

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
NOTIFICATION
FINAL FINDINGS

New Delhi, the 1st October, 2009

Subject: Anti Dumping Duty Investigations concerning imports of Flax Fabrics originating in or exported from China PR & Hong Kong.

No.14/08/2008--DGAD: - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE

A. 1. The procedure described below has been followed subsequent to the preliminary findings:

- a. On 3rd October, 2008, the Designated Authority (hereinafter referred to as the Authority) issued an initiation Notification, duly notifying the same in the Gazette of India, thereby initiating an Anti-Dumping investigations concerning imports of the subject goods originating in or exported from China PR and Hong kong (hereinafter referred to as subject country).
- b. The Designated Authority notified Preliminary Findings vide notification dated 17/02/2009 with regard to anti-dumping investigations concerning imports of Flax Fabrics originating or exported from China PR & Hong Kong and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- c. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the said findings within forty days from the date of the letter;
- d. The Authority provided an opportunity to all interested parties to present their views orally on 18th May 2009. All parties presenting views orally were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rejoinders, if any.
- e. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted and arguments made by various interested parties;

- f. The arguments raised by the petitioners and other interested parties have been appropriately dealt with in these findings;
- g. In accordance with Rule 16 supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 16th September 2009 and comments received on the same, have been duly considered in these findings;
- h. *** in this notification represents information furnished by an interested parties on confidential basis and so considered by the Authority under the Rules.
- i. The Period of Investigation for the purpose of the present investigation is 1st April, 2007 to 31st March, 2008 (12 months). The examination of trends in the context of injury analysis covered the period from April 2004-March 2005, April 2005-March 2006, April 2006-March 2007 and the POI.
- j. 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.
- k. The Authority satisfied itself with regard to accuracy of the information provided by the interested parties to the extent considered necessary.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

B.1. Views of the Domestic industry

2. The Product under Consideration is woven fabric having more than 30% flax content. Flax and linen are synonyms and the word “flax” is also known as “Linen” and can be used to produce yarn and fabric made from flax fibres. It is also often used as in generic term to describe a class of woven bed, bath, table and kitchen textiles because traditionally flax was widely used for towels, sheets, etc. In the past, the word also referred to light weight undergarments such as shirts, chemises, waist shirts, lingerie and detachable shirt collars and cuffs.

6. The product under consideration is classified under Customs Tariff Chapter 53 at sub-heading 53.09. The Custom classification is indicative only and not binding on the scope of investigation.

7. The applicants have claimed that goods produced by them are like article to the goods originating in or exported from China and Hong Kong. The imported product is also used by same category of consumers. The product contains the same basic technical properties and has the same functions & uses. There is no known difference in Flax Fabric produced by the Indian industry and subject Flax Fabric imported in India. Flax Fabric produced by the Indian industry and imported in India 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. The goods produced by the domestic industry are being considered as like article to the goods imported from the subject countries.

B.2. Views of the Importers, Consumers, exporters and Other Interested Parties

8. None of the importers, consumers, exporters and other interested parties have filed any comment or submissions with regard to the product under consideration, and the like articles.

B.3. Examination by the Authority

9. The product under consideration is flax fabric originating in or exported from china PR and Hong Kong is normally classified under Chapter 53 of the Customs Tariff Act. “Flax” and “Linen” are synonyms and the word flax is also known as Linen and can be used to produce yarn and fabric made from flax fibres. It is often used as in generic term to describe a class of woven bed, bathtub, table and kitchen textiles because traditionally flax was widely used for towels, sheets etc. This product is classified under Customs Tariff Chapter 53 at sub-heading 53.09. The Custom classification is indicative only and not binding on the scope of investigation.

10. Rule 2(d) of the Anti-dumping Rule specifies that like article means an article, which is identical and alike in all respects to the product under consideration or in the absence of such an article, another article having characteristics closely resembling those of the articles under examination.

11. The petitioner claimed that the goods produced by them are like article to the goods originating in or exported from the subject countries. The Authority notes that the Domestic Industry has not been producing substantially woven fabric having more than 30% flax content. During the POI, the production of woven fabric having more than 30% flax content was merely 0.62% of the total production, hence not substantial. However, the Domestic Industry has been majorly producing woven fabric having more than 50% flax content. The woven fabric (having more than 50% flax contents) produced by domestic industry has characteristics, which are similar to those imported flax fabric from subject countries. In view of the above the authority hold that woven fabric (having more than 50% flax contents) produced by the domestic industry and those being imported from the subject countries are like articles and is the Product under Consideration within the meaning of the rules for the purposes of this finding.

C. DOMESTIC INDUSTRY

C.1. Views of the Domestic Industry

12. The following submissions have been made by the Domestic Industry with regard to the standing of the Domestic Industry.

i. The application has been filed by M/s Jaya Shree Textiles (A unit of Aditya Birla Nuvo Ltd.) India and is supported by seven other manufacturers namely. a) Govardhan overseas

Pvt. Ltd., b) VSM Weaves India Ltd. c) V.S. Palaniswamy Company, d) Vasanthi Fabrics e) Mahendra Textiles f) Mars Export, Karur g) Ram Textiles, Karur. The petitioner has imported Flax fabric from China during the POI and the injury period. However, the import is insignificant as compared to production by the company (6.27%) and consumption (1.16%) in India. It has been stated by the petitioner that the imports were necessitated at the time of peak season and capacity constraints with the domestic industry at that stage. It has been seen that (a) production of the petitioner constitutes a major proportion in Indian production; (b) domestic producers expressly supporting the application account for significantly more than 50 per cent of total production of the like product produced by the domestic industry; and (c) the application has been made by or on behalf of the domestic industry. The petition therefore, satisfies the requirement of standing under the Rules. Further, the participating company constitutes domestic industry within the meaning of the Anti Dumping Rules.

