

**MINISTRY OF COMMERCE & INDUSTRY**  
**(Department of Commerce)**  
**(DIRECTORATE GENERAL OF ANTI DUMPING &**  
**ALLIED DUTIES)**

New Delhi, the 6th June, 2003

**PRELIMINARY FINDINGS NOTIFICATION**

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

**No 14/51/2002 DGAD** - The Government of India 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. 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 the following exporters/ producers, in accordance with the Rule 6(4):
  - M/s. Maanshan Goldstar Chemical (Group), China.
  - M/s. Langzi Gandong Chemical Co. Ltd., China.
  - M/s. Jiaozuo City Chemical General Plant, China
  - M/s. Xiangfan City Inorganic Chemical General Plant, China
  - M/s. Zhuzhou Chemical Group Co. Ltd., China.
  - M/s. Shaogum City Chemical Paint, China
  - M/s. Pinggui Minaral Bureau, China.
  - M/s. Basis City Huahong Titanium White Plant, China,
  - M/s. Titanium White Plant Pinggui Feidiie Crop, China,
  - M/s. Titanium Industry Co of Panzhihuo Iron & Steel Group Corp., China
  - M/s. Chongqing Xinhuo Chemical Energy Factor, China,
  - M/s. Titanium White Branch of Shanghai Coking Co. Ltd., 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 the following importers/users of the subject goods in accordance with Rule 6(4):
  - M/s. Chemi Care, Mumbai,
  - M/s. Chemi Enterprises/ Mulatic & Co., Mumbai,
  - M/s. Crystal India, Mumbai,
  - M/s. G. C. International, Mumbai.
  - M/s. Popawala & Co, Mumbai,
  - M/s. Pure Chemical Co. Pon Pure Chem (P) Ltd., Chennai
  - M/s. Kantilal Sanghvi & Co., Mumbai
  - M/s. KPL International Limited, New Delhi.
  - M/s. Associated Industries, Mumbai.

- M/s. Amrit Chem, Mumbai.
- M/s. Chitaal Chemical Ltd., Mumbai,
- M/s. Chemitic Enterprises, Mumbai,
- M/s. Goodless Nerolack Paints, Mumbai.
- M/s. Snowcem India Ltd., Mumbai.

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.

Response/ information to the questionnaire/notification was filed by the following exporters/ producers:-

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 Co Ltd, China;

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

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. \*\*\* in this notification represents information furnished by the interested party on confidential basis and so considered by the Authority under the Rules;

xii. 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 Thiruvananthapuram in Kerala;

xiii. 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.

xiv. Investigation was carried out for the period starting from 1st January, 2002 to 31st December 2002 i.e. the period of investigation (POI).

## **B. VIEWS OF THE PETITIONER, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES.**

### **1. PETITIONER'S VIEWS**

The petitioners have made the following major points in their submissions:

- a. Titanium Dioxide is being dumped by the producers/ exporters from People's Republic of China;
- b. The producers and exporters from subject country are dumping the subject goods in the Indian market for quite some time.
- c. The material is being shipped directly from subject country and is also being transshipped from other countries.
- d. Titanium Dioxide are classified under Custom Sub-heading no. 28.23.00 and 28.23.00.01 of Schedule I of the Customs Tariff Act, 1975. The imports of the subject goods are required to be reported in terms of "kgs".
- e. Titanium Dioxide can be in Anatase form or Rutile form.
- f. Import information has been collected from DGCI&S.
- g. The Anti Dumping Rules clearly give various methods for determination of normal values in case of a non-market economy countries.

The Rules were further amended on 31st May, 2001 with regard to determination of normal value in case of non-market economies and para 7 has been modified and para 8 has been inserted in Annexure I to the Rules in this regard.

- h. The Government of India has further amended para 8 of the Rules on 4th Jan, 2002.
- i. In the instant case, China is a non-market economy. China has been treated as non-market economy by European Commission and United States of America since past three years. European Union and United States of America are members of World Trade Organization. In India also, the Designated Authority has treated China as non-market economy.
- j. With regard to treatment of China as non-market economy by other WTO member's countries, USITC in a number of investigations has treated China as a non-market economy.
- k. Clearly, China is a "non-market economy" country. Determination of normal value for this country is to be done in accordance to the rules relating to non-market economies.
- l. According to these Rules, the normal value in non-market economy countries can be determined on the basis of the following:

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

- a. China is a non-market economy country. The normal value in China can be determined on any of the above mentioned basis. The normal value in China can thus be determined on the basis of estimates of cost of production in India including selling, general & administrative expenses and profit. The normal value has been determined accordingly.
- b. The petitioner has determined normal value based on constructed cost of production of the petitioner, including SGA and reasonable profit margin in accordance to the Rules.
- c. The information published by DGCI&S has been relied upon for determination of normal value and value of the imports of subject goods in India.
- d. The export price has been claimed on the basis of the data compiled by the Directorate General of Commercial Intelligence & Statistics, Calcutta. Adjustments have been claimed on account of:
  - i. Landing Charges,
  - ii. Ocean Freight,
  - iii. Marine Insurance,
  - iv. Inland Transportation in the country of export,
  - v. Port handling and port charges.

## 2. EXPORTERS' VIEWS

### 1. 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 has been furnished information relating to 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. The exporter has claimed for market economy status

- a. M/s Dahua in their submissions has claimed that the company is operating on a market economy principles. They have argued as under:
  - i. A Chinese State –Enterprise is akin to a Public Sector Undertaking in India

- ii. Regulation for Transformation of Operational Mechanism of State owned Industrial Enterprises;
- iii. Accounting Law of the People's Republic of China and the Accounting Standards for Business Enterprises;
- iv. Chinese Accounting Standards;
- v. Bankruptcy Laws
- vi. Exchange Rate Conversion;

They have submitted that Guanzxi Dahua Chemical Factory satisfies each of the four conditions laid down under paragraph 8(3) of the Anti dumping Rule s 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.

