

To be published in the Part 1 Section 1 of Gazette of India, Extraordinary

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

NEW DELHI, the 24 th September 2008

Final Findings

Sub: Anti-Dumping Investigation involving import of Sulphur Black from China PR.

F.NO. 14/16/2006-DGAD:- Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

2. WHEREAS Sulphur Black Manufacturers' Association (herein after referred to as the applicant) has filed an application before the Designated Authority (hereinafter referred to as this Authority), in accordance with the Act, and the Rules, alleging dumping of Sulphur Black, originating in or exported from the China PR (herein after also referred to as subject country) and requested for initiation of an investigation for levy of anti dumping duties on the subject goods.

3. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the applicants issued a public notice dated 26th June 2007, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, in accordance with the sub-Rule 5(5) of the Rules, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which, if levied would be adequate to remove the injury to the domestic industry.

4. The Authority notified its preliminary findings vide Notification dated 10th March 2008 recommending imposition of provisional measure and the vide Notification No. 48/2008-Customs dated 11th April 2008, the Central Government has imposed provisional antidumping duty on import of the subject goods from the subject country. On the request of the Designated Authority the Central Government extended the time period for completion of this investigation till 25th September 2008, in terms of Rule 17 of the Rules.

A. Procedure

5. Procedure described below has been followed with regard to this investigation after issuance of the Preliminary Findings by the Authority.

(i) The Designated Authority sent copies of preliminary finding dated 10th March 2008 to all interested parties to this investigation, including the Embassy of the subject country in India, cooperating exporters from the subject country, domestic industry and the importers participating in the investigation requesting them to make their views known in writing within 40 days of the notification of the preliminary findings.

ii) The comments of the interested parties in response to the preliminary findings have been taken on record and the Authority has examined the issues raised therein.

iii) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;

iv) The Authority held a public hearing on 1st April 2008 to provide an opportunity to all interested parties to present their views. The oral submissions made by the parties during the public hearing reproduced in writing have been taken on record for the purpose of this investigation.

v) The Authority has examined the confidentiality claims of various interested parties in respect of the data submitted by them. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, alongwith non-confidential summary thereof, has been treated confidential. **** in this findings represents information furnished by the petitioner on confidential basis and so considered by Authority under the Rules;

vi) The Authority conducted on the spot verification of the co operating exporters and domestic industry to the extent considered necessary

vii) The Authority disclosed the essential facts of the case vide disclosure statements dated 9th September 2008. The interested parties have filed their comments to the disclosure statements and the same has been taken on record and addressed, to the extent the same are substantiated by the parties concerned;

(viii) Investigation was carried out for the period starting from Jan 2006 to December 2006 (POI). However, injury investigation has been carried out for a period from 2003-04, 2004-05, 2005-06 and POI.

ix) For the sake of brevity issues addressed in the preliminary findings, to the extent they have not been contested by the interested parties, have not been repeated in this finding

B. Product under Consideration and Like Article

6. The product under consideration in the present petition is Sulphur Black. Sulphur black is produced either in grains/flake form or in liquid form. Sulphur Black in grain form is a lustrous grain, imparts full black shade with a slight reddish or greenish tone. Sulphur Black is mainly used for dyeing cellulose fiber. Sulphur Black is also useful for dyeing viscose staple fiber and yarn, paper and leather.

7. In the preliminary findings the Authority noted that none of the interested parties have raised any issue regarding the product under consideration and like articles as indicated in the petition and on the basis of information available with it, the Authority provisionally held that sulphur black produced in flake/grain form and liquid form, as well as sulphur black produced in various concentrations are physically and chemically alike, use same production process and are technically and commercially interchangeable. Accordingly, it was held that the product under consideration in this investigation covers sulphur black in all forms and all concentrations. However, in the post preliminary submissions the interested parties have raised certain technical issues regarding the product scope, nature of the product and comparability, for like article determination. The issues have been summarized as follows:

M/s Shanxi Linfen Dyeing Chemicals Co. Ltd

8. M/s Shanxi Linfen, in its submissions, has argued inter alia that

- The subject good is generally manufactured and sold in different strengths namely, BR 100, BR 200, BR 240, etc. BR 240 represents 100% strength. There is a direct co-relation between the strength of Sulphur Black and cost of production involved. Higher the strength, higher the cost and lower the strength, lower the cost. However, the Preliminary Findings proceed on the premise that there is no difference in the manufacturing process and the cost involved, which is incorrect as there is significant difference in cost depending upon the strength and concentration. Lower the strength/ concentration lower is the cost.
- It is well recognized custom trade and practice that different strength of Sulphur Black can only be compared on strength to strength basis. Different strengths of the subject good are used for different purposes and cannot be substituted and therefore, as per trade practice difference in strength acquire significance.

M/s Dalian Green Peak

9. The above exporter in its submissions has argued inter alia that
- There appears to be a confusion that 'strength' is synonymous with "concentration" and that BR240 represents 100% concentration. In fact there is no 100% concentration and 'Strength' has a different context altogether. Dalian had noted this confusion in the Notice of Initiation and Petition but had not pointed it out earlier as there was no proposal to adjust on the basis in effect of 'Concentration'. Hence, it was seen merely as terminology adopted by the Hon'ble Authority and of no consequence.
 - Actually, 'strength' refers to the dyeing ability of the sulphur black. The number following BR is determined compared to the dyeing ability of standard. For example, the standard BR200 of one KG is used to dye the fabric of 1 square in controlled conditions; then the tested sulphur black of one KG also used to dye the fabric of 1 square in the same controlled conditions. The experienced technician usually compares the dyeing result of the fabrics dyed by the BR200 and the tested sulphur black by eye to determine the strength of the tested sulphur black.
 - Chinese producers produce 3 tones for each grade. For the argument that the strength of 501 BR200 is almost equal to the strength of 522 BR180 or 521 BR180 for Dalian, it can only be determined and proved through experiment and can be verified during the on-site visit. Since there is no generally accepted standards for sulphur black BR, the three types of sulphur black BR produced by different producers may be different. Therefore, sulphur black with specific strength should be the like product of the sulphur black with the same strength, when there is such sulphur black produced and sold by the Indian domestic industry according to the definition of "like product".
 - BR200 is also the largest product of the cooperating producers from China PR and the only grade that both the cooperating exporters have exported to India during the POI and was the main grade exported by each cooperating exporter.
 - The domestic industry's concerns during the public hearing was chiefly in context of 200BR and lower grades and not 240BR of which import volumes are low and DI does not produce or sell 250BR or higher grades. Moreover, DI itself imports 240BR as there is insufficient domestic production. Therefore, there can *prima facie* be no injury on account of these high grades and they may be excluded.
 - Since BR240 is mainly used in India for liquid form which has limited market only for high end, high volume textiles /garments producers often for exports, there would, in fact be a good case for excluding BR240 and higher grades of the subject goods that are presently neither produced or sold in India by DI or exported to India from China.

- Although BR240 and the sulphur black in liquid form are covered by this investigation up to now, they should be excluded from the calculation of the dumping margin and the injury margin. BR240 was not exported by other Chinese exporters to India during the POI and the BR240 exported by Dalian did not enter into the commerce of India and thus should not be regarded as export sales to India.
- It is stated that there was no sulphur black in liquid form exported to India from China during the POI. The cost and price of the sulphur black in liquid form is higher than those of the sulphur black in grain/flake form.
- As there were actually no export sales of BR240 and the sulphur black in liquid form to India during the POI, for fair comparison of the export price and normal value stipulated in Article 2.4 of the AD Agreement, BR240 and the sulphur black in liquid form should be excluded from the calculation of the normal value and non-injurious price, and thus be excluded from the calculation of the dumping margin and the injury margin.
- Similarly, higher grades of the Subject Goods may be excluded as they were neither produced in India nor sold in India during the POI by DI or exporters.

Examination by the Authority

10. The Authority has noted the views expressed by various interested parties on the scope of the product under consideration and like articles. The issue was also examined in detail during the verification of production process and technical details of the product at the premises of the exporters concerned, on the basis of these arguments. The interested parties have argued and Authority notes that it is not appropriate to describe sulphur black in terms of 'concentration', as various BR values, by which the product is described, does not denote concentration of the product, but the dyeing strength of the product, calibrated with reference to a standard specified by the producer of such products. It is also noted that a universal standard does not exist for the product. It is also noted that BR value is not the only description of the product but represents the tone (Blue-Red) of the product. Similarly, other tones of the product are also available and are denoted such as DR etc. However, in trade parlance the product is described in various BR or DR values, which represents the dyeing strength of the product compared to the standard product of manufacturer or user.

11. The Authority noted in the preliminary findings that only sulphur black in grain/flakes form has been imported during the POI from the subject country. However, sulphur black produced in flake/grain form and liquid forms are physically and chemically alike, use same production process and the products are technically and commercially interchangeable. Though the interested parties have argued that liquid should be excluded from the scope

of product under consideration, since this product has not been exported from China, no significant argument has been made by any interested party to show that these two types of the product are not technically of commercially interchangeable. On the other hand it has been argued by the domestic industry that both grain and liquid are interchangeably used by the user industry for dyeing cotton fabrics, paper and leather. The liquid sulphur black provides a more consistent dyeing property and reduces use of other chemicals in the dyeing process at the users end. Use of liquid dyes also reduces use of process water, steam, power and increases productivity. Therefore, the Authority does not find any convincing ground to find that liquid sulphur black is not a like product compared to the grains and therefore, to remove the same from the scope of investigation.

12. As regards exclusion of various strength of sulphur black, particularly BR 240, as argued by the exporters, there has been no significant argument by any interested party to establish that they are not *inter se* substitutable. Merely because the domestic industry does not produce significant quantity of this product type or there is no significant import of this product type during the POI, the product cannot be excluded from the scope of the investigation, as long as the product type is physically and chemically similar, *inter se* substitutable and alike to the other product types within the same general description of the product i.e., sulphur black. In fact the domestic industry produces BR240. The Authority also noted above that there is no universal/international standard for this product. Therefore, one grade of one producer could match with another grade of another producer, or a user defined grade, on the basis of the standards set by the producer or user. Therefore, there is a considerable degree of interchangeable use of various grades. None of the interested parties have filed any significant argument on this issue in their post disclosure submissions.

13. In view of the above, the Authority holds that sulphur black in all forms and all strengths are *inter se* technically and commercially substitutable and therefore, like articles for the purpose of this investigation. Accordingly, this investigation covers sulphur black in all forms and all strengths (hereinafter referred to as subject goods). The product is classified under Chapter 32 of the Customs Tariff Act. Specific tariff head at Eight Digit level is 32041967.

C. Domestic Industry and Standing

14. The application for this investigation was filed by the Sulphur Black Manufacturers' Association on behalf of its members supported by a resolution of the association.

15. The Authority recorded in the preliminary findings that it has been brought to the notice of the Authority that there are ten known active producers of subject goods in India, namely M/s Atul Limited, M/s Bhanu

Chemicals Pvt. Ltd, M/s Apco Dyechem Pvt. Ltd, M/s Madhav Dye & Chemicals, M/s Rajasthan Dye and Chemicals, M/s Maulick Dyechem, M/s S M Chemicals, M/s Nitin Industries, M/s Khera Chemicals, M/s Dyechem India. Apart from these known producers, there were a large number of small producers (about 25) of subject goods, who have either suspended production or exited from this product segment due to intense dumping of the product in the Country. Two major producers of the subject goods i.e., M/s Atul Limited and M/s Bhanu Chemicals, accounting for 83% of total production of the subject goods, have provided relevant information in the present petition. Balance quantity is produced by other small producers as above, in small scale sector, who have supported the application made by the association. Therefore, the applicants command the standing to file the application.

16. It was also recorded in the preliminary findings that one of the applicant domestic producers i.e., M/s Bhanu Chemicals, and one of its sister concerns had imported certain quantities of sulphur black in grain form during the POI under advance licensing scheme and otherwise, for processing them into liquid form for export purpose. The applicants have argued that such small quantity of imports by the applicant should not disqualify it to be treated as one of the constituents of the domestic industry, for the purpose of examination of standing and injury as per the Indian Rules. It has also been argued that even if this producer is disqualified to be treated as a part of the domestic industry, the other producer i.e. M/s Atul limited, with a production of 2723 MT, commands about 52% of the total production of the subject goods in India. It has also been argued that as per the Indian Rules, the exclusion of an importing domestic producer from the domain of domestic industry, for the purpose of determination of standing and injury, is not automatic and depends upon the merit of the case.

