

No.14/2/2009-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES
UDYOG BHAVAN

NOTIFICATION

New Delhi- 19th October, 2010

Final Findings

Subject: Anti-Dumping Investigations concerning imports of SDH Equipment originating in or exported from China PR and Israel

No. 14/2/2009-DGAD:- Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped Articles and for Determination of Injury) Rules, (hereinafter referred as Rules) 1995 thereof;

Procedure

2. The procedure described below has been followed:
 - a. The Designated Authority (hereinafter referred to as Authority), received an application filed by M/s Tejas Networks Limited (herein after referred to as the applicant) on behalf of the domestic industry, alleging dumping of Synchronous Digital Hierarchy Transmission Equipment (herein after referred to as SDH equipment or subject goods), originating in or exported from the People's Republic of China and Israel (hereinafter referred to as subject countries) and requested for initiation of anti dumping investigations for levy of anti dumping duties on the subject goods.
 - b. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry found it appropriate to initiate the investigations concerning imports of subject goods originating in or exported from China PR and Israel. The authority notified the Embassy of subject countries in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with Rule 5 of the Rules.
 - c. The Authority issued a public notice dated 21st April 2009 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject countries in accordance with the Rule 5. Sub-Rule 6(1) of the Rules to determine the existence, degree and effect of alleged dumping and injury and to recommend the amount of antidumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

- d. The Authority forwarded a copy of the public notice to the known exporters (whose names and addresses were made available by the applicant to the authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6 and requested them to file questionnaire responses and make their views known in writing within 40 days of the initiation notification.
- e. Copies of the non-confidential version of the petition filed by the domestic industry were made available to the known exporters and the Embassies of the subject countries in accordance with Rules 6 supra.
- f. The Authority forwarded a copy of the public notice to all the known importers (whose names and addresses were made available by the applicant to the authority) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6.
- g. The Embassies/Representatives of the subject countries in New Delhi were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their countries/territories to respond to the questionnaire within the prescribed time. A copy of the letter, non confidential version of the petition and exporter questionnaire sent to the exporter was also sent to the Embassies/ of subject countries in India along with a list of known exporters/ producers made available by the petitioner.
- h. A copy of the non-confidential application was also provided to other interested parties, wherever requested.
- i. The Authority sent questionnaire to following known exporters/ producers of the product in subject countries to elicit relevant information to the known exporters from subject countries in accordance with the rule 6.
 - i. Huawei Technologies Co., Ltd
 - ii. Wuhan Research Institute of Post & Telecommunication
 - iii. ZTE Corporation Ltd.
 - iv. Alcatel-Lucent
- j. Following exporters/foreign producers/association of foreign producers have responded to initiation notification and provided information/ submissions:
 - i. ZTE Corporation Ltd.
 - ii. Huawei Technologies Co. Ltd.
 - iii. Shenzhen Huawei Technologies Ltd.
 - iv. Hisilicon Technologies Ltd.
 - v. Fiberhome Telecommunications Technologies Co. Ltd.
 - vi. Wuhan Fiberhome International Technologies Co. Ltd.
 - vii. Hangzhou ECI Telecommunications Co. Ltd.
 - viii. ECI Telecommunications Co. Ltd.
 - ix. Alcatel Lucent Shanghai Bell Co. Ltd.
 - x. CCCME
 - xi. Alcatel-lucent Shanghai Bell Co.,
 - xii. UT Starcom

- xiii. Ciena, USA
- k. Questionnaire was sent to following importers:
 - i. Aircel Limited
 - ii. Prithvi Information System
 - iii. Dishnet Wireless Limited
 - iv. Punjab Communications Limited
 - v. Bharati Airtel Limited
 - vi. HTL GST
 - vii. Bharat Sanchar Nigam Limited
 - viii. Huawei India
 - ix. Tata Teleservices Limited
 - x. ZTE India
 - xi. Tata Teleservices (Maharastra) Limited
 - xii. ECI India
 - xiii. Idea Cellular Limited
 - xiv. Alcatel Lucent
 - xv. Vodafone Essar Limited
 - xvi. Nokia Seimens Networks
 - xvii. Railtel Corporation of India Limited
 - xviii. Erricson
 - xix. Tata Communications
 - xx. Himachal Futuristic Communications
 - xxi. Reliance Communications Limited
 - xxii. ICOMM
 - xxiii. Shyam Telelinks
- l. Following importers/consumers/association thereof have responded to the Authority and provided information/submissions:
 - i. ECI India Pvt. Co. Ltd.
 - ii. Huawei India Telecommunications Pvt. Ltd.
 - iii. Vodafone Essar Ltd.
 - iv. Vuppalamritha Magnetic Components Ltd.
 - v. Prithvi Information's Solutions Ltd.
 - vi. Huawei Technologies India Pvt. Ltd,
 - vii. M/s MRO-TEK Ltd., Bangalore
 - viii. M/s Juniper Networks Pvt. Ltd., India,
 - ix. Aircel Ltd.,
 - x. Vodafone Esaar Ltd.,
 - xi. Bharti Airtel Ltd.
 - xii. ECI Telecom India Pvt. Limited,
 - xiii. RAD Data Communications Ltd.
 - xiv. Tatatele Service
 - xv. BSNL,
 - xvi. Tirumala Seven Hills

- m. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods for the past three years, including the period of investigations;
- n. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file and kept open for inspection by the interested parties;
- o. Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- p. The confidentiality claims of various interested parties in respect of the data submitted by them were examined and duly considered by the Authority. Wherever the Authority was satisfied with regard to claims of confidentiality and where the concerned interested party has provided sufficient non confidential version, the Authority has granted confidentiality to such information provided by interested parties.
- q. The information, which is by nature confidential or which has been provided by an interested party on a confidential basis has been treated as confidential in this Findings document. However, non confidential version of such confidential information has been disclosed to such an extent that the same permits reasonable understanding of the substance of information provided on confidential basis.
- r. Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters and Embassy of China PR. Exporters were informed that authority proposes to examine the claim of the applicant in the light of para 7 and para 8 of Annexure I of Anti Dumping Rules, as amended. The exporters/producers of the subject goods from China PR were therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment be granted to cooperating exporters/producers.
- s. Investigation has been carried out for the period starting 1st April – 31st Dec 2008 (9 months – POI). Data for the period 2005-06, 2006-07, 2007-08 and POI has been considered for assessment of injury to the domestic industry.
- t. Authority recorded preliminary finding on 7th September 2009, a copy of which was forwarded to all interested parties including Embassies of the subject countries in India. All interested parties were asked to file their comments on preliminary findings.
- u. The Authority held a public hearing on 21.12.09 to hear the interested parties orally, which was attended by representatives of interested parties. The interested parties were advised to file written submissions and were granted permission to file rejoinder to the submissions made by opposing interested parties. The written submissions and rejoinders received from interested parties, to the extent considered relevant, are being considered in this statement. For the purpose, all

interested parties were advised to file their submissions in writing latest by 04th Jan 2010 and were permitted to file rejoinder submissions latest by 17th Jan 2010.

- v. The investigations could not be completed within the prescribed time of one year on account of Court proceedings associated with the case in Hon'ble High Court of Hyderabad and therefore an extension in time for completing the investigation by 20.10.2010 was sought and has been allowed by the Central govt.
- w. On the spot verification of the data of the responding exporters who filed their submissions and invited the Authority for verification, were carried out to the extent necessary.
- x. In view of large number of participating parties and a number of issues raised by these interested parties, the Authority has first brought out the submissions made by these interested parties. Further, in order to avoid repetition, the Authority has collectively brought out arguments by these interested parties.
- y. In accordance with Rule 16 of the Rules supra, the essential facts /basis disclosed to known interested parties and comments received on the same have been considered in Final Findings.
- z. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- aa. Abbreviations used in this Final Findings Document represents as follows –

SN	Abbreviation	Explanation/meaning
1.	Authority	Designated Authority
2.	Act	Customs Tariff Act, 1975 as amended in 1995
3.	Rules	Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
4.	PUC	Product under consideration, i.e., SDH Transmission Equipment as defined in the relevant para in this disclosure statement
5.	CKD	Completely knocked down condition
6.	SKD	Semi knocked condition
7.	DA	Designated Authority
8.	DI	Domestic industry
9.	ADA	WTO Agreement on Anti Dumping
10.	SDH	Synchronous Digital Hierarchy Transmission Equipment
11.	Tejas	Tejas Networks Ltd.
12.	VMCL	Vuppalamritha Magnetic Components Ltd
13.	Prithvi	Prithvi Information Solutions Ltd.
14.	BSNL	Bharat Sanchar Nigam Limited

Product under consideration and like article

Submissions by Domestic Industry (Tejas) and other Indian producers

3. Domestic industry made following submissions regarding product under consideration
 - a. The product under consideration in the present petition is “Synchronous Digital Hierarchy transmission equipment, its accessories, associated

software and its essential parts & components, in assembled, CKD, SKD form or fitted with eventual broadband/cellular equipment”.

- b. SDH transmission equipments are also known as multiplexers, Add Drop Multiplexers (ADM), Multiple Add Drop Multiplexer (MADM), digital cross-connects. Populated PCBs, Power supply, Lasers, Chassis and software meant for SDH transmission equipment, etc. consist of essential parts of a SDH transmission equipments and are within the scope of the product under consideration provided the said components are meant for SDH transmission equipment application only.
- c. SDH transmission equipments can be bought either as transmission equipments or forming part of another equipment e.g., broadband and/or cellular (both GSM and CDMA) equipment. SDH transmission equipments forming part of broadband and/or cellular equipments are also within the scope of the product under consideration.
- d. Product under consideration is an assembly of a number of electronic components and/or electronic printed circuit boards, which are designed to perform the specific intended function of multiplexing for combined lower speed signals into high-speed signals for transmission through optical fiber over distances (short or long). Since, among other applications, these are installed at Base Transmission Stations, switch exchanges and other point of presence, SDH equipments installed at different locations may differ in terms of the associated properties.
- e. Different SDH equipment are comparable in term of essential product characteristics including physical and optical, production technology, manufacturing process, R&D Development, software capabilities, functions and usage, etc. Accordingly, various SDH equipments are one like product for the purpose of present investigation.
- f. The product under consideration can be imported either as complete equipment, or in CKD, SKD or even component form. Further, a number of accessories are required for connecting/ installing SDH transmission equipment in the network (E1 cables, PCM cables, power cables, racks, workstations etc.). Software is an integral part of these equipments, which may be bought either as a part of the equipment or separately. These all are also within the scope of the product under consideration.
- g. The product under consideration is classified under Chapter 85 of the Customs Tariff Act, 1975.
- h. The key effort involved in production of subject goods is in the development of technology. Substantial research & development efforts are put in by the producers globally in design & development of the subject goods, the extent of which may be gauged by the fact that about 60% of manpower deployed is in design & development of the product under consideration.
- i. The core of production is in technology, know-how, design and development of the product. The actual process of manufacturing is, in

fact, a much smaller part of the total activity involved in production and supply of subject goods and comprises of complex assembling of a large number of components on a PCB (populated PCBs) and then assembling and testing them as finished products.

- j. The production in the present product is an activity comprising of design and development of complex hardware, embedded software and network management software as well as the final assembly and test of the finished product. The petitioner, producers in subject countries and other global players all undertake combination of all these activities.
- k. The production process can be divided into following:
 - i. research
 - ii. product conceptualization,
 - iii. design & drawing
 - iv. product proto type developments
 - v. development of the technology,
 - vi. conceptualization and understanding of functionality,
 - vii. development of associated software
 - viii. product blue print /prototype development
 - ix. integration,
 - x. testing,
 - xi. assembly,
 - xii. software programming
 - xiii. test jigs,
- l. Any consumer of the product insists on a combination of all the above before placing orders on any party. Further, some of the consumers in India insist on sales & support being extended by someone from India. Therefore, the producers in subject countries have set up their own/related enterprises in India in order to provide sales and support services
- m. Design and development of the subject goods involves significant amount of resources on research and development. The petitioner has developed significant amount of intellectual property over the years. In similar fashion, the foreign producers have also developed significant amount of intellectual property over the years.
- n. The petitioner and major global players in this industry outsource a significant part of component manufacturing to specialized producers (Electronic Contract Manufacturers). These companies, who undertake a significant part of component manufacturing activities, are, however, mere job processors, having no knowledge whatsoever about the technology and design & development involved in the product. These job processors lack the knowledge of intellectual property required in production of the subject goods.
- o. The Indian Rules and WTO Agreement of Anti dumping does not prescribe anything with regard to scope of the product under consideration,

nor has it prescribed the parameters that should be considered for describing/ specifying the product under consideration.

- p. The petitioner researched upon a large number of cases investigation by India, EC and the US in support of its claim of scope of product under consideration. These includes decisions of the US ITC in the matters of Certain Tow-Behind Lawn Groomers and Parts Thereof from China PR, Diamond Sawblades and Parts Thereof From China PR and Korea, Gray Portland Cement and Cement Clinker From Japan, Hand Trucks and Certain Parts Thereof From China PR, Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan, Mechanical transfer presses from Japan. Further, petitioner referred to decisions of the EC in the matters of Ironing boards, Steel tube and pipe fittings, Compact Disc Players (CDP).
- q. Domestic industry is entitled to seek relief under the law in respect of “an article” and such article means all its known forms/ species/ types.
- r. “SDH equipment” includes products in its various forms, different names, supplied in different forms. Multiplexers, Add Drop Multiplexers (ADM), Multiple Add Drop Multiplexer (MADM), digital cross-connects are different names of the same product. Populated PCBs, Power supply, Lasers, Chassis and software meant for SDH transmission equipment are various sub-set of the product.
- s. Product can be supplied in assembled form or broken into these various sub-set of the product. An exporter can export either the finished ready to use equipment, or in sub-assembly, cards, CKD/SKD conditions and carry out the remaining operations in India (involving negligible value addition). Further, the product can be produced and supplied in various sizes to meet specific customer requirement.
- t. The way SDH equipment is produced and used and the jurisprudence emerging out of various cases investigated by various investigating Authorities establishes that the scope of the product under consideration is not wide in the present case. Further, inclusion of parts/components is fully justified, considering the production activities relating to the product under consideration.
- u. The petitioner has sought imposition of anti-dumping duties only on parts/ components for SDH application.
- v. The claims of the interested parties for exclusion of various types are not bonafide for the following reasons
 - i. Multiplexors – Petitioner has large scale sale of SDH Multiplex.
 - ii. DWDM multiplexors are not part of present petition and investigations.
- w. As far as scope of the product under consideration is concerned, the only requirement under the law is whether (a) the various types included in the scope of the product under consideration constitute same article; (b) Tejas

is engaged in manufacture of an article which is like article to the product under consideration.

- x. Petitioner has referred to the decision of EC in the matter of fasteners and argued that the fact of no production of some particular component/part of the product does not disqualify a company from seeking protection on the product. The domestic industry should be engaged in production of the product and is not required to be offering parts of the product in the market.
- y. The petitioner has sought inclusion of parts and components as (a) these are specifically designed for production of SDH equipments, (b) these have no other application but for production of the product, (c) production of the product from the stage of parts/components/assemblies/sub-assemblies involves only a screw driver technology and therefore exclusion of these from the scope would imply permitting imports of these at dumped prices, which would lead to continued dumping and injury in spite of imposition of anti dumping duties. It has remained undisputed that the contention of the domestic industry in this regard is incorrect. Domestic industry also raised a question that if anti-dumping duties on product under consideration is justified, why imports of such items should be permitted and why such imports would not cause injury to the domestic industry. Domestic industry has also contended that the Authority can specify that such duty on parts, components, sub-assemblies can be implemented on declaration basis and the same can be specified in the relevant customs notification as well.
- z. DWDM Multiplexors and PDH multiplexors are different products. The Authority may specifically clarify the same to eliminate all doubts unnecessarily created by some interested parties. Further, the Authority may consider such other arguments of opposing parties with regard to appropriate descriptions and clarify the same in the final findings in order to ensure clarity at the time of implementation of the duty.

4. It has been claimed that it is well settled law that the product description remains dispositive and customs classifications are given only for convenience. Merely because import of a product has been reported under a classification specified under an anti dumping duty notification, the same does not imply that anti dumping duty would be charged on the same.

5. With regard to claims of the interested parties to specifically exclude certain products, the domestic industry has claimed as follows –

- i. STM-1, 4, 16 - There is no dispute for inclusion of these types
- ii. STM-64 - The domestic industry has produced and supplied these. The claim is without basis. It has been shown to the officials during the visit that the company produces STM 64 which are also DXC. The mere fact that Tejas did not bid in a specific tender for a specific product type for a specific customer

doesn't mean that the company do not produce the particular product. Non participating in a particular tender does not imply that the company is not manufacturing the particular product.

- iii. STM-256 - There is no requirement so far for STM 256 in India. STM 256 is nothing but SDH equipment. None of the consumers have deployed STM 256 and also there is no approved specification (TEC GR) for STM 256 system, these systems have not been deployed by the telecom operators. A product can be produced only if demand/ requirement for the same exist. It is understood that, none of the telecom operators in India have deployed any STM 256 system and even worldwide only very few telecom operators have deployed STM 256 in their network. Tejas has already made significant R&D investments in developing STM 256 technology and Tejas can provide STM 256 capabilities on its systems, as and when required
- iv. Multiplexers - Multiplexers is a broad term. SDH equipments also have multiplexers. Domestic industry has produced and supplied these. These have been imported in India. The Authority may however clarify that only SDH multiplexers are within the scope of the product under consideration
- v. DWDM - These are not SDH equipments and are beyond the scope of product under consideration. The interested parties have sought this exclusion only to confuse the Authority
- vi. Parts & components of SDH equipments - These cannot be excluded. Argument of domestic industry have been brought out separately

6. It is claimed that the eventual consumers are interchangeably consuming goods supplied by domestic and foreign producers. All major telecom service providers in India like BSNL, Bharti, Aircel are buying Huawei product and Tejas product, and that too for the same network, same application and against the same specification.

7. It is further claimed that Multiplexers or other equipments operating on DWDM technology are not covered under the PUC. Petitioner supplies SDH multiplexer or DXC and it was shown to officers during the visit.

8. Tejas manufactures both SDH products and carrier Ethernet products. Tejas will pay the applicable duty if it will source dual usage components for SDH use and if the same is within the product scope. The petition is only in respect of one article, albeit in its various forms. The rules nowhere prevent inclusion of different forms of an article within the scope of the product under consideration. There may hardly be any investigation conducted so far wherein product under consideration did not have multiple forms.

9. SDH, its accessories, associated software, parts and components, Populated PCB's, Power supply, lasers, Chassis, EI cables, PCM cables, power cables, racks, collectively forms an SDH equipment (excluding work stations). Individually, none of these have any end use. For example - a tube light requires a tube, a choke, a starter and a base. It cannot be said that

each of these four items are different articles, merely because they have their own distinguished character.

9A. The requirements of rule 5 are to be satisfied in respect of product under consideration and not individual forms of the product under consideration. The product under consideration is SDH transmission equipment. When “different technology equipment” is imported with “SDH interfaces” then duties will be not be imposed on full value of “different technology equipment” but only on the parts related with SDH technology.

10. It has been suggested that the Authority may investigate CIENA claim that goods produced by it originated in USA and the IPR is in USA. If goods originated in China PR, anti-dumping duties should apply. If goods are not of Chinese origin, the anti-dumping duties should not apply.

Submissions made by FIBCOM

11. They have claimed to be the domestic manufacturers of the PUC. However, to support their contention, apart from a write up, they have submitted no other information to substantiate their field of activity. In their written submissions, they have stated that it supports the imposition of antidumping duty on “complete SDH equipment” and “populated modules for use in SDH” but has opposed the duty being recommended and levied on components.

Submissions by Exporters, Importers and other interested parties

12. Following opposing parties have advanced their arguments on product under consideration and like article

- a) Huawei Technologies Co. Ltd., China PR,
- b) Huawei Technologies India Pvt. Ltd,
- c) Huawei Telecommunications (India) Pvt. Ltd,
- d) MRO-TEK Ltd., Banglore (importer),
- e) Juniper Networks Pvt. Ltd., India, Aircel Ltd.,
- f) Vodafone Essar Ltd.,
- g) Bharti Airtel Ltd.,
- h) CCCME,
- i) Prithvi Information Solutions Ltd.,
- j) Vuppalamritha Magnetic Components Ltd.,
- k) ECI telecom Ltd.
- l) Hangzhou ECI Telecommunications Co. Ltd., China PR
- m) ECI Telecom India Pvt. Limited,
- n) RAD Data Communications Ltd.,
- o) Alcatel-lucent Shanghai Bell Co.,
- p) Tatatele Service.,
- q) Fiberhome Telecommunications Technologies, Co. Ltd.,

- r) ZTE Corporation Ltd., China PR,
- s) UT Starcom,
- t) FIBCOM,
- u) Ciena, USA,
- v) BSNL,
- w) Tirumala Seven Hills

13. Submissions made by these interested parties are collectively summarized below.

i. Product scope is excessive

- a. Scope of the product under consideration in the present case is excessive.
- b. Product like DWDM, CWDM, microwave radios, base stations, routers etc, are being considered for Anti Dumping Duty by Customs Department and DRI due to lack of clarity, which has led to delay and harassment to telecom consumers. Authority should issue necessary clarification in this regard to avoid delay and harassment.
- c. Product is designed as per TEC guidelines GRs no. GR/SDH-13/01 July 2003, GR-SDH-04/03 Mar 2005, GR/SDH-10/02 Mar 2005, GR-SDH-08/02 Mar 2005 and GR-SDH-07/01 Mar 2005 as stated in the petition. A clarification may kindly be issued that anti dumping duty is applicable only on the products manufactured under these standards of TEC.
- d. Product scope defined in initiation notification is overly broad. There is no rational to include distinctly different goods such as multiplexer in the product scope.
- e. Digital cross connect and add drop cross multiplexers are features of SDH equipment and not SDH equipment. SDH transmission equipment are sophisticated technology, which provides these features.
- f. Some articles such as Base Stations, Microwave, Router & Switches, DWDMs, and CWDMs have interface with SDH products and are not SDH transmission equipments.
- g. DXC technologies are not available in the low-end SDH transmission equipments manufactured by Tejas during the POI, and GR for DXC was also not mentioned in the list of GRs provided by Tejas at Para G of the petition.
- h. The practice all over the world is of restricting the investigation in respect of one article/product only. Customs Act and Anti-dumping Rules use the words “an article”, “any article”, “the article”, “the product”, “a product”, “the product”, “the like product”. Nowhere plurals have been used. Thus any investigation, which covers more than one “like articles”, is ab initio illegal.
- i. Product has been defined very widely without considering the indices like the physical characteristics, degree of commercial interchangeability, functions & end uses, industry specifications, pricing, quality, etc.
- j. The working group under Doha Round has interpreted “product under consideration” and thus DGAD should examine all the relevant factors while determining the scope of the product under consideration.

- k. Based on the PCN provided by the Authority it can be strongly assumed that the extent of Tejas along with supporters is limited to the products ranging from STM-1 to STM-64.
- l. By virtue of widest possible scope of PUC parties are adversely affected by the investigation.

ii. **Customs classification**

- a. Exact customs tariff head 85176260 may kindly be specified in places of present customs tariff head given 851762. Six digit classifications include wide variety of other unrelated products.
- b. The classification of product given is incorrect and misleading.
- c. Para 5 of the PF refers to SDH Transmission Equipment whereas duty table refers to “complete SDH Equipments”. The missing ‘transmission’ word has created confusion, which is evident in customs notification as well.
- d. Imprecise definition has resulted in avoidable harassments and ADD demands by Customs Department, and thereby causing delays in network rollout and inconvenience to telecom customers.
- e. While SDH Multiplexers are classifiable under 8517.62.60, Tejas has deliberately chosen to mislead the DA by giving only 6 digit (8517.62).
- f. As per General Rule of Customs, any product presented in unassembled or disassembled form will be classified as a complete or finished product. Part and components of SDH Equipments cannot in any manner be considered as incomplete or unfinished equipments as per Rule 2(a) of the General Rules of Interpretation. Even in the absence of specific mention that “including in CKD/SKD”, the Indian Customs will apply Rule 2(a).
- g. Six digit code under the duty table has created confusion as the RAD products fall under 8 digit classifications which are 8517.6270/90

iii. **Unjustified inclusion of accessories, parts and components, associated software, populated PCBs, power supply, lasers, chasis and software meant for SDH transmission equipment, etc in product scope: -**

- a. No explanation given of “accessories, associated software and its essential parts and components”. None of the accessories covered in the scope have been specified.
- b. No clear meaning given of associated software.
- c. It is not clear whether parts and components is one word or two words. What are the parts and components and how these are different than accessories.
- d. Initiation notification states “populated PCBs, power supply, lasers, chasis and software meant for SDH transmission equipment, etc.” Scope has been left open ended by using word “etc.” at the end of the list.

- e. There is contradiction regarding inclusion of software within PUC. If the SDH equipment is being imported as a part of equipment such as GSM network, how the export price of SDH equipment will be determined.
- f. Tejas is required to prove that it produces parts and components, which have been sought to be included in PUC.
- g. SDH, its accessories, associated software, parts and components, populated PCB's, power supply, lasers, chassis, EI cables, PCM cables, power cables, racks, workstations etc. are distinct and different articles in terms of name, character and use and cannot be included with the product scope.
- h. Requirements of Rule 5(2) have not been fulfilled as the petition did not contain any data or evidence for accessories, associated software, parts and components, Populated PCB's, Power supply, lasers, Chassis, EI cables, PCM cables, power cables, racks, workstations etc.
- i. Tejas is not in the merchant market of accessories, associated software, parts and components.
- j. There is no DI for parts and components including lasers and receivers. Therefore the same cannot be included under the PUC.
- k. A clarification should be issued for restricting the scope of duty only on parts, components and equipments used in SDH Transmission Technology.

iv. **Product imported as part of equipment/project cannot be subject to duties**

- a. Product under consideration includes certain products, which are not manufactured by the petitioner. It is well accepted principle that unless there is a like product manufactured in the domestic market, there is no question of injury to the domestic industry.
- b. Even though PUC as per PF includes "SDH Equipments forming part of eventual cellular/broadband equipments", the same are not included in the duty table. As Tejas only assembles low-end traditional SDH Equipments, it has no right to seek duty on cellular/broadband equipments.

v. **Product not produced by the petitioner cannot be included within the product scope.**

- a. Petitioner is capable of production of only limited technological capacity product, but has sought to include high end equipment through its unsubstantiated claim on injury.
- b. Petitioner has no commercial deployment of STM 64. Therefore, there is no question of the imported goods competing in the market place with the STM 64 of the petitioner.

- c. The definition of PUC should be suitably amended to cover only those equipments which are produced by Tejas, specially in Para 6 of the PF which talks about Multiplexers.
- d. Largest PSU in this sector has also pointed out that Tejas has abstained from bidding for the contracts for STM-64 and DXC products. Thus as per BSNL also, Tejas does not manufacture STM-64, STM-256, and DXC products.
- e. The Authority should define the PUC more accurately and restrictively and should seek specific declaration from Tejas as to the products it actually produces.
- f. PUC has been incorrectly defined to cover SDH transmission equipments not manufactured by Tejas and which are not 'like article' to equipments manufactured by Tejas.
- g. Preliminary Findings at Para 97, BSNL Certificates, Supply certificates of BSNL and certificates of ITI Limited and Bharat Electronics establish that Tejas was engaged in manufacture of STM-1, STM-4 and STM-16 only and not of STM-64 and STM-256:
- h. As Tejas itself has admitted that equipments other than STM-1, STM-4 and STM-16 are to be excluded from the PUC, the scope of PUC needs to be re-determined.
- i. SDH equipments and parts & components that are not being manufactured by Tejas should be excluded from the scope of PUC.
- j. Grades which are not manufactured by Tejas should be excluded from the scope of investigation. ECI's optic based equipments should therefore be excluded, as Tejas does not offer such products.
- k. BSNL has confirmed that Tejas never participated in tenders of STM-64; O-E-O based DXC equipments. Accordingly, this category of SDH and parts and components used to manufacture the same should be kept out of the scope of the PUC.

vi. **Dual use of parts/components difficult to define.**

- a. Tejas is required to explain that what components had been imported, and why they have been treated as having dual use.
- b. ICs inbuilt in the PCBs are specifically designed for SDH Equipments therefore it is difficult to understand how they can have dual use.
- c. It is difficult to draw the distinction that which parts have a dedicated use and which parts have dual use, therefore such a classification is amorphous and ambiguous.
- d. If imports of components are counted only if they have dedicated use for the product, there is a chance of abuse of the provision by Tejas since the dual use imports will not be accounted for.
- e. As has been admitted that some components and parts have alternate use (other than SDH), the imposition of duties would have serious operational issues and would breed litigation and unnecessary cost and consequences to importers and users in India.

