

Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan

NOTIFICATION

Final Findings

New Delhi, the 22nd August 2003

Subject :- Anti-dumping investigation concerning import of Float Glass originating in or exported from People's Republic of China and Indonesia- Final Findings.

No. 14/19/2002-DGAD – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE:

2. The procedure described below has been followed with regard to the investigations:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from All India Flat Glass Manufacturers' Association (AIFGMA), New Delhi on behalf of the domestic industry, alleging dumping of Float Glass (hereinafter referred to as subject goods) originating in and exported from People's Republic of China and Indonesia (hereinafter referred to as subject countries);
- ii. The following producers of Float Glass in India and members of the AIFGMA (hereinafter referred to as the petitioners) have specifically consented to participate in the anti-dumping investigations:
 - a. M/s. Saint Gobain Glass India Ltd., Kanchipuram, Tamil Nadu.
 - b. M/s. Float Glass India Ltd., Mumbai.

Another domestic producer, viz., M/s. Gujarat Guardian Ltd., Dist. Bharuch, Gujarat has supported the petition.

- iii. The Authority notified the Embassies of Peoples' Republic of China and Indonesia in India about the receipt of dumping application made by the petitioners before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iv. The Authority issued a Public Notice dated 5th July 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Float Glass covered under Chapter heading/subheading 70.05 of Schedule I of the Customs Tariff Act;
- v. The Authority forwarded copy of the said public notice to the known exporters, importers and to the complainants and gave them an opportunity to make their views known in writing;
- vi. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Embassies of subject countries in India;
- vii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods;
- viii. The Authority provided copies of the non-confidential version of the Petition to the known exporters and the Embassies of the subject countries in accordance with Rule 6(3) supra;
- ix. The Embassies of the subject countries were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the 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 exporters was also sent to them;
- x. A questionnaire was sent to the known importers/users (as per details in the preliminary findings) of subject goods in India calling for necessary information in accordance with Rule 6(4);
- xi. The Authority notified preliminary findings vide notification dated 20th November, 2002 and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- xii. The Authority also forwarded a copy of the preliminary findings to the Embassies of subject countries in India with a request that the exporters/producers of subject goods and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated above;
- xiii. The Authority forwarded a copy of the preliminary findings to all the known exporters (whose details were made available by the Petitioner) other exporters who responded to the initiation notification, importers in India and they were requested to furnish their views, if any, on the preliminary findings within forty days from the date of the letter;
- xiv. The Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 19th February, 2003. All parties

- presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- xv. The Authority made available to all interested parties the public file containing non-confidential version of evidence submitted by various interested parties for inspection, upon request as per Rule 6(7);
 - xvi. Arguments made by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in the disclosure statement and these findings;
 - xvii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 25th June, 2003 vide a disclosure statement and comments received on the same have also been duly considered in these findings;
 - xviii. Cost investigations including spot verification (as deemed necessary) of the domestic industry were also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the Petitioner.
 - xix. The Authority conducted on the spot verification of information furnished by the exporter M/s PT Mulia Glass, Indonesia.
 - xx. *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
 - xxi. The investigation covered the period from 1st April, 2001 to 31st December, 2001.
 - xxii. Copies of the Initiation Notice and Preliminary Findings were also sent to FICCI, CII, ASSOCHAM etc. for wider circulation.

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND

EXAMINATION BY AUTHORITY.

3. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these are relevant as per rules and have a

bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below.

4. At the Preliminary Findings stage responses had been received from the following:

Exporters: -

- i. PT Mulia Glass, Indonesia.
- ii. PT Abdi Rakyat Bakti, Indonesia.
- iii. PT Tensindo, Indonesia.
- iv. M/s Qinhuangdao Huazhou Glass Co. Ltd., China
- v. M/s Nanning Float Glass Co. Ltd., China

Importers

- i. M/s. Monika Exim International Ltd., Pune.
- ii. M/s. Liberty Glass House, Mumbai.
- iii. M/s. Impact Safety Glass Works Pvt. Ltd., Bangalore
- iv. M/s. Mahaveer Mirror Industries
- v. M/s. T.L.Verma & company (P) Ltd.
- vi. M/s Samarth Industries, Mumbai
- vii. M/s Rajvi Enterprise, Mumbai
- viii. M/s Chinoy Chablani & Company, Calcutta

The submissions made by various interested parties had been dealt with in the preliminary findings and these are not being repeated here for the sake of brevity.

Views expressed by M/s Monika Exim International Ltd., Pune and M/s Navakar Impex Pvt. Ltd., Chennai in response to Disclosures :

5. It has been argued that the Disclosures issued by the Authority are deficient as under:

Initiation : The application for initiation was without a letter from the petitioners and supporters.

Procedure : Many of the interested parties were not sent the copy of initiation notification dated 5.7.2002 and their names were not disclosed in the list. Even the foreign exporters like PT Tensindo and PT Abdi Rakyat Bakti were not sent the copy of the preliminary findings and were not informed about the public hearing held on 19.2.2003.

Non-Disclosure of Civil Appeal : The fact of pending court cases / interim orders of Hon'ble High Court have not been mentioned in the Disclosures.

Period of Investigation : It was essential to segregate the reflective glass imports from Float Glass before initiating the investigation. Initiation was done in July, 2002, i.e. seven months after the last date of POI.

Product under Consideration and Like Article : It is not disclosed as to why production quantity of item sheet glass is not considered as Like Article. If production of sheet glass is considered, the petitioners would not fall under the definition of domestic industry.

Margin of Dumping :

- a. The Designated Authority has not disclosed the reasoning for taking the Normal Value as constructed cost of manufacturing for domestic petitioners instead of the Normal Value of PT Mulia in the case of the Chinese manufacturers. The Authority should consider the Normal Value as that of PT Mulia instead of highly inflated cost of manufacture of the domestic petitioners.
- b. In the absence of response from Chinese manufacturer, the Authority has not disclosed how the proof of export price from China has been calculated to achieve the dumping margin.
- c. The Authority has failed to disclose its reasoning for calculating the Normal Value, export price and margin of dumping on weighted average basis.
- d. The Normal Value provided by PT Mulia has been upheld for other Indonesian suppliers. The export price for the three manufacturers is alike specially for the 4mm and 5mm clear float glass. The Designated Authority has not disclosed the flawed calculations. As the Normal Value and export price are same for the three manufacturers, how dumping margin of PT Tensindo and PT Abdi can be higher when compared with PT Mulia.

Assessment of Injury :

- Imports from subject countries: The annualized import figures, which have not been disclosed, have been used to suggest the increase in volume of imports from the subject countries when actual figures should have been available. Actual or even annualized import data relied upon has not been disclosed. There has been drastic reduction in the total quantity of imports when compared to the year 99-2000. During the year 99-2000, the imports have said to be 10272 tones whereas during the POI it has fallen to 4406 MT and annualized to 5874.67 MT.

It can also be seen from the table 4.1 of the application that the import from the subject countries in comparison to the demand in the country, imports gave drastically reduced from 9.15% in 99-2000 to 1.71 in 2000-01 and 3.32 % during the POI though there have been drastic increase in the total demand of the country from 100 to 118.18

- Market share: The petitioners appear to have presented only annualized figures of sales volume of subject goods during POI when actual figures were available at the time of submitting the application. The annualized sales volume figures relied upon by the Designated Authority have not been disclosed.

It has not been disclosed as to how the demand for the subject goods in relation to the demand in the country has increased. As a matter of fact it has been disclosed that the said demand in comparison the domestic industry has decreased.

The market demand data for subject goods, which is by nature non-confidential, has not been disclosed. The Designated Authority in evaluation injury parameters has used this data.

- Production of Domestic Industry: The installed capacity of the petitioners for the subject goods has not been disclosed. The information regarding installed capacity is significant to evaluate and examine level of investments and operations and return on capital claimed and adopted by domestic industry.

Optimum and not any actual level of capacity utilization in terms and actual figures for the domestic industry has not been disclosed.

The DA has noted that there has been an increase in capacity of production and due to the increase only a marginal decrease of 0.66% in capacity utilization has occurred. The DA has failed to show how an injury can be claimed on this. As a matter of fact the DA has not disclosed a better performance on account.

