

## **DIRECTOR GENERAL (SAFEGUARDS)**

### **NOTIFICATION**

New Delhi, 31<sup>st</sup> July, 2012

#### **Subject:-Safeguard investigation concerning imports of Carbon Black – Final findings-Reg**

G S R D- 22011/12/2011 dated 31<sup>st</sup> July, 2012 having regard to the Customs Tariff Act, 1975 and the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 thereof;

#### **A. Procedure**

1. An application has been filed before me Under Rule 5 of the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 by M/s. Association of Carbon Black Manufactures, 5A Raba Kailash, 55/4 Ballygunge Circular Rd. Kolkata-700019 on behalf of domestic producers of Carbon Black in India along with two of its member companies; i.e. M/s. Phillips Carbon Black Limited, 31, Netaji Subhash Road, Kolkata-700001, and M/s. Hi-Tech Carbon, Murdhwa Indl Area, P.O. Renukoot, Dist: Sonebhadra (U.P.) for imposition of Safeguard Duty on imports of Carbon Black (for rubber applications) into India from China PR, to protect the domestic producers of said Carbon Black against market disruption and threat of market disruption caused by the increased imports of the said Carbon Black into India from China PR.
2. Having satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of Carbon Black (for rubber applications) from China PR, was initiated vide Notice of Initiation dated 2<sup>nd</sup> December, 2011 and published in the Gazette of India, Extraordinary on the same day.
3. A Copy of the Notice of Initiation dated 2<sup>nd</sup> December 2011 along with copy of non-confidential version of the application filed by the domestic industry were forwarded to the Central Government in the Ministry dealing with Commerce and other Ministries concerned, Govt. of China PR through their embassy in New Delhi and other interested parties listed below in accordance with Rule 6(2) & 6(3) of the Safeguard Rules, 2002:

#### **(I) Domestic Producers**

- a. M/s. Phillips Carbon Black Limited, 31, Netaji Subhash Road, Kolkata-700001

- b. M/s. Hi-Tech Carbon Murdha Indl Area, P.O. Renukoot, Dist: Sonebhadra (U.P.)
- c. Continental Carbon India Limited, A-14 Industrial Area No. 1 South Side of GT Road Ghaziabad-201 001
- d. Ralson Carbon Black Ltd. Jitwal Kalan Tehsil Malerkotla Distt. Sangrur Punjab
- e. Cabot India Limited MIDC Plaot No.3 Trans -Thane Creek area Thane Belapur Road Post Ghansoli Thane 400701 Maharashtra
- f. Himadri Chemicals & Industries Limited Registered Office Fortuna Tower 23-A, Netaji Subhas Road 8th Floor, Kolkata 700 001

(II) Importers

- a. M/s JK Tyres, Link House, 3, Bahadurshah Zafar Marg, New Delhi - 110 002
- b. M/s Birla Tyre, Shivam Chambers 53, Syed Amir Ali Avenue, Kolkata-700 019, West Bengal.
- c. M/s Apollo tyres, Apollo House 7, Institutional Area, Sector-32, Gurgaon -122001 (Haryana)
- d. M/s CEAT Ltd., CEAT Mahal, 463, Dr. Annie Besant Road, Worli, Mumbai 400 030
- e. M/s MRF Ltd., 124 Greams Road, Chennai-06
- f. M/s Ralson, Plot No: 3, New Industrial Area, Mandideep. Distt. Raisen, M.P. – 462046
- g. M/s Poddar Tyre, GT Road Jugiana, Ludhiana (PB) 141420
- h. M/s Oriental Rubber Industries, 525 Koregoan Bima Pune Nagar Road, Pune
- i. M/s Hindustan Rubber, 1 Janki Center OFF Veera Desai Road Andheri(W) Mumbai-53
- j. M/s Agarwal Rubber, 15-1-503/49/A, Ashok Market, Siddiamber Bazar, Hyderabad 500 01, Andhra Pradesh
- k. M/s Exel Rubber, Flat no. 507, Sai Sadan Apts, Opp. SBI Balkampet, S.R. Nagar, Hyderabad – 500038
- l. M/s Tega Industries, First floor, No 210, 5th Main Road Vijay Nagar 2nd Stage Bangalore 560040
- m. M/s Phoenix Yule, Ideal Plaza, 4th Floor, 11/1, Sarat Bose Road, Kolkatta 600 02, West Bengal
- n. M/s Monotona Tyres, Mumbai, Mumbai 422 01, Maharashtra
- o. M/s TVS Srichakra, Perumalpatti road Velaripatti Road , Melur Taluq Madurai-625122

- p. M/s Ahuja Continental, 1109 Mittal Towers MG Road Bangalore
- q. M/s Midas Rubber,P. John Zachariah Buildings, Kottayam, Kerala, 686001
- r. M/s Tolins, M.C. Road, Kalady-683 574, Kerala
- s. M/s TM Tyres,5-35, Survey No, 305 & 321 Kalakal Village Medak - 502320, Andhra Pradesh
- t. M/s Hartex Rubber (P) Ltd, Kamala Towers, 2nd Floor,Plot No.1-8-304 to 307,Patigadda Road, Begumpet, Hyderabad- 500 016. Andhra Pradesh.

(III) Exporters

- a. Hebei Daguangming Industry Group Co., Ltd., Western Side, Donghuan South Road, Shahe City, Hebei Province. P.R.China.
  - b. Shanghai Kargos International Trade Co., Ltd., T2-12F, No. 2601 Xietu Rd, Shanghai, P. R. China
  - c. Hebeijing country xinyuan rubber Chemical Co Ltd., Shengli road Guangsha district 31-1-101, Hengshui city, Hebei province, P.R.China
  - d. Hebei Yonghui Chemical Industries Import and Export Co., Ltd., No.199, Xinhua Road, Shijiazhuang, Hebei, P. R. China
  - e. Gansu Jinshi Chemical Co., Ltd., 109 #, West suburb, Minle County, Gansu, P. R. China
  - f. Shandong Shuangyan Chemical Co., Ltd., NO.787 Donger Road Dongying City, Shandong, P.R.China
  - g. Weifang Longzhou Industry and Commerce Co., Ltd., Luocheng Town, Shouguang City, Shandong Province. P.R.China
  - h. Laiwu Taishan Carbon Black Co., Ltd.,Gaozhuang industrial zone, Laicheng, Laiwu, P.R.China
  - i. Qichang Chemical Co., Ltd., Beichenwang, tangyin County, Anyang City, Henan Province, P. R. China
  - j. Jiangxi Black Cat Carbon Black Co., Ltd., Liyao, Jingdezhen City, Jiangxi Province, 333000, P.R.China Suzhou Boahua Carbon, Xushuguan Suzhou, P.R. China-21515
4. Questionnaires were sent to the known exporters from China PR, known importers/users in India and other interested parties as per the information available including the Govt. of China PR with request to make their views known in writing within 30 days of the initiation notice.
  5. Request to consider them as interested parties was received from M/s Automotive Tyre Manufacturers Association (ATMA) and the request was accepted.

6. Requests for an extension of time to submit their replies were made by the following parties:
  - a. Exporting Nation, China PR.
  - b. Automotive Tyre Manufacturers Association (ATMA)
  - c. Jiangxi Black Cat Carbon Black Inc. Ltd., China.
7. After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time to submit reply as per Rule 6(4) of Safeguard Rules'2002 were allowed.
8. Following interested parties made their submissions during the course of the investigations
  - a. China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters and China Rubber Industry Association.
  - b. Automotive Tyre Manufacturers Association (ATMA)
  - c. Jiangxi Black Cat Carbon Black Inc. Ltd. , China
9. Following parties provided information in the form of questionnaire responses
  - a. Hi-tech Carbon (Domestic Producer Questionnaire)
  - b. Phillips Carbon Black Ltd (Domestic Producer Questionnaire)
  - c. Jiangxi Black Cat Carbon Black Inc. Ltd. , China (Exporter Questionnaire)
  - d. Apollo Tyres (Importer Questionnaire)
  - e. Ceat Tyre (Importer Questionnaire)
  - f. JK Tyre & Industries Limited (Importer Questionnaire)
  - g. Pheonix Conveyor Belt India (P) Ltd (Importer Questionnaire)
10. The information presented by the petitioners was verified to the extent possible, by onsite visits to the plants of the domestic producers. The non confidential version of verification report was placed in the public file.
11. All the views expressed by the interested parties have been taken into account in making appropriate determination. The non confidential information received or acquired has been kept in the public file.
12. After expeditious conduct of investigation, Preliminary Findings were issued on 16<sup>th</sup> March, 2012, recommending imposition of provisional safeguard duty @ 30% ad-valorem on import of Carbon Black (for rubber applications) from China PR.
13. A Public Hearing was held on 25<sup>th</sup> May, 2012, which was attended by a number of interested parties. However, following interested parties made submissions at the time of oral hearing
  - a. Petitioners/domestic industry;

- b. China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters and China Rubber Industry Association.
- c. Automotive Tyre Manufacturers Association (ATMA)
- d. Jiangxi Black Cat Carbon Black Inc. Ltd. , China

14. All interested parties who participated in the Public Hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002. Copy of written submissions filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.

#### **B. Views of Domestic Producers (Applicant)**

15. The views expressed by the petitioners/domestic industry are summarized as follows: –

- a) The product under consideration is ‘Carbon Black used in rubber applications’. It is an inorganic chemical used in production/ processing of rubber (including tyres), as reinforcing filler. Carbon Black is also known as acetylene black, channel black, furnace black, lamp black, lampblack, thermal black, and noir de carbone. Carbon black for rubber applications is the Carbon black that is used in production/ processing of rubber (including tyres), as a reinforcing filler. The petition is in respect to increased imports of Carbon black used in rubber applications. Carbon black used in non-rubber applications, such as inks in copiers and computer printer cartridges, paints, crayons and polishes, is not within the scope of the present investigation. The subject goods fall under Chapter 28 of the Custom Tariff Act under subheading no. 28030010.
- b) There are four more producers of the goods but the applicant companies namely M/s. Phillips Carbon Black Limited and M/s. Hi-Tech Carbon account for more than 80% of production and hence are major producers.
- c) The Imports of the product under consideration have increased throughout the injury period in absolute terms with a sharp increase in imports in the most recent period. There is a sudden, sharp and significant increase in imports in the recent period. Imports have also increased in relation to production in India throughout the injury period with a significant increase in the most recent period. Imports of product under consideration have shown recent, sudden, significant and sharp increase. The condition prescribed under the rules in this regard is clearly met.
- d) The product under consideration has history of dumping causing injury to the Indian industry of the product under consideration.

- e) The import and injury related data for 4 year period has been filed by the petitioner. The petitioner has provided the quarter wise information for the injury period and month-wise information till December 2011.
- f) Basis of determination of import volumes: The petitioner considered information on imports reported by IBIS, DGCI&S and China Customs. The information published by DGCI&S and China Customs could not be adopted for the reason that they contained consolidated data including those imports of carbon black which are not for rubber applications.
- g) Imports as per China customs data: The China Customs statistics cannot be relied upon for the reason that the same includes imports of other types of carbon black as well, given that the imports are predominantly of the product under consideration and the entire requirement of other kinds of carbon black is extremely low, but the information published by the China Customs is nevertheless indicative of the fact that imports of carbon black have surged in significant volume.
- h) Increase in imports: Imports of the product under consideration has increased not only in absolute terms but also in relation to production and consumption with a significant increase in the most recent period. The reasons for increase in imports are as follows:
  - i. Cost advantage: The domestic industry uses CBFS as a raw material for manufacturing Carbon Black whereas Chinese producers use CBO. There is a significant price difference between the two raw materials (CBO prices prevailing in China vs. CBFS prices prevailing in international market). The price difference between the two raw materials provides significant cost advantage to the Chinese producers which lead to low price imports of Chinese Carbon Black.
  - ii. In Carbon Black industry, the raw material cost plays a very important role and is the prime cost incurred by the producers of Carbon Black. Hence raw material prices play an important part in deciding the price trend of Carbon Black. The price trend would show that from the month of June, the prices of CBO have started to decline and at the same time the price of CBFS started increasing. Hence both domestic industry and China increased its prices. But despite such increase, there were huge difference between the price quoted by Chinese suppliers as compared to domestic industry prices and third countries prices. The price of Carbon Black from third countries i.e., Korea, Australia and Thailand have remained higher than the Chinese prices, which clearly establishes why the imports have increased from China and declined from third countries.
  - iii. China suppliers partly increased their prices in view of global increase in the prices as a result of increase in CBFS price. However, the Chinese prices still remained far lower than the prevailing prices of carbon black and resultantly, the Chinese carbon black became extremely lucrative for the consumers. It is this factor which has led to significant surge in imports of carbon black in India.

- iv. The price difference in the raw material has resulted in cheap Chinese imports of Carbon Black capturing the Indian market causing injury to domestic industry.
  - v. Also, even when the Anti-dumping duty is added to the imports from China, the prices of Chinese Carbon Black is still far lower than those of domestic industry, clearly leading to the price advantage to the Chinese producers.
  - vi. Excess Capacity: The Chinese producers have excess production capacities and are therefore looking for market opportunities. The Chinese Carbon Black market is expanding on year to year basis thereby increasing their export volumes. The capacity of Carbon Black with China has exceeded 5 million ton per annum and the output is 3.4 million tones. The price difference between the two raw materials has further increased after Oct., 2011. Considering the huge production capacities of the subject goods in subject country and their export orientation and the increasing demand for the subject goods in India, in all likelihood imports will continue to remain high compared to 2008-09 and 2010-11.
- i) Demand of the product concerned has increased throughout the injury period.
  - j) Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry. Decline in market share of the domestic industry has adversely impacted the production and capacity utilization of the domestic industry.
  - k) The domestic production increased up to 2010-11, but thereafter declined in the most recent period. The production process of carbon black is such that the domestic industry should attempt to produce more and more product in order to achieve not only economies of scale but also to arrest fixed cost associated with the plant and production efficiencies. However, so rapid is the increase in the imports that the domestic industry was forced to look for market opportunities outside India in order to dispose off the production which could not be sold in the domestic market. Despite these extra efforts by the domestic industry, the inventories levels with the domestic industry were rising to such an extent that the domestic industry were eventually forced to take production suspension.
  - l) The petitioners submit that the addition capacity is in view of present and potential demand of the product in the market. There is a decline in the capacity utilization year to year basis as well as quarterly basis.
  - m) The sales of the domestic industry increased up to FY 2010-11. But, it declined in the recent period. There has been significant decline in the sales volumes of the domestic industry as a result of increased imports. The domestic industry continues to face lower sales volumes. The decline in sales is despite the fact that the demand increased significantly. Sales of domestic industry declined whereas the imports have increased significantly.
  - n) The domestic industry is faced with the problems of accumulated inventories throughout the injury period. The levels of inventories have increased from 3,912 MT in 2008-09 to 9,832 MT in 2011-12.

