

No. 15/5/2008-DGAD
Government of India
Ministry of Commerce & Industry
Directorate General of Anti-Dumping & Allied Duties

New Delhi the 3rd July , 2009

Final Findings

NOTIFICATION

Subject: Anti Dumping Sunset Review Investigations concerning imports of Titanium Dioxide originating in or exported from China PR.

No.15/5/2008- DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

A . BACKGROUND OF THE CASE

Whereas the Designated Authority, 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, initiated the original investigation vide Notification No. 14/51/2002-DGAD dated 16th January, 2003. The Authority issued its Final findings recommending imposition of definitive Anti Dumping Duty on imports of Titanium dioxide (hereinafter referred to as subject goods) originating in or exported from China PR (hereinafter referred as subject country), vide Notification No. 14/51/2002-DGAD dated 15th March, 2004 and such definitive duty was imposed by the Govt. of India vide Customs Notification No. 54/2004 dated 09.04.2004.

2. The Designated Authority, in terms of section 9A (5) of said Act. received a duly substantiated application from *M/s. Travancore Titanium Products Ltd.* requesting for review and continuation of the anti-dumping duties levied on the subject goods from subject country as the domestic industry continued to suffer injury on account of dumping by the subject country. The request was based on the grounds that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The petitioner had claimed with prima facie evidence in this regard and had requested for the imposition of the anti dumping duty on subject goods from the subject country.

3. Having satisfied on the basis of positive evidence submitted by the domestic industry substantiating the need for a review, the Designated Authority issued a Public Notice No. 15/5/2008-DGAD dated 5th July, 2008 published in the Gazette of India, Extraordinary, initiating sunset Review of the anti-dumping investigations to review the need for continued imposition of duties in force and whether the expiry of the duty would likely to lead to continuation or recurrence of dumping and injury.

B. PROCEDURE

4. In these proceedings the procedure described below has been followed:
- (i) The Authority notified the Embassy/Representatives of the China PR in India about the receipt of application made by the petitioner before initiating the investigation in accordance with sub-Rule (5) of Rule 5 supra.
 - (ii) The Embassy/Representatives of the subject country in New Delhi were informed about the initiation of the investigation in accordance with Rule 6(2).
 - (iii) The Designated Authority sent copies of initiation notification dated 5th July, 2008 to the Embassy/Representatives of the subject country in India, known exporters from the subject country, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file questionnaire responses and make their views known in writing within prescribed time limit. Copies of the letter, petition and questionnaire sent to the exporter were also sent to the Embassy of subject country along with a list of known exporters/ producers with a request to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time.
 - (iv) Copy of the non-confidential version of the petition filed by the domestic industry was made available to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra.
 - (v) Questionnaires were sent to the following known exporters from subject country in accordance with the rule 6(4) to elicit relevant information:
 - 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;
 - 5. Maanshan Goldstar Chemical(Group)
 - 6. Jiaozuo City Chemical General Plant
 - 7. Zhuzhou Chemical Group Co. Ltd.
 - 8. Pinggui Mineral Bureau
 - 9. Titanium White Plant Pinguui Feidiie Corp.
 - 10. Chongqing Xinhua Chemical Energy
 - 11. Iangaxi Gandong Chemical Co. Ltd.
 - 12. Shaogum City Chemical Plant
 - 13. Basis City Huahong Titanium White Plant
 - 14. Titanium Industry Co. of panzhihua Iron
 - 15. Titanium White Branch of Shanghai
 - 16. Anhui GuSheng Import & Export Co. Ltd.

17. Anhui Huishang International Co. Ltd.
 18. Jiangsu Hongyuan Pharmaceutical Co. Ltd.
 19. Chongqing Xinhua Chemical Energy Factory
- (vi) Only one exporter namely M/s Cangwu Shunfeng Titanium Dioxide co. Ltd, Cangwu Guangxi, China submitted their response after four months of the stipulated timelines which was rejected being time barred totally deficient as requisite information as required in the exporters Questionnaire was not provided. No response has been filed by any other exporters to the above notification.
- (vii) Questionnaire was sent to the following known importers and Consumers of subject goods in India calling for necessary information in accordance with Rule 6(4):
1. Chemi Care
 2. Crystal India
 3. Popawala & Co.
 4. Kantilal Sanghvi & Co.
 5. Associated Industries
 6. Chitaal Chemicals ltd.
 7. Goodless Nerolack Paintsd.
 8. Chemi Enterprises/Mulatic & Co.
 9. G.C. International
 10. Pure Chemical Co/PonPure Chem(P) Ltd.
 11. KPL International Limited
 12. Amrit Chem.
 13. Chemtic Enterprises
 14. Snowcem India Ltd.

M/s Kansai Nerolac paints Ltd and M/s Berger Paints India Ltd has submitted the information regarding imports made by them which have been taken into account. No response has been filed by any other interested parties.

- (viii) Transaction-wise data of imports for the period of investigation and preceding three years were called from Directorate General of Commercial Intelligence and Statistics (DGCI&S) in addition to the IBIS data provided by the domestic industry. The product under consideration Titanium Dioxide Anatase type is classified under Chapter 28 under Sub-heading 28230010. The original investigation has established that substantial volumes of imports are made under Chapter 32 also. The Authority considered imports under Chapter 28 and Chapter 32 in the previous investigations. Imports data available shows continued imports under Chapter 32. The information provided by DGC&IS contained imports of Anantase grade and Rutile grade from China and other countries. The product under consideration being Anatase, the imports for Anatase grade only have been considered for the purpose of this investigation. The data provided by DGC&IS have been relied upon for the purpose of this investigation.

- (ix) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- (x) M/s. Travancore Titanium Products Ltd. being domestic industry, submitted the information/data. The Authority verified the information furnished by the domestic industry to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to examine the injury suffered, to work out optimum cost of production, cost to make and sell the subject goods in India and so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to domestic industry. It was noted that the company has not yet completed statutory audit of its accounts for the year 2007-08. However, the company has maintained all statutory books of accounts. Since information relied upon is from the books of accounts, the Authority has adopted the information verified from the books of accounts maintained by the company. The Authority has relied upon information provided by the opposing interested parties with regard to performance of the supporting company namely M/s Kilburn Chemicals.
- (xi) The Authority held a public hearing on 05.06.2009 to hear the interested parties orally, which was attended by representatives of interested parties. The arguments rose in the written submissions/ rejoinders received from interested parties have been considered, wherever found relevant, in this findings;
- (xii) Investigation was carried out for the period starting from 1.04.2007 to 31.3.2008 (POI) and the Injury analysis has been done for the period 2004-05, 2005-06 and 2006-07.
- (xiii) The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.
- (xiv) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- (xv) In accordance with Rule 16 of the anti-dumping Rules, the Authority had issued a detailed disclosure statement on 19th June, 2009 giving thereby essential facts under consideration and views expressed thereon have been duly incorporated in the present final findings.
- (xvi) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- (xvii) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the facts available.
- (xviii) *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the authority under the Rules.

4.1 Comments to the Disclosure statement *by importers.*

- i) DGCI&S data is conspicuously absent from the public file maintained by the DGAD.

- ii) The annual report for the 2007-08 has not been supplied. We have been informed that the annual report for the year 2007-08 is yet to be audited.