**b) Claim For Market Economic Status By M/S Guangxi Dahua Chemical Factory**

As a producer and exporter of the subject product, Guangxi Dahua Chemical Factory (hereinafter "Dahua") is fully cooperating with the Designated Authority. It submits that market conditions prevail for Dahua and normal value shall be based on its own prices and costs.

**1. Legal Provisions Concerned**

Petitioner in its petition has quoted the relevant provisions in Indian Anti-Dumping Regulations with respect to the so-called "non-market economy country". Relevant provisions in paragraph 15 of the Protocol on China's Accession to the WTO, which provides that:

"[a] 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 of 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...."

Based on the above provisions in both Indian Anti-Dumping Regulations and the WTO Protocol on China's Accession, Dahua believes that its manufacture, production and sales of the subject product are based on commercial considerations and entirely reflect the market signal.

## **2. Market Conditions Prevailing in Dahua**

### **1. General**

Dahua is a state-owned factory, or in other words under the Chinese law, is a factory owned by all the people, *i.e.*, the state, as provided under the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People of 13 April 1988 (the "Industrial Enterprises Law") and the Regulation for Transformation of Operational Mechanism of State-Owned Industrial Enterprises (the "Regulations for Transformation"). The copy of its business license is furnished as evidence.

Under the laws, Dahua has full autonomy in management, takes full responsibility for its profits and losses. In fact, Dahua has the right to make its own decisions on pricing, exports, domestic sales, operations, personnel, investments and other operating issues.

Dahua has a simple organisational structure. At the top is the General Meeting consisting of 140 representatives selected from all staff members. Under the General Meeting is the managerial team led by the General Manager, which oversees all operational departments of the factory. The General Meeting is a supreme body in the factory, with the authority to approve business plans and appoint the General Manager through the election. It has a meeting twice a year to review and approve business reports, plans and other important matters presented by the General Manager. An example of its minutes of session in 1997 is furnished, as in this session the General Meeting, among others, appointed the present General Manager. The General Manager and his deputies run daily business, overseeing work of the various operational departments.

## 2.2 Decision-Making on Costs and Prices

### 2.2.1 Costs

The raw materials for the subject products are ilmenite, sulphuric acid and coal gas. Dahua purchases these materials on the spot market. It has established business relationships with the suppliers, and concluded some long term contracts to purchase the materials. Once it determines its needs, it will contact and negotiate with these suppliers to buy the materials on terms agreed. An example of the contract purchasing ilmenite from Kuming Qiangsheng Mining Co., Ltd. is furnished.

Dahua has full autonomy in setting price of all the products it manufactured. With respect to domestic sales, it usually negotiates price with customers by phone and follows by making sales contracts. In its response to the investigation questionnaire, Dahua provides transaction documents of 10 domestic sales and 10 exports to India, which includes the sales contracts. As for exports to India, Dahua has its export department in Nanning, the capital of Guangxi province. All exports are handled by a sales team that has full authority in setting export price.

The production, R&D as well as investment in Dahua are fully based on commercial consideration. Given the market change of the subject product at home and abroad, the managerial team decided in July 2002 to build up a new production line.

### 2.2.2 Labor

Dahua organizes its labor force in accordance with its internal Code of Conduct, which is designed to enhance worker performance. In this regard, it rewards the performance of its workers through various means such as wage increases, promotions to higher position etc. The Code of Conduct also includes a series of penalties that range from warning, demerit, downgrade of position, reduction of wages, up to dismissal. These correspond to the internal rules or office manuals found in most western companies.

Dahua recruits employees through two channels. One channel is by way of announcement of vacancies through notices in the media. Another one is to interview people recommended by employment agencies and graduates from various colleges. After interviewing the pre-selected job-seekers, the General Office Department, responsible for personnel matters, reports to the General Manager for approval. Once accepted, new employees sign employment contracts with Dahua with a trial period of 1-3 months.

To hire employees, any departments which desire to hire workers first report to the General Office Department. The latter then makes an overall coordination among all departments concerned and reports to the General Manager. With the approval of the General Manager, the General Office Department sends recruitment notices to the public and organizes interviews. Decisions selecting job seekers are made merely by their merits.

To dismiss an employee, the departments concerned must first justify their proposal to fire the employee and report to the General Office Department. The latter then submits its proposal to the General Manager. It is the General Manager who makes the final decision. Under the Code of Conduct, an employee may be dismissed if he or she commits wrongdoings such as seriously breaching the Code of Conduct, continuous absence from work without any notice or justification, etc.

### **2.3 Financial Situation**

As a state-owned enterprise, the local government merely owns the assets of Dahua. The management of the assets is the fully responsibility of Dahua managerial team. Like any other Chinese companies, Dahua's financial books are governed by the Chinese accounting laws. Books of account must be accurate, complete, prepared up to date. Dahua uses the accrual method to maintain its books of account. Income earned and expenses incurred during the period are accounted for as income and expenses of the period, regardless of whether the amount has been received or paid during the period. Dahua has adopted double entry accounting. It obtains the original supporting document or prepares a primary voucher whenever there is a business transaction. All original documents and primary vouchers must be true, complete and accurate, and be obtained or prepared through proper procedures. The original documents and primary vouchers shall be used as accounting vouchers only after they have been verified.

Like any other Chinese enterprises, Dahua accounts fixed assets at historical cost as obtained. Depreciation on fixed assets is accounted on the basis of the original cost, estimated residual value, estimated useful life and working capacity, according to the straight line method or the working capacity (or output) method. Dahua employs the straight-line method to calculate depreciation and amortisation, which means depreciation of assets is evenly allocated over the service life of the assets. Dahua has not been engaging in any barter trade. It does not have payment via compensation of debts.