- o) The landed price of imports is lower than the (a) selling price of the domestic industry and (b) cost of production of the domestic industry. The imports are significantly undercutting the domestic prices. The price undercutting is resulting in price suppression and depression. It is relevant to point out that the gap between the cost of sales and selling price of the domestic industry shrink on quarter to quarter basis with cost of sales higher than selling price in last two quarters of 2011-12. Consequently domestic industry suffered financial losses in the recent period.
- p) The profitability of the domestic industry improved in 2009-10 but thereafter started declining significantly.
- q) the number of employees has increased throughout the injury period both yearly and quarterly. Hiring & firing of employees is the last resort situation of the domestic industry. Domestic industry submits that employment as a factor of injury may not show adverse impact of increased imports on the domestic industry in view of labour laws in the country and nature of the production process.
- r) In addition to the market disruption already inflicted on the domestic industry, increased imports of Carbon Black are threatening market disruption to the domestic industry.
- s) There are no other factors that may be attributing to the market disruption to the domestic industry other than dumping and the low priced imports. Dumping of the product from China PR (and other countries) caused significant injury to the domestic industry. However, the Designated Authority has already recommended imposition of anti dumping duties on such dumped imports. Therefore, the current injury to the domestic industry is after taking into account the injury caused to the domestic industry from dumped imports.
- t) The interim measures are imperative in view of the steep deterioration in performance of the domestic industry as a result of increased imports of the product under consideration.
- u) Petitioners requested imposition of provisional safeguard duty. The interim measures are imperative in view of the steep deterioration in performance of the domestic industry and the threat of market disruption as a result of increased imports of the product under consideration. The domestic industry has been forced to undertake production cuts. Domestic sales of the domestic industry have declined significantly. The capacity utilization of the domestic industry has steeply declined in the most recent period in view of decline in sales caused by surge in imports. Inventories with the domestic industry are rising significantly. Further, the domestic industry is facing financial losses from carbon black operations.
- v) Petitioners submit that the quantum of safeguard duty can be reduced by the amount of anti dumping duty. The domestic industry is not looking for dual protection, nor has asked for safeguard duty ignoring anti dumping duty. The



domestic industry requests the Director General to consider the injury to the domestic industry and address the gross injury to the domestic industry.

- w) Public interest: Imposition of proposed safeguard duty shall be in public interest for the following reasons.
- i. The producers interest – Imposition of safeguard duty shall be in the public interest from Indian manufacturing sector point of view, as it would help preventing decline of the domestic industry in India, would prevent surge in import and would address the significant injury being caused to the domestic industry as a result of this surge in imports. The domestic industry has expanded its capacities and therefore needs to be protected against low priced imports.
  - ii. Consumer's interest – Major use of the product under consideration is in manufacturing of tyres. The product under consideration is not a major cost element for consumer industry (major cost element is natural rubber). As per estimate of the domestic industry, cost of carbon black for the consumers is in the region of 6% (the fact can be established from the annual report of the tyre industry). Further, market share of China in demand for the product in India was in the region of 11% during the period of surge in imports. While the consumers need not import any carbon black from China and the domestic industry has sufficient capacities to meet the present and potential demand of the product in the Country; even if it is argued that the consumer industry should continue to import the product at the same level from China and imposition of safeguard duty shall result in cost to the consumer increasing by 30% in respect of these Chinese imports, it follows that the impact on consumer in any case shall not exceed 0.33% (even ignoring anti dumping duty). It is, however, submitted that even this would not be the impact on domestic industry for the reason that the tyre industry can source the entire volume from the domestic market and the domestic industry does not intend to increase its price because of imposition of safeguard duty.
  - iii. The Govt. of India had earlier imposed safeguard duty on imports of one of the rubber chemicals (PX-13) wherein the Director General (Safeguards) came to the conclusion that imposition of safeguard duty on imports of PX-13 shall be in public interest.

### **C. Views of Automotive Tyre Manufacturers Association (ATMA)**

16. The views expressed by the Automotive Tyre Manufacturers Association (ATMA) are summarized as follows –

- a) Change of price data mid way by domestic industry: Domestic industry has changed the price data mid way through the investigation without providing any explanation of the same.
- b) Under reporting of export volumes of domestic industry by Director General (Safeguards) : The export volumes mentioned in page 16 of the Preliminary Findings does not match with the export volumes reported in the 'On-site

verification' report of the DI and it appears that the export volumes in the preliminary findings are grossly under reported.

- c) Preliminary Findings disregard the submission of importers: The Hon'ble DGS vide paragraph 65 of the preliminary findings has stated that: "ATMA has also not provided any information on imports of carbon black by its various members." However this statement by the Hon'ble DGS is incorrect as Apollo, JK Tyres and Ceat had provided details of import volumes, CIF Price and domestic procurement price of carbon black. ATMA has the acknowledgment receipt of the submissions made to the DGS.
- d) Excess confidentiality granted by Director General (Safeguards): Domestic industry vide its submission dated January 2, 2012 has stated that the plants of the domestic industry were shut down. However domestic industry has not provided the reasons for the same. It is the submission of ATMA that DI being a public listed company would have to provide the reasons for the shutdown of the plant to its shareholders. Thus the information cannot be termed as "confidential" or "business sensitive" as argued by the counsel for the domestic industry as the same would be available in the public domain.
- e) Domestic industry recognizes inherent competitiveness of coal tar as an input for production of Carbon black
  - i. In view of the apparent cost advantage in using coal tar, domestic industry has been trying to shift to coal tar. In this respect, the annual report of PCBL provides that PCBL has been using tar oil as an input product since F.Y 2008-09. Thus PCBL is already using Coal Tar oil as an input in production of Carbon Black. In this respect, it is the submission of ATMA that Non Injurious Price (NIP) for a company should be based on most efficient use of resources. Since PCBL is already using Coal Tar, NIP for the domestic industry should be determined as per the Coal tar prices and not as per CBFS prices.
  - ii. Furthermore PCBL has also commissioned a coal tar plant in Orissa. As per the annual report of PCBL, the plant is expected to be commissioned in the 2nd quarter of the financial year 2012-13. In this respect, it should be noted that domestic industry as per the petition has sought duty protection for 4 years. However in view of the fact that the coal tar plant will be commissioned in Q2 of (2012-13), a duty based upon the CBFS prices would be unjustified as the NIP would decrease further.
- f) Significant financial performance by DI
  - i. Installed capacity increased from 5,00,000 MT to 7,24,000 MT
  - ii. Production increased from 4,16,244 MT to 6,14,105 MT which is an increase of 48%. There was also an increase in average production per month which increased from 34,687 MT in 2008-09 to 51,175 MT in 2011-12.

- iii. Capacity utilization increased from 83% in 85%.
  - iv. Domestic sales decreased by a mere 4.8% from previous year but increased by a huge 32% from the base year.
  - v. Domestic sales value increased by 65% in 2011-12 as compared to 2008-09.
  - vi. DI is posting profits.
  - vii. Decline in profits is on account of Capacity expansion.
- g) No Price Suppression/ Depression: DG Safeguards in its previous ruling in *Coated Paper Board* dated 3/11/2009 has ruled that when there has been an increase in import prices, in absence of any contrary evidence submitted by the domestic industry, any decline in profits cannot be attributed to increased imports. As per the present petition, domestic industry has stated that the decline in profit is due to increase in imports from China PR. However in view of the above ruling, decline in profits cannot be attributed to imports from China PR. It should also be noted that DG Safeguards has not addressed the issue of the rise in domestic procurement price, even through the same was provided by ATMA on both confidential and non confidential basis.
- h) No threat of market disruption: DI has posted significant financial performance on all injury parameters including profits. However there has been a decline in profits in 2011-12. ATMA thus submits that a marginal decline in profits cannot lead to a conclusion of injury or threat of injury to the domestic industry.
- i) Alleged Injury to the DI covered by Anti dumping duty: The increase in domestic selling price is complemented by increase in domestic sales value which increased by 65% during the same period which clearly shows that the price increase did not negatively affect sales volumes. Thus ATMA submits that any injury to the domestic industry is covered by the existing anti dumping duty.
- j) Break in of Causal Link due to non segregation of injury: DGS not following its own practice of not permitting double duty protection. In exceptional circumstances a product may attract antidumping and safeguard duty. However simultaneous levy can be imposed, only if injury from the causes is 'segregated' as stated by Hon'ble DGS in the Safeguard investigation against import of Front Axle Beam, Steering Knuckle and crankshafts of medium and heavy commercial vehicles from China PR. Preliminary findings give no indication why existing antidumping duty is not sufficient to address market disruption, as required by the ruling in Front Axle Beam. This non segregation of injury in the present petition results in break in of the causal link between imports from China and the alleged injury to the DI.

**D. Views of M/s Jiangxin Black Cat Carbon Inc. Ltd.**

17. The views expressed by M/s Jiangxin Black Cat Carbon Inc. Ltd are summarized as follows –

- a) Inclusion of products not covered within the scope of product under consideration and incorrect import statistics
- i. The investigation is with respect to carbon black for rubber applications only and other grades of carbon Black used in non rubber applications are explicitly excluded from the scope of investigation. However, preliminary finding issued by DGSG is totally silent as to how import analysis was done and whether any exclusion was made or not.
  - ii. Data provided for Q2 2011-12 in the initiation notice and domestic industry petition is same, whereas there is a slight decline in preliminary findings. Figures for Q1 2011-12 are same in Initiation Notice, Preliminary Findings and domestic industry Petition.
  - iii. In the preliminary findings, DG SG has stated that for entire POI i.e 2008-09 till Oct 2011-12, it has relied upon IBIS import statistics provided by domestic industry. If that is the case, then there should not be any variance in the petition and preliminary findings. Even if it were to be assumed that in the preliminary findings DGSG excluded non –PUC from total import , then it is not clear as why Q1 2011-12 figures are same for all the above mentioned 3 sources.
- b) Market disruption claim is incorrect
- i. DG SG has accepted the arguments of domestic industry that in view of the surge in imports from China PR, it is facing market disruption and there is threat to market disruption in the future and provisionally held that domestic industry is facing market disruption and also threat of market disruption.
  - ii. Though domestic industry is heavily relying on Q2 2011-12 and Oct 2011 import figure surge in imports, yet it has neither been able to establish material injury nor any causal link between the injury and increased in imports.
  - iii. While revenue of HI- Tech Carbon has increased by 21% in 2011-12(on annualized basis) compared to 2010-11, Phillips Carbon Black has 30.43% increase in sales revenue during the same period. Overall, the domestic industry as a whole has been able to increase the sales revenue by almost 26% in 2011-12. Thus, imports from China PR have not stopped domestic industry to grow and domestic industry has been able to increase its sales.
  - iv. The quarter to quarter comparison of sales revenue for 2010-11 and 2011-12 shows remarkable increase in sales revenue of domestic industry. Revenue increased by 51% in Q1 and by 28% and 15% in Q2 and Q3 respectively. Since 2010, domestic industry has not suffered any loss or decline in revenue.

- v. Domestic industry's growth could be witnessed from ever increasing production and capacity addition for past 2 years. Compared to 2008-09, production as well as capacity of the domestic industry has increased by 45%. Compared to 2010-11, the performance of the domestic industry has improved. While production capacity has increased by 12%, production has also increased by 4% for the same period
  - vi. Thus as far as sales, production and production capacity is concerned, rising imports had absolutely no volume effect on the domestic industry.
  - vii. Post 2008-09, domestic industry has remained healthy and has been performing exceedingly well. No loss has been incurred by the domestic industry.
  - viii. In the preliminary findings, DG SG has rejected the profits stated in annual reports stating that the annual performance reported is not exclusively in respect of product under consideration. That being the case, the segregated information relating to production, capacity, sales revenue and profit for product under consideration and non –product under consideration should be provided. And if segregation is not possible, then DG SG is bound to consider the overall performance of domestic industry with respect to 'carbon black' as a whole.
- c) Other causes of injury: Domestic industry has not revealed to DG SG that one of its constituents HI-Tech Carbon imports goods from Thailand. Thus, any loss in market share of the domestic industry is due to the fact that exports from related entity have taken that share. Therefore DG SG should either terminate the investigation or refer the matter to DGAD to decide on the issue.
  - d) No causal link: Imports from China and profit made by domestic industry are directly proportional to each other. Whenever the imports increased, the profits of the domestic industry also increased and when the profits of the domestic industry declined, the imports also witnessed a decline. There are other factors, which determine the performance of the domestic industry and clearly establish absence of causal link between the performance of domestic industry and import from China.
  - e) Raw material cost: CBFS forms a major raw material and a major cost ingredient in production of carbon black. Changes in Carbon Black cost would to a large extent move in tandem with change in raw material prices i.e CBFS. Compared to Q1 , CBFS prices declined by 2%. During the same period, cost of sales of the domestic industry increased by 10%.However, in Q3, CBFS prices increased by 8% compared to prices prevailing in Q2.As against this, cost of sales increased by only 1%.Thus there is no link between the change in the raw material price and resultant cost of sales. When a major raw material price is not having a significant impact on cost of Carbon Black, then it becomes obvious that there are other factors that are responsible for change in cost.
  - f) China Specific Safeguard duty cannot be imposed: TPSS investigation against China is by nature exceptional, which is to be sparingly used by the other

Members countries of WTO and should not be used in every case of increase in imports.

- g) Safeguard duty and Anti –Dumping duty cannot be imposed simultaneously: Anti-dumping duties imposed in 2010 were based on injury margin. Hence anti-dumping duties so imposed have already taken care of injury caused to domestic industry by the imports.
- h) During the period of anti –dumping imposition, selling price increased by 24% while cost of production only increased by 12%. Even between April 2011 and Oct 2011, while CBFS price increased by 4%, selling price of the domestic industry during the same period increased by 8%. Thus, even with increase in raw material price, domestic industry has been able to increase its selling price by an even bigger rate. Furthermore between the same period , import prices from China has increased by 17%. Clearly indicates that ever since anti- dumping duties were imposed, domestic industry has been able to consistently increase its selling price and earn profits. Along with increase in rise in selling price, Chinese import prices have also been consistently rising. Thus, there is no injury, which has not been covered by anti –dumping. Any safeguard duty imposed over and above the anti –dumping duties will only amount to double protection to domestic industry.