The DA has also not disclosed that the supporting company M/S Gujart Guardian has been running at almost 110% capacity during the POI.

The market share of the domestic industry has been consecutively increasing and when it is clearly accepted by the domestic industry that there has been increase in the market share there is no reason that imports would cause any injury and therefore, no injury is caused or proved due to the imports. The capacity utilization near to 80% is generally treated as optimum worldwide and fall of meager percentage of 0.66 in the capacity utilization may be due to the increase in the new capacities.

· Sales Volume: The alleged normative basis of working out fair selling price has not been disclosed. It is not shown as to how injury to the domestic industry on account of some unexplained "other factors" is nullified. What are these "other factors" has also not been disclosed.

It is pertinent to note that how the ADA is satisfied to accept the contention of the domestic industry that the increase in the market share of the domestic industry has to be viewed in the context of the addition of the new capacity in the country, if such is the case, that market share increases with the set up of new capacities, why should there be fear of imports because the addition of import is like addition of new capacity as the market is big enough to consume the increased capacities.

- Inventory: The DA has not disclosed the reasoning for comparing inventory levels with that of at the end of December, 2001 in comparison to the previous year closing on March, 2001. The inventory levels can only be compared with year end to year end or December 2001 to December 2000 to come to a correct level of comparison.
- Employment: The DA has not disclosed that there is no Injury on these grounds.
- Wages: The DA has not disclosed that there is no Injury on these grounds.
- Profitability: The DA has not disclosed that the Profits made by the domestic industry have been the highest during the POI when compared to the previous entire history of the domestic industry. Also, not disclosed is that the company m/s Saint Gobain, petitioner, is a new company and has shown much better results when compared with their projections in their project reports. Also not disclosed is that the supporter Gujarat Guardian Ltd. Has made a profit of around Rs. 50 Crores during the POI.
- Price under selling: Optimum and not any actual cost of production for producing subject goods have not been disclosed. It has not been shown as to how fair selling price or non-injurious price, which is stated, to be due to the domestic industry has been worked out and what are the costs involved therein and the underlying assumptions. The difference between the fair selling or non injurious price whose method of computation, cost involved, basis and assumptions have not been disclosed and the landed value of the imports is in fact the actual imposition of provisional anti dumping duty and therefore the entire basis and working of arriving at the fair selling or non injurious price was required to be disclosed.
- Price under cutting: The DA has not disclosed that the domestic industry increased the selling price of their product during the POI by at least 65% when compared to the previous AY. In the presence of the above how can any price

underselling or injury due to this be claimed? If price undercutting was there, then increase in selling price would not have been possible. The ADA has not disclosed "other factors" that are said to have resulted in the sale price improvement of the domestic industry and the extent to which the sale price increase was accounted for by increase in raw material price.

- Returns on Investment: The DA has not disclosed that in view of the increased capacity in the preceding year a fair ROI was not possible for any of the manufacturers, in spite this all have shown a better ROI during the POI. The authority has not disclosed what a fair ROI is expected by the petitioners. The supporting company has earned a profit after tax and depreciation of over 10% of their investments during POI. The fair and not any actual return on investments to which the domestic industry is stated to be entitled to has not been disclosed by the ADA in the disclosure statement. What is the fair level of investment on which fair returns have been calculated and assumed has not been disclosed.

The analysis of financial information if provided by the domestic industry and the results of verification done by the authority to examine the impact of imports on domestic industry's Return on Capital employed has not been disclosed.

What is the methodology adopted in this analysis has not been shown or explained. The price-undercutting table does not disclose any figure, which should have been disclosed to arrive at the exact price undercutting if any. The price undercutting was not due to the imports but due to the competition among the domestic manufacturers wherein the float glass industry has planned to wipe out the sheet glass industry in phased manner.

- Actual and Potential negative effects on cash flow: There is no analysis disclosed or discussed of the designated authority on the aspect that negative cash flow of the petitioners was a function of several other factors, which too have not been disclosed.
- Growth: The DA has not disclosed of the additional investments made by the supporting company.

Causal Link:

It has been time and again been brought to the notice of the DA, that not only must the DA study, the alleged dumping, it must also study the effect of dumping to the domestic industry and any injury thereof. And also the DA must verify that the injury being caused to the domestic industry is by the effects of dumping only and that there

is a clear causal link between the two. And if any other factors are causing the injury, this must not be attributed to dumping.

In the present case, there is no injury to the domestic industry on account of alleged dumping. This is very much clear from the balance sheets of all, the petitioners as well as the supporters. If any injury were observed, the balance sheets would have shown a negative performance rather than a positive when compared with the immediate preceding three years as is in the case of the present investigation. The DA has not disclosed this.

The rules clearly specify, if any restrictive trade practices between domestic and local producers exist, the injury caused by this must not be attributed to dumping. The DA has time again pointed out to the ruling of the Supreme Court, which has only shown that both the MRTPC and the ADD have separate jurisdictions to cover this matter. The case at the MRTPC is still pending on account of injury being caused to the domestic producers on account of Restrictive trade practice. If injury by supply of low priced goods due to the petitioners at the MRTPC are claiming a restrictive trade practice. Then as the ADD rules specify, no injury caused due to this factor may be attributed to dumping. In other words, the ADD must segregate the quantum of injury due to the Restrictive trade practice and must not attribute that amount to Injury being caused due to dumping, if any.

The exact causal link in terms of the price, value and the volume of the imports and that of the domestic industry is not established or disclosed.

6. Authority's views

- a. The Authority is of the view that the Disclosures issued on 25th June, 2003, under Rule 16 of the Anti Dumping Rules contained the essential facts under consideration of the Authority which would form the basis for its final findings. The submissions made by various interested parties at the stage of preliminary findings had been addressed and dealt with at the time of issue of preliminary findings notification dated 20.11.2002. The Disclosure Statement as per Rule 16 are required to contain the essential facts under consideration of the Authority which form the basis for making final determination. It is not permitted to bring in new issues at this stage by any interested party as sufficient time had already been given to the interested parties to offer comments after initiation of investigation, after issue of preliminary findings and after holding of the public hearing.
- b. As regards arguments on initiation that the application for the initiation was without a letter from the petitioners and supporters, the petition contained the letter of All India Flat Glass Manufacturer Association. Upon request made by

the importer M/s Monika Exim International Ltd., a copy of the said letter dated 26th April, 2002 was supplied to them by the Designated Authority vide letter dated 1st October, 2002.

- c. As regards points raised regarding procedure of forwarding of initiation notification and preliminary findings to various interested parties, the Initiation Notification dated 5.7.2002 and the Preliminary Findings dated 20.11.2002 were sent to all the known interested parties, Embassies of the subject countries in India and to those exporters / importers who had participated in the investigation. In this regard, para 2 of the preliminary findings notification also refers. The Authority also received acknowledgment about receipt of preliminary findings notification dated 20.11.2002 from exporters M/s PT Tensindo. As regards Public Hearing held on 19.2.2003, notice of same had been issued on 22nd January, 2003 and all interested parties had been informed. Exporter, M/s PT Mulia confirmed by their e-mail dated 17.2.03 about receipt of the notice of the public hearing and informed that they would not participate in the public hearing. M/s Mahavir Mirror Industries, Chennai, M/s Navakar Impex Pvt. Ltd., Chennai acknowledged the receipt of the notice of public hearing but did not attend the same on the plea that they had challenged the preliminary findings before the Hon'ble High Court, Madras and that in view of the interim orders of the Court, all further decisions including the final findings were to be kept in abeyance. M/s Monika Exim International Ltd. neither responded to the notice of public hearing nor did they attend the public hearing. The representative from the Ministry of Industry, Republic of Indonesia and officials of the Embassy of Indonesia in India attended the public hearing, among others. The Authority is of the view that the procedure as laid down under Anti Dumping Rule 6 was duly followed and the interested parties were given opportunity to make oral submissions in the public hearing held on 19.2.2003. The parties attending the public hearing made written submissions thereafter which were also exchanged. The parties thereafter made rejoinders on the submissions of other parties. Some of the importers and exporters did not attend the public hearing for the reasons best known to them, however they can not claim that opportunity of oral hearing was not given to them. Rather the opportunity given to them was not availed by them. There were no directions from the Hon'ble High Court to restrain the Designated Authority from proceeding further in the investigation. Therefore, the Authority does not find any merit in the arguments of the importers as regards not following the procedure in the conduct of the investigation.
- d. As regards arguments raised on other issues viz. POI, Product under consideration and Like Article, dumping margin, injury assessment, the same have been dealt with at appropriate places in these findings.