Like any other companies, Dahua overcomes the shortage of cash flow by applying for commercial loans from banks. The loans usually are rolled over on their maturity dates. Dahua does not benefit from any special loan or subsidy schemes.

## 2.4 Application of Bankruptcy and Property Laws

Like any other companies in China, Dahua is governed by the Bankruptcy Law. Under the Bankruptcy Law, an enterprise shall declare bankruptcy in case it is unable to pay its debts when due, and the court organizes the formation of a liquidation committee responsible for liquidation. After the completion of liquidation, the liquidation committee drafts a liquidation report and submits the report to the owner for confirmation and to the Commercial Registration Authority in order to obtain cancellation of the registration of the enterprise and publicly announce its winding-up.

The property law applying to Dahua is mainly "the Industrial Enterprises Law". Article 2 of the law clearly provides that property of the state-owned industrial enterprise is owned by the whole people, the state entrusts the enterprise to manage its operation by separating ownership of the enterprise from the management of the enterprise's operation.

## 2.5 Exchange Rate Conversions

Foreign exchange system in China has undergone significant change since 1979. China is a member of the IMF. Significant moves have been taken to reform, rationalize and liberalize the foreign exchange market. The practice of multiple exchange rates in swap centers has been abolished. China has already unified its foreign exchange market and removed many of the restrictions on the use of foreign exchange.

China's foreign exchange reform carried out since 1979 has reduced administrative intervention and increased the role of market forces. From 1979, a foreign exchange retention system was applied in China, although foreign exchange swap was gradually developing. In early 1994, official RMB exchange rates were unified with the market rates. The banking exchange system was adopted and a nationwide unified inter-bank foreign exchange market was established, with conditional convertibility of the RMB on current accounts. On 1 December 1996, China has formally accepted the obligations of Article VIII of the IMF's Articles of Agreement, removing exchange restrictions on current account transactions. Accordingly, since then RMB has been fully convertible on current accounts. It is confirmed by the IMF in its Staff Report on Article IV Consultations with China in 2000 that China has no existing foreign exchange restrictions for current account transactions.

The State Administration of Foreign Exchange ("SAFE") is under the auspices of the People's Bank of China ("PBC"), China's central bank. SAFE is the administrative organ empowered to regulate foreign exchange. Its main functions are to monitor and

advise on balance-of-payment and foreign exchange matters. SAFE is also required to draft appropriate regulations and monitor compliance.

Under the Regulations on PRC Foreign Exchange System and Provisions on Settlements, Sales and Payments of Foreign Exchanges, companies in China can purchase foreign exchange at market exchange rates from banks or debit their foreign exchange accounts directly to make payments of foreign exchanges. Foreign exchanges for personal use by individuals can be purchased directly from the banks upon presentation of valid documents justifying the use of the foreign exchange.

Regarding the exchange rate regime, China since the unification of exchange rates on 1 January 1994 has adopted a single and managed floating exchange rate regime based on supply and demand. PBC publishes the reference rates of RMB against the US dollar, the HK dollar and Japanese yen based on the weighted average prices of foreign exchange transactions at the inter-bank foreign exchange market during the previous day's trading. The buying and selling rates of RMB against the US dollar on the inter-bank foreign exchange market can fluctuate within 0.3% of the reference rate. For the HK dollar and Japanese yen the permitted range is 1%. Banks can deal with their clients at an agreed rate. The exchange rates for other foreign currencies are based on the rates of RMB against the US dollar and cross-exchange rates of other foreign currency on the international market.

In conclusion, Dahua has been engaging in its business based on commercial considerations. It submits that in the current anti-dumping investigation its prices and cost shall be the base for determination of the normal value. It respectfully request the Designated Authority to consider its claim. Meanwhile, in addition to the evidence provided the aforesaid attachments, all the other files and documents are available in the factory for on-spot verification.

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

The exporter has furnished response to exporters questionnaire. The information furnished is grossly deficient and inadequate. It is found that the response is not strictly in the form and manner prescribed by the Authority. There is no claim that the company involved can be treated as market economy entity.

## **2. M/s Guangxi Xing Mei Xiang Titanium Mafg Co LtdChina, (GXMLX) , M/s Guangxi Cang Wu Titanium Manufacturing co. Ltd China. (GCWT) & M/s ZHEJIANG Provincial Light & Textile Industry, China (ZPLT)**

The above exporters from China have attempted to furnish the response to exporters questionnaire. The information furnished is grossly deficient and inadequate. It is

found that the response is not strictly in the form and manner prescribed by the Authority. Annual reports of the three companies for the past two years and investigation period have also not been provided. It is also noted that no soft copy of the response has been filed. There is no claim that the three companies involved can be treated as market economy entities.

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

The authorised 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 with the Authority.

### **4. 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.

## **3. IMPORTERS VIEWS**

3.1 M/s Snowcem India Ltd. Mumbai : They have stated they have not imported Titanium Dioxide from China during the period of investigation. Hence, no response.