**E. China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters and China Rubber Industry Association**

18. The views expressed by the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters and China Rubber Industry Association are summarized as follows –

- a) Inaccuracy and Insufficiency of Information in the Petition: It is a settled principle that a duly filled petition with ‘sufficient’ evidence regarding imports, injury and causal link is mandatory in order to initiate an investigation. However, as per the Submissions of the Petitioners dated 7<sup>th</sup> January, 2012, it can be seen that the Petitioners have in fact revised their Import Statement and Costing Information subsequent to the initiation. Hence, the initiation itself was based on insufficiently supported petition and does not justify the present initiation.
- b) Unreliable Source of Information accepted by the Authority: At paragraph 65 of the said Findings, the Hon'ble Director General (Safeguards) has relied upon privately sourced import data from IBIS as submitted by the Petitioners and not on the import data from DGCI&S. It is respectfully submitted that the reliance on privately sourced data is not in consonance with the established practice of the Hon'ble Director General (Safeguards) followed in earlier investigations wherein the Hon'ble Director General (Safeguards) has relied upon information sourced from DGCI&S at least to the extent possible.
- c) Post – Period of Investigation decline in Imports: It is respectfully submitted that in the light of the abnormal accumulation of imports in the months of September-October-2011 the Hon'ble Director General (Safeguards) ought to examine the

actual imports, post October- 2011 to correctly assess the position on imports into the country. In fact, the change in the demand pattern is clearly reflected in the actual import data post October 2011 which shows a rapidly declining trend in imports from China PR. A mere perusal of the import data, clearly reveals that the imports in period after September 2011 have actually declined and do not show a continued increasing trend required for the imposition of safeguard duty.

- d) Period of Investigation is not Recent: The Appellate Body of the WTO in *Argentina – Footwear (WT/DS121/AB/R dated 14th December, 1999)* explained that "the increase in imports must have been "sudden and recent." The dispute concerned provisional and definitive safeguard measures imposed by Argentina on imports of footwear in 1997. The Appellate Body found that an examination of import trends over a period of five years is not reasonable, in light of the "is being imported" language used in the WTO Agreement on Safeguards.
- e) In the factual matrix of the case at hand, the Period of Investigation begins from April 2008 and ends in October 2011. Clearly, the data which is upto 42 months old cannot be qualified to be "recent". The imports analysed by the Hon'ble Director General (Safeguards) are dated and distort the injury analysis.
- f) Raw material prices in China PR as "other factors" and not "unforeseen circumstances": Price trend of CBFS cannot be regarded as the "unforeseen developments" which will lead to increase in imports and cause injury or threaten to the domestic industry. The Hon'ble Director General (Safeguards) cannot exclude the possibility of increases in CBO which may become more expensive than CBFS. The Chinese Carbon Black industry cannot be penalised for using a more cost effective method of producing the subject goods by relying upon low cost raw materials
- g) Absence of Injury to the Domestic Industry
  - i. The evaluation of the requisite criteria does not reveal any negative impact to the Domestic Industry which is solely linked to the increased exports from China PR and hence, there is no injury to the Domestic Industry.
  - ii. As can be seen from the data, the Domestic Industry has been expanding and adding capacities, which has resulted in the installed capacity, domestic production and the capacity utilisation to grow. As can be seen the total sales of the Domestic Industry has been in tandem with the increase in production.
- h) Absence of threat of market disruption: It can be seen from the Chinese exports and the ratio to global exports has sharply decreased from Sept.2011 onwards. The increase in exports from China PR, was a temporary effect due to peculiar demand-supply situation in India and the trade flow is back to the normal level and thus there is no threat of market disruption.
- i) Non-attribution and absence of causal link: It is respectfully submitted that the alleged injury claimed by the Domestic Industry is not attributable to the increase in imports of the subject goods solely from China PR and there is an absence of causal link.

- j) The effect of the increase in imports from other sources such as Thailand, Russia and Korea must be analysed and considered by the Hon'ble Director General (Safeguards) and the injurious effects of the same, if any, ought to be segregated.
- k) Export Focus of the Domestic Industry: As compared to the base year of 2008-09, the exports have increased significantly as well as the export prices of the domestic industry. Thus the commercial choice of directing their sales whether in the domestic market and / or export market which has allegedly caused them injury cannot be attributed to an increase in imports from China PR. This is clearly a case of self-inflicted injury, if any.
- l) Efficacious Alternate Remedy is Available: It is respectfully submitted that the claims of the Petitioners can be adequately addressed by the Hon'ble Designated Authority at the Directorate General of Anti-dumping and Allied Duties in the impending Mid-term Review which is already in progress. Hence, the Petitioners already have an efficacious alternate mechanism by virtue of the which all claims of injury can be adequately redressed and the present transitional safeguard-duty investigation is unnecessary.
- m) Public Interest: The additional trade remedy protection will be further detrimental to the growth of the Indian tyre industry which is grossly damaging to the larger public interest and economical interest of the country.

**F. Rejoinder of Automotive Tyre Manufacturers Association (ATMA):**

- a) The statement of the DI that the reason for increase in imports is due to the cost advantage of the Chinese producers which is on account of use of Coal Tar oil. As ATMA has clearly demonstrated in its POST PH WS as well this submission, DI is itself using coal tar oil since 2008-09 and moreover a coal tar plant will be commissioned in the next coming quarter, i.e. July 2012-September 2012. In view of the same, the NIP of the DI should be determined based on coal tar as an input.
- b) The injury figures along with the profit figures as provided by ATMA in its POST PH WS clearly illustrate that DI is not suffering from market disruption. Moreover DI has not been able to refute the claim of ATMA that domestic procurement prices have increased by 38-41% in Q4 of 2011-12 as compared to Q3 of 2010-11. The domestic procurement price clearly illustrate that imports have not had any effect on domestic prices especially since import prices have increased by 45% in Q4 of 2011-12 as compared to Q1 of 2008-09.
- c) ATMA request the Hon'ble DGS not to allow the DI to change its data mid way and if the same is allowed, an explanation for the same should be provided to all interested parties.
- d) ATMA would like to draw the attention of the Hon'ble DGS towards the break in of the causal link. ATMA in its previous submission had submitted that no break up of injury on account of dumping and on account of surge in imports has been provided either by the DI or by the Hon'ble DGS. Therefore in view of the past practice of the DGS as reflected in the Front Axle Beam, Steering Knuckle and



crankshafts of medium and heavy commercial vehicles from China PR17, the causal link between the imports and the alleged injury to the DI is broken.

- e) DI has not been able to show as to how the existing anti dumping duty is not sufficient to cover the injury to the DI. In this respect ATMA relies on its previous submissions. It should be noted that DI has not presented any arguments refuting the claim of ATMA.

#### **G. Rejoinder of M/s Jiangxin Black Cat Carbon Inc. Ltd**

- a) Since domestic producers are having a facility which uses only CBFS whereas Chinese producers use CBO, there is always bound to be difference between the costs of both the products.
- b) Increase in Chinese Imports only a temporary trend.
- c). TPSSM is an exceptional Measure.
- d). No injury to domestic industry.
- e). No loss suffered.
- f.) No threat of serious injury.
- g). Fit case to refer to DGAD.

#### **H Rejoinder of China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters and China Rubber Industry Association**

- a) The initiation of the present investigation is erroneous
- b) Period of investigation is not recent.
- c) Annualising/Extrapolating the imports is erroneous.
- d) Significant decline in imports post-period of investigation.
- e) Lack of injury to the Domestic Industry.
- f) Raw material prices in China PR as “other factors” and not “unforeseen Circumstances”.
- g) Absence of Critical Circumstances.
- h) Difference in raw material prices and technology is clearly a non- attributive factor.
- i) There is no threat of market disruption to the domestic industry.
- j) The commercial choice of directing their sales whether in the domestic market and /or export market which has allegedly caused them injury cannot be attributed to an increase in imports from China PR.
- k) The imposition of safeguard duty will lead to dual remedy protection to the Domestic Industry.

- l) The additional trade remedy protection will be further detrimental to the growth of the Indian tyre industry which is grossly damaging to the larger public interest and economic interest of the country.

**I. Rejoinder of Domestic Industry:**

**(i) On submissions of ATMA-**

- a) The Director General has grossly inadequate/insufficient questionnaire response/information/cooperation from consumers of the product under consideration in India as (a) ATMA Member Companies constitute hardly 64% of total consumption of the product under consideration . (b)Consumption by ATMA Member companies participating in the present investigations constitutes quite lower consumption of the product under consideration in India. (c) Other consumers of the product under consideration have preferred non cooperation with the Director General. (e) The Director General may kindly consider consumer wise imports of the product. (d) The significant surge in imports is because of imports made by, inter-alia, Balakrishna Tyres, which, in fact is a non cooperating party.
- b) Neither the Chinese producers nor the Indian consumers' responses can be considered as "adequate". In other words, the Director General may kindly conclude that there was insufficient/inadequate response from the Chinese exporters and Indian consumers.
- c) There is a typographical error in the submission made before the Designated Authority. Instead of reporting imports from subject countries of anti dumping case (Australia, Thailand, China and Russia), the domestic industry has inadvertently mentioned only Chinese imports, that too an incorrect figure. It has already been clarified to the DGAD and also to the Director General. However, the imports statistics used in the present investigation are pertaining to China only. In any case, the Director General has adopted its own verified data and has not blindly applied the claims of the domestic industry.
- d) So far as information required on gross imports of the product in the Country is concerned, the information provided by the responding exporters or importers/consumers could not be relied upon for determining volume of imports because while disputing the claims of the domestic industry with regard to import volumes, ATMA has not lodged any verifiable claim with regard to total imports of carbon black in India from China and third countries.
- e) It is not the case where issue of use of CBO by China PR and DI is concerned. The issue concerns the price at which CBO is available to the Chinese producers, domestic industry and global producers. The domestic industry argued that CBO price is low selectively in China and only for Chinese consumers. They can neither import CBO from China at these prices, nor are CBO prices in the global market low.

- f) Increase in sales revenue is due to increase in the cost of sales of the product under consideration but the profits of the domestic industry have declined significantly both year-wise and quarterly.
- g) ATMA has access to 10 tyre manufacturing companies owing to their membership with ATMA but has submitted the data of only three companies (Apollo, JK Tyres and Ceat). The association has deliberately not disclosed the data pertaining to rest of its members. The injury margin after adding anti dumping duty is quite significant and establishes that the domestic industry is suffering injury despite anti dumping duty.

**(ii) On submissions of M/s Jiangxin Black Cat Carbon Inc. Ltd**

- a) The data provided in the petition is the raw data which includes all the Carbon Black imports. However, in the import statement, injury analysis and increased imports analysis, imports pertaining to Carbon Black for rubber applications only have been considered. In any case, the Director General (Safeguards) has considered imports as per their own analysis. The Director General has not considered the import volumes claimed by the domestic industry. Thus, there is no legal basis for the argument that the imports considered includes significant non-product under consideration.
- b) So far as data for Q2 (2011-12) i.e 25772 MT submitted in the application filed before DG(Safeguards) is concerned, it is fact that the said quantity has been mentioned in the safeguard petition, but the figure taken by DG(Safeguards) for Q2 (2011-12) is 25686 MT based on verification done. It is also submitted that none of these parties disputing the preliminary findings with regard to increased imports have provided any information with regard to gross imports of carbon black in India.
- c) That the import figures are different due to different sources adopted. In the initiation notification, the DGSD adopted the DGCI&S data wherein the petitioners have adopted IBIS data in the petition. However, in the Preliminary Findings DGSD has adopted IBIS data after doing their own analysis of transaction-wise data of the product under consideration.
- d) Increase in sales revenue is due to increase in the cost of sales of the product under consideration but the profits of the domestic industry has declined significantly not only year-wise but also quarterly. Increase in values per se does not indicate anything with regard to the performance of an industry. The increase in turnover may be a result of increase in raw materials (as the situation is case of tyre industry and carbon black industry).
- e) That capacity enhancement is a long term process driven out of macro-economic factors and the period of actual enhancement cannot be seen in isolation. Domestic industry has enhanced capacities considering present and potential demand for the product in the Country. However, due to the increased imports, the process of capacity enhancement of the domestic industry has slowed down.
- f) The profit earned by the domestic industry has thus been considered in relation to carbon black for rubber applications relating to domestic market only.

- g) The increase in profits as per the annual reports of the petitioner companies is pertaining to the overall performance of the company, whereas the present investigation is for domestic operations of Carbon Black for rubber application. Therefore statements in the annual reports cannot be relied upon.
- h) All information filed by the domestic industry and that relied upon by the Director General (Safeguards) is for the product under consideration only. Since the domestic industry has made available segregated data for the product under consideration, overall performance cannot be and need not be relied upon.
- i) The petitioner has not imported any goods from its related company during the injury period. The argument is purely imaginary. Further, imports from third countries collectively declined and Chinese imports increased. there are no other factor causing injury expect increased imports from China PR.
- j) The surge started from July-Sept., 2011 and with the surge in imports, the profitability of the domestic industry steeply deteriorated. Therefore, imports from China and profit made by domestic industry are not directly proportional to each other
- k) Cost of sales of the domestic industry has moved in tandem to the CBFS prices. Also in 2011-12, which is the surge period, the price of CBFS has increased and so the cost of sales. But the domestic industry was unable to increase its selling price in proportion to increase in cost of sales resulting in decline in profits. In 2011-12, the import price has increased, but same remained far lower than not only the selling price of the domestic industry but also its cost of sales.
- l) The accession treaty of China PR nowhere states that the Transitional Product-Specific Safeguard Mechanism is exceptional and should be taken up only in rare situations. Notwithstanding, the situation being faced by the domestic industry is an exceptional situation wherein the domestic industry has been faced with decline even in volume parameters.

**(iii) On submissions of China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters and China Rubber Industry Association;**

- a) Imports of the product under consideration have increased over the injury period in absolute terms with a sharp increase in imports in the recent period. There is a sudden, sharp and significant increase in imports in the recent period. Both annual and quarter-wise imports volumes also show a significant increase in imports.
- b) There is a slight decline in imports in FY12-Q4, but the levels of imports remain even in this period was at the higher levels as compared to the previous quarters thereby showing a significant increase in imports. In any case, there is no legal requirement for a determination that imports are presently increasing. Rather, imports could have 'increased' in the recent past, but not necessarily be "increasing" upto the end of the period of investigation or immediately preceding the determination.
- c) No evidence has been provided by this interested party to show that IBIS data is not reliable. The Customs Tariff (Transitional Product Specific Safeguard Duty) Rules,

2002, do not specifically define the agency from where the import data should be taken but it is the discretion of the investigating authority to consider the data available to them. Also, there are cases in the past wherein IBIS data has been relied upon. Therefore it is in consonance with the established practice followed in earlier investigations.

- d) There are plethora of cases in the past like PX-13, Aluminum FRP & Foil, Phthalic Anhydride wherein Director General (Safeguards) has relied upon IBIS data.
- e) The POI has been taken by the Director General from 2008-09 onwards till Q3 of 2011-12. In view of the fact that full year of 2011-12 has not been included in the investigation, the data has been analyzed both annually and thereafter on quarterly basis. The quarterly analysis was considered important in order to take into account significant changes in the quarterly performance of the domestic industry.
- f) There is a significant price difference between the two raw materials (CBO prices prevailing in China vs. CBFS prices prevailing in international market). The price difference between the two raw materials provides significant cost advantage to the Chinese producers which lead to low price imports of Chinese Carbon Black. Resultantly, the Chinese carbon black became extremely lucrative for the consumers. It is this factor which is unforeseen under the given circumstances and has led to significant surge in imports of carbon black in India.
- g) That the price difference between CBO and CBFS started increasing from around April-June 2011 and became significant after July, 2011 period. The price difference has continually increased thereafter. The available information on market situations in China shows that the price of CBO in China started falling in Q1 2011-12 with further steeper fall thereafter.
- h) That both M/s PCBL and M/s Hi Tech are not export centric companies. Their Domestic sales continue to constitute majority of their sales. Moreover, the opposing parties have not provided any substantial information to corroborate their claim.

