dispose of his property. The General Principles of the Civil Law of People's Republic of China stipulates that an owner has rights to lawfully possess, utilize, profit from and dispose of his property. Thus, firms are subject to both bankruptcy and property laws, which guarantee the legal stability and certainty for the operations of business.
- vii) The company has never been involved in barter-trade or counter-trade. The company has never been involved in compensation trade (also known as product buy-back).

### **EXAMINATION BY THE AUTHORITY**

51. The Designated Authority, as per para 8(2) of Annexure I of the AD Rules for the purpose of determination of Normal Value, proceeded with a presumption that any country that has been determined to be or has been treated as, a non-

market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three years period preceding the investigation is a non-market economic country. In the past three years WTO members such as EU and USA have treated China PR as a non-market economy country in anti- dumping investigations. In the instance case, China PR has been proposed to be investigated as non-market economy Country.

52. The Authority sent Market Economy Treatment (MET) questionnaire and exporter's questionnaire to M/s. Osram China Lighting Co. Limited, China PR (Exporter). They filed the response in support of their claim of market economy treatment and requested for determination of normal value on the basis of domestic sales of subject goods in their home market. In view of their claim of MET treatment, verification was carried out at the premises of the responding producer and exporter. The Chinese producer has claimed individual treatment on the grounds that they are operating under market economy condition irrespective of prevailing economy situation in the country without any direct or indirect State interference or influence in their business activity.

53. In anti-dumping investigations normal value concerning imports originating in China PR, shall be determined in accordance with para 7 & 8 of Annexure I of the AD Rules. The Authority notes that para 7 of Annexure 1 of AD Rules provides that:

*"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin."*

54. Further Para 8 of Annexure 1 of the AD Rules (as amended) provides that:

- (1) *"8 (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in subparagraph(3)*
- (2) *There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country;*
- (3) *Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption*

*by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).”*

55. It is noted that the responding Chinese producer furnished information/evidence as mentioned in para 8(3) of Annexure 1 of AD Rules to enable the Designated Authority to consider the following criteria as to whether

- a) the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts; such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
- d) the exchange rate conversions are carried out at the market rate;
- e) Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

56. Detailed questions regarding ownership, management, control, determination of commercial and business policies and on financial situation etc. were addressed to the applicant. Responses filed by the new shipper were analyzed to determine whether the applicant exercised a degree of independence from the Chinese Government comparable to what would prevail in a market economy country. The Authority sought general and certain specific information with regard to the following parameters from the applicants:-

- Ownership details
- Shareholding patterns
- Information on promoter/holding company/companies
- Constituents of Board of Directors, their legal status and person/party being represented by them.
- Raw Material Inputs and Costs
- Existence or otherwise of any minimum wage stipulation by the State and if the enterprises are free to decide wages as per market demand.
- Production Facilities and Costs
- Loans and subsidies
- Barter Trade/ Counter Trade
- Profit Distribution

- Bankruptcy and property laws
- Exchange rates conversions

57. In order to examine whether there was any degree of State influence or interference over the allocation of resources and decisions of the applicant, whether directly or indirectly, the ownership pattern of the petitioner was examined. The claims/ counter claims made by the interested parties were taken into account and details in this respect were verified. As per business license, the company is whole owned foreign enterprise in which a very high percentage of shares are held by M/s Osram GmbH and small percentage are held by M/s Prosperity Lamps & Components (HK) Ltd. Originally M/s Osram china Lighting Ltd. was held by three shareholders in which majority of shares were held by M/s Osram GmbH, however, subsequently Osram GmbH consolidated position by purchasing the share of the other company. The Authority notes that all members of board of directors are foreign nationals. The Authority examined the composition of Board of Directors of the company, their functions, to determine whether there is any interference and involvement of the State in the management and working of the companies. The Authority relied upon the relevant provisions relating to constitution of Board of Directors, Board of Supervision, General Manager, their functions & powers, appointment & dismissal, autonomy of the company in matters of appointment etc and the role which State or State owned/controlled persons/bodies plays, if any, in such companies whether directly or indirectly.

58. It was found that the raw materials were purchased from the open market and at market values as the prices of the various raw materials were varying and procured at market prices. It was found that the company procures an important raw material from one of the affiliates/related company in China PR. During the period of investigation the related party has not sold the said raw material to any other independent buyer. Accordingly the exporter was asked to obtain details of the cost of production of the said raw material from the affiliate company so as to establish that the transfer price represents a fair price. Copies of the same were submitted by the exporter after verification. It is observed that the price charged by the related party is based on cost plus reasonable profit. The same has been considered to be representative.

59. The Authority notes that the company is buying electricity from State owned company. Since electricity procurement was from State owned enterprises, the Authority examined the tariff at which the company was getting electricity. Copies of invoices were collected and tariff paid by the company was ascertained. It was found that the electricity have been charged according to the consumption pattern and the prevailing prices charged by the concerned electricity/water supply company.

