

MINISTRY OF COMMERCE & INDUSTRY
(Department of Commerce)
(Directorate General of Anti Dumping & Allied Duties)

NOTIFICATION

New Delhi, the 17th January , 2003

PRELIMINARY FINDINGS

Subject : Anti-dumping investigation concerning import of Para Cresol originating in or exported from People's Republic of China - Preliminary Findings.

No. 14/29/2002-DGAD - The Government of India having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE

2. The procedure described below has been followed:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s. Atul Ltd., Gujarat, representing the domestic industry, alleging dumping of Para Cresol (hereinafter referred to as subject goods) originating in and exported from Peoples' Republic of China (hereinafter referred to as subject country) ;
- ii. The preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was thereafter, considered as properly documented;
- iii. The Authority notified the Embassy of Peoples' Republic of China in India about the receipt of dumping application made by the petitioners before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iv. The Authority issued a Public Notice dated 27th August, 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Para Cresol covered under Chapter heading/subheading 2907.12 of Schedule I of the Customs Tariff Act.
- v. The Authority forwarded copy of the said public notice to the known exporters, importers and to the complainants and gave them an opportunity to make their views known in writing.

- vi. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Embassy of subject country in India.
- vii. The Authority sent questionnaires, to elicit relevant information, to the following exporters: -

China Jiansu International Eco. & Tech. Cooperation Co.,
No.1, Hanzhongmen Str., 9F, G.E. HanzHong Garden,
Nanjing,
Jiangsu,
China – 210029.

Jiangsu Huaihua Group Co. Ltd.,
3-I, 3-J, Zhongsha Commercial Building,
9 # Hong miao,
North Hong Wu Rd., Nanjing,
Jiangsu,
China – 210018.

Xi'an Lijin Chemical Co. Ltd.,
China.
Tel. No. 00 86 029 2234384
Tel.No. 00 86 029 6253117

Nanjing Longyan Chemical Co. Ltd.,
No. 102, Taixin Road Yanziji,
China.

Nanjing – Jingmei Chemical Co. Ltd.,
Jeiנגgio – town,
Lifhui – county,
Nanjing,
China.

M /s China Jiangsu International Economic
-Technical Co-operation Corporation (CJIETCC),
11/F Chun Feng Mansion,
37 Hua Qiao Road,
Nanjing – 210 029.
China P.R.

M/s Nanjing Jingmei Chemical Co. Ltd.,
Jingqiao Town, Lishui County,
Nanjing, China P.R.

- viii. The Embassy of subject country in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- ix. The questionnaire was sent to the following importers of subject goods:

Inventaa Chemicals Ltd.,
10-91, Sowbhagyanagar,
Opp. IDPL Colony,
Hyderabad – 500 037.

Nandolia Organic Chemicals,
4/Ahmed Amir Estate,
Opp. Bostan Hotel,
S.V. Road, Jogeshwari (West),
Mumbai – 400 012.

Ratnagiri Chemicals Pvt. Ltd.,
611 & 612, 6th Floor,
Raheja Arcade,
Sector – 11, C.B.D. Belapur,
Navi Mumbai – 400 614.

Metrochem Industries Ltd.,
505-506, 'Surya Rath', Panchwati,
Ellisbridge,
Ahmedabad – 380 006.

Benzo Chem Industries Ltd.,
Madhu Kunj, Shankar Ghanekar Marg,
Prabhadevi,
Mumbai – 400 025.

Ketan Chemical Corporation,
30, Swastik Plaza,
V L Mehta Road,
Juhu Scheme, Next to Kala Niketan,
Vile Parle (W),
Mumbai – 400 049.

Quality Industries,
W-50, MIDC, Phase II,
Dombivali (E), 421 204, Dist. – Thane,
Maharashtra.

Amruta Organics Ltd.,
B-23, Sinnar Tal. Co-op. Ind. Estate Ltd.,
Sinnar – 422 103 Dist – Nashik.

M/s Black Rose Exports Pvt. Ltd.
145-A Mittal Tower, Nariman Point,
Mumbai – 400 021.

- x. Additional information regarding injury was sought from the petitioners, which was also furnished;
- xi. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
- xii. Some of the interested parties requested for extension in time to file their response to the questionnaire which was granted upon due cause shown;
- xiii. ***** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xiv. The investigation covered the period from 1st April 2001 to 31st March, 2002;
- xv. Copies of initiation notice were also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

B. PETITIONER'S VIEWS

3. The petitioner has made the following major arguments in their submissions:-

- i. This application is filed seeking a levy of anti-Dumping duty on imports of Para Cresol from China. The said products are being dumped into the country at prices significantly below their normal values and as such, causing material injury to the Indian domestic industry manufacturing the said product.
- ii. The product finds major uses in Dyes and Pigments, Perfumery and Drug Intermediates, Optical Brightener, Surfactants, Synthetic Food Flavour, Ultra violet Light Absorbers, Antioxidants and Stabilizers for lubricants.
- iii. Atul Limited is the only producer of Para Cresol in India.
- iv. Petitioner is capable of producing all grades of Para Cresol.

- v. There is no difference between the products manufactured by the domestic industry in India and the imported goods.
- vi. There is no difference between the production process of the domestic industry in India and that of the imported goods.
- vii. The petitioner has relied on import data based on the source viz. Chemical Trade Intelligence.

On Dumping

- viii. We have tried to get information on prices of the subject goods in the domestic market of subject country. We have also made attempts to get price list of the exporters or price evidence for the export to other country. We submit that we have not been able to get any direct evidence with regard to the prices of the subject goods in the subject country or the price list of the exporters either for sale in that country or for exports to other country. We submit that constructed normal value is a good indicator of the normal value for the purpose of initiation of investigation. Since the application is for imports from China, we request the Designated Authority to apply the provisions of Rules 7 & 8 (as amended) of the Anti Dumping Rules. Accordingly, the Designated Authority is requested to accept constructed normal value based on the details given in the confidential version of the petition.
- ix. The export price for subject country has been worked out on the basis of the import figures available with us along with the cif values. Adjustments have been made on account of Ocean Freight, Marine Insurance, Inland Transportation in the country of export, Port handling and Port charges to arrive at ex-factory export price.

On Injury

- x. **Imports from the subject country** – It can be seen that the imports from China increased from a mere 267 MT in the year 1999-2000 to 586 MT during the period of investigation. China is the only supplier of the product under consideration during the period of investigation. Further, imports from the subject country in comparison to the total demand in the country has more than doubled during the period of investigation over the year 1999-2000.
- xi. **Changes in Market Share held by the Indian Producers** - The share of the domestic industry in the total consumption in the country has declined from 89.82% in the year 1999-2000 to 85.15% during the period of investigation.
- xii. **Evidence of lost contracts** – The complainant domestic industry tried its best to hold on to the existing customers and increase its customers base by reducing prices. Yet the fact that 586 MT of dumped imports arrived into India during POI is adequate evidence that it lost potential customers.

- xiii. **Output/Productivity & Capacity utilization** - The production by the petitioner declined during the period of investigation over the preceding financial year. It can be seen that there has been a drop in the capacity utilization of the domestic industry to the extent of about 4.91% in the period of investigation over the preceding financial year. It would, therefore, be clear that the domestic industry's position has deteriorated significantly in view of the fact that there is a drop in the capacity utilization.
- xiv. **Sales Volume & Value** – The volume of sales by the petitioner went up during the period of investigation over the preceding financial year but this is at the cost of reduction in sales prices by the domestic industry. It may be mentioned that the pressure on the prices of the domestic industry has led to a situation of direct losses to the domestic industry even though we have been able to retain our market share.
- xv. **Inventories** – The inventories have drastically increased from ****MT at the end of March 2001 to ****MT as on 31.03.2002, an increase of over ****%.
- xvi. **Employment** – The employment has marginally decreased in the period of investigation. The number of employees declined to ****as against ****in the previous year.
- xvii. **Wages** – Because of rigidity of labour laws in India, the wage costs have gone up even though the domestic industry is incurring losses on their operations of para cresol.
- xviii. **Profitability** – Dumping by China had a significant impact on the net sales realization by the domestic industry for the subject goods. To hold on to its market share, the petitioner had to compete with low priced offers/imports of subject goods from the subject country. Due to the dumping by the subject country, the domestic industry had to suffer a loss in the period of investigation. It may be seen that the profitability of the company as a ratio between cost of sales and sales value has been declining over the last three years.
- xix. **Return on Investment (Capital Employed)** – The impact of losses mentioned above are further amplified if they are seen in relation with effective capital employed in the plant. It may be noted at the outset that Para Cresol industry is highly capital intensive. The industry has invested an amount of Rs.**** per metric tone of installed capacity. This will require a minimum profit of over Rs.**** per metric ton. As against a reasonable profit, the domestic industry is, in fact, incurring a loss of Rs.**** per MT on its sales. It can also be seen that the domestic industry is incurring loss of ****% on effective capital employed in per MT production of Para Cresol.
- xx. **Price Underselling** – Despite best efforts to cut costs and streamline their operations, the domestic industry is not in a position to realize a reasonable price for their products. The landed value of the product under consideration

from China is much lower than the prices the domestic industry ought to have realized on the sales of the subject goods. The injurious effect of this high level of price underselling has had a direct and deleterious effect on the financial performance of the domestic industry.

- xxi. **Magnitude of Margin of Dumping** – According to the estimates made by the Petitioner, the margin of dumping works out to 36.49% for China.
- xxii. **Actual and potential negative effect on cash flows** – As mentioned earlier, the domestic industry is working at a loss. There is a considerable impact on cash flows coupled with the fact that the inventory levels in this industry are also high.
- xxiii. **Growth** – Because of losses the industry is not able to make any investment.

CAUSAL LINK

- xxiv. From the details of the imports given in the foregoing paragraphs, it is clear that the imports of subject goods from sources other than China is nil indicating that other sources are also not able to compete with the dumped goods.
- xxv. Demand for subject goods is more or less constant and, therefore, decline in demand is not a factor causing injury to the domestic industry.
- xxvi. The sharp increase of dumped imports at injurious price of subject goods has prevented the domestic industry from realizing a reasonable remunerative selling price in the domestic market. A thorough examination of all the factors will clearly show that the only cause of material injury suffered by the petitioners is the dumped imports. The causal link between material injury and the dumped imports from China is, therefore, established beyond any doubt.

C. EXPORTERS', IMPORTERS', USERS' AND OTHER INTERESTED PARTIES' VIEWS

4. have been received from the following exporters: -

- i. M/s Nanjing Longyan Chemical Co. Ltd., CHINA
- ii. M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA

5. The submissions made and/or the information provided by the above exporters are as follows: -

a) **M/s Nanjing Longyan Chemical Co. Ltd., CHINA**

- i. M/s Nanjing Longyan Chemical Co. Ltd., CHINA is a Chinese – foreign equity joint venture, duly established in accordance with the Law of the People's

Republic of China on Chinese-foreign equity joint ventures as a legal person of China on July 25, 1994.

- ii. A copy of the Business licence of the respondent and a copy of the Articles of Association is furnished.
- iii. The Respondent independently operates business and production activities, freely selects suppliers and customers, and develops sales market in response to the signal of the market.
- iv. The Respondent would like to claim Market Economy / Individual Treatment. The Respondent will be pleased to cooperate with the Indian Investigating Authority should any additional information be requested.
- v. The exporter has furnished information relating to domestic sales, exports, cost of production etc. on the different annexures.

b) M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA

- i. M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA, a Chinese-foreign equity joint venture, is incorporated in accordance with the Law of the People's Republic of China on Chinese-foreign equity joint ventures in 1993.
- ii. A copy of the Business licence of the respondent and a copy of the Articles of Association is furnished.
- iii. The Respondent independently operates business and production activities, freely selects suppliers and customers, and develops sales market in response to the signal of the market.
- iv. In this respect, the Respondent would like to claim Market Economy / Individual Treatment. The Respondent will be pleased to cooperate with the Indian Investigating Authority should any additional information be requested.
- v. The exporter has furnished information relating to domestic sales, exports, cost of production etc. on the different annexures.

6. The following importers have responded by giving information on the Importer's questionnaire :

- i. M/s Nandolia Organic Chemicals Pvt. Ltd., Mumbai
- ii. Universal Chemicals & Industries Ltd., Mumbai
- iii. Black Rose Exports Pvt. Ltd., Mumbai

7. Following other submissions have been made by M/s Black Rose Exports Pvt. Ltd., Mumbai for non-imposition of anti-dumping duty on Para Cresol from China :

- i. Atul Limited is the only manufacturer of Para Cresol in India with a Plant Capacity of 5000 MT/annum. The grade manufactured is of 85 – 96% purity. Thus in terms of 98% purity it works out to 3750 MT / annum.

- ii. Atul themselves manufacture down stream products like P cresidine, Para Anisaldehyde, Para Anisic Alcohol which consumes around 3370 MT. And balance of some 1500 MT is sold for domestic market.
- iii. Indian market of Para Cresol is to the tune of 7600 MT and as explained above, Atul Ltd. has only about 1500MT surplus for domestic sales. So the only alternative left is to import Para Cresol.
- iv. Atul manufactures 98% purity at the most, that too is available on request & subject to availability, since most of it is 85 – 96% purity.
- v. Manufacturers of Para Anisaldehyde, Para Anisic Alcohol require a purity of 99% min with set Point of 33.5 Deg C to manufacture their end product to get acceptance in International markets. Atul cannot give such material.
- vi. Anti dumping in Para Cresol would mean loss of quality, if manufactured from Atul's material & consequently loss of Export Revenues to the Nation.
- vii. Input Output Norms specify that mfg 1 Mt Para Cresol requires 1.559 MT Toluene + 1.63 Mt Caustic Soda. This norm in fact has been fixed based on Atul's mfg. If Para Cresol is made based on above, the Cost that arrives is much less than the Import Price. That means Atul has a problem of either Technological inefficiency or outdated know-how.
- viii. Other than China even UK offers at same Price levels.
- ix. Aromatic Division of Atul which manufacturers these products is the most profitable Division in the entire group. It means at even these price levels, they have a sufficient level of profits & eventually means imports do not hurt their bottom line.
- x. Until China started offering for Indian markets, Atul had enjoyed virtual monopoly and the same monopolistic situation would one again prevail if Anti Dumping is imposed.
- xi. Atul offer Para Cresol on quota system whereby only a few customers get material on regular basis.

8. Submissions made by other importers / users :

a) M/s Global Bulk Drugs & Fine Chemicals Pvt. Ltd., Hyderabad have made following general submissions :

- i. One of the Bulk Drugs, Diltiazem and its intermediates are manufactured from the basic Raw Material "Para Anisic Aldehyde" manufactured and supplied by M/s Atul Limited, M/s Nandolia Organics and M/s Ascent Fine Chem Pvt. Ltd.
- ii. M/s Atul Limitee has manufacturing Capacity of about 5000 MT of Para Cresol of 95% purity.
- iii. It consumes captively about 2900 MT p.a. of Para Cresol in manufacture of para Anisic Aldehyde.

- iv. It consumes captively about 300 MT p.a. of Para Cresol in manufacture of Para Cresdine.
- v. It also consumes about 190 MT p.a. of Para Cresol in manufacture of Para Anisic Alcohol.
- vi. Further it sells about 1500 MT p.a. of Para Cresol in the local market to down stream manufacturers.
- vii. On meeting all the above requirements, surplus of Para Cresol in balance with Atul Ltd. will only be 110 MT. The Installed Capacity for manufacture of 'Para Anisic Aldehyde' of M/s Ascent Finechem Pvt. Ltd. and M/s Nandolia Organics Pvt. Ltd. is about 750 MT each/per annum which needs to use about 1000 MT/each/p.a. of Para Cresol. Thus the total demand of above manufactures of Para Cresol is 2000 MT p.a. which cannot be met by M/s Atul Ltd. as they do not have any surplus quantities to meet this requirement. It may also be noted that M/s Atul Ltd., being the only manufacturer of the Para Cresol in India, it is all the more Monopolistic situation where any dependence on them for supply of Para Cresol will not only be suicidal but also detrimental to the interest of the Bulk Drugs Manufacturers.
- viii. Further, before the entry of M/s Nandolia Organics and M/s Ascent Finechem in the market M/s Atul Limited has been enjoying a monopolistic market and was selling Para Anisic Aldehyde at a price of about Rs.350/kg. Which due the entry of competitors has come down presently to Rs.225/kg. This has enabled the domestic Bulk Drug Industry to compete effectively in the International Market.
- ix. We also wish to bring to your kind notice that the Landed price of imported Para Cresol is higher than the price of M/s Atul Ltd. The cost of production of Para Cresol of M/s Atul Ltd. is about Rs.70/kg. against their selling price of Rs.110/kg. The Chinese Para Cresol is being exported at US D 1.58 to 1.60/kg CIF Indian Ports.
- x. Thus imposition of any anti-dumping duty on para cresol will be of disadvantage to other para Anisic Aldehyde manufactures as they have to depend on M/s Atul Limited for supply Para Cresol which is major raw material for manufacture of Para Anisic Aldehyde. This will lead to increase in prices of Para Anisic Aldehyde and throw the other manufactures out of market creating again monopolistic situation detrimental specifically to the interest of Para Anisic Aldehyde Manufacturers and Bulk Drug Industry in general.
- xi. The information is furnished based on the Balance Sheet of M/s Atul Limited as on 31.3.2002 and information from the market sources.

b) M/s Anant Fragrance Pvt. Ltd. have made following submissions :

- i. We manufacture a variety of fine chemical products of high quality and supply them in the domestic as well as international markets. The basic raw materials are one or more downstream products of para cresol.
- ii. At present these downstream products are available to us at competitive rates from several domestic manufacturers and suppliers. M/s Atul Limited also happens to be a major manufacturer and supplier of these downstream products of para cresol. If this petition is approved, it would render it to be a sole manufacturer and supplier of these downstream products placing it in a monopolistic position. This will also result in non-availability or short supply of these products because of non-viability of producing these products by existing manufacturers. The overall situation will drive us to be incompetent in the domestic as well as international markets.
- iii. In view of what is stated above, we request you not to approve the petition filed by M/s Atul Limited to help safeguard our genuine business interests.

c) **M/s Moraya Global Pvt. Ltd., Mumbai** have informed in their submissions that para cresol supplied by M/s Atul Limited is not only of inferior quality but also does not have any consistency. M/s Atul Limited is also not supplying material on time. M/s Atul Limited finds competition only from para cresol imported mostly from China. If anti dumping duty is imposed on Para Cresol, M/s Atul Limited will enjoy absolute monopoly. Under such situation, entire Indian aroma chemical industry which has goods substantial export exposure will suffer heavily.

d) **M/s Zenith Enterprise, Ahmedabad and M/s Naiknavare Chemicals Ltd. Mumbai** have opposed the petition of M/s Atul Limited stating that M/s Atul Limited, being the only manufacturer of Para Cresol in India, is not able to cope with the local demand for this product and their supplies are inconsistent. Atul offers two grades of Para Cresol viz. 95% and 98% purity with a huge price difference between these grades. Proposed imposition of anti dumping duty on Para Cresol will bring up Para Cresol prices by Atul Limited as well as other International suppliers. This will adversely affect their production.

D. EXAMINATION AND FINDINGS BY THE AUTHORITY

9. The submission made by the petitioners, importers, exporters and other interested parties, to the extent filed before the Authority have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.
10. The cases of new exporters or those stated to be willing to give price undertaking shall be considered, on request, by the Authority in accordance with the Rules supra.

Product Under Consideration

11. The product under consideration in this investigation is Para Cresol (hereinafter referred to as subject goods). The subject goods find major uses in Dyes and Pigments, Perfumery and Drug Intermediates, Optical Brightener, Surfactants, Synthetic Food Flavour, Ultra violet Light Absorbers, Antioxidants and Stabilizers for lubricants.

The product is covered under Customs heading 2907.12 of Schedule I of Customs Tariff Act. This Custom classification is however, indicative only and is in no way binding on the scope of the present investigation. The product is classified under ITC HS Code 290712 01.

Like Article

12. The petitioners have claimed that there is no difference between the products manufactured by the domestic industry in India and the imported products. The Authority notes that the domestic industry produces Para Cresol in different grades. The importers, in their arguments, have not disputed that M/s Atul Limited is capable of producing different grades of Para Cresol. The Authority is of the view that the product being imported substitutes the product manufactured by the domestic industry. Thus, the Authority holds, for the purpose of preliminary determination, that Para Cresol being produced by the domestic industry is like article to the product under consideration.

Domestic Industry

13. The petition has been filed by M/s Atul Limited (Aromatics Division), Dist. Valsad, Gujarat. The petitioner company is the sole producer of Para Cresol in India. Therefore, they represent the 100% domestic production of the subject goods. The petitioner has informed to have made imports of 32 MT during POI under Advance Licence for fulfilling export obligation. It has been argued by some of the importers that since the petitioner has made imports during the POI they may not be treated as part of the eligible domestic industry. The Authority notes that the imports of 32 MT made by M/s Atul Limited during POI were meant for export production and these imports were necessitated due to a planned stoppage of their Para Cresol plant. The Authority does not consider these small quantity imports for export production to make the petitioner as ineligible to be treated as 'Domestic Industry' within the meaning of Rule 2(b) supra. Petitioner is, therefore, considered to represent the domestic industry.

E. DUMPING & EXAMINATION OF CLAIMS MADE ON NORMAL VALUE & EXPORT PRICES

Normal Value

14. Under Section 9A(1)(c) of the Customs Tariff (Amendment) Act,1995 normal value in relation to an article means:

- i. "The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)";

15. The Authority sent questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). The responses were received from the following two exporters:

- i. M/s Nanjing Longyan Chemical Co. Ltd., CHINA
- ii. M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA

16. The petitioner had claimed that they had not been able to get any direct evidence with regard to the prices of the subject goods in the subject countries or price list of the exporters either for sale in that country or for export to other country. Further, they have requested to apply the provisions of Rules 7 & 8 (as amended) of the Anti Dumping Rules for normal value determination as the exporters are from China. Accordingly, they have requested to accept constructed normal value. The aforesaid two exporters, in their response, have claimed market economy / individual treatment. They have also claimed that they independently operate production and business activities, freely select suppliers and customers, develop sales market in response to the signal of the market.

17. Authority notes that para 7 of Annexure 1 of Anti Dumping Rules, inter-alia, provide that :

"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin....."

Further para 8 of Annexure 1 of Rules supra (as amended) provides that :

"8.(1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph (3)

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country.

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether :

- a. the decisions of concerned firms in such country 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:*

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 of the principles set out in paragraph 7 and in this paragraph."

18. The Authority notes that the two exporters have claimed market economy / individual treatment on the ground that they independently operate production and business activities, freely select suppliers and customers and develop sales market in response to the signal of the market. The Authority, however, finds that sufficient evidence and information on the basis of the criteria specified in sub-para (3) in paragraph 8 has not been furnished to rebut the presumption that the exporters are from non-market economy. The Authority is, therefore, unable to apply the principles set out in paragraph 1 to 6 of Annexure 1 of Rules supra and is constrained to proceed as per 'facts available'. In addition, the Authority observes that the information furnished by the exporters relating to cost of production as required under Appendix 8 & 9 of the questionnaire was incomplete and incorrect. In respect of raw materials, the ratio of each raw material in the final product was not given; the basis of allocation of costs to Para Cresol production was not given. From the available financial statement viz. profit & loss account, balance sheet, the cost of production for the POI was not verifiable. As the furnished information did not enable the Authority to verify the cost of production, the domestic sales transaction could not be treated to be in the ordinary course of trade. The Authority has separately informed in detail the shortcomings in the information furnished to the concerned exporters. This information, if furnished subsequently by the exporters, will be considered for the final determination.

19. Under the circumstances, Normal value under the Rules is determined on the basis of 'facts available' as per Rule 6(8). Therefore, the information available on the estimated cost of production as per evidence furnished by the petitioner plus selling, administrative and general expenses and a reasonable amount of profit has been taken as the basis for working out the Normal value of subject goods in China PR which is considered to be US \$ ***/kg. While considering the evidence regarding cost of production furnished by the domestic industry, the Authority has referenced the Normal Value with reference to actual cost of production of domestic industry after normating it at optimum efficiency level.

Export price :

20. M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA

M/s Nanjing Jingmei have informed that they did not export the product concerned to the Indian market directly during the period of investigation but exported by domestic trading companies. The Authority notes that ***MT Para Cresol produced by Nanjing Jingmei was exported by the domestic trading companies to India. The Authority has also considered the information furnished by the co-operating importers regarding their imports from China P.R. The exporter has shown adjustments on account of inland freight and handling charges from the sales price to the domestic trading companies. The Authority has made adjustments on these accounts to arrive at the export price at ex-factory level.

21. M/s Nanjing Longyan Chemical Co. Ltd., CHINA

M/s Nanjing Longyan Chemical Co. Ltd. have given information regarding exports of ***MT Para Cresol to India. They have shown adjustments on account of discounts, port charges, ocean freight, insurance and bank charges. Adjustments on these accounts have been made from the weighted average export price as furnished by the exporter to arrive at the export price at ex-factory level.

Dumping margin

22. The principles governing the determination of normal value, export price and the dumping margin are laid down in Annexure-I to the Rules. For the purpose of the fair comparison between the normal value and export price, the Authority has made calculations and comparisons at the same level of trade in respect of Para Cresol 98%. Normal Value at ex-factory level has been compared with the export price at ex-factory level of Para Cresol. Considering the normal value and export price, determined as detailed above, the dumping margin comes as under:

S. No.	Name of Exporter	Dumping Margin %
1.	M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA	40.74%
2.	M/s Nanjing Longyan Chemical Co. Ltd., CHINA	31.94%
3.	Other Exporters from China P.R.	45.04%

F. INJURY

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

"Determination of Injury:

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

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

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

25. Views of the petitioners

The views of the petitioner as regards injury and causal link are contained in Part B of these findings and these are not being repeated for the sake of brevity

Examination by the Authority:

26. The Authority has considered the views of the petitioner, exporters, importers and users as regards injury. The Authority has examined the information regarding various injury parameters as under:

Imports from subject country :

27. As per the petition, the imports from subject country were 267.4 MT in 1999-2000, 724 MT in 2000-01 and 586 MT during POI 2001-02. However, as per the information received from the exporters / importers, the Authority finds that the imports of Para Cresol from subject country during POI were 1217.88 MT. The Authority finds that imports from subject country grew by 68% during POI over the previous year. However the share of imports from subject country in the total imports grew to 100% during POI in comparison to the previous year share of 99.72% and in the year 1999-2000 of 68.82%. The Authority finds that there has been significant increase in the dumped imports from subject country in absolute terms.

Market share:

28. The Authority finds that the market share of the domestic industry and the imports from the subject country in the demand of subject goods has been as under :

	1999-2000	2000-2001	2001-2002(POI)
Share of domestic industry (%)	49.67%	27.68%	30%
Share of imports from subject country	34.54%	72%	70%

Market share of imports from subject country in the total demand for the subject goods has increased from 34.54% in 1999-2000 to 70% during POI. However, the market share has reduced from 72% in the previous year. The market share of the domestic industry in the total demand of subject goods has not declined during POI. It has increased from 27.68% during 2000-01 to 30% during the POI.

Capacity Utilisation:

29. The Authority finds that the capacity utilization of the domestic industry declined during the POI as reflected in the table below:

Year	Capacity Utilization (%)
1999-2000	61.78%
2000-2001	67.71%
2001-2002 (POI)	62.80%

(Indexed)

Sales Volume:

30. Sales volumes of domestic industry increased from ** in 2000-01 to *** in POI and indexed figures are as under :

Year	Sales Volume (MT)
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1999-2000	100
2000-2001	69
2001-2002 (POI)	130

Inventory :

31. The Authority finds that the inventory of finished goods held by the domestic industry has increased considerably at the end of financial year in March, 2002 in comparison to the previous year closing on March, 2001. This showed an increase of ***%.

Employment :

32. The employment has marginally decreased in the period of investigation.

Wages :

33. The Authority notes that the wage costs have gone up.

Profitability:

34. The Authority has taken note of the arguments of some of the importers/ users that Aromatic Division of M/s Atul Limited makes huge profits and therefore, domestic industry cannot claim injury. M/s Atul Limited manufactures several products in the Aromatic Division and Para Cresol is one of the products. The Authority finds that dumping of subject goods had a significant impact on the net sales realization of the domestic industry for the subject goods. The petitioner had to compete with the low priced offers / imports of subject goods from subject country. The cost of sales has been higher than the sales realization resulting in losses suffered by the domestic industry in the manufacture and sale of subject goods during POI. Therefore, the Authority finds that the domestic industry has suffered losses in their manufacturing operation relating to Para Cresol.

Return on capital employed:

35. The Authority notes that manufacturing of Para Cresol is highly capital intensive. Instead of earning a reasonable profit, the domestic industry, is in fact incurring a loss of Rs.*** per MT on the sales of Para Cresol. Therefore, the domestic industry is incurring a loss of ***% on effective capital employed on per MT production of Para Cresol.

Price under selling:

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

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

Actual and potential negative effect on cash flows:

37. The Authority finds that the domestic industry has not been able to earn even nominal returns on the capital employed for manufacture of Para Cresol. The inventory levels are also high. Therefore, there is a considerable impact on the cash flows of the domestic industry.

Growth:

38. The Authority finds that because of losses the domestic industry is finding it very difficult to make any new investment.

G. CAUSAL LINK

39. The Authority has examined the impact of the dumped imports on the domestic industry as per principle (v) of Annexure-II of the Anti-Dumping Rules. The relevant indices as set forth in para (iv) of Annexure II of the Rules have been examined by the Authority.

40. The Authority has considered the views expressed by the petitioners and other interested parties as regards the causal link, which have been mentioned, in the preceding paragraphs. After examining the various economic parameters as above the Authority has come to the following conclusions:

- i. There has been an increase in imports of subject goods from subject country in absolute terms.
- ii. The market share of the dumped imports from the subject country has increased significantly during POI in comparison to the year 1999-2000. However, it has decreased marginally during the POI in comparison to the previous year.
- iii. The selling price of the domestic industry decreased during the POI as compared to year 2000-01 and the same has been below the non-injurious price (NIP) on account of dumped imports.
- iv. The domestic industry has suffered injury due to price suppression. They have not been able to raise their selling price so as to realize a fair return on the

investments as the landed value of the dumped imports has considerably depressed the selling price of the domestic industry.

- v. The Authority concludes that the most significant cause of injury to the domestic industry has been the price under selling. As a result of lower landed value of imports of subject goods from subject country, the domestic industry has not been able to realize a fair and reasonable price for its products. This has led to negative return on investment. The investments in the Para Cresol Manufacturing Industry are quite heavy and the loss on sales realization has resulted in losses and negative return on the investment by the industry which reflects the injury suffered by the industry.
- vi. The above economic parameters cumulatively and collectively establish that domestic industry has suffered material injury on account of dumping.
- vii. The demand of the subject goods has not decreased but has instead increased and therefore, contraction of demand cannot be attributed as a cause of injury. No technological development in the industry or any other such factor which could have resulted in injury to the domestic industry has been noticed.

H. INDIAN INDUSTRY'S INTEREST

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

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

I. CONCLUSIONS

43. The Authority has, after considering the foregoing, come to the conclusion that:
- i. Subject goods have been exported to India from subject country below the normal value;
 - ii. The domestic industry has suffered material injury; and

- iii. The material injury has been caused by the dumped imports from subject country.

44. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of subject goods from subject country in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty not exceeding the margin of dumping or the margin of injury whichever is lesser and which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports has been compared with the non-injurious selling price of the domestic industry determined for the period of investigation.

45. Accordingly, the Authority recommends that provisional anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Para Cresol falling under Chapter Heading 2907.12 of Schedule I of Custom Tariff Classification originating in or exported from People's Republic of China pending final determination. The anti dumping duty shall be the difference between the amount mentioned in column 3 in the following table and the landed value of imports of the subject goods in US\$/kg.

S. No.	Name of Exporter	US\$/Kg
1.	M/s Nanjing Jingmei Chemical Co. Ltd. , China	2.445
2.	M/s Nanjing Longyan Chemical Co. Ltd., China	2.445
3.	Other Exporters from China P.R.	2.445

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

J. FURTHER PROCEDURE

47. The following procedure would be followed subsequent to notifying the preliminary findings:-

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of these preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;

- c. The Authority would provide opportunity to all the interested parties for making oral submissions which have to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary;
- e. The Authority would disclose essential facts before announcing final findings.

L.V. Satharishi
Designated Authority