

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

**NOTIFICATION**

**FINAL FINDINGS**

New Delhi: the 15th March, 2004.

**Subject:** Anti-dumping investigation concerning import of Titanium Dioxide originating in or exported from People's Republic of China- Final Findings.

**No. 14/51/2002- DGAD** - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

**A. PROCEDURE**

1.0 The procedure described below has been followed with regard to the investigation:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from Titanium Dioxide Manufacturer's Association (hereinafter referred to as petitioner) on behalf of the domestic industry, alleging dumping of Titanium Dioxide (hereinafter referred to as subject goods) originating in and exported from People's Republic of China (hereinafter referred to as subject country) ;
- ii. Preliminary scrutiny of the application filed by the petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iii. The Authority notified the Embassy of subject country in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iv. The Authority issued a Public Notice dated 16th January, 2003 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Titanium Dioxide originating in or exported from People's Republic

of China, classified under heading 28.23.00 and 28.23.00.01 under Indian Trade Classification of Schedule I of the Customs Tariff Act, 1975;

- v. The Authority forwarded copy of the said public notice to the known exporters (whose details were made available by petitioner), importers (whose details were made available by petitioner), chambers of commerce and to the complainants and gave them an opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2):
- vi. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Embassy of subject country in India. A copy of the non-confidential petition was also provided to other interested parties, wherever requested.
- vii. The Authority sent questionnaires, to elicit relevant information, to all known exporters/ producers, in accordance with the Rule 6(4): Response/ information to the questionnaire/notification was filed by the following exporters/ producers before preliminary findings:-
  1. M/s. Guangxi Dahua Chemical Factory ,China
  2. M/s Guang Xi Xing Mei Xiang Titanium Dioxide Co Ltd, China;
  3. M/s Guang Cang Wu Titanium Manufacturing Co Ltd, China;
  4. M/s Shaugan Chemical plant , China;
- viii. The Embassy of China in New Delhi was also informed about the initiation of investigation in accordance with Rule 6(2) with a request to advise all concerned exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the known exporters was also sent to the Embassy of the subject country in accordance with Rule 6(3).
- ix. The questionnaire was sent to , to all known importers/users of the subject goods in accordance with Rule 6(4): Response/ information to the questionnaire/ notification was filed by the following importers/ users:
  1. M/s Snowcem India Ltd. Mumbai;
  2. M/s Bhimrajka Impex LTD, Mumbai;
  3. M/s Chemi Enterprise , Mumbai
  4. M/s Nerolac Paints
  5. M/s.Berger Paints
  6. EASTCORP International, Kolkatta

The exporters / importers sought extension of time for furnishing of reply to the questionnaire. The Authority considered the request and allowed extension of time of ten days to two weeks for submission of reply by the interested parties.

- x. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- xi. The Authority notified preliminary findings vide notification dated 6th June,2003 and requested the interested parties to make their views known in writing within 40 days from the date of its publication.
- xii. Authority held a oral hearing on 8th August,03. The interested parties who attended the hearing were requested to submit their written submission as per schedule.
- xiii. \*\*\* in this notification represents information furnished by the interested party on confidential basis and so considered by the Authority under the Rules;
- xiv. The Authority sought and verified information given by the domestic industry and to this end investigations were carried out at the premises of the petitioners at TTPL, Kerala, and supporter M/s Kolmac, Chemicals, Kolkatta
- xv. The Authority also conducted cost investigation and worked out optimum cost of production and cost to make and sell subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner.
- xvi. Investigation was carried out for the period starting from 1st January, 2002 to 31st December 2002 i.e. the period of investigation (POI).
- xvii. Additional details regarding injury were sought from the petitioner, which were also furnished.
- xviii. The Authority conducted on-the-spot verification of the domestic industry as well as cooperative exporters to the extent considered necessary.
- xix. Central Government vide OM No. 354/51/2003 TRU dated 9.1.2004 granted two month extension from 16.1.2004 for completing the investigation.
- xx. In accordance with Rule 16 of the Rule supra, the essential facts /basis considered for these findings are being disclosed to known interested parties and comments received on the same would be duly considered in the final findings.

## **B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY:**

### **2.0 VIEWS OF DOMESTIC INDUSTRY:**

- a. They have stated that though there are many exporters of subject goods from China, only few exporters have filed a written submission. Absence of other

exporters or their representatives in oral hearing seemingly reflects the lack of interest of these exporters in the investigation.

- b. They have stated that decision of Designated Authority with respect to rejection of market economy treatment (MET) for M/s. Dauha in the preliminary findings is in accordance with the legal provisions.
- c. Petitioners have submitted that the exporter should provide sufficient information in the non-confidential version of the response.
- d. The petitioners have reiterated that the imports from China are in fact undercutting the price of petitioner company in the Indian market indicating that the imports were causing injury to the domestic industry in the investigation period.
- e. Petitioners have stated that China has exported both rutile and anatase grade of the material. The imports have been reported in several customs classifications including under "2823". These imports seem to have been included and reported under anatase category as reported in DGCI&S statistics considering that 8 digit classification has not been mentioned. Petitioner has provided detailed transaction wise listing of imports as per secondary sources to establish that very significant volumes is being reported under customs heading 3206. As per the IBIS data provided by the petitioner, significant volume of imports from China in these IBIS statistics have been reported under customs heading 3206.
- f. Imports from China are in fact undercutting the prices of the domestic industry. Argument of the exporter is based on average export price as per DGCI&S, which is incorrect due to (a) inclusion of rutile grade in classification meant for anatase grade; (b) reporting of the product under customs classification 3206. In fact, average import price was far lower and landed price of imports was significantly below selling price of imports. Further, not only the price undercutting is positive, prices underselling is also quite relevant.
- g. The demand of the subject goods have not declined. The fact is that the imports reported by the DGCI&S and second resources are very much understated.

## 2.0 EXPORTERS:

### 2.1 M/s. Guangzi Dauha Chemical Factory, China (DAUHA)

- a. M/s. Dauha, a producer and exporter of subject goods, has fully cooperated with the Designated Authority ever since initiation of anti dumping investigations.
- b. In the preliminary finding recommendations, the Authority has declined to accept Dauha's claim for market economy status. They have requested the Authority for granting market economy statistics and the determination of normal value be based on domestic prices and costs in the final finding recommendations by the Authority and has submitted information on

- i. Market conditions prevailing in M/s. Dauha.
- ii. Legal criteria for market economy status
- iii. Extracts of foreign trade law of Peoples Republic of China.
- iv. Extracts of Regulation of Peoples Republic of China on imports and exports of goods.

c. They have reiterated that M/s. Dauha, a producer and exporter of Titanium Dioxide is engaging in commercial transaction both in China and abroad based on market economy conditions.

## **2.2 M/s. Guangzi Cang Wu Titanium Manufacturing Co.Ltd. (GCWT)**

They have stated that the M/s Cang Wu Titanium Dioxide manufacturing Company Limited which was controlled by the State Government before the year 1997 was changed the name to M/s Cang Wu Shun Feng Titanium Dioxide Co. Ltd, China, with effect from 28.7.2003. The reason for the change in the name is attributed to change over to private sector.

## **IMPORTERS/USERS**

### **2.3 M/s. Titanium Dioxide Agents, Dealers and Consumers Association of India:**

The Association has welcomed the imposition of provisional anti dumping duty on Titanium Dioxide. They have stated that Chinese goods are not only cheap but are of also poor quality standards. They have also requested that the authorities should keep watch on imports of 'rutile' grade in the under the grab of 'anatase' grade.

### **2.4 EASTCORP International, Kolkatta**

The PHD Chamber of Commerce and Industry, Delhi, has forwarded a representation made by M/s Eastcorp International, Kolkatta vide ;their letter dated 8.9.2003. The importers have stated that the name of the producer in Sl.no 3 column 7 of the recommendation has been misquoted in the preliminary finding. The producer name should be read as ' Shaoguan Chemical Plant' instead of 'Shaoguan Chemical Plant Co. Ltd '. To this effect, they have enclosed a copy of a certificate from China Council for the Promotion of International Trade China Chamber of International Commerce.

## **C. VIEWS OF INTERESTED PARTIES ON DISCLOSURE STATEMENT ISSUED BY THE DESIGNATED AUTHORITY:**

### **3.1. VIEWS OF DOMESTIC INDUSTRY:**

#### **a. On Product Under Consideration:**

The actual volume of imports reported in the disclosure statement are far higher than what has been reported by the petitioner under Chapter 28. Apparently, actual volume of imports under Chapter 32 is significantly higher than what has been assessed by the petitioner. This is due to the fact that the information provided by the petitioner was based on IBIS (which covered only few customs ports), whereas the information available with the Designated Authority, being from the DGCI&S, the same shows much higher import volumes.

Significantly higher volume of imports have been made under Chapter 32. Such being the case, petitioner requests extension of anti dumping duty on all titanium dioxide anatase grade, regardless of whether the goods are imported under Chapter 32 or 28. This is vital, as, in fact, substantial volumes are being imported under Chapter 32. Petitioner are afraid, should anti dumping duty not be extended to Chapter 32, imports may be allowed to be cleared under this sub-heading without payment of anti dumping duty.

