DIRECTOR GENERAL (SAFEGUARDS)

NOTIFICATION

New Delhi, 16th March, 2012

Subject:-Safeguard investigation concerning imports of Carbon Black – Preliminary findings-Reg

G S R D- 22011/12/2011 dated 16th March, 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 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 into India, to protect the domestic producers of Carbon Black against market disruption and threat of market disruption caused by the increased imports of 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 from China PR was initiated vide notice of initiation dated 2nd December, 2011 and published in the Gazette of India, Extraordinary on the same day.

3. A Copy of the Notice of Initiation dated 2nd 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'02:

(I) Domestic Producers

a. M/s. Phillips Carbon Black Limited, 31, Netaji Subhash Road, Kolkata-700001
b. M/s. Hi-Tech Carbon Murdhwa 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,6-3-865, Madhupala Towers, Ameerpet, Hyderabad- 500 016

(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. The information presented by the applicant was verified by onsite visits to the plants of the domestic producers. The non confidential version of verification report is kept in the public file.

9. 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.

(B) Views of Domestic Producers (Applicant)

10. 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.

11. There are four more producers of the goods but the applicants, companies M/s. Phillips Carbon Black Limited and M/s. Hi-Tech Carbon account for more than 80% of production and hence are major producers.

SN	Year	Petitioners	Other Indian producers	All Indian producers
		%	%	%
1	2008-09	81	19	100
2	2009-10	80	20	100
3	2010-11	84	16	100
4	11-12 (Q1)	85	15	100
5	11-12 (Q2)	83	17	100
6	11-12 (Q3)	82	18	100

12. 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. It would thus be seen that 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.

13. The product under consideration has history of dumping causing injury to the Indian industry of product under consideration.

14. The import and injury related data for 4 year period has been filed by the applicant. The petitioner has provided the quarter wise information for the year 2011-12.

15. Unforeseen development which has lead to increase in imports is that the prices of CBFS have been increasing throughout the injury period which has lead to global increase in the prices of Carbon Black. However, the Chinese producers have not increased their prices, due to availability of cheap CBO resulting in Chinese Carbon Black becoming cheaper vis-à-vis domestic industry and other third countries suppliers.

16. The Chinese producers have created significant production capacities and are therefore looking for market opportunities. 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, causing market disruption to the domestic industry.

17. Demand of the product concerned has increased throughout the injury period

18. 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

19. Production of the domestic industry increased year-wise throughout the injury period. However, quarterly analysis shows that the production increased till Apr-June 2011 but thereafter declined significantly in the next two quarters**.** The month-wise analysis shows that the production of the domestic industry declined. Further, the domestic industry has contended that its production is likely to decline further in Nov.-Dec., 2011

20. It is also important to note, as regards annual trends, that the domestic industry has added significant capacities to meet the demand of the product by the consumers. However, whereas the domestic industry added capacities to serve the consumers, the consumers have resorted to huge imports of the product from China.

21. The sales volume of the domestic industry declined in 2011-12. While quarterly analysis shows a significant decline in sales volume of the domestic industry in the most recent period. Sales have also decline drastically month-wise. The decline in sales volumes on annual basis is despite increase in demand and production. Thus, while demand and production increased on annual basis, the sales of the domestic industry declined

22. Landed price of imports is significantly lower than the selling price of the domestic industry. Landed price of imports is significantly lower than the cost of sales. The imports are significantly undercutting the domestic prices. The price undercutting is resulting in increased imports and is causing price suppression. The petitioner submits that the input prices and cost of production have significantly increased. But the domestic industry is unable to increase the selling price in proportion to increase in costs due to availability of cheap imports from subject country in the Indian market.

23. Capacity utilized by the domestic industry for production of the product under consideration for sale in the domestic market has declined. The capacity utilization of the domestic industry declined as compared to the preceding years. The domestic industry has in fact reduced production in the most recent period.

24. Also the domestic industry is faced with significant accumulated inventories. The levels of inventories have increased throughout the injury period with a significant increase in the most recent period.

25. Profitability of the domestic industry has steeply declined in the recent period. The cost of sales of the product under consideration has increased throughout the injury period. But the domestic industry was unable to increase its selling price in proportion to the cost of sales due to increasing price of raw material and presence of cheap imports. Consequently the profits earned by the domestic industry have declined throughout the injury period.

26. It is important to note that the period 2008-09 is the period when the domestic industry was facing injury due to dumping of the product in the Country. Thus, the losses in the year 2008-09 reflect impact of dumping on the domestic industry. This dumping was from a number of countries, including China. The investigations conducted by the Designated Authority on Anti Dumping led to imposition of anti dumping duty. Performance of the domestic industry improved after imposition of anti dumping duties.

27. The return on investments also followed the same trend as that of profits. The return on investments declined year-wise as well as quarterly due to presence of increased imports

28. 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.

29. 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.

30. 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.

31. 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.

32. In the light of the critical circumstances, the applicant submitted that any delay in the application of safeguard measures would cause grave damage to the domestic industry. It is requested to the Authority to take immediate necessary actions in the form of provisional safeguard duty to prevent the domestic industry from suffering irreparable damage.