C.2. Views of the Exporter, Importer, consumer and Other Interested Parties

Representations by Hong Kong Government:

13. The following representations are made by The Trade and Industry Department of the Government of the Hong Kong Special Administrative Region (HKSARG) with respect to this initiation.

14. The scope of the present representations covers the Indian Authority's AD proceedings against flax fabrics originating in or exported from Hong Kong. Further, representations may be submitted to the Indian Authority in the light of information, which may become available at a later date.

15. We regret that the Indian Authority has initiated the AD investigation against imports of flax fabrics originating in or exported from Hong Kong based on unsubstantiated evidence and flimsy arguments as presented in the non-confidential version of the petition document filed by Jaya Shree Textiles.

16. HKSARG wholly rejects Jaya Shree Textiles' allegations against Hong Kong. We are of the view that Jaya Shree Textiles failed to provide sufficient evidence to justify the initiation of the AD investigation against Hong Kong.

17. We consider that the Indian Authority should not have initiated the current AD proceedings against Hong Kong based on Jaya Shree Textiles' flimsy arguments. We are of the view that by initiating the current AD proceedings against Hong Kong, the Indian Authority has not acted in accordance with the World Trade Organisation Agreement on Implementation of Article VI of the GATT 1994 ("the WTO AD Agreement"), particularly its Article 5.3. We reserve our right to pursue the case further in accordance with the relevant provisions of the WTO AD Agreement.

18. We demand that the Indian Authority should terminate the AD proceedings against the imports of flax fabrics originating in or exported from Hong Kong immediately.

19. The Indian Authority is obliged under Article 5.3 of the WTO AD Agreement to “*examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation*”. As we elaborate in the following paragraphs, we have found that the information contained in the petition document is inadequate to justify initiation of the current AD proceedings.

D. OTHER ISSUES

D.1. VIEWS OF THE DOMESTIC INDUSTRY

a. Unauthorized participation/submission and untimely submissions

20. Petitioner submits that a number of parties seem to be participating in the present investigations without providing (a) authorization in their favour; and/or (b) relevant information in the form and manner prescribed within specified time limits, (c) entering into investigations at such a belated stage of the proceedings. We hereby request the Designated Authority not to permit these.

b. Submissions made by Hong Kong Government

21. The government of Hong Kong contends that the Authority has erred in fixing the normal value. It is to be noted in this regard that such a contention is not open to the contender who is neither an exporter nor a manufacturer. In this case, Designated Authority has followed the procedure prescribed under Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules; 1995. Normally, only the exporter or the manufacturer of the articles can challenge the value fixed by the Designated Authority. The same has been held by the Tribunal in *AIIGMA v. Designated Authority-2000* (119) E.L.T. 333 (T). We, therefore request the Authority to reject this contention of the Hong Kong Government.

23. Further, it has been held in *Halder Topse* Supreme Court Judgement that if the respondent makes the export price based on an appropriate third country available to the Authority then it could have established the actual normal value of their product. Further, in *Gopal Krishnaji Ketkar v. Mahomed Haji Latiff & Others* (1968 3 SCR 862) court has further held that even if the burden of proof does not lie on a party the court may draw an adverse inference if he withholds important documents in his possession which can throw light on the present facts in issue. It is not a sound practice for those desiring to rely upon a certain state of affairs to withhold from the court the best evidence that is in their possession, which could throw light upon the issues in controversy than to rely upon the abstract doctrine of onus of proof.

24. Though the above decision was with reference to a proceeding in court of law, the same is equally applicable to the investigation conducted by the authority herein which has the duty of appreciating the evidence placed before it and also has the statutory authority of drawing adverse inference in the circumstances enumerated in Rule 6 (8) of the Rules.

D.2. VIEWS OF THE EXPORTER, IMPORTERS, CONSUMERS AND OTHER INTERESTED PARTIES

25. The Authority notes that none of the producers/ Exporters/Consumers and other interested parties except one importer of the subject goods in China and Hong Kong has responded to the Designated Authority.

D.3. EXAMINATION BY THE AUTHORITY

26. The Authority has examined the contentions made by Government of Hong Kong in this regard as well as the evidence available on record. With regard to standing of the domestic industry, Rule 2(b) states as under:

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

27. The Authority notes the observations made by the Trade Department of Hong Kong (HKSARG). The Authority observes that the Department should have substantiated the observations with evidence/ facts under their control instead of mere assertions.

E. NORMAL VALUE

E.1 MARKET ECONOMY TREATMENT CLAIM, ANALYSIS AND FINDINGS

28. None of the Chinese exporters has responded to the initiation notification.

E.2. NORMAL VALUE FOR CHINA

29. The Petitioner submits that normal value could not be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not available to the Petitioner. Export price from other countries to India cannot be adopted for the reasons that (a) volume of known imports are quite low (b) import price from other countries could be affected due to imports from subject countries. It should be noted that such normal value must be ‘comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country’. In order to arrive at normal value on this basis, the Authority shall require complete & exhaustive verifiable information on all domestic sales made by a cooperating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade). Petitioner has claimed that it has not been able to procure such information from a producer in market economy third country.