- f. Lasers and receivers have multiple uses (beyond SDH) and Indian users are 100% import dependent. There are no alternatives to lasers & receivers.
- g. DGAD should exclude the components which has alternate usage and should include those components which has dedicated use in production of SDH equipments

vii. **Other issues** -

- a. Consumer perception should also be given weight in determination of product under consideration.
- b. There are number of significant differences between Huawei's SDH products and those of Tejas. Huawei produces its own ASIC whereas Tejas does not. For I/Ps Tejas is dependent on FPGA vendor. Their products are like diesel locomotive and steam locomotive engines i.e., both are used for pulling a train but they are not like articles as the difference far exceed the similarities
- c. Tejas has made contradictory arguments. On one hand, it says that foreign producers do R&D in their country and have Indian offices for doing incremental activities only. On the other hand, it claims that foreign producers have opened development centers in India to take advantage of low labor cost in India and IP created by these companies resides in foreign countries.
- d. By the Tejas' own admission (that certain products deserve to be excluded from scope of PUC) during the public hearing, the entire proceedings now deserve to be terminated as aspects like scope of DI, PUC, Dumping Margin, injury analysis will have to be completely re-determined in accordance with the new determination of the PUC.
- e. Because of differences in technology and functionality, different types of SDH Equipments cannot be considered technically or commercially substitutable with each other. Nor are the products of two different manufacturers.
- f. DA has failed to identify whether the imports from the subject countries are similar to Tejas goods, and whether the conditions of competition are also similar to justifying cumulation for injury assessment. Actual users have also placed material on record that Tejas does not have the technologies, which the imported subject goods have.
- g. The product under consideration is SDH transmission equipment. If the company has sold other products, the same in any case not covered under the scope of the product under consideration.
- h. When RAD is importing a "different technology equipment" with "SDH -1 interfaces" then duties will be not be imposed on full value of "different technology equipment" but only on the parts related with SDH-1 technology.
- i. RAD exports some products having STM-1 interface, which are used in Access technology and not in SDH technology. These products do not have same end use as that of SDH Equipments. Most of the RAD products having STM-1 interface don't work in SDH environment, because they are used for carrying data and voice traffic to SDH networks (Access terminals) and not to

build SDH transmission. Thus the scope should be amended to exclude RAD's products, including those with STM-1 interface.

- j. Core Director is undisputedly distinct product in terms of its capability, functionality, technical specification and end use. Technical specifications for Core Director are not covered under those given by Tejas in its Petition. Core Director is placed at a higher level as it assimilates the input data from multiple sources and forwards the same to the network path based on the traffic on a particular path whereas subject goods are placed at lower level.
- k. Ciena is exporting Core Director from USA. Its product is being assembled by a contract manufacturer in China PR as per Ciena specifications and requirements and pursuant to R&D done by Ciena in USA & India.
- l. Majority of value addition in Core Director is the design & development, which is done in USA or in India, and does not originate from China PR. Ciena has been considered as a known American producer of telecom products. Since Ciena's R&D resides in USA, a country other than the subject countries, Core Director should be excluded from the purview of investigation.
- m. Almost 99% of the accessories and parts & components are either imported or locally procured by Tejas, and therefore Tejas cannot be termed as producer of one of the group of PUC.
- n. PUC should be first categorized, and Dumping Margin and Anti Dumping Duty should be assessed and recommended based on these categories, as the DA has done in the case of Cold Rolled Flat Products of Stainless Steel and Lead Acid Batteries

Standing of the petition and scope of the domestic industry

Submission by the petitioner

14. Petitioner has advanced following arguments
 - a. The petitioner provided information which is adequate and accurate and the same clearly establishes that the petitioner's production constitute a major proportion in Indian production.
 - b. Other parties such as VMCL, Prithvi cannot be considered as domestic manufacturers under the rules.
 - c. All published information such as Voice and Data, Communications Today confirm that the petitioner is a major producer of the product in the Country and other parties such as VMCL and Prithvi claiming to be domestic manufacturers are not domestic manufacturers at all.
 - d. Information of leading Industrial Associations such as CMAI,TEMA etc. also clearly establishes that the petitioner is a majority producer.
 - e. Even if companies such as Prithvi, VMCL, Huawei are considered as a producer, they cannot be recognized as an eligible producer under Rule 2(b) in view of the fact that they are largely importing the product under consideration.
 - f. The petition is supported by M/s. Measurement & Controls Limited and Coral.

- g. Production for the purpose of current product under consideration includes activities such as research, product conceptualization, design & drawing, development of the technology, conceptualization and understanding of functionality, product blue print preparation, development of associated software, product prototype development (hardware and software), component procurement, soldering and EMS activities, integration, preparation of test jigs, assembly, testing, and product support and bug fixes. Unless a company undertakes all these activities, it cannot be recognized as a domestic producer of the product.
- h. With regard to imports by Tejas, the petitioner has advanced following arguments –
 - (i) The petitioner should be considered as eligible domestic manufacturer to bring the present petition, notwithstanding that supplemental imports of components or sub- assemblies being made by them;
 - (ii) The petitioner has provided sufficient details to justify its consideration as a domestic industry under Rule 2(b). These includes (a) bifurcation of materials consumption by Tejas into imported components from China PR, Iseal & third countries (both in direct imports by Tejas or in the sub-assemblies imported by Tejas, (b) research & development costs incurred by Tejas at different stages of production, (c) breakdown of total purchases into domestic & imports, (d) country wise purchases of components & assemblies, (d) break-up of the parts/ components imported from China PR in terms of various items in terms of dual use components and components dedicated in SDH application (which shows that barring printed circuit boards, the parts/components imported from China PR are parts/components which do not have dedicated applications in the product under consideration. The petitioner also claims that even printed circuit boards are produced as per design given by the petitioner),
 - (iii) On the basis of verified details, it can be seen that value of Chinese parts/components imported by the petitioner is quite insignificant.
- i. Tejas uses services of EMS on job contract basis. This use of EMS services cannot be compared with the manner in which companies such as VMCL/Prithvi are operating. Sub-contracting components or cards manufacturing to specialized agencies (EMS) is substantially different from buying such components or cards from another SDH manufacturer and then assemble the product. Petitioner compared its manufacturing activities with VMCL and Prithvi in terms of parameters such as core business activities of the companies, nature of imported item, reasons for imports, purpose of imports and whether the focus of the company was predominantly on imports of the product or manufacturing in the Country and concluded that companies such VMCL, Prithvi are de-facto working like an agent of Huawei – buying the product in CKD/SKD conditions, using Huawei technology to assemble & test the product and fix bug. VMCL/Prithvi lack technical expertise required for producing SDH equipment and has largely remained an importer of the product.
- j. An entity undertaking only incremental activities in India should be considered as ineligible domestic manufacturers, unless such entity (i) is undertaking production

activities in India sufficient enough to constitute substantial transformation of the input into the output, (ii) is not substantially importing the product under consideration and/or are not related to foreign producers of the subject goods from the subject countries, (iii) focus is not on imports with supplemental assembly line or testing operations in India. Various suppliers of SDH equipment in the Indian market can be categorized into two categories – (a) companies who undertake full product life-cycle related expenses, including technology development, research & development and manufacturing in India, and (b) companies who undertake major product related expenses, including technology development, research & development and manufacturing outside India and export finished product either in assembled or CKD/SKD condition to India along with the final assembly/testing instructions.

k. Research & development activities and production – petitioner strongly argued that a company can constitute producer only if it undertakes sufficient research & development within the Country. Refuting the arguments of other interested parties with regard to research & development, the petitioner has argued that research & development in this industry can be divided into a number of sub-categories, which includes (a) basic research required for production of an equipment having SDH technology, (b) research required to produce a new series of the product (such as STM4, STM16, STM64, STM256), (c) research required for developing a particular model in these series (such as various types of STM4 or STM16), (d) research & development required for mass production of each model. Petitioner further argued that even the accounting standards and income tax authorities do not permit charging of any research & development expense to revenue or capital account. Whether an expenditure incurred on research & development will be charged to revenue account or capitalized would depend on the nature of research carried out by the company. The company provided information from its books of accounts showing (a) bifurcation of total expenses into research design and development expenses and manufacturing expenses including testing and assembly, (b) bifurcation of total research & development expenses into amounts charged into revenue account and amounts capitalized, (c) nature of research where expenses have been capitalized and where the expenses have been charged to revenue account. Further, petitioner compared the various research & development activities done by Tejas, Prithvi, VMCL and Huawei in terms of (a) research in India with IPR resident in India, (b) Design and Development in India, (c) EMS Contract Manufacturing in India and Other Countries, (d) Assembly & Test Procedure, (e) “Specifications Development” in India, (f) Final Assembly & Testing in India, (g) Post Sales “bug fixes /enhancement /upgrades” done in India, (h) Post Sales – Spares Supply/ Technology Support in India and claimed that Prithvi & VMCL merely carry out assembly operations in India and Huawei does most of its Operations outside India.

Meaning of production –

15. Petitioner has argued activities carried out by the company constitute production and activities carried out by other companies such as Prithvi, Huawei and VMCL do not constitute production. Petitioner has advanced number of arguments which are summarized below.

- i. Meaning of production cannot be the same in all products. Production for the purpose of the present investigations shall imply that production activity which results in “production” of the “product under consideration”. Further, product is identifiable in terms of a number of parameters such as product characteristics, production technology, production process, functions & usage, pricing and customs classification. There are several steps/stages involved in the production of SDH equipment which includes conceptualization, preparation of detailed drawings and designs (blueprint).
- ii. Based on operational requirements, Tejas identifies the specific components required and develops various kinds of software elements, which would make such hardware functional with regard to the desired operation. Based on the blueprint for the hardware, and the software developed, a fully functional prototype is produced. This ‘prototype’ contains both the hardware as well as the embedded software necessary for the operation of the equipment and its compatibility with other equipment in the network, as seen through a network management system. Prototype developed by Tejas’ is tested using test specifications and testing software. A fully functional prototype is comprised of chassis, racks, PCB, cables software etc. After testing of SDH prototype instructions are given to EMS for soldering of components on PCB as per Tejas’ requirement. Various software are also provided to the EMS on a carrier media, for carrying out certain assembly line operations principally soldering activities. The soldered non functional PCB’s are supplied by EMS to Tejas manufacturing facility in India as SDH equipment until integrated and tested with Tejas’ customized components such as chassis, racks, cables, software elements. Integration activity is followed by rigorous testing, debugging and quality control. The testing, debugging & reworking activity includes development of special test jigs, test specifications and testing software which is critical in manufacturing process of SDH equipment.
- iii. Anti-Dumping Law does not define as to what would constitute “production” or “manufacture”. The scope of the term “domestic producer” would have to be inferred with reference to the purpose and object of Section 9A of the Act and the Rules made there under. Further, Rules differentiate between domestic industry and domestic manufacturer. Not all domestic producers are domestic industry.
- iv. Definition of “manufacture” under other legislations cannot be imported for the purposes of understanding the scope of domestic industry under dumping law. This principle has been well set out in the recent decision of the Hon’ble Supreme Court in the case of Qazi Noorul HHH Petrol Pump Vs. Deputy Director, ESI Corporation reported in 2009 (240) ELT 481 (SC).

- v. There are numerous statutes, which define the term “manufacture”, “manufacturing process” or “manufacturer”. These include, for example, Factories Act, 1948, Special Economic Zone Act, 2005, Central Excise Act, 1944, Consumer Protection Act, 1986, Beedi and Cigar Workers Act, 1966 and Standard of Weights and Measures Act, 1976, Foreign Trade Policy. The definition of production under these statutes are significantly different, which establishes that merely because a company pays excise duty and is therefore recognized as a producer under Excise Law should also be treated as a producer for the purpose of the present law as well.
- vi. Under Anti-Dumping Law, the considerations relevant for determining producer would be, factors such as the level of investment in India, technical expertise involved in the activities carried out, extent of value addition in India, employment levels and other costs and activities carried out in India, which result in the production of the article.
- vii. A very significant part of the value of the product is attributable to the software developed in India, which is partially loaded at the stage of assembly by the EMS, partially used for testing, debugging & reworking in India and also provided to users for functioning of SDH network. Development of software also constitutes production of goods.
- viii. The Constitution Bench of the Hon’ble Supreme Court considered whether the term “goods” would include software and, therefore, whether development of software would constitute production of goods.
- ix. Tejas develops software in India, a part of which is provided to the EMS on a carrier media and such activity constitutes production of “goods” by Tejas.
- x. Tejas also carries out substantial activities after the goods are returned from the EMS. At this stage the product is not functional as SDH equipment and is in an intermediate stage of production. Assembly and testing activities done by Tejas using “in house” developed software, test specifications & test procedures. Tejas also develops other SDH software elements like “network management software, element management software, application software etc.” which are necessary for the functioning of the SDH network.
- xi. With regard to the argument that the job worker is also a manufacturer, Tejas has argued that where the entire process is carried out by the job worker, he may acquire the status of manufacturer. However, in a case where only a part of the production activity is outsourced, and substantial activities are carried out by the manufacturer, it cannot be said that the identity as manufacturer of the finished article is lost on account of outsourcing of certain processes.
- xii. The Hon’ble Supreme Court in the case of Shree Ram Vinyal & Chemical Industries Vs. CC, Mumbai reported in 2001 (129) ELT 278 (SC) has held that assembly cannot be equated with the expression manufacture. In the case of United Telecoms Ltd Vs. CC, Bangalore reported in 2009 (241) ELT 380 (T), it has been held mobile phones do not become so, until the software is loaded by the manufacturer. Therefore, whether mere assembly would be manufacture would depend on the facts of each case. Merely because one or two of the processes

- involved in the production of the SDH equipment are outsourced, it cannot be said that Tejas is not a producer of SDH equipment
- xiii. Under the normal definition of manufacture, the activities carried out by VMCL and Prithvi would not have constituted manufacture, but for the deeming provisions under the Central Excise Act. A deeming provision is to be construed strictly and only for the purpose of the Act in which it is enacted.
 - xiv. Petitioner provided a comparative of the various activities done by Tejas and Importers. Petitioner argued that production for the purpose of the present product implies activities such as Specification development and designing of Hardware and Software based on research & development carried out, collaborative components development with suppliers, Proto Type Product Development, Development of Network Management Software in India, Development of Element Management Software in India, Development of Test Procedures, Test Specifications and Testing software in India, Product verification w.r.t the specifications and quality of Hardware and Software in India, Complete Verification w.r.t the specifications and quality of the complete SDH proto type (hardware + software combined), Manufacturing of boards, Installation of Software in SDH Hardware, Final Assembly & Testing of the complete SDH box(hardware + software), Post Sales bug fixes”, Post Sales “product features enhancement /upgrades”, Post Sales – Spares Supply/ Technology Support and claimed that Tejas performs all these operations necessary to be considered as a producer, whereas Prithvi, VMCL merely carry out assembly operations in India. Huawei does most of its operations outside India.
 - xv. In addition Tejas also does rigorous assembly and testing based on the “Test Procedures and Specifications” developed in India by Tejas product design team in India. Other importers like Prithvi and VMCL do not do any technology development or R&D for the subject products and even the final assembly and testing of imported products is done as per specifications given by their foreign technology providers/ manufacturer based in subject countries.
 - xvi. Tejas has made huge investments to establish customer support and service centers in India. Tejas is capable of doing “installation services, enhancements, bug fixes” for its products within India. By contrast, importers like Prithvi, VMCL don’t have technological capability to do “enhancements”, “bug fixes” capabilities within India and they rely on their foreign technology providers/manufacturers to provide “enhancements” & “bug fixes”. They don’t even have their own “product documentation” (they merely photocopy the one provided by Huawei, including Huawei’s copyrights), which establishes the fact that they are only importers and traders, rather than a domestic producer of SDH.
 - xvii. Tejas identified various components and their procurement & development in or outside India and argued that taking help of EMS is substantially different from taking help in design & development itself. In case of VMCL and Prithvi, it is de-facto Huawei who is the producer of the product concerned, with assembly operations (if any) left to the VMCL and Prithvi. In case of Tejas, the company is the producer, with soldering operations left to EMS contractors.

- xviii. With regard to activities of EMS, petitioner submitted that it is well accepted globally that EMS companies are only a contract manufacturer, with no ownership of product rights, IPR or knowhow, and they are only job-workers, who provide soldering/testing services to electronic products from different industries.
- xix. Petitioner has also relied upon USITC consideration of six factors to determine whether a company is a producer of product concern or not. These are
- the extent and source of a firms capital investment;
 - the technical expertise involved in U.S. production activity;
 - value added to the product in the United States;
 - employment levels;
 - quantities and types of parts sourced in the United States; and .
 - any other costs and activities in the United States leading to production of the like product, including where production decisions are made.
- xx. Petitioner has also referred to emerging jurisprudence in various books Dumping and Subsidies by M/s. Stranbook & Hooper, The Law and Procedures Governing the Imposition of Anti-dumping and Countervailing Duties in the European Community by M/s. Clive Stanbrook and Philip Bentley, A Handbook on Anti-dumping Investigations by Judith Czako, Johann Human and Jorge Miranda, Cambridge University Press, Antidumping and Countervailing Duty Handbook of the United States International Trade Commission. Petitioner also referred to a number of decisions of the EC, India and US authorities.

Submissions by Exporters, Importers and other interested parties

16. Following opposing parties have advanced their arguments on product under consideration and like article

- i. Huawei Technologies Co. Ltd., China PR,
- ii. Huawei Technologies India Pvt. Ltd,
- iii. Huawei Telecommunications (India) Pvt. Ltd,
- iv. MRO-TEK Ltd., Banglore (importer),
- v. Juniper Networks Pvt. Ltd., India, Aircel Ltd.,
- vi. Vodafone Essar Ltd.,
- vii. Bharti Airtel Ltd.,
- viii. CCCME,
- ix. Prithvi Information Solutions Ltd.,
- x. Vuppalamritha Magnetic Components Ltd.,
- xi. ECI telecom Ltd.
- xii. Hangzhou ECI Telecommunications Co. Ltd., China PR
- xiii. ECI Telecom India Pvt. Limited,
- xiv. RAD Data Communications Ltd.,
- xv. Alcatel-lucent Shanghai Bell Co.,
- xvi. Tatatele Service., Fiberhome Telecommunications Technologies, Co. Ltd.,

- xvii. ZTE Corporation Ltd., China PR,
 - xviii. UT Starcom,
 - xix. FIBCOM,
 - xx. Ciena, USA,
 - xxi. BSNL,
 - xxii. Tirumala Seven Hills
 - xxiii. EMS Vendors (Celestica, Smile and Solectron)
 - xxiv. Component Vendors (Arrow , Avnet)
17. Submissions made by these interested parties are collectively summarized below.
- i. Applicant itself is an importer of the subject goods and has no locus of filing the present petition as the applicant gets significant parts of components outsourced to specialized producers called EMS.
 - ii. The applicant has been importing subject goods from Celestica, an EMS, which operates through numerous offices in China PR. Since the applicant has itself imported the goods from subject countries, it cannot represent “domestic industry” in this case.
 - iii. The applicant’s claim for qualification for “Domestic Industry”, based on the criterion of R&D is defective since R&D is not the sole factor to be used in this regard. Reference is given of paras 7.112, 7.114 and 7.124 of WTO Panel Report WT/DS/337/R. These paras deal with the interpretation of Article 4.1 of the Anti-Dumping Agreement. It has been thereby contended that all categories and group of producers shall be considered as forming domestic industry.
 - iv. BSNL also classifies the applicant as an importer.
 - v. Petition pertains to some products STM 256, STM 64 and Digital Cross Connects. These are such products which the applicant neither manufactures nor sells. Therefore petitioner also has no Locus.
 - vi. The applicant’s claim of having 84.7% share in Indian production during the POI is misleading and incorrect.
 - vii. Petitioner has given no proof for its claim that M/s Measurement & Controls Limited supports its petition.
 - viii. The ‘letter from undisclosed association’ has wrongly classified MCI, BEL and ITI as Indian Producers. MCI has not even sold single unit of subject goods till date. BEL and ITI work on the same model as HFCL and Prithvi.
 - ix. Domestic industry producing the like article has not been properly identified and standing to file the petition has not been established.
 - x. Petitioner has made artificial distinction between themselves and other Indian producers. Other producers participated in tenders floated by MTNL and BSNL and won tenders too. However, based on logic given by Tejas, they should be the only producer and only participating company in MTNL, BSNL tenders.
 - xi. Winning of MTNL, BSNL tender by a producer itself shows that they are producer of product concern. Determination whether a company is a producer or not based on R&D carried out is absurd and irrelevant for determination for the purpose of Rule 2(b).

- xii. Rule 2(b) defines domestic industry as “the domestic producers as a whole engaged in the manufacture of the like article and activity connected therewith. Tejas does not pass this test.
- xiii. There is no definition of “manufacture” in Indian ADD Rules. Some guidance on scope the term manufacture can be derived from the interpretation of the term by the Supreme Court of India with respect of Section 2(f) of the Excise Tariff Act 1944.
- xiv. Supreme Court stated that as long as a new marketable commodity emerged as a result of the manufacturing activity, a manufacture was deemed to have taken place.
- xv. There is a little distinction between the activities carried out by the petitioners and some of the other members of the domestic industry to whom petitioner classified as importers. Petitioner cannot be defined as domestic industry because of the fact that it sources its components from outside and uses services of contract manufacturing for its production.
- xvi. It is incorrect to claim that only those who have significant R&D activities should be treated as domestic industry. Legal requirement is production and not extent of R&D.
- xvii. There is no whisper in the petition as to which parts and components petitioner produces in India, in absence of which the authority could not have examined whether the petitioner produces all products which are included within the scope of domestic industry.
- xviii. Authority should have sought information with regard to parts and components being imported by the petitioner.
- xix. Tejas, in its petition, provided selected list of Indian producers and has deliberately excluded number of producers (FIBCOM etc.)
- xx. DA’s approach of ignoring those engaged in ‘incremental activities’, is untenable, as ‘manufacturer involves any set of activities by which PUC is brought into life’. [BPL India (Supreme Court) and Majestic Auto. (CESTAT) cases relied upon]
- xxi. Rule 2(b) does not require any R&D based classification. It simply uses ‘domestic producers engaged in the manufacture of like article and any activity connected therewith’
- xxii. Huawei undertakes huge R&D activities in India.
- xxiii. In view of substantial imports by Tejas, the nature of production activity carried on by Tejas has not been addressed by the petitioner.
- xxiv. Tejas is required to prove that it produces parts and components, which have been sought to be included in PUC whereas it has admitted contrary.
- xxv. Contrary to Para E of the Tejas petition, which says investment in Plant & Machinery is low, Para 68 of PF states that petitioner has made significant investments in manpower as well as plant and equipments.
- xxvi. Tejas is required to explain that what components had been imported, and why they have been treated as having dual use.

- xxvii. ICs inbuilt in the PCBs are specifically designed for SDH Equipments therefore it is difficult to understand that how can they have dual use.
- xxviii. Without visiting Tejas factory (as admitted during Public Hearing), the Authority could not have come to a conclusion that Tejas has all the required capabilities. Whereas as per Para 43 of PF, the said conclusion has been arrived at after a detailed investigations at petitioner's premises.
- xxix. The production process of the petitioner is primarily in Thailand. Even Tejas 2007-08 Annual Report acknowledges the fact.
- xxx. A number of SDH equipments have been imported by Tejas. It can also be inferred that Tejas does not even have facility to repair the "imported goods" as some of the entries in this list are described as "repair goods"
- xxxi. Part and components are ultimately sourced from China PR, Exports from Thailand shall not be accepted at their face value. [Reference made to DGAD-Rubber Chemicals case].
- xxxii. TEMA, which is another leading industry association, in their letter dated 3-Dec-09 has also strongly supported petitioner's stance about the definition of who constitutes domestic industry and their support to the interim decision of the Authority. Clearly traders/assemblers cannot be considered domestic industry.
- xxxiii. Tejas claim of having 84.7% share in Indian Production during POI is very doubtful, as Tejas itself has admitted that it commands 16% market share, and as per Voice & Data that of ECI is 30%, of Alcatel is 18%.
- xxxiv. Tejas has admitted that it has been importing some components/sub-assemblies from other countries therefore it cannot deny that it has imported the alleged dumped product, and hence it cannot constitute domestic industry.
- xxxv. Foreign shareholding in the companies cannot be used as a basis to exclude domestic producers.
- xxxvi. While relying upon footnote 289 of WTO Panel Report DS337, DA did not expressly hold that other Indian producers couldn't be considered as Producers.
- xxxvii. USITC decision of Colour Television Receivers is based on specific provisions of law of a particular country, are alien standards for India. Even as per six standards referred to in that case Huawei & VMCL are better placed. Furthermore, R&D is not at all a yardstick under the material relied upon nor under Indian Law.
- xxxviii. If the conclusion of USITC decision of Colour Television Receivers is relied upon, the other Indian producers should also be considered as part of DI.
- xxxix. When Indian law on "Domestic Industry" is already present it is unnecessary to apply the alien standards that too which do not deal with AD law at all. The IPR material relied upon by Tejas is merely an opinion of a Private body in US, and has no force of law.
- xl. In the Tejas paper-book the reference made to an article "Huawei India Footprint: Milestones", does not support petitioner's case at all, as it makes

- evident that Huawei India employs more than 2000 R&D engineers and has invested USD 200 million, and has 7 offices in India.
- xli. Tejas has argued that BSNL does not allow any party to participate in the tender process unless the real manufacturer (OEM) participates. However, this very document reveals that technology transfer is well recognized part of the given market. Further definition of OEM nowhere envisages that OEM alone is manufacturing the entire product.
 - xlii. As per Supreme Court cases of Delhi Cloth and General Mills and Ujagar Prints, payment of excise duties implies that the entity concerned is engaged in manufacture/production and therefore Petitioner's argument at the Public Hearing that payment of excise duties is not relevant, deserves to be ignored and is clearly meant to obfuscate the issue.
 - xliv. Assembling cannot be treated as 'an activity incidental' to manufacturing of the product.
 - xlv. Tejas has made contradictory arguments that on one hand it says that foreign producers do R&D in their country and have Indian offices for doing incremental activities only. On the other hand it claims that foreign producers have opened development centers in India to take advantage of low labor cost in India and IP created by these companies resides in foreign countries.
 - xli. Coral telecom and TEMA do not get mentioned in PF, hence should not be given opportunity to make submission now.
 - xlii. Case referred to Union of India vs Delhi Cloth and General Mills (1963) for defining "Manufacturing" is relied upon, which establishes that the meaning of domestic producer accorded by the Authority is incorrect.
 - xliii. 27. 66% of components used by Tejas in STM 1,4, 16 are imported and are not of dual use. Tejas does not have any other production activity apart from using them in SDH.
 - xliiii. Claim of Tejas having 86% of production in India of like article is flawed. Tejas has admitted that cards are assembled outside India and visit to any manufacturing plant will bring this out clearly that cards assembly is the core of manufacturing while testing and R&D are incidental activities.
 - xliii. Tejas has classified all other companies as non-manufacturers based on self made matrix. If Tejas argument of IPR owner to be the true manufacturer is accepted, then all producers who do manufacturing by paying royalty will cease to be manufacturer.
 - 1. Tejas has admitted that it imports components then its imports cannot be viewed differently from imports done by VMCL/Prithvi only because Tejas does backward integration activities like R&D. As per Reliance case, it is clear that backward integration activities like R&D cannot be considered necessary to call a company as a manufacturer.
 - ii. Mere undertaking R&D and having its own production catalogue cannot be termed as manufacturer. Further, producers who have full backward integration alone cannot be treated as producers in India as in case of Reliance Industries.

