

No.-14/2/2009-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan, New Delhi

Dated 10th February, 2012

NOTIFICATION

(FINAL FINDINGS)

Subject: - Anti Dumping Duty investigation in respect of import of Synchronous Digital Hierarchy Transmission Equipment (SDH Equipment), originating in or exported from the People's Republic of China PR and Israel.

No.-14/2/2009-DGAD: Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred as the AD Rules);

BACKGROUND

1. Whereas the Designated Authority (hereinafter referred to as the Authority), in accordance with the Customs Tariff Act, 1975 as amended from time to time (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 or the AD Rules), received an application filed by M/s Tejas Networks Limited (hereinafter referred to as the applicant) on behalf of the domestic industry, alleging dumping of Synchronous Digital Hierarchy Transmission Equipment (hereinafter referred to as the SDH equipment or the subject goods), originating in or exported from the People's Republic of China PR and Israel (hereinafter referred to as the subject countries) and requesting the Authority for initiation of anti dumping investigations for levy of anti dumping duties on the subject goods.
2. And whereas the Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, and after examination of the same with regard to the adequacy and accuracy, issued a Public Notice dated 21st April 2009, published in the Gazette of India, Extraordinary, initiating the anti-dumping duty investigations concerning imports of the subject goods originating in or exported from the subject countries in accordance with the Rule 6 (1) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.
3. And whereas the Designated Authority having regard to the Act and the Rules, investigated and then recommended imposition of provisional Anti Dumping Duty on imports of the

subject goods originating in or exported from China PR and Israel vide Notification dated 7th September 2009, and provisional anti-dumping duties were imposed by the Ministry of Finance vide Notification No. 132/2009-Customs dated 8th December, 2009.

4. And whereas the Designated Authority issued Final Findings on 19th October, 2010 recommending imposition of definitive anti-dumping duty on imports of the subject goods from subject countries and definite Anti-dumping duties were imposed by the Ministry of Finance vide Notification No.125/2010-Customs dated 16th December, 2010.
5. And whereas some interested parties filed appeals before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi challenging the Final Findings dated 19th October 2010 and the Customs Notification issued by the Ministry of Finance.
6. And whereas the Hon'ble CESTAT after extensively hearing the interested parties as well as the domestic industry issued an order dated 11th August, 2011 wherein the Tribunal allowed the appeals of three appellant interested parties, namely, M/s Huawei Technologies Co Ltd, China; M/s Vuppalamritha Magnetic Components, Hyderabad, India and M/s Prithvi Information Solutions Ltd, Secundrabad, India, by remanding the matter back to Designated Authority for affording post-decisional hearing to the appellants and other interested parties, if any, and for making such modifications to the Final Findings as might be necessary as a result of such post decisional hearing. The order of the Hon'ble Tribunal stated as follows:

“Accordingly we allow these appeals by remand to the DA for affording post-decisional hearing to the appellants and for making such modifications to the Final Findings as may be necessary as a result of such post decisional hearing. The respondent-domestic industry and other interested parties, if any, shall also be allowed to participate in such post decisional hearing. Any modifications made in the final findings would be considered by giving effect to the same by the government by carrying out the necessary amendment to the impugned notification imposing anti-dumping Duty. This process shall be completed within 6 months from the date of this order and status quo shall be maintained meanwhile. Since we are allowing the main appeals by remand, the MA (EH) and SPs stand disposed off.”

PROCEDURE

7. The procedure described below has been followed
 - i. Pursuant to the order of the Hon'ble CESTAT, the Authority provided an opportunity to the interested parties to present their views orally in a Oral Hearing held on 23rd January, 2012. The interested parties who presented their views orally at the time of Oral Hearing were requested to file written submissions of the views expressed by them orally and were allowed to file rejoinders to the submissions made by opposing parties. The following interested parties have filed submissions subsequent to the oral hearing:
 - a) Tejas Networks Ltd, India
 - b) Coral Telecom, India
 - c) Huawei Technologies Co. Ltd., China PR
 - d) ECI Telecom Limited, Israel
 - e) Hangzhou ECI Telecommunications Co. Ltd., China PR
 - f) ECI Telecom India Pvt. Limited, India

- g) Ceragon Networks Limited, Israel
- h) RAD Data Communications Ltd, Israel
- i) Vuppalamritha Magnetic Components Ltd., India
- j) Prithvi Information's Solutions Ltd., India
- k) UT Starcom, China
- l) Ciena Corporation, USA
- m) ZTE Corporation, China
- n) Aircel India Limited, and
- o) Vodafone India Limited.

- ii. Submissions made by various interested parties pursuant to the post decisional oral hearing held by the Authority were examined in detail in the light of the facts and the legal provisions and the same have been considered in the present Final Findings by the Authority to the extent considered relevant in the context of the present investigation.
- iii. In view of a large number of participating interested parties and a number of issues raised by these interested parties, the Authority has summarized the submissions made by these interested parties collectively in the present Final Findings.
- iv. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant investigation were disclosed to the known interested parties vide Disclosure Statement dated 6.2.2012. The comments received on the said Disclosure Statement, to the extent considered relevant, have been considered by the Authority in its Final Findings.
- v. *** in the Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority on merits under the Rules.
- vi. Some of the abbreviations used in this Final Findings represent as follows:

SN	Abbreviation	Explanation/meaning
1.	Authority	Designated Authority
2.	DA	Designated Authority
3.	Act	Customs Tariff Act, 1975 as amended in 1995
4.	Rules	Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
5.	PUC	Product under consideration, i.e., SDH Transmission Equipment as defined in the relevant para in this Disclosure Statement
6.	SDH	Synchronous Digital Hierarchy Transmission Equipment
7.	CKD	Completely knocked down condition

8.	SKD	Semi knocked down condition
9.	DI	Domestic industry
10.	ADA	WTO Agreement on Anti Dumping
11.	Tejas	Tejas Networks Ltd.
12.	VMCL	Vuppalamritha Magnetic Components Ltd
13.	Prithvi	Prithvi Information Solutions Ltd.
14.	BSNL	Bharat Sanchar Nigam Limited
15.	MET	Market Economy Treatment
16.	POI	Period of Investigation

Submissions by the petitioner domestic industry in written submissions and rejoinders after the post decisional second oral hearing held on 23rd January, 2012

8. The following submissions were made by the domestic industry:

- i. The domestic industry requested that all the facts, contentions, averments and statements presented in the earlier submissions be deemed to be incorporated whether or not repeated in their submissions filed subsequent to post decisional second oral hearing.
- ii. The petitioner requested the Authority to consider and define the meaning of origin in view of very peculiar facts and circumstances of the present case. Meaning of production/manufacture changes from product to product and has to take into account the production activities carried out in manufacturing such product. Further, the meaning of “originating in” has to be linked to the place where the product has indeed been produced. Such place cannot be restricted to the place where the product has been assembled using screw driver technology.
- iii. “Indian product” is different from “product manufactured in India”. The petitioner refers to and relies on the Recommendations on Telecom Equipment Manufacturing Policy by Telecom Regulatory Authority of India (TRAI) dated 12th April, 2011. It is most vital to ensure that (a) the domestic industry does not face continued dumping even after imposition of anti dumping duties, (b) producers outside China and Israel are not made to pay anti dumping duties merely because of some small operations carried out in China, and (c) Chinese and Israeli producers should not be allowed to continue dumping by importing the product in any of its form and doing the remaining part in India.
- iv. Tejas’ factory at Pondicherry was visited on behalf of the Designated Authority after the preliminary findings. The visit prior to the preliminary findings was to Bangalore, where the company maintains all relevant financial information. Since the purpose of the visit prior to preliminary findings was to verify the financial information, the visit was restricted to Bangalore. Further, the company has a research & development wing at Bangalore. Research and development is at the core of production in this industry.

- v. Verification was conducted at Pondicherry after the preliminary findings. The domestic industry never stated at the time of the first hearing that Pondicherry factory did not exist during the investigation period and that the factory had started production only recently. On the contrary, the Pondicherry factory was operational during the investigation period.
- vi. The petitioner submitted that the Authority, while considering whether M/s Hangzhou ECI Telecommunication Co. Ltd is entitled to market economy treatment or not, only looked into the ownership criterion and ignored the other six criteria and most importantly that market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the Rules. Further, petitioner submits that no sufficient reasoning has been provided by the Authority to establish that M/s Hangzhou ECI Telecommunication Co fulfils all the above mentioned parameters of the market economy treatment.
- vii. There are strong reasons to believe that certain responding exporters (in particular ECI and ZTE) have deliberately suppressed information from the Authority and not reported all their export transactions with regard to the domestic sales and exports to India during the POI. This suppression of critical information seems to have been done deliberately to reduce their Injury and Dumping Margins. It is thus evident that ECI has not established how it is entitled for market economy treatment.
- viii. ECI has not only given wrong information but also they have already started duty circumvention by adopting wrong practices. ECI has re-routed their exports from China to India via Israel to claim misleading "Country of Origin" as "Israel", even when goods are of Chinese origin
- ix. At the outset, it may be noted that Huawei did not press any arguments on the merits of the dispute before the CESTAT, and confined their arguments on the issue of hearing. A written note was also given on this point, which is available in their petition filed before the Hon'ble Supreme Court.
- x. The petitioner requests the Authority to kindly note the fact of non submission of written submissions by the parties who attended the hearing and those who did not attend the hearing and did not file any submissions.
- xi. Huawei has not raised any new grounds beyond those which were argued in the previous hearing before the Authority and which were adequately considered by the Authority in the previous findings.
- xii. Huawei's counsel argued for more than two hours at the time of oral hearing and they have now filed very brief (two page) written submissions. Domestic industry requests the Authority to consider and record this fact. In fact, under the Rules, the Designated Authority is not required to consider any argument raised by an interested party orally if such oral argument is not subsequently reproduced in writing.
- xiii. As regards the accuracy and adequacy of the evidence, the petitioner submitted that petitioner in its petition clearly provided information with regard to Indian production. Petitioner provided information with regard to its own production and Indian production, which clearly established that the share of petitioner in Indian production was about 85%.
- xiv. As regards credibility of CMAI letter, it was stated that CMAI made four statements in its letter. Till date, it has not been established that any of these statements is factually incorrect. This itself establishes credibility of the letter issued by CMAI. As regards the qualification in the CMAI letter, it has been mentioned only to convey that these figures should not be considered as 100% accurate figures. It is relevant to point out in this regard that the certificate that the Authority requires from petitioner,

foreign producers and importers in their respective questionnaires also contains a qualification.