**J Findings of the Director General (Safeguards) :**

19. I have carefully gone through the case records, the replies filed by the domestic producers, exporters and exporting nation. Submissions made by the various parties and the issues arising there-from are dealt with at appropriate places in the findings below.

**(I) The product under investigation:**

20. The product involved is 'Carbon Black', classified under Customs Tariff Heading No. 28030010 under the Customs Tariff Act, 1975. Carbon Black is also known as acetylene black, channel black, furnace black, lamp black, thermal black, and noir de carbone. Carbon black can be divided into two categories – rubber and non-rubber applications. Carbon black for rubber applications is used in production/ processing of rubber (including tyres), as a reinforcing filler. The present petition is in respect of increased imports of Carbon black used in rubber applications. Carbon black used in

non-rubber applications, such as inks in copiers and computer printer cartridges, paints, crayons and polishes, is not within the scope of the present investigation.

21. It is noted that the customs classification 28030010 is in respect of carbon black and includes all kinds of carbon black. However, the scope of the product under consideration in the present case is restricted to only carbon black used in rubber application. Therefore, the customs classification is not dedicated for the product under consideration.

**(II) Domestic Industry:**

22. Section 8C(7)(a) of the Customs Tariff Act 1975 defines domestic industry as follows:

(a) *“Domestic industry” mean producers -*

- i. as a whole of the like article or a directly competitive article in India; or*
- ii. whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India*

23. The application has been filed by M/s. Association of Carbon Black Manufactures, 5A Raba Kailash, 55/4 Ballygunge Circular Rd. Kolkata-700019 on behalf of two of its member companies M/s. Phillips Carbon Black Limited, 31, Netaji Subhash Road, Kolkata-700001, and M/s. Hi-Tech Carbon, Murdha Indl Area, P.O. Renukoot, Dist: Sonbhadra (U.P.). There are four more known producers of Carbon Black in India namely M/s Continental Carbon India Limited, A-14 Industrial Area No. 1, South Side of GT Road, Ghaziabad-201 001; M/s Ralson Carbon Black Ltd., Jitwal Kalan, Tehsil Malerkotla, Distt. Sangrur, Punjab; M/s Cabot India Limited, MIDC Plot No.3, Trans -Thane Creek Area, Thane- Belapur Road, Post Ghansoli, Thane 400701 Maharashtra; M/s Himadri Chemicals & Industries Limited, Registered Office: Fortuna Tower, 23-A, Netaji Subhas Road, 8th Floor, Kolkata- 700 001. The applicants account for more than 80% of the Indian production and hence are major producers.

Financial Year	Quarter	Production			Share	
		Petitioners (MT)	Other Indian Producers(MT)	All Indian Producers (MT)	Petitioners	Other Indian Producers
2008-09		416,244	97,598	513,842	81%	19%
2009-10		492,862	121,766	614,628	80%	20%
2010-11		585,899	108,823	694,722	84%	16%
2011-12	Q1	163,458	29,086	192,544	85%	15%
	Q2	148,188	28,367	176,555	84%	16%
	Q3	137,035	34,854	171,889	80%	20%
2011-12(A)		598,241	123,076	721,317	83%	17%

24. After taking into account the information on record, it is determined that production of the domestic producers filing the petition and who have provided relevant information constitutes a major share in the total production of the product under consideration in India. Accordingly, petitioner companies constitute domestic industry as per Section 8C(7)(a) of the Customs Tariff Act 1975.

### **(III) Period of Investigation (POI):**

25. The Customs Tariff Act, 1975 and the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002, do not specifically define what the Period of Investigation should be. However the issue of period of investigation has been dealt in Panel findings in US-Line Pipe Case against Korea. The Panel in this case ruled that it is up to the discretion of the investigating authority of the importing Member to decide the “length of the period of investigation” and its “breakdown”:

*“We note that the Agreement contains no requirements as to how long the period of investigation in a safeguards investigation should be, nor how the period should be broken down for purposes of analysis. Thus, the period of investigation and its breakdown is left to the discretion of the investigating authorities. In the case before us the period selected by the ITC was five years and six months, which is a period similar in length to the one used by the Argentine investigating authority in Argentina — Footwear Safeguard. However, we note that the Appellate Body, in the findings relied upon by Korea to argue the question of the length of the period of investigation, emphasized not the length of the period per se, but that there should be a focus on recent imports and not simply trends over the period examined. In the case of the line pipe investigation the ITC did not merely compare end points, or look at the overall trend over the period of investigation (as Argentina had done in the investigation at issue in Argentina — Footwear Safeguard). It analysed the data regarding imports on a year-to-year basis for the 5 complete years, and also considered whether there was an increase in interim 1999 as compared with interim 1998. We are of the view that by choosing a period of investigation that extends over 5 years and six months, the ITC did not act inconsistently with Article 2.1 and Article XIX. This conclusion is based on the following considerations: first, the Agreement contains no specific rules as to the length of the period of investigation; second, the period selected by the ITC allows it to focus on the recent imports; and third, the period selected by the ITC is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports.”(paras. 7.196, 7.199 and 7.201<sup>1</sup>)*

26. The Panel in the same US-Line pipe case ruled that:

*“In a safeguard investigation, the period of investigation for examination of the increased imports tends to be the same as that for the examination of the serious injury to the domestic industry. This contrasts with the situation in an anti-dumping or countervailing duty investigation where the period for evaluating the*

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<sup>1</sup> WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case

*existence of dumping or subsidization is usually shorter than the period of investigation for a finding of material injury. We are of the view that one of the reasons behind this difference is that, as found by the Appellate Body in Argentina – Footwear Safeguard, "the determination of whether the requirement of imports "in such increased quantities" is met is not a merely mathematical or technical determination." The Appellate Body noted that when it comes to a determination of increased imports "the competent authorities are required to consider the trends in imports over the period of investigation". The evaluation of trends in imports, as with the evaluation of trends in the factors relevant for determination of serious injury to the domestic industry, can only be carried out over a period of time. Therefore, we conclude that the considerations that the Appellate Body has expressed with respect to the period relevant to an injury determination also apply to an increased imports determination." (Para 7.209)<sup>2</sup>*

27. From the above it is clear that neither the domestic laws on Transitional Safeguard measures nor Agreement on Safeguard and Article XIX of GATT, nor the Accession Protocol of the Peoples Republic of China provide specific guidelines on the period of investigation. However, having regard to the nature and purpose/objective of the present investigations, it is evident that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and market disruption and it should not only end in the very recent past but the investigation period should be the recent past.
28. Considering the long history of dumping of the product under investigation, levy of antidumping duty in 2009 and that the period selected should be sufficiently long to allow conclusions to be drawn regarding existence of increased imports and to neutralize the effect of seasonal variation, data has been considered from F.Y. 2008-09 to 2011-12 (Upto December). In the Notice of Initiation and Preliminary Findings, import data upto Oct 2011 had been considered. Now, the import data has been updated till Dec, 2011. The POI has been taken from 2008-09 onwards till Q3 of 2011-12. In view of the fact that full year of 2011-12 has not been included in the investigation, the data has been analyzed both annually and thereafter on quarterly basis. The quarterly analysis was considered important in order to take into account significant changes in the quarterly performance of the domestic industry.
29. The Imports of carbon black in India were examined over the entire period considered. Further, the pattern of imports was compared with the performance of the domestic industry as reflected in the economic parameters. The information provided by the interested parties with regard to market developments in India and China were also examined. The trends in major raw materials – CBFS and CBO were also examined over the period. It is seen that the price difference between CBO and CBFS started increasing from around April-June 2011 and became significant after July, 2011 period. The price difference has continually increased thereafter. The available information on market situations in China shows that the price of CBO in China started falling in Q1 2011-12 with further steeper fall thereafter. Having regard to all the information on record, it is considered appropriate

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<sup>2</sup> WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case



to consider Q2 and Q3 2011-12 as the surge period. Accordingly, imports in this period have been examined and compared with imports in preceding years in order to determine whether imports of the product under consideration have increased within the meaning of the rules. Further, information for April-Dec.2011 as a whole has also been considered and compared with the preceding years for the present determination. However, since this period is of nine months, figures have been compared with previous years after annualizing the same in order to arrive at a fair conclusion. It is considered appropriate that the six months period is sufficient and long enough to make a determination with regard to whether imports of carbon black have increased in India within the meaning of the rules and whether the domestic industry has suffered injury as a result of these increased imports.

**(IV) Source of Information:**

30. The product under investigation is imported into India under chapter heading 28030010 of the Customs Tariff Act, 1975. The Safeguard investigation was initiated on the basis of DGCI&S import data from 2008-09 to 2010-11 and data provided by the domestic industry from secondary data compiling agency (IBIS) for rest of the period. In the Preliminary Findings, the import data for the entire period has been considered on the basis of data provided by the domestic industry from secondary data compiling agency (IBIS). The information provided by the petitioners and other interested parties were examined and it was found that it included some imports of the products which are beyond the scope of the product under consideration. Therefore, even though the petitioners had reported imports as per IBIS which included imports under HS code 28030020 and 28030090 also; after scrutiny the imports falling under HS code 28030010 only has been considered. The analysis for increasing imports was carried out for the relevant period by considering imports of Carbon Black under chapter heading 28030010 of the Customs Tariff Act, 1975 for 'rubber applications' only.
31. The data on various economic parameters submitted by the domestic industry in their petition till Oct 2011 has been verified by this directorate to the extent possible and the non confidential version of verification report has been placed in public file for all concerned. The verified data has been taken into consideration for injury analysis. The data for Nov and Dec 2011 has been adopted on the basis of information furnished by the petitioners.
32. Some of the interested parties have made submissions disputing the claim of increased imports made by the domestic industry. The import volumes claimed by the domestic industry have also been disputed by some of the interested parties. Some interested parties have made reference to the submissions made by the domestic industry in the ongoing midterm review anti-dumping investigation by the Designated Authority and have alleged that import volumes claimed by the domestic industry in anti-dumping investigations are significantly different from import volumes relied upon by the Director General in the preliminary findings. The domestic industry has clarified to both, to the undersigned and the Designated Authority on Anti Dumping, that there was a typographical error in the import volumes reported by

the domestic industry in their submissions before the Designated Authority on Anti Dumping. So far as data for Q2 (2011-12) i.e 25772 MT submitted in their application filed before DG(Safeguards) is concerned, it is fact that the said quantity has been mentioned in the safeguard petition, but the figure taken by this office for Q2 (2011-12) is 25686 MT based on verification done. It is also noted that none of these parties disputing the preliminary findings with regard to increased imports have provided any information with regard to gross imports of carbon black in India for consideration. It is noted in this connection that questionnaire responses have been received from the following foreign producers.

a. Jiangxi Black Cat Carbon Black Inc. Ltd. , China (Exporter Questionnaire)

33. Further, questionnaire responses have also been received from the following importers/consumers in India.

a. Apollo Tyres (Importer Questionnaire)

b. Ceat Tyre (Importer Questionnaire)

c. JK Tyre & Industries Limited (Importer Questionnaire)

d. Pheonix Conveyor Belt India (P) Ltd (Importer Questionnaire)

34. The information on imports provided by the responding exporters and importers/consumers have also been examined and analyzed. It is noted that these parties have provided information with regard to their own activities only. None of these parties have provided information with regard to gross imports of carbon black in India from China and third countries. Since the information was required on gross imports of the product in the Country, the information provided by the responding exporters or importers/consumers could not be relied upon for determining volume of imports. While disputing the claims of the domestic industry with regard to import volumes, I find that ATMA has not lodged any verifiable claim with regard to total imports of carbon black in India from China and third countries.

35. Some of the interested parties argued on reliability of IBIS data. However they have not provided any evidence to show that IBIS data is not reliable. The Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002, do not specifically define the agency from where the import data should be taken but it is the discretion of the investigating authority to consider the data available to them. Also, there are cases in the past wherein IBIS data has been relied upon by this directorate. Therefore, reliance on IBIS data after thorough scrutiny at transaction level as source of import data is in consonance with the established practice followed in earlier investigations.

#### **(V) Confidentiality of information submitted**

36. The domestic industry has provided some information on confidential basis and sought confidentiality on the information /data submitted. The domestic industry provided non confidential version of the application for safeguard measure as per the provisions of Safeguard Rules 2002 and Trade Notice No. SG/TN/1/97 dated

06.09.1997. Further the domestic industry has submitted reasons for seeking confidentiality at the time of filing the application.

37. The other interested parties have also provided some information on confidential basis and have requested for confidentiality of information and have submitted non confidential version of such submissions. However some of the interested parties have objected to the confidentiality claims of the domestic industry and have argued that the domestic industry has claimed excessive confidentiality and that meaningful argument can be put forward only with actual data on economic parameters is disclosed to the interested parties. These interested parties have argued that confidentiality should not be granted on such information.
38. Rule 7 of the Customs Tariff (Transitional Product Specific Safeguards Duty) Rules, 2002 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information (there is no provision under Accession Treaty of the People's Republic of China in this regard). The rules provide that an interested party is not required to disclose such information on actual basis which is confidential information of the company and disclosure of which can cause serious prejudice to the business interests of such party, which is not in public domain and which the petitioner has not disclosed before public at large in the past.
39. Accordingly, I have considered the prayer for confidentiality wherever it has been sought by the domestic industry and other interested parties, and has been granted under the provisions of the aforesaid rule.

**(VI) Anti-dumping Measures taken earlier:**

40. Having regard to the Customs Tariff Act, 1975, as amended from time to time, and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, the Designated Authority notified its final findings vide Notification No.14/21/2008-DGAD dated 24th December, 2009 and recommended imposition of definitive anti-dumping duty on imports of "Carbon Black used in rubber applications" originating in or exported from China PR, Australia, Russia and Thailand and the definitive anti-dumping duty was imposed by the Central Government vide Notification No. 6/2010-Customs dated 28th January, 2010. Investigation was carried out for the 12 months period starting from 1<sup>st</sup> Oct 2007 to 30<sup>th</sup> September, 2008 as the "investigation period" and the injury analysis was done considering the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and Oct 2007- September 2008.
41. Based on these recommendations of the Designated Authority on Anti Dumping, the Govt. of India has imposed anti dumping duty on imports of the product vide notification no. 6/2010-Customs dated 28th January, 2010.
42. Thereafter M/s Automotive Tyre Manufacturers' Association (ATMA) has submitted an application before Directorate General of Antidumping and Allied Duties requesting for initiation of a midterm review of the anti-dumping duties imposed on the imports of the product in accordance with Section 9A of the Customs Tariff Act 1975 read with Rule 23 of the Customs Tariff (Identification, Assessment and

Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. On the basis of information made available by ATMA before the Designated Authority, the Designated Authority initiated a mid-term review of these anti-dumping duties imposed on the imports of the subject goods originating in or exported from China PR, Australia, Russia and Thailand vide notification no No.15/41/2010-DGAD dated 30<sup>th</sup> August, 2011. The period of investigation of the aforementioned Mid-Term Review is 1<sup>st</sup> April, 2010 to 31<sup>st</sup> March, 2011. The injury investigation period however covers the periods 2007-08, 2008-09, 2009-10 and the 2010-11. It appears that the Designated Authority has not yet recorded final findings in this review.