3.2 M/sBhimrajka Impex LTD, Mumbai: They have stated that:

- i. Any imposition of anti dumping duty on the subject goods would be harmful to the interest of the consuming industries;
- ii. Regular imports are going on at prices varying form US \$ 825 –1100 per ton. The quality and brand of the product determines the price.
- iii. There are imports from other countries also at similar price levels.
- iv. The claim of TTPL , that they have a market share of 57% is to be verified before acceptance,
- v. But for the monopolistic situation of short supply , high prices , the unit would have been closed down long back as other public sector units;
- vi. There is no injury caused to domestic industry;
- vii. No anti dumping duty be imposed on subject goods;

3.3 M/s Chemi Enterprise , Mumbai:

The imports have furnished the information in the prescribed format. They have requested that Authority may consider the subject matter in light of the information submitted and be please to arrive at a fair decision in the interest of justice to all. Further they have stated that :

- i. The Titanium Dioxide Assn comprises of two major producers of Titanium Dioxide Rutile grade and Anatase grade. TTPL is a major producer and M/s KolmaK and Kilburn are small producers.
- ii. TTPL production is not sufficient to meet full local demand
- iii. TTPL became uncompetitive due to double taxation with respect to sales tax;
- iv. As per news item, that the duty free imports of this item has been made by EOU's and the same might have found its way into the domestic market;

### 3.4. M/s Goodlass Nerolac Paints, Mumbai:

They have responded to the Importers Questionnaire. Information in Annexure 1 for imports to India, Annexure 2 for imports to India during period of investigation and previous years, As regards to information in Annexure 6 regarding Report on inventory is not complete as the domestic purchases made by the company has not been included which is used for own consumption.

### 3.5 M/s.Berger Paints

They have responded to the Importers Questionnaire. Information in Annexure 1 for imports to India, Annexure 2 for imports to India during period of investigation and previous years, As regards to information in Annexure 5 concerning utilisation of imports of the product under consideration has not been furnished and they have stated that 'material imported has been brought for own consumption'. The information furnished in Annexure 6 regarding Report on inventory does not reconcile with imports made by the company in to India.

Authority notes that selective information has been furnished by the importer/user and the same has not been considered.

### 3.6 Chemical & Alkali Merchant's Association

They have stated that:

- i. It is detrimental to the interest of Chemical Trade if monopoly is allowed to be retained by a few by trying to thwart legitimate import ;
- ii. To examine the bonafides of the so called Titanium Dioxide Association when there is mononoly one producer in Kerala State;

iii. M/s Kilburn Chemicals , Tuticorin, is a small unit in Tamil Nadu;

### 3.7 Titanium Mazdoor Sangh, Thiruvananthapuram:

They have stated that due to marketing crisis faced by Travancore Titanium Products limited, the Association has urged to impose Transitional Product Safeguard duty on import from Peoples Republic of China under Section 8 C for Titanium Dioxide (Anatase grade);

As the issues raised above pertains to safeguard the representation dated 20.2.2003 has been forwarded to DG Safeguards for appropriate action at their end.

## **D. EXAMINATION AND FINDINGS BY AUTHORITY**

4 The foregoing submissions made by the petitioner, exporters and importers, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

## **E. PRODUCT UNDER CONSIDERATION**

5. 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.

b) The production process is explained by the following reactions: -

1.  $FeO, Fe_2O_3, TiO_2 + H_2 \rightarrow FeSO_4 + Fe_2(SO_4)_3 + TiOSO_4 + 5H_2O$
2.  $Fe(\text{Scrap}) + H_2SO_4 \rightarrow FeSO_4 + 2H$
3.  $Fe_2(SO_4)_3 + 2H \rightarrow FeSO_4 + H_2SO_4$
4.  $TiOSO_4 + 2H_2O \rightarrow TiO(OH)_2 + H_2SO_4$
5.  $TiO(OH)_2 \rightarrow TiO_2(\text{Cryst}) + H_2O$

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.

c) 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: -

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

d) 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.

## **F. DOMESTIC INDUSTRY**

6. There are three producers of Titanium Dioxide Anatase Grade in the Country. There is one more 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 alongwith relevant injury information. Production of petitioner company, namely, Travancore Titanium Products accounts for more than 50% of Indian Production.

The petition, therefore, satisfies the criteria laid down under Rule 5(1), 5(3) and explanation to Rule 5(3). The petitioner satisfies the standing of "Domestic Industry" within the meaning of the Rules.

## **G. LIKE ARTICLE**

7. Petitioner 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.

Titanium Dioxide produced by the petitioner company is considered as a like article to the goods imported from China in accordance with the Anti-dumping Rules.

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.

## **H. DUMPING**

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 -

- iii. 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
- iv. 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 transshipped 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 normal value and ex-factory export price determination is illustrated below.

#### **8.1 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 has been furnished in information relating to 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.

##### Normal Value

M/s Dahua in their submissions has claimed that the company is operating on a market economy principles. They have argued as under:

- a. A Chinese State –Enterprise is akin to a Public Sector Undertaking in India
- b. Regulation for Transformation of Operational Mechanism of State owned Industrial Enterprises;
- c. Accounting Law of the People's Republic of China and the Accounting Standards for Business Enterprises;
- d. Chinese Accounting Standards;

- e. Bankruptcy Laws
- f. Exchange Rate Conversion;

They have submitted that Guanzxi Dahua Chemical Factory satisfies each of the four conditions laid down under paragraph 8(3) of the Anti dumping Rule s 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.

8.1.1 Authority notes that the extracts in English version of the Regulations furnished, Authority notes that the few lines are missing or illegible in each page of the text furnished due to error in photo copying.

8.1.2 The exporter having used the Chapters and Articles to strengthen their arguments to treat M/s Dahua as market economy company Authority notes following :

**LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON INDUSTRIAL ENTERPRISES OWNED BY PEOPLE -1988**

### **CHAPTER -III**

Article 23 : An enterprise shall have the right to request the adjustment of mandatory plans regarding goods and materials subject to planned supply or product sales arrangements.

An enterprise shall have the right to accept or reject any production assignment issued by any department or unit, except for those within mandatory plans.