- lii. The citations and case laws on what constitutes production for the purpose of antidumping duty investigations are misleading and none of the cases referred to would apply.
- liii. The provisions contained in US Law are not contained in Indian Law.
- liv. EMS services are not merely soldering services. Since the applicant exercise full control over EMS in Thailand so they cannot say they don't have a related party in Thailand.
- lv. Tejas has failed to prove why payment of excise duty doesn't amount to manufacturing.
- lvi. Designated authority should have done polling to grant domestic industry status to Tejas.
- lvii. Since products are custom made, Tejas won't be able to meet entire demand in India.
- lviii. Tejas has deliberately left out some Indian producers from the list of domestic industry. Authority cannot selectively apply discretion in the same case.
- lix. Tejas, in its petition, provided selected list of Indian producers and has deliberately excluded number of producers (FIBCOM etc.)
- lx. DA's approach of ignoring those engaged in 'incremental activities', is untenable, as 'manufacturer involves any set of activities by which PUC is brought into life'. [BPL India (Supreme Court) and Majestic Auto. (CESTAT) cases relied upon]
- lxi. Rule 2(b) does not require any R&D based classification. It simply uses 'domestic producers engaged in the manufacture of like article and any activity connected therewith'.
- lxii. Tejas is claiming to be the DI when it is a company predominantly owned by third country shareholders, which undertakes production activities through outside EMS does not qualify to be a DI, & which actually imports subject goods.
- lxiii. Commenting on the reliance of Tejas on the definition/meaning of production accorded by the US authorities, the interested parties have argued that when Indian law on "Domestic Industry" is already present, it is unnecessary to apply the alien standards that too which do not deal with AD law at all. The IPR material relied upon by Tejas is merely an opinion of a private body in US, and has no force of law.
- lxiv. Reliance by Tejas on an article titled "Huawei India Footprint: Milestones", does not support petitioner's case at all; as it makes evident that Huawei India employs more than 2000 R&D engineers and has invested USD 200 million, and has 7 offices in India.
- lxv. As per Supreme Court cases of Delhi Cloth and General Mills and Ujagar Prints, payment of excise duties implies that the entity concerned is engaged in manufacture/production and therefore Petitioner's argument that payment of excise duties is not relevant deserves to be ignored and is clearly meant to obfuscate the issue.

- lxvi. Assembling cannot be treated merely as ‘an activity incidental’ to manufacturing of the product.
- lxvii. Even though DA has recognized that Tejas is importing from China PR, yet it has chosen to regard it Tejas as domestic industry. Question of the percentage of such imports vis-à-vis total cost of production is extraneous to the Anti Dumping Rules.
- lxviii. Tejas argued that inclusion is by default but exclusion has to be established. Going by this logic other domestic producers who are making imports deserve to be treated with a similar flexibility as Tejas is seeking for itself
- lxix. All the Indian manufacturers including Tejas are dependent upon import in respect of part and components and there is no DI for parts and components
- lxx. There is no determination that whether Tejas constitutes Domestic Industry in respect of each of the articles covered under the PUC.
- lxxi. With regards to the issue of “standing” VMCL & other Interested parties have been denied full opportunity
- lxxii. Supreme Court in Reliance Industries vs. DA has held that backward integration of manufacturing process is not relevant for the purpose of determining ‘domestic industry’. Therefore research and R&D are irrelevant in this regard.
- lxxiii. Consequent to inclusion of parts, components, accessories etc, Prithvi and other similarly situated domestic producers have been illegally excluded from DI.
- lxxiv. Indian Rules do not lay down a condition of “substantial transformation” for determining whether an entity can be regarded as DI. Assembly of parts and components imported in CKD/ SKD form into fully built up equipment amounts to manufacture. Further, payment of excise duty is an un rebuttable and a definitive proof that manufacture has been carried on. [BPL India, Naren Tulaman cases relied upon.]
- lxxv. Costs related to R&D, IPR ownership in India etc. are irrelevant for purposes of payment of excise duty as well as for determining DI. As per AS-26 by ICAI, development and design expenses ought to be capitalized as assets and do not form part of the costs.
- lxxvi. It is evident from list of processes undertaken by Tejas on pages 17 & 18 of Tejas Paper-book, that it is not the actual manufacturer.
- lxxvii. If pre-manufacture costs are excluded the imports by Tejas would constitute a very high proportion in its total costs, thus it is clear that Tejas itself is a major importer.
- lxxviii. Mandatory certification of no self imports or no relationship with exporters/importers was not provided for each of accessories, associated software, parts and components etc.
- lxxix. Since Ministry of Finance is presently treating all such producers as producers of SDH, the investigatory arm viz. Ministry of Commerce could not have artificially alerted well settled principles of law laid down by the Hon’ble Supreme Court and Central Government.

- lxxx. Tejas is not in the merchant market of accessories, associated software, parts and components.
- lxxxi. The DA should disclose the correspondences, if any, to other domestic manufacturers and the basis of its decision to exclude from DI.
- lxxxii. DA has also not recorded reasons in support of exercise of discretion under Rule 2(b) in favour of the Applicant when they were found to be an importers.
- lxxxiii. The CMAI letter is undated, unsigned and not on the letterhead. It is surprising to find that the Authority's conclusion is merely based upon CMAI letter and there is no other material placed on record as to what further enquiry was conducted by DAs. None of the supporters were present at the hearing or have till date filed any information.
- lxxxiv. DA's conclusion that since there are no imports of complete SDH equipments by Tejas, to that extent Rule 2 (b) is not attracted and the petitioner cannot be considered as importer, is legally incorrect specially when Tejas itself is engaged in assembly of parts and components sourced from outside India including China PR
- lxxxv. Scope and definition of Domestic Industry needs to be reassessed by DA as other Indian producers are also engaged in assembly line operations, testing and selling in India, which is similar to Tejas' activities.

Proceedings before the Hon'ble High Court of Andhra Pradesh at Hyderabad

18. M/s Vuppalamritha Magnetic Components Ltd. filed a petition being Writ Petition No 22155/09 before the Hon'ble High Court of Andhra Pradesh at Hyderabad seeking a direction or order in the nature of a writ of mandamus declaring the initiation notification dated 21.04.2009 and the preliminary findings dated 07.09.2009 as being illegal, arbitrary and unlawful and consequently, setting aside the same, on a number of grounds. M/s. Prithvi Information Solutions Ltd. and M/s M/s. Tata Teleservices Ltd. filed impleadment application and challenged the notifications. Tejas preferred two SLP against the orders of the Hon'ble High Court. The Authority also preferred an SLP before the Hon'ble Supreme Court. The Authority has carefully considered various arguments raised by the writ petitioner and other parties in these writ petitions and has examined the issues raised by these interested parties in the light of the legal & factual position. The brief of the cases and the arguments raised by the interested parties are given below.

19. Following issues were raised in these Writ Petitions

- i. Prithvi and VMCL argued that request for justice was ignored by DGAD, proceedings are impugned. Though Prithvi and VMCL are one of the largest manufacturers of optical transmission equipments but they were not considered as domestic industry.
- ii. Product under consideration and like article definitions is not right. Product definition is too wide. Several products which were not manufactured by Tejas during POI have also been included within the scope of the product under

- consideration. Inclusion of product types such STM64, STM 256, DWDM, DXC, Core Director, etc. have been referred in this regard.
- iii. Even STM 1/4/16/64 supplied by Tejas is not the same products as the imported product and there are significant differences between the two.
 - iv. Duty is imposed on HS Code 851762, which includes DWDM.
 - v. Product under consideration includes several components and CKD/SKD sets which are not manufactured by Tejas.
 - vi. Tejas has so defined the product that Prithvi which manufactures other optical transmission product is deliberately left out.
 - vii. Prithvi and VMCL are manufacturer as per excise and customs data.
 - viii. BSNL has asked DGAD to terminate the investigations because it results in Tejas monopolizing the market. BSNL has also stated that Tejas has never participated in STM 64 Tender.
 - ix. Tejas allegation that Huawei dropped prices by more than 50% in a year is wrong.
 - x. Tejas has monopolistic attitude.
 - xi. All the manufacturer in India import components and do assembly in India. So by including parts into product scope. Tejas has tried to exclude Prithvi and VMCL from being considered as eligible domestic producer.
 - xii. Tejas has not provided any documents to prove that they are major producers. Letter given by CMAI is wrong. Cedentials of CMAI are doubtful.
 - xiii. Tejas is not a majority manufacturer and its markets share is just 20% as per ICRA, Gartner and Voice and data.
 - xiv. Tejas also imports component but is considered as eligible domestic industry while Prithvi and VMCL were not considered as domestic industry. DGAD has relaxed rules for Tejas saying that Tejas has imported dual usage components without considering that Tejas has a dedicated use of components i.e. for manufacturing of SDH Telecom equipments.
 - xv. Tejas imports from Malaysia and Thailand. Imports from third country (other than China PR/Israel) should also amount to the party being considered as importer, because under rule 2(b) country of imports is not specified. Even if Tejas imported from third countries, Tejas is not eligible to be treated as domestic manufacturer.
 - xvi. Tejas uses services of EMS. The Authority should check from where these EMS companies import components. It is highly likely that EMS companies import components from China PR.
 - xvii. A party which is not manufacturing components and importing the same from other countries including China PR cannot ask for duty on components.
 - xviii. Duty on components with dual usage will create operational problems and confusions.
 - xix. DGAD has not considered Prithvi and VMCL as eligible manufacturers because they don't do any "substantial transformation" of inputs. No concept of "substantial transformation" exists in Anti Dumping rules.

- xx. DGAD has wrongly considered R&D, EMS contract manufacturing, post sales and bug fixes as part of manufacturing activity. These activities are not relevant to determine an eligible manufacturer.
- xxi. BSNL in their letters to DGAD have stated that Tejas does not qualify as domestic industry and Tejas doesn't manufacture STM 64.
- xxii. Telecom Industry is import dependent since high quality equipments are not available in India. Curb on imports will increase cost for industry. CKD and SKD imports will also affect the industry
- xxiii. DGAD under pretext of confidentiality has suppressed information in preliminary findings thus creating ambiguity and lack of clarity on their approach during preliminary findings.
- xxiv. Contracts are awarded by tendering process and rates are quoted before imports. So no causal links exist between landed value of imports and injury to industry.
- xxv. 9 months POI is against guidelines of anti dumping practice.
- xxvi. Authority has not done separate determination of injury on parts and duty on SDH boxes is applied on parts. This is impermissible under Rule 4(b) and 17(d).
- xxvii. PCN methodology to standardize the product is wrong because by very nature product cannot be standardized.

20. The Hon'ble High Court vide three interim orders dated 21.10.2009, 11.11.2009 and 18.11.2009 in writ petition no. 22155/2009 stayed the anti dumping proceedings at the preliminary stage. Tejas filed SLP No. 32870-32875/2009 before Hon'ble Supreme Court, impugning the aforesaid orders of the Hon'ble High Court. This Hon'ble Supreme Court was pleased to stay the aforesaid impugned orders and direct the Hon'ble High Court to expeditiously hear and dispose of the pending writ petition.

21. The Hon'ble High Court vide order dated 22.01.2010 in WP 22155/2009 set aside the Initiation Notification dated 21.04.2009 and the Preliminary Findings dated 07.09.2009 on, inter-alia, the following grounds

- a. the assumption of jurisdiction by Designated Authority depends on the applicant satisfying that it is a domestic industry as defined under rule 2(b) of the rules and concluding that in the absence of the qualifications as to domestic industry, the assumption of jurisdiction by Designated Authority, initiation of investigation, preliminary findings and final findings would be ex facie without jurisdiction and any investigation would amount to error in the exercise of the jurisdiction.
- b. Rule 2(b), 5(1), 6, 8, 12 and Annexures I and II of the Rules contain no burden on VMCL or on interested parties and that the initial burden is always on Tejas to approve that they constitute domestic industry, that in spite of imports by themselves, they do not constitute importer and that by reason of dumping for the article, they suffered injury; and the Designated Authority cannot expect those manufacturers/ suppliers/ dealers of the same article to prove the negative.

- c. The DA erroneously assumed jurisdiction insofar as Tejas did not fall within the definition of a domestic producer and was really an importer. Further Prithvi and VMCL were importers of SDH equipment in CKD/SKD form from Huawei of China PR, they were also "manufacturers" of SDH equipment because they allegedly "assembled" the equipment and paid excise duties.
- d. Petitioner Tejas was not a "domestic producer" of SDH equipment for purposes of Rule 2(b) of the Anti-Dumping Rules and, therefore, ineligible to file an anti-dumping petition on the ground that it had imported certain components forming part of the Product under Consideration (PUC) as defined in the Initiation Notification. To qualify as a "domestic industry", the domestic producer must be engaged in the manufacture of the product to the extent of a "major proportion", i.e., the producer must show that he manufactures all the necessary parts, accessories and components of the PUC.
- e. VMCL is a manufacturer on the grounds that (a) VMCL is an assessee under Central Excise Act (b) an industry cannot be a manufacturer for levy of central excise and cannot cease to be a manufacturer for the purpose of anti dumping law, (c) mainly because it gets testing software from Huawei and uses its brochure, it does not cease to be a manufacturer, (d) the process involved is certainly manufacturing, (e) in any event, when the impugned preliminary findings and the provisional levy directly affect them, VMCL cannot be denied standing on the ground that they are not manufacturers
- f. The tariff classification under Chapter 85 of the Custom Tariff Act deals SDH under one sub-heading and other multiplexers, optical multiplexer software under different sub-headings and that it is submitted by the counsel that the capacity of SDH equipment differs depending on the specification. It can range from 155 Mbps for STM-1 to 40 Gbps for STM-256. Therefore, the DA while inviting response from interested parties/exporters importers/domestic agencies indicated code table for creating of PCN for SDH equipment for all capacities and other equipment. It only deals with STM-1, STM-4, STM-16 and STM-64. Therefore, from all these materials available, it is not clear as to whether SDH equipments manufactured by VMCL are alike or identical to the products manufactured by Tejas.
- g. DA denied the valuable rights of interested parties and rendered his exercise illegal by permitting Petitioner Tejas to keep certain business proprietary information confidential.

22. Designated Authority vide Special Leave Petition No. 7675 of 2010 (and separately, Tejas Networking Ltd. vide Special Leave Petition No. 7254 of 2010 and Coral Telecom Ltd vide Special Leave petition no. 4589 of 2010), challenged the impugned orders dated 22.01.2010 of Hon'ble High Court of Andhra Pradesh at Hyderabad before the Hon'ble Supreme Court of India. After hearing the parties, the Hon'ble Supreme Court vide its order dated 19.03.2010 was pleased to order as follows:

"Since these matters involve economic consequence, we are required to expeditiously decide these cases finally as they involve interpretation of Anti-Dumping Laws. The

parties are given liberty to mention these matters for a fixed date of hearing after the hearing of Civil Appeal No.3453 of 2002 (Jindal Stainless Limited & anr. Vs. State of Haryana & Ors) by the Constitution Bench is concluded. In the meantime, we direct the importer-companies herein to pay interim duty on the following equipments:

- 1. STM-1*
- 2. STM-4 (In SKD, CKD sub assembly and/of parts and components)*
- 3. STM-16*
- 4. STM-64 and*
- 5. STM-256*

However, it is made clear that DWDM stands excluded from the above list. Subject to above, the impugned judgments of the High Court are stayed.

The Designated Authority is directed, however, to proceed with the hearing and adjudication of the matter and pass final orders which will be subject to the decisions in these special leave petitions.”

23. The Authority notes that interested parties opposing the imposition of ADD including, among others, VMCL, Prithvi and Huawei Technologies India at no point of time provided any information to the Authority either on their manufacturing capacities or imports made by them. Although the onus is always on the interested party to provide verifiable information on claims and counter claims, the Authority, for the sake of clarity, sought information from these interested parties vide letter dated 20th July, 2010, specifying a deadline. In response thereto, while strongly opposing the information being called for, VMCL and Prithvi sought extension in time to provide the requested information. The Authority, taking into account the complexity of the case, allowed extension to these two parties for submission of the relevant information. Huawei India however did not seek any extension but submitted information, though belatedly.

24. The information sought by the Authority from these three interested parties is summarized below.

- a. Names, addresses and production of companies in India, who, according to these parties, are producers of SDH equipments;
- b. Justification with verifiable evidence for the arguments that (i) SDH equipment produced and supplied by different parties are different products or otherwise incomparable, (ii) STM-64, STM-256 and DXC are different products and should be excluded, (iii) research & development activities relied upon by the petitioner should be considered as pre-manufacturing activities and should not be basis for defining production.
- c. Details of Research & Development activities, including its nature, carried out by these companies, bifurcating into product under consideration and other products.
- d. Nature of business activities carried out by these companies.
- e. Copies of Annual Reports.

- f. Activities that the company should undertake in order to qualify as a manufacturer as far as the product under consideration are concerned.
- g. Information on activities being carried out by Tejas outside India, particularly with regard to allegations of their ineligibility as a domestic manufacturer.
- h. Difference and similarities between DWDM and SDH Multiplexer.
- i. Justification for exclusion of parts & components and unassembled or disassembled form of the product.

25. The information /submissions made by Prithvi / VMCL and Huawei have been considered in the present Final Findings Document.

26. Apart from these submissions, these interested parties sought a fresh Public Hearing on the grounds that the Authority has changed. Some other parties also sought public or personal hearing. The claims made by these interested parties were therefore examined by the Authority.

27. The Authority has carefully considered the submissions made by these interested parties before the Hon'ble High Court and in their submissions before the Authority during the course of the present investigations. These were appropriately addressed in the disclosure statement as well as in this Final Findings Document.

Examination by the Authority

28. Various submissions made, which are required to be addressed by the Authority can be broadly categorized into following:

- A. Product under Consideration and issues related to it.
- B. Domestic Industry and issues related to its standing, imports by DI etc.
- C. Whether fresh Public Hearing sought by some of the interested parties is mandatory.

Product Under Consideration

29. The Authority stated as follows in the Preliminary Findings with regard to the product under consideration.

“5. The product under consideration in the present investigation is “Synchronous Digital Hierarchy transmission equipment, its accessories, associated software and its essential parts & components, in assembled, CKD, SKD form or fitted with eventual broadband/cellular equipment”.

6. SDH transmission equipments are also known as multiplexers, Add Drop Multiplexers (ADM), Multiple Add Drop Multiplexer (MADM), digital cross-connects. Populated PCBs, Power supply, Lasers, Chassis and software meant for SDH

transmission equipment, etc. consist of essential parts of a SDH transmission equipments and are within the scope of the product under consideration provided the said components are meant for SDH transmission equipment application only.

7. SDH transmission equipments can be bought either as transmission equipments or forming part of another equipment e.g., broadband and/or cellular (both GSM and CDMA) equipment. SDH transmission equipments forming part of broadband and/or cellular equipment are also within the scope of the product under consideration.

8. Product under consideration is essentially an assembly of a number of electronic components and/or electronic printed circuit boards, designed to perform the intended function of multiplexing for combined lower speed signals into high speed signals for transmission through optical fiber over short or long distances. Since, among other applications, these are installed at Base Transmission Stations, switch exchanges and other point of presence, SDH equipments installed at different locations may differ in terms of the associated properties. Different SDH equipment are comparable in term of essential product characteristics including physical and optical, production technology, manufacturing process, R&D Development, software capabilities, functions and usage, etc. Accordingly, various SDH equipments have been regarded as one like product for the purpose of present investigation.

9. The product under consideration can be imported either as complete equipment, or in CKD, SKD form. Further, a number of accessories are required for connecting/installing SDH transmission equipment in the network (E1 cables, PCM cables, power cables, racks, workstations etc.). Software is an integral part of these equipments, which may be bought either as a part of the equipment or separately. These all are also within the scope of the product under consideration.

10. It is noted that there are a number of components required for production of the product under consideration which have multiple alternate usage. It is therefore, clarified that with regard to the components, the scope of PUC is only such components and parts having a dedicated application with regard to the PUC alone. In other words, the scope of the product under consideration extends to components/parts only if the same have a dedicated use in production of SDH equipment.

11. the product under consideration is classified under Chapter 85 of the Customs Tariff Act, 1975. It is further classified under the heading 851762 of schedule-I of Custom Tariff Act as per Indian Trade Classification. The classification is, however, indicative only and is in no way binding on the scope of the present investigation.”

30. A number of interested parties have disputed the scope of the product under consideration on a number of grounds. The Authority has carefully considered arguments raised by various interested parties supporting or opposing the anti-dumping duties and comes to the following conclusion. A basic issue which arises for consideration in the present

case is the meaning of production. The issue has arisen in view of the peculiarities of the product, production process followed and the nature of activities carried out by companies who are engaged in manufacturing/assembling the product under consideration in India, China PR and third countries. After careful examination of arguments raised by various interested parties, the Authority comes to following conclusion:

- i. It would be appropriate to consider the meaning of production on case by case basis. A universal definition of production would not be appropriate. In fact, different laws and regulations have defined/treated different meaning of production, as is evident from different meaning/interpretation of production under different laws. The Authority holds that the meaning of production is required to be considered having regard to the specific law and regulation, the specific definitions and interpretation given therein and the objective and purpose for which the law has been created. For the purpose of anti-dumping duties, in the present case, for example, it would be grossly inappropriate to hold that a company is a domestic producer merely because it is undertaking certain incremental production activities. In fact, any such interpretation would lead the law becoming inoperable. The Authority, therefore, holds that a company could not be considered as a domestic producer merely because it has paid excise duty. The Authority notes that under excise law, goods are considered to have been produced even if incidental or ancillary activity for the completion of article is conducted including packing or repacking in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. However, for the purpose of Anti dumping law, it cannot be said that such production activity are sufficient to constitute production. It will lead to significant multiplicities and double accounting either in imports or in domestic production.
- ii. For the purpose of anti-dumping law, the Authority holds that goods must be considered to have been produced only if the inputs undergo a “substantial transformation” into output. Widely acknowledged practice of the investigating Authorities is to consider parameters such as physical and technical properties, production technology, manufacturing process, plant & equipment, function & uses, pricing, consumer perception and customs classifications in order to consider whether the two articles are same or different. Further, the article may eventually be produced after following a small or long process and might be produced in one or more stages before it is eventually transformed into a form where it can constitute an article produced for the intended purpose. Merely if some inputs have been processed at the intermediate stages, where they have no use (and can perform no functions) but for consumption in the eventual product, the intermediate may not be considered as an article, even if it is saleable at that stage. From this point of view, the Authority holds that production and sale of SDH equipment or assemblies, sub-assemblies which are produced during the production process of making SDH equipment cannot be considered as a distinct product for the present purpose.

- iii. The Authority extensively examined the nature of production activities carried out by the petitioner and foreign producers. On the spot verifications was specifically focused, inter-alia, on this aspect. The Authority has considered the argument of various interested parties in this regard. The Authority comes to the following conclusion with regard to what constitutes production and what kind of production activities are required to be included in manufacturing of SDH equipment. The various steps involved in making SDH equipment are as follows:
- Research>> Product Conceptualization>> Design & Drawing>> Development of the technology>> Conceptualization and understanding of functionality>> Product blue print preparation>> Development of associated software>> Product proto type development – Hardware and Software>> Component Procurement>>Populating the Board / Card as per the design>>Soldering and EMS activities>> Integration>> Preparation of Test Jigs>> Assembly>> Testing>> Product Support and Bug fixes.*
- iv. It is possible that some of these steps might involve one or more sub-processes which might be carried out independently, or, some of these processes may be integrated by some company.
31. Having regard to the above, the Authority reviewed the scope of the product under consideration as defined in the preliminary findings. The Authority holds as follows with regard to status of various interested parties-
- (a) Tejas – The production activities carried out by Tejas are tabulated below.
- a) research
 - b) product conceptualization
 - c) design & drawing
 - d) development of the technology
 - e) conceptualization and understanding of functionality
 - f) product blue print preparation
 - g) development of associated software
 - h) product prototype development-hardware and software
 - i) component procurement
 - j) soldering and EMS activities
 - k) integration
 - l) preparation of test jigs
 - m) assembly
 - n) testing
 - o) product support and bug fixes
32. Considering the nature of production activity undertaken by Tejas, the Authority holds that Tejas constitutes a domestic manufacturer.
33. As regards Prithvi & VMCL, the production activities carried out by Prithvi & VMCL in India, as available to the Authority based upon source information are assembly, testing and product support and bug fixes. Admittedly, these companies undertake only assembly operations in India, which activity constitutes very insignificant activity. The input does not

undergo a “substantial” transformation into the output. The inputs consumed by the company do not have distinguished character, function/use and are employed for production of the product under consideration.

34. The Authority notes that as per the details furnished by CIENA, a US based company, who have also participated in the investigation, the production activities carried out by them in USA are tabulated below.

SN	Activity	Place of activity (Inside/outside/both)
1	Research	USA
2	Product Conceptualization	USA
3	Design & Drawing	USA
4	Development of the technology	USA
5	Conceptualization and understanding of functionality	USA
6	Product blue print preparation	USA
7	Development of associated software	India
8	Product proto type development – Hardware and Software	USA
9	Component Procurement	USA, China PR and Third countries
10	Soldering and EMS activities	USA , China PR and Thailand, Singapore
11	Integration	USA and Third Countries
12	Preparation of Test Jigs	USA
13	Assembly	USA and Third Countries
14	Testing	USA and Third Countries
15	Product Support and bug fixes	USA and Third Countries

Scope of product under consideration –

35. The Authority notes that the product under consideration is essentially transmission equipment using SDH technology. It can be produced in a verity of specifications to meet the eventual customer requirements. Further, evolution of higher version/higher capacity equipment is an ongoing continuous process/phenomena in this industry. The investigation has shown, while STM-64 equipments are already developed and the customers have already started deploying the same in the telecom Networks (even though in a limited way), STM-256 was at development stage during the investigation period as far as Indian market is concerned. The investigation has shown that following types of SDH equipments were either in use or in development during the investigation period. The Authority considered the arguments of the interested parties on exclusion of some of these types and holds as follows in this regard:

- a. STM-1, 4, 16 – There is no dispute that these products are rightly included within the scope of the product under consideration;
- b. STM-64 – The interested parties argued that the petitioner has not offered STM-64 in commercial volumes. It has also been argued that largest Public Sector Company

operator (BSNL) has not bought STM-64 from the petitioner. The Authority, however, holds that STM-64 is rightly within the scope of the product under consideration for the reasons –

- (a) The company has produced and sold STM-64 in Indian and overseas markets as was verified by the Authority through its investigating team. ;
- (b) Even if the company has sold some volumes in the export markets, the product type cannot be excluded, as the fact of like article produced by the domestic industry gets established (the Authority notes that rule 2(b) read with 2(d) implies that the domestic industry should have manufactured like article. It is unnecessary to require that the domestic industry should have sold like article in domestic market). On the spot verification conducted at the premises of the petitioner, in fact, showed production of STM-64 in commercial volumes i.e. also for **QUICKTEL**.
- c. STM-256 – Admittedly, STM-256 was neither imported during the investigation period nor supplied by the domestic industry. Investigation conducted at the premises of the petitioner and foreign producers clearly showed that STM-256 can be described as the new generation SDH equipment. The investigation has not shown that if STM-256 was exported by foreign producers, the domestic industry did not offer STM-256. In fact, the interested parties agreed that technical approvals/permissions to deploy SDH-256 are not even in place in the country. The Authority observes that a claim for exclusion of a particular type cannot be entertained unless the same has been exported to India during the relevant period, as the fact of non supply of like article by the domestic industry cannot be established unless the type is exported to India. The Authority holds that no grounds have been made out justifying exclusion of STM-256. Moreover, the investigating team was given access to STM-256 equipment, manufactured by Tejas and available in their premises in Bangalore. Tejas showed that it has made significant investment (Rs. ***** crores) so far in development of this product and claimed that the equipment could be sold only if some party placed an order for the same.
- d. Digital Cross connects – The interested parties repeatedly argued for exclusion of digital cross connect. The investigation has shown that digital cross connect are actually the equipment used in telecommunications networks, that allows lower-level signals, to be rearranged and interconnected among higher-level signals. Digital cross connect can be produced in SDH technology and other technologies. Digital cross connect equipment of SDH technology is clearly SDH equipment. Record verified by the investigating team establishes that Digital cross connect of SDH technology has been produced and supplied by the petitioner during the investigation period. The cost and price information included in the injury information and injury margin assessment includes the production and sale of digital cross connect of SDH technology. The Authority, therefore, holds that digital cross connect of SDH technology are rightly within the scope of the product under consideration. However, since digital cross connects are produced in other technology as well, it is clarified; as a matter of abundant precaution, that digital cross connect of other technologies are beyond the purview of the product under consideration and present investigations.

- e. SKD/CKD form of SDH equipments – Interested parties largely concede that SKD/CKD form of SDH is rightly within the scope of the product under consideration. As would be seen from the production process elaborated hereinabove, the product is an assembly of a number of cards, components, assemblies and sub-assemblies. It is quite possible that the product is transported in its SKD/CKD form. In fact, the product is in general invoiced in SKD/CKD form only. The producers do not raise invoice for ‘fully functional and operational’ SDH equipment. The production process from SKD/CKD form is a very insignificant assembly line operation requiring only screw driver technology. In fact, it is possible (and in fact is a practice largely adopted) to first produce the complete equipment, including necessary testing etc. and instead of transporting in a finished form, it is dispatched after dismantling in a SKD/CKD form. Exports of such SKD/CKD, thus tantamount to exports of the product under consideration itself. In fact, the product has been shipped from China PR in this SKD/CKD form as well. The Authority, therefore confirms that the scope of the product under consideration includes SKD/CKD form of the product.
- f. Assemblies and Sub-assemblies _ the verification of the records of various exporters from China PR and Israel revealed that the Equipment is shipped in the form of assemblies and sub-assemblies and each of these assemblies and sub-assemblies are priced individually. Therefore the equipment imported as a unit or in the form of assemblies / sub-assemblies is within scope of Product under consideration.
- g. Populated Circuit Boards / cards-The cards / PCB’s are populated as per the design developed by the manufacturer and thereafter, apart from loading of software, there is only a need to arrange them in a shelf and adjust them to a circuit. Since Populated Circuit Boards are propriety of the manufacturer, the same are within the scope of Product under consideration. It is however clarified that in case PCB or cards are meant for production/ assembly of a product other than SDH equipment, the same is beyond the scope of the product under consideration. PCB and cards are within the scope of the product under consideration only if such PCB or cards are meant for production of SDH equipment.
- h. Parts and Components- Interested parties have heavily opposed inclusion of parts and components within the scope of the product under consideration. The interested parties have argued, inter-alia, that (i) parts/components are different product, (ii) parts & components have not been offered by domestic industry, (iii) production from the stage of parts/components is quite significant and in fact, constitutes production, (iv) imposition of anti-dumping duties on parts/components is inoperable or may even lead to harassment at the stage of implementation or might lead to demand for collection of duty even when the same may not be justified. The domestic industry on the contrary has sought inclusion of parts and components on the premise that their exclusion will leave a big scope for circumvention. They have pleaded that Imports of components as “raw material” or “inputs” must be distinguished and differentiated with imports of SDH in component form (with IPR being supplied without customs check/control/clearance). They have further submitted that the Domestic industry is not against imports of components as inputs. Domestic industry is against import of

product in the form of components, using the same Chinese IPR and then assembling the product in India as this tantamount to continued dumping in different form.

- i. The Authority, takes note of the fact that parts and components are not manufactured by the Domestic Industry, and the domestic industry for parts and components is not before the Authority.
- j. The Authority further notes that parts and components used in SDH equipment have multiple usages and do not have a dedicated usage in SDH alone. Authority, after going into the details of usage of parts and components is of the view that including parts and components, when imported on a standalone basis is going to put the whole consumer durable industry to hardship. .
- k. SDH equipment as part of another equipment - The Authority notes that the product under consideration eventually forms part of Broadband or Cellular equipment. It is quite possible to import SDH equipment as part of such Broadband or Cellular equipment. If the scope of the product under consideration is not kept to include imports of SDH equipment forming part of such Broadband or Cellular equipment, the entire process of undertaking present investigations and proposed measures can be defeated. Further, no justified grounds have been brought out by any interested party why such import should not be chargeable to duty. The only concern of the interested party may be that the Customs Port Authorities should not demand anti-dumping duties on the entire Broadband or Cellular equipment. It is, therefore, clarified that the scope of the duty shall only be to the extent of the value of SDH equipment included in such Broadband/Cellular equipment. The scope of duty shall not extend to the entire equipment. The importers are expected to declare and the Customs Port Authorities are expected to apply due diligence in ascertain/bifurcating the value of SDH equipment.
- l. Software – Software is an essential part of the product under consideration in as much as the equipment is totally non-functional without such software. Such software can be developed by the producer itself or producer may get the same developed from other agencies. It is possible to invoice such software either as part of the equipment or separately. The scope of the product under consideration rightly includes the software and the Authority confirms the same.
- m. DWDM – Lot of interested parties have sought exclusion of DWDM. DWDM is different technology transmission equipment. It is not SDH technology equipment. Since, DWDM is not a SDH technology equipment, the same was beyond the scope of present investigation and proposed measures. However, in view of repeated arguments of the interested parties and their claim of possible demands of anti-dumping duties in future by Customs Port Authorities, it is proposed to clarify in the final findings that DWDM transmission equipment are beyond the scope of the product under consideration and no anti-dumping duties are payable thereon.
- n. PDH-Is outside the scope of PUC as it does not involve SDH Technology.

36. Having regard to the petition, initiation notification, preliminary findings, arguments raised by the domestic industry and opposing interested parties, the Authority holds that the scope of the product under consideration is as follows:

“Synchronous Digital Hierarchy transmission equipment, viz. STM-1, STM-4, STM-16, STM-64, STM-256 in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / sub-assemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of Product under Consideration.”

37. As per the submissions made by CIENA, they are procuring components from China PR as also some portion of manufacturing or assembly for CIENA USA’s products is outsourced and carried out in China PR by Sanmina SCI and the same does not qualify as products originating from China PR. However the Authority holds that goods produced by them shall be subject to AD Duty only if they are covered within the scope of definition of product under consideration and if the imports of such goods into India either originate in or are exported from the subject countries under investigation.

PCN System

38. The product under consideration is produced and sold in a number of different types. Different types are produced to meet specific customer requirements. In order to ensure fair comparison between normal value and export price, the Authority segregated the product under consideration into different types based on parameters such as transmission capacity; cross connect capacity, E1 interfaces, electrical interfaces, optical interfaces, optics types, etc. The Authority evolved a product control system (PCN) running into 15 digit. All interested parties were directed to provide information on cost & price separately for each PCN.

39. Some of the interested parties, opposing the petition raised issues on PCN system devised by the Authority. It has been submitted that Tejas has attempted to standardize the specifications of the various diverse equipments covered under the PUC by evolving a system of Product Control Number (PCN). According to them, although some attempt at standardization of parameters has been made by evolving the PCN criteria, such products are by their very nature not amenable to standardization as they are completely non-standardized, made to suit the requirements of each network, functioning on a different frequency, contained diverse modules, the addition or deletion of which would lead to wide variation in

costs and the costs were dependent on the interplay of technology, hardware and software used etc.

40. The Authority taking note of these comments holds that the product under consideration is essentially an assembly of a number of electronic cards and sub-assemblies. In fact, the producers tend to invoice the sales in terms of SKD/CKD/cards/sub-assemblies of the product. Investigation has shown that all the companies follow some system for design and development of the product, for which some product coding system is followed. Considering this aspect of the PUC, Authority had prescribed a PCN system, considering the scope of PUC and the intent was to bring the scope of the PUC identifiable and comparable. While doing so, the Authority gave liberty to all the responding exporters to come up with any other suggestion on devising the PCN methodology, duly justifying the system, other than the one proposed by the Authority. A communication was individually sent to all the interested parties in this regard. However, all the exporters, who participated in the investigation, chose to accept the PCN methodology suggested by the Authority and submitted data as per the said PCN methodology. Therefore, the Authority holds that the PCN methodology adopted for the present investigation has proved to be correct and reasonably acceptable to all the interested parties, particularly the responding exporters, who in principle agreed to this methodology and got their data verified based upon this PCN methodology.

Standing & scope of the domestic industry

41. Arguments have been made by various interested parties that –
- a) Petitioner itself is an importer of the product under consideration;
 - b) The discretion under rule 2(b) cannot be applied differently for different parties;
 - c) The rules do not distinguish between imports from subject countries and non subject countries;
 - d) The rules do not prescribe any numerical formula with regard to volume of imports;
 - e) The goods imported by the petitioner from Thailand might include parts/components which were eventually sourced from China PR and because the scope of the product under consideration includes parts/components, petitioner should be considered ineligible domestic industry.
42. The Authority considers that following issues arises for consideration and decision in the present investigations –
- (a) Whether Tejas, VMCL, Prithvi and such other companies can be considered as a producer or manufacturer of like article under dumping law for the purpose of the present investigations.
 - (b) Whether Tejas, VMCL, Prithvi and such other companies should be considered as eligible or ineligible domestic industry within the meaning of Rule 2(b) in view of imports made by these entities from subject or non subject countries. Further,

whether imports from subject countries alone are relevant for the purpose, or whether imports from third countries also attract possible ineligibility criteria under Rule 2(b).

43. Prior to 15th July, 1999, Rule 2(b) of the rules read as follows –

*"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers **shall** be deemed not to form part of domestic industry". [Emphasis added]*

44. At the time of the initiation of this investigation, Rule 2(b) of the Rules read as follows:-

*"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers **may** be deemed not to form part of domestic industry". [Emphasis added]*

45. However, post initiation, this Rule has been amended as follows:

"2(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' **may be construed as referring to the rest of the producers only**" [emphasis added]

46. Thus, Rule 2(b) of the AD Rules provides that domestic producers which are related to the exporters or importers or which are themselves importers of the allegedly dumped articles may be excluded when determining the domestic industry in certain situations. As the use of the word 'may' in Rule 2(b) suggests, the two types of producers in question, i.e. related producers and producers importing the alleged dumped product, are not automatically excluded from being part of the domestic industry. Rather, it is the consistent practice of the investigating authorities that the exclusion of such producers must be decided on a case-by-case basis, on reasonable and equitable grounds, and by taking into consideration all the legal and economic aspects involved.

47. The question of excluding or including a domestic producer from the ambit and scope of the domestic industry is of practical importance as the question arises whether or not they are really part of the domestic industry in the sense of Rule 2(b) of the AD Rules. This in turn may have an effect on the standing of the application i.e. whether or not their (the domestic producers that have filed or supported the application) production reaches the necessary level of representatively as stipulated under the AD Rules; as the output of domestic producers, which are excluded from the definition of the domestic industry because of their relationship to exporters or importers; or because of their own dumped imports, will not be taken into consideration while calculating total domestic production and when determining if the applicant along with supporting domestic producers represent a major proportion of such production.

48. The Authority notes that Rule 2(b) has been amended twice. The Rule 2(b) as enshrined in the AD Rules as on 1.1.1995 provided no discretion to the Designated Authority in such situations where one or more domestic producer has imported the product under consideration or is related to an importer or exporter of the product under consideration. However, WTO Agreement on Anti Dumping and domestic laws of other investigating authorities vested discretion to the investigating authorities in such situations, which were to be applied on a case by case basis. Rule 2(b) was amended with effect from 15th July 1999 vide Customs Notification No.44/1999 (N.T.) vesting discretion to the Designated Authority in such situations, which could be applied on case by case basis. Rule 2 (b) has further been amended recently as stated above. The Authority considers that this discretion is necessary to meet situations wherein:-

- A. Some domestic producers may not wish to support an anti-dumping application merely because they themselves are importing the product, or they are related to an importer or exporter of the product. Such domestic producers may even wish to force closure of other domestic producers in order to eliminate competition through unfair practice of dumping. One justification for vesting the discretion in the Authority is to enable the Authority to exclude such entities, who may seek to thwart an attempt by the remaining domestic producers seeking bonafide redressal of injury caused on account of dumping by filing an anti-dumping application and seeking suitable relief against the unfair trade practice of dumping. If it were not so, the remaining domestic producers may not be able to meet the 'standing requirement' as stipulated in the law to file an anti-dumping application and seek suitable remedy against the unfair trade practice of dumping. In short, the Authority considers that there was a need to exclude certain entities from the scope of domestic industry in order to enable the Authority to address injurious dumping in the Country.
- B. One or more of the domestic producers might have imported the product under consideration or their related company might have imported or exported the product under consideration for one or more bona-fide reasons. Some of these reasons are listed below:

- i. imports made under advance license in order to compete in the international market in the downstream product;
- ii. imports made at the time of temporary suspension of production (due to variety of bona-fide reasons, such as fire, strike, natural calamities etc);
- iii. imports made to supplement the product line by importing a particular type which the applicant may not be producing and which might constitute a very small portion of its total business operations;
- iv. imports made for testing, research & development, seed-marketing purposes (imports of the product to test the quality and other parameters when faced with low priced imports);
- v. Imports of the part of the product which does not form the core activity in the manufacturing of the product.
- vi. the volume of imports is low having regard to total volume of imports, Indian production and consumption;
- vii. balance of business between manufacturing and import
- viii. Whether imports are from the countries under investigation

49. Thus, the Authority is of the view that the modified Rule provides discretion to the Authority in the above mentioned situations. In other words, the AD Rules have been amended to provide discretion to the Authority to include a domestic producer in certain situations or to exclude a domestic producer in certain situations.

50. The Authority during verification of the records of the Domestic Industry, also verified the details of imports made by them during POI. As per the annual report issued by the company, total Turn Over in terms of sales of SDH including STM-1, STM-4, STM-16 and STM-64 during POI is to the tune of Rs. *** Crores. Further verification of the data from SAP system records and financial records maintained by the Company reveals that total number of components which go into an SDH is *** out of which *** components are sourced from China PR. The Chinese origin components primarily include ***Bare Boards and *** fans. Other components are mechanical in nature. The details of components / PCB's imported from various sources by Tejas are given below:

a. Thailand- Rs. *(***)%**

There is one EMS, who procures from *** vendors identified by Tejas, where from the EMS are supposed to procure the components. These include *** vendors from India, *** vendors from USA, *** vendors from Taiwan, *** vendors from EU, *** vendors from Japan, ***vendors from Switzerland, *** vendors from UK, ***vendors from Thailand, *** vendors from Hong Kong and Korea RP each, ***vendors from Israel, *** from China PR, ***vendor from Canada, *** vendor from Dubai, and *** from rest of the world. Imports from Thailand include:

- i. **PCB-** Assembled as per the design provided by Tejas-Rs. *** /-Includes embedded software provided by Tejas
- ii. **Bare Boards-Rs.***/-**

- iii. **Capacitors- Rs ***/-**
- iv. **Connectors-Rs. ***/-**
- v. **Inductors-Rs. ***/-**
- vi. **Resistors-Rs. ***/-**
- vii. **Stickers-Rs. ***/-**
- viii. **Trans Receivers-Rs. ***/-**
- ix. **Transformers-Rs ***/-**
- x. **Misc. item like IC's Cables,Washers,Nuts,PackingMaterial-Rs.***/-**

b. Locally from India-Rs. * (***)-procured from ***vendors.**

The details of these procurements are as under:

- i. **PCB from EMS- Assembled as per the design provided by Tejas-Rs. ***/- (***)Includes embedded software provided by Tejas**
 - ii. **Bare Boards-Rs.***/-**
 - iii. **Capacitors- Rs ***/-**
 - iv. **Connectors-Rs. ***/-**
 - v. **Inductors-Rs. ***/-**
 - vi. **Resistors-Rs. ***/-**
 - vii. **Stickers-Rs. ***/-**
 - viii. **Trans Receivers-Rs. ***/-**
 - ix. **Transformers-Rs ***/-**
 - x. **Patch Cord-Rs ***/-**
 - xi. **Mechanical and Misc. item like Racks, Chassis, Face Plates, Trays, I C's, Cables,Washers,Nuts,PackingMaterial-Rs.***/-**
- c. **Singapore- Rs. *** (***)** (In Singapore Tejas has a subsidiary working as a procurement office, Sourcing from approved vendors including *** vendors from Singapore)

The details of these procurements are as under

- i. **PCB - Assembled as per the design provided by Tejas-Rs. ***/-(***% of total turnover), Includes embedded software provided by Tejas**
- ii. **Capacitors- Rs ***/-**
- iii. **Connectors-Rs. ***/-**
- iv. **Inductors-Rs. ***/-**
- v. **Resistors-Rs. ***/-**
- vi. **Trans Receivers-Rs. ***/-**
- vii. **Transformers-Rs ***/-**
- viii. **Patch Cord-Rs ***/-**
- ix. **Misc. item like IC's Cables,Washers,Nuts,PackingMaterial-Rs.***/-**

d. China PR-Rs . *(***%)**

The details of procurements from China PR are as under

- i. **Bare Boards - Rs ***/-**
- ii. **Capacitors- Rs ***/-**
- iii. **Connectors-Rs. ***/-**
- iv. **Inductors-Rs. ***/-**
- v. **Transformers-Rs ***/-**
- vi. **Trans Receivers-Rs. ***/-**
- vii. **Patch Cord-Rs ***/-**
- viii. **Misc. item like IC's Cables,Washers,Nuts,PackingMaterial-Rs.***/-**

e. Taiwan Rs. *(***%)**

The details of procurements from Taiwan are as under

- i. **Connectors-Rs. *****
- ii. **Inductors-Rs. *****
- iii. **Transformers-Rs *****
- iv. **Trans Receivers-Rs. *****
- v. **Misc. item like IC's Cables, Washers, Nuts, Packing Material-Rs.*****

51. The Authority notes that imports from China PR, comprising of ***% of the total imports made by the company (***% of the turnover of the company) are stand alone components, which are no more a part of PUC and therefore not relevant for determination of standing.

52. Further, on the issue imports from the countries other than those under investigation, the Authority holds that where the imports of the product are not from the countries under investigation, the same does not constitute imports of “alleged dumped article”. Such import, therefore, should not prevent such domestic producer from bringing an application as a domestic industry. It is relevant to point out that in case such domestic producer is importing significant volumes from countries not under investigation, the same becomes relevant in establishing existence or otherwise of casual link. If the imports from third countries are insignificant in volume, in any case, the same become irrelevant. It could be feared that such third country import might become significant after imposition of anti-dumping duties.

53. Interested parties have argued that the fact that imports were made from non subject countries is irrelevant under Rule 2(b) and “*alleged dumped article*” relates to article and cannot be linked to the country. The Authority has carefully examined various legal provisions in this regard and holds that terminology in various provisions under rules and the objective of exclusion provided under 2(b) make it abundantly clear that the question of excluding a party under rule 2(b) should arise only if such imports are from subject countries under investigation. The Authority relies upon in this regard on the objective/intent of

providing such a discretion under 2(b) and various provisions under rule 2 and 6. Reference to dumped article or alleged dumped article under rule 2 and 6 is clearly with reference to subject **Country (ies)**, the producer in such subject countries and importers of the product from such subject countries. The Authority thus holds that imports of the article under investigation from subject countries alone are relevant for the purpose of inclusion or exclusion of a domestic manufacturer under rule 2(b).

54. It has been argued that Rule 2(b) cannot be applied differently on different parties. It has further been alleged that the Authority has considered Tejas as eligible domestic producer Prithvi and VMCL as ineligible domestic manufactures. Interested opposing parties have disputed the preliminary determination and argued that even when both Tejas and Prithvi/VMCL have resorted to imports, the Authority has discriminately applied discretion available in Rule 2(b). Notwithstanding the determination with regard to product under consideration, the meaning of Chinese, Indian and third countries, the meaning of goods manufactured in India, China PR or third countries which leads to a conclusion that Prithvi and VMCL are not domestic manufacturer of the product under consideration in India, the Authority holds that in any case, rule 2(b) does not provide a uniform decision on inclusion or exclusion of domestic producers who are themselves importing the product. The Authority holds that such discretion is required to be exercised on a case by case basis. Different parties might import the product for different reasons. Volume/extent of imports by different parties might be different. Inclusion or exclusion of domestic manufacturer under rule 2(b) is based on certain reasons. Since the reasons themselves might vary from party to party, a universal application of the discretion is neither conceived under the law nor would be appropriate. Practice of the Authority and other Investigating Authorities in this regard also supports this view of the Authority.

55. Interested parties have argued that Tejas has undisputedly used services of EMS. Such EMS companies might have procured parts/components from China PR, value of which might not be included in the volume of imports relied upon by the Authority in applying the discretion. Authority notes that one of the biggest EMS services used by Tejas is in Thailand. In Thailand, they have identifies *** vendors from different countries wherefrom these vendors are to source the inputs / components. Out of these *** vendors, only *** are from China PR. Moreover, the procurement by these vendors is stand alone components which are not covered under the scope of “Product under Consideration”. The Authority therefore holds that this argument of the opposing interested parties, opposing the eligibility of Tejas, is also not sustainable.

56. It has been alleged that although there are a number of other manufacturers, Tejas has been considered to have the necessary standing of constituting a major proportion of the total domestic production within the scope of Rule 2(b) of AD Rules. In this context, the Authority notes that initially, after the initiation of investigation, apart from Prithvi and VMCL, no other so called manufacturer, as highlighted by both Prithvi and VMCL in their submissions has come forward to claim the status of being a domestic manufacturer. However, apart from making a claim to this effect in a narrative form, they never came up with any information

about their manufacturing activities. Prithvi / VMCL have not filed questionnaire response in the form and manner prescribed, either as a domestic producer or an importer of the product under consideration. Even when the Authority specifically advised these companies to provide information in the form and manner prescribed, these interested parties have preferred not to provide relevant information. Even otherwise they never furnished any details / data about their set up except to claim that they are manufacturers as they also pay excise duty. Mere payment of excise duty cannot give the status of “manufacturer” for the present purpose, as already stated here in before. The Authority notes that these two companies have preferred non cooperation within the meaning of Rule 6(8). The Authority holds that while it is open for an interested party to advance its argument, it is obligatory on the part of such interested party to provide such information as is requested by the Authority and offer itself for verification. The entire exercise undertaken in the instant case in ascertaining actual status of these entities would have been significantly smoothed, had these interested parties provided relevant information demanded by the Authority and offered themselves to spot verification. In view of conscious non cooperation preferred by these interested parties, the Authority has been constrained to rely upon available material in this regard. The information on record has shown as follows –

- i. These interested parties have not sold SDH equipment till the end of the investigation period.
- ii. The Authority identified activities such as research, product conceptualization, design & drawing, development of technology, conceptualization and understanding of functionality, product blue print preparation, development of associated software, product prototype development-hardware and software, component procurement, soldering and EMS activities, integration, preparation of test jigs, assembly, testing and product support and bug fixes as essential production activities. These interested parties do not carry out these production activities listed by the Authority as the activities comprising of production in the present case. It is not established that these parties even carried out assembly operation. There is no evidence on record showing production or sale of the product under consideration by these parties. Even on the repeated argument of payment of excise duty, these interested parties have not established that the said excise duty was paid in respect of SDH equipment. Petitioner argued that the said excise duty might have been paid on different products. These interested parties have not provided evidence to show that the excise duty was indeed paid for production & clearance of the product under consideration.
- iii. These interested parties have failed to establish that they have made investments in research & development, plant & equipment and other facilities required for production of the product under consideration concerned. The Authority notes in this regard that only activities relating to product under consideration alone are relevant to the Authority. Other activities carried out by these interested parties, if any, are entirely irrelevant in this regard. It is also relevant to point out in this regard that on their own accord, some of the interested parties, including VMPL & Prithvi considered DWDM as “product under consideration”. It is therefore not

established whether the alleged status of a manufacturer is because of possible production and sale of DWDM or SDH equipment. The Authority notes that in case these companies have set up production facilities and have thereafter produced and sold DWDM equipment, the same cannot entitle them to claim a status of producer for the present purpose and present product under consideration.

57. Subsequent to issue of Preliminary Findings, FIBCOM came up with a claim of being manufacturers of PUC and claimed to support the petition so long as components are placed outside the purview of PUC. They also, however, did not provide any data on their claim to be a manufacturer, to the Authority. Petitioner, at pre-initiation stage had filed a letter from CMAI (Association) along with the petition. CMAI stated that the petitioner account for a major proportion of Indian production. This was considered prima facie sufficient evidence for the purpose of initiation of the investigation.

58. Authority noted in the preliminary findings that the reference was made by the interested parties to panel report in the matter concerning Farmed Salmon from Norway. Authority noted in the preliminary findings that the facts of that case are different than those of the present case. In the case under reference, EC had not examined whether or not activity conducted by those producers who were not considered as producers of product concerned was an activity which could constitute production. Authority notes that the interpretation of Article 4.1 of ADA given by the WTO Panel has a limited scope in the present proceedings. The Para 7.115 of the Report are relevant in this regard:

7.115 There is no dispute that filleted salmon is within the scope of the like product identified by the EC in this case. Thus, based on our interpretation of the plain language of Article 4.1, we consider that any enterprise that produced any form of the like product should be considered, at least in the first instance, a "producer" of the like product, and as such, part of the domestic industry.

Footnote 289 reads as follows:

289. There may be circumstances in which an enterprise whose product is within the scope of the like product may be found to have engaged in a level of activity so low as to justify the conclusion that it did not, in fact, "produce" the like product. However, there was no consideration of the degree of activity of filleting-only undertakings in defining the domestic industry during the investigation. Therefore, the question is not before us on the facts of this case. (Emphasis Supplied.)

59. Panel therefore envisaged some circumstances (as stated in footnote 289), which Panel agreed may not be sufficient to consider an entity as a "producer" of the product. The panel however did not decide when a company may be considered as a domestic producer and when it can be considered as a mere importer of the product under consideration. The Panel did not dwell on what constitutes sufficient activity in order to describe an entity as a

producer. Nor did the Penal describe the meaning of “production”. The precise issue under consideration in the present case is what constitutes production and who can be regarded as a domestic producer.

60. In view of the above, having regard to the definition of the domestic industry under Rule 2(b) and information on record, the authority holds that VMCL and Prithivi have failed to establish themselves as domestic producer of the product under consideration for the purpose of present investigations. Further, in any case, these parties have failed to establish that they should be considered as “eligible domestic industry” within the meaning of Rule 2(b).

61. As regards Tejas, barring arguments on imports by the company, no other reasons/grounds have been advanced by these interested parties justifying treatment of Tejas as ineligible domestic industry. The Authority holds that imports of the product from subject countries alone are relevant for the present purpose and therefore imports made by Tejas from Thailand do not disentitle the company from being considered DI. The Authority holds that principal activity of the company is manufacturing in India, which includes essential research and design and development in production activity. The petitioner has not reduced, its own production activity, and has not turned to trading. No justifiable reasons have been advanced by the interested parties warranting exclusion of the petitioner.

62. Based on the information available on record, the Authority provisionally determined that (a) production activities by the petitioner constitutes production for the purpose of the present investigations; (b) imports by the petitioner are not such as to disqualify the petitioner from the scope of Rule 2(b), (c) imports by other domestic suppliers such as Prithvi and VMCL are such as to render them ineligible domestic producers under Rule 2(b), (d) production of the petitioner accounts for a major proportion of total Indian production. On this basis, Authority provisionally concluded that the petition satisfies the standing and the petitioner constitutes domestic industry within the meaning of the Rules.

63. While disputing the claim of M/s Tejas Networking Ltd to treat it as the domestic industry, the opposing interested parties contended that M/s Tejas Networking Ltd should be treated as ineligible for consideration as the domestic industry in view of the facts that (a) Tejas had imported certain components forming part of the product under consideration (PUC) as defined in the Initiation Notification, (b) to qualify as a "domestic industry", the domestic producer must be engaged in the manufacture of the product to the extent of a “major proportion”, i.e., the producer must show that he manufactures all the necessary parts, accessories and components of the PUC, (c) DGAD has not considered Prithvi and VMCL as eligible manufacturers because they don’t do any "substantial transformation" of inputs, (d) no concept of "Substantial transformation" exists in Anti Dumping rules, (e) Tejas also import component but is considered as eligible domestic industry while Prithvi and VMCL were not considered as domestic industry, (f) DGAD has relaxed rules for Tejas saying that Tejas has imported dual usage components without considering that Tejas has a dedicated use of components i.e. for manufacturing of SDH Telecom equipments, (g) imports from third

countries other than China PR/Israel also amounts to one being considered as importer because under rule 2(b) country of imports is not specified and so even if Tejas imports from countries other than China PR and Israel even then Tejas is not eligible to be called as domestic manufacturer, (h) Tejas imported from Thailand and Malaysia.

64. After careful examination of the legal provisions and facts of the case, the Authority notes that facts on record do not justify exclusion of M/s Tejas Networking Ltd from considering it as the domestic industry in the instant matter. The contention of the opposing parties that a company is ordinarily to be excluded in case it has imported does not hold good in view of the fact that imports made by Tejas from subject countries are essentially standalone components which are now outside the scope of PUC.

65. The Authority holds that that mere fact of payment of excise duty, if considered a barometer of “manufacturing” for the purpose of anti dumping law, would lead to several incorrect interpretations with regard to determination of dumping & injury as

- i. It would imply that even incremental activities such as retagging, repacking, relabeling, micronisation, metallization, pulverization, etc. will also become production.
- ii. The interpretation will lead to a situation where one product could have been produced several times. For instance, in the instance case, there are companies known as EMS companies, who are specialized electronic component soldering companies, doing such activities for a variety of industries, without any knowledge whatsoever with regard to designing or functioning of the card they produce. These companies are also paying excise duty. The interpretation will imply that even these companies should be recognized as SDH manufacturers. Thus, these EMS companies who have produced and supplied the card to Tejas Networks would become the manufacturer of SDH equipment (in CKD/SKD condition) and thereafter Tejas Networks is the manufacturer of the same SDH equipment. The production will be counted twice. Similarly, imports of the product will be counted as production of the foreign producer & import into India and thereafter the very same product will be counted as production & domestic sale of the importer, only because the importer has imported the product in CDK/SKD condition, assembled the product and sold it after payment of excise duty. The scope of the product under consideration includes parts & components in some situations. Some of these parts & components may have been produced by some other specialized component manufacturers in India. Thus, even these component manufacturers would also become SDH manufacturer.
- iii. Every company selling the product cannot be regarded as a domestic producer. There should be certain minimum threshold activity/criteria to be completed/ crossed by a party selling a product in the market before it can be regarded as a producer. And such activity/criteria cannot be payment of excise duty. Such

activity/criteria have to be considered on the basis of nature of the product and production process. For example, a person trading in the imported product is also engaged in some activity connected with the product. However, such trader cannot be regarded as a producer under anti dumping law, even if such trader is paying excise duty for some plausible reasons under excise law.

66. The Authority further notes that apart from CMAI, TEMA, which is another industry association, in their letter dated 3-Dec-09 has also supported petitioner's stance about the definition of who constitutes domestic industry and their support to the interim decision of the Authority. The mere fact that **no other so called manufacturer** has either, not participated in the investigation, or those who have participated, have failed to provide any evidence with regard to their manufacturing activities in the Performa prescribed for the domestic industry, and other details elaborately discussed above further support the conclusion drawn by the Authority that Tejas constitutes "Domestic Industry" within the meaning of AD Rules.

Whether a second Public Hearing is mandatory / necessary if a new Designated Authority assumes charge halfway through the investigation.

67. The Authority notes that under the law, the Central Govt. may appoint a person not below the rank of Joint Secretary as the Designated Authority. The Central Govt. may provide the designated authority services of such other persons and such other facilities as it deems fit. The investigations were initiated and preliminary findings were notified when Shri R. Gopalan was the Designated Authority. Public hearing was also chaired by Shri R. Gopalan. Subsequently on 4th January, 2010, the Central Government appointed me as the Designated Authority. In view of the fact that the public hearing was earlier chaired by Shri R. Gopalan, some interested parties demanded another public hearing or personal hearing in the nature of public hearing.

68. It is relevant to point out in this regard those personal meetings / hearings were granted by the Authority wherever requested and justified. The Authority has carefully considered the request for public hearing having regard to the nature of the current proceedings; the procedure followed in conducting the investigations; established practices in this regard and grounds advanced by these interested parties for seeking public hearing or personal hearing in the nature of public hearing. The Authority holds that Rule 6 provides for an opportunity to an interested party to present information both in writing and orally. If the information is presented orally, it is required to be subsequently reproduced in writing. Clearly it is this written information which alone can be considered by the Authority for making a determination. In other words, if a party has presented some information orally, but the same is not reproduced in writing, the Authority is prevented from considering that information. On the contrary, if an interested party has made some submission, the Authority is obliged to consider the same, even if the interested party fails to present it orally. In fact, the WTO ADA clearly states that there shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Further, the Rules do

not prescribe that the Authority should provide such opportunity for submitting information orally in the form of a public hearing where all interested parties are present. In fact, the WTO Agreement clearly provides that the Authority shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. However, there is no obligation on any party to attend a meeting, nor failure to do so can be prejudicial to that party's case. Further, interested parties have also been given a right, on justification, to present other information orally. However, such oral information provided can be taken into account only in so far as it is subsequently reproduced in writing and made available to other interested parties participating in the investigations. It is thus evident that no party can demand as a matter of right that the Designated Authority should provide opportunity for oral hearing in the form of a public hearing where all interested parties are present. Under the circumstances, in any case, an interested party cannot demand to be heard orally through a public hearing.

69. All submissions made by these interested parties from time to time as also at the time of previous oral hearing have been placed before me. The interested parties, while requesting an oral hearing, have not been able to point out any such fact or factor which indeed requires an opportunity for oral presentation of such information. Indeed no justification has been made out in support of such oral presentation of information. In other words, these interested parties were not able to point out to any such information, including new information, which is not on record or which is otherwise required to be presented orally.

70. In view of the foregoing, I consider that it is not necessary to hold another public hearing. Nor an interested party has been able to establish its case for presenting some information orally before me. All the facts presented to me in writing were considered while issuing the disclosure statement and comments to the disclosure statement are being adequately addressed in this Final Findings Document.

71. Above all, VMCL and Prithvi were given an opportunity to seek an appointment for personal hearing through a communication dated 19th April, 2010, which was not been availed by them. Further, VMCL, Prithvi and all other interested parties had and indeed availed, either directly or through their legal representative numerous opportunities to present their views orally before the Officers appointed to assist the Authority in the present investigations. A number of meetings were granted by the Officers to the legal representatives of various interested parties. In fact, the Officers liberally granted such opportunity whenever requested. All such submissions made before the Officers orally or in writing have been placed before me.

Response to the Communication Dated 20th July, 2010

72. The Authority, having considered that both Prithvi and VMCL have been vehemently opposing the investigation without providing any substantial inputs to support their views, sent a communication to both these interested parties on 20th July, 2010, seeking inputs on various claims made by these interested parties from time to time. That apart, a

communication was also sent to Huawei seeking inputs relating to this case. The Authority notes that while Huawei India provided reasonable information for consideration by the Authority, both VMCL and Prithvi have continued to have the same attitude of not cooperating with the Authority, but trying to stall the proceedings on one pretext or the other without providing any relevant inputs whatsoever. They went to the extent of questioning the wisdom of the Authority to seek information in the sixteenth month of the investigation. The Authority holds that the onus, under the AD Rules, is on the interested parties to provide relevant information with supportive verifiable evidence for consideration by the Authority. The Rules do not either prescribe or bind the Authority to seek inputs / information from any interested party towards later part of the proceedings, so long as the Authority has received “relevant information” and has provided sufficient time to the parties. The communication dated 20th July was sent to both the above named importers as another opportunity to give them yet another chance to substantiate their claim. Instead of providing the same, they have repeated their earlier submissions without providing any information / evidence to support their claim. While Prithvi has claimed that they are manufacturers of DWDM, (Non-PUC Product), VMCL has claimed to be manufacturers of PUC, once again, without providing any verifiable information on the activities carried out by them supported by the details about their workforce, balance sheet, inputs, R&D etc. Both of them have also not provided any information on imports made by them although an importer’s questionnaire should have been filed by them (Questionnaire is available on the official website of Department of Commerce). Further they have admitted having imported components but have been silent on the issue of complete equipment as well which came to the notice of the Authority during the verification of data of one of the responding exporters from China PR. To sum up, apart from seeking extension in time to file a response to the information sought by the Authority, which was allowed by the Authority, nothing of substance was provided to the Authority except repetition of what had been stated by them earlier from time to time. The Authority holds that all the issues raised by them earlier and repeated in their submissions dated 6th August have already been addressed in the paragraphs here-in before and need not be repeated.

73. Some interested parties identified a number of parties as manufacturer of the product under consideration. The Authority examined the claim of these interested parties. It is found that the claim of these interested parties is based on offers for supply of SDH product to the customers in India. The Authority holds that the mere fact of possible supply by a company cannot mean that such a company is indeed a manufacturer of the product. Some parties made reference to the BSNL tenders or website information. It is however noted that the said information is in respect of suppliers of the product and does not establish that these suppliers were indeed manufacturer of the product.

Confidentiality

74. Some of the interested parties opposing the petition made following submissions on confidentiality:

- i. There was alleged material irregularity in the matter of confidentiality in the present proceedings in so much as the preliminary findings with respect to various

- issues were not disclosed and were scored out on the purported ground of keeping information confidential.
- ii. While examining the price effect of imports compared with the imported product with comparable lower model of SDH transmission equipment manufactured by Tejas. Designated Authority has not disclosed the details and analysis of such comparison and has on the basis of mere statement that lower model type of domestic product is compared with imported product, sought to establish price undercutting.
 - iii. For determination of domestic production, Designated Authority has relied upon production details provided by Tejas which are purported to be published in the Voice and Data Recorder Magazine in respect of PUC and other products and which is appropriately adjusted in order to determine information for the relevant product but the details of adjustment made in order to determine the information in respect of the relevant product is not disclosed and is kept confidential.
 - iv. Submissions including Non-Confidential Version of the response made by other interested parties, other than the DI have not been made available to the other interested parties.
 - v. The Authority has gravely erred in issuing directions to the Chinese companies for disclosure of PCN details. On the contrary no such stipulation has been prescribed for the DI. It is further submitted that such direction goes against the spirit of these provisions.
 - vi. Certain information which could not have been kept confidential has been kept confidential by the Domestic Industry. There are also no reasons provided as to why the information on which confidentiality has been claimed and apparently allowed or is not susceptible to summarization. Even for information which can be considered as confidential, by its very nature, no proper indexation has been done to permit a reasonable understanding of the substance of the information submitted in confidence. Grant of confidentiality cannot be automatic and the Designated Authority must apply its mind to whether confidentiality is validly claimed. If the Applicants are not willing to disclose such information on which confidentiality could not have been claimed, then the Designated Authority and all such information ought to be rejected. We would request the Authority to first decide this important issue of confidentiality, and thereafter provide us an opportunity to make effective representation as envisaged under the Rules. We would also like to submit that we are presently prevented from making appropriate submissions in view of excessive confidentiality claimed by the domestic industry.

Examination by the Authority

75. The Authority considers that the issue of confidentiality can arise in following situations –
- a. Information filed by interested parties on confidential basis and confidentiality of the same from other interested parties – Authority holds that information provided by an interested party on confidential basis cannot be disclosed to

other interested parties participating in other interested parties in view of express provision under the rules.

- b. Information filed by interested parties on confidential basis and confidentiality of the same from the same party – As regards confidentiality of information provided by an interested party itself, the Authority has adequately disclosed data to the interested parties at this stage. The data could not have been disclosed before the present stage.
- c. On the issue of Submissions that Non-Confidential Version of the response made by other interested parties, other than the DI have not been made available to the other interested parties is denied as all such submissions are made available in Public File mandated by the law and continue to be available in the said Public File duly indexed even today.

Public Interest

76. It has been submitted that the parts and components of telecom transmission equipments are not manufactured in India and there is clear import dependence for these items. The immediate impact of the levy, it is claimed, would result in a substantial increase in the cost of operations for genuine manufacturing companies like VMCL which manufacture items which are ultimately supplied to the telecommunication industry. It has further been alleged that the levy will not only adversely impact the Indian telecom industry, but also other dependent sectors such as IT, ITES and BPO sector which is wholly dependent upon the telecom sector for its voice and data transmission requirements. Therefore the increase in cost on account of imposition of such Anti-dumping Duty will effectively have to be borne by the domestic importers, telecom service providers like BSNL/ MTNL and by the domestic consumers. It has also been stated that Imports are a necessity as Petitioner cannot by any stretch of imagination supply the needs of the entire Indian market especially with the focus of the Government of India in expanding the telecom footprint in the country as enshrined in India's National Telecom Policy. These are aspects which also need to be borne in mind by the Authority in this investigation.

77. The Authority taking note of the submissions as above has the role to provide a level playing field between the domestic producers and imports. The Authority while examining the petition and recommending the result has to follow certain set principles prescribed in Anti-Dumping Law. The Authority's intention is neither to restrict the imports nor to be a source of increase in cost for any interested parties, so long as the reliance and result is based upon the data. In the present investigation the data supplied by all the interested parties has been relied upon, some of which is also verified, wherever the interested parties invited the Authority for verification of the same. Authority therefore concludes that having worked within the set principles and prescribed legal framework of AD Law, no area of the procedure has been left unattended. It is also pointed out that the petitioner claimed that the cost on account of SDH equipment is insignificant in total cost of a transmission station. The interested parties have not refuted this claim of the petitioner. As regards parts and

components, the same when imported on a standalone basis are not included within the scope of PUC and therefore arguments on this score are not relevant.

Normal Value , Export Price and Dumping Margin

Normal Value

Claims made by the Domestic Industry

78. The petitioners have claimed that China PR is a non-market economy. No country has granted market economy country status to China PR after following detailed evaluation procedure, examination and evaluation. They have further claimed that even China PR agreed in the accession treaty that WTO Members could use an NME antidumping methodology through December 11, 2016. China PR has been treated as non-market economy by European Commission and United States in the past three years. European Union and United States are members of World Trade Organization. In India also, the Designated Authority has treated China PR as non-market economy. The Designated Authority has treated China PR as non-market economy in practically all the investigations initiated against China PR after the amendment dated 31st May, 2002. Even after the amendment dated 4th Jan., 2003, the Designated Authority has treated China PR as a non-market economy.

79. Applicants claimed that producers from Israel are dumping subject goods in India. They have claimed to have determined normal value in Israel on the basis of price paid and payable in the domestic market in Israel. They have claimed that Israel being a part of Mid-east / Europe region, the average selling price of PUC is expected to be even higher than those in Asia and in the absence of any information with regard to actual transaction price in Israel, price determined based upon market research reports has been adopted for determination of normal value.

Examination by the Authority

China PR

Examination of Market economy claims

80. The Authority notes that in the past three years, China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of para 8 (2) of the annexure 1 of AD rules, China PR has been treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules.

81. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provides information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a. The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b. The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) The exchange rate conversions are carried out at the market rate

82. The Authority notes that a number of producers and exporters from China PR including M/S Fibrehome Telecommunication Technologies Ltd., M/S ZTE Corporation, M/s Alcatel-Lucent Shanghai Bell Co. Ltd., M/S Huawei Technologies Co., Ltd., M/S Hangzhou ECI Telecommunication CO. Ltd have responded to the questionnaire pertaining to market economy status and to the exporters' questionnaire, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. The questionnaire responses and the market economy responses of the responding producers and exporters were examined. Since, at the PF stage, these responses were found deficient, as was elaborately explained in the PF document, all these responding exporters were treated as operating under Non-Market Economy conditions. The Authority had further explained in the PF document that the submissions regarding Market Economy Claim will be examined in detail during the course of investigation and verification by the Authority and the position in this regard will be reviewed during the course of investigation, if, upon verification these companies satisfy the MET norms. The verification of records relating to Market Economy claim was carried out in respect of all the above named responding exporters and detailed verification reports were issued to individual exporters. The position on Market economy claim, arising out of the verification is briefly summed up below:

M/S Fibrehome Telecommunication Technologies Ltd.

83. Shareholding pattern of both (FHI) (Exporting on behalf of FHT) and FiberHome Technologies reveals that *Wuhan Research Institute of Posts and Telecommunications (WRI)* which is owned by the State Owned Assets Supervision and Administration Commission holds *** shares in both these Companies. FHI has *** shareholders namely FHT (***%) and WuHan Hongxin Telecommunications Technologies Ltd., (WHTT) (***%). FHT is a state owned company with ***% state owned shares and Wuhan Hongxin is also a state owned company with ***% state owned shares. Further Wuhan Research Institute of Posts and Telecommunications (WRI) is admittedly state-owned. As per the AOA, Board of Directors shall have *** Directors including *** Chairman, *** Dy. Chairman and *** independent Directors. As per the list of top *** shareholders and Board of Directors the

company has *** independent Directors and *** regular Directors out of which *** are on behalf of WRI, *** on behalf of Institute of Post and Telecommunications and *** from other shareholders. The *** Directors on behalf of WRI which is a state owned company are holding the important positions of ***, *** and of ***. Mr. *** is the *** of FHT who is also a *** in WRI and also a *** in FHI. Considering this pattern, it clearly establishes that state interference in the day to day operations of the Company cannot be ruled out and therefore the Authority holds that the Company is operating under NME conditions. Further, since the company is not entitled for market economy status even if one of the parameters is not satisfied, the Authority has not examined other aspects relating to market economy status of the company.

M/S ZTE Corporation

84. The company ZTE Corporation was established on *** with registered capital of RMB *** Million, with Regn. No. *** and License no ***. There were nine major contributors/sponsors of the capital as follows:

1	***
2	***
3	***
4	***
5	***
6	***
7	***
8	***
9	***

85. Out of the above, the Company *** hereinafter referred to as *** was jointly formed by ***, *** (***) and *** each holding **%, **% and **% share in *** which ultimately held **% in the new company ZTE Corp. The company at serial no 4 above was a *** in *** and rest all were ***. The *** major shareholders’ stock holding structure namely that of ***, *** (***) and *** in *** stay unchanged since ***. Further, *** is a ***, and ***, *** (***) is a ***. The company *** is one of *** confirmed *** and qualified under the National torch Plan Key High Technology and New Technology Enterprise by the State Science and Technology commission.

86. Also since ***, except *** and the ***, which still remained major share holders of the ZTE, other equity holders gradually liquidated their holdings and delisted from the top *** share-holder chart. The *** and other contributors/sponsors reduced its holdings of the company stock from initial **% to**% during this period.

87. Company has *** directors on board, out of which *** directors are from the major share holders that is ***and other shareholders, *** are from the company’s senior management and *** are independent directors, notified in their respective technical fields,

from law firms or other disciplines. It has been seen that *** is the *** of the company since its inception.

88. Considering the above factors, the Authority is unable to grant market economy status to the company and holds that the Company is operating under non-market economy conditions.

M/s Alcatel-Lucent Shanghai Bell Co. Ltd.

89. Presently the structure of the shareholding in the company is as follows:

- Changan Communications Clearing and Settlement Co Ltd., China ***%
- China Huaxin Posts and Telecommunications Economic Development Centre, ***%
- Alcatel Lucent China Investment Co Ltd, China ***%
- Alcatel Lucent Participations Chine, France ***%
- Alcatel Lucent Participations, France ***%

90. The first two are Chinese Shareholders and the next three entities belonging to the Alcatel Group. Alcatel Group has ***% plus *** share in the total shareholding while the remaining shares are owned by the Chinese state owned enterprises shareholders.

91. ***. were jointly established by the National Computer Network and Information Security Management Center of China and the First Service Center of Ministry of Information Industry. China Hua Xin Postal and Telecommunication Economic Development Center (the “Center”), is an enterprise subordinate to China Telecom and owned by the whole people.

92. There are *** Board of Directors, *** by Chinese shareholders, and *** nominated by Alcatel shareholders. The *** is *** and is nominated by Chinese shareholder and *** is nominated by Alcatel shareholder. The company is subject to International regulations, controls and disclosure requirements.

93. The Authority notes that, the company, during the course of verification submitted that the decision making is not affected or influenced by the government nominees on the Board. However the Authority also notes that the company has, since inception, significant Govt. presence through share holdings by State departments. Over a period of time, the govt. shareholding pattern remained ***% being Government Owned. Presently, the board of directors also has ***% (***) nominees of State departments including the *** having a casting vote. In view of the above, with this significant state participation, the state interference cannot be ruled out and therefore the Authority holds that the Company cannot be granted market economy status.

M/S Huawei Technologies Co., Ltd.

94. On the spot investigations were conducted at the premises of M/s Huawei Technologies on 6th-9th April 2010. A detailed verification report was issued to the Company with an opportunity to offer comments thereon. As the verification report issued by the Authority shows that the share capital of the company has undergone substantial increase from RMB *** at the time of incorporation to RMB *** million by the time of period of investigation. Further, it was claimed that the company was owned by *** natural persons at the time of incorporation. The ownership underwent a large number of changes during the period of investigation. As per Business License dated ***, Huawei Technology Co. Ltd. is a limited liability company, wholly invested by *** and its paid up capital was RMB *** Millions, which was increased to RMB *** Millions in *** and RMB ***Millions in ***. *** is the legal representative of the Company. In short, during POI itself, the paid-up capital was increased from RMB *** billion to RMB *** billion. Prior to ***, there were ***shareholders namely *** Holding (***) and *** (**%). After ***, the entire Share Capital was held by ***. of which *** were stated to be shareholders. Considering the fact that ownership of the company has undergone so many changes and the share capital has been increased to such a significant extent, on the spot investigation focused on each addition to share capital and each change in the ownership structure.

95. While the Authority appreciates that additions to capital or changes in ownership structures are quite normal business phenomena; particularly in the context of non-market economy situation, the fundamental issue that arises for consideration is the source of funds for the capital so invested, changes in ownership structure and compatibility of ownership structure with capital investments. The exporter could not establish source of funds for fairly large amount of investments. It is also noted that a very large sum of investments have been made by a *** and the ***. The source of funds with the *** or the ***, however, remains completely unexplained.

96. The exporter pleaded non-availability of a large number of documents stating that the documents were too old and was not required to be permanently stored by the company. The exporter, however, could not show on the basis of statutory requirements in China that the exporter was not required to maintain such records on perpetual basis. Moreover, some of these amounts invested being so large and are by a ***. The Authority is unable to accept the claim that the exporter was not in a position to provide relevant information.

97. The exporter in its response to verification report heavily stressed that it is acted to the best of its abilities. Kind attention of the Authority has also been drawn to the WTO Agreement which deals with the situations wherein the Authority can apply best available information. The exporter pleaded that it has acted to the best of its abilities and failure to provide certain documents is due to significantly high age of these documents and therefore failure to provide the same should not be held against the exporter. The Authority is unable to appreciate the submissions of the exporter in this regard and considers that ownership structure and the manner in which ownership changed over the period is one of the

fundamental requirements for a determination relating to market economy status. Further, given the level of investments made, and the changes to ownership structure, it cannot be said that the underlying documents are of non-consequential value.

98. In view of the above, the state interference cannot be ruled out and therefore the Authority is unable to grant market economy status to the exporter.

M/S Hangzhou ECI Telecommunication CO. Ltd

99. In the beginning, M/s Eastern Telecommunications Co. Ltd (“EastCom”) of China and ECI Telecom Ltd Israel (“ECI”) agreed for a Joint Venture on ***. The company to be formed out of this Joint Venture was Hangzhou ECI Telecommunication Co Ltd (HETC). The registered capital of the JV was US\$ ***Million.

100. Eastcom thus had ***% share and ECI had ***%. The Board of Directors appointed in the Board of Directors was *** by Eastcom and *** by ECI. ECI had their controlling *** post in the JV. The JV HETC was primarily doing the trading activity. The product XDM was purchased from Israel and simply sold in China. The JV was responsible for marketing activities. The JV had warehousing facilities only in China. ECI Israel fixed the transfer price for selling from Israel to be purchased by HETC.

101. In ***, a subsidiary of Eastcom namely EOTC (Hangzhou Eastern Optical Communications Co Ltd) was identified by ECI for further acquirement. The company EOTC was in the business of optic technology compatible with the SDH business of ECI. ECI paid US \$ *** in *** for purchase of technology to EOTC directly. HETC purchased the *** including the *** and other services of EOTC for RMB ***. Thus, EOTC was totally purchased by HETC and ECI in ***. The company has shown the relevant documents in this regard. The share of ECI Israel grew to ***% of the total book value of HETC.

102. With this, EOTC was purchased over, HETC remained, ECI became ***% partner in the JV, Eastcom remained as ***% partner in HETC. The other activities of Eastcom (except the share in HETC) remained as usual. In ***, ECI Israel paid out to their minority partner Eastcom in HETC the book value of their share. In ***, thus HETC remained there but with ECI Israel only as ***% owner.

103. Considering the above, the Authority holds that the company / producer has provided information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 to prove that they are operating under Market economy Conditions and are entitled for MET treatment..

Normal Value

China PR

M/S Fibrehome Telecommunication Technologies Ltd., Alcatel-Lucent Shanghai Bell Co. Ltd. and M/S Huawei Technologies Co., Ltd. and ZTE corporation

104. Having concluded upon verification of records of the above named companies that they are operating under Non- Market Economy conditions, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules to the above named Chinese companies and has to proceed in accordance with Para 7 of Annexure- I to the Rules. According to these Rules, the normal value in China PR can be determined on any of the following basis:

- a. On the basis of the price in a market economy third country, or
- b. The constructed value in a market economy third country, or
- c. The price from such a third country to other countries, including India.
- d. If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.

105. The Authority indicated, in the Initiation Notification, that the applicant has suggested that subject product is produced and sold in USA and Europe and these countries can be treated as surrogate country for China PR. The applicant furnished names and addresses of the producers in these countries.

106. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. Since no information with regard prices and costs prevalent in these markets could be accessed and also the responding Chinese companies have made no claim with regard to an appropriate market economy third country, the normal value in respect of M/s Fibrehome, M/s Alcatel China PR and M/S ZTE Corporation Ltd. has been worked out on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules. Accordingly, the ex-works Normal Value of the product under consideration for all the above named exporters from China PR has been constructed based on facts available. The Normal Value has been constructed taking into account actual weighted average price of all the major components separately for SDH equipments of different types, based on domestic industry import prices, duly adjusted for freight. No adjustment has been made for Customs Duty since the equipments for SDH are attracting Zero Customs Duty. It is noted that even the domestic industry is sourcing its major components from the international markets. Conversion cost, and SGA expenses of the domestic industry, have been adopted for determination of the normal value. After adding a reasonable profit margin of 5%, normal value has been constructed. The weighted average normal value for the PCNs exported by the Chinese producers working under non-market economy are shown below:

Name of the Company	Nos. of PCN's	Qty (Nos.)	Weighted Normal (USD/No.)	Avg. Value
M/S Fibrehome Telecommunication Technologies Ltd.	***	***		***
Alcatel-Lucent Shanghai Bell Co. Ltd.	***	***		***
M/S ZTE Corporation	***	***		***

M/S Hangzhou ECI Telecommunication CO. Ltd

107. This producer / exporter were found to be operating under Market economy conditions as elaborately explained above. While filing the response to the initiation, they had submitted an appendix 1, claiming to have sold *** PCN variants in the domestic market, corresponding to the PCN’s sold in India. Verification of records of these revealed that these PCN variants had been sold under *** different contracts to various customers in the domestic market. It however came to notice during verification that a number of PCN’s not sold in the domestic market in Israel (The PUC is invoiced from Israel), did contain some assemblies / sub-assemblies which were the same as used in the PCN’s exported to India. The Authority notes that product under consideration being finished, semi finished, CKD/SKD, sub-assemblies, and considering the manner in which the producers are invoicing the product, as also considering the fact that normal value is the price of “LIKE ARTICLE” and in the absence of identical article, another article is required to be considered, normal value has to be taken by considering the SKD/CKD prices. Considering this the Normal value in respect of such sub-assemblies has been taken as the value at which these assemblies / sub-assemblies were sold in the domestic market at ex-factory level. For others, cost of production as per verified data of the producer / exporter plus profit as realized by the exporter on subject goods in the domestic market has been taken for determination of normal value. Accordingly, the normal value has been worked out as under:

Name of the Company	Nos. of PCN’s	Qty (Nos.)	Weighted Avg. Normal Value (USD/No.)
M/S Hangzhou ECI Telecommunication Co. Ltd.	***	***	***

Israel

M/S ECI Telecom Ltd. Israel

108. The Company has provided information in various appendices, along with Bill of Materials, which has been examined by the Designated Authority. Authority notes that out of *** PCN are exported to India, only *** numbers have been sold in domestic market and se*** to third countries. This position got confirmed during verification of the responding exporter. The rest of the PCN’s have not been sold except to Indian market. It however came to notice during verification that a number of PCN’s not sold in the domestic market in Israel did contain some assemblies / sub-assemblies which were the same as used in the PCN’s exported to India. The Authority notes that product under consideration being finished, semi finished, CKD/SKD, sub-assemblies, and considering the manner in which the producers are invoicing the product, as also considering the fact that normal value is the price of “LIKE ARTICLE” and in the absence of identical article, another article is required to be considered, normal value has to be taken by considering the SKD/CKD prices. Considering this the Normal value in respect of such sub-assemblies has been taken as the value at which these assemblies / sub-assemblies were sold in the domestic market at ex-factory level. For others,

cost of production as per verified data of the producer / exporter plus profit as realized by the exporter on sale of subject goods in the domestic market has been taken for determination of normal value. Accordingly, the normal value has been worked out as under:

Name of the Company	Nos. of PCN's	Qty (Nos.)	Weighted Avg. Normal Value (USD/No.)
M/S ECI Telecom Ltd, Israel	***	***	***

Export Price

Responding Exporters from China PR

M/s Alcatel-Lucent Shanghai Bell Co. Ltd., China PR

109. As per the verified data, adjustments on account of Insurance, Inland Transportation, Handling Charges, overseas transportation, customs declaration fee, credit cost, bank charges and packing cost (As per verified data of one other responding exporter as they had not claimed any packing cost) have been taken into consideration for determination of net export price. Net export price at ex-factory level in respect of each PCN has been worked out accordingly for comparing the same with the Normal Value at the same level of trade.

M/S Fibrehome Telecommunication Technologies Ltd. China PR.

110. As per response filed with the Authority, they have exported ***PCN Variants to India during POI, comprising of *** Nos. However during verification of records of the responding exporter it was noticed that they had exported *** Sets / Nos of ***different PCN variants of PUC to India during POI. Verified adjustments on account of inland transportation, overseas transportation and credit cost, pre-installation and post-installation service charges / warranty and packing cost have been considered for determination of net export price at ex-factory level in respect of each PCN. Net export price at ex-factory level in respect of each PCN has been worked out accordingly for comparing the same with the Normal Value at the same level of trade.

M/S Huawei Technologies Co., Ltd. China PR.

111. Huawei Technologies has revised its export sales statement a number of times. The company also pleaded that the systems followed by the company are different from the PCN system followed by the Authority and argued that the company would have faced no difficulties in providing export sales information had the company followed company's internal product coding systems. The company revised its export sales statement a number of times. As brought out in the verification report sent to the company, the export sales information of the company remained un-verified. The Authority is unable to accept the argument that the product coding system followed by the Authority was too complicated and prevented the company from providing the desired information. Indeed, a number of producers in subject countries have participated in the present investigations and have

provided information without expressing the kind of difficulties expressed by the company. Notwithstanding, the Authority had clearly stated while informing product coding system to the interested parties that the exporters were free to modify product coding system or use their own system, should they find the system proposed by the Authority is insufficient/ inadequate or cumbersome. In any case, nothing prevented the exporter from providing information on both the basis – the product coding system followed by the Authority and product coding system followed by the company.

112. The product under consideration is essentially an assembly of a number of electronic cards and sub-assemblies. In fact, the producers tend to invoice the sales in terms of SKD/CKD/cards/sub-assemblies of the product. Investigation has shown that all the companies follow some system for design and development of the product, for which some product coding system is followed. It is noted that the export sales information has been so drastically revised by the company that even sub-assemblies/cards composition has also been altered in different responses.

113. As per response filed with the Authority, they had claimed to have exported *** PCN Variants to India during POI, comprising of *** Nos. Out of these *** PCN's were cards. No quantity had been mentioned in respect of these *** PCN's and therefore these were excluded for the purpose of determination of NEP for preliminary determination. These PCN's were basically extracted from PO's executed with different customers in India. Although the Authority gave necessary opportunity to them to get their data verified during verification visit, the PCN details claimed by them could not be verified as there appeared mismatch in subfields identified against each PCN as per the nomenclature prescribed by the Authority. This was pointed out to them in the verification report. In response to the verification report, they submitted the updated PCN details, claiming to have corrected the anomaly and sought acceptance of the same for determination of NEP. According to this they had exported *** sets / nos. of *** different PCN variants to India during POI. That apart they also claimed to have exported a few more PCN's against loan contract to Prithvi etc. against which they had failed to provide proper accounting during verification.

114. Considering the above, the Authority holds that claim on export sales to India remained unverified in spite of reasonable and adequate opportunity having been provided to them. The Authority is therefore unable to determine individual Export Price and NEP for determination of either individual DM or Injury Margin in respect of the subject producer exporter.

ZTE Corporation

115. So far as the provisional measures are concerned, individual DM was not allowed to them as it was found that they had filed incomplete data. Details in this regard were reported in PF document. Further it was stated in the PF document that a view as to whether the data proposed to be provided afresh by the company shall be accepted subsequently for final determination shall be taken by the Authority on receipt of the same. The responding

exporter, subsequent to issue of Preliminary Findings submitted fresh data with regard to exports to India. The data was found to be complete and has been duly accepted by the Authority for final determination. As per the revised data submitted, the subject exporter / producer have exported *** sets / nos. of *** different PCN variants to India during POI. That apart they had also exported *** nos. of cards. Verified adjustments on account of credit cost, Inland Freight, Handling, loading and ancillary expenses, customs clearance, ocean freight, insurance, bank charges, packing charges and warranty have been considered for determination of net export price at ex-factory level.

M/S Hangzhou ECI Telecommunication CO. Ltd China PR through M/S ECI Telecom Ltd. Israel

116. As per the verified data, they have exported *** PCN Variants to India during POI, comprising of *** Nos. Adjustments have been claimed on account of Inland Freight, Overseas Freight, insurance, storage, Finance Cost / SGA Expenses, profit of ECI Israel (related trader in this case) and Warranty etc. as verified have been allowed for determination of Net Export Price at ex-factory level.

Israel
M/S ECI Telecom Ltd. Israel

117. As per the verified data, they have exported *** PCN Variants to India during POI, comprising of *** Nos. Adjustments have been claimed on account of Inland Freight, Overseas Freight, insurance, storage, Finance Cost Expenses and Warranty etc. as verified have been allowed for determination of Net Export Price at ex-factory level.

Dumping margin

118. The Authority has recognized differences in physical and optical characteristics of different types of SDH equipment and has accordingly compared normal value with export price by considering the physical and optical characteristic and configurations of SDH equipments imported against identical specifications. The comparison has been made on the basis of Normal value and export price in respect of each PCN separately and weighted average Normal Value has thereafter been compared with the weighted average NEP for determination of Dumping Margins. The dumping margins so determined are detailed in the table below.

Name of the Company	Weighted Avg. Normal Value (USD/No.)	Weighted Avg. Export Value (USD/No.)	Dumping Margin USD/No. (%)
M/S Fibrehome Telecommunication Technologies Ltd.	***	***	*** (280-290%)
Alcatel-Lucent Shanghai Bell Co. Ltd.	***	***	*** (40-50%)
M/S Hangzhou ECI Telecommunication Co. Ltd	***	***	*** (5-15%)
M/S ECI Telecom Ltd., Israel	***	***	*** (10-20%)
M/S ZTE Corporation	***	***	*** (30-40%)

Residual - China			(280-290%)
Residual – Israel			(200-210%)

Injury Determination

Submissions by the domestic industry

119. The Domestic Industry has made following submissions on Injury.

- (i) The product under consideration is required by the customers for setting up the optical transmission backbone of their telecom networks. It is capital goods procurement for them. Given the huge value of investments involved, the customers follow a well laid down system of purchase.
- (ii) Companies such as BSNL, MTNL and RailTel, follow a system of open tendering, whereas private players (such as Bharati, Reliance, Tata Communication etc.) follow a system of closed tenders through a Request For Proposal (RFP) process.
- (iii) In open tenders, bids are invited from all suppliers in closed sealed envelopes, such bids are opened in presence of all participating suppliers and prices quoted by suppliers are announced publicly. In closed tenders, the customers invite quotations, compare the same and thereafter normally place orders based on the best commercial offer (lowest price, credit terms etc.).
- (iv) Price negotiation in both the systems is not ruled out. Such price fixation can be for specified volumes or tentative volumes. Actual shipments however take place over the tenure of the rate contract (of 12-24 months).
- (v) Considering high value of business involved, the petitioner regularly tracks requirement of individual customers and very closely monitors each offer made.
- (vi) Petitioner is reasonably well aware of the procurements made by the customers. Petitioner is reasonably well aware of the procurement decision taken by the customers.
- (vii) Petitioner has consolidated information with regard to various orders won and lost over the injury period based on this market intelligence regularly developed.
- (viii) Various intending suppliers quote irrevocable prices. After this offer, while there is a possibility of further price reduction, there is no possibility of increase in the prices.
- (ix) Designated Authority should focus on the offers made by the Foreign Producers and Indian Producers for assessing injury to the domestic industry. The injury margin should also be determined based on these offers made by the foreign suppliers.

Views / Submissions made by opposing interested parties

120. Interested parties opposing the petition have made submissions on injury which can be summed up as follows:

- i. There is no basis to suggest that the provision of Article 3.4 in any way authorizes the consideration of exports which are scheduled rather than affected.
- ii. A dumping margin and injury margin determination can only be determined with respect to the Period of Investigation and not merely on estimates.
- iii. SDH Transmission Equipments such as STM 64 are not manufactured by the petitioners. Therefore injury faced by the petitioners can only arise out of the limited demand for the subject goods produced by the petitioner. Further the assertion by the petitioner that customers now would prefer to purchase 2 units of STM 64 or 8 units of STM 16 rather than 128 units of STM 1 is preposterous and reflects a complete failure to understand the customer pattern or utilization of SDH Transmission Equipment. Assuming without admitting that the submission of the petitioner actually makes sense, the question needs to be asked whether the significant decline in demand for the subject goods in volume terms should not be a natural corollary where as available data shows quite the contrary.
- iv. There is significant increase in market share of the petitioners from 2007 -08 to POI, from 13.5% to 18.1%. This increase is almost completely at the expense of imports of subject countries which decreased from 45.19% in 2007-08 to 41.32 in POI.
- v. The submission of the petitioner with respect to its capability to cater to the Indian market and capacity utilization has been directed throughout the submission on its claim that EMS vendors, who in turn are primarily based in international jurisdictions such as Thailand and Malaysia, have the requisite capacity to fulfill Indian demand. The basic question that we request the DGAD to address is whether it is relevant to treat the petitioners as domestic producers as the actual production work is carried out only in Thailand and Malaysia and not in India.
- vi. Production and sales have increased compared to both, base year 2005-06 as well as previous period 2007-08. The petitioner now claims sales and production have decline compared to 2006-07. This approach of picking and choosing injury periods to establish a decline or increase is devoid of any reasonable justification.
- vii. Huge claims of losses by the petitioner are not corroborated by the annual reports of the petitioner.
- viii. The submission of the petitioner with respect to inventory is inaccurate.
- ix. On causal link analysis, the Authority should examine factors like pattern of consumption, Development of Technology and imports from third countries.
- x. Significant imports take place from affiliated companies and EMS vendors based abroad. It is quite obvious that a profit margin would be added by these companies prior to sale to the petitioner. Furthermore, imports from the affiliated company Tejas Communications PTE Limited is quite considerable.
- xi. The applicant industry has admitted the inherent nature of the sales in this segment of the industry. Clearly, prices are not determined based on demand and supply. In other words, the landed value has no bearing on the tendering process and hence the methodology adopted in normal cases is not applicable in such cases. In any case potential performance of the Industry as a factor of injury as argued is on the face of it bad in law. Further, there is no substantiation, cogent material or data in support of

applicants claim about potential performance for the Designated Authority to reach conclusions based on such claims.

- xii. Authority should not convert entire volumes in terms of one size say STM-4 and STM-16 as alleged by the Petitioner and it is submitted that the said request by the Petitioner also deserves to be rejected.
- xiii. There is no Injury to the Domestic Market. In fact a lot of indices show a positive trend:
- xiv. There is no material injury or any threat of material injury to the Domestic Industry by the imports of Chinese producers/exporters. The alleged injury is just a mere allegation, conjecture and remote possibility and the same are not substantiated by evidence:
- xv. The demand of the subject goods has as such increased from 100 (2005-06) to 183 (POI) and the corresponding sales of the domestic industry has grown up to 175 during the same period which cannot be said to be significantly low.
- xvi. Chinese producers/exporters imported the subject goods to India at a reasonable landed price which has not caused price undercutting of the subject goods in the Domestic Market
- xvii. The Domestic Industry's market share has increased from the 2007-08 to the POI.
- xviii. Tejas claimed that its export profits are at present financing the domestic losses. However, it is to be noted that despite the Tejas' present allegations, its own data (Proforma IVA) reveals export losses.
- xix. Return on investment is not a proper index to analyze as to whether there has been an injury caused to the Domestic Industry due to imports of the subjects in India by Chinese producers/importers.
- xx. It has been submitted that the definition of PUC and 'like article' is not only relevant for the determination of the normal value, export price which culminates into calculation of dumping margin but also for the assessment of injury to the domestic industry. The issue of like product has to be determined as early as possible in an anti dumping investigation because it clearly has an impact on the proceedings including the imposition of duties.
- xxi. It has been alleged that information provided by Tejas in relation to the low-end transmission products being manufactured by it has been considered and analyzed for arriving at the injury to the domestic industry arising from the entire range of equipments covered under the PUC including the high-end transmission products and other categories of equipments covered within the broad description of PUC.
- xxii. Entire injury analysis is based on data relating to SDH alone whereas according to the applicant industry itself, the scope of investigation seeks to cover accessories, associated software, parts and components, Populated PCB's, Power supply, lasers, Chassis, EI cables, PCM cables, power cables, racks, workstations etc..

Examination by the Authority

121. The Authority has noted the views expressed by the interested parties in respect of the injury claims of the domestic industry and examined the mandatory factors for the purpose of injury determination and causal link analysis.

Assessment of import volumes –

122. The Authority has examined information made available by the petitioner from secondary sources, information received from the DGCI&S, information made available by the petitioner from IBIS, information provided by the responding exporters and importers for assessment of import volumes. The Authority has considered information made available by the responding exporters in so far as POI is considered. For previous years, since none of the exporters have provided information in the form and manner prescribed and has provided information for different periods, the Authority has no other option but to adopt information contained in the petition.

Assessment of demand

123. Authority has determined demand or apparent consumption of the product in the Country as the sum of domestic sales of the domestic producers and imports from all sources. The demand so assessed can be seen in following table.

	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April-Dec 08	POI annualised vis-à-vis 2005- 06
<u>In terms of numbers</u>						
China	***	***	***	***	***	1364%
Israel	***	***	***	***	***	35%
Subject Countries	***	***	***	***	***	240%
Other Countries	***	***	***	***	***	151%
Imports in India	***	***	***	***	***	186%
Sales of Domestic industry	***	***	***	***	***	175%
Sales of Other Indian Producers as estimated by the domestic industry	***	***	***	***	***	
Demand	51308	118,500	81,186	94,027	70,520	183%
<u>In terms of value – Rs. Lacs</u>						
China	***	***	***	***	***	1159%
Israel	***	***	***	***	***	183%
Subject Countries	***	***	***	***	***	334%
Other Countries	***	***	***	***	***	229%
Imports in India	***	***	***	***	***	270%
Sales of Domestic industry	***	***	***	***	***	234%
Estimated Sales of Other Indian Producers	***	***	***	***	***	
Demand	50,461	79,829	117,574	132,083	99,062	262%

124. Demand for the product under consideration has shown significant increase in terms of both numbers and values. Domestic industry alleged that in spite of significant increase in the demand in the country, they are not able to take advantage of the same because of dumping from subject countries. This allegation of the domestic industry is corroborated as much as the demand has gone up by 42,719 pcs / nos or Rs. 816.22 crores, whereas sales of the domestic industry increased by 2593 pcs / nos. or Rs. 108 crores only during the period.

Import volumes and market share

125. With regard to the volume of the dumped imports, the Designated Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. Annexure-II (ii) of the Anti-dumping rules provides as under: -

“While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute term or relative to production or consumption in India”

126. Volume of dumped imports from the subject countries is given in following table:-

	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April- Dec 08
Subject Countries	16,159	55,907	36,688	38,856	29,142
Other countries	25,219	38,257	33,520	38,117	28,588
Total Imports	41,378	94,164	70,208	76,973	57,730
Indian Production	9,930	24,337	10,978	17,053	12,790
Indian Consumption	51,308	118,500	81,186	94,027	70,520
Market Share imports					
Subject Countries	31.49%	47.18%	45.19%	41.32%	41.32%
Other countries	49.15%	32.28%	41.29%	40.54%	40.54%
Subject Countries Imports in relation to Indian Production	162.73%	229.72%	334.20%	229.54%	227.85%

127. The Authority notes that the volume of imports from subject countries has increased significantly. It is noted that whereas the volume of imports from subject countries during POI (annualized) (when measured in terms of numbers) increased by about 140% over base year 2005-06. Share of subject countries in total Indian consumption of the product increased significantly from 31% to 41% over the injury period. In terms of value, the absolute imports from subject countries have increased significantly by about 234% during POI (annualized) over 2005-06.

	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April-Dec 08	POI annualised vis-à-vis 2005-06
Imports in Nos.						
China PR	***	***	***	***	***	1364%
Israel	***	***	***	***	***	35%

Subject Countries	***	***	***	***	***	240%
Other Countries	***	***	***	***	***	151%
Total Imports	***	***	***	***	***	186%
Imports in Value Rs. Lacs						
China PR	***	***	***	***	***	1159%
Israel	***	***	***	***	***	183%
Subject Countries	***	***	***	***	***	334%
Other Countries	***	***	***	***	***	229%
Total Imports	40,699	63,508	101,679	109,876	82,407	270%
Indian Production						
Volume	9,930	24,337	10,978	17,053	12,790	170%
Value Rs. Lacs	***	***	***	***	***	227%
Subject Countries Imports in relation to Indian production						
Volume	163%	230%	334%	228%	228%	141%
Value Rs. Lacs	163%	230%	334%	239%	239%	147%

128. It is seen that there has been significant increase in imports from subject countries both in absolute term as well as in relation to production in India.

Imports in relation to consumption in India

129. Volume of dumped imports from the subject countries in relation to consumption in India is given in following table:-

	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April-Dec 08	POI annualised vis- à-vis 2005-06
Imports in Nos.						
China	***	***	***	***	***	1364%
Israel	***	***	***	***	***	35%
Subject Countries	***	***	***	***	***	240%
Other Countries	***	***	***	***	***	151%
Total Imports	41,378	94,164	70,208	76,973	57,730	186%
Imports in Value Rs./ Lacs						
China	***	***	***	***	***	1159%
Israel	***	***	***	***	***	183%
Subject Countries	***	***	***	***	***	334%
Other Countries	***	***	***	***	***	229%
Total Imports	40,699	63,508	101,679	109,876	82,407	270%
Indian Consumption						
Volume	51,308	1,18,500	81,186	94,027	70,520	183%
Value Rs. Lacs	50,461	79,829	117,574	132,083	99,062	262%
Subject Countries Imports in relation to Indian Consumption						
Volume	31.49%	47.18%	45.19%	41.32%	41.32%	131%
Value Rs. Lacs	31.50%	47.23%	45.19%	40.19%	40.19%	128%

130. It is seen that imports from subject countries which were only 31.5% during 2005-06 went up to 41.32 % in POI in relation to consumption in India. Authority notes that volume impact of the imports on the domestic industry has been adverse.

Price effect of imports

131. With regard to the effect of the dumped imports on prices, the Authority examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

132. The Authority notes that each consumer procures SDH equipment meeting its specific requirement. SDH equipment used by a consumer at one station might differ from SDH equipment used at other stations in terms of associated physical and optical properties. In view of the same, for the purpose of assessment of price undercutting, the Authority has considered most closely resembling product type sold by domestic industry and compared the same with imported product type. Wherever there are no identical models, the Authority has considered a model having lower configuration than the imported product in order to ensure that price undercutting was not overstated. After determining price undercutting for individual PCN exported, the Authority has determined weighted average price undercutting for the responding exporter after considering associated volumes. It is seen that the price-undercutting margin are quite significant.

133. In this regard, Authority examined price undercutting separately for each model (PCN). Wherever the domestic industry has not offered identical model, the Authority has considered comparable lower model offered by the domestic industry. It is seen that the landed price of imports for the responding exporters are significantly lower than the selling price of the same equipment offered by the domestic industry, resulting in significant price undercutting. In fact, wherever the domestic industry has not offered identical model and comparison has been made with comparable lower model, it is seen that the landed price of imports are lower than the selling price of the domestic industry. While the domestic industry argued that its selling prices must be adjusted upwards in these cases, it is observed that the extent of price undercutting was significant even without such an adjustment.

134. Petitioner claimed that it has been forced to lower its prices in order to continue to get business. Resultantly, the domestic industry has been gradually lowering its prices, far beyond justified levels in view of low & dumped prices offered by the subject exporters. Petitioner also claimed that the prices offered by the foreign producers for supply of the same equipment in subsequent orders have been materially lower than the prices offered in the past. In other words, each successive price offer for supply of the same equipments has been at materially lower prices. Petitioner further argued that whereas the petitioner suo-moto, follows a practice of offering lower prices each successive year to its clients for the same equipment, the price reduction offered by the foreign producers are too significant and too

steep. Given the small size of the market [there is limited and known number of suppliers], petitioner further claimed that activities of each of the supplier and consumer get tracked by all concerned. Therefore, low prices offered by the Foreign Producers not only result in loss of business in that account, but also, the same has benchmarking impact on all subsequent offers that the domestic industry makes. Thus, injury to the domestic industry from such loss of business must be seen not only in one account where the domestic industry loses sales, the same must be seen in all other accounts where the domestic industry thereafter is forced to reduce the prices to prevent the dumping.

135. In order to determine whether imports for the product under consideration are suppressing or depressing the prices of product under consideration, the Authority considered the trends in cost of sales and sales revenue for the domestic industry. The relevant information is given below:

Rs. Lacs	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April-Dec 08	POI annualised vis- à-vis 2005-06
Cost of sales	***	***	***	***	***	***
Index	100	144	171	294	294	
Increase over previous year		***	***	***		
Sales revenue	***	***	***	***	***	***
Index	100	139	172	234	234	
Increase over previous year		***	***	***		

136. It is seen that the increase in cost of sales in 2006-07 was higher than increase in sales revenue. Thereafter, in 2007-08, the increase in cost of sales was slightly lower than increase in sales revenue. However, in period of investigation (annualized), increase in the sales revenue was far lower than increase in cost of sales. Whereas sales revenue increased only by 36% during POI over 2007-08, cost of sales increased by 72% over the period. On overall basis, whereas cost of sales increased by Rs. *** crores, the sales revenue increased only by Rs. *** crores. It is thus clear that imports were suppressing/depressing the price of domestic industry in the market.

Economic parameters of the domestic industry

137. Annexure II to the Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the

margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Petitioner submits that examination of performance of the domestic industry would reveal that the domestic industry has suffered material injury. Further, the domestic industry is threatened with material injury, should the present condition continue, as discussed in detail here in under.

Capacity and capacity utilization:

138. Petitioner claimed, core of production in this industry is in design and development of the product. The actual process of manufacturing and extent thereof can be in house or outsourced depending on requirement. The petitioner claimed that it can meet the entire Indian demand without any addition to plant and machinery, since producers in this industry leverage the capacities of Electronic Manufacturing Services partners, who in turn have enough capacities to meet the next 10 years requirements of India. In other words, capacity and capacity utilization must be seen in terms of intellectual property and ability of the company to deploy qualified personnel to carry out necessary design and development and manage its global supply chain. On this account, the petitioner has sufficient capacity to meet the Indian demand. In view of the same, petitioner claimed that capacity and capacity utilization may be considered irrelevant parameter in the present case.

139. Petitioner also claimed and no interested parties disputed that production of the product under consideration is extremely peculiar in as much as producers globally are increasingly concentrating on basic research, design & development. Further, petitioner claimed that capacity to produce is not an appropriate parameter in the fact and circumstances of the present case as the manufacturers decide to outsource part production activity depending on a number of factors. Authority holds that petitioners claim on this score is correct.

Production and sales volumes

140. Production and sales volumes of the domestic industry moved as shown below:

	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April-Dec 08	POI annualized vis-à-vis 2005-06
Domestic Production (Nos.)	***	***	***	***	***	***
Indexed	100	203	117	175	175	
Domestic Sales (Nos.)	***	***	***	***	***	***
	100	203	117	175	175	

141. It is seen that domestic sales and consequently production of the domestic industry shows increasing trend over the injury period. Petitioner claimed that this was a natural outcome of three factors –(a) petitioner commenced production & sale of its newSTM-1, STM-4, STM-16 and STM-64 products that enhance the range of its products (b) petitioner has gained additional volumes due to superior technology and support that is appreciated by

Indian customers (c) the market for telecommunication equipment in India has seen unprecedented growth in India - thanks to the telecommunication boom and the technological development in telecommunication sector. This was more than envisaged by the petitioner while setting up its facilities and its business plan, and additional investments were made in the company from time to time to support this. In fact, petitioner had envisaged much higher level of operation that could be achieved so far. Petitioner claimed that its production levels in fact have been lower than what it should have been. The reason for sub-optimal performance is the significant reduction in prices by Chinese/Israel suppliers and consequently substantial increase in the import volumes.

142. In view of increase in production & sales and claims of the petitioner, the increase in production was compared with increase in demand. It was seen that even when production of the domestic industry has increased over the injury period, increase in the demand of the product under consideration was far higher than the increase in production. The domestic industry had alleged that imports have taken over significant market opportunities that were available to the domestic industry. The authority thus holds that production of the domestic industry has suffered because of dumping in as much as the domestic industry has been prevented from increasing production to the extent it should have had in the absence of dumping.

Market Share:

143. Petitioner has claimed, despite the fact that the petitioner is India's first optical networking product company which is innovating and creating significant Intellectual property, the market share of domestic industry has not increased. The same has, in fact, declined. Whereas the petitioner had expected to increase its market share by introduction of new products to expand its range, the market share of the petitioner has declined over the years because of presence of dumped imports in the market. Market share of the domestic industry was determined in respect of its domestic operations. The verified information showed as follows:

	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April-Dec 08
Demand/ Consumption in India					
Volume	51,308	1,18,500	81,186	94,027	70,520
Value Rs. Lacs	50,461	79,829	117,574	132,083	99,062
Sales of Domestic industry					
Volume	***	***	***	***	***
Indexed	100	203	117	175	175
Value Rs. Lacs	***	***	***	***	***
Indexed	100	138	172	233	233
Market Share of Domestic industry					
Volume	***	***	***	***	***
Indexed	100	88	74	96	96

Value	***	***	***	***	***
	100	87	74	89	89

144. It is seen that the market share of domestic industry has come down during period of investigation both in terms of volume and value in comparison to the base year.

Factors affecting prices:

145. As stated before, landed price of imports being offered by Foreign Producers are significantly below the selling price of the domestic industry. As a result of significant price difference between the imported product price and domestic industry price, consumers have switched over part of their demand to the imported product. Further, the domestic industry has been forced to reduce its prices not only in subsequent supplies to the same customer, but also supplies to other customers in the market as well.

146. The domestic industry claimed, there is dramatic decline in the prices offered by Chinese suppliers. As a result of continued competition from foreign suppliers and loss of business, the domestic industry has been lowering its prices with every successive offer. The imports are therefore, clearly having significant price depressing effect in the Indian market.

Profit/Loss

147. Petitioner claimed that profits earned by the domestic industry from production and sale of the product under consideration in the domestic market declined over the injury period. So significant has been decline in the profits over the years that the petitioner has suffered financial losses during the POI in its domestic business.

148. Profit/loss of the domestic industry was determined in respect of its domestic operations. The verified information showed as follows:

	2005-06	2006-07	2007-08	April-Dec 08 - Annualized	April-Dec 08
Profit/Loss Rs./ Lacs					
Domestic	(***)	(***)	(***)	(***)	(***)
Indexed	(100)	(207)	(162)	(964)	(723)
As per annual report	(***)	***	***	(***)	(**)
Indexed	(100)	64	165	(14)	(11)
Sales Value Rs./ Lacs					
Domestic	***	***	***	***	***
Indexed	100	138	172	233	175
As per annual report	***	***	***	***	***
Indexed	100	187	302	352	264
Profit/Loss as % of Sales					
Domestic	(***)	(***)	(***)	(***)	(***)
Indexed	(100)	(149)	(94)	(412)	(412)
As per annual report	(***%)	***%	***%	(***%)	(***%)

Indexed	(100)	34	55	(4)	(4)
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149. It is seen that the sales revenue of the domestic industry remained consistently below the cost of sales resulting in financial losses in respect of domestic operations. Further, loss has in percentage of sales revenue increased substantially from 9.12% in 2005-06 to 37.58% in the period of investigation. It is thus seen that the domestic industry was suffering significant financial losses, which increased significantly over the injury period.

150. Since the petitioner has significant export activities, its profits in combined operations in domestic and exports continued to be positive till 2007-08. However, significant decline in its domestic profitability has resulted in decline in the overall profitability of the company in the POI. Petitioner claimed that its exports are reasonably profitable and are at present financing the domestic losses. Petitioner further claimed that no company can survive in the long run on such basis. Dumping has created very adverse position for the domestic industry.

Return on Investments

151. Since basic investments in production of the subject goods is in intellectual property in terms of design and development and skilled/qualified man power, petitioner claimed that the return on investment expressed as a percentage of return on capital employed would not adequately reflect the reasonable returns that this industry can expect. Globally the industry considers profitability in terms of gross margins and the gross margins of the domestic producers in India are significantly lower than the gross margins for their global peers.