7. Writ Petitions / Appeals before the Hon'ble High Court

- a. Some of the importers of Float glass had filed writ petitions / appeals before the Hon'ble High Court of Madras challenging the validity of the Preliminary findings Notification dated 20.11.2002. In the WP Misc Petition 1812/2003 in WP 1451 of 2003 of M/s Mahavir Mirror Industries and WP Misc Petition 3985/2003 in WP 3193 of 2003 of M/s Monika Exim International Ltd. and WP 1810/2003 in WP 1449 of 2003 of M/s Navakar Impex Pvt. Ltd., the Hon'ble High Court had issued interim orders on 20.1.2003 and 3.2.2003 stating that there will be an interim stay to the effect that the Central Government to proceed only up to the stage of Rule 13 and further decision shall be kept in abeyance until further orders. Thereafter, the WP 44506 & 44507 of 2002 of Mahavir Mirror Industries and WP 3193 & 3194 of 2003 of Monika Exim had been dismissed by an order dated 13.3.2003 of Hon'ble High Court of Madras. The said importers had challenged, inter-alia, the legality of the Preliminary Findings dated 20.11.2002 and the validity of Rule 7 relating to confidentiality information, non-compliance of principles of natural justice in the shape of personal hearing prior to the issue of preliminary findings. The Hon'ble High Court did not find any justification in the Writ Petitions of these importers and therefore, dismissed the same.
- b. Subsequently, in the WA Misc Petition 2091 and 2092/2003 of M/s Mahavir Mirror Industries and WA Misc Petition 2093 and 2094/2003 of M/s Monika Exim International Ltd., the Hon'ble High Court, Madras passed following orders on 16th April, 2003:

Having heard either counsel in all these matters and having regard to the facts and circumstances of the case and balance of convenience, we direct, that in all these cases, the goods be released on furnishing bank guarantee towards Anti –Dumping Duty. We make it clear that in the event of writ appeals being allowed, the bank guarantee shall be revoked or otherwise on the failure of the payment of Anti-Dumping Duty, the bank guarantee will have to be invoked.

From the above orders of the Hon'ble Court, it is evident that there are no directions to the Designated Authority to stop proceeding further in the investigation.

8. Product under Consideration and Like Article :

The product under consideration in this investigation is 'Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including processed glass meant for decorative, industrial or automotive purposes'.

Subsequent to the Preliminary Findings, following views / comments have been received :

Views of All India Flat Glass Manufacturers' Association (AIFGMA) :

- i. The description of the product under consideration is specific and covers only clear and tinted glass. Accordingly, the above product definition cannot include 'reflective glass' which are processed and do not remain clear and tinted so as to come under the scope of the anti dumping investigation. The Association had no intention of getting anti dumping duty levied on 'reflective glass' imported from China and Indonesia as the same do not injure the domestic industry and is a processed glass which is imported at substantially higher prices than Float Glass. It is, therefore, requested for exclusion of reflective glass from the notification imposing anti dumping duty on Float Glass.
- ii. It is abundantly clear that sizes below 2mm and above 12mm are not proposed to be covered within the purview of the investigation nor do the reflective glasses form part of the investigation. In the chart submitted by the importer they have indicated that the Domestic Industry does not manufacture some non-standard thickness like 3.2 mm, 4.2mm, 5.5mm etc. In this connection, it is respectfully submitted that normally glass is sold in standard thickness only and glasses of non standard thickness are perfectly substitute to the Domestic Industry's range of products, both technically and commercially. Thus, the importer has not been able to point out any product which is not like article to the Product Under Consideration or the product range of the Domestic Industry. This is without prejudice to the fact that the contention of the importer about the non-production of certain thickness is also incorrect.

Views of Impact Safety Glass Works Pvt. Ltd. Bangalore :

There are other manufacturers of Flat Glass in India who are part of the Association and who produce similar or substitutable items. The petitioner has not admitted these companies as Indian producers. In case the product being produced by these companies is not a like product, the relevant issue would be whether the product being imported from Indonesia and China is a like product. The Indian producers must be in production of 'like article'. For the goods imported from the subject countries, the goods produced by all these producers who have not been acknowledged as Indian Producers are like articles. These producers could not have been, therefore, ignored by the petitioners, more so when these companies are members of the Association.

M/s Monika Exim International Ltd. and M/s Navakar Impex Pvt. Ltd. have raised an issue in response to the Disclosure Statement that it has not been disclosed why Sheet glass has not been considered as Like Article.

Examination by the Authority :

The Authority recalls the Preliminary Findings wherein under para 19, the issue of domestic industry has been dealt with. The Authority has observed that M/s Haryana Sheet Glass Ltd., M/s Gujarat Borosil Ltd. and M/s IAG Company Ltd. are manufacturers of Sheet Glass. The other producer M/s Triveni Glass Ltd., who manufactures Float Glass, has already been shown as manufacturer under 'other producers' in the petition. The Authority is of the view that the present investigation relates to 'Float Glass' and the arguments made by importers M/s Monika Exim and M/s Navakar Impex Pvt. Ltd. to include sheet glass within the scope of the product under consideration and Like Article is irrelevant and devoid of justification. The Authority confirms the Preliminary Findings as regards the Product under Consideration subject to the clarification given by the domestic industry to exclude reflective glass from the scope of the investigation and imposition of anti dumping duty. The authority notes that the subject goods being imported from the subject countries technically and commercially substitute the domestic producers' product. It may be that Float Glass of some thickness may not have been produced by the domestic industry during the period of investigation. Yet the domestic industry is capable of producing the same and the imported subject goods are commercial substitute of the domestically produced Float Glass. The imported subject goods have characteristics closely resembling those of the domestic product. In the absence of any other significant arguments on the issue of Like Article, the Authority confirms its views that the Product under Consideration being imported from the subject countries is a Like Article to the Float Glass being produced by the domestic industry.

9. Period of investigation :

The period of investigation in the present investigation is from 1st April, 2001 to 31st December, 2001. It has been argued by the importers viz. M/s Monika Exim International Ltd., Pune and M/s Navakar Impex Pvt. Ltd., that the import data of secondary sources also included reflective glass which is not a part of the item under investigation. The item reflective glass is also falling under HS Code 70.05 and it was essential to segregate the reflective glass from clear and tinted float glass before initiating the investigation. The reason for not segregating reflective glass from the item under investigation is not disclosed. Further, it has been argued that data is provided by Customs Houses officially on payment of fees and therefore, depending on secondary source data gives grounds for suspicion. The initiation was done in the month of July, 2002 i.e. seven months after the last date of POI. It is not digestible to say that data were not available from reliable sources even after seven months. Further it has been argued that how quarter-wise information in respect of POI was helpful to the Authority in making appropriate analysis when information pertaining to POI of nine months is compared with two full accounting years. The Authority is of the view

that the anti dumping agreement does not lay down the period of investigation. However, it should not be less than six months. The Authority also notes that the importers have raised the above arguments at a very belated stage i.e. after the issue of Disclosures. The importers or any interested party were fully aware of the period of investigation and the data relied upon by the petitioners. Nonetheless the authority has examined this aspect. The Authority has referred to the petition of the domestic industry wherein a 'Note on Collation of Import Data' had been annexed. It had been clearly stated in the said Note by the petitioner that the statistics published by the DGCI&S give combined details of all types of Float Glass and surface ground or polished glass imports into India from various countries. However, the petition related to *'Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including processed glass meant for decorative, industrial or automotive purposes'* which were being dumped and causing injury to the domestic industry. The Note further stated that the petition sought to cover only subject Float Glass for which no dedicated heading exists nor is the data compiled by any agency (including DGCI&S) in that manner. The petitioner also stated that in view of the fact that DGCI&S data was not available for the subject goods, they had collected and collated the same from Impex Data Services and the data available for ICD, Delhi from BE Register. The Authority does not find substance in the argument of the importers about inclusion of reflective glass in the volume of imports of subject goods as claimed in the petition by the petitioner. Moreover, the volume of imports of subject Float Glass is also corroborated from the response of the exporters. Therefore, the Authority considers that the period of investigation in this case is appropriate.