60. The company was found to be maintaining its accounts as per Generally Accepted Accounting Principles of China. The company maintains monthly profit & loss statement which is required to file profit & loss statement along with VAT filing. The profit & loss statement for each of the months of the investigation period was examined and cross verified with the profit & loss statement filed by the company along with its VAT return and a separate profitability of the subject

goods and other goods was found. Accounts of the company are audited regularly by the Auditors and no adverse comments were found in their Auditor Report with regard to the accounting practices followed by the company.

61. Bankruptcy and property laws were examined and found that the company is free to acquire property. The bankruptcy law is applicable to a firm when a firm becomes bankrupt and the details regarding settlement of the dues is governed by law maintained under bankruptcy law.

62. Exchange rate conversions were also verified from their books of accounts and found that the export remittances were converted into the Chinese currency as per the exchange rate prevailing on the date of transaction. During the verification visit the export invoices were verified to see whether the realized amounts are credited into their books of accounts. The Authority observed that exchange conversions have taken place at the existing rate, which was more or less stable.

In view of above mentioned information and verified facts, the Authority decides to determine normal value in accordance with Section 9(A)(1)(c) of the Customs Tariff Act, 1975.

### **NORMAL VALUE**

63. Under Section 9A(1)(c), normal value in relation to an article means:
- (i) The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
  - (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –
    - (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
    - (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)
    - (c) The Authority sent exporter questionnaire to M/s. Osram China Lighting Co. Limited, China PR(Exporter), for the purpose of determination of normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. In response to the questionnaire the new shipper filed the information in exporter questionnaire. They have exported three sizes of the CFL with choke and the information regarding the domestic sales in their home market has been provided. The normal value as per Section 9A (1) (c) is the comparable price of domestic sales of subject

goods in the ordinary course of trade for the like article, which is meant for consumption in the exporting country. They have also provided break up of costs of production of all the sizes/models/types of the subject goods that have been produced and exported to India during the period of investigation. The element wise cost of production was also verified from the books of account maintained by the company. An analysis of the profit and loss account of the company shows that the company has made an overall profit on the sale of subject goods during the period of investigation and calendar year. The Normal Value based on cost of production plus SGA and reasonable profit for these models/types of CFL with choke, has been considered to be the appropriate basis for assessing the Normal Value.

64. As indicated above the company has exported different models/types of two sizes of CFL to India during the period of investigation. These models are types of CFL with choke. Based on the methodology explained above size wise/ model/type wise ex-factory normal value for these models/ types of CFL with choke is determined as under:

<u>SI No</u>	<u>Size /model/type of CFL</u>	<u>Normal Value(US\$ per Pc.)</u>
<u>1</u>	T3 8 watts	***
<u>2</u>	T3 11 watts.	***
<u>3</u>	T3 14 watts.	***

### **EXPORT PRICE**

65. In response to the questionnaire, the exporter has furnished invoice-wise/ size-wise details of exports made to India during the period of investigation in Appendix-2. The exporter has also furnished copies of invoices in support of the same. Exports to India have been made at FOB basis to M/s Osram India Ltd., a related company. The exporter has claimed adjustments on account of expenses up to FOB level. The company has made sales to India to M/s Osram India Ltd., one of its affiliates. Expenses from FOB to India have been incurred by the said importer. Details from the importer in importer's questionnaire was solicited. Adjustment as claimed by the importer with regard to landing, transportation, insurance, Customs Duty paid etc., have been considered based on verified data and is proposed to be allowed to arrive at the ex-factory export price to India. Further Invoices raised by M/s Osram India Ltd. pertaining to Indian customers were verified and reconciled along with the adjustments claimed by them. Details regarding their claim of adjustments were verified during the course of verification from the records maintained by the Importer at Delhi. The ex-factory export price has been calculated after taking into account the verified data regarding adjustments. The size wise and model/type wise ex factory export price of subject goods comes to :-

<u>SI No</u>	<u>Size /model/type</u>	<u>Export Price (US\$ per Pc.)</u>
<u>1</u>	T3 8 watts	***

<u>2</u>	T3 11 watts.	***
<u>3</u>	T3 14 watts.	***

**DUMPING MARGIN**

66. After determining dumping margins by considering above mentioned normal values and export prices for different sizes/ models /types, the weighted dumping margin for Compact Fluorescent Lamps (CFL) has been determined. It has been found that the exporter has exported the subject goods below its Normal Value and the weighted average dumping margin has been determined as US \$ 0.16 per piece.

**Recommendations of the Authority**

67. After considering the foregoing the Authority concludes that

i) Export price of Compact Fluorescent Lamps (CFL) produced and exported to India by M/s. Osram China Lighting Co. Limited ,China PR is below its normal value during the period of investigation.

ii) The Authority, therefore, recommends that anti dumping duty US\$ 0.16 per piece be imposed on imports of Compact Fluorescent Lamps (CFL) falling under Chapter 85 of the Custom Tariff Act, 1975 produced and exported to India by M/s. Osram China Lighting Co. Limited, China PR.

68. An appeal against this order shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

**(R. Gopalan)**  
**Designated Authority**