### **CHAPTER VI :RELATIONS BETWEEN AN ENTERPRISE AND THEGOVERNMENT**

Article 55 The government or the government department in charge shall, in accordance with State Council regulations, uniformly issue mandatory plans to enterprises, ensure that enterprises have access to goods and materials subject to planned supply in amounts required for the fulfillment of the mandatory plans, examine and approve plans submitted by enterprises regarding matters such as capital construction and major technical transformation, appoint or remove from office or reward or penalise leading administrative cadres at the level of deputy factory director in line with the proposals of factory directors and assess and train leading administrative cadres at the level of factory director.

## **CHAPTER VIII SUPPLIMENTARY PRINCIPLES**

Article 65 : The principles of this Law shall apply to enterprises owned by the whole people which engage in transport, post and telecommunications, geological prospecting, construction and installation, commerce, foreign trade, goods and materials, agriculture, forestry and irrigation.

### **REGULATION FOR TRANSPROAMTION OF OPERATIONAL MECHANISM OF STATE-OWNED INDUSTRIAL ENTERPRISES( JULY23,1992)**

Article9: An enterprise shall have the right to set price on products and labor.

An enterprise shall make independent price decisions on all industrial consumer products for daily use other than few basic products which are regulated by the price department of the State Council and provincial government.

Article 10 An enterprise shall have the rights to sell its products.

An enterprise shall independently sell the products it produces outside the mandatory plan to any parts of the nation; to which, no department or local government shall adopt any prohibiting, restrictive or discriminating measures.

An enterprise will sell its products within the scope of directive plan. If a purchaser or government-selected units fails to perform a contract, the enterprise shall have the right to stop production and send a complaint to the government or the relevant governmental department for settlement, or file a lawsuit at People's Court in accordance with the relevant contract regulations for breach of contract. An enterprise may sell the products that have already been produced. The enterprise may sell the surplus production by itself after fulfilling the production under mandatory plan.

Article 28 Any policy loss of an enterprise due to price-control resulting from public policy and interest or production under mandatory plan shall be resolved by the price department through appropriate adjusting or decentralizing the price, upon the review and approval by the finance department, an enterprise will be compensated accordingly. After the above measures finance department, an enterprise will be compensated accordingly. After the above measures being taken, an enterprise still has losses, such losses shall be treated as operational losses.

Article 32 An enterprise whose leading products are inconsistent with the State industrial policy, or unmarketable and kept too long in stock, shall switch to other production. An enterprise may switch to other production on its own initiative

according to the market survey and its own conditions in order to achieve better economic results.

## **CHAPTER V The Relationship Between Enterprise and Government:**

Article 40: The Government, pursuant to the principle of separating responsibilities between the government and the enterprises, will coordinate, supervise, control enterprises by law, and provide services to them.

Article 41 : The assets of an enterprise are owned by the whole people, which is state-owned. The State Council exercises the power over the ownership of an enterprise's property on behalf of the State.

The Authority notes that para 7 of Annexure 1 of Anti Dumping Rules, *inter alia*, provides that:

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

8.1.3 Further para 8 of Annexure 1 of Rules supra (as amended) provides that:

"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)

1. 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 years 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).

2. The designated authority shall consider in each case the following criteria as to whether:
  - a. the decision of concerned firm 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 off, 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 of the principles set out in paragraph 7 and in this paragraph."

8.1.4 The Authority notes that the producer/exporters from China have claimed market economy treatment on the ground as stated above. The Authority, however, finds that sufficient evidence and information on the basis of the criteria specified in sub-para (3) of paragraph 8 has not been furnished. The Authority finds that the producer/exporters have furnished some documents regarding registration, constitution, purchase invoices, audit & account law of PR China. However, these documents fall short of the requirements under sub-para (3)(a) i.e. the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values. Mere submission of some of the purchase invoices, registration certificates etc. is not sufficient evidence to establish that the producer/exporters deserve Market Economy Treatment within the meaning of para 8(3)(a) of Annexure-I of the Rules. In order to meet the criteria laid down under sub-para (3), the Authority is of the view that the producer/exporter should have furnished the following inter-alia:

- i. How the raw materials and other relevant inputs for manufacturing the product concerned are procured (short or long term contracts, spot market, number of suppliers for the various raw materials, purchased locally or abroad etc.).
- ii. For each item of raw material, information about the name and address of the supplier. Whether the supplier is a private person, a company, the State or a local/regional authority.
  - If it is a private person, whether this person has Chinese nationality or any other nationality;
  - If it is a company, whether it is a Chinese company, a foreign-owned company or a joint venture with a foreign-owned company;
  - If it is a Chinese company, whether it is a privately owned company, a State-owned company or a company owned by local/regional authorities. If it is a company part-owned by the State or local/regional authorities, specify to what extent State or local/regional authorities are involved;
  - If it is a local/regional authority, details to be given.
- i. For each item of utility i.e. coal, electricity, water and oil, the names/addresses of the suppliers may be given. Whether these utilities are charged at normal rates or whether any special or subsidized rate is charged. What are the rates charged during the POI for each of the utility.
- ii. Whether there are any restrictions or conditions, either direct or indirect, on imports of raw materials used by the producer. If so, these restrictions or conditions may be described.
- iii. It may be described how labour is organized for production purposes. How many skilled workers, unskilled workers, manager's etc. are employed? What is the average wage paid to each of these categories in the POI?
- iv. How company employees are remunerated (i.e. indicating in detail all elements of remuneration including salary, overtime pay, company car, holiday allowance etc.). What is the frequency of the remuneration? Which legal entity is the final payer? Do the employees of the company or their families benefit from other facilities such as housing, medical care, pension education etc.? It may be specified who pays for these facilities. If the company employs foreign staff, and if so to mention separately where the final payer is located.
- v. Whether any local/regional authority or State is involved in setting prices/quantities. Provide a copy of the documents (together with an English translation) in which those involvements are set out and indicate the relevant provisions.
- vi. Which accounting documentation has to be registered for official purposes each year? Which authorities are involved in the official registration of these documents?

