

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

NOTIFICATION

Preliminary Findings

New Delhi, the 17th February, 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.

2. WHEREAS M/s Jaya Shree Textiles (A unit of Aditya Birla Nuvo Ltd.) India (hereinafter referred to as the applicant) and supported by seven other manufacturers filed an application before the Designated Authority (hereinafter referred to as the Authority), in accord with the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the Rules), alleging dumping of **Flax Fabrics** originating in or exported from **China PR & Hong Kong** and have requested for initiation of anti-dumping investigations and levy of anti-dumping duties on the subject goods.

3. 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 3rd October, 2008 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject countries in accordance with the sub-Rule 6(1) of the Rules to determine existence, degree and effect of alleged dumping and the need to recommend the amount of antidumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

PROCEDURE

4. Procedure described below has been followed with regard to this investigation by the Authority.

- (i) The Authority notified the Embassy of China in India and for Hong Kong also the Embassy of China in India about the receipt of dumping application made by the applicants 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 3rd October 2008 to the Embassy of China in India and the Director General, Bureau of Fair Trade for Imports and Exports, Ministry of Foreign Trade & Economic Cooperation, China and for Hong Kong also the Embassy of China in India and The Trade and Industry Department, Hongkong, known exporters from the subject countries, importers and the domestic industry as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.
- (iii) The Authority provided copies of the non-confidential version of the application to the known exporter and to the Embassy of China in India and the Director General, Bureau of Fair Trade for Imports and Exports, Ministry of Foreign Trade & Economic Cooperation, China and for Hong Kong also the Embassy of China in India and The trade and Industry Department, Hongkong in accordance with Rule 6 supra.
- (iv) The Embassy of China in India and the Director General, Bureau of Fair Trade for Imports and Exports, Ministry of Foreign Trade & Economic Cooperation, China and for Hong Kong also the Embassy of China in India and The Trade and Industry Department, Hongkong were informed about the initiation of the investigation in accordance with Rule 6 with a request to advise the exporter/ producers from their country to respond to the questionnaire within the prescribed time. A copy of the letters and questionnaire sent to the exporter/producers was also sent to them, along with the names and addresses of the exporter.
- (v) The Authority sent questionnaire, to elicit relevant information to the following known exporters in the subject countries in accordance with Rule 6(4);

Exporters:

- | | |
|--|---|
| 1. Yangxin Yuandong Textile Co.
No.8-140, Fushan Rd., Yangxin,
Huangshi, Hubei, China | 2. Changshu tonghe group co Ltd
No.28, Miaodong Rd., Miaoquan
Town, Changshu, Jiangsu,
China PR |
| 3. Hunan Huasheng Industrial &
Trading Co. Ltd, 420, 3 rd Section
Middle Furong Road,
Changsha, Hunan, China | 4. Mengyin cotton textile co Ltd
No. 66 Wenher Road, Mengyin. City :
Mengyin. Province : Shandong,
China PR |
| 5. Suzhou Zhenlong Textile Co., Ltd
Nanxin Area, Huangqiao Town,
Xiangcheng, Suzhou, Jiangsu, China. | 6. Harbin Chaolong flax co Ltd
Nangang District, Harbin, Heilongjiang
Province on the 28 th Yushan road .,
China PR |
| 7. Polytex Linen Cotton Limited
Block C,D,E 20/F, Excelsior Building
68-76 Sha Tsui Road, Tsuen Wan,
N.T. Hong Kong. | 8. Jiangsu Fanjia Flax Textile Mill Co.,
Ltd Zhen, ZhaoShi, SuZhou, Jiangsu.
China PR |
| 9. HK Zishun Int'l Industry Limited
Flat Rm B,8 / F , Chong Ming Building
72 Cheng Sha Wan Rd, KI
Hong Kong. | 10. Suzhou Nanya Group
1,Cheng Zhong Road, Xiang Cheng
Town, Xiang Cheng District, Suzhou,
Jiangsu, China PR |
| 11. Binfenzhuang Fabric Co Ltd
No.102-105, B F1., Tianhui Square,
Wanshang RD., China Textile City,
Shaoxing, Zhejiang, China | 12. Qiqihar zhong tian textile co Ltd No.
170, Heping Rd., Fulaerji District,
Qiqihar, Heilongjiang, China |
| 13. Huafang Ramie Textile Co Ltd
201# 2Building, Jinhu City Homeland,
Shicheng Av., Tongling, Anhui, China | 14. Wujin Huanyu Textiles Co Ltd
Nanxiashu Town, Wujin, Changzhou,
Jiangsu, China |

- (vi) No Exporter has responded to the exporter's questionnaire. The Trade and Industry Dept of the Govt of the Hongkong Special Administrative Region Hongkong Govt have responded to the initiation notification.
- (vii) Questionnaires were sent to following known importers and users of subject goods in India calling for necessary information in accordance with Rule 6(4).