30. Petitioner has further claimed that consideration of India as a surrogate country would result in access to accurate and adequate information. It has been pointed out that India has been considered as an appropriate surrogate country by other Investigating Authorities also. None of the interested parties have made any submissions in this regard. Nor any other interested party has suggested any other country as an appropriate market economy third country.

30. Petitioner has been exporting the product under consideration to a number of countries. Amongst these, significant exports are being made to Malaysia. Therefore, considering that the price at which the material is being sold for consumption in the export market, the normal value on the basis of landed cost of its fabric in Malaysia comes to \$5.16/ mtr.

31. Alternatively, normal value in China can be determined on the basis of (a) price in India and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. Normal value on the basis of cost of production in India, duly adjusted comes to US\$ 4.70 per meter.

32. Considering all the information on record, the Authority has adopted India as an appropriate market economy country for Chinese Producers. Normal value on this basis comes to 4.70\$ per meter.

E.3. NORMAL VALUE IN CASE OF HONG KONG

33. None of the producers/exporters in Hong Kong has responded to the Authority. Petitioner would like to determine normal value in case of Hong Kong on the basis of constructed normal value, claiming that considering the price at which goods have been imported from Hong Kong, the same would not have permitted recovery of even associated direct costs and therefore cost of production was the most appropriate methodology for determination of normal value. Since none of the exporters from Hong Kong has responded to the Authority and further since there is no other information available to the Designated Authority, normal value in case of Hong Kong has been determined on the basis of estimates of cost of production, duly adjusted to include selling, general & administrative expenses and profits. The normal value on this basis comes to US\$ 4.70 per meter.

E.4. EXPORT PRICE:

34. Export price has been determined on the basis of weighted average import price into India, considering the information on volume and value of imports provided by IBIS. None of the Chinese producers have responded to the Designated Authority with verifiable information. Barring an importer M/s Celebrity Fashions Ltd. Chennai, none of the importers/consumers responded to the Authority with verifiable information. The information provided by M/s Celebrity Fashions Ltd. Chennai was examined by the Authority and it was found that whereas the known volume of imports during the investigation period was 1,27,67,974 meters from both the countries, imports reported by this responding importer accounts for 3,23,660 meters only, i.e., 2.53 % of total known imports.

35. As the quantity of imports reported is not very substantial and it might have already been reported under the IBIS import data, the export price has been determined on the basis of weighted average import price of the imports reported by the IBIS. These prices are CIF export prices. These export prices have been adjusted for expenses incurred between CIF and ex-factory, based on the claims made by the petitioner. The expenses on account of Ocean freight, Marine Insurance and others have been reduced from these CIF export prices. The net ex-factory export price, after adjustment of the above expenses is as follows:

Country	\$/Mtr
China	1.48
Hong Kong	2.14

E.5. DUMPING MARGIN

36. On the basis of normal values and net export prices determined as explained above at ex-factory level, the dumping margin during POI for all exporters are as per table below: -

US \$ Per Mtr		
Particulars	China	Hong Kong
Normal Value	4.70	4.70
Export price	1.48	2.14
Dumping margin amount \$	3.22	2.56
Dumping margin amount Rs.	132.59	105.09
Dumping margin %	219	120

37. The authority has adopted currency conversion rate for the POI as US \$/ RS= 40.75.

E.6. Representations by Hong Kong Government:

38. The following representations are made by The Trade and Industry Department of the Government of the Hong Kong Special Administrative Region (HKSARG) with respect to Normal value/export price and dumping margin.

(A) Normal Value

39. The petitioner has determined the normal value on the basis of constructed value without providing justifiable reasons. The methodology to calculate the constructed normal value is also not disclosed.

40. We note that during the Period of Investigation, the rate of imports from Hong Kong was not amongst the lowest ones. We also note that the “constructed normal value” per Mtr for Hong Kong is INR 191.66 or US\$ 4.7 per mtr. For Hong Kong estimated by the petitioner is much higher than the import prices (rates of imports) of the products from certain countries, such as France (INR 79.15), United Kingdom (INR 129.75) and Ireland (INR 142.86), whose

costs (presumably lower than the import prices) should generally be higher than those in Hong Kong. This “constructed normal value” we considered highly unusual and not reasonable. The accuracy and reliability of the estimation are, therefore, questionable.

6.1 EXAMINATION BY THE AUTHORITY

41. The authority has gone through the observations made by the trade department of Hong Kong (HKSARG). The Authority notes that the department should have substantiated their observations with the domestic prices of the PUC in Hong Kong or certain exporters from Hong Kong should have participated by providing information as per the exporter’s questionnaire. The authority notes that no exporter has responded from Hong Kong or the Trade department has also not furnished alternative domestic prices/ export prices prevalent during the POI in Hong Kong.