17. Other interested parties have not disputed the preliminary determination of standing and domestic industry. Only Dalian in its comments on the preliminary findings has submitted that the Authority should consider that the applicants account for less than 45% of total domestic production during POI and not 54% during POI as claimed. However, the basis on which they have arrived at this figure has not been provided. As per the information available with the Authority Atul Limited commands 52% of total production of sulphur black in the country (including all grades on actual strength basis) and therefore, the contention of the exporter is not correct. It has been further argued that the production of BR240 in domestic market was limited, there is no domestic production of grades BR250 and higher, and many of the Applicants (including Bhanu) import BR240 from China, including Dalian, during the POI and to date. This issue has already been addressed in the like article determination and therefore, does not affect the standing and domestic industry determination. None of the interested parties have filed any argument on standing issue in their post disclosure submissions. Therefore, the Authority confirms its findings in the preliminary findings in respect of domestic industry and its standing to file the application.

18. As recorded in the preliminary findings the applicant Association was requested to file the cost and injury data in respect of other existing producers. However, the other producers are mostly in the unorganized sector and have not filed any cost and injury data. Therefore, the cost and injury information of the participating domestic industry, which constitutes about 83% of total domestic production, has been considered for the final determination.

D. De Minimis Limits

19. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary sources, as well as the data furnished by the cooperating exporters from the subject country, the imports of the subject goods, from the subject country, are above the de minimis level.

E. Other submissions and issues raised

M/s Shanxi Linfen Dyeing Chemicals Co. Ltd

20. In addition to specific comments on the methodology of determination of dumping, injury and causal links, recorded in the respective sections in this finding the above exporter, in its various submissions, has inter alia made the following general arguments:

- That the allegations of dumping, injury and causal link have not been duly substantiated by the domestic industry in its application and without ascertaining the adequacy and accuracy of the information filed the Authority should not have initiated this investigation;
- The Domestic Industry has claimed excessive confidentiality on information and documents that are already in the public domain. No reasons have been accorded by the Domestic Industry regarding the confidentiality of data;

M/s. Dalian Green Peak Chemicals Co. & M/s Dalian Dye Chem International Corporation

21. In addition to specific comments on the methodology of determination of dumping, injury and causal links, recorded in the respective sections in this finding the above exporter, in its various submissions, has inter alia made the following general arguments:

- The exporter has argued that the Authority failed to communicate the possibility of an adjustment to the cooperating exporters and to invite comments thereon. Though in some jurisdictions provisional duty may be levied without a preliminary determination, Rule 13 in India explicitly requires a preliminary determination to precede any Provisional duty to

avoid 'ambushing' exporters and importers. In this spirit the exporters could have been informed that the Hon'ble Authority was considering adjustment and the methodology thereof and invited comments on the same.

- the issue of adjustment has been wrongly proceeded on as there appears to be a confusion that 'Strength' is synonymous with Concentration and that BR240 represents 100% concentration.
- Even if the Authority confirms NME treatment to Dalian, it may note Dalian's co-operation and offer a higher standard of disclosure of construction of Dalian's normal value than the disclosure available in case of construction of normal value of non-cooperating exporters that have in effect waived or forfeited their respective legal rights by non-cooperation.
- That the benefit of the lesser duty norm not be extended to non-cooperating exporters since this discourages cooperation.
- When there is physical characteristics difference between the subject product and the like product, the adjustment should be made only to the normal value of the like product so that the normal value of the like product is comparable to the export price of the subject product.
- Normally there are two kinds of methods to adjust the physical characteristics difference which are widely used by the anti-dumping authorities around the world. One method is based on the market value difference incurred by the difference in physical characteristics and other method is based on the cost difference incurred by the difference in physical characteristics.
- The Applicant has kept certain crucial information, pertaining to the costing information and the methodology adopted to arrive at the normal value, confidential without providing meaningful non-confidential summaries thereof. Therefore, the Applicant has not fulfilled requirement of providing non-confidential summaries of the costing information and the calculation of the normal value and has significantly hampered the right of Dalian to defend itself in this investigation.

Examination by the Authority

22. As far as the adequacy and accuracy of information at the time of initiation of the investigation is concerned, it is noted that the investigation was initiated upon prima facie satisfaction of the Authority regarding the adequacy and accuracy of information submitted by the applicants in respect of dumping, injury and causal links. Therefore, the arguments of the interested parties are not tenable.

23. The Authority notes that neither the Antidumping Agreement, nor the Rules requires the Authority to make a pre-preliminary determination disclosure of the methodology to be adopted by the Authority in its preliminary determination and seek comments of parties. The provisional measure is aimed at providing a temporary relief to the domestic industry from the

onslaught of dumping and continued injury during the investigation phase. Therefore, preliminary determination is a provisional assessment, mostly based on table analysis of the data, and does not require same standard of analysis as in the case of final determination. Neither the Agreement, nor the Rules require the Authority to issue a disclosure of the determination made in the preliminary findings. The methodology of provisional determination had been adequately explained in preliminary findings. Only disclosure provision, under the Rule, is in terms of Rule 16, to be made before the final findings. Therefore, the arguments of Dalian that they should have been given a full disclosure of the methodology before determination or a disclosure of the determination after the provisional finding, does not hold good.

24. As regards higher standard of disclosure to cooperating exporters vis-à-vis non-cooperating exporters and differential treatment in respect of lesser duty rules, the Authority notes that general disclosure are issued to all interested parties and confidential disclosures are issued to the participating exporters in respect of their data. Therefore, higher disclosure standards are already built into the system and do not require any special treatment for Dalian, as has been argued. Neither the Rules, nor the Agreement provides for preferential treatment to cooperating exporters in respect of lesser duty application. Therefore, the arguments of this party are not tenable.

25. As far as the methodology of comparison and adjustments are concerned, the comments and arguments of the interested parties have been duly addressed in the relevant section for proper comparison and determination of final dumping margins.

26. The interested parties have also raised the issue of inadequate non-confidential disclosures by the opposing parties. It has been argued that the Non Confidential Petition filed by the Petitioner remains defective, and the evidence as to calculation of normal value in the Non Confidential version is incomplete and the interested parties are unable to comment upon the allegations of dumping of the subject goods for the reason that methodology along with the evidence used for constructing the normal value for China PR have not been disclosed. In this connection the Authority notes that the non-confidential submissions made by the interested parties and confidentiality claims of the respective parties have been examined at the time of submission and the parties were asked to make adequate non-confidential disclosures for the benefit of other parties. On the basis of the submissions made, the information, which are by nature confidential, viz, cost and selling information and other information which are commercially sensitive and have been submitted in confidential manner by a party supplying such information, have been treated so. No information has been treated as confidential in an automatic manner or without application of mind as has been argued by the parties. The information submitted on non-confidential basis and indexed or summarized information of confidential information as submitted by the parties, have been placed in the public folder.

F. Determination of Dumping Margin

27. The Authority notes that responses to exporter's questionnaire have been received from the following exporters of the subject goods from the subject countries:

1. M/s. Dalian Green Peak Chemicals Co. Ltd (Producer) alongwith Dalian Dye Chem International Corporation (Exporter)
2. M/s Shanxi Linfen Dyeing Chemicals Co. Ltd.

28. The questionnaire responses of these producers and exporters were examined and further information was called from them. The responding producers/exporters have filed additional submissions which were also taken on record and examined in the preliminary finding. The exporters concerned have rebutted the non-market economy presumption. On the basis of preliminary examination of the questionnaire responses and the Market economy responses of the responding producers and exporter and supplementary submissions made by them the Authority provisionally held that the responding producer/exporters from China are not operating under market economy conditions. In their post preliminary finding submissions the responding exporters have disputed these provisional findings. None of the interested parties have filed any significant argument on this issue in their post disclosure submissions. The views of the responding exporters, on the preliminary market economy determination, have been summarized as follows:

Views of M/s. Dalian Green Peak Chemicals Co. Ltd (Producer) and M/s Dalian Dye Chem International Corporation (Exporter);

29. In the submissions made on behalf of this producer/exporter it has been argued inter alia that

- The Authority may note that a number of leading trading countries have decided to recognize China as a market economy and that these include developed market economies like Singapore and New Zealand. This makes less relevant the decision by some other jurisdictions/WTO members as criteria to presume NME Status for China.
- There should not be any hostile discrimination qua China in respect of the NME issue. It may be recalled here that since certain jurisdictions have conferred MET recognition to Russia the Hon'ble Authority has ceased to treat Russia as a NME in recent investigations though Russia has been treated as NME in other jurisdictions within the past 3 years.
- there is, *prima facie*, no reasonable basis to assume that the said subject goods business sector in China operates as a NME and thus Dalian may be excluded from being deemed to be operating under NME conditions and the information furnished by Dalian clearly shows that Dalian makes

its business decisions exclusively in a manner of business in a market economy.

- The laws introduced in China in recent years as applicable to this business sector and to Dalian are similar to the comparable laws in market economies and had begun to be enforced by the POI.
- Dalian does not enjoy a monopoly on Subject Goods production, trade or exports and that there is no State/Government control on pricing and costing of Dalian. Producer purchases the raw materials and sells the finished products at market driven prices that are not regulated by the State/Government. In turn, Exporter exports the Subject Goods, *inter alia*, to India during the said POI at market driven prices not influenced by the Government. Further, there is no State/Government management control of the Producers or their respective prices and costs.
- The accounting system used by Dalian is consistent with international norms in a market economy. Dalian does not receive any subsidies other than permitted VAT reimbursement that are levied on domestic sales and purchases its foreign exchange through the authorized dealer bank, as in a market economy like India and maintains its accounts consistently with international norms.
- It is also submitted that the prices paid in India for the subject goods exported by Dalian during the POI include a reasonable profit margin. It is submitted that the decisions of Dalian with respect to prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and the costs of the inputs reflect market values. It is submitted that there is neither any State regulation of costs or prices of these inputs in China, nor any system of 'administered prices'.
- Further, there is no distortion of production costs and financial situation as the Producer has not converted former State assets, or distorted depreciation thereof, or engaged in barter trade or debt forgiveness or debt/equity swaps, or received the benefit of any write-off.
- Dalian has exported the subject goods to India during the POI consistent with its normal value and, in fact, the Export Price of Dalian to India during the POI, as may be verified, is the highest from China. Thus, the Export Price of Dalian to India has been determined by market signals and commercial considerations and not by Government influence. The Producer and Dalian have also repaid any debt consistently as required.
- Dalian, like Shanghai and Shenzhen, has high FDI concentration and that these cities exporters ordinarily have high EP in different investigations reflecting the greater influence of international pricing and MET norms in the supply chains and management of exporters from these cities. Local economic environment of Dalian is positively market oriented and is remarkably exposed to both domestic and foreign competitions.
- Dalian is subject to China's laws and regulations with respect to bankruptcy and property respectively. There are a number of bankruptcies in China of similar firms, including in the POI.

- As in India the exchange rate is based on the market rate as determined by the Central Bank as is reflected in the confidential data furnished along with the said Confidential Response. Further, Dalian has borrowed from the banks on market terms and repaid its loans as per schedule as in a market economy Dalian has acquired its land through market economy mechanisms.
- In any case the practice in other jurisdictions is not to reject or disregard an exporter's efforts to exclude itself from NME treatment without verification of the information furnished by the said exporter in this regard. Dalian agrees to verification of the same and the information furnished.
- Dalian has a Union and wage rates are well above the prescribed minimum wages applicable. Dalian has also paid for its land-use during the POI. Dalian is repaying its loan and market based interest as per the payments schedule. Therefore, Dalian submits that it isn't appropriate to conclude that the enterprise will work under the guidance of the State relating to production, sales, pricing etc for the law.
- that full or part 'state ownership' is not listed as a published criterion, relevant for price/behavior comparability, in either the said Protocol or the said Rules and may not be read into the phrase 'interference by the State' since the said Protocol contemplates price comparability only and the said Rules provide for 'operate as a market economy firm' indicating behavior.
- that the stated purpose of NME is to correct for possible price distortions. Dalian submits that conversion ratios in accordance with different economies of scale are well known. Thus, if keeping in mind Dalians verified conversion ratio based on its economies of scale, the price of its key raw materials are comparable with the international price of these raw materials than it is clear that there has been no price distortion and thus, no reason to deny MET to Dalian.
- Dalian has earned and distributed profits regularly during POI and thus Dalian is behaving/operating like a market economy firm.
- Ownership of Dalian appears to be the main issue in respect of grant of MES.