Petitioner understands that between preliminary findings and by now, significant volumes of imports of the product under consideration have taken place under Chapter 32, without payment of anti dumping duty. They have submitted that, authority may clarify that all these imports shall be subjected to anti dumping duty; and anti dumping duty applies on the product under consideration regardless of classification under which it is reported.

#### **b. On Dumping:**

- a. The petitioner has stated that the claims of the exporter are such that it can be inferred that the exporter is trying to establish that (a) Chinese companies are market economy companies; and (b) Chinese State Owned/Controlled Companies are market economy companies. Further, petitioner has reiterated that, EC continue to deny MET to Chinese State Owned Companies. In fact, EC does not even grant individual treatment to such State Owned Companies.
- b. The following judgements of the EC have been referred by the petitioners in this regard:-
  - i. In the matter of Silicon originating in Russia, the EC has granted market economy treatment to the exporter on the basis of findings that the prices for the main raw materials for the Russian exporters were in line with world market prices as well as with the purchase prices of the community industry.

- ii. In the matter of solutions of Urea and Ammonium nitrate from Algeria, Belarus, Lithuania, Russia and Ukraine (where natural gas is the major product), the EC has not granted market economy treatment to the exporters based on the findings that state had an influence in the setting of gas prices.
- iii. In the matter of Certain Iron or steel Ropes and cables from Russia, the EC did not grant market economy status on the basis that for several important inputs the cost did not substantially reflect market values and financial statements audited in line with Russian standards which differed from the International Accepted Accounting standards.

- c. As regard to maintenance and auditing of accounts and procurement of assets, it has been submitted by the petitioner that when the company is a state owned enterprise, how can even be claimed that the capital of the company did not come from State.
- d. The Tax returns are filed by every enterprise – be a market economy company or non market economy. The filing of tax returns does not establishes market economy status or other wise.
- e. Dahua's reference to a number of areas where price control exists even in India is misplaced. A company operating under Govt. control in "market economy country" and a company operating under Govt. control in "non market economy country" can not be put in the same footing, as has been attempted by the exporter in this case.
- f. The petitioners have submitted that the company is not entitled for MET. None of the other companies who have cooperated from China are also not entitled for MET, as has been rightly held by the Designated Authority.

c. Dumping margin is on lower side:-

Petitioners have submitted that the dumping margin assessed in the disclosure statement is on lower side given the best estimates of cost of production.

d. On Injury And Causal Link:

Import volumes and market share:

Actual volume of imports assessed by the Designated Authority are significantly higher than the known volume of imports for which the petitioner could provide evidence. Petitioner had been, in fact, all along the investigations arguing that the actual volume of imports is significantly higher than the volume of imports for which the petitioner could authentically collect evidence. Petitioner's difficulties in providing evidence of actual volume of imports is due to the fact that the information

on this account is in possession of DGCI&S, which has been refusing to provide transaction wise data to the trade and industry.

#### Factor affecting domestic prices

It appears that the Designated Authority has disallowed service charges paid by the petitioner. Should such be the case, petitioner submits that the selling price of the domestic industry was also required to be adjusted appropriately, as the selling price of the domestic industry includes remuneration on account of service charges paid. Petitioner reiterates that comparison of non injurious price excluding service charges with net sales realization information provided by the petitioner would result in unfair comparison. It should also be noted that the cost of production information provided by the domestic industry is inclusive of service charges payable and, therefore, selling price information contained in costing information is also inclusive of service charges.

#### e. On Non Injurious Price

- a. While the factual element used by the Designated Authority in determining non injurious price have not been disclosed to the domestic industry. It is submitted that the NIP determined is far lower than the expected level based on the actual cost and fair return on capital employed. Accordingly petitioner has requested that the non injurious price assessed may kindly be reviewed again. Petitioner has submitted that the level of non injurious price determined would not be able to provide reasonable relief to the domestic industry.

#### f. Duty on Fixed Amount Basis:

The Designated Authority has recommended anti-dumping duty in terms of fixed amount. It is submitted that the final duties may please be recommended in terms of fixed amount only.

### **VIEWS OF EXPORTERS:**

#### **3.2 M/s Guangxi Dahua Chemical Factory, China,**

#### On Market Economy Treatment shall be given to Dahua :

1. The exporters have stated that they have no comments to offer on General Disclosure.
2. The Authority has proposed not to grant market economy treatment to M/s Guangxi Dahua on the ground that the absence of significant state interference cannot be ensured as it is a state owned enterprise. In this regard, they have

stated that, there are three levels of Government in China – Central, Provincial and City. Dahua is owned by a ‘City’ government which has no role or control whatsoever in formulating industrial and economic policies. The role of a City Government shall not be confused with the role of a ‘Provincial’ or ‘Central’ Government. A city government is a local civic body with little jurisdiction over industrial and economic policies affecting the market conditions in which an industry operates. A city government basically looks after civic amenities and not industrial/economic policies. Such policies are decided by the ‘provincial’ or ‘central’ government as the case may be. Baise City Government is only an investor or entrepreneur in so far as Dahua is concerned. Therefore, market economy treatment cannot be denied to Dahua.

3. Dahua has provided ample evidence supported with documentary proof that decisions regarding price, costs and inputs including raw-materials, cost of technology and labour, output, sales and investments are made in response to market signals reflecting supply and demand and that there is no state interference in this regard. These facts have been verified also.
4. Even assuming without admitting that there was some interference, it must be noted that the rules themselves permit ‘some degree’ of interference but they do not permit ‘significant interference’ by the state. In the instant case, there is no interference at all by the State as has been demonstrated by facts.
5. Under these circumstances, the decision of the Authority not to treat Dahua as an enterprise operating on market economy principles is bad in law. Dahua once again requests the Authority to reconsider this decision and grant market economy treatment to them.
6. The Authority has determined constructed normal value [CNV] based on cost of production of the most efficient producer in India after making appropriate adjustments with regard to raw materials, utilities and capacity utilisation plus a reasonable profit of 5% on cost of sales. M/s Guangxi Dahua submits that the above methodology is not one of the three methodologies prescribed under the Indian Anti-dumping Rules. Normal value shall be determined in terms of Paragraph 7 of Annexure-1 to the Anti-dumping Rules. In view of this, Dahua requests the authority to determine normal value based on the data submitted by them.

#### On Injury determination and examination of cause of link :

1. The import statistics given at paragraph 9.1 of the preliminary finding and the import statistics given at paragraph 1 of the disclosure statement differ in so far as they relate to the period of investigation. The imports from China were shown as 2040 MT in the preliminary findings which stand revised to 6362 MT in the disclosure statement. Similarly, imports from other countries were

reported as 2505 MT in the preliminary findings which stand revised downwards to 2192 MT in the disclosure statement. From the foot-note given in the disclosure statement, it appears that the revision is due to the addition of transaction-wise detail of IBIS Mumbai and DGCIS reported under chapter 32.

2. Dahua objects to this revision on three grounds stated below:

- a. It appears that the domestic industry has given additional data subsequent to the public hearing. This additional data was not part of their written submissions made pursuant to the public hearing. As an interested party we have not been made aware of the revisions to the import statistics submitted by the petitioner. We have not been given an opportunity to examine the revised data and offer our comments thereon.
- b. Prima-facie, the revision appears to be unwarranted as there is a specific heading under chapter 2823.00. The heading reads as: 2823.00 Titanium Oxides.
- c. Heading 3206 covers only pigments and preparations based on titanium dioxide. It does not, repeat, it does not cover titanium dioxide per se. The product under investigation is titanium dioxide and not pigments based on titanium dioxide. Just because the petitioner has claimed that titanium dioxide has been cleared in the name of 'Mica Pigments', that too based on the description given in the import statistics, the authority cannot include imports of pigments based on titanium dioxide to determine the volume of imports of titanium dioxide. Further, it amounts to an allegation of mis-declaration before customs. There is no warrant to entertain such allegations in an AD Investigation. Therefore, the revision is unwarranted.
- d. Authority has stated that transaction-wise details as per IBIS Mumbai under Chapter 32 as well as imports shown under DGCIS under Chapter 32 have been added. This appears to be a case of double counting. It is not known whether the same transactions reported under chapter 32 by IBIS Mumbai have been reported under chapter 32 for DGCIS statistics also. It is also quite possible that the transactions reported under chapter 28 by DGCIS might have been reported under chapter 32 by IBIS Mumbai and vice versa. Therefore, it is not correct to combine the data from two different sources to arrive at total volume of imports. The Authority should either go by DGCIS data or by IBIS Mumbai data and not a combination of both.
- e. Thus, the factual basis used by the Authority for determining the volume of imports into India is incorrect and the findings will be vitiated to that extent. Dahua requests the authority to redetermine the volume of imports and re-evaluate injury, etc. A revised disclosure statement may be made available to us for our comments.

- f. The capacity utilisation has undergone such wide variation between the preliminary findings and the disclosure statement.

