

**NOTIFICATION UNDER ARTICLE 12.1(b) OF THE  
AGREEMENT ON SAFEGUARDS ON FINDING A SERIOUS INJURY  
OR THREAT THEREOF CAUSED BY INCREASED IMPORTS**

**INDIA**

The following communication, dated 26 August 1998, has been received from the Permanent Mission of India.

Referring to India's communication dated 13 March 1998, circulated as WTO Document No. G/SG/N/6/IND/2 dated 18 March 1998, regarding notice of initiation of a safeguard investigation concerning imports of "Carbon Black" into India and to forward herewith a copy of the Notification No. SG/INV/3/97 dated 1 July 1998, under Article 12.1(b) of the Agreement on Safeguards, containing the Final Findings of the Director General (Safeguards) with regard to the investigation under reference.

It may be mentioned here that that Government of India has not yet taken any decision on these findings to impose safeguard duty on imports of Carbon Black into India. It is requested that this Notification under Article 12.1(b) of the said Agreement may please be brought to the notice of the Members.

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**DIRECTOR GENERAL (SAFEGUARDS)  
5<sup>TH</sup> FLOOR, DRUM SHAPE BUILDING  
I.P. BHAWAN, I.P. ESTATE  
NEW DELHI**

**NOTIFICATION**

**SG/INV/3/97  
1 July 1998**

**SUBJECT: SAFEGUARD INVESTIGATION CONCERNING IMPORTS OF CARBON BLACK –  
FINAL FINDINGS**

Having regard to the Customs Tariff Act, 1975 and Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997 thereof;

**I. PROCEDURE**

(i) The Notice of Initiation of safeguard investigation concerning imports of Carbon Black into India was issued on 5 February 1998 and was published in the Gazette of India, Extraordinary on 6 February 1998. A copy of the Notice was also sent to all known interested parties, namely:

**Domestic Producers**

1. Cabot India Ltd. (CABOT), Mumbai – 400 020
2. Hi Tech Carbon (HTC), New Delhi – 110001
3. Oriental Carbon & Chemicals Ltd. (OCCL), Ghaziabad – 211 001
4. Philips Carbon Black Ltd. (PCBL), Calcutta – 700 001
5. Ralson Carbon Black Ltd. (RCBL), New Delhi

**Importers**

1. Apollo Tyres Ltd., New Delhi – 110 019
2. Birla Tyres, Calcutta – 700 019
3. Modi Stone Ltd., New Delhi – 110 019
4. Ceat Ltd., Mumbai – 400 025
5. Dunlop India Ltd., Calcutta – 700 016
6. Goodyear India Ltd., Faridabad – 121 004
7. J K Tyres, New Delhi 110 001
8. Modi Rubber Ltd., New Delhi – 110 065
9. MRF Ltd., Chennai – 600 006
10. Tyre Corpn. of India, Calcutta – 700 087
11. Vikrant Tyres Ltd., Mysore – 570 002
12. Govind Rubber Ltd./Balakrishna Tyres Ltd., Mumbai – 400 011
13. Andrew Yule & Co., Calcutta – 700 001
14. Elgi Tyres & Treads Ltd., Coimbatore – 641 005
15. Sundaram Industries Ltd., Madurai – 625 016
16. Srichakra Tyres Ltd., Madurai – 625 001
17. Midas Rubbers, Kottayam – 686 001
18. Mustang Rubbers, Kottayam, Kerala
19. P. John Zacharia & Co. (P) Ltd., Kottayam, Kerala

## Exporters

1. Lucky Ltd. Carbon Div., South Korea
2. Hyosung Corp., South Korea
3. Posco Chemical Company Ltd., South Korea
4. Thai Carbon Black Company Ltd., Thailand
5. Thai MC Company, Thailand
6. Continental Carbon Australia Pty Ltd., N S W Australia – 2231
7. Alexanedia Carbon Black Co. Ltd., Egypt
8. PT Cabot Indonesia, Indonesia
9. Mitsubishi Chemical Corp., Japan

(ii) A copy of the notice was also sent to the governments of exporting countries through their embassies in New Delhi.

(iii) Questionnaires were also sent on the same day to all known domestic producers and importers.

(iv) All parties were asked to submit their response by 23 March 1998. Request for extension for time to submit their reply was made by the following parties:

- Automotive Tyre Manufacture Association (ATMA)
- Chemicals and Allied Products Export Promotion Council, Mumbai
- All India Rubber Industries Association, Mumbai
- Thai Carbon Black Public Co. Ltd., Thailand
- All India Federation of Rubber Footwear Manufacturers, New Delhi

Keeping their request in mind and the need to complete the investigation within the statutory time-period, extension up to 30 March 1998 was allowed and the parties concerned were accordingly informed.

(v) The following parties requested to be considered as interested parties which was accepted.

- All India Rubber Industries Association, New Delhi
- All India Federation of Rubber Footwear Manufacturers, New Delhi
- Rishirop Polymers Pvt. Ltd. on behalf of M/s Korea Kumho
- Petrochemicals Co. Ltd., Korea
- The Northern India Rubber Manufacturers Federation

(vi) Replies to the notice dated 5 February 1998 and to questionnaires were received from the following:

(a) **Domestic Producers** namely:

1. Oriental Carbon and Chemicals Ltd., Ghaziabad
2. Cabot India Ltd., Mumbai
3. Hi Tech Carbon, New Delhi
4. Phillips Carbon Black Ltd., Calcutta
5. Ralson Carbon Black Ltd., New Delhi
6. Association of Carbon Black Manufacturers (ACBM)

(b) **Importers** namely:

1. Apollo Tyres Ltd., New Delhi
2. Birla Tyres, Calcutta
3. Modi Rubber Ltd., New Delhi
4. J.K. Tyres, New Delhi
5. MRF Ltd., Chennai
6. Vikrant Tyres Ltd., Mysore
7. Elgi Tyres & Treads Ltd., Coimbatore
8. Srichakra Tyres Ltd., Madurai
9. Midas Pre-cured Treads (P) Ltd., Kottayam
10. Mustang Rubbers, Kerala
11. P. John Zacharia & Co. (P) Ltd., Kottayam

(c) **Exporters** namely:

1. Hyosung Corporation, South Korea
2. Thai Carbon Black Public Co. Ltd., Thailand
3. Alexandria Carbon Black Co. Ltd., Egypt
4. Mitsubishi Chemical Corporation, Japan
5. LG Chemical Ltd., Korea
6. Keopyeong Steel Chemical Co. Ltd., Korea

(d) **Associations** namely:

1. Chemicals and Allied Product Export Promotion Council
2. Automotive Tyre Manufacturers Association (ATMA)
3. All India Federation of Rubber Footwear Manufacturers

(e) **Exporting governments** namely:

Taipei Economic and Cultural Centre, New Delhi

(vii) Verification of the information considered necessary for the investigation was done and to this end a team of officers visited the premises of M/s Oriental Carbon and Chemicals Ltd., Ghaziabad. The outcome of the verification was conveyed to the concerned parties.

(viii) A public hearing was given to all interested parties on 28 May 1998 notice for which was sent on 20 April 1998. The parties were asked to submit in writing the information presented by them in the public hearing so as to reach the office of DG by 5 June 1998 and to collect the copies of written submissions made by other parties from the office of DG on 8 June 1998. Rebuttals if any were asked to be submitted in the office of DG by 15 June 1998.

## **II. VIEWS OF THE DOMESTIC PRODUCERS**

The Domestic Producers have made the following main points:

(a) **PCBL**

1. Sales have gone down in spite of sharp reduction in basic selling price and sharp increase in discounts because of large imports of Carbon Black and decreasing c.i.f. prices.
2. In the cracking of crude depending upon the targeted end-product of the manufacturer a carbon rich residue is obtained which is blended for obtaining fuel oil or CBFS.