Importers:

1. K.Mohan Textiles B1,2/5, Begur Road, Bommanahalli , BANGALORE. 560076
2. Prateek Apparels Pvt Ltd. No. 113, Krishna Reddy Industrial Area, 7th Mile, Kudlu Gate, Hosur Road, Bangalore -560068
3. Ambattur Clothing Co Ltd... 86/L, Ambattur Industrial Estate, Ambattur Chennai 600058, Tamil Nadu.
4. Aditya Birla Nuvo Ltd. 110, 4th Cross, 5th Block, Koramangla Ind Layout, Madura Garments Division, Bangalore-560095
5. Shahi Exports, Pvt Ltd. Shahi export house, IP-1, Sector- 28 Mathura Road (5 Km From Badarpur Border) Faridabad – Haryana
6. Mulberry Silk Limited, Shaughnessy Road, Mulberry House No. 20. Bangalore-560025
7. Leela Scottish, Chennai A-8 & 9, Guindy Industrial Estate, Chennai, 600032
8. Colourplus Fashions Pvt. Ltd. C-10, Industrial Estate, Ambattur, Chennai-600058.
9. Richa & CO B-108 , Mayapuri, Phase-I New Delhi, 110064
10. Indian Terrian Clothing Pvt. Ltd., 107, AGST Road, Chrompet, Chennai-600014
11. Chopda Associates Kamala City, SB Marg, Lower Parel, 3, Ground Floor, B Wing, Trade Wor, Mumbai
12. Orient Crafts Ltd, KH 20-22 Khekri Daula Gurgaon, 122016 (HR) India.
13. Mohan Clothing Co (P) Ltd., 76, Udyog Vihar, Phase-1, Gurgaon Gurgaon-
14. Orient Clothing, Co. P. Ltd. 298-300, Phase-VI, Udyog Vihar, Gurgaon
15. ITC LTD. 86, Udyog Vihar Phase-1, Lifestyle Retaining Business Division, Gurgaon 122016.
16. Gokaldas Images, Bangalore. 7 & 12, Industrial Suburb, 2nd Stage, Tumkur Road, Yeshwanthpur, Bangalore, 560022
17. Raymond Apparels Ltd., Building D-2, Gala 1010, Kahler Village, Kahler, Sriarihat Complex, Bhiwandi-400606
18. Textiles 198/2/1, Surya Fortune Tower, Ramesh Market, East Of Kailash, Garhi, New Delhi-110065
19. Prasam Exports 508/09, Bezzola Commercial Complex, 115, Sion-Trombay Road, Chembur, Mumbai 400 071
20. Anish India Export 405 Pace City-II, Sector-37 Gurgaon, 122016

(Viii) Users:

- | | |
|---|--|
| 1. Donear Industries Ltd.
210, Key Tuo Industrial Estate,
Kondivita Lane, Near M.I.D.C,
Andheri [E] Mumbai – 400 059 | 2. Ranger Apparels Export (P) Ltd.
No. 2011 Gramthana,
Kacharkanahalli, Bangalore 560 084, |
| 3. Vijayeswari Textiles Ltd.
10/400 Palaghat Road, Kuniamuthur,
Coimbatore 641008 | 4. Shreyans Enterprises,
No 30.N.M.S.Compound
Erode 638001 |
| 5. Indian Linen Company
B-36, Sector 60, Noida 201301 | 6. Morarjee Textiles Ltd.
Plot No: G-2, MIDC, Industrial Area
Post-Salaidhaba, Via Hingna, Butibori,
Nagpur - 441 110 |
| 7. Auro Weaving Mills
(A Unit of Vardhman Textiles Limited)
Village : Baddi, Tehsil : Nalagarh
Himachal Pradesh | 8. V.S.Palaniswami Company, 24,
Sankari Bypass Road, Pallipalayam,
Erode, 638006, Tamilnadu. |
| 9. Sachdeva Textiles
A-53, Mangalpuri Industrial Area
Phase II, New Delhi | 10. VSM Weaves India Ltd.
4/88-1- Sankari Main
Road, Pallipalayam. ERODE – 638 006
Tamil Nadu. |
| 11. Mars Export
Nh-7, New Madurai Bye-Pass Road
, Karur-63 | 12. Vasanthi Fabrics,
3/415, Pappathy
Kadu, Vedyarasampalayam,
Pallipalayam, Agraharam
Erode. 638008, Tamilnadu |
| 13. Arvind Mills Limited
Shirtings Business Division Sante
Gujarat - 382721 | 14. Mahindraa Textiles
3/415, Pappathy
Kadu, Vedyarasampalayam,
Pallipalayam, Agraharam Erode.
638008, Tamilnadu |
| 15. Govardhan Overseas Pvt Ltd
21, Hospital Road, Karma Laxmi
Narayan Complex
Bangalore 53 | 16. Mayank Textiles
Vijay Mandi. Gaziabad 201010 |
| 17. Global Fibres & Fabrics Pvt. Ltd
301, Mansarover, 90, Nehru Place,
New Delhi 110 019 | |

