

MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI DUMPING AND
ALLIED DUTIES

New Delhi the 18th December, 2001

FINAL FINDINGS

Subject: Anti-Dumping investigation concerning imports of High Styrene Butadiene Copolymer/High Styrene Resin/Rubber (HSR) originating in or exported from Poland and Territory of European Union.

22/1/2000-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

The procedure described below has been followed:

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s Apar Industries Ltd. and M/s Apcotex Lattices Ltd. (hereinafter also referred to as petitioner) having registered offices at Apar House, Corporate Park, Sion-Trombay Road, Chambur, Mumbai-400021 and 49-53, Mahavir Centre, Plot No.77, Sector-17, Vashi, Navi Mumbai-400073 respectively on behalf of domestic industry, alleging dumping of High Styrene Butadiene Copolymer/High Styrene Resin/Rubber (HSR) (hereinafter referred to as subject goods) originating in or exported from Poland and Territory of European Union (hereinafter referred to as subject countries).
- ii. Preliminary scrutiny of the application filed by the petitioners revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iii. The Authority on the basis of prima-facie evidence submitted by the petitioner decided to initiate the investigation against imports of subject goods from Poland and Territory of European Union. The Authority notified the Embassy of Poland and Delegation of the European Commission in New Delhi(hereinafter also called Embassies of the subject countries) about the

- receipt of the dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.
- iv. The Authority issued a public notice dated 20.12.2000 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under Custom Code 4002.1902 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from Poland and Territory of European Union.
 - v. The Authority notified preliminary findings dated 13.3.2001 and forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter.
 - vi. The Authority also forwarded a copy of the preliminary findings to the Embassy of the subject countries in New Delhi with a request that the exporters/producers of subject goods and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in (v) above.
 - vii. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by petitioner) and industry/user associations and gave them an opportunity to make their views known in writing in accordance with the Rule 6(2), 6(3) and 6(4) .
 - viii. The Authority provided an opportunity to all interested parties to present their views orally on 9.5.2001 in accordance with Rule 6(6). All parties presenting views were requested to file written submissions of the views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
 - ix. The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request. Also on request of certain interested parties regarding additional information from the petitioner for offering comments was also made available to the extent it was relevant, feasible and permissible within the Rules;
 - x. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
 - xi. Response/information to the preliminary findings/disclosure were filed by the following interested parties:-

Domestic Industry

- i. M/s Apar Industries Ltd.
- ii. M/s Apcotex Lattices Ltd.

Exporter

- i. M/s Firma Chemiczna Dwory SA, Poland
- ii. M/s Bayer International S.A. Switzerland
- iii. M/s Enichem S.p.A. Italy

Importers/User Associations

- i. M/s All India Federation of Rubber Footwear Manufacturers, New Delhi
 - ii. M/s All India Rubber Industries Association, Mumbai
 - iii. M/s New India Rubber Works Pvt. Ltd., Calcutta
 - iv. M/s Banik Rubber Industries, Calcutta
 - v. M/s Paragon Rubber Industries
 - vi. M/s Paragon Polymers Products Ltd.
 - vii. M/s Malaya Trade Impex Polymers
 - viii. M/s Small Scale Rubber Industries Association
 - ix. M/s Rishiroop Polymers Pvt. Ltd.
 - x. M/s Leo Rubbers
-
- ix. Arguments raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently to preliminary finding and disclosure have been appropriately dealt in these findings;
 - x. Optimum cost of production and cost to make and sell the subject goods in India was worked out on the basis of Generally Accepted Accounting Principles (GAAP) and by analysing the cost information furnished by the petitioners.
 - xi. The Authority verified the information provided by the petitioners to the extent considered necessary and also conducted on spot verification of the data furnished by M/s Firma Chemiczna Dwory SA., the exporter from Poland .
 - xii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 22.11.2001.
 - xiii. ** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
 - xiv. The period of investigation (POI) considered is 1.1.2000 to 30.9.2000

B. VIEWS OF DOMESTIC INDUSTRY, EXPORTERS, IMPORTERS, USER ASSOCIATIONS AND OTHER

INTERESTED PARTIES & EXAMINATION BY AUTHORITY

The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paras herein below to the extent these are relevant as per rules and have a bearing upon the case. Certain interested parties have indicated that views expressed by them are not taken into account in the disclosure statement. The Authority has considered all views expressed by the interested parties to the extent they are relevant as per rules and have bearing on the case and have been appropriately considered in these findings. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paras herein below.

C.1 PRODUCT UNDER CONSIDERATION & LIKE ARTICLE

a) The following submissions have been made by M/s Apar Industries Ltd. and M/s Apcotex Lattices Ltd.:-

- i. The product involved in this investigation is High Styrene Butadiene copolymer. It is also commonly known as HSR or High Styrene Resin / Rubber. It has been referred to as HSR in these submissions. HSR can be of various grades and can be supplied in various forms. The present investigations is against all grades and forms of HSR imported from Poland and European Union (EU). HSR is manufactured by producers of Styrene Butadiene Rubber (SBR) only and is consumed in the rubber industry. HSR can be sub-divided into two categories:
 - a. SBR 1900 series – Emulsion Resin Rubber Masterbatch also called High Styrene Resin Masterbatch,
 - b. High Styrene Reinforcement Polymers (HSBR).

The SBR 1900 series is a blend or masterbatch of two latexes – Styrene Butadiene Latex and High Styrene Resin Latex. HSBR is a product prepared by direct polymerization of high levels of styrene with butadiene. The product under consideration is imported under Chapter 39 and 40. The difference between the goods imported under Chapter 39 & 40 is that of percentage content of styrene, which does

not render the product as different and the product still has almost similar technical and commercial applications.