3. The price of CBFS depends upon the demand of this carbon rich residue for use in fuel oil or CBFS.
4. Prices of fuel oil and CBFS generally move in different directions.
5. CBFS is not necessarily available in international market for procurement when prices of CBFS are low.
6. There is a premium charged by CBFS blenders over the prices of residual oil and c.i.f. prices of CBFS do not necessarily bear any relationship with f.o.b. price of residual oil.
7. Due to port and handling bottlenecks in India, the Indian buyers have to bear a higher c.i.f. price although the f.o.b. prices for different buyers may be the same. As compared to Thai Carbon, Indian c.i.f. prices of CBFS are generally \$15 higher.
8. As compared to Duty Free Imports of Carbon Black of 14,549 MT in 1996-1997 by the tyre industry, the duty free imports in the first half of 1997-1998 increased to 11,400 MT. The duty paid imports (for domestic production) increased more sharply during the relevant period from 3,251 MT to 17,518 MT.
9. As compared to 1996-1997 when they realized an average profit before tax (PBT) of Re 3,129/- per MT, their profits reduced to Re 36/- per MT in the first quarter of 1997-1998 and to Re 1,630/- per MT in the second quarter. In the third and fourth quarter of 1997-1998, they have incurred losses of Re 646/- per MT and Re 1,930/- per MT respectively.
10. As compared to c.i.f. prices of imports, they have been supplying Carbon Black to domestic producers on deemed export basis at much lower prices.
11. The period of investigation should be extended to take into consideration developments for the entire year 1997-1998.
12. They intend to restructure their unit as under:
  - March 1998: Complete advanced downstream unit comprising of agglomerators, process bag filter, palletizing, drying and materials handling facility etc. at Durgapur.
  - June 1998: Complete Colombian Caracas reactor with instrumentation at Durgapur.
  - Sept. 2000: 5 MW captive power plant at Baroda.
  - March 2002: Complete second CAT reactor with support system.
  - March 2002: 20 MW captive power plant at Durgapur.

(b) **CABOT**

CABOT, *inter alia*, mentioned that they manufacture Carbon Black conforming to ASTM specification and that their product has been approved by all consumers.

(c) **OCCL**

1. They manufacture Carbon Black of various grades used in rubber and tyre industry, including specialty carbons required by the tyre industry for which orders were placed with them. Their product meets the quality standards and has been approved by all the major tyre manufacturers.
2. The consumption of CBFS per MT of Carbon Black depends on the strength of carbon in the CBFS.
3. Carbon Black is imported mainly by tyre manufacturers.
4. In spite of reduction in sale prices w.e.f. 1 April 1997, sales went down by 15 per cent from March 1997 because of fall in prices of imported CB.
5. In order to maintain even this reduced market share, hefty discounts were offered to buyers in the year 1997.
6. Profit has gone down during the year 1997-1998 (Up to September 1997)
7. Because of reduced production, cost of production has gone up.
8. Carbon Black is imported in different grades but used in the rubber industry including the tyre industry.
9. The benefit of reduction in prices of raw materials is not necessarily passed on immediately to the customers, even by the rubber industry including the tyre industry.
10. The increased imports into India have resulted and would further result on account of substantial gap in supply and demand in Asia-Pacific region, which became more pronounced at the end of 1996 and early 1997.
11. Additional capacity in India and outside was created to meet additional demand projected by the tyre industry.
12. This surplus capacity is expected to be utilized over minimum four years through natural growth of the tyre industry or an economic turn around in India and SE Asian countries.
13. Substantial reduction in production, sales and profitability would lead to inadequate generation of funds for modernization and R&D efforts which will affect future competitiveness and growth.
14. The average quarterly imports of Carbon Black of about 2,527 MT in January-December 1996, increased to about 12,345 MT in January 1997-March 1998, which indicates a sharp rise by about 389 per cent.
15. As safeguard provision is for a long period in future the investigation should cover not only the facts as submitted but extrapolate and take a position on trends and then determine the extent and period of protection.
16. Their profit has reduced from Re 1,049.23/MT (PBT) in the year ended 31 March 1997 to Re 343.15/MT in the six months ended 30 September 1997.
17. OCCL and other domestic producers have priced their deemed export supplies below the c.i.f. value of imports.

18. Indian buyers have certain infrastructural and quantity constraints in obtaining CBFS supplies.

19. CBFS prices are not linked with Platt 2 Index.

20. They reduced Carbon Black prices in April 1997, July 1997 and October 1997.

21. They intend to become internationally competitive by expanding from 35,000 MTPA to 60,000 MTPA and modernize with help from technology suppliers and consultants.

22. They have made the following plans for modernization and expansion of the plant and machinery.

- (i) To increase the capacity from 35,000 TPA to 60,000 TPA.
- (ii) Substantial reduction in overhead expenditure per MT which would be possible because of high volumes and at the same time by maintaining or reducing the level of employment.
- (iii) Significant increase in efficiencies in use of raw materials and other utilities.
- (iv) Optimum use of waste gases to become a lot more energy efficient.
- (v) Restructuring of marketing plants through changes in packing and transportation so that customer benefit through on time deliveries resulting in very low inventories.

(d) **HTC**

HTC have, *inter alia*, mentioned that they intend to implement project at coastal location in Gundipundi, Chennai which has its strategic benefits or reduced freight cost on raw materials and finished products due to coastal location and close proximity to the domestic consumers in South India.

(e) **CACIL**

Carbon & Chemicals (CACIL) has merged with PCBL w.e.f. 4/97. They have, *inter alia*, mentioned that they intend to restructure as under:

- (i) Installation of captive power plant to reduce power cost.
- (ii) Installation of air preheaters to reduce raw material cost.

(f) **Association of Carbon Black Manufacturers (ACBM)**

1. The imports of carbon black in April-May 1997 were actually more than that shown in the application for safeguard duty.

2. Imports continued at a high level in October-December 1997 i.e. 13,717 MT at an average c.i.f. of Re 18,931/MT.

3. Carbon black manufacturers produce carbon black in different grades which are of international standard and to the individual specification of the tyre companies. They are also tested and pre-approved by the tyre companies.

4. Since January 1996 cost of imports has been falling steeply.
5. If there is any perception that imports are of such grades that are not available in India, the Custom House daily lists show that the actual imports have been of standard grades that have been supplied by domestic producers for many years.

### **III. VIEWS OF THE EXPORTERS/GOVERNMENTS OF EXPORTING COUNTRIES**

The exporters of carbon black to India have made the following main points:

#### **(a) Hyosung Corp., Korea**

1. The increase in imports of carbon black is mainly due to difference in the quality of imported carbon black and domestically produced carbon black rather than price alone.
2. The imposition of safeguard duty on carbon black imports would make Indian tyre manufacturers less competitive in the international market.
3. The local (domestic cost) of carbon black needs to be reviewed as it is much higher than the international price of carbon black. Measures such as reduction in import duties on carbon black feedstock and cut down on bubble cost by domestic producers can help in achieving a lower cost of production.

#### **(b) LG Chemicals Ltd., Korea**

1. The tyre exporters from India have been importing carbon black from LG due to the high quality of carbon black in order to make their products internationally competitive .
2. They are willing to discuss satisfactory settlement of the friction caused by carbon black exports and to develop economic cooperation between the two nations.

#### **(c ) Alexandria Carbon Black Co. Egypt**

1. The reduction in the local consumption of carbon black in Asia Pacific particularly Korea and Thailand had resulted in increased exports of carbon black from these countries.
2. The increase in cost of production of carbon black shown by Indian manufacturers seems unrealistic as world over a severe reduction in the feedstock oil prices has led to a substantial reduction in the cost of production of carbon black in the international market.
3. Present customs duty on carbon black in India are already high compared to other parts of the world.
4. Local prices of carbon black in Europe are much lower than the prices of carbon black in India.
5. Indian carbon black manufacturers are exporting carbon black at international prices which are lower than local prices in India. They are also selling carbon black under deemed exports to Indian tyre manufacturers at international prices.
6. Indian tyre manufacturers prefer to import carbon black due to higher quality.



7. Carbon black is a raw material for tyres and India is a big exporter of tyres to Egypt. The initiation of action against imports from Egypt could lead to similar retaliatory action from Egypt.

8. CBFS prices were based on fuel oil prices.

9. International prices of carbon black were also low.

10. There was no dumping of carbon black into India.

**(d) Thai Carbon Black Public Co. Ltd., Thailand**

1. They have been a regular exporter of carbon black to various countries and are known for very high quality and competitive prices. They have always exported at international market prices.

2. All the carbon black producers have their prices based on feedstock oil prices and a sharp drop in the oil prices internationally (from US\$95-110 in January 1997 to US\$75 at the end of March 1997) has led to a drop in the world carbon black prices. However, the Indian carbon black manufacturers have reduced their prices only marginally.

3. High quality and competitively priced exports of carbon black have helped the Indian tyre industry to grow.

4. Higher imports of carbon black are a result of artificially high prices maintained by domestic producers as the surplus capacity has remained constant in 1996, 1997 and 1998.

5. The imports are declining since October 1997.

6. Both India and Thailand are forming an association (BISTEC) to cooperate further and open doors for higher trade, the imposition of safeguard duty would be a retrograde step and would be a barrier in achieving this goal.