- ix) In response to the above notification, M/s Celebrity Fashions Ltd, Chennai have filed their response in the importer questionnaire.
- (x) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and for the period of investigations;
- (xi) The Authority made available non-confidential version of the evidence presented by interested parties in the form of a public file kept open for inspection by the interested parties;
- (xii) Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti dumping duty lower than dumping margin would be sufficient to remove injury to Domestic Industry. For the purpose, domestic industry was directed to provide its cost of production duly certified by a practicing cost accountant.
- (xiii) *** in this Notification represents information furnished by the applicant on confidential basis and so considered by Authority under the Rules;
- (xiv) 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 April2004-March2005, April2005-March2006, April 2006-March2007 and the POI.
- (xv) 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.
- (xvi) The Authority satisfied itself with regard to accuracy of the information provided by the interested parties to the extent considered necessary at this stage.

PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. 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.

DOMESTIC INDUSTRY

8. Rule 2(b) defines domestic industry as under:-

(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 exporter 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:

9. 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, participating company constitutes domestic industry within the meaning of the Anti Dumping Rules.

10. **Representations by Hong Kong Government:**

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.

1. These representations are made by the Trade and Industry Department of the Government of the Hong Kong Special Administrative Region ("HKSARG" or "we") to the Directorate General of Anti-Dumping and Allied Duties of the Department of Commerce of the Ministry of Commerce and Industry of the Government of India ("The Indian Authority") concerning the anti-dumping ("AD") proceedings initiated by the Indian Authority on 3rd October, 2008 against imports of Flax Fabrics originating in or exported from among others, Hong Kong.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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.
7. 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.

10.1 Examination by the authority

The authority has gone through the observations made by the Trade Department of Hongkong (HKSARG). The Authority notes that the Deptt should have substantiated the observations with evidence/ facts under their control instead of mere assertions.

11. NORMAL VALUE

Market economy treatment claim, analysis and findings

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

12. Normal Value for China

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.

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.

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.

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.

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.

13. **Normal value in case of Hong Kong**

None of the producers/exporters in Hong Kong has responded to the Authority. Petitioner had determined 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.

14. **EXPORT PRICE:**

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.

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 following expenses have been reduced from these CIF export prices.

- Ocean freight,
- Marine Insurance,

The net ex-factory export price, after adjustment of the above expenses is as follows:

Country	\$/Mtr
China	1.48
Hong Kong	2.14

15. **DUMPING MARGIN**

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	
	China	Hong kong
Normal value	4.70	4.70
Export price	1.48	2.14
Dumping margin amount \$	3.23	2.56
Dumping margin amount Rs	132.59	105.09
Dumping margin %	219	120

The authority has adopted currency conversion rate for the POI as US \$/ RS= 41.05.

16. **Representations by Hong Kong Government:**

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

i) Article 2.1 of the WTO AD Agreement stipulates that the normal value is generally the price of the product at issue, in the ordinary course of trade, when destined for consumption in the exporting country market. Nevertheless, we note that the petitioner has determined the normal value on the basis of constructed value without providing justifiable reasons.

ii) The table at Annexure 3.2 of the Petition shows that “constructed normal value” per Mtr for Hong Kong is INR 191.66 or US\$ 4.7. We do not know how this “constructed normal value” is arrived at, as all the figures and the calculation, save the rate of flax fibre, have been blotted. Without prejudice to our question in paragraph 8 above, we would like to request the Indian Authority to provide all the missing data in Annexure 3.2 to us for our examination of their degree of reliability in establishing the constructed normal value for Hong Kong.

iii) We note that during the Period of Investigation (POI), the rate of imports from Hong Kong was not amongst the lowest ones. We also note that the “constructed normal value” of 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 developed European 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.