10. Domestic Industry

Views of M/s T.L. Verma & Co. Pvt. Ltd.

- i. Two petitioner companies do not represent a major proportion of the total output of the domestic industry in India and therefore, the investigation is liable to be terminated. There are two more producers in India, viz. (1) Gujarat Guardian Ltd. and (2) M/s Triveni Glass Ltd. Out of the two producers, M/s Gujarat Guardian Ltd. has supported the petition. M/s Triveni Glass Ltd. has not supported the petition.
- ii. The petitioners represent 49.49% of the total production of the subject goods in India during the period of investigation. The petitioners along with the supporting manufacturer constitute 82.09% of total domestic production of the subject goods in India.
- iii. Only the two petitioner companies have furnished detailed information regarding the status of the domestic industry to the Authority. The supporting company has not furnished the relevant details to the Authority.

- iv. In terms of Rule 11(2) read with Rule 2(b), the injury should be established for the domestic industry which should cover at least those domestic producers whose collective output of the subject goods constitute a major proportion of the total domestic production of that article in India. In this case, the total production of the two petitioner companies alone does not constitute a major proportion of the total domestic production in India. Thus the petitioner companies cannot be treated as domestic industry within the meaning of Rule 2(b).
- v. The deeming provision regarding 25% standing contained in proviso to Rule 5(3)(a) is not applicable here. The phrase 'domestic industry' appearing in Rule 11 as also in the Annexure-II shall be interpreted in accordance with the definition given in Rule 2(b). Since Rule 2(b) specifies the major proportion requirement, it is necessary that injury determined for the two domestic producers will fulfill Rule 11(2) only if they pass the major proportion test. In this case, the two domestic producers have failed to pass the major proportion test. The injury determination is, therefore, flawed and the provisional duty is illegal and deserves to be withdrawn.
- vi. Therefore, the domestic industry should cover three companies in this case i.e. two petitioner companies M/s Saint Gobain Glass Ltd., M/s Float Glass India Ltd. and the supporting company M/s Gujarat Guardian Ltd. Considering data in respect of two petitioner companies alone will not amount to considering the situation of the domestic industry.
- vii. As the domestic industry has failed to produce sufficient evidence of injury to the domestic industry, the investigation may be terminated under Rule 14(b).

Views of Petitioner

- i. In the case of Hexamine, this issue had been argued before the Authority but was over ruled and the Designated Authority considered that injury analysis for the Domestic Industry can be done even if the petitioner Domestic Industry accounts for less than 50% of the country's production. In this case, through out the injury analysis, only the information relating to the two petitioners had been considered. The exception has been made only while analyzing the sales and market share for the petitioners when the sales data of other producers had also been considered.
- ii. In the instant case also, the Designated Authority has considered the information of the entire domestic industry and not of the petitioner alone while analyzing the factors relating to market share. The analysis in the case of Float Glass is in line with the approach taken by the Designated Authority in the previous cases.

- iii. The representative of the importer has not submitted any authority to support their case as to why the term ‘major proportion’ should necessarily imply those who account for more than 50% of the domestic production.
- iv. Without prejudice to the above, while filling the application, the responsibility of the domestic industry is to present the information with regard to the petitioner as well as other producers for the purpose of ‘standing’ to file the petition. At this stage, the information with regard to the other producers is collected by the petitioners from the best available sources. We have now collected the certified information from the non-petitioner domestic producers which indicate the petitioners themselves account for more than 50% of the production as per table given below:

PERIOD OF INVESTIGATION		
Petitioners	Qty (MT)	Rs.(Lakhs)
Floatglass India Ltd.	96122	15541
Saint-Gobain Glass India Ltd.	95641	15743
Total for Petitioners	191763	31284
Supporting Producers		
Gujarat Guardian Ltd.	107441	19456
Total for Supporting Producers	107441	19456
Other Producers		
Triveni Glass Ltd.	51060	7713
Grand Total	350264	58453
% of Petitioners	54.75%	
% of Petitioners & Supporters	85.42%	

- v. It may be seen from the above that the petitioners themselves account for 54.75% of the total domestic production of the like articles.

M/s T.L. Verma & Co. Pvt. Ltd. have given following views in their rejoinder and on the Disclosures :

- i. The petitioner companies should have established their status as ‘domestic industry’ at the time of making the application. According to the data submitted by them, collective output of the two petitioner companies was less than 50%. This is evident from the preliminary findings. All of a sudden, in the written submissions, the petitioner gives some new data stating that the production of non-petitioner companies are less and therefore, share of the petitioner companies is more than 50% of the total domestic output. There is no basis for such a claim. This claim is not based on facts. Even the revised data does not give ‘actual output’ but only annualized output.

- ii. The petitioner had an obligation to submit correct details at the time of filing the petition so as to establish beyond reasonable doubt that they fulfill the standing criteria.
- iii. The action of the Authority in the Hexamine case was legally not sustainable. In terms of Rule 11(2), the Authority is required to evaluate injury for the domestic industry. In terms of Rule 2(b), the domestic industry means, the domestic producer as a whole or those producers whose collective output represent a major proportion of the total domestic output. Therefore, legally, the Authority is bound to evaluate injury for such of those domestic producers, whose collective output passed the major proportion test.
- iv. The Authority has accepted the production volume of non-petition companies without any verification. There is no mention about why and on what basis, the figures were amended at the late stage in the proceedings. In terms of Rule 8, the Authority is required to satisfy itself as to the accuracy of the information supplied by the interested parties upon which the findings are based.

Comments of M/s Monika Exim International Ltd. and M/s Navakar Impex Pvt. Ltd.

The product of the petitioners, Triveni float glass, Indian sheet and imported glass should be treated as Like Article, if the petitioners treat the imported glass as Like Article with the petitioner's float glass. If the Designated Authority takes this position, the petitioners would not fall under the definition of domestic industry as they would not represent the major proportion of the Indian total production. Even now the petitioners are below the major proportion. In the Disclosure Statement, the Authority has changed the earlier stand taken in the preliminary findings by stating that the petitioners account for 54.75% instead of 49.49% as stated earlier. The Authority is required to disclose the data they relied on at the time of initiation of investigation.

Examination by the Authority

The Authority has examined the various arguments on the issue of domestic industry. The petitioners have also furnished letters from the other two domestic producers viz. M/s Gujarat Guardian Ltd. and M/s Triveni Glass Ltd. The two companies have confirmed their production of subject goods during the period April-December, 2001 as under :

M/s Gujarat Guardian Ltd.	107441 MT
M/s Triveni Glas Ltd.	51060 MT

The Authority has also checked that the above production figures are for the period April-December, 2001 and not annualized as incorrectly mentioned by the petitioners in their letter dated 3.3.2003 subsequent to the Public Hearing. The total production of

subject goods by the four producers during POI April-December, 2001 is 350264 MT. Out of this, the share of the two petitioner companies viz. M/s Float Glass India Ltd. and M/s Saint Gobain Glass India Ltd. is 191763 MT. This comes to 54.75% of the total production. The Authority is of the view that the aforesaid two non-petitioner companies have confirmed in writing about their production of subject goods during the POI. The Authority considers the same as correct. In any case, the petition enjoyed the support of producers of subject goods that represented more than 50% of the domestic production even at the stage of initiation. As the share of the two petitioner companies viz. M/s Float Glass India Ltd. and M/s Saint Gobain Glass India Ltd. is 54.75% of total production, they represent the major proportion of the total domestic production of subject goods. The Authority considers the two petitioner companies to represent the domestic industry within the meaning of Rule 2(b) and Rule 11(2). For the purpose of evaluation of factors viz. total demand of the subject goods and net sales realization, the Authority has considered the information relating to the supporting producer M/s Gujarat Guardian Ltd. also.