4.2 Examination by the authority

The authority notes that the import data of DGC&IS contains sensitive information about names of importers/ quantity/ prices etc, hence not put in the public file, Further, the authority notes that the disclosure statement confirmed that the company has not yet completed statutory audit of its accounts for the year 2007-08.

C. PRODUCT UNDER CONSIDERATION AND ‘LIKE ARTICLE’

5. The product involved in the original investigation was Titanium dioxide Anatase grade (also referred to as subject goods). The product was defined in the original investigations as follows:

“The product under consideration in the present investigation is Titanium Dioxide Anatase grade, having chemical formula TiO_2 . Titanium Dioxide can be used in Anatase form or Rutile form. However, the present investigation is against Titanium Dioxide in Anatase form only. 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. It is a pigment and is primarily used in the manufacturing of paints, plastics, paper, ink, rubber etc. 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.”

6. The product under consideration Titanium Dioxide Anatase type is classified under Chapter 28 under Sub-heading 28230010. The original investigation has established that substantial volumes of imports are made under Chapter 32 also. The Authority considered imports under Chapter 28 and Chapter 32 in the previous investigations. Imports data available to the domestic industry shows continued imports under Chapter 32. In view of the same, the Authority has considered imports in both the Chapters for the purpose of the present investigations, as per the information provided by DGC&IS in this regard.

7. Submissions made by the Interested Parties

7.1 The Domestic Industry has represented as follows with regard to product under consideration and like article:

(i) The applicant has claimed that there is no known difference between the product manufactured by them and the subject goods imported from the subject country, which can have any impact on price, usage, quality etc. The applicant also claims that the technology and primary production process employed by them and the foreign producers are comparable; however, producers fine-tune their production process based on available facilities and necessities.

7.2 Views of the importers, consumers, exporters and other interested parties.

None of the exporters, importers, consumers and other interested parties has disputed with regard to the nature of the subject goods that are exported to India from the subject country and those being manufactured by the domestic industry.

Examination by the Authority.

7.3 The product under consideration Titanium Dioxide Anatase type is classified under Chapter 28 under Sub-heading 28 23 00 10. However, the product under consideration, that is, Titanium dioxide Anatase type is also being imported reportedly under Chapter 32. It has also been held by the Authority in the final findings of the original case that substantial volumes of imports have been made under Chapter 32 also. In the circumstances, the Authority has considered imports volume as reported by DGC&IS under Chapter 28 & 32 with respect to Titanium Dioxide, Anatase type for the purpose of this investigation.

7.4 The product under consideration produced by the Indian industry and imported from the subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. In view of the similarity in manufacturing process and substitutability, the Authority therefore holds that the two are required to be treated as alike and one product for the purpose of defining the 'product under consideration' as per Rule 2(d) of Anti-Dumping Rules.

8. D. Standing and scope of the Domestic Industry

8.1 In the original investigations, the Titanium Dioxide Manufacturer's Association had filed the petition before the Designated Authority on behalf of producers of Titanium dioxide in India. In the original investigation, there were three producers of the product under consideration in India. In the Sunset review investigation, M/s. Travancore Titanium Products Ltd. has filed the petition on behalf of domestic industry. The petition has been supported by M/s. Kilburn Chemicals Ltd. The domestic industry has claimed that another producer namely M/s Kolmak Chemicals Ltd. has closed down. The petitioner, thus, constitutes domestic industry within the meaning of the Anti Dumping Rules. However, it has also been claimed by the petitioner that there is no need to prove the standing in a sunset review investigation under Rule 23.

8.2 Views of the Domestic Industry

- (i). The petition for imposition of anti dumping duty was filed *M/s. Travancore Titanium Products Ltd.*
- (ii) Production of the petitioner constitutes a major proportion of total Indian production. The petition has been supported by M/s. Kilburn Chemicals Ltd. The domestic producers expressly supporting the application account for more than 50 per cent of the total production of the like product produced by the domestic industry. Thus, petitioner accounts for "a major proportion in total eligible Indian production". and constitutes "domestic industry" within the meaning of the Rules.

Views of the Importers, Consumers, Exporters and Other Interested parties

8.3 At the time of oral hearing and subsequently in the comments to the disclosure statement, following issues were raised by the importers–

- (a) Petitioner does not satisfy standing under Rule 5;
- (b) Petitioner does not constitute domestic industry under the Rules;
- (c) Following the Supreme Court judgment, the Authority must collect information from all domestic producers.
- (d) Rule 2 (b) clearly stipulates that any petition for imposition of anti dumping duty must be initiated by a major producer of the industry. In the instant case this requirement has clearly not been fulfilled as TTPL does not constitute as major producer as it only holds 48.7 % of the market share while majority share of 51 % is held by KCL who has only supported the petition. It is humbly submitted that support from a major producer to any petition for imposition of anti dumping duty cannot be deemed to qualify as fulfilment of Rule 2 (b) of the Antidumping Rules. Hence, the petitioner herein cannot be termed as the domestic industry for the purpose of Rule 2 (b) of the Antidumping Rules and the said petition is liable to be dismissed as it is not maintainable before the Designated Authority.
- (e) Hence, the instant petition cannot be deemed as a comprehensive document for the purpose of determining injury, as the data provided exclusively related only to Travancore Titanium Products Ltd. and cannot be relied upon solely for analysis by the DGAD. It is humbly submitted that data relating exclusively to one producer cannot be termed as illustrative for an entire industry. Hence, the instant petition suffers from insufficiency of data and should be rightfully dismissed by the Hon'ble DGAD.

8.4 Examination by the Designated Authority

- i) The Authority has examined submissions made by various interested parties and has appropriately dealt with the same in the present findings. The Authority holds that the present investigation is a sunset review investigation conducted to ascertain whether anti dumping duties imposed earlier is required to be extended further. Rule 5 of the Anti-dumping Rules, applicable to fresh investigations, is not applicable in case of sunset reviews. It is also noted that the Hon'ble High Court of Delhi has held that sunset review investigation is mandatory on the part of the Authority. Even if there is no application, the Authority is to conduct sunset review. Further, it is observed that the share of petitioner along with supporter is more than the limits prescribed under Rule 5.
- ii) After taking into account the production of all the known producers of the subject goods in the Country, the Authority observed that there are two other companies, which are known to have created capacities to produce the subject goods in India i.e. M/s. Kilburn Chemicals Limited and M/s. Kolmak Chemicals Limited. No information in respect of M/s Kolmak could be made available. The Authority has assessed the production volumes of remaining producers and their support and opposition to the petition. M/s. Kilburn Chemicals has supported the petition. The company has however not provided

any information. In view of non cooperation by the company, the Authority has relied upon information provided by the opposing interested parties with regard to performance of the company. Therefore, the Authority holds that for the purpose of this investigation, the petitioner constitutes domestic industry within the meaning of the Anti Dumping Rules. However, it has also been claimed by the petitioner that there is no need to prove the standing in a sunset review investigation under Rule 23. The arguments raised by interested parties with regard to performance of Kilburn Chemicals have been appropriately dealt in the causal link section.

