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

NOTIFICATION

New Delhi the 28th February, 2013

Final Findings

Subject: - Mid-term Review (MTR) anti-Dumping investigation concerning imports of 'Carbon Black used in rubber applications', originating in or exported from China PR, Australia, Russia and Thailand.

No. 15/41/2010-DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter referred as the Rules);

A. Background of the case:

1. Whereas, the Designated Authority (hereinafter referred to as the Authority), had notified its final findings vide Notification No.14/21/2008-DGAD dated 24th December, 2009, recommending imposition of definitive anti-dumping duty on the imports of "Carbon Black used in rubber applications" (hereinafter referred to as the subject goods), originating in or exported from China PR, Australia, Russia and Thailand (hereinafter referred to as the subject countries). The definitive anti-dumping duty was imposed by the Central Government vide Notification No. 6/2010-Customs dated 28th January, 2010.

2. Whereas M/s Automotive Tyre Manufacturers' Association (ATMA), hereinafter referred to as the applicant, submitted an application for mid-term review (MTR) on behalf of the importers and users of the subject goods. The applicant requested for conducting a mid-term review (MTR) of the anti-dumping duties imposed on the imports of the subject goods, originating in or exported from the subject countries, in accordance with section 9A of the Act read with Rule 23 of the Rules, claiming that the circumstances that were prevalent during the original investigation have changed significantly during the POI proposed by them, leading to a situation where the existing antidumping duties are no longer warranted.

B. Initiation

3. And whereas Rule 23 of the Rules read with Section 9A of the Act require that the Designated Authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the Designated Authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

4. Having regard to the information provided by the applicant substantiating the need for such review and indicating changed circumstances necessitating a review of the measure in force, the Designated Authority, vide Notification No. 15/41/2010-DGAD dated 30th August, 2011, initiated the subject Mid-term Review (MTR) investigation of the final findings notified vide Notification No. 14/21/2008-DGAD dated 24th December, 2009 published in the Gazette of India, Extraordinary Part I, Section I and the definitive duties imposed by the Central Government vide Notification No.6/2010-Customs dated 28th January, 2010, to review the need for continued imposition of the anti-dumping duties.

C. Procedure

5. The procedure described below has been followed with regard to the investigation:

i) The Authority sent copies of the initiation notification dated 30th August, 2011 to the embassies of the subject countries in India, known exporters from the subject countries, known importers and other interested parties, and the domestic producers, as per available information. The known interested parties were requested to file the questionnaire responses and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters were also sent to embassies of the subject countries along with a list of known exporters/producers, with a request to advise the exporters/producers from the subject countries to respond within the prescribed time.

ii) Copy of the non-confidential version of the application filed on behalf of the applicant was made available to the known exporters, domestic producers and the embassies of the subject countries in accordance with Rule 6(3) of the AD Rules.

iii) The Authority forwarded a copy of the public notice initiating the MTR to the following known producers/exporters in the subject countries and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4) of the Rules:

Carbon Black Producers/Exporters in Australia

1. MIs Continental Carbon Australia Pty Ltd. Sir Joseph Banks Drive Kurnell NSW 2231, Australia Phone: 9668 9177
2. Cabot Australia Pty. Ltd P.O. Box 829, Torquay, Victoria 3228, Australia

Carbon Black Producers/Exporters in China PR

1. Hebeijing Country Xinyuan Rubber Chemical Co Ltd., Shengli Road Guangsha District 31-1-101, Hengshui City, Hebei Province, P.R.China
2. HebeiYonghui Chemical Industries Import And Export Co., Ltd., No.199, Xinhua Road, Shijiazhuang, Hebei, P. R. China-311101
3. LaiwuTaishan Carbon Black Co., Ltd.,Gaozhuang Industrial Zone, Laicheng, Laiwu, P.R.China -271122
4. Qichang Chemical Co., Ltd., Beichenwang, Tangyin County, Anyang City, Henan Province, P. R. China
5. Tianjin Dolphin Carbon Black Ltd., East Of Railway, North Of YinheqiaoBeichein District, Tianjin, P.R.China 300400
6. MIs HebeiDaguangmingJuwuba Carbon Black Co., Ltd. South of Donghuan Road, Shahe City, Hebei Province, China – 054100 Ph: 86-319-8707022
7. MIs Jiangxi Black Cat Carbon Black Co., Ltd ("Black Cat") LiyaoJingdnezhen City Jiangxi Provice, PR China – 333000 Ph: 86-798 839 9126
8. Suzhou Boahua Carbon, Xushuguan Suzhou, China-215151 Ph: 0086-512-653
9. MIs Ningbo Detai Chemical Co. Ltd. No. 699, Fengxiang Road, Ningbo Chemical Industry Zone (Xiepu, Zhenhai) Ningbo City, Zhejiang Province, China
10. MIs Longxing Chemical Stock Co., Ltd. No.1, Longxing Street, Donghuan Road, Shahe City, Hebei, China Ph: 86- 3198869003
11. MIs Ningbo Sheen - All Chemical Co., Ltd. R.M. 6C2-6D2, Xinjingjiang Building, No. 419 Lingqiao Road, Ningbo City, PRC- 315000 Ph: 86-574-87255359
12. China Rubber Industry Association

North Yinhe Bridge Beichengdu, Tianjin-300400 China Ph: 86-22-27276558
13. M/s Jinneng Science & Technology Co. Ltd., No.1 Jinneng Street, Qihe, Shandong, China
14. China Rubber Group Carbon Black Research and Design Institute No.568, Huixing Road, Huidong Dist., Zigong City Sichuan, PR China

Carbon Black Producers/Exporters in Russia

1. Omsktechuglerod OJSC 644049, barabinskaya Street, 20, Omsk, Russia Ph: (3812) 42-02-63
2. MIs. YaroslavskiyTekhnicheskiyUglerod Yaroslavl, 150000, Russia
3. MIs Trigon Gulf FZCO No. MO 0743, Jafza PO Box 61468, Dubai, UAE Ph: 971 48819337
4. Amtel Holding Company, Amtel House 45 Kutuzovsk, Prospekt,121170 Moscow, Russia.
5. Severgazprom, 39/2 Lenin Street UkhtaKomi, Republic of Russian Federation
6. Nizhnekamsk Carbon Black Plant 423570 Nizhnekamsk , Prombaza Republic of Tartarstan

Carbon Black Producers/Exporters in Thailand

1. Thai carbon Black, 44 Moo1, Ayuthaya -Angthong Highway, TambolPasa, AmphurMuang, Angthang 14000
2. Thai Tokai Carbon Product Co., Ltd. 9th Floor, Harindhorn Tower, 54 North Sathorn Road, Silom, Bangrak, Bangkok 10500, Thailand
3. Bridgestone Carbon Black (Thailand) Co., Ltd., Rojana Industrial Park, Ban Khai District, Rayong Province, Thailand

iv) In response to the initiation of the subject investigation, following producers/exporters from the subject countries have responded by filing questionnaire response:

Sl.No.	Name of producer/exporter	Country
1.	M/s Jiangxi Black Cat Carbon Inc. Ltd., Jingdezhen, China PR	China PR
2.	M/s. Jinneng Science & Technology Co. Ltd. China PR	China PR
3.	M/s. Shanghai Hyun Tong Industry International Co. Ltd. China PR	China PR
4.	M/s. Suzhou Baohua Carbon Black Co. Ltd. China PR	China PR
5.	M/s. YaroslavskiyTekhnicheskiyUglerod, Russia	Russia
6.	M/s Trigon Gulf FZCO, UAE	UAE

v) Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Anti-dumping Rules:

1	M/s Apollo Tyres Ltd, Apollo House 7, intuitional Area, Sector-32, Gurgaon - 122001 (Haryana)
2	M/s J. K. Tyre& Industries Ltd. Link House, 3 Bahadur Shah Zafar Marg, New Delhi - 110 002
5	M/s Goodyear South Asia Tyres Pvt. Ltd. H-18 MIDC Industrial Area WalujAurangbad.
4	M/s Goodyear India Ltd. Matura Road Ballabgrah, Faridabad, Haryana 121004
5	M/sCabot India Ltd. NKM International House, 178, Backbay Reclamation, BabhubhaiChinai Marg,, Mumbai 400020
6	M/SGeneral Rubbers P. John Zachariah Buildings Kottayam – 686001, Kerala

7	Automotive Tyre Manufacturers' Association (ATMA), PHD House (4th Floor), Opp. Asian Games Village, Siri Institutional Area, New Delhi-110016
8	All India Rubber Industries Association 1009, Padma Tower , 15 Rajindra Place, New Delhi-Ll0008
9	M/S Gem Poly Tech Industries Pvt. Ltd Garden Lane, Beliaghata, Kolkata - 700010, West Bengal

vi) In response to the above notification, following importers/ users have filed importer questionnaire response.

a) M/s Ceat Limited

b) M/s. JK Tyre & Industries Ltd

c) M/s. Apollo Tyres Ltd.

vii) Questionnaires were also sent to the known domestic producers of the subject goods in India for necessary information and response.

1. Association of Carbon Black Manufacturers 5A, Raba Kailash, 55/4 Ballygunge Circular Road, Calcutta 700019
2. Phillips Carbon Black Ltd 31, NetajiSubhas Road, Kolkata 700001
3. Hi-tech Carbon Murdhwa Industrial Area P.O. Renukoot DisttSonebhadra (UP) 231217
4. Continental Carbon India Ltd A-14 Industrial Area No 1 South Side of GT Road, Ghaziabad-201001
5. M/s Cabot India Ltd. NKM International House, 178, Backbay Reclamation, BabhubhaiChinai Marg,, Mumbai 400020

viii) M/s. Phillips Carbon Black Limited and M/s. Hi-Tech Carbon, the domestic producers of the subject goods constituting domestic industry in the subject investigation, have filed response/submissions along with injury related information/data.

ix) Exporters, producers and other interested parties who have not responded to the Authority, nor supplied information relevant to this investigation, have been treated as non-cooperating interested parties.

x) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the period of investigations, which was

received by the Authority. The domestic industry provided information with regard to imports based on IBIS data (secondary source). The Authority has, however, relied upon the DGCI&S data for computation of the volume of imports and required analysis.

xi) Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry. The NIP has been determined by the Authority in terms of the principles laid down under Annexure III to the Anti-dumping Rules.

xii) Investigation was carried out for the period starting from 1st April, 2010 to 31st March, 2011 (POI). However, injury examination was conducted for a period from 2007-08, 2008-09, 2009-10 and the POI. The Authority also called relevant information/data from the interested parties for post POI (1st April 2011 to 30th Sep. 2011) for conducting likelihood analysis.

xiii) In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 20th April, 2012 and 30th October, 2012. The parties, which presented their views in both the oral hearings, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.

xiv) The submissions made by the interested parties during the course of the investigation have been considered by the Authority, wherever found relevant, in this disclosure. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry and the co-operating producers/exporters.

xv) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

xvi) In accordance with Rule 16 of the Rules supra, the essential facts were disclosed by the Authority to the known interested parties vide a disclosure statement issued on 22nd February, 2013 and comments received on the same, to the extent considered relevant by the Authority, have been considered in this finding.

xvii) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded the disclosure statement on the basis of the facts available.

xviii) The competent Authority has extended the time period for completing the subject investigation up to 28.02.2013.

xix) ******* represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

xx) The average exchange rate of 1US$ = Rs 46.18 prevailing during the POI has been adopted by the Authority in this finding.

D. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

6. The Product under Consideration (PUC) in the original investigation was 'Carbon Black used in rubber application'. In the original investigation the product was defined as under:

> *"5. The product under consideration is 'Carbon Black used in rubber applications'. It is an inorganic chemical used in production/ processing of rubber (including tyres), as reinforcing filler. Carbon Black is also known as acetylene black, channel black, furnace black, lamp black, lampblack, thermal black, and noir de carbone. Carbon black can be divided into two categories – rubber and non-rubber applications Carbon black. Carbon black for rubber applications is the Carbon black that is used in production/ processing of rubber (including tyres), as a reinforcing filler. The present investigation is in respect of Carbon black used in rubber applications. Carbon black used in non-rubber applications, such as inks in copiers and computer printer cartridges, paints, crayons and polishes, is not within the scope of the present investigation.*
>
> *6 The subject goods fall under Chapter 28 of the Act under Subheading No. 28030010. The customs classification is indicative only and is in no way binding on the scope of the present investigation."*

7. None of the importers, consumers, exporters, domestic industry and other interested parties has filed any comment or submissions with regard to product under consideration and like articles. The applicant submitted that they have no issues regarding the product under consideration and like article. In view of the above, the scope of the product under consideration in the present investigation remains the same as that in the original investigation.

E. SCOPE OF DOMESTIC INDUSTRY AND STANDING

Submissions made by the Petitioner (ATMA), Exporters, Importers and Other Interested Parties

8. Following submissions have been made by the applicant (ATMA), Exporters, Importers and other interested parties with regard to standing and scope of the domestic industry:

i. M/s Hi-Tech Carbon, one of the constituents of the domestic industry in the original investigation, is related to a producer and exporter of the subject goods from Thailand, namely M/s Thai Carbon Black Co Ltd. The said related producer/exporter had made substantial exports to India during the period of investigation and also not filed questionnaire response. In view of the above Hi-Tech Carbon is ineligible to become the domestic industry and therefore the level of injury if any suffered by the domestic industry should be determined based on the performance of Phillips Carbon Black alone.

ii. The Designated Authority has no discretionary power to permit Hi-Tech Carbon having a related producer/exporter in the subject country as domestic industry under the Rules.

iii. The argument of domestic industry that ATMA filed an application for mid-term review already considering Hi-Tech as domestic industry is devoid of any merit. Filing a petition giving details of Hi-Tech does not mean that ATMA concedes that Hi-Tech is a part of domestic industry.

iv. Domestic industry has made another baseless submission that ATMA has suppressed the fact that it did not disclose information about duty-free imports made by its members. It is submitted that some of the members filed their importers questionnaire response in response to the initiation of investigation. Furthermore, upon receiving a letter from DGAD, majority of members provided the information sought by DGAD. Thus, there is no suppression of facts as has been claimed by domestic industry.

v. Domestic industry has claimed that since imports from related exporter are under duty free scheme, domestic industry should not be excluded as such imports are not affecting domestic industry. The DGAD should therefore exclude all the imports made under advance license scheme from all the subject countries, and only thereafter should conduct injury and threat of injury analysis.

vi. From the websites of Phillips Carbon Black Ltd (PCBL) and Ceat Ltd, it is evident that one of the Directors of PCBL is the Managing Director of CEAT Ltd, an importer of subject goods from subject

countries. Hence PCBL also needs to be excluded from the scope of domestic industry.

vii. As per Rule 25 of the AD Rules, Hi tech Carbon and M/s. Phillips Carbon Black Limited cannot be treated as domestic producers of the subject goods as they are only making a value addition of just 15% to the raw material that is predominantly imported into India from third country.

