

TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY  
PART-I, SECTION-1

No. 14/17/2009-DGAD  
GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
(DEPARTMENT OF COMMERCE)  
DIRECTORATE GENERAL OF ANTI DUMPING & ALLIED DUTIES

**NOTIFICATION**

New Delhi, the 23<sup>rd</sup> December 2011

**Final Findings**

Subject:- Anti-Dumping Investigations concerning imports of Coumarin originating in or exported from China PR – Final Findings

No. 14/17/2009-DGAD- Whereas the Designated authority, having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter referred to as the Rules);

**Background:**

1. Whereas the Designated Authority (hereinafter also referred to as the Authority), having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 as amended from time to time, (herein after referred to as the Rules) received an application from M/s Atlas Fine Chemicals Pvt. Limited, Nasik, Maharashtra through M/s. TPM Solicitors & Consultants, New Delhi (hereinafter referred to as the Applicant) alleging dumping of Coumarin ( hereinafter referred to as subject goods) originating in or exported from China PR ( hereinafter referred to as subject country) and requested for the initiation of Anti Dumping investigations for levy of anti- dumping duties on the subject goods.

2. And whereas the Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, after examination of the same with regard to adequacy and accuracy, issued a Public Notice dated 10<sup>th</sup> July, 2009 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject country in accordance with

the Rule 6 (1) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of Anti Dumping Duty, which, if levied, would be adequate to remove the injury to the domestic industry.

3. And whereas the Designated Authority having regard to the Act and Rules investigated and recommended imposition of provisional Anti Dumping Duty on imports of Coumarin (hereinafter referred to as subject goods) falling under Chapter 29 (Organic Chemical) of the Customs Tariff Act, 1975 (51 of 1975) originating in or exported from China PR, vide Preliminary Findings dated 29<sup>th</sup> January, 2010 and Provisional Anti Dumping Duty was imposed on the subject goods vide Customs Notification No.38/2010-Customs dated 23rd March, 2010 and final findings were issued on 5th July 2010 and definite Antidumping duties imposed by the Ministry of Finance.

4. And whereas, the Fragrance and Flavors Association filed an appeal before CESTAT, challenging the imposition of Anti-dumping duty on imports of Coumarin vide Customs Notification No 82 /2010-Customs dated 20th August, 2010. The Hon'ble CESTAT vide its order dated 17th June, 2011 set aside the Final Findings dated 7th July 2010 and the Customs notification dated 20th August, 2010 and remanded the matter back to Designated Authority for fresh decision after granting a reasonable opportunity of hearing to the appellant within a period of 6 months.

**A. Procedure:**

5. The procedure described below has been followed:

- (i) The Authority notified to the Embassy/Trade Representative of subject country in India about the receipt of application alleging dumping of subject goods made by the Applicant before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- (ii) The Authority sent copies of Initiation Notification dated 10<sup>th</sup> July, 2009 to the Embassy/Trade Representative of the subject country in India informing about the initiation of the investigation in accordance with Rule 6 with a request to advise the exporters/ producers of the subject country to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the exporters/producers and Non-Confidential Version of the application was also sent to them, along with the names and addresses of the known exporters from the subject country as per the addresses made available by the applicant.
- (iii) The Authority sent copies of Initiation Notification dated 10<sup>th</sup> July, 2009 along with non-confidential version of application as well as exporter's questionnaire to the known producers/exporters of the subject country as per the addresses made available by the applicant and requested them to provide relevant information and make their views known in writing within 40(forty) days of Initiation Notification.

- (iv) The Authority sent copies of Initiation Notification dated 10<sup>th</sup> July, 2009 along with importer's questionnaire to the known importers and domestic industry as per the addresses made available by the applicant and requested them to provide relevant information and make their views known in writing within 40(forty) days of Initiation Notification.
- (v) The applicant requested the Authority to treat China PR as a non-market economy country for the purpose of present investigations. The Authority informed the known exporters from China PR that it proposes to examine the claim of the applicants in the light of para (7) & (8) of Annexure-I of the Anti-Dumping Rules as amended. The concerned exporters / producers of the subject goods from China PR were therefore advised to furnish necessary information/sufficient evidence, as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment should be granted to the cooperating exporters/producers who could demonstrate that they satisfy that market conditions prevail in their case.
- (vi) The Authority sent questionnaire, to elicit relevant information to the following known exporters in subject country in accordance with Rule 6(4):
- a. Tianjin City No. 3 Chemical Reagent factory, Xuzhuangzixiang, Dongli District, Tianjin – 300 240.
  - b. Nanjing Huafa Chemical Co. Ltd. Meishan, Zhonghuamenwai, Jiangning County, Nanjing City Jiangsu – 210 039.
  - c. Changzhou No. 2 Chemical Plant, 16, Changqi Rd., Qishuyan, Changzhou City, Jiangsu – 213 003.
  - d. Doumen County Baishifa, Chemical Factory Co., Ltd. Doumen Town, Doumen County, Zhuhai City, Guangdong – 519.
- (vii) In response to the Initiation Notification the following exporters/producers from the subject country have responded to the questionnaire.
- a. Yinghai (Cangzhou) Aroma Chemical Co., Ltd.
  - b. Jiangyin Baihui Fragrance Co. Ltd.
- (viii) A questionnaire was sent to the known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4). In response to the above notification none of the importers/interested parties filed their submissions.
- (ix) The preliminary findings was issued on 29<sup>th</sup> January 2010 and a copy of the same was sent to the all the interested parties for their comments. A copy of the same was also put on the website simultaneously for information to all concerned.

However, no reply was received from any interested parties within given time limit. Subsequent to the preliminary findings and public hearing, a letter was received from M/s Fragrance and Flavours Association of India wherein they stated that they had not been named as known association by the applicant and hence they and members of the association who are also importers and users have not been able to give their views as they did not receive the copy of the Public Notice. They also stated that the members of the association have not received the importers questionnaire and have not been able to give their views. The matter has been examined and it is noted that the Authority at the stage of initiation of investigation wrote to the known parties including importers listed in the application for seeking response to the questionnaire. Further, initiation of investigations and preliminary findings were notified in the Gazette of India and was made known to all interested parties and a copy of the same was put up on the website for information to all interested parties. However, none of the importers or consumers responded to the Authority at the stage of initiation or Preliminary findings and public hearing. The Authority therefore is unable to accept the argument of the association with regard to reasons for its inability to respond to the present investigations and participate in the present investigations. Notwithstanding the legal position in this regard, the Authority considered the request of the association and addressed the association and importers asking them to give information in the form and manner of importers questionnaire. It is noted that none of the importers except one has responded to the letter from the Authority. It is noted that response has been received from M/s Karnataka Aromatics which is also grossly deficient. None of the information in the form and manner prescribed in importers questionnaire has been provided by the company. The importer has merely provided details of 4 import transactions from M/s Jiangyin Baihui Fragrance Co. Ltd., which has been examined by the Authority. No response was received within the given time frame from any other interested party. As anti dumping investigations are time bound, further request for extension from the above mentioned association was not granted.

- (x). A request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods made in India during the past three years and the period of investigation. The information received from DGCI&S was analyzed and the same was compared with the information received from the IBIS (secondary sources). After the detailed examination, it was decided to take into account the information from IBIS as it had reported higher volumes.
- (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 as per Rule 6(7). A copy of the non-confidential application was also provided to other interested parties, as requested.
- (xii) The Authority has verified the information furnished by the Domestic Industry to the extent possible to examine the injury suffered and to work out optimum cost

of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicants so as to ascertain if Anti Dumping Duty lower than the Dumping margin would be sufficient to remove injury to the domestic industry.

- (xiii) In accordance with Rule 6(6), the Authority also provided an opportunity to all interested parties to present their views orally in a Public Hearing held on 10<sup>th</sup> March, 2010. The interested parties who presented their views in the Public Hearing were requested to file their written submissions of the views expressed orally latest by 17<sup>th</sup> March, 2010 and to submit their rejoinders latest by 24<sup>th</sup> March, 2010.
- (xiv) \*\*\*\* in this Statement represents information furnished by an interested party on confidential basis and so considered by the Authority on merits under the Rules.
- (xv) The Period of Investigation for the purpose of the present investigation is 1<sup>st</sup> January, 2008 to 31<sup>st</sup> December, 2008 (12 months). The examination of the trends in the context of injury analysis covers the period from 2005-06, 2006-07, 2007-08 and the Period of Investigation.
- (xvi) The Authority provided opportunity to the importers/ industrial users of the product under consideration to furnish information considered relevant to the investigation regarding dumping, injury and causality. In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 21<sup>st</sup> June 2010 and comments received thereon were duly considered in the final findings.
- (xvii) The Authority notified final findings vide its notification No. 14/17/2009-DGAD dated 7<sup>th</sup> July 2010 recommending imposition of definitive Anti-dumping duty, which was considered by the Central Govt. and definitive Anti Dumping Duty was imposed on the subject goods vide Customs Notification No 82 /2010-Customs dated 20<sup>th</sup> August, 2010.
- (xviii) The Fragrance and Flavors Association of India (FAFAI) filed an appeal before CESTAT, challenging the imposition of Anti-dumping duty on imports of Coumarin vide Customs Notification No 82 /2010-Customs dated 20<sup>th</sup> August, 2010.
- (xix) The Hon'ble CESTAT vide its order dated 17<sup>th</sup> June, 2011 set aside the Final Findings dated 7<sup>th</sup> July 2010 and the Customs notification dated 20<sup>th</sup> August, 2010 and remanded the matter back to Designated Authority for fresh decision after

granting a reasonable opportunity of hearing to the appellant within a period of 6 months. The order stated as follows:

*“10. We are of the view that the Designated Authority before recommending the imposition of anti dumping duty was required to provide personal hearing to parties who have filed objections and adduced evidence before him. As such, we find the action of the Designated Authority in not granting a personal hearing to the appellants in this case not proper and consequently, his final findings and customs notification issued thereto to be sustainable in law.*

*13. in view of our findings as above, we set aside both the impugned notifications (confirming the Final findings and notifying the antidumping duty rates) referred to in paragraph 1 and remand the matter to the Designated Authority for fresh decision after granting a reasonable opportunity of hearing to the appellants, but within a period of 6 months from the date of receipt of this order. Keeping in view the preliminary findings notified earlier and the interest of the Domestic industry, we direct that the future imports shall be provisionally assessed in the meantime, which shall be subject to the final outcome of the remand proceedings.”*

- (xx) The certified copy of the order dated 23<sup>rd</sup> June 2011 was received by DGAD on 29<sup>th</sup> June 2011. Further, pursuant to the order of CESTAT, the Authority provided an opportunity to all interested parties to present their views orally in a Public Hearing held on 4<sup>th</sup> October, 2011. The interested parties who presented their views orally in the Public Hearing were requested to file written submissions of the views expressed by them orally and were allowed to give rejoinders to the submissions made by opposing parties.
- (xxi) Submissions made by various interested parties during the course of the investigations and pursuant to the oral hearing held by the Authority were examined in detail in the light of facts and legal provisions and the same have been considered in the present disclosure statement.
- (xxii) In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant investigation were disclosed to the known interested parties. The comments have been received from M/s FAFAI and M/s M/s Atlas Fine Chemicals Pvt. Limited, Nasik, Maharashtra during the stipulated time mentioned in the disclosure statement. The comments received on

disclosure statement, to the extent considered relevant, has been duly considered in the Authority' findings.