11. Submission of Non-confidential Information

Views of M/s T.L. Verma & Co. Pvt. Ltd.

The note on collation of import data referred to in the findings was silent as to the method followed in converting quantity from Sq. Mtr. to MT in the absence of thickness. The import data published by IMPEX statistics services did not contain 'thickness' details in all the transactions. This is a crucial element in determining the volume of imports. Therefore, the opposing interested parties have a right to know how the data conversion took place. We had also asked them to disclose the factor used in converting the Sq. Mtr. into MT and the basis therefor. Further, the non-confidential version of the petition is completely blank in respect of Proforma IVA (except item 1 relating to import data), table on profitability, sales volume, cost of sales, unit price and loss or profit, return on investment, price under selling, price under cutting and Proforma IVB.

The Authority has not disclosed the basis and methodology followed in determining NIP and injury margin for the domestic industry.

Views of Government of Indonesia

Level of confidentiality used in the notification is unjustified in the light of requirements of Article 6.5 of the Agreement. The price effect of the dumped imports is clearly of importance in that price undercutting is alleged resulting in price suppression. However, no adequate non-confidential summary of the basic price

information is presented. At least, the information should be provided in indices and % terms to substantiate the examination undertaken by the Investigating Authority.

Views of Petitioners

- i. We are concerned about the facts that the Designated Authority has accepted the information submitted by PT Mulia Glass despite the fact that they have not supplied the non-confidential version of their response thereby failing to fulfill their legal obligation. Para 5(i) of the Preliminary Findings refers in this regard.
- ii. The parties raising objection about the inadequacy of non-confidential version submitted by us, in their own submission have not given any information. All the seven annexures to the importer's questionnaire submitted by them are either blank or contained an assertion that 'information not susceptible for summarization as the information is highly sensitive'.

Examination by the Authority

- i. As regards submission of non-confidential version by exporter, M/s PT Mulia Glass, the same had been furnished by the exporter and copy of the same has been placed in the public file. The importer, M/s Impact Safety Glass Works Pvt. Ltd. had not furnished any non-confidential version of the importer's questionnaire, which had been recorded under para 11 of the preliminary findings. The said importer has made elaborate comments subsequent to the public hearing. The Authority has considered their general submissions where these are supported with the non-confidential version.
- ii. As regards arguments of importers regarding Non-Disclosure by the Authority about the methodology followed in determining the NIP and injury margin for the domestic industry, the Authority has followed the consistent practice whereunder the methodology for arriving at NIP for the domestic industry is communicated to the domestic industry on a confidential basis. This part of the Disclosure contains the non-injurious price determined for the domestic industry which is based on the confidential information relating to cost of production.
- iii. As regards non-submission of adequate non-confidential version by the petitioner, the Authority recalls the preliminary findings vide para 21. It has been argued by one of the importers that the method followed in converting quantity from sq. meter to MT has not been disclosed. This information has been furnished by the exporter, M/s PT Mulia and the petitioners to the Designated Authority on a confidential basis. The Authority considers the same as confidential and is of the view that the disclosure of the same is not warranted. The petitioner had given information in Para IV of non-confidential version regarding imports and indexed information regarding market share of

imports and domestic industry, capacity utilization, sales volume, sales value, unit price, inventories. The petitioner has claimed confidentiality in respect of information pertaining to profitability, return on investment, figures of price under selling and price under cutting, landed value of imports. The Authority is of the view that the said information being claimed as confidential is of strategic business interest of the petitioner and considers that the information may be treated as confidential as per Rule 7(1).

C. EXAMINATION OF CLAIMS REGARDING NORMAL VALUE, EXPORT PRICE AND DUMPING

MARGIN.

12. As brought out in the preliminary findings, the Designated Authority sent questionnaires to known exporters of the subject goods in subject countries. Responses were received from the following exporters:

- i. PT Mulia Glass, Indonesia.
- ii. PT Abdi Rakyat Bakti, Indonesia.
- iii. PT Tensindo, Indonesia.
- iv. M/s Qinhuangdao Huazhou Glass Co. Ltd., China
- v. M/s Nanning Float Glass Co. Ltd., China

Subsequent to the Preliminary Findings, following arguments have been received from various interested parties / governments of subject countries :

13. Submissions of the Government of the Republic of Indonesia :

Basis for the Normal Value used in the application – In accordance to Article 5.2 of the Anti Dumping Agreement, an application should include evidence of inter alia dumping and should not be based on simple assertion unsubstantiated by relevant evidence. Further, in accordance to Article 5.2 of the Agreement, the Authority shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation. In this regard, the annual accounts of PT Mulia Industrindo is not an appropriate basis to evaluate the cost of production of the subject goods as the holding company of Mulia Glass produces a wide range of diverse products.

14. Submissions of M/s PT Mulia Glass :

- i. Adjustments on account of packing, ocean freight, insurance, shipping charges, trucking costs, clearance and handling and fumigation charges have been allowed from the export price. However, while calculating ex-factory export price, Authority has decided to resort to weighted average irrespective of thickness and color. We have not exported Float Glass of 2mm and 3mm thickness to India during POI. The majority of exports consist of 12mm ***MT, 4mm Dark Grey ***MT and 5mm Dark Grey ***MT. When calculating the weighted average of the ex-factory export price, Authority should differentiate between clear and tinted / color Float Glass.
- ii. We do not agree with the Authority's recommendation regarding provisional anti dumping duty on all imports of Float Glass of thickness 2mm to 12mm. The thicknesses which have not been exported to India during POI i.e. 2mm and 3mm should be excluded from imposition of any anti dumping duty.
- iii. There is no necessity to impose provisional anti dumping duty on our exports to India, pending final determination. Such an imposition should be decided upon only when all our submitted data information has been duly verified and our views taken into account.
- iv. In the absence of any complete response from the exporter from China in the form and manner prescribed, the authority has determined the Normal Value in respect of China on the basis of actual cost of production of India's domestic industry after normating it at optimum efficiency level. We have enthusiastically and in good faith participated in the investigation and hence by applying the same standard to PT Mulia Glass, the Authority may arrive at a Normal Value which is even lower than the one mentioned in the case of China.

15. Submissions of M/s Impact Safety Glass Works Pvt. Ltd., Bangalore.

- i. Asahi has three Float Glass plants in Indonesia which is more than 1/3rd production in Indonesia. When their counterparts are selling material in Indonesia, it is inconceivable that constructed cost of production basis should have been adopted. Even for constructed cost of production, the petitioner has used annual report of Mulia Industries, which is not a producer and is only a holding company having many subsidiary factories and companies. The working of cost of production based on the balance sheet of Mulia Industrindo is just to misguide the Authority to gain advantage in imposition of provisional duties.
- ii. The adjustment made from export price has not been disclosed. Information with regard to ocean freight and other expenses were disclosed on non-confidential basis in the case before MRTP and Supreme Court. How the same

information can now become confidential. The amount of dumping margin involved has not been disclosed.

16. Views of the domestic industry

The exporters from Indonesia have several cases of anti dumping against them by other authorities. It appears that it is their policy to supply at dumped prices causing immense injury to the interest of the domestic industry.

Examination by the Authority

17. Normal Value for Indonesia

Following exporters from Indonesia had responded to the investigation :

- i. PT Mulia Glass, Indonesia.
- ii. PT Abdi Rakyat Bakti, Indonesia.
- iii. PT Tensindo, Indonesia.

It has been argued by the Government of Indonesia and some importers that the information in the petition was based on estimation and the basis of construction of normal value of PT Mulia on the balance sheet of Mulia Industrindo was incorrect. The Authority is of the view that at the time of initiation of investigation the petition may contain the prima-facie information relating to the Normal value estimates in support of claim of the alleged dumping. However, the Authority had received the response from M/s PT Mulia and even at the stage of Preliminary Findings, the Normal Value of all the Indonesian exporters was determined on the basis of information furnished by the said exporter. Thus the Authority does not find any merit in the argument of the Indonesian Government and the importers on this account.