**Price under selling and Price under cutting are equal :**

- a. The authority has observed that price under cutting was in the range of 10-20%. Further, the Authority has observed that the price under selling was also in the range of 10-20%. When price under selling and price under cutting are in the same range, NIP and sales realisation of the domestic industry shall be either same or pretty close. Under such circumstances, injury to the domestic industry cannot be established. Therefore, injury determination and causal link shall be held to be absent.

**On Incidence of Sales tax has not been considered in the causal link analysis :**

- a. The sale from TTPL to KSIPTC involving levy of local sales tax at 30% and the second sale was from KSIPTC to the ultimate customer involving levy of CST at 4%. When the Kerala Government relaxed this condition and allowed TTPL to sell the product directly, within a very short span, customers have started buying from TTPL and TTPL has cleared all its stocks. Thus the injury was caused only by this peculiar method of sale followed by TTPL and not because of dumped imports. This fact has not been examined at all.

**M/s Indian Paint Association:** They have made similar submissions with regard to price underselling, price undercutting, incidence of sales tax and causal link analysis.

**3.3 M/s Cang Wu ShunFeng Titanium Dioxide Co. Ltd, China :**

M/s Cang Wu has made submissions by e-mail that "M/s Cang Wu ShunFeng Titanium Dioxide Co. Ltd, China" exports through "M/s ZheJiang Provincial Light & Textile Group Light Industry Co. Ltd." and a certificate has been furnished during the verification

Dumping margin based on domestic prices would workout to around 10% against 26.9% determined by the authority.

**VIEWS OF IMPORTERS:**

**3.4 M/s.CHEMI ENTERPRISE.**

The importer/user has vide submissions dated 14.7.2003 has observed that:

The injury analysis is related to only TTPL and its selling price during the period of investigations viz. 1.1.2002 to 31.12.2002, was subject to double taxation.

- a. Decline in quantity of sales of the domestic industry may be attributable to the fact that during the period of investigation and even earlier considerable quantities of the subject material might have been imported from China and cleared duty free under various export promotion schemes and found their way into the domestic market.
- b. Subsidised and non-subsidised imports of the subject material from the subject country is not shown and considered and similarly demand and supply data of local producers is also not given and considered whereas it is claimed by the petitioners that they produce 57% of domestic production and therefore, it is necessary to verify the actual production consistency thereof and how the balance is met and the demand is also met.
- c. Levy of anti dumping duty is actually eliminating the competition and also eliminating the choice available to the domestic consumer.
- d. Normal value and ex-factory price and dumping margin are not given and therefore, it gives way to believe that dumping duty is levied on assumptions and also unilaterally.

M/s Chemi Enterprise ,vide submission dated 25.8.2003 has stated that:

- a. Titanium Dioxide Anatase Grade is a general name and therefore the goods compared are not similar because they are not commercially interchangeable having regards to quality reputation existence of trade mark and country of origin and applicability whereas the goods produced by the petitioners are standardized as per ISI-(BIS) and has a brand name AJANTOX'A is 111:1991 and therefore not comparable with the imported Chinese material.
- b. Titanium Dioxide anatase grade manufactured in China is not equal to the standard of the material produced domestically. The domestic material fetches higher price than the Chinese material on account of its quality and acceptability.
- c. In view of the quality difference the domestic produced material always fetches higher price than the Chinese material and the difference in selling price is not much so as to cause injury to the domestic industry.
- d. Titanium Dioxide anatase is imported from different countries and the price is not the same because the price varies from one brand to another depending upon its quality reputation, acceptability and applicability etc.
- e. After initiation of investigation the petitioner has done away with the marketing intermediary (KSIPTC) and done away with the double taxation and allowed discounts to their stockists and registered a comfortable rise in sales and thereafter immediately on imposition of provisional anti-dumping duty

increased the prices and in this way the benefits went to the stockists rather than the petitioner or the labour.

- f. The demand projected shows a future gap of 8,400M/T and therefore there is a gap between demand and supply of anatase grade titanium dioxide and therefore, the question of injury or threat of injury to the petitioner is out of question and there is no possibility at all of its being shut down at any time in future on account of such meagre duty paid imports from China which are negligible. The estimated demand level for anatase grade titanium dioxide for the period 2001-2002 is 22,500 M/T.
- g. Consolidated imports of titanium dioxide anatase grade where maximum 2,200 M/T during 2001-2002 and minimum 1,500 M/T during April 2002 to July, 2002.
- h. Indian manufacturers and production level of anatase grade Titanium Dioxide for the period April 2001 to March 2002.
- i. The investigation initiated by the Authority needs be terminated for the reason stated above and withdraw the anti dumping duty provisionally imposed must be withdrawn in the interest of justice and fair play.

## **D. EXAMINATION BY THE AUTHORITY:**

4.0. The submission made by the exporters, importers, domestic industry and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter. However, certain crucial issues raised by different interested parties have been examined as under:-

- a. With regard to the issue raised by the petitioner in respect of non injurious price determination and assessment of net sales realisation it is clarified that the authority called the representative of the petitioners and the methodology adopted was explained. It was further explained that the comparison of the non injurious price with net sales realisation and the landed value has been made at appropriate comparable levels.

### **On issue of product under consideration**

The product under consideration Titanium Dioxide Anatase type is classified under Chapter 28 under Sub-heading 28 23 00 01. After the preliminary findings it has come to the light that substantial volumes of imports have been made under Chapter 32 also. For the purpose of Disclosure Statement Authority considered imports under Chapter 28 for the period of investigation and under Chapter 32 IBIS data for the period January to March, 2002 and DGCI&S data for the period April to December, 2002. Authority has called for transactionwise details of imports from DGCI&S, Kolkata for

Chapter 28 and 32 which has been received. Subsequently, higher volumes of imports of subject goods have been reported under Chapter 32. In the circumstances, the Authority has picked up imports volume reported under Chapter 28 & 32 with respect to Titanium Dioxide, Anatase type for the purpose of this investigation and ensured that double counting of imports is avoided in its analysis.

#### **On issue of Like Article by M/S. Chemi Enterprise:**

The importer/user has raised that the domestic material is of higher quality with a brand name Ajantox-A, vis-à-vis, Chinese material is of lower quality and available at lower price. The Authority notes that this is only an argument without substantiation. Further, it notes that none of the cooperative producers/exporters have raised the issue of brand or the quality in this investigation. Hence, argument raised by importer/user is rejected.

As regards the argument raised about duty free imports of subject goods from subject countries during the period of investigation under advanced license/several export promotion schemes, Authority notes that the subject goods which are destined for domestic market under DTA attracts all duties including anti dumping duties.

Evidence given in form of PIE chart indicating imports volumes for different countries including Germany is for the period April 1998-March, 1999 and is not for the period of investigation. Hence the Authority rejects the evidence.

Authority notes that the extracts of market price as reported by Industrial Chemical and Solvent (Chennai) dated December, 7,2002 does not indicate/clarify whether the subject goods is imported under duty free schemes.

As regards to sale of subject goods by the petitioner companies during the period of investigation was subject to double taxation and their selling price was in competitive. Authority notes that M/s. TTPL was selling its products through same outfit even before the period of investigation and during the investigation period.

#### **On claims of Market Economy status for M/s Dauha:**

Reference is drawn to the analysis made by the Authority in para 8.1 of the Preliminary Findings dated 6th June 2003. In this regard Authority notes that M/s.Dauha has furnished additional information in form of evidence while claiming market economy status, however, the Authority is unable to apply the principles set out in paragraph 1-6 of Annexure I of the Rules Supra and is constraint to proceed as per para 7 of annexure I whereby normal value can be determined on any other reasonable basis including price actually paid or payable in India for the like product

duly adjusted to including a reasonable profit margin. Authority confirms this findings on non-market economy status for M/s. Dauha as per preliminary findings. For the purpose of final finding the information furnished by the exporter on whom market sales, cost of production and claims of market economy status has been examined. Authority notes that the company has admitted in its submission that Dauha is a State-owned enterprise governed by the law of Public Republic of China on Industrial Enterprises and the regulation for transformation of operational mechanism of state owned industrial enterprises. The Baise city government, Guangxi province is the sole share holder of the enterprise. Accordingly, Authority concludes that the absence of significant state interference in this case can not be ensured and thus does not satisfy the criteria under the rules. For this reason, the Authority has not granted market economy treatment to this company.

## **E. PRODUCT UNDER CONSIDERATION**

5.0 a) The product under consideration in the present investigation is Titanium Dioxide Anatase grade, having chemical formula  $TiO_2$ .

Titanium Dioxide can be in Anatase form or Rutile form. However, the present investigation is against Titanium Dioxide in Anatase form only.

Titanium Dioxide Anatase is produced from ilmenite, which is a mixture of titanium, ferrous iron and ferric iron. Titanium in ilmenite is extracted by reacting this raw material with sulphuric acid. Titanium goes into the solution as titanium oxy sulphate. Titanium dioxide is obtained from titanium oxy sulphate by injecting live steam and dewatering the treated pulp.

