

**To be published in Part-I Section I of the Gazette of India Extraordinary**

Government of India  
Department of Commerce  
Ministry of Commerce & Industry  
(Directorate General of Anti-Dumping & Allied Duties)  
Udyog Bhawan, New Delhi  
\*\*\*\*\*

**Dated, the 16<sup>th</sup> November, 2010**

**FINAL FINDING**

**Subject: Final Findings of Anti-dumping investigation on imports of Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of a width exceeding 30 cms., originating in or exported from China PR.**

**No.14/25/2008-DGAD:-** Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

2. WHEREAS M/s Lohia Starlinger Ltd., Kanpur (herein after referred to as the Applicant) has filed an application before the Designated Authority (hereinafter referred to as Authority), in accordance with the Customs Tariff Act, 1975 as amended from time to time and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 as amended from time to time (herein after referred as Rules), alleging dumping of Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of a width exceeding 30 cms. (subject goods) originating in or exported from China PR (herein after referred to as subject country) and requested for initiation of Anti Dumping investigation for levy of anti dumping duty on the subject goods. The embassy of subject country was notified about the receipt of fully documented application as per Rule 5(5).

3. And Whereas, the Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 18<sup>th</sup> May 2009 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject country in accordance with sub-Rule 6(1) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which if levied would be adequate to remove the injury to the domestic industry.

## **A. General**

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

- a) The Embassy of the subject country was notified about the receipt of fully documented application as per Rule 5(5).
- b) The Designated Authority forwarded a copy of the public notice to the known exporters (whose names and addresses were made available by the applicant to the Authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2) and requested them to file questionnaire responses and make their views known in writing within 40 days of the initiation notification.
- c) Copies of the non-confidential version of the petition filed by the domestic industry were made available to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra.
- d) The Authority forwarded a copy of the public notice to all the known importers (whose names and addresses were made available by the applicant to the Authority) of the subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- e) The Embassy of the subject country in New Delhi was informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from its country to respond to the questionnaire within the prescribed time. A copy of the letter, non-confidential version of the petition and exporter's questionnaire sent to the exporter was also sent to the Embassy of the subject country in India along with a list of known exporters/producers made available by the petitioners.
- f) Request was made to Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of the subject goods made in India for the period of investigation and preceding three years. The transaction-wise data on imports received from DGCI&S have been considered appropriately in the findings.
- i) A copy of the non-confidential application was also provided to other interested parties, wherever requested.

- j) The Authority sent questionnaire to all known exporters/ producers of the product concerned in China PR to elicit relevant information, in accordance with the rule 6(4).
- k) Importer Questionnaire has been sent to all known importers in India.
- l) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file and kept open for inspection by the interested parties.
- m) Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the petitioner on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain whether Anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- n) The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated confidential.
- o) A Market Economy Treatment (MET) questionnaire was also forwarded to all the known exporters and Embassy of China PR. Exporters were informed that Authority proposes to examine the claim of the applicant in the light of Para 7 and Para 8 of Annexure-I of Anti-dumping Rules, as amended. The exporters/ producers of the subject goods from China PR were therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment be granted to cooperative exporters/producers.
- p) Investigation was carried out for the period 1<sup>st</sup> April to 31<sup>st</sup> December, 2008 (9 months) and injury was examined for 2005-06, 2006-07, 2007-08 and POI.
- q) The Authority notified preliminary findings on 16<sup>th</sup> February 2010. A copy of which was forwarded to all the interested parties including Embassy of the subject country in India.
- r) All interested parties were asked to file their comments on preliminary findings.
- s) The Authority held a public hearing on 29<sup>th</sup> March 2010 to hear the interested parties orally, which was attended by representatives of the interested parties. The interested parties were asked to file written submissions and rejoinders, if any. The written submissions and rejoinders received from interested parties are considered in the final findings to the extent considered relevant.

- t) The Authority accepted the response to the exporter's questionnaire submitted in the prescribed format by M/s Starlinger & Co. Gesellschaft m.b.H, Austria (exporter in this case), on their request made during the public hearing. Though M/s Starlinger G m.b.H Austria submitted earlier the information in response to Initiation, the same was not considered for the purpose of preliminary findings as the information was not in prescribed format.
- u) The Authority got verified the data and information submitted by the exporter (Starlinger G m.b.H, Austria) and producer (Starlinger Plastic Machinery Company (Taicang), China) in response to the exporter's questionnaire. Comments received from the producer/exporter on the verification report have been appropriately dealt in the Final Findings.
- u) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings was disclosed on 23<sup>rd</sup> June, 2010 and comments received thereon are appropriately addressed in the final findings.
- v) \*\*\*\* in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

## **B. Product under Consideration**

5. The product under consideration, as per initiation notification as well as preliminary findings, is Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of a width exceeding 30 cms., originating in or exported from China PR. The Circular Weaving Machines consist of a central portion having shuttles for inserting the weft and a creel for inserting the warp. PP/HDPE tapes are used as weft and warp. The circular PP/HDPE cloth woven goes from the take up to the cloth winder. The circular woven fabrics are widely used in packaging applications such as packaging of cement, fertilizers, chemicals, plastic granules, etc. and for covering fabrics such as tarpaulin, etc.

6. The product under consideration is classified under Chapter 84 of the Customs Tariff Act, 1975 under sub-heading no.8446 - Weaving Machines (looms). The same is covered under ITC (HS) Code 8446.21/8446.21.90 (other)/8446.29 (other) & 8446.29.00 (other), at six/eight digit level.

7. The applicant has clarified that there is no significant difference in Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of a width exceeding 30 cms., produced by the domestic industry and those exported from China PR. Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of a width exceeding 30 cms., produced by the Indian industry and imported from China PR are comparable in terms of characteristics such as manufacturing process & technology, functions & uses, product specifications, pricing, distribution &

marketing and tariff classification of the goods. The subject goods produced by the petitioner are like articles to those imported from China PR in accordance with the Anti-dumping Rules.

### **Examination by the Authority**

8. It is noted that the product under consideration, as per initiation notification as well as preliminary findings, is Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of a width exceeding 30 cms., originating in or exported from China PR. Therefore, the Authority treats the said product as the product under consideration for the purpose of final findings as well. The Customs and ITC HS classification of the product under consideration mentioned above is, however, indicative only and in no way binding on the scope of the present investigation

### **C. Like Article**

9. The applicant has claimed that goods produced by them are like articles to the subject goods originating in or exported from China PR. There is no significant difference in the subject goods produced by the applicant and those exported from subject country and the two are technically and commercially substitutable. The Authority accepts the claim of the applicant in this regard. Therefore, for the purpose of present investigation, the subject goods produced by the domestic industry are being treated as Like Article to the same imported from the subject country in accordance with the AD Rules.

### **D. Standing of Domestic Industry**

10. The application has been filed by M/s. Lohia Starlinger Ltd., Kanpur on behalf of the domestic industry. As per evidence available on record, production of M/s. Lohia Starlinger Ltd., Kanpur accounts for a major proportion of the domestic production as their production is more than 50% of the Indian production.