E. Dumping Determination

9 Determination of normal value

9.1 Views of the Importers, Consumers, Exporters and Other Interested parties:

- i) It is humbly submitted that the petition is replete with insufficient information. The petitioners vide Annexure 3.2 of the petition are computing market value by taking prevailing international prices as the price of raw material. It is submitted that the petitioners have presupposed that prevailing international prices shall be true reflection of Chinese prices. Secondly, without prejudice to same, it is added that the petition does not disclose the said international prices of sulphur or the source from where these prices have been accessed. Similarly the normal value has been inflated by taking the domestic industry's price for power, utilities and furnace oil instead of a more objective basis for these costs. The domestic industry must be compelled to reveal the source from where data is gathered. It is submitted before the Hon'ble DGAD that all interested parties must be provided with opportunity to argue the authenticity of the data supplied by the petitioners.
- ii) It is further pleaded that the domestic industry must also be compelled to reveal the data relating to export price. It is humbly submitted that Annexure 3.3 of the petition only contains the net export however essential details such as Freight, Cost, and Insurance have not been supplied. The importers must be allowed access to relevant information, so as present an informed argument before the DGAD. Such non disclosures practically negates the rights of interested parties to present submissions for due consideration before the DGAD.

9.2 Views of the Domestic Industry

- i) The petitioner has claimed China as non-market economy. Petitioner submits that unless the responding Chinese exporters conform to these standards, the Designated Authority is required to determine normal value in accordance with Para 7 of Annexure-I to the Rules.

According to these Rules, the normal value in China can be determined on any of the following basis:

- (a) the price in a market economy third country,
- (b) constructed value in a market economy third country,

- (c) the price from such a third country to other country, including India.
- (d) the price actually paid in India, adjusted to include a reasonable profit margin.
- (e) the price actually payable in India, adjusted to include a reasonable profit margin.
- ii) Normal value must be “comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country”. In order to arrive at normal value on this basis, the complete & exhaustive verifiable information on all domestic sales made by a co-operating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade) are required. However, no exporter has cooperated or furnished information in this respect.

9.3 In view of the above, the petitioner could not consider price from such third countries to other countries for the reasons (a) information is not available; (b) the price so adopted must be a price in the ordinary course of trade; (c) such information would also require cooperation from a producer in such third country.

9.4 The petitioner submits that India is an appropriate surrogate country for Chinese producers. Not only consideration of India as a surrogate country would result in access to accurate and adequate information, there is no factual basis to consider that India would not be a proper surrogate country. India has been considered as an appropriate surrogate by other Investigating Authorities too.

9.5 As 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 (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. The petitioner has, therefore, constructed the normal value for the subject country based on the information available for the domestic industry.

9.6 Comments to the disclosure statement by Importers.

- i) Normal value has been wrongly constructed on the basis of cost of production in India including selling, general and administrative expenses and profits provided by TTPL. The constituents employed by the DA for the computation of normal value be disclosed to the importers.
- ii) The view that the weighted average landed price of imports from China is in the similar range of the information provided by the importers is incorrect.

9.7 **Examination by the Authority**

- a) None of the exporters have responded to the questionnaire. In the absence of relevant information from Chinese producers, the Authority has constructed the normal value based on facts available by adopting the cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. It is further mentioned that while cost of production of TTPL has been adopted, the same has been

appropriately adjusted with regard to possible high wage costs which TTPL might have incurred. Even though the normal value has been moderate, substantially on this account, it is relevant to point out that the authority had not been offered options in the fact and circumstance of the present case as to while disputing the determination of normal value, the interested parties has failed to provide any other alternate basis of which normal value can be constructed.

- b) The Authority notes the concern of interested parties that methodology for determination of normal value was not adequately explained in the petition. The Authority, however, adequately disclosed the methodology in the disclosure statement issued earlier as well as the present findings. It is however observed that the elements of costs & expenses could not have been disclosed, given that the company constitutes confidential business sensitive information of the domestic industry.
- c) The position in respect of landed value (weighted average) comparison with those of importers (based on DGC&IS data) is as follows:

Particulars	Unit	POI
Volume	MT	5,372
Value (Assessable Value)	Rs. Lacs	2,684.29
Export Price (Assessable Value)	Rs./MT	50,470
CIF Export Price	Rs./MT	49,971
Customs Duty - Basic	%	10
Customs Duty Amount - Basic	Rs./MT	5,047
Landed Price of imported Product	Rs./MT	55,018

The weighted average landed value based on the information submitted by the importers is Rs 60.60 per kg.

E.1 EXPORT PRICE

9.8 With regard to export price, the Authority observed that none of the exporters has cooperated. The information provided by importers M/s Kansai Nerolac shows an import of *** MT at the landed price of Rs ***per kg and that of M/s Berger shows an import of ***Mt at Rs ***per kg. The weighted average landed price of imports from China, as per

DGC&IS data for the POI, comes to Rs 54.97 per kg. This is almost in the similar range of the information provided by the importers and has been adopted. The export price is therefore, determined on the basis of information provided by DGC&IS. In absence of any other information provided by any other interested party, the following adjustments, as provided by the petitioners, have been taken in to account to arrive at the net export price: -

- (a) Ocean freight @ US\$ 60.41 pmt
- (b) Marine insurance @ 0.05% of CIF value
- (c) Commission @ 1% of FOB value
- (d) Port expenses @ 1% of FOB value
- (e) Inland freight @ 1% of FOB value
- (f) Bank commission @ 0.05% of FOB value

E.2 Dumping Margin

9.9 On the basis of normal value and net export price determined, as explained above, at ex-factory level, the dumping margin during POI for all exporters is as per table below:

China	US\$ per MT
Normal value	***
Net Export price	***
Dumping margin amount US \$	***
Dumping margin %	33.02

F. INJURY AND CAUSAL LINK DETERMINATION

10. The petition is for review, continuance and enhancement of anti dumping duty in force for further period of five years in view of continued dumping and injury or likelihood of dumping and injury.

10.1 According to Section 9(A)(5) of the Customs Tariff Act, anti dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.

10.2 It is clear from the above that the duty imposed earlier should remain in force for a period of five years from the date of its imposition. However, in a situation where the dumping continues or is likely to recur in the event of revocation of anti dumping duty and where the domestic industry continues to be injured or the injury to the domestic industry is likely to recur in the event of revocation of anti dumping duty, the anti dumping duty in force should be continued further for a period of five years.

10.3 Article 3.1 of the WTO Agreement and Annexure-II of the Rules provide for 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 the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

11. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states as follows.

“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

12. The Authority has taken note of the arguments of the interested parties on injury examination and addressed the issues raised at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties.

F.1 Views of the Domestic Industry

13. The domestic industry has submitted the following to claim that they have suffered material injury as a result of dumping from the China PR:

13.1. In a situation where the dumping continues or is likely to recur in the event of revocation of anti dumping duty and where the domestic industry continues to be injured or the injury to the domestic industry is likely to recur in the event of revocation of anti dumping duty, the anti dumping duty in force should be continued further for a period of five years. In the instant case, dumping of the product from China has continued. Dumping would intensify, should the present anti dumping duty be revoked from China.

13.2. The domestic industry has continued to suffer injury and the same is likely to continue in the event of revocation of duties. If the domestic industry has not suffered continued injury, petitioner then claims that the revocation of duties would likely to lead to recurrence of injury from Chinese imports.