Titanium Dioxide ( $TiO_2$ ) occurs commonly in oxide form. Properties of the subject goods are described in terms of refractory index, specific gravity, hardness, crystal structure, oil absorption, colour, hiding power, ultra violet light absorption, resistance to chalking, etc.

b) Titanium Dioxide is an inorganic chemical. It is classified under Chapter 28 of the Customs Tariff Act. Complete description of the product under Customs Tariff and under ITC is as under: -

<b>Chapter / Sub-heading</b>	<b>Description</b>
28	Inorganic Chemicals
2823	Titanium Oxide
282300	Titanium Oxide
28230001	Titanium Dioxide, Anatase type

Even though the product has dedicated classification, it has been found from the DGCI&S transaction wise import data that the product is being reported in very substantial quantities under customs classification 3206. Authority found that the exports reported by two responding exporters itself are in the region of imports reported by the DGCI&S under classification 2823.

Titanium Dioxide is a pigment and is primarily used in the manufacturing of paints, plastics, paper, ink, rubber etc. Titanium Dioxide Anatase is used in the production of the following: -

- All type of white and pastel shades of paints,
- White walled tyres and car tyres,
- Printed fabrics,
- Electronic components,
- Foot wear and leather goods,
- Flooring materials like linoleum, white mosaics,
- De-lustering of artificial fibre in Textile Industry.

Titanium Dioxide (Anatase) has a very high degree of whiteness. Its tinting strength and hiding power are superior to any other white pigment and it also has stability & durability against light and heat. It is not toxic. Imports of the product are allowed under Open General License (OGL) Policy.

As regards Chemi Enterprise's argument on product and like article, the Authority notes that decline in the sales volumes and market share of the petitioner in particular and Indian Producers in general and increase in import volumes and market share of the imports from China on the other hand does not suggest a possible difference in the product. In fact, it has been argued by some other party that the sales of the Indian Producers have once again increased after imposition of ADD. It is also relevant to point out that the arguments on alleged quality difference are unsubstantiated and unquantified with verifiable evidence.

## **F. LIKE ARTICLE**

6.0 Petitioner has claimed that the subject goods produced by the petitioner are like article to the subject goods imported from China. Petitioner claimed that there is no known difference in Titanium Dioxide exported from China and Titanium Dioxide produced by the petitioner company.

In order to examine whether Titanium Dioxide produced by the domestic industry and imported from China are comparable, characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product

specifications, pricing, distribution & marketing and tariff classification of the goods were relied upon. It is found that the subject goods imported from China and goods produced by the domestic industry are technically and commercially substitutable. The consumers are using the two interchangeably. There is no argument disputing the claim of the petitioner on this account.

In view of the above, the Authority holds that the goods produced by the domestic industry are like article to the goods imported from the subject countries, within the meaning of the Rules.

## **G. DOMESTIC INDUSTRY**

7.0 There are three producers of Titanium Dioxide Anatase Grade in the country. Other producer of Titanium Dioxide, namely Kerala Minerals & Metals Limited. However, the company produces only Rutile Grade. All the producers are members of the Association. Petition was filed by the Association comprising all the producers of the subject goods. M/s. Travancore Titanium Products Limited, Travancore is the petitioner company who has provided all relevant information in the petition. Other two producers, namely M/s. Kolmak Chemicals Limited and Kilburn Chemicals Limited have specifically supported the petition.

Subsequent to initiation, M/s. Kolmac Chemicals have also provided costing information along with relevant injury information. Production of Travancore Titanium Products alone accounts for more than 50% of Indian Production.

The petitioner, therefore, satisfied the criteria laid down under Rule 5(1), 5(3) and explanation to Rule 5(3). Further, Travancore Titanium Products and Kolmac Chemicals have been treated as "domestic industry" within the meaning of the Rules.

## **H. NORMAL VALUE,EXPORT PRICE AND DUMPING MARGIN:**

8.0 Under Section 9A (1)(c), normal value in relation to an article means:

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of

the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -

- a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export or there is no comparable price in the country of origin, the normal value shall be determined with reference to its price in the country of origin.

The Authority also notes the various Customs Notifications NO.44/99(N.T) dated 15th July, 1999, No.28/2001(N.T) dated 31st May, 2001 and No.1.2001(N.T) dated 4th January, 2002 on the Anti Dumping Rules.

The Authority provided opportunity to the exporters from subject countries to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassies of subject country in India also. The Authority sent questionnaires to all the known exporters for the purpose of determination of export price and normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. Responses were received from the following exporters from China PR:-

- a. M/s Guangxi Dahua Chemical Factory, China( Dahua)
- b. M/s Guang Xi Xing Mei Xiang Titanium Dioxide Co Ltd, China;
- c. M/s Guang Cang Wu Titanium Manufacturing Co Ltd, China;
- d. M/s Shaugan Chemical plant , China;

Details of normal value and ex-factory export price determination is given below.

#### **M/s Guangxi Dahua Chemical Factory, China( Dahua) :**

The exporter has furnished information in the Exporters Questionnaire. The transaction wise information relating to Sales in home market, exports to India, sales price structure for exports to India and Domestic market , Factory cost and profit in App 1-8 respectively have been furnished.

M/s Dahua in their submissions has claimed that the company is operating on a market economy principles. They have submitted that Guanzxi Dahua Chemical Factory satisfies each of the four conditions laid down under paragraph 8(3) of the Anti dumping Rules and thus is entitled to be treated as a market economy company in terms of the proviso to paragraph 8(3) and under the circumstances, the Authority shall apply the principles set out in paragraphs 1 to 6 of Annexure 1 for the purposes of determining normal value, export price and margin of dumping in so far this company is concerned.

In the preliminary finding, the Authority had noted that it was unable to apply the principles set out in paragraph 1 to 6 of Annexure 1 of Rules supra and is constrained to proceed as per para 7 of Annexure-1 whereby normal value can be determined on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted to include a reasonable profit margin.

Vide their submissions dated 1.9.2003, M/s GUANGXI DAHUA CHEMICAL FACTORY, CHINA , submitting reclaim for Market Economic Status.

The company disagrees with the preliminary findings in this regard. Again Dahua claims that market economy status be granted and normal value be based on its own prices and costs by the Designated Authority in the final proceedings. This submission addresses particularly the issue of normal value in the context of paragraph 8.1 of the Preliminary Findings Notification.

### **Market Conditions Prevailing in Dahua**

It is claimed that it has full control on inputs/outputs, pricing, exports, domestic sales, operations, personnel, investments and other operating issues along with sufficient evidence. Accordingly, Dahua meets those criteria as described in paragraph 8.1.3 of the Preliminary Findings Notification, sub-para (3) of the Rules.

It is also claimed that Dahua chooses sources of best competitiveness. Based on the market situation as well as production need, Dahua selected different suppliers for materials needed by contract or in a spot market.. A complete list of all suppliers for each item along with their prices, ownerships and addresses is furnished. However, these suppliers, no matter private or state-owned, are all operating under market conditions. To Dahua, the only consideration is price and quality of raw materials they have offered. Dahua did not select any foreign supplier during the period of investigation.

- i. Dahua purchased coal gas from a private company, coal from 6 companies, 4 of which are privately owned. Besides, Dahua did not purchase water from any

party but producing by itself. Relevant information of utilities suppliers for Dahua's production during the POI is furnished. Dahua is charged at normal rates for usage of utilities. To the best knowledge of Dahua, these suppliers of utilities were not subsidized.

- ii. Considering costs and quality, Dahua purchased all needed raw materials in domestic market, rather than importing from foreign market. In that sense, no restrictions or conditions on imports of raw materials applied to Dahua.
- iii. As a general practice, Dahua employs workers by contracts. Contractual workers are generally organized in the light of the specific production flow to work for no more than 40 hours a week. Prior to their posts, workers must be strictly trained. For some special titles as electricians and welders, relevant certificates/qualifications are required.
- iv. Dahua has full autonomy to decision-making on pricing and output quantity. No local/regional authority or State is involved in Dahua's process of product manufacture and sale, by law or in practice.
- v. The Balance Sheet and Income Statement of Dahua audited by Guangxi Guixincheng Accounting Firm must be filed annually with the local taxation administration and financial administration.

- a. Dahua applies to the *General Principles of Financial System for Enterprises, Financial System for Industrial Enterprises, Accounting Standards for Enterprises and Accounting System for Industrial Enterprises* enacted by the Ministry of Finance of the People's Republic of China in 1992. sets concerned.
- b. Dahua obtained its fixed or intangible assets on the open market, rather than receiving from any government agencies or other enterprises freely or with discount. For instance, Dahua bought machinery, mechanical apparatus and other production equipment on the open market; and gained buildings by contractual construction between Dahua and construction companies. Dahua's Record of Fixed/intangible Assets as dated of December 31, 2002 is furnished.

- vi. Dahua did not lease or rent any facilities used for production and/or commercial purposes.
- vii. As of the date of 31st December, 2002 Dahua held loans taking from the Bank of China Beise Branch and the Industrial and Commercial Bank of China Beise Branch. Both banks providing loans to Dahua are commercial banks and operating under market economy conditions. Dahua did not receive any special loan or subsidized schemes. A list of loans held by Dahua by the end of 2002 is furnished.
- viii. Under the *Regulation of Foreign Exchange Administration*, exchange rates between the RMB and foreign currencies are based on supply-demand mechanism on the market, and there is a single, managed floating rate. The

people's Bank of China, the central bank, publishes the daily exchange rates in line with the price on the inter-bank exchange market.

Following this system, Dahua may buy foreign currencies from banks with RBM for purchase of inputs, at the rate of the transaction date. Similarly Dahua sells its earnings in foreign currencies to banks at the rate of the transaction date. However, Dahua is a new player in international market and has not applied for a foreign currency account so far.

- ix. Dahua did not conduct barter-trade or counter-trade in the last five years.
- x. Dahua did not conduct barter-trade or counter-trade in the last five years either.

## **2. Legal Criteria for Market Economy Status**

In its first claim, Dahua quoted both Indian Anti-Dumping Rules and the WTO Protocol on China's Accession justifying that Dahua meets those criteria for market economy status. Dahua believes that its manufacture, production and sales of the subject product are based on commercial considerations and entirely reflect the market signal.

The Designated Authority also pointed out in the Preliminary Findings Notification that, some text/phrases like "mandatory plan" or "policy losses" in relevant laws and regulations indicates that Dahua is not operating under market economy conditions as envisaged under paragraph 8 of Annexure I Rule Supra. Dahua could not agree with that. As a matter of fact, mandatory plan has been erased long before in most commercial fields in China, and price control on products has been cut down dramatically. Also as a member of the WTO, China is obliged not to launch any price control upon products or services unless otherwise listed in Annex 4 of the Protocol on the Accession of the People's Republic of China and to reduce them in the future, as explicitly stated in paragraph 56 of the Report of the Working Party on the Accession of China. Both raw materials Dahua used for production of the subject product and the subject product itself fall out of the list of government price control by Chinese authority.

In terms of export activities, China cut down much control on export activities and generally allowed for free import and export of goods as early as 1990's. According to Article 15 of the Foreign Trade Law of the People's Republic of China ("Foreign Trade Law"), "the State allows free import and export of goods and technologies". Moreover, a new regulation concerning export of commodity was issued one day prior to China's accession to the WTO, permitting free, fair and orderly international trade. Article 4 of the Regulations of the People's Republic of China on the Import and Export of Goods ("Regulations on Goods Import and Export") provides that "The

State shall permit the free import and export of goods, and shall ensure, in accordance with the law, that import/export trade is fair and orderly. Apart from goods that are categorically prohibited or restricted under the law or administrative regulations from being imported or exported, no organization or individual shall put in place or maintain measures that prohibit or restrict the import or export of goods." In this context M/s Dahua has cited Annex 4 of the Protocol.

The product concerned and the raw materials used for the manufacture of the product concerned are not subject to price controls in China.

- a. Price controls on select products like natural gas and pharmaceuticals still exist. Pharmaceuticals are subject to price controls in many countries including India especially life saving drugs, bulk formulations of generic drugs, etc. Similarly, India had kept Natural Gas under the Administered Price Mechanism till recently.
- b. In China, agricultural products like Durum wheat, etc are subject to government guidance pricing. This is akin to the Minimum Support Price and the Minimum Price for Import of such goods prevailing in India in the agricultural sector. Urea is subject to Government guidance pricing in China. In India, Urea is still under administered pricing with substantial subsidy from the Government's treasury.
- c. Even in India, public utilities like gas, water, electricity, etc were subject to government pricing till recently except in some areas, due to entry of private players, government pricing has ceased to exist in respect of services rendered by government departments, local authorities or government corporations such as Irrigation Department, State Electricity Boards, State/UT water boards, municipal corporations, river valley authorities, etc. Such price controls do not make India a non-market economy. Similarly, price controls in these public utilities shall not be taken to mean that China continues to be a non-market economy.
- d. In the services sector, government pricing is prevailing in China in respect of postal and telecommunications services, entry fee for tour sites, education services, etc. Needless to say that in India also, these services are subject to Government pricing even today.
- e. Rail Freight and Railway passenger fares are subject to Government guidance pricing in China. In the case of India, they are controlled by the Government itself. The railway fares are approved by Parliament as a part of Railway Budget. This does not mean that India is a non-market economy country.

Thus, China has dismantled its price controls on almost all items except a few goods and services on which many of the market economy countries and western developed

economies continue to have price controls. Therefore, China shall be treated as a Market Economy.

In paragraph 8.1.6 of the Preliminary Findings Notification, the Designated Authority also addressed the Business License and minutes of session furnished by Dahua. Dahua wants to restate that "state ownership" means nothing of government interference in Dahua's business operation. As proofed by sufficient evidences, Dahua, as one of the market players in both domestic and international market, is acting independently and is responsible for its own profits and losses. Dahua furnished the copy of minutes of session in year 1997 rather than during the POI in its first claim for the reason that it was the session when the present general manager Mr. Su Yaowei was elected and appointed then. In Annex 2 to the first claim it was described that a new factory director of Dahua was elected. However, there is no difference between the post of general manager as mentioned in the first claim and factory director as called in its Annex, both of them indicating the head of Dahua, Mr. Su Yaowei. Dahua will be willing to provide further information in this regard, including minutes of session in the POI as well as evidence of the post concerned.

The exporter has cooperated with the investigation and the exporters' information was verified for determination of normal value and export price

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

The authority has examined the submissions made by the interested parties with regard to the treatment of the co-operating exporter as Non Market/ Market economy entities in China PR. Relevant Rules governing such treatment are as under:

#### ***"15. Price Comparability in Determining Subsidies and Dumping***

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- a. In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation **or** a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:
  - i. If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the

manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

- ii. The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
- b. In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.
- c. The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.
- d. Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

#### **Position Under Indian Law at time of initiating matter:**

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

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

Provided that in view of the changing economic conditions in Russia and in the Peoples' Republic of China, where it is shown on the basis of sufficient evidence in writing on the factors specified in this paragraph that market conditions prevail for one or more such firms are subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

Note :- For the purposes of this paragraph, the list of non market economy countries is Albania, Armenia, Azerbaijan, Belarus, Peoples' Republic of China, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. Any country among them seeking to establish that it is a market economy country as per criteria enunciated in this paragraph, may provide all necessary information which shall be taken due account by the designated authority.]

### **Position Under Indian Law Post 4th January 2001:**

Rule 8. (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph (3)

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country.

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether :

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

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph".

Vide Notification No.1/2002NT Customs dated 4.1.2002. Para 8(1)(2) & (3) was amended.

Vide Notification 101/2003 dated 10th Nov.,2003, the para (4) was inserted after Sub-paragraph 3(d) in Para 8 of Annexure 1 to Custom Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Duty on Dumped Articles and for Determination of Injury) Rules 1995.

"(4) Notwithstanding anything stated in sub-paragraph (2) above, the designated authority may treat a country as market economy country, if, based on a detailed evaluation of the relevant criteria as contained in a public document, the said country has been determined to be or has been treated as a market economy country recently by a WTO Member for the purpose of anti-dumping investigation. Criteria which may be relevant in this respect include those specified in sub-paragraph (3) above."

The Authority notes that the WTO gives the option of treatment of China for the purposes of application of Anti Dumping or subsidy measures to the Member state.

1. A perusal of the entire clause above show that there is nothing to preclude a WTO Member from granting full market economy treatment to China or partial market economy treatment to companies or exporters from China. In fact, a Member is also empowered to grant market economy status to China as a whole.
2. The Indian law clearly provides that the companies operating in China can be treated as Market Economy if they satisfy the conditions laid down under the Rules.
3. With the onus shifted on the party claiming the market economy status, the Indian law, clearly prescribes the criteria prior to any company/entity getting market economy status from a Non-Market economy.
4. On each of the four criteria as per para 8 of Annexure I of Anti dumping Rules, the exporters provided detailed submissions, which were verified by the Authority.
5. In light of the above, giving market economy treatment and accepting the cost of production supplied by the cooperating exporter from China, who has fulfilled the criteria for market economy treatment in accordance with the laws of India is fully within the powers of the Designated Authority and compatible with India's commitment to the WTO.

The Authority has examined the status of cooperative exporter from China PR in light of the above.

**M/s Guangxi Dahua Chemical Factory, China( Dahua) :**

The information furnished by the exporter on home market sales, cost of production and the claims of market economy status has been examined. Authority notes that the company has admitted in its submission that M/s Dauha is a state owned enterprise, governed by the Law of People Republic of China on Industrial Enterprises and the Regulation for transformation of operational mechanism of State owned Industrial Enterprises. The Baise City Government , Guangxi Province is the only share holder of the enterprise.

Accordingly, the Authority therefore concludes that the absence of significant state interference in this case cannot be ensured and thus does not satisfy the criteria under the Rules. For these reasons the authority has not granted market economy treatment to this company.