7. Carbon black prices followed the trend of CBFS prices which is not the case with domestic industry.

8. The landing rate of CBFS in India was higher by US\$15 per MT.

**(e) Kosco, Korea**

They have only mentioned their production and export figures and no other comments have been made.

**(f) Cancab Limited of Alberta, Canada**

Cancab through the Canadian High Commission have submitted that they produce certain specialty carbon for specialty polymers by the non-tyre rubber industry and for metallurgical industry. These are not produced in India and are used in export production.

**(g) Taipei Economic and Cultural Centre**

The carbon black exports from Taipei to India have been decreasing sharply for the last three years and there have been no exports to India from 1997.

(h) **Singapore**

Embassy of Singapore in India, *inter alia*, invited attention to WTO provisions.

(i) **Egypt**

1. Carbon black is an intermediate product for tyres. If safeguard duty is imposed on imports of carbon black, tyre manufacturers would not be able to compete internationally.
2. Balance of trade was in favour of India.
3. Imposition of safeguard duty may harm Indo-Egypt relations.

(j) **Japan**

1. Safeguard measure was an exceptional measure.
2. Only 15 cases have been initiated all over the world whereas in India five cases have been initiated so far.

**IV. VIEWS OF THE IMPORTERS/USERS**

The importers/users of carbon black have made the following main points:

(a) **All India Federation of Rubber Footwear Manufacturers**

1. Quality of domestically produced carbon black was poor.
2. Safeguard duty will be used by the carbon black manufacturers to increase their price of various grades of carbon black.
3. Artificial scarcity of carbon black would be created by the local manufacturers.
4. Imposition of safeguard duty would reduce competitiveness on the exports front which will be detrimental to the entire rubber industry and also bring a bad name to the country because most of the export units may not be in a position to fulfil their export obligation.
5. Carbon black manufacturing industry is known for creating artificial scarcity with a view to increasing the prices of their products.
6. Increase in import of carbon black is temporary which should not be taken cognizance of.
7. Imports made against exports should not be taken into consideration as the automotive tyre manufacturing units are importing carbon black against their entitlements of exports.
8. Safeguard duty rules provide that prior consultation with exporting countries is a must to impose duty and adequate trade-compensation for adverse affect has to be provided.
9. It is correct that presently the prices of imported carbon black are cheaper than the prices of carbon black in the local market which is temporary in nature.
10. Data given in carbon black manufacturers application is not reliable and projected in such a fashion so as to substantiate their case.

11. Since the applicant is expressing its helplessness to compete with the depressed conditions prevalent outside and it failed to comply with prevalent conditions, the application does not deserve any sympathy of consideration.

12. There is total absence of material injury. The injury alleged by manufacturers is hypothetical and is only apprehension. The nexus between imports and domestic production has not been established since there is none.

13. Although there is an increase in the imports of carbon black but at the same time its production has also been increasing. During 1995-1996 when compared with the import of 1994-1995 the imports decreased from 7.44 per cent to 7.22 per cent.

14. Production of carbon black is increasing every year. There is loss of domestic sale but it is because of poor quality of the local products and not due to decline in demand.

15. The total industry is exposed to global competitiveness and it is the right of the domestic users to procure their raw material wherever available of good quality as well as cost-effective.

16. Safeguard duties can be imposed to prevent or remedy serious injury to the domestic industry and such a measure would also require the industry to adjust itself to the new situation of competition offered by imports.

**(b) MRF Limited**

1. While considering the application, the duty free imports of carbon black should be excluded as:

- (i) Duty free imports of material for exports production is an in-built provision of Exim Policy. Duty free imports do not have any impact on the domestic raw material producers.
- (ii) In order to give high priority to exports they have to source quality material at international prices.
- (iii) They are placing orders on deemed export basis with domestic manufacturers against exports.
- (iv) The Government of India issued notification that duty free imports of raw materials for export production will not be taken into account for anti-dumping cases. In case of safeguard duty cases also the quantity of duty free imports should be excluded from the calculation.
- (v) All categories of tyres are put in the Free Trade list in 1997-1998 Exim Policy. Now the import of tyres is also increasing in volume. The tyre companies abroad have facilities to source raw material (RM) world wide keeping commercial and technical parameters into account.

2. While sourcing RM the Management do keep in mind various parameters such as price, quality, credit period, transportation time, need to keep a balance between foreign and domestic suppliers etc. in order to compete in the domestic and in the world market.

3. Imposition of safeguard duty would lead to imports becoming costlier thus the competitive capacity in the domestic market against the import of tyres will be adversely affected.

4. Carbon black manufacturers should persuade the consuming industry to reduce the level of imports through appropriate commercial terms and adhering to delivery schedules.
5. Exchange rates in many countries go on fluctuating. Full advantage of such exchange rate fluctuations are taken by industries in various countries in sourcing materials. When most of the developed countries are taking advantage of the same, Indian companies should not be deprived of such advantage.
6. Part of the problems faced by carbon black manufacturers is on account of too much expansion of their capacities without cultivating exports market. They should not use DG's office and burden the tyre industry with safeguard duty on carbon black.
7. To comply with the demand of special performance requirements/parameters such as wet traction, rolling resistance etc. by the multinational automobile manufacturers on the OE fitments Specialty Blacks have to be imported which are not currently made in India. The local carbon black manufacturers do not have the technology for manufacture of these specialty carbon black and hence imports of these grades are essential.

**(c) Chemicals & Allied Products Export Promotion Council**

1. Exports have grown in the last four years. Increase in the imports of carbon black is to service export growth and hence should be no cause for alarm. VABAL was discontinued. Since the corrective action has already been taken there is no further cause, if there was a cause for injury.
2. The international price of the feedstock has been continuously dropping due to the unprecedented slide in global oil prices. However, carbon black manufacturers raised their prices in 1995-1996 from 31,700/MT to Re 36,960/MT for HAF-N330 grade.
3. Further the import duty on feedstock has been progressively reduced and now stands at 20 per cent basic where as import duty in many countries is much lower giving them a better edge.
4. Feedstock accounts for nearly 50 per cent of the cost of production. The present slide of oil prices in the international markets therefore serves as great advantage to the domestic producers. The manufacturers of carbon black in the international market reflected the slide in the oil prices whereas domestic producers are yet to reduce their prices commensurate with the reduction of their cost of imports.
5. Eighty-two per cent of feedstock is imported and this feedstock forms 50 per cent of the input to manufacture carbon black. The Indian rupee has depreciated to the extent of 12 per cent in the last six months. This puts carbon black importers at a disadvantage.
6. The price of feedstock in July 1997 was around US\$171/MT as compared to US\$136/MT in January 1998 i.e. a drop of about 20 per cent. Therefore, the feedstock price drop has more than compensated for the difference due to drop in prices of carbon black taking also into account the exchange rate fluctuation.
7. Unit cost of production in India is very high on account of multiplicity of taxes and cascading effect thereof. The high cost of domestic finance and lack of infrastructure add to the expenses on the bottom line which put the ACBM members at a disadvantage, for which safeguard is not the remedy.
8. Many countries importing CBFS like Indian carbon black manufacturers are still in a position to compete globally. Does it mean our ACBM members have failed on all counts?

9. Carbon black imported under Advance Licence for export production be quantified and excluded from export figures as the same is used for export production

10. To keep our export competitive all raw materials have to be made available at international prices failing which the exports for India may suffer.

(d) **ATMA**

1. Safeguard duty demanded by carbon black manufacturers is highly inflated. As the period of investigation with reference to which the investigation has been initiated is April-September 1997, the action of domestic industry in establishing the landed price of imports alone with reference to July-September 1997 price is incorrect. The difference between the domestic and imported CB prices should work out to only about 12 per cent and not 18 per cent.

2. It would be unfair to try to take advantage of changed circumstances as on 1 January 1998 or to peep into the future on the grounds that the price would fall further.

3. Calculation of weighted average cost submitted by carbon black manufacturers should be audited to ensure that costs not attributable to the production of carbon black have not been included resulting in higher cost of production.

4. As the international and domestic market prices do not remain constant and that continuous changes take place in the prices depending on the demand and supply situation, it is necessary to restrict the investigation with reference to a period of investigation.

5. Carbon black feedstock accounts for over 50 per cent of the cost of production. CBFS is imported on which there is 20 per cent duty in India whereas in Thailand duty is only 1 per cent. This is a major factor acting to the disadvantage of the domestic industry.