- xv. As regards pre-decisional hearing and polling of domestic producers, it was submitted that there was no legally mandated requirement for holding pre-initiation polling or hearing. In any case, since the petition showed that the share of petitioner was in the region of 86%, significantly above the minimum mandated share of 25%, polling was wholly unnecessary.
- xvi. As regards confidentiality, it is submitted that the exporter itself has not disclosed information with regard to different types of product sold by the exporter in Indian market. No details of imports of sub-assemblies or assemblies made by these parties have been disclosed in their non confidential public versions. Even when a copy of Voice and Data magazine has been demanded as the exporter's counsel claimed to have in possession five years copies of Voice and Data with them, and copy of which was never made available to the domestic industry through public file. It is not clear whether at all these five years copies of voice & data have been filed by them before the Authority.
- xvii. As regards accuracy of Voice and Data magazine, it is submitted that rule is limited to satisfaction of the Designated Authority with regard to accuracy of information. This cannot be read as an obligation on the Authority to verify each and every information filed before the Authority.
- xviii. Disclosure Statement is only a disclosure of essential facts. Disclosure Statement is not a disclosure of determinations. Normal value and export price constitute determinations- an outcome of the essential facts. Normal value and export price are in fact required to be determined after the interested parties have offered their comments on the facts gathered during the course of the proceedings.
- xix. The domestic industry has not imported complete SDH equipments from any country.
- xx. Tejas does not import populated PCB from outside India. Tejas merely gets PCBs populated from its EMS as per its design and drawing.
- xxi. As regards unusually short notice for hearing, the petitioner submitted that this was a second date for the present hearing. The Designated Authority had earlier notified all interested parties for the hearing which was scheduled on 23rd Dec., 2011. The hearing however did not take place that day because of some objection raised by some interested party. The interested parties are well aware that the CESTAT has granted six months time to the Designated Authority to conduct these post decisional hearings and issue necessary findings. Given these circumstances, it cannot be said that unusually short notice was given for the present hearing.
- xxii. Designated Authority has clearly found that the domestic industry has imported only (a) dual use parts and components, (b) PCBs populated by its EMS on the basis of design & drawings given by Tejas (i.e., job work got done by Tejas from outside India).
- xxiii. Petitioner has not imported the product under consideration. Instead, the petitioner has imported dual use parts and components, which are now beyond the scope of the product under consideration and imports of which is similar to imports of raw materials by a manufacturing company. Petitioner has not imported PUC from the subject countries.
- xxiv. Notwithstanding, petitioner submits that the Rule 2(b) provides a discretion to the Authority to treat a domestic producer as ineligible in certain situations.

- xxv. As regards the request to the Authority by some interested party not to issue Final Findings till disposal of the SLP before the Hon'ble Supreme Court of India, the petitioner submitted that the Hon'ble Supreme Court has issued no such orders or direction to the Designated Authority. Infact after extensively hearing the parties present at the time of last hearing, the Hon'ble Supreme Court did not pass any order preventing the Designated Authority from proceeding in compliance of the CESTAT order. Therefore, the petitioner requests the Authority to proceed with the issuance of findings as per the directions of the CESTAT. The CESTAT has granted six months to the Designated Authority and the anti dumping duties have been protected for the same period. It is vital that the findings are issued within time limits so that the domestic industry does not face a "no duty period". In fact, not only no stay has been granted by the Supreme Court, the Court by its earlier order dated 20.09.2011 has specifically directed the Authority to proceed with the remand proceedings.
- xxvi. As regards the Designated Authority having absolute discretion to exclude the product, the petitioner submitted that the Designated Authority can exclude a product from the scope of the product under consideration only if the domestic industry does not have like article. If the domestic industry has like article, the Designated Authority cannot exclude such product type. The Designated Authority does not have absolute discretion in this regard. The exclusion is governed by the facts of the case and whether the domestic industry is having like article.
- xxvii. As regards the exclusion of PTN from the PUC, the petitioner submitted that ZTE provided no information/material whatsoever to establish that PTN is not a type of product under consideration. A party seeking exclusion of a particular product type must establish justification for such exclusion. The onus to establish need for exclusion is onto the exporters. If the exporters contend that particular product is beyond the scope of the product under consideration, then such exporter must establish the same. The domestic industry has provided sufficient evidence to establish that PTN is indeed a type of product under consideration.
- xxviii. Significant activities other than software development are done by Tejas. Submissions made earlier are relied upon. Software development is a part of the total production activity. It is also undisputed position that software is a critical activity.
- xxix. By virtue of Note 6 to Section XVI, assembly amounts to manufacture for the purpose of levy of excise duty – creates a deemed fiction, which can not be extended to other laws – definition in excise law may not have applicability in present case. Definition of manufacture / production is to be considered in the context of the law and purpose for which such word is used. Detailed written submissions are referred to and relied upon.
- xxx. Burden of proof on Tejas to prove that it constitutes the Domestic Industry has been adequately discharged. No material has been given by opposing interested parties to rebut the claim. The finding of the Designated Authority on such pertinent questions of facts is correct. The Supreme Court has directed DA to decide the case without regard to observations of Andhra Pradesh High Court. Therefore, no reliance can be placed on the said decision.
- xxxi. As regards request of the opposing interested parties for exclusion of parts and components, it is submitted that Petitioner continued to argue inclusion of part and components within the scope of product under consideration. Petitioner has not sought exclusion of parts and components from the scope of product under consideration. Now that the Designated Authority has accepted their contentions and rejected petitioner's contentions, it is highly improper for the opposing interested parties to

now dispute such exclusion by the Authority. In any case, attaching motives behind such exclusion is highly improper.

- xxxii. Imports of raw material from the subject countries do not bar a manufacturer from being considered as eligible domestic industry. There are number of investigations conducted by the Authority, wherein the petitioner is importing the raw material from amongst the subject countries.

Submissions by opposing interested parties in written submissions and rejoinder submissions after the second oral hearing

9. The following submissions were made by the opposing interested parties:
- i. The Authority and the Ministry of Finance simply accepted what was presented by the applicants (Tejas) in the application without conducting an examination w.r.t. exclusion of certain Indian entities (Prithvi and VMLC) from the definition of 'domestic producers'.
 - ii. CMAI has produced a letter indicating that Tejas's production accounts for more than 50% of the production, though they did not maintain accurate information about the production. This letter was considered as an evidence in accepting the application without looking into the adequacy and accuracy of the information.
 - iii. The application stated that the production of other Indian producers was based on the data published in Voice & Data magazine, which had information on the PUC as well as other products and, therefore, the same has been adjusted in order to determine information about the PUC. The Authority has not examined the details about the adjustments.
 - iv. The Authority has not examined the accuracy of the information furnished in the application by cross checking it with other official import statistics such as DGCI&S
 - v. No reasoning was given by the Designated Authority in its findings as to why the binding decisions of Dye Stuff Manufacturers Association of India vs Government of India were not applicable to the DA.
 - vi. No pre-decisional hearing took place to evaluate the claim of the applicants that they represent the domestic industry.
 - vii. Even a polling exercise among the domestic producers has not been conducted. This would have helped to evaluate whether there is any opposition to the application or not.
 - viii. Designated Authority has conducted the investigation in an arbitrary manner without complying with the mandatory procedural requirements contained in Rules 6,7,8,9 and 16.
 - ix. The Designated Authority has released limited information and evidence to the appellant and other interested parties. There are other procedural violations committed, such as, information not called for under Rule 6(4) were insisted upon, excessive confidentiality was granted, accuracy of volume and value of imports was never verified, verification visit was made in an arbitrary manner, disclosure statement by respondent no 1 was not made available.
 - x. Excessive confidentiality with regard to source of the import data, basis of majority market share, different types of product produced by domestic industry, basis of normal value or the export price, evidence of various deductions claimed from export

price, no indexed costing information. Purchase policy, sales policy, store accounting, inventory/ WIP/stock valuation, quality control policy

- xi. Non confidential versions furnished by the interested parties other than the applicant were not made available public.
- xii. Disclosure Statement did not disclose all essential facts that formed the basis of the decision. For example, Normal Value and Export Price determined for residual category of exporters; comments offered by appellant; Tejas has imported complete SDH; segregation of profit in domestic and export market.
- xiii. In the original Disclosure Statement, the margin of dumping was 240-250% and in the revised second Disclosure Statement, it was 280-290%. Such an upward enhancement with respect to margin of dumping was perverse as any alteration of the NIP could not alter the margin of dumping.
- xiv. The applicant domestic industry was a design house engaged in design and development activities in India but the actual production activities were carried outside India.
- xv. Designated Authority visited applicant's head office at Bangalore and extended the invitation to visit the new plant at Pondicherry that had been established subsequent to the visit.
- xvi. It has been admitted in the Final Findings that Tejas had imported PCBs from Thailand and Singapore. Once PCBs enter India, no substantial transformation is required to make the finished product.
- xvii. The Indian related party has submitted a list of 11 domestic producers in India with their complete contact details and the products for which they have been approved by BSNL. Few of them out of this list import bare PCBs into India and populate those PCBs in India. Designated Authority has not examined the status of these companies.
- xviii. Those who undertake assembly operations and final testing in India are not to be treated as domestic producers. Thus, when the applicant (Tejas) is not involved in manufacture, the applicant shall not be treated as a domestic industry.
- xix. The Designated Authority has not examined the activities carried by Tejas from the list of activities carried by them.
- xx. Assemblies and sub assemblies, capacitors, connectors, inductors, resistors, stickers, trans-receivers, transformers and patch cords were procured from such third sources, while Tejas were engaged in the incremental activity of procuring these items and carrying out assembly and testing operations. Designated Authority concluded that substantial operations were carried out by Tejas.
- xxi. Designated Authority held in impugned findings that imports from other countries do not constitute alleged dumped articles, such determination is not properly based as the question is not merely importation but importation by a person who does not manufacture the product in India. And the question is whether the imports were really from countries other than the subject countries in this case.
- xxii. Designated Authority did not carry out any verification at the premises of such third party EMS vendors to examine their capacity and other production facilities.
- xxiii. Designated Authority failed to provide a precise definition as the definition covers four distinct items, i.e., parts, equipment, assemblies/sub assemblies and other equipments
- xxiv. STM 64 and STM 256 should not have been included because STM-64 was never produced in commercial quantities and had never entered the Indian domestic market.