- ii. It has been argued by the opposing interested parties that the petitioners have defined the product differently in this investigation as compared to the previous investigation. These parties have further attempted to justify that the product falling under Chapter 39 and 40 are different. To put otherwise, these parties have argued that the product under consideration can not fall under two Customs Chapters. It is submitted that entire argument on this account is without basis and without appreciation of the purpose for which the customs classification is mentioned.
- iii. At the outset, it is submitted that the petitioners are entitled to seek investigations and anti-dumping duty on that product which has been imported into India and like article of which is being produced in the Country. Further, while deciding the scope of the investigations, the issue of like article has to be kept in mind. In case like product is not included, the entire exercise may be become futile. It would be relevant to refer to the order of the CEGAT in this regard in the matter relating to Oxo Alcohols, which states as under:

*" The Designated Authority has not come to the conclusion that **Normal Hexanol has characteristics closely resembling those of the other articles under investigation.** What the Authority found is that the product manufactured by use of Normal Hexanol can substitute the product manufactured by other Oxo Alcohols." (emphasis added).*

It is evident from the above that any product type which is like article to the imported article has to be included within the scope of the present investigations.

- iv. The purpose of customs classification is to help in understanding the product. Rule 12(ii) and 17(2)(ii) states as under in this regard:-

"a description of the article which is sufficient for customs purposes"

Thus, the description of the article should be sufficient for the purpose of customs understanding. The description of the article governs the scope of the customs classifications. The customs classification can not govern the scope of the product.

- v. Rule 4(1)b dealing with the duties of the Designated Authority provides that it shall be the duty of the Designated Authority to identify the article liable for anti-dumping duty. Thus, *the issue of customs classification is not binding on the Designated Authority.*

- vi. The real test for inclusion or otherwise of goods falling under Chapter 39 and 40 lies in the test of like article. It is submitted in this regard that the Polish producers (and possibly the European Union producers) produces different grades of HSR (even though this information has been suppressed by the Polish producer). The grades produced by the company include KER 1904, KER 1909 and KER 9000. As per literature of Polish producer, all these grades fall under High Styrene Rubber (HSR). We request the Designated Authority to direct the exporter to disclose the composition and specifications of these products and examine whether any of these would be assessable under Chapter 39 for the purpose of customs classification. Further, we request the Designated Authority to examine whether these three grades are like articles. We submit that these three grades are like articles in terms of characteristics such as physical & chemical characteristics, production technology, functions & uses, product specifications, distribution & marketing of the goods. These grades are technically and commercially substitutable and the consumers can use them interchangeably. We submit that the grades are like articles in terms of these characteristics.
 - i. It is not necessary that the exporter should have exported all grades/forms of the product for being included in the scope of the investigations. There are invariably a number of types of the product which would not have been exported in the investigation period, yet the same are required to be kept within the scope of the investigations, in so long as these are like article to the product involved.
 - ii. It would be misrepresentation of facts to state that the previous investigations did not have any connection with HSR. The preliminary findings notified by the Designated Authority in the previous investigations are quite elaborate on this account and clearly indicate that SBR 1900 series was within the scope of the investigations in the previous investigations.
 - iii. Assuming though not admitting that the product involved in the previous investigation did not include other types of HSR, the same does not in any event prevent the petitioners from including these types within the scope of the present investigations. Assuming though not admitting that the petitioners in the previous case did not take due care of the product involved, the same does not imply that the petitioners in this case should follow the same. The two investigations are distinct and different investigations and the scope of the investigations in the previous case does not grant any liberty to the opposing interested parties on this account in the present investigations. We rely upon the investigations in the case of polyester film by European Union against Korea also, wherein the product under consideration was changed against the same country for the same product.

In response to the disclosure, the following submission has been made:-

- i. We reiterate our earlier submissions on the product under consideration.
- ii. It is noted that the Designated Authority has proposed to clarify that the product does not include Polystyrene, Thermoplastic elastomer, Acrylonitrile – Butadiene Styrene copolymers and Styrene acrylonitrile copolymers. The Domestic Industry has no objection to such a clarification, which should take care of the repeated argument of opposing interested parties with regard to possible charging of duties on other products falling under Chapter 39. However, it is clarified that neither the Domestic Industry has demanded nor Designated Authority has imposed anti dumping duty on any product being imported under Chapter 39. The Domestic Industry has demanded duty on the subject goods, if imported under Chapter 39. It cannot certainly be the case of the opposing parties that HSR if sought to be cleared under Chapter 39 should not attract duty and it is not the case of the Domestic Industry that if other products if imported under Chapter 39 should also attract duty, when the Domestic Industry is seeking duties only on HSR.
- iii. With regard to other types of HSR being produced by the exporters (which have not been exported to India in the investigation period), it is submitted that all these types are required to be included within the scope of duties, as these various other types of HSR being produced by the subject exporters are like article to HSR exported to India in the investigation period.
- iv. With regard to the issue of like article, it is submitted that the goods being produced by the Domestic Industry are like article to the goods being imported from subject countries. We rely upon our earlier submission.
- v. It has been argued by the other interested parties that no evidence has been provided by the petitioners nor any analysis carried by the Designated Authority in the preliminary findings that the two products (imported under Chapter 39 and 40) is like article. This is factually incorrect, as the petitioners have provided sufficient evidence in as much as the following have been provided to the Designated Authority showing interchangeability of the goods imported under Chapter 39 and 40 as per letters of Customs; Literature of Dwory, the exporter from Poland, letter from IISRP clarifying the technical information about SBR 1900 series and details of transaction-wise imports from PPR, clearly showing that the goods have been imported from other countries under Chapter 39 as well as 40.

b. M/s Firma Chemiczna Dwory S.A., Poland have made the following submissions:-

- i. It has been mentioned in the written submissions that "the difference between goods imported under chapter 39 & 40 is that of percentage content of styrene,

which does not render the product as different and the product still has almost similar technical and commercial applications" (emphasis added). It is observed that no basis has been supplied by the petitioners nor is any such analysis visible in the preliminary findings that the two products have 'almost' similar technical and commercial applications. In this connection, it is submitted that the determination of like articles has to be made by a positive and affirmative finding and not only on the basis of the contentions made by the petitioners.