(xxiii) \*\*\*\*\* in this final findings represents information furnished by an interested party on confidential basis and so considered by the Authority on merits under the Rules. The Arguments made by various interested parties pursuant to the oral hearing are examined by the Authority in this disclosure statement at appropriate headings. The Authority in this case has considered the data relating to customers' price and costing as confidential as the disclosure of the same may give the undue competitive advantage to the other interested parties. The data relating to volumes of domestic industry has not been treated as confidential.

(XXIV) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available'.

## **B. Product under consideration and like article:**

6. The product under consideration in the present investigation is Coumarin of all types (hereinafter referred as "subject goods"). Coumarin (Chemical Formulae C<sub>9</sub>H<sub>6</sub>O<sub>2</sub>) belongs to the lactone family of chemicals. It is an aroma chemical, which can be in the form of white crystals, flake or powder. It has characteristic odour of newly mown hay and bittersweet somewhat similar to vanilla. Coumarin is used in the preparation of fragrance compounds and those fragrance compounds are used in the production of soaps, detergents, cosmetics, incense sticks, and fine fragrances. It imparts pleasant fragrance and masks unpleasant odors in many other household and industrial products. Coumarin, which was originally a natural product obtained from Tonka beans is now produced synthetically. It can be obtained by two synthetic processes i.e. (i) Starting from phenol to obtain Salicylaldehyde followed by Perkin reaction and (ii) Starting from Ortho-cresol which is also called Raschig method in which Salicylaldehyde is made from Ortho-cresol and then converted into Coumarin. In both the processes Salicylaldehyde and Acetic Anhydride react in the presence of Sodium Acetate in Acetic Acid as catalyst and crude Coumarin is separated from Acetic Acid by distillation. The crude Coumarin is further purified by several distillations and then crystallized in Methanol. The crystallized product is separated by centrifugation and dried. The main physical specification of Coumarin is its purity, for which the melting point is the indicator.

7. The product is classified under Chapter 29 (Organic Chemical) of the Customs Tariff Act under Customs Sub-heading No. 2932.21.00. However, customs classification is indicative in nature and not binding on the scope of the investigations.

**B.1 Views of the interested parties:**

8. None of the interested parties made any submissions regarding the product under consideration at any stage of the proceedings.

**C. Like Article:**

9. With regard to like article, Rule 2(d) provides as under: -

*"like article " means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;*

10. The applicant has claimed that there is no known difference in the product under consideration produced by the Indian industry and exported from subject country. The product under consideration produced by the Indian industry and imported from subject country are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

11. The Authority notes that none of the interested parties have raised any argument in relation to product under consideration and like article. The Authority after due consideration of the submissions made by the interested parties notes that the subject goods produced by the petitioner company are like articles to the subject goods imported from subject country in accordance with the Anti-Dumping Rules.

**D. Other submissions and issues raised before the final findings dated 7<sup>th</sup> July 2011**

**Submissions by domestic Industry**

12. The following are the post hearing submissions made by the domestic industry:

- 1) There is a long history of dumping of the subject goods from China PR. In fact, the dumping in United States of America has led to the closure of plant and in European Union is now likely to lead to plant closure.
- 2) It is not established by the Chinese producers on evidentiary basis that Authority can grant them market economy treatment. Rather, their own response states that their accounts are unaudited. Also, the information sought by the Authority in the preliminary

findings has not been provided by the exporters. Rather, Chinese producers have misguided the Authority by not revealing their relationship with the State. Therefore, preliminary findings should be maintained in this regard.

- 3) The dumping margins (3.46% and 9.23%) determined by the authority are too low.
- 4) The claims of the export price made by the Chinese exporters does not corroborate with the prices reported to Indian Customs. Hence, unless the export price claims are corroborated with the Indian Customs data, the claim of export prices would remain wholly inadmissible.
- 5) The VAT Invoice is the only authentic document which the exporter can provide to establish price at which the goods were exported. However, VAT invoice is the invoice presented to Chinese Customs and is not the invoice presented to the Indian Customs;
- 6) The invoice presented to Indian Customs is the Commercial Invoice. However, the commercial invoice presented to Indian Customs is not presented to China Customs. Thus, possibilities of Commercial invoice and VAT invoice not getting corroborated are not ruled out.
- 7) Given the limited number of transactions in this case, it is vital to corroborate the claims made by the exporter that the data compiled and consolidated by IBIS and DGCI&S. In case of the significant differences in the prices now claimed by the exporter and the prices reported to Customs, the prices reported to the Customs can only be relied upon for determining export prices.
- 8) The issue of difference in the exporter's claims and the Indian Customs reports had been adequately brought before the Designated Authority in past number of investigations. Consistent position applied by the Designated Authority in such cases is to adopt prices declared to Indian Customs. Petitioner requested the Designated Authority to refer the matter to DRI as well for further investigations.
- 9) Normal value determined (around US\$ 12.75) is too low. In this respect, the constructed normal value is the last resort under the law. Petitioner has provided the information on (a) prices in Europe and (b) Import prices from Europe.
- 10) In the present case and in past few cases, the Designated Authority has considered the Cess on customs duty for determining landed price of imports. It is, however, noted that whereas the outstanding issue of inclusion of excise duty has remained outstanding, the interested parties have mislead the authority in selectively addressing the issue of Cess.
- 11) Injury margin should be determined inclusive of the excise duty, Cess and Commission.
- 12) Returns should be determined considering the gross fixed assets. 22% return is too low. In any case, revaluation of assets should not be ignored. If depreciation is to be accounted for, appreciation of assets must also be counted for..
- 13) Post period of investigation, the volume of subject goods increased from the subject country whereas the prices declined.
- 14) There is a past history of circumvention of duties by the Chinese exporters. The Designated Authority may specify in the operative part of the order that the investigations have shown that the goods are not being produced in any country other than China, India and Europe. This is most vital in order to prevent circumvention of anti-dumping duties.
- 15) In order to ensure that the said duty is not circumvented by over invoicing the value, petitioner submits that the DA may specify minimum amount of duty that should be charged, irrespective of the import prices ie., the benchmark form of duty.

- 16) There is disparity between the finance notification and the notification of the Ministry of Commerce. The Ministry of Finance has modified the definition of landed price of imports while implementing the recommendations of the Designated Authority. The result of this modification is reduction in protection to the domestic industry.
- 17) In reply to the disclosure statement, the domestic industry has reiterated the submissions made earlier by them to the Authority. In addition, they have pointed out the disparity between the finance notification and ministry of commerce notification in the definition of landed value. They have pointed out that the result of this modification is less than recommended protection to the domestic industry. They have requested the Authority to address this issue. Further, they have pointed out significant decline in prices of subject goods by significant imports in Post investigation period and continued circumvention of duties. They have requested the Authority to address these issues.

### **Submissions made by exporters, importers and Association**

**13.** The following are the post hearing submissions made by the exporters and post disclosure comments by Fragrance and Flavours association of India.

- 1) Due to the significant variation in exchange rate in POI, the calculation of landed value by adopting single exchange rate is incorrect.
- 2) DA has erred in considering the 7.5% customs duty for the calculation of landed value.
- 3) 3% Surcharge on the customs duty has not been considered for the calculation of landed price of imports.
- 4) NIP is based on inflated rate of return. Granting of 22% return is incorrect and unreasonable.
- 5) The lesser duty rule Proposal to WTO considers reasonable return based on the capital employed as the last option to calculate NIP.
- 6) Actual rate of interest should be adopted as domestic industry has never earned such high rates of return.
- 7) Landed value of exports made by the exporters is above or almost equal to the NIP.
- 8) DA should verify the claim of Normal value and Export price calculation provided by the exporters for the correct assessment.

### **Arguments raised by the Association**

- 9) Coumarin is used for making Agarbathi. There are three manufacturing associations having around 2000 members who are mostly small and medium sized manufacturers who would be affected to a large extent due to exorbitant levy of ADD. There is only one manufacturer of Coumarin in India who may not be able to

meet the demand of the industry. ADD has resulted in monopoly of the sole Indian manufacturer who in return has increased the price of coumarin to Rs 30/- per KG from June 2010 i.e. immediately after levy of ADD. Soaps & Detergent and Cosmetics & Toiletries industry which uses Coumarin as a raw material is majorly catered by small and medium sized manufacturers which are largely affected by increase in the price of the raw material (coumarin) due to imposition of ADD.

- 10) Agarbathi which is now under cottage industry mainly employ rural women and also agarbathi is largely exported. Imposition of ADD will increase the cost of raw material which in turn would effect rural employment as well as foreign exchange which is earned through exports. Instead of imposing ADD, the sole manufacturer of Coumarin should be encouraged to enhance the capacity to meet the demand at a lesser cost owing to the fact that the labour cost in India is lower than China and sell the product at competitive price.

**Submissions raised by User Association ( M/s FAFAI and International flavours and fragrance India Pvt Ltd ) in written submissions and rejoinders after the second oral hearing on 4<sup>th</sup> October 2011 pursuant to CESTAT orders dated 17<sup>th</sup> June 2011.**

14. Following are the submissions made by user Association (M/s FAFAI and International flavours and fragrance India Pvt Ltd ) in written submissions and rejoinders after the second oral hearing on 4<sup>th</sup> October 2011 pursuant to CESTAT orders dated 17<sup>th</sup> June 2011.

- (i) It has been submitted by user association that the domestic industry M/s Atlas accounts for 100% of the Indian production which amounts for monopoly in production and distribution of coumarin. The AD measures are contrary to the spirit of competition laws.
- (ii) It has been submitted by user association that Chinese producers sell Coumarin at the same price globally and therefore do not harm domestic industry.
- (iii) It has been submitted by user association that the prices of phenol, which is a principal raw material for coumarin is reflective in Chinese prices whereas the domestic industry prices have increased significantly high irrespective constant phenol prices.
- (iv) It has been submitted by user association that when the domestic producer can compete with Chinese producers globally then why it is not possible in India.
- (v) It has been submitted by user association that consumers cannot depend upon sole producer as it would be difficult to manage in the event of any natural disaster.
- (vi) It has been submitted by user association that normally, the ADD is levied on incremental basis whereas in Coumarin this is not the case.
- (vii) It has been submitted by user association that the interests of large number of consumers and members of the Association and affiliated associations (in the range of 800-2000) are getting adversely affected against the monopolistic interests of sole

domestic producer, which is against the objective of Anti-dumping laws. Further, Protecting the interests of the sole domestic producer would affect the livelihood of over 2000-3000 units in small scale industries including Aggarbattis industry.