STM-256 was not imported into India and all the parties have agreed that technical approvals for deployment of STM-256 are not in place in India. Further, STM-256 belongs to a different class of product compared to other STM 1- 64.

- xxv. DXC shall be excluded because :
- a. DXC is used for traffic grooming and switching functions.
 - b. Globally, DXC is treated as a separate product category.
 - c. DXC can never substitute a STM –XX machine
- xxvi. Designated Authority has included Populated PCBs in the PUC and the records of the case indicate that domestic industry did not produce populated PCBs within India.
- xxvii. Designated Authority has not examined the nature of the broadband or cellular equipment and whether it is possible to segregate the value of SDH equipment alone from the value of SDH equipment.
- xxviii. Designated Authority has included software meant for SDH that may be brought either as a part of the equipment or separately. It's a service and, thus, should be excluded.
- xxix. Few equipments have been excluded on the basis of 'being non-SDH in any of its form'. The custom authorities are demanding duty on those equipments any of whom are having some SDH compliant parts/interfaces as only those machines that are non SDH in any of its form alone have been excluded. Therefore, in place of 'being non-SDH in any of its form', even if they contain any SDH compliant parts or interfaces be substituted.
- xxx. The PUC was not homogenous product but available in number of variants and grades. The PCBs and height end SDH could not be subject to anti dumping duty in light of various Tribunal orders. The product definition is in violation of the binding orders of the CESTAT.
- xxxi. The appellant had disclosed all information in its books with respect to the shareholding structure of the company. The Designated Authority insisted of the complete accounts of Employees Union, who were the trustee of the shares held by the employees of the company and the Union was not willing to share the information.
- xxxii. Designated Authority acknowledged the Employees Union as a separate legal entity, yet diverse findings were given.
- xxxiii. Non disclosure of information by a separate legal entity could not have been used as a pretext to prejudice the interest of the appellant.
- xxxiv. When Designated Authority verified individual documents with various sub fields of the PCNs, no mistakes were found. It was wrong on the part of the Designated Authority to conclude that appellant had made repeated modifications to the data.
- xxxv. As per verification report, the PCN details had been verified in respect of every sub field. The appellant had followed the 15 digit system with the same feature without any modifications. The appellants had given a complete list of description that they had used for denoting every sub field of the PCN as suited to their needs. There was no difference in the description between PCNs reported and the underlying documents. The appellant has provided all the possible information available with them, still the export price was rejected on the ground that the information was not ideal for the Designated Authority.
- xxxvi. Non determination of a separate dumping margin for the appellant or according an explanation with respect to the methodology adopted for determination of margin of

dumping is a direct violation of the statutory requirements imposed by rule 17(2) and rule 17(3).

- xxxvii. The injury determination has failed to meet the objective examination standard with respect to (a) the volume of dumped imports based on voice and data magazine, (b) effect of dumped imports on the prices in the domestic market for the like article, (c) consequent impact of these imports
- xxxviii. DA failed to analyze that in electronics products, the price does not increase with increase in capacity and when a new article is introduced in market, the price will be higher. Tejas is new company whereas appellant is established since decade.
- xxxix. Capacity and capacity utilisation has also not been examined properly as the EMS vendors were located in India or outside India has not been examined.
 - xl. Designated Authority mentioned in the preliminary findings that domestic industry's losses increased in domestic operation, their overall profit position remained positive due to exports financed the losses, whereas the appellant had brought into light the fact that the profits have increased but the exports had gone down.
 - xli. Designated Authority failed to make objective assessment of the factors concerned. In the causation analysis, 'volume and prices of imports not sold at dumping prices had to be examined' whereas the Designated Authority made a cursory observation in this regard as it had not evaluated the volume of imports from other countries.
 - xlii. Though the average price from the subject countries did not show any price undercutting at all, Respondent No. 1 has determined that there was significant price undercutting when compared on a PCN to PCN basis.
 - xliii. Designated Authority had not examined the competition between domestic producers at all.
 - xliv. Designated Authority had failed to examine the information relating to competition presented by Tejas in the application.
 - xlv. Export performance and productivity also has not been analysed.
 - xlvi. Refusal to accept a price undercutting without according proper reasoning for the same is unwarranted.
 - xlvii. DGAD is requested to undertake another verification visit to Huawei, China since earlier visit was biased.
 - xlviii. Objections are raised vide letter dated January 18, 2011 regarding conduct of the hearing and its manner of calling (unusually short notice was given).
 - xliv. DGAD is requested to make available a properly indexed public file containing all the documents.
 - 1. DGAD is requested not to issue Final Findings till disposal of SLP pending in the Hon'ble Supreme Court. Alternatively, DGAD may terminate investigation without imposing any measures.
 - li. As regards issue of defining "originating in", following are relevant:
 - a. Telecom Equipment Manufacturing Policy (12 April 2011) relied upon is merely a draft policy.
 - b. Resorting to the Telecom Policy is not warranted in an AD investigation for ascertaining origin.
 - c. Intellectual property, as mentioned in the Policy, does not encompass manufacturing activity.

- d. It is beyond the scope of the powers of the DA to design rules of origin. This is done by the Ministry of Finance through Customs Notifications.
- e. These Customs Notifications provide that 'value addition norms', 'change in customs classification' and 'transformation in the nature of the product' help determine the origin of a product. The Applicant is requesting that these factors be disregarded to protect its dubious claim that it constitutes DI and is not an importer.
- f. Unlike Telecom Policy, the purpose of AD law is not to protect intellectual property, but domestic manufacturers of the product.
- lii. In view of judgments by Madras and Calcutta High Courts, applicant is required to be excluded from the constituents of DI as they import PUC.
- liii. Pondicherry factory did not come into operation for a long time after POI. Dates of verification of Pondicherry factory by DA not disclosed.
- liv. Requested the DGAD for non-confidential versions of verification reports of first visit to head office at Bangalore and alleged second visit at Pondicherry.
- lv. Petition deals with imports into India: (i) Chart given without date/period, source, (ii) Pgs 49-50 said to be reproduction of Voice and Data Magazine, but are illegible and no import volume, no basis given, (iii) Pg 51 shows a forecast without quantity, (iv) Pg 52 shows figures for import, without value, basis or source.
- lvi. Number of products were excluded before initiation of investigation (by DA and Hon'ble Supreme Court), but import statistics were not altered.
- lvii. As regards coral submissions, they have submitted that those who do not file questionnaire response cannot be termed domestic producers/interested parties/domestic industry in the absence of information.
- lviii. As regards mis-declaration of export prices, it is submitted that export price provided in initial questionnaire remains unchanged and information was clearly verified by the Investigating Team (led by 3 officers). ECI satisfied the DA that the sample export transactions were correctly reported on 13 Oct 2010. The DA in para 169 of the Final Findings stated, "...ECI also provided evidence that the volumes reported in the import data were not correct."
- lix. As regards the MET, it is submitted that HETC has established that it is a wholly owned subsidiary of ECI Israel and its management is completely free from State interference. ECI was, during that period, a listed company at Nasdaq, bound by listing regulations. Investigating Team examined all the relevant facts for grant of MET Status during the on-site verification. DA has in many other AD cases accorded MET to privately owned Chinese companies.
- lx. Exporters accepted PCN (Product Control Number) system suggested by DI, and varied their reports accordingly. However, DA correctly recorded in its Final Findings that the description and price of the goods exported remained unchanged.
- lxi. PCN methodology not followed in calculating the Normal Value; DA erred in calculating the Dumping Margin.
- lxii. The Authority has taken assembly/sub-assembly wise selling price in the domestic market / third countries contrary to the method followed in arriving at the export price as per the PCN methodology.
- lxiii. With regard to the determination of the normal value for the remaining PCNs, the methodology adopted in calculating the normal value is inconsistent with the determination of the export price.