- ii. The petitioners have further attributed to the opposing Interested Parties the contention that the product under consideration for the purpose of anti-dumping cannot fall under two different customs headings. It may be stated that as far as this exporter is concerned, we submit that no statement was made by us that the product under consideration for the purpose of anti-dumping investigation cannot fall under two different customs headings. The petitioners have inaccurately attributed such statement to the 'opposing parties' and then have gone ahead to justify the same. It has been vehemently argued in the written submissions that the customs classification is not relevant for the purpose of anti-dumping investigations. The basic assertion seems to be that since the product under consideration in the Petition and consequently the initiation notification covers both resins as well as rubber, there cannot be any comments or arguments advanced on the scope of investigations. This, it is submitted is clearly erroneous. The Hon'ble Designated Authority needs to record a finding on the product under consideration and the like article.
- iii. In this connection, it is our submission that nowhere have we made the statement that the product under consideration cannot fall under two or more headings or sub-headings of the customs classification. It may also be mentioned that in this case the issue is that of two different '*chapters*' and not two different *headings* as made out by the domestic industry. We would like to respectfully submit to your Honour that we have painstakingly surveyed the literature on the subject and we could not find any parallel where two products falling under two different chapters have been held as like articles. We have made effort to look for cases in different regimes where the product under consideration could be as broad as covering two entirely different chapters but have not been able to locate any such reference. It is in this connection that we brought to the kind attention of the Hon'ble Designated Authority the system of HS Classification which though not binding on the Authority certainly has tremendous persuasive value. The scheme of classification is designed to classify the products according to their degree of differentiation. Thus, the higher the level of classification, higher would be the product differentiation. For example, the two digit level would be for Organic Chemicals, Fertilizers, Plastics and Articles thereof, etc., while the six digit level would be the product

- groupings within the chapter heading. The degree of differentiation is thus obvious and cannot be ignored by the Hon'ble Designated Authority. This would perhaps be the first case in the entire jurisprudence of anti-dumping that products falling under two different Chapters are considered as like articles.
- iv. Both Apar and Apcotex make "High Styrene Rubbers " only which are classified as "Synthetic Rubbers" falling under Chapter 40 of the Custom Tariff Act. This is confirmed by their own statements in their Balance Sheet. Kind attention is invited to the Directors' report attached to Apar's Balance Sheet of 1998-99 as well as Schedule 21 of the same Balance Sheet at Serial (i) where APAR have clearly classified their high styrene rubber as "Synthetic Rubber". Apar is trying to confuse the Authority by talking of SBR 1900 series and High Styrene Butadiene masterbatches. The fact of the matter is that they are making "Synthetic Rubber" which meet the definition as stipulated under Chapter Note No. 4(a) to Chapter 40 of the Customs Tariff Act and their product does not meet the definition of Chapter note (i) to Chapter 39 of the Custom Tariff Act.
 - v. Styrene Butadiene Co-polymer resins or Polymers fall under Chapter heading 3903.90 and they are not the same as Styrene Butadiene Rubbers falling under Chapter 40 of the Customs Tariff Act.
 - vi. During a previous Anti-dumping investigation in the matter of SBR from several countries including Korea RP, the Authority had held in its preliminary and final findings that the product "High Styrene Resin" and Styrene Butadiene Co-Polymer Resin are not the product under consideration when the same arguments were put forth by the same petitioner in that proceedings. This matter was further confirmed in the CEGAT in an appeal filed by Relaxo Rubber Ltd. In their final Order No. 164/165- 2001-A dated 26/4/2001, the CEGAT Tribunal held that the product "Styrene Butadiene Co-Polymer Resin" has no relation with "Styrene Butadiene Rubber" falling under Chapter heading 4002. Thus, it is respectfully submitted that there can be no controversy on the issue of the product under consideration in so far as the product produced both by Apar and Apcotex is "Styrene Butadiene Rubber" falling under Chapter 4002 and since they do not manufacture any "Styrene Butadiene Co-Polymer resins" falling under Chapter 3903.90, they cannot claim that such products should be included under the scope of present investigation.
 - vii. In their submissions dated 23/5/2001, at Para (i) the Petitioners have cited a recent CEGAT order in the antidumping matter related to Oxo Alcohols. It is submitted this is mis-leading. In the referred to CEGAT order, as published in 2001 (130) ELT-58 (Tri-Del), the Tribunal has clearly held at Para 9 of their finding that "Normal Hexanol is not one manufactured or produced by Domestic Industry. So, its import cannot cause injury to Domestic Industry". In order for the product to be treated as "like article" the Authority must arrive at finding that such products themselves have characteristics closely resembling

each other. In the present case since it is clearly and technically obvious that Styrene Butadiene Co-Polymer Resins do not meet the characteristics of Styrene Butadiene Rubber as outlined in Chapter Note 4 (a) of Chapter 40 in the Customs Tariff Act that they do not have characteristics closely resembling each other. Therefore, they are not "like articles".

- viii. It is already a settled matter in the previous anti dumping finding where the Authority held that SBR as not like articles or product under consideration with "Styrene Butadiene Co-Polymer Resins" the same applies in this proceeding as well and the product under consideration, therefore, has necessarily to be restricted to any or all Styrene Butadiene Rubbers falling under Chapter 40 only which represent the product actually produced by the domestic industry.
- ix. Not withstanding the above and without prejudice, we submit that there are several other Styrene Butadiene Co-Polymers Resins falling under Chapter 3903.90 which are never used in the rubber industry and which would fall under ambit of Anti-dumping duty were the Authority to ever consider that they were like articles to HSR. By way of examples, we cite the following products:-
 - 1. "Styrolux"- produced by BASF, Germany
 - 2. "K-Resin" – produced by Phillips Petroleum, USA
 - 3. "Asaflex"- produced by Asahi Kasei, Japan.
- i. Out of the examples of Styrene Butadiene co-Polymer resins cited above, "Styrolux" is produced in EU and antidumping duty would become leviable on it were the Authority to enlarge the scope of the product under consideration to Chapter heading no. 3903.90. This product is not "like article" to the HSR produced by the domestic industry and under no circumstances can any antidumping duty be levied on it.
- ii. It is submitted that the Designated Authority had consciously and deliberately kept resins out of the purview of the product under consideration in the earlier findings obviously for the reasons that the two products fell under two different chapters.
- iii. It is also interesting to see the reference to the 'case of polyester film by European Union against Korea also, wherein the product under consideration was changed against the same country for the same product'. We earnestly submit that such citations without giving the full reference and attaching or quoting at least the relevant extracts cannot be permitted to be taken on record. In any case, it is our understanding that in the above-referred case, the product description was changed but each time the coverage or scope of investigation was narrowed down. The case referred by the petitioners, therefore, support the