- (viii) It has been submitted by user association that there is an arbitrary increase of prices and temptation to reduce production by the domestic producer.
- (ix) It has been submitted by user association that no dumping has been established with respect to subject countries. It has been further been submitted by user association that no proper determination of normal value has been carried out. Further, local market prices in China of Coumarin have to be determined first.
- (x) It has been submitted by user association that Designated Authority by not enquiring the export prices of Coumarin to other world markets where Coumarin is not manufactured has flawed the investigation.
- (xi) It has been submitted by user association that the sole domestic producer is unable to compete with large Chinese manufacturers due to low levels of actual production, inefficient management and technology. Therefore, difference in prices cannot be attributed solely to dumping.
- (xii) It has been submitted by user association that there is ambiguity in the Exchange rate used while calculation of normal value and export price.
- (xiii) The CESTAT Order should be respected and the attempt of domestic industry to belittle the public interest should be considered strictly.

15. **In its rejoinder**, The Association has reiterated its submissions made in written submissions and it has further reiterated its opposition to Atlas Fine Chemicals Ltd , Nasik, calling itself as the domestic Industry and making submission as if it constitutes domestic industry although admittedly it is the sole and exclusive local producer of Coumarin in India. The following is rejoinder submissions of association.

- (i) It has been submitted by association that the arguments made by FAFAI are reiterated,. It has not been denied by Atlas that it is the sole producer of Coumarin in India and is a single entity with a single factory situated in Nasik, Maharashtra. Unlike some single producers of cement like ACC/Holsim who have a chain of factories across India and who can thus be called domestic Industry even excluding the other multitudinal manufacturers of cement, Atlas cannot be conferred this status by any stretch of imagination. It has further been submitted that it allegedly actually imports Coumarin and sells it under its markings as if it has manufactured it in India. However it has been stated that actual documentary evidence is not available with the association at the moment. Further, It has been submitted by association that Atlas has not refuted the factual position of it being the monopoly producer of Coumarin in India. Its reference to Rules citing no exclusion is of no help as there is no specific provision that anti dumping duty protection can be rendered to a sole/monopoly producer. Clearly Atlas cannot be granted a monopoly status with protection under the Anti dumping Rules./Provisions.

- (ii) It has been submitted by association that M/s Atlas has not denied the usage of Coumarin in the manufacture of Soaps and detergents but attempts to justify the increase in prices of these items with the imposition of Anti-dumping duty by erroneously claiming it to be a miniscule price. The fact that costs of production of Soaps, detergents, and items of export such as Agarbatties would have a negative impact on domestic industries dependent upon Coumarin as a raw material. It has been submitted by association that the reference to an increase in the price of Coumarin over a period of time and the attempt to justify it on the ground that it amounted to only 5% ignores the fundamentals. It was submitted that with the imposition of Anti dumping duty on Coumarin, Atlas had effectively become a Monopolist in India and was free to increase its domestic prices as it thought fit particularly when market witnessed bouts of increased demand.
- (iii) It has been submitted by association that M/s Atlas has failed to appreciate that Public Interest is not synonymous with interests of Atlas. Public interest refers to the interest of the public at large, the users, importers and the economy of resultant manufactured products. The mere fact that the association with associate associations like the Aggarbatti Association have represented against the levy shows the extent of opposition to the move to impose anti dumping duty. Under the circumstances the attempt by Atlas to belittle the public interest is strongly repudiated.
- (iv) It has been submitted in the rejoinder submission that anti dumping will achieve elimination of competition with the sole producer being granted a wall of protection with freedom to manipulate the market. It has been stated that this cannot be the objective of Anti dumping as it is against the spirit of competition and merely encourages monopolistic situation with a sole producer.
- (v) With regard to exports made by other manufacturers, it has been submitted that once cost of inputs increases final product of export will become costlier. Cottage industry and small industry (namely Agarbatti and other such manufacturers) have no mechanism or expertise to import under advance duty free license as Atlas seems to suggest. Their requirement is met by importers who provide financial credit as well as cater to their small requirements from time to time. The argument of Atlas that the resultant increase in cost would be marginal is also to be rejected as export is highly price sensitive.
- (vi) It has been submitted by user association that the claim by Atlas that it has sufficient capacity to meet domestic demand at reasonable prices remains unsubstantiated.
- (vii) It has been submitted by association that no direct evidence has been furnished to show that Chinese suppliers sell Coumarin below the prices prevailing in their own country. Mere fact that China is a non market economy does not validly raise the presumption that their prices for export are much below local market prices or cost of production. Unless there is specific data on this count, anti dumping cannot be justified. Moreover the designated authority has failed to compare Indian Import

prices with import prices in other competitive economies, hence the conclusions of dumping are questionable and hence unsustainable under the Customs Laws.

- (viii) In response to disclosure statement, the FAFAI has denied any comments made in relation to competition law. On other issues it has reiterated its comments made with regard to increase in selling prices of coumarin post POI. On the issue of dumping from China PR and consequent injury to domestic industry, it has restated that onus to prove dumping is upon the Authority and NOT on Chinese producers who are/may be indifferent to the outcome of this exercise. They have reiterated their submissions that injury caused to the domestic industry is on account of its own higher cost of production and thus higher prices.

**Submissions raised by Domestic Industry in written submissions and rejoinders after the second oral hearing on 4<sup>th</sup> October 2011 pursuant to CESTAT orders dated 17<sup>th</sup> June 2011.**

**16. Following are the submissions made by domestic industry in written submissions and rejoinders.**

- (i) It has been submitted by domestic industry in their submission that none of the importers or consumers or Association of consumers or importers responded within the time limits during the investigation and none of the importers or consumers or Association of consumers or importers responded to the preliminary findings so issued by the Authority. At the belated stage of the proceedings, after the issuance of disclosure FAFAI responded to the Authority. It has been added that no time lines as prescribed under the Indian AD Law have been abided by the Association. The limit for filing the response to the association is 30 days and further, the extension if any sought shall be granted only when it is "Practicable" and this opportunity to participate cannot be extended indefinitely and at some time legitimately ceases to exist. Further, the anti dumping investigations are time bound in nature and therefore no grievance can be claimed in this regard by the alleged Association.
- (ii) It has been submitted by domestic industry that even after such late submissions being made by the FAFAI, the Authority considered its contentions in its final findings and addressed the same. The Authority examined the claims of the association, which is extensively dealt in the final findings. The said association failed to furnish adequate and sufficient evidence to justify that the findings of dumping or injury were inadequate.
- (iii) It has been submitted by domestic industry that there is a long history of dumping of the subject goods not only in India but in Europe and US also; manufacturers had to close down their plants due to excessive dumping. Further, significant price difference

between the import transactions does not have any logical explanation. The import transactions have been reported at a higher price only to avoid payment of anti-dumping duty. There is significant increase in the volume of imports from the subject country.

- (iv) It has been submitted by domestic industry that M/s FAFAI has misled the Authority and is serving the vested interests of its few members as not all members of this association are the importers/consumers/users of the product under consideration. There is no basis in the argument that the anti-dumping duty concerns 800-1000 members of FAFAI. Further, association cannot make representation on behalf of soap and detergent industry as it is not the member of the association. M/s FAFAI is neither a producer, exporter or importer nor an association or producers or exporters or importers of the product under consideration therefore cannot be considered as an interested party under Rule 2( c).
  
- (v) The unquantified impact of the anti-dumping duty on the members should not be considered. Further, the impact on cost on the downstream industries by the imposition of ADD is 0.5% only which is miniscule and cannot be considered significant. There is no evidence submitted by the Association establishing its claim of the sudden and exorbitant price increase. It has been further added that the protection and relief from the injury or threat of injury due to the dumped imports from the subject countries under the law is provided to the “domestic industry” irrespective of the number of companies (in the light of the fact when out of three domestic producers, two have suspended the production) involved if it satisfies the standing criteria provided under the AD law.
  
- (vi) It has been submitted by domestic industry that the objective of the anti dumping law is not to restrict competition but to prevent the unfair trade practice and protect the domestic industry. Anti-dumping duty does not prohibit or prevent the imports and only provides for a fair play in the domestic market. No evidence is submitted by the association establishing that there was no dumping from the subject country. In the matter of Haridas exports v. All India Float Glass Manufacturers Association, the Supreme Court has laid down that the anti-dumping law does not affect the competition and the scope of both the laws is different with no conflict. Sufficient information has been submitted with the Authority wherein domestic industry has suffered significant financial losses in its domestic market and profits in the export market. It has been submitted by domestic industry that the domestic industry has sufficient capacity to meet the current and future demand of the product in the Country. Further, M/s FAFAI sought Confidential Information concerning the

domestic industry from the Customs Authority under the RTI Act, when it was held confidential by the domestic industry. Designated Authority is not the appropriate Authority to handle the issue of under-invoicing.

- (vii) It has been submitted by domestic industry that the allegation of the FAFAI that the prices of the domestic industry are monopolistic prices is without basis in the event of sufficient loss being faced by the domestic industry. There is no evidence that the domestic industry is inefficient manufacturer and the performance of the domestic industry must be seen in its existing situation and not under an ideal situation. The changes in selling price are disproportionately lower than the changes in the cost of production over the period.
- (viii) It has been denied by domestic industry that prices of Phenol, which is principal raw material for production of coumarin, have remained quite stable over the period and the customs duty on raw material have declined from 50% to 7.5%. The domestic industry submits that over the injury period, the customs duty on the product under consideration declined from 12.5% to 7.5%. Secondly, the decline is not selectively in the customs duty on the product. The decline was across the board and extended to raw materials as well. Further, the domestic industry was in profits when the customs duty was 12.5% and the domestic industry suffered financial losses. Further, the loss suffered by the domestic industry increased even when the customs duty remains the same. With regard to arguments that the domestic industry is undertaking exports and is not willing to sell the material to the domestic consumers, the domestic industry has denied this claim and has submitted that it is actually faced with significant unutilized capacities and has lost significant domestic sales. FAFAI argued that Chinese manufacturers are exporting the product at same price globally. Domestic industry submits that the issue is totally irrelevant. Under the law product is being sold at a dumping price, if it is being exported at a price below normal value.
- (ix) In its reply in the rejoinder statement, It has been submitted by domestic industry that if the Chinese product is priced same globally does not imply that the product is not being dumped. It has been again contended that Phenol is not as significant a cost item as is being projected by the interested parties. Costs on account of phenol would normally be in the region of 15 – 20% of total costs. The prices of various raw materials varied from country to country at a given time as well as in the last five years. Phenol prices have moved very significantly. The import price of coumarin shows only one pattern – i.e., a consistent decline in the prices – despite the pattern in phenol and export price of the petitioner. Chinese producers have not aligned their prices to Phenol prices. Further, the Domestic industry disputes that the domestic demand is 350 MT. As per the Final Findings of the Designated Authority, the

domestic demand in the period of investigation was 293.55 MT, as against admitted capacity of 400 MT. Further, even considering 7% demand claimed by the consumers, the capacity would be sufficient to meet demand till 2014. In its history, the domestic industry has never left any accepted order unfulfilled and has supplied to all its customers well in time. Further, it has been submitted that the domestic industry cannot be denied protection against unfair dumping merely because it cannot meet the demand.