152. Return on capital employed was determined in respect of its domestic operations showed as follows:

Rs./Lacs	2005-06	2006-07	2007-08	April-Dec 08
Capital Employed – Company as a whole				
Net Fixed Assets	***	***	***	***
Indexed	100	180	497	346
Working capital	***	***	***	***
Indexed	100	161	249	336
Capital Employed	***	***	***	***
Indexed	100	162	262	318
Profit before interest and tax	(***)	***	***	***
Indexed	(100)	132	285	55
Return on capital employed - %	(***)	***	***	***
Indexed	(100)	82	109	16
Capital Employed – PUC Domestic	***	***	***	***
Indexed	100	120	149	224
Profit before interest and tax PUC domestic	(***)	(***)	(***)	(***)

Indexed	(100)	(179)	(60)	(910)
Return on capital employed - %	(***)	(***)	(***)	(***)
Indexed	(100)	(149)	(40)	(406)

153. The analysis of trend in return on capital employed showed that the domestic industry has not been able to earn profits throughout the injury period so far as domestic operations are concerned. The negative return on capital employed, which was 100 in 2005-06 deteriorated further to over 400 in POI. For the company as a whole, the domestic industry in the base year made losses. However during 2006-07 and 2007-08, the company earned profits but during POI, the return on capital employed declined significantly to the level of less than 2%. The company on its all operations including exports earned some returned mainly due to export operations. These trends show that the profitability of the domestic industry and return on investments has suffered adversely.

Cash flow/profit

154. Petitioner claimed that since the domestic industry has significant domestic and export operations, cash flow situation of the domestic industry for all its operations is not reflective of the impact of dumping on cash flow. Therefore, cash profits situation of the domestic industry have been ascertained considering profit before taxes and depreciation. It is seen that domestic industry had negative cash flow throughout the injury period. Further, the cash loss increased substantially in the investigation period.

	2005-06	2006-07	2007-08	POI
Cash Profit – PUC domestic	(***)	(***)	(***)	(***)
Indexed	(100)	(211)	(158)	(688)

Inventories: -

155. Petitioner claimed that the product under consideration is produced only after taking firm order based on detailed specifications and these goods are not kept in inventories. Authority holds that inventories are not a parameter reflecting injury to the domestic industry.

Employment and Wages

156. Petitioner claimed, one of the major investments is in development of intellectual property in terms of research and development. As stated before, petitioner had anticipated significant market opportunity because of the unprecedented telecommunication boom in the Country. Further, the domestic industry is improving its global presence, which also calls for intensified research & development activities. All this required investment in manpower. Resultantly, manpower deployed and consequently wages paid by the domestic industry has increased over the years, as would be seen from the table below.

SN		2005-06	2006-07	2007-08	April-Dec 08
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1	Number of employees				
(a)	Research & development	***	***	***	***
	Indexed	100	151	247	324
(b)	All other activities	***	***	***	***
	Indexed	100	139	178	211
(c)	Gross employment	***	***	***	***
	Indexed	100	145	215	272
2	Wages				
(a)	Research & development (Rs./Lacs)	***	***	***	***
	Indexed	100	181	281	226
(b)	All other activities (Rs./Lacs)	***	***	***	***
	Indexed	100	166	271	260
(c)	Gross employment (Rs./Lacs)	***	***	***	***
	Indexed	100	174	276	242

157. Petitioner claimed that it is not possible to reduce the employment, as any such effort would imply a process of permanent decline of the domestic industry. The intent of the foreign producers is very clear – to eliminate Indian industry in this important product segment. The petitioner claimed that the product under consideration was developed by them in this Country and India joined select few countries in the world having capability and capacity to produce this high technology product. The Telecom growth in India has created a huge demand for the product under consideration. Elimination of Indian Producer can provide not only huge market opportunity to the foreign producers in India, but also would eliminate competition to them in global market. Present dumping is therefore likely to have very significant adverse impact on employment and wages, as India is trying to move up the value chain and create a talent pool of technologists who can create high-value, intellectually property and products.

158. Petitioner further claimed that the Govt. of China was supporting its telecom equipment manufacturing industry in a variety of ways, which includes huge soft loans.

Productivity:

159. Productivity of the domestic industry has been measured in terms of production per employee, expressed in number and value of SDH equipments produced.

SN		2005-06	2006-07	2007-08	April-Dec08
1	Production per employee				
(a)	Number of equipment Domestic Industry	***	***	***	***
	Indexed	100	140	54	48
(b)	Value of equipment Domestic Industry(Rs./Lacs)	***	***	***	***
	Indexed	100	97	81	66

160. It is seen that the productivity of the domestic industry has improved. In spite of improvement in productivity, however, price parameters have deteriorated significantly.

Ability to raise funds:

161. Petitioner claimed that investments in plant and machinery are not a critical factor in the present case. In fact, funds requirements in this industry are more on account of working capital than in fixed assets. Ability of this industry to raise funds may, therefore, seriously be affected with the present level profitability of the domestic industry.

Assessment on Injury

162. Having regard to the information made available by various interested parties and investigation conducted, the Authority concludes that subject imports have increased in absolute terms (both in volume & value) and in relation to production & consumption in India. There is significant decline in the import price over the injury period. Imports are significantly undercutting the prices of the domestic industry in the market. Imports are depressing the prices of the product under consideration in the market. Performance of the domestic industry deteriorated in terms of profits, market share, and return on investment, cash flow, and growth. Even though volume of production and sales increased over the injury period, the domestic industry lost significant business opportunities to sell their products in the market. Authority has considered capacity utilization and inventories is not indicator of injury to the domestic industry. Decline in profits, return on investments and cash flow is in spite of significantly improved performance on export front. Employment, productivity and wages have improved. However, the improvement therein far outweighs the deterioration in other parameters. The deterioration in the performance during the current period is quite significant and material.

Causal link and Analysis of other factors

163. Having examined the existence of material injury and volume and price effects of dumped imports on the prices of the domestic in terms of its price undercutting, price underselling and price suppression, and depression effects the Authority has also examined whether other indicative parameters listed under the Indian Rules and Agreement on Anti Dumping could have contributed to injury to the domestic industry. Therefore, the following parameters have been examined:

- a) Imports from Third Countries: - Imports from countries not under investigation are either insignificant or at prices higher than the import prices from the subject countries and therefore, do not affect the prices in the domestic industry;
- b) Contraction in Demand: - Demand for the subject goods have increased substantially during the injury examination period. Therefore, possible contraction in demand cannot be attributed to the injury to the domestic industry.

- c) Pattern of consumption: - No significant change in the pattern of consumption has been alleged by any interested party.
- d) Conditions of competition: - The goods are freely importable. The applicant is the major producers of the subject goods and account for almost 100% of the domestic production. Therefore, domestic competition could not be attributed to the injury to the domestic industry. No other evidence of conditions of competition or trade restrictive practices has been brought to the knowledge of the Authority.
- e) Developments in technology: - There is no allegation of significant changes in technology which could have caused injury to the domestic industry.
- f) Export performance of the domestic industry: - There is no evidence on record to show that exports of the DI have any impact on its performance considered hereinabove.
- g) Productivity: - Productivity of the domestic industry has improved in terms of total output. Therefore, this cannot be attributed to the injury of the domestic industry.

164. The non-attribution analysis as above shows that no other factor other than the dumped imports has affected the domestic industry.

Factors establishing causal link

165. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated due to dumped imports from subject countries. Therefore, the causal links between dumped imports and the injury to the domestic industry is established on the following grounds:

- a. The dumped import prices and consequently the landed price of imports from the subject countries steeply declined, resulting in significant price undercutting. As a direct consequence, the domestic industry was forced to reduce the prices.
- b. Reduction in the selling prices by the domestic industry adversely affected the profits, cash flow and return on investments of the company.
- c. Even though the domestic industry responded to decline in import prices, significant positive price undercutting resulted in increase in market share of imports from the subject countries. As a direct consequence, market share of the domestic industry declined.
- d. In spite of increase in demand and reduction in selling prices by the domestic industry, market share of the domestic industry declined due to significant reduction in landed price of imports. This retarded the growth of the domestic industry.
- e. The significantly low prices being offered by the foreign producers have prevented the domestic industry from increasing its production and sales to the level it could have in the absence of dumping.

166. The Authority concludes that the domestic industry suffered material injury and the injury have been caused by the dumped imports from the subject countries/territories.

Magnitude of Injury and injury margin

167. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The comparison has been done by determining the non injurious price for the model imported in India. Separate comparison has been done and injury margin determined for each model imported. Thereafter, the weighted average injury margin has been determined considering the associated import volumes. The injury margins have been worked out as follows:

Country	Exporter	Injury Margin Rs Per PCN	Injury Margin %
China PR	M/S Fibrehome Telecommunication Technologies Ltd.	***	280-290%
	Alcatel-Lucent Shanghai Bell Co. Ltd.	***	40-50%
	M/S Hangzhou ECI Telecommunication Co. Ltd	***	110-120%
	M/S ZTE Corporation	***	30-40%
Israel	M/S ECI Telecom Ltd., Israel	***	2-10%
Residual- China PR		***	280-290%
Residual - Israel		***	65-75%

Comments Received from Various Interested parties to the disclosure statement. Domestic Industry

168. Domestic Industry in their submissions in response to the disclosure statement has stated as under

- i. The Authority should specify meaning of origin and what constitutes Indian product, Chinese product or third country product;
- ii. Use of EMS constitutes “job work”, which is very much permissible under the law. In fact, the costing section requires details of job work done or got done by the domestic industry. Production activity by EMS does not constitute production;
- iii. Tejas has not utilized any EMS company in Malaysia
- iv. Petitioner has standing to bring and maintain the present petition;
- v. The Authority has re-determined non injurious price based on preliminary comments to disclosure statement given by the domestic industry. The re-determined non injurious price may be disclosed to the domestic industry;
- vi. The domestic industry has provided some import data and claimed that ECI and ZTE have not truthfully disclosed all of their export transactions to the Authority.
- vii. Duty should be recommended on software, technical know-how and profit element as well, as these constitute product;
- viii. Duty may be recommended on ad-valorem basis only;

Examination by the Authority

169. Authority seeks to hold that Tejas is the Domestic Industry and has necessary standing within the scope of the Rules, without a reference to the IPR issue, as of now because Tejas is the only manufacturer who provided data in manner prescribed, to the Authority. There were claims of being domestic producers by VMCL and Prithvi, one of whom, at the fag end of the investigation in August, 2010, admitted in writing that they are into manufacture of DWDM, not included under PUC, and the other claimant was found to be an importer of the equipment during the course of verification carried out at the premises of the responding exporters and therefore not eligible to be considered as DI within the scope of Rule 2(b). Moreover, no verifiable data, whatsoever, in the manner prescribed, was presented to the Authority by either of the two, FIBCOM, the claimant to be another producer, also did not provide any verifiable data, although they came in support of Tejas seeking imposition of duty of complete equipment and no other interested came forward to claim to be the manufacturer, nor did any other interested party provide any data on this score to the Authority. The Authority has re-determined non injurious price based on the submissions made by the domestic industry. As regards unreported transactions, the Authority notes that while ZTE provided evidence that the alleged missing transactions are not within the scope of the product under consideration; ECI also provided evidence that the volumes reported in the import data were not correct.

M/S RAD Data Communications Ltd (RAD).

170. Commenting on the disclosure statement they have sought exclusion of those RAD products/modules having STM-1 interface don't work in SDH environment, because they are used to carry data and voice traffic over dark fiber, in private campus networks or private networks of Defense, Railways, and Utilities. Many of these products are stated not to transmit data/voice traffic in SDH environment, because they are used only as 'monitoring/probe' devices for 'Operations and Maintenance' of Transmission Networks. Therefore these products/modules do not have the same end use of SDH Transmissions and cannot be considered as "like products" to those manufactured by Tejas. They have also sought exclusion of similar STM-4 interfaces.

Examination by the Authority

171. The Authority reiterates the scope of the product under consideration in the present case and holds that all other goods which do not conform to the scope of the product under consideration are clearly beyond the scope of the proposed measures. The interested parties are expected to establish their claims before the customs port authorities with regard to exact nature of the product sought to be cleared. While it is well understood, it is clarified that anti dumping duty is chargeable only if the product sought to be cleared falls within the scope of the product under consideration. The Authority has however addressed all the concerns on inclusions and exclusions from the purview of recommended AD Duty in the form of a footnote to the Duty Table of this Final Findings Document.

M/s Ceragon Networks Limited

172. The product produced by Ceragon shall be outside the scope of the product under consideration as it is not like article with the product under consideration. They have also submitted that Designated Authority should amend the scope of the investigation by clearly excluding Ceragon's products/modules including STM -1 so as to avoid any kind of interpretational issues during the imports of the products.

Examination by the Authority

173. The Authority reiterates its position. Anti dumping duty applies on the product regardless of the producer. Further, Authority considers that it would not be appropriate to specify names of the individual companies or products which are outside the scope of the product under consideration and proposed duties. Moreover, nothing prevents an exporter to export goods produced by some other producer attracting anti dumping duty. The Authority has however addressed all the concerns on inclusions and exclusions from the purview of recommended AD Duty in the form of a footnote to the Duty Table of this Final Findings Document.

Fibcom

174. They have re-iterated their claim to be domestic manufacturers. While agreeing with the facts brought out by the Authority in the disclosure statement, they have sought describing the PUC in terms of ITC (HS) at 8 digit level to avoid circumvention on payment of AD Duty by the importers.

Examination by the Authority

175. The Authority reiterates its position. Anti dumping duty applies on the product regardless of customs classification. Customs classifications have been mentioned only for customs convenience and are not binding on the scope of the product liable to anti dumping duty. Anti Dumping duty shall apply on the product under consideration regardless of the customs classification reported by the importer. Similarly, anti dumping duty will not apply even if a product has been reported under the customs classification mentioned in the present notification if the product sought to be imported falls beyond the scope of the product under consideration. The Authority has however addressed all the concerns on inclusions and exclusions from the purview of recommended AD Duty in the form of a footnote to the Duty Table of this Final Findings Document.

ANDA Telecom

176. SDH equipments are not similar to PDH equipments. The of Designating Authorities should be clearly mentioning the difference between SDH and PDH equipments, If any antidumping duty is payable it should only on SDH equipment not on PDH equipments

Examination by the Authority

177. The Authority reiterates its position. Anti dumping duty applies only on product under consideration as defined in the present notification. All other products are in any case beyond the scope of the product under consideration of the present notification. The Authority has addressed all the concerns on inclusions and exclusions from the purview of recommended AD Duty in the form of a footnote to the Duty Table of this Final Findings Document.

Ceragon Israel

178. They have pleaded that Ceragon exports some Microwave Radio Terminals which could have an STM-1 interface to the SDH transmission equipment. This interface claimed to act as a physical media to enable the connectivity between the radio and the SDH equipment. It has been emphasized that this is merely an interface, and does not perform any of SDH transmission equipment requirements. Thus they have sought to amend scope to exclude Ceragon's products, including those with STM-1 interface.

Examination by the Authority

179. The Authority has addressed all the concerns on inclusions and exclusions from the purview of recommended AD Duty in the form of a footnote to the Duty Table of this Final Findings Document. Anti dumping duty applies only on product under consideration as defined in the present notification. All other products are in any case beyond the scope of the product under consideration of the present notification.

UT Starcom Inc. (India Branch Office)

180. They have submitted that They oppose imposition of antidumping duty on the Subject Goods and contest finding in the Disclosure Statement on the following grounds::

- i. Tejas does not fall under the ambit of the definition of "Domestic Industry" as defined under Rule 2 (b) of The Act Tejas must also prove that they manufacture all necessary accessories, parts, components and cables and SDH Equipment, considering that Tejas is an importer of these parts and does not "produce" them as Tejas imports 95% of these parts, components and accessories into India, 65.58% of raw material utilised by Tejas being imported.
- ii. It is wrong on part of the Designated Authority to expect the interested parties opposing such investigation to prove otherwise. It is only when the applicant discharges the initial burden in terms of Rule 5(1) of the Anti Dumping Rules onus would then shift to the responding parties to prove their case.
- iii. There is no apparent threat of injury faced by the indigenous industry due to alleged surge of import of the Subject Goods from the Subject Countries. A mere increase in volume of imports is not the primary factor for establishing dumping and proper importance should also be given to other economic parameters such as capacity

utilization, volume of sales, volume of production of the applicant in the investigations to calculate actual injury for levy of anti dumping duty. In this regard they have drawn reference is drawn to Carbon Black case , wherein it has been held that increased imports entering at declining prices coupled with the fact that surplus capacities were set up abroad is an indicator of imminent serious injury.

- iv. The Authority in the Disclosure Statement has out rightly rejected various other factors which are also relevant for determining the causal relationship. The Designated Authority while observing that production and sales of the Domestic Industry has increased completely ignored it while evaluating extent of injury to the Domestic Industry. They have referred to Article 3.5 of the Anti Dumping Trade Agreement which provides that while determining injury and causal link thereof mere existence of dumping is not sufficient to impose anti dumping duty. Furthermore it has also been submitted that the consideration of the relevant factors for determining injury and causal link by the Designated Authority, should not be a mere mechanical exercise with a check-list approach, but, a meaningful and objective assessment of relevant factors having bearing on existence and consequences of injury by import of such article in the context of any established industry in India.
- v. There is contradictions in the findings that while demand of SDH Equipment is increasing, production is increasing, sales revenue is also increasing (36% during POI) and capacity utilization is also increasing, still the Domestic Industry is alleging dumping and injury. The Authority in the Disclosure Statement has mentioned that volume of imports has increased from 31.55 in 2005-06 to 41.32% during POI however, very conveniently ignoring the same data which shows that volume of imports has also gone down from 47.18% in 2006-07 to 41.32% during the period of investigation. Thus this kind of proposition is based on false allegations by a single motive of gaining monopoly and restricting competition is not only anti consumer, anti competition but also encourages cartelization by the Domestic Industry.
- vi. Contrary to claims of the Petitioners, their production has increased at a reasonable rate during the period 2005-06 to 2006-07 to 2007-08 which is also corroborated in the Disclosure Statement. Thus, it is evident that the Domestic Industry is not facing any injury from imports of SDH Equipment from the Subject Countries and thus there exists no causal link of alleged injury to the Domestic Industry. In this regard they have placed reliance on the decision of the Hon'ble Customs, Excise and Service Tax Appellate Tribunal in the case of **Andhra Petrochemicals Vs. Designated Authority [2006 (201) E.L.T. 481 (Tri.)]** wherein it has been held:

“The designated authority is required to give a final finding, inter alia, as to the export price, normal value and the margin of dumping of the article under investigation and as to whether import of the said article into India causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India.”

- vii. Treatment of China as a non market economy country by the Designated Authority is rather arbitrary in nature. To treat any economy as non market economy specific

findings has to be given in each case. Past treatment cannot be the sole reason for treating any economy as non market economy is not tenable. Further non market economy status cannot be fastened to any country as a general rule.

- viii. The entire investigation is being conducted in an arbitrary manner and without having regards to the principles of natural justices as giving bare 24 hours to submit response to the Disclosure Statement, lists out some instances of the gross violations of principles of natural justices, further details of which would be submitted during the course of hearing in the matter:
- ix. Most of the data submitted by the Domestic Industry has been marked confidential and accepted by the learned Designated Authority as such, leading to a situation that exporter/ importers are not able to make an effective rebuttal of claim made by the Domestic Industry. While Rule 7(1) of the Anti Dumping Rules provides for submissions of information on confidential basis, Rule 7(2) thereof mandates for providing non confidential summary of such information to enable the other parties to understand substance of submissions. However the non confidential summary of confidential data submitted by the Domestic Industry does not give any understanding of the facts/ data and hence they are not able to make an effective response to the submissions of the Domestic Industry
- x. While the Designated Authority consented to the letter by CMAI and Measurement Controls Limited for claim made by Tejas to qualify as “domestic industry”, only letter by CMAI is placed on record. However it is apparent from the Disclosure Statement, whether the Designated Authority has made any efforts to corroborate the same when Authority itself found that more than 65% of components used by Tejas is imported
- xi. The Domestic Industry in the Petition mentioned that inter-alia details of exports made by them are available in Performa IV-A, but marked the same as confidential and non confidential summary thereof had not been provided, and
- xii. The Designated Authority failed to cause investigations or record any findings as to why in spite of increase in sales, production, inventory the Domestic Industry is alleging injury.

Examination By the Authority

181. Authority notes that the issues relating to standing of the domestic industry, imports by domestic industry as also addressing the same within the scope of Rule 2(b) of the AD Rules has elaborately been taken care of in detail in the disclosure statement and present findings. No new issues have been brought out by the party and the issues addressed in the disclosure statement or the present findings elsewhere need not be addressed afresh. With regard to treatment of China as a non market economy country, the Authority notes that the Rules provides for rebuttable presumption. Therefore, the Authority is required to treat Chinese producers as operating in non market economy, unless a responding Chinese producer establishes its claim of market economy status.

CIENA USA

182. They have submitted that considering that DGAD has admitted the plea of Domestic Industry that the key effort involved in production of subject goods is in the development of technology. Substantial research & development efforts are put in by the producers in design & development of the subject goods, the core activity in the production of the subject good is development of technology, know-how, design and development of the product and the production process of subject good and the country in which such process is carried out is of significant commercial importance in terms of the reliance placed by consumer on the technology produced in certain specific country, Authority may consider to mention in Final Findings document that that the substantial transformation goods produced by CIENA is not carried out in the subject countries under investigation and, therefore, the goods do not originate from China PR.”

Examination by the Authority

183. Authority takes note of the comments as above. As far as the issue of defining the country of origin by taking into account the country of origin for IPR, Authority notes that although the Administrative Ministry for Telecom Equipment was considering this aspect for specialized products relating to Telecom and had publicized the same for comments from all concerned, the issue had not been firmed up as yet as no formal orders to this effect have been issued. Therefore, the Country of Export and Country of Origin for the present investigation will continue to be in line with Preliminary findings notified by the Authority.

184. However, irrespective of the above, Authority seeks to hold that Tejas is the Domestic Industry and has necessary standing within the scope of the Rules, without a reference to the IPR issue, as of now, as under.

- i. Tejas is the only manufacturer who provided data in manner prescribed, to the Authority.
- ii. There were claims of being domestic producers by VMCL and Prithvi, one of whom, at the fag end of the investigation in August, 2010, admitted in writing that they are into manufacture of DWDM, not included under PUC, and the other claimant was found to be an importer of the equipment during the course of verification carried out at the premises of the responding exporters and therefore not eligible to be considered as DI within the scope of Rule 2(b). Moreover, no verifiable data, whatsoever, in the manner prescribed, was presented to the Authority by either of the two.
- iii. FIBCOM, the claimant to be another producer, also did not provide any verifiable data, although they came in support of Tejas seeking imposition of duty of complete equipment.
- iv. No other interested came forward to claim to be the manufacturer, nor did any other interested party provide any data on this score to the Authority.

M/s Huawei Technologies Co., Ltd, China PR , Aircel Ltd. and MRO Tech

185. Responding to the disclosure statement, M/s Huawei Technologies Co., Ltd, China PR

- i. DGAD should not have treated Huawei on par with other non-cooperating exporters by applying the all others rate of dumping margin of 280 - 290% despite all the cooperation extended by Huawei. There was no warrant to discard the export price of Huawei. Export price details were made available to DGAD and there was no change whatsoever in the export price. Export price details reported in Appendix 2 were found to be tallying with the relevant supporting documents and accounting records including bank statements in support of realization of export proceeds. During the verification, when the authority verified the individual documents with the various sub-fields of the PCNs, no mistake was ever found. All the documents matched with the data presented. In the preliminary findings, the values reported against certain PCNs without quantities had been ignored. After the preliminary findings, Huawei had reallocated the values of those PCNs to other PCNs that had quantities. At the time of verification, the components in PCNs without quantities were also reallocated to those PCNs with quantities. The re-allocations were made in order to match all components with their values in the PCNs. Such modifications did not amount to changing the export price. In fact, the export prices before and after the reallocation remained the same.
- ii. Since no additional data was submitted pursuant to the verification report, there was no reason why DGAD could not accept the submitted information. Huawei had given a complete list of description that it had used to for denoting every sub-field of the PCN. When the description used by Huawei was considered for comparing the various sub-fields of the PCN, there was no difference in the description between the PCNs reported and the underlying documents.
- iii. In terms of paragraph 5 of Annex II of the WTO ADA, even if the information provided is not ideal in all respects, it shall not be disregarded as Huawei has acted to the best of its abilities.
- iv. Insistence of the DGAD on production of extremely old documents, not requested before hand and refusal to grant MET status on the failure to produce such documents was unjustified.
- v. Huawei Technologies Co., Ltd (hereinafter "Huawei") provided detailed evidence which showed that Tejas was using its exclusive OEM manufacturer Celestica in Thailand as a front to engage in indirect imports from China PR.
- vi. Tejas does not cease to be an importer merely because it indirectly imports from China via Thailand instead of engaging in direct imports from the subject country. Therefore, Tejas does not qualify to represent the Domestic Industry under paragraph 2(b) of the Antidumping Rules, 1995.
- vii. Huawei and a number of other interested parties sought a public hearing to exclusively discuss the issues relating to the product under consideration. They wanted to highlight that a number of products that comply with SDH standards are

sought to be included by customs authorities though they are significantly different from the STM 1 to 16 machines manufactured by Tejas. Despite repeated requests to hold a public hearing on this crucial issue, no hearing was held. Without providing an opportunity to address submissions or counter-submission on the issue, DGAD has decided to summarily include STM 64, STM 256, DXCs, broadband and cellular equipments which incorporate SDH equipments, assemblies & sub-assemblies and populated circuit boards/cards within the scope of the PUC. The decision of the DGAD is highly arbitrary.

- viii. DGAD in paragraph 30(ii) of the Disclosure Statement has stated that the goods are produced only if the inputs deployed in the production process undergo a “substantial transformation”. However, DGAD failed to examine whether parts & components including populated circuits boards and cards, SDH Transmission Equipment are produced in India by the petitioner.
- ix. The position adopted by the DGAD that inputs processed at an intermediate stages, where they had no use (and could perform no functions) but for consumption in the eventual product, could not be considered as an article even if saleable at that stage, is completely faulty.
- x. DGAD has erroneously included distinct products and higher grades of SDH Transmission Equipment not produced by Tejas, while determining the applicable anti-dumping duty. Reasons for exclusion are provided below:
 - i. STM 64 – The finding of the DGAD that Tejas has supplied STM - 64 in India and overseas market is highly questionable. Tejas has not participated in any tender process for STM 64 till date. DGAD has accepted the false claims of Tejas.
 - ii. STM 256 – The decision of Hon’ble CESTAT in *Andhra Petrochemicals Ltd Vs Designated Authority, 2006 (201) ELT 481 (Tri-Del)* that an article which is not an article exported from any country or territory to India cannot be subjected to anti-dumping duty is binding on DGAD and no antidumping duty can be recommend on STM 256. STM 256 is distinguishable on the basis of (a) technical characteristics (b) manufacturing process (c) functions & uses and (d) customer perceptions.
 - iii. Digital Cross Connects - DXCs represent a separate technology and are distinguishable from STM 1 to 256 family of SDH Transmission Equipments. Huawei submitted detailed differences between DXC and SDH Transmission Equipments, none of which was considered by DGAD.
 - iv. CKD/SKD form and assemblies & sub-assemblies – DGAD should clarify that assemblies /sub-assemblies not having the essential character of SDH equipments shall not be subject to anti-dumping duty.
 - v. PCB/Cards - Tejas does not produce PCBs and cards but imports them in substantial quantities. Evidence to this effect has already been furnished to the DGAD. Inclusion of PCBs and cards within the PUC is therefore completely erroneous.
 - vi. Parts & components – Since DGAD has acknowledged that parts & components are not manufactured by the “Domestic Industry” DGAD should issue a clarification to exclude parts & components. While excluding parts &

components, assemblies/sub-assemblies, PCBs and cards have been included. In the absence of a clarification as to the distinction between parts/components and the assemblies/subassemblies/PCBs and cards, it will create chaos in the customs administration.

- vii. SDH equipment as part of equipment – Ministry of Finance vides Customs Notification Non 132/2009 had excluded broadband or cellular equipments which incorporate SDH equipments from the scope of anti-dumping duty, despite inclusion of such products in the Preliminary Finding. Therefore, DGAD should exclude the same from final findings also.
- viii. Software – Software is a service and not a good. DGAD should not take an internationally unprecedented step of imposing anti-dumping duty on a service.
- xi. Vide submission dated December 30, 2009; Huawei has submitted a detailed list of products which should be excluded from the scope of the PUC. The same may kindly be considered by the DGAD and excluded from the scope of the present levy.
- xii. The Hon'ble Tribunal in a plethora of cases such as *Videocon Narmada Glass Vs Designated Authority [2003(151) ELT 80(Tri-Del)*, *Indian Refractory Associations Vs Designated Authority [2000 (119) ELT 319 (Tribunal)]* and *Magnet Users Association Vs Designated Authority [2003 (157) ELT 150 (Tri- Del)]* has ruled in favour of excluding grades not manufactured by the Domestic Industry. Therefore, product grades not manufactured by Tejas should be excluded from the scope of the Domestic Industry.
- xiii. DGAD in examining the locus standi of the petitioner has failed to examine whether “substantial transformation” of the subject goods are carried out by Tejas in India. The list of activities carried out by Tejas as provided in paragraph 31 of the Disclosure Statement does not establish whether actual production is carried out by Tejas or by EMS vendors. No explanation has been provided as to how the activities carried out by Prithvi & VMC are different from that of Tejas.
- xiv. DGAD has made a false statement in paragraph 43 of Preliminary Finding that detailed investigation was carried out at the premises of Tejas. During the public hearing, the counsel for the domestic industry openly stated that the authority visited only the head office of Tejas at Bangalore and they did not visit the plant at all for the reason that Tejas did not have any plant at all at the time of visit by DGAD Team.
- xv. Performance of “pre-production activities” like design and development cannot qualify a company as a producer. This is a consistent practice of US Department of Commerce/ International Trade Commission
- xvi. The use of the term “manufacture” in Rule 2(b) – Definition of Domestic Industry - has to be given meaning. The use of the term is a deviation from the text of the WTO ADA which uses the term “production” with the purpose of aligning the Rules with India jurisprudence. The position of law as acknowledged by the Supreme Court of India in *Diwan Bros vs Central Bank of India, Bombay and Ors [AIR 1976 SC 1503]* is binding on DGAD.
- xvii. More than 70% of the shares of Tejas are held by non-Indians and for this reason also, they cannot be treated as ‘domestic industry’.

- xviii. DGAD has not examined the detailed submissions made by Huawei on injury and causal link in its Written Submission dated January 4, 2010.
- xix. Reliance on “Voice & Data” magazine to determine import volume for the period under review, except the POI was in clear violation to the binding decision of CESTAT in *Dye Stuff Manufacturers Assn of India v GOI 2003 (157) ELT 154 (Tri)*. Additionally, import data submitted in the petition comprised sales contracted as well as sales effected. No injury could be deemed to have been caused through contracted sales.
- xx. Point to point comparison i.e. comparison of the imports during base year 2005-06 with POI – April – December, 2008 was in clear violation of *EC-Tubes*, WT/DS219 where the panel had held that a meaningful examination of injury must take into account the actual intervening trends in each of the injury factors and indices rather than just a comparison of the end points. Intervening trends indicate that between 2007-08 and the POI, market share of Tejas in increased demand was 47.30% while that of Chinese exporters was only 16.88%.
- xxi. In examining the price effect, DGAD should have examined whether increase in cost of sales was a result of the profit margin added by related EMS vendors who carried out the actual production process for Tejas; whether the cost of sales determined for Tejas was on the basis of the cost incurred on products actually sold by Tejas and not other products; whether inability of Tejas to gain market share flowed from the incapability of meeting the unique demands of the customer.
- xxii. Submissions of Huawei on (1) Enhanced profitability of the Domestic Industry ; (2) Increase in production/sales & market share; (3) Increase in Employment & Wages presented in the Written Submission have not been considered by the DGAD. DGAD has not even examined whether Tejas had the capacity to meet the demands of the Indian industry.
- xxiii. It is a settled position of WTO law, as elucidated *EC - Bed Linen*, paragraph 6.154 - 6.159, that all the listed factors mentioned in Article 3.4 must be examined by the investigating agency and *Mexico – Corn Syrup*, paragraph 7.128 that consideration of each of the factors must be apparent in the final determination of the investigating authority. No such consideration is however apparent from the disclosure statement.

Examination by the Authority

186. The Authority relies upon elaborate verification report issued to the exporter, disclosure statement issued and the present findings. Issues raised by the company have also been raised by other interested parties and have already been addressed elsewhere in the disclosure statement and present findings. The Authority also takes note of the submissions made by Huawei Technologies, proposing a price undertaking and seeking information on export price, normal value, dumping and injury margins so as to enable them to submit a suitable undertaking. The Authority notes that the details about non-determination of export price in respect of the subject exporter have already been explained in the disclosure statement as well as in these findings. Consequently it has also not been possible for the Authority to determine the individual DM and IM for the subject exporter. Moreover, the

product under consideration is not a simple homogeneous product but a complex one with a number of variants. Therefore the Authority holds that such an undertaking, proposed by them is impractical; Rule 15(3)) refers.

Fibrehome

187. While commenting on the disclosure statement, they have stated as under
- a. PCN's exported by Fibrehome are not manufactured by Tejas. How cost data of Tejas has been used for working out Normal Value for different PCN and products.
 - b. Excessive confidentiality has been adopted in respect of Normal Value and Non-injurious Price which is not based on actual cost data of Tejas and cannot be treated confidential.
 - c. Cost of production in India is entirely different from prevailing in China. R&D cost is very high for Tejas. Authority should have adopted Normal Value as prevailed in Israel or Hangzhou ECI Telecommunication Co. Ltd, considered as operating under Market Economy conditions in China PR. In case some of the PCN are not produced and sold by ECI Telecom Ltd. Israel, the Authority should have resorted to Normal Value based on the same assumption as has been adopted while working out the CNV for those PCN which are not produced by Tejas.
 - d. Anti Dumping Duty should be imposed type-wise by segregating the PUC into the types they are sold.
 - e. Non-injurious Price determination is incorrect
 - Raw Material Cost:- when all the PCN exported into India have not been manufactured by Tejas, they could not have provided PCN wise detailed Bills of Material on 522 PCN. Further parts and components used for different PCN by different companies may differ.
 - Research & Development Cost: How Authority has assessed the R&D cost for PCN not produced by Tejas is not known.
 - Reasonable Return on Capital Employed methodology is totally baseless. Authority should adopt the rate of return on capital employed actually earned by Tejas during the period when there was no allegation of dumping.

Examination by Authority

188. Issues raised by the company have already been addressed elsewhere in the disclosure statement and present findings. It is clarified that the Authority has constructed normal value for the exported PCN. For the purpose, the Authority has established PCN by considering the properties of the exported product type. As regards difference in the prices of inputs, the Authority holds that the prices of inputs prevailing in China cannot be adopted unless the company concerned has been given market economy treatment. As regards separate duty on different product type, Authority holds that the difference in product types is relevant only for

the purpose of comparison (for determining dumping margin and injury margin). Eventual anti dumping duty has to be on the product under consideration. The Authority has adopted the same rate of return for determining reasonable profit for the domestic industry as has been considered in other investigations. This is despite the claim of the domestic industry for higher rate of return on the grounds that the investment in the present product is not limited to plant & equipment and working capital, but extends to manpower, which also constitutes assets for the production of the product in the present case.

M/s ZTE Corporation, China

189. ZTE has truthfully reported all exports transactions in Appendix 2 and nothing has been concealed to mislead the Authority. Rather the export transactions reported by the interested party now are not SDH devices but DWDM devices and according to ITU-T G.671 and ITU-T G.680, OADM is one form of DWDM device.

Examination by the Authority

190. Their submissions on this score have been accepted on its face value and suitably addressed in response to the claim of the DI on this score in paras herein before.

VMCL

191. They have stated as under

- a. The disclosure statement is in contravention to SC decisions as regards what constitutes production and confidentiality.
- b. VMC is a manufacturer as per the law declared by the Hon'ble Supreme Court
- c. Complainant has no manufacturing and supply capabilities to address the needs of the domestic users. For the import of parts, components, assemblies, sub-assemblies, etc., India is wholly dependent on import.
- d. While the PUC has been redefined in disclosure statement there has been no corresponding re-determination of the 'domestic industry' or consequent re-determination to the dumping, injury and causal link.
 - i. STM 64, STM 256 and DXC are not 'like products' to STM 1, STM 4 and STM 16.
 - ii. DXC equipment is altogether a different category of equipment than the STM equipments.
 - iii. Constitution of the domestic industry, dumping, injury, causal link, etc. needs to be separately determined for STM 64, STM 256 and DXC equipments.
 - iv. In the light of the letters by *BSNL, ITI Ltd*, it emerges that the complainant industry was not engaged in the manufacture of STM 64, DXC equipments.
 - v. Mere investment in capacity, development of test equipment, etc. for STM 256 is not the thresholds for determining the domestic industry.
 - vi. Both assemblies and sub-assemblies as also PCBs have like treatment as has been afforded to parts and components.

- vii. No parts and components, assemblies & subassemblies, etc. of DWDM equipments including ‘STM 16 Muxponder cards’ should be included in the scope of the product.
- viii. Concept of “substantial” transformation is not a statutory requirement to determine whether or not an entity can be regarded as part of the domestic industry.
- ix. Tejas should be considered to be importer of parts and components of PUC from the subject countries.
- x. The company has provided all the relevant information called. The statement that the company has not extended co-operation in relation to the present proceedings is fallacious.
- xi. Request for public hearing - the “due process” requirement in relation to the Anti-dumping proceedings requires hearing and such request cannot be denied. Following determination proposed to be made by the Authority are without disclosing the relevant basis and should be rejected.
 - a. Tejas has produced and sold STM 64 in India and overseas [Pg. 30 Para 36 (b)]
 - b. Tejas has shown production of STM 64 in commercial volumes i.e. also for BSNL [Pg. 30 Para 36 (b)]
 - c. Tejas has manufactured STM 256 [Pg. 30 Para 36 (c)]
 - d. DXC equipment of SDH technology has been produced and supplied by Tejas during the investigation period.
 - e. Letter of TEMA (an industry association)

Examination by Authority

192. Authority notes that VMCL has not established its status as an interested party. Under Rule 2(c), an interested party is defined as follows

- (c) “interested party” includes -
 - (i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;
 - (ii) the government of the exporting country; and
 - (iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;

193. In the instant case, the company has not established how it constitutes an interested party. The company is neither a domestic producer of the product, nor an importer nor a consumer in India. Thus, while holding that the company has not been able to establish its credentials as an interested party, the Authority has considered it appropriate to take cognizance of the issues raised by the company and submissions made from time to time. They have furnished fresh evidence in the form of a letter from IIT, Mumbai, in support of its contention that DXC and STM are different products. It further claimed that STM 1 to 64 are

line cards and at best can be used as a transport equipment, whereas DXC is a much more advanced technology suiting the needs of network wide operations. They have further claimed that DXC and STM are not interchangeable / substitutable. The Authority notes that the very same evidence admits that DXC and STM are two different types of SDH equipment. Further, the letter admits that DXC need not be specific to just SDH, which implies that DXC is certainly an SDH equipment as well. The Authority holds that the mere fact that different types are deployed for different specific end applications does not imply that such different types are indeed dislike articles. Undisputedly, SDH transmission equipments also have DXC; the same have been produced & sold by the domestic industry, and imported from subject countries. Further, DXC of other transmission technology in any case are beyond the scope of the product under consideration.

194. As regards letter issued by VJTI, Mumbai, the Authority notes that the query raised onto VJTI itself was incomplete and incorrect. VJTI has not been asked to distinguish and differentiate between SDH and non SDH DXC. Further, the query is not on whether DXC and STM can be SDH transmission equipment. Moreover, the scope of the product under consideration as considered by the Authority, which is most fundamental information required by any party before giving opinion does not appear to have been made known to VJTI. Nor the purpose of the present investigations, scope of product under consideration as can be considered in anti dumping investigations appears to have been brought to the knowledge of VJTI. It does not appear that VJTI has been informed that the Authority has considered the scope of the product under consideration as SDH transmission equipments and in that case whether DXC & STM of SDH technology constitute one product. Notwithstanding, it is noted that VJTI has only concluded that DXC and STM have different specific end application. They have not concluded that DXC SDH transmission equipments are fundamentally different from STM SDH transmission equipments on the basis of product criteria applied in anti dumping (considering parameters such as product characteristics, manufacturing technology & process, function, pricing, etc.)

195. As regards STM64, the Authority reconfirms that the domestic industry has in fact produced and sold STM64 during the investigation period. As regards STM256, the arguments of the interested parties and position of the Authority thereon has already been brought in the disclosure statement and the elsewhere in the present findings. Further with regard to submission of the additional information / evidence in the form of comments to the disclosure statement, the Authority notes that there is a deadline prescribed for interested parties to submit the same and for the Authority to examine it and conclude the investigation. The Authority therefore holds that additional information furnished by them in the form of Auditor's report etc. which also remains un-verified, is un-acceptable and inadmissible so far as the present proceedings are concerned.

ECI and Hangzhou ECI

196. In their comments to the disclosure statement they have stated as under:

- i. Software being one of the crucial inputs in SDH equipment should be given full effect while calculating export price.
- ii. It appears that the Designated Authority has taken the gross selling price without making adjustments for domestic freight, taxes etc. for PCN's which were sold in the Domestic Market.
- iii. Authority has penalized the cooperating exporters by not considering a reasonable profit of 5% which has otherwise been considered for the cooperating exporters who have been denied market economy treatment.
- iv. Authority has taken assembly/sub-assembly wise selling price in the domestic market / third countries contrary to the method followed in arriving at the export price as per the PCN methodology.
- v. With regard to the determination of the normal value for the remaining PCN's, the methodology adopted in calculating the normal value is inconsistent with the determination of the export price.
- vi. It is not known whether the costs of accessories supplied by Tejas in the domestic market have been considered while computing the Non-Injurious Price.
- vii. Exporters (i.e. HETC and ECI) have fully cooperated even when each time the parameters / methodologies for the Product under Consideration were modified.
- viii. Tejas had the requisite capability to produce DXC only up to 60 GBPS. Inclusion of DXC's exceeding 60 GBPS is erroneous.
- ix. It is hard to accept injury with rise in sales, production, productivity, employment, wages coupled with a fall in imports from Israel.
- x. Authority in its disclosure statement without offering any reasons revised the injury margin to 5-15% for ECI
While calculating the export price, the weighted average price of assemblies has been ignored whereas while calculating the normal value a weighted average price has been used.

Examination by the Authority

197. Authority has accepted the submissions of including embedded software etc. for calculation of NEP and LP so far as XDM variant is concerned. As regards BG variant, the submissions on this score made by the exporter cannot be accepted as they have sold software in the domestic market free of cost as has been recorded in the verification report. Regarding determination of NV by including profit on domestic sales alone, as also taking the same at ex-factory level, the same has suitably been incorporated while working out the margins. It is clarified that accessories have not been included in the calculations of non injurious price and injury margin. The non injurious price for the domestic industry had to be revisited as some omissions and calculation errors came to notice after issue of disclosure statement necessitating issue of a second revised disclosure statement.

M/s Alcatel-Lucent Shanghai Bell Co. Ltd.

198. Responding to the disclosure statement, they have stated as under:

- i. “Ownership” is not relevant criterion to determine grant of Market Economy Treatment, significant state interference with regard to operations of the company being relevant to granting MET status.
- ii. Using the import prices in India would not be in accordance with the mandate of reasonability as envisaged under para 7. International prices have been completely ignored by the Authority.
- iii. Since the PCN’s are different, components are different, design is different etc., the adoption of Domestic Industry prices would not be appropriate.
- iv. Change in the product under consideration or scope of investigation, the injury analysis is also required to be carried with reference to changed product under consideration.
- v. Applicant Industry could not have been treated as Domestic Industry in view of the amendment in Rule 2(b) vide notification No. 18/2010-Customs (NT) dated 27.02.2010.

Examination by the Authority.

199. The Authority notes that the Rules require the Authority to determine whether the decisions of the concerned firms regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard. The Authority further notes that one of the shareholders, holding very significant share, is State owned or controlled, the exporter is required to establish that its decisions on these stated parameters are independent of the State. The exporter has not been able to establish such independence from the State interference. Moreover as already recorded in the Disclosure Statement and these findings, the state interference cannot be ruled out under the circumstances. As stated elsewhere, the Authority has determined normal value by considering the PCN of the exported product type. As regards input prices, the Authority holds that it would not be inappropriate to consider the domestic industry prices. The Authority notes that the change in the definition of Rule 2(b) does not vitiate the finding on scope of the domestic industry arrived by the Authority.

Tirumala Seven Hills P Ltd

200. The company, appreciating exhaustive disclosure and exclusion of components/ parts from the product under consideration while imported on standalone and independently has further stated that this will, not only help the Indian manufacture to remain competitive in this cut through competitive environment but will open doors to other Indian companies to get in to the manufacturing. They have also stated that apart from exhaustive details for PUC – 8 digit HS code 8517 62 60 should also be mentioned to bring more clarity to PUC. They also want that a clear exclusion should also be made for parts and components from PUC to bring more clarity and to avoid any confusion at Indian customs. They have also sought a clear

exclusion of all multiplexing technology product like PDH, CWDM and DWDM other than SDH should also be made for better understating of Indian customs.

Examination by the Authority

201. The Authority reiterates its position. Anti dumping duty applies only on product under consideration as defined in the present notification, regardless of customs classification where the goods have been reported for clearance. However, the Authority has addressed these issues in the form of footnotes to the duty table.

PRITHVI

202. Responding to the disclosure statement, they have submitted following comments:

*i. **General Submissions***

1. The Authority has acted contrary to law on critical aspects like what constitutes production, confidentiality issues etc.
2. Damage is caused to the larger national interest by recommending imposition of duty on STM 64 and DXC which are items in relation to which the evidence on record shows that the Applicant does not have the manufacturing and supply capacities.
3. Irrespective of exclusion of DWDMs from the PUC by the Authority, anti dumping duties are being imposed on the import of DWDMs on the ground that the same is also covered under the PUC.

*ii. **Specific Submissions***

1. Non cooperation as regards present proceedings - Authority has erred in concluding that Prithvi has not cooperated with the Authority. All the information sought by the Authority was provided by Prithvi.
2. Non submission of Information - Except the information which was beyond the statutory requirements, all other information was submitted.
3. Public hearing- Request for conducting Fresh Hearing in light of various complexities relating to PUC was ignored.
4. Product under Consideration
 - a. *STM 64, STM 256 and DXC are not 'like products' to STM 1, STM 4 and STM 16*
 - i. STM 64, STM 256 and DXC cannot be included in the PUC as they are not technically or commercially substitutable to the products that are produced by the Applicant.

- ii. DTX Equipments are different from STM Equipment on the basis of the purpose and applications of the equipments, physical characteristics, network location, technology supported, etc.
 - iii. Constitution of the domestic industry, dumping, injury, causal link, etc. needs to be separately determined for STM 64, STM 256 and DXC equipments.
- b. *STM 64 & DXC should be excluded from PUC*
- i. Finding of the Authority that Applicant has undertaken the production of STM 64, DXC is unsubstantiated with any evidences. Further, the evidences submitted by the interested parties in this regard are ignored.
 - ii. Applicant was not engaged in the manufacture of STM 64, DXC equipments during the POI.
 - iii. Applicant does not meet the standing qualification for being recognized as Domestic Industry for STM 64, DXC as the same is absent in the findings of the Designated Authority.
- c. *STM 256 should be excluded from the PUC*
- i. There is no production of STM 256 in the country.
 - ii. Applicant does not qualify to be the Domestic Industry for STM 256. Mere investment in capacity, development of test equipment, etc. does not determine Domestic Industry.
 - iii. For the aforementioned reasons, STM 256 cannot be included within the scope of PUC.
- d. *Assemblies, Sub- assemblies and Populated Circuit Boards (“PCB”)*
- i. Assemblies and sub-assemblies have been retained as part of the PUC, despite the fact that these products are in the nature of parts and components.
 - ii. Assemblies and sub-assemblies do not by itself constitute the SDH Equipment.

5. Domestic Industry

- a. Definition of manufacture under the Central Excise law should be the basis to determine whether an entity is a manufacturer.
- b. Prithvi and other manufacturers have been wrongly excluded from being considered as Domestic Industry. The concept of “substantial” transformation is not a statutory requirement to determine whether or not an entity can be regarded as part of the domestic industry.

- c. Preferential treatment has been accorded to the Applicant by allowing Tejas to maintain the proceedings and excluding other manufacturers from the purview of domestic industry.

6. Injury Analysis

- a. Redetermination of the PUC is required as the Applicant does not have the manufacturing capabilities for STM 64, STM 256, DXC, etc the same cannot be covered under the PUC.
- b. Accordingly, fresh injury analysis will be required, and then the same will not result in any injury to the Applicant in respect of the products manufactured by it.

7. Findings are without evidence and without disclosing the basis

- a. Evidence and basis for certain findings i.e., production of STM 64, STM 256, DXC equipment of SDH Technology are/have been produced by the Applicant;
- b. Letter of TEMA are not disclosed to the interested parties.
- c. The calculations in relation to the NIP and also the range of dumping margins were modified by the Designated Authority without providing any reasons for the same.

Examination by the Authority

203. The issues raised by them have also been raised by the other interested parties and have been addressed appropriately in these findings. Further the Company has not established its status as interested party. On the contrary the evidence provided in response to the disclosure statement raises doubts on their eligibility as interested party within the meaning of Rule 2(c) of Ad Rules.

Examination of other common issues raised by interested parties.

204. As regards some of the common issues raised, the Authority notes that, a number of interested parties have disputed a number of facts disclosed by the Authority on the ground that the relevant evidence has not been disclosed to the interested parties by the Authority. The Authority notes in this regard that while the petitioner and interested parties are entitled to claim confidentiality under Rule 7, the disclosures by the Authority either in the disclosure statement or in the present findings is also subject to the requirements of Rule 7. Therefore, while recording the facts or the findings on such facts, the Authority cannot disclose the relevant evidence. Moreover, the Authority has disclosed to the interested parties substance of the information/evidence provided by the petitioner or interested parties through the disclosure statement or the present findings and the interested parties have got an opportunity to defend their interests on the basis of the same.

205. Referring to improvements in a number of the economic parameters, more particularly in volume parameters, a number of interested parties have disputed that the domestic industry has suffered injury. The Authority holds since performance of the domestic industry has improved in respect of some parameters and deteriorated in respect of other parameters, the Authority is required to consider whether deterioration in performance of the domestic industry in respect of some parameters outweigh the improvement in performance of other parameters to such an extent that it must be concluded that the domestic industry has suffered injury. If, however, the improvements in some parameters outweigh the deterioration in other parameters, the Authority must conclude that the domestic industry has not suffered injury. The Authority, after analyzing the injury notes that the performance of the domestic industry has materially deteriorated in terms of profits, return on investment and cash profits. Thus only conclusion that can be drawn is that the performance of the domestic industry has suffered materially, notwithstanding improvements in parameters such as production, domestic sales, etc. The Authority notes that a business enterprise is set up for selling the goods with the objective of earning reasonable profits. It cannot be said that performance of a business enterprise whose production & sales volumes are improving leap & bound is good, if its profits and return on investment deteriorate to such an extent that the same becomes negative. In the present case, while it is found that production and sales of the domestic industry improved, it is also found that the domestic industry has suffered financial losses, negative return on investment and negative cash profits.

206. The Authority further holds that CKD, SKD and sub-assemblies are nothing but form of the product, having no use other than into integration into SDH equipment. These do not have distinct character, function or use. The product can be invoiced both in finished ready to use condition and in SKD or sub-assemblies condition, as was established beyond doubt during verification of the records of the responding exporters.

207. Since the Authority has excluded standalone components from the scope of the product under consideration, imports of such standalone components by the petitioner, in any case, do not constitute imports of alleged dumped product.

Volume and Prices of imports not sold at the dumped prices

208. The subject goods are being supplied from other countries as well. The import prices from third countries are, however, significantly higher than the subject countries. Imports from third countries are not causing material injury to the domestic industry at this stage.

Contraction in demand and / or change in pattern of consumption

209. Demand for the subject goods shows a healthy growth during the entire injury investigation period and therefore, the injury to the domestic industry has nothing to do with the lack of demand in the country. The data on consumption and demand does not show any change in the pattern of consumption of the product and has not been a factor causing injury to the domestic industry.

Trade restrictive practice and competition between the foreign and domestic producers

210. The goods are freely importable. The applicants are the major producers of the subject goods and account for significant domestic production and sales. No evidence of conditions of competition or trade restrictive practices has come to the knowledge of the Authority. The Authority notes that there is a single market for the subject goods where dumped imports from subject countries compete directly with the subject goods produced by domestic industry. The Authority also notes that the imported subject goods and domestically produced goods are like articles and the imported product is sold to meet the similar applications/ end uses as domestically produced subject goods.

Development of Technology

211. Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury. However development of models of higher capability is a regular phenomenon in this industry and both follow this aspect of the technology.

Export performance

212. Information on export performance has been considered by the Authority separately and injury analysis is based on domestic sales alone.

213. No other factor, which could have possibly caused injury to the domestic industry, has been brought to the knowledge of Authority.

Conclusion on Causation

214. Concluding the investigation, the Authority holds that injury is caused to the domestic industry by dumped imports. The Authority concludes that:

- i. The prices offered by the foreign producers are lower than the prices offered by the domestic industry. Resultantly the consumers are increasingly switching over to dumped imports.
- ii. As a result of increase in imports, the domestic industry is being prevented from improving its market share. The imports are depressing the prices of the domestic industry as a result of significant price difference between domestic and imported product. Consequently the domestic industry has been forced to reduce the prices over the period.

As a result of reduction in prices offered by the domestic industry, its profitability and consequently return on investments & cash flow materially

Recommendations

215. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested

parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of final duty is required to offset dumping and injury. Therefore, the Authority considers it necessary and recommends imposition of final anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

216. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty as indicated in Col 8 of the duty table below, which shall be as a percentage of CIF value of imports, is recommended to be imposed from the date of notification, to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject countries/territories.

S. No	Sub. Heading	Description	Country Of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement
-1	-2	-3	-4	-5	-6	-7	-8	-9
1	851762 & 851770	<i>**“Synchronous Digital Hierarchy transmission equipment” as per notes below</i>	China PR	China PR	M/S Fibrehome Telecommunication Technologies Ltd.	M/S Fibrehome Telecommunication Technologies Ltd.	266%	% of CIF Value of Imports
2	-DO-	-DO-	China PR	China PR	Alcatel-Lucent Shanghai Bell Co. Ltd.	Alcatel-Lucent Shanghai Bell Co. Ltd.	45%	% of CIF Value of Imports
3	-DO-	-DO-	China PR	China PR	M/S ZTE Corporation	M/S ZTE Corporation	36%	% of CIF Value of Imports
4	-DO-	-DO-	China PR	China PR	M/S Hangzhou ECI Telecommunication Co. Ltd	M/S ECI Telecom Ltd., Israel	7%	% of CIF Value of Imports
5	-DO-	-DO-	China PR	China PR	Any other combination than as at Sl. 1,2 3 and 4above	Any	266%	% of CIF Value of Imports
6	-DO-	-DO-	China PR	Any other than China PR	Any	Any	266%	% of CIF Value of Imports

7	-DO-	-DO-	Any	China PR	Any	Any	266%	% of CIF Value of Imports
8	-DO-	-DO-	Israel	Israel	M/S ECI Telecom Ltd., Israel	M/S ECI Telecom Ltd., Israel	3%	% of CIF Value of Imports
9	-DO-	-DO-	Israel	Israel	Any other than combination as at Sl.No. 8 above	Any	70%	% of CIF Value of Imports
10	-DO-	-DO-	Israel	Any other than China PR and Israel	Any	Any	70%	% of CIF Value of Imports
11	-DO-	-DO-	Any other than China PR	Israel	Any	Any	70%	% of CIF Value of Imports

****Note 1.** *The product under consideration will include “Synchronous Digital Hierarchy transmission equipment, viz. STM-1, STM-4, STM-16, STM-64, STM-256 in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / sub-assemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of Product under Consideration*

****Note 2.** *SDH Equipment essentially transmits signals through the medium of Optical Fibre. There may be SDH equipment meant for transmission through electrical Copper Medium or Microwave Radio Medium. The SDH Equipment transmitting the data through optical fibre alone shall be subject to levy of antidumping duty.*

****Note 3.** *When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the imports.*

****Note 4** *PDH, CWDM, DWDM, Microwave systems, GPON ,DSLAM, MSAN, BITS, Routers, PTN, PDSN, SGSN, MGW, BTS, BSC, MSC, ONT, HLR, HSS and MRP being non-SDH in any of its form are outside the scope of PUC and therefore not subject to levy of AD Duty.*

****Note 5.** *Microwave Radio Terminals which could have an STM-1 interface to the SDH transmission equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of payment of AD Duty*

216. Subject to the above the provisional findings, notified vide notification dated 7th September, 2010, are hereby confirmed

Further Procedures

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

218. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

P.K.Chaudhery
The Designated Authority