- vii. The methods of depreciation and amortisation used for the main fixed and intangible assets needs to be explained. The acquisition value and the current book value may be specified. It may be explained in each case how the asset was obtained (e.g. bought on the open market, transferred to the company by a shareholder, given for free or at a discount by the State or a third company). If the valuation of the above-mentioned assets has been changed during the last 10 years it may be explained on what basis and to give the reasons for the change in valuation. The impact on the current book value may also be given.
- viii. List of all facilities used for the production and/or commercial purposes that are not owned by the company (land, buildings and machines). The contracts for lease or rent to be furnished.
- ix. A list of current loans held by the company as at 31st December, 2002 may be provided giving details of the amounts, repayment installments and interest rates. It may be explained whether the company benefits from special loan or subsidy schemes (e.g. preferential interest rates and extended payback periods, subsidized energy supply etc).
- x. It may be explained how foreign exchange rate(s) used for the purchase of inputs, conversion of the proceeds of export sales and repatriation of profits are set? Is there only one rate, which can be used? Explain if there are any limits applicable to the company for the use/conversion of foreign currencies. If the company has a foreign exchange account, the approval of the application (together with an English translation) by the relevant authority may be submitted.
- xi. Has the company been involved in barter-trade or counter-trade at any time in the last five years involving the exchange of goods or commodities for (foreign) equipment, services or commodities? Provide details and explain the accounting methods used.
- xii. Explain whether the company has been involved in compensation trade (also known as product buy-back) at any time in the past five years whereby a (foreign) company provides machinery and equipment for which it receives payment-in-kind, usually in the form of goods produced. Explain if such payments were structured as loans or as installment sales. Explain the accounting methods used.
- xiii. The profit distribution policy of the company for the last three years may be specified.

8.15 The Authority is, therefore, 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.

8.16 Authority notes that the exporter has furnished evidence in support of claims for Market Economy Status. The copy of Business License submitted indicates that the manufacturer is a 'State Owned' enterprise. Further, the copy of minutes of session submitted by the producer pertains to year 1997 and not the period of investigation. The minutes mentions the election of particular post, however, the claims are regarding different post.

8.1.7 Authority, further notes that the text /phrases used viz 'mandatory plan', 'other basic products which are regulated by price department of the State Council', 'Any policy loss of an enterprise due to price control resulting from public policy and interest or production under mandatory plan shall be..' etc., in Article 28 of Chapter III of Law of the People's Republic of China on Industrial Enterprises owned by People-1988 indicates that the producer is not operating under market economy conditions as envisaged under para 8 of Annexure I Rule Supra. Accordingly, Authority for the purpose of preliminary findings has not accepted the arguments by the exporters on market economy status and has considered the exporter entity operational under non market economy conditions.

8.1.8 The Authority is of the view that the information furnished by the exporter can be considered subject to furnishing of sufficient evidence in respect of parameters relating to market economy treatment and other information in the foregoing paragraphs. For the purpose of the preliminary findings the Normal value is determined on the basis of cost of production of subject goods in India plus selling, administration and general expenses and a reasonable profit margin as per para 7 of Annexure-I of the Rules. While doing so the Authority has considered the information furnished by the petitioners and information best available with it.

### Export Price

8.1.9 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, which have been allowed for the purpose of preliminary determination, pending verification. Accordingly, the Authority has determined Export Price at ex-factory level.

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

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.

#### Normal Value (M/s Dahua)

The information furnished is grossly deficient and inadequate. It is found that the response is not strictly in the form and manner prescribed by the Authority.

Under the circumstances, the authority is of the view that the information furnished by the exporter can be considered subject to furnishing of sufficient evidence in respect of parameters relating to market economy treatment and other information in the foregoing paragraphs. For the purpose of the preliminary findings the Normal value is determined on the basis of cost of production of subject goods in India plus selling, administration and general expenses and a reasonable profit margin as per para 7 of Annexure-I of the Rules. While doing so the Authority has considered the information furnished by the petitioners and information best available with it.

#### Export Price(M/s Dahua)

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, packing, inland freight, overseas freight and insurance, which have been allowed for the purpose of preliminary determination, pending verification. Accordingly, the Authority has determined Export price at ex-factory level.

#### **8.3 M/s Guangxi Xing Mei Xiang Titanium Mafg Co LtdChina, (GXML) , M/s Guangxi Cang Wu Titanium Manufacturing co. Ltd. China. (GCWT) & M/s ZHEJIANG Provincial Light & Textile Industry, China (ZPLT)**

The above exporters from China have attempted to furnish the response to exporters questionnaire. The information furnished is grossly deficient and inadequate. It is found that the response is not strictly in the form and manner prescribed by the Authority. Annual reports of the three companies for the past two years and

investigation period have also not been provided. It is also noted that no soft copy of the response has been filed. There is no claim that the three companies involved can be treated as market economy companies.

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

1. The Organization Structure of the Company to be furnished.
2. Transaction wise sales in Appendix-1 and 2 does not appear to contain all sales in the domestic market and exports to India.
3. Clarification whether the company is free to sell in Chinese market and is free to export to India, as it is found that the exports to India have been made through a Govt. of China owned Trading House.
4. Appendix-3 of the response is not complete.
5. Statement of raw material consumption should specify the volume of raw material consumed per unit of the product.

**B. M/s.Guangxi Cang Wu Titanium Manufacturing Co. Ltd. (GCWT)**

Except for furnishing an authorisation letter by M/s Lake Town consultancy, Calcutta, and some sample invoices, the exporter has not furnished information to the questionnaire in the form and manner prescribed by the Authority. However, no response has been filed. In the circumstances, Authority has treated the exporter as non-cooperative exporter for the purpose of this investigation. In the circumstances, Authority has treated the exporter as non-cooperative exporter for the purpose of this investigation.