18. PT Mulia Glass, Indonesia

The Authority recalls the preliminary findings on the issue of dumping. M/s PT Mulia Glass had submitted detailed information regarding domestic sales, exports to India, cost of production, sale price structure for exports and domestic sales etc. The Authority has also conducted on the spot verification of the exporter's information. The Authority has verified the cost of production of subject goods produced by M/s PT Mulia Glass. Adjustments on account of packing, inland freight, discounts, credit etc. have been verified. As regards inland freight (trucking), the exporter makes domestic sales in various parts of Indonesia which have different freight costs depending upon the location. Based on the quantum of domestic sales made to each region and the weighted average freight cost to each region, a weighted average

freight cost of Indo Rupiah *** PMT has been furnished by the exporter which has been considered for adjustment from domestic sales price. The exporter has also given information regarding credit given on the domestic sales. The Authority has also considered the same. Analysis of the domestic sales price of different thickness indicates that most of the domestic sales are in the ordinary course of trade. In the case of 4mm thickness (clear) more than 20% of the sales are not in the ordinary course of trade i.e. less than cost of production plus selling, administration and general costs. The remaining ***% profit making sales have been considered for Normal Value determination. The Authority, therefore, has determined normal value of different thickness types on the basis of domestic sales price of the exporter at ex-factory level. As regards the arguments of the exporter that in the case of China, Normal Value has been determined on the basis of constructed cost of production based on Indian domestic industry, the Authority has determined Normal Value in accordance with Section 9A(1)© of the Customs Tariff Act.

19. PT Abdi Rakyat Bakti, Indonesia.

The Authority recalls the preliminary findings on the issue of dumping. The exporter had furnished only one set of response with all information marked as confidential. No other set of non-confidential information had been furnished as required under the Rule 7(2). The exporter was also advised vide letter dated 6.9.02 to submit non-confidential version, which has not been furnished. The Authority finds that the exporter had not given satisfactory reason for not furnishing non-confidential version. The exporter had also not furnished information regarding cost of production and the Profit & Loss Account and Balance Sheet. The Authority notes that the exporter has not given any comments or information subsequent to the preliminary findings. The Authority thus holds that the exporter has not fully cooperated in the investigation. The Authority is, therefore, constrained to disregard the information furnished by the exporter in terms of Rule 7(3). The Authority has, therefore, been constrained to rely upon the best available information under Rule-6 (8) for Normal Value determination. The Authority has determined the Normal Value in respect of this exporter on the basis of information available in the case of M/s PT Mulia Glass, Indonesia.

20. PT Tensindo, Indonesia.

The Authority recalls the preliminary findings on the issue of dumping. The information furnished by M/s PT Tensindo, Indonesia was found to be grossly deficient. The exporter has not furnished the required information as pointed out in the preliminary findings. The Authority is, therefore, constrained to rely upon the best available information for Normal Value determination. The Authority has therefore, determined the Normal Value in respect of this exporter on the basis of information available in the case of M/s PT Mulia Glass, Indonesia.

21. Export price in respect of Indonesia:

The Authority recalls the preliminary findings as regards export price determination. Export price in respect of M/s PT Mulia Glass had been determined on the basis of information furnished by the exporter. They have furnished details of exports of Float Glass 'Clear' and 'Dark Grey' in various thickness. The Authority has considered the export prices shown in the questionnaire response. The exporter has shown adjustments on account of packing, ocean freight, insurance, shipping charges, trucking costs, clearance and handling and fumigation charges. The Authority has verified the information relating to adjustments. The ocean freight adjustment has been considered on actual basis as per statement furnished by the exporter during verification. The ex-factory export price has been determined after making above adjustments.

22. Export price in respect of M/s PT Tensindo has been considered on the basis of the furnished information regarding sales to India. There is no response from the exporter subsequent to the preliminary findings. Adjustments on the basis of information available in the case of M/s PT Mulia have been made from the CIF export price to arrive at the export price at ex-factory level.

23. Export price in respect of PT Abdi Rakyat Bakti, Indonesia has been considered on the basis of the furnished information regarding sales to India. There is no response from the exporter subsequent to the preliminary findings. Adjustments on the basis of information available in the case of M/s PT Mulia have been made from the CIF export price to arrive at the export price at ex-factory level.

24. Normal Value for China P.R.

The Authority recalls the preliminary findings on the issue of dumping. None of the exporters from China P.R. had given complete response to the questionnaire sent to them. M/s Qinhuangdao Huazhou Glass Co. Ltd., China, who had stated to have exported the subject goods during the POI, did not co-operate by furnishing the information as per the questionnaire. The other exporter M/s Nanning Float Glass Co. Ltd., China had informed to have not exported float glass during the period of investigation and so they have not filled the questionnaire response. As regards arguments made by importer to adopt the Normal Value in respect of PT Mulia, Indonesia to determine Normal Value in respect of Chinese producers, the Authority does not find merit in the argument as the same is not in conformity with the Anti Dumping Rules. The Normal Value in the case of Indonesia exporters has been determined based on the domestic sales prices in that country. In the absence of complete response from any Chinese exporter, the Authority has determined Normal Value in the case of China on the basis of facts available as per Rule 6(8) of the Rules

supra. The Authority therefore confirms in the absence of any complete response from the exporters from China PR in the form and manner prescribed, to make the findings with regard to exports from China PR on the basis of the facts available to it as per rule 6(8) supra. Accordingly, the Authority has determined the Normal Value in respect of China PR on the basis of constructed cost of production. While doing so, the Authority has considered the evidence regarding cost of production furnished by the domestic industry and has referenced the Normal Value with reference to actual cost of production of domestic industry after normating it at optimum efficiency level.

Normal Value and Export Price in respect of other exporters of Indonesia

25. In respect of other non-cooperative exporters, the Authority has determined Normal Value based on evidence of domestic sales price of co-operative exporter. Lowest export price as per co-operative exporter has been adopted.

Dumping Margin :

26. The Authority followed the consistent practice of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I to the anti-dumping rules. Dumping margins have been determined on the basis of a fair comparison of Export Price with the Normal Value in pursuance of the principle laid down in Para 6 of Annexure-1 to the Rules. The comparison is at the same level of trade, i.e. Ex-factory level. As regards concerns expressed by some of the interested parties about proper comparison of Normal Value and export price of different thickness of clear and tinted Float Glass, the Authority has taken due care to compare Normal Value and export price of Float Glass of different thickness and color to the extent data is available. As regards arguments made by importers about different dumping margins in respect of exporters from Indonesia while the Normal Value being the same, the authority has considered the export price of the respective exporters while determining the dumping margins. Weighted average dumping margin has been arrived at after determining individual dumping margin for different thickness / color type. Based on the Normal Value and export price as determined above, the Authority has determined the following dumping margins(%) :

S. No.	Country	Name of Exporter	Dumping Margin %
1.	Indonesia	M/s PT Mulia	46.71
2.	Indonesia	M/s PT Tensindo	54.63
3.	Indonesia	M/s PT Abdi Rakyat Bakti	78.91
4.	Indonesia	All other exporters.	78.91
5.	China	All exporters.	43.82

D. INJURY AND THREAT OF INJURY

27. Rule 11 of Anti Dumping Rules reads as follows:

"Determination of Injury:

1. In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;
2. The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules."

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

- a. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.
- b. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

29. Submissions of the Government of the Republic of Indonesia :

- i. The notifications of preliminary findings must contain the matters of facts and law which have led to arguments being accepted and rejected. As both sales volumes and selling prices increased in the POI, cash flow must have been positive and not negative as claimed.

- ii. Determination of the Injury should be based on positive evidence and involve an objective examination of the volume and effect of the dumped imports on prices of the domestic market. The alleged dumped imports have declined. The examination of the findings of the Authority should be reviewed. Imports did not increase in absolute terms as shown in the findings of the Authority.
- iii. The Authority should re-examine whether imports increased in relative terms compared to demand or production.
- iv. All factors relating to injury be evaluated. The Authority must explain why and how the alleged dumped imports has caused injury in view of the increases in production, sales volume and value, increased profitability etc. The only explanation provided to support injury is that the return on investment is not sufficient. Even if this were to be the case, a critical evaluation of other factors would have to be provided before a determination of material injury is concluded.
- v. The Authority has failed to address any other known factors in the preliminary determination, mainly the following :
 - a. Increase in capacity of the domestic industry,
 - b. Trade restrictive practices that may encourage the domestic industry trying to set selling price too high.
 - c. The price impact of a new entrant on the domestic market.