### **Views of the exporter**

11. Following submissions were made by exporter before the oral hearing:

- (i) M/s Starlinger Plastics Machinery (Taicang) Co. Ltd., China PR is manufacturing circular weaving looms and other machinery primarily for exports market under technology provided by M/s Starlinger & Co Gesellschaft m.b.H, Austria.
- (ii) The Applicant, M/s Lohia Starlinger Limited, India is a joint venture between Lohia Machine Works, Kanpur and M/s Starlinger & Co. Gesellschaft m.b.H. M/s Starlinger & Co. Gesellschaft m.b.H, Austria holds 34.67% stake in M/s Lohia Starlinger Limited and is the largest single minority shareholder in M/s Lohia Starlinger Limited.

- (iii) Furthermore M/s Starlinger & Co Gesellschaft m.b.H enabled M/s Lohia Starlinger Ltd. to manufacture circular weaving looms by providing applicable technology and know-how.
- (iv) The Starlinger-Huemer family directly and indirectly controls through FEPIA Privatstifung and direct personal shareholding in all companies forming part of the Starlinger group.
- (v) The Applicant, M/s Lohia Starlinger Ltd. is a part of the Starlinger group, as M/s Starlinger & Co Gesellschaft m.b.H is the largest single minority shareholder in the Applicant company namely M/s Lohia Starlinger Limited, holding 34.67%.
- (vi) M/s Starlinger Plastics Machinery (Taicang) Co. Ltd. exports the products concerned solely to M/s Starlinger & Co Gesellschaft m.b.H, Austria, which in turn exports them to other countries including India.
- (vii) Ms. Angelika Huemer is the President of the Board of M/s Starlinger Plastics Machinery (Taicang) Co. Ltd. and at the same time Managing Director of M/s Starlinger & Co. Gesellschaft m.b.H, Austria and Managing Director of M/s Starlinger Export GmbH, Austria.
- (viii) M/s Starlinger & Co. Gesellschaft m.b.H, Austria is holding 34.67% shares in M/s Lohia Starlinger Limited, the petitioner, with legal right to be on the board of M/s Lohia Starlinger Limited. The directorship was illegally taken away from M/s Starlinger GmbH, Austria by M/s Lohia Starlinger Limited and the case is presently pending before the Company Law Board, India.

12. Following submissions have been made by exporter after the oral hearing:

- (i) Rules contain deeming provision and refer to a relationship which may be either “legal or operational”.
- (ii) The Rules refer to a situation where one is in a position to control the other.
- (iii) “Operational relationship” implies a situation where there might be relationship in the operations of the companies, whereas “legal relationship” implies a relationship which exists in law – whether or not exercised/applied.
- (iv) “In a position to control” means a situation where in fact, control exists, whether or not exercised/applied.
- (v) That majority shareholding, i.e., above 50% only gives legal control is not correct.

(vi) The interpretation drawn by the Authority in this investigation shall mean that the two companies shall be treated as unrelated in case shareholding between the two is below 50%.

(vii) 50% and above criteria applied by the Authority in the present case is grossly inconsistent with the past decisions and current practices of the Authority with regard to relationship.

### **Views of the domestic industry**

13. Following submissions were made by domestic industry:

- a. M/s Lohia Starlinger Limited (hereinafter referred as 'LSL') is not a part of the so called Starlinger Group, which is evident from the fact that the website [www.starlinger.com](http://www.starlinger.com) does not list LSL as member of the Starlinger Group.
- b. LSL does not have any shareholding nor control in Starlinger, China and Starlinger, China has no shareholding and/or control in LSL
- c. LSL has no control over Starlinger & Co GmbH, Austria (hereinafter referred as 'Starlinger, Austria') nor is controlled by Starlinger, Austria, legally or operationally.
- d. The very fact that Starlinger, Austria has filed a Petition before Hon'ble CLB seeking appointment of its nominee on the Board of LSL establishes the fact that Starlinger, Austria does not have any control over LSL nor do they have any contractual right to claim role in management or control over LSL. The Petition filed in the year 2005 has been vehemently opposed by LSL before CLB.
- e. Starlinger, Austria provided technology initially to LSL. The last technology transfer took place under agreement made way back in 1992, which too expired with expiry of time and Starlinger, Austria has been duly compensated by LSL for technology transfer by payment of royalty in accordance with the terms of the relevant agreement.
- f. LSL is no way related to Starlinger, Austria and/or Starlinger, China. Their only claim is that they are holding 34.67% shares in LSL. But mere shareholding does not make Starlinger, Austria and/or Starlinger, China related to LSL within the meaning of AD Rules.
- g. The Board of LSL has not appointed any director representing Starlinger, Austria since 2002 and hence the question of Ms. Angelika Huemer being illegally ousted from the Directorship does not arise. In any case, the very fact that Starlinger, Austria has filed a Petition before the Hon'ble Company Law Board (CLB) seeking appointment of its nominee on the Board of LSL

establishes the fact that Starlinger, Austria do not have any control over LSL nor do they have any contractual right to claim any role in the management or control over LSL. The Petition filed in the year 2005 by Starlinger, Austria is still under consideration before CLB and no decision has been given by CLB so far.

- h. It is incorrect to state that CLB has confirmed that Starlinger, Austria and LSL are related. The Hon'ble CLB has not passed any such order.
- i. It is denied that LSL is a joint venture between Lohia Machine Works and Starlinger, Austria. There is no such agreement with Lohia Machine Works. Starlinger, Austria has raised a similar claim in the petition No. 62/2005 before the Company Law Board, which has been denied by LSL before the CLB and the matter is sub-judice.
- j. Starlinger, Austria is neither legally nor operationally in control of LSL within the meaning of AD Rules

### **Examination by the Authority**

14. The Authority has examined the position in the light of the definition of related companies under Rule 2(b) of Customs Tariff (Anti Dumping) Rules 1995. The said Rule is reproduced as under:

- i) Producers shall be deemed to be related to exporters or importers only if,-*
  - (a) One of them directly or indirectly controls the other; or*
  - (b) Both of them are directly or indirectly controlled by a third person; or*
  - (c) Together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.*
- (ii) A producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.*

15. The Authority notes that the key element in regard to relationship of the domestic producer and the exporter is 'control', legal or operational. The Authority finds that Starlinger, China is a 100% subsidiary of Starlinger, Austria whereby both are related companies. Further, it is evidenced that Starlinger, Austria is holding 34.67% shares in the applicant company i.e. Lohia Starlinger Limited. But mere shareholding does not amount to exercise of control and therefore does not make Starlinger, Austria and/or Starlinger, China related to Lohia Starlinger Limited (LSL) within the meaning of Anti Dumping Rules. Majority shareholding i.e. above 50% only gives legal control. Further, the Authority finds that no Director representing Starlinger, Austria has been appointed in the Board of applicant company since 2002. It is brought on record by both the

parties that Starlinger, Austria has filed a Petition before Company Law Board seeking appointment of its nominee on the Board of LSL. All these establish that Starlinger, Austria has no operational control as well over LSL. Further, even if the two parties are related parties, the mere fact of relationship is insufficient to consider the domestic producer as ineligible. There must be sufficient grounds justifying exclusion of such related domestic producer. There must be evidence that the related domestic producer has acted differently due to relationship, or has participated in dumping practices and has taken such steps which would have resulted in self inflicted injury. In the instant case, there is no such evidence that the relationship between the two parties have led to petitioner behaving in a manner different from an unrelated producer.