- (x) It has been submitted by domestic industry that the domestic price is much below the price at which petitioner is exporting. Further, the submission that one producer in India having its production stopped by natural disaster is equally applicable to Chinese suppliers. If a major Chinese supplier is hit with a natural disaster, Indian users have a domestic supplier. There are large numbers of commodities in India where there is only one manufacturer in the country and yet these products are attracting Anti-dumping duties like Sewing Machine Needles, Front Axle Beam, PVC Flex, Opal Glassware, Viscose Stable Fiber, STPP, NBR etc, to name a few. There are no known instances of supply disruptions in these cases. Further, It has been submitted by domestic industry that the argument that ADD is levied on incremental basis is without basis. The Anti-dumping duties can be recommended in either form.
- (xi) It has been submitted by domestic industry that though the public interest provision is not expressly defined under the Indian law, however, the principle and objective of the public interest are enshrined in the present Indian law. The Designated Authority has allowed all interested parties to make their representations before the forum in compliance of such a right. It is misleading that a single domestic producer does not constitute domestic industry in view of usage of the word 'domestic producers' as a whole in the definition of Rule 2(b). The issue has already been considered by CESTAT and in a number of cases and by WTO in the matter of EC Cotton Type Bed Linen.
- (xii) It has been submitted by domestic industry that no evidence has been submitted establishing that imposition of anti-dumping duty shall affect livelihood of over 2000-3000 units nor exports of aggarbattis would become uncompetitive. If the domestic production for coumarin ceases, which is ultimate objective of the Chinese Manufacturers, the situation can easily be exploited by the Chinese manufacturers who can then charge prices at their will. It would certainly not been in the public interest that the requirement of the country are left totally at the mercy of Chinese manufacturers. It has been submitted by domestic industry that neither the Association nor any consumer has produced any evidence to show that they have not been able to procure the material from the domestic market. On the contrary, domestic industry has

been able to show verifiable information that the inventory levels with the domestic industry have significantly increased and its sales have significantly fallen resulting in suspension of the production. With regard to suspension of production, it has been submitted that suspension of production is because of rising inventories and lack of orders from the domestic market, the same does not establish adversely with regard to ability of the domestic industry to supply the material.

- (xiii) On the issue of dumping margin determined by the Authority, It has been submitted by domestic industry that the dumping margin determined by the Designated Authority is fully consistent with the law. The contention of the Association that no enquiry appears to have been made to determine the normal value of the product in China appears to show that the Association has not even bothered to consider the Preliminary Finding and Final Findings issued by the Authority. It presumes without any legal and factual basis that the finding of the Authority is based on conjecture or suffers procedural shortcomings. The Authority has recorded a detailed finding that the responding Chinese exporters were not entitled for market economy status.
- (xiv) The domestic industry has denied that Tribunal in its remand order has made any adverse comments. In fact, petitioner/domestic industry is aggrieved by the order of the Tribunal.. The same, however, has not been appealed only because of the fact that the Tribunal has granted an opportunity of hearing to the Association. It has been submitted by domestic industry that it would be highly improper on the part of the association to attempt to color its submissions by reading excessively in the order of the Hon'ble Tribunal.
- (xv) It has been submitted by domestic industry that the argument that the Designated Authority by not enquiring the export prices of Coumarin to other world markets where coumarin is not manufactured has flawed the investigation is beyond the law. When significant sales of the product exist in China, normal value shall be based on the domestic Chinese prices, if the Chinese producers can establish market economy status.
- (xvi) In reply to the disclosure statement, the domestic industry has reiterated its earlier submissions. It has disputed the submissions of the association that the extent to which proposed anti dumping duty shall have adverse effect on the cost and price of the eventual end product is irrelevant and the mere fact that imposition of anti dumping duty shall leave to increase in the cost of the consumer is sufficient to conclude that the imposition of anti dumping duty shall not be in public interest. They have disputed the fact that imposition of anti dumping duty shall lead to increase in the cost of production of the consumers' product. It has also been stated that merely because cost of production of a particular product might increase does not imply that

imposition of anti dumping duty shall not be in public interest. They have also challenged the *locus standi* of M/s FAFAI. It has also been stated that it remains to be established whether at all majority of FAFAI members shall be adversely affected by the proposed levy. On the issue of public interest, it has been stated that the public interest is not the interest of producers and the term extends to interest of users, importers and economy. They have further added that it is not in the public interest that the production facility in the country are forced to close down because of dumping of the product and the country is left totally dependent on foreign suppliers that too from China. They have requested that the currency of anti dumping duty should be in US \$.

#### **E.1 Examination by the Authority:**

17. The submissions have been analysed as follows:

- a) With regard to variation in the Exchange Rate, the Authority notes that for determination of dumping margin, the Authority has considered exchange rate prevailing at the time of exports. However, in line with consistent practice followed by Authority, variation in the exchange rates have not been taken into account for determination of injury margin.
- b) The producers/exporters have disputed the customs duty considered by the Authority for determining injury margin. It is clarified that customs duty during the relevant period was 7.5%. Further, the Authority has added 3% surcharge for calculation of landed price of imports.
- c) The producers/exporters have disputed the determination of non-injurious price and grant of 22% return for determining reasonable profit. The Authority considers that it is the consistent practice of the Authority to grant 22% return on capital employed for computing profits. Further, As regards the proposal before WTO, the Authority notes that the proposal under consideration before WTO cannot be treated as legal obligation for the Authority for the present determination.
- d) The exporter has claimed that landed price is quite comparable to non-injurious price. The Authority, however, notes that the difference between the two is significant.
- e) With regards to the determination of the export price and landed value of subject goods from China PR, the Authority noted the arguments submitted by the domestic industry that the export price claimed by exporters should not be admitted unless these claims are corroborated by the prices reported to Indian customs. In line with the consistent practice, on site verification was conducted at the premises of the responding Producers/exporters in China PR. Meanwhile, the authority examined the import data received from DGCI&S and the data procured by the Authority from Customs Port Authority. The domestic industry also provided a statement showing imports into India and the name of the importers and exporters concerned. The Authority on the basis of

examination of the data notes that there is significant difference in the values reported to the Indian customs and data made available by responding importer and to the Designated Authority. As the import values reported to Indian Customs and responding importer are significantly lower and further since significant imports have been cleared at these prices, the export prices claimed by the concerned exporters were closely examined with reference to prices reported in the Customs Port data. Further, during the verification visit, the concerned exporters were specifically asked to justify their claim of export price based on credible evidence. As has been noted in the para relating to dumping margin, one of the major responding Producer/exporter has not been able to prove to the Authority about its export prices with credible evidence. In view of significant variation in the export prices, the Authority considered it appropriate to rely upon to the data made available by Indian Customs Port Authority and Indian importer in all these transactions where there was significant difference in import value.

- f) On the issue of determination of normal value on the basis of prices of the product in an market economy third country or prices from such third countries to other countries including India, the matter has been examined in detail in the para pertaining to determination of normal value.
- g) With regard to the claim of the domestic industry to include Excise Duty, Cess and Commission for the purpose of determining of injury margin, the Authority reiterates its consistent practice that the Excise Duty is not required to be considered for the reason that the amount of Excise duty is the same as the amount of additional duty of Customs leviable on imports. With regard to the Commission, the Authority determined non-injurious price at level without including commission. Further, there is no evidence on record that commission has been paid by the exporter to an Agent in India. Commission paid to an exporter outside India is not relevant for the purpose.
- h) The domestic industry has requested for re-determination of non-injurious price and has requested for determination of reasonable profit after considering apportionment of selling general and administrative expenses and working capital between domestic and exports in the ratio of turnover is incorrect. The Authority, however, holds that the non-injurious price has been determined on the consistent basis adopted by the Authority.
- i) With regard to import data for the period subsequent to the period of investigation, the Authority notes that the import data/information only for the period of investigation is required to be considered for the present investigation. It would not be appropriate to consider any information for the period subsequent to the period of investigation.
- j) The domestic industry has also pointed out that the notification issued by the customs includes a special additional duty of Customs under the definition of landed price of imports, whereas the Authority specified the same excluding special additional duty of customs. The matter has been considered and as recommended earlier in the preliminary findings, it is noted that the landed value does not include special additional duty of customs in the final findings. The same is being recommended to Ministry of Finance.

#### **Examination of the issues raised before the second public hearing**

18.(A) The Authority has duly considered various submissions and issues raised by various interested parties during the course of investigation. The Authority notes that the investigations are being conducted in accordance with the Act and Rules made therein as referred above. Further, the Authority has relied upon “positive evidences” made available by the interested parties during the course of investigations. The Authority notes that in case an interested party has advanced arguments without providing positive evidence and where it is not possible to verify the authenticity and correctness of the argument from public sources, it is not possible to accept such arguments. Subsequent to the issuance of disclosure statement, comments have been received from domestic industry and Fragrance and Flavours association of India.

(i) Some interested parties, in their comments to disclosure statement, argued that the petitioner is the sole producer of the product under consideration in India. The matter has been examined and it is noted that the petitioner in its relevant part, has stated that there are two more producers of the product under consideration in India who have suspended production. In any case, under the rules, the Authority is required to consider whether the petitioner satisfies standing and constitutes domestic industry. Even if the petitioner is the sole producer of the product under consideration in India, the same does not prevent it from seeking relief under the dumping rules.

(ii) With regard to the argument concerning price increase in the post period of investigation period, the Authority notes that the investigation has shown that the petitioner was suffering financial losses due to dumping. In case the domestic industry increases the prices unreasonably, the consumers would be free to request review of current anti-dumping duties. The same holds good for the domestic industry who have submitted that subject goods at much lesser price than prevailing during the POI has been entering into India in substantial volumes.

(iii) With regard to alleged impact of imposition of anti-dumping duties on consumers, increase in the cost of eventual product and employment, the Authority notes that no quantified information has not been provided by the Association. Further, the purpose of anti-dumping duties is to prevent dumping causing injury to the domestic industry.

(iv) With regard to customs duty that is already been paid on imports (and which is providing relief to the domestic industry), the Authority notes that the injury to the domestic industry has been determined after adding the prevailing custom duties. The current injury is therefore after including the protection of customs duty granted to the domestic industry.

(v) The interested parties have argued that the domestic industry cannot meet the Indian demand. The Authority notes that the demand for the product under consideration during the POI was about 294 MT and was at the highest level. Domestic industry itself has a capacity of 400 MT. The domestic industry alone should be in a position of meet the entire Indian

demand. However, it is also noted that ability to meet the domestic demand is not an essential pre-requisite for seeking protection from dumped imports.

(vi) On the issue of subject goods being produced in limited countries, it is noted that the domestic industry has argued that the subject goods are produced only in China, India and France. The domestic industry has also brought to the notice of the Authority circumvention proceedings undertaken by European Commission. It is noted by the Authority that none of the other interested parties have disputed the claim of the domestic industry in this regard.