- case of the exporters and the user industry more than that of the domestic industry.
- iv. We also wish to submit that as per our understanding, the EU distinguishes the PCN at the eight or ten-digit or even higher level and the same was done in this case also. In contrast, the domestic industry in this case has been pleading for clubbing of two products at the two digit (Chapter) level. This is not borne out of the international jurisprudence nor from the earlier two decisions of the Hon'ble Designated Authority. This is without prejudice to our submission the fact that *res judicata* will operate prohibiting the Hon'ble Designated Authority to take a different view in the instant case as a positive determination has been made by the Hon'ble Designated Authority in quasi-judicial proceedings on product under consideration as well as like articles.
 - v. Further, in the case of SBR cited by the petitioners, the position of the Hon'ble Designated Authority is clear beyond any doubt:
 - vi. "The Authority observes that items falling under 3903.90 are not the product under consideration and **SBR in 1000 series is not produced by petitioner and thus are not product under consideration**" (emphasis added).
 - vii. The ratio of the decision in the above case is squarely applicable on the facts of this case also and to that extent are binding on the Hon'ble Designated Authority. The linkage of the two cases cannot be better explained than the submissions made by the Petitioners themselves in their written submissions:
 - viii. In para 6 of the written submissions, the petitioners have stated as under:
 - ix. "It would be a misrepresentation of facts to state that the previous investigations did not have any connection with HSR"
 - x. In para 7, it has been categorically asserted that:
 - xi. "The two investigations are distinct and different investigations and the scope of the investigations in the previous case does not grant any....." (emphasis added)
 - xii. Thus, while it would be clear from the above that the petitioners have taken shifting stands as and when it suited them. The current investigation is not being seen as a different investigation from the previous one either by the domestic industry or by the exporters in so far as the issues of product under consideration and like articles are concerned. The doctrine of *res judicata* will be applicable on this ground also.
 - xiii. We had also made a specific argument during the public hearing to the effect that if the customs classification is different to the extent of two different chapters and not merely headings or sub-headings, the responsibility on the domestic industry to prove that the two products falling under two different chapters are like articles is much more. Unfortunately, as stated earlier, we do not find any basis in the petition or in the preliminary findings as to how the test of 'likeness' for products belonging to two different chapters was passed.

In fact, the preliminary findings are not clear whether any such test was applied. It is a well settled principle of law that the evidence is to be led by the party that makes the assertion. Note on Section 101 of the Evidence Act 1872:

Section 101 – Burden of Proof: "Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist . . ."

- xiv. We had also contended that resins have been included on the grounds that rubber falling under chapter 40 has been cleared under Chapter 39 also. We still submit that what was cleared under chapter 39 was indeed resins and not rubber unless the Hon'ble Designated Authority has any different evidence. We earnestly request that the Designated Authority may kindly ascertain the facts in this regard from the customs authorities.

In response to the disclosure, M/s Firma Chemcizna Dwory SA have made the following submissions:-

- i. M/s Firma have reiterated the submissions made by them on these issues earlier.

c) M/s Bayer International SA Switzerland have made the following submissions.

- i. The importer consignment are cleared by the exporter under Chapter 39 or 40 which however can be ascertained conclusively only from the importer. M/s Bayer International has also indicated their exports to India and production during POI.

d) M/s All India Federation of Rubber Footwear Manufactures and M/s Paragon have made the following submissions:

- i. At the outset it must be pointed out that the products under investigation as are set out in the petition is unduly broad and without justification. The jurisprudence on anti dumping suggests that the product under consideration should always be the narrowest group of products in order to ensure that there is no undue protection to the domestic industry. In this case, as elaborated in the following paras, the Domestic Industry has attempted to include products, which should not have been included in the scope of investigations in the first place.
- ii. It may be pointed out that in the first investigation concerning -the import of SBR from Japan, Korea, Turkey, Taiwan, USA, Germany and France the product involved was Styrene Butadiene Rubber classified under custom sub-heading 4002.19.

- iii. In that particular case, the "domestic industry" was M/s Synthetics and Chemicals, who manufactured all types of SBR.
- iv. In this present case on HSR(SBR 1900 Series) the Petitioners (M/s Apar Industries Ltd. and M/s Apcotex Lattices Ltd.) have in the petition asked for investigation in to High Styrene Butadiene Coo-polymers. They go on to state:-

"This is also called High Styrene Resin/Rubber (HSR). HSR covers SBR 1900 series and HSR. SBR 1900 series refers to High Styrene Resin Masterbatch(also called Emulsion Resin Rubber Masterbatch). HSR refers to High Styrene Reinforcement Polymers. HSR can be of various grades and can be supplied in various forms..."

- v. It is noteworthy that even in the first case concerning SBR the Hon'ble Designated Authority excluded Resin from the scope of the investigation. The Hon'ble CEGAT on 26.4.2001 confirmed this finding (Final Order No.164-165/2001-A). The Hon'ble CEGAT cited with approval the final order of the Designated Authority dated 2nd June, 1999. In particular paragraph 7 was reproduced.

"While submitting the evidence that HSR 1900 series is also being imported under Chapter 39, the Authority observes that the item cleared under Chapter 39 is "Elastomer Resin KHS 68" and thus is not under the nomenclature of "Synthetic Rubber."

Clearly the Hon'ble Designated Authority intended to only impose duty on Synthetic Rubber. However, as is evident from the petition, the petitioners have through a very convoluted manner sought to include not only all types of HSR within the purview of the investigation (i.e. 1500 and 1700 series) but also Resins which have been conclusively held not to be "Synthetic Rubber". They do not manufacture the co-polymers and resins, sought to be included by them. It is admitted that the petitioners do not manufacture any thing other than HSR 1900 grade.

- By broadening the scope of the product under investigation, the petitioners have surreptitiously sought to include products, which they do not manufacture.
- vi. It is submitted that by including co-polymers in the description of the product under consideration, the petitioners are seeking to include certain types of plastics, which are clearly not "Synthetic Rubber". Not one iota of evidence is produced to show that synthetic rubber is coming under under Chapter 39. We urge the Hon'ble Designated Authority to kindly get the facts ascertained from the Ministry of Finance if any Synthetic Rubber has been cleared by the Customs under Chapter 39. As was submitted to the Hon'ble

Designated Authority during the hearing, there is no question of synthetic rubber coming under Chapter 39 as the latter covers only the items classified under that chapter in terms of the Notes to Chapters 39 and 40. Broad based imposition of duties based on mere allegations by the Petitioners can have a devastating effect on the user industry.