**C. Zhejiang Provincial Light & Textile Industry Group Corp., (ZPLT)**

1. The company is required to file separate response.
2. A statement showing price at which the company purchased the goods from the producer concerned and sold to India need be provided.
3. Information on expenses incurred by the company on exports to India need be furnished.
4. Profit & loss account of goods purchased and sold to India need be given.

**Normal Value**

Under the circumstances, the authority is of the view that the information furnished by the exporter can be considered subject to furnishing of sufficient evidence in respect of parameters relating to market economy treatment and other information in the foregoing paragraphs. For the purpose of the preliminary findings the Normal value is determined on the basis of cost of production of subject goods in India plus selling,

administration and general expenses and a reasonable profit margin as per para 7 of Annexure-I of the Rules. While doing so the Authority has considered the information furnished by the petitioners and information best available with it.

#### 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, packing, inland freight, overseas freight and insurance, which have been allowed for the purpose of preliminary determination, pending verification. Accordingly, the Authority has determined Export price at ex-factory level.

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

The authorised 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)).

#### **8.5 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)..

#### **8.6 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.

#### **8.7 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.

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

In respect of other non cooperative exporters from China PR the Authority has relied on the normal value adopted in respect of M/s. Dauhua, China. The export price has been determined as per the information reported by DGCI&S, Kolkata , information furnished by the petitioners and the best available information with the Authority in accordance with Rule 6(8).

### **8.9 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 weighted average 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.

8.10 The dumping margin for exporter/ producer comes as under:

<b>Sl. No.</b>	<b>Exporter/ Producer</b>	<b>Normal Value (\$/MT)</b>	<b>Ex-factory Export Price (\$/MT)</b>	<b>Dumping Margin \$/MT</b>	<b>Dumping Margin as % of Export Price</b>
1	M/s. Guangxi Dahua Chemical Factory ,China (Dahua)	***	***	***	52.3
2	M/s Guang Xi Xing Mei Xiang Titanium Dioxide Co Ltd, China; (GXML)	***	***	***	55.0
3	M/s Shaugan Chemical plant Co Ltd, China; ( Shaugan)	***	***	***	55.7
4	Other Exporters	***	***	***	57.7

### **9. INJURY**

Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "..... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles..." In considering the effect of the dumped imports of prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

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.

### 1. The various economic parameters are as under: -

Particulars	1999-00	2000-2001	2001-2002	POI (Jan,02 to Dec,02 )
Imports	Volume (MT)	Volume (MT)	Volume (MT)	Volume (MT)
China PR	359	1069	1543	2040
Other Countries	2894	2177	2622	2505
Total Imports	3253	3246	4165	4545
Sales of dom industry	15041	14681	12505	10050
Other producers	5984	6250	7388	8249
Total Demand	24278	24177	24058	22844
<b>Share of imports</b>				
Share of China PR	11%	33%	37%	45%
Share of others	79%	67%	63%	55%
Total	100.0	100.0	100.0	100.0
<b>Share in Demand</b>				
China PR	1%	4%	6%	9%
Other countries	12%	9%	11%	11%
Domestic industry	62%	61%	52%	44%
Other Producers	25%	26%	31%	36%
Total	100%	100%	100%	100%

### Import volumes and market share

Imports from various countries, their share in terms of imports and demand in India is given above.

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

- a. Imports from China have increased in absolute terms;
- b. Imports have increased in relation to imports of the product in India;
- c. Imports have increased in relation to production of the domestic industry in India;
- d. 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 the imports show a clear adverse volume effect. The adverse effect is significant and material.

### **1. Economic Parameters affecting domestic industry**

The injury analysis is related to only M/s TTPL, which accounts for a major portion of Indian production and constitutes the domestic industry.

Various parameters relating to the performance of the domestic industry were as under: -

Particulars	1999-00e		2000-2001		2001-2002		PO I (Jan –Dec02)	
	Volume (MT)	Value (Rs.Lacs)	Volume (MT)	Value (Rs.Lacs)	Volume (MT)	Value (Rs.Lacs)	Volume (MT)	Value (RsLacs)
Capacity	100		100		100		100	
Production	100	100	96	99.65	8734	93.88	69.75	80.85
Capacity Utilisation	100		96		87.33		69.75	
Domestic Sales	100	100	97.61	102	83.14	85	66.82	66
Opening Stock	100		122		116		327	
Number of days production in stock	100		95		168		274	
Unit Cost of Production		100		103.85		107.49		115.93
Unit Selling Price		100		105.92		103.31		99.44
Unit Profit/ Loss		100		144.34		25.99		-205.84

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

- a. Production and capacity utilization has significantly declined in 2002 as compared to previous years;
- 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.

### **3. Factor affecting domestic prices**

1. The domestic industry is facing price undercutting. As a direct result, the domestic industry has been forced to reduce the prices;
2. The imports are resulting in price undercutting in spite of reduction in the prices by the domestic industry;
3. The selling price of domestic industry is below the non-injurious price. The imports are thus resulting in price underselling in the market.

### **4. Employment**

Number of employees has declined over the years. The domestic industry has been forced to reduce employment whereas it should have increased the employment.

### **5. Profitability**

It may be seen that the company has started incurring losses from a situation of profits.

### **6. 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, the domestic industry is finding it difficult to stock and maintain the rising inventories.

### **7. 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.

### **8. Productivity**

Productivity of the domestic industry has deteriorated, given the sub-optimal level of production, in spite of reduction in the number of employees.