**Examination by Authority with regard to issues raised by various interested parties after the second public hearing held on 4<sup>th</sup> October 2011**

18.(B). The Authority has duly considered various submissions and issues raised by various interested parties in arriving at the present disclosure statement. The Authority notes that the investigations are being conducted in accordance with the Act and Rules made therein as referred above. Further, the Authority has relied upon “positive evidences” made available by the interested parties during the course of investigations. The Authority notes that in case an interested party has advanced arguments without providing positive evidence and where it is not possible to verify the authenticity and correctness of the argument from public sources, it is not possible to accept such arguments. With regard to submissions raised during the second public hearing, the Authority has analysed the same in the appropriate headings of the disclosure statement.

(i) It has been claimed that imposition of anti-dumping duties in any way is contrary to the Competition Law, or anti-dumping measure is contrary to the spirit of competition law. It has been argued that Anti-dumping duties should not be imposed in the present case for the reason that the petitioner being the sole domestic producer, the petitioner can resort to unfair anti competitive practices and such imposition of Anti-dumping duties in such situations will be against the spirit of competition law. It has also been argued that imposition of Anti-dumping duties shall lead to monopolistic positions. The domestic industry has rebutted the claim that the scope of anti-dumping law and competition law is entirely different. Kind attention of the Designated Authority has been drawn to the decision on Hon’ble Supreme Court in the matter of Haridas Exports vs All India Float Glass Mfrs. Association (2002 (145) E.L.T. 241 (S.C.)) wherein the Hon’ble Supreme Court has at length dealt with the scope and functions of anti-dumping law and MRTP law. The domestic industry has also referred to discussions in WTO and communications filed before working group on interaction between trade and competition policy.

The authority has examined the factual and legal position in this regard. The authority notes that Anti-dumping duties are recommended and imposed under Section 9(a) of the Customs Tariff Act. Competition Law has separately been enacted. Neither the anti-dumping law contains any prohibition on imposition of Anti-dumping duties. In a

situation, where the said imposition might lead to anti competitive practices or otherwise may be against the spirit of competition law; nor anything in competition law contains a provision which prohibits imposition of Anti-dumping duties in case an investigation establishes that the parameter for imposition of Anti-dumping duties are fully met. The authority notes that the two laws operate in two different situations. Question of dumping and injury to the domestic industry arises as a result of cross border trade i.e. when goods are introduced into the commerce of the country on prices below normal value and when such dumping is causing injury to the domestic industry in India. Scope of competition law is within the trade and commerce in the country. The authority holds that there is no bar in imposition of Anti-dumping duties on the grounds that the domestic industry constitutes a sole domestic producer. The authority also note that Rule 23 of the dumping rules address those situations where there is no longer justification for imposition of Anti-dumping duties. The relevant part of the Rule 23 is reproduced below.

*23(1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.*

*(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.*

*(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.*

*(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.*

- (ii) It is, thus, seen that the Authority has been empowered to conduct review investigation and recommend withdrawal of Anti-dumping duties in those situations where it is established that the circumstances leading to imposition of Anti-dumping duties have significantly undergone the change and there is no warrant in continuation of Anti-dumping duties any longer. Thus, where a domestic manufacturer has taken any undue advantage/benefit under dumping law or where prices of the products has been unreasonably increased or where the supply of the goods have been restricted or otherwise regulated, an interested party can seek a review before the authority and

such review can lead to discontinuation of Anti-dumping duties. The fact before authority has not established that the petitioner had resorted to charging significantly higher prices or otherwise restricted supply of the goods. On the contrary, the investigation has established that the domestic industry was suffering financial losses and extent of these losses increased over the injury period. Further, the capacity utilization of the domestic industry was adversely impacted. The investigation has not shown that the petitioner had restricted or regulated supplies of the material in the market.

- (iii) On the issue raised by user association that Chinese producers sell Coumarin at the same price globally and therefore do not harm domestic industry, it is stated that subject goods are exported to various countries at same price do not imply no dumping. The producers from subject country is required to establish that goods are not dumped in Indian market. The investigation has established significant dumping of the product in the country.
- (iv) With regard to arguments submitted by user association that the prices of phenol, which is a principal raw material for coumarin is reflective in Chinese prices whereas the domestic industry prices have increased significantly high irrespective of constant phenol prices, it is noted from the questionnaire responses filed by the some of the responding exporters that they are not using phenol as the raw material (They are using O-Cresol as the raw material). From the information filed by the domestic industry and verified by the Authority, it is noted that cost of production of subject goods has increased more than increase in net selling price of the domestic industry over the injury period . More ever, the Authority also notes that the relevant issue for the Designated Authority is whether the subject goods have been sold at a price below normal value in the subject countries and whether such dumping has caused injury to the domestic industry.
- (v) With regard to arguments submitted by user association that when the domestic producer can compete with Chinese producers globally then why it is not possible in India, it is stated that the verified information of the domestic industry shows that the selling price of domestic industry in respect of exports is significantly higher than the selling price in the domestic market.
- (vi) On the submission made by user association that consumers cannot depend upon sole producer as it would be difficult to manage in the event of any natural disaster, it is stated that whether a consumer wishes to buy from one or more producer is entirely a discretion/decision of the consumer concerned. It is noted that imposition of Anti-dumping duties does not imply that the consumer shall be forced to buy only from domestic sources. In fact, the consumer is free to source the material from any market,

including China. The objective of anti-dumping duty is to address the injury caused to the domestic industry by the dumped imports. The consumer, however, can continue to source the material from any sources, including China PR at un dumped prices.

- (vii) On the submission by user association that normally, the ADD is levied on incremental basis whereas in Coumarin this is not the case, it is stated that anti dumping duty can be imposed either in the form of fixed quantum of duty, or a benchmark form/reference price system or on ad-valorem basis keeping in view the factual matrix of the case.
- (viii) On submission by user association that the interests of large number of consumers and members of the Association and affiliated associations (in the range of 800-2000) are getting adversely affected against the monopolistic interests of sole domestic producer, which is against the objective of Anti-dumping laws and protecting the interests of the sole domestic producer would affect the livelihood of over 2000-3000 units in small scale industries including Aggarbattis industry, and domestic industries denial of the submissions made by the association about the public interest, it is stated that the purpose of anti-dumping duty is to eliminate the dumping of the product in the market and create a fair market situation. The objective is not to protect the interests of any particular interested party. Such imposition of duty is expected to bring fair market conditions.
- (ix) On submission by user association that there is an arbitrary increase of prices and temptation to reduce production by the domestic producer and domestic industry's submission denying such an increase, it is stated that the matter has been examined- It is noted that—as regards the issue of the applicant's performance in Post POI is concerned; the Authority notes that post POI data is not considered for undertaking either dumping or material injury analysis.
- (ix) On submission by user association that no dumping has been established with respect to subject countries and no proper determination of normal value has been carried out and that the local market prices in China of Coumarin have to be determined first, it is stated that the investigation has established that the subject goods have been exported from China to Indian Market at prices below normal value and dumping margins are quite significant. The normal value has been determined having regard to the legal provisions. None of the Chinese producers have established that they are entitled to market economy treatment. Normal value cannot be determined on the basis of cost or prices in China unless the producer concerned establishes that its information can be

used for determining normal value in view of the provisions of Para 7 & 8 of Annexure-I to the Rules.

- (x) On submission by user association that Designated Authority by not enquiring the export prices of Coumarin to other world markets where Coumarin is not manufactured has flawed the investigation, it is noted that under the provisions of Section 9A1(c) read with Rule 10 and annexure-I to the rule provides a specific methodology to be followed for determination of normal value. Under these provisions, the normal value is required to be determined on the basis of price prevailing in the domestic market of the exporting country, in the ordinary course of trade, when meant for consumption. It is only when such price cannot be determined that the law permits determination of normal value on the basis of export price to third countries or cost of production. However, annexure-I to the rules provide that in case of non market economy countries, the domestic price in China cannot be adopted for determination of normal value, unless it is established by the producer that the company or China should be considered as operating in market economy environment in relation to such product. Since none of the Chinese producers have been able to establish their market economy status, the rules prohibits determination of normal value on the basis of price in China PR. Further, when rules prohibits determination of normal value on the basis of prices in China because of non market economy provisions, it is impermissible to consider export price from China PR to third countries or cost of production of Chinese producers.
- (xi) On submission by user association that the sole domestic producer is unable to compete with large Chinese manufacturers due to low levels of actual production, inefficient management and technology and therefore, difference in prices cannot be attributed solely to dumping, it is noted that it has not been established by any interested parties that the domestic industry is unable to compete in view of large size of Chinese manufacturers nor the fact that the domestic industry has inefficient management or technology. Further, it is noted that the authority cannot consider any unsubstantiated or un-quantified argument.
- (xii) On submission by user association that there is ambiguity in the Exchange rate used while calculation of normal value and export price, it is stated that there is no ambiguity in the exchange rate used for calculation of normal value and export price. The exchange rate as published by the customs, which are consistently used by the authority, has been used in this case as well.
- (xiii) As regards the argument that the CESTAT Order should be respected and the attempt of domestic industry to belittle the public interest should be considered strictly it is

notes that the authority has considered the aspect of public interest as well. It is, however, noted that neither the association nor any other interested party has provided any verifiable quantified information to the authority, which could establish that imposition of anti-dumping duty is not in the public interest. Thus, it has not been established that imposition of the present anti-dumping duty is not in public interest.

**F. Domestic Industry and Standing:**

19. The petition has been filed by M/s. Atlas Fine Chemicals Pvt. Limited, as the domestic industry. Apart from the applicant, there were two other producers of the subject goods in India, who have closed their commercial production. Accordingly, the applicant accounts for the 100% of the Indian production during the period of investigation. The Authority notes that none of the interested parties have disputed this claim.

20. The Authority holds that the Atlas Fine Chemicals Pvt. Ltd is the sole producer of the like article in India. The Authority holds that the application satisfies the requirements of Rule 2(b) and Rule 5(3) of the AD Rules. Further, M/s Atlas Fine Chemicals Pvt. Limited constitutes 'domestic industry' within the meaning of the Rule 2(b) of the AD Rules.

21. With regard to the argument that the sole domestic producer cannot file an anti-dumping petition and seek imposition of anti-dumping duties, it is recalled that the domestic industry had stated (and not denied/refuted by any interested party) there were two other producers of the product under consideration in India, but they had suspended their production and were no longer in operation at the time of investigation. During the course of investigations, it was noted the petitioner was therefore the sole domestic producer and had requested imposition of anti-dumping duties alleging that dumping of Coumarin in India was causing injury to the domestic industry. The opposing interested parties have argued that since the petitioner is the sole producer of the product in the Country and since Rule 2(b) refers to producers, it has been argued that existence of a single producer does not imply "domestic industry" and sole producer does not have a right to seek imposition of anti-dumping duties. Emphasis has been placed in particular on usage of the term "producers" and it has been argued that since the law has used producers in its plural form, one producer alone cannot constitute domestic industry.