13.3 The domestic industry has requested for conversion of anti dumping duty from benchmark form to fixed amounts on the grounds that the costs of inputs required for production of the product under consideration have significantly increased and therefore benchmark form is not an appropriate form for the product.

13.4 Views of the exporters, importers, users & other interested parties

1. The source of additional information has not been provided, which was given on the date of hearing.
2. Importers data is essential for the correct adjudication and the contention of domestic industry to oust the importers to make any representation should be rejected. As per Rule 23 of DGAD, this should not be done as to examine the recurrence of duty correctly.
3. TTPL does not have standing as a domestic producer.
4. There are irregularities in the data in the petition and the additional submissions made.
5. Domestic industry should provide information about the methodology of determining the benchmark price.
6. The additional data provided does not exclusively pertain to the imports of TiO₂ Anatase grade.
7. The additional data provided exceeds the period of investigation and includes data for 2008-09. And so such information should be discarded.
8. Petitioners have wrongly stated that in the sunset review it is the market disruption which is sufficient to be shown even without showing the material injury.
9. All injury parameters are not completely addressed.
10. Imports have not resulted in price undercutting and so no causal link has been established. Further there has been increase in volume of imports from other countries.
11. Import price of the subject goods is higher than the domestic sales price so there is no price undercutting.
12. Kilburn Chemicals has not suffered injury.
13. TTPL has priced its goods at highly uncompetitive prices and that is why KCL has to undercut its prices.
14. TTPL has been suffering due to its own operational difficulties and not because of imports.
15. The additional data provided does not exclusively pertain to imports of TiO₂ Anatase grade.
16. Analysis of injury parameters of Kilburn is not considered which shows a different picture of profits, positive capacity utilization, production, sales and market share.
17. Petitioners contended at the public hearing that the importers should be disallowed from making written submissions. Then the said contention is equally applicable on the petitioners who provide new data on import volumes and value during the public hearing.
18. Since the prices have gone up by 17%, there is no price suppression.
19. The additional data on excess capacity of Chinese exporters does not pertain to production capacity of TiO₂ Anatase grade exclusively.
20. The CAG Report for the year ending March 2007 has concluded on the decline witnessed by Travancore Titanium Products Limited as lack of strategic management.

F.3 Examination by the Authority

14. For the purpose of assessing present state of injury, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority noted the concern of the parties

about analysis of injury parameter and has addressed the same by undertaking analysis of all mandatory injury parameters.

14.1 Comments to the Disclosure statement by Importers and Examination by the Authority.

14.2 It has been noted that the importers have raised the points in respect of sales volume taken in respect of Kilburn, installed capacity of TTPL, about other injury parameters and disclosure of NIP etc. The authority has examined all these issues and notes that the information in respect of Kilburn has been adopted based on the information contained in their financial statements as provided by the petitioners.

14.3 In respect of the Installed capacity, the authority notes that it was earlier contended by the importers that the petitioner has an installed capacity of only 15,000 MT and not 25,000 MT as claimed in the petition. On examination and verification, the authority has considered the capacity as 15000 MT. The authority notes that had 25000 MT considered as Installed capacity, the injury would be further aggravated. In respect of the Production figures provided vide Para 18.1 of the disclosure statement and those provided in Proforma IV-A Part II of the petition, it is noted that the figures as reported in the disclosure statement are as verified by the authority. Moreover, the impact arising out of such difference in production has not been pointed out by the importers.

14.4 It has been further submitted that the DGAD has erred by stating that the landed price of imports is significantly lower than the selling price, the landed price of imports is significantly lower than the NIP and the increase in cost of sales has not been proportionately matched with the increase in selling price. It may be stated that in respect of import prices, the authority has made the determination based on – (a) verified information; (b) selling price of domestic industry. The CIF import price in the period of investigation was Rs.49.96 /Kg, considering 10% Customs Duty, the landed price of imports comes to Rs.55/Kg. The weighted average landed price based on the information submitted by the importers is Rs 60.60 per kg.

14.5 It has been stated that the veracity of the surplus capacity figures for Chinese exporters must be reassessed in the light of misstatements made by the petitioner. It is noted that the authority has proceeded based on available information. Moreover, the importers have provided no evidence showing possible decline of such capacities. In respect of inflated and uncompetitive raw material cost, the authority notes that the input prices of TTPL are comparable or even lower than international prices.

14.6 In respect of the disclosure of the absolute figures for the various constituents employed to arrive at the NIP, the authority notes that the breakdown of non-injurious price is based on business sensitive confidential information and therefore cannot be disclosed to other parties. This is a consistent practice.

15. (A) VOLUME EFFECT: Volume effect of dumped imports and impact on domestic industry:

The effects of volume of dumped imports from subject country have been examined as follows:

15.1 Demand and Market shares

The Authority has determined demand or apparent consumption of the product in the Country as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed can be seen in the table below. It is seen that demand of the product in the country, after showing increasing trend till 2006-07, shows marginal decline in the POI from the base year.

Figures in MT

Demand	2004-05	2005-06	2006-07	2007-08
Sales of Domestic industry	14396	12077	12468	11020
Sales of Kilburn (supporter)	8490	9077	7389	9166
Imports - Subject Countries	6059	9210	9799	5372
Imports - Other Countries	3990	3647	5915	5749
Total Demand	32936	34011	35571	31307

15.2 Import Volume & market share

With regard to volume of the dumped imports, the designated authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. The Authority considers that in a sunset review case, this is required to be applied on mutatis mutandis basis in the present case.

	2004-05	2005-06	2006-07	2007-08
Imports from China (MT)	6,059	9,210	9,799	5,372
Share of Imports in relation to				
➤ Total imports in India	60.29	71.63	62.36	48.31
➤ Demand in India	18.40	27.08	27.55	17.16
➤ Production of Domestic Industry	35.92	60.19	74.22	40.69

With regard to the argument that imports have declined in the current period of investigation, the Authority notes that the present investigation is a sunset review investigation. Increase in imports is not a necessary pre-condition for extension of anti dumping duties. In fact, anti dumping duties can be extended even in those situations where there are no exports of the product. The domestic industry provided news items showing that Chinese Titanium Dioxide industry was directed to suspend production in view of Olympics, considering that the production process relating to the product is considered a highly polluting process.

15.3 The petitioner has claimed that significant volume of imports in the presence of anti dumping duties and the price at which these imports have been made clearly establishes that the imports have been made without payment of anti dumping duties. Given the significant volume of imports in spite of existing anti dumping duties, it is evident that the volume of imports would at the least increase further in the absence of anti dumping duties. The Authority observes that there have been significant imports in spite of existing anti dumping duties.

16. Production, capacity and capacity utilization

16.1 Actual production, capacity and capacity utilization of the domestic industry have declined as shown in the following table-

	2004-05	2005-06	2006-07	2007-08
Capacity (MT)	15,000	15,000	15,000	15,000
Production (MT)	16,868	15,300	13,203	11,517
Capacity utilization (%)	112.45	102.00	88.02	76.78

16.2 The Authority observes that there has been consistent decline in production from 2005-06 due to continued presence of dumped import in the market. Consequently, capacity utilization has also declined.