- lxiv. It appears that the Designated Authority has taken the gross selling price without making adjustments for domestic freight, taxes etc. for PCNs which were sold in the Domestic Market.
- lxv. Authority has penalized the cooperating exporters by not considering a reasonable profit of 5% which has otherwise been considered for the cooperating exporters who have been denied market economy treatment.
- lxvi. Element / Embedded Software Price not considered in the Export Price. Software being one of the crucial inputs in SDH equipment should be given full effect while calculating export price.
- lxvii. The Domestic industry failed to provide data on PCN basis for injury parameters.
- lxviii. The calculation of dumping margin pertaining to the data of the Interested Parties is to be disclosed. It cannot be kept confidential as it pertains to their own data.
- lxix. No injury to the domestic industry.
- lxx. The duties were imposed on products not manufactured by the DI in India. DA concluded 522 PCNs were exported to India and only 139 PCNs of products were matched with the DI. The importers / end-users data shows that several of the products imported by them are not manufactured / cannot be supplied by DI.
- lxxi. Respondent No.2 states that a comparable lower model applied by DI has been used as a basis for comparison and goes on to observe that the landed prices for the exporters are significantly lower than the selling price of the same equipment supplied by DI.
- lxxii. Ceragon exports some Microwave Radio Terminals which could have an STM-1 interface to the SDH transmission equipment. This interface acts as a physical media to enable the connectivity between the radio and the SDH equipment. It has been emphasized that this is merely an interface, and does not perform any of the SDH transmission equipment requirements. Thus, it is sought to amend scope of the PUC to exclude Ceragon's products, including those with STM-1 interface. DA has absolute discretion to exclude products from purview of the investigation.
- lxxiii. RAD products/modules having STM-1 interface be excluded from PUC as they don't work in SDH environment, because they are used to carry data and voice traffic over dark fiber, in private campus networks or private networks of Defense, Railways, and Utilities. Many of these products are stated not to transmit data/voice traffic in SDH environment, because they are used only as 'monitoring/probe' devices for 'Operations and Maintenance' of Transmission Networks. Therefore, these products/modules do not have the same end use of SDH Transmissions and cannot be considered as "like products" to those manufactured by Tejas. Similar STM-4 interfaces be excluded too.
- lxxiv. It is wrong on part of the Designated Authority to expect the interested parties opposing such investigation to prove otherwise. It is only when the applicant discharges the initial burden in terms of Rule 5(1) of the Anti Dumping Rules, onus would then shift to the responding parties to prove their case.
- lxxv. The DA conveniently excluded parts and components from the scope of product in the Final Findings so that Tejas was kept out of being termed as an importer. The Petitioner is an importer of 95% of parts and components used by it.
- lxxvi. DA provided no data/figures as to the percentage of imports from China PR. DA summarized activities conducted by the Petitioner in India and has added that Tejas is importing components, i.e., development board, developing software and outsourcing soldering activity.

- lxxvii. If pre-manufacture costs are excluded, the imports by Tejas would constitute a very high proportion in its total costs. Thus, it is clear that Tejas itself is a major importer.
- lxxviii. Tejas is importing majority of raw material from China and routing the same through Thailand. This is a device to remain within the ambit of the term 'domestic industry'.
- lxxix. The legislature did not give such discretionary powers to DA whereby the DA can hold a party to be DI if such party cannot even satisfy the basic criteria of being a manufacturer. Further, reference to "certain situations" needs to be corroborated with evidence and cannot be taken as an arbitrary right given to DA.
- lxxx. DA in the Final Findings has excluded parts and components on the ground that they have multiple-usage and do not have a dedicated usage in SDH Equipment alone. On that basis, even the other SDH Equipments such as Digital Cross Connects, populated PCBs, SDH Equipment as part of broadband or cellular equipment, software, etc. are liable to be excluded as they all have multiple usage and do not have a dedicated usage for SDH Equipment only.
- lxxxi. Almost 95% of Tejas' imports are of parts and components. Thus, exclusion of parts and components from the subject goods seems to be highly convenient.
- lxxxii. Treatment of China as a non market economy country by the Designated Authority is rather arbitrary in nature. To treat any economy as non market economy, specific findings have to be given in each case. Past treatment cannot be the sole reason for treating any economy as non market economy. Further, non market economy status cannot be fastened to any country as a general rule. Findings on non-market economy status is incorrect.
- lxxxiii. UT Starcom is a multinational company and has not been given any subsidy by the Chinese government.
- lxxxiv. Decisions of UT Starcom (regarding prices, costs and inputs, technology and labour, output, sales and investment) are made in response to market signals reflecting supply and demand, and without significant State interference.
- lxxxv. UT Starcom has complete set of basic accounting records which are independently audited in line with international accounting standards.
- lxxxvi. Non-market economy status cannot be fastened to any country as a general rule. The WTO Agreement or guidelines nowhere specifically termed China as a perpetual non-market economy.
- lxxxvii. Any fresh finding by DA should not address PTN.
- lxxxviii. If the DA proceeds to issue findings (including Final Findings) which address PTN, such findings should be made subject to the decision of the CESTAT in the appeal.
- lxxxix. As regards suppression of the information (export transactions) and being uncooperative, it is submitted that:
- a. It is false, baseless and motivated.
 - b. DA conducted site verification between 2nd and 5th June 2010 and accepted the data as true.
 - c. Findings of the Designated Authority are referred.
- xc. Final determination dated 19.10.2010 is final and binding (save and except the inclusion of PTN within the meaning of the PUC that is under challenge before the CESTAT).

- xc. DA referred to irrelevant activities (research, product conceptualization, design and drawing, development of technology, understanding of functionality, development of software) when looking at the production. *Reliance Industries v. DA* [2006 (202) ELT 23 (SC)]: backward integration of manufacturing process is not relevant for the purpose of determining 'DI'.
- xcii. The Final Findings have ignored the plea of public interest. ADD would serve a single entity, and more so, entities in Thailand, over PSUs like BSNL, and large telecom service providers. Tejas seeks duty on STM 64, STM 256 and DXC equipments which it cannot supply to meet domestic demand.
- xciii. PUC has been substantially revised and in the Final Findings, it is not clear whether this revised scope of PUC has been taken into account when calculating injury, normal price and margin of dumping.
- xciv. Ciena's products Core director and 5400 (being optical cross connects) are materially different from the petitioner's products and are not the like product to the PUC. Therefore, Ciena's products need to be excluded from the product scope as equivalent product is not produced by petitioner or domestic industry and no injury can possibly be caused by imports of Core director and 5400.
- xcv. Core director/5400 belong to the product family of optical cross connects and are not the products identified under para 36 of Final Findings due to significant difference in scale, multi technology support and support of control plane based networking intelligence.
- xcvi. The Authority is requested to exclude Core director and 5400 from product under consideration and make necessary amendments to the Notes of the Final Findings to exclude product and technologies which are not manufactured by the petitioner.
- xcvii. Ciena products cannot be classified as originating from China PR (or Israel) as substantial transformation and substantial value addition takes place outside of China.
- xcviii. By acknowledging that actual manufacturing is an inconsequential activity, petitioner is actually alleging dumping of services in India which is not permissible in the law.
- xcix. No assessment of dumping margin of Ciena, notwithstanding submission of information in exporter's questionnaire. Ciena requested the Authority to visit its facilities in USA but no response received from the Designated Authority. They were not informed that their submissions were deficient. They requested the Authority to determine dumping margin and non injurious margin for Ciena.
- c. The fact of Ciena's products (CoreDirector and 5400) "originating outside China", has not been disputed by DI.

Examination by the Authority

10. The Authority notes that most of the interested parties have repeated their arguments filed after the previous oral hearing dated 21.12.2009. The arguments advanced by these interested parties were already examined and addressed in detail in the previous Final Findings. The Authority has, however, carefully considered all the submissions made by the interested parties afresh. The same have been dealt with in the present Disclosure Statement to the extent considered necessary.

PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE.

11. The scope of the product under consideration was described in detail in the previous Final Findings and its corrigendum earlier notified and is as under:

“Synchronous Digital Hierarchy transmission equipment, viz. STM-1, STM-4, STM-16, STM-64, STM-256 in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / sub-assemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of Product under Consideration.

***Note 2. SDH Equipment essentially transmits signals through the medium of Optical Fibre. There may be SDH equipment meant for transmission through electrical Copper Medium or Microwave Radio Medium. The SDH Equipment transmitting the data through optical fibre alone shall be subject to levy of antidumping duty.*

***Note 3. When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the imports.*

***Note 4. PDH, CWDM, DWDM, Microwave systems, GPON, DSLAM, MSAN, BITS, Routers, PDSN, SGSN, MGW, BTS, BSC, MSC, ONT, HLR, HSS and MRP being non-SDH in any of its form are outside the scope of PUC and therefore not subject to levy of AD Duty”.*

***Note 5. Microwave Radio Terminals which could have an STM-1 interface to the SDH transmission equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of payment of AD Duty”.*

12. The Authority notes that the product under consideration is essentially transmission equipment using SDH technology. It can be produced in a variety of specifications to meet the eventual customer requirements. Further, evolution of higher version/higher capacity equipment is an ongoing continuous process/ phenomena in this industry. The investigation has shown that while STM-64 equipments are already developed and the customers have already started deploying the same in the telecom networks (even though in a limited way), STM-256 was at the development stage during the investigation period as far as Indian market is concerned.
13. A number of arguments have been raised with regard to the scope of the product under consideration. After careful examination of arguments raised by various interested parties,

and having regard to the facts of the case and legal provisions, the Authority comes to the following conclusion:

- i. It would be necessary and appropriate to consider the meaning of production on case to case basis and having regard to the objective of the law. A universal definition of production would not be appropriate. In fact, different laws and regulations have defined/treated different meaning of production, as is evident from different meanings/interpretations of production under different laws. The Authority holds that the meaning of production is required to be considered having regard to the specific law and regulation, the specific definitions and interpretation given therein and the objective and purpose for which the law has been created. For the purpose of anti-dumping duties, in the present case, for example, it would be grossly inappropriate to hold that a company is a domestic producer merely because it is undertaking certain incremental production activities. In fact, any such interpretation would result in the law becoming inoperable. The Authority, therefore, holds that a company cannot be considered as a domestic producer merely because it has paid excise duty. The Authority notes that under excise law, goods are considered to have been produced even if incidental or ancillary activity for the completion of article is conducted, including packing or repacking in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. However, for the purpose of anti dumping law, it cannot be said that such production activities are sufficient to constitute production. It will lead to significant multiplicities and double accounting either in imports or in domestic production.
- ii. For the purpose of anti-dumping law, the Authority holds that goods must be considered to have been produced only if the inputs undergo a “substantial transformation” into output. Widely acknowledged practice of the investigating Authorities with regard to definition of article is to consider parameters such as physical and technical properties, production technology, manufacturing process, plant & equipment, function & uses, pricing, consumer perception and customs classifications. These parameters are employed in order to consider whether the two articles are the same article or different articles. Further, the article may eventually be produced after following a small or long process of production and might be produced in one or more stages before it is eventually transformed into a form where it can constitute an article produced for the intended purpose. Merely if some inputs have been processed at the intermediate stages, where they have no use (and can perform no functions) but for consumption in the eventual product, the intermediate may not be considered as an article, even if it is saleable at that stage. The input must be distinctly different from output in terms of these parameters. From this point of view, the Authority holds that production and sale of SDH equipment or assemblies, sub-assemblies which are produced during the production process of making SDH equipment cannot be considered as a distinctly different product for the present purpose.
- iii. The Authority extensively examined the nature of production activities carried out by the petitioner and foreign producers. On the spot verification was specifically focused, inter-alia, on this aspect and the verification reports issued to the exporters have also been examined. The Authority has carefully considered the arguments of various interested parties in this regard. The Authority considers that a producer must undertake various activities before it can be considered as a producer. Various steps involved in making SDH equipment are as follows:

Research>> Product Conceptualization>> Design & Drawing>> Development of the technology>> Conceptualization and understanding of functionality>> Product blue print preparation>> Development of associated software>> Product proto type development – Hardware and Software>> Component Procurement>>Populating the Board / Card as per the design>>Soldering and EMS activities>> Integration>> Preparation of Test Jigs>> Assembly>> Testing>> Product Support and Bug fixes.

- iv. The Authority came to the conclusion the above mentioned production activities are required to be undertaken in manufacturing of SDH equipment. While it is appreciated that the company need not undertake each of the above activities. It is possible that some of these steps might involve one or more sub-processes which might be carried out independently, or some of these processes may be integrated by some company. Nevertheless, a company cannot be considered a producer of the product under consideration in the present case unless it is undertaking a substantial part of these activities.
14. Having regard to the above, the Authority reviewed the scope of the product under consideration as defined in the preliminary findings and the disclosure statement and earlier notified in the final findings. The Authority also analyzed the status of activities carried out by various interested parties, including the petitioner, other parties in India who claimed themselves as a producer of the product under consideration and foreign producers. The Authority notes that no new substantial fact has been brought about by the interested parties in their post decisional second oral hearing submissions in this regard, and, thus, the Authority maintains its earlier findings with respect to the scope of the product under consideration as defined in the earlier notified in the final findings.
 15. Regarding the nature of production activity undertaken by Tejas, the Authority had held in the previous final findings that Tejas constituted a domestic manufacturer for the present purpose. The Authority notes that no new substantial fact has been brought about by the interested parties in their post decisional second oral hearing and post decisional Disclosure Statement submissions in this regard, and, thus, the Authority maintains its earlier findings in this regard.
 16. As regards Prithvi & VMCL, these companies have not provided verifiable evidence of production activities being undertaken by them. Production activities carried out by Prithvi & VMCL in India, as per information available to the Authority, are assembly, testing, product support and bug fixes. These companies have not rebutted, with verifiable evidence, the claim of the petitioner that these companies are undertaking only assembly operations in India and such activities constitute very insignificant activity in the present product. They have not rebutted the claim of the petitioner that in their case, the input does not undergo a “substantial” transformation into the output. The inputs consumed by the company do not have distinguished character, function/use and are employed for production of the product under consideration.
 17. The Authority also examined the activities carried out by Ciena, who has submitted that they are procuring components from China as also some portion of manufacturing or assembly for Ciena USA’s products is outsourced and carried out in China by Sanmina SCI and the same does not qualify as products originating from China. Considering the information on record, the Authority holds that goods produced by Ciena shall be subject to AD duty so long they are covered within the scope of definition of product under

consideration and so long the imports of such goods into India either originate in or are exported from the subject countries under investigation.

18. The investigation has shown that following types of SDH equipments were either in use or in development during the investigation period. The Authority considered the arguments of the interested parties on exclusion of some of these types and holds as follows in this regard:

- i. STM-1, 4, 16 – There is no dispute that these products are rightly included within the scope of the product under consideration;
- ii. STM-64 – The interested parties argued that the petitioner has not offered STM-64 in commercial volumes. It has also been argued that largest Public Sector Company operator (BSNL) has not bought STM-64 from the petitioner. The Authority, however, holds that STM-64 is rightly within the scope of the product under consideration for the following reasons –
 - (a) Tejas has produced and sold STM-64 in Indian and overseas markets as was verified by the Authority through its investigating team;
 - (b) Even if Tejas has sold some volumes in the export markets, the product type cannot be excluded, as the fact of like article produced by the domestic industry gets established (the Authority notes that rule 2(b) read with 2(d) implies that the domestic industry should have manufactured like article. It is unnecessary to require that the domestic industry should have sold like article in domestic market). On the spot verification conducted at the premises of the petitioner, in fact, showed production of STM-64 in commercial volumes, i.e., also for Quiktel.
- iii. STM-256 – Admittedly, STM-256 was neither imported during the investigation period nor supplied by the domestic industry. The responding exporter from China claimed that STM-256 was not deployed in China also (which means that this was not sold in China as well). The responding exporter also claimed that deployment of STM-256 in India is not even feasible so far, as necessary permission for its deployment have not been given by the competent Govt. of India authority. Investigation conducted at the premises of the petitioner and foreign producers clearly showed that STM-256 can be described as the new generation SDH equipment. The investigation has not shown that if STM-256 was exported by foreign producers, the domestic industry did not offer STM-256. In fact, the interested parties agreed that technical approvals/ permissions to deploy SDH-256 are not even in place in the country. The Authority observes that a claim for exclusion of a particular type can not be entertained unless the same has been exported to India during the relevant period, as the fact of non supply of like article by the domestic industry cannot be established unless the type is exported to India and is permitted to be used in India. The Authority holds that no grounds have been made out justifying exclusion of STM-256. Moreover, the investigating team was given access to STM-256 equipment, manufactured by Tejas and available in their premises in Bangalore. Tejas showed that it has made significant investment (Rs. ***** crores) so far in development of this product and claimed that the equipment could be sold only if some party placed an order for the same. No consumer in India has given any order to the domestic industry for supply of SDH-256.
- iv. Digital Cross Connects – The interested parties repeatedly argued for exclusion of digital cross connect. The investigation has shown that digital cross connect are actually the equipment used in telecommunications networks, that allows lower-

level signals to be rearranged and interconnected amongst higher-level signals. Digital cross connect can be produced in SDH technology and other technologies. Digital cross connect equipment of SDH technology is clearly SDH equipment. Record verified by the investigating team establishes that Digital Cross Connect of SDH technology has been produced and supplied by the petitioner during the investigation period. The cost and price information included in the injury information and injury margin assessment includes the production and sale of digital cross connect of SDH technology. The Authority, therefore, holds that digital cross connect of SDH technology are rightly within the scope of the product under consideration. However, since digital cross connects are produced in other technology as well, it is clarified as a matter of abundant precaution that digital cross connect of other technologies are beyond the purview of the product under consideration and present investigations.

- v. SKD/CKD form of SDH equipments – Interested parties largely concede that SKD/CKD form of SDH is rightly within the scope of the product under consideration. As is seen from the production process, the product is an assembly of a number of cards, components, assemblies and sub-assemblies. It is quite possible that the product is transported in its SKD/CKD form. In fact, the product is in general invoiced in SKD/CKD form only. The producers do not raise invoice for ‘fully functional and operational’ SDH equipment. The production process from SKD/CKD form is a very insignificant assembly line operation requiring only screw driver technology. In fact, it is possible (and in fact is a practice largely adopted) to first produce the complete equipment, including necessary testing etc. and instead of transporting in a finished form, it is dispatched after dismantling in a SKD/CKD form. Exports of such SKD/CKD, thus, tantamount to exports of the product under consideration itself. In fact, the product has been shipped from China in SKD/CKD form as well. The Authority, therefore, confirms that the scope of the product under consideration includes SKD/CKD form of the product.
- vi. Assemblies and Sub-assemblies – The verification of the records of various exporters from China PR and Israel revealed that the Equipment is shipped in the form of assemblies and sub-assemblies and each of these assemblies and sub-assemblies are priced individually. Therefore, the equipment imported as a unit or in the form of assemblies / sub-assemblies is within the scope of the product under consideration.
- vii. Populated Circuit Boards / Cards – The cards/PCB’s are populated as per the design developed by the manufacturer and thereafter, apart from loading of software, there is only a need to arrange them in a shelf and adjust them to a circuit. Since Printed Circuit Boards are propriety of the manufacturer, the same are within the scope of the product under consideration. It is, however, clarified that in case PCBs or cards are meant for production/assembly of a product other than SDH equipment, the same is beyond the scope of the product under consideration. PCB and cards are within the scope of the product under consideration only if such PCBs or cards are meant for production of SDH equipment.
- viii. Parts and Components – Interested parties have heavily opposed inclusion of parts and components within the scope of the product under consideration. The interested parties have argued, inter-alia, that (i) parts/components are different products, (ii) parts & components have not been offered by domestic industry, (iii) production from the stage of parts/components is quite significant and, in fact, constitutes production, (iv) imposition of anti-dumping duties on parts/components is inoperable or may even lead to harassment at the stage of implementation or might lead to demand for collection of duty even when the same may not be justified. The domestic industry on the contrary has sought inclusion of parts and components on

the premise that their exclusion will leave a big scope for circumvention. They have pleaded that imports of components as “raw material” or “inputs” must be distinguished and differentiated with imports of SDH in component form (with IPR being supplied without customs check/control/clearance). They have further submitted that the domestic industry is not against imports of components as inputs. Domestic industry is against import of product in the form of components, using the same Chinese IPR and then assembling the product in India as this tantamounts to continued dumping in different form. The Authority has taken note of the fact that parts and components are not manufactured by the Domestic Industry, and the domestic industry for parts and components is not before the Authority. The Authority further notes that parts and components used in SDH equipment have multiple usages and do not have a dedicated usage in SDH equipment alone. The Authority, after going into the details of usage of parts and components, is of the view that including parts and components, when imported on a standalone basis is going to put the whole consumer durable industry to hardship.