43. The application filed before the Designated Authority on Anti Dumping is based on claim by ATMA that the domestic industry is not suffering injury from dumped imports and there is no justification for continuation of anti-dumping duties. It is noted in this connection that Rule 23(1) of Anti-Dumping Rules provides for review of anti-dumping duty and states that the designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted. Further, the Designated Authority on Anti Dumping has stated as follows while initiating Midterm Review investigations.

Grounds for Review:

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

Period of Investigation (POI)

*10. The period of investigation for the purpose of the present review is 1st April, 2010 to 31st March, 2011. The injury investigation period will however cover the periods 2007-08, 2008-09, 2009-10 and the POI (2010-11).*

44. Thus, it is the case of ATMA (and Chinese exporters) that the product was not being dumped during April 2010– May 2011 period and that the domestic industry has not suffered injury during this period. The domestic industry has made available a copy of their submission before Designated Authority on Anti Dumping (post initiation submissions, written submissions and rejoinder submissions). Further, it is noted

that imports of the product under consideration started surging from Q1, 2011-12 and hence considered July-Dec.2011 as the surge period for the purpose of present investigations. It is thus noted that the investigation period considered for the present investigation is different from and is subsequent to the investigation period being considered by the Designated Authority on Anti Dumping.

## (VII) Increased Imports

45. Section 8C of Customs Tariff Act, 1975 deals with the power of the Central Government to impose safeguard duty and provides as follows

*“1. Notwithstanding anything contained in Section 8B, if the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the People’s Republic of China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article”*

46. The rules require an increase in imports as a basic prerequisite for the application of a safeguard measure. Thus, to determine whether imports have “increased in such quantities” for purposes of applying a safeguard measure, the rules require an analysis of the rate and amount of the increase in imports, in absolute terms and as a percentage of domestic production as has been held by the panel and later confirmed by the Appellate Body in Argentina –Footwear case also.

47. In its evaluation of whether the investigation by the Argentine authorities demonstrated the required increase in imports under Articles 2.1 and 4.2(a), the Panel in Argentina-Footwear case stated the following:

*... the Agreement requires not just an increase (i.e., any increase) in imports, but an increase in "such...quantities" as to cause or threaten to cause serious injury. The Agreement provides no numerical guidance as to how this is to be judged, nor in our view could it do so. But this does not mean that this requirement is meaningless. To the contrary, we believe that it means that the increase in imports must be judged in its full context, in particular with regard to its "rate and amount" as required by Article 4.2(a). Thus, considering the changes in import levels over the entire period of investigation, as discussed above, seems unavoidable when making a determination of whether there has been an increase in imports "in such quantities" in the sense of Article 2.1. (emphasis added)*

48. Rule 2(iii) of Transitional Safeguard Duty Rules under the Customs Tariff Act, 1975 provides as follows

*“Increased quantity” includes increase in imports whether in absolute terms or relative to domestic production*

49. The analysis of the increased imports of Carbon Black in the light of the abovementioned provisions has been done. It is seen that Imports of Carbon Black (for rubber applications) from People’s Republic of China into India have shown

sharp increase in absolute terms as well as in relative terms. It is also noticed that the rate of increase in imports from People's Republic of China is significantly higher than that imports from countries other than People's Republic of China, causing market disruption and threat of market disruption to the domestic industry.

**a) Increase in Imports from China in absolute terms:**

50. The imports of the product under consideration from China have increased in absolute terms throughout the injury period. There is a sudden, sharp and significant increase in imports in the recent period. Imports from China increased from 12971 MT in 2008-09 to 77804 MT in 2011-12 (Annualised basis), which is an increase of 600% over the period. **There is a sudden surge in imports in 2011-12 (A) over 2010-11 from China by 465% though increase in total import is only 173% during corresponding period.**

Financial Year	Quarter	Import from China (MT)		Total Import (MT)	% of Imports from China
		Annual	Quarterly		
2008-09		12971		39187	33
2009-10		17722		63244	28
2010-11		16724		61185	27
2011-12	Q1		5789	14828	39
	Q2		25686	32465	79
	Q3		26878	31972	84
2011-12(A)		77804		105686	74

51. The slight dip in import in 2010-11 from 2009-10 level is due to imposition of Anti-Dumping duty vide Notfn. No. 83/2009-Customs, dated 30<sup>th</sup> July, 2009 (Prov.) and vide Notfn. No. 06/2010- customs, dated 28<sup>th</sup> January, 2010 (final) on the subject goods. Since the definitive anti dumping duty became effective from 28<sup>th</sup> Jan'10, the volume of imports in 2010-11 reflected the same.

52. It is seen from the data above that imports of carbon black from China are increasing rapidly in absolute terms. The overall imports of carbon black from China have increased significantly from 12,971 MT in 2008-09 to 77,804 MT in 2011-12(A). The imports from China were 5789 MT in Q1 of 2011-12 which increased to 25,686 MT in Q2 of 2011-12. Also, the imports from China PR have increased significantly in Q2 of 2011-12 and Q3 of 2011-12.

53. As result of significant increase in imports from China, the overall imports of the product under consideration from various sources increased from 39187 in 2008-09

to 105686 in 2011-12 (A). Further, overall imports from various countries were 14828 in Q1 of 2011-12 which increased to 32465 MT in Q2 of 2011-12 and 31972 in Q3 of 2011-12. Thus, while the overall imports of the product under consideration averaged 9,797 per quarter in 2008-09, the same increased to 15,811 in 2009-10, declined marginally to 15,296 in 2010-11, but surged thereafter to 14828, 32465 and 31972 in Q1, Q2, and Q3 respectively in 2011-12.

54. Imports from third countries were as follows –

Financial Year	Quarter	Import from China (MT)		Third countries(MT)		Total Import (MT)	% of Imports from third countries
		Annual	Quarterly	Annual	Quarterly		
2008-09		12971		26216	6554	39187	66.90
2009-10		17722		45522	11381	63244	71.98
2010-11		16724		44461	11115	61185	72.67
2011-12	Q1		5789		9039	14828	60.96
	Q2		25686		6779	32465	20.88
	Q3		26878		5094	31972	15.93
2011-12(A)		77804		27882		105686	26.38

55. It is seen that imports from third countries represented major proportion in total imports of carbon black in India till Q1, 2011-12. However, with the surge in imports from China, the share of third countries rapidly declined and the imports from third countries collectively represented 21% and 16% in Q2 and Q3, 2011-12 respectively.

56. It is noted that so significant was the surge in imports that despite decline in imports from third countries after imposition of anti dumping duty, overall imports of the product under consideration in India showed significant surge.

**(b) Increase in imports in relation to production of the domestic industry**

57. The imports of Chinese Carbon Black in India have also increased rapidly in relation to production of the domestic industry. The production of domestic industry has declined in absolute terms in the recent period (2011-12) in view of the increased import from China PR. It is seen that imports of carbon black from China remained at a low level (between 3-4%) during 2008-09 and 2010-11 in relation to production of domestic industry. However, the imports have increased so rapidly thereafter in 2011-12 that the imports in relation to production constitute 13% of Indian production.

Financial Year	Quarter	Import from China (MT)	Production (MT)	% of China Import In relation to domestic production
2008-09		12971	416244	3
2009-10		17722	492863	4
2010-11		16724	585899	3
2011-12	Q1	5789	163458	4
	Q2	25686	148188	17
	Q3	26878	137035	20
2011-12(A)		77804	598241	13

**(c) Imports in relation to Consumption/Demand**

58. Changes in demand/consumption so determined over the period has been compared with the changes in the imports from various sources and supplies by the domestic industry in order to determine whether imports of carbon black in India have increased significantly in relation to consumption or demand for the product in the Country.

59. The imports of Chinese Carbon Black in India have increased rapidly in relation to Indian consumption of carbon black. It is seen that imports of carbon black from China remained at a low level (3%) during 2008-09 and 2010-11. However, the imports have increased significantly thereafter in 2011-12(A) to such an extent that the imports in relation to consumption constituted 11% of Indian consumption.

Financial Year	Quarter	Import from China (MT)	Total Demand/ Consumption (MT)	% of China Import In relation to domestic consumption
2008-09		12971	460048	3
2009-10		17722	582930	3
2010-11		16724	614152	3
2011-12	Q1	5789	160228	4
	Q2	25686	164671	16
	Q3	26878	165321	16
2011-12 (Total)		77804	653627	11

60. Imports from China in relation to domestic consumption increased from 3% in 2010-11 to 4% in Q1 2011-12. However, thereafter, imports from China in relation to domestic consumption increased to 16% in Q2 and Q3 2011-12. It is thus seen that imports of Chinese carbon black in India surged significantly in relation to domestic consumption.



61. In view of the above, it is observed that imports of Carbon Black from China PR have increased in absolute and relative terms and that the increase in imports is recent enough, sudden enough, sharp enough and significant enough to constitute “increased imports” within the meaning of Section 8C of the Customs Tariff Act, 1975.
62. As regards the argument that increase in imports in September and October 2011 does not signify a trend and is an aberration, it is observed that the imports of the product under consideration have increased over the injury period in absolute terms with a sharp increase in the most recent period. There is a sudden, sharp and significant increase in imports in the recent period. The Imports from China have increased phenomenally from 12971 MT in 2008-09 to 77804 MT in FY 2011-12(A) which shows a significant increase. The increase in imports analysis is not based on only two months data. Even Q1, Q2 & Q3 of 2011-12 as a whole show increased imports.

### **(VIII) Unforeseen development**

63. It is noticed in the domestic industry’s submissions that there is no expressed obligation/requirement on the Director General (Safeguards) to analyse unforeseen circumstances as there is no specific requirement either in Indian Rules or under Accession Treaty of the People’s Republic of China on the methodology that should be followed for analyzing unforeseen developments. The Agreement on Safeguard also does not make any prescription with regard to the methodology that should be followed or the parameters that must be met in deciding unforeseen developments. It is however, considered that it is important to examine the circumstances which have led to increased imports.
64. In Argentina — Footwear (EC) and Korea — Dairy, the Appellate Body held that “any safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the Agreement on Safeguards and Article XIX of the GATT 1994<sup>3</sup>
65. Article XIX of GATT 1994 states as follows
- 1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.*
66. The Appellate Body in Argentina – Footwear (EC case) held that the phrase Unforeseen Developments means the developments which were unexpected. ‘Unforeseen developments’ requires that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to

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<sup>3</sup> Appellate Body Report on Argentina — Footwear (EC), para. 84 and Appellate Body Report on Korea — Dairy, paras. 76–77.

domestic producers must have been 'unexpected'. The Body in the same case noted a GATT panel report which held that the development must have been unforeseen at the time of tariff negotiation. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.

67. The Appellate Body, in Argentina — Footwear (EC), then held that the requirement of “unforeseen developments” did not establish a separate “condition” for the imposition of safeguard measures, but described a certain set of “circumstances”:

68. The panel on US- Steel Safeguards<sup>4</sup> concluded that the confluence of several events can unite to form the basis of an unforeseen development:

*“The United States argues that the robustness of the US dollar was a development which combined with the other developments, namely, the currency crises in Asia and the former USSR and the continued growth in steel demand in the United States’ market as other markets declined, lead to increased imports.”*

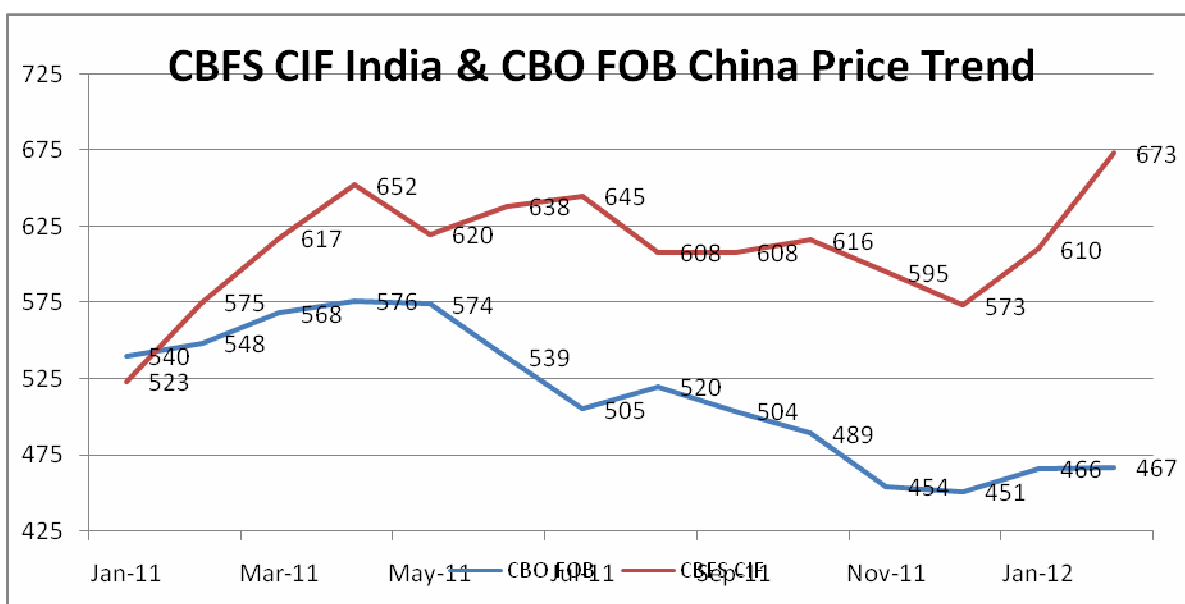
69. The petitioner has pointed out low price of raw material in China vis-à-vis raw material used by other countries including the domestic industry and its growing gap is the unforeseen development leading to surge in imports. It is observed that domestic industry largely uses CBFS (carbon black feed stock) as a raw material for manufacturing Carbon Black, whereas Chinese producers use CBO (carbon black oil), even though the domestic industry in India also uses CBO to the extent available and there are some plants in China as well which use CBFS. There is a significant difference in the price of these two raw materials. The price difference between the two raw materials provides cost advantage to the Chinese producers which led to low prices of Chinese Carbon Black.