16.3 It is noted that whereas the domestic industry was earlier able to utilize its full capacity (and in fact achieved capacity utilization far higher than installed capacity), the capacity utilization has suffered and declined significantly. The fact that the domestic industry has achieved capacity utilization far in excess of 100% clearly shows technical capability of the domestic industry. The commercial viability due to dumping is the sole injury to the domestic industry. The impact of dumping has been so significant that the domestic industry has been forced to reduce its production.

17. Sales:

17.1 Sales volumes of domestic industry are given in the following table: -

	2004-05	2005-06	2006-07	2007-08
Domestic Sales (MT)	14396	12077	12468	11020
Indexed	100	84	87	77

17.2 The sales volume of the domestic industry shows a pattern similar to that of production. Sales of the domestic industry declined significantly over the current injury period.

18. Market share

18.1 Share of the domestic industry and various other parties in demand in India was as under:

Market Share in Demand(%)	2004-05	2005-06	2006-07	2007-08
Sales of Domestic industry	43.71	35.51	35.05	35.20
Sales of Kilburn- supporter	25.78	26.69	20.77	29.28
Imports - China	18.40	27.08	27.55	17.16
Imports - Other Countries	12.11	10.72	16.63	18.36
Total	100	100	100	100

It is observed that the current anti dumping measures has not been sufficient to deter the Chinese exporters from dumping the subject goods in India. The imports from China continue to hold significant share in the market in spite of anti dumping duty being in force.

18.2 The petitioner has submitted that it has been general experience and expectation that volume and share of imports would decline significantly with the imposition of anti dumping duties – access to dumped imports being sole cause of significant increase in imports in the past, more so in a situation where the domestic industry is in a position to cater to the demand. However, in the instant case, even when the anti dumping duties remained in effect, the volume of imports has not got impacted because of existing anti dumping duties. The domestic industry had hoped to regain its market share after imposition of anti dumping duties. However, continued presence of dumped imports prevented domestic industry in increasing its sales and market share.

18.3 The authority observes that during the injury period, the share of domestic industry has gone down by 8.51%, 3.5% of which has been taken over by another domestic producer namely M/s Kilburn. The imports from other countries have gone up by 6.25% and imports from China have gone down by 1.25%, thus the remaining 5% have been taken over by other countries. Thus, volume effect is not there. However, in respect of decline in imports during POI from the previous years, the domestic industry has provided news items showing that Chinese Titanium Dioxide industry was directed to suspend production in view of Olympics, considering that the production process relating to the product is considered a highly polluting process.

19. B) Price Effect of the dumped imports on the Domestic Industry

i) The impact on the prices of the domestic industry on account of imports from the subject country have been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry (worked out on the basis of the costing information of the domestic industry) have been compared with landed value of imports from the subject country for Anatase grade.

ii) A comparison for subject goods during the period of investigation was made between the landed value of dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission offered by the domestic industry have been adjusted. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic industry by appropriately considering the cost of production for the product under consideration during the POI. The position is as follows:

<u>Price undercutting</u>	<u>Rs/MT</u>
NSR	***
Landed Price	***
Price undercutting Rs	***
Price undercutting %	33.16
<u>Price underselling</u>	
NIP	***
Landed Price	***
Price underselling Rs	***
Price underselling %	34.11

iii) It is found that (a) landed price of imports are significantly below the selling price of the domestic industry, thus resulting in price undercutting; (b) the selling price of the domestic industry are substantially below the non-injurious price of the domestic industry, thus resulting in price underselling, (c) whereas cost of production increased over the injury period, the selling prices did not increase in the same proportion. The imports were therefore suppressing the prices of the domestic industry in the market.

iv) The authority observes that the landed price from China PR during the POI and the injury period was substantially lower than the prices from other countries.

<i>CIF Price</i>		2004-05	2005-06	2006-07	2007-08
China P.R.	Rs./Mt	47798	48408	52075	49968
Trend	Indexed	100	101	109	105
Other Countries	Rs./Mt	93198	107576	113767	89856
Trend	Indexed	100	115	122	96

With regard to imports from other countries, it is observed that imports from other countries have increased. It is however, also observed that import prices from other countries are higher than the import price from China and selling price of the domestic industry. Since imports from other countries are not undercutting the prices of domestic industry, it cannot be said that imports from other countries are leading to adverse price effect. Thus, the authority observes that the price effect of dumped imports from China is quite significant.

20. **Examination of other Injury Parameters**

After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other economic parameters which

could indicate existence of injury to the domestic industry have been analyzed hereunder as follows:

21. **Profit/loss, return on investment and cash flow** – The return on investment, profit/loss before and after interest, return on investment and cash profit has moved as shown in the table below:

	Unit	2004-05	2005-06	2006-07	2007-08
Profit /(Loss)					
Cost of Sales - Domestic	Rs/Mt	***	***	***	***
<i>Indexed</i>		100	119	114	135
Selling price - Domestic	Rs/Mt	***	***	***	***
<i>Indexed</i>		100	100	104	117
Profit/(Loss) - Domestic	Rs/Mt	***	(***)	(***)	(***)
<i>Indexed</i>		100	(461)	(175)	(398)
Profit/(Loss) - Domestic	Rs/Lacs	***	(***)	(***)	(***)
<i>Indexed</i>		100	(387)	(152)	(305)
Profit before Interest and Taxes Domestic	Rs/Lacs	***	(***)	(***)	(***)
<i>Indexed</i>		100	(374)	(139)	(295)
Cash Profit	Rs/Lacs	***	(***)	(***)	(***)
<i>Indexed</i>		100	(221)	(71)	(168)
Return on Investment					
Gross Fixed Assets	Rs/Lacs	***	***	***	***
Net Fixed Assets	Rs/Lacs	***	***	***	***
Working Capital	Rs/Lacs	***	***	***	***
Total Capital Employed(on GFA basis)	Rs/Lacs	***	***	***	***
Total Capital Employed(on NFA basis)	Rs/Lacs	***	***	***	***
Capital Employed for Domestic (GFA basis)	Rs/Lacs	***	***	***	***
Capital Employed for Domestic (NFA basis)	Rs/Lacs	***	***	***	***

Return on Capital Employed-GFA	%	***	(***)	(***)	(***)
Trend (Indexed 2004-05=100)	Indexed	100	(671)	(209)	(310)
Return on Capital Employed-NFA	%	***	(***)	(***)	(***)
Trend (Indexed 2004-05=100)	Indexed	100	(850)	(499)	(376)

The data shows that the cost of sales increased by 35% whereas selling price increased only by 17% in POI as compared to base year. As a result, profit per MT declined significantly in POI as compared to base year.

21.1 The profit (PBIT) declined significantly in POI as compared to base year. Domestic industry was in losses in POI. PBIT which was positive in the base year was significantly negative in POI.

21.2 In order to analyze the impact of dumped imports on cash flow, the Authority has considered the trends in cash profits. The cash profit has been determined by addition of amount of depreciation to the profit (profit before tax). The trend shows the same trend as of PBIT. Cash profit has been converted into cash loss.