6. CBFS price has fallen from US\$110-115/MT f.o.b. to about US\$70-80/MT in the beginning of 1997 resulting in fall of the price of carbon black in the world market and reduction of sale prices of carbon black of about 6.5 per cent in April 1997 and 4.5 per cent in July 1997 was natural due to fall in CBFS prices.

7. Serious injury cannot be deemed to exist in a situation where the domestic industry is still making a profit.

8. Any measure taken should be such that there is overall benefit to the economy as a whole and measure does not result in shifting of the problem of domestic industry to the user industry.

9. It would be inappropriate to merely look into the higher levels of imports without going into the reasons for the same i.e. quantum of duty free imports of CB against export of tyres, already prevailing somewhat higher import level, liberalization syndrome, erratic supply of domestic producers, lack of confidence level on the part of buyers on the domestic producers.

10. The Government of India framed the policy of allowing duty free imports of raw materials against export of tyres to enable the Indian industry to have a level playing field in competing in international market. As in the case of anti-dumping investigations, it is fair that duty free import is also excluded to determine whether the duty paid imports merit safeguard measures.

11. Actual imports have been lower than duty free import entitlement of CB @ 23 Kg. per 100 kg of tyres exported.

12. Compared to 1995-1996 duty paid imports had gone down in 1996-1997.

13. In 1992 the Government of India placed truck/bus tyres in OGL list against which the tyre industry did not seriously protest. Again in 1997-1998 EXIM Policy all other categories of tyres have been put under OGL. Import of tyres which started as a trickle is gaining in volume. The tyre industry being unhappy at this development has fully realized the fact that economic liberalization is irreversible and is sharpening its skills and strengthening its competitiveness to take on imports whereas carbon black manufacturers have been tending to function as if India is still having an insulated economy. When free import is allowed whether in India or any other country, there is bound to be some increase in imports.

14. It is not unusual for companies in various industries sometimes to make losses. To take a short period of six months to make out a case by carbon black manufacturers is not appropriate. During the current financial year many tyre companies have also made losses.

15. World over the trend during the last two years has been one of declining raw material prices.

16. Credit/discount is a market phenomenon. There is nothing unusual about discount/credit given by carbon black manufacturers. Heavy discounts are given by tyre manufacturers also.

17. Carbon black industry has received the biggest help from the tyre industry by way of deemed exports which they have not mentioned anywhere in the application.

18. The tyre industry is going through an extremely difficult phase. Sluggish market conditions had resulted in steep reduction of tyre prices. Tyre industry has not got a level playing field in the matter of import duty structure.

19. Carbon black manufacturers have not been able to adjust to the changing times. They have not made any serious and consistent attempts to export their product. Imposing any safeguard measures on carbon black would cause incalculable harm on the consuming industry i.e. tyre industry and they would find it difficult to compete in the export market.

20. Imports of carbon black under VABAL were put by the Government under sensitive list in August 1993. If this was not done the imports would have been to the tune of 30,000 MT per year. Under VABAL there was flexibility to import anything but after carbon black being brought under sensitive list percentage of carbon black for import was fixed vis-à-vis export of tyres per MT. There has been consistent growth in the export of tyres and hence duty free import entitlements of carbon black also increased. The table below shows the export of tyres in MT, duty free import entitlement of carbon black and actual imports of carbon black by the tyre industry.

Year	Export of tyres (MT)	Import entitlement of carbon black (MT)	Actual import of carbon black (MT)
1994-1995	76,859	17,677	19,280
1995-1996	84,545	19,445	13,699
1996-1997	93,000	21,390	15,000
1997-1998	102,300	23,529	

In the year 1994-1995 the actual imports of carbon black would have been more than that entitled because of residual advance licences. In the years 1995-1996 and thereafter the tyre manufacturers imported less carbon black than for which they were entitled.

21. If duty free imports of carbon black are excluded from total imports the duty paid imports of carbon black are very low and cannot be termed as increased imports.

22. Tyre manufacturers have to meet international competition while exporting tyres which they cannot do if sourcing of raw materials is not at international prices.
23. The quantum of safeguard duty has been wrongly calculated as different figures of cost of production have been given in annexure XVI and XVII. It should not exceed 12 per cent. This added with CBFS price reduction should come down to only about 3 per cent to 4 per cent which cannot cause serious injury.
24. The installed capacity of carbon black in India is 306,000 MT against consumption of 248,000 MT i.e. peak capacity utilization of 80 per cent can be achieved. So, like Asia Pacific Glut, India is also contributing to it having its influence on reduction in prices.
25. As per Article 3(1) of the Agreement on Safeguards the investigation should, *inter alia*, include as to whether or not the application of a safeguard measure would be in public interest.
26. Carbon black manufacturers have formed an informal cartel.
27. Carbon black manufacturers have not submitted any plans for positive adjustment. If they have already modernized their plants what are they going to do to achieve competitiveness, whether the plan given by them is technically or economically feasible.
28. Two carbon black manufacturers have not responded, perhaps they might not be suffering injury.

**(e) The Northern India Rubber Manufacturers Federation**

1. Information regarding cost of production is not available.
2. Carbon Black manufacture in India is controlled by only two business families i.e. Birlas and Goenkas. They have formed a cartel and any safeguard measures would imply safeguard of these two families rather than the whole country. Before entering into a cartel there was a price war among them in respect of carbon black.
3. Before applying any safeguard measures interest of small scale sector and that of public should be taken into account.
4. Wrong figures of import of carbon black have been given in the application to mislead the investigation as DGCIS never gives import figures for a particular period before expiry of a further three years.
5. As per Annexure III of the application the production of PCBL has gone up and there is no loss of profit. Capacity utilization of carbon black industry as a whole has gone up from 63 per cent in 1993-1994 to 70 per cent in 1997-1998 (up to September 1997).
6. Reduction in duty of CBFS was not passed on to buyers.

**(f) Tread Rubber & Precured Tread Rubber**

- M/s. P. John Zacharia & Co. Pvt. Ltd.
- M/s. Mustang Rubbers
- M/s. Midas Precured Treads (P) Ltd.

All from Kottayam, Kerala

1. Carbon black grade HAF N-330 is major raw material for the above manufacturers. The price of indigenous HAF was unreasonable and quality not as per specification.
2. During the period from 1994 to 1997 they have increased 77 per cent of basic price of HAF. Till March 1997, they have suffered unilateral price hike.
3. Imported HAF enabled them to improve the quality of their product with cost saving of Re 5,000 / MT to Re 6,000 / MT. After they have stopped procurement from the domestic suppliers, the price was reduced from 77 per cent to 49 per cent by the domestic producers.
4. By liberalization of the Indian economy and entry of MNCs into the Indian market, they are more quality conscious and so Indian manufacturers have to improve the quality of their products so as to compete with foreign manufacturers but there is no improvement of quality by the domestic manufacturers.

(g) **Elgi Tyre & Tread Ltd. (ETTL)**

ETTL have sent their response on 6 April 1998 received in the Office of the Director General on 13 April 1998. Their reply has thus been received after due date. Although no request for extension was made by them for submission of their response, in the interest of justice their response and reply to the questionnaire has been taken on record. ETTL have, *inter alia*, submitted that:

1. Cost of their product largely depends upon the value of CB and that they have to be competitive to survive in the market.
2. Any levy of safeguard duty will affect their business seriously both in the domestic and international markets.

(h) **Andrew-Yule**

1. They manufactured conveyor belts and carbon black was one of the raw materials for them.
2. There was a price discrimination by carbon black manufacturers for the tyre and the non-tyre sector.
3. They are importing carbon black under the DEEC Scheme.
4. International price forces should be borne by everyone, including carbon black manufacturers.
5. They have the option to overcome difficulties faced in procuring material.

**V. FINDINGS OF THE DG**

1. I have gone through the record and the replies filed by domestic producers, exporters, importers, exporting governments and various users associations and federations etc. Submissions made by them and various issues arising therefrom are discussed in these findings at appropriate places.

2. Product under consideration

- (i) The product under consideration for the purpose of the present investigation is "carbon black" for the rubber industry including tyre industry. Carbon black is a form of carbon and is manufactured in different grades – with varying characteristics. All the grades are mainly used in the rubber industry which includes the tyre industry.



Carbon Black Feed Stock (CBFS) is the main raw material used in the manufacture of carbon black.