16. Thus, in the absence of legal or operational control by Starlinger, Austria and/or Starlinger, China over LSL and in the absence of sufficient grounds to treat LSL as ineligible domestic producer in the light of the provision contained in Rule 2(b), the Authority holds that the applicant is entitled to be treated as domestic industry within the meaning of Rule 2(b) of the AD Rules and has the standing to file the petition in terms of Rule 5(3) of the AD Rules.

#### **E. Confidentiality**

17. The confidentiality claims of domestic industry in respect of the data submitted by them have been examined. The data concerning costing, customers, prices etc. have been treated as confidential to the extent of acceptability of confidentiality by the Authority. The data/information of the producer and exporter, M/s Starlinger Plastics Machinery (Taicang) Co. Ltd., China and Starlinger & Company G.m.b.H, Austria submitted as confidential has also been treated as confidential to the extent acceptable.

#### **F. Other issues**

18. Following other issues have been raised by the exporter:

##### **Misleading import data relied upon**

Import data relied upon in the preliminary findings is misleading on account of the following:

- i) Import data from Infodrive was made available for the period April-Dec, 2008. No bonafide reason for non-availability of imports from a reliable source is given.
- i. DGCI&S information for the period till August '08 was released by DGCI&S on 1<sup>st</sup> Feb 2009. Data for Sept. 2008, Oct. 2008, Nov. 2008 and Dec. 2008 has been released by the DGCI&S on 09.03.2009, 10.03.2009, 07.04.2009 and 19.05.2009 respectively.
- ii. Under the circumstances it cannot be admitted that Infodrive information was not available for the period April-Dec., 2008 by around May, 2009.

Evidently, the petitioner has made false, incorrect and misleading statement with a view to seek initiation of the present investigation.

iii. Petitioner has included Power looms for weaving fabrics of width >30 cm. nes shuttle type, Machines for weaving fabrics of a width > 30 cm shuttle type, nes, Circular loom, Weaving machine (looms) shuttle standard set of spare parts, Weaving machine which cannot be considered as the product under consideration.

### **Examination by the Authority**

19 At the time of preliminary findings, no response to exporter's questionnaire was filed in the prescribed format by M/s Starlinger, Austria (exporter). Therefore, the Authority did not take cognizance of this response and did not accept their individual treatment claims for the purpose of preliminary findings. Subsequently, Starlinger, Austria has furnished requisite information in the prescribed format, which was accepted and verified by the Authority. The Authority, for the purpose of final findings, determines volume and value of imports based on information now made available on record and verified.

### **Non Injurious Price**

#### **Submission by Starlinger GmbH, Austria**

20. Starlinger GmbH, Austria has exported only 6 shuttle Circular Weaving Machines during the period of investigation. The import data provided by the petitioner also is only in respect of 6 shuttle Circular Weaving Machines for the entire injury period. However, petitioner produced 6, 8 and 10 shuttles Circular Weaving Machines. The non-injurious price determined should relate only to the 6 shuttle Circular Weaving Machines.

#### **Submission by the Petitioner**

21(a) The petitioner/applicant has submitted that machines with 6 shuttles, 8 shuttles or 10 shuttles are used for the same purposes and in an interchangeable manner. Having defined the product under consideration as 'CWM having six or more shuttles', it is appropriate to determine a single NIP for the product under consideration. There is no need to determine a separate NIP for 6 shuttles alone. In a number of cases, DGAD had determined a single NIP for the product under consideration irrespective of the fact that the said product under consideration consisted of several different models/grades. The said established practice may be followed in this case also and only a single NIP may be determined for the product under consideration as a whole.

(b) The petitioner in its post-disclosure comments had stated that the Authority had adopted return on capital employed at the rate of 22% ignoring the fact that because of relatively lower capital investment and higher contribution of lower technology/R&D efforts coupled with higher employment of labour and outsourcing of components from vendors, capital goods industry enjoys a higher rate of return on capital employed as

compared to other industries. The petitioner had therefore requested the Authority to provide the return of at least 45% on capital employed.

(c) NIP of the domestic industry should be increased by average rate of CST to offset the effect of CST on domestic sales vis-à-vis SAD which is levied on imports in lieu of CST and which is eligible for credit.

### **Examination of the Authority**

22(a) The Authority notes that the product under consideration in the present investigation is Circular Weaving Machine having six or more shuttles. However, during the course of investigation, it was found that the machines having only six shuttles have been exported to India by Starlinger, Gmbh, Austria during the POI. Therefore, for the sake of fair comparison, dumping margin and injury margin have been determined for the said machines having six shuttles in respect of the said co-operative exporter.

(b) The Authority has determined the NIP for the domestic industry after duly considering the expenditure incurred by the petitioner on R&D, labour and cost of outsourced components, etc after due verification. Further, the Authority has provided return on capital employed at the rate of 22% on capital employed as per the consistent and uniform practice followed in all the anti-dumping cases.

(c) It has been the consistent practice of the Authority not to consider CST for the purpose of determining NIP and accordingly the Authority has not considered the CST in computing the NIP.

### **G. Dumping Margin**

23(a) Following submissions have been made by the domestic industry:

- (i) Suppliers to Starlinger, China are either wholly owned or partly owned by the State.
- (ii) It is stated that Starlinger China export profits are calculated at standard costs for the product concerned plus an appropriate profit. It is not clear as to what method is used by them to calculate export profits. They also say that profits are used to cover start up costs. The company was started in the year 2005. When did the start up period end? What was the amount of start up costs that were met from export profits? What portion of start up costs was met from domestic profits? The answer raises more queries than it answers.
- (iii) The company suffered loss on account of export sales and the accumulated losses were financed by equity and, receiving deposits from a related company i.e. Starlinger Austria and deferring payment to suppliers. When payments are deferred to suppliers, to cover the accumulated losses, it is clear indication of non-market nature of the economy.

(iv) The landlord is stated to be provider of hired personnel. It is further stated in response that the workers are not employed by Starlinger – China but outsourced. The details of the relationship between Starlinger – China and the personnel provider have not been indicated.

(v) There is no information with regard to the source from which the machinery and other fixed assets were procured by Starlinger - China.

(b) Following submissions have been made by the exporter and other interested parties.

(i) The Designated Authority has consistently held that possibilities of State interference cannot be ruled out in such cases where one of the shareholders is a State owned/controlled entity. However, in the present case, 100% shareholding is by an Austrian company.

(ii) Therefore, not only there was no state interference in the past, but also no possibility of State interference in the future.

(iii) A majority of inputs used in export product are being procured from Starlinger Austria. Thus, there is no possibility of the inputs price reflecting non-market forces.

(iv) Starlinger, China maintains its financial records consistent with the Austrian Accounting Standards, European Accounting Standards, International Accounting Standards and Chinese Accounting Standards.

(v) The company has been set up by Starlinger and no on-going plant was acquired by Starlinger.

(vi) Starlinger, China is 100% owned by Starlinger group. All Directors, Chief Executive and other senior management in Starlinger, China are non Chinese national and are appointed by Starlinger, Austria. Starlinger, China has 100% investment from Starlinger. There is no investment from Govt. of China. The company has technology provided by Starlinger, Austria.