21.3 It is also observed that domestic industry earned profits in 2004-05 after imposition of anti dumping duties. However, the domestic industry has suffered significant financial losses from 2005-06 onwards. In fact, so significant have been the financial losses that the domestic industry has not been able to recover even interest and depreciation expenses.

22. **Inventories:**

Inventories with the domestic industry have been as under:

	Unit	2004-05	2005-06	2006-07	2007-08
Average stock	MT	***	***	***	***
Indexed		100	84	35	44

22.1 The inventories with the domestic industry are indicative of its inability to sell the subject goods even at a loss. Even though the inventories declined, it is relevant to note that even these levels of inventories are too high.

23. **Employment, wages and productivity**

		2004-05	2005-06	2006-07	2007-08
Employment	Nos.	***	***	***	***
Trend	Indexed	100.00	96.88	88.34	76.19

23.1 It is observed that employment over the period has declined. The domestic industry has no option but to reduce employment in view of significant injury being faced for past 10 years. The domestic industry is somehow trying to survive with reduction in employment, through use of overtime wages, which is optimizing its overall situation.

		2004-05	2005-06	2006-07	2007-08
Productivity per day	MT	***	***	***	***
Trend	Indexed	100.00	93.38	85.88	68.67
Productivity per Employee	MT	***	***	***	***
Trend	Indexed	100.00	96.39	97.22	90.13

23.2 Productivity has declined over the period in view of decline in production. However, even if productivity is considered at the same rate as in the past, it is evident that the domestic industry would have still suffered injury. Wages paid by the domestic industry declined over the injury period, in spite of which the domestic industry is suffering significant losses. Had the wages paid been the same, the domestic industry would have suffered significantly higher financial losses.

24. **Growth**

Growth of the domestic industry is negative in respect of volume as well as price parameters such as sales volume, production, capacity utilization, profitability, return on investment and cash flow.

25. **Dumping margin** – The Authority notes that the dumping margin determined in the previous investigation was found quite significant. The dumping margin determined in the application shows continued significant dumping by Chinese producers.

26. **Ability to raise capital investments** – The Authority notes the following submissions of the petitioner in this regard: -

The domestic industry is required to bring in pollution control measures. Further, research & development is an integral part of every industry. The current product is no exception. However, given significant financial losses, when running of the plant itself is so difficult that the company has been forced to request the Govt. of Kerala or other public sector companies to lend them support with huge funds, investing in R&D or pollution control has become an extremely difficult task. It is clarified that the company has yet not adopted expensive pollution control but is in the process of doing so; however, the difficulty of the company is that it is facing competition from

those companies who are probably not required to invest in pollution control measures.

It is noted that continued dumping has very adversely impacted the ability of the company to raise capital.

27. **Conclusion on injury**

27.1 It has been heavily argued by the opposing parties that –

- (a) Another producer M/s Kilburn Chemicals has not suffered injury;
- (b) Kilburn Chemicals has caused injury to the petitioner;
- (c) Imports from third countries caused injury to the petitioner.

27.2 From the information made available by the interested parties in this regard, the Authority observes the following –

- (a) Even when production & sales of the company have increased, the capacity utilization of Kilburn is sub-optimal.
- (b) The profitability of Kilburn has significantly declined as may be seen from the table below (since Kilburn Chemicals has not responded to the Authority, the present observations are based on evidence provided by the opposing parties);
- (c) From the annual reports of Kilburn Chemicals, the summarized position of the company is as follows:

		2004-05	2005-06	2006-07	2007-08
Sales	MT	8490	9077	7389	9166
Profit before tax	Rs.	72,500,000	9,107,449	9,159,738	3,567,664
Profit after tax	Rs.	34,900,000	8,458,264	6,954,264	1,973,921
Dividend	%	18%	20%	20%	5%
Profit per unit					
Profit before tax	Rs./MT	8,539	1,003	1,240	389
Profit after tax	Rs./MT	4,111	932	941	215

d) It is seen from the above that even if it is admitted that Kilburn has gained volumes, it is evident that the performance of the company has significantly deteriorated in terms of profits, return on investment and cash flow. In fact, assuming that Kilburn constituted domestic industry, it is seen that the conclusion drawn by the Authority would have remained the same i.e. the domestic industry suffered continued injury.

27.3 Interested parties have pointed out about operational difficulties and significantly high unnecessary investment in pollution control measures by the petitioner. The petitioner, however, confirmed not having adopted the pollution control measures of the magnitude as is

known to the opposing parties. The domestic industry argued that they have planned to make very small investments. Even such small investment is becoming difficult in view of significant adverse performance of the company due to dumping. The domestic industry claimed that they are not able to raise capital for investment due to dumping and this may cause irreparable damage to the domestic industry.

27.4 Imports of product under consideration remained significant over the current injury period in absolute terms. The increase in imports was in spite of existing anti dumping duties and appears to be because of increase in the costs leading to increase in the import prices and consequently benchmark becoming less effective in ensuring imports at undumped /non injurious prices. Imports remained significant in relation to production and consumption in India. With regard to price effect, it is observed that imports were significantly undercutting the prices of the domestic industry in the market and were preventing price increases that would have otherwise occurred in the absence of imports. As regards consequent impact of dumped imports on the domestic industry, performance of the domestic industry deteriorated in terms of production, capacity utilization, market share, sales volumes, selling price, profits, cash profit and return on investments. Imports were suppressing domestic prices. The Authority, therefore, concludes that the domestic industry has suffered continued material injury.

28. CAUSAL LINK

28.1 Likelihood of continuation or recurrence of injury

The present investigation is a review investigation and the Designated Authority is required to examine whether revocation of duty is likely to lead to continuation or recurrence of dumping and injury. In this case, though declining, as there are continued dumped imports, the Designated Authority is required to examine whether revocation of duty is likely to lead to continued dumping of the product. Though in a declining trend, the exporters and producers from the subject country are exporting subject goods to India for the past several years. The current dumping margin is very significant. In the previously concluded investigation also dumping margin was significant. In such a situation, there is no reason to believe that the dumping will not intensify with the revocation of duty. Although from the data in the preceding paragraphs, it is evident that the volume of imports from the subject country has reduced much as compared to the base year. However as noted above, imports from China are significantly undercutting the prices of domestic industry. The argument of interested parties to such an extent is factually incorrect. Further, the fact that imports have declined from China does not establish that there is no causal link between continued dumping and continued injury to the domestic industry. It, at best, establishes that the decline in sales volumes of the domestic industry cannot be attributed to dumped imports. Even on this factor, the domestic industry argued that had the Chinese producers not resorted to dumping, the domestic industry would have had enough market to sell the material. This, according to the domestic industry, clearly establishes adverse impact. Furthermore, and more importantly, in any case, significant difference between landed price of import on one side and selling price & non injurious price of domestic industry on the other side clearly establishes that injury would intensify in the event of revocation of anti dumping duties. The domestic industry has referred to the decisions of the CESTAT in the following cases, which has also been considered in the present disclosure statement.

- i) Kalyani Steel Ltd 2006(203) ELT 418.
- ii) Indian Graphite Manufactures association 2006(199) ELT 722

iii) Forum of Acrylic Fibre manufacturers 2006(202) ELT 257

iv) Jindal Steels Ltd 2006(204) ELT 267

Considering the huge production of the subject goods in China and their export orientation and the increasing demand for the subject goods in India, in all likelihood any reduction or revocation of the anti-dumping duty may lead to spurt in the dumped imports injuring the domestic industry.