Submissions made by Domestic Industry

9. Following submissions have been made by the domestic industry with regard to standing of the domestic industry:

a) The common director in PCBL and CEAT has not attended any board meeting in the relevant period and therefore cannot be termed as having impacted through their relationship in term of Rule 2(b).

b) Hi-Tech Carbon should be considered as an eligible domestic producer despite exports by their affiliated companies in subject countries in view of (i) past decision of the Designated Authority in this regard at the time of original investigations, (ii) low volume of exports by the related producers, (iii) production of the company in India being quite significant, (iv) focus of the company being on domestic production instead of imports.

c) Production by the respondent domestic producers constitutes a major proportion in Indian production; domestic producers expressly supporting the extension of Anti-dumping duty account for more than 50 percent of total production of the like product produced by the domestic industry.

d) The mere fact that one or more domestic producers of the product have themselves imported the product does not imply that such domestic producers should not form part of the domestic industry.

e) The petitioner has withheld vital fact from the authority that imports from Thailand from TCB were under duty exemption scheme. Out of total exports of Carbon Black by TCB to India during period of investigation, only *******% of the total exports are duty paid and rest all the exports made by TCB are under advance license. Since these imports are under duty exemption scheme, in any case, this do not disentitle Hi-Tech from being considered as part of domestic industry

f) The Hon'ble Chennai High Court in the matter of Nirma Ltd. vs. Saint Gobain Glass India Ltd., has held that the Designated Authority has discretion under Rule 2(b) and the amendment dated 27th Feb., 2010 has not taken away the discretionary power of the Designated Authority.

g) In the original investigation the Designated Authority exercised its discretion and came to the conclusion that that Hi-Tech Carbon is eligible

domestic industry. The opposing interested parties have not challenged the same at the time of original investigation or thereafter.

h) The applicants have filed the application for initiation of Mid-term review considering Hi-tech Carbon as domestic industry. The applicant seems to have now taken a U-turn and now stating that Hi-Tech is not an eligible domestic industry. If the argument of the applicant is considered, then the whole basis of their application along with their claim of good performance by the domestic industry (which includes Hi-Tech) does not hold good and therefore the whole investigation is bad and without any factual basis.

i) The volume of exports from the related party accounts for mere ***% and ***% in the total Indian production and demand respectively. It cannot therefore be said that the exports made by the related exporter is significant.

j) Hi-Tech Carbon is the second largest producer of carbon black in India, covering approximately ***percent of the domestic market share. The focus of the company is on domestic production.

k) The responding companies have not imported the product under consideration during the period of investigation from subject countries.

l) There is no automatic exclusion of the related domestic producer from the ambit of domestic industry. Various WTO members have determined the eligibility of the related domestic producers based on facts and circumstances of the case.

m) Petitioner has compared the exports made by Thai Carbon with total exports from Thailand or production of Hi-Tech Carbon. Either of the two parameters is not adopted either by the Designated Authority or other investigating authorities. On the contrary, the established practice in this regard clearly is that the Designated Authority and the investigating authorities consider such imports in relation to production and consumption in India.

n) Despite repeated arguments of the domestic industry, the petitioner has not disputed that these imports have been made by its members under advance licenses. Thus, such imports only supplement the production effort and not substitute the production efforts of Hi-Tech Carbon. It is established practice of the Designated Authority and investigating authorities that imports made to supplement the production efforts should not be considered as sufficient reason to treat such company as ineligible.

o) Imports from Thailand in the post-POI period have significantly declined as evident in the table below.

Year	Imports from Thailand (MT)
2008-09	***
2009-10	***
2010-11	***
Q1 2011-12	***
Q2 2011-12	***
Q3 2011-12	***

p) It is the consumers, being represented by ATMA in the present case, who are resorting to duty free imports from various sources. They are unwilling to give domestic industry a price equivalent to its selling price minus duty benefit (the maximum that the domestic industry can do in such situations). Thus, this segment of market, in any case, was not available to the domestic industry even after imposition of anti-dumping duty. The Govt. of India has exempted such imports from payment of ADD. Had ADD been applied on such imports, the domestic industry would have catered to this market and the consumers would not have imported the product.

q) No Statutory or organizational restriction by the shareholders in relation to operations of the related companies: if the two related companies are acting autonomously when defining and pursuing their business plans and if the relationship did not influence the behavior, nor distort the analysis of the economic situation of the domestic producer in question as regards the product concerned, then the producer may not be excluded under Rule 2(b).

r) Related producers operating are in competition and have conflicting interest: if the two companies concerned, although related, have conflicting interests regarding the imposition of anti-dumping measures, then such related domestic producers should be included within the ambit of domestic industry.

s) Is the behavior of the related parties distinct and different as compared to unrelated parties: The investigating authorities consider the behavior of the related parties and ascertain whether the same shows distinct and different behavior as compared to unrelated parties? Followings are relevant in this regard:

    a. Status of the company among the different manufacturers of the product in the domestic country;
    b. Whether focus of the company is on domestic production;

c. Effect of non imposition of Anti-dumping duty on the company concerned;
d. Trend of injury information of the concerned producer with the other domestic producers.

t) Whether exports of the product in question by the related producers allow the domestic producer to benefit, or serve to shield them, from the effects of dumping. If a domestic producer has shielded itself from the effect of dumping by resorting to exports by the related party, the company must be excluded or if a domestic producer has participated in some way in the dumping practices or has otherwise unduly benefitted from it, it may be excluded.

u) Effect on injury analysis – Where exclusion of the related parties would unduly skew the data for the remaining members of the industry, it must be included or if inclusion of a domestic producer would distort the injury findings, it must be excluded.

v) Exports Made by the Related Parties: Apart from being a related party, it is also pertinent to evaluate the impact of the exports, if any, made by the related party in a given case. Whether such related party had exported the product to India during the period, if so, what is the impact thereof on the claims of injury? If not, whether there is any other ground still justifying its exclusion. In case the related party has also exported the subject goods, then the following also need to be evaluated:

i. The volume of exports made by such related party;
ii. The purpose of such exports made by the related party;
iii. Whether there is any evidence to show that injury to the domestic industry was attributable to such exports by the related party;
iv. Whether the general emphasis of the related domestic producer was on the production of the subject goods or whether the general emphasis gradually or steadily shifted to imports;
v. Any other factor which might have been brought to the notice of the Authority by the interested parties during the course of the proceedings.

w) In the instant case, Hi-tech Carbon and TCB can be loosely said to be related party, but for the purposes of Anti dumping Rules they are not related parties because (a) none of them directly or indirectly control the other; (b) none of them are directly or indirectly controlled by any third person; and (c) they does not directly or indirectly controlled by any third person. Assuming though not admitting that the two companies are related, the domestic industry submits that the rules provide for discretion, as

elaborated above and the discretion should be in favour of inclusion of the company as a domestic industry for the reasons given below:

i. Hi-tech Carbon has not imported the subject goods from any related exporter from subject countries.

ii. Hi-Tech Carbon is one of the business verticals of the Aditya Birla Nuvo Limited (ABNL) and is engaged in carbon black business.

iii. Aditya Birla Nuvo Limited and Thai Carbon (TCB) are two separate listed corporate entities and neither holds any share in the other. They are controlled by their respective shareholders and the board of directors.

iv. There are two directors who are common on board of both the companies, namely Mr. Kumar Managalam Birla and Mrs. Rajashree Birla. However, both are non-executive directors and have joined the board in their individual capacity. It is also pertinent to note that the board of directors of ABNL and TCB constitutes of 11 and 12 directors respectively and none of these two directors have any casting vote or any veto right.

v. Both the companies act autonomously while taking business decisions in pursuing their own business plans.

vi. Both the companies are working in competition with each other in the Indian market as one is the domestic producer of the subject goods and the other is the exporter.

vii. There is no statutory or organizational restriction by the shareholders in relation to operations of the two companies.

viii. Both the companies have conflicting interest regarding the imposition of Anti-dumping duty. Imposition of Anti-dumping duty would help the domestic company i.e. ABNL to recover from the injurious effect of dumping caused by the exporters from subject countries, whereas the goods exported by TCB will be subject to Anti-dumping duty.

ix. The behaviour of the Hi-tech Carbon is not distinct and different as compared to Phillips Carbon Black Limited who is the unrelated domestic producers in India. Both the domestic producers are injured from the effect of dumping practices by the exporter of subject countries including Thailand. The trends of various economic factors of both domestic producers are similar therefore it cannot be said that Hi-Tech Carbon is benefitting out of dumping by TCB.

x. With manufacturing plants at Renukoot in Uttar Pradesh, Patalganga in Maharashtra and Gummidipoondi in Tamilnadu, Hi-Tech Carbon is the second largest producer of carbon black in India, covering approximately ***percent of the domestic market share. The focus of the company is on domestic production.

xi. Revocation of anti-dumping duty would severely affect the performance of Hi-tech Carbon. Imports are undercutting the prices of the domestic industry. Resultantly, lower import prices prevented the company from increasing their prices. Reduction in profits directly resulted in deterioration in return on capital employed and cash profits. Thus, deterioration in profits, return on capital employed and cash flow is directly due to dumped imports.

Examination by the Authority

10. The Authority notes that at the time of the initiation of the subject investigation, Rule 2(b) of the Anti-dumping Rules read as follows:-

> *"domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producer only".*

11. However, post initiation, the Rule 2(b) has been amended vide Notification No. 86/2011-Cutoms (N.T.) dated 1st December 2011 and presently reads as follows:

> *"domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers".*

12. Rule 2(b) of the Anti-dumping Rules provides that domestic producers which are related to the exporters or importers or which are themselves importers of the allegedly dumped articles may be excluded when determining the domestic industry in certain situations. The Authority is of the considered view that the use of the word 'may' in Rule 2(b) suggests that the two types of producers in question, i.e. related producers and producers importing the dumped product, are not automatically excluded from being part of the domestic industry. On the contrary, it has been the consistent practice of the investigating authorities that the exclusion of such

producers must be decided on a case-by-case basis, on reasonable and equitable grounds, and by taking into consideration all the legal and economic aspects involved.

13. As regards the contention of the applicant and other interested parties that the Authority has no discretionary power to consider or not to consider a domestic producer as domestic industry under Rule 2(b) of the Rules in view of their relationship with the exporters of the subject goods from subject countries and imports of subject goods from subject countries by themselves or through related companies, the Authority notes that similar issue had been raised by some interested parties in the anti-dumping investigation concerning imports of soda ash from China PR, Pakistan, Kenya, etc before the Hon'ble Madras High Court. The Hon'ble division bench of Madras High Court in Writ Appeal Nos. 193 / 2012, 194 / 2012,189 / 2012 and 195 / 2012 in their judgment dated 27.04.2012 held inter alia held as follows:

> " 62……..(ii) the term 'domestic industry', as it was amended on 27.02.2010, has not taken away the discretionary power of the Designated Authority……"

14. Further, the Hon'ble Division Bench of Madras High Court vide their order dated 18.06.2012, while disposing of the M. P. 1 of 2012 in W.A. No. 195 of 2012, reiterated their earlier judgment that the Designated Authority is endowed with the discretionary power in this regard.In view of the above, the Authority notes that there should not be any further dispute as regards discretionary power of the Authority under the Rules.

15. The Authority has taken cognizance of the jurisprudence available on the subject and relied upon by it in some of its earlier findings in respect of investigations concerning imports of Soda Ash, Viscose Staple Fibre, etc. These jurisprudence suggests the following as the circumstances in which a related domestic producer may be included or excluded:-

(a) One of the important factors in this regard is the balance of business of the domestic producer between manufacturing and importing. If the company predominantly manufactures the product in India, it should be included. However, if the domestic producer closes or reduces its production and instead imports the product or the general emphasis of its business shifts from production to imports, it should be excluded.

(b) If a domestic producer has shielded itself from the effect of dumping by resorting to imports or exports to a related party, the company must be excluded.

(c) If a domestic producer has participated in some way in the dumping practices or has otherwise unduly benefitted from it, it must be excluded.

(d) If inclusion of a domestic producer would distort the injury findings, it must be excluded.

(e) If a domestic producer does not co-operate with the Authority, the Authority tends to consider such domestic producer as ineligible.

16. The Authority also notes that the text book written by M/s. Czako, Human and Miranda; inter alia, mentions the criteria applied by the other WTO members in such situations as follows:-

(a) The percentage of domestic production of the product in question that is accounted for by the related producers.

(b) Whether imports of the product in question by the related producers allow them to benefit, or serve to shield them, from the effects of dumping.

(c) Whether exclusion of the related parties would unduly skew the data for the remaining members of the industry.

(d) The level or long term nature of the commitment shown by the producer to the domestic production, as opposed to importing activities.

(e) The ratio of import shipments to domestic production for the related producers.

17. The Authority considers that the purpose of the discretion to include or exclude certain domestic producers is to enable the Authority to come to an objective and undistorted determination with regard to the effects of dumped import on the domestic industry in India by excluding those domestic producers from the relevant domestic industry which have participated in injurious dumping. The Investigating authorities may exclude a related producer, where the related parties either:

(a) provoked or contributed to a fall in prices on the market,
(b) are shielded from their effects, or
(c) where they benefited unduly from them.

18. With regard to the first category, i.e. the participation in dumping practices, the Authority considers that several typical situations may be distinguished. On the one hand, the exclusion is indeed appropriate where the injury of a domestic producer is

self-inflicted because imports from dumped producers reduced the use of domestic producers' own capacity, or resulted in the abdication of domestic producers' projects designed to increase their own production. The Authority is of the view that exclusion of a domestic producer is prima facie not appropriate, if its participation in the dumping was an act of self-defence. Such a domestic producer should, therefore, be taken into account when defining the relevant domestic industry.

19. The Authority further considers that the domestic producers who import the dumped products or whose related party exports the dumped products or whose related party imports the dumped products do not unduly benefit from dumping practices, if these exports/imports do not represent a significant part of their sales or market size. Indeed, no advantage would occur to such domestic producers in such an event because of the competition from other suppliers in the market. Another distinction drawn by the Investigating authorities of other countries while deciding whether a domestic producer should be excluded is: Is the domestic producer merely supplementing its domestic production with some dumped imports or whether it is primarily an importer with relatively limited production? If the focus has shifted from domestic production to imports, then such a domestic producer should be excluded from the scope of domestic industry. Thus an important element that needs to be considered on the subject is: whether or not the domestic producer in question is committed to production in the country of imports.

20. The Authority notes that the relevant provisions and legal position as on date, defining the domestic industry, grants discretion to the Authority to either include or exclude a related domestic producer from its consideration as a part of the domestic industry. The Authority further notes that in case the applicant is related to a producer in the exporting country, the mere fact of such relationship does not lead to automatic exclusion of such producer from the ambit and scope of the domestic industry. Indeed, discretion granted has to be judiciously exercised by the Authority in such cases, to examine further on case by case basis and consider whether such a related producer should be considered as eligible or ineligible to be considered as a part of the domestic industry. Axiomatically, the impact of relationship on the facts of the case needs to be appreciated for this purpose. Considering the facts available on record, the Authority has, *inter alia*, considered the following:-

(a) Whether the behaviour of the related parties is distinct and different as compared to unrelated parties;
(b) Whether there is some evidence to show that such related producer triggered or intensified dumping in the Indian market;
(c) Whether the related domestic producer has been shielded from the effects of dumping or has unduly benefited from it;
(d) Whether the related domestic producer has sought to stifle the competition in the Indian market;

(e) Whether there is a case of self-inflicted injury?