- (ii) Carbon black is classified under heading 2803.00 of the First Schedule of the Custom Tariff Act, 1975 and under Classification No. 28030002 of the Indian Trade Classification (based on Harmonized Commodity Description). The classification, however is indicative only and is in no way binding on the scope of the present investigation.
- (iii) It has been claimed by some tyre manufacturers that some specialty carbon being imported are not manufactured by the domestic producers of carbon black in India. In this regard it is observed that PCBL have made a specific submission that they are capable of producing all grades required by the tyre manufacturers. They have mentioned that grades N-351, N-234 and N-115 were specially made by them on their customers' request. While the grade N-351 was made in 1996 and approved by the customer, response for other grades developed recently is awaited. On the contrary no evidence has been produced by the tyre manufacturers that their demand for any grade was not met with by the domestic producers. All grades of carbon black, for rubber industry including tyre industry are, therefore, covered under the scope of the present investigation.

### 3. Domestic industry

The application has been filed by the "Association of Carbon Black Manufacturers" on behalf of:

- 1. M/s. Cabot India Ltd., Mumbai
- 2. M/s. Hi Tech Carbons, Renukot
- 3. M/s. Qoriental Carbon and Chemicals Ltd., Ghaziabad, and
- 4. M/s. Phillips Carbon Black Ltd., Calcutta

There are six domestic producers of carbon black accounting for a total domestic production of 245, 897 MT in the year 1996-1997. The applicants named above account for 233,762 MT (1996-1997) which constitutes a major proportion of domestic production. Carbon and Chemicals (CACIL) has merged with PCBL w.e.f. April 1997. The application is, therefore, considered to have been filed on behalf of the domestic industry.

### 4. Period of investigation

An issue has been raised regarding the period of investigation. The domestic producers have requested to take into consideration the developments that have taken place till recently i.e. after the initiation of the investigation. They have submitted that the safeguard measure is to protect the domestic industry, and therefore, the investigation should cover not only the facts as submitted but extrapolate and take a position on trend and then determine the extent and period of protection. ATMA on the other hand has submitted that it would be unfair to try and take advantage of the changed circumstances or to peep into the future on the grounds that prices will fall further. It is observed that with respect to the period of investigation, to assess the fact of increased imports, it is generally necessary to analyse the relevant data comparatively for over a longer period, and in this regard the Trade Notice No. SG/TN/1/97 dated 26 September 1997 requires the applicants to submit data for a period of most recent three years or longer for which data is available. In the present case the investigation has been initiated on 5 February 1998. In their application the domestic producers had submitted data up to September 1997 and the decision to initiate the investigation was taken on the basis of this data. It would now not be fair to change this reference period as various interested parties respond to the investigation with reference to the facts available during this period. At the

time of filing the petition the applicants have already exercised their option to base their petition on the basis of certain facts obtained during a reference period. The applicants submitted data for the period from 1994-1995 to 1997-1998 (up to September 1997) in their application and on that basis they have requested for the imposition of a Safeguard Duty. It is, therefore, proposed to restrict the investigation to the period from April 1994 to September 1997. It may however, be mentioned that for the purpose of determination of the effect of the increased imports on the domestic industry and the quantum of safeguard duty that may be adequate to protect the domestic industry from the serious injury caused by the increased imports, it is appropriate to consider the data for a more recent period. However, it is not desirable to base the findings on any isolated transactions but the findings should be based on facts obtained during a reasonable period of time immediately preceding the date of initiation of investigation for which reliable data can be made available. Accordingly, it may vary from case to case taking into account all the facts. In the present case it is proposed to make this determination on the basis of data for the period April-September 1997.

#### 5. Increased Imports

The domestic producers have a total installed capacity of 308,000 MT per annum. They achieved a capacity utilization of about 80 per cent in the year 1995-1996 and 1996-1997. The capacity utilization, however, fell down to 66.64 per cent in the year 1997-1998 (April-September). The production also fell down from 245,897 MT in 1996-1997 to a level of 102,629 MT in 1997-1998 (April-September). As compared to the domestic production, the imports of CB increased from 16,788 MT in 1995-1996 to 17,733 MT in 1996-1997 and 28,917 MT in 1997-1998 (April-September). In 1994-1995, however, the imports were 28,927 MT which have been explained by the domestic producers as being on account of utilization of Value Based Advance Licences (VABALs) by the tyre industry for imports of CB. The holders of VABALs had a flexibility to use these licences without quantity or value restrictions for import of carbon black. The applicants have claimed that most of these licences were used for import of carbon black and hence higher quantities of carbon black were imported under VABALs. Import of carbon black against VABALs was brought under sensitive list i.e. restriction on utilization of VABALs for import of carbon black were put in August 1993. The spill over effect, however, continued for some period for the licences which had already been issued. The imports started declining in 1995-1996, being 5,944, 4,167, 4,094 and 2,573 MT respectively in Quarter 1, Quarter 2, Quarter 3 and Quarter 4 of 1995-1996. The imports started increasing in 1996-1997 being 1,753, 2,119, 3,662 and 10,199 MT in Quarter 1, Quarter 2, Quarter 3 and Quarter 4 respectively of 1996-1997. The trend continued in the first and second Quarter of 1997-1998 when the imports further increased to 13,071 and 15,487 MT respectively. As compared to the domestic production, the share of imports increased from 7.21 per cent in 1996-1997 to 28.18 per cent i.e. almost four times in the first half of 1997-1998. Table 1 shows an analysis of the imports in 1996-1997 and 1997-1998 (April-September) on quarterly basis. The imports which were 1,753 MT in April-June 1996 increased to 2,119 MT in July-September, 1996 i.e. 121 per cent, 3,662 MT in October-December 1996 i.e. 209 per cent, 10,199 MT in January-March 1997 i.e. 582 per cent, 13,071 MT in April-June 1997 i.e. 746 per cent and 15,478 MT in July-September 1997 i.e. 883 per cent of the imports in the quarter April-June 1996. The applicants had compiled April-September 1997 figures from Custom House daily lists. The DGCIS has since compiled data up to July 1997. The DGCIS data of imports for April-June 1997 is 15,835.75 MT and 5,774.39 for July 1997 as against 13,071 MT computed by the applicants for April-June 1997 indicating that the actual imports in April-September 1997 may be more than the figures furnished in the application. This trend of imports clearly shows that the imports have been increasing spirally during this period. At the same time the import prices of CB have been falling down from Re 20,856 in April-June 1996 to Re 18,282 per MT in July-September 1997. This clearly showed a trend of increasing imports at declining prices.

TABLE 1

Period/ Quarter	Imports		c.i.f. Re/MT (average)
	MT	In % age of April-June 1996 imports	
1996-1997			
I	1,753	100	20,856
II	2,119	121	21,616
III	3,662	209	20,204
IV	10,199	582	19,640
1997-1998			
I	13,071	746	19,096
II	15,487	883	18,282

6. Imports of CB for use in Export Production

- (i) The importers/users and exporters of CB have contented that imposition of safeguard duty on CB will adversely affect the exports of the tyre industry as the imported carbon black is used mainly for export production. The exports by the rubber industry during the years 1994-1995, 1995-1996, 1996-1997 and 1997-1998 (April-September) have been Re 942 crores, Re 1,094 crores, Re 1,210 crores and Re 1,400 crores (estimated for the whole of 1997-1998) as given in Table 2 below.

TABLE 2

Period	Capacity MT	Capacity utilization %	Production MT	Sales MT	Imports of CB MT	Exports by user industry Re Crores
1994-1995	280,834	64.12	180,093	165,254	28,927	943
1995-1996	280,834	80.34	225,644	170,847	16,788	1,095
1996-1997	308,000	80.35	245,897	187,250	17,733	1,216
1997-1998 (up to Sept.)	154,000	66.64	102,629	80,212	28,917	1,410 (estimated for 1997- 1998)

- (ii) From these figures it is observed that as compared to 1994-1995, exports have grown to 116 per cent in 1995-1996, 110.05 per cent in 1996-1997 as compared to 1995-1996 and 115.95 per cent in 1997-1998 (estimated for the whole year) as compared to 1996-1997. The imports of CB have, however, grown to 105.63 per cent in 1996-1997 as compared to 1995-1996 and to 326.14 in 1997-1998 (April-September) as compared to 1996-1997 on a *pro rata* basis. It is seen that during 1994-1995 to 1996-1997 total exports of 3,254 crores were made by the carbon black user industry whereas total CB imports during this period were 63,488 MT which indicates that roughly imports of 19.52 MT of CB correspond to exports worth Re 1 crore. In the year 1997-1998, however, the exports estimated for the entire year are 1,410 crores which should correspond to 27,520 MT of CB imports for the entire year. As against this in the first six months of 1997-1998 itself, a quantity of 28,917 MT of CB has

been imported. It is, therefore, not correct to assume that the entire imports are for export production alone or that the imports bear any nexus to the exports.