M/s. Guangzi Cang Wu Titanium Manufacturing Co.Ltd. (GCWT)

M/sGuangxi Xing Mei Xiang Titanium Manufacturing Co. Ltd. (GXMLX)

M/s. Zhejiang Provincial Light & Textile Industry Group Company, Hangzhou, China. (ZPLT)

Both the exporters information along with the trading house ZPLT has been verified by DGAD. The exporters from GCWT have furnished supplementary information on normal value and export price for consideration. Though the company claimed for market economy status, no information substantiating the claim of market economy status has been furnished. Vide their fax from M/s ZPLT dated 6th February, 2004 requested more time to submit the information on market economy. As the investigations are time bound, the Authority has decided to go ahead with the best available information on record. M/s. GXMLX has failed to cooperate fully during the verification visit and furnish the information in the form and manner prescribed by the Authority. In the circumstances, Authority discarded the information for the purpose of final finding.

#### **M/s GCWT & M/s GXMLX :**

The company furnished information on home market sales in the prescribed questionnaire. The Chinese producer claimed to be fully independent from state interference and stressed that its private status be taken in to account. However, information on market economy status was neither furnished before nor during the verification visit. The information submitted on 16.2.2004, subsequent to the verification visit on their claim of market economy status was not verifiable and hence it is rejected.

#### **Normal Value**

##### **M/s Guangxi Dahua Chemical Factory, China( Dahua) :**

The Authority notes that the company has admitted in its submissions that it is a state owned enterprise. For the purpose of the final finding, the information /evidence furnished by the company with regard to market economy does not meet the criteria laid down under the Rules. The Authority considered, out of a number of options provided under the Rule, the best option to be applied for assessment of normal value. The Authority notes that the following options are provided under the Rules:-

1. the price in a market economy third country,
2. constructed value in a market economy third country,
3. the price from such a third country to other countries, including India.
4. the price actually paid in India, adjusted to include a reasonable profit margin.

5. the price actually payable in India, adjusted to include a reasonable profit margin.

It is noted that constructed value in a market economy third country or price actually payable in India, adjusted to include a reasonable profit margin are most appropriate basis in the instant case. In fact, price in a market economy third country, such as India or price from third country to other countries, including India would have, at best, resulted in higher normal value. At the same time, it is possible that such prices are not reflective of true and representative prices. Under the circumstances, the authority has based the normal value on constructed cost of production by adopting information available on cost of production of the most efficient producer in India by making appropriate adjustments with regard to raw materials, utilities and capacity utilisation. A reasonable profit of 5% on the cost of sales is considered for determination of the normal value. The Normal Value thus works out to \$\*\*\* per Mt of the subject goods.

### **Export Price:**

The exporter has furnished transaction wise details for export sales to India during the period of investigation along with Sales price structure in App 4. Adjustments have been claimed on account of discounts/commission (\$\*\*\*), inland freight(\$\*\*\*), taxes(\$\*\*\*), overseas freight (\$\*\*\* ) and insurance(\$\*\*\* ) and the same after verification have been adopted. The authority after due verification of the information submitted by the exporter has adopted the Export Price as \$\*\*\* Mt at ex-factory level.

### **M/s Cang Wu ShunFeng Titanium Dioxide Co. Ltd, China**

(formerly named M/s Guangxi Cang Wu Titanium Manufacturing co. Ltd. China.)  
(GCWT)

### **Normal value**

The company furnished information on home market sales in the questionnaire response. It was noted during the verification that the company has effected domestic sales through M/s ZheJiang JiaXing Oil and Paints Factory, China and M/s GuangZhou HuangPu BaiHe Pigment Co, Ltd, China. Exports sales through M/s ZheJiang Provintial L & T Group Light Industry Co Ltd, Hang Zhou (ZPLT) and M/s GuangXi Chemical Import and Export Company. The status of M/s GuangXi Chemical Import and Export Company which is a trading company is not known as they did not cooperate with the investigation. Though the producer company viz. Cang Wu has furnished all details for domestic sales, transaction wise. It is noted that the information provided on domestic sales activity was incomplete and inadequate as

the sales chain for domestic sales to independent consumer through Retail / Distributor/trader has not been furnished and no evidence to that effect was given during verification. Information on market economy status was neither furnished before nor during the verification visit. The information submitted on 16.2.2004, subsequent to the verification visit on their claim of market economy status was not verifiable and hence it is rejected. Under the circumstances, the authority has based the normal value on constructed cost of production by adopting information available on cost of production of the most efficient producer in India by making appropriate adjustments with regard to raw materials, utilities and capacity utilization. A reasonable profit of 5% on the cost of sales is considered for determination of the normal value. The Normal Value thus works out to \$ \*\*\* per Mt of the subject goods.

### **Export Price:**

The exporter has furnished transaction wise details for export sales to India during the period of investigation along with Sales price structure in App 4. Since Exports sales through M/s ZheJiang Provintial L & T Group Light Industry Co Ltd, Hang Zhou (ZPLT) has been furnished ,the Authority has considered adjustments on account of inland freight (\$\*\*\*), taxes (\$\*\*\*), overseas freight (\$\*\*\*) and insurance(\$\*\*\*) to arrive the ex factory Export Price. The authority after due verification of the information submitted by the exporter has adopted the Export Price as \$ \*\*\* per Mt of subject goods at ex-factory level. As regards to volumes of sales made through M/s GuangXi Chemical Import and Export Company who did not cooperate with the investigation it would fall under residual category.

### **Guangxi Xing Mei Xiang Titanium Manufacturing Co. Ltd. (GXMLX)**

During the verification visit the producer company did not furnish relevant information on cost of production, domestic sales, sales to other countries, adjustment, export price, audited accounts etc for verification. In the circumstances, Authority treats the company as non-cooperative and has not determined separate dumping margin for the exporter. The company would fall under the residual category.

### **M/s Shaoguan Chemical Plant, China**

Authority noted in the preliminary finding that the exporter response to exporters questionnaire is grossly deficient and inadequate in many respect.:

1. There is no response to the general descriptive part of the questionnaire (A to H of the questionnaire).
2. Appendix-7 has not been provided.

3. Month-wise sales in Appendix-3 does not appear to have been given for all the months of the investigation period.
4. Transaction wise sales in Appendix-1 does not appear to contain all sales in the domestic market.
5. Annual reports for the past two years and investigation period not provided.
6. There is no claim that the company can be treated as market economy company.

There has been no response after the preliminary findings and the exporter is treated as a non cooperative exporter and separate dumping margin has been determined for the exporter. The company would fall under the residual category

#### **M/s Maanshan Chemical ( Group) Co. Ltd, China**

The authorized representatives in India furnished the authorisation letter from the exporter and collected the non confidential version of the Petition for making submission to exporters questionnaire. However, no response has been filed. In the circumstances, Authority has treated the exporter as non-cooperative exporter for the purpose of this investigation (Rule6(8)).

#### **Jiaozuo General Chemical Plant , China**

The exporter has stated that their plant is a State owned Comprehensive Inorganic chemical plant with four branch companies. They have also stated that the subject goods are classified under HS code 32061110 in China Customs. They have not kept any business relationship with the importers listed in the petition. They have furnished some evidence from Custom Data Chart to support their claim. In the circumstances, Authority has treated the exporter as non- cooperative exporter for the purpose of this investigation (Rule6(8)..

#### **Panzhihua Iron & Steel Group Cropn. , China**

The authorised representative in India stated that the exporters wish to cooperate with the investigation. However, no response has been filed. In the circumstances, authority has treated the exporter as non-cooperative exporter for the purpose of this investigation.

#### **Guangxi Baihe Industry co. Ltd. , China**

The exporters requested for extension of time to file the questionnaire response, which was considered by the Authority and allowed time up to 17.3.2003. However, no

response has been filed. In the circumstances, authority has treated the exporter as non-cooperative exporter for the purpose of this investigation.

### **For Non Cooperative Exporters:**

The authority has based the normal value in respect of all non cooperative exporters on constructed cost of production by adopting information available on cost of production of the most efficient producer in India by making appropriate adjustments with regard to raw materials, utilities and capacity utilization. A reasonable profit of 5% on the cost of sales is considered for determination of the normal value. The Normal Value thus works out to( \$ \*\*\* ) per Mt of the subject goods. As regards to export price it has been based on the lowest export price transaction ( \$ \*\*\* ) of a cooperative exporter in the investigation being the best available information with the Authority in accordance with Rule 6(8).

### **DUMPING MARGIN**

The rules relating to comparison provides as follows:

*"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."*

The authority has carried out normal value comparison with the weighted average ex-factory export price in period of investigation, for evaluation of the dumping margin for all the exporter/ producers of the subject country wherever appropriate.