16.1 Examination by the authority

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

17. **METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK**

- i) The Authority has taken note of various arguments raised by interested parties in their submissions.
- ii) Article 3.1 of the ADA and Annexure II of the AD Rules provide for 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) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in 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 positive 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 would have otherwise occurred to a significant degree.
- iii) For the purpose of injury analysis the Authority has examined the effect of dumped imports of the subject goods on the domestic industry and its effect on production, capacity utilization, sales, prices and profitability, etc. to examine the existence of injury and causal links between the dumping and injury, if any.
- iv) Since positive dumping margins have been established for the exports from the subject countries, therefore, entire exports from the subject countries have been treated as dumped imports for the purpose of injury analysis and causal links examination.

18. **VOLUME EFFECT OF DUMPED IMPORTS AND IMPACT ON DOMESTIC INDUSTRY:**

i) **Assessment of demand**

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	***	***	***	***
Trend (Indexed)	100	117	125	137
Capacity of the domestic Industry	***	***	***	***

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.

ii) Volume Effects of Dumped Imports: Import volumes and market shares

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	***	***	***	***
Sales of other Indian products	***	***	***	***
Import-China/Hongkong	***	***	***	***
Import-other countries	***	***	***	***
TOTAL DEMAND	***	***	***	***
INDEX	100	118	125	137
Production of DI	***	***	***	***
Indian production	***	***	***	***
%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 :

- Imports have increased in absolute terms;
- Imports have increased in relation to Indian production of the product in the Country;
- 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.

iii) Price effect of imports

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:

	Rs/Mtr	
	China	Hong Kong
Net sales realization	*****	***
Landed Price	***	***
Price Undercutting	***	***
% Price undercutting	77.03	50.48

a) Price suppression/depression

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

Landed price of imports is significantly below the non-injurious price (Rs 237.28 per mtr) of the domestic industry resulting in significantly positive underselling.

iv) Economic Parameters of The Domestic Industry

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.

v) Production, capacity and capacity utilization

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

Lacs mtrs

	2004-05	2005-06	2006-07	2007-08
Capacity	***	***	***	***
Increase in capacity		6.48	5.04	16.56
Production	***	***	***	***
Increase in production		8.91	4.41	(2.42)
Capacity utilization	87.95	95.15	94.39	67.13
Demand in India	***	***	***	***
INDEX	100	118	125	137
Increase in demand		31.62	12.58	21.43

It is observed that

- demand for the product under consideration increased throughout the injury period;
- as a result of increase in demand, the domestic industry enhanced its capacities;
- 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.
- Capacity utilization of the domestic industry declined significantly in 2007-08.

vi) Sales Volume.

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

Lac. Mt

	2004-05	2005-06	2006-07	2007-08
Domestic Sales	***	***	***	***
Increase in sales		6.96	2.71	0.52
Increase in demand		31.62	12.58	21.43

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.

vii) Segment Analysis:

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	***	***	***	***
Whole Sale	***	***	***	***
RMG Domestic	***	***	***	***
RMG Export	***	***	***	***
FR	***	***	***	***
Industrial	***	***	***	***
Total Domestic	***	***	***	***
Less trading	***	***	***	***
Domestic without trading	***	***	***	***
Exports	***	***	***	***
Total sales	***	***	***	***

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.

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.

Figures in Lac Mtrs.

	2004-05	2005-06	2006-07	2007-08
Retails	***	***	***	***
Other than retail	***	***	***	***
Total	***	***	***	***

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	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

viii) Inventories:

Inventories with the domestic industry have been as under:

	Unit	2004-05	2005-06	2006-07	2007-08
Average stock	Lacs Mtr	***	***	***	***
Index		100	129	180	220
Stock as no. of days of sales	Nos	75	77	102	121

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

ix) Profits:

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	***	***	***	***

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	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)

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.

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.

x) Market share

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	100	100	100	100
Capacity of the domestic industry				
Demand in India				

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.

xi) Employment and Wages

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.	***	***	***	***
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.

xii) Productivity:

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
Production	Lacs Mtr	***	***	***	***
Productivity per day	Mtr	***	***	***	***
Productivity per employee	Mtr	***	***	***	***
Index		100	123	110	103

xiii) Factors affecting domestic prices

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	***	***	***	***
Cost of production	***	***	***	***
Price undercutting	***	***	***	***
Index	100	101	92	95

xiv) Return on investments

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)	%	***	***	***	***
ROCE (NFA)	%	***	***	***	***
Index		100	149	95	0.22

xv) Cash Flow

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	Na	***	***	***
Cash flow	Per/MTR	Na	***	***	***
Cash Profit	Rs/Lacs	***	***	***	***
Cash Profit	Per/MTR	***	***	***	***
Index		100	150	102	0.22

xvi) Growth

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

19. Representation from Hong Kong:

- i) 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

- ii) 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).

- iii) 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 (%) ²	6.06	7.80	9.81	9.15
• Demand in India (%) ³	3.57	4.63	5.67	5.35
• Indian Production (%) ⁴	7.97	10.33	11.92	11.83

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.

About Injury and causal link:

- iv) The petitioner claimed that the performance of the domestic industry deteriorated in terms of production, capacity utilisation, selling price, profits, cash profit and return on investment. Market share declined and inventories increased throughout the injury period. The petitioner concluded that the domestic industry has suffered material injury which has been caused by the dumped imports.
- v) 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 utilisation 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.
- vi) From the above, it can be seen that contrary to the assertion made by the petitioner, the injury to the Indian domestic industry might have been caused by at least one other factor i.e. the over expansion of capacity of Indian domestic industry. Thus, it is unfair and unjust to conclude that the injury to the domestic industry, if any, has been caused by the alleged dumped imports.
- vii) We reiterate our view that imports from 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. Stretching further that even in the unlikely event that there were dumping, which we do not see there is any such evidence, imports from Hong Kong would not have been the cause of the alleged injury.
- viii) Hong Kong adopts free trade policy and has been ranked as the world's freest economy for the 14th consecutive year by the Heritage Foundation in the Foundation's 2008 Index of Economic Freedom study. Given our open market and highly competitive environment, we believe that Hong Kong companies have neither the incentive nor support to engage in any dumping activities.
- ix) 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. Together with the reasons set

out in the present representations, we consider that the petitioners 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.

- x) We reserve our right to make further representations throughout the course of the AD proceedings. We also reserve our right to further pursue the case in accordance with the relevant provisions of the WTO Agreement.

20. Examination by the authority

The authority has gone thru the observations made by the Trade Deptt of Hongkong(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 Hongkong shows an upward trend from the base year.

21. **Conclusion on Injury**

- A) Cumulative assessment of injury
 - i) As per para iii of annexure-II, in cases where 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) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.
 - ii) With a view to assess the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product, -
 - a) The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%.
 - 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.

- iii) In view of the above, 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.

B) 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 and Hong Kong.

CAUSAL LINK

22. 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.

Examination of Other Known Factors

Volume and prices of imports from other sources

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

Contraction in demand and / or change in pattern of consumption

24. 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.

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

25. 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.

Development in technology

26. 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.

Export performance

27. 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.

Productivity of the Domestic Industry

28. Even though productivity per employee has declined during the investigation period, the same is because of dumped imports preventing full utilization of the capacities. Further, even if the productivity is considered at the same level as that of 2005-06 (when the domestic industry had best profits in the injury period), the provisional conclusion on the injury to the domestic industry would not be different.

Conclusion on Causation

29. In view of the above, the Authority provisionally 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. 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 imports 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 provisionally concludes that the domestic industry has suffered material injury due to dumped imports.

Magnitude of Injury Margin

30. 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	Hongkong
Landed price	***	***
NIP	***	***
Injury margin	***	***

Indian industry's interest & other issues

31. 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.

32. 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.

Recommendations

33. The Authority notes that the investigation was initiated, notified to all interested parties and adequate opportunity was given to the exporter, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted a preliminary investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having provisionally established positive dumping margin against the subject country, as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is required to offset dumping and injury pending completion of the investigation.

34. Therefore, Authority considers it necessary and recommends provisional anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder.

35. Having regard to the lesser duty rule followed, the Authority recommends imposition of provisional 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 in respect of all imports originating in or exported from China and Hong Kong. Accordingly, provisional antidumping duty equal to the difference between the amount indicated in Col 9 of the table below and the landed value is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject countries.

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	9	10	11
1.	53.09	Flax fabric	China	China	Any	Any	204.89	Mtr	Rs
2.		-do-	Any	China	Any	Any	204.89	Mtr	Rs
3.		-do-	Hongkong	Hongkong	Any	Any	205.52	Mtr	Rs
4.		-do-	Any	Hongkong	Any	Any	205.52	Mtr	Rs

For the purposes of this notification, "landed value" means the assessable value as determined under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the said Act;

Further Procedures

36. The following procedure would be followed subsequent to notifying the Preliminary findings:-

- The Authority invites comments on these findings from all interested parties and the same would be considered in the final finding;
- Exporter, importers, applicants and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the dispatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- The Authority would conduct further verification to the extent deemed necessary;
- The Authority would disclose essential facts before announcing final findings.

(R. Gopalan)
The Designated Authority