- (iii) The domestic producers have provided data of overall procurement of carbon black giving a break up of carbon black used for export production and for domestic production (Table 3).

TABLE 3

	1996-1997	1997-1998 (April-September)
Gross Procurement MT	238,761	124,442
Duty Free Procurement MT		
Imports	14,549	11,400
Deemed Exports	15,010	6,543
Duty Paid Imports	3,251	17,518
Domestic Demand	205,951	88,981

It is observed from this data that in 1996-1997, in all 17,800 MT of carbon black was imported out of which 14,549 MT were imported duty free i.e. for export production and 3,251 MT for use in domestic production. As against this the total imports in the first six months of 1997-1998 were 28,917 MT. 11,400 MT of this were imported duty free i.e. for export production and 17,518 MT for domestic production. The domestic producers have also sold some material on deemed export basis. From this data it is observed that even after excluding imports for export production, the imports for domestic production have increased from 3,251 MT in 1996-1997 to 17,518 MT in the first six months of 1997-1998 i.e. to 1,078 per cent on a *pro rata* basis.

- (iv) It has been contended that duty free import material for export production is an in-built provision in the Export-Import Policy and since such imports of raw materials are used only for export production, import of the same does not affect the domestic production. I am afraid this argument is fallacious. Whether for use in domestic production, or for use in export production, both the requirements taken together contribute to the domestic demand and constitute market for the domestic producers of CB. Any material imported for export production, therefore, competes with the domestically produced goods.
- (v) As regards the effect on competitiveness of export production due to imposition of any safeguard duty, it is observed that a significant requirement of carbon black for export production has been supplied by the domestic producers on deemed export basis. In 1996-1997, the domestic producers supplied 15,010 MT out of a total of 29,559 MT and in the first six months of 1997-1998, they supplied 6,543 MT out of 17,943 MT. The domestic producers have generally supplied carbon black on deemed export basis at prices below c.i.f. import prices of carbon black. Specific information in this regard has been provided by PCBL whose prices for deemed exports were as indicated in Table 4.

TABLE 4

	Deemed Export Qty. to Tyre Manufactures  (MT)	Average price of CB to Tyre Manufacturers  (MT)	Average c.i.f. price of CB imports  (RS/MT)	Imports more expensive by  (Rs/MT)
April 1997	131	15,739	19,831	4,092
May 1997	66	14,736	19,025	4,289
June 1997	278	17,217	18,692	1,475
July 1997	212	17,409	18,833	1,424
August 1997	97	15,713	17,948	2,235
September 1997	<u>0</u>	<u>=</u>	18,095	<u>=</u>

(Data as per supplies made from PCBL excluding Cochin factory)

(vi) Besides, in international trade exports are net of duties or taxes i.e. all duties and taxes including safeguard duty paid on inputs used in the manufacture of export production are entitled to be refunded as duty drawback etc. Duties and taxes paid on inputs used in the manufacture of CB, which is used in the export production of tyres are also, therefore, entitled to be refunded. The objective of safeguard duties is to enable the domestic producers to become internationally competitive. If, therefore, the domestically produced CB is not internationally competitive for use in export production, imposition of safeguard duties should help them in becoming internationally competitive which should also be in the long-term interest of the exporters. As far as the duty free imports of CB for use in export production is concerned, any safeguard duty levied on such imports should be entitled to be refunded on export of tyres, in accordance with the existing law. It is therefore, observed that imposition of safeguard duty on carbon black is not likely to affect adversely the export production.

#### 7. Depressed condition of domestic industry

It is observed that the domestic production which increased to 245,897 MT in 1996-1997 has fallen sharply to 102,629 MT in the first six months of 1997-1998, a fall of about 16.5 per cent on *pro rata* basis as compared to 1996-1997. Similarly, the capacity utilization has come down to 66.64 per cent from 80.35 per cent in 1996-1997, a fall of nearly 17 per cent. The four applicant companies have registered loss of sales which has fallen down from 187,250 MT in 1996-1997 to 80,212 MT in the first six months of 1997-1998, a loss of about 14.3 per cent as compared to 1996-1997 on a *pro rata* basis. The average sales realization has come down to Re 26,370 per MT in the first six months of 1997-1998 as compared to Re 28,404 per MT in 1996-1997 i.e. a loss of 7.16 per cent. The domestic producers have thus suffered loss of profit in the first six months of 1997-1998 as compared to 1996-1997. HTC's profit has been reduced by approximately 56 per cent during April-September 1997 on annualized basis as compared to 1996-1997. CACIL's unaudited result show a loss of Re 30.04 lakhs in the first half of 1997-1998 as compared to a profit of Re 927.89 lakhs in 1996-1997. In the case of PCBL also the profits have been reduced to Re 587 lakhs during April-September 1997 as compared to Re 1,264 lakhs during October-March 1997 (the company's financial year is October-September) and Re 2,610 lakhs in 1995-1996. CABOT has not provided separate figures for profit during April-September 1997.

8. Quality of domestically produced CB

An allegation has been made about the poor quality of CB produced domestically. This is, however, a vague and unsubstantiated allegation. No details as to how the domestically produced CB suffers in quality and how does that affect the production of user industry have been provided. The user industry has all along been using domestically produced CB. About 20,000 MT of CB is also exported per annum by the domestic producers, some of whom also have been given ISO accreditation. The domestic producers are operating with foreign collaborations/licences of world leaders, with modern technologies. A specific allegation regarding quality of domestically produced CB has, however, been made by Tread Rubber (TR) and Pre-Cured Tread Rubber (PCTR) manufacturers concerning Iodine Absorption Number. They have alleged that they require CB with Iodine Absorption number in the range of 83.5-85 whereas the domestically produced CB was within the range of 82.1-82.8. The TR and PCTR manufacturers use N-330 grade CB. The major users of N-330 grade CB are the tyre industries who require N-330 grade CB with Iodine Number 82. The domestic producers of CB produce N-330 grade CB with Iodine Number 82. A copy of the specification of carbon black required by Midas made available by OCCL indicates that they had requested for carbon black with Iodine Absorption No. 82. It is also seen from the information provided by the TR and PCTR manufacturers that they have imported N-330 grade CB with Iodine Number 83.2 mgm/gm. Their contention regarding Iodine Number that they require CB with Iodine Number 83.5-85, therefore, is not fully supported. In fact their main concern appears to be the price which is evident from their statement that "the price of indigenous HAF was unreasonable and quality was not as per our specification." It may also be seen from Table 5 that when the prices of imported CB were increasing in 1995-1996, the quantities of imported CB fell down in the successive quarters, but in 1996-1997 and 1997-1998, the quantities of imported CB increased in successive quarters as the prices kept on falling down. Price of imported CB was thus the most important factor in the decision to import carbon black.

TABLE 5

Period	f.o.b. of CBFS (Platt 2% index US\$)	Imported CV		Domestic CB		Imported CB (c.i.f.) x (100+duty) Re/MT (Avg.)
		<u>c.i.f. (Re)</u> quantity	Rate of duty %	COP Re/MT (Avg.)	Avg. selling price Re/MT	
April- June 1995	100-110	<u>16,446</u> 5,944	50	21,620	24,734	18,065 x 150% = 27,098
July-Sept. 1995		<u>17,614</u> 4,167				
Oct.-Dec. 1995		<u>18,223</u> 4,094				
Jan.-March 1996		<u>22,288</u> 2,573				
April-June 1996	90-95	<u>20,856</u> 1,753	40 + 2	22,458	28,364	20,113 x 142% = 28,560
July-Sept. 1996	100-110	<u>21,616</u> 2,119				
Oct.-Dec. 1996	110-115	<u>20,204</u> 3,662				
Jan.-March 1997	75-80	<u>19,640</u> 10,199				
April-June 1997	80-95	<u>19,096</u> 13,071	30 +5	24,460	26,370	19,096 x 135% = 25,780
July-Sept. 1997	90-95	<u>18,282</u> 15,487				
						18,282 x 135% = 24,681