### **9. 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.

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

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

11. 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. Further, performance of other Indian Producers has also deteriorated. M/s Kolmac has since provided costing information as also injury information. The same is analysed below. It would be seen that the performance of Kolmac also has materially deteriorated.

## 12. M/s. KOLMAC

Particulars	1999-00		2000-2001		2001-2002		Jan 02-Dec02	
Indexed	Qty. (MT)	Val (Lac)	Qty. (MT)	Value (Lacs)	Qty. (MT)	Value (Lacs)	Qty. (MT)	Value (Lacs)
Capacity	100		100		100		100	
Production	100	100	100	104	109	114	100	106
Capacity Utilization	100		100		109		100	
Dom Sales	100	100	104	106	108	109	99	95
Opening Stock	-	-	100	100	177.54	184	278.07	256
Closing Stock	100	100	178	184	278	293	306	326
Average Stock	100		278		456		584	
Prodn per day	100		100		109		100	
No of days prodn in stock	100		278		420		586	
Unit Cost of Production		100		104		105		107
Unit S Price		100		102		101		97
Unit Profit/ loss		100		84		56		-15
G F A		100		109		113		115
Working capital		100		125		107		76
Cap Employed		100		111		112		111
profit from the product		100		84		61		-15
ROC		100		76		54		-13
Depreciation		100		111.17		103.48		3.73
Cash Flow		100		94.31		76.68		-7.92

It may thus be noted that the argument of opposing interested parties is without any basis.

## 10. 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 following table.

Country	Quantity	Value	Rate	Share
	Kgs.	Rs.	Rs/kg.	%
Australia	109471	9321614	85.15	3.47
Belgium	26475	2282142	86.20	0.84
Canada	7000	627822	89.69	0.22
Chinese Taipei	36000	2936407	81.57	1.14
China PR	1540892	75614718	49.07	48.84
Finland	10100	830501	82.23	0.32
France	1036	111289	107.42	0.03
German FRP	611523	60429701	98.82	19.38
Indonesia	907	120176	132.50	0.03
Italy	105025	7780265	74.08	3.33
Japan	49663	4007582	80.70	1.57
Korea RP	8000	682962	85.37	0.25
Malaysia	111442	8671274	77.81	3.53
Netherlands	8750	1069330	122.21	0.28
Norway	22000	1740776	79.13	0.7
Poland	40000	2765571	69.14	1.27
Singapore	136708	12148453	88.86	4.33
Slovenia	25000	2006082	80.24	0.79
Spain	10000	350829	35.08	0.32
Switzerland	32500	2327363	71.61	1.03
Thailand	11000	916442	83.31	0.35
UK	74901	5821895	77.73	2.37
USA	176863	14418414	81.52	5.61
Total	3155256	216981608	68.77	100

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 24298

Possible decline in the demand has, therefore, not contributed to any injury to the domestic industry.

3. 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. Material injury has been caused to domestic industry from dumped imports.

1. Landed price of imports from China was lower than the selling price of the domestic industry, forcing the domestic industry to reduce the prices. As a direct consequence, the domestic industry has been forced to 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.
2. 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 and capacity utilization deteriorated.
3. While the volume of imports and demand of the product increased, the domestic industry registered a negative growth.
4. 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.
5. Decline in the selling price of the domestic industry resulted in deteriorating return on investment.
6. Performance of the domestic industry(M/s TTPL) has deteriorated and material injury has been caused due to dumped imports.
7. Performance of M/s Kolmac 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.

## **11. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

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

The Authority also recognises that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the

decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers. Imposition of anti-dumping measures would also not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

## 12. LANDED VALUE

The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of customs duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

## 13. CONCLUSIONS

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

1. Subject goods have been exported to India from subject country below the normal value.
2. The domestic industry has suffered material injury; and
3. The material injury has been caused by the dumped imports from subject country.

14. The Authority considers it necessary to impose anti-dumping duty provisionally, pending final determination, on all imports of subject goods from subject country in order to remove the injury to domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti-dumping duty not exceeding the margin of dumping or the margin of injury whichever is less and 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 non-injurious selling price of the domestic industry determined for the period of investigation.

15. Accordingly, the Authority recommends that provisional anti-dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Titanium Dioxide falling under Chapter Heading 282300 of Custom Tariff Classification originating in or exported from People's Republic of China pending final determination. The anti dumping duty shall be the amount in US\$/MT mentioned in column 9 in the following table on all imports of the subject goods.

16.	Curreccy	US\$	US\$	US\$	US\$
	Unit of measurement	Per MT	Per MT	Per MT	Per MT

Amount	313.01	342.34	303.70	358.04
Exporter	any	any	any	any
Producer	M/s.Guangxi Dahua Chemical Factory, China	M/s.Guang Xi Xing Mei Xiang Titanium Mfg.Co.Ltd. China	M/s. Shaugan Chemical Plant Co.Ltd. China	Any producer except M/s.Guangxi Dahua Chemical Factory , China M./s.GuangXi Xing Mei Xiang Titanium Mfg. Co .Ltd. China, M/s. Shaugan Chemical Plant Co. Ltd. China.
Country of Export	Any country	Any country	Any country	Any country
Country of Origin	China	China	China	China
Specification	Anatase Grade	Anatase Grade	Anatase Grade	Anatase Grade
Description of Goods	Titanium Dioxide	Titanium Dioxide	Titanium Dioxide	Titanium Dioxide
Customs Sub-heading	28230001	28230001	28230001	28230001
SNo	1.	2.	3	4.

17. 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.

## 18. FURTHER PROCEDURES

The following procedure would be followed subsequent to notifying the preliminary findings:-

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of these preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would provide opportunity to all the interested parties for making oral submissions which have to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary;
- e. The Authority would disclose essential facts before announcing final findings.

**L.V. Saptharishi**  
Designated Authority