29. **Likelihood of Dumping**

To examine the likelihood of dumping in a sunset review investigation, the Authority applies the same methodology and the procedure as are applied in original investigations. The dumping margin is also recalculated for the POI.

29.1 The subject goods are being exported at very low and dumped prices. The Chinese exporters have continued dumping even after the imposition of anti-dumping duties. Further, the volume of imports is significant in spite of present duties. Thus, the present situation is clearly suggestive that (a) the dumping would continue in the event of revocation of anti dumping duty; (b) the volumes would further increase, once the present anti dumping duties are revoked. Thus dumping is likely to continue in significantly increased proportion in the event of revocation of anti dumping duties. There are no changes in the parameters/circumstances prevailing at the time of original investigation as well as at present. It is evident from above that dumping margins are not only more than de-minimis but also significantly high. The circumstances, which were prevalent at the time of original investigations, are very much in existence even in the present period. Considering the volume of imports reported in the injury period of previous case and the volume of imports reported in the current injury period in absolute terms and in relation to production & consumption in India, the Authority is of the view that revocation of anti dumping duties is likely to lead to injury to the domestic industry from dumped Chinese imports.

29.2 Following are some of the considerations, which reflect that the dumping would occur rather at aggravated level in the event anti-dumping duties are revoked or not extended for the next five years.

a. **Exports to other Countries**

Chinese exporters are exporting the subject goods in the third countries in significant volumes. It is evident that in the case of revocation of anti dumping duty, dumping of Chinese material into the Country would intensify.

The position of top twenty destinations of Chinese exports (quantity in Kg) of Titanium Dioxide (282300) is as follows:

	Top 20 Countries					
Rank	Country -	Apr 04-Mar 05	Apr 05-Mar 06	Apr 06-Mar 07	Apr 07-Mar 08	Apr 08-Mar 09
0	--World-- -	2,83,97,739	2,87,57,488	3,48,64,937	3,81,02,954	2,24,41,538
1	United States -	22,42,077	14,41,620	13,75,675	19,94,998	33,13,245

2	Japan -	41,77,155	25,80,738	35,42,242	45,02,728	24,48,249
3	India -	14,89,000	30,32,175	68,65,250	44,76,350	21,54,150
4	Spain -	3,40,000	15,85,000	15,49,000	68,45,500	20,97,525
5	Korea, South -	33,34,725	35,87,100	45,61,140	44,14,852	15,44,998
6	Thailand -	18,05,000	17,57,500	27,44,840	22,57,000	15,23,345
7	Indonesia -	3,26,800	9,40,000	16,46,500	13,33,500	11,98,625
8	Hong Kong -	81,67,810	64,12,300	24,02,000	29,30,676	11,59,550
9	Vietnam -	3,97,600	7,73,925	13,48,110	11,57,530	10,80,520
10	Belgium -	1,38,000	4,40,000	6,10,800	4,98,100	6,93,600
11	Turkey -	65,000	64,000	6,87,200	5,21,775	6,89,000
12	Netherlands -	59,500	5,24,000	2,23,725	7,08,000	5,11,000
13	France -	4,14,000	3,94,100	5,10,300	6,01,850	4,66,250
14	Taiwan -	8,40,960	8,27,175	9,24,610	5,92,975	4,55,005
15	Iran -	1,67,000	3,89,000	5,81,000	5,53,300	4,11,020
16	Malaysia -	4,29,000	5,84,000	6,77,000	5,55,510	4,02,425
17	Italy -	22,000	1,20,075	7,82,000	14,71,300	3,75,800
18	Brazil -	3,00,000	0	91,000	3,22,000	3,50,000
19	Australia -	60,000	92,000	60,000	3,18,000	2,99,000
20	Bangladesh -	42,000	1,29,500	1,72,000	1,04,000	2,18,000

Source of data: China Customs

Pricing trend

The prices to third countries expressed in Rs. Term per kg (US\$=Rs 40.75 for POI) is as follows:

Rank	Country -	Apr 04- Mar 05	Apr 05- Mar 06	Apr 06- Mar 07	Apr 07- Mar 08	Apr 08- Mar 09
0	--World--	-				
1	United States -	79.46	59.56	92.77	107.41	224.12
2	Japan -	218.16	148.59	258.41	286.60	210.11
3	India -	59.43	124.73	305.47	237.52	126.54
4	Spain -	13.01	54.29	60.62	332.10	149.05
5	Korea, South -	143.31	158.68	216.16	253.36	106.50
6	Thailand -	72.88	75.35	128.69	130.72	101.59
7	Indonesia -	13.36	40.75	74.04	76.33	76.23
8	Hong Kong -	281.95	255.13	110.92	154.71	78.93
9	Vietnam -	12.12	26.10	58.63	65.80	74.15
10	Belgium -	5.77	19.38	31.29	29.37	45.26
11	Turkey -	2.48	2.93	31.31	25.55	48.24
12	Netherlands -	2.55	18.77	11.39	37.65	44.29
13	France -	15.26	15.41	23.08	31.04	35.74
14	Taiwan -	31.96	40.47	46.53	36.92	27.51
15	Iran -	7.24	16.22	26.11	30.73	25.04
16	Malaysia -	17.49	25.74	30.62	32.14	28.58
17	Italy -	0.64	4.68	31.41	71.11	19.81
18	Brazil -	14.67	-	4.20	19.91	22.95
19	Australia -	2.59	4.39	2.67	16.90	21.84
20	Bangladesh -	1.69	5.18	7.78	6.66	13.76

Source of data: China Customs

b. Capacities with Chinese producers

The capacities created by producers in China are significantly high. There are more than 100 producers of Titanium Dioxide in China. Huge volume of exports being made by the Chinese producers in third country markets makes it evident that the volume of imports into India would increase significantly in the event of revocation of anti-dumping duty. The petitioners could collect information with respect to the some of the producers of the subject goods in China, which shows the following position –

S.N.	Name of the Company	Capacity/Production(MT)
1	Jiangsu Hongyuan Pharmacia P Rtical Co.,Ltd	15,000
2	Jiangsu Taibai Group Corp.	50,000
3	Shanghai Nanling Chemical Products Co., Ltd	12,000
4	Xiamen Profounder Import and Export Co., Ltd	30,000
5	Jiangsu Zhentai Chemical Co., Ltd.	50000
6	Maanshan Goldstar Chemical Industrial (Group)	2000
	Total	159,000

c). The Chinese producers are holding significant capacities, as may be seen from the information given above for some of the Chinese producers. Such being the case, there is a great possibility that revocation of duty would lead to surge in imports and severe injury to the domestic industry. Given the meagre demand of approximately 38,000-40,000 MT in India, as compared to capacity in China (more than 50,000 MT for some of the producers), it is beyond doubt that the domestic industry can be completely wiped out by the Chinese dumping, should the same be allowed.

d) The representatives of M/s. Berger Paints Ltd. and M/s. Kansai Nerolac Paints Ltd. have argued that the data on excess capacities does not pertain to production capacity of TIO₂ Anatase grade exclusively. However, the importers have not provided any information to substantiate their claim. Therefore, the Authority considers the information submitted by the domestic industry as best information available.

e) From the foregoing, it is evident that the Chinese producers have huge capacities of Titanium Dioxide and have been exporting substantial quantities to third countries. The exports are being made to India also and domestic industry is facing continuous dumping of subject goods from China. However, there is no reason or justification to believe that revocation of the duty would not lead to increased or continued dumping at large scale with consequent severe injury to the domestic industry.