21. The Authority considers that apart from being a related party, it is also pertinent to evaluate the impact of the exports/imports, if any, made by the related party in a given case. Whether such related party had exported/imported the product to India during the period, if so, what is the impact thereof on the claims of injury? If not, whether there is any other ground still justifying its exclusion. In case the related party has also exported/imported the subject goods, then the following also need to be evaluated:

- The volume of exports/imports made by such related party;
- The purpose of such exports/imports made by the related party;
- Whether there is any evidence to show that injury to the domestic industry was attributable to such exports/imports by the related party;
- Whether the general emphasis of the related domestic producer was on the production of the subject goods or whether the general emphasis gradually or steadily shifted to imports;
- Whether the volume of exports/imports by such related parties were such that the related exporter is gradually or steadily substituting the unrelated domestic producers' market;
- Any other factor which might have been brought to the notice of the Authority by the interested parties during the course of the investigation.

22. The imports were not made by Hi-Tech during POI. The imports were rather made directly by unrelated importers. The domestic industry claimed that during POI the exports made by M/s Thai Carbon Black (TCB) to Indian importers were mostly under duty free advance licenses. They claimed that out of total *** MT exports of Carbon Black made by TCB to India during the period of investigation, only *** MT (***% of total exports) were exported under duty paid mode and the rest *** MT were exported against duty free advance licenses. In this context the Authority requested the applicant to provide information regarding imports made by their member importers under advance license during the POI. The applicant informed that out of their 10 members, five of their members namely M/s CEAT Ltd, Apollo Tyres Ltd, J K Tyres & Industries Ltd, Bridgestone India Pvt Ltd and MRF Ltd together have imported during POI total *** MT of the subject goods from M/s TCB, out of which *** MT was under duty free advance licenses. On the basis of the above information, the Authority notes that only *** MT (***% of the total imports) of the subject goods were imported by the members of the applicant association on payment of duty and the balance *** MT was imported under duty free advance licenses, during the POI, from M/s TCB Thailand. This reinforces the claim made by the domestic industry that the concerned exporter has exported mostly under advance licenses to India during POI.

23. Although M/sHiTechCarbonand M/sThaiCarbonBlack PublicCompany (TCB) are related, both the companies are independent companies under the legal framework of the respective countries, one operating under the Company Law of India and the other operating under the Company Law of Thailand. The Thai Carbon is a producer and exporter of the subject goods from Thailand, one of the subject countries, during POI, but did not file response. The subject exporter being non-cooperative will be subjected to residual duty in case the anti-dumping duty is continued to be imposed. In such a situation it does not seem to be benefiting M/s Hi-Tec in any manner. Imposition of Anti-dumping duty against Thailand itself proves the intent of the domestic industry. If the Hi-tech carbon was benefitted by the related party exports, it would not have filed the petition against Thailand at the very first instance. It is pertinent to note that the exports made by the related party are also subject to anti-dumping duty and therefore there is no evidence to prove that Hi-tech carbon is unduly benefitted. Focus of Hi-Tech continues to be on production. The company have not turned trader. The Authority further notes that there is no evidence whatsoever provided by opposing interested parties establishing that the two parties have colluded.

24. The domestic industry in the original as well present review investigation is constituted by two leading unrelated domestic producers of Carbon Black in the country namely M/s Philips Carbon and M/s Hi-Tech Carbon. Had the exports of subject goods made by the related exporter of Hi-Tech Carbon i.e. TCB would have injured the domestic industry, M/s Philips Carbon would have been injured equally. In that event, being an unrelated party, by no stretch of imagination M/s Philips Carbon, would have joined hands with Hi-Tech., in the anti-dumping investigation. Moreover, the behaviour of the Hi-tech Carbon is not distinct and different as compared to Phillips Carbon Black Limited who is the unrelated domestic producer in India. Both the domestic producers are injured from the effect of dumping practices by the exporter of subject countries including Thailand. The trends of various economic factors of both domestic producers are more or less similar, therefore it cannot be said that Hi-Tech Carbon is benefitting out of dumping by TCB.

25. Moreover during the original investigation, the issue regarding non eligibility of M/s Hi-Tech Carbon as domestic industry due to their relationship with M/s ThaiCarbonBlackPublicCompany Ltd. (TCB) had come up. TheAuthorityin its Final Findings notification No.14/21/2008-DGAD dated 24thDecember 2009 had observed as follows:

> *"20. The Authority notes that M/s Hi Tech Carbon is related to M/s Thai Carbon Black Public Company and M/s Liaoning Birla Co. Ltd. M/s Hi Tech Carbon has claimed that M/s Liaoning Birla Co. has not exported carbon*

black in Indian market. Even though M/s Thai Carbon Black Public Company Ltd. has exported the subject goods to India, the entire volume of exports is only 2178 MT, out of total of 515350 MT in POI. Some interested parties have reiterated their argument regarding inclusion of M/s Hi Tech in view of exports by their related entity. The Authority, however, notes that the exports made by the Thai related company are not so significant and not under such condition to take a view that M/s Hi Tech should be considered ineligible to be considered as a part of the domestic industry. The Authority notes that the Hi Tech Carbon has not turned to importing and trading. The focus of the company remains substantially on production. Further, there is no evidence on record to show that M/s Phillips Carbon Black Ltd. and M/s Ceat Ltd. are related companies. Even though ATMA has participated in the present investigations as an interested party and M/s Ceat Ltd. is their member, there is no evidence on record to show that M/s Ceat Ltd. has imported significant volumes of the product under consideration from the subject countries after payment of customs duties.

21. The Authority notes that the volume of exports made by M/s Thai Carbon Black is too insignificant in relation to production and consumption in India. Besides, it has not been established that M/s Hi Tech Carbon should be excluded from the purview of domestic industry because of exports made by the related company. The Authority considers it appropriate to include M/s Hi Tech Carbon within the scope of the domestic industry. With regard to eligibility of M/s Phillips Carbon, the Authority notes that the interested parties have not provided sufficient evidence to justify its exclusion.

22. As per the evidence available on record, production of M/s Phillips Carbon Black Ltd. and Hi-Tech Carbon account for a major proportion of the domestic production of like article, being significantly more than 50% of Indian production. Further, the petition is supported by M/s Continental Carbon. The application thus satisfied the requirements of Rule 2(b) and Rule 5(3) of the AD Rules. Further, M/s Phillips Carbon Black Ltd. and M/s Hi-Tech Carbon are being treated as "domestic industry" within the meaning of Rule 2(b) read along with Rule 2(d) of the AD Rules for the present purpose."

26. It is relevant to note that applicant in the present review investigation, who were also interested party in the original investigation and had taken similar ground for exclusion of Hi-Tech from the purview of domestic industry due to their relationship with Thai Carbon, have not impugned the decision of the Authority in considering Hi-Tech as domestic industry under the Rules. Moreover the Authority notes that the applicant for present MTR did not show any prejudice with regard to the standing and scope of M/s Hi-tech as constituting domestic industry in the event of

relationship with TCB. Rather the ground on which the present MTR was sought by the applicant was that:

- the import prices of Carbon Black have increased significantly;
- domestic selling prices have also increased significantly;
- the cost of raw material – Carbon Black Feed Stock (CBFS) has come down significantly and that with the fall in cost of major raw materials, the Non-injurious price (NIP) for the domestic industry has come down drastically;
- coupled with a significant increase in import prices leading to an increase in the landed value of imports, the injury margin has come down and as a consequence, a need for reviewing the current level of duties has arisen."

27. As regards the contention of ATMA that Phillips Carbon Black Ltd (PCBL) and Ceat Ltd are related in the context of having a common director, the Authority notes that CEAT Ltd has opposed the domestic industry in the present investigation by filing importer questionnaire response. Moreover the concerned importer had also opposed the domestic industry in the original investigation. This signifies that relationship has no determining effect on the decision making process of both the companies. Had the relationship been of any significance in the decision making process of these companies, then the concerned domestic industry would not have sought imposition of anti-dumping duty on the imports of subject goods from the subject countries and the concerned importer would not have opposed the move of the domestic industry.

28. After careful examination of the submissions made by the interested parties on the subject and considering the legal provisions and facts of the case and Authority's consistent position in such circumstances, the Authority notes that the facts on record do not justify exclusion of M/s Hi-tech and PCBL from being considered as domestic industry under the Rules. M/s Philips Carbon and M/s Hi-Tech Carbon account for a major proportion of the domestic production of the subject goods in India and therefore constitute domestic industry under Rule 2(b) and Rule 5(3) of the Rules.

29. As regards the contention of the petitioner that imports made under duty exemption scheme should be excluded while conducting injury analysis, it is noted that it is a consistent practice with Authority not to exclude such imports while conducting injury analysis. The Authority in the past has examined similar issues pertaining to the anti-dumping investigations involving imports of Aceton, originating in or exported from European Union, Chinese Taipei, Singapore, South Africa & USA and held as under:

> "56. It has been stated that imports made under duty exemption scheme should be excluded for the purpose of injury analysis. The Authority notes that the imports made under duty exemption scheme create competition and change

the price line as the importers would procure the goods from exporters or producers whosoever gives him the competitive price, therefore, the imports made under duty exemption scheme cannot be considered to have not affected the price in the market. The Authority, therefore, has not found it reasonable to exclude all duty free imports for the purpose of injury analysis."

30. Therefore, the imports made under duty exemption scheme cannot be considered to have not affected the price in the domestic market. An Advance license/authorisation holder has a choice either to import the inputs on a duty free basis or procure the same from indigenous sources by using the mechanism of Advance Release Order. The purpose of injury analysis is to examine and capture the effect of dumped imports on the domestic industry. Therefore, it would not be reasonable to exclude all duty free imports for the purpose of injury analysis.

31. As regards the submission of petitioner and other interested parties that as per Rule 25 of the Anti-dumping Rules, Hi tech Carbon and M/s. Phillips Carbon Black Limited cannot be treated as domestic producers of the subject goods as they are only making a value addition of just 15% to the raw material that is predominantly imported into India from third country. In this context the provisions of Rule 25 of AD Rules is extracted below:

> *"**25. Circumvention of anti dumping duty.** - (1) Where an article subject to anti dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti dumping duty in force if,-*
>
> *(a) the operation started or increased after, or just prior to, the anti dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and*
>
> *(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.*
>
> *Explanation I. – 'Value' means the cost of assembled, complete or finished article less value of imported parts or components*
>
> *Explanation II. - For the purposes of calculating the 'value', expenses on account of payments relating to intellectual property rights, royalty, technical know- how fees and consultancy charges, shall not be taken*

into account.

(2) Where an article subject to anti dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti dumping duty in force if the alteration of the description or name or composition of the article subject to anti dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any.

(3) Where an article subject to anti dumping duty is imported into India through exporters or producers or country not subject to anti dumping duty, such exports shall be considered to circumvent the anti dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or producers or country not subject to anti dumping duty.

Explanation.- For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely:-

(a) absence of a justification, economic or otherwise, other than imposition of anti- dumping duty;

(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.

32. The Authority notes that provisions of Rule 25 of Anti-dumping Rules have been formulated to address a completely different situation caused by circumvention by the exporters/producers who are subjected to anti-dumping duty. Criteria given in the said Rule is not applicable in the matter concerning standing and scope of domestic industry in an anti-dumping investigation.

F. Confidentiality

33. The applicant and other interested parties have submitted that the information can either be kept confidential or non-confidential; there is no regulation which provides for the treatment of information as confidential for few interested parties alone and be regarded as non- confidential for all others. On the contrary the domestic industry has alleged that applicant has claimed information pertaining to domestic industry confidential from the domestic industry itself.

Examination by the Authority

34. The Authority notes that none of the interested parties have raised any major issue concerning confidentiality. However it is noted that the Authority has granted confidentiality wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.

G. MISCELLENEOUS SUBMISSIONS

Submissions made by the Petitioner (ATMA), Exporters, Importers and Other Interested Parties

35. Following miscellaneous submissions have been made by Petitioner (ATMA), Exporters, Importers and Other Interested Parties:

a. The scope of mid-term review is different from the scope of sunset review. In a mid-term review DGAD is required to consider and determine whether there is sufficient justification for withdrawal of anti-dumping duty before completion of five years, whereas in sunset review DGAD is required to determine whether anti-dumping duty is required to be extended further or not after expiry of five years.

b. Petitioner has sought review of existing measures providing 'positive information substantiates the need for review'. Therefore, the argument by the domestic industry that the onus of proving that revocation of duty would not cause injury to the domestic industry does not hold any water.

c. POI should not be extended as argued by the domestic industry, If the contention of the domestic industry that 'the performance during POR is irrelevant' is accepted and the performance as of today is to be examined, the concept of examining the performance over a period would lose its legal sanctity and there would be no end to an AD Investigation as the new data would keep flowing in with passage of time.

d. Post initiation data should not be considered, the producers will stage manage their business in such a way so as to show losses in the period post initiation and claim injury as a sign of recurrence.

e. Safeguard investigation is China specific and not relevant for other subject countries.

f. DGAD is not an appellate authority to consider the findings of a safeguard finding. DGAD is required to examine the performance during the defined Period of Investigation (POI) with the defined injury period prior to the POI, unlike safeguard investigation, which does not have a specified investigation period.

g. There exists large variation in the data presented in the submissions made by domestic industry in the present investigation and findings recorded by DG Safeguards.

h. Although DG Safeguards recommended imposition of safeguard duty for a period of three years, Ministry of Finance considered that imposition of safeguard duties for a period of 15 months is sufficient for domestic industry to overcome the effects of injurious effects of imports from China PR. Thus, even according to Central Government, injury due to imports from China PR beyond 31st December 2013 is unlikely.

i. The amended rule requires interested party to provide positive information substantiating a need for review. There is no need to provide information substantiating need for withdrawal of anti-dumping duties as argued by domestic industry.

j. The contention of the domestic industry that its performance during the POR is totally insufficient for examining the need for withdrawal of anti-dumping duty is without any legal basis. The purpose of specifying a particular period as the POR is to examine the performance of the domestic industry during that period and thereafter review the need for withdrawal of the Duty.

k. The POR fixed for the present case is April 2010 to March 2011. The investigation was initiated on 30 August 2011, that is, 5 months after the end of POR. Therefore the POR fixed by the Authority cannot be termed as historic as argued by the domestic industry.

l. The findings of DG Safeguards shall not be considered by DGAD while arriving at the final determinations, since the information contained therein is totally different from information provided by domestic industry in the present MTR investigation.

m. The information regarding the procurement prices of a few members cannot be disclosed since it would adversely affect the purchasing power of the members who had provided the information.

n. The contention of the domestic industry that imports should have stopped after the imposition of AD Duty is highly incorrect. The object of AD Duty is only to cure the injurious effect of dumping and not to stop imports.

o. The MTR investigation should be restricted to the POR of the present investigation and not consider post POR data as it would result in consideration of new data every now and then and thereby result in delay in completion of investigation.

Submissions made By Domestic Industry

36. Following miscellaneous submissions have been made by the domestic industry:

a. The scope of Mid Term Review Investigation is substantially different from scope of original or sunset review investigation in the sense that while in a Mid Term Review, the Designated Authority is required to consider and determine whether there is sufficient justification for withdrawal of anti-dumping duty at premature stage, in a Sunset Review, the Designated Authority is required to consider and determine whether anti-dumping duty is required to be extended further. However, in both the

type of review, likelihood analysis in respect of dumping and injury is an essential consideration.

b. The period of investigation fixed by the Authority is historical and the performance of the domestic industry has undergone a significant change thereafter. Therefore any determination without consideration of the present period will be against the intention of the Rule 23 (1A).

c. Designated Authority has to examine whether changed circumstances could be said to be of lasting nature. Mere change in circumstance is insufficient. The performance of the domestic industry and the levels of imports from subject countries in the current period is the most reliable evidence in order to determine the lasting nature of the changed circumstances.

d. There is no basis for the argument that the safeguard findings should not be considered merely because there are some differences in the figures. The basis adopted by the Director General Safeguards for assessment of production, domestic & export sales volumes, inventories volume is different from the basis adopted by the Designated Authority. While Designated Authority adopts financial records and financial statement forming part of annual accounts; the Director General Safeguards adopts excise records. This has been clearly stated by Director General (Safeguards) in its final finding. The relevant extracts are as follows:

    a. *Production: - The production has been determined on the basis of production reported by the domestic industry in its excise records*
    b. *Sales: The sale has been determined on the basis of goods cleared by the domestic industry, as reported in their excise records.*
    c. *Inventory: The level of inventories was considered as per excise records maintained by the domestic industry.*

e. Thus, minor variation between the two data is inevitable. As stated in the written submissions, even more important parameter such as profit/loss as per Income Tax Act and profit/loss in the Annual Report may not be the same, as Annual Report is prepared as per directions under Companies Act. These differences are, however, not relevant to the Designated Authority. The domestic Industry has not requested Designated Authority to consider the figures adopted by the Director General Safeguards. The domestic industry has requested the Designated Authority to consider the conclusions drawn by the Director General Safeguards. It is not established that the decision in two bases have led to two different conclusions. In fact, information presented by domestic industry on both the basis leads to the very same conclusions i.e.

    i. Performance of the domestic industry improved on account of parameters such as production, domestic sales, capacity utilization, market share till 2010-11and deteriorated thereafter.

ii. Performance of the domestic industry with regard to profits, return on investment and cash profits improved till 2010-11 and deteriorated thereafter.

f. These conclusions are clearly established from both set of information, i.e. the information relied upon by the Director General Safeguards and the information provided to the Designated Authority based on financial records.

g. The difference in imports is due to the fact that whereas the Designated Authority considers product description and includes imports of the product under consideration regardless of the classification where it has been imported, the Director General has considered imports falling under HS code 28030010 only. Domestic industry refers to the final findings notified by the DG (Safeguards), which is relevant to the present issue. The relevant extracts finding of DG (Safeguards), are as follows –

> *30.The product under investigation is imported into India under chapter heading 28030010 of the Customs Tariff Act, 1975. The Safeguard investigation was initiated on the basis of DGCI&S import data from 2008-09 to 2010-11 and data provided by the domestic industry from secondary data compiling agency (IBIS) for rest of the period. In the Preliminary Findings, the import data for the entire period has been considered on the basis of data provided by the domestic industry from secondary data compiling agency (IBIS). The information provided by the petitioners and other interested parties were examined and it was found that it included some imports of the products which are beyond the scope of the product under consideration. Therefore, even though the petitioners had reported imports as per IBIS which included imports under HS code 28030020 and 28030090 also; after scrutiny the imports falling under HS code 28030010 only has been considered. The analysis for increasing imports was carried out for the relevant period by considering imports of Carbon Black under chapter heading 28030010 of the Customs Tariff Act, 1975 for 'rubber applications' only.*

h. Without prejudice, domestic industry submits that the difference in the two data is insignificant. Both data leads to eventually same conclusion. Under the Rules, ultimately, DA is concerned with the trends in the economic indices. Whether the data contained in the safeguard findings or data now presented by the domestic industry before the DA is considered, eventual conclusion drawn shall remain the same. For example, the DA is concerned with whether the production increased or declined materially. Whether the production is considered as per excise records or as per financial records, the same conclusion shall be reached. Thus, there is no material impact of considering two different basis for assessment of economic parameters.

EXAMINATION OF THE AUTHORITY

37. Rule 23 of Anti-dumping Rules states as follows:

(1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1A) The Designated Authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the Designated Authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive anti-dumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the Designated Authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9/10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.

38. Article 11.2 of the Agreement provides that the Authority shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti dumping duty is no longer warranted, it shall be terminated immediately.

39. The applicant and the other interested parties have contended that the scope of mid-term review is different from the scope of sunset review. The applicant has contended that in a mid-term review DGAD is required to consider and determine whether there is sufficient justification for withdrawal of anti-dumping duty before completion of five years, whereas in sunset review DGAD is required to determine whether anti-dumping duty is required to be extended further or not after expiry of five year. On

the other hand, domestic industry contended that in a mid-term review, current performance alone is insufficient to conclude whether the anti-dumping duty can be withdrawn at this stage and that the Authority is required to consider the likely situation when anti dumping duty is withdrawn.

40. The Authority has examined the issues raised by the interested parties and domestic industry and notes that Rule 23 of the Anti-dumping Rules obligates the Authority to review the need for the continued imposition of an anti-dumping duty, *inter alia*, upon request by any interested party who submits positive information substantiating the need for such review after a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the Authority shall recommend to the Central Government for its withdrawal, where it comes to the conclusion that the injury to the domestic industry is not likely to continue or recur if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

41. As regards analysis of post POI data, the Authority notes that post POI developments are required to be addressed through the review mechanism as envisaged under the Anti-dumping Rules and the Customs Tariff Act, which is necessary to determine the likelihood of continuation or recurrence of injury to the domestic industry and necessity for withdrawal or continued imposition of anti-dumping measures. The Authority has examined and evaluated the information/data not only with reference to the period of investigation but has also analysed the post POI information/data for assessing likelihood of recurrence of dumping and injury to arrive at the conclusions. Therefore for the purpose of the present investigation, the Authority has considered the injury period till March 2011. However, the period of April-September, 2011 has also been considered for assessing likelihood of continuation or recurrence of dumping and injury to the domestic industry.

42. As regards difference in data between safeguard and anti dumping, it is claimed by the domestic industry that the basis adopted by the Director General Safeguards for assessment of production, domestic & export sales volumes, inventories volume is different from the basis adopted by the Designated Authority. While Designated Authority adopts financial records and financial statement forming part of annual accounts; the Director General Safeguards adopts excise records. In this regard the Authority notes that the present findings are based on verified data as furnished by the cooperating interested parties.

H. Determination of Dumping Margin

Market Economy Claims,Normal Value, Export Price and Dumping Margin

Submissions made by the domestic industry during the course of investigation

43. The submissions made by the domestic industry with regard to normal value, export price and dumping margin are as follows:

i. China should be treated as non-market economy countries for following reasons:

- Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity.
- Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values
- Market economy status cannot be given unless the responding exporter establish that their books are audited in line with international accounting standards.
- Market economy status cannot be granted even if one of the parameters is not satisfied.
- It is not for the Authority to establish that the responding companies are indeed operating under market economy environment and are entitled for market economy treatment. On the contrary, it is for the responding Chinese exporters to establish that they are operating under market economy conditions.
- Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group have not filed the response, market economy status must be rejected.
- In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.

ii. Normal value in case of China should be determined in accordance with para-7 Annexure-I to the Rules.

Submissions made by the Petitioner (ATMA), Exporters, Importers and Other Interested Parties

- The domestic industry has claimed that there is huge excess capacity with Chinese producers which threatens dumping into India. It is submitted that China PR has been holding excess capacity for quite a long time, however mere availability of excess capacity is not sufficient in itself to conclude that there will be recurrence of dumping into India.

- The main reason for difference in prices of Chinese product and domestic product is due to difference in raw material used by Domestic industry and its Chinese counterpart. Merely because Chinese producers are able to produce the subject goods at cheaper price does not imply they are dumping the goods. Any injury arising out of different raw materials used cannot be attributed to dumping.

Examination of Market Economy Claims

China PR

44. The Authority sent copies of the MET questionnaire to all the known exporters for rebutting presumption of non-market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the Rules. The Authority also requested Government of

China to advise producers/exporters in their country to provide the required information.

45. 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 PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The cooperating exporter/producer of the subject goods from China are 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:-

    i. The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labor, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

    ii. The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

    iii. Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and

    iv. The exchange rate conversions are carried out at the market rate.

46. In the present investigation, the following producers/exporters of subject goods from China PR, except M/s Jiangxi Black Cat Carbon Inc. Ltd., Jingdezhen, China PR (producer/exporter), claimed market economy treatment by filing MET questionnaire response;

    1. M/s. Jinneng Science & Technology Co. Ltd. China PR.
    2. M/s. Shanghai Hyun Tong Industry International Co. Ltd. China PR.
    3. M/s. Suzhou Baohua Carbon Black Co. Ltd. China PR.

47. The Authority notes that M/s Shanghai Hyun Tong Industry International Co. Ltd. China PR and M/s. Suzhou Baohua Carbon Black Co. Ltd. China PR did not cooperate by offering themselves for verification of their data/information, and therefore, are considered as non-cooperative in the present investigation.

48. The data/information furnished by M/s. Jinneng Science & Technology Co. Ltd. China PR who claimed market economy treatment and M/s Jiangxi Black Cat

Carbon Inc. Ltd., Jingdezhen, China PR (producer/exporter) who did not claim market economy treatment, were verified by the Authority.

M/s Jinneng Science & Technology Co., China PR

49. M/s Jinneng Science & Technology Co., Ltd filed MET Questionnaire and claimed market economy treatment in the present investigation. The data/information furnished by M/s. Jinneng Science & Technology Co. Ltd was verified by the Authority. Following observations weremade by the Authority during the course of on the spot verification:

i. During the on the spot verification, it was informed that the subject company and its controlling parent companies as well as the related companies are entirely family held business. It was further informed that prior to establishment of the subject company, the family owning the subject company was involved in kitchen implement business. However the subject company could not substantiate with documentary evidence how the family could manage so much of fund from the kitchen implement business to make such a huge investment within a period of ten years or so.

ii. On being questioned about the relationship between M/s Shandong Reipu and M/s Shandong Chenming Chemical Co Ltd, it was informed that Mr. Qin Ping, the Chairman of the subject company had set up M/s Shandong Chenming Chemical Co Ltd in 1998 with ***% share for producing food additives. It was further informed that this company was closed in 2002 and the land and the assets of the company were sold off. But the company could not substantiate the transaction with documentary evidence. However, when being informed about the web based information that the old name of M/s Shandong Reipu is M/s Shandong Chenming Chemical Co Ltd, the subject company stated that the business of M/s Chenming Chemicals Ltd was taken over by M/s Reipu, the controlling parent company of the subject company. But the subject company could not substantiate with documents to prove that the transaction was as per market process.

iii. It was informed by the company that the entire group including the subject company is family held and all the investments and monetary transactions are made in cash. When questioned about the source of fund of the investors, no satisfactory answer supported by documents could be provided. The company could not provide any document to prove that the sales and purchases of the assets of the subject company and the related companies were done as per the open market price. The company also could not produce the details of the purchase of the raw materials at the prevailing market prices.

iv. Further, one of the web based information states that the subject company was listed as the State Ministry of Coal Chemical key schedule contact companies. On being questioned about the relevance of such statement, the company could not provide any satisfactory answer substantiating with documents.

v. In the balance sheet, the company claims to have assets worth of *** Million RMB in the very first year of establishment of the company and the company claimed depreciation for the same. But the company could not provide the assets register along with relevant documents supporting the procurement of such assets by the company. The company could not also produce the detailed land related documents and documents in support of procurement of land and buildings at market prices.

vi. The company did not provide the audited annual accounts for the year 2011 stating that the same is not ready. But, it was observed that while the audited annual accounts of the company are generally ready by the month of February of the year, no satisfactory reason could be provided by the company for not keeping the annual accounts for the year 2011 ready even by the end of month of June when company is verified. The company was asked to provide an undertaking to this effect, but they did not do so.

vii. The company informed that the Board of Supervisors of the company is manned by three members. While two members were claimed to be employees of the company, the chairman of the BOS was stated to be the Chairman of the Labour Union as well. But the company could not provide details about the engagement of the members of the BOS nor the documents in support of their employment and payment of monthly salary to them.

50. The verification report was sent to the subject company for comments through their representatives. In their response to the verification report M/s Jinneng did not rebut the observations of the Authority as regards their non-market status, thereby acknowledging their non-market economy status. In view of the above position, the Authority does not grant market economy treatment to M/s Jinneng Science & Technology Co., Ltd, China PR.

51. In view of the fact that none of the responding producers/exporters have been accorded MET status and none of the interested parties, including the domestic industry, have made available any material fact to the Authority to select an appropriate market economy third country, the Authority has determined the normal value in respect of China PR on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules.

52. Para 7 of Annexure I of the Anti-dumping Rules provides that:

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

53. Accordingly, the ex-works Normal Value of the product under consideration for all exporters from China PR has been constructed based on facts available and the Authority has determined the normal value in respect of China PR on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules.

Methodology adopted for constructing Normal Value in case of China PR

54. The Authority has constructed the Normal value for the Chinese producers on the following basis –

a. International prices of major input, carbon black feed stock has been considered on the basis of the price published by Platts magazine for Heavy Stock GC3%.

b. Consumption of raw materials and Conversion costs have been adopted on the basis of information/data of efficient producer of the domestic industry.

d. Selling, general & administrative costs have been taken on the basis of information/data of efficient producer of the domestic industry.

e. Profit has been taken @ 5% of ex-factory cost excluding interest.

55. For the purposes of conducting a fair comparison, separate Normal value has been calculated for each grade of subject goods produced and sold and separate Normal value has been calculated for each quarter of the period of investigation. However, the dumping margins so arrived have been weighted averaged for the entire 'period of investigation' and for the 'product under consideration' as a whole thereafter.

56. Accordingly Constructed normal value is determined by the Authority in respect of China PR as US $ ***per MT.

Normal value in case of Russia, Australia and Thailand

57. While no questionnaire response has been filed by any producer/exporter from Australia and Thailand, the questionnaire response has been filed by M/s. Yaroslavskiy Tekhnicheskiy Uglerod, Russia.

M/s. Yaroslavskiy Tekhnicheskiy Uglerod(producer) and M/s Trigon Gulf, FZCO Dubai, UAE

58. The data/information furnished by M/s Yaroslavskiy Tekhnicheskiy Uglerod was verified by the Authority. During the POI, while the company exported the subject goods to other countries directly, they exported to India only through their distributor M/s Trigon Gulf, a trading company at Dubai, in the UAE. It was stated that M/s Trigon Gulf purchased the subject goods ex-factory from M/s Yaroslavskiy and then exported to India by preparing all the required documents and bearing all required expenses. The goods are shipped directly from the factory to Indian consumers. The payment is however made by Trigon. The entire transaction was stated to be governed by a contract signed between Yaroslavskiy and Trigon Gulf.

59. During the verification it was found that all the randomly selected invoices in respect of the subject goods claimed to have been exported to India during the POI and post-POI showed the consignee's name as *****,** Colombo, Sri Lanka. On being questioned, it was informed by the company that all the other export consignments were also consigned to the same company in Colombo and they have been following this practice of showing the Colombo party as the consignee in respect of all their exports to India via Trigon Gulf, Dubai. But, the company could not provide any satisfactory reason/justification, with documentary support, for showing the name of *******, Colombo, Sri Lanka as the consignee in their invoices etc when the subject goods are actually meant for export to India and that was very much within their knowledge. From the copy of the addendum to the contract it is evident that it was very much within the knowledge of Yaroslavskiy that the subject goods shipped by them are actually meant for the Indian buyers and it was very much within the knowledge of Trigon Gulf that Yaroslavskiy is showing *******, Colombo as the consignee in respect of the goods purchased by them for export to Indian buyers. Despite this knowledge, Yaroslavskiy continued to show the name of *******, Colombo in their export documents and Trigon did not object to the same practice and continued to show the same consignments in the name of Indian buyers in their export documents.

60. Further, M/s Trigon Gulf also exported the subject goods produced by other Russian and Chinese producers to India during the POI. But in respect of such transactions no response has been filed by the concerned producers from Russia and China PR. Therefore, a portion of Trigon's export of the subject goods to India during the POI of the present investigation has gone un-responded by the concerned producers.

61. During the verification M/s Trigon was also requested to clarify why the name of the party has been shown in the documents prepared by Yaroslavskiy as *******, Colombo, when the goods were actually meant for sale to Indian customers as per the contract signed by them. No satisfactory reasons/justification with documentary support for following such practice was provided to the investigation team by Trigon as well.

62. M/s Yaroslavskiy Technicheskiy Uglerod, Russia was requested much in advance to keep the required documents/records ready duly translated into English language for

verification purpose. In spite of clear and prior instructions, most of the required documents/records were not translated in to English language and kept ready for verification. As a result, the team was handicapped in verifying the data/information furnished by the company.

63. The verification report was sent by the Authority for comments by concerned producer and exporter. But, as regard issue of showing consignee name as ***, Colombo in the invoices of the producer in respect of shipment meant for Indian buyers, no satisfactory reasons/justification for following such practice could be provided by either the producer or the exporter concerned with documentary support.

64. The above observations, along with a few others, were noted in the verification report and were sent to the concerned parties for comments. In response, M/s Open Joint Stock Company "Yaroslavsky Technichesky Uglerod" Russia (producer) has submitted inter alia as follows:

> *"Trigon gulf is authorized to sell CB in any other country/market with prior approval of Yaroslav and can divert the goods to any other location along with India. The Consignee mentioned as " *** – Srilanka" in final invoice received from Yaroslavl, therefore does not matter. It is Yaroslav's own export matter (how they want to document it) and hence irrespective of consignee mentioned as ***, Srilanka, Trigon is authorised to sell goods in India to customers of their choice. Each MT of goods supplied to Trigon Gulf is properly documented by them and BL copies/invoices can prove final destination as India. It is Yaroslav's internal matter as to how to create export documentation. It has no financial bearing."*

65. In their response, M/s Trigon Gulf replied inter alia as follows:

> *"Point 3: Tigon gulf also supplies to India, Carbon Black produced by M/S *** - Russia and M/S ***–China. Volume of both these companies however is very small to justify filing questionnaire response. Trigon represents Yaroslav in India. Yaroslav and Trigon have submitted their response regarding MTR and cooperated with whole investigation to avoid Anti Dumping*
>
> *Point 5: Kindly also refer to m/s Yaroslavsky's response (point 7) on same subject. Trigon gulf has provided all documentary proofs of each MT procured from Yaroslav and shipped to India to various customers. It was Yaroslav's export documentation which shows consignee as *** Shrilanka, which is irrelevant to current investigations."*

66. In view of the above the Authority does not find the questionnaire response of M/s. Yaroslavskiy Tekhnicheskiy Uglerod (producer) and M/s Trigon Gulf, FZCO Dubai, UAE as reliable and beyond reasonable doubt. The Authority therefore does not consider their responses and not to grant individual dumping margin to the concerned producer - exporter combination.

Determination of Normal value in respect of Russia, Thailand and Australia

67. Since, the response filed by M/s. Yaroslavskiy Tekhnicheskiy Uglerod (producer) and M/s Trigon Gulf, FZCO Dubai, UAE has not been accepted by the Authority and no response has been received from any other producer/exporter of the subject goods from Russia, Thailand and Australia, the Authority has determined the Normal Value in respect of Russia, Thailand and Australia as per facts available in terms of Rule 6(8) of the Anti-dumping Rules. Accordingly Normal value at Ex-factory level in respect of Russia, Thailand and Australia is determined on the basis of methodology explained in para 54 and 55 of this finding. The weighted average Normal value for the grades exported to India so determined is US$ ***per MT, US$ ***per MT and US$ ***per MT respectively.

I. EXPORT PRICE

Export price for the responding exporters

68. The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by these interested parties.

M/s Jinneng Science & Technology Co., Ltd, Jinan, China PR (producer/exporter)

69. Separate weighted average export price to India has been determined for each grade/type of the subject goods, as explained above. The adjustments have been made on account of inland transportation, overseas transportation, overseas insurance, credit, bank charges and export packing as claimed by the exporter. During the verification Jinneng claimed that there is no VAT refund for the exports of the subject goods. In the exporters verification report it was noted that no adjustment has been claimed by M/s Jinneng for the difference between VAT paid/payable and the VAT refund. In their reply to the verification report Jinneng claimed that the prices shown in the Appendix 2 were net of VAT and therefore no adjustments have been claimed by them. On the basis of the verified data, the Authority notes that Jinneng exported the subject goods to India ***MT during the POI for the gross value of US$ ***and ***MT during the post-POI (April, 2011 – September, 2011) for the gross value of US$ ***. After making the acceptable adjustments, the Authority determines the export price of Jinneng as US$***per MT during the POI.

M/s Jiangxi Black Cat Carbon Inc. Ltd., Jingdezhen, China PR (producer/exporter)

70. It was claimed by M/s Jiangxi Black Cat Carbon Black Inc., Ltd, China PR that during the POI of the subject MTR i.e. April 2010 – March 2011, they have made part of their export sales to India, through their related company M/s Jingdezhen KMZ Group Imp &Exp Co., Ltd. ("KMZ"). During on the spot verification, Black Cat was requested to clarify why their related party M/s KMZ did not file the exporters' questionnaire response since they have also exported the product concerned to India during POI. It was explained by Black Cat that KMZ is only acting as an agent of Black Cat. They are not acting as exporter/trader of the product concerned as they are not earning any profit in any transaction. The comments furnished by the party in the above regard pursuant to the verification report were also found to be unsatisfactory.

71. The Authority notes that without any response filed by M/s KMZ, the related party of M/s Black Cat, the export price of Black Cat cannot be considered as representative export price of the entire group company's exports to India. In view of the above position the Authority does not grant individual dumping margin to M/s Jiangxi Black Cat Carbon Black Inc., Ltd, China PR.

Determination of Export Price in respect of Non-Co-operative Exporters/Producers from China PR

72. The Authority has decided to determine the Export Price in respect of non-cooperative exporters as per facts available in terms of Rule 6(8) of the Anti-dumping Rules. Accordingly, the export price at ex-factory level in respect of all non-co-operative exporters from China PR is determined as US$ *** per MT.

Determination of Export Price in respect of Exporters/Producers from Russia, Australia and Thailand

73. As mentioned in earlier para, the Authority has decided not to accept the response filed by M/s. Yaroslavskiy Tekhnicheskiy Uglerod (producer) and M/s Trigon Gulf, FZCO Dubai, UAE (exporter) and since no other response has been received from any of the producers/exporters of the subject goods from Russia as well as Thailand and Australia, the Authority has decided to determine their Export Price as per facts available in terms of Rule 6(8) of the Anti-dumping Rules. The data has been collated as per the information provided by the applicant and the information provided by the co-operative exporter. The Authority has considered DGCI & S import data during POI for the purpose of arriving at the weighted average CIF value of imports from these countries. Adjustments on account of ocean freight, insurance, commission, port expenses, inland freight and bank charges, as claimed by the domestic industry, have been considered to arrive at the net export price in respect of these countries. Accordingly, the export price at ex-factory level is determined as US$ *** per MT from Russia, US$ *** per MT from Australia and US $ *** per MT from Thailand.

J. DUMPING MARGIN

74. Considering the Normal values and Export prices as determined above, the dumping margins are determined as follows:

Exporter	Country	Dumping Margin US$ per MT	Dumping Margin as %	Dumping Margin Range %
M/s. Jinneng Science & Technology Co. Ltd.	China PR	***	***	35 - 45
Non-Co-operative producers/ exporters	China PR	***	***	55 - 65
Non-Co-operative producers/ exporters	Russia	***	***	10 - 20
Non- Co-operative producers/ exporters	Australia	***	***	10 - 20
Non-Co-operative producers/ exporters	Thailand	***	***	5 - 15

K. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

Submissions made by the Applicant (ATMA), Exporters, Importers and Other Interested Parties

75. Following are the submissions made by the applicant and other interested parties in this regard:

a) Import prices have significantly improved, by 24% from all subject countries between POI of original investigation and 2010-11. The existing measures need to be reviewed for the sole reason that the import prices have changed considerably and significantly during 2008-09, 2009-10 and 2010-11 when compared with 2007-08 as well as the POI of the original investigation.

a. Purchase price of CBFS, the major raw material has declined substantially – a decline of 7% in crude prices between POI of original investigation and 2010-11. The cost of another raw material, Tar Oil, has also declined. Therefore, non-injurious price should have come down drastically.

b. There has been an increase in the capacity of the domestic industry for the subject product. There has been significant changes in the selling prices of the Indian domestic industry and improvement in all parameters. The performance of the domestic industry has improved significantly for which the duty was imposed; the duty should now be withdrawn as having served its purpose.

c. The performance of the domestic industry started deteriorating only after the information that the petition has been filed by ATMA for withdrawal of AD Duty was known in the market. The domestic industry intentionally kept its sales volume and prices lower so as to show injury in the post POR period.

d. Closure of Cabot India's carbon black facility was not because of any adverse impact of alleged imports but was purely a management decision for better cost structuring, ability to expand and other factors

e. There has been an increase of 60% in the exports of the domestic industry between POI of original investigation and 2010-11. This indicates that the domestic industry can compete internationally.

f. The DGSGD has noted in its preliminary findings that unit price of imports have also risen and the price is not the factor of injury. This also clearly establishes that the domestic industry is not suffering injury due to dumping.

g. The claims of the domestic industry in the context of depreciation of re-valued assets, working capital etc., for calculating NIP should be out rightly rejected as the proposed methodology will be a deviation from established and consistence practice of Authority.

h. The Authority should not blindly accept the claim of the domestic industry that the return on capital employed of 22% shall be granted to it as per the consistent practice. The Authority can utmost grant so much returns that the domestic industry earned when it was not suffering injury.

b) Determination of NIP and its comparison with domestic industry's NSR is necessary to determine whether the domestic industry is earning well over its cost to make and sell and ROCE. Domestic industry is earning high return considering huge investments and therefore they have wrongly submitted that they are still suffering injury.

c) Contents of financial statements of the domestic industry are in contradiction with the contention of the domestic industry – robust financial results, increasing capacity, no injury from imports. Circumstances that existed in the previous investigation have materially changed and there is no likelihood of recurrence of injury to domestic industry.

d) The surge in imports is being taken care of by the DG Safeguards and DGAD is not required to dwell into this problem. Moreover, the safeguards investigation being conducted by the DG Safeguards is China specific and not relevant to other subject countries.

e) The robust increase in the capacity of the domestic industry shows that they are not facing any problem in raising capital. As far as capacity is concerned, the domestic industry is in the same position as exporter from subject countries and is dumping the goods in other countries.

f) During the POI of the original investigation, total installed capacity of the domestic industry was 500,000 MT. Capacity additions have been consistently added to meet the expected demand. During the POI of present review investigation, capacity addition of 175,000 MT has been made by the petitioner taking the total capacity to 675,000 MT. Similarly, some new entrants have come into the market, while others have exited. This change in in dynamics of domestic industry of Carbon Black in India constitutes a changed circumstance, which warrants review of existing anti-dumping duties.

g) The contention of the domestic industry that while interpreting Annexure III to the rules, no past practice should cloud the way in which text is to be interpreted is not correct. Annexure III is only a codification of the practice that is followed by the Authority and NIP should be determined by the Authority as per the law laid down in Annexure III.

h) DGAD is not an appellate authority to consider the findings of a safeguard finding. DGAD is required to examine the performance during the defined Period of Investigation (POI) with the defined injury period prior to the POI, unlike safeguard investigation, which does not have a specified investigation period.

i) Although DG Safeguards recommended imposition of safeguard duty for a period of three years, Ministry of Finance considered that imposition of safeguard duties for a period of 15 months is sufficient for domestic industry to overcome the effects of injurious effects of imports from China PR. Thus, even according to Central Government, injury due to imports from China PR beyond 31st December 2013 is unlikely.

j) Imports from Russia are coming down on regular basis and as such have no impact on the injury to the domestic industry. Injury to the domestic industry is self-inflicted and not on account of imports.

k) Russia/Yaroslavaskiye has no surplus capacities available with them.

l) The MTR investigation should be restricted to the POR of the present investigation and not consider post POR data as it would result in consideration of new data every now and then and thereby result in delay in completion of investigation.

m) The main reason for difference in prices of Chinese product and domestic product is due to difference in raw material used by Domestic industry and its Chinese counterpart. Merely because Chinese producers are able to produce the subject goods at cheaper price does not imply they are dumping the goods. Any injury arising out of different raw materials used cannot be attributed to dumping.

n) The circumstances that existed during the previous investigation have seen a material change and there is no likelihood of recurrence of injury to domestic industry, specifically from Yarosalaskiy Russia.

SUMBISSIONS MADE BY THE DOMESTIC INDUSTRY

76. The domestic industry has submitted as under:-

a. Demand for the product under consideration declined in 2008-09 as a result of recession in the automobile industry and then increased significantly in 2009-10 and POI. The demand has further increased in the present/current period. The domestic industry has increased its capacity in 2009-10 and 2010-11 in anticipation of increase in demand and considering the production plans of the consumer industry.
b. Imports have increased in absolute terms, in relation to production of the product in India and in relation to demand of the subject goods in India. Imports are undercutting the prices of the domestic industry and increase in the selling price was less than the increase in the cost of production. The imports are thus suppressing the prices of the domestic industry in the market.
c. The production and sales volumes have increased. However, post 2010-11, even when capacity has further increased, the domestic sales have dramatically fallen and consequently production & capacity utilization have declined.
d. The capacity could not be utilized to the optimum level in view of the fact that the volume of dumped imports once again increased significantly. This has led to piling of inventories despite underutilized capacities. Further, inventories have significantly increased in April-Dec., 2011 period despite significant reduction in production
e. Cost of production increased in 2008-09, declined in 2009-10 and then again increased in 2010-11. The selling price shows a similar trend. However, the selling price did not increase at the same rate as cost of sales in 2010-11. Resultantly, profitability of the domestic industry, which improved in 2009-10, after a loss in 2008-09; was comparatively low in 2010-11.
f. Thus, profitability of the domestic industry had already started deteriorating from the investigation period of the present case. The situation deteriorated dramatically thereafter.
g. Although the market share of the domestic industry increased, there is no significant change in the market share of Indian producers at large. In any case, post imposition of anti-dumping duty, the market share of the Indian producers should have improved substantially back to the market share of domestic industry prior to dumping. Yet, the domestic industry has not reached back the market share gained earlier.
h. Cabot India is not part of domestic industry and has not sought continued imposition of Anti-dumping duties.
i. The decline in CBFS *per se* does not establish the need for withdrawal of anti-dumping duty. The interested parties must establish that the injury to the domestic industry is unlikely in the event of withdrawal of anti dumping duty. As established in the written submissions, should the domestic industry reduce the prices to the extent of anti dumping duty, it would suffer significant financial losses.
j. Increase in exports volumes does not show competitiveness of such export volumes. It only shows the inability of the domestic industry to sell in the domestic market or better profitability in the export market.
k. Information contained in the Annual Report is not relevant for the reason that the same is not restricted to the product under consideration and extends to other products

as well. Also the information in the annual report is for both for exports and domestic operations.

l. Domestic Industry suffered continued injury from dumping even after the imposition of anti- dumping duty. The Domestic Industry is yet to earn reasonable rate of return. The domestic industry is looking for utilization of its capacities to the extent demand exists in the Country. It was expected that the condition of the Domestic Industry would improve under the discipline of the anti- dumping duty. However, the condition of the domestic industry remained fragile.

m. Majority consumers in tyre segment decide their procurement on the basis of relative prices offered by the foreign producers and domestic industry. If the prices offered by the foreign producers are lower, the consumers increase their off take from foreign producers. This gets clearly established by the significant increase in imports from China in the most recent period.

n. No current dumping or no current injury is insufficient to recommend withdrawal of anti-dumping duty. The exporter must establish no injury in the event of withdrawal of Anti-Dumping Duty.

o. As regards the submission that **c**ontents of financial statements of the domestic industry are in contradiction with the contention of thedomestic industry, it is submitted that the information contained in the Annual Report is not relevant for the reason that the same is not restricted to the product under consideration and extends to other products as well. Also the information in the annual report is for both for exports and domestic operations.

p. The decline in imports of the subject goods from Russia is not relevant as the fact of decline in exports from individual countries is of no relevance in a Mid Term Review. What is relevant is whether dumping is unlikely to resume in larger proportion and the domestic industry is unlikely to suffer injury in the event of withdrawal of duties. There are significant exports from Russia to various global destinations. The current volume of global exports itself is sufficient to show likelihood of injury.

q. Although the capacity utilization of the domestic industry declined, the increase in production and domestic sales is because of increase in demand. The market share of the domestic industry after increasing till 2010-11 fell sharply in Q2, 2011-12. Profitability improved till 2009-10 and then declined in current period of investigation. The profitability in the current period of investigation was worse than the profitability in 2007-08. Further, profitability deteriorated steeply and was at a very low level in Q3 2011-12.

r. Safeguard duty imposed covers injury caused by dumping only in respect of China and that too in a situation where the quantum of safeguard duty is higher than the quantum of anti-dumping duty. If quantum of anti-dumping duty is higher than quantum of safeguard duty, it follows that both safeguard duty and anti-dumping duty to the extent of differential amounts are payable. It also follows that full injury in those cases has not been addressed by safeguard duty.

s. The safeguard duty has been restricted upto 31.12.2013 not because the Government considered that the domestic industry would suffer "no injury" thereafter. The duty has been restricted because the Government considers that safeguard duty cannot be charged under WTO obligations after 31.12.2013.

t. The increase in capacity of Domestic Industry and export performance do not establish that withdrawal of ADD shall not cause injury to the domestic industry. Increase in capacity at the least establishes enhanced need for fair market situation. Increased exports are only out of available capacities and not at the cost of domestic market.

u. Any comparison of NIP with NSR in a review investigation would be insufficient to conclude whether ADD can be revoked. If the difference is positive, it implies that the industry is unable to realize NIP. If the difference is negative, it does not even mean "no adverse price effect".

EXAMINATION BY THE AUTHORITY

77. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties. However, the specific submissions made by the interested parties are addressed by the Authority as below:

78. As regards submission of the petitioner and other interested parties concerning closure of Cabot India's carbon black facility, Authority notes that Cabot India is not a part of domestic industry and therefore issue raised by the applicant in this regard is not relevant.

79. The applicant and other interested parties have contended that in the preliminary finding the Directorate General of Safeguard Duties (DGSGD) has noted that unit price of imports have also risen and the price is not the factor of injury, thus establishing absence of injury to the domestic industry due to dumping. The Authority notes that the DGSGD has already issued the final findings in this respect vide their notification no. G S R D- 22011/12/2011 dated 31st July, 2012. The relevant paras of the final finding of DGSGD are extracted below:

> *"98. The performance of domestic industry shows that despite increase in demand of Carbon Black over the POI, the market share of domestic industry has decreased and that of Chinese imports has increased. It is also seen that after imposition of Anti-Dumping duty (ADD) in year 2009-10, the price undercutting, both with and without ADD for imports from China has increased.*
>
> *99. It is observed that even though there is a rise in import price in recent period, the same is far lower than the selling price of the domestic industry which has led to increase in price difference between domestic industry's Selling Price and landed price of import. This has resulted in consumers*

switching over to the imports from China PR and has caused grave market disruption and consequential injury to the domestic industry which establish the causal link between increased import and disruption caused."

"*111. On the basis of the above findings it is seen that*

a. Imports of the product under consideration have increased over the injury period in absolute terms with a sharp increase in imports in the recent period,

b. Increased imports of Carbon Black from People's Republic of China have caused and threatened to cause market disruption to the domestic industry/producers of Carbon Black and

c. It has been established that injury to the domestic industry has been caused by the increased imports from People's Republic of China; and

d. It will be in the public interest to impose safeguard duty on imports of Carbon Black from China PR."

80. As regards submission of the applicant and other interested parties concerning determination of NIP and its comparison with domestic industry's NSR, the Authority notes that the difference between NIP and NSR is one of the parameters of injury analysis in an anti-dumping investigation, but not the sole parameter. Such analysis cannot be treated as the sole basis for concluding whether or not there is injury to domestic industry on account of dumping. Moreover, in a review investigation the focus of analysis is likelihood of injury to the domestic industry in the event of revocation of duty and not current injury as such.

81. As regards submission of the applicant and other interested parties concerning methodology of determination of NIP, the Authority notes that relevant guidelines in this regard is well laid down under Annexure III of Anti-dumping Rules.

82. The applicant and other interested parties have contended that in 2010 Chinese producers were holding as much of additional capacity as of now and the same will not impact the Indian market in the future also. The Authority notes that excess capacity in a subject country is an important indicator of likelihood of dumping in the event of revocation of Anti-dumping duty. Since it has been acknowledged by the petitioner that Chinese producers have excess capacity, present investigation being review investigation, such excess production capacity in China cannot be ignored.

83. As regards submission of the petitioner and other interested parties that the Authority should not accept the claim of return on capital employed as 22%, it is noted that it is the consistent practice of the Authority to allow a return of 22% on capital employed.

L. Cumulative assessment

84. Attention is invited to Annexure II para (iii) of the AD Rules which provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -

a. the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like article or where the export of individual countries is less than three per cent, the imports collectively accounts for more than seven per cent of the import of like article and

b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

85. In this regard the Authority notes that:

- The margins of dumping from each of the subject countries are more than the limits prescribed above;
- The volume of imports from each of the subject countries is more than the limits prescribed except from Iran as already recorded in relevant section of these findings);
- Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market. This is evident from the following:
    a) The domestic industry produces various grades of the subject goods. Similar grades are being produced by producers from the subject countries and supplied to India. The subject goods manufactured by the producers from the subject countries inter-se and in comparison to the product manufactured by the domestic industry has comparable properties. In other words, the subject goods supplied from various subject countries and by the domestic industry are inter-se like articles.
    b) There are common parties who are resorting to use of imported material from various sources and domestic material. Imported and domestic materials are, therefore, being used interchangeably and there is direct competition between the domestic product & imported product and inter-se imported product.

c) The exporters from the subject countries and domestic industry have sold the same product in the same periods to the same set of customers. The sales channels are comparable.

d) Volume of imports from each of the subject countries is significant.

e) Consumers make purchase decision on the basis of prices offered by various suppliers.

In view of the above, the Authority considers, it would be appropriate to assess injury to the domestic industry cumulatively from Australia, China PR, Russia and Thailand.

86. The Authority has taken note of submissions made by the interested parties. Annexure II of the Anti-dumping Rules provides for objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact on domestic producers of such products. While examining the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports either in absolute term or relative to production or consumption in India. With regard to price effect of dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increase which would have otherwise occurred to a significant degree.

87. As regards the impact of dumped imports on the domestic industry, Para (iv) of Annexure-II of Anti-dumping Rules states as follows: *"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments."*

88. The Authority has examined the injury parameters objectively taking into account the facts and arguments of the interested parties. For analyzing the injury parameters, all relevant documents including the balance sheet of the Domestic Industry have been examined and verified by the Authority. The issues relating to the interest of the Indian industry and other issues have also been dealt by the Authority under appropriate headings.

Demand and market share

89. It is noted that demand for the product has shown significant and consistent increase over the injury period (except 2008-09) and even post POI.

Periods	Domestic Sales of Domestic Industry	Sales of Other Indian Producers	Imports Subject Countries	Imports Other Countries	Demand/consumption	Trend
	MT	MT	MT	MT	MT	Indexed
Injury period with POI						
2007-08	345641	111,826	48,209	14,858	520,534	100
2008-09	340067	98,052	43,825	7,506	489,449	94
2009-10	404649	119,391	57,605	8,082	589,727	113
2010-11	462280	109,537	46,273	16,312	634,403	122
Post POI						
Q1(11-12)annualized	471,602	104,292	40,880	17,936	634,710	122
Q2(11-12)annualized	390,488	132,000	116,333	27,757	666,578	128

Import volumes and market share

Market Share	Units	07-08	08-09	09-10	10-11	11-12-Q1	11-12-Q2
Domestic Industry	%	66	69	69	73	74	59
Other Indian Producers	%	21	20	20	17	16	20
Subject Countries	%	9	9	10	7	6	17
Other Countries	%	3	2	1	3	3	4
Demand/consumption	%	100	100	100	100	100	100
Imports in relation to Production	%	10	11	12	8	6	19
Imports in relation to Domestic Sales	%	14	13	14	10	9	30

90. It is seen that: -

i. The imports during POI have increased as compared to the immediate preceding year as well as the base year. However, during Post POI, in Q2, the imports have significantly increased vis-a- vis the entire injury period including the POI.

ii. Imports from subject countries have slightly declined in relation to production and consumption in India during POI as compared to the base year. It is also noted that the imports in relation to production and consumption have increased significantly in Q2, the imports have significantly increased vis-a- vis the entire injury period including the POI.

iii. The Authority notes that the market share of the domestic industry has increased from the level of 66% during the base year to 73% during the POI. But the share of the domestic industry has drastically declined during Q2 period of Post POI as compared to the entire injury period. The market share of other Indian producers, which has remained more of less stagnant throughout the injury period including the POI, has increased during Q2 of post POI. On the contrary, the market share of the subject countries, which has declined during POI as compared to the base year, has registered a significant increase during Q2 of Post POI.

Price Effect of the Dumped imports on the Domestic Industry

91. With regard to the effect of the dumped imports on prices, the Designated 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 products 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. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the cost of production, Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from the subject countries.

Price suppression and depression effects of the dumped imports:

92. The price suppression and price depression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values of the subject goods from the subject countries in relation to injury period including POI and Post POI.

Period	Cost of Sales	Trend	Increase/ decrease over base year	Selling Price	Trend	Increase/ decrease over base year
	Rs/MT		%	Rs/MT		%
Injury period with POI						
2007-08	***	100	-	***	100	-
2008-09	***	150	***	***	126	***
2009-10	***	124	***	***	122	***
2010-11(POI)	***	153	***	***	149	***
Post POI						
Q1(11-12) annualized	***	169	***	***	156	***
Q2(11-12) annualized	***	186	***	***	168	***

93. From the above, the Authority notes that there was significant increase in both costs of sales as well as selling price during POI, compared to the base year. The Authority notes that the increase is in selling price is not in proportion to the increase in cost price during POI as compared to immediate preceding year. This indicates price suppression effect whereby the domestic industry has not been able to realize the selling price commensurate with increase in the cost of sales. Further there was significant increase in both costs of sales as well as selling price during post POI as compared to POI, but increase in selling price has fallen much short of the increase in cost of sales. This indicates that the price suppression effect of the dumped imports has worsened during Post POI.

Price undercutting and Price underselling effects

Price Undercutting

94. While working out 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 deducted. The landed value of imports has been calculated by adding 1% landing charge and applicable basic customs duty and education cess to the export / CIF prices from the subject countries, as reported by each responding exporter. For others category, landed price has been computed by adding applicable basic customs duty and education cess to the Assessable value as per DGCI& S data.

Country	Landed Value without ADD	Landed Value with ADD	NSR	Price undercutting without ADD		Price undercutting with ADD		Price Undercutting Without ADD Range	Price Undercutting With ADD Range
	Rs./MT	Rs./MT	Rs./MT	Rs./MT	%	Rs./MT	%		
POI									
Australia	***	***	***	***	***	***	***	5-15	0-10
China	***	***	***	***	***	***	***	5-15	0-10
Thailand	***	***	***	***	***	***	***	5-15	0-10
Russia	***	***	***	***	***	***	***	5-15	0-(10)
Subject Countries	***	***	***	***	***	***	***	5-15	0-10
Post POI									
Australia	***	***	***	***	***	***	***	5-15	0-10
China	***	***	***	***	***	***	***	5-15	0-4
Thailand	***	***	***	***	***	***	***	0-10	0-(10)
Russia	***	***	***	***	***	***	***	5-15	0-10
Subject Countries	***	***	***	***	***	***	***	5-15	0-10

95. The Authority notes that the price undercutting of dumped imports from the subject countries on the domestic price during POI as well as Post POI and with ADD and without ADD is positive. However, the price undercutting in respect of Russia and Thailand is negative with the anti-dumping duty.

Price Underselling

96. For the purpose of price underselling the landed prices of the imports from subject country have been compared with the Non-injurious price of the domestic industry determined for the POI as well as post POI. It shows that while the underselling was negative during the POI, the same is positive during post POI.

SN	Country	Landed Price without ADD	NIP	Underselling		
		Rs/MT	Rs/MT	Rs/MT	%	Range %
	Period of Investigation					
1	Australia	***	***	***	***	0 – (10)
2	China	***	***	***	***	0 – (10)

3	Thailand	***	***	***	***	(5) – (15)
4	Russia	***	***	***	***	0 - (10)
	Post Period of Investigation					
1	Australia	***	***	***	***	5 -15
2	China	***	***	***	***	5 - 15
3	Thailand	***	***	***	***	0 - 10
4	Russia	***	***	***	***	5 - 15

M. Examination of other Economic Parameters of Domestic Industry

Sales volumes

97. Sales volumes of the domestic industry are analyzed over the injury period. The position is as follows:

Period	Domestic Sales Volume
	MT
Injury period with POI	
2007-08	345641
2008-09	340067
2009-10	404649
2010-11	462280
Post POI	
Q1(11-12) Annualized	471,602
Q2(11-12) Annualized	390,488

It is noted that the domestic sales volume have increased during POI. The domestic sales have also marginally increased during Q1 of Post POI as compared to the POI, but during Q2 period of post POI the domestic sales of domestic industry has significantly declined.

Production, Capacity and Capacity Utilization

98. The Production, Capacity and Capacity Utilization details are as follows:

Period	Capacity	Production	Capacity Utilization
	MT	MT	%
Injury period with POI			
2007-08	485,000	465,586	96%
2008-09	500,000	414,226	83%
2009-10	590,000	491,743	83%
2010-11	674,000	581,508	86%

Post POI			
Q1(11-12) Annualized	724,000	654,113	90%
Q2(11-12) Annualized	724,004	598,025	83%

It is noted that both the capacity has increased over the injury period including POI. However, the production has increased in the injury period with the exception of 2008-09, it has declined. The increasing trend is also reflected during Q1 of post POI period. But during Q2 of post POI period the volume of production has declined. It is further noted that the capacity utilization of the domestic industry has declined during POI as compared to base year and further declined during the Q2 of Post POI period.

Inventories:

99. Data relating to inventories shows as follows:

Period	Opening	Closing	Average stock
	MT	MT	MT
Injury period with POI			
2007-08	8,494	10,025	9,259
2008-09	10,025	9,870	9,948
2009-10	9,870	15,616	12,743
2010-11	15,616	17,554	16,585
Post POI			
Q1(11-12) Annualized	17,554	16,386	16,970
Q2(11-12) Annualized	16,386	20,876	18,631

It is noted that average inventories have increased consistently in the POI as well as in Post POI. The inventory in the second quarter of post POI was significant in spite of reduction in production.

Profits and actual and potential effects on the cash flow

100. The Profits and actual and potential effects on the cash flow are as follows. With regard to Profit/Loss and cash flow, it is observed that the profitability of domestic industry in terms of profit before tax and interest and cash profit has increased in the POI as compared to base year, but declined thereafter significantly during Q1 and Q2 periods of Post POI.

	Unit	2007-08	2008-09	2009-10	POI	Q1(11-12)	Q2(11-12)
Cost of sales	Rs./Mt	***	***	***	***	***	***
Trend	Indexed	100	150	124	159	169	186
Selling Price	Rs./Mt	***	***	***	***	***	***
Trend	Indexed	100	126	122	149	156	168
Profit/Loss	Rs./Mt	***	***	***	***	***	***
Trend	Indexed	100	(56)	111	135	54	26
Profit/Loss before Tax	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	(55)	130	181	18	7
PBIT	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	(11.82)	134	185	27	19
Cash Profit	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	(42)	127	176	25	13

Return on Capital Employed:

101. It is noted from the following Table that Return on capital employed has declined during the POI as compared to base year. Thereafter, it has declined significantly during Q1 and Q2 periods of Post POI.

	Units	2007-08	2008-09	2009-10	2010-11	Post POI (Annualized)	2011-12-Q1	2011-12-Q2
PBIT-Domestic	RsLacs	***	***	***	***	***	***	***
NFA	RsLacs	***	***	***	***	***	***	***
Working Capital	RsLacs	***	***	***	***	***	***	***
Capital Employed	RsLacs	***	***	***	***	***	***	***
Return on Capital employed	%	***	***	***	***	***	***	***
Index		100	-12	97	87	45	54	37

Employment, wages and productivity

102. The data relating to employment, wages and productivity show as follows:

Period	No. of employees	Wages	Wages per unit of production	Productivity per employee
	Nos	Rs/Lacs	Rs/MT	MT
Injury period with POI				
2007-08	***	***	***	***
2008-09	***	***	***	***
2009-10	***	***	***	***
2010-11	***	***	***	***
Post POI				
Q1(11-12) Annualized	***	***	***	***
Q2(11-12) Annualized	***	***	***	***

It is seen that there was increase in the number of employees throughout the injury period mainly due to commencement of production in new plants. In line with the above trend, wages paid and productivity also show improvement.

Magnitude of dumping

103. It is observed from the section pertaining to Dumping Margin above that dumping margins in respect of the imports of the subject goods from the subject countries are significantly positive in both in POI and Pot POI.

Growth

104. The Authority notes that the growth of domestic industry was positive during injury period including POI, but the same has deteriorated in post POI, especially during Q2 period of Post POI.

Ability to raise funds:

105. It is noted that the domestic industry has enhanced the Capacity of the subject goods from the base year to POI and in Post POI (i.e. Q1). This signifies that their ability to raise capital industry has not been affected.

N. Magnitude of Injury and Injury Margin

106. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject countries for determination of injury margin during POI and Post POI. The injury margin thus determined is as under:

Country	Producer/exporter	NIP of DI (Rs/MT)	Landed price (Rs/MT)	Injury margin	Injury margin %	Injury margin Range
POI						
China PR	M/s Jinneng Science and Technology. Co. Ltd.	***	***	***	***	0-10
	Any other producer/exporter	***	***	***	***	0-10
Russia	All producer/exporter	***	***	***	***	0-(10)
Australia	All producer/exporter	***	***	***	***	0-(10)
Thailand	All producer/exporter	***	***	***	***	(5)-(15)
Post-POI						
China PR	All producer/exporter	***	***	***	***	5-15
Russia	All producer/exporter	***	***	***	***	5-15
Australia	All producer/exporter	***	***	***	***	5-15
Thailand	All producer/exporter	***	***	***	***	0-10

Conclusion on material injury

107. It is noted that during POI the performance of the domestic industry has improved in terms of production, sales volumes, market share, capacity, profit , cash profit and return on capital employed, but deteriorated in terms of capacity utilization and inventory. However during post POI, especially during Q2 period the economic health of the domestic industry in terms of production, sales volumes, capacity, capacity utilization, inventory, market share, profit, cash profit and return

on capital employed deteriorated. Moreover price undercutting and underselling effects are positive and significant.

O. Other Known Factors & Causal Link

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

(a) Volume and prices of imports from third countries

The Authority notes that during POI, imports of the subject goods from countries other than the subject countries have been de-minimis in volume, except South Korea wherein the price is more than that of the subject countries. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

(b) Contraction of demand and changes in the pattern of consumption.

The Authority notes that there is no contraction in the demand during injury period. On the contrary, overall demand for subject goods has shown significant positive growth during the injury period. The Authority further notes that the domestic industry has expanded its capacity during the POI, however the domestic industry is unable to utilize its capacity to the extent of available demand due to dumped imports.

(c) Developments in technology:

The Authority notes that none of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

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

The Authority notes that the subject goods are freely importable. The domestic industry is the major producer of the subject goods and account for significant domestic production and sales. Further there is no perceptible competition among the domestic producers, except that is obvious of a market economy.

(e) Export performance of the domestic industry:

The table below summarises the performance of the domestic industry in respect of exports made by them.

	Unit	2007-08	2008-09	2009-10	POI	Post-POI Annualised
Volume	MT	***	***	***	***	***
	Index	100	63	69	101	157

The Authority notes that the export volumes of the domestic industry have increased during the POI vis-à-vis the base year as well as the immediate preceding year. Therefore, export performance cannot be considered as a reason for any injury. Moreover, the price and profitability in the domestic and export market has been segregated by the Authority for the purpose of present injury assessment.

109. The Authority notes that while listed known other factors do not show injury to the domestic industry, following parameters show that injury to the domestic industry has been caused by dumped imports. It is noted that during POI the performance of the domestic industry has improved in terms of production, sales volumes, market share, capacity, profit , cash profit and return on capital employed, but deteriorated in terms of capacity utilization and inventory. However during post POI, especially during Q2 period the overall economic health of the domestic industry in terms of production, sales volumes, capacity, capacity utilization, inventory, market share, profit, cash profit and return on capital employed deteriorated. Thus, the deterioration during post POI, especially during Q2 period in profits, return on capital employed, cash flow, etc. is directly due to dumped imports. Decline in market share has prevented the domestic industry from raising their production and plant utilization.

P. <u>Likelihood of continuation or recurrence of injury</u>

110. The Authority has to determine as to whether the subject goods are continuing to enter the Indian market at dumped prices or are likely to be exported at dumped prices from the subject countries in the event of withdrawal of anti dumping duties. It is pertinent to examine whether injury to the domestic industry is likely to recur due to these dumped imports if the duty is removed or varied. It has already been established that the landed value of imports from the subject countries to India was below the selling price of the domestic industry during POI and post POI and the non injurious price in post POI determined for the domestic industry. The Authority has also examined the likelihood of recurrence of injury to the domestic industry on the basis of information and evidence presented by the various interested parties during the course of the investigations. The Authority examined the likelihood of continuation or recurrence dumping and injury considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules, which states as under:

"A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter alia, such factors and;

a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.

b. Sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports.

c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely to increase demand for further imports and,

d. Inventories of the article being investigated."

Submissions made by the Domestic Industry

111. Following submissions are made by Domestic industry

a) Absence of continued dumping and injury in review period does not imply any likelihood of recurrence of dumping and injury in the event of withdrawal of anti-dumping duties.

b) Exporters from subject countries are also dumping in third countries which indicate likelihood dumping in India.

c) Following factors establish likelihood of continuation of dumping and injury

- Volume of imports from the subject countries have significantly increased despite imposition of anti- dumping duty.
- Producers in the subject countries maintain huge capacities to produce carbon black. In case of withdrawal of anti-dumping duty, the volume of imports is bound to increase further.
- On comparison of the landed price of imports with and without anti-dumping duty with that of the selling price of the Domestic Industry, it would be seen that significant price undercutting exists.
- The subject country holds a significant market share in the Indian Market. In fact, the market share of dumped imports has only increased. This situation exists in spite of the present anti-dumping duty

- Exporters from the subject countries have very high export orientation worldwide.

- Continued presence of dumped imports has prevented the domestic industry from recovering from past effects of dumping. In the event of withdrawal of current antidumping duty, the domestic industry will have to either decrease the selling price by the amount of ADD or will maintain the current selling price. In either case, it will suffer injury.

Submissions made by the petitioner and other interested parties

112. Following submission are made by petitioner and other interested parties

a. The performance of the domestic industry is steady and even after withdrawal of Anti-dumping Duty; the domestic industry will not be injured. Without prejudice to earlier submissions, even in the post POR period, the performance of the domestic industry has been commendable compared to the earlier period.

b. The allegation of domestic industry regarding dumping by subject countries in third countries is unsubstantiated. If that had really been the case then ADD proceeding would have been initiated and ADD imposed in those countries as well.

c. The domestic industry has not been able to substantiate their claim that subject countries has excess capacity

d. It is not disputed that the domestic industry was not suffering injury in 2010 even when Chinese producers were holding as much of additional capacity. The excess capacity in China will not impact the Indian market in the future also.

Examination by the Authority

113. Rule 23 of Anti-dumping Rules of India requires the Authority to examine the need for continued imposition of the duty from time to time. The petitioner in its submission has argued that midterm review investigation does not require an examination of likelihood aspects as in the case of a sunset review. However, the Authority is of the view that such an examination would also involve an examination of the lasting nature of the changed circumstances and the likelihood scenario in the event of withdrawal of the duty. In order to determine whether the changed circumstances of dumping is of lasting nature and whether injury to the domestic industry would continue or recur in the future if the duties are removed, the Authority has examined the submissions made by the interested parties. The Authority had called for additional information from the co-operating exporters for the period of investigation, as well as subsequent period immediately following the period of investigation. In this regard, the Authority notes as under:

Volume of Exports Post- POI:

114. In order to examine, the likelihood of injury to the domestic industry due to dumping of the subject goods from the subject countries, the Authority has undertaken analysis of the volume of exports of the subject goods to India and other countries from the subject country during the post-POI period as well. The Authority notes that the volume of the exports from subject countries to India during the POI and post POI on the basis of DGCI& S data was 46174 MT and 78606 MT (Annualized) respectively, showing 70% growth. This trend indicates that there is significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.

Market share of Subject Countries in the Indian market

115. The Authority notes that the market share of the subject countries, which has declined during POI as compared to the base year, has registered a significant increase during Q2 period of Post POI, despite the anti-dumping duty in place. On the contrary, while market share of other domestic producers has marginally increased during Post POI, the market share of the domestic industry has significantly declined during the corresponding period; thereby indicating that market share of the domestic industry has been captured by the subject countries. Further, the market share of domestic producers as a whole has also declined significantly. The volume of dumped imports is likely to increase further in the event of revocation of anti-dumping duties

Price attractiveness of Indian market

116. The price at which the subject goods are being exported by subject countries to India is an indicator of the likelihood of continuation of dumping. At the landed price in India, there is significant undercutting both with and without duty during POI and Post POI. Thus, in the event of the revocation of anti-dumping duties, the Indian prices would be too attractive to the foreign producers and there is strong likelihood that Indian consumers would import substantially due to increasing demand.

Export orientation of foreign producers

117. From the available information it is evident that the producers/exporters from subject countries have tremendous production capacity and are very much export oriented. Considering the increase in demand for the subject goods in Indian Market and its lucrative price, if the anti-dumping duties are revoked, the entire demand in India can be catered by the producers/exporter from subject countries.

Surplus capacity

Qty : '000 MT							
	2000	2005	2009	2010	2011	2012f	2015f
CHINA							
Capacity	1100	2310	4349	5100	5490	5900	6400
Consumption	764	1620	2758	2860	2920	3060	3750
Excess	336	690	1591	2240	2570	2840	2650
RUSSIA							
Capacity	638	703	683	683	718	858	945
Consumption	287	345	234	297	343	380	425
Excess	351	358	449	386	375	478	520
THAILAND							
Capacity	220	370	385	465	465	515	515
Consumption	132	200	240	314	350	367	400
Excess	88	170	145	151	115	148	115
Source :							
Carbon Black World Data Book 2012 Notch consulting Group Published Jan 2012							

118. From the information furnished by the domestic industry as given in table above, the Authority notes that China PR, Russia and Thailand, three out of four subject countries, have substantial surplus capacity for the subject goods. This indicates that in the event of revocation of anti-dumping measures, considering the increase in demand and favourable prices in Indian market, the exportable surplus can find its way to Indian market at dumped price.

Level of current and past dumping margin

119. Considering the dumping margin determined by the Authority in the previous investigation and the dumping margin now assessed, it is quite evident that the exports were continued to be made at dumped prices and is likely to continue with revocation of anti dumping duties. Volume of imports has significantly increased even after imposition of anti-dumping duties. The volume of imports in the current investigation period is higher than even the original investigation period. Further, the volume of imports is likely to increase further in the event of revocation of anti dumping duties, given the significant price undercutting and underselling during the injury period.

120. This proves that producer/exporter from subject countries are involved in dumping the subject goods not only in India but also in other countries. Thus, in the event of revocation of the anti-dumping duty by India, it would not be difficult for the exporters of subject countries to export to India the subject goods at dumped

prices. It is also noted that dumping is continuing from the subject country in India in spite of the antidumping duty in force.

121. As far as continuation or recurrence of injury to the domestic industry is concerned the price levels at which the goods are entering Indian market from the subject country, in spite of the duty in force, is an important indicator. The Authority also notes that in spite of improvement in the condition of the domestic industry in several injury parameters during POI, during post POI, especially during Q2 period the overall economic health of the domestic industry in terms of production, sales volumes, capacity, capacity utilization, inventory, market share, profit, cash profit and return on capital employed deteriorated. Thus, the deterioration during post POI, especially during Q2 period in profits, return on capital employed, cash flow etc. is due to dumped imports.

122. The essential facts of the investigation, as analysed by the Authority in this finding, sufficiently prove that the changed circumstances, on the basis of which Automobile Tyre Manufacturers Association (ATMA) has sought for the mid-term review, are not of lasting nature and there is a likelihood of continuation/recurrence/intensification of dumping of the subject goods, originating in or exported from the subject countries, and consequent injury to the domestic industry, in the event of reduction/revocation of the anti-dumping duty.

Q. Indian industry's interest and other issues

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

124. The purpose of imposing 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. Further, imposition of anti-dumping duties, would not affect the availability of the product to the consumers.

R. Post Disclosure Comments

125. The following are the Post-disclosure comments by the producers/exporters/imports/other interested parties:

i. Inadequate time granted by the Authority for post disclosure comments.
ii. Excessive Confidentiality as regards computation of normal value, export price, NIP, etc.
iii. Allowing 22% return on capital employed is not justified without stating specific reasons.
iv. Even though safeguard duty was recommended for a period of 3 years, DGAD has not at all considered this fact while conducting injury and recurrence of injury analysis.
v. The disclosure statement is not clear whether the Authority considered the reduction in prices of major raw material while determining NIP of the domestic industry.
vi. The inclusion of Hi-Tech Carbon within the scope of domestic industry is not justified in view of significant exports of subject goods by their related party in Thailand. Further, the disclosure statement does not contain a specific finding with respect to each and every factor considered by the domestic industry while justifying inclusion of Hi-tech Carbon within the scope of domestic industry.
vii. While DGAD has considered that duty free imports made though related exporter have not adversely affected the domestic industry, yet at the same time, DGAD has not segregated such imports for the purposes of injury analysis.
viii. Comparison of NIP and NSR needs to be done by the Authority while conducting injury analysis.
ix. Domestic sales, production and capacity utilization has consistently improved during the last 4 years as well as during first quarter of post POI period. Only during the second quarter post POI, the volume parameters have shown a decline. Such being the case, it will be incorrect to hold that injury to domestic industry is likely.
x. The domestic industry was not at all injured during the review period and in fact recorded significant increase in profits, sales, production and capacity utilization.
xi. There exists no injury to the domestic industry at present nor there any likelihood of recurrence of injury to domestic industry.
xii. DGAD has held that presence of excess capacities in China may result in dumping into India. It is submitted that China PR has been holding excess capacity for quite a long time and have not adversely impacted the Indian market anyway.
xiii. From para 105 of the disclosure statement, it is seen that DGAD has arrived at a negative injury margin for Russia, Australia and Thailand. Since in terms of Section 9A(1), anti-dumping duty has to be lesser of dumping margin or injury margin, DGAD is mandated to recommend anti-dumping duty based on lower of the two margins.

xiv. Since DGAD during the original investigation did not ask Jingdezhen KMZ to file any response, treatment of Black Cat as non-cooperative now is unjustified.

xv. In respect of Yaroslavaskiy and Trigon, mentioning of country of consignee as Colombo in the export documents is merely a technical lapse having no financial or other bearing on the investigation results and therefore the same may be ignored by the Authority.

xvi. Volume of exports of OMSK - Russia produce by Trigon is very small and therefore this does not justify filing questionnaire response.

xvii. In terms of subsection 6A to section 9A of Customs Tariff Act, DGAD has no power to reject the information given by an exporter or producer.

xviii. There is neither any economic rationale nor any legal basis for deducting the non-refundable VAT from the export realization.

126. The following are the Post-disclosure comments by the domestic industry:

i. The present investigations being a midterm review investigation, the methodology applied for determination of normal value, export price, dumping margin, non injurious price and injury margin should be the same as applied in the original investigation.

ii. The quantum of anti dumping duty is not required to be modified in the present case, as the extension of duty is on the grounds of likelihood of dumping and consequent injury.

iii. Facts on record do not justify exclusion of Hi-tech Carbon Black from the scope of Domestic Industry.

iv. The imports made under duty exemption scheme cannot be considered to have not affected the price in the domestic market

v. The difference between NIP and NSR is one of the parameters of injury analysis in an anti-dumping investigation, but not the sole parameter.

vi. Though domestic industry has shown positive growth in the economic parameters such as production, domestic sales, productivity, profit, cash profit, ROCE, etc in POI as compared to the base year, the, analysis of post-POI data shows that the domestic industry would suffer significant injury if anti dumping duties is discontinued at this stage.

vii. An examination in midterm review would involve an examination of the lasting nature of the changed circumstances and the likelihood scenario in the event of withdrawal of the duty.

viii. Determination of NIP by the Designated Authority is not correct in respect of treatment given to lean gas generated in the production process of carbon black by the domestic industry.

Examination by the Authority

127. The Authority notes that the post-disclosure comments made by the parties are mostly unsubstantiated reiterations of their earlier submissions. The post-disclosure comments, considered relevant by the Authority, are addressed below:

i. As regards the submission that the Authority granted inadequate time for post disclosure comments, the Authority notes that adequate opportunities were granted to the interested parties during the course of the investigation.

ii. As regards excessive confidentiality adopted by the Authority in respect of computation of normal value, export price, NIP etc, the Authority notes that in terms of the anti-dumping rules, non-confidential facts/data made available in the form of a public file and the methodology of computing normal value, export price, dumping margin, injury margin, NIP etc are very much disclosed in this finding. Moreover, the details of the export price and NIP were provided to the concerned exporters and the domestic industry.

iii. As regards the submission that the Authority allowed 22% return on capital employed without specific reasons, the Authority notes that it is the consistent practice of the Authority to allow a return of 22% on capital employed.

iv. The interested parties have submitted that even though safeguard duty was recommended for a period of 3 years, DGAD has not at all considered this fact while conducting injury and recurrence of injury analysis. In this regard the Authority notes that both the measures are governed by different rules intended to address different set of situations arising out of unfair trade practices adopted by the exporters. Moreover, as established in this finding, there is a likelihood of recurrence/intensification of dumping and consequent injury to the domestic industry in the event of revocation of the anti-dumping duties.

v. As regards the submission that the disclosure statement is not clear whether the Authority considered the reduction in prices of major raw material while determining NIP of the domestic industry, the Authority notes that the NIP has been determined as per the Rules based on verified data.

vi. The interested parties have submitted that inclusion of Hi-Tech Carbon within the scope of domestic industry is not justified in view of significant exports of subject goods by their related party in Thailand and the disclosure statement does not contain a specific finding with respect to each and every factor considered by the domestic industry while justifying inclusion of Hi-tech Carbon within the scope of domestic industry. In this regard the Authority notes that all the relevant parameters have been considered while considering Hitech Carbon as domestic industry under the Rules.

vii. As regards the contention that in terms of subsection 6A to section 9A of Customs Tariff Act DGAD has no power to reject the information given by an exporter or producer, the Authority notes that the responses filed by M/s. Yaroslavskiy Tekhnicheskiy Uglerod (producer) and M/s Trigon Gulf, FZCO Dubai, UAE have not been accepted by the Authority as the same were not found to be reliable and beyond reasonable doubt, for the reasons already recorded in this finding.

viii. As regards the submission made by Jinneng that there is neither any economic rationale nor any legal basis for deducting the non-refundable VAT from the export realization, the Authority notes that the export price has been determined considering the export price claimed by the concerned exporters and as per the Rules.

ix. The Authority notes that one of the interested parties has submitted that conclusion of likelihood of recurrence of injury by the Authority based on the performance of 3 months alone are incorrect and improper. In this connection, the Authority notes from the audited accounts of the domestic industry for the year 2011-12 that the financial performance of domestic industry in terms of Profit Before Interest and Tax (PBIT) and Return on Investment (ROI) has declined significantly as compared to the POI.

x. As regards the comment of domestic industry not to consider the profit on sale of power in determination of NIP, the Authority notes that the lean gas generated in the manufacture of carbon black is used in generation of power and no value has been assigned for such lean gas. The Authority further notes that the domestic industry has sold part of the power generated by them to outside parties and made profit. The confidential version of the submissions made by the domestic industry in this regard has been examined and no merit has been found in them. Accordingly, the Authority has determined the NIP after adjusting the profit on sale of power generated from the lean gas generated while producing carbon black.

S. Conclusions

128. Having initiated and conducted the review as requested by ATMA and having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submissions made by the interested parties or otherwise as recorded in this finding and on the basis of the analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

i. In spite of the anti-dumping duty in force, the subject countries command a significant share in the Indian market.

ii. The landed price of imports from the subject countries, even with anti-dumping duty, is lower than the domestic selling price.

iii. The exports from subject countries are causing positive price undercutting with as well as without anti-dumping duty during the POI and post-POI and positive underselling in Post POI.

iv. In spite of improvement in the condition of the domestic industry in several injury parameters during POI, during post POI, especially during Q2 period, the overall economic health of the domestic industry in terms of production, sales volume, capacity, capacity utilization, inventory, market share, profit, cash profit and return on capital employed, etc, deteriorated. Thus, the deterioration during post POI, especially during Q2 period in profits, return on capital employed, cash flow etc. is directly due to dumped imports.

v. The changed circumstances of dumping and injury are not of lasting nature and are likely to recur or intensify if the duties are revoked.

T. Recommendation

129. Having concluded that the situation of the domestic industry continues to be fragile and there is likelihood of continuation/resumption/intensification of dumping and injury on account of imports of the subject goods from the subject countries, if the duties are revoked, the Authority holds that the measure is required to be extended in respect of imports of the subject goods from the subject countries.

130. The responses filed by M/s Jiangxi Black Cat Carbon Inc. Ltd., Jingdezhen, China PR and M/s. Yaroslavskiy Tekhnicheskiy Uglerod, Russia and its connected exporter M/s Trigon Gulf FZCO, UAE have not been accepted by the Authority due to the reasons already recorded in this finding. In view of the above the Authority does not recommend any specific duty to these parties. The Authority further notes that no other exporter/producer from the subject countries, which had been granted specific duties in the original investigation, has cooperated in this Mid-Term Review

investigation. In view of the above the Authority does not recommend any specific duty to such non-cooperative exporters/producers. Moreover, the Authority does not recommend specific duty to the other respondent producer/exporter from China PR namely M/s. Jinneng Science & Technology Co. Ltd., in view of the fact that the alleged changed circumstances are not found to be of lasting nature and dumping and injury are likely to recur or intensify if the anti-dumping duties are revoked.

131. The Authority had earlier recommended imposition of antidumping duties on the imports of the subject goods, originating in or exported from the subject countries vide Final Findings Notification No. 14/21/2008-DGAD dated 24th December, 2009 and duties were imposed by the Central Government vide Notification No. 6/2010-Customs dated 28th January, 2010. In view of the above position, the Authority considers it necessary and recommends continuation of the anti-dumping duties imposed on the imports of the subject goods, originating in or exported from the subject countries, as specified in the table below:

Duty Table

.No.	Heading/ Subheading	Description of goods *	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	28030010	'Carbon Black used in rubber applications'*	Australia	Australia	Any	Any	0.330	KG	US Dollar
2	28030010	'Carbon Black used in rubber applications'*	Australia	Any	Any	Any	0.330	KG	US Dollar
3	28030010	'Carbon Black used in rubber applications'*	Any	Australia	Any	Any	0.330	KG	US Dollar
4	28030010	'Carbon Black used in rubber applications'*	China PR	China PR	Any	Any	0.423	KG	US Dollar
5	28030010	'Carbon Black used in rubber applications'*	China PR	Any	Any	Any	0.423	KG	US Dollar
6	28030010	'Carbon Black used in rubber applications'*	Any	China PR	Any	Any	0.423	KG	US Dollar
7	28030010	'Carbon Black used in rubber applications'*	Russia	Russia	Any	Any	0.391	KG	US Dollar
8	28030010	'Carbon Black used in rubber applications'*	Russia	Any	Any	Any	0.391	KG	US Dollar
9	28030010	'Carbon Black used in rubber applications'*	Any	Russia	Any	Any	0.391	KG	US Dollar

10	28030010	'Carbon Black used in rubber applications'*	Thailand	Thailand	Any	Any	0.186	KG	US Dollar
11	28030010	'Carbon Black used in rubber applications'*	Thailand	Any	Any	Any	0.186	KG	US Dollar
12	28030010	'Carbon Black used in rubber applications'*	Any	Thailand	Any	Any	0.186	KG	US Dollar

* Note: Thermal Black and Carbon Black grade meant for semi conductive compound applications are excluded from the scope of the product under consideration

U. Further Procedures

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

133. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(J.S. Deepak)
Designated Authority