Views of M/s Shanxi Linfen Dyeing Chemicals Co. Ltd

30. In the submissions made on behalf of this producer/exporter it has been argued inter alia that

- In 1997, Linfen Dyeing was converted into a limited liability company in accordance with PRC Company Law, which is a different legal form from the Solely State-funded Company provided by Article 65 of the Company Law. The employees are the real controllers and managers of Linfen Dyeing. As a result of the above, in 2005 the shareholders agreed to transfer the managing power to the employees by re-allocation of members of board of directors. Thus, the representatives of employees constitute a majority in the board of directors, which ensures the employees' managing power in the day to day operation of Linfen Dyeing.

- Linfen Dyeing is in fact controlled by its employees through the board of directors and management. The representatives of the employees occupy a majority in the board of directors. These representatives are elected through the employees at a meeting.
- Linfen Dyeing is not a part of a Group. Linfen Dyeing has two subsidiaries. The first is Shanxi Sino-wide Dyeing Chemicals Co., Ltd, which is responsible for production of medical intermediates; the other is Tianjin International Trading Co., Ltd., which is responsible for exporting the products manufactured by Linfen Dyeing. Tianjin International Trading Co., Ltd was established in 2007. During POI, Linfen Dyeing did not have any related company engaged in production, sale or distribution of the subject merchandise.
- No local/regional authority or State is involved in setting prices/ quantities of the product concerned. All the sales decisions are made by Linfen Dyeing's management freely and independently, according to the market conditions.
- Linfen Dyeing sets the prices of the subject merchandise exported to India and other countries according to the production costs and the international market situation. The sales manager of Linfen Dyeing negotiates with customers directly. These negotiations are not subject to any review or guidance from governmental authority.
- No organization outside the company reviews or approves any aspect of the sales transaction and no local/regional authority or State is involved in setting prices/ quantities.
- Linfen Dyeing is not subject to any direct or indirect quantitative or other restriction for any of these activities.

F.1 Examination by the Authority

31. The Authority, notes that in the past three years China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of para 8 (2) of the annexure 1 of AD rules, China PR has been treated as a non-market economy country, subject to rebuttal of the above presumption by the exporting country or individual exporters, in terms of the above Rules.

32. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China were required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) the exchange rate conversions are carried out at the market rate.

In the light of the above the market economy claims of the responding exporters have been examined as follows:

a. M/s. Dalian Green Peak Chemicals Co. Ltd (Producer) and M/s Dalian Dye Chem International Corporation (Exporter)

33. On the basis of information submitted by this responding exporter the Authority notes that the producing Company, i.e. M/s Green Peak, one of the major producers of the subject goods in China, is a joint stock company controlled by Dalian Dyestuff & Chemicals Corporation, which is in turn 100% held by Dalian Dyestuff & Chemicals Group. Dalian Dyestuff & Chemicals Group is a state-owned entity. Green Peak was established on Dec. 26, 2000 by Dalian Dyestuff & Chemicals Corporation along with other 4 shareholders, which are themselves state-owned.

34. The production facility of the subject goods was established in August, 1999 in Dalian Free Trade Zone (FTZ) and was put into use since October, 1999. This production facility was owned by Dalian Dyestuff & Chemicals Corporation before Green Peak was established and was transferred to Green Peak as capital contribution in the new Company. The examination of the formation and status of the Companies indicates that Companies continue to be fully owned and controlled by the Government through its holdings in promoter Companies. It is also noted that net asset value of the erstwhile entity, capitalized at the time of formation of the new Company, was significantly lower compared to the book value of the assets. Therefore, significant distortions appear to have been carried over from the previous entity affecting the cost and price structure of the Company.

35. Green Peak has a board of directors with 9 directors out of which 6 directors represent the investors, which are state-owned entities. The exporting company i.e. M/s Dalian Dyechem is 100% held by Green Peak and therefore, continues to be under the control of the Government.

36. The producing company draws all utilities from its parent company i.e. M/s Dalian Dyestuffs & Chemicals Corporation. The Company does not have any specific contract with the parent Company for the supply of utilities viz. Electricity, Steam and Water. However, the utility price is charged based on price determined by the State. The major raw materials for the subject goods, i.e. DNCB and Sodium Hydroxide are captively produced by Dalian Green Peak and other raw materials are sulphur, sodium sulfide (both purchased from unrelated private suppliers through short-term contract or spot market).

37. In its post preliminary finding submissions the responding exporter has argued that since the producer has not been converted from State Assets, there is no distortion of depreciation etc., no involvement in barter trade, debt forgiveness or debt equity swap or write off etc. They have also raised the issue of recognition of China as a market economy by other market economy countries and the sulphur black sector in China does not operate under non-market economy condition.

38. The Authority notes that Indian Rules, in this context, are clear. As long as China does not fulfill the conditions stipulated in Para 8 in Annexure I to the Rules the Authority has to make a determination in respect of individual responding companies from China, on case to case basis, as per the criteria prescribed in the provisions quoted above.

39. Examination of the submissions made by the responding producer and exporter indicate that the Government continues to have full controlling interest in the producing Company.

40. The Authority also notes that the producing and exporting Companies are significantly owned and controlled by the Government and cost and prices are distorted due to carry over of distortion at the time of transfer of the production unit from the promoting Company to the new Company. Several inputs and utilities are also provided by the related companies, which are under government control. Therefore, the Authority is of the view that this producer- exporter from China cannot be granted market economy status for the purpose of determination of its Normal Value.

a) M/s Shanxi Linfen Dyeing Chemicals Co. Ltd (Producer)

41. M/s Shanxi Linfen Dyeing Chemicals Co. Limited (Shanxi) was established in 1997 as a Limited Liability Company, as per the Company Law of PRC. Shanxi is the biggest manufacturer of Sulphur Black in China with annual capacity of **** MT and produces two types of Sulphur Black-Solubilised SB (SSB) and Non- Solubilised SB (NSB) in various strengths, both in grain as well as in liquid forms and sales the same in various markets.

42. M/s Shanxi Linfen Dyeing, earlier existed as Shanxi Linfen City Dyeing Material Factory, established under the centrally planned economy system at

Xinjiang Town under Shanxian Linfen Economic & Trade Commission and later moved to the south of Linyi City in 1964. In June 1995, three State-owned entities signed an Article of Association to form a Limited Liability Company in the name and style of M/s Shanxi Linfen Dyeing Chemicals Co. Ltd, in accordance with PRC Company Law. Out of total registered capital, ****% was contributed by the Shanxi Linfen Government in the form of assets of Shanxi Linfen Dyeing Factory, referred above. The Company was formally established on 7th July 1997.

43. The process of formation and capital contribution at the time of formation of the new Company and transfer of assets of the old factory shows that against total assets of the Company of RMB ****/- the liability stood at RMB ****/-. Therefore, the net asset value of the Company on the date of transfer was RMB ****/-. The Linfen Government has used this net asset value as the ownership equity in the new Company formed in 1995, after adjusting for outstanding loan interests of the enterprise, which stood at ****/-. Therefore, capital contribution of Linfen Government to the net Company was only RMB ****/-, contributed in the form of assets of the old factory, whose asset value was RMB ****.

44. As far as other shareholders are concerned, Shanxi Economy Development and Investment Company have also capitalized its loans standing at RMB ****/- to equity in the new Company. The third shareholder i.e., Shanxi Economy and Trade Assets Management Company also capitalized its outstanding loans standing at RMB ****/- into equity in the new Company. Therefore, there was no cash contribution by any shareholder in the new Company. It was found that the Company is basically running on the loan from employees fund and long term loans, including loan from Shanxi Credit and investment Company.

45. The shareholders of Linfen Dyeing continue to be companies owned by Shangxi Province government. Therefore, the producing company continues to be a government owned and controlled company. In 2006, Economy and Trade Commission of Linfen City contemplated privatization of the unit by transferring its shares in the unit as per the State-owned Equity Transfer Project Introduction document submitted. However, the project did not materialize.

46. The registered capital of the Company was raised in 2006 by fresh capital contribution by the promoters in the same proportion by capitalizing the surplus and undistributed profits during the previous years' operations. No fresh cash contribution has been made by any shareholder.

47. The Company is running on the basis of the loan contribution of the employees which is more than the paid-up Capital of the Co. As a result of controlling interests of the employees, the managing powers have been

transferred in 2005 to the employees and representatives of the employees constitute a majority in the board of directors.

48. The Company has a wholly owned subsidiary i.e., M/s Tianjin International Trading Co., who is engaged in export business. However, this subsidiary Company was established in 2007 and had not exported the subject goods to India during the POI. Accordingly, erroneous inclusion of the name of M/s Tianjin International Trading Co in the preliminary determination, based on their questionnaire response of the trading Company, has been removed.

49. The above examination shows that at the time of transfer of assets and capitalization of the assets and liabilities, the promoters' loan components outstanding at the time of the transfer, have been waived completely. Net asset value booked in the new company's books is also highly distorted. Since there is no cash contribution from the shareholders, the Company is basically running on debt financing from the loan taken from Employees and other financial institutions on long term borrowing basis.

50. The Company produces DNCB captively. Significant quantity of other raw materials i.e., Chlorobenzene and Liquid Alkali is purchased from State-owned or State-controlled entities. For production of the subject goods electricity is supplied from state-owned Shanxi Electricity Co. Ltd. Unit power purchase price during the POI was RMB **** per unit. It has been argued that Shanxi being a coal belt, the electricity is cheaper in this province. The Company is using state-owned land on the basis of land use notification issued by Linfen Govt. for 50 years lease.

51. The Company has argued that although Linfen Dyeing is still a limited liability company owned by shareholders of local governments, these shareholders are not involved in the business decisions and day to day management of Linfen Dyeing and the rights of three shareholders are limited to receive the profits distribution and elect their representatives in board of directors.

52. It has been submitted that the employees of the Company are the real controllers and managers of the Company as the long term capital contribution of the employees in the Company through various loan and development funds which exceeds the registered capital of the company.

53. However, the above examination shows that the responding Company continues to be owned and controlled by the Government and there is a significant distortion in the cost and prices due to waiver of loans and interests and distortion in the net asset value of the company at the time of transformation into the new entity. Therefore, the Authority is of the view that this Company cannot be granted market economy treatment for the purpose of determination of its normal value.