30. Current Injury and causal link

30.1. Article 3.1 of the Act and Annexure II of the AD Rules provide for 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 the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the

effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

G. Other Known factors and Causal Link

31. The Authority has examined existence of causal link between the dumped imports and injury suffered by the domestic industry in the light of the arguments of the interested parties and having regard to the Rules in this regard.

a) Effect of other known listed parameters

The Authority examined the issue of causal link and other non-attributive factors as laid down in the Rules to segregate injury, if any, caused by other factors. In this regard, the following indicative factors as laid down in the Rules have been examined.

31.1 Volume and Prices of imports not sold at the dumped prices

The Authority observes that although there are imports of the product under consideration from other countries during the POI but the import prices, as evident from the data at Para 19 (iv) above, were higher than the prices of domestic industry and hence are not undercutting the domestic industry's price. Thus, the authority observes that the price effect of dumped imports from China is quite significant.

(b) Trade restrictive practice and competition between the foreign and domestic producers

The Authority has not found any trade restrictive practice followed by the domestic industry and other Indian producers. The Authority observes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market. Further, the landed price of imports declined very significantly over the injury period. In a situation where the import prices are substantially lower than the selling prices of the Indian Producers, it cannot be concluded that the price reduction in the market were triggered by the domestic producers.

(c) Contraction of demand or Changes in the pattern of consumption

There is no contraction in the overall demand during the period under consideration. Therefore, any possible decline in demand is not a factor, which could have caused injury to the domestic industry. There is no argument by interested parties regarding the change in the pattern of consumption, nor does it appear that changes in the pattern of consumption could have inflicted the injury to the domestic industry.

(d) Export performance

Export sales of the domestic industry have declined. However, the data with respect to domestic sales has been examined separately. Therefore, decline in exports is not a possible cause of injury to the domestic industry.

Particulars	Unit	2004-05	2005-06	2006-07	POI
Exports Sales	MT	785	5,464	-	25

(e) Productivity of the Domestic Industry

Productivity of the domestic industry has declined as a result of decline in production.

(f) From the foregoing, it can be concluded that there is no evidence of injury being caused due to other factors.

(g) Overall assessment

32. The above analysis of various injury and causal link factors show that in spite of improvement in some parameters during the injury period, the performance of the domestic industry has materially deteriorated and the industry suffered injury in terms of sales volumes, capacity utilization, market share, profitability, cash flow and return on investment, while there was significant demand for the product in the domestic market. The injury suffered is material and significant. Therefore, the Authority concludes that the domestic industry has suffered continued injury and such injury has been caused significantly by price and volume effects of dumped imports from the China PR. Injury, if any, caused due to other factors is not significant.

33. Magnitude of Injury and injury margin

In a situation where the dumping continues or is likely to recur in the event of revocation of anti dumping duty and where the domestic industry continues to be injured or the injury to the domestic industry is likely to recur in the event of revocation of anti dumping duty, the anti dumping duty in force should be continued further for a period of five years. In the instant case, dumping of the product from China has continued. Dumping would intensify, should the present anti dumping duty be revoked from China.

33.1 Comments to the Disclosure statement.

a) By the Importers

33.1.1 There should be no conversion of the benchmark duty payable on imports of the PUC into fixed amount because:

- a. There is no dumping,
- b. The aim of the anti-dumping duty is to remove injury to the domestic industry, is achieved through levy of benchmark duty as well.

b) By Domestic industry

33.1.2 Definitive anti dumping duties are required to be continued on imports from the subject country and fixed form of duty may be recommended, expressed in US\$.

33.2 Examination by the authority

a) The authority notes that the investigations have shown continued imports at dumped prices and continued injury. As the landed price of the subject product does not show wide fluctuation, the authority observes that there is no necessity for imposition of definitive duties in fixed terms.

H. FINAL FINDINGS:

34. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submissions of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- i) The subject goods are entering the Indian market at dumped prices and the dumping margin is substantial and above de-minimis.
- ii) The subject goods are likely to enter Indian market in increased volumes and at dumped prices, should the present measures be withdrawn.
- iii) The performance of the domestic industry has materially deteriorated and the industry suffered injury in terms of sales volumes, capacity utilization, market share, profitability, cash flow and return on investment, while there was a healthy demand for the product in the domestic market. The situation of the domestic industry continues to be fragile due to continued dumping of the subject goods from the subject country. Should the present anti dumping duties be revoked, injury to the domestic industry is likely to continue and intensify.

I Indian industry's interest and other issues

35. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the product in India. 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 practice, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of the anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the products to the consumers. The consumers could still maintain two or even more sources of supply.

36. The purpose of anti dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti dumping, therefore, would not affect the availability of the products to the consumers.

37. The domestic industry has represented for conversion of present anti dumping duties from benchmark form to fixed form, expressed in US\$. The Authority notes that there were significant movements in the raw material prices over the injury period. It is therefore considered appropriate to modify the form of measure to fixed quantum of anti dumping duties expressed in US\$.

J. Recommendations

38. Having concluded that the situation of the domestic industry continues to be fragile and there is likelihood of continuation and intensification of dumping and injury on account of imports from the subject country if the duties are revoked, the Authority is of the opinion that the measure is required to be extended in respect of imports from the subject country as

recommended by the Authority vide Final Findings Notification No.14/51/2002-DGAD dated 15th March, 2004 published in the Gazette of India, Extraordinary, Part-I, Section-I, on 16th March ,2004 and notified by the Central Government vide Notification No.54/2004-Customs dated 9th April, 2004.

39 Having examined the current dumping and likelihood of dumping to be imminent in case of withdrawal of the current measure in place and since none of the exporters from the subject country has cooperated and provided the required information/data, the Authority recommends continued imposition of Anti-Dumping Duty for a further period of five years on all the exporters/producers in respect of the subject goods originating in or exported from China PR as per the table below. The Anti-Dumping duty shall be equal to the difference between the amount mentioned in column no.9 of the following table and the landed value of the imported subject goods falling under chapter 28 and/or 32 of the Customs Tariff, originating or exported from the subject country as mentioned below:-

Sl No.	Customs Sub heading	Description	Specification	Country of origin	Country of export	Producer	Exporter	Reference Price Amount	Unit of measurement	Currency
1	2	3	4	5	6	7	8	9	10	11
1	28 23 and/ or 32 06	Titanium Dioxide	Anatase	China PR	China	Any	Any	1735.47	Per MT	US \$
2	28 23 and/ or 32 06	Titanium Dioxide	Anatase	China PR	Any	Any	Any	1735.47	Per MT	US \$
2	28 23 and/ or 32 06	Titanium Dioxide	Anatase	Any other than China PR	China	Any	Any	1735.47	Per MT	US \$

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

R. Gopalan
Designated Authority