(C) Views of Automotive Tyre Manufacturers Association (ATMA)

33. Increase in imports in September and October 2011 does not signify a trend: the imports have remained constant throughout the injury period. The imports of September and October 2011, the trend is too recent to undertake any meaningful analysis.

34. No case of irreparable damage is made out by the domestic industry which negated the claim of critical circumstances

35. Imports in Sept 2011 and Oct 2011 an aberration.

36. Factors other than increased imports causing injury

    a. In FY 2010-11, carbon black facilities in the EU stopped production so DI started selling more in the EU. Imports from Russia fell (diverted to the EU). Imports from Australia stopped (sole manufacturing plant closed).

    b. In FY 2010-11, automobile industry growing at a fast pace, but in FY 2011-12, growth trend reversed, but contracts already entered into could not be rejected and so most were taken delivery of in Sept-Oct 2011.

    c. Since 2008-09, Indian CB producers have had capacity greater than domestic demand to cater to the export market. PBCL and Hi Tech are export centric companies.

    d. Significant export sales realization.

    e. With domestic industry‘s focus on export market and the projected growth of demand in 2011-12, the user industry needed to secure the supply of Carbon Black and therefore placed order in 2010-11 for 2011-12.

    f. Tyre companies are witnessing negative profits and therefore the demand of Carbon Black has also witnessed slowdown. Request the Director General (Safeguards) to analyze the imports from Nov 2011-Mar 2012 to determine whether there is continued increase in imports as alleged by domestic industry.

37. No market disruption

    a. USITC: continuous expansion in DI’s capacity negates claim of material injury.

    b. Increase in installed capacity, production and capacity utilization.

c. Production has increased quarter wise as well.

d. Sales increased both in volume and value terms. There is a decline in sales in the most recent period due to increase in sales of other Indian producers.

e. No price suppression /depression. Rise in CIF prices and also the domestic selling price also increased.

f. Prices at which the tyre companies have procured Carbon Black in India is much higher than what is provided by the domestic industry in its petition.

g. There is increase in profits as per the annual reports of the petitioner companies. PBIT has taken a hit in light of increase in depreciation and interest cost.

h. Petitioner itself stated before **DGAD that the reason for increase in imports** from April-Oct 2011 was inadequate AD duty. Present investigation could result in double protection.

i. Non attribution analysis in view of the change in the trend of demand.

38. There is no threat of market disruption as there is no case of continued imports and hence no case of threat of material injury is established.

39. Imposition of safeguard duty would not be in public interest as largest consumer of Carbon Black i.e. tyre industries is already facing Anti-dumping duty and safeguard duty on various inputs.

40. Import data includes Carbon Black of non rubber applications as well.

41. Variance in data of total demand of Carbon Black as provided in initiation notification and domestic industry's petition.

(D) <u>Views of M/s Jiangxin Black Cat Carbon Inc. Ltd.</u>

42. Import data is highly deficient and does not establish sudden increase in imports

a. Modification/ refining, if any, of raw import data by the petitioner, not disclosed. Respondent requests Authority to provide raw import statistics, methodology, etc.

b. Import statistics relied upon includes products other than subject goods (non-rubber application carbon black included, import statement would naturally show an increase)

c. Data presented before DGSGD is completely different from the data presented before AD Authority (shown significantly higher imports only before DGSGD)

d. Other data compilation errors (misplaced decimal points and additional zeroes; items repeated)

43. Discrepancies between injury information and Annexure submitted by petitioners.

44. Safeguard duty and AD duty cannot be simultaneously imposed in this case

45. 'Market disruption' claim is erroneous for reasons as under:

a) No fall in production of petitioners in 2011-12; also quarter-wise (Q3 figures not analyzed since just one month available).

b) The injury if any is only due to imports by the petitioner (a related company of Hi-Tech Carbon, i.e., Birla Carbon has been exporting to India in substantial quantities; therefore, fall in production of Hi-Tech Carbon, if any, is due to shift from production in India to importing).

c) The fall in sales volume and capacity utilization does not indicate a 'market disruption' to the DI (fall in sales and capacity utilization of DI too small to be considered 'market disruption'; also, not caused by subject imports).

46. Injury, if any, covered by AD duty: AD duty has been imposed based on injury margin. Since then, even taking into account the increase in cost the NIP increased by 12%, the injury margin is covered by the AD duties imposed, since landed value has also increased (by 18%).

47. No causal link

    a. Fall in profits during earlier period also- There were increased imports only during FY 2011-12 but profitability fell at a higher pace even before.

    b. Quarter on quarter analysis also does not show any injury to DI- when the imports were increasing, the selling price of the domestic industry also increased.

48. Investigation in violation of the Competition Act, 2002

    a. 2 producers (Hi-Tech Carbon and Philips Carbon Black Ltd.) which filed the petition hold dominant position in Indian carbon Black market and are abusing the dominant position to drive away competition from China.

    b. s. 21, Competition Act: where parties raise issue regarding applicability of Competition Act before a statutory authority, the later is to refer the case to Competition Commission before proceeding with the investigation.

49. Responses of DI to DI questionnaire have not been made available to respondent. If no responses filed, petition is incomplete and no investigation can be conducted.

50. Imports for many countries have increased. Therefore, safeguard duty under the Protocol cannot be imposed.

(E) <u>Views of Government of China</u>

51. In FY 2010-11, carbon black facilities in the EU stopped production so DI started selling more in the EU. Imports from Russia fell (diverted to the EU). Imports from Australia stopped (sole manufacturing plant closed).

52. There is no adverse price impact of imports from China against Carbon Black made in India.

53. Limited supply of Carbon Black from China to India in future will not result in threat of market disruption in view of Carbon Black in China is mainly consumed in domestic market, exports only account for 7% of total production in China, other major export markets, limited capacity in China.

54. No injury to the domestic industry as compared to the year 2008-09

55. No causal link due to demand supply gap in India, increasing export of domestic industry, lower GDP growth, high interest cost and currency depreciation.

(F) <u>China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters and China Rubber Industry Association</u>

56. No request has been received from above two parties for including them as interested parties in the present investigation. Although they have filed their submissions on 15/02/2012, no request for any time extension has been received from them in the matter. However their views in brief are as under:

    a. Imports of Carbon Black from China PR is not an established trend of increased imports and is indicative of an abnormal surge, isolated to a single period, particularly in sep 11

    b. Abnormal increased in imports in month of September2011 owing to advance quantity supply contracts made by the importers and user industry which resultantly led to an incidental increase in the month of September, 2011.

    c. Volume of product under consideration imported from China was an unusual export to meet the temporary demand of Indian tyre industry.

d. There is no price undercutting, depression or suppression on the domestic products.

e. There is no threat of market disruption in view of Chinese producers giving priority to their domestic demand, other major export markets, limited production capacity due to environment l protection.

f. Positive trends of the domestic industry. In comparison to 2008-09, most economic parameters showed a positive trend in the year 2009-10.

(G) <u>Findings of the Director General (Safeguards) :</u>

57. 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.

58. Petitioners requested for <u>imposition of provisional safeguard duty</u> 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.

59. The Rule 9 of Customs Tariff (Transitional Product Specific Safeguard Duty)Rules, 2002 notified vide Notification No. 34/2002-NT-Customs dated 11.06.2002 prescribes that the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he/she may record a preliminary finding regarding "market disruption" or "threat of market disruption". The principles governing investigations have been provided in the Rule 6 of the Customs Tariff (Transitional Product Specific Safeguard Duty)Rules, 2002. The harmonious reading of Rules 6, 9 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional Safeguard duty based on preliminary findings. The Rule 15 of the said Rules provide for refund of differential Safeguard duty in case safeguard duty imposed after conclusions of the investigations is lower than the provisional duty already imposed and collected. In the facts and circumstances of the present case, it is considered that 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 from China PR. As this case has been initiated and provisional findings are being issued in view of critical circumstances, this interim measure is in full conformity to the domestic law as well as Article 16.7 of the China's Accession Protocol.

(I) The product under investigation:

60. The product involved is 'Carbon Black', classified under Customs subheading 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. 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.

(II) Domestic Industry:

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

(a*) "Domestic industry" means 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*

62. 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 Murdhwa Indl Area, P.O. Renukoot, Dist: Sonebhadra (U.P.). There are four more known producers of Carbon Black in India namely Continental Carbon India Limited, A-14 Industrial Area No. 1 South Side of GT Road Ghaziabad-201 001, Ralson Carbon Black Ltd. Jitwal Kalan Tehsil Malerkotla Distt. Sangrur Punjab , Cabot India Limited MIDC Plaot No.3 Trans -Thane Creek area Thane Belapur Road Post Ghansoli Thane 400701 Maharashtra, Himadri Chemicals & Industries Limited Registered Office Fortuna Tower 23-A, Netaji Subhas Road 8th Floor, Kolkata 700 001 but they are not the petitioners in the present case. The applicants account for more than 80% of the Indian production and hence are major producers.

63. 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 of the total production of the said article in India. Accordingly, they are Domestic Producers as per Section 8C(7)(a) of the Customs Tariff Act 1975.

(III) Period of Investigation (POI):

64. This is a fresh case based on the recent market disruption or threat of market disruption being faced by the domestic industry. The POI has been taken from 2008-09 onwards till Q3 (October) of 2011-12 and the domestic data has been verified to the extent possible from the available records of the Domestic Industry till October,2011 by on site visit by the officers of the Directorate

(IV) Source of Information:

65. The import data for the instant POI has been taken from IBIS submitted by the petitioners. The analysis for increasing imports has been carried out for the relevant POI of Carbon Black for Rubber applications.

The injury data for the relevant POI submitted by the domestic industry in their petition has also been relied upon, which has been duly verified by on site visit by the department to the extent deemed necessary and the verified data has been taken into consideration for injury analysis. The cost data and calculations of injury margin have been provided by the petitioner duly certified by independent Chartered Accountant.

It is noted that none of the opposing interested parties, the Chinese producers, ATMA, consumers or other interested parties have provided any information with regard to gross imports of carbon black in to India. ATMA has also not provided any information on imports of carbon black by its various members.

(V) Confidentiality of Information submitted

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

67. The other interested parties have also requested for confidentiality of information and have submitted the confidential and non confidential version of all submissions. However they objected to the excessive confidentiality claimed by the domestic industry and

argued that meaningful argument can be put forward only with actual data on economic parameters and hence the same should not be granted.

68. Rule 7 of the Safeguards Rules,2002 and Art. 3.2 of WTO also provide for confidentiality. The petitioner is not required to disclose such information which is confidential information of the company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the petitioner has not disclosed before public at large in the past. Accordingly confidentiality, as prayed for by the domestic industry, is granted.

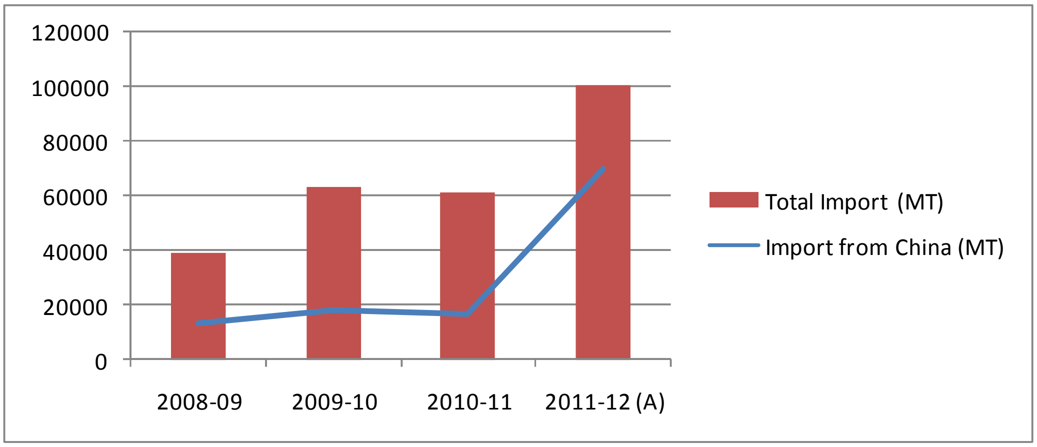
(VI) Increased Imports

69. Imports of Carbon Black 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 from countries other than People's Republic of China, causing market disruption and threat of market disruption. The data relating to imports of Carbon Black from 2008-09 onwards till October,2011 is as under

(VII) <u>Increase in Imports from China in absolute terms:</u>

70. The Imports of the product under consideration have increased throughout the injury period in absolute terms. There is a sudden, sharp and significant increase in imports in the recent period. The Imports from China increased from 12971 MT in 2008-09 to 69960 MT in 2011-12 (on annualized basis) which is an increase of 539%. **There is a sudden surge in imports in 2011-12 (Annualised) over 2010-11 from China by 318% though increase in total import is only 65%.**

Financial Year	Quarter	Import from China (MT)	Total Import (MT)	% of Import from China
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*
	OCT,11	9335	11489	81
	Q3 (A)	*28005*	*34467*	*81*
2011-12 (A)		**69960**	**100769**	**69**



The slight dip in import in 2010-11 from 2009-10 level is due to imposition of anti dumping duty vide ntfn. no. 83/2009-Customs, dated 30th July, 2009 (Prov.) and vide ntfn. no. 06/2010 customs, dated 28th January, 2010 (final) on the subject goods.

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 has nearly doubled in first half of 2011-12 in comparison with the total quantity of 16724 MT imported in 2010-11.

(a) Increase in imports in relation to production

71. The imports of Chinese Carbon Black in India have also increased rapidly in relation to Indian production. The Production of DI 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. However, the imports have increased so rapidly thereafter in 2011-12 that the imports in relation to production constitute 11% 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
	OCT,11	9335	46582	20
	Q3(A)	28005	139746	
2011-12 (Annualised)		69960	614105	**11**

(b) Imports in relation to Consumption/Demand

72. 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 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
	OCT,11	9335		
	Q3	28005	149793	19
2011-12 (Annualised)		69960	632923	**11**

73. 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 Act.

(VIII) Unforeseen development

74. 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 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.

75. 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":

76. The panel on US- Steel Safeguards[1] 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."

77. The petitioner has pointed out low price of raw material in China vis-à-vis raw material used by other countries including the DI and its growing gap to be the unforeseen development. It is observed that domestic industry uses CBFS (carbon black feed stock) as a raw material for manufacturing Carbon Black whereas Chinese producers use CBO (carbon black oil). There is a

[1] Para 86 of Korea Dairy case Appellate Body Report Of WTO 36

significant price difference between the two raw materials. The price difference between the two raw materials provides cost advantage to the Chinese producers which lead to low prices of Chinese Carbon Black.

78. 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 would be seen that throughout the injury period, there has been a price difference between CBO and CBFS and from the month of June'11 the prices of CBO have started to decline and at the same time the price of CBFO started increasing which can be seen from below.

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

79. Resultantly, domestic industry has increased its prices but at the same time China also increased its prices. But in spite of such increase, the price quoted by China is far lower than domestic industry prices and third countries prices. The price of Carbon Black from other major supplier countries who also use CBFS as raw material, i.e. Russia, Korea, Australia and Thailand, started increasing during the same period i.e. from June'11 onwards and were comparable to the prices quoted by the domestic industry. It is noted that this was the period when the imports from China has entered India at significant levels capturing the Indian market by offering lower prices.

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

Particulars	Apr-11	Oct-11	% Increase
CBFS	29457	30547	3.70
DI Selling Price	***	***	7.60
CBO	26,044	24278	(6.78)
China CIF	51989	61232	17.78

81. It is seen that when the prices of CBFS increased by 3.70%, the domestic industry selling price increased by 7.60% in Oct 11 as compared to April 11. However the price of CBO declined by 7% in Oct 11 as compared to Apr-11 but China has increased its prices by 18%. Thus, even after a cost advantage of about 25% (18% + 7%), the DI prices is about 15% higher than the import price with ADD from China. 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.

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

	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

83. Thus, it is seen that the difference in raw material prices has increased from minus USD 17 to USD 126 which has enabled lower price of the finished Carbon Black in China than that of the DI causing market disruption in the recent period leading to increase in low priced import from China and continues to threaten market disruption for domestic industry which, if not checked immediately, would be difficult to repair.

84. The Chinese producers have created significant production capacities and are therefore looking for market opportunities. Also as per the information provided by the domestic industry, 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 in 2011-12 & thereafter as compared to 2008-09 and 2010-11.

(IX) <u>Market disruption and Threat of Market disruption</u>

85. Statutory framework: “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.[2]; and “threat of market disruption”[3] means a clear and imminent danger of market disruption.

86 It is seen that the Annexure to Rule 8 of the Custom Tariff Act (Transitional Product Specific Safeguard Duty)Rules, 2002 technically 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

2 Section 8C(7)(b) of the Customs Tariff Act, 1975
3 Section 8C(7)(c) of the Customs Tariff Act, 197

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.[4]

87 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.

(X) Market disruption:

88. 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 indicated by the following factors:

a. **Market share**: the market share of the domestic industry increased upto Q1 of 2011-12 but thereafter declined significantly. The market share of domestic industry declined from 74% in Q1 of 2011-12 to 57% in Q3 of 2011-12. This was the period when the imports entered the Indian market at significant rate capturing the Indian market. The market share of the subject imports from China increased from 3% in 2008-09 to 11% in 2011-12 (on annualized basis). This sharp growth is accounted for by decline in market share of both DI and import from countries other than China.

Financial Year	Quarter	Total Import	Import from China (MT)	Sales of DI (MT)	Sales of other Indian Producers	Total Demand (MT)	% of Market Share		
							DI	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
	OCT,11	11489	9335	28225	10217	49931			
	Q3	34467	28005	84675	30651	149793	57	19	4
2011-12 (Annualised)		100769	69960	423014	119632	632923	67	11	5

[4] Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

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 FY 2010-11, but declined drastically in the most recent period. The domestic production has fallen steadily from 163458 MT in Q1 (2011-12), to 148188 MT in Quarter 2(2011-12) & further to 139746 MT in Q3 (2011-12) i.e. by 14.5%. 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. As there is demand for the product therefore the DI 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 were rising to such an extent that the domestic industry were eventually forced to take **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 by the domestic industry. 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 rising inventories.

Financial Year	**Quarter**	**Production (MT)**	Inventory(MT)	Installed Capacity
2008-09		416244	3912	500000
2009-10		492863	7594	552500
2010-11		585899	8678	667000
2011-12	**Q1**	163458	7902	181002
	Q2	148188	11600	181002
	OCT,11	46582	17249	60334
	Q3	139746		181002
2011-12 (Annualised)		614105		724008

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 DI (MT)**	**Sales of other Indian Producers**	**Total Demand (MT)**	EXPORT(MT) by DI
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	26434
	Q2	148188	99206	33000	164671	29489
	OCT,11	46582	28225	10217	49931	8576
	Q3	139746	84675	30651	149793	25728
2011-12 (Annualised)		614105	423014	119632	632923	110570

d.It is seen (table above) that the sales of the domestic industry has increased up to FY 2010-11, it declined in the most recent period from 443430 MT in 2010-11 to 423,014 MT(annualized) in 2011-12. So far as most recent period is concerned, sales declined in absolute terms from 119327 MT in Q1 of 2011-12 to 84675 MT in Q3 of 2011-12. This decline in sales is despite the fact that the demand increased on annualized basis.

Period		Sales of DI (MT)	Total Demand (MT)	Sales as % of Demand.
2008-09		322809	460048	**71**
2009-10		400295	582930	**69**
2010-11		443430	614152	**73**
2011-12	**Q1**	119327	160228	75
	Q2	99206	164671	61
	OCT,11	28225	49931	57
	Q3 (A)	84675	149793	
2011-12 (Annualised)		423014	632923	**67**

(i)However, it is noticed that in absolute term, sales of the DI as percentage to total demand of the product has declined throughout the POI (except in 2010-11 when ADD was imposed) i.e. from 71% to 67%. In the most recent period also, this decline is sharp, from 75% to 57%. This clearly shows that the domestic industry suffered loss in sales in absolute as well as in relation to demand.

(ii)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 contented that so significant was the increase in imports that the same has lead to decline in domestic sales of the domestic industry. This decline in domestic sales is despite the increase in demand. Domestic industry is being forced to export its production, despite significant domestic demand. 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. Such exports are not a matter of choice, but a compulsion for the domestic industry, driven out of continuous increased imports of the product in the Country.

(iii)The domestic industry further contended that there is a significant price difference between the domestic and imported product. The domestic industry further contended that even though the product is attracting anti-dumping duties, the surge in import volume is unabated. However, so significantly low the import prices are that even after adding the Anti-dumping duties in respect of some of the Chinese companies, 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 19000 MT in 2011-12(A) from 2010-11 whereas the imports have increased by approx 40000 MT. 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 DI in the process causing market disruption.

e. **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 77% respectively. The capacity utilization of domestic industry in Q3 2011-12 is at the lowest level. The expansion in capacity in 2011-12 (A) was 9% over 2010-11 but the capacity utilization declined by 6% during the same period due to increase in market share of 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
	OCT,11	46582	60334	77
	Q3	139746	181002	77
2011-12(Annualised)		601856	724008	83

f. **Inventory**: The level of inventories was considered as per excise records maintained by the domestic industry. It would be seen that as the market share of the domestic industry is declining, that of imports is increasing. The domestic industry was unable to increase its sales volume 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 17249 MT in October,2011(Q3 of 2011-12), almost <u>four times</u> in 2011-12 from the 2008-09 level, reflecting the plight of the domestic industry. 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, the domestic industry is faced with rising inventories.

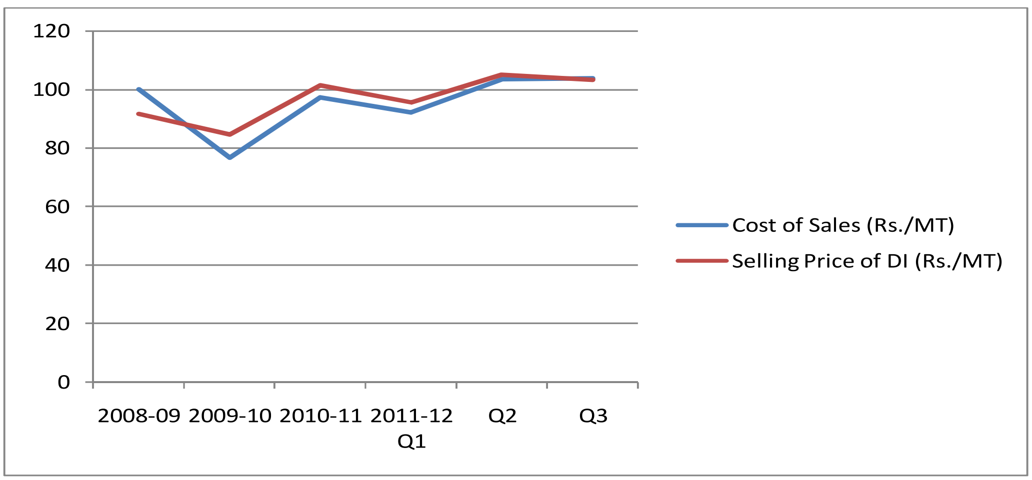
Financial Year	**Quarter**	**Production (MT)**	**Sales of DI (MT)**	Inventory(MT)
2008-09		416244	322809	3912
2009-10		492863	400295	7594
2010-11		585899	443430	8678
2011-12	**Q1**	163458	119327	7902
	Q2	148188	99206	11600
	OCT,11	46582	28225	17249
	Q3	139746	84675	
2011-12 (Annualised)		614105	423014	

g.**Employment and Productivity**: There is no significant change in the level of employment but both employment and productivity has gone down during the most recent period as can be seen from below:

Financial Year	Quarter	Production (MT)	Employment(Nos)	Productivity (MT per day)
2008-09		416244	1057	1140
2009-10		492863	1133	1350
2010-11		585899	1280	1605
2011-12	Q1	163458	**1290**	1816
	Q2	148188	**1257**	1647
	OCT,11	46582	**1175**	1553
	Q3	139746	**1175**	1553

h.Profit/loss: The domestic industry has reported profit before tax, duly certified by a practicing Cost Accountant. Further, 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 significant 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. Further, it is noted that the constituents of domestic industry are having significant other operations as well. The profit earned by the domestic industry has however 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.

Financial Year	Quarter	Cost of sales (Indexed)	Selling price (indexed)	Profitability (indexed)
		Rs/MT	Rs/MT	(Rs./MT)
2008-09		100.0	91.7	-8.3
2009-10		76.7	84.6	7.9
2010-11		97.3	101.5	4.2
2011-12	Q1	92.2	95.6	3.4
	Q2	103.5	105.1	1.5
	Q3	103.8	103.4	-0.3



It is seen that DI 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.

i. 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 annual report performance is not exclusively in respect of product under consideration for domestic operations.

XI Threat of market disruption

89. The imports are entering the Indian market at huge quantities in absolute terms as well as in relation to production and consumption in India. Positive price undercutting indicates the likely adverse price effect of increased imports on Domestic Industry. It may be seen from the import data that the imports from China PR are largely of the subject goods. Considering the net selling price of the domestic industry for the good, the price undercutting from China PR is significantly positive and is likely to remain positive. The difference between import price and domestic selling price is too high 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 even after considering the prevailing anti dumping duties. Thus, the imports will continue to remain lucrative;
(b) The Chinese producers are holding significant unutilized 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 producer is therefore likely to intensify its activities in the Indian market;
(d) As the auto industry is witnessing growth and the demand of the PUI 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, return on investment and cash flow 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.

XII Other Factors of Injury:

92. 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.

Period	Landed price of imports with ADD from China (Indexed)	Net Selling Price (DI) indexed	Export Price (indexed)
	Rs.per MT	Rs.per MT	Rs.per MT
2008-09	100	115	92
2009-10	98	106	80
2010-11	112	128	92
2011-12 (till Oct)	126	143	121

The data in table above shows that the export price of DI is always less than the Domestic selling price. The domestic industry has to export the goods despite of sound domestic demand at the price much higher than the export price. In view of this the export is not profitable option for the DI. The DI has to export to minimize losses. Hence it can not be said that the export is priority for DI. Further no evidence has been brought on record to show that DI has refused domestic supply to the User industry in India and have instead resorted to exporting. The fact that domestic industry has to export at price less than domestic sale price shows that the increase in import is not due to demand supply gap.

XIII Causal Link between Increased Import and Market disruption or Threat of Market disruption:

93. 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. Subject imports are available at prices lower than 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 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).

	Net Selling Price of DI	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.per MT	Rs.per MT	Rs.per MT	Rs.per MT	Rs.per MT	Rs.per MT
2008-09	100.0	81.6	86.6	No ADD	--	13.4
2009-10	92.2	74.2	78.9	85.1	7.1	13.3
2010-11	110.6	85.1	90.4	97.2	13.4	20.2
2011-12 (till Oct)	124.3	96.6	102.6	109.4	14.9	21.7

94. The performance of domestic industry shows that despite of increase in demand of Carbon Black over the POI, the market share of DI has decreased and that of import has increased. It is also seen that the price undercutting, both with and without ADD for imports from China has increased. Moreover, the difference between the landed price of import and the domestic selling price is significant and is increasing over the year since 2008-09.

95. It is observed that rise in import volume in recent period is despite decrease in price difference between DI's SP and landed price of import with ADD from China. This has caused grave market disruption and has harmed DI in absolute terms which establishes the causal link between increased import and disruption caused.

XIV **Public Interest**:

96. Some of the interested parties have argued that imposition of safeguard duty would not be in public interest as largest consumer of Carbon Black i.e tyre industries is already facing Anti-dumping duty and safeguard duty on various inputs. On examination of the competing interests of different economic operators and public at large has been carried out. In this respect, it is important to keep the prime objective of safeguard laws in mind which is to address injury to the domestic industry because of increased imports. It is in the interest of all to keep a healthy and competitive Industry. It is apparent that if the provisional safeguard measures are not taken, both the prices and market share of domestic industries will further reduce resulting in financial loss of domestic Industries 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.

97. The Applicants have submitted 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). 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%.

98. 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 price of tyre industry.

99. 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 under the garb of Anti-dumping duty. 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.

XV Critical Circumstances:

100. "Critical circumstances" means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause market disruption to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry[5]

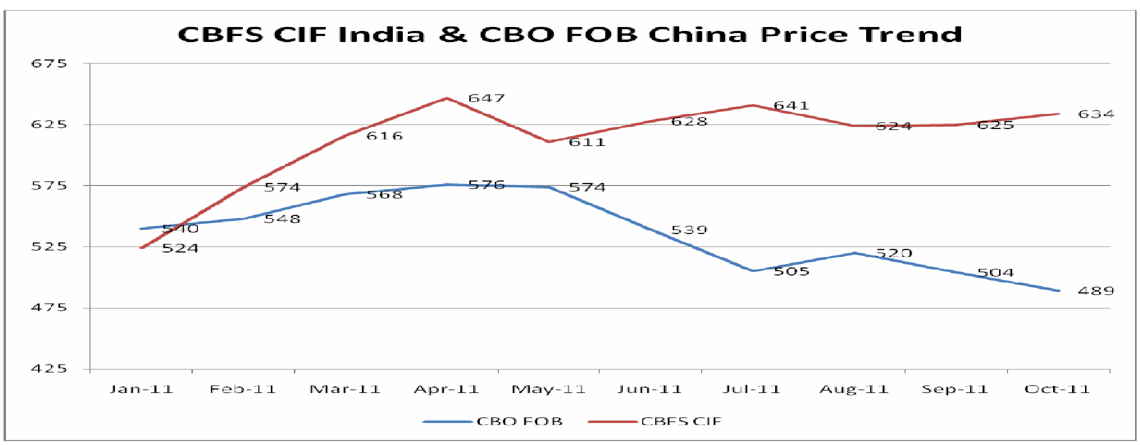
A. The sudden surge in import, performance of the domestic industry and the rising gap in the raw material have been considered in order to determine the existence of critical circumstances. For this purpose, the monthly performance of the domestic industry in the most recent period has been analysed which can be seen from the table below:

[5] Rule 2(ii) of *Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002*

	Units	11-Apr	11-May	11-Jun	11-Jul	11-Aug	11-Sep	11-Oct
Production	MT	54767	54150	54542	54751	48127	45311	46582
Capacity utilization	%	91	90	90	91	80	75	77
Sales-Domestic	MT	41003	39150	39173	38337	31757	29112	28225
Closing Stock	MT	8459	7559	7902	10609	11687	11600	17249
Total imports	MT	6470	3886	4471	8879	9084	14507	11489
Imports From China	MT	1,692	1,245	2,849	6,530	6,674	12,482	9,335
Market share of domestic industry	%	73.01	75.69	74.85	65.85	61.26	53.30	56.53
Market share of China	%	3.01	2.41	5.44	11.22	12.87	22.85	18.70

B. The market share of import from China has risen phenomenally in the recent period and this surge in import volume is in spite of ADD on the product. Since the unit price of import has also risen, price is not the factor and the injury is mainly due to import surge. 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 and the profitability is now negative.

C. It is observed that domestic industry uses CBFS as a raw material for manufacturing Carbon Black whereas Chinese producers use CBO. The price difference between the two raw materials provides cost advantage to the Chinese producers which led to low prices of Chinese Carbon Black. This has resulted in cheap Chinese imports of Carbon Black capturing the Indian market causing injury to domestic industry. The price difference in the raw material can be seen from the graph below:



D. The preliminary determination thus shows that excessive surge in import with rising unit price from China in the recent period; poor performance of the DI and rising difference in the price of raw material for manufacturing carbon black has caused market disruption and constitute critical circumstances in the instant case. In view of the above, critical circumstances exist justifying imposition of provisional safeguard duties immediately in order to save the domestic producers from damage of market disruption which it would be difficult to repair, if the application of safeguard measure is delayed.

XVI Comments on views of Interested Parties:

101. The apprehensions raised by the interested parties in view of the initiation of instant safeguard investigation are dealt with in brief, for the sake of brevity.

a. 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 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. The Imports from China have increased phenomenally from 12971 MT in 2008-09 to 25,686 MT in Q2 of FY 2011-12 which shows a significant increase. The increase in imports analysis is not based on only two months data. Even 2011-12 as a whole also shows increased imports.

b. As regards the argument that M/s PBCL and M/s Hi Tech are export centric companies, it is observed that both M/s PBCL and M/s Hi Tech are not an exports centric companies. In fact it was contended by the applicants that faced with significant increase in imports of the product from China, the petitioner companies are undertaking significant exports of the product to a number of countries. However, the opposing parties have not provided any substantial information to corroborate the above claim. It is also noted that the inventories with the domestic industry rose sharply and significantly, despite production cuts and decline in capacity utilization.

c. As regards the argument that no price suppression /depression have been caused to the domestic industry, it is observed that due to presence of low priced imports, the landed price of imports were below the selling price of the domestic industry, thus leading to significant price undercutting. Further, the applicants were unable to increase their prices in tandem with increase in costs. Consequently the domestic industry suffered losses in the most recent period clearly establishing price suppression and depression effect.

d. 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 is being proposed based on much more recent period. Further, the domestic industry is suffering injury despite the existing anti dumping duty. 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.

e. As regards the applicability of competition law, the Authority notes 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.

XVII Conclusion and Recommendation:

102. On the basis of the above preliminary findings it is seen that 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. There exist critical circumstances, where any delay in application for Specific Safeguard measures would cause

damage which it would be difficult to repair, necessitating immediate application of provisional Specific Safeguard duty for period of 200 days, pending final determination of market disruption and threat of market disruption. 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, Specific Safeguard Duty at the rate of 30 % ad valorem minus Anti-dumping duty payable on Carbon Black falling under Chapter heading 28030010 (for rubber applications) which is considered to be the minimum required to protect the interest of domestic industry, is recommended to be imposed on imports of such goods from Peoples Republic of China.

XVIII Further Process:

a) The information provided by various parties may be subjected to verification where necessary, for which they will be informed separately.

b) A public hearing will be held in due course before making a final determination, for which the date will be informed separately.

Sd/-
(Indrani Dutt Majumder)
Director General.