70. In Carbon Black industry, the raw material cost is the major cost incurred by the producers of Carbon Black. Hence raw material prices play a major role in deciding the price trend of Carbon Black. After analyzing the price trend it was seen that throughout the injury period, there has been a price difference between CBO and CBFS. However, from the month of June’11, the prices of CBO started to decline and at the same time the price of CBFS started increasing which can be seen from table below. The domestic industry claimed following trends in prices of CBO and CBFS:

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<sup>4</sup> Para 86 of Korea Dairy case Appellate Body Report Of WTO 36

Month	China CBO FOB US\$/MT	CBFS CIF India US\$/MT	Gap between CBFS CIF India and China CBO US\$/MT
Jan-11	540	523	(17)
Feb-11	548	575	27
Mar-11	568	617	50
Apr-11	576	652	75
May-11	574	620	46
Jun-11	539	638	99
Jul-11	505	645	140
Aug-11	520	608	88
Sep-11	504	608	104
Oct-11	489	616	126
Nov-11	454	595	141
Dec-11	451	573	122
Jan-12	466	610	144
Feb-12	467	673	206



71. The BAIINFO Coal Chemical Weekly (report for the period 1<sup>st</sup> June to 7<sup>th</sup> June, 2012) submitted by the petitioner has been examined. The published reports suggest that the construction industry in China has faced slowdown due to some Govt. of China policy, as a result of which the prices of coal tar, industrial naphthalene and andhracene oil have significantly declined.

72. The report also suggests that purchase price of CBO in China has declined for the Chinese markets. It is also seen that in 2011, the total Carbon Black production in China far exceeds the total domestic demand, which indicates surge in exports from China in the ensuing period.

73. Thus, the evidence on record shows that the prices of raw materials involved in production of carbon black declined in Chinese market. In fact, whereas the prices of raw materials like CBFS globally increased, the same declined in the Chinese market. Since the raw materials cost constitutes majority of the cost of production (approx. 80 % of total cost of production is on account of raw materials), the price difference between the Chinese and global players has led to significant difference in the cost structures of the domestic industry and Chinese exporters. Resultantly, even when the Chinese producers have increased their prices in respect of exports to India the petitioners are suffering (despite their cost reductions) because the landed price of imports became significantly below the selling price of the domestic industry. The significant price difference between the domestic and imported product has resulted in significant surge in imports of Chinese carbon black in India.

Months	CBO FOB Price	CBFS CIF Price	Carbon black Import Price with ADD (Rs. Per MT)					Selling price Domestic Industry (Indexed)
	RS./MT	Rs./MT	china	Australia	Korea (No ADD)	Thailand	Russia	
Apr-11	26,044	29,457	56,012	67,492	60,766	61,781	56,683	100
May-11	25,814	27,878	59,410	65,813	60,596	60,611	59,540	102
Jun-11	24,621	29,136	60,144	66,448	79,838	65,184	57,238	101
Jul-11	22,993	29,342	61,890	74,700	74,197	64,787	58,117	104
Aug-11	23,264	27,198	60,676	77,415	72,906	65,390	---	107
Sep-11	23,459	28,313	62,010	80,508	73,244	81,266	60,507	107
Oct-11	24,278	30,547	65,646	85,015	78,138	84,048	67,362	108
Nov-11	22,725	29,770	69,720	79,403	91,707	-	70,576	106
Dec-11	23,740	30,129	70,615	-	86,931	-	76,226	105

74. It is seen from the above that the domestic industry increased its prices and. at the same time Chinese suppliers also increased their prices. However, despite such increases, the prices quoted by Chinese suppliers remained lower than domestic industry prices and third countries prices. The price of Carbon Black from other major supplier countries, i.e. Russia, Korea, Australia and Thailand, started increasing during the same period i.e. from June'11 onwards and were comparable or even higher as compared to the prices offered by the domestic industry. It is noted that this was the period when the imports from China have entered India in significant volumes capturing the Indian market by offering lower prices.

75. The price difference in the raw material for the most recent period Apr'11 to Dec'11 has resulted in cheap Chinese imports of Carbon Black capturing the Indian market causing irreparable market disruption.

76. It clearly shows that in spite of decline in raw material prices, China was able to increase its prices and yet are selling at price much lower than the other counterparts as the Chinese producers of Carbon Black are benefitted due to the raw material differences.

77. The price difference in the raw material can be seen as under:

Period	China CBO FOB US\$/MT	CBFS CIF India US\$/MT	Gap between CBFS CIF India and China CBO US\$/MT
Jan-11	540	523	(17)
Feb-11	548	575	27
Mar-11	568	617	50
Apr-11	576	652	75
May-11	574	620	46
Jun-11	539	638	99
Jul-11	505	645	140
Aug-11	520	608	88
Sep-11	504	608	104
Oct-11	489	616	126
Nov-11	454	595	141
Dec-11	451	573	122

78. The Chinese producers have created significant production capacities and are therefore looking for market opportunities. As per the information provided by the domestic industry and not refuted by opposing interested parties, including Govt. of China, the Chinese Carbon Black market is expanding on year to year basis thereby increasing their export volumes. The capacity of Carbon Black with China has exceeded 5 million ton per annum and the output is 3.4 million tones. Considering the huge production capacities of the subject goods in subject country lying idle and their export orientation and the increasing demand for the subject goods in India, in all likelihood imports will continue to remain high as compared to 2008-09 and 2010-11.

79. Some of the interested parties argued that raw material prices in China PR should be taken as "other factors" and not "unforeseen circumstances". It is noted that there is a significant price difference between the two raw materials (CBO prices prevailing in China vs. CBFS prices prevailing in international market). The price difference between the two raw materials provides significant cost advantage to the Chinese producers which lead to low price imports of Chinese Carbon Black. Resultantly, the Chinese carbon black became extremely lucrative for the consumers. I find that it is this factor which has led to significant surge in imports of carbon black in India and clearly therefore, raw material price is the unforeseen circumstance which lead to increase in imports.

**(IX) Market disruption and Threat of Market disruption**

80. Statutory framework: Under the Rules, “market disruption” shall be caused whenever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry<sup>5</sup>. “Threat of market disruption” means a clear and imminent danger of market disruption.
81. It is seen that the Annexure to Rule 8 of the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 requires that certain listed factors as well as other relevant factors must be evaluated to determine market disruption or threat of market disruption. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant decline in sales, employment and productivity which may show "material injury" to the domestic industry, and therefore may justify a finding of market disruption. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "material injury" to the domestic industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.<sup>6</sup>
82. Accordingly, in analyzing market disruption or threat of market disruption all factors, which are mentioned in the rules as well as other factors which are relevant for determination of market disruption or threat of market disruption, have been considered. No single factor has been considered as dispositive. All relevant factors within the context of the relevant business cycle and conditions of competition which are relevant to the affected industry have been considered. The determination of market disruption or threat of market disruption is based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.
83. It is observed that the increased imports of Carbon Black from China PR have caused and are threatening to cause market disruption to the domestic producers of Carbon Black as reflected by the following factors:
- a. Market share:** the market share of the domestic industry increased upto Q1 of 2011-12 but declined significantly thereafter. The market share of the domestic industry was 70% in 2008-09, when the domestic industry was suffering injury from dumped imports. The market share further declined to 69% in 2009-10, but improved thereafter to 72% (2010-11) and then to 74% (Q1, 2011-12) with the imposition of anti dumping duty. The market share of domestic industry declined from 74% in Q1 of 2011-12 to 61% in Q3 of 2011-12. This was the period when the Chinese imports entered the Indian market at significant rate capturing the Indian market. The market

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<sup>5</sup> Section 8C(7)(b) of the Customs Tariff Act, 1975

<sup>6</sup> Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

share of the subject imports from China increased from 3% in 2008-09 to 12% in 2011-12(A), while market share of imports from third countries in fact declined over this period. This sharp growth in Chinese market share led to decline in market share of both domestic industry and import from countries other than China. Further, the decline in the market share of the domestic industry was steeper and was despite imposition of anti dumping duty on various sources, including China. The surge in Chinese imports of carbon black has clearly adversely impacted the market share of the domestic industry. This decline in the market share of the domestic industry is despite significant addition to the production capacities by the domestic industry and significant increase in inventories with the domestic industry.

Financial Year	Quarter	Total Import (MT)	Import from China (MT)	Sales of domestic industry (MT)	Sales of other Indian Producers	Total Demand (MT)	% of Market Share		
							Domestic industry	China Import	Other Countries
2008-09		39187	12971	322809	98052	460048	70	3	6
2009-10		63244	17722	400295	119391	582930	69	3	8
2010-11		61185	16724	443430	109537	614152	72	3	7
2011-12	Q1	14828	5789	119327	26073	160228	74	4	6
	Q2	32465	25686	99206	33000	164671	60	16	4
	Q3	31972	26878	100608	32741	165321	61	16	3
2011-12 (A)		105686	77804	425521	122419	653627	65	11	4

**b. Production:** - The production has been determined on the basis of production reported by the domestic industry in its excise records. It is seen that the domestic production increased up to Q1 of 2011-12, but declined in the next two quarters. The domestic production has fallen steadily from 163458 MT in Q1 (2011-12), to 148188 MT in Q2 (2011-12) and further to 137,035 MT in Q3 (2011-12) i.e. by 16%. The domestic industry has submitted that the production process of carbon black is such that the domestic industry should attempt to produce more and more of the product in order to achieve not only economies of scale but also to arrest fixed cost associated with the plant and production.

Financial Year	Quarter	Production (MT)	Per quarter(MT)
2008-09		416244	104061
2009-10		492863	123216
2010-11		585899	146475
2011-12	Q1	163458	163458
	Q2	148188	148188
	Q3	137035	137035
2011-12 (A)		598241	149560

As there is demand for the product, therefore the domestic industry had increased their capacity over the injury period. However, so rapid is the increase in the imports that despite these extra efforts by the domestic industry, the inventories levels with the domestic industry continued to rise to such an extent that the domestic industry were eventually forced to take recourse to production suspension. Increasing production with high capacity means inventory position will worsen further. The domestic industry contended that the increased imports of carbon black are leading to production suspension in the most recent period. The verification at the premises of the domestic industry showed that the domestic industry constituents had taken production shut down in order to arrest the trend of rising inventories.

UNIT	Period of Shut Down		Days	Reason of Planned Shut Down
	From	To		
Phillips Carbon Black Ltd., Durgapur	07.09.2011	13.09.2011	7	Line-1 down due to high inventory
	16.09.2011	19.09.2011	4	CAT-1 down due to high inventory
	06.10.2011	31.10.2011	26	CAT-1 down due to high inventory
Phillips Carbon Black Ltd, Mundra	27.07.2011	07.07.2011	12	CAT-1 down due to market recession
	29.07.2011	04.08.2011	7	CAT-2 & CAT-3 down due to market recession
	26.09.2011	31.10.2011	37	R-2 down due to market recession
Phillips Carbon Black Ltd.Palej	12.09.2011	22.09.2011	11	Line-01 down due to high stock
	22.09.2011	27.09.2011	6	Line-03 down due to high stock
	25.10.2011	31.10.2011	7	Line-01 down due to high stock

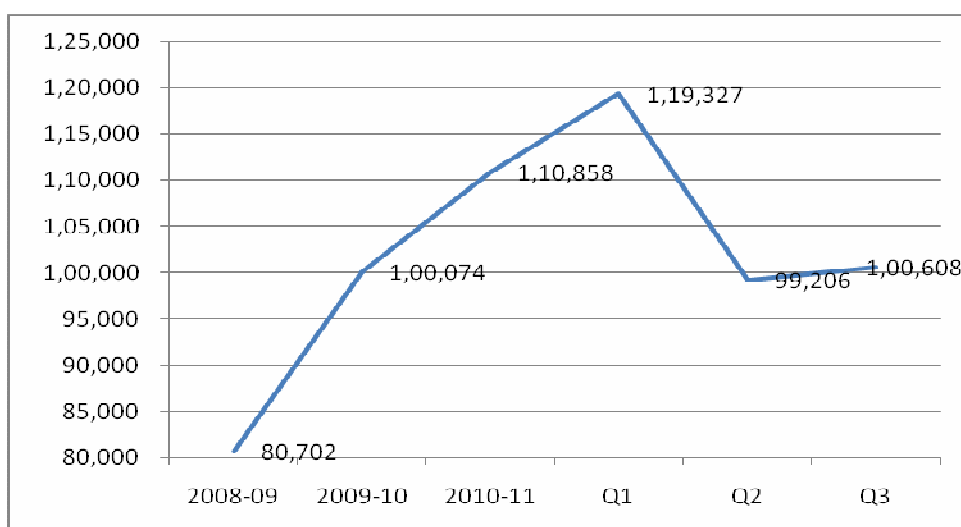
84. It is also noted that demand for carbon black has shown consistent increase over the period. Thus, decline in production suffered by the domestic industry is despite continued increase in demand for the product in the Country. It is also noted that production of the domestic industry did not decline even during the dumping of the product in the Country. In fact, the domestic industry was able to improve its production despite dumping of the product. Further, the domestic industry increased its export volumes significantly in the most recent period. The domestic industry contended that the exports were undertaken considering domestic demand and off take of the product from the domestic market. However, even after undertaking additional exports, the domestic industry was faced with piling up of inventories and therefore had to reduce the production. The domestic industry eventually resorted to production suspension in order to contain rising inventories.

c. **Sales:** The sale has been determined on the basis of goods cleared by the domestic industry, as reported in their excise records.



Financial Year	Quarter	Production (MT)	Sales of domestic industry (MT)	Sales of other Indian Producers(MT)	Total Demand (MT)	Export (MT) by domestic industry
2008-09		416244	322809	98052	460048	94395
2009-10		492863	400295	119391	582930	89021
2010-11		585899	443430	109537	614152	141383
2011-12	Q1	163458	119327	26073	160228	44909
	Q2	148188	99206	33000	164671	45295
	Q3	137035	100608	32741	165321	35153
2011-12 (A)		598241	425521	122419	653627	167143

Graph: Per quarter sales of domestic industry



- i. It is seen that the sales of the domestic industry has increased up to FY 2010-11 and the trend continued till Q1, 2011-12 before the surge in Chinese imports started. However, the sales volumes of the domestic industry declined sharply in the most recent period from 443430MT in 2010-11 to 425521 MT in 2011-12(A). Sales declined in absolute terms from 119327 MT in Q1 of 2011-12 to 100608 MT in Q3 of 2011-12. This decline in sales is despite the fact that the total demand increased throughout the POI.
- ii. It is noted that in relative terms, sales of the domestic industry as percentage to total demand of the product has declined significantly with the surge in imports. Sales of the domestic industry as percentage of demand declined sharply from 74% in Q1 of 2011-12 to 61% in Q3 of 2011-12. This clearly shows that the domestic industry suffered loss in sales in absolute terms as well as in relation to demand.