F. INJURY DETERMINATIONS AND EXAMINATION OF CAUSAL LINK

F.1.VIEWS OF THE DOMESTIC INDUSTRY

42. The followings are the views of domestic industry:-

a) Demand of the subject product in India was increasing throughout the injury period. Considering the increase in demand, the domestic industry has enhanced its capacity. However, the domestic industry is now faced with significant unutilized capacities.

b) Imports have increased in absolute terms. They have increased in relation to Indian production of the product in the Country and also in relation to demand/consumption of the product in India.

c) There is significant price undercutting due to dumped imports.

d) There is significant price underselling in the domestic industry due to dumped imports.

e) Even when both demand and sales of the domestic industry for the product were increasing over the injury period, the increase in sales in 2007-08 was marginal as compared to significant increase in demand.

f) Petitioner argued that its market for the product under consideration could be grouped into a number of segments. These are Retail; Whole Sale; RMG (Ready made Garment), Domestic; RMG Export; Export; FR/Industrial and Others. Petitioner argued that each of the above market segment represents a market with its own dynamics and while it would appear from the above overall sales volumes that the same were increasing over the injury period, sales volumes declined. Further, petitioner argued that (a) sales in the retail segment have increased significantly. (b) Sales in the wholesale segment have almost stagnated between 2005-06 and 2007-08. (c) Sales in RMG domestic have in fact declined. This is the segment where the imports are directly competing with the domestic industry. (d) Sales in RMG exports have also declined in proposed POI. (e) Exports of the domestic industry have been growing due to persistent efforts of the domestic

industry. (f) FR is a segment where the domestic industry has almost got vanished due to dumping. (g) Industrial segment is also affected due to dumping.

g) Average stocks with the domestic industry have gone up.

h) Profits of the domestic industry declined. The domestic industry has gone into a situation of financial losses from a situation of profits upto 2006-07.

i) Whereas the cost of sales increased throughout, selling price increased upto 2005-06, but declined thereafter. Consequently, profits increased in 2005-06, but declined thereafter significantly to such a situation that the domestic industry suffered financial losses in 2007-08.

j) Whereas the market shares of the imports have increased, that of the domestic industry has declined.

k) Employment and wages have increased in view of additions to the capacity.

l) Productivity improved in 2005-06, but declined consistently thereafter with the addition of capacities and lower utilization thereof due to dumped imports.

m) The growth of the domestic industry is negative in terms of most of the parameters, more particularly after 2005-06.

n) Due to pressure from subject-dumped imports, cash flow situation of the domestic industry has deteriorated.

o) Return on investment increased in 2005-06 with the improvement in profits, but consistently declined thereafter as a result of dumped imports in the market.

F.2. REPRESENTATION FROM HONG KONG:

43. Following are the submissions made by the Government of Hong Kong:

a) The share of imports from Hong Kong has decreased as compared with the same period last year despite of the increase in total demand.

b) The imports from Hong Kong have decreased in relation to the production or consumption in India during the POI as compared with the previous year. Therefore, it cannot be established, or at least is inconclusive, that there has been a 'significant increase' in imports from Hong Kong in relative terms.

c) We note that while the demand of the subject product increased throughout the period (increased by 39% from 2004-05 to 2007-08), the capacity of the Indian domestic industry grew at a much higher rate (increased by 74% from 2004-05 to 2007-08). Given

that the growth in capacity was almost double of that of the domestic demand, it is not unreasonable to experience decrease in capacity utilization unless the growth in exports could make up the difference. The logical consequence of over expansion would be declining return on investment, increasing in inventories, and in turn, suppression of selling price. Expansion of capacity also resulted in greater depreciation expenses, which would translate into poor performance on profitability in the event of over expansion.

d) Hong Kong only accounted for a small percentage of the Indian market, and such imports can only be a price taker instead of a price setter.

e) Furthermore, we notice that Hong Kong has not been mentioned in any of the supporting letters from other Indian producers enclosed as Annexure – 2.5 of the petition document. The petitioner has failed to provide sufficient and reliable evidence to justify the initiation of the AD Investigation. We urge the Indian Authority to terminate the AD Investigation against Hong Kong immediately.

F.3. EXAMINATION BY THE AUTHORITY

44. The authority has gone through the observations made by the Trade Department of Hong Kong (HKSARG) in respect of Injury. The Authority notes that the trend analysis needs to be compared from the base year. The trend of imports from Hong Kong shows an upward trend from the base year.

F.4.CUMULATIVE ASSESSMENT OF INJURY

45. As per annexure-II (iii) of the Rules, in case, imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that-

a) The margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article, and,

b) The subject goods have been imported from the subject countries under the same tariff classification;

c) The Authority has found that the imported subject goods are commercial substitutes of the domestically produced Flax Fabrics.

21. The Authority holds that it is appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article in the light of conditions of competition between the imported products and the like domestic product.

46. With a view to assess the conditions of competition between imported products and the like domestic product, the Authority notes that -

a) The subject goods have been imported from the subject countries under the same tariff classification;

b) The Authority has found that the imported subject goods are commercial substitutes of the domestically produced Flax fabric.

c) The information furnished to the Authority gives a reasonable indication that the exports made from the subject countries compete in the same market, as these are like products.

47. As is evident from the detailed injury analysis in tables below, imports of subject goods increased significantly in absolute terms. Subject imports increased significantly in relation to total imports into India, production and consumption in India. With regard to price effect, imports were significantly undercutting the prices of the domestic industry in the market, increase in selling price of the domestic industry were far below than the increase in cost of production resulting in decline in profits and eventually financial losses in 2007-08 from a situation of a reasonable level of profit in the year 2005-06. Price undercutting resulted in price suppression as well as price depression. Performance of the domestic industry in terms of economic parameters improved till 2005-06 and thereafter deteriorated in terms of production, capacity utilization, selling price, profits, cash profit and return on investments. Market share declined and inventories increased throughout the injury period. If sales are segmented, while retail sales of the domestic industry increased, rest of all sales stagnated after 2005-06 and in fact declined in the proposed POI in spite of significant increase in demand of the product in the Country. It is thus evident that the domestic industry has suffered material injury as a result of increased/continued-dumped imports from China PR and Hong Kong.