(vii) Starlinger, China has very limited unrepresentative sales of the product under consideration in the domestic market. Considering the prices of the product under consideration, the company should be given market economy status on this account itself.

(viii) Steel which is the predominant raw material used in the manufacture of Circular Weaving Machines is not transacted under market economy conditions in China PR and that steel is highly subsidized in China PR.

### **Examination by the Authority**

24. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country as per para 8(2) of Annexure 1 of the Rules. Upon initiation, the Authority advised the producer/exporter in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known exporters for rebutting presumption of non market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China PR to advise producers/exporters in their country to provide information

25. M/s. Starlinger Plastics Machinery (Taicang) Co. Ltd. responded to the initiation of the investigation and had provided information. It was noticed that Starlinger & Co. GmbH – Austria has exported the product to Indian market which was produced by its related company Starlinger Plastics Machinery (Taicang) Co. Ltd. China PR. Starlinger, Austria had, however, not filed information in the prescribed format. Accordingly, the Authority did not grant market economy status to the responding producer/exporter and determined normal value in accordance with Para-7 of Annexure-I. Subsequent to the preliminary findings, the company has filed information in the prescribed format, which has been accepted and taken on record by the Authority. Verification of producer's and exporter's data/information was conducted at the premises of Starlinger Plastics Machinery (Taicang) Co. Ltd. China PR and Starlinger & Co. GmbH – Austria to the extent considered necessary. However, during the course of investigation, it was found that Circular Weaving Machines having only six shuttles were exported to India by the cooperative exporter during the POI. Therefore, the Authority, for the purpose of fair comparison, has considered only Circular weaving machines having 6 shuttles for determination of dumping margin and injury margin, so far as the co-operative exporter is concerned.

### **H. Market Economy Issue**

26. With regard to market economy treatment, Annexure I of the Rules provides as under:

8. *The term “non market economy country” subject to the Note to this paragraph means every country listed in that note and includes any country which the Designated Authority determines and which does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise. While making such determination, the Designated Authority shall consider as to whether, -*
  - (i) *the 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;*

- (ii) *the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;*
- (iii) *such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and*
- (iv) *the exchange rate conversions are carried out at the market rate; Provided that in view of the changing economic conditions in Russia and in the People's Republic of China, where it is shown on the basis of sufficient evidence in writing on the factors specified in this paragraph that market conditions prevail for one or more such firms are subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.*

27. The Authority notes that M/s Starlinger, China submitted information in prescribed format to rebut the presumption of non market economy. The verification of the information has been conducted by the Authority at their premises in China. During the verification, Authority has examined various parameters as defined under the Rules and notes that no material has been found to show that there is any State interference with regard to determination of price of the product. Thus it is reasonable to believe that the company is free to determine its own price based on market forces.

28. It has been found that company is sourcing key inputs/components of the export product from its related company Starlinger, Austria. All components which have technology involved are sourced from Austria. Some parts and components are also sourced from suppliers from China PR. All such Chinese supplies are from unaffiliated private entities. As regards the steel components procured from China PR, the same comprises of 846 kg in one unit of the subject goods and value wise it constitutes around 4.5% of the cost of production considering the international steel price during the POI. The share of steel components will be further lower if one considers the differential between the international price and the subsidized price. In any case, the component of subsidized steel procured from local market is found to be too insignificant to have a bearing on the cost of the product and on the market economy status in the present case.

29. The technology used in production of product concerned is provided by related company i.e. Starlinger, Austria.

30. The company is free to employ people as per its requirement and production plan.

31. It has been noted that plant and equipment involved in production of product is quite limited, as major production activity consists of sub-assembly and assembly of parts & components.

32. An issue has been raised by the domestic industry that the components and parts sourced from Austria are not at arm's length basis. The issue has been specifically examined by the Authority. The Authority notes that critical and high tech components sourced from Austria are not at loss. There are two kinds of supplies from Austria – components & parts produced by Starlinger in Austria and components & parts sourced by Starlinger, Austria from markets outside China and supplied to Chinese plant. Certain components and parts produced by Starlinger in Austria are supplied to Starlinger China at a profitable price. Further, parts and components sourced from market and supplied to Chinese plant are at a price higher than the procurement price (i.e., after addition for markup). Therefore, Authority considers that the transactions between Starlinger, Austria and Starlinger, China are arms length transactions and cost of production of Chinese plant reasonably reflects the costs associated with production and sale of the product.

33. The company is 100% owned by Starlinger, Austria. It does not involve any investment of Chinese State or Chinese individual. The only shareholder of the company is Starlinger Export GmbH, which is an Austrian limited liability company registered with the Company Registrar of Commercial Court, Vienna 'Hendelsgericht' Wien, under the no. 211625 having its register seat in Millergasse 9, 1060 Wien and which is a part of Starlinger Group.

34. None of the management personnel of the Starlinger, China is of Chinese nationality and no Chinese director is in company's board.

35. Authority did not find any evidence to show that preferential rate for loans is available to the company.

36. In view of the above, Authority holds that the company is operating under market economy conditions and considers it appropriate to accord market economy treatment to the company and determine normal value as per records maintained by the company.

#### **I. Normal Value**

37. Starlinger, China has furnished information in Appendix 1 relating to sales in domestic market. Starlinger, Austria have furnished information in Appendix 1A relating to exports to Indonesia and in Appendix 2 for exports to India along with other Appendices. In the disclosure statement, Authority noted that the company has made just two sales transactions involving 8 machines in the domestic market, which are spread over just two months of POI. The Authority, therefore, did not treat the domestic sales as representative basis of normal value. On the other hand, the Authority noted that domestic industry as well as the exporter has claimed normal value on the basis of

export price to Indonesia. Therefore, the Authority proposed to determine normal value based on export price to Indonesia as appropriate third country after making adjustments on the extra materials used in heddle wire version exported to Indonesia. However, in their response to the disclosure, the applicant has stated that after according MET status to the producer (Starlinger, China), domestic sales within China cannot be discarded as the quantum of sales comprised more than 6% of exports to India as against the requirement of 5% laid down in the relevant WTO Agreement. The Authority has accepted the plea of the applicant and determines the normal value on the basis of domestic selling price of the subject goods in China PR. Accordingly, the invoice price of local sales in China PR i.e. US\$ \*\*\*\*/machine has been considered as the basis of normal value.

38. The machines sold in the domestic market in China have following optional features/attachments vis-à-vis standard version of machines exported to India, as seen from the records maintained by the company:-

- Driven inlet system
- Two sets of accessories

39. The machines sold in China PR thus have special equipments included, which were optional as per requirements of the customer in China PR. In view of the same, the Authority considers adjustment of the selling price by an amount of US\$ \*\*\*\*/machine to account for the total cost of the special/additional parts. Further adjustment on account of import duty (US\$\*\*\*\*) for purchased parts from Starlinger, Austria has been considered on the basis of the verified data.

40. Thus normal value in respect of Starlinger, Austria (Exporter) and Starlinger, China (Producer) is determined as US\$ \*\*\*\*/machine.

#### **Normal value for non-cooperating exporters**

41. The Authority notes that no other party from China PR has responded to the notice of initiation or to the disclosure. Therefore, the Authority has determined the normal value for the purpose of final findings for the residual category at the same level as determined in the preliminary findings.

#### **J. Export Price:**

#### **42. Issues raised by the petitioner**

(i) A sample order confirmation for 4 machines issued by Starlinger, Austria to an unrelated customer in India, confidentially obtained by Lohia Starlinger Ltd is attached. The said order confirmation shows that the sales price quoted by Starlinger, Austria is inclusive of the following additional elements:-

- a) Wearing Parts and Spare Parts amount to USD 800.
- b) Packing, loading, installation and commissioning charges.

(ii) With regard to installation and commissioning, the document states that it would involve providing supervision and aid extended by the technicians from Starlinger and/or their sub contractors for a period of 12 man days and 1 flight ticket. If the services are required for any period over and above 12 man days, a fee of USD 100 per man day would be charged. Applying the same rate for the first 12 days included in the export price, an amount of USD1200 should be deducted from the export price towards cost of services rendered in India towards installation and commissioning. In addition, a minimum of USD100 may have to be deducted towards airfare.

(iii) Wearing parts and spare parts worth USD800 are also being supplied within the export price quoted. Therefore, the same may also be deducted.

(iv) It is also necessary to examine the appropriateness of making deductions towards packing and loading expenses also.

(v) A perusal of the document shows that the terms of sale include provisioning of warranty for (a) mechanical defects for a period of 15 months after shipment or 12 months after setting into operation whichever is earlier (b) electrical defects for a period of 9 months and 6 months respectively after shipment or setting into operation. Though it is difficult to determine the exact amount of warranty expenses included in the export price, on a conservative basis, a deduction of 6% \*(at the rate of 0.5% per month and the 12 months) may be made towards warranty charges.

(vi) A set of print outs has also been attached taken from the website of Starlinger, Austria showing that they have appointed agents worldwide for selling their products. When Starlinger worldwide agents work in connection with the sale of their products, it is natural to conclude that Starlinger would be paying commission to those agents.

(vii) While determining the landed value of imports from the export price reported by Starlinger, Austria, it is necessary to make deductions towards the above as these elements represent activities carried out within India after they are cleared from the customs.

(viii) Post Disclosure, the applicant has stated that ex-factory export price has not been adjusted on account of (a) profit earned by Starlinger Austria; (b) Packing & Loading Expenses; (c) installation and warranty/guarantee charges (d) costs of Delhi office of Starlinger, Austria (e) Warranty/Guarantee charges (f) Non-refundable portion of VAT (g) SGA expenses and profit of all other

related companies involved in export to India; and (h) inland freight and port handling & bank charges; and (i) extra parts.

### **Comments of the Exporter**

43. With regard to the above submissions made by the petitioner, the exporter has made the following comments:-

- (i) The petitioner has provided confidential documents in respect of the exporter's business, but has withheld from the Authority about the manner in which the petitioner company is doing business. This is vital for the reason that the Authority needs to examine whether there are differences in various parameters and if there are no differences, such claims are required to be ignored/rejected.
- (ii) Landed price cannot be adjusted for any of the factors identified by the petitioner. There is no basis for the belated claims made by the petitioner and no adjustment is required to be made on account of factors identified by the petitioner, Starlinger submits that in any case, landed price cannot be adjusted for any of the factors identified by the petitioner.
- (iii) The landed price cannot be adjusted for mandatory spare parts for the reason that the petitioner has also supplied mandatory spare parts, cost of which must have been included in the non-injurious price determined. Since non injurious price is inclusive of mandatory spare parts, the landed price must also be inclusive of mandatory spare parts.
- (iv) Packing and loading expenses cannot be deducted from landed price of imports. The Designated Authority has never made any such adjustments. The landed price of imports is defined by the Authority and the same implies CIF price plus duties of customs. CIF price includes packing & loading expenses.

Post-disclosure, the following comments are furnished by the exporter:-

- (i) Price adjustment for special equipments fitted with the machine should be based on difference in sale price, and not on cost basis as has been done in case of special equipments in the subject goods exported to Indonesia.
- (ii) Even on the basis of cost difference, the same cannot be computed only on account of material cost. It should also take into account processing/ conversion cost and a reasonable profit which are in the nature of production cost reflected in Starlinger, China's Appendix-7.
- (iii) As regards warranty claims, the petitioner has made no provision on account of warranty/guarantee in its annual report. Further, the petitioner themselves considers that the expenditure on account of possible warranty is not ascertainable.

- (iv) It would be seen from the information supplied that the company has provided some additional features in the machine exported to Indonesia and sold in Chinese markets. It is for the reason that price adjustment is required to be done in respect of optional features/spares/equipments in order to ensure fair comparison.
- (v) As regards recommendatory/mandatory spare parts, such spares are provided by the company in its sales in domestic market and exports to India and Indonesia also. Further, such recommendatory spares have been provided by the petitioner also.
- (vi) Both normal value and export price in respect of subject goods include mandatory spare parts.
- (vii) As regards packing & loading cost for dumping margin, these costs are same for goods exported to India and Indonesia.
- (viii) Installation and commissioning costs are included in both landed price and non-injurious price and therefore is not required to be adjusted. Product under consideration being in nature of capital goods invariably requires installation & commissioning. Such installation & commissioning might be charged separately or might be included in the price. Further, installation & commissioning expenses include costs in the nature of travelling and manpower costs. These are charged to income & expenditure statement under their respective accounting heads. Therefore, sales revenue might be inclusive or exclusive of installation & commissioning cost. However, the non-injurious price determined for the applicant is based on cost of production and not based on sales price.
- (ix) As regards determination of injury margin, landed price of import does include installation & commissioning cost. However, the NIP determined for the petitioner must also be inclusive of these costs for the reason that these expenses must have been accounted for by the petitioner under the head 'salary & wages' or indirect SGA expenses.
- (x) Installation and commissioning charges cannot be deduced from landed price of imports for the reasons that (a) petitioner has also incurred the same expenses on this account (b) these expenses are not in the nature of direct costs, but are in the nature of fixed/indirect overhead expenses. In fact, the Designated Authority had earlier done investigations relation to capital goods such as Tyre Curing Presses, Plastic Processing Machines, SDH Equipment, X-Ray Baggage Machine etc. to name a few. The Designated Authority has, however, never carried out such price adjustments.
- (xi) All parts and components supplied by Starlinger Austria to Starlinger China are at fair market price.
- (xii) It has been clarified that Starlinger does not have any office in India. Starlinger Exports has an office in India and Starlinger Exports has charged to Starlinger & Co. on account of these services provided in India. During the verification, officers specifically asked for the information in this regard, it was shown that the expenses of the company included expenditure on account of expenditure charged by Starlinger Exports.

## **Examination by the Authority**

44. It is noted that Starlinger, Austria had exported 129 '6-shuttle' machines to India during POI.

45. Starlinger, Austria has provided transaction wise information relating to exports to India in the form and manner prescribed. It is noted that the company has provided information on exports to India during POI on the basis of date of invoice. It is noted that all exports by Starlinger, Austria to India or third countries are back to back sales. Starlinger, Austria has purchased the goods from Starlinger, China (Producer) and exported/invoiced the same to its foreign customers. The company was asked to link all purchases made from Starlinger, China with corresponding sales made to India and Indonesia, which was provided by the company. The company has exported 129 machines to India during the investigation period, spreading over 7 export transactions. Authority notes that sales made to India are on CFR basis. In the disclosure statement export price was proposed to be determined on the basis of weighted average CFR price of exports made during the POI. Adjustments were proposed to be made on account of ocean freight, bank charges and SGA expenses of Starlinger, Austria to arrive at export price at ex-factory level, after due verification of exporter's data and records.

46. The Authority has duly examined the post-disclosure comments of the interested parties and notes that adjustments in export price on account of recommendatory spare parts and installation & commissioning is not warranted as the same are included in the domestic sales. On warranty, the Authority notes that the amount charged thereon is not ascertainable for both the applicant as well as the exporter and warranty is invariably associated with products in nature of capital goods, whether supplied by the applicant or by the exporter. Therefore, no adjustment on warranty is considered by the Authority. Thus the net export price for Starlinger, GmbH, Austria is determined as US\$ \*\*\*\*\*/machine based on weighted average CFR price (US\$\*\*\*\*\*/machine) duly adjusted on account of ocean freight (US\$\*\*\*\*), bank charges (US\$\*\*\*\*) SGA expenses including India office expenses of Starlinger, Austria (US\$\*\*\*\*) and profit of the related exporter i.e. Starlinger, Austria (US\$\*\*\*\*). Amount considered for adjustments on the aforesaid heads has been determined on the basis of export documents and information furnished by the exporter after due verification.

## **Export price for non-cooperative exporters from China PR**

47. Export price for residual category, for the purpose of final findings, is determined at the same level as determined earlier for the purpose of preliminary findings.

## **K. Dumping Margin**

48. On the basis of comparison of normal value and export price at ex-factory level as determined above, dumping margin is worked out as under:

	US\$/Machine			
	Normal Value	Net Export Price	Dumping Margin	Dumping Margin %
M/s. Starlinger Plastics Machinery (Taicang) Co. Ltd., China PR (Producer) and M/s. Starlinger & Co. Gesellschaft mbH. – Austria (Exporter)	****	****	****	21.32
Any other combination of exporter/producer	****	****	****	22.08

## **L. Methodology for Injury Determination and Examination of Causal Link**

49. As regards injury and causal link, the Authority notes that no interested party other than the petitioner has made any submission in this regard after preliminary findings. Therefore, the Authority proposes to confirm its preliminary findings on injury determination and determination of causal link. Accordingly, the Authority proceeds with final determination of injury and causal link as under:-

### **Injury Determination**

50. For the purpose of injury analysis the entire imports from the subject country have been treated as dumped imports.

### **Submissions by the Domestic Industry**

51. The domestic industry has raised the following arguments:-

- (a) Material injury suffered by domestic industry is shown in terms of (a) volume effect; and (b) price effect.
- (b) **Increase in absolute terms:** Imports from the subject country in the year 2006-07 were 157 units. In the year 2007-08, it went down to 90 units. However, during the POI (nine months of 2008-09 i.e. April-December 2008), imports have increased to 247 units. In terms of indexed numbers, imports during April-Dec 2008 were 157% of imports made during 2006-07.
- (c) **Increase in relative terms:-** Dumped imports as a percentage of domestic production increased from 8% in 2006-07 to 12% during April-Dec. 2008. During the same period dumped imports as a percentage of domestic consumption increased from 11% to 13%.

**(d) Effect of dumped imports on the prices of the domestic industry**

(i) **Price undercutting:** The landed value of imported goods was 18% higher than the sales realization of the domestic industry during 2006-07. However, landed values dropped significantly in spite of the increase in the domestic sales realization and were lower than the domestic sales realization by 9% during 2008-09.

(ii) **Price underselling:** Price undercutting does not show the full extent of impact of the dumped imports on the prices of the domestic industry. The domestic industry was not able to increase their prices commensurate with increase in cost. Therefore, one should actually look at price underselling. Price underselling was negative 18% during 2006-07 when imports started. It was negative 2% during 2007-08. However, it was turned to a positive 17% during the POI (April-Dec 2008). With such a significant price underselling, profitability of the domestic industry has been adversely affected.

(e) **Market share:-** Upto 2005-06, there were no imports and the domestic industry enjoyed 100% of the market share. During 2006-07, market share of domestic industry went down to 89%. It increased to 94% in 2007-08 and during the POI (April-December 2008), market share again went down to 87%.

(f) **Capacity utilization:-** Capacity utilization of the domestic industry has gone down from 94% during 2004-05 to 83% during POI (April-Dec 2008).

(g) **Profits:-** Domestic industry had earned a profit of Rs.\*\*\*\* lacs during 2005-06 when there were no dumped imports. Upon arrival of dumped imports during 2006-07, profits went down to Rs.\*\*\*\* lacs. Profits went further down to Rs.\*\*\*\* lacs during 2007-08 and the domestic industry has incurred a loss of Rs.\*\*\*\* lacs during POI (April-Dec 2008). From a profit of Rs.\*\*\*\* lac per machine during 2005-06, domestic industry's profits went down to Rs.\*\*\*\* lac per machine during 2007-08. During POI (April-Dec 2008), they incurred a loss of Rs.\*\*\*\* lac on every machine sold.

(h) **Return on investments:** During 2005-06, ROCE was 57%. It went down to 39% during 2006-07 and further to 14% during 2007-08. With increased dumping, ROCE went down to a mere 3% during April-Dec 2008. At this rate of ROCE, a capital goods manufacturer can never survive.

(i) **Ability to raise capital or investments:-** Where the ROCE is just 3%, ability to raise capital or investments would be highly jeopardized.

### **Examination by the Authority**

52. Authority has noted the views expressed by the domestic industry and examined the mandatory factors for the purpose of final injury determination and causal link analysis in these findings.

53. Rule 11 of Antidumping Rules read with Annexure-II provides that injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

54. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.

55. All economic parameters affecting the Domestic Industry as indicated above such as production, capacity utilization, sales volume, etc. have been examined as under.

#### **M. Volume Effects of Dumped Imports: Import volumes and market shares**

##### **a) Import Volumes**

56. Product under consideration is specifically importable under Customs Tariff Head 8446.21.90 and 8446.29.00. The imports data shows that the imports have also been made under different custom tariff heads.

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

58. For the purpose of injury analysis the Authority has relied on import data procured from Infodrive and volume of imports of the subject goods from the subject country have been analysed as under:-

##### **b) Import Volumes and share of subject country**

Particulars	Unit	2005-06	2006-07	2007-08	Apr.- Dec.
-------------	------	---------	---------	---------	------------

				2008 (9 months)	
Imports from China PR	Nos.	Nil	157	90	193
Domestic Production & Sales	Nos.	1616	1941	2483	2070
Total Demand	Nos.	1616	2098	2573	2263
Share of Imports from China PR	%	0	7.48	3.50	8.52

59. The data shows that imports from subject country increased from 90 machines during 2007-08 to 193 machines during POI (9 months only). Similarly, the share of imports in the domestic demand has increased from 3.5% during 2007-08 to 8.52% during POI. It has been observed that imports have increased in absolute terms and also in relation to domestic demand.

**c) Production and capacity utilization of the Domestic Industry**

Particulars	Unit	2005-06	2006-07	2007-08	Apr.- Dec. 2008 (POI)
Capacity	Nos.	1887	2166	3138	2484
Production	Nos.	1616	1941	2483	2070
Capacity Utilization	%	86	90	79	83

60. The above data shows that capacity of the domestic industry has been increasing every year except 2007-2008. The capacity utilization has increased from 79% during the year 2007-08 to 83% during POI and decreased from 86% during base year to 83% during the POI.

**d) Sales of Domestic Industry**

	Unit	2005-06	2006-07	2007-08	Apr.- Dec. 2008(POI)
Domestic Sales	Nos.	982	1308	1827	1599

61. The data on sales indicates that the domestic industry sold 1827 number of machines during 2007-08 which has reached a level of 1599 during POI (9 months), thereby showing an increasing trend.

**Price Effect of the Dumped imports from subject country on the Domestic Industry**

**Evaluation of landed price of imports over the injury analysis period**

### **Views of applicant regarding Landed Value during POI**

62(i) While determining the landed value of imports from the export price reported by Starlinger, Austria, it is necessary to make deductions towards wearing parts and spare parts, packing, loading, installation & commissioning charges, warranty and SGA expenses of Starlinger, Austria from the CFR price of imports as these elements represent activities carried out within India after they are cleared from the customs.

(ii) Expenses incurred by the exporter through their related entity in India and a notional profit attributable to such operations shall be deducted from the export price before arriving at the landed value. The cost of operations of the Delhi liaison office is to be deducted while arriving at the ex-factory export price as well as landed value as landed value cannot include the cost of activities to be performed in India after the goods are cleared from Indian Customs.

### **Views of exporter regarding Landed Value during POI**

63(i) Landed price cannot be adjusted for any of the factors identified by the petitioner. There is no basis for the belated claims made by the petitioner and no adjustment is required to be made on account of factors identified by the petitioner, Starlinger submits that in any case, landed price cannot be adjusted for any of the factors identified by the petitioner.

(ii) The landed price cannot be adjusted for mandatory spare parts for the reason that the petitioner has also supplied mandatory spare parts, cost of which must have been included in the non-injurious price determined. Since non injurious price is inclusive of mandatory spare parts, the landed price must also be inclusive of mandatory spare parts.

(iii) Packing and loading expenses cannot be deducted from landed price of imports. The Designated Authority has never made any such adjustments. The landed price of imports is defined by the Authority and the same implies CIF price plus duties of customs. CIF price includes packing & loading expenses.

(iv) As regards determination of injury margin, landed price of import does include installation & commissioning cost. However, the NIP determined for the petitioner must also be inclusive of these costs for the reason that these expenses must have been accounted for by the petitioner under the head 'salary & wages' or indirect SGA expenses

### **Examination by the Authority**

64. The Authority has duly examined the comments of the interested parties in regard to determination of landed value and has considered adjustments in CFR price of export on account of recommendatory spare parts and installation & commissioning for the purpose of determination of landed value, as these are figuring in the export

invoices to India and quantified in the confirmed export orders. On warranty, the Authority notes that the amount charged thereon is not ascertainable for the applicant and warranty is invariably associated with products in nature of capital goods, whether supplied by the applicant or by the exporter. Thus, no adjustment on warranty is considered by the Authority. With regard to the adjustment from the landed value on account of mandatory spare parts supplied by the exporter, the Authority notes that the domestic industry was not supplying any spare parts along with the machines free of charge and the selling price charged by the domestic industry for the said machines did not include the price for mandatory spare parts. The Authority, therefore, deducted the sales value of mandatory spare parts at US\$ \*\*\*\* per machine and US\$ \*\*\*\* per machine towards installation and commissioning expenses from the CFR price of the machine. As regards the expenses of Indian office of Starlinger Exports GmbH, a related company of the exporter, the Authority notes that as per the permission granted by the Reserve Bank of India, the Indian office of Starlinger Exports, GmbH can undertake only liaison work and cannot undertake any trading or commercial activity. Further, no commission shall be charged or any other remuneration received/income earned by the office in India for the liaison activity. In view of the above, the Authority finds no merit for deducting the Delhi Office expenses from the landed value as claimed by the petitioner. Thus the Landed value for POI is determined as Rs. \*\*\*\*/machine, based on the weighted average CFR price duly adjusted for price of recommendatory spare parts, expenses on installation & commissioning and insurance to make it CIF price of imports.

**(a) Price undercutting and underselling effects**  
**Price Undercutting**

Particulars	Unit	Apr.- Dec. 2008 (POI)
Volume of Imports	Nos.	129
CFR value per unit (Net)	Rs.	****
Insurance @ 0.05% on CFR	Rs.	****
CIF value per unit	Rs.	****
Landing Charge 1%	Rs.	****
Assessable value	Rs.	****
Basic Customs Duty plus cess	Rs.	****
Landed price of imports	Rs.	****
Net Selling Price	Rs.	****
Price Undercutting	Rs.	(-)****
Price Undercutting (%)	%	(-)10 to (-)15

**Price underselling**

Particulars	Unit	Apr.- Dec. 2008 (POI)
Landed price of imports	Rs./machine	****
Non-Injurious Price of domestic industry	Rs./machine	****

Price Underselling	Rs./machine	(-)****
Price Underselling (%)	%	(-)5 to (-)10

65. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting and price underselling. For the purpose of this analysis the weighted average Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry have been compared with the weighted average landed value of imports from the subject country.

66. In determining the weighted average net sales realization of the domestic industry, freight outwards and commissions offered by the domestic industry and the central excise duty paid have been adjusted.

67. Price undercutting has been determined by comparing the weighted average landed value of dumped imports from the subject country over the entire period of investigation with the weighted average net sales realization of the domestic industry for the same period. The landed value of imports has been calculated by adding 1% handling charges, prevailing customs duty and cess to the CIF value of machines imported into India from the subject country as verified by the Authority. The price undercutting from subject country remains negative during POI.

68. For the purpose of determining price underselling, the weighted average landed price of imports from the subject country has been compared with the non-injurious price of the domestic industry determined for the POI. The price underselling in respect of the subject goods has been determined as Rs.\*\*\*\*/machine for the POI.

**(b) Price suppression and depression effects of the dumped imports:**

69. Price depression exists when the industry's prices are lower than the level of the previous period. During the POI, the average net selling price of the domestic industry was Rs.\*\*\*\* as compared to Rs.\*\*\*\* during the year 2007-08. This indicates that price depression has not occurred during the POI. Price suppression occurs when dumping prevents price increases that could otherwise take place due to increase in costs. In this case, the domestic industry has not been able to increase its selling price to match the cost of production.