The dumping margin so assessed are significant and above de-minimus limits prescribed under the Rules. The dumping margin for exporter/ producer of the subject goods from the subject country are as under:

S N	Exporter/ Producer	Normal Value (\$/MT)	Ex-factory Export Price (\$/MT)	Dumping Margin \$/MT	Dumping Margin as % of Export Price
1	M/s. Guangxi Dahua Chemical Factory ,China (Dahua)	***	***	***	23.9%
2	M/s M/s Cang Wu ShunFeng Titanium Dioxide Co. Ltd, China exports through M/s ZheJiang Provincial Light & Textile Industry, China (ZPLT), Haugzhou, China PR	***	***	***	26.9%

3   Other Exporters	***	***	***	27.9%
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## I. INJURY AND CAUSAL LINK:

### 9.0 The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that:

- i. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.
- ii. While examination the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 19 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

For the examination of the impact of the dumped imports on the domestic industry in India, Authority may consider such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the rules supra.

It has been pointed out by the domestic industry that the Authority seems to have adjusted the net sales realisation and cost of production of the domestic industry. Petitioner has pointed out this seems to have not been appropriately reflected in the disclosure statement in terms of certain parameters (cost of production, selling price, profit/loss, cash flow, return on investment). This has been appropriately taken care in these findings.

### 9.1 Import volumes and market share:

Particulars	1999-00	2000-2001	2001-2002	POI (Jan,02 - Dec,02 )
<b>Imports (MT)</b>				
China PR	359	1069	1543	6362*
Other Countries	2894	2177	2622	2192*
Total Imports	3253	3246	4165	8554

Sales of dom industry	17286	17011	14921	12265
Other producers	3739	3920	4972	5966
Total Demand	24278	24177	24058	26785
<b>Share of imports</b>				
Share of China PR	11%	33%	37%	74%
Share of others	89%	67%	63%	26%
Total	100%	100%	100%	100%
<b>Share in Demand</b>				
China PR	1%	4%	6%	24%
Other countries	12%	9%	11%	8%
Domestic industry	71%	70%	62%	46%
Other Producers	15%	16%	21%	22%
Total	100%	100%	100%	100%

\* Figures include imports reported by DGCIS under Chapter 28 & transaction wise details by IBIS, Mumbai (for period Jan – March,02) and DGCIS (for period April – December,02) under Chapter 32.

The imports from various countries, their share in terms of imports and demand in India is given above. It has further been pointed out by the petitioner that the imports are being reported under other customs classifications also by DGCI&S. In support of the same they have provided information of the exports statistics claimed to be published by Chinese Government and transaction wise data from the Secondary Sources. The petitioner has also submitted details of imports statistics published by DGCI&S in respect of other products showing imports of the subject goods reflected in those details. The Authority also notes that the imports figures reported by the DGCI&S is about 30% lower than the imports details submitted by the cooperating exporters in this investigation. It has been submitted by the domestic industry that the imports of subject goods reported under chapter 28 by DGCI&S is incomplete. Further it was stated that the imports are reported under chapter heading 3206 (Mica Pigments) also. A transaction wise analysis of the imports reported under sub head 3206 (Mica Pigments) by DGCIS and IBIS , Mumbai was made. This analysis shows that the volumes of imports of the subject goods during period of investigation of Titanium Dioxide (anatase) to the tune of more than 6000 mt from China PR and more than 2000 Mt in respect of other countries. Total exports of the subject goods by responding exporters works out to 3087 MT during the period of investigation. Thus, it is evident that a number of actual exporters have not cooperated with the Authority.

#### **The Authority observes that: -**

- Imports from China have increased in absolute terms;
- Imports have increased in relation to production of the domestic industry in India;

- c. Imports have increased in relation to demand of the subject goods in India. At the same time, share of the domestic industry has declined.

It is thus evident that there has been a significant increase in dumped imports, both in absolute terms as also relative to production and consumption in India. Imports show a clear adverse volume effect. The adverse effect is significant and material.

With regard to the effect of the dumped imports on prices of the domestic industry, the Authority considered whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports was otherwise to depress prices to a significant degree or prevent price increases to a significant degree which otherwise would have occurred. For the purpose, the Authority compared the weighted average landed value of dumped imports from China with the weighted average net sales realisation of the domestic industry. The Authority calculated the landed value of imports by adding 1% landing charges and the applicable basic customs duty to the CIF import price. In determining the net sales realization of the domestic industry, the Authority excluded rebates, discounts/service charges and commissions offered by the domestic industry and the central excise duty paid. It was found that imports from China were significantly undercutting the prices of the domestic industry in the Indian market. The extent of price undercutting was separately determined for the responding exporters as also for non-cooperative exporters. A high percentage of undercutting was found for the responding exporter.

With regard to change in import volumes, it is clarified that detailed transaction wise information on imports was provided by the petitioner from Secondary Sources, which showed (a) very substantial imports of the product under consideration under Chapter 32 and (b) imports of Rutile grade were reported under classification meant for product under consideration. In view of this position, the Authority referred to the transaction wise import information made available to the DGCI&S and it was found that imports under Chapter 32 were in fact, far higher than what was claimed by the petitioner. In fact, it was found that the actual volume of exports made by the responding exporters was higher than the volumes claimed by the domestic industry. Authority, therefore, considers it appropriate to revise and correct the import volumes.

As regards allegation of not making available information filed by the domestic industry subsequent to the written submissions, the Authority notes that the domestic industry had provided non confidential version of its submissions, which were placed in the public file. In fact, even Dahua had filed substantial information after the written submissions.

As regards possible double accounting of the import volumes, it is clarified that data from different sources shown in the disclosure statement refers to different periods and imports under different chapter. There can not, therefore, be possibility of double accounting.

The Authority notes that while one of the interested parties had earlier alleged decline in demand, another interested party has now alleged substantial increase in demand and projected the same at the level of 22,500 (unquantified and unverifiable claim). However, the Authority notes that the maximum demand established during the period was 26785 MT, whereas the capacity created in the Country is 28100 MT.

## **9.2 Economic Parameters affecting domestic industry :**

The injury analysis is related to M/s TTPL, & M/s Kolmac which accounts for a major portion of Indian production and constitutes the domestic industry. Various parameters relating to the performance of the domestic industry are as under: -

### **1. Capacity, Production, Capacity Utilization and Sales**

Capacity, production, capacity utilisation and sales of the domestic industry shows as under:-

	<b>1999-2000</b>	<b>2000-2001</b>	<b>2001-2002</b>	<b>POI</b>
Capacity	28100	28100	28100	28100
Production	17511	16891	15774	12892
Capacity utilization	62%	60%	56%	46%
Sales volumes	17286	17011	14921	12265
Sales values (indexed)	100.00	102.37	88.79	70.38

### **The Authority observes that**

- a. Capacity of the domestic industry for the subject goods remained same over the injury period. However, production and capacity utilization significantly declined over the injury period;
- b. Sales volumes have declined significantly. At the same time, import volumes have increased;
- c. The domestic industry may lose further sales, as in spite of reducing prices, the imports are undercutting the prices of the domestic industry.

### **2. Factor affecting domestic prices**

(indexed)	1999-2000	2000-2001	2001-2002	POI
Net sales realisation	100.00	104.41	102.29	100.93
Cost of production	100.00	104.39	107.84	118.66
Optimum cost of production				*****

- a. The domestic industry is facing price undercutting. As a direct result, the domestic industry has been forced to reduce the prices. The price undercutting is in the range of 10% to 20%.
- b. The imports are depressing the prices of the domestic industry.
- c. The increase in unit cost of production was primarily due to decline in capacity utilisation and consequently increase in the incidence of overhead costs. However, it was found that the net sales realisation was below optimum cost of production. It is also noted that the decline in capacity utilisation is due to decline in sales volumes as a result of dumped imports in the market. Thus, the increase in unit cost of production is a result of dumped imports from China.
- d. The imports are resulting in price underselling in spite of reduction in the prices by the domestic industry;
- e. The landed value of the imports from the subject country is below the non-injurious price. The imports are thus resulting in price underselling in the market. The price underselling is in the range of 10% to 20%.

With regard to similar level of price undercutting and underselling, it is seen that the non injurious price of the domestic industry is comparatively closer to the net sales realisation. Though non injurious price and net sales realisation are close, injury to the domestic industry is established because the landed price of imports is well below both i.e. the net sales realisation and non injurious price of the domestic industry.

### 3. Employment & wages

Number of employees has declined over the years. The wages paid by the domestic industry have declined. However, in spite of decline in wages, the domestic industry was suffering adverse profitability.

### 4. Profitability

In order to analyse the profitability of the domestic industry from production and sales of the subject goods, the Authority examined the unit cost of production, selling price and profit/loss. The relevant details are as under:-

Indexed	1999-2000	2000-2001	2001-2002	POI
Unit Net sales realisation	100.00	104.41	102.29	100.93
Unit cost of production	100.00	104.39	107.84	118.66

Unit profit/loss	100.00	105.55	54.65	(62.25)
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Figures in bracket indicate financial loss

It is observed that the Domestic Industry has started incurring financial losses from a situation of profits. The decline in sales volumes directly affected the profitability of the domestic industry.

## 5. Inventories

In spite of reduction in production, the domestic industry is faced with increasing inventory levels. It would be that the average number of days production is in stock has increased significantly. In fact, at the time of spot verification, attention of the Authority was drawn to the fact that the domestic industry was finding it difficult to stock and maintain the rising inventories. The average level of inventories appeared unprecedented, as would be seen from the table below.

(Mt)

1999-2000	2000-2001	2001-2002	POI
1042	1143	1560	3132

## 6. Cash Flow

Whereas the company was having positive cash flow from production and sale of the subject goods, the cash flow became negative in the investigation period in view of financial losses being suffered by the domestic industry, as is evident from the table below with regard to information relating to cash profits:

Indexed	1999-2000	2000-2001	2001-2002	POI
Cash profits	100.00	101.16	55.97	(18.08)

(Figures in bracket indicates cash loss)

## 7. Productivity

Productivity of the domestic industry, when expressed in terms of production per employee and production per day deteriorated, given the sub-optimal level of production, in spite of reduction in the number of employees.

	1999-2000	2000-2001	2001-2002	POI
Production per day	48	46	43	35
Production per employee	21.73	21.58	22.41	19.03

## **8. Growth**

Even when the demand for the product has been growing and is positive, the growth of the company has been negative due to dumped imports, as is evident from decline in sales volume, increase in demand and decline in market share of domestic industry in consumption in India.

## **9. Market share**

Share of imports from China, other countries, domestic industry and other Indian Producers in consumption in India have been as under:-

	<b>1999-2000</b>	<b>2000-2001</b>	<b>2001-2002</b>	<b>POI</b>
<b>Share in Demand</b>				
China PR	1%	4%	6%	24%
Other countries	12%	9%	11%	8%
Domestic industry	71%	70%	62%	46%
Other Producers	15%	16%	21%	22%
Total	100%	100%	100%	100%

It is observed from the above that

- a. Share of imports from China in consumption in India increased significantly.
- b. Share of domestic industry in consumption declined.
- c. Share of other Indian Producer increased. However, it was found from the published financial results of the other Indian Producer (M/s. Kilburn Chemicals) that this company was also suffering significant price undercutting and its profitability declined over the period.

## **10. Return on Investments**

Significant decline in profits of the domestic industry directly resulted in decline in return on investments. Further, while the ROI was earlier positive, the same became negative over the injury period, as would be seen from the table below.

<b>Indexed</b>	<b>1999-2000</b>	<b>2000-2001</b>	<b>2001-2002</b>	<b>POI</b>
ROI	100.00	95.73	40.91	(36.07)

## **11. Ability to raise fresh Investment**

The domestic industry is finding it difficult to plan fresh investments given that the performance has materially deteriorated.

9.3 Argument has been raised by interested parties that injury to the domestic industry is due to the high incidence of sales tax being borne by the M/s TTPL. It has been further argued that performance of other Indian Producers has not deteriorated. In this regard, the Authority notes that: -

- i. The non-injurious price is determined by the Authority at ex-factory level. Such being the case, any impact of post selling expenses, beyond ex-factory and taxes and duties does not get attributed to dumped imports.
- ii. Performance of other Indian Producers have also deteriorated. M/s Kolmac has since provided costing information as also injury information, which was verified by the Authority. It is seen that the performance of Kolmac also has materially deteriorated. Even though Kilburn Chemicals has not cooperated with the Authority in the present investigations, it appears from the annual report and quarterly reports that this company must also be suffering significant price undercutting and its profitability has also got materially deteriorated.
- iii. The Authority also notes that the argument can be relevant either for injury or causal link. With regard to impact of sales tax on injury to the domestic industry, the Authority notes that Article 3 to the ADA and Annexure II to the Rules with regard to injury to the domestic industry requires an examination of the domestic industry in terms of a number of parameters. Reasons for improvement or decline in these parameters is not required to be examined for the purpose of injury examination. With regard to impact of sales tax from causal link point of view, the Authority notes that (a) the Authority has done complete injury analysis, including assessment of non injurious price, after excluding sales tax, (b) other Indian Producers also have suffered deterioration in profitability. While verified information of Kolmac clearly shows that the performance of the company also significantly deteriorated, annual reports and quarterly results of Kilburn also show significant deterioration. It is also pointed out that the sales tax being paid by the company was 8% in the POI and not 30% as alleged by some party. 30% was the general rate of sales tax, while the company was granted much lower concessional sales tax rate. As regards ability of the domestic industry to sell quickly with the removal of sales tax, the Authority notes that injury to the domestic industry was much higher than what the Authority has assessed. The ADD was also imposed around the same time. Therefore, it is not relevant that the domestic industry could sell with the imposition of interim ADD and/or removal of sales tax.

## 10.0 CAUSAL LINK

1. Volume and value of imports from other countries are either de-minimus or the prices are significantly higher, as is seen from the information relating to imports from other countries.

**2. Demand for the product is on the increase, as is seen from the table below.**

1999-2000 24278

2000-2001 24177

2001-2002 24058

2002-2003 26785

The petitioner has claimed that the imports of the subject goods as reported in the DGCI&S for the POI does not reflect complete imports details. The petitioner has claimed that the imports of subject goods is being reported in classification 3206. In support of this claim the petitioner has submitted details of imports as per secondary sources, which shows substantial imports under 3206. Authority examined detailed transaction wise DGCI&S import information available for 3206 and found that a very significant volume of imports (5735 MT) have been reported under 3206 alone. In fact, exports made by the responding exporters are far higher than the imports reported by the DGCI&S. Possible decline in the demand has, therefore, not contributed to any injury to the domestic industry.

Factors such as changes in pattern of consumption trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance does not appear to be a cause of injury to the domestic industry.

**4. Material injury has been caused to domestic industry from dumped imports, as would be evident from the following:-**

- a. Landed price of imports from China was lower than the net sales realisation of the domestic industry, forcing the domestic industry to reduce the prices. As a direct consequence, the domestic industry has been forced to reduced its selling price and consequently a situation of financial losses and cash losses during the period of investigation from a situation of profits and positive cash flow in the preceding years.
- b. Dumped imports from China resulted in decline in the sales volumes of the domestic industry. As a direct consequence, while the inventories with the domestic industry increased, the production, capacity utilization and productivity deteriorated.
- c. While the volume of imports and demand of the product increased, the domestic industry registered a negative growth.

- d. Increase in volume of dumped imports from China resulted in increase in the market share of China. As a direct consequence, the share of domestic industry declined.
- e. Decline in the selling price of the domestic industry resulted in deteriorating return on investment.
- f. Performance of the domestic industry has deteriorated and material injury has been caused due to dumped imports.

The above factors establish that injury to the domestic industry has been caused due to dumped imports.

## **J. INDIAN INDUSTRY'S INTEREST:**

11.1 The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

11.2 The Authority recognises that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on 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, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods.

11.3 The Authority notes that the imposition of anti dumping measures would not restrict imports from 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.

## **K. CONCLUSIONS:**

**12. The Authority has, after considering the foregoing, come to the conclusion that:**

- i. Titanium Dioxide have been exported to India from China PR below its normal value;
- ii. The Indian industry has suffered material injury ;
- iii. The injury has been caused cumulatively by the imports from the subject country.

13. The Authority considers it necessary to impose an anti dumping duty on all imports of Titanium Dioxide from subject country in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority recommends the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports has been compared with the weighted average non-injurious price of the Petitioner Companies determined for the period of investigation.

14. Accordingly, the Authority recommends that definitive anti dumping duties as set out below be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Titanium Dioxide Anatase grade reported under Chapter 28 or any other Chapter of the Customs Tariff Act, originating in or exported from subject countries pending final determination subject to observations made in para above. Since imports of the product have been reported and allowed to be imported under Chapter 32, Anti Dumping Duty shall be applicable in case the goods are reported in other classification also, so long as the imported product is "Titanium Dioxide Anatase grade". The anti dumping duty shall be the difference between the amount mentioned in column (9) table below and the landed value of imports per Mt to be imposed on all imports of subject goods falling under chapter 28 and chapter 32 of the Customs Tariff, originating in or exported from subject country:-

15.											
Sl No .	Custom s Sub heading	Description	Specificatio n	Country of origin	Country of export	Produce r	Exporter	Amount	Unit of measuremen t	Currenc y	
1	28 23 or 32 06	Titanium Dioxide	Anatase	China PR	Any Country	M/s Guangxi Dahua Chemical Factory, China PR	Any exporter	1227.00	Per MT	US \$	
2	28 23 or 32 06	Titanium Dioxide	Anatase	China PR	Any Country	M/sCang Wu Shun Feng Titanium Dioxide Co.Ltd., China PR	M/s.ZheJiang Provincial Light & Textile Industry, Haungzhou, China PR	1227.00	Per MT	US \$	
3	28 23 or 32 06	Titanium Dioxide	Anatase	Any Country except China PR	China PR	Any producer except M/s. Guangzi Dahua Chemical Factory, China PR M/s. Cang Wu Shun Feng Titanium	Any exporter	1227.00	Per MT	US \$	

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

17. Subject to the above, the Authority confirms the Preliminary Findings dated 6th June, 2003.

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

19. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, supra.

**(ABHIJIT SENGUPTA)**  
DESIGNATED AUTHORITY