Financial Year	Quarter	Sales as % of Demand.
2008-09		70
2009-10		69
2010-11		72
2011-12	Q1	74
	Q2	60
	Q3	61
2011-12 (A)		65

- iii. It is further noted that the Chinese imports have increased as a percentage of the domestic sales of the domestic industry. The Chinese imports were 4% of domestic industry sales in 2008-09, which increased to almost 18% in 2011-12 (Annualized) clearly showing the increase in imports and its effect on domestic sales of the domestic industry. In fact, during the surge period (Q2 and Q3 of 2011-12), Chinese imports were about 26% of domestic industry's sales volumes.

Financial Year	Quarter	Import from China (MT)	Sales of domestic industry (MT)	Chinese Imports as a % of sales of domestic industry
2008-09		12971	322809	4.02
2009-10		17722	400295	4.43
2010-11		16724	443430	3.77
2011-12	Q1	5789	119327	4.85
	Q2	25686	99206	25.89
	Q3	26878	100608	26.72
2011-12 (A)		77804	425521	18.28

- iv. The domestic industry contended that the rising imports of carbon black have prevented the domestic industry from selling its production in the domestic market. The domestic industry contended that so significant was the increase in imports that the same has led to decline in domestic sales of the domestic industry. This decline in domestic sales is despite the increase in demand and imposition of anti dumping duty. Domestic industry is being forced to export its production, despite significant domestic demand. So rapid was the increase in the imports that the domestic industry was forced to look for market opportunities outside India in order to dispose off the production, which could not be sold in the domestic market.
- v. The domestic industry further contended that there is a significant price difference between the domestic and imported product. The domestic industry also stated that even though the product is attracting anti-dumping duties, so significantly low the Chinese import prices are that even after adding the Anti-dumping duties, the landed price of imports are below selling price of the domestic industry. This significant price difference between domestic and imported product has led to increased sourcing by the consumers from Chinese producers. Resultantly, the sales of the domestic industry declined. Also the demand of the product increased by almost 39000 MT in 2011-12(A) from 2010-11 whereas the imports from China have increased by approx

61000 MT in the same period. This clearly shows that increase in imports is far more than increase in domestic demand of product under consideration in India, consequently the imports have captured significant market share of the Indian producers affecting sales of domestic industry, in the process causing market disruption.

- vi. As regards the argument that M/s PCBL and M/s Hi Tech are export centric companies, it is observed that both M/s PCBL and M/s Hi Tech have not been found to be export centric companies. Domestic sales of the two companies continue to constitute majority of their sales, as below:

Period	Quarter	Domestic sales(MT)	Export sales(MT)	Total sales(MT)	Share of domestic sales
2008-09		322809	94395	417204	77%
2009-10		400295	89021	489316	82%
2010-11		443430	141383	584813	76%
2011-12	Q1	119327	44909	164236	73%
	Q2	99206	45295	144501	69%
	Q3	100608	35153	135761	74%
2011-12 (A)		425521	167143	592664	72%

- vii. Moreover, the opposing parties have not provided any substantial information to corroborate their claim. It is noted that the inventories with the domestic industry rose sharply and significantly, despite production cuts and decline in capacity utilization. Had the Domestic Industry been export centric, they could have easily sold in the export market from inventories and by maintaining its production. The export was not a matter of choice but an effort to minimize the predicaments in wake of import surge.
- viii. The interested party in their submissions pointed out that export entries for Q1,Q2, Oct,11, Q3 and 2011-12 (annualized ) mentioned in preliminary findings does not match with the verified data placed in the public file. The matter was examined and it was found that the data placed in the public file is correct but inadvertently in the preliminary findings, due to typographical error, the value of the exports has been mentioned instead of quantity of exports. Even though this typographical error did not vitiate the injury analysis and conclusion, but for the sake of clarity and correctness of the data, a corrigendum has been issued on 21/06/2012.
- ix. The export price of the domestic industry was compared with their selling price in the domestic market. The data in table below shows that the export price of domestic industry was lower than their domestic selling price. Further no evidence has been brought on record to show that domestic industry has refused or delayed domestic supplies to the user industry in India and that the domestic industry has instead preferred exports

Period	Net Selling Price (DI) (Indexed)	Landed price of imports with ADD from China (Indexed)	Export Price (indexed)
	Rs.per MT	Rs.per MT	Rs.per MT
2008-09	100	87	79
2009-10	92	85	70
2010-11	111	97	79
2011-12 (Till Dec.)	125	112	106

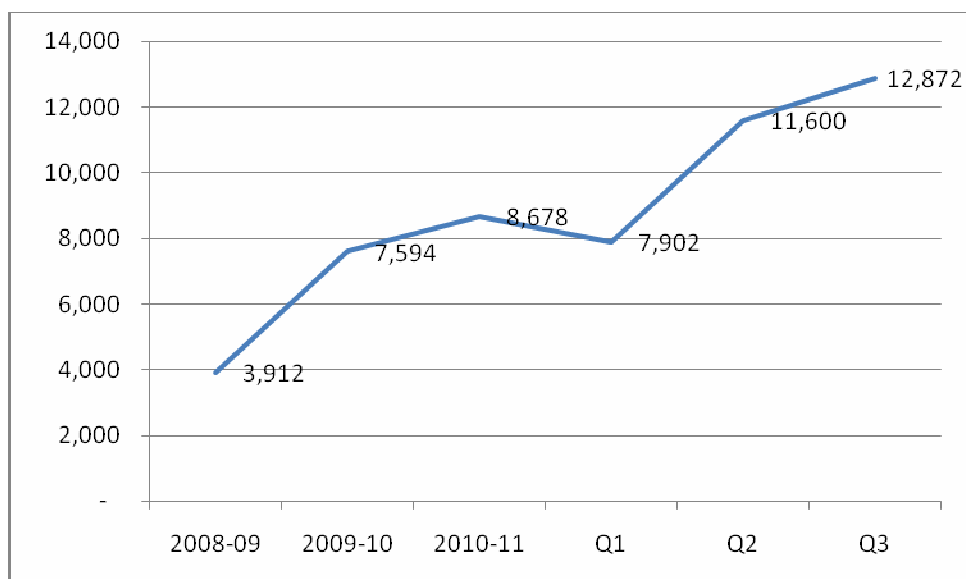
**d. Capacity utilization:** The domestic industry has added capacity over the period. The domestic industry contended that the addition to capacity is in view of present and potential demand of the product in the market. It is noted that the domestic industry added capacity upto Q1 2011-12 and despite these additions in capacities, the domestic industry was able to achieve 90% capacity utilization in Q1 2011-12. However, capacity utilization fell sharply thereafter in Q2 and further in Q3 to 82% and 76% respectively. The capacity utilization of domestic industry in the most recent period is at the lowest level. The expansion in capacity in 2011-12 was 9% over 2010-11 but the capacity utilization declined by 5% during the same period due to increase in market share of imports. It is noted that the capacity addition took place in Q1, 2011-12 and the domestic industry was able to achieve 90% capacity utilization in this period on the enhanced capacity. However, capacity utilization declined thereafter in Q2 and Q3 with surge in Chinese imports. It is thus noted that the decline in capacity utilization coincided with the surge in imports.

Financial Year	Quarter	Production (MT)	Installed Capacity	Capacity Utilisation (%)
2008-09		416244	500000	83
2009-10		492863	552500	89
2010-11		585899	667000	88
2011-12	Q1	163458	181002	90
	Q2	148188	181002	82
	Q3	137035	181002	76
2011-12(A)		598241	724008	83

85. Thus, the domestic industry was able to improve its capacity utilization despite additions of fresh capacities and dumping of the product in the Country. However, capacity utilization declined sharply in Q2 and thereafter Q3, when the imports have surged from China. Further, capacity utilization fell even when the domestic industry undertook additional exports in this period.

**e. Inventory:** The level of inventories was considered as per excise records maintained by the domestic industry. It is seen that as the market share of the domestic industry was declining and that of imports was increasing, inventories with the domestic industry were rising. The domestic industry was unable to increase its sales volume (sales volumes in fact declined) and had to face the problems of accumulated inventories. The levels of inventories have increased significantly throughout the injury period. The table below depicts the inventory levels which have witnessed a massive surge from 3912 MT in 2008-09 to 12872 MT in Q3 of 2011-12, almost three times in 2011-12 from the 2008-09 level, reflecting the adverse effects of the surge in imports. The domestic industry contended that faced with rising imports, they made efforts to undertake additional exports in order to curtail the level of inventories and to maintain production to the extent feasible. However, increase in Chinese imports is so rapid that despite declining production and rising exports, the domestic industry is faced with rising inventories.

Financial Year	Quarter	Production (MT)	Sales of DI (MT)	Inventory(MT)
2008-09		416244	322809	3912
2009-10		492863	400295	7594
2010-11		585899	443430	8678
2011-12	Q1	163458	119327	7902
	Q2	148188	99206	11600
	Q3	137035	100608	12872
2011-12 (A)		598241	425521	12872



**f. Employment and Productivity:** there is an increase in the level of employment with the domestic industry. The productivity of the domestic industry has shown the same trend as that of production. Productivity increased till Q1, 2011-12. Productivity however declined in Q2 and thereafter Q3, 2011-12.

Financial Year	Quarter	Employment (Nos)	Production	Productivity (MT per day)	Productivity (MT per employee)
2008-09		1,057	416,244	1,140	394
2009-10		1,133	492,863	1,350	435
2010-11		1,280	585,899	1,605	458
2011-12	Q1	1,290	163,458	1,816	127
	Q2	1,257	148,188	1,647	118
	Q3	1,302	137,035	1,523	105

- g. Profit/loss:** The domestic industry has reported profit before tax, duly certified by a practicing Cost Accountant.

Financial Year	Quarter	Cost of Sales Indexed	Selling Price Indexed	Profitability Indexed
		RS/MT	RS/MT	RS/MT
2008-09		100	92	(8)
2009-10		77	85	8
2010-11		97	102	4
2011-12	Q1	92	96	3
	Q2	104	105	2
	Q3	104	103	(0.3)

- i. The profit reported by the domestic industry is considered in respect of product under consideration relating to its domestic operations only. It is noted that the domestic industry has export activities in relation to the product under consideration. Profit earned by the domestic industry in the exports operations have been segregated and has not been considered for the purpose of analyzing impact of increased imports on the profits earned by the domestic industry. The profit earned by the domestic industry has thus been considered in relation to carbon black for rubber applications relating to domestic market only. It is seen that profitability of the domestic industry has steeply declined in the most recent period. The profitability improved in 2009-10 but thereafter started declining significantly. The domestic industry suffered losses in the most recent period quarter (Q3).
- ii. It is seen that domestic industry suffered loss in 2008-09, and as contended by them, these financial losses are on account of dumping of the product. It is noted that Directorate General of Antidumping and Allied Duties had earlier conducted anti-dumping investigations in relation to carbon black, wherein the Designated Authority has considered October 2007 to September 2008 as the investigation period. It is, thus, concluded that the financial losses suffered in 2008-09 were in view of the injury caused due to decline in demand and dumping of the product.

- iii. There is a significant adverse effect on the profits of the domestic industry due to increased imports from China PR. The landed price of the imports is significantly below the selling price of the domestic industry. The imports are significantly undercutting the domestic prices. As a result of significant price difference between the domestic and Chinese product, the consumers resorted to significantly higher sourcing from China. Resultantly, the profits of the domestic industry severely declined with the surge in imports. Further, whereas the costs have increased due to increase in input costs, the selling price did not increase in proportion to the increase in costs. Resultantly, the profit per unit of domestic sales declined with the surge in imports. The surge in imports is thus resulting in price suppression wherein the domestic industry is unable to increase its selling price in proportion to increase in cost.
- iv. It has been argued by the interested parties that no price suppression / depression has been caused to the domestic industry. It is however observed that due to presence of low priced imports, the landed price of imports were below the selling price of the domestic industry. Further, with the surge in imports, the domestic industry was unable to increase its prices in tandem with increase in costs. This is clearly established by decline in per unit profits of the domestic industry in respect of its domestic sales. Consequently the domestic industry suffered losses in the most recent period clearly establishing price suppression effect of the imports.
- v. Some of the interested parties argued that there is increase in profits as per the annual reports of the petitioner companies. It is however noticed that the information related to the performance of the domestic industry provided in the annual reports is pertaining to the overall performance of the company, whereas the present investigation is for domestic operations of Carbon Black for rubber application. Therefore, statements in the annual reports are not specific to the product under consideration and so no reliance has been made on them.
- vi. Some of the interested parties have argued on inherent competitiveness of coal tar. It is observed that the present situation is not that of difference in raw materials that can be used by the domestic industry and Chinese producers. Even the domestic industry can use CBO in its existing plants. However, the issue concerns the price at which CBO is available to the Chinese producers, domestic industry and global producers. The domestic industry argued that CBO price is low selectively in China and only for Chinese consumers. They can neither import CBO from China at these prices, nor are CBO prices in the global market low.
- vii. Some of the interested parties argued that the sales revenue of the domestic industry have increased. It is noted that sales revenue cannot be seen in isolation. It is further noted that the increase in sales revenue is due to increase in the cost of sales of the product under consideration but the profits of the domestic industry have declined significantly both year-wise and quarterly.
- viii. Some of the interested parties argued that imports from China and profit made by domestic industry are directly proportional to each other. It is observed that the surge started from July-Sept., 2011 and with the surge in imports, the profitability of

the domestic industry steeply deteriorated. Therefore, imports from China and profit made by domestic industry are not directly proportional to each other

- h. Return on investment:** The domestic industry has reported its return on investment considering profit before interest and taxes earned in the domestic operations relating to the product under consideration alone. Capital employed has been considered in respect of product under consideration for the domestic operations alone. Returns on investment have been determined considering profit before interest and capital employed by the domestic industry. Capital employed for the purpose has been considered as net fixed asset plus working capital. It is seen that return on investments showed the same trend as that of profitability. Return on investment declined from 222 points in 2009-10 to 111 points in 2010-11 and further declined to 44 points during the most recent period. As regards improvement in return on capital employed between 2008-09 and 2009-10, it is noted that the same is a result of imposition of anti dumping duty.