30. Views of M/s T.L. Verma & Co. Pvt. Ltd.

- i. Even for the two petitioner companies for whom the Authority has determined injury, the determination of injury violates the provisions of Rule 11.
- ii. Imports from subject countries are not significant – The market share of imports from subject countries was only 1.67% during POI and was 0.71% in 2000-01. At the same time, the share of the petitioner domestic industry increased from 38.37% during 2000-01 to 48.63% during POI. Thus, when the share of the subject imports increased by 0.96%, the share of the domestic industry increased by 10.26%. As per data given in the application, the market size increased from 106 in 2000-01 to 118 in POI (9 months) or 158, annualized. Thus, the market size has increased by over 52% whereas the share of imports from subject countries increased only by 0.96%. The increase in imports from the subject countries can never be treated as ‘significant increase in imports’ within the meaning of the first sentence of paragraph (ii) of Annexure II. The Authority is required to evaluate the increase with reference to the market context.
- iii. Sales Volume - Sales volume of the domestic market has increased by over 17%. There is no injury to the domestic industry on this ground.
- iv. Production – There is no evaluation of injury on production.

- v. Capacity Utilization – There has been marginal increase in capacity utilization. Therefore, there is no injury on this ground.
- vi. Inventory - The production is down, sales volume has increased by 17%, inventory could not have increased. It seems that there is some error in the findings.
- vii. Wages & Employment - These factors do not show any injury to the domestic industry.
- viii. Profitability – The Authority is required to examine the profitability of the domestic industry during the POI and compare the same with previous period.
- ix. Return on Capital Employed – The Authority has not given any reason as to why the percentage is considered too low and what percentage of return of capital employed shall be considered adequate.
- x. Price under Selling – The Authority appears to have determined one single non-injurious price and landed value for all varieties of Float glass. Such a single comparison is wrong. NIP of respective quality / size should be compared with the respective landed value of imports.
- xi. Price under Cutting – For price undercutting, landed value is to be examined with reference to average selling price of the domestic industry.
- xii. Price Suppression / Depression – The findings of Authority as regards price suppression / depression are not correct as the petitioners have stated that the industry is realizing a higher price during the POI. When the prices have increased, the question of price depression does not arise.
- xiii. Actual and Potential negative effect on Cash Flow – The findings are too generic. The Authority is required to determine actual cash flow during POI and compare the same with the cash flow of previous period.
- xiv. Growth - The findings on this aspect are too generic. The Authority may evaluate this properly.
- xv. No injury in respect of China – From the information relating to dumping margin and ex-factory export price, it appears that landed value of imports from China would be higher than the NIP determined by the domestic industry. Therefore, imports from China could not have caused any injury to the domestic industry.
- xvi. Causal Link - No causal link has been established between alleged dumped imports and alleged injury. While determining causal link, the Authority has not evaluated other factors i.e. factors other than dumped imports which are also causing injury to the domestic industry at the same time.

31. Views of M/s Impact Safety Glass Works Pvt. Ltd., Bangalore.

- i. Over investment in the country has caused injury, if any, to the Indian producers.

- ii. Petitioner's Group Companies M/s Glaverbel and Glavermas are part of Asahi Group of Company and the said petitioner is part of the same group. M/s Glavindia is the agent in India. The petitioner and M/s Glavindia import the item tinted reflective glass. This activity should have caused injury to the whole domestic industry as this item can be very well produced by any float glass plant. The petitioners have been able to effect impressive price increases during the investigation period. Signs of recovery and prosperity rather than injury are quite visible in the investigation period. Evidently, the imports have had no price effect on the domestic industry.
- iii. The quantity of imports in terms of domestic production is negligible. The effect of price would be on quantity. However, reverse is the situation in the present case. The alleged price effect had the effect of lowering of the volumes due to the ways adopted by the petitioner.
- iv. Profits of the domestic industry are increasing over the years. Their profits were at peak in the investigation period as compared to previous two years.
- v. It is not clear whether reasons for price under selling can be linked to imports.
- vi. The prices of goods have been increasing constantly for the last two years. The statement made by the domestic industry that they are under constant pressure to reduce the prices is factually not correct.
- vii. There is no causal link between alleged price under cutting and selling price of the domestic industry.
- viii. The domestic industry had earlier filed complaint against the same Indonesian exporters alleging that the Indonesian exporters were adopting restrictive trade practice. Thus petitioners have attributed two reasons against the same cause and effect. Having claimed that restrictive trade practices were being employed by the exporters, how can the Indian producers now claim that there is no injury to them due to alleged restrictive trade practice.
- ix. There is no evidence of material injury to the domestic industry.
- x. The Designated Authority should also examine any known factors other than the dumped imports which at the same time are injury the domestic industry.

32. Views of the Domestic Industry

- i. The claim of the domestic industry as regards injury were dealt in the preliminary findings and are not being repeated. In response to the arguments made by other interested parties, the domestic industry has made following submissions :
- ii. It has been argued by the importers that the market share of imports from subject countries was only 1.67% during the POI which was 0.71% in 2000-01. It has also been argued that the share of the domestic industry has increased much more as compared to the share of the subject imports. It is submitted that

the increase in imports has to be seen in comparison to the share held in the preceding period. Such a comparison would indicate that the share of imports has more than doubled in the POI as compared to the immediately preceding period. The rate of growth of imports is also much higher as compared to the rate of growth of market. The increase in imports may also be re-evaluated after taking into account the imports from Nhava Shava Port.

- iii. With regard to the increase in sales volume, the importers have failed to appreciate the fact that increase in sales volume need to be analyzed in view of the fact that the total capacity as well as production in the country has gone up due to addition of the new manufacturer. The argument of the importer that an increase of 17% does not indicate injury can at best be considered as an arithmetic exercise and not an economic evaluation of this factor. The Designated Authority is requested to consider that the increase in sales may be evaluated taking into consideration the new capacities.
- iv. As regards the actual production by the domestic industry, the Authority may appreciate the fact that the increase in production is almost entirely on account of a new manufacturer viz. M/s Saint Gobain.
- v. With regard to profitability and return on capital employed, the domestic industry has not been able to realize a reasonable rate of return on the huge investments made by it despite the fact that they have the world class technology and have also taken extensive steps to cut costs over a period of time. The dumped imports from subject countries are not allowing the domestic industry to realize any returns which can be considered as reasonable.
- vi. As regards Authority's findings on price under cutting, the Authority has actually recorded in its findings that the comparison of the average net sales realization of the domestic industry with the landed value of imports has been made to arrive at the extent of price under cutting. The reference to NIP in the table below in the sub-para relating to Price under cutting is an inadvertent typographical error.
- vii. As regards assumptions made by importer regarding working of Normal Value for China and the non-injurious price, such argument is totally presumptuous in nature, and has no factual or legal force. The Authority is urged to proceed on the basis of information available with it.

Examination by the Authority

33. The Authority has examined the various claims and counter arguments on injury as under:

i) Imports from subject countries:

The total imports from subject countries were 10272 MT in 1999-2000, 2036.11 in 2000-01 and 4406 MT during POI (9 months) or 5874 MT (annualized). Imports from subject countries grew by 188% during POI (annualized) over the previous year. There was overall decline in imports from subject countries during POI in comparison to year 1999-2000. However the share of imports from subject countries in the total imports grew to 96.45% during POI in comparison to the previous year share of 20.87% and in the year 1999-2000 of 67.75%. The Authority finds that there has been significant increase in the dumped imports from subject countries in absolute terms.

ii) Market share:

Market share of imports from subject countries in the total demand for the subject goods has increased from 0.71% in 2000-01 to 1.67% during POI. Market share of the petitioner domestic industry in the total demand of subject goods has not declined during POI. It has increased from 38.37% during 2000-01 to 48.63% during the POI. However, the market share of imports from other countries in total demand has declined during the POI to 0.06% from 2.71% in year 2000-01. The overall demand of the subject goods has increased significantly during the POI in comparison to the previous two years. The increase in market share of the dumped imports from subject countries with reference to the total demand shows that there has been significant increase in imports from subject countries both in absolute terms as well as in relation to the demand in the country.

iii) Production of Domestic Industry

The Authority notes that the capacity, production and capacity utilization of the domestic industry has been as under :

Year	Capacity*	Production*	Capacity Utilization
1999-2000	100	100	76.48%
2000-01	151	156	79.09%
April-Dec. 2001	167	171	78.43%
POI Annualized	223	228	78.43%

*Indexed figures.