9. Existing Protection

It has been claimed that the domestic producers enjoy a protection of 30 per cent + 5 per cent against the imported CB, which should be an adequate level of protection. While it is true that in 1997-1998, imported CB was chargeable to 30 per cent + 5 per cent, the domestic producers of CB used 82 per cent of imported CBFS which was chargeable to 20 per cent + 5 per cent customs duty. As mentioned earlier, it is a general feature of international trade that all exports are net of duties and taxes. Accordingly, in the case of imported CB also the international prices of CB are supposed to be net of any duties or taxes paid on the inputs etc. including CBFS. The domestic producers on the other hand use duty paid CBFS in the manufacturing of CB and are thus at a disadvantageous position as compared to imported CB, so far as they have to use duty paid imported CBFS in the manufacture of CB which admittedly is about 82 per cent of the total CBFS requirement and constitutes about 50 per cent in terms of cost of production of carbon black. The domestic producers of CB suffer from

other disadvantages too, which are not of their own making. Lack of the international standard infrastructural facilities, higher costs of power and borrowing capital are examples of some of these disadvantages. The domestic sales/purchases also had to suffer sales tax which was generally not payable on imports by actual users. The import duty on CB has been reduced from 65 per cent in 1994-1995 to 50 per cent in 1995-1996, 40 per cent + 2 per cent in 1996-1997 and 30 per cent + 5 per cent in 1997-1998. As against this the import duty on CBFS which was 30 per cent in 1994-1995 and 1995-1996 has been reduced from 30 per cent + 2 per cent in 1996-1997 to 20 per cent + 5 per cent in 1997-1998. The domestic producers of CB using imported CBFS thus suffered disadvantages vis-à-vis imported CB and the existing level of duties on imported carbon black did not provide them adequate protection against the injuriously increasing imports.

#### 10. Causal Link

- (i) The domestic producers in their application have submitted that large surplus capacities have been set up in the Asia-Pacific region and in Egypt. Taken together in 1996 there was a surplus capacity of 439,000 MT. Projection of surplus capacities for 1997, 1998, 1999 and 2000 are 453,000 MT, 448,000 MT, 279,000 MT and 244,000 MT respectively. The surplus capacity is having its impact on the imports into India. About 96 per cent of the total imports during April-September 1997 have entered from Australia, Egypt, Korea and Thailand. The imports have grown phenomenally at declining prices in 1996-1997 and 1997-1998 (April-September) and they have taken a substantial share of domestic consumption which has increased from 8.65 per cent in 1996-1997 to 26.5 per cent in the first six months of 1997-1998. (Table 6 below.)

TABLE 6

	Imports	Sales	Apparent Consumption	% of imports in Apparent Consumption
<u>1995-1996</u>	16,788	170,847	187,250	8.95
<u>1996-1997</u>	17,733	187,250	204,983	8.65
<u>1997-1998</u> (first six months)	28,917	80,212	109,129	26.50

- (ii) The apparent consumption (domestic sales + imports) in 1996-1997 stood at 204,983 MT which on a *pro rata* basis increased by 6.47 per cent to 109,129 MT in the first six months of 1997-1998. The domestic production of 245,897 MT in 1996-1997, however, declined to 102,629 MT in the first six months of 1997-1998. Taking into account the increase in apparent consumption the domestic producers lost  $\{(245,897 + 6.47\% \text{ of } 245,897) \div 2 - 102,629\}$  28,275 MT of production on a *pro rata* basis. During this period 28,917 MT of CB were imported. As compared to 1996-1997, on a *pro rata* basis, there was an increase in imports of 19,455 MT  $\{28,917 - (17,733 + 6.47\% \text{ of } 17,733) \times \frac{1}{2}\}$ . Similarly they lost sales of 19,470 MT  $\{(187,250 + 6.47\% \text{ of } 187,250) \div 2 - 80,212\}$  on a *pro rata* basis in the first half of 1997-1998. The loss of share in sale of 19,470 MT by the domestic producers of CB was, thus taken over by the imported CB which increased by 19,455 MT.
- (iii) It has been alleged that the domestic industry lost this sale because it did not reduce the selling price. The importers/users/exporters of CB have mentioned that CBFS is the major raw material in the manufacture of CB, prices of which have fallen down but the domestic producers of CB did not reduce the price of their CB in line with the



fall in prices of CBFS. In this context it is observed that it is an admitted fact that CBFS is the major raw material for the manufacture of CB. Approximately 1.8 MT of CBFS is required for producing 1 MT of CB and about 82 per cent of CBFS is imported.

- (iv) ATMA has furnished information on f.o.b. prices of imported CBFS which represent the Platt 2 per cent Index which is a posting of transaction prices for fuel oil. Fuel oils available from different sources of different specifications have, however, to be blended together for making CBFS. Domestic producers of carbon black have mentioned that blenders in US Gulf Coast charge a premium on fuel oil prices which varies with the demand/supply position. The actual c.i.f. prices of CBFS have been provided by domestic carbon black manufacturers. The c.i.f. prices of imported CBFS and the f.o.b. prices mentioned by ATMA during January-March 1996 to July-September 1997 were as under:

TABLE 7

Period	f.o.b. of CBFS/MT US\$*	c.i.f. of CBFS/MT US\$**
January-March 1996	100-110	109
April-June 1996	90-95	119
July-September 1996	100-110	115
October-December 1996	110-115	125
January-March 1997	75-80	125
April-June 1997	80-95	114-124
July-September 1997	90-95	112-122

\* On the basis of information provided by ATMA.

\*\* On the basis of information provided by domestic producers of carbon black.

- (v) The data in Table 7 above indicates that c.i.f. price of imported CBFS does not show that it follows the trend of Platt 2 per cent Index. While the Platt 2 per cent Index prices dipped to a low of 75-80 US\$ PMT in January-March 1997, the c.i.f. prices ruled at a high of US\$125 PMT. The Platt prices increased to US\$80-95 PMT and 90-95 PMT in April-June 1997 and July-September 1997 the c.i.f. prices declined from US\$125 to US\$114-124 and US\$112-122 respectively.
- (vi) Further the information provided in Table 5 shows that the imported carbon black prices do not necessarily bear any relationship with the Platt 2 per cent Index prices. While in April-June 1996, Platt prices were US\$90-95 (f.o.b.) the c.i.f. import price of CB was Re 20,856 per MT (average). However, in July-September 1997 when the Platt prices of CBFS were \$90-95 per MT the c.i.f. import prices of CB (average) were reduced to Rs- 18,282/- per MT. Similarly in January-March 1996 when the Platt prices were in the range of \$100-110 per MT, the c.i.f. import prices of CB were Re 22,288 (average), but in July-September 1996 and October-December 1996 the Platt prices of CBFS were in the range of \$100-115 per MT whereas the c.i.f. import prices of CB dropped to Re 21,616 and Re 20,204 per MT (average). It therefore, appears that even in the international market the prices of CB do not necessarily bear any immediate nexus with the Platt 2 per cent Index prices. The domestic producers of CB could have also not been expected to keep on fluctuating their prices in line with the prices of imported raw material. It is to be kept in mind that while the cost is a matter of fact, price is a matter of policy. Even the fact of cost may depend largely upon the method of costing adopted by the individual units. The domestic producers of CB, however, reduced their sale prices and offered discounts in 1997-1998 (April-

September) OCCL reduced their sale prices w.e.f. 1 April 1997 consequent to duty reduction on imported CB for the year 1997-1998 and fall in the prices of imported CB and offered discounts twice during this period i.e. in April, and July 1997. Hi-Tech Carbon (HTC), offered rebates/discounts of Re 776.71 lakhs in 1995-1996 and Re 795.19 lakhs in 1996-1997, whereas in the first six months of 1997-1998, they offered rebates/discounts of Re 741.46 lakhs. Phillips Carbon Black Ltd. (PCBL) increased discount from Re 2,740 per MT in October-March 1997 to Re 3,516 per MT in April-September 1997. Similarly Carbon & Chemicals India Ltd. (CACIL) increased discounts on domestic sales of CB from Re 1,204 per MT in 1996-1997 to Re 2,207 per MT in April-September 1997. On an average, the domestic producers of CB offered a discount of about 6.5 per cent or Re 1,900 per MT to the tyre industry in April 1997 and about 4.5 per cent or Re 1,400 per MT in July 1997, making a total price reduction of about Re 3,300 per MT. The domestic industry thus reduced selling prices and offered discounts in April and July 1997. The average selling price during April-September 1997 has been reduced to Re 26,370 per MT from Re 28,404 per MT in 1996-1997. The loss of sale by the domestic industry obviously had its effect on cost of production as a result of increase in the fixed cost per MT of CB produced making it difficult for the domestic producers to further reduce the selling prices as they lost their share in domestic sales.