- ix. SDH equipment as part of another equipment - The Authority notes that the product under consideration eventually forms part of Broadband or Cellular equipment. It is quite possible to import SDH equipment as part of such Broadband or Cellular equipment. If the scope of the product under consideration is not kept to include imports of SDH equipment forming part of such Broadband or Cellular equipment, the entire process of undertaking present investigations and proposed measures can be defeated. Further, no justified grounds have been brought out by any interested party as to why such import should not be chargeable to duty. The only concern of the interested party may be that the Customs Port Authorities should not demand anti-dumping duties on the entire Broadband or Cellular equipment. It is, therefore, clarified that the scope of the duty shall only be to the extent of the value of SDH equipment included in such Broadband/Cellular equipment. The scope of the duty shall not extend to the entire equipment. The importers are expected to declare and the Customs Port Authorities are expected to apply due diligence in ascertain/bifurcating the value of SDH equipment.
- x. Software – Software is an essential part of the product under consideration in as much as the equipment is totally non-functional without such software. Such software can be developed by the producer itself or producer may get the same developed from other agencies. It is possible to invoice such software either as part of the equipment or separately. The scope of the product under consideration rightly includes the software and the Authority confirms the same.
- xi. DWDM – Lot of interested parties have sought exclusion of DWDM. DWDM is different technology transmission equipment. It is not SDH technology equipment. Since DWDM is not an SDH technology equipment, the same was beyond the scope of present investigation and proposed measures. However, in view of the repeated arguments of the interested parties and their claim of possible demands of anti-dumping duties in future by Customs Port Authorities, it is clarified that DWDM transmission equipment are beyond the scope of the product under consideration.

19. Having regard to the petition, initiation notification, preliminary findings, final findings earlier notified, arguments raised by the domestic industry and opposing interested parties at the time of present post decisional oral hearing and submissions made by the interested parties pursuant to the post decisional oral hearing and post decisional Disclosure Statement, the Authority holds that the scope of the product under consideration is as follows:

“Synchronous Digital Hierarchy transmission equipment, viz., STM-1, STM-4, STM-16, STM-64, STM-256 in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / sub-assemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of product under consideration.

***Note 2. SDH Equipment essentially transmits signals through the medium of Optical Fibre. There may be SDH equipment meant for transmission through electrical Copper Medium or Microwave Radio Medium. The SDH Equipment transmitting the data through optical fibre alone shall be subject to levy of antidumping duty.*

***Note 3. When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the imports.*

***Note 4. PDH, CWDM, DWDM, Microwave systems, GPON, DSLAM, MSAN, BITS, Routers, PDSN, SGSN, MGW, BTS, BSC, MSC, ONT, HLR, HSS and MRP being non-SDH in any of its form are outside the scope of PUC and therefore not subject to levy of AD Duty”.*

***Note 5. Microwave Radio Terminals which could have an STM-1 interface to the SDH Transmission Equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of payment of AD Duty*

PCN SYSTEM

20. The product under consideration is produced and sold in a number of different types. Different types are produced to meet specific customer requirements. In order to ensure fair comparison between normal value and export price, the Authority classified the product under consideration into different types based on parameters such as transmission capacity, cross connect capacity, E1 interfaces, electrical interfaces, optical interfaces, optics types, etc. The Authority evolved a product control system (PCN) running into 15 digits. All interested parties were directed to provide information on cost & price separately for each PCN. The interested parties were, however, given liberty to deviate from the suggested PCN system after due justification.

21. Some interested parties have disputed the proposed PCN system. The Authority notes that the product under consideration is essentially an assembly of a number of electronic cards and sub-assemblies. In fact, the producers tend to invoice the sales in terms of SKD/CKD/cards/sub-assemblies of the product. Investigation has shown that all the companies follow some system for production and sale of the product, for which some product coding system is followed. Considering this aspect of the product, the Authority had prescribed a PCN system, considering the scope of PUC and the intent has been to bring the scope of the PUC identifiable and comparable. While doing so, the Authority gave liberty to all the responding exporters to come up with any other suggestion on devising the PCN methodology, duly justifying the system, other than the one proposed by the Authority. A communication was individually sent to all the interested parties in this regard. However, all the exporters, who participated in the investigation, chose to accept the PCN methodology suggested by the Authority and submitted data as per the said PCN methodology. Therefore, the Authority holds that the PCN methodology adopted for the present investigation has proved to be correct and reasonably acceptable to all the interested parties, particularly the responding exporters, who in principle agreed to this methodology and got their data verified based upon this PCN methodology. The Authority is unable to accept the argument of the interested parties that the PCN system proposed was too complicated and the exporter could not give data in accurate manner in view of the PCN system. The Authority considers that the exporter should have pointed out such operational difficulties while responding to the questionnaire at the stage of initiation of investigations. Any such submission while responding to the verification report issued by the Designated Authority after on the spot verification cannot be accepted.

STANDING & SCOPE OF THE DOMESTIC INDUSTRY

22. Arguments have been made by various interested parties that –

- i) Petitioner itself is not a producer of the product under consideration;
- ii) Petitioner itself is an importer of the product under consideration;
- iii) The discretion under rule 2(b) cannot be applied differently for different parties;
- iv) The rules do not distinguish between imports from subject countries and other countries;
- v) The rules do not prescribe any numerical formula with regard to volume of imports;
- vi) The goods imported by the petitioner from Thailand might include parts/components which were eventually sourced from China PR and because the scope of the product under consideration includes parts/components, the petitioner should be considered ineligible domestic industry.

23. Based on the information available on record, the Authority provisionally determined that (a) production activities by the petitioner constitute production for the purpose of the present investigations; (b) imports by the petitioner are not such as to disqualify the petitioner from the scope of Rule 2(b); (c) imports by other domestic suppliers such as Prithvi and VMCL are such as to render them ineligible domestic producers under Rule 2(b); and (d) production of the petitioner accounts for a major proportion of the total Indian production. On this basis, the Authority provisionally concluded that the petition

satisfies the standing and the petitioner constitutes domestic industry within the meaning of the Rules.

24. While disputing the claim of M/s Tejas to treat it as the domestic industry, the opposing interested parties have contended that Tejas should be treated as ineligible for consideration as the domestic industry in view of the facts that (a) Tejas had imported certain components forming part of the product under consideration (PUC) as defined in the Initiation Notification, (b) to qualify as a "domestic industry", the domestic producer must be engaged in the manufacture of the product to the extent of a "major proportion", i.e., the producer must show that he manufactures all the necessary parts, accessories and components of the PUC, (c) DGAD has not considered Prithvi and VMCL as eligible manufacturers because they don't do any "substantial transformation" of inputs, (d) no concept of "substantial transformation" exists in anti dumping rules, (e) Tejas also imports component but is considered as eligible domestic industry while Prithvi and VMCL were not considered as domestic industry, (f) DGAD has relaxed rules for Tejas saying that Tejas has imported dual usage components without considering that Tejas has a dedicated use of components, i.e., for manufacturing of SDH Telecom equipments, (g) imports from third countries other than China PR and Israel also amount to one being considered as importer because under rule 2(b) country of imports is not specified and so even if Tejas imports from countries other than China PR and Israel even then Tejas is not eligible to be called as domestic manufacturer, and (h) Tejas imported from Thailand and Malaysia.
25. The issues raised by the interested parties with regard to standing & scope of the domestic industry have been mentioned and analyzed in detail by the Authority at paras 41 to 66 of the Final Findings. The Authority concluded that Tejas constitutes "Domestic Industry" within the meaning of the AD Rules.
26. As far as Tejas is concerned, the Authority has analysed the production activities undertaken by the company. As regards imports made by Tejas, detailed factual position in this regard was stated by the Authority at para 50 of the final findings. The Authority notes that Tejas' imports from China, which are ***% of the total imports made by the company (***% of the turnover of the company), are the stand alone dual use components. The Authority has not included stand alone dual use components within the scope of the product under consideration. During verification of records of responding exporters, the Authority has come across information with regard to import of complete equipment from China, both by Prithvi and VMCL.
27. It has been argued by the interested parties that Tejas did not have production facilities at Pondicherry during the POI. Tejas has provided invoice which shows invoicing of the product from its Pondicherry facility during the POI. The factory of the company was visited by a team of investigating officers. It is established that production activities identified for the product were being carried out by the company within the country. The Authority thus holds that Tejas was carrying out production activities at Pondicherry during the POI.
28. As regards imports from third countries not under investigation, the Authority notes that such third country imports do not constitute imports of "alleged dumped article". Such

import, therefore, should not prevent such domestic producer from bringing an application as a domestic industry. It is relevant to point out that in case such domestic producer is importing significant volumes from third countries, the same might be relevant in establishing existence or otherwise of causal link. If the imports from third countries are insignificant in volume, the same becomes irrelevant.