Financial Year	Quarter	ROI (Indexed)
		%
2008-09		(100)
2009-10		222
2010-11		111
2011-12	Q1	122
	Q2	78
	Q3	44

**(X) Threat of market disruption**

86. The rules provides as follows –

*(1) In the investigation to determine whether increased imports have caused or are threatening to cause “market disruption” to a domestic industry, the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the article concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.*

*7a. “threat of market disruption” means a clear and imminent danger of market disruption.*



87. The Panel on US — Lamb<sup>7</sup> considered that a focus on the recent data available pertaining to the end of an investigation period was logical in view of the future-oriented nature of a threat of serious injury analysis. The relevant extracts are as follows:

*“In our view, due to the future-oriented nature of a threat analysis, it would seem logical that occurrences at the beginning of an investigation period are less relevant than those at the end of that period. While the SG Agreement does not specify the appropriate duration of the time-period to be considered in an investigation, the Panel and Appellate Body in Argentina — Footwear both considered this issue to some extent. Both concluded that (for an actual serious injury finding) the most recent data were clearly the most relevant. In particular, the Appellate Body stated that ‘the relevant investigation period should not only end in the very recent past, the investigation period should be the recent past’.*

*Given that a threat of serious injury pertains to imminent significant overall impairment, i.e., an event to take place in the immediate future, the same principle should hold true a fortiori for threat determinations compared with present serious injury determinations. This supports the view that the USITC was correct to focus on the most recent data available from the end of the investigation period. We also consider that data from 1997 and interim-1998 cover an adequate and reasonable time-period if complemented by projections extrapolating existing trends into the imminent future so as to ensure the prospective analysis which a threat determination requires.*

*Therefore, we consider that, by basing its determination on events at the end of the investigation period (i.e., one year and nine months) rather than over the course of the entire investigation period, the USITC analysed sufficiently recent data for making a valid evaluation of whether significant overall impairment was “imminent” in the near future. By the same token, we also consider that, by basing its determination at all on data about events from the recent past, rather than relying exclusively on projections for the various industry indicators into the future, the USITC made its threat determination on the basis of objective and quantifiable facts, and ‘not merely on allegation, conjecture or remote possibility’*

88. The Panel Report on US — Lamb, in a finding subsequently not reviewed by the Appellate Body, which addressed the question whether once imports have increased to already cause some degree of injury, there is no requirement of additional increased imports in order to legitimately determine the existence of a threat of serious injury. The relevant extracts are as follows:

*“The complainants further claim that the US reference to projections of future increases in imports in defending its threat analysis amounts to equating a ‘threat of increased imports’ with a ‘threat of serious injury’, which the Argentina — Footwear panel found not to be permissible....*

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<sup>7</sup> . [Panel Report on US — Lamb](#), paras. 7.192-7.194

*We agree in general with the complainants' argument that a threat of increased imports as such cannot be equated with threat of serious injury. However, in our view, this is not what the USITC has done in this case. Moreover, we also deem it possible that imports continuing on an elevated level for a longer period without further increasing at the end of the investigation period may, if unchecked, go on to cause serious injury (i.e., may threaten to cause serious injury). That is, if increased imports at a certain point in time cause less than serious injury, it is not necessarily true that a threat of serious injury can only be caused by a further increase, i.e., additional increased imports. **In our view, in the particular circumstances of a case, a continuation of imports at an already recently increased level may suffice to cause such threat.***

89. The Chinese imports are entering the Indian market in huge quantities in absolute terms as well as in relation to production and consumption in India. Significant price difference between the domestic and imported product indicates the likely adverse price effect of increased imports on Domestic Industry. It is seen from the published import data and imports of the product under consideration that the imports from China PR are largely of the carbon black for rubber applications. Imports of carbon black for non-rubber applications are quite low. Considering the net selling price of the domestic industry for the subject goods, the price difference between domestic and Chinese price is significantly high and is likely to remain positive making the imports lucrative and posing continued threat of increased import.
90. The threat of serious market disruption is established by the following factors:-
- (a) The price difference between domestic and imported product is too high. Thus, the imports will continue to remain lucrative;
  - (b) The Chinese producers are holding significant capacities. Resultantly, they are looking for additional markets to the extent possible;
  - (c) The increasing gap in the price of raw materials i.e. CBFS and CBO is providing significant mileage to the Chinese producers. The Chinese producers are therefore likely to intensify their activities in the Indian market;
  - (d) As the auto industry is witnessing growth and the demand of the product under investigation is also growing, the Indian market is lucrative and thus threat of market disruption is clearly imminent.
91. The domestic industry is losing sales opportunities. Consequently, production, capacity utilization, profits and return on investment is not improving even after imposition of anti dumping duties due to continued presence of low price increased imports. Given the low prices offered by the Chinese producers and significant freely disposable production capacities with them, the imports are surging further despite low prices offered by the domestic industry. Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry causing serious market disruption and threatening to cause further damage.

**(XI) Other Factors of Injury:**

92. Article 4 (b) of the Agreement on Safeguards states as follows

*(b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports*

93. According to the Appellate Body's decision concerning US-Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, the injurious effects of the import should be separated and distinguished from all the other factors which affected the local industry.

94. In the light of the above, the Authority has analyzed the possible other factors that may be attributed to the injury to domestic industry. Followings are relevant in this regard –

- a) Possible decline in demand of the product: There is no contraction in demand of Carbon Black in India. Demand of the product in India has shown significant increase over the years.
- b) Changes in the patterns of consumption: The pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have contributed to the injury to the domestic industry.
- c) Trade restrictive practices of and competition between the foreign and domestic producers: There is no trade restrictive practice which could have contributed to the injury to the domestic industry.
- d) Developments in technology: Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.
- e) Export performance: The claimed injury to the domestic industry is on account of domestic operations. Petitioners have provided costing and injury information for domestic operation. Claimed injury to domestic industry cannot be attributed to exports.

INDEXED

Period	Net Selling Price (DI)	CIF import price from China	Export Price
	Rs.per MT	Rs.per MT	Rs.per MT
2008-09	100	82	79
2009-10	92	74	70
2010-11	111	85	79
2011-12 (Till Dec.)	125	99	106

95. The data in table above shows that the export price of domestic industry was lower than their domestic selling price. However, the export price of the domestic industry during the year 2011-12 is higher than the import price from China. The domestic industry has to export the goods despite sound domestic demand at a price lower than its domestic selling price. In view of this, the export is not a preferred option for the domestic industry. The domestic industry has to export to optimize its resources. However, it cannot be said that the export is priority for domestic industry. Further no evidence has been brought on record to show that domestic industry has refused domestic supply to the User industry in India and have instead preferred exports. The fact that domestic industry has to export at price less than domestic sale price itself shows that the domestic industry is not export centric and has not focused on exports and ignored the domestic supplies.

**(XII) Causal Link between Increased Import and Market disruption or Threat of Market disruption:**

96. The Panel on Korea — Dairy set forth the basic approach for determining “causation”:

*“In performing its causal link assessment, it is our view that the national authority needs to analyze and determine whether developments in the industry, considered by the national authority to demonstrate serious injury, have been caused by the increased imports. In its causation assessment, the national authority is obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the domestic industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports.*

*To establish a causal link, Korea has to demonstrate that the injury to its domestic industry results from increased imports. In other words, Korea has to demonstrate that the imports of SMPP cause injury to the domestic industry producing milk powder and raw milk. In addition, having analysed the situation of the domestic industry, the Korean authority has the obligation not to attribute to the increased imports any injury caused by other factors.”<sup>8</sup>*

97. The product is largely sold in comparison/ competition with imports. The landed price of imports is significantly lower than the selling prices of the domestic industry as is evident from the table below. Subject imports are available at prices lower than the selling price of domestic industry. Consequently, the consumers are increasingly switching over to imports, thus forcing the domestic industry to offer sub-optimal prices. The domestic industry is losing sales opportunities. Consequently, production, capacity utilization, profits, return on investment is declining due to

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<sup>8</sup> [Panel Report on Korea – Dairy](#), paras. 7.89-7.90

continued presence of low price imports. The imports are undercutting the prices of the domestic industry. Consequently, the domestic industry has suffered decline in profits and return on investment. Exports undertaken by the domestic industry are a result of increased imports of carbon black from China. It is thus evident that injury to the domestic industry has been caused by the increased imports.

**Import from China (indexed).**

Period	Net Selling Price of domestic industry	CIF value of import	Landed price of imports without ADD	Landed price of imports with ADD	Price undercutting with ADD	Price undercutting without ADD
	Rs/MT	Rs/MT	Rs/MT	Rs/MT	Rs/MT	Rs/MT
<b>2008-09</b>	100	82	87	87	13	13
<b>2009-10</b>	92	74	79	85	7	13
<b>2010-11</b>	111	85	90	97	14	21
<b>2011-12 (Till Dec.)</b>	125	99	105	112	13	20

98. The performance of domestic industry shows that despite increase in demand of Carbon Black over the POI, the market share of domestic industry has decreased and that of Chinese imports has increased. It is also seen that after imposition of Anti-Dumping duty(ADD) in year 2009-10, the price undercutting, both with and without ADD for imports from China has increased.

99. It is observed that even though there is a rise in import price in recent period, the same is far lower than the selling price of the domestic industry which has led to increase in price difference between domestic industry's Selling Price and landed price of import. This has resulted in consumers switching over to the imports from China PR and has caused grave market disruption and consequential injury to the domestic industry which establish the causal link between increased import and disruption caused.

100. It is argued by the opposing party that M/S Hi-tech was importing from Thailand. On the basis of examining the materials on record, It is clarified that there are no imports of product under consideration by M/s Hi-tech Carbon from Thailand.

**(XIII) Public Interest:**

101. Article 3 of the Agreement on safeguards states as follows:

1. *A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.*

102. In an economy there are varying and some time competing interests of different economic players. The imposition of safeguard duty can affect different players differently and the impact may not always be most suitable for all the different economic players when they have competing interests. Therefore interests of various economic player groups have been analyzed based on the available information

103. Some interested parties have argued that imposition of safeguard duty would not be in public interest as largest consumer of Carbon Black i.e tyre industry is already facing Anti-dumping duty and safeguard duty on various inputs. The issue has been examined.. In this respect, it is important to keep the prime objective of transitional safeguard laws in mind, which is to address injury to the domestic industry because of increased Chinese imports. It is in the interest of all to keep a healthy and competitive Industry. It is apparent that if the safeguard measures are not taken, both the prices and market share of domestic industry will further decline, resulting in financial losses to the domestic industry to the extent of getting the domestic industry unviable and consequent loss of employment as well as loss of strategic and economic interest to keep the domestic market competitive. The imposition of safeguard duty would allow the domestic industry to remain competitive and, at the same time, users/buyers will have a wider choice to source their material requirements, that too at competitive prices.

104. The petitioners have claimed that the cost of carbon black for the consumers is in the region of 6% (the fact can be established from the annual report of the tyre industry). The market share of China is around 11%. I agree with the submission made by the petitioner; even if it is argued that the consumer industry should continue to import the product at the same level from China and imposition of safeguard duty shall result in cost to the consumer increasing by 30% (as per provisional recommendation) in respect of these Chinese imports, it follows that the impact on consumer, in any case, shall not exceed 0.33%. This is ignoring the fact that the provisional safeguard duty of 30% recommended in the Preliminary Findings was proposed to be adjusted for anti dumping duty, payable, if any.

105. While arguing that imposition of safeguard duty shall not be in public interest, it is noted that ATMA has not provided any quantified claim in this regard.
106. Considering the above share and the insignificant cost of Carbon Black it is noted that there will be no or very minimal impact (0.19%) of Safeguard duty on the prices of the tyre industry.
107. Further, it is noted that already 3 investigations have been concluded on imposition of Anti-dumping duty on tyres and one is ongoing. Therefore, the tyre industry is well protected. It has not been demonstrated by the consumers that the impact of safeguard duty on the consumers will be unbearable. At the same time, the domestic industry has argued that given the market share of China, the impact of proposed safeguard duty on the consumer industry shall be insignificant. The domestic industry has further stated that it shall not increase its prices as a result of imposition of the proposed safeguard duty. As regards the Anti-dumping duty imposed on Carbon Black, it is noted that in spite of Anti-dumping duty being imposed on China, the imports kept on entering the Indian market at a significant volume causing injury to the domestic industry. Therefore it is in public interest to impose safeguard duty on imports of Carbon Black from China PR.

**(XIV) Simultaneous Anti-dumping duty and safeguard duty:**

108. There have been submissions from interested parties, who have submitted against the desirability of imposition of both duties simultaneously. They have also submitted that imposition of both duties at the same time is not in the public interest. The issue has been analyzed. It is a fact that anti-dumping duty is also a trade remedy measure to counter and neutralize the ill effects of dumped imports through raising tariff barrier. Safeguard duty is a measure to protect the domestic industry from injurious effects of increased imports by raising tariff barrier. Both the duties have one function in common i.e. neutralizing injurious effects of imports, besides other functions. The domestic industry is legally justified for filing the present application. WTO laws also permits the same. No violation of either domestic or international law has been pointed out by the interested parties. It is also noted that the anti dumping duty was based on a different investigation period, whereas the present safeguard duty being proposed is based on much more recent period. Further, the domestic industry is suffering injury despite the existing anti dumping duty. In fact, the Designated Authority on Anti Dumping is at present conducting a midterm review of existing anti dumping duty based on an application filed by ATMA. It is however clarified that the safeguard duty being proposed shall take into account the anti dumping duty that

is already in place. Therefore, there would not be dual protection against the same injury.

**(XV) Other Issues**

109. As regards the applicability of competition law, it is held that the levy or non-levy of safeguard duty or other duty being a legislative act pursuant to the exercise of powers under the Customs Tariff Act can also not be a subject-matter of judicial review by the Competition Commission. The two Acts substantially operate in different fields.

**(XVI) Provisional Measures:**

110. In the Preliminary Findings, it was held that increased imports of Carbon Black from China PR have caused and threatened to cause further market disruption to domestic producers of Carbon Black. It was also observed that critical circumstances existed, where any delay in application for safeguard measures would cause irreparable damage to the industry. Considering the market disruption suffered by domestic industry during the year 2011-12 in a number of critical injury parameters, it was held that the provisional measures were rightly recommended in this case in order to thwart the possibility of irreparable damage. However, till date, no safeguard duty has been levied in the instant case.

**(XVII) Conclusion:**

111. On the basis of the above findings it is seen that
- a. Imports of the product under consideration have increased over the injury period in absolute terms with a sharp increase in imports in the recent period,
  - b. Increased imports of Carbon Black from People's Republic of China have caused and threatened to cause market disruption to the domestic industry/ producers of Carbon Black and
  - c. It has been established that injury to the domestic industry has been caused by the increased imports from People's Republic of China; and
  - d. It will be in the public interest to impose safeguard duty on imports of Carbon Black from China PR.

**(XVIII) Recommendation**

112. Considering the average cost of production of Carbon Black by the domestic producers (confidential), a reasonable return on capital employed, the present



level of import duties and average import prices of Carbon Black, a Specific Safeguard Duty on Carbon Black falling under Chapter heading 28030010 (for rubber applications) is proposed for imposition in the following manner:

Period	Rate of Specific Safeguard Duty
First year	30% ad-valorem less anti dumping duty payable, if any.
Second year	25% ad-valorem less anti dumping duty payable, if any.
Third year	20% ad-valorem less anti dumping duty payable, if any.

113. Recommendation for leviability of the aforementioned safeguard duty is considered to be the minimum required to protect the interest of domestic industry, to be imposed on imports of such goods from Peoples Republic of China.

Sd/-

**(Indrani Dutt Majumder)**

**Director General**