**N. Examination of other Injury Parameters**

70. After having examined the volume and price effects of the dumped imports on the domestic industry and injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares in the earlier section, other economic parameters of injury caused by dumped imports have been analyzed hereunder:-

**(a) Profit/Loss and Return on Investment**

	Unit	2005-06	2006-07	2007-08	Apr.- Dec. 2008(POI)
Sales (NSR)	Rs. Lacs	****	****	****	****
Trend	Indexed	100	133	188	172
Cost to make and sell	Rs. Lacs	****	****	****	****
Trend	Indexed	100	141	217	210
Profit/Loss before tax	Rs. Lacs	****	****	****	(-) ****
Trend	Indexed	100	92	53	(7)
Profit/Loss before interest and tax	Rs. Lacs	****	****	****	****
Trend	Indexed	100	94	61	13
Capital Employed for domestic sales	Rs. Lacs	****	****	****	****
Trend	Indexed	100	139	247	294
Return on Capital Employed	%	****	****	****	****
Trend	Indexed	100	68	25	4

71. The above data shows that domestic sales realization of the domestic industry has not increased commensurate with the increase in cost to make and sell. The profitability of the domestic industry has declined over the injury investigation period and resulted in net loss on the domestic sales in the POI. The Return on Capital Employed for domestic sales of the domestic industry has significantly declined during the POI as compared to the base year as well as the preceding year.

#### (b) Cash Profit

72. Cash profits of the domestic industry over the injury period have been as under:-

	Unit	2005-06	2006-07	2007-08	Apr.- Dec. 2008(POI)
Profit/Loss before Tax and interest	Rs. Lacs	****	****	****	****
Trend	Indexed	100	94	61	13
Depreciation on domestic sales	Rs. Lacs	****	****	****	****
Trend	Indexed	100	161	375	343
Cash profit/loss for domestic sales	Rs. Lacs	****	****	****	****
Trend	Indexed	100	101	94	47

73. It is seen from the above that the cash profits of the domestic industry has significantly deteriorated during the POI as compared to the base year.

**(c) Employment and wages**

Particulars	Unit	2005-06	2006-07	2007-08	Apr.-Dec. 2008 (POI)
Number of Employees	No.	439	462	471	475
Trend	Indexed	100	105	107	108
Wages	Rs. Lakhs	****	****	****	****
Trend	Indexed	100	109	135	116*
Average monthly wages per employee	Rs.	****	****	****	****
Trend	Indexed	100	103	126	107

\* Annualised

74. From the above, it is evident that the number of employees has increased. However, average monthly wage per employee has declined during the POI as compared to previous year.

**(d) Magnitude of Dumping**

75. Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margin determined against the subject country for the POI, is significant.

**(e) Factors affecting prices**

76. Examination of the trend in the volume of dumped imports from the subject country indicates volume effect of dumped imports. However, price undercutting and price underselling effects are found to be negative.

**Conclusion on injury parameters**

77. The above analysis of the factors indicate that in spite of improvement in the production and sales in absolute terms, the domestic industry suffered injury on account of decline in market share, net sales realization, profitability, return on investments and cash profits. Volume of dumped import from the subject country has increased significantly from 90 numbers of machines during the preceding year to 257 nos. (Annualized) during POI. The injury suffered by the domestic industry is material and significant.

**O. Other Known Injury factors and Causal Link**

78. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti Dumping have been examined to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined:-

**i) Volume and prices of imports from other sources**

79. During POI, no imports of the subject goods from countries other than the subject country have been reported as apparent from the import data of DGCI&S. Therefore, the imports from other countries cannot be considered as dumped imports causing injury to the domestic industry.

**ii) Contraction in demand, change in pattern of consumption and Development of technology**

80. Demand for the subject goods shows a healthy growth during the entire injury investigation period and therefore, the injury to the domestic industry cannot be attributed to the lack of demand in the country. The data on consumption and demand does not show any significant change in the pattern of consumption of the product. There is no mention of significant changes in technology by any interested party, which could have caused injury to the domestic industry.

**iii) Trade restrictive practices of and competition between the foreign and domestic producers**

81. The subject goods are freely importable. The applicant is the major producer of the subject goods and account for significant domestic production and sales. No other evidence of conditions of competition or trade restrictive practices has been brought to the attention of the Authority by any interested party.

**iv) Export performance of the domestic industry**

Particulars	Unit	2007-08	Apr.- Dec. 2008(POI)
Export Sales	Nos.	656	471
Cost of export sales	Rs/Lacs	****	****
Selling Price	Rs/Lacs	****	****
Profit/Loss	Rs/Lacs	****	****

82. The Authority notes that the export volume of the domestic industry has not been adversely impacted during the POI. Further the petitioner has been making significant level of profits from their exports during the POI as well as in the previous year. Therefore, injury cannot be attributed to the export activity of the domestic industry.

#### **v) Productivity of the Domestic Industry**

83. Productivity of the domestic industry in terms of production per employee has improved. Therefore this cannot be a factor causing injury to the domestic industry.

84. The above non-attribution analysis shows that no other known factors appear to have caused injury to the domestic industry.

### **P. Factors establishing Causal Link**

85. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated. The causal link between dumped imports and the injury to the domestic industry is analysed on the following grounds:

- a. The volume of dumped import from the subject country has sharply increased at significantly lower prices during the injury investigation period.
- b. Increase in import volumes and suppression of domestic prices adversely affected the profits, cash flow and return on investments of the company.
- c. There is an increase in market share of imports from the subject country. As a direct consequence, market share of the domestic industry has declined. .

86. Therefore, the Authority concludes that the domestic industry suffered material injury due to dumped imports. However, the causal link between dumped imports by the participating/co-operative exporter and injury to the domestic industry is not conclusively established.

### **Q. Magnitude of Injury and injury margin**

87. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject country for determination of injury margin during POI. Thus compared, the injury margin per machine is determined as under:-

**(Rs/machine)**

Producer	Exporter	Injury Margin Rs.
Starlinger, China	Starlinger, Austria	(-)****
Any producer from China PR	Any exporter	****

## **R. Conclusions**

88. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, the Authority concludes that:

- i) The subject goods have entered the Indian market from the subject country at prices less than their normal value in the domestic market of the exporting country;
- ii) The dumping margins of the subject goods imported from the subject country are above de minimis;
- iii) The domestic industry has suffered material injury on account of dumped imports. However, causal link between dumped imports by the participating/co-operative exporter and injury to the domestic industry is not conclusively established.

## **S. Indian industry's interest & other issues**

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

## **T. Recommendations**

90. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on various aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and causal link between dumping and injury to the domestic industry, in terms of the Rules laid down, and having established positive dumping margin against the subject country, and having concluded that the domestic industry suffered material injury, the Authority holds that imposition of definitive anti dumping measure is required only in respect of residual producers/exporters (other than the participating producer/exporter) from the subject country to prevent injury to the domestic industry.

91. Therefore, Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of subject goods, from the subject country, in the form and manner described hereunder.

92. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove injury to the domestic industry. Accordingly, definitive antidumping duty equal to the amount indicated in Col 7 of the duty table given below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on imports of the subject goods originating in or exported from China PR.

### Duty Table

S. No.	Tariff Head	Description Of Goods	Country of Origin / Country of Export	Producer	Exporter	Amount of Duty (US\$/machine)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	8446.21 8446.21.90 8446.29 8446.29.00	Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of width exceeding 30 cms.	China PR/ Austria	Starlinger Plastic Machinery Company (Taicang), China	Starlinger & Co. Gesellschaft m.b.H, Austria	Nil
2	8446.21 8446.21.90 8446.29 8446.29.00	Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of width exceeding 30 cms.	China PR/ Austria	Any other combination of producer and exporter		1193.00

93. An appeal against this order, after its acceptance by the Central Government, shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

(P.K. Chaudhery)  
Designated Authority