29. Interested parties have argued that the fact that imports were made from non subject countries is irrelevant under Rule 2(b) and “alleged dumped article” relates to article and cannot be linked to the country. The Authority has carefully examined various legal provisions in this regard and holds that terminology in various provisions under rules and the objective of exclusion provided under 2(b) makes it abundantly clear that the question of excluding a party under rule 2(b) should arise only if such imports are from the subject countries under investigation. Imports from third countries cannot be considered as imports of alleged dumped article. The Authority relies upon in this regard on the objective/intent of providing such a description under 2(b) and various other provisions under the rules. Reference to dumped article or alleged dumped article under rule 2 and 6 is clearly with reference to subject country(ies), the producer in such subject countries and importers of the product from such subject countries. The Authority thus holds that imports of the article under investigation from subject countries alone are relevant for the purpose of inclusion or exclusion of a domestic manufacturer under rule 2(b).
30. It has been argued that Rule 2(b) cannot be applied differently on different parties. It has further been alleged that the Authority has considered Tejas as eligible domestic producer and Prithvi and VMCL as ineligible domestic manufactures. Interested opposing parties have disputed the Authority’s determination in this regard and have argued that even when both Tejas and Prithvi/VMCL have resorted to imports, the Authority has discriminately applied discretion available in Rule 2(b). Notwithstanding the determination with regard to product under consideration, the meaning of Chinese, Indian and third countries, the meaning of goods manufactured in India, China PR or third countries which leads to a conclusion that Prithvi and VMCL are not domestic manufacturer of the product under consideration in India, the Authority holds that in any case, rule 2(b) does not provide a uniform decision on inclusion or exclusion of domestic producers who are themselves importing the product. The Authority holds that such discretion is required to be exercised on a case by case basis. Different parties might import the product for different reasons. Volume/extent of imports by different parties might be different. Inclusion or exclusion of domestic manufacturer under rule 2(b) is based on certain reasons. Since the reasons themselves might vary from party to party, a universal application of the discretion is neither conceived under the law nor would be appropriate. The practice of the Authority and other Investigating Authorities in this regard also supports this view of the Authority.
31. Interested parties have argued that Tejas has undisputedly used services of EMS. Such EMS companies might have procured parts/components from China PR, value of which might not be included in the volume of imports relied upon by the Authority in applying the discretion. The Authority stated the factual position in this regard at para 56 of the final findings. Further, these imports are of dual use parts and components or stand alone components which are beyond the scope of the “product under consideration”. The Authority, therefore, holds that this argument of the opposing interested parties is not sustainable.
32. It has been alleged that although there are a number of other manufacturers, Tejas has been considered to have the necessary standing of constituting a major proportion of the total domestic production within the scope of Rule 2(b) of the AD Rules. In this context, the Authority notes that initially, after the initiation of investigation, apart from Prithvi

and VMCL, no other so called manufacturer, as highlighted by both Prithvi and VMCL in their submissions, has come forward to claim the status of being a domestic manufacturer. Even Prithvi and VMCL, barring a claim to this effect in a narrative form, never provided any verifiable information about their manufacturing activities. Prithvi / VMCL have not filed questionnaire response in the form and manner prescribed, either as a domestic producer or an importer of the product under consideration. Even when the Authority specifically advised these companies to provide information in the form and manner prescribed, these interested parties have preferred not to provide relevant information. Even otherwise they never furnished any details / data about their set up except the claim that they are manufacturers as they also pay excise duty. Mere payment of excise duty cannot amount to give the status of a “manufacturer” for the present purpose, as already stated herein before. The Authority notes that these two companies have preferred non cooperation within the meaning of Rule 6(8). The Authority holds that while it is open for an interested party to advance its argument, it is obligatory on the part of such interested party to provide such information as is requested by the Authority and offer itself for verification, if desired by the Authority. The entire exercise undertaken in the instant case in ascertaining actual status of these entities would have been significantly smoothed, had these interested parties provided relevant information demanded by the Authority and offered themselves to spot verification. In view of conscious non cooperation preferred by these interested parties, the Authority has been constrained to rely upon available material in this regard. The information on record has shown as follows –

- i. These interested parties have not sold SDH equipment till the end of the investigation period.
- ii. The Authority identified activities such as research, product conceptualization, design & drawing, development of technology, conceptualization and understanding of functionality, product blue print preparation, development of associated software, product prototype development-hardware and software, component procurement, soldering and EMS activities, integration, preparation of test jigs, assembly, testing and product support and bug fixes as essential production activities. These interested parties do not carry out substantial part of these production activities listed by the Authority as the activities comprising production in the present case. It is not established that these parties even carried out assembly operation. There is no evidence on record showing production or sale of the product under consideration by these parties. Even on the repeated argument of payment of excise duty, these interested parties have not established that the said excise duty was paid in respect of SDH equipment. Petitioner argued that the said excise duty might have been paid on different products. These interested parties have not provided evidence to show that the excise duty was indeed paid for production & clearance of the product under consideration.
- iii. These interested parties have failed to establish that they have made investments in research & development, plant & equipment and other facilities required for production of the product under consideration. The Authority notes in this regard that only activities relating to product under consideration alone are relevant to the Authority. Other activities carried out by these interested parties in respect of other products, if any, are entirely irrelevant in this regard. It is also relevant to point out in this regard that on their own accord, some of the interested parties, including VMPL & Prithvi considered DWDM as “product under consideration”. It is, therefore, not established whether the alleged status of a manufacturer is because of possible production and sale of DWDM or SDH equipment. The Authority notes that in case these companies have set up production facilities and have thereafter produced and sold DWDM equipment, the same cannot entitle

them to claim a status of producer for the present purpose and present product under consideration.

- iv. Subsequent to issue of Preliminary Findings, FIBCOM came up with a claim of being manufacturers of PUC and claimed to support the petition so long as components are placed outside the purview of PUC. They also, however, did not provide any data on their claim to be a manufacturer to the Authority. Petitioner, at pre-initiation stage, had filed a letter from CMAI (Association) along with the petition. CMAI stated that the petitioner accounts for a major proportion of Indian production. This was considered prima facie sufficient evidence for the purpose of initiation of the investigation.

33. The Authority noted in the preliminary findings that the reference was made by the interested parties to panel report in the matter concerning Farmed Salmon from Norway. The Authority noted in the preliminary findings that the facts of that case are different than those of the present case. In the case under reference, EC had not examined whether or not activity conducted by those producers who were not considered as producers of product concerned was an activity which could constitute production. The Authority notes that the interpretation of Article 4.1 of ADA given by the WTO Panel has a limited scope in the present proceedings. Para 7.115 of the Report is relevant in this regard:

7.115 There is no dispute that filleted salmon is within the scope of the like product identified by the EC in this case. Thus, based on our interpretation of the plain language of Article 4.1, we consider that any enterprise that produced any form of the like product should be considered, at least in the first instance, a "producer" of the like product, and as such, part of the domestic industry.

Footnote 289 reads as follows:

289. There may be circumstances in which an enterprise whose product is within the scope of the like product may be found to have engaged in a level of activity so low as to justify the conclusion that it did not, in fact, "produce" the like product. However, there was no consideration of the degree of activity of filleting-only undertakings in defining the domestic industry during the investigation. Therefore, the question is not before us on the facts of this case.

34. Panel, therefore, envisaged some circumstances (as stated in footnote 289), which Panel agreed may not be sufficient to consider an entity as a “producer” of the product. The panel, however, did not decide when a company may be considered as a domestic producer and when it can be considered as a mere importer of the product under consideration. The Panel did not dwell on what constitutes sufficient activity in order to describe an entity as a producer. Nor did the Panel describe the meaning of “production”. The precise issue under consideration in the present case is what constitutes production and who can be regarded as a domestic producer.
35. In view of the above, having regard to the definition of the domestic industry under Rule 2(b) and information on record, the Authority holds that VMCL and Prithivi have failed to establish themselves as domestic producers of the product under consideration for the purpose of present investigations. Further, in any case, these parties have failed to establish that they should be considered as “eligible domestic industry” within the meaning of Rule 2(b).
36. As regards Tejas, the Authority has examined at length the nature of activities being carried out by Tejas at para 31 of the final findings. The Authority holds that imports of

the product from subject countries alone are relevant for the present purpose. Imports made by Tejas from Thailand do not disentitle the company from being considered domestic industry. Imports from China are not of the product under consideration as considered by the Authority. The Authority holds that principal activity of the company is manufacturing in India. The petitioner has not reduced its own production activity, and has not turned to trading. No justifiable reasons have been advanced by the interested parties warranting exclusion of the petitioner.

37. After careful examination of the legal provisions and facts of the case, and the fact that no new substantial fact has been brought about by the opposing interested parties in their post decisional second oral hearing submissions in this regard, and, thus, the Authority notes that facts on record do not justify exclusion of Tejas from considering it as the domestic industry in the present case. The contention of the opposing parties that a company is ordinarily to be excluded in case it has imported does not hold good in view of the fact that imports made by Tejas are essentially standalone components which are now outside the scope of PUC and thus maintains its earlier findings in this regard.
38. The Authority notes that that mere fact of payment of excise duty, if considered a barometer of “manufacturing” for the purpose of anti dumping law, would lead to several incorrect interpretations with regard to determination of dumping & injury as it would imply that even incremental activities such as retagging, repacking, relabeling, micronisation, metallization, pulverization, etc. will also become production. The interpretation will lead to a situation where one product could have been produced several times. For instance, in the instance case, there are companies known as EMS companies, who are specialized electronic component soldering companies, doing such activities for a variety of industries, without any knowledge whatsoever with regard to designing or functioning of the card they produce. These companies are also paying excise duty. The interpretation will imply that even these companies should be recognized as SDH manufacturers. Thus, these EMS companies who have produced and supplied the card to Tejas would also deemed to become the manufacturer of SDH equipment (in CKD/SKD condition). The production will be counted twice. Similarly, imports of the product will be counted as production of the foreign producer & import into India and thereafter, the very same product will be counted as production & domestic sale of the importer, only because the importer has imported the product in CDK/SKD condition, assembled the product and sold it after payment of excise duty. The scope of the product under consideration includes parts & components in some situations. Some of these parts & components have been produced by some other specialized component manufacturers in India. Thus, even these component manufacturers would also become SDH manufacturer. Such companies, therefore, cannot be recognized as SDH manufacturers under the anti dumping laws.
39. Further, every company selling the product cannot be regarded as a domestic producer. There should be certain minimum threshold activity/criteria to be completed/ crossed by a party selling a product in the market before it can be regarded as a producer. And such activity/criteria cannot be payment of excise duty. Such activity/criteria have to be considered on the basis of nature of the product and production process. For example, a person trading in the imported product is also engaged in some activity connected with the product. However, such trader cannot be regarded as a producer under anti dumping law, even if such trader is paying excise duty for some plausible reasons under the excise law.

40. The Authority further notes that apart from CMAI, another industry association TEMA, in their letter dated 3-Dec-09 has also supported petitioner's stance about the definition of who constitutes domestic industry and their support to the interim decision of the Authority. Clearly traders/assemblers cannot be considered domestic industry. The mere fact that no other so called manufacturer has either participated in the investigation or those who have participated have failed to provide any evidence with regard to their manufacturing activities in the Proforma prescribed for the domestic industry, and also other details elaborately discussed above, further support the conclusion drawn by the Authority that Tejas constitutes "Domestic Industry" within the meaning of the AD Rules.
41. The claims of the petitioner with regard to assessment of Indian production was examined by the authority in detail. The authority in particular examined the claim of the petitioner on the basis of voice and data magazine. It was found that Indian production assessed by petitioner was reasonable and sufficient to establish standing of the petitioner within the meaning of the rules. The investigation has established that the production of the petitioner constituted a major proportion in Indian production (significantly beyond 50% of Indian production). The authority notes in this regard that the petitioner can be expected to provide only such information as is reasonably available to them. None of the interested party have been able to show that petitioner did not provide information which was publically available information and which could have constituted more accurate information.
42. The reasoning of the CESTAT in Dye Stuff Manufacturers Association vs. Designated Authority is not applicable to the present case. In the matter of Dye Stuff Manufacturers Association vs. Designated Authority, the magazine was not periodically reporting the price of Aniline. Instead the magazine had carried an article on Aniline and mentioned the price of Aniline in the market. In the instant case, however, the interested party agreed that Voice and Data magazine regularly mentions the relevant information. Further, the credibility of voice and data magazine gets established if information contained in the journal with regard to operations of Tejas are compared with the actual operations of Tejas.
43. There is no legal requirement to hold a pre-decisional hearing or polling in order to determine standing of the petitioner under Rule 5. The Authority notes that petition contained sufficient information with regard to standing and the same constituted sufficient positive evidence. Further, the investigation conducted by the Authority established that the facts contained in the petition were sufficient and correct in this regard.
44. As regards the argument that applicant is required to be excluded from the constituents of DI as they import PUC, the Authority notes that the petitioner has imported parts and components which are beyond the scope of the product under consideration. Further, the Authority holds that the definition of Rule 2(b) provides discretion to the Authority.

CONFIDENTIALITY

45. Issues regarding the confidentiality have been examined by the Authority at para 75 of the previous Final Findings. The Authority notes that no new substantial fact has been brought about by the interested parties in their post decisional second oral hearing submissions and post decisional Disclosure Statement submissions in this regard, and, thus, the Authority maintains its earlier decision.

46. As regards the non confidential version of the submissions of other interested parties, the same was made available in the public file maintained by the Authority.

PUBLIC INTEREST

47. Issues regarding public interest have been examined by the Authority at paras 76 & 77 of the final findings. The Authority notes that no new substantial fact has been brought about by the interested parties in their post decisional second oral hearing submissions and post decisional Disclosure Statement submissions in this regard, and, thus, the Authority maintains its earlier decision.

DETERMINATION OF DUMPING MARGIN

48. Issues regarding the market economy treatment and determination of dumping margin have been examined by the Authority from para 78 to 118 of the previous final findings. The Authority notes that no new substantial fact has been brought about by the interested parties in their post decisional second oral hearing submissions and post decisional Disclosure Statement submissions in this regard, and, thus, the Authority maintains its earlier decision.

INJURY AND CAUSAL LINK

49. Issues regarding injury to domestic industry and determination of injury margin have been dealt by the Authority from para 121 to 167 of the final findings. The Authority notes that no new substantial fact has been brought about by the interested parties in their post decisional second oral hearing submissions in this regard, and, thus, the Authority maintains its earlier decision.

50. As regards the arguments that the earlier Disclosure Statement did not disclose all essential facts that formed the basis of decision, it is noted that Authority had disclosed all such essential facts which were required to be disclosed to interested parties and which formed the basis of the Authority's previous decision.

51. As regards the arguments related to the verification in the petitioner's premises, the Authority notes that the investigating team constituted by the Authority visited premises of the petitioner at Bangalore and Pondicherry.

52. As regards the arguments regarding the need of verification at the premises of such third party EMS vendors, it is noted that the Authority has conducted such verification as is considered necessary for the purpose of present determination.

53. The interested parties request the Authority not to issue Final Findings till disposal of the SLP pending in the Hon'ble Supreme Court of India. The Authority is of the view that there is no direction by the Hon'ble Supreme Court that the Designated Authority should not issue final findings. In the absence of any specific direction preventing the Designated Authority from

notifying the finding and considering the orders of the CESTAT, the Authority considers it appropriate to issue the findings in the present matter.

54. As regards the disclosure of non confidential version of the verification report of the domestic industry, the Authority has not disclosed verification report of the foreign producers to other interested parties (the domestic industry also demanded a copy of the verification report of the foreign producers). Further, there is no mandated legal requirement for a verification report to be prepared in respect of verification conducted at the premises of the domestic industry. Verification report in respect of on the spot investigations conducted at the premises of the domestic industry is, therefore, not required to be made available to the interested parties.

Examination by the Authority of the submissions of the Domestic Industry and the opposing interested parties after the post decisional Disclosure Statement dated 6th February, 2012:

55. A number of interested parties have offered comments to Disclosure Statement issued by the Authority on 6th February, 2012, which have been carefully examined by the Authority. The Authority noted that these comments are substantially repetition of the submissions made by these interested parties earlier during the course of the proceedings or in their written/rejoinder submissions filed after the post decisional oral hearing conducted by the Authority pursuant to the orders of the Hon'ble CESTAT. The arguments of the domestic industry are with regard to correctness of the product under consideration proposed by the Authority and standing determination made by the Authority. Further, domestic industry has reiterated their submissions objecting to the grant of market economy treatment to ECI and acceptance of export price for some of the responding exporters in view of allegedly unreported export transactions. The opposing interested parties have reiterated their earlier submissions, arguing incorrect scope of product under consideration (in particular inclusion of SDH-64, SDH-256, Digital Cross Connect, applicability of anti-dumping duty if the product under consideration is imported as part of other product, etc. Interested parties have opposed proposed determination with regard to standing of Tejas to file the present petition and have argued that Tejas cannot constitute domestic industry. At the same time, these interested parties have argued that other domestic companies (such as Prithvi, VMCL etc.) should also be treated as domestic industry.
56. Having regard to various submissions made by the interested parties at the time of oral hearing and thereafter in their written and rejoinder submissions, Disclosure Statement issued by the Authority and comments to the Disclosure Statement offered by various interested parties, and further having regard to the anti-dumping act and the rules, information filed by various interested parties during the course of the investigations and considering the merits in the arguments raised by the interested parties in view of legal and factual position, the Authority holds that the comments offered by various interested parties to the post decisional Disclosure Statement do not call for any reconsideration of factual and legal position earlier reported in the Disclosure Statement.

Indian industry's interest and other issues

57. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product under consideration in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.

58. The Authority recognizes that the purpose of anti dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

Conclusions and Recommendations

59. The Authority notes that the Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi vide its order dated 11.08.2011 had directed the Authority to make such modifications to the Final Findings as may be necessary as a result of such post decisional hearing.
60. Having regard to final findings earlier notified, various submissions made by the interested parties at the time of second oral hearing and thereafter in their written & rejoinder submissions, Disclosure Statement issued by the Authority and comments to Disclosure Statement offered by various interested parties, and further having regard to the anti-dumping act and the rules, information filed by various interested parties during the course of the investigations and considering the merits in the arguments raised by the interested parties in view of legal and factual position, the Authority holds that the final findings earlier notified by the Authority do not require any modification. The petitioner had standing to file and maintain the petition. The submissions made by the interested parties do not require any modification in the dumping margin earlier determined. Further, the Findings earlier notified by the Authority with regard to existence of injury to the domestic industry and casual link between dumping and injury also do not require any modification. The Authority holds that the product under consideration has been exported from subject countries at a price below normal value, thus, resulting in dumping of the product which has caused injury to the domestic industry. The Authority holds that anti-dumping duties are required to be imposed in order to address injury caused to the domestic industry by dumped imports. The Authority holds that no part of the Final Findings Notification No 14/2/2009-DGAD dated 19th October, 2010 is required to be modified as a result of the post decisional hearing conducted by the Authority and submissions made by various interested parties pursuant to the said hearing. The Authority, hereby, issues its post decisional Final Findings confirming the Final Findings earlier notified vide Notification No. 14/2/2009-DGAD dated 19th October, 2010.
61. An appeal against the order of the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Sd/-
(Smt Vijaylaxmi Joshi)
Designated Authority