The Authority finds that there has been increase in the production capacity of the domestic industry and actual production. However, with reference to the increased capacity in the POI, the capacity utilization has marginally declined by 0.66% during the POI in comparison to the previous year.

iv) Sales Volume:

Sales volumes of domestic industry increased from ** in 2000-01 to *** in POI. This showed an increase of about 17% over the year 2000-01. However, this increase in sales volume is also on account of increase in the capacity of the domestic industry and therefore, this increase in sales cannot by itself be attributed to an improvement in performance.

v) Inventory:

The inventory of domestic industry has increased by 14% at the end of December, 2001 in comparison to the previous year closing on March, 2001. As regards arguments of importer that the inventory could not have increased when the sales volume has increased by 17% and that capacity utilization has come down by 0.66%, the Authority finds that the capacity of the domestic industry had increased from 100 to 167 (indexed) during POI. There was also increase in production from 100 to 171 (indexed). Therefore, the assumptions of the importer are not correct. The increase in inventory is on account of lower sales in comparison to the higher production volume as a result of increased capacity.

vi) Employment:

There has been no impact on the employment level in the domestic industry.

vii) Wages:

There is no effect on the wages of the industry in view of the prevalent labour laws.

viii) Profitability

The Authority notes that the domestic industry has made some marginal profit during the POI.

ix) Price under selling:

The authority has compared the Non-injurious price of the domestic industry with the landed value of imports and has found that there is significant price under selling as a result of dumped imports.

	China	Indonesia
NIP	***	***
Landed value	***	***
Under selling %	*** (+ve)	*** (+ve)

x) Price under cutting:

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the average net sales realization of the domestic industry with the landed value of imports and have found that there has been very significant price under cutting. The imports were having significantly suppressing/ depressing effect on the prices in the domestic market, as the domestic industry has not been able to raise its selling price in view of the dumped imports.

	China	Indonesia
Average Net Sales Realization	***	***
Landed value	***	***
Under cutting %	*** (+ve)	*** (+ve)

While determining the non-injurious price for the like articles for the domestic industry, the Authority has used the actual cost of production of the subject goods to determine optimum cost of production for the domestic industry which would take into account the normated best consumption norms and the actual price of the raw materials which are consumed for the production of the subject goods during the period of investigation. For calculation of injury margin, the ex-factory non-injurious price determined for the period of investigation has been compared with the landed value of the imported goods.

CONCLUSIONS ON INJURY

34. From the foregoing, the following conclusions are made by the Authority regarding various injury parameters affecting the domestic industry:

- i. There has been an increase in imports of subject goods from subject countries in absolute terms as well as in relation to the demand of subject goods in the country.
- ii. The market share of the dumped imports from the subject countries has increased.
- iii. The selling price of the domestic industry increased during the POI as compared to year 2000-01. However, the same has been below the non-injurious price (NIP) on account of dumped imports.
- iv. The industry has suffered injury due to price undercutting by the dumped imports.
- v. The domestic industry has suffered injury due to price suppression. They have not been able to raise their selling price so as to realize a fair return on the

- investments as the landed value of the dumped imports has considerably depressed the selling price of the domestic industry.
- vi. Sales Volume of the domestic industry increased during the POI which is on account of increase in the production capacity of the domestic industry. This increase in sales cannot by itself be attributed to an improvement in the performance.
 - vii. There has been an increase in the inventory at the end of December, 2001 in comparison to previous year closing on March, 2001.
 - viii. There has been no impact on the employment level of the domestic industry.
 - ix. There is no effect on the wages of the industry.
 - x. The Authority concludes that the most significant cause of injury to the domestic industry has been the price under cutting and price under selling. As a result of lower landed value of imports of subject goods from subject countries, the domestic industry has not been able to realize a fair and reasonable price for its products. This has led to very marginal return on investment. The investments in the Float glass Industry are quite heavy and the low return achieved on the investment by the industry reflects the injury suffered by the industry.
 - xi. The above economic parameters cumulatively and collectively establish that domestic industry has suffered material injury on account of dumping.

E. CAUSAL LINK

35. As regards the impact of the dumped imports on the domestic industry the Authority has examined the effect of the dumped imports in accordance with principle (v) of Annexure-II of the Anti-Dumping Rules.

The Authority finds that the most significant cause of the injury to the domestic industry has been the price under cutting and price under selling as a result of the dumped imports from subject countries. As a result of lower landed value of imports of subject goods from subject countries, the domestic industry has not been able to realize a fair and reasonable price for its products. This has led to very marginal return on investment. The investments in the Float glass Industry are quite heavy and the low return achieved on the investment by the industry reflects the injury suffered by the industry. The demand of the subject goods has not decreased but has instead increased and therefore, contraction of demand cannot be attributed as a cause of injury. The Authority also notes that the domestic industry is globally competitive and changes in technology or competition amongst the domestic producers are not the cause of injury. No technological development in the industry or any other such factor which could have resulted in injury to the domestic industry has been noticed.

On the basis of the 'facts available', it is observed that the imports of the subject goods from "other countries " are below the de-minimis level during the period of investigation. The Authority therefore, concludes that the injury to the domestic industry has been caused by the dumped imports of subject goods from subject countries.

Earlier complaints made by AIFGMA before the Designated Authority, Customs and MRTP Commission

36. M/s Impact Safety Glass Works Pvt. Ltd., Bangalore and other importers have again raised the issue of AIFGMA having earlier approached the Designated Authority, the Customs Authority and MRTP Commission regarding the imports from Indonesia. The Authority recalls the preliminary findings under para 22 – 24 on this issue and confirms its views.

F. INDIAN INDUSTRY'S INTEREST

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

38. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the subject goods or the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

G. CONCLUSIONS

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

- i. Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes have been exported to India from subject countries below their normal value;
- ii. The domestic industry has suffered material injury;

- iii. The material injury has been caused cumulatively by the dumped imports from subject countries;

40. It is considered necessary to impose definitive anti-dumping duty on the imports of subject goods. Accordingly, the Authority recommends imposition of anti dumping duty on the imports of Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes

41. It is decided to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry . The landed price of imports was also compared with the non-injurious price of the domestic industry, determined for the period of investigation. Accordingly, it is proposed that definitive anti-dumping duties be imposed on ‘Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes’ originating in or exported from the subject countries being cleared under Heading 70.05 of the Schedule I of Customs Tariff Act. The anti-dumping duty shall be the amount mentioned in Col. 9 of the Table below in US\$ per MT.

S.No	Sub-Heading	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
1.	70.05	Float Glass	Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes	Any country other than China	Indonesia	Any producer	PT Mulia Glass	71.16	MT	US\$
2.	70.05	Float Glass	Same as above.	Any country other than China	Indonesia	Any producer	PT Tensindo	77.76	MT	US\$
3.	70.05	Float Glass	Same as above.	Any country	Indonesia	Any producer	PT Abdi Rakyat	81.21	MT	US\$

				other than China						
4.	70.05	Float Glass	Same as above.	Any country other than China	Indonesia	Any producer	All exporters except PT Mulia, PT Tensindo and PT Abdi Rakyat	81.21	MT	US\$
5.	70.05	Float Glass	Same as above.	China	Indonesia	Any producer	Any exporter	81.21	MT	US\$
6.	70.05	Float Glass	Same as above.	Any country	China	Any producer	Any exporter	72.27	MT	US\$

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

43. Subject to the above, the Authority confirms the preliminary findings dated 20th November, 2002.

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

L. V. SAPTHARISHI
Designated Authority