22. At the outset, the Authority considered the various legal provisions. Rule 2(b) of the rules as applicable at the time of investigations read as follows:-

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

23. Rule 5 governs initiation of investigations and inter-alia provides as follows with regard to filing of an application before the Designated Authority.

*5. Initiation of investigation. - (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.*

*(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -*

*(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry :*

*Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and*

*(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -*

*(i) dumping,*

*(ii) injury, where applicable; and*

*(iii) where applicable, a casual link between such dumped imports and the alleged injury,*

*to justify the initiation of an investigation.*

*Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.*

24. The authority notes that an investigation can be initiated either suo motu or on the basis of an application filed before the authority. The application before the authority can be filed either by the domestic industry itself or can be made by some other body on behalf of domestic industry.

25. The authority cannot initiate investigations unless it is established that the petition is supported by those domestic producers whose collective output constitute a major proportion in the total domestic production. Further the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty percent of the total production

of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

26. Rule 2(b) provides that the domestic industry shall comprise of domestic producers as a whole. However, in a situation where all domestic producers are not before the authority, the authority is required to consider whether the production of the producers before the authority constitutes a major proportion in total domestic production.

27. Since the rules have used the word “producers”, a question arises that if the goods are being produced by only one producer in the Country, whether such producer constitutes domestic industry. The issue has been examined at length by the WTO in the matter of European Communities – India Anti-dumping duties on imports of Cotton Type Bed-linen. After considering arguments of all the parties, the panel inter-alia concluded as follows.

*6.72 In this regard, we consider informative other provisions which use the plural form, but are applicable in the singular case. For instance, Article 4.1 of the AD Agreement defines the domestic industry in terms of "domestic producers" in the plural. Yet we consider it indisputable that a single domestic producer may constitute the domestic industry under the AD Agreement, and that the provisions concerning domestic industry under Article 4 continue to apply in such a factual situation.....*

28. It is, thus, seen that the WTO Panel, in a dispute not challenged before the Appellate Body, held that it is undisputable that a single domestic producer may constitute domestic industry under the AD agreement and the provisions concerning domestic industry shall continue to apply in such a factual situation.

29. The authority also notes that anti-dumping duties have been recommended in a large number of cases in India where the domestic industry constituted a sole domestic producer. A number of these recommendations were challenged before the Hon’ble CESTAT. Impositions of anti-dumping duties in these cases have not been set aside on the grounds of possible incorrect determination of domestic industry. Having regard to legal provisions and considering to the available jurisprudence, the authority considers that imposition of anti-dumping duties in those cases where the petitioner constitutes the sole domestic producer is justified and is permissible within the law.

## **G. Methodology for calculation of dumping margin:**

### **G.1 Determination of Dumping Margin in case of China PR:**

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

exporting country or individual Producers/Exporters in terms of the above Rules for the purposes of preliminary determination.

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

- (i) The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- (ii) 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;
- (iii) Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- (iv) The exchange rate conversions are carried out at the market rate.

**Normal value:**

**G.2. Market economy treatment claim, analysis and findings:**

32. The following two producers/exporters from the China PR have responded and filed their responses.

- (i) M/s Jiangyin Baihui Fragrance Co. Ltd.
- (ii) M/s Yinghai (Cangzhou) Aroma Chemical Co., Ltd.

**Jiangyin Baihui Fragrance Co. Ltd.**

33. M/s Jiangyin Baihui Fragrance Co. Ltd. China PR filed a questionnaire response and MET response in this matter as a producer and exporter of the subject goods. After examination of the responses, the Authority sought certain additional information by way of

deficiency letter as noted in the preliminary findings. Subsequent to the preliminary findings, the concerned Producer/Exporter submitted reply to the deficiency letter and also consented to onsite verification of its claims regarding market economy treatment.

34. During the onsite verification, response to the MET questionnaire's response was examined. It is recalled that M/s Baihui had claimed market economy treatment and had requested the authority to take into account domestic selling prices for the purpose of determination of normal value. During the verification process the concerned producer was advised to substantiate along with relevant document as to how they meet the various criteria relating to para 8 of the Annexure – 1 of the anti-dumping rules which relates to grant of market economy treatment. However, the producer/ exporter declined to submit these documents to the investigation team. In addition, the subject exporter/ producer informed that the documents relating to market economy claims are almost not available and accordingly the same cannot be provided to the verification team. Hence, in view of this, the Authority is unable to examine the claim of the producer/exporter with regard to market economy status and determined the normal value for the responding producer exporter as per para 7 of the Annexure 1 of the Anti dumping rules.

**Yinghai (Cangzhou) Aroma Chemical Co., Ltd. (M/s Yinghai )**

35. M/s Yinghai (Cangzhou) Aroma Chemical Co., Ltd. filed a questionnaire and market economy treatment response as a producer and exporter of the subject goods. Certain additional information was sought with respect to incomplete information provided in response. Subsequent to the preliminary findings, the concerned exporter submitted reply to the deficiency letter and also consented for onsite verification of its claims regarding market economy treatment and export prices.

36. During the onsite verification, the response to the exporter's questionnaire and the market economy treatment questionnaire's response was taken up for examination. In the response to the MET questionnaire, M/s Yinghai had claimed market economy treatment and had requested the authority to take into account domestic selling prices for the purpose of determination of normal value. During the verification process the concerned producer was asked to substantiate along with the document as to how they meet the various criteria relating to para 8 of the Annexure – 1 of the anti-dumping rules which relate to grant of market economy treatment. However, the producer and exporter declined to submit these documents to the investigation team. In addition, the subject exporter and producer informed that documents relating to market economy claims are almost not available and accordingly the same cannot be provided to the verification team. Hence, in view of this, The Authority determined the normal value for the responding producer/ exporter as per para 7 of the Annexure 1 of the Anti dumping rules.

**Export price:**

**G.3 Determination of Export Price:**

**M/s Jiangyin Baihui Fragrance Co. Ltd.**

37. M/s Jiangyin Baihui Fragrance Co. Ltd. China PR filed a questionnaire response as a producer and exporter of the subject goods. After examination of the responses, the Authority sought certain additional information by way of deficiency letter as noted in the preliminary findings. Subsequent to the preliminary findings, the concerned exporter submitted reply to the deficiency letter and also consented for onsite verification of its claims regarding market economy treatment and export prices.

38. Subsequent to the preliminary findings, the exporters data were verified by the Authority during onsite verification at the premises of the subject producer exporter. During the verification process, the appendix wise response to the exporters questionnaire were taken up for examination. It is recalled that before the verification visit, the subject producer exporter had been given the list of the documents along with their originals prior to the verification visit to keep them ready. It included documents from the invoice to the payment received from the Indian importers through normal banking channel. The subject producer/exporter was also asked to keep ready the original VAT register and VAT invoices which are used for getting the refunds from the Chinese Customs. The subject producer exporter showed the sales invoices of the 17 transactions that have been reported in the Appendix 2. Apart from the sales invoices the subject producer/exporter also showed the sales contract, packing list, bill of lading. The subject producer/exporter then was specifically asked to bring the original document relating to payment of export proceeds from the Indian importers through normal banking channels. They were also asked to explain why the large number of other export transactions made by them to the Indian importers during the period of investigations were not reported by them in the appendix 2. A detailed verification report in this regard was sent to the concerned exporter for his comments. In reply to the verification report, the exporter concerned has resubmitted that they have given all their shipments details in their response and has submitted credit advice in respect of their shipments. However, it is noted that said exporter has not been able to present the details of the payment received from Indian importers through normal banking channels and also not been able to present or corroborate the export prices with original records ( including original VAT register ) and export volumes with Indian Customs Port and data made available by responding Indian importer. Further, the said exporter was also not able to comment why many of the export transactions from them as appearing in Indian port records or information received from Indian importer are not being reflected in their records.

39. In view of the above, the Authority has not accepted the said producer/exporter's data for the purpose of determination of export price. Therefore, no separate dumping margin has been determined for M/s Jiangyin Baihui Fragrance Co. Ltd.

**Yinghai (Cangzhou) Aroma Chemical Co., Ltd.**

40. M/s Yinghai (Cangzhou) Aroma Chemical Co., Ltd. has filed a questionnaire and market economy treatment response as a producer and exporter of the subject goods. Certain additional information was sought with respect to incomplete information provided in the appendix 8, difference in raw material consumption in various appendices, basis of allocation between product under consideration and other products and an explanation to the discrepancy in the share holding of the company. Subsequent to the preliminary findings, the concerned exporter submitted reply to the deficiency letter and also consented for onsite verification of its claims regarding market economy treatment and export prices.

41. Subsequent to the preliminary findings, the exporters data was verified by the Authority during onsite verification at the premises of the subject producer exporter. During the verification, the appendix wise response to the exporters questionnaire were taken up for examination. It is recalled that before the verification visit, the subject producer exporter had been given the list of the documents along with their originals prior to the verification visit to keep them ready. It included documents from the invoice to the payment received from the Indian importers through normal banking channel. The subject producer/exporter was also asked to bring the original VAT register which is used for getting the refunds from the Chinese Customs. During verification, the producer/ exporter produced the original records of the VAT invoices including their records as kept in their register and also original records relating to payment received by them from Indian importers through normal banking channels. In fact, their data was also corroborated with the import information received from Indian Customs Port. Thereafter, a verification report was sent to producer exporter for their comments. However, no comments have been received from them till date.

42. In view of the above, the Authority has accepted the data submitted by the producer/exporter and verified subsequently by the Authority for determination of export price and dumping margin.

#### **G.4 Determination of Normal Value**

43. In the preliminary findings, the Authority had determined normal value based on any other reasonable basis in line with para 7 of Annexure -1 of the Rules. The domestic industry, however, disputed the same and claimed that since normal value on the basis of price in a market economy third country or price from such third countries to India are available, the same should be given preference over “ any other reasonable basis”.

44. The matter has been examined and it is noted that the Chinese producers have not been able to establish that they are entitled for market economy treatment. In this connection Para 7 of Annexure I of the Rule provides that

*“In case of imports from non-market economy countries, normal value shall be determined on the basis if 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. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”*

45. Thus, rules provide for consideration of prices of the product in an market economy third country or prices from such third countries to other countries including India for determination of normal value in case of non market economy country. However, in this subject case, it is noted that since the volume of imports of subject goods into India from appropriate market economy third country is quite low and the even the prices in that country ( European Union ) could be impacted due to Chinese dumping, the Authority considers it appropriate to determine normal value on “any other reasonable basis”, as was determined at the stage of preliminary findings. Accordingly, the ex-works Normal Value of the product under consideration for all these exporters from China PR is proposed to be determined on the basis of facts available. The Normal Value has been constructed taking into account available international price of major inputs. Conversion cost and SGA expenses of the domestic industry have been adopted for determination of the normal value. After adding a reasonable profit margin of 5 %, constructed normal value for the subject goods for all exporters from China PR have been worked out. The normal value thus determined comes to US\$ \*\*\*\*\*.

#### **G.5 Determination of Export price:**

46. The Authority has determined the export price for other non responding exporters as per the facts available on record. The Authority has therefore determined the export price for all the non responding exporters/producers from China PR based on facts available on record. For the responding exporter whose export prices and Price adjustments have been verified, the export price has been determined after taking into account their prices to India given in their appendix wise information and all adjustments claimed by them and verified by the Authority. For other exporters, the CIF Export price has been adjusted for ocean freight, marine insurance, commission, inland freight, port expenses and bank commission, as per the information provided by these cooperating exporters.

#### **G.6 Determination of dumping margin:**

47. Considering the Normal value and the Export price as determined above, the dumping margin works out as follows:

	unit	Yinghai	Others
Normal value	US \$/Kg	****	****
Net export price	US \$/Kg	****	****
Dumping margin	US \$/Kg	****	****
Dumping margin	%	9.23	28.14

48. The Authority notes that the dumping margin from China PR is significant and more than the de-minimis limits prescribed.

**Methodology for Injury Determination and Examination of Causal Links:**

**H. Examination of Injury and Causal Link:**

49. Rule 11 of Anti-Dumping Rules read with Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “taking into account all relevant facts, including the volume of the dumped imports, their effect on prices in the domestic market for the like articles and the consequent effect of such imports on domestic producers of such articles.” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India or whether the effect of such imports are otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

50. The Authority notes that the application for imposition of Anti-Dumping Duty has been filed by M/s. Atlas Fine Chemicals Ltd, who commands a major proportion of total production of subject goods in India. In terms of Rule 2(b) of the Rules it has been treated as the domestic industry for the purpose of this investigation.

51. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. are required to be considered in accordance with Annexure II of the Rules. All economic parameters affecting the Domestic Industry as indicated above such as production, capacity utilization sales volume etc. are also required to be examined.

**H.1. Views of the Domestic Industry:**

52. The following are the views of domestic industry:-

- (i) Present petition is for imposition of Anti Dumping Duty against dumped imports of Coumarin from China PR in the Indian market. Dumping of the product in India is not a new phenomenon.
- (ii) With the advent of increasing imports the performance deteriorated in terms of domestic sales, production, capacity utilization, productivity, inventories, market share, profits, return on investments, cash flow, etc.
- (iii) The demand of the product in the country shows a positive trend whereas sales of the domestic industry at the same time show a negative trend. As a result, market share of the domestic industry declined.
- (iv) Volume of dumped imports from China PR has increased very significantly in absolute terms over the injury period.
- (v) Imports have increased significantly in relation to total imports, production and consumption in India.
- (vi) As a result of increase in imports in absolute term and relative to production and consumption, share of the domestic industry has declined.
- (vii) The export quantities of domestic industry shows continuous decrease indicating significant market share of dumped Chinese goods in the world markets.
- (viii) Weighted average import prices (after including basic customs duties) have been significantly below the net sales realization of the domestic industry, thus resulting in significant price undercutting.
- (ix) The dumped CIF export price shows a substantial reduction in the landed price of imports. This had direct adverse impact on the domestic industry. Reduction in the landed price of imports prevented the Indian Producers from effecting legitimate price increases.
- (x) The landed price of imports is significantly below the cost of production of the domestic industry. Imports have had significantly depressing effect on the prices of the domestic industry in the market.
- (xi) The production, capacity utilization and sales of the domestic industry have declined both in absolute and relative term.
- (xii) The performance of the domestic industry for product under consideration has deteriorated over the injury period and since 2006-07, the domestic industry is in significant losses.
- (xiii) Market share of the domestic industry has severely declined whereas that of imports has materially increased.
- (xiv) Productivity of the domestic industry declined with decline in production.
- (xv) ROI (NFA Basis) of the domestic industry has significantly deteriorated over the injury period. Similar is the situation of cash profit as well. This clearly shows the price depression and suppression effect of dumped imports from China PR that has resulted in significant losses to the domestic industry.

- (xvi) There has been a considerable increase in the level of inventories indicating that even at the capacity utilization of 43% during the investigation period, the domestic industry is unable to dispose off its production.
- (xvii) Growth in terms of sales, production, capacity utilization, cash profits, profits, return on investment has been negative.
- (xviii) The dumping margin from subject country is not only more than de-minimus but also very substantial. The impact of dumping on the domestic industry is significant and is gradually intensifying.

## **H.2 Views of the Exporters, Importers and other interested parties:**

53. None of the other interested parties have made any submissions with regard to injury to the domestic industry and causal link thereof.

## **H.3 Examination by the Authority:**

54. The Authority has taken note of submissions made by the interested parties. Annexure II of AD Rules provides for objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact on domestic producers of such products. While examining the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports either in absolute term or relative to production or consumption in India. With regard to price effect of dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increase which would have otherwise occurred to a significant degree.

55. As regards the impact of dumped imports on the domestic industry, para (iv) of Annexure-II of AD Rules states as under:

*“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”*

56. The Authority has examined the injury parameters objectively taking into account the facts and arguments of the interested parties.

## **H.4 Volume Effect of dumped imports and Impact on domestic industry:**

57. Transaction-wise information of imports of subject goods was called from DGCI&S and the same was compared with the information provided by the IBIS (secondary sources). It was claimed by the domestic industry along with evidence that the subject goods had been reported in more than one tariff head and hence information from IBIS should be taken into account as it has reported higher volumes. After the detailed examination, it was decided to take into account the information from IBIS as it had reported higher volumes.

**Import, Demand, Volumes and Market share:**

58. Demand of the product in the Country has been assessed as the sum of domestic sales of the domestic producers and imports from all sources.

**Import particulars**

59. It is noted that imports of the subject goods from subject country has increased significantly in absolute terms during the injury period. Further, the market share of subject country has increased significantly during the same period as shown in the table.

Particulars	Units	2005-06	2006-07	2007-08	POI
<b>Imports</b>	<b>MT</b>	<b>188.25</b>	<b>194.10</b>	<b>219.50</b>	<b>251.36</b>
China PR	MT	149.85	158.65	204.05	219.45
Other Countries	MT	38.40	35.45	15.45	31.91
<b>Market share in Imports</b>	<b>%</b>				
China	%	79.60	81.74	92.96	87.31
Other Countries	%	20.40	18.26	7.04	12.69

**Demand particulars:**

60. Demand for the product under consideration increased throughout the injury period and has grown by about 17% during the injury period. Further, imports of the subject goods from the subject country has increased in absolute terms during the same period. It is also noted that increase in dumped imports was more than the increase in demand.

Particulars	Units	2005-06	2006-07	2007-08	POI
Imports total	MT	188.25	194.10	219.50	251.36
Sales of Domestic Industry	MT	62.97	63.37	58.93	42.19
Demand	MT	251.22	257.47	278.43	293.55
Index demand		100	102.49	110.83	116.85

**Imports in relation to various parameters:**

61. It is also noted that dumped imports of the product under consideration increased in relation to production of the like product in India during the injury period . Further this has also increased in relation to consumption in India as well as sales of the domestic industry.

Particulars	Units	2005-06	2006-07	2007-08	POI
Dumped imports from subject country in relation to					
Share in total imports	%	79.60	81.74	92.96	87.31
Share in Demand	%	59.65	61.62	73.29	74.76
Production in India	%	57.85	90.54	112.40	128.91
Sales of Petitioner	%	237.97	250.34	346.25	520.16

**Market share of domestic industry:**

62. As a result of this increase of subject goods from subject country, the market share of the domestic industry declined during the injury period.

Particulars	Units	2005-06	2006-07	2007-08	POI
Market share in Demand	%				
Import from- China	%	59.65	61.62	73.29	74.76
Import from Other Countries	%	15.29	13.77	5.55	10.87
Sales of Domestic Industry	%	25.07	24.61	21.17	14.37

63. It is thus noted that demand for the product under consideration increased throughout the injury period and has grown by about 17% during the injury period. Further, imports of the subject goods from subject country have increased in absolute terms during the same period. It is noted that increase in dumped imports was more than the increase in demand. It is also noted that imports increased in relation to imports of the product under consideration in India from various sources in general and from the subject country in particular. Further, imports of the product under consideration increased in relation to production of the like product in India. As a result of this increase of subject goods from subject country, the market share of the domestic industry declined during the injury period. Thus, it is determined that the domestic industry has suffered significantly on account of volume effect of dumped imports from subject country.

**Price effect of imports:**

64. With regard to the effect of the dumped imports on prices, it has been examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. A comparison for product concerned was made between the landed value of exported product and the average selling price of the domestic industry for domestic market net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex factory level. The CIF prices of the subject country concerned were adjusted for post importation applicable duties. This comparison showed that during the period of investigation, the subject goods originating in China PR were sold in the Indian market at prices which were lower than the domestic industry's prices. It is thus seen that imports were undercutting the domestic prices though the extent of undercutting is not considered significant during the POI.

Particulars	Units	2005-06	2006-07	2007-08	POI
Landed Value	Rs./Kg	****	****	****	****
Net sales realization	Rs./Kg	****	****	****	****
Indexed	Trend	100	94	102	117
Price Undercutting	Rs./Kg	****	****	****	****
Indexed	Trend	100	23	88	38
Price Undercutting	%	****	****	****	****
Price Undercutting	% Range	10 to 15	1 to 5	10 to 15	1 to 5

65. The Authority has also examined price depression, price suppression and price underselling if any, suffered by the domestic industry on account of dumped imports from subject country. After examination, it is determined that the landed value of imports from subject country is significantly below the cost of production and non-injurious price of the domestic industry. The imports are thus resulting in price underselling being faced by the domestic industry. It is further noted that selling prices of the domestic industry have increased during the injury period but this increase is much less than increase in the cost of production of domestic like product sold by the domestic industry resulting in price suppression.

	Unit	2005-06	2006-07	2007-08	POI
Cost of Sales	Rs./kg	****	****	****	****
Trend	Index	100	101	110	128
Domestic selling price	Rs./kg	****	****	****	****
Trend	Index	100	94	102	117

66. It is thus determined that whereas the costs increased by 28%, the domestic industry could increase its selling prices only by 17%. It is thus noted that the dumped imports from subject country are preventing the domestic industry from effecting legitimate price increases. It is thus concluded that the effect of dumped imports on the domestic industry has been adverse and significant.

### **Economic parameters of the domestic industry**

67. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

(i) **Production:**

68. It is noted that production of the domestic industry declined over the injury period. It is further noted that whereas demand for the product increased by 17%, production declined by about 35% during the injury period.

	Unit	2005-06	2006-07	2007-08	POI
Capacity	MT	400	400	400	400
Production	MT	259	175	182	170
Trend	Indexed	100	68	70	66
Demand	MT	251	257	278	294
Trend	Indexed	100	102	111	117
Production in % of demand	%	103.11	68.06	65.20	57.99

(ii) **Capacity & capacity utilization:**

69. Capacity & capacity utilization of the domestic industry moved as shown in the table below. It is seen that capacity installed by the company during the injury period remained the same. It is also noted that petitioner is using the production capacities dedicatedly for the product under consideration. Whereas demand for the product increased during the injury period, decline in production led to decline in capacity utilization. Decline in capacity utilization is in tandem with the decline in production. Thus, whereas demand for the product increased by about 17%, capacity utilization declined by 34%.

	Unit	2005-06	2006-07	2007-08	POI
Capacity	MT	400	400	400	400
Production	MT	259	175	182	170
Capacity Utilization	%	64.76	43.81	45.38	42.56
Trend	Indexed	100	68	70	66
Demand	MT	251	257	278	294
Trend	Indexed	100	102	111	117

(iii) **Domestic sales:**

70. It is noted that domestic sales of the domestic industry declined significantly over the injury period. It is also noted that petitioner does not have any captive consumption. However, petitioner does have significant exports. The impact of dumping was therefore examined only with reference to domestic sales.

	Unit	2005-06	2006-07	2007-08	POI
Domestic Sales	MT	63	63	59	42
Trend	Indexed	100	100	94	67
Demand	MT	251	257	278	294
% of sales in demand	%	25.07	24.61	21.17	14.37
Change in					
➤ Domestic sales	MT		0	-4	-17
➤ Demand	MT		6	21	16

(iv) **Profitability:**

71. The profitability of the domestic industry in respect of domestic like product has been examined only in respect of domestic sales. It is seen that profitability of the domestic industry for the subject goods has significantly deteriorated over the injury period. The domestic industry is in significant losses since 2006-07. Further, the losses increased over the injury period.

	Unit	2005-06	2006-07	2007-08	POI
Cost of Sales	Rs./Kg	****	****	****	****
Indexed	Trend	100	101	110	128
Net Sales Realization	Rs./Kg	****	****	****	****
Indexed	Trend	100	94	102	117
Profit/Loss	Rs./Kg	****	****	****	****
Indexed	Trend	100	(76)	(93)	(152)
Profit before tax	Rs. Lacs	****	****	****	****
Indexed	Trend	100	(77)	(87)	(102)
Profit before interest	Rs. Lacs	****	****	****	****
Indexed	Trend	100	(77)	(87)	(102)

(v) **Employment and Wages:**

72. Employment with the domestic industry and wages paid were as follows

Productivity	Unit	2005-06	2006-07	2007-08	POI
Employment	Nos.	****	****	****	****
Indexed	Trend	100	84	72	67
Wages	Rs. Lacs	****	****	****	****
Indexed	Trend	100	104	109	155

73. It is thus noted that employment has been adversely affected due to decline in domestic sales, production and continuing low capacity utilization.

(vi) **Productivity:**

74. Productivity of the domestic industry was as follows

Productivity	Unit	2005-06	2006-07	2007-08	POI
Productivity per employee	MT	4.54	3.65	4.43	4.48
Indexed	Trend	100	80	97	99

75. It is seen that productivity of the domestic industry was almost at similar levels during the injury period. Thus, this parameter is not considered relevant for assessing the injury of the domestic industry.

(vii) **Return on investments and cash flow:**

76. The return on investment has been determined considering profit before interest and capital employed in the product. Impact on cash flow has been determined considering profit before depreciation but after interest cost. It is noted that return on capital employed and cash profits have significantly deteriorated over the injury period. It is also noted that the performance of the domestic industry with regard to profits and return on capital employed & cash profits moved in same direction and deteriorated adversely during the injury period.

	Unit	2005-06	2006-07	2007-08	POI
ROCE	%	****	****	****	****
Indexed	Trend	100	(28)	(36)	(58)
Cash Profit	Rs.Lacs	****	****	****	****
Indexed	Trend	100	(47)	(50)	(71)

(viii) **Inventories:**

77. There is significant increase in the level of inventories since 2007-08 to the POI though it has declined at an absolute level during the injury period. However, inventories equal to number of days sales have increased during the injury period. Further, the domestic industry has argued that in spite of 40% capacity utilization during the investigation period, the domestic industry was not able to sell the subject goods completely. The domestic industry further argued that despite existing level of demand where the domestic industry would have easily reached 100% plant utilization, imports at dumped prices have adversely impacted the production and inventory level of the domestic industry.

	Unit	2005-06	2006-07	2007-08	POI
Inventories	MT	15	12	5	12
Inventories equal to no. of days sales	Days	21	22	10	27

(ix) **Growth:**

78. Information with respect to growth in various parameters is given in the table below. It is seen that growth in terms of both volume & price parameters is negative.

Particulars	Unit	2005-06	2006-07	2007-08	POI
Growth					
Production	%		(32.35)	3.60	(6.22)
Domestic sales	%		0.64	(7.01)	(28.41)
Inventory	%		(23.12)	(57.54)	139.24
Selling Price/KG	%		(5.64)	8.14	14.34
Cost/KG	%		1.39	8.58	16.05
ROI	%		(13.51)	(0.80)	(2.32)

(x) **Ability to raise capital investments:**

79. The domestic industry has argued that given the current state of affairs where running the product is consistently not performing well because of persistent dumping over the last more than five years, substantial fresh investments cannot even be imagined. It is noted that the product under consideration forms a very significant part of the company's overall operations. The Authority holds that continued dumping of the product and financial losses in the product are bound to adversely impact the ability of the domestic industry to raise capital investments.

(x) **Level of dumping & dumping margin:**

80. The dumping margin established hereinabove in respect of responding exporters and non cooperative exporters are quite significant and above the de minimus level.

(xi) **Lost sales:**

81. The domestic industry has submitted various instances of the orders lost by it from various customers who have cited availability of Chinese subject goods at lesser prices.

**I. Causal Link**

82. The Authority has examined whether other factors listed under the AD Rules could have contributed to injury to the domestic industry. It was found as follows.

(i) **Imports from third countries:**

83. The Authority has collected the transaction-wise imports data of the subject. From the information available on record, the Authority notes that there are no significant imports of subject goods countries other than subject countries.

(ii) **Contraction in demand:**

84. The Authority notes that the demand for the subject goods has shown significant improvement during the injury period. Possible contraction in demand could not have caused injury to the domestic industry.

(iii) **Changes in the pattern of consumption:**

85. The pattern of consumption with regard to the product under consideration has not undergone any change, nor there is any quantified allegation in this regard. The investigation so far has not shown existence of alternate competing products and possible injury being caused by such alternate products.

(iv) **Trade Restrictive practices of and competition between foreign and domestic producers:**

86. The Authority notes that there is a single market for the subject goods where dumped imports from China PR compete directly with the subject goods supplied by the domestic industry. It is noted that the imported subject goods and domestically produced goods are like articles and are used for similar applications/end uses. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

(v) **Developments in Technology:**

87. There is no allegation of developments in technology, nor the investigation so far has shown that possible injury to the domestic industry could have been caused by developments in technology.

(vi) **Export performance:**

88. The petitioner has significant exports. However, the Authority has considered only domestic operations and domestic profitability. Further, it has been determined that per unit exports price during the POI was 17% higher than the domestic selling price.

(vii) **Productivity of the Domestic Industry:**

89. There is no material change in productivity of the domestic industry. Possible decline in productivity cannot be the reason for the established injury to the domestic industry.

**Level of dumping margin and injury margin:**

90. The level of dumping margins and injury margins as determined are mentioned below. It is thus noted that these levels are considered significant.

	Unit	Yinghai	Others
Dumping Margin	US\$/Kg	****	****
Dumping Margin	%	9.23	28.14
NIP	Rs./Kg	****	****
Exchange Rate	Rs./US\$	43.46	43.46
NIP	US\$/Kg	****	****
Injury Margin	US\$/Kg	****	****
Injury Margin	%	****	****
Injury Margin	% (Range)	4-8	20-25

**I. Conclusion on Injury and causation**

91. There has been a significant increase in the volume of dumped imports from China PR at the absolute level and also in relation to demand of subject goods in India. It is noted that the market share of the dumped imports has increased and that of domestic industry has declined. The dumping margin from subject country has been determined and is considered significant. Further, production, sales volumes and capacity utilization of the domestic industry have declined and inventories with the domestic industry have increased. Thus, the dumped imports from subject country show adverse volume effect. It is also noted that the dumped imports were undercutting the prices of the domestic industry in the market though the undercutting margin is not significant. It could be assumed that the domestic industry was trying to match its selling prices close to the landed price of imports of subject goods from China PR. Further, it has been noted that, the domestic industry has not been able to increase its prices in proportion to the increase in the cost of production and the domestic industry has been forced to sell the product at prices much below non injurious price. Thus, as a result of price underselling and price suppression, the domestic industry has suffered significant decline in profits, return on investments and cash profits. Thus, it is determined that the dumped imports have had significant adverse price effect in terms of price underselling and price suppression which in turn lead to significant deterioration in profits, return on investments and cash profits.

92. As per the material available on record, the Authority holds that various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury caused by the dumped imports from the subject country.

**J. Conclusions:**

93. After examining the submissions made by the interested parties and issues raised therein including the issues raised during the public hearing pursuant to CESTAT order dated 17th June, 2011; and considering the facts available on record including written submissions and rejoinders submitted pursuant to the CESTAT order dated 17<sup>th</sup> June 2011, the Authority holds that:

(a) The product under consideration has been exported to India from the subject country below Normal values.

(b) The domestic industry has suffered material injury on account of subject imports from subject country.

(c) The material injury has been caused by the dumped imports of subject goods from the subject country.

**K. Indian industry's interest & other issues**

94. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way; and therefore, would not affect the availability of the product to the consumers.

95. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of these product. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. 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 the subject goods.

**L. Recommendations**

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

parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the Act and the AD Rules and having established definitively positive dumping margins concerning imports of the subject goods originating in or exported from the subject country and as well as material injury and threat thereof to the domestic industry caused by such dumped imports; the Authority is of the view that imposition of definitive duty is required to offset the dumping and 'injury' in the instant matter. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duties concerning imports of the subject goods from the subject country in the form and manner described hereunder.

97. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the difference between the amount indicated in Col 8 of the table below and the landed value is recommended to be imposed on all imports of subject goods originating in or exported from China PR.

**Duty Table**

SI. No	Sub-heading	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit of measurement	Currency
-1	-2	-3	-4	-5	-6	-7	-8	-9	-10
1	2932.21	Coumarin of all types	China PR	China PR	Yinghai (Cangzhou) Aroma chemical Co., Ltd.	Yinghai (Cangzhou) Aroma chemical Co., Ltd.	14.02	Kg.	US\$
2	- do -	- do -	China PR	China PR	Any combination of producer and exporter other than at S. No. 1 above		14.02	Kg.	US\$
3	- do -	- do -	China PR	Any country	Any	Any	14.02	Kg.	US\$

				other than China PR					
4	- do -	- do -	Any country other than China PR	China PR	Any	Any	14.02	Kg.	US\$

**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.**

98. Subject to the above, the Authority confirms the preliminary findings dated 29<sup>th</sup> January, 2010.

99. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(Vijaylaxmi Joshi)  
Designated Authority