48. Therefore, the Authority notes that it is appropriate to, cumulatively assess the effect of imports of the subject goods on the domestically produced like article, in the light of conditions of competition between the imported products and the like domestic product.

49. The Authority has taken note of various arguments put forth by the Domestic Industry (There was no response from other interested parties).

50. Annexure II of the AD Rules requires that determination of injury shall involve an objective examination of both:

a) The volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and

b) Consequent impact of these imports on domestic producers of such products.

51. The Authority while examining the volume of dumped imports is required to examine whether there has been a significant increase in the dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the authority is required to examine whether there has been

significant price undercutting by the dumped imports as compared to 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 increase which otherwise would have occurred to a significant degree.

52. For the purpose of injury analysis the Authority has examined cumulative effect of dumped imports of the subject goods on the domestic industry and its effect on all relevant Economic factors and indices having a bearing on the state of industry to evaluate the existence of injury and causal links between the dumping and injury, if any.

53. Since significant dumping margins have been established for the exports from the subject countries, entire exports from the subject countries have been treated as dumped imports for the purpose of injury analysis and causal link examination.

F.5. VOLUME EFFECT OF DUMPED IMPORTS AND IMPACT ON DOMESTIC INDUSTRY

54. The Authority notes that the imports of product under consideration from other countries are either negligible or the export price is higher.

55. The Authority notes that there is no contraction in the demand during POI. On the contrary, overall demand for subject goods has shown significant positive growth during the injury period. There is no significant change in consumption pattern of the product in the domestic market, which could be attributed to the injury to the domestic industry.

A) ASSESSMENT OF DEMAND

56. The demand or consumption of the product in the Country has been determined as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed can be seen in the table below:

	Figures in Lac Mtr			
	2004-05	2005-06	2006-07	2007-08
Demand/ Consumption	175.71	207.33	219.91	241.34
Trend (indexed)	100	117	125	137
Capacity of the Domestic Industry	38.16	44.64	49.68	66.24

Demand of the subject product in India was increasing throughout the injury period. Considering the increase in demand, the domestic industry has enhanced its capacity. However, the domestic industry is now faced with significant unutilized capacities.

B) VOLUME EFFECTS OF DUMPED IMPORTS: IMPORT VOLUMES AND MARKET SHARES

57. Volume of dumped imports has increased over the years. The imports in relation to production and consumption in India are given in the table below:

Figures in Lac Mtr

Demand	2004-05	2005-06	2006-07	2007-08
Sales of DI	29.40	36.35	39.07	39.59
Sales of other Indian products	43.19	50.29	54.69	62.87
Import-China/Hong Kong	76.63	92.40	107.22	125.3
Import-other countries	26.50	28.29	18.93	13.58
TOTAL DEMAND	175.72	207.33	219.91	241.34
INDEX	100	118	125	137
Production of DI	33.56	42.48	46.89	44.47
Indian production	79.44	95.43	105.60	111.6
%Share of import in relation to				
Total imports	74.30	76.56	84.99	90.22
Demand in India	43.61	44.57	48.76	51.92
Indian production	96.46	96.82	101.5	112.2

It is seen that:

- a) Imports have increased in absolute terms;
- b) Imports have increased in relation to Indian production of the product in the Country;
- c) Imports have increased in relation to demand/consumption of the product in India.

In view of the above, it is concluded that dumped imports show adverse volume effect.

F.6. PRICE EFFECT OF IMPORTS

58. With regard to the effect of the dumped imports on prices, the Authority is required to consider 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.

The comparison is as follows:

	China	Hong Kong
Net sales realization	***	***
Landed Price	74.69	105.25

Price Undercutting	***	***
% Price undercutting	64.77	50.35

A) PRICE SUPPRESSION/DEPRESSION

59. Dumped imports are depressing the prices of the domestic industry. CIF import price of the subject goods from China and Hong Kong have declined continuously over the injury period. The selling prices of the domestic industry have declined in the same direction and to the same extent as that of imports.

B) Price underselling

60. Landed price of imports is significantly below the non-injurious price of the domestic industry resulting in significantly positive underselling.

C) Economic Parameters of The Domestic Industry

61. Annexure II to the Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The Petitioner has submitted that examination of performance of the domestic industry would reveal that the domestic industry has suffered material injury. Further, the domestic industry is threatened with material injury, should the present condition continue, as discussed in detail herein under.

a) Production, capacity and capacity utilization

62. Actual production, capacity and capacity utilization of the domestic industry have been provided in the following table.

	2004-05	2005-06	2006-07	2007-08
Capacity	38.16	44.64	49.68	66.24
Increase in capacity		6.48	5.04	16.56
Production	33.56	42.48	46.89	44.47
Increase in production		8.91	4.41	(2.42)
Capacity utilization	87.95	95.15	94.39	67.13
Demand	175.72	207.33	219.91	241.34

Index	100	118	125	137
Increase in demand		31.62	12.58	21.43

It is observed that:

- (a) demand for the product under consideration increased throughout the injury period;
- (b) as a result of increase in demand, the domestic industry enhanced its capacities;
- (c) even when the domestic industry was able to increase its production in proportion to increase in capacities till 2006-07, the same was not true for 2007-08. In fact, the production of the domestic industry declined whereas the capacity increased.
- (d) Capacity utilization of the domestic industry declined significantly in 2007-08.

b) Sales volumes of domestic industry are given in the following table:-

	Lac. Mt			
	2004-05	2005-06	2006-07	2007-08
Domestic Sales	29.40	36.35	39.07	39.59
Increase in sales		6.96	2.71	0.52
Increase in demand		31.62	12.58	21.43

63. It is seen that even when demand and sales of the domestic industry for the product both were increasing over the injury period, the increase in sales in 2007-08 was marginal as compared to significant increase in demand. Thus, even when the domestic industry enhanced capacity and was having unutilized capacities and demand for the product was increasing in the market, sales volumes of the domestic industry could increase only marginally.

c) Segment Analysis

64. Petitioner argued that its market for the product under consideration can be grouped into a number of segments. These are Retail; Whole Sale; RMG (Ready made Garment), Domestic; RMG Export; Export; FR/Industrial and Others. Petitioner argued that each of the above market segment represents a market with its own dynamics and while it would appear from the above overall sales volumes that the same were increasing over the injury period, sales volumes declined, if the same are examined more closely on segment basis as would be seen from the following –

	(Lac Mtrs.)			
	2004-05	2005-06	2006-07	2007-08
Retail	4.29	6.24	6.85	8.28
Whole Sale	5.74	9.44	9.88	9.38
RMG Domestic	10.16	12.39	11.58	11.76

RMG Export	7.35	6.80	10.62	9.06
FR	3.08	2.76	1.06	0.21
Industrial	2.71	2.71	3.07	4.34
Total Domestic	33.34	40.34	43.06	43.04
Less trading	3.94	3.98	3.99	3.45
Domestic without trading	29.40	36.35	39.07	39.59
Exports	2.59	3.84	3.40	4.06
Total sales	35.93	44.18	46.45	47.10

65. Based on the above, petitioner argued that (a) sales in the retail segment have increased significantly. This is the segment where the company has its own retail outlets. (b) sales in the wholesale segment have almost stagnated between 2005-06 and 2007-08. This is the segment where the imports are also equally present. (c) Sales in RMG domestic have in fact declined. This is the segment where the imports are directly competing with the domestic industry. (d) Sales in RMG exports have also declined in proposed POI. Imports are competing in this segment. (e) Exports of the domestic industry have been growing due to persistent efforts of the domestic industry. (f) FR is a segment where the domestic industry has almost got vanished due to dumping. (g) Industrial segment is also affected due to dumping.

66. The Authority notes that sales of the domestic industry increased only because of its own retail chain. In fact, if the sales of the domestic industry are divided into (a) retail and (b) others, it is seen that the sales of the domestic industry were stagnating/reducing, in spite of significant positive growth in the market, as would be seen from the table below.

	2004-05	2005-06	2006-07	2007-08
Retails	4.29	6.24	6.85	8.28
Other than Retails	29.05	34.10	36.21	34.76
Total	33.34	40.34	43.06	43.04

INDEX

	2004-05	2005-06	2006-07	2007-08
Retail	100	145	160	193
Other than retail	100	117	125	120
Total Index	100	121	129	130

d) Inventories:

67. Inventories with the domestic industry have been as under:

	2004-05	2005-06	2006-07	2007-08
Average stock	6.57	8.50	11.85	14.48
Index	100	129	180	220
Stock as no. of days of sales	75	77	102	121

The Authority notes that average stocks with the domestic industry have gone up.

e) Profits

68. Profits of the domestic industry declined. The domestic industry has gone into a situation of financial losses from a situation of profits upto 2006-07.

	Unit	2004-05	2005-06	2006-07	2007-08
Cost of sales	Rs/Mtr	***	***	***	***
Selling Price	Rs/Mtr	***	***	***	***
Profit before tax	Rs/Mtr	***	***	***	(***)
Profit before tax	Rs/Lacs	***	***	***	(***)
PBIT	Rs/Lacs	***	***	***	***

INDEX

	Unit	2004-05	2005-06	2006-07	2007-08
Cost of sales	Rs/Mtr	100	103	107	115
Selling price	Rs/Mtr	100	106	105	105
Profit before Tax	Rs/Mtr	100	161	81	65

69. Whereas the cost of sales increased throughout, selling price increased upto 2005-06, but declined thereafter. Consequently, profits increased in 2005-06, but declined thereafter significantly to such a situation that the domestic industry suffered financial losses in 2007-08.

70. It has been submitted that the domestic industry enhanced their capacity in the hope that it would participate in the positive growth of the product in the Country. However, unfair pricing situation created by the dumped imports prevented the company from benefiting from the increase in demand. Whereas the domestic industry made investments with the hope that it would improve its profitability, just the reverse happened due to unfair dumping of the product in the Country.

f) Market share

71. Share of the domestic industry and various other parties in demand in India was as under:

Figures in %

Particular	2004-05	2005-06	2006-07	2007-08
Domestic industry	16.73	17.53	17.77	16.40
Other Indian Industry	24.58	24.26	24.87	26.05
Total Indian Industry	41.31	41.79	42.64	42.45
Subject countries	43.61	44.57	48.76	51.92
Other countries	15.08	13.64	8.61	5.63
Total imports	58.69	58.21	57.37	57.55
Total Capacity/Demand DI	100	100	100	100

72. Market share of the domestic industry improved up to 2006-07, but declined in the POI. This decline in market share is in a situation where (a) the demand in the Country showed significant growth; (b) the domestic industry had expanded capacity in order to meet higher demand. It is also relevant to point out that the price undercutting and dumping by the Chinese imports is found in the entire injury period. The market share of Indian industry remained stagnant during the Injury period. Whereas the domestic industry had hoped to improve its market share as a result of enhancement of capacities, it was faced with a situation of stagnation/reduction in market share because of dumped imports in the market.

g) Employment and Wages

74. Employment and wages have increased in view of additions to the capacity.

Particular	Unit	2004-05	2005-06	2006-07	2007-08
No. of employees	Nos.	255	262	324	328
Wages	Rs/Lacs	***	***	***	***
Wages per employee	Rs	***	***	***	***
Index		100	112	107	105

It is seen that wage per employee has increased over the base year.

h) Productivity

75. Productivity of the domestic industry shows same trend as that of production. Productivity improved in 2005-06, but declined consistently thereafter with the addition of capacities and lower utilization thereof due to dumped imports. Petitioner claimed that considering the rate of present situation and latest performance of the domestic industry, domestic industry would not be able to maintain its productivity, should the dumped imports be allowed to continue at the current prices.

Particular	Unit	2004-05	2005-06	2006-07	2007-08
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Production	Lac Mtrs	33.56	42.48	46.89	44.47
Productivity per day	Mtr	9589	12136	13397	12705
Productivity employee	Mtr	13161	16212	14473	13557
Index		100	112	110	103

xiii) Factors affecting domestic prices

76. Landed price of subject imports including applicable customs duty is significantly below the sales realization. Dumped imports are significantly undercutting the prices of the domestic industry in the Indian market. Consequently, whereas cost of production continuously increased, increase in selling price in 2006-07 was lower than increase in cost of production. Further, whereas the cost of production increased, selling price declined in the POI, causing price depression and price suppression, as would be seen from the table below.

	Rs/Mtr			
	2004-05	2005-06	2006-07	2007-08
Net sales realization	***	***	***	***
Landed price for subject countries	58.68	69.91	81.13	77.59
Cost of production	***	***	***	***
Price undercutting	***	***	***	***
Index	100	101	92	94

xiv) Return on investments

77. Return on investments shows the same trend as that of profits. Return on investment increased in 2005-06 with the improvement in profits, but consistently declined thereafter as a result of dumped imports in the market.

Unit		2004-05	2005-06	2006-07	2007-08
Profit/Loss (PBIT)	Rs/Lacs	***	***	***	***
ROCE (GFA)	%	14.71	23.05	14.97	3.73
ROCE (NFA)	%	20.28	20.27	19.17	4.50
Index		100	149	95	0.22

xv) Cash Flow

78. Cash flow position of the domestic industry shows same trend as of profits. Due to pressure from subject-dumped imports, cash flow situation of the domestic industry has deteriorated, as would be seen from the table below. Though, the industry was able to make cash profits, the same were improving till 2005-06 and started declining thereafter.

	Unit	2004-05	2005-06	2006-07	2007-08
Cash flow	Rs/Lacs	N A	***	***	(***)
Cash flow	Per/MTR	N A	***	***	(***)
Cash Profit	Rs/Lacs	***	***	***	***
Cash Profit	Per/MTR	***	***	***	***
Index		100	150	102	0.22

xvi) Growth

79. The growth of the domestic industry is negative in terms of most of the parameters, more particularly after 2005-06.

F.7.Representation from Hong Kong:

80. We note from Annexure 1.4 that the import data on flax fabrics from Hong Kong are as follows:

Year	Volume (Mtr) (a)	Value (INR) (b)	Rate (b)/(a)	Share
2004-05	633,287	63,947,734	100.98	6.06
2005-06	986,220	89,214,724	90.46	7.80
2006-07	1,259,021	151,366,187	120.23	9.81
2007-08 (POI)	1,321,020	123,413,060	93.42	9.15

81. Article 3.2 of the WTO AD Agreement requires the Indian Authority to “consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member”. In this connection, the share of imports from Hong Kong has decreased as compared with the same period last year despite of the increase in total demand (p. 16 of the non-confidential version of petition document).

82. According to the data provided in the petition document, we have worked out the imports from Hong Kong in relation to production and consumption in India as follows:

	2004-05	2005-06	2006-07	2007-08
Import Volumes (Lac/Mtr)	6.33	9.86	12.59	13.21
Share of Imports in relation to				
Total imports in India %	6.06	7.80	9.81	9.15
Demand in India %	3.57	4.63	5.67	5.35
Indian Production %	7.97	10.33	11.92	11.83

83. The above table shows that the imports from Hong Kong have decreased relative to production or consumption in India during the POI as compared with the previous year.

Therefore, it cannot be established, or at least is inconclusive, that there has been a 'significant increase' in imports from Hong Kong in relative terms.

Examination by the Authority

The injury examination is carried out from the base year. From the base year, the imports from Hongkong shows an increase of approx.3%

G. CAUSAL LINK

84. In order to reach conclusions on the cause of the injury suffered by domestic industry and in accordance with Article 3.5 of Agreement on Anti-Dumping and Para (v) of Annexure-II of Rule 11 of the Indian Rules, the Authority examined the impact of listed known factors and their consequences on the situation of the domestic industry. Known factors other than dumped imports, which could at the same time have injured the domestic industry were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

G.1. Examination of Other Known Factors

A. Volume and prices of imports from other sources

85. The Authority notes imports of product under consideration from other countries are either negligible or the export price is higher.

B. Contraction in demand and / or change in pattern of consumption

86. The Authority notes that there is no contraction in the demand during POI. On the contrary, overall demand for subject goods has shown significant positive growth during the injury period. There is no significant change in consumption pattern of the product in the domestic market, which could be attributed to the injury to the domestic industry.

C. Trade restrictive practices of and competition between the foreign and domestic producers

87. The Authority notes that there is a single market for the subject goods where dumped imports from subject country compete directly with the subject goods produced by domestic industry. Imports of various types of product under consideration are being sold in the same market as goods being sold by the domestic industry. No evidence of trade restrictive practices of and competition between the foreign and domestic producers has come to the notice of the Authority.

D. Development in technology

88. On the basis of examination of the records, the Authority provisionally holds that development in technology has not been a relevant factor for the injury to the domestic industry.

E. Export performance

89. The Authority notes that the export volumes of the domestic industry have increased over the injury period. Possible decline in exports volume does not appear to have caused injury to the domestic industry.

F. Productivity of the Domestic Industry

90. The productivity per employee has increased during the investigation period over the base year.

G. Conclusion on Causation

91. In view of the above, the Authority concludes that injury suffered by the domestic industry due to other factors is non-existent or far too insignificant as compared to injury suffered because of dumped imports (para 47 above). The situation of the domestic industry has shown a material deterioration over the injury period, which was substantially due to dumped imports. Decline in market share of the domestic industry during investigation period as a consequence of increase in dumped import volumes leading to sub-optimal increase in sales volumes, which in turn prevented the domestic industry from improving its production & capacity utilization, price undercutting by dumped imported leading to decline in profits, return on investments and cash flow establishes that injury to the domestic industry was caused by dumped imports. The Authority concludes that the domestic industry has suffered material injury due to dumped imports.

H. Magnitude of Injury Margin

92. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted average landed price of the exports from the subject country and the injury margins have been worked out as follows.

Injury margin calculations

		Rs/Mtr
China		Hong Kong
Landed price	74.69	105.25
NIP	***	***
Injury margin	162.59	132.03

I. Comments to Disclosure Statement

Submissions of Domestic Industry

93. i)It has been stated that the Domestic industry has been producing and selling fabrics with below 50% flax content. During the course of investigations, the petitioner has provided detailed statement showing type-wise fabric production. It would be seen that

the petitioner has produced flax fabric having flax content below 30%. It is therefore requested to review the disclosure statement and include flax fabric with flax content of more than 30% within the scope of the product under consideration.

ii)The submissions made by Hong Kong are untenable due to various reasons.

iii)The petitioner manufactures yarn and the same is captively consumed to make fabrics. It is submitted that only captive transfer rate is required to be considered.

iv)The duty should be in terms of US\$ when the exchange rate exceeds average of the POI. The duty should be in INR when the exchange rate falls below the average of the POI.

94. Examination by the Authority

The Authority notes that as per the grade-wise production statement, the domestic industry has produced fabric having flax content of 30-50%. This is 0.62% of the total production. As the domestic industry is not making substantial production of the fabric having flax content of upto 50%, the Authority has therefore concluded the product under consideration to have flax content of more than 50%. The other arguments raised by the domestic industry have been duly considered in these findings.

G. 2. Indian industry's interest & other issues

95. The Authority recognizes that imposition of anti-dumping duties might affect the price level of product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or even more sources of supply.

96. 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 products to the consumers.

H. CONCLUSIONS:

97. Having regard to the issues raised, information provided and submissions made by the interested parties and facts available before the Authority through the submission of interested parties including those made as comments to the disclosure statement or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current dumping and injury, the Authority concludes that:

- i. Imports originating in the subject countries are taking place at dumped prices and the same have caused material injury to the domestic industry.
- ii. Subject goods exported from the subject countries are at prices below their normal value, Non Injurious Price of the domestic industry and the net sales realization of the subject goods of the applicants, and have caused injury to the domestic industry.
- iii. Decline in market share of domestic industry as a consequence of increase in market share of subject imports from the subject countries prevented the domestic industry from increasing their sales commensurate to growth in demand.
- iv. Significant price-undercutting and substantial increase in the volume of dumped imports adversely affected the performance of the domestic industry in terms of profits, cash flow, and return on investment.
- v. Significant increase in volume of dumped imports from the subject countries (both in absolute terms as well as in relation to the share in demand) has resulted in significant decline in market share of the domestic industry.

98 Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly the Authority recommends the definitive anti dumping duty be imposed on all imports of Flax Fabrics originating in/or exported from China PR and Hong Kong. Dumping duty equal to the difference between the amount indicated in Col. 8 of the table below and the landed value of imports/kg. to be imposed from the date of notification to be issued in this regard by the Central Government on all the imports of Flax Fabrics falling under Chapter 53, Custom Sub-heading 53.09 of the Customs tariff originating in or exported from the countries mentioned below:-

Sl No	Sub-Heading	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
2	53.09	Flax fabric	China	China	Any	Any	206.24	Mtr	Rs
3	53.09	-do-	China	Any	Any	Any	206.24	Mtr	Rs
4	53.09	-do-	Any	China	Any	Any	206.24	Mtr	Rs
5	53.09	-do-	Hongkong	Hongkong	Any	Any	209.72	Mtr	Rs
6	53.09	-do-	Hongkong	Any	Any	Any	209.72	Mtr	Rs
7	53.09	-do-	Any	Hongkong	Any	Any	209.72	Mtr	Rs

99. 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.

100. Subject to above, the Authority confirms the provisional findings dated 17th February, 2009 and corrigendum notification dated 27th February, 2009 and recommends

imposition of the anti-dumping duty as in Para above and the duty table as above from the date of imposition of provisional anti-dumping duty.

101. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

R. Gopalan
The Designated Authority