G. Other issues raised by the interested parties regarding price comparability and dumping margin determination

M/s. Dalian Green Peak Chemicals Co. Ltd

54. Commenting upon the methodology adopted in the preliminary findings for determination of dumping margin Dalian has inter alia argued that

- the linear adjustment method adopted by the Authority in adjusting the respective export prices of each grade of the Subject Goods exported to India by the cooperating exporters during POI into grade 240BR based on adjustments of the respective quantities exported, of each other grade by each exporter, and comparing the respective adjusted EPs with CNV of Dalian for BR240 and the NIP of DI for that grade, is erroneous. The correct procedure would have been to determine the EP, NV, DM, NIP on Grade to Grade basis and recommend accordingly.
- Verification will establish that grade-wise dumping margin/injury margin determinations are most appropriate and also that the *pro rata* cost of production of the lower grades is relatively higher than that of the higher grades.
- The issue of adjustment has been wrongly proceeded on, as there appears to be a confusion that 'Strength' is synonymous with Concentration and that BR240 represents 100% concentration. In fact there is no 100% concentration and 'Strength' has a different context altogether and thus there has been confusion in this regard. Actually, 'strength' refers to the dyeing ability of the sulphur black. The number following BR is determined by comparing with the dyeing ability of a standard. However, there is no general accepted standard for sulphur black BR. The strength of 501 BR200 is almost equal to the strength of 522 BR180 or 521 BR180 for Dalian. It can only be determined and proved through experiment and can be verified during the on-site visit. and the three types of sulphur black BR produced by different producers may be different.
- Concentration usually means the amount of a specified substance in a unit amount of another substance. For sulphur black industry, there is no such concept of "concentration" to describe the sulphur black. There is only "strength" that is used to describe the sulphur black. The number following "BR" represents the strength of the sulphur black compared to the standard. Sometimes, "%" sign is used following the number in business transaction. For example, "BR240" is also written as "BR 240%".
- Although Dalian used concentration in its response to the deficiency letter dated 17.12.2007, it was just simply made according to the description of the Indian domestic industry. Dalian does not use concentration to describe the sulphur black and actually all the producers including the Indian domestic industry do not use concentration to describe the sulphur black. Dalian did not know that the Authority would use such a method to

convert the sulphur black in other strengths to BR240 and so Dalian did not pay much attention to this question at that time.

- The purpose of such kind of wrong description is to mislead the Authority to convert sulphur black in other strengths to BR240 on so called pro rata basis.
- The strength of sulphur black is determined compared to the strength of the standard. If BR200 is used as the standard, then BR240 means the strength of BR240 is 120% ($=240/200*100\%$) of the strength of the standard BR200. Similarly, BR180 means the strength of BR180 is 90% ($=180/200*100\%$) of the strength of BR200.
- However, it should be noted that the sulphur black BR is different from other standard products. There are no national, industrial, international or generally accepted standards for sulphur black BR for either Chinese producers or Indian producers, or other producers around the world regarding the strength. Therefore, actual dyeing ability or strength of the standard BR200 produced by different producers may be much different after conducting an experiment on them to test, although all of them are written as BR200 in the invoices and the accounts and used as standard for individual producer. It is very normal that the actual strength of BR180 produced by one producer is the same as the actual strength of BR200 produced by another producer after conducting the experiment on them to test the dyeing ability.
- For a better understanding it is important to know how the individual producer ascertains its own standard.
 - First, when a batch of the sulphur black BR is produced, the producer takes some of it and regards it as the standard named BR200. Then the producer conducts the experiment to the standard to see the dyeing ability of it.
 - Second, when another batch of the sulphur black BR is produced, the producer takes some of it to conduct the experiment to see its dyeing ability.
 - Third, the producer compares its dyeing ability to the dyeing ability of the standard BR200.
 - Fourth, according to the comparison result, if it is found that its strength is 120% of the standard, the producer names it as BR240; if it is found that its strength is 90% of the standard, the producer names it as BR180.
 - From the process, it is clear that the individual producer ascertains the standard BR200 itself without based on any uniform standards.
- Due to the absence of the national, industrial, international or generally accepted standards for sulphur black BR, the strength of the standard used by different producers may be much different even if all of them are called BR200.
- Even in the same company, the actual strength of BR200 is different for different types of BR200. For example, Dalian produces three types of sulphur black BR, that is 501 sulphur black BR, 522(588) sulphur black BR and 521 sulphur black BR. The tone of 522 sulphur black BR is redder

than the tone of 501 sulphur black BR, and the tone of 521 sulphur black BR is bluer than the tone of 501 sulphur black BR. The three types have their own standard 501 BR200, 522 BR200 and 521 BR200. The strength of 501 BR200 is almost equal to the strength of 522 BR180 or 521 BR180.

- For this reason, the sales of sulphur black are usually made by sample. When a new customer wants to purchase the sulphur black from Dalian, Dalian usually provides 501 BR200 or 522 BR200 produced by it to the customer for a sample. The customer will test the sampled BR200 and then decide what strength he would like to buy compared to the sampled BR200. A new customer will not directly require Dalian to sell BR240 to him without looking into its standard.
- As there is no national, industrial, international or generally accepted standards for sulphur black BR and the standard used by every producer may be much different, there is no an uniform and reasonable basis to adjust the physical characteristics difference between sulphur black in different strengths produced by different producers.
- It is stated by the Indian domestic industry that the strength of the grain is adjusted by adding salt. It seems that the Indian domestic industry produces BR240 first and then lowers the strength of the sulphur black by adding salt to get BR150, BR180, BR200, etc. However, when the sulphur black in press cake is recovered from the mother liquor by filtration for the first time, the strength of the original press cake usually is about 180% for Dalian, and may be as low as 140%-150% for other producers, if the production technology of the producer is not very good.
- If the strength of the original press cake is 180%, then the producer can get BR180 directly after the press cake is treated with caustic/sodium hydrogen sulphide/ sodium sulphide and dried. If BR200 or BR240 is needed, the original press cake is washed to get rid of sodium thiosulphate, sodium chloride and other impurities until the strength of the press cake is improved from 180% to 200% or 240%, then get BR200 or BR240 after the washed press cake is treated with caustic/sodium hydrogen sulphide/ sodium sulphide and dried. If BR130 is wanted, the producer can add the salt to the original press cake or to the sulphur black in flake/powder form to lower the strength from 180% to 130%.
- When the sulphur black in press cake is recovered from the mother liquor by filtration for the first time, the strength of the original press cake may not be 240% for all the producers. It is a wasted cost for producers to get BR240 from BR180 by washing, and then get BR180 from BR240 by adding salt to BR240 if the strength of the original press cake is 180%.
- The statement by the Indian domestic industry that the strength of the grain is adjusted by adding salt and lower concentrations are achieved simply by addition of salt is not correct. Actually, the strength of the sulphur black is lowered by adding salt or improved by washing from the original press cake.
- It should be noted that the quality and dyeing ability of sulphur black in low strengths such as BR130, BR150 which is obtained by adding salt to

sulphur black in high strengths such as BR180 is poor practice. Dalian does not produce the sulphur black in strengths which is lower than 180%.

- The Authority may proceed on the basis of individual type to type and weight to weight comparison in order to ensure that there is correct 'apple-to apple' comparison. The grouping together of very disparate grades/products in the said Investigations leads to severe distortion of the dumping margins and to unlawful antidumping duty being recommended on products/grades/segments that have admittedly not seen any injurious dumping.
- When there is physical characteristics difference between the subject product and the like product, the adjustment should be made only to the normal value of the like product so that the normal value of the like product is comparable to the export price of the subject product. For example, if the subject product is BR200 and the like product is BR240, the normal value of BR240 should be adjusted as the normal value of BR200 and then the normal value of BR200 is compared to the export price of BR200. The adjustment is only made once in this method.
- Normally there are two kinds of methods to adjust the physical characteristics difference which are widely used by the anti-dumping authorities around the world. One method is based on the market value difference incurred by the difference in physical characteristics and other method is based on the cost difference incurred by the difference in physical characteristics.
- However, the adjustment method adopted by the Authority is neither based on the market value difference nor based on the cost difference. It is just simply based on the ratio of different strengths of sulphur black compared to 100% concentration of BR240. Dalian is not generally saying that this kind of method is incorrect, just because it is not calculated on the basis of the market value difference or the cost difference. The problem is that this kind of method adopted by the Authority does not reasonably reflect the market value difference or the cost difference incurred by the difference in the physical characteristics. Therefore, export price and normal value of the sulphur black, in different strengths/concentrations, are rather distorted when converted to those of BR240, compared to the actual price and cost of BR240, and accordingly the dumping margin and injury margin are also distorted by this kind of method.
- As the sulphur black exported by Dalian to India is in high strength (BR200 and BR240) and the sulphur black produced and sold by the Indian domestic industry as well as the other cooperating exporter from China is in low strength (most are below BR200), this rule makes the improvement on the export price of Dalian is much smaller than the improvement on the normal value and non-injurious price, so that makes the dumping margin and injury margin much higher than what they should be.
- There is no uniform basis for the adjustment for the physical characteristics difference between sulphur black in different strengths. The Indian domestic industry produced and sold the sulphur black in different strengths during the POI. It is requested that the Authority calculate the

export price, normal value, dumping margin and the injury margin for sulphur black in each strength based on information of the sulphur black in the same strength without adjusting the physical characteristics difference.

- However, if such adjustment is unavoidable the Authority should at least adopt a method that reasonably reflects the market value difference or the cost difference incurred by the difference in the physical characteristics. In such a situation the standard for comparison should be taken as BR200 and not BR240. It cannot be said that BR240 represents 100% concentration. BR240 is determined by comparing its strength to the strength of the standard, and the strength of all sulphur black is determined by comparing its strength to the strength of the standard. When determining the strength, the standard is the basis. Usually producers including the Indian domestic industry use BR200 as the standard. Third, most of the product produced and sold on the market is BR200. BR240 is much less produced and sold. So BR200 is the most appropriate product to be the conversion basis. As BR200 is the most popular product in the market, it will reduce the inaccuracy caused by the physical characteristics difference adjustment as less adjustment is required than using the sulphur black in other strengths as the basis.
- It is not necessary for the Authority to make the physical characteristics difference adjustment, as the physical characteristics difference adjustment is only required when there is physical characteristics difference between the subject product and the like product. The Authority converted the relevant information of sulphur black in other different strengths to the information of BR240 and then compared the export price and normal value based on BR240, which artificially produced the problem of physical characteristics difference.
- The Indian domestic industry produced and sold the sulphur black in different strengths such as BR200, BR 180 and mainly lower grades during the POI. When there is like product which is identical, i.e. alike in all respects to the subject product, the Authority has no reason and basis to make the physical characteristics difference adjustment (i.e. convert the price of sulphur black in other strength to the price of BR240). It is quite illegal for the Authority to make the physical characteristics difference adjustment which violates the definition of "like product" in Article 2.6 of the AD Agreement and the requirement of "fair comparison" between export price and normal value in Article 2.4 of the AD Agreement.
- Actually the price and cost of production of the sulphur black in different strengths are separately accounted by the DI too. The Authority is in the position to require the DI to provide the relevant information of sulphur black with specific strength, so that the Authority may compare the export price of the subject product and the normal value of the like product based on the sulphur black with the same strength.

55. M/s Shanxi Linfen in its submissions has inter alia argued that,

- DA has wrongly accepted the Petitioner's calculation of normal value on the basis of a constructed normal value. Hon'ble DA must take cognizance of the data and submissions filed by Linfen in their Confidential Responses while arriving at the normal value instead of accepting the constructed Normal value calculated by the Petitioner, which is based on secondary sources and is unsubstantiated per se.
- The subject good, Sulphur Black, is generally manufactured and sold in different strengths namely, BR 100, BR 200, BR 240, etc. BR 240 represents 100% strength. There is a direct co-relation between the strength of Sulphur Black and cost of production involved. Higher the strength, higher the cost and lower the strength lower the cost. However, the Preliminary Findings proceed on the premise that there is no difference in the manufacturing process and the cost involved. This is however, incorrect as there is significant difference in cost depending upon the strength and concentration. Lower the strength, lower is the cost. Thus the premise on which the dumping margin and injury margin determinations have been made by the Hon'ble DA is incorrect and is flawed as the Hon'ble DA has converted all different strengths of the subject goods sold in exporting country markets, as well as in the domestic markets, to 100% equivalent quantities. The Hon'ble DA has determined the normal value for the product for 100% concentration and compared the same with export price determined on equivalent of 100% strength basis.
- As the cost of production of the subject goods, in different strengths of dyeing, varies significantly the Authority also must compare the cost on a grade to grade (strength to strength) basis.
- Another factor which affects the price comparability is the difference in packaging cost for different strengths of the subject good. For lower concentration, the goods are usually packed in plastic bags and higher concentration/strength goods usually in cartons. The margin/ variation in cost for different packaging are in the range of RMB 300-350 per MT.

Views of the domestic Industry

56. The domestic industry, in its preliminary finding submissions, has also disputed the adjustment methodology though they themselves had presented all data after converting the same to 100% strength basis. It has been argued that the cost of production of BR 100 would not be half of BR 200 and therefore, linear adjustment method is not appropriate. It has been further argued that the domestic industry adopted the proportionate cost & price methodology in view of their strong belief that majority of the exports occurred in the category of BR 200. If 80% of the imports are in BR 200 category, conversion of all imports into one concentration would not materially distort the picture. However, if significant exports are in the lower concentration category, the normal value of such concentration would not

proportionately change and linear adjustment adopted by the Authority would be erroneous. Therefore, the Authority should determine normal value, export price and dumping margin separately for each concentration and thereafter determine cumulative dumping margin. The domestic industry has also disputed substantial import of lower grade material as per the submissions of responding exporters from China.

Examination by the Authority

57. The issues of comparison methodology, raised by the interested parties, have been examined. The Authority notes that the domestic industry, in its application indicated that sulphur black is produced in various concentrations. It was submitted that BR240 represents 100% concentration and all other grades of sulphur black are actually different concentrations of the product. Accordingly, in the application itself the volume and price data were consolidated. After initiation of the investigation based on the above application, none of the interested parties, including the responding exporters, commented upon this aspect of the case. Dalian in its post preliminary submissions admits the fact that though they noticed this anomaly in the application they ignored this and did not bring it into the notice of the Authority. Therefore, the Authority proceeded with the preliminary determination on the premise that all grades of Sulphur Black are actually different concentrations of the same product and accordingly, for the purpose of determination of dumping and injury margins all grades were converted to single concentration based on their respective strengths, as per the information provided by the domestic industry.

58. However, on the basis of the arguments made by the interested parties, after the preliminary findings, the issue of the nature of the product itself and the comparison methodology has been examined again carefully. It has been brought to the notice of the Authority that the BR values do not represent any concentration but the dyeing strength of the product against certain standards which are not universal. In fact the concept of 'concentration' is a misnomer for this product, so also the term 'BR'. BR represents the colour tone 'Blue-Red' and there could be many combinations of such colour tones such as 'DR' or 'B'. The value suffixed to these terms represents the dyeing strength of the product.

59. It has also been brought to the notice of the Authority that there is no universal standard for this product and each producer/user has his own standard, depending upon the colour strength or dyeing strength and colour/tones, and grades are calibrated against their own standards. Therefore, standard strength represented by BR or DR value of one grade of one producer/user may vary from the colour strength of another producer for the grade description calibrated against his own standard. Usually in commercial and trade parlance, BR200 is the standard grade for this product representing 100% strength, which a producer uses to calibrate other grades.

However, the specification of different producers or users for BR200 may vary. For example BR200 of one producer may match with say BR180 of another producer or user in terms of its dyeing strength and tones. Therefore, the trade in this product takes place on the basis of sample approval, rather than any universal grade specification.

60. The production process was also examined and it was noticed that production involves several stages. In the first stage, sodium sulphide is reacted with sulphur to produce sodium polysulphide. In another reaction, DNCB is hydrolyzed by sodium hydroxide to obtain dinitrophenol. Dinitrophenol is then deoxidized by sodium polysulphide and then condensed and sulpherified to obtain crude sulphur black wet cake. The producers achieve different strengths, compared to their own standard, at the wet cake stage, depending upon the reaction levels achieved. The wet cake obtained in the reaction process is washed and purified several times to obtain product of desired higher strengths, i.e., BR180%, BR200% and BR240%. For producing lower grades than the strength achieved at wet cake stage salt may be added to adjust to lower strengths. Some producers also do some blending of different strengths to achieve required grades. However, all grades and strengths are producer or user defined against their own standard grades and not compared to any international standard, which does not exist.

61. In view of the above, the Authority is of the view that conversion of the quantity of exports based on the concentrations of various grades, as indicated by the domestic industry, is erroneous and leads to distorted results. Therefore, the Authority examined the possibility of adopting other comparison methods for determination of dumping and injury margins.

62. The interested parties have argued that comparison should be done on grade to grade basis. In this connection the Authority notes that though grade to grade comparison is the ideal method, it would not be possible to do so in this case because of three reasons. Firstly, there is no universal standard for this product and grade of one producer or user differs from that of another producer/user, thereby making any grade to grade comparison meaningless. Secondly, for the same grades of a defined strength of a producer, the user has a different grade definition. Thirdly, none of the cooperating exporters are found to be operating on market economy principles and therefore, their own domestic sales (and thereby their own domestic grades) cannot be compared with their export sales (grades) for determination of their dumping margins.

63. The Authority also notes that all the grades of the subject goods are substitutable and alike, except their relative strengths and it has been established that there is no uniform standard for grading the products. Product of a defined strength of one producer, calibrated against his own standard, can match with another defined strength of another producer, calibrated against his own standard. Therefore, there being a very high degree of interchangeability and substitutability it is not possible to work out separate

normal value or non-injurious price for each grade exported by the responding exporters for the purpose of grade to grade comparison and determination of dumping and injury margins. In view of the above, the Authority proceeds to compare the export prices at weighted average level for both dumping and injury margin determination. However, it emerges from the arguments of the interested parties that BR240 is a significantly distinct grade with a higher cost and price compared to other grades below BR200. Therefore, for the purpose of fair comparison Normal value and export prices of all grades up to BR 200 have been considered on weighted average basis and BR240 has been considered separately.

64. In its post disclosure submissions M/s Shanxi has disputed the comparison methodology adopted by the Authority in the disclosure statement and has *inter alia* argued that the comparison of lower grades of sulphur black exported by them, to a single normal value and NIP determined for BR200 grade, is erroneous as it does not take into account the cost and market value difference of different grades which affects price comparability. It has been further argued that even the other cooperating exporter, M/s Dalian, has submitted that the methodology adopted in the preliminary findings was not per se wrong. Only problem in that method was that it did not take into account the cost or market value differential of the grades. Therefore, the Authority should have converted all grades to BR200 as the reference grade, as suggested by Dalian, taking into the market value differential of different grades as per the information available with the Authority. It has also been argued that if such conversion to a reference grade was not possible, the Authority should have worked out Normal values and NIPs for narrower ranges of the product for fair comparison, instead of a single Normal Value and NIP for all grades upto BR200 which results in a unfair determination for Shanxi because of the fact that they have exported several grades of the product to India. If such a comparison is also not possible, as an alternative the exporter has suggested that the Authority should remove other grades lower than BR 200 from Linfen's export data and use BR 200 only for the margin calculation.

65. Authority notes that neither M/s Dalian, nor the domestic industry, has raised any argument on the comparison methodology in their post disclosure submissions though these parties had vehemently argued for a grade to grade comparison in their previous submissions. The domestic industry has only reiterated its earlier arguments that the exporter has filed false information before the Designated Authority and goods primarily exported from China include DR 200 and 240. The exporters have been falsely describing the grades below BR200 to reduce their duty liability. Under the circumstances the Authority has rightly cumulated different strengths upto BR-200. In this connection the Authority notes that the determination of export price of the exporters is based on the verified data and therefore, the contentions of the domestic industry that the exporters have filed false or misleading information in respect of the grades of the goods exported by them are not tenable.

66. The arguments of Shanxi, in its post disclosure submissions, have been examined and the Authority notes that the problem of grade to grade comparison in this case has been explained in detail in the disclosure itself and it was noted that in the absence of any universal standard for the product and significant grade interchangeability it has not been possible to resort to a exact grade to grade comparison or defining ranges of grades for fair comparison as suggested by this exporter. For the same reasons conversion of various grades to a reference grade is also not possible. Moreover, the cost or market value factors for conversion of different grades to single reference grade is also not possible as no verifiable information was available for determining such factors. Exclusion of other grades of Sulphur black and determination based on only BR200 is also not possible as the determination would not cover the entire product under consideration. Therefore, the methodologies suggested by the exporter could not be adopted by the Authority for determination of the dumping margins in this case. Accordingly, the Authority confirms the methodology adopted in this case.

F.2 Determination of normal value

67. As recorded above, none of the responding exporters from China PR have been found to be eligible for grant of market economy status and individual treatment for the purpose of determination of their normal values. Therefore, normal value in China is required to be determined in terms of Para 7 of Annexure I of the Rule which provides that

In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.

68. It was indicated, in the initiation notification, that the Authority may notify an appropriate third country, in the due course, for the purpose of determination of normal value in China PR in terms of the above provision.

However, it has been brought to the notice of the Authority that being a highly polluting industry, the subject goods are produced only in China and India and there is no other producer outside these two countries, which can be adopted as an appropriate market economy third country for the above purpose. Therefore, the domestic industry has submitted that India should be treated as an appropriate surrogate country for China in this matter and the normal value should be determined accordingly.

69. In view of the above the Authority proceeds to determine the normal value in terms of second proviso of para 7 of Annexure 1 to the Rules on facts available basis.

70. As recorded in the foregoing paragraphs, the Authority notes that in view of lack of standard specification and high degree of product interchangeability it is not possible to determine normal value for each grade exported by the exporters concerned. It was further noted that BR240 is a significantly distinct grade with a higher cost and price compared to other grades below BR200 and therefore, for the purpose of fair comparison it is appropriate to consider Normal value and export prices of all grades up to BR 200 on weighted average basis and BR240 has to be considered separately.

71. The Authority also notes that the domestic industry does not produce all exact grades exported by the exporters and the exporters themselves do not maintain separate grade-wise cost data for construction of grade-wise normal value, even if the problem of interchangeability of the grade is ignored. However, for two main grades i.e. BR200 and BR240, exported by the cooperating exporters and also produced by the domestic industry, credible data for cost of production and consumption norms are available. Therefore, the Authority has determined the normal values based on these two grades.

72. For the purpose of determination of normal values for these two grades the consumption norms of the cooperating exporters for the major raw materials and international prices of these raw materials, as reported in the import statistics of India, have been used alongwith the conversion cost of the most efficient of the constituents of the domestic industry. A reasonable profit margin of 5% has been added to the above cost to arrive at the normal value for these two grades as follow:

BR240

Cost of raw materials per Kg:	Rs ****
Utilities Cost per Kg:	Rs ****
Conversion Cost, SGA Expenses and Finance cost per Kg	Rs ****
Total Cost to make and sale per Kg	Rs ****
Profit margin per Kg @ ****%:	Rs ****
Constructed Normal Value Per Kg:	Rs ****

CNV USD/Kg @ Exchange Rate Rs45.67 US\$ ****

BR200

Cost of raw materials per Kg:	Rs ****
Utilities Cost per Kg:	Rs ****
Conversion Cost, SGA Expenses and Finance Cost per Kg	Rs ****
Total Cost to make and sale per Kg	Rs ****
Profit margin per Kg @ ****%:	Rs ****
Constructed Normal Value Per Kg:	Rs ****
CNV USD/Kg @ Exchange Rate Rs45.67	US\$ ****

F.3 Export Price

i) M/s. Dalian Green Peak Chemicals Co. Ltd (Producer) and M/s Dalian Dye Chem International Corporation (Exporter);

73. The subject goods manufactured by Dalian Green Peak are exported to India through M/s Dalian Dyechem International Corporation, which is a subsidiary of Green Peak. The export sales to India have been verified. The responding related producer and exporter have reported export of **** MT of the subject goods to India during the POI. The responding producer and exporter have exported only Sulphur Black BR200 and BR240 during the POI. The exports are to unrelated end users as well as distributors in India on CIF term and the payment has been realized on DP/TT/LC terms.

74. The exporter has not paid any commission or rebate against the export sales to India. Direct selling expenses incurred by the exporters towards inland transportation, ocean freight and insurance, handling expenses and bank charges against exports to India have been verified and adjusted against the export transactions. Few transactions involved credit period for which an adjustment has been made based on the average short term borrowing rate of the Company @****% during the POI, for the credit period.

75. The Company had not indicated any packing expenses in the original submissions on the ground that the domestic and export packing are same. However, it was noted that the packing is basically of two types, PP bags or Paper Cartons. Since the packing in the domestic market of the Indian producers is different, for the purpose of like to like comparison, the cost of packing against individual transaction has been deducted as verified.

76. As per the VAT statement submitted to the Government the producer pays differential VAT of 4% (VAT payable @17% on FOB value declared in the customs invoice and 13% VAT refund entitled on the above value on export of the goods) to the government, which is a cost to the exporter. Therefore, for arriving at net realization against the export transactions differential @ 4% of FOB value has been adjusted. On the basis of above

verified data, the export price of this exporter at ex-works level, in unpacked condition, works out as under.

Product category	Sum of Quantity (MT)	Sum of Net Invoice Value USD	Sum of Total Adjustments USD	Sum of Net ex-works Value USD	Net EP (Unpacked) USD/MT
BR 200	****	****	****	****	****
BR240	****	****	****	****	****
Total	****	****	****	****	****

ii) M/s Shanxi Linfen Dyeing Chemicals Co. Ltd

77. The responding related producer/ exporter have exported **** MT of the subject goods to India during the POI, which includes Sulphur Black of several grades. The exports are to unrelated end users as well as distributors in India on CIF term and the payment has been realized on DP/TT terms.

78. No commission or rebate is paid by the company against the export sales to India. Direct selling expenses, viz. inland transportation, ocean freight and insurance, handling expenses, bank charges were verified from the records of the Company and have been adjusted against the export transactions. Since the transactions are against DP/TT terms no credit cost is involved.

79. The Company sales the product using two kind of packaging i.e., paper cartons and PP woven bags. Since the packing for home market and exports are same, the Company had not shown any packing adjustment in Appendix 2. However, for the purpose of like to like comparison since the packing in the domestic market of the Indian producers is different, packing costs have been deducted from all transactions to arrive at net export price at ex-works level.

80. As per the VAT statement submitted to the Government the producer pays differential VAT of 4% (VAT payable @17% on FOB value declared in the customs invoice and 13% VAT refund entitled on the above value on export of the goods) to the government, which is a cost to the exporter. Therefore, for arriving at net realization against the export transactions differential @ 4% of FOB value has been adjusted. On the basis of above verified data, the export price of this exporter at ex-works level, in unpacked condition, works out as under:

Company's Product code	Sum of Quantity(MT)	Sum of Net Invoice Value(USD)	Sum of Total Adjustments USD	Sum of Net Export Value (USD)	Net EP USD/MT
BR 120%	****	****	****	****	****
BR 130%	****	****	****	****	****
BR 150%	****	****	****	****	****
BR 160%	****	****	****	****	****
BR 170%	****	****	****	****	****
BR 180%	****	****	****	****	****
BR 185%	****	****	****	****	****
BR 200%	****	****	****	****	****
solubilized	****	****	****	****	****
Grand Total	****	****	****	****	****

F.4 Dumping Margins

81. For the purpose of determination of dumping margin the ex-works normal value and export prices so determined have been compared at the same level of trade and dumping margins have been determined for the exporters from the subject country as follows:

i) M/s. Dalian Green Peak Chemicals Co. Ltd (Producer) and M/s Dalian Dye Chem International Corporation (Exporter);

82. The net ex-factory export prices of individual product types (strengths of sulphur black) have been compared with the constructed normal value the product as explained earlier on prorata basis to determine the weighted average dumping margin of this producer-exporter combination as follows:

Product category	Qty MT	Net Export Price Unpacked US\$/MT	Constructed Normal Value US\$/MT	Dumping Margin US\$/MT	DM %
BR200	****	****	****	****	
BR240	****	****	****	****	
Total	****	****	****	****	52.8%

ii) M/s Shanxi Linfen Dyeing Chemicals Co. Ltd

83. The net ex-factory export prices of individual product types (strengths of sulphur black) have been compared with the constructed normal value the product as explained earlier to determine the weighted average dumping margin of this producer/exporter as follows:

Product code	Sum of Quantity (MT)	Net EP US\$/MT without packing	Constructed Normal Value US\$/MT	Dumping Margin US\$/MT	DM %
BR 120%	****	****	****	****	
BR 130%	****	****	****	****	
BR 150%	****	****	****	****	
BR 160%	****	****	****	****	
BR 170%	****	****	****	****	
BR 180%	****	****	****	****	
BR 185%	****	****	****	****	
BR 200%	****	****	****	****	
solubilized	****	****	****	****	
Total/ Weighted average	****	****	****	****	53.1%

iii) All other exporters from China PR

84. The export price for all other exporters from China PR has been determined on facts available basis taking into account the transaction data of the cooperative exporters and the same has been compare with the constructed normal value to determine the dumping margin for all other non-cooperative exporters in the subject country.

All Others	CNV USD/MT	EP USD/MT	DM US\$/MT
All Others	****	****	****
			149%

F.5 Dumping Margin Summary

Producer	Exporter	Dumping Margin USD/MT	DM %
M/s. Dalian Green Peak Chemicals Co. Ltd	M/s Dalian Dye Chem International Corporation	****	52.8%
M/s Shanxi Linfen Dyeing Chemicals Co. Ltd	M/s Shanxi Linfen Dyeing Chemicals Co. Ltd	****	53.1%
All Others	All Others	****	149%

G. INJURY DETERMINATION

85. Commenting upon the preliminary injury determination the interested parties, in their post preliminary finding submissions, the interested parties have made the following arguments:

Views of Shanxi Linfen

86. M/s Shanxi Linfen, in its post preliminary finding submissions, has *ineter alia* argued that

- There are no producers of Sulphur Black outside India and China. Sulphur Black is mainly used for dyeing cellulose fibre, viscose staple fibre and yarn, paper and leather. Contrary to the assertion of the Domestic Industry alleging injury, there has been a large positive lasting growth in demand and domestic production has not been able to keep pace with the domestic demand, necessitating imports of the subject goods from China, especially in view of the fact that the subject product is manufactured only in India and China.
- The imports of the subject goods from the subject country are on account of the gap in demand in India and the Indian domestic production.
- As per the petition, many of the injury parameters indicate improvement or a marginal decline. This itself leads, *a priori*, to the conclusion that it is not dumping, which is the cause of alleged injury to the domestic industry and the present initiation is nothing but the abuse of the process of law.
- Information brought on record by Linfen clearly demonstrates that the subject goods sold in India are at a price consistent with the normal value and above the cost of production and at profits and have not caused any injury to the domestic industry.
- That alleged injury to the domestic Industry is on account of the cost structures of the domestic producers and their inability to reduce per unit cost of production, due to lack of modern amenities and lack of benefits of economies of scale and not due to any alleged dumping

M/s Dalian Green Peak

87. The above exporter, in its post preliminary finding submissions, has *inter alia* argued that

- The Injury that the Indian industry alleges against the Chinese exports is because the Sulphur Black Industry in India is under the unorganized sector. The plants fall under Small Scale Industry (SSI) category. Most of the plants falling under the umbrella of Sulphur Black Manufacturer Association of India have a monthly production ranging from 10-30 MT per month with the sole exception of Atul Dyestuffs Ltd., Valsad who have a monthly production of 150-200 MT/month according to market estimation. As the sector is unorganized, most of the plants do not have their marketing department and are dependent on the traders for selling their goods.
- These traders seldom give good prices to the manufacturers and they sometimes end up selling their goods at low prices to these dealers.

Ultimately, the gainer is the dealer who sells at a better price and makes good profit from the sales of Sulphur Black. If the market analysis is done, then it will be found that the dealer has never made losses on the sales of Sulphur Black clearly highlighting the dominance of dealers over these manufacturers.

- As the sulphur black industry remains under the unorganized sector, there has been no R & D effort and Indian plants are still following very old and outdated process of 1940's.
- It is a globally accepted fact that only such plants are viable who have their own in-house DNCB production facilities. Surprisingly, with the exception of Atul, none of the units have their own DNCB plants. They are outsourcing the said dye intermediate and end up paying a very high price.
- Most of the plants have mushroomed in Northern India where they have a distinct locational disadvantage. The units in North India are sourcing their major inputs such as DNCB, Sulphur and Sodium Sulphide from plants located in western or southern part of India and incur high expenses towards freight. Hence, the high cost of logistics makes these plants economically unviable.
- Moreover, the DI produces mainly below BR 180 grade and one tone only which result in lower levels of the valuable byproduct produced in these lower grades resulting in comparatively higher COP structure for DI compared to Chinese exporters with a product mix with higher share of higher grades and more efficient conversions. There are some differences in packing costs too of the different grades.
- That the concerns of DI at the hearing are chiefly in context of 200BR and lower grades and not 240BR of which import volumes are low (less than 5% of Dalian's exports to India during POI) and DI does not produce or sell 250BR or higher grades. Moreover, DI itself imports 240BR as there is insufficient domestic production. Hence, Dalian submits there can *prima facie* be no injury on account of these high grades and they may be excluded.
- The Injury alleged by the domestic industry is not because of the Chinese imports, but due to their own mismanaged costs, out dated technology and poor inventory/logistics.

Views of the domestic industry

88. The domestic industry in its submissions has refuted the arguments of the exporters regarding the injury and causal links and has inter alia argued that there is no basis for the arguments that problems of the Indian producers are because they are in the Small Scale Sector. The very same producers were viable some time back. They have now become unviable only because of dumping from China. Further, Atul Ltd also suffered injury in spite of being in the organized sector. The fact whether the producer has its own DNCB facility or not is of no relevance for the reason that dumping investigations are product specific where prices of captive inputs are required to be taken at

market value. If any of these producers are having their own DNCB, the same can not lead to any advantage to them.

89. It has been further argued that there is no basis for the argument that the domestic industry produces mainly below BR 180. On the contrary, the domestic industry produces primarily BR-200 and some volumes of BR-240. The argument of the domestic industry is that even Chinese producers have largely exported BR 200. Any claim now that the exported material was of lower strength is misleading. There is also no basis for the statement that there is insufficient production of BR-240. Strength-wise import statement clearly shows that imports of BR-240 are less than 5% whereas domestic production of BR-240 is more than the import volumes.

90. It has been further argued that Dalian has merely reproduced various legal provisions and decisions. Dalian, however, has not identified any factor which could have contributed to the injury to the domestic industry. As is evident with regard to parameters relating to production, sales, capacity utilization etc., growth of the domestic industry was significantly below what it could have been in the absence of dumped imports, considering the production of domestic industry between 2003-04 and 2005-06. It is also evident that dumped imports have prevented domestic industry from increasing its production, capacity utilization, sales volumes and market share. Further, dumped imports were undercutting prices of the domestic industry and thus led to deterioration in the performance of the domestic industry in terms of profit, return on investment and cash flow.

G.1 Examination of Injury and Causal Link:

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

92. The Authority notes the arguments of the interested parties in respect of the injury claims of the domestic industry as recorded above, for examination of various injury parameters and causal links in the following section.

93. The application for imposition of antidumping duty has been filed by the Sulphur Black Producers Association on behalf of the domestic producers of the subject goods. However, two domestic producers i.e, M/s Atul Limited and

M/s Bhanu Chemicals, who command a major proportion of total production of the subject goods in India, have filed complete injury information. In terms of Rule 2(b) of the Rules the above producers have been treated as the domestic industry for the purpose of this investigation. The Authority also notes that though there are other known producers of the subject goods in India they are all in unorganized sectors commanding very small productions individually. It has been submitted by the applicants that a significant number of producers have exited the market due to severe dumping from China for a long time. The other producers were asked to provide their cost and injury information, which has not been submitted so far. Therefore, for the purpose of injury determination the cost and injury information of the above domestic producer, constituting the domestic industry as defined in Rule 2(b), has been examined. However, overall impact of the dumped imports on the domestic industry as a whole has been examined to the extent information is available.

94. For the examination of the condition of the domestic industry and the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules. All economic parameters affecting the Domestic Industry as indicated above such as production, capacity utilization, sales volume etc. have been examined as under: -

A) Volume Effects of Dumped Imports: Import volumes and market shares

a) Import volumes and share of subject countries:

95. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. The domestic industry has argued that the DGCI&S data does not reflect the complete import data and the import volume is higher than that has been reported in the DGCI&S data. In support of its claim the domestic industry has produced the transaction wise data compiled by IBIS. It has been argued that the subject goods are imported under several heads and DGCIS data does not cover imports under a number of classifications.

96. The Authority has examined the volume of imports of the subject goods from the subject country and other countries based on the transaction-wise import data provided by DGCI&S as well as IBIS data provided by the domestic industry. The export data of the responding exporters from China have also been taken into consideration. The Authority notes that the export from the subject country as reported by the responding exporters is found to be much higher than the import reported in the DGCIS data but closer to the import volumes reported in the IBIS data. Examination of DGCI&S data and

IBIS data indicates that imports of the subject goods are taking place under several classifications heads under tariff heading 32.04, which has not been properly captured in DGCI&S data. Therefore, for the purpose of final determination, the export volume reported in the transaction-wise BIS data has been considered for volume and price analysis.

97. The Authority also notes that sulphur black is imported from the subject country in different strengths. In the preliminary determination the import volumes of various strengths were converted to equivalent of sulphur black 100% strength (BR240 equivalent) for volume and price analysis. However, as discussed earlier the very premise of concentration of the product has been found to be erroneous. It has also been found that there being no international standard for various grades or strengths of this material, it is not possible to arrive at any reasonable equivalence of various grades of different producer. Therefore, for the final determination the import volumes and values as reported in the import statistics and volume and value of production and sales of the domestic industry have been adopted as it is, without conversion to any equivalent grade. On the basis of the above, the quantities of imports of the subject goods work out as follows:

Quantity in MT				
Country	2003-04	2004-05	2005-06	POI (Jan,06 to Dec,06)
CHINA P RP	927	1,184	3,398	4,340
Trend(Indexed)	100	128	367	468
Others	-	-	19	-
Total	927	1,184	3,417	4,340
Trend(Indexed)	100	128	369	468
Share of subject country	100%	100%	99%	100%

98. The data indicates that the imports from China PR constitutes 100% of imports of the subject goods to India, except a small volume imported from another country in the preceding year, which is also a likely transshipment as that country apparently does not have any production facility for the subject goods. It has been brought to the notice of the Authority that this being a highly polluting industry, this industry has exited from most of the countries and India and China are the two major producers of this product in the world. Import from the subject country has increased by over 360% compared to the base year.

b) Actual and potential effect on production and capacity utilization:

99. The volume of domestic production and sale has been examined for assessment of demand and to examine the effects of dumped imports on the domestic operation of the domestic industry. Capacity, production and sales of the domestic industry and total demand in Indian market are as follows:

Quantity in MT

Period	Unit	2003-04	2004-05	2005-06	POI
Installed Capacity of DI	MT	3,800	3,800	3,800	3,800
Trend	Indexed	100	100	100	100
Capacity of other producers	MT	3000	2000	2000	1000
Trend	Indexed	100	67	67	33
Total Capacity	MT	6,800	5,800	5,800	4,800
Trend	Indexed	100	85	85	71
Production (DI)	MT	2,946	3,466	3,934	4,334
Trend	Indexed	100	118	134	147
Production (others)	MT	2500	2300	900	900
Trend	Indexed	100	92	36	36
Total Domestic Production	MT	5,446	5,766	4,834	5,234
Trend	Indexed	100	106	89	96
Capacity Utilization DI	%	78	91	104	114
Trend	Indexed	100	118	134	147

100. The above data shows that while the capacity of the applicant domestic industry remains same and there is a significant increase in their production, total domestic capacity of the product has significantly declined by about 30%. The domestic industry has argued that sustained dumping from the subject country has forced the producers in the unorganized sector to exit the market. Therefore, improvement of the production and capacity utilization of the applicant domestic industry is to be seen in the background of the exit of about 25 producers in the unorganized sector and decline in production and sale of other producers still in production at a much reduced level.

101. The demand pattern and sales performance of the domestic industry and other domestic producers have also been examined as follows:

Quantity in MT

Production, Sales and Demand	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
Domestic Sales of DI	2,414	2,695	3,262	3,419
Trend	100	112	135	142
Sales of other domestic Producers	2,471	2,152	749	730
Trend	100	87	30	30
Total domestic sales	4,884	4,847	4,011	4,149
Trend	100	99	82	85
Imports	927	1,184	3,417	4,340
Trend	100	128	369	468
Total Demand	5,811	6,031	7,428	8,489
Trend	100	104	128	146

102. The above data shows that total domestic sales of the product has declined by over 15% compared to the base year though sales of the applicant domestic industry has increased during the injury investigation period, while total demand for the product has increased by about 46% compared to the base year and imports from the subject country, which is 100% of total imports, has increased by over 360%. While the capacity of the applicant domestic industry remains same at 3800 MT level through out the injury investigation period, the Authority notes that a large number of small producers have exited from the manufacturing of this product, which is reflected in decline in their sales by over 70% compared to the base year. Therefore, the data indicates that the space vacated by the small producers in India has been largely cornered by the dumped imports from the subject country and partly by the applicant domestic industry.

103. The capacity utilization of the applicant domestic industry has improved compared to the base year but at the same time a large number of small and medium producers of the subject goods have exited the market due to prolonged dumping from the subject country.

104. The domestic industry in its post disclosure submissions has argued that increase in production, sales & capacity utilization is because of addition of solid and liquid sulphur black. If the production and sales are seen separately, it would be found that the production and sale of solid form has declined in the investigation period after increasing upto 2005-06, whereas that of liquid form has increased. Secondly, the fact is that the petitioner companies had unutilized production capacities because of dumping in India. The capacity utilization appears more than 100% as a result of simple addition of liquid and solid form. In this regard the Authority notes that both solid and liquid sulphur blacks have been treated as like articles and included in the product under consideration. Therefore, segregated analysis for the purpose of injury examination, as suggested by the domestic industry, is not appropriate.

105. However, the Authority notes that Para 1 of Annexure II to the Rules requires the Authority to examine the impact of dumped imports on the domestic producers of the subject goods. Therefore, the production volume and capacity utilization of the applicants alone does not provide the correct picture of the condition of the domestic producers of the subject goods in this case. The fact that about 25 small and medium producers have exited the market and sales volume of domestic producers other than the applicants has declined sharply since the base year indicates that available unutilized capacity in the country is significantly high compared to the capacity of the applicants.

c) Actual and potential effect on market share:

106. Effects of the dumped imports on the domestic sales and market shares have been examined as follows:

Market Share	Market Share in Demand (%)			
	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
Subject Country	15.95%	19.63%	45.74%	51.13%
Trend	100	123	287	321
Other countries	0	0	0.26%	0
Domestic Industry	41.53%	44.68%	43.92%	40.28%
Trend	100	108	106	97
Other domestic producers	42.52%	35.69%	10.08%	8.60%
Trend	100	84	24	20
All domestic producers	84.05%	80.37%	54.00%	48.87%
Trend	100	96	64	58

107. While the demand of the subject goods in the domestic market has increased by about 46%, the share of the domestic industry in the total demand has declined by over 1% and the share of all domestic producers has drastically declined from over 85% in the base year to only little over 48% of total demand in the POI, whereas the share of the dumped imports has increased from about 16% in the base year to 51% of the total demand in the POI, indicating that the dumped imports have significantly impacted the sales volumes and market shares of the domestic producers of the subject goods. This is corroborated with the fact that about 25 small and medium units which have since been closed during this period, as reflected in the decline in sales volumes of domestic producers other than the applicants.

B) Price Effect of the Dumped imports on the Domestic Industry

108. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

109. The Authority notes that the exports of the subject goods from the subject country is of sulphur black grains only in various strength. Therefore, for fair comparison of the landed value of dumped imports with the domestic sales of the like goods for price effects examination, the domestic selling price and non-injurious price of the grains only have been considered.

i) Price undercutting and underselling effects

110. Price undercutting has been determined by comparing the weighted average landed value of dumped imports from the subject country, over the entire period of investigation, with the weighted average net sales realization of the domestic industry for the same period for sulphur black grains only. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the value reported in the IBIS data of import prices from the subject country.

111. In determining the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been rebated. The net sales realization of the domestic industry has also been computed for grains only.

112. For the purpose of price underselling determination the weighted average landed price of imports from subject country, as explained above, has been compared with the non-injurious price of the domestic industry determined for the POI in respect of sulphur black grains.

	Rs/Kg			
Particulars	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
Cost of sales of DI (Grains)	****	****	****	****
Trend	100	93	97	100
NSR of DI (Grains)	****	****	****	****
Trend	100	98	106	103
Landed Value - China PR (Grains)	43.24	41.24	39.06	39.52
Trend	100	95	90	91
Price Undercutting	****	****	****	****
Trend	100	105	152	136
Price Undercutting (%)	30-40%	30-40%	50-60%	50-60%
Weighted Average NIP (Grains)				****
Price Underselling				****
Price Underselling %				75-85%

113. The above data shows that while the weighted average cost of sales of the DI has remained almost same compared to the base year and increased by about 3% compared to the previous year, weighted average sales realization of the domestic industry has declined by 3% compared to the previous year. The data also shows weighted average landed value of dumped imports has declined by 9% in the POI as compared to base year.

114. Weighted average landed value of the dumped imports has been significantly below the weighted average net sales realization of the domestic industry for the entire injury investigation period and has significant price undercutting effect on the domestic industry. The landed value is also significantly below the cost of sales of the domestic industry during the injury period and non-injurious price determined for the POI, resulting in significant price underselling.

ii) Price suppression and depression effects of the dumped imports:

115. To examine the price suppression effect of the dumped imports on the domestic prices the trend of net sale realization of the domestic industry has been compared with the cost of production.

Rs/Kg

Particulars	2003-04	2004-05	2005-06	POI (Jan-Dec 06)
Cost of Sales (Grains)	****	****	****	****
Trend	100	93	97	100
Selling Price (Grains)	****	****	****	****
Trend	100	93	99	96
Landed Value	43.24	41.24	39.06	39.52
Trend	100	95	90	91

116. The data indicates that while the cost of production of the domestic industry has increased by 3% compared to the previous year, the selling price has declined by 3% in the same period. Landed value, which is significantly below the selling price and cost of sales of the domestic industry, has further declined by about 9% during the injury investigation period. This in effect has prevented the domestic industry to increase the prices to realize the cost of production in spite of the fact that there is a healthy growth in demand in the domestic market. The selling price of the DI has remained significantly below the domestic cost of sales in the injury investigation period. It therefore, appears that while the costs have increased, the domestic industry has been forced to keep its prices suppressed in the presence of dumped imports, in order to retain its market share. This price suppression appears to have caused financial loss to the domestic industry as the industry is unable to realize its cost in the domestic market.

117. The above analysis shows that the dumped imports have adverse volume and price effect on the domestic industry in terms of increase in volume of dumped imports, both in absolute terms and as a share of demand in the domestic market, and by forcing the domestic industry to keep its prices suppressed, while significantly undercutting and underselling the prices in the domestic market.

G.2 Examination of other injury factors

118. After examining some of the injury factors as above i.e. actual and potential decline in sales and market share; actual and potential increase in volume of imports etc. in the previous section, the Authority has examined the other mandatory injury parameters in this section as follows:

a) Actual and Potential effects on profitability

119. Profits earned by the domestic industry from the sales of the domestic like product (sulphur black grains and liquids) in the domestic market has been examined as follows: -

	Unit	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
Domestic Cost of Sales (All Products)	Rs./kg	****	****	****	****
Trend	Indexed	100	100	107	105
Domestic selling price (All Products)	Rs./kg	****	****	****	****
Trend	Indexed	100	98	105	99
Profit / Loss per unit	Rs./kg	****	****	****	****
Trend	Indexed	(100)	(496)	(777)	(1,736)

120. The data shows that the industry was suffering marginal loss per unit sold in the domestic market even in the base year. But loss per unit of the product sold by the domestic industry has increased significantly during the POI due to increase in cost of sales while the sale realization, after showing significant improvement in the previous year, has further declined in the POI.

b) Actual and potential effect on Cash Flow

121. Cash profit of the domestic industry on its domestic operations work out as under:

Cash Profit	Unit	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
Total profit before tax	Rs. Lacs	****	****	****	****
Trend	Indexed	100	554	1,050	2,459
Depreciation on Domestic Sales	Rs. Lacs	****	****	****	****
Trend		100	104	128	102
Cash Profit: Domestic Sales	Rs./Kg	****	****	****	****
Trend	Indexed	100	(5)	(96)	(470)

122. The domestic industry suffers significant cash loss in its domestic operations. From a positive cash flow in the base year the domestic industry has suffered significant cash loss in the POI.

c) Actual and potential effect on return on investments

123. Return on net fixed assets and working capital employed on its domestic operation have been examined as follows:

	Unit	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
Total profit before tax	Rs./Lacs	****	****	****	****
Trend	Indexed	100	554	1,050	2,459
Interest	Rs./Lacs	****	****	****	****
PBIT	Rs./Lacs	****	****	****	****
Trend	Indexed	100	97	122	95
Capital Employed (NFA + WC)	Rs./Lacs	****	****	****	****
Trend	Indexed	100	109	134	134
Return on capital employed	%	****	****	****	****
Trend	Indexed	100	89	91	71

124. As a result of significant loss on domestic sales due to suppressed prices during the injury investigation period, return on the domestic investments of the domestic industry has declined significantly during the POI as compared to the base year by over 30%.

d) Inventories

125. Inventory holding of the domestic industry, in terms of average stock and stock as a percentage of sales, shows decline.

Inventory	Unit	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
Opening Stock	Kg	****	****	****	****
Closing Stock	Kg	****	****	****	****
Average Stock	Kg	****	****	****	****
Trend	Indexed	100	76	97	60
Inventory as a % of sales	%	14.60	9.29	10.16	6.35

e) Productivity

126. Productivity of the domestic industry in terms of its labour productivity and daily output has been examined which shows significant improvement in productivity in terms of labour output as well as daily productivity. Therefore,

productivity of the domestic industry does not show sign of injury to the domestic industry.

Productivity	2003-04	2004-05	2005-06	POI
Production (MT)	****	****	****	****
Trend	100	118	134	147
No of Employees	****	****	****	****
Trend	100	81	72	71
No of Days	350	350	350	350
Productivity (MT/Employee)	****	****	****	****
Trend	100	146	186	208
Daily Productivity (MT/Day)	****	****	****	****
Trend	100	118	134	147

f) Employment and wages

Employment & Wages	Unit	2003-04	2004-05	2005-06	POI(Jan,06 to Dec,06)
No of Employees	No	****	****	****	****
Trend		100	81	72	71
Wages	Rs.Lacs	****	****	****	****
Trend		100	72	62	65
Wages per Employee	Rs.Lacs	****	****	****	****
Trend		100	90	86	92

127. Examination of the data on employment level and wages paid by the domestic industry indicates that the employment level and wages paid by the domestic industry has declined in spite of increase in production during this period.

g) Ability raise fresh investment

128. Domestic industry has not made any fresh investment for capital expansion in the subject goods during the injury investigation period. The Authority also notes that other domestic producers, still in production of the subject goods, have substantially reduced their production and sales level and about 25 other producers in small and unorganized sector, have exited from the market, indicating that the product is no more attractive for further investment and the industry is unable to raise fresh investment though there is a healthy growth in domestic demand.

h) Growth

129. Growth of the domestic industry in terms of various physical and financial parameters shows that while the applicant domestic industry shows positive growth in production and capacity utilization, this growth is primarily

due to the fact that several other domestic producers have exited the market. Closure of these units has however, left a large unutilized capacity in the domestic market, while there is a huge increase in demand in the domestic market. The financial performance in terms of profit on domestic sales and return on capital employed shows significant decline over the injury investigation period in spite of the fact that the domestic demand situation is positive and productivity of the domestic industry has improved. Parameters such as market share, profit, cash flow, and return on investments shows negative growth.

i) Magnitude of Dumping

130. The dumping margins, as an indicator of injury to the domestic industry, shows that the margins determined for the cooperating exporters from the subject country are significantly above de minimis level.

j) Factors affecting prices

131. Examination of trend in the volume of dumped imports and prices from the subject country and the domestic prices indicate that the dumped imports through volume and price effects have affected the prices of the domestic industry.

G.3 Overall assessment

132. The above analysis of the factors indicate that in spite of the improvement in capacity, production, and sales, the domestic industry suffered injury on account of decline in market share, net sales realization, profitability, return on investments cash profits and growth. Volume of dumped import from the subject country has increased many fold and the prices of dumped imports, are significantly undercutting the prices of the domestic industry, preventing the domestic industry to raise the prices to remunerative level and recover the rising costs of production. Failure to command remunerative price due to price suppression by the domestic industry has resulted in significant financial losses to the domestic industry. Closure of several units and significant decline of capacity, production and sale of other domestic producers indicates that the injury suffered by the domestic industry is material and significant.

H. Causal link and other factors

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

injury to the domestic industry. Accordingly, the following mandatory parameters have been examined:

i) Volume and prices of imports from other sources

134. As per the import statistics relied upon the subject goods are being imported from the country under investigation only. Therefore, volume and prices of the subject goods imported from other countries could not have affected the domestic industry.

ii) Contraction in demand and / or change in pattern of consumption

135. Demand for the subject goods shows a healthy growth during the entire injury investigation period and therefore, possible contraction in demand cannot be attributed to the injury to the domestic industry. The data on consumption and demand does not show any significant change in the pattern of consumption of the product.

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

136. The goods are freely importable. The applicants are the major producers of the subject goods and account for major domestic production and sales. Other domestic producers have either exited the market or significantly reduced production. No other evidence of conditions of competition or trade restrictive practices has been brought to the knowledge of the Authority by any interested party.

iv) Development in technology: -

137. The interested parties have argued that the domestic industry suffers injury due to use of outdated technology and uneconomical scale of production. However, the Authority notes that the process and technology of production of the subject goods used by the domestic producers and the exporters from the subject country are similar and there is no significant difference in process of production.

v) Export performance of the domestic industry: -

138. The Authority notes that the export sale of the domestic industry has declined significantly during the injury investigation period though the export prices shows improvement. However, for the purpose of injury analysis the domestic sales only has been considered and injury, if any, caused due to the export performance of the domestic industry has not been attributed to the dumped imports.

	Unit	2003-04	2004-05	2005-06	POI
Export Sale	MT	****	****	****	****
Trend	Indexed	100	77	53	66
Price	Rs/Kg	****	****	****	****
Trend	Indexed	100	106	123	118

vi) Productivity of the Domestic Industry

139. As noted earlier productivity of the domestic industry has improved in terms of total output and employee output. Therefore, this cannot be attributed to the injury to the domestic industry.

vii) Other factors

140. The Authority notes of the arguments of the interested parties that the injury suffered by the domestic industry is on account of several factors inherent to the domestic producers in India, such as uneconomical size, locational disadvantages and high logistic costs, and outdated technology. In this connection the Authority notes that the major producer of the subject goods in India i.e., M/s Atul Limited, commanding 52% of total domestic production and 63% of the total production of the applicants, is a producer with a modern integrated plant located in the western part of India, which does not suffer from any locational disadvantage or inefficiencies due to economy of scale and technological disadvantage as has been argued by the interested parties, but still suffers injury. In fact most of the injury parameters have been examined with reference to the performance of the most efficient producer, in order to isolate the injury caused by such factors if any. The interested parties have also argued that the injury suffered by the domestic industry is due high margin retained by the intermediary traders. However, such arguments are not substantiated with verifiable evidence. Therefore, the arguments of the interested parties that the injury caused to the domestic industry is due to factors listed above are not borne out of the facts of the case.

141. The above non-attribution analysis shows that no other known factors, other than the dumped imports, appear to have affected the domestic industry. On the other hand the dumped imports, through its volume and price effects, appear to have caused injury to the domestic industry.

I. Factors establishing causal link

142. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated due to dumped imports from the subject county. Therefore, the causal links between dumped imports and the injury to the domestic industry is established on the following grounds:

- a. The volume of dumped import from the subject country has sharply increased and the landed price has significantly declined during the injury investigation period, resulting in significant price undercutting and underselling. As a direct consequence, the domestic industry has been prevented from realizing remunerative prices.
- b. Increase in import volumes and inability of the domestic industry to raise the prices to recover the cost of production has adversely affected the profits, cash flow and return on investments of the company.
- c. Significant positive price undercutting and underselling has resulted in exit of several producers in India from the domestic market leaving large unutilized production capacity.

143. The Authority notes that none of the interested parties have made any significant argument or submission with regard to determination of injury and causal links in their post disclosure submissions. Therefore, the Authority concludes that the domestic industry suffers material injury and the injury has been caused by the volume and price effects of dumped imports from the subject country.

J. Magnitude of Injury and injury margin

144. As noted earlier sulphur black grains of various strengths have been imported into India during the POI. However, the Authority also notes that the product does not have any international standard to define the grades. The grades of individual producers are defined against their own standard grades, which has significant interchangeability with the grades of other producers or users which is corroborated by the fact that the producers and exporters have shown different grades for the same product. The Authority further notes that since different grades of the subject goods are like articles import of one grade of the subject good materially injures the production and sale of all others grades also. Therefore, exact grade to grade comparison for determination of injury margin is neither possible, nor required. The domestic producers produce two major grades i.e., BR200 and BR240 which are comparable to various grades produced and exported by the exporters from the subject country. Accordingly, the non-injurious price has been determined for above two grades in unpacked condition for comparison with the weighted average landed value of exports from the subject country in unpacked condition, for determination of weighted average injury margins for the exporters from the subject country. Accordingly, the injury margins have been worked out as follows:

Producer	Exporter	Injury Margin	Injury Margin
		USD/MT	%
M/s. Dalian Green Peak Chemicals Co. Ltd	M/s Dalian Dye Chem International Corporation	****	35-45%
M/s Shanxi Linfen Dyeing Chemicals Co. Ltd	M/s Shanxi Linfen Dyeing Chemicals Co. Ltd	****	35-45%
All Others	All Others	****	105-115%

K. Conclusions

145. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the authority concludes that:

- i) The subject goods have entered the Indian market from the subject country at prices less than their normal values in the domestic market of the exporting country;
- ii) The dumping margins of the subject goods imported from the subject country are substantial and above de minimis;
- iii) The domestic industry has suffered material injury and the injury has been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject country.

L. Indian industry's interest & other issues

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

M. Recommendations

147. The Authority initiated and conducted the investigation into dumping, injury and causal links between dumping from the subject country and injury to the domestic industry in terms of the Rules laid down. Having established positive dumping margins against the subject country, and having concluded that the domestic industry suffers material injury due to such dumped imports,

the Authority is of the opinion that definitive measure is required to be imposed to offset dumping and injury being caused to the domestic industry. Accordingly, the Authority recommends imposition of definitive antidumping duty in the form and manner prescribed below.

148. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. The Authority further notes that there is a significant differentiation of the product in terms of its strength and prices. Therefore, a definitive duty in terms of reference price or fixed duty would not be appropriate in this case. Therefore, the Authority recommends imposition of definitive measure as an ad valorem duty, to be worked out as a percentage of the CIF value of imports of the subject goods from the subject country. Accordingly, definitive ad valorem antidumping duty, as indicated in Col 9 of the duty table annexed herewith, is recommended to be imposed from the date of imposition of the provisional duty notified by the Central Government, on all imports of subject goods originating in or exported from the subject country. Subject to the above the preliminary findings dated 10th March 2008 is hereby confirmed.

Duty Table

Sl. No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty
1	2	3	4	5	6	7	8	9
1	32.04	Sulphur Black	In All forms and strengths	China PR	Any	M/s. Dalian Green Peak Chemicals Co. Ltd	M/s. Dalian Green Peak Chemicals Co. Ltd; Or M/s Dalian Dye Chem International Corporation	42.4%
2	32.04	Sulphur Black	In All forms and strengths	China PR	Any	M/s Shanxi Linfen Dyeing Chemicals Co. Ltd	M/s Shanxi Linfen Dyeing Chemicals Co. Ltd;	41.3%
3	32.04	Sulphur Black	In All forms and strengths	China PR	Any	Any other combination other than above		116.8%
4	32.04	Sulphur Black	In All forms and strengths	Any other than China PR	China PR	Any	Any	116.8%

N. Further Procedures

149. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

150. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

R. Gopalan
Designated Authority