#### 11. Cartelization

It has been alleged that the four petitioners have been indulging into unfair and restrictive trade practices in as much as they have formed an informal cartel. The basis of this allegation is that the prices offered by the carbon black manufacturers were manipulated in such a way that the final price to buyers was the same from different carbon black manufacturers. In this regard it is observed that the buyers of domestically produced carbon black were insisting that the domestic procedures should match their prices with the landed price of imported carbon black. Evidence has been produced to the effect that the domestic producers were asked to bring their prices in line with the landed prices of imported carbon black. This allegation, therefore, now cannot be made against the domestic producers who in an effort to meet with the requests of the buyers, adopted the selling prices to keep in line with the imported carbon black prices. Obviously, this would have led them to adopt similar pricing structure. This allegation, therefore, is not sustainable in so far as the present investigation is concerned.

#### 12. Public Interest

It has been submitted that imposition of Safeguard Duty on carbon black would not be in public interest. This claim has been made on the basis that imposition of Safeguard Duty would make the imported Carbon Black costlier in the hands of importers/users which may result in the increased cost of resultant products. In this regard it is observed that the scope of the term Public Interest is not to be restricted to cover consumer interest alone. It is a much wider term which covers in its ambit the general social welfare taking into account the larger community interest. While the imposition of Safeguard Duty may result in increased cost of imported carbon black in the hands of buyers and therefore, it may also effect the end products manufactured therefrom, it is important to keep in mind the objective of imposition of Safeguard Duty. The purpose of imposition of Safeguard Duty is to provide time to the domestic industry within which it may make positive adjustments to meet with the new situation of competition offered by the increased imports. The imposition of Safeguard Duty would not only allow a wider choice to the buyers to source their requirements, but also at competitive price. The domestic producers provide employment to a large number of people and make a valuable contribution to the economy. Safeguard Duty would thus enable them to survive in the face of competition offered by the imports which should also be in the long-term interest of the buyers of carbon black as well as of the consumers of products manufactured therefrom. It is,

therefore, considered that imposition of Safeguard Duty on carbon black would be in general public interest.

13. Threat of Serious Injury

An analysis of various factors discussed above clearly indicates that the domestic producers have lost production, sales and profit in the first half of 1997-1998 as compared to 1996-1997. The imports have increased from 17,773 MT in 1996-1997 to 28,917 MT in the first half of 1997-1998, indicating an increase by 225 per cent. On a quarterly basis the imports have grown to 746 per cent and 883 per cent in the first and second quarters of 1997-1998 as compared to the first quarter of 1996-1997. The domestic producers lost a production of about 28,262 MT in the first half of 1997-1998, after taking into account the growth in the apparent consumption. Similarly, they lost sales of about 19,461 MT during this period in which the imports increased by 19,456 MT. Obviously, the domestic industry suffered this loss on account of increased imports. The average sales realization of the domestic industry during this period has fallen down to Re 26,370 per MT from Re 28,404 per MT and the average cost of production increased from Re 22,458 per MT to Re 24,460 per MT during the same period. As the domestic producers kept on losing production and sale it had its impact on fixed cost, thereby increasing the cost of production and reducing the profits. The increase in imports which have been entering the Indian markets at declining prices mostly from Australia, Egypt, Republic of Korea and Thailand have threatened the domestic producers of serious injury specially as they have surplus capacity to cater to almost the entire Indian demand of carbon black. In conclusion, a serious injury to domestic producer is clearly imminent. The increased imports have therefore, caused threat of serious injury to domestic producers of carbon black in the first half of 1997-1998.

14. Adjustment Plan

- (i) The applicants have submitted that the domestic industry has modernized many plants and they are constantly working to improve further so as to reduce their costs.
- (ii) OCCL proposes to expand and modernize its CB plant from the capacity of 35,000 TPA to 60,000 TPA at an envisaged expenditure of Re 30 crores. Through this the company expects to substantially reduce the overhead expenditure per MT resulting in a reduction of Re 1,000-1,200 per MT in the cost of production. The company also expects to significantly increase efficiency in use of raw materials and other utilities, resulting in direct savings in the cost of production of about Re 900-1,100 per MT, to become energy efficient and to restructure its marketing plan resulting in improvements in packing and transportation, and reducing inventory levels at customers end.
- (iii) HTC is implementing a project at a coastal location in Gundipunnai, Chennai having strategic benefits of reduced freight cost on raw material and finished product.
- (iv) PCBL plans to complete advanced downstream unit comprising of agglomerators, process bag filter, palletizing, drying and material handling facility and Colombian Carcass reactor at Durgapur in 1998 at an estimated cost of Re 33.42 crores; CAT reactor and 5 MW captive power plant in 2000 at an estimated cost of Re 38.5 crores; 2<sup>nd</sup> CAT reactor at Baroda at an estimated cost of Re 20 crores and 20 MW captive power plant at Durgapur at an estimated cost of Re 80 crores in March 2002.
- (v) CACIL plans to install a captive power plant to reduce power cost and air-preheaters to reduce raw material consumption. They expect to reduce costs by Re 3.24 crores in 1998-1999 and Re 4.32 crores in 1999-2000.

- (vi) From the restructuring plans of the domestic industry it appears that they need a period of about two years to substantially complete their plans and to restructure their units.

15. Critical Circumstances

The applicants had requested for imposition of provisional safeguard duty. Provisional Safeguard Duty can be imposed only in critical circumstances where delay in imposition of safeguard duty may cause irreparable damage. In the case before me, the domestic producers are facing a threat of serious injury caused by the increased imports of CB. They are, however, profit making units, though at a reduced level except one unit namely CACIL where unaudited report shows a loss of Re 30.04 lakhs in the first half of 1997-1998. As against an average cost of production of Re 24,460 per MT in the first half of 1997-1998, the domestic producers have realized an average selling price of Re 26,370 per MT, i.e. they are making on an average a profit of 7.81 per cent. The domestic producers have neither been forced to close down nor to retrench their employees. In view of this, it is considered that critical circumstances did not exist to recommend imposition of provisional safeguard duty. No recommendation to impose provisional safeguard duty was, therefore, made.

16. Share of individual Exporting Countries in Imports

Individual share of various exporting countries in 1996-1997 in the total imports of carbon black into India was as under:

Country/Territory	Quantity (MT)	Percentage Share
Australia	3,882.6	21.89
Belgium	15.3	0.09
Canada	26.2	0.15
China, P.R.	221.0	1.25
Chinese Taipei	24.0	0.14
Egypt ARP	3407.5	19.22
France	7.6	0.04
German F. Rep.	60.6	0.34
Indonesia	761.0	4.29
Iran	630.0	3.55
Japan	5.7	0.03
Korea, RP	3,571.0	20.14
Netherlands	8.8	0.05
Singapore	375.3	2.12
Thailand	4,049.7	22.84
United Arab Emirates	614.0	3.46
United Kingdom	64.9	0.37
United States	9.0	0.05

## VI. CONCLUSION AND RECOMMENDATIONS OF DG

In view of the findings above, it is concluded that the increased imports of carbon black for the rubber industry including the tyre industry into India have caused a threat of serious injury to the domestic producers and imposition of a safeguard duty for a period of two years will be in the public interest.

While arriving at the quantum of safeguard duty which will be adequate to protect the domestic industry, the cost of production (confidential) of carbon black produced domestically has been taken on a weighted average basis for the entire domestic industry. Similarly, the c.i.f. import prices of carbon black have also been taken on weighted average basis. Adjustments have been made for duties, taxes and handling charges as applicable both for domestically produced carbon black and for the imported carbon black and also for terms of payment. No adjustment has, however, been made for the sales tax or other local taxes paid on the domestically produced carbon black in view of the budget 1998-1999 Provision of levying 4 per cent Special Additional Duty on imports (not meant for sale) which takes into account sales tax and other local taxes etc. generally levied on domestically produced goods. It is also considered that the levy of 4 per cent Special Additional Duty will have a significant effect on the weighted average cost of production of domestically produced carbon black as during the period under investigation the domestic producers imported about 82 per cent of their CBFS requirement which accounted for nearly 50 per cent of the cost of production of carbon black. Adjustment on this account, therefore, has been made. The domestic producers have claimed 9 per cent profit margin, which is considered reasonable.

Considering the need to progressively liberalize the safeguard duty in order to facilitate positive adjustment by the domestic industry, a safeguard duty at the rates mentioned below is recommended to be imposed on carbon black imported into India for a period of two years from the date of its first imposition.

First year @ 16% (Sixteen per cent) *ad valorem* on c.i.f. import price.

Second year @ 5% (Five per cent) *ad valorem* on c.i.f. import price.

(R.K. Gupta)  
DG (Safeguards)

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