- vii. Consequently it must be clarified that the product under consideration is only High Styrene Rubber, i.e. SBR 1900 Series which is a blend of masterbatch of 2 Latexes - Styrene Butadiene Latex and High Styrene Latex falling under the Chapter Heading 4002.19. Anything else is not manufactured by the Petitioners and cannot fall under the purview of the Product Under Consideration.
- viii. It is submitted that any other description or heading will be ultra vires the scope of the investigation. The product under consideration is Styrene Butadiene Rubber 1900 series i.e., HSR, and the same must follow the precedent as laid down by the Honourable Designated Authority in the first SBR case.
- ix. As was submitted to the Designated Authority during the hearing, we apprehend that the information submitted by the Domestic Industry and accepted by the Designated Authority for the purpose of preliminary findings may not be factually correct. We would most respectfully submit that the authenticity of the claim that synthetic rubber is being cleared under Chapter 39 also, may be verified from any possible source at the command of the Designated Authority. We still believe that there is no question of synthetic rubber coming under Chapter 39 as the latter covers only the items classified under the chapter in terms of the Notes to Chapters 39 and 40. Broad-based imposition of duties based on mere allegations by the petitioners can have a devastating effect on the user industry.

In response to the Disclosure, M/s All India Federation of Rubber Footwear Manufacturers has made the following submission:-

- i. Our arguments put forth in our submissions have either not been taken into consideration or have been brushed aside as a result of which the Anti-dumping Authority has erroneously exceeded the scope of review envisaged under Rule 23 with regard to 'Product under Consideration' whereas in the original final findings dated 2.6.1999 the Designated Authority has restricted the scope of the "Product under Consideration."

2. EXAMINATION BY AUTHORITY

The Authority notes the submissions made by various interested parties regarding the product under consideration being quite broad based and also that the goods manufactured by the Domestic Industry are not like article to the goods imported from the subject countries. The Authority also notes that it has been indicated that both M/s

Apar Industries Ltd. and M/s Apcotex Lattices Ltd. make High Styrene Rubber(HSR) and that this product would only fall under Chapter 40 of the Customs classification and also that in the previous anti dumping investigation of SBR from the subject countries, classification regarding this product has already been given. The Authority notes that it has been argued that the product is broad enough and extends to two chapters of customs classification whereas Chapter 39 pertains to Resins and not to rubber, the products which the Domestic Industry manufactures. It has also been indicated that by virtue of such a broad based coverage certain category of products like Asaflex from Japan, Styrolus from Germany and K-resin from USA would also attract anti dumping duty even though they may not be covered in the scope of the investigation. The Authority also notes that specifically the practice of EU has been quoted in reference to the definition of the product under consideration.

The Authority after carefully examining into the above arguments holds that the product under consideration as defined in the initiation notification and subsequently in the preliminary findings in Para C(I) is different by virtue of being wider from the product under consideration as defined in the earlier investigation on SBR from Japan, Korea, USA, Turkey and Taiwan being referred to by various interested parties in the foregoing para. The Authority noting the submissions made by various interested parties that certain category of goods would not fall under the scope of investigation viz. Asaflex from Japan, Styrolus from Germany and K-resin from USA confirms the product under consideration as indicated in the preliminary findings in Para C(1) but with exclusion of certain category of goods as indicated below. The product under consideration is defined as under:-

"High Styrene Butadiene Copolymer, also called High Styrene Resin/Rubber (HSR) of all grades and forms. HSR covers SBR 1900 series referring to High Styrene Resin Latex Master batch and HSBP referring to High Styrene re-informement Polymer. The product does not include Polystyrene, Thermoplastic elastomer, Acrylonitrile-Butadiene Styrene copolymers, Styrene-acrylonitrile copolymers. Also SBR 1500 and 1700 Series are not covered in the product.

As regards the customs classification and the product under consideration, the Authority notes the submissions specifically made by various interested parties and holds that depending on the Styrene content, the product can be imported under Chapter 40, Custom Head 4002.19 (ITC classification 4002.1902) (Styrene Butadiene Rubber with Styrene content of over 50%) and Chapter 39, Custom Head 3903.90 (ITC Classification 3903.9000) (Polymers of Styrene in primary form other than Polystyrene, Styrene-Acrylonitrile copolymers & Acrylonitrile-Butadiene-Styrene copolymers).

Recalling Hon'ble CEGAT's order No. 20& 21/2000 dated 2.2.2000, the Authority also holds that the custom classification is relevant to the extent the product can be specifically defined and that irrespective of classification under the customs head the description of the product as illustrated above is binding. The Authority also recalls the catalyst case wherein the subject goods were cleared under two chapters of customs classification.

The Authority notes that certain submissions have been made on quality and standard of the subject goods supplied by Domestic Industry. At the same time views have been expressed that Domestic Industry is unable to meet the demand of subject goods in totality. There is an inherent contradiction in these submissions to the extent that as such the users are sourcing the material from domestic producers and also disputing quality. The Authority, therefore, holds that the quality and standards claims of the users are unsubstantiated, not quantified and are therefore rejected.

The Authority also notes the submissions made by various interested parties regarding the goods manufactured by the Domestic Industry not being like article to the goods imported from subject countries and that the test of likeness has not been spelt out in the preliminary findings. The Authority noting the data provided by the exporter M/s Firma Chemcizna Dwory SA, Poland holds that the goods exported by them to India during the POI and the goods produced by the Domestic Industry have closely resembling characteristics. The goods exported from Poland were used in similar uses like the domestic product and that there is technical and commercial substitutability of these goods with reference to usage by certain common customers in footwear/ other applications. The Authority also notes that besides the grade KER 1904 which has been exported by the exporter from Poland, the other grades viz. KER 1909 and KER 9000 manufactured by them also have characteristics closely resembling the goods exported by them and are also used for similar end uses and are also therefore within the purview of investigation and qualify the test of like article. The Authority also notes that the goods produced by the Domestic Industry are also technically and commercially substitutable with characteristics closely resembling the goods exported by M/s Bayer International SA Switzerland in terms of end use both application and customer-wise. The Authority therefore recalls and confirms the finding on like article as indicated in Para C(2) of the preliminary findings.

D.1 STANDING OF THE DOMESTIC INDUSTRY

a) M/s Apar Industries Limited and M/s Apcotex Lattices Limited have made the following submissions:-

- i. We reiterate our earlier submissions on the standing of the Domestic Industry, which are not being repeated for sake of brevity. The petitioners satisfy the conditions of standing and constitute the Domestic Industry within the meaning of the Rules.

b) All India Federation of Rubber Footwear Manufacturers and M/s Paragon Rubber have made the following submissions:

- i. The petitioners have stated in this petition that M/s Synthetics and Chemicals Limited have recently stopped production but surprisingly have sought to include their data for purposes of injury.
- ii. This is all the more surprising since in 1999 the petitioners filed a petition against import of NBR from Taiwan and in that petition categorically stating that M/s Synthetics and Chemicals had suspended its production for the past many years.
- iii. M/s Synthetics and Chemicals Limited cannot be included as the Domestic Industry as they have ceased production since about three years and accordingly cannot be included even for injury purposes.
- iv. If M/s Synthetics and Chemicals Ltd. is to be included as part of the Domestic Industry for injury (as the Petitioners seem to have done), the petitioners – M/s Apar Industries Ltd. and Apcotex Lattices Ltd. do not have sufficient standing to file this petition, as M/s synthetics and Chemicals Ltd. accounted for over 85% of the domestic HSR production in India. If their capacity is to be counted, then clearly with 15% capacity the petitioners cannot file this petition.
- v. Furthermore, assuming without admitting that the petitioners comprise "Domestic Industry" then based upon the same "confidential data" from the same "Public Sources" that the petitioners rely upon, it appears that M/s Apar Industries Limited have themselves imported rubber under the classification 4002.1900 from UK, which is a part of the European Union. It is submitted that based on this alone, the Hon'ble Designated Authority should consider if M/s Apar Industries must be removed from the Domestic Industry. It also shows that full facts were not brought to the notice of the Designated Authority at the time of initiation.

2. EXAMINATION BY AUTHORITY:

The Authority notes that it has been indicated by certain interested parties that if the data of M/s Synthetics and Chemicals Ltd., a domestic producer of SBR is included for the purpose of costing and injury analysis, the petitioners would not qualify for the purpose of standing for this petition and that M/s Apar Industries Ltd. has also imported the subject goods from territory of EU in the POI. The Authority noting the above submissions holds that M/s Apar and M/s Apcotex have not imported the

subject goods in the POI and that M/s Synthetic and Chemicals Ltd have closed their production and have not produced the subject goods during the POI and that M/s Apar Industries Ltd. and M/s Apcotex Lattices Ltd. qualify as Domestic Industry within the meaning of the Rule 2(b) and also have the requisite standing to file the petition as per Rule 5(a) and 5(b). In this regard, therefore, the Authority recalls and confirms Para C(3) of the preliminary findings on standing of the petitioners.

E.1 OTHER ISSUES

a) M/s Apar Industries Limited and M/s Apcotex Lattices Limited, Mumbai have made the following submissions:-

- i. No suppression of information regarding address of factories on this account by the petitioners was made. This is mere oversight and was hitherto not pointed out by any interested party. In fact, the address of the plants of the two companies are well known to a large number of consumers of the subject goods in India. The relevant addresses are:

- Apar Industries Limited
Dharmsinh Desai Marg,
Mahul Trombay
Mumbai 400074 Maharashtra
Contact Person: Shri G. R. Karandikar
Telephone: 5951531/5544005
Facsimile: 5541708

The company has produced the subject goods at its Valia plant also, address of which is as under:

Village Dungri,
Taluka Valia
District Bharuch-Gujarat
Contact person: Shri Dinesh Bale,
Telephone: 2643-70442/3/5
Facsimile: 2643-70010

Apcotex Lattices Limited
Plot No. 3/1,
Taloja Industrial Area of MIDC
P O Taloja District-Reigad Maharashtra
Contact person: Shri B V Manjunath
Telephone No.: 7412239

Facsimile: 7412360

- ii. The Domestic Industry while providing information on non-confidential basis as sought by various interested parties in the public hearing requests that the matching information in respect of two responding exporters and the basis of AIRIA's assessment of demand of HSR be provided.
- iii. This issue has been raised by opposing interested parties that the domestic industry had not given sufficient information to the Designated Authority for the purposes of initiation.

We submit that the Designated Authority took eight months to initiate the investigation and before initiation, a lot of additional information as well as a lot of clarifications were desired by the Designated Authority, which were also provided by the domestic industry. During this eight months period, the domestic industry's allegation has been scrutinised in detail. Further, we submit that the domestic industry is required to provide sufficient evidence to establish dumping and onus is on the exporter to provide all information without any suppression/ distortions to the Designated Authority to establish that there was no dumping. Before initiating the investigations, the Designated Authority examined adequacy and accuracy of the information provided in the petition, as noted in the initiation notification dated 20.12.2000. The investigations have been initiated in accordance with the Rules. The argument of the opposing interested parties perhaps is that the Designated Authority should have investigated the case before initiating the investigations. We submit that purpose of initiation is to investigate the existence of alleged dumping causing injury. The Designated Authority is not obliged to investigate the allegation before initiating the investigations.

ii. AIRIA has written to the Designated Authority as also to us seeking certain information about the company. While we find that the matching information has not been provided by the exporter from Poland, we are providing the relevant information to the Designated Authority. We are willing to disclose this information to the exporters, importers and AIRIA. However, we request the Designated Authority to apply the same treatment to an exporter and a domestic producer with regard to the issue of confidentiality. In case the Designated Authority is satisfied that the request for confidentiality by the exporter is warranted, we request the same treatment. In case the Designated Authority is satisfied that this information should be disclosed to the opposing interested parties, we request the following information:-

1. Matching information in respect of the two responding exporters.
2. AIRIA's assessment of demand of HSR and the basis thereof. We also request that AIRIA be in that event directed to further provide information how this demand was met by the industry. As is known, the Designated Authority has

defined demand as the sum of imports and sales by the domestic companies. The demand is thus required to be furnished accordingly by AIRIA.

3. Information on volume of imports by each responding importer.

In response to the Disclosure, the following submissions have been made:-

1. There are a number of submissions made by opposing interested parties which are either factually not correct or are made with an attempt to mislead the Designated Authority or are not relevant to the present investigations. For instance, it has been pointed out that submissions made by the petitioners are unsigned and does not identify the persons taking responsibility for the statements made. The argument is without appreciation of the fact that the written submissions filed by the Domestic Industry were accompanied with a covering letter, duly signed.
2. There are lots of submissions, which remained unsubstantiated or inconclusive or does not lead to an argument/averment at all. For instance, while the opposing interested parties are pointed out that there should be sufficient evidence regarding dumping, injury and causal link, the opposing interested parties have thereafter argued that the evidence of normal value in terms of cost of production should be only in terms of cost of production in the country of origin. In fact, it is not even the argument of the exporter that the Domestic Industry has adopted Indian cost as normal value in the subject countries.
3. A hype is being created with regard to disclosure of information and confidentiality of information. Surprising, such an argument has come from those interested parties whose data has been found much different than what has been filed. In fact, the Domestic Industry earnestly submits that responses of such exporters should be completely rejected wherein it is found upon subsequent verification that the information initially furnished was factually wrong and misleading.
4. With regard to confidentiality, any information, which is by nature confidential is allowed as confidential by the Designated Authority. It may not be out of context to mention that even the exporters have not cited any reason for claiming confidentiality and yet the exporters have resorted excessive confidentiality.
5. With regard to the information sought by All India Federation of Rubber Footwear Manufacturer(FORM), it is submitted that FORM has conveniently ignored to mention that Domestic Industry has also addressed a number of letter (copies of which were also endorsed to the Designated Authority) to FORM, which not only remained unreplied to the core issues involved but also, were evasive on the other suggestions made by the Domestic Industry.

6. The opposing interested parties have projected as if the Designated Authority should have first investigated the case before initiating investigations. It is submitted that the purpose of initiation to investigate the allegation and not that the Authority should first investigate to initiate.
7. The opposing interested parties have resorted to conjectures while assessing demand. Demand of the subject product in the investigation period was in the region of 17000 MT on annualized basis.

b) M/s Firma Chemiczna Dwory S.A., Poland has made the following submissions:-

- i. It is submitted that the submission made on behalf of the petitioners is unsigned and does not identify the persons who are taking responsibility for the statements made. This is crucial since the Hon'ble Designated Authority is a quasi-judicial authority. Furthermore some of the statements made are misleading and wrong. Accordingly the party making the statement must identify themselves.
- ii. Rule 5 (3) (a) states that the designated authority shall not initiate an investigation pursuant to an application made under sub-Rule (1) unless (a) It determines on the basis of an examination of the degree of support for or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. (b) It examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is **sufficient evidence** regarding:
 - a. Dumping,
 - b. Injury, where applicable, and
 - c. Where applicable, a causal link between such dumped imports and the alleged injury to justify the initiation of an investigation.

A plain reading of the above provisions clearly indicate that the evidence with regard to dumping, injury and causal link are required at every stage of the investigation. The only difference for the purpose of initiation is that instead of full satisfaction of the Designated Authority, sufficient evidence is required. However, it may kindly be noted that while the level of evidence may be different between the initiation and the provisional/final findings, the authorities are not at liberty to change the 'nature' of evidence at the time of initiation or at the time of provisional / final findings. To illustrate the argument, it is submitted that for initiating an investigation, it is necessary that there should, *inter alia* be sufficient evidence with regard to Normal Value. The first option is to have the prices prevailing in the home market of the exporting country. The other two options subject to certain conditions are:

-Third country export price

-Cost of production in the country of origin plus reasonable administrative, selling and general costs, and profits

Assuming that for the purpose of initiation, it was sufficient to rely upon **any** of the three options, it was incumbent upon the petitioner domestic industry to provide sufficient information with regard to that particular option. In the instant case, the domestic industry has chosen to rely upon the 'cost of production' method. Without prejudice to our reservations on the merits and propriety of selecting the 'cost of production' method for a market economies like EU and Poland, we submit that the domestic industry ought to have made the estimations for the Normal Value based on the cost of production plus expenses and profit **only in the country of origin.**

(iii) The attitude displayed by the domestic industry with regard to the information, which has been kept as confidential, by the domestic industry is, it is respectfully submitted, strikes a major blow to the cornerstones of all anti dumping investigations, viz. transparency and adversarial investigations. The argument advanced for not giving the requisite information is that the exporter should also be asked to provide the same information. It has not been clarified as to what information is being sought from the exporter, which the latter is not, entitled to keep as confidential. It may be pointed out that it was the domestic industry, which had approached the Hon'ble Designated Authority for imposition of anti-dumping duty against specific sources. It is a well-settled point of law that it is for the party bringing the case to lead the evidence. It would not be permissible for the domestic industry to first provide inadequate and inaccurate information and when it is pointed out that the same cannot be kept as confidential under the existing Rules and instructions on the subject, it is argued that the exporter should be asked to give the same information. The responsibility of the domestic industry with regard to submission of confidential information cannot be brushed aside so lightly. We submit that our rights under the rules are seriously jeopardized due to the stand of the domestic industry. We reiterate our request to the Hon'ble Designated Authority to kindly let us have the reasons submitted by the domestic industry, as required under the rules, to keep the following information confidential and whether the same were considered sufficient by the Designated Authority:

- i. Basis of stating that HSR is being cleared under Chapter 39 also.
- ii. Source and basis of alleged imports of HSR under chapter 39.
- iii. Import figures based on so-called public sources.
- iv. Volume and Value of imports from other countries.
- v. Production Volume by the domestic industry.
- vi. Production Volume of Other related products by the domestic industry.

(iv) The citations, statements and quotations by the petitioners are in many places wrong and have been made selectively, concealing the true context in which they were made. Accordingly, it is respectfully submitted that the Hon'ble Designated Authority verify the accuracy and the context of the same rather than accepting them at face value.

(v) -Designated Authority may terminate the investigation on account of:

- a. inaccurate and inadequate information was not available at the time of initiation.
- b. there is no dumping.
- c. no injury to the Petitioners.
- d. there is no causal link between the alleged dumping and alleged injury.
- e. domestic industry has not been able to substantiate their arguments and have failed in responding to the issues of facts and law raised by the exporter/ user industry.

c) M/s Bayer International SA Switzerland have made the following submissions:-

- i. M/s Bayer International SA has indicated that the crucial issue, which the Designated Authority needs to address, is the nature of confidentiality and it is respectfully submitted that the Authority is only required to keep confidential figures and data which are susceptible to use by competitors or interested parties detrimental to the person providing the information. It is incumbent on the Authority to determine for itself as to what information marked as confidential by the parties is not really in the nature of confidential information and to disclose the same despite the fact that the party providing the information has marked the same as confidential. Failure to do so would result in the inability of the parties to effectively counter information, which may be used against them in arriving at a decision and may amount to miscarriage of justice and/or arrival at incorrect conclusions.
- ii. Virtually all figures in the complaint have been treated as confidential including figures compiled by Polymer Plastics & Rubber Journal which is clearly not a privileged document and publication available in the public domain. It is submitted that this Designated Authority should therefore analyse the same and provide such information as it may in its discretion consider to be not confidential.

d) M/s All India Federation of Rubber Footwear Manufactures and M/s Paragon Rubber have made the following submissions:

- i. The anti dumping rules are clear that the Designated Authority must be satisfied as to the need for keeping information as confidential. In particular Rule 7(1) and Rule 6 of the Anti Dumping rules are relevant.
- ii. The aspects which have been kept as confidential by the Domestic Industry are in total disregard to the above instructions, rules and jurisprudence on the subject.
- iii. Designated Authority had during the public hearing specifically asked the Domestic Industry to provide the basic information to the user industry. Encouraged by this, the All India Federation of Rubber Footwear Manufacturers (FORM) wrote to the Domestic Industry to provide the relevant information in due deference to the directions of the Hon'ble Designated Authority. We would like to inform you that FORM has not received any information.
- iv. Rule 5 (3) (a) states that the designated authority shall not initiate an investigation pursuant to an application made under sub-Rule (1) unless (a) It determines on the basis of an examination of the degree of support for or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. (b) It examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding:
 - a. Dumping,
 - b. Injury, where applicable, and
 - c. Where applicable, a causal link between such dumped imports and the alleged injury to justify the initiation of an investigation.
- v. The aspect concerning the accuracy and adequacy of information concerning dumping, injury and a causal link is an obligation emanating from Article 5.3 of the WTO Agreement on anti-dumping.
- vi. This point was also raised in a dispute concerning the Panel decision in the Guatemala - Mexico Cement case. In that case the Honourable Panel opined that an aspect which was required to have been considered at the time of initiating a particular case could not subsequently be rectified retrospectively. Para 8.62 of the panel decision is relevant.
- vii. The information submitted by the petitioner is wholly insufficient and inaccurate for the purposes of initiating an investigation. The information pertaining to the imports is based on mere conjecture and contains a number of misleading statements.
- viii. Using this self-created confusion, the petitioner goes on to compile import information from secondary sources, which is kept confidential. While doing so it admits that the secondary sources do not reflect information from all Indian Ports.

- ix. It is respectfully submitted that to prevent self serving and selective data being used to file a Petition that rule 5 (3) (b) puts a duty on the Hon'ble Designated Authority, in fact this duty was very eloquently expressed in the Guatemala Mexico Cement Case as per para 8.31 of the report .
- x. It is respectfully submitted that the anti dumping rules are clear that the Designated Authority must be satisfied as to the need for keeping information as confidential. In particular Rule 7(1) and Rule 6 of the Anti Dumping Rules are relevant.
- xi. We would like to reiterate that aspects which have been kept as confidential by the Domestic Industry are in total disregard to the above instructions rules and jurisprudence on the subject.
- xii. It may be recalled that the Designated Authority has during the public hearing specifically asked the Domestic Industry to provide the basic information to the user industry. Encourage by this, the All India Federation of Rubber Footwear Manufacturers (FORM) wrote to the Domestic Industry to provide the relevant information in due deference to the directions of the Designated Authority. We would like to inform you that FORM has not received the information.
- xiii. It was indicated that the Domestic Industry has kept confidential information . "Basis of stating that HSR is being cleared under Chapter 39, source and basis of alleged imports of HSR under Chapter 39, Import figures based on so-called public sources, volume and value of imports from other countries, production volume by the Domestic Industry, production volume of other related products by the Domestic Industry and name and addresses of the manufacturing units". It is requested that the Hon'ble Designated Authority should compel the Domestic Industry to submit at least the above essential information on a non-confidential basis.
- xiv. We had also requested the Designated Authority to kindly let us know if the Domestic Industry had in pursuance to the rule position and the instruction on the issue, provided reasons for keeping such information as mentioned above confidential. Unfortunately, we have not received any response in the matter. We would also like to mention that from the inspection of the public file, it appears that the Domestic Industry did not provide any such reason for keeping the basic information confidential. Therefore, it is respectfully submitted that the question of the Designated Authority taking any specific decision on the issue will not arise. The investigations in the case therefor need to be terminated on this ground alone.
- xv. It may be mentioned that the petitioners claim to rely upon import data provided by M/s Polymers Plastics and Rubber Journal. The user industry has obtained a copy of the Polymers Plastic and Rubber Journal data for import during January to September 2000. The only import from Poland of HSR 1900 came in on 30th August, 2000 at a price of Rs.43.68 per kg.. whereas the

petitioners have showed imports from Poland at an export price of Rs.38.93 per kg.

- xvi. In addition to this the import data impacts the apparent injury to the Domestic Industry, thus distorting the ability of the Designated Authority to ascertain whether there exists dumping or indeed injury in the present petition. By inflating volumes and reducing the export price the apparent injury is manifested more severely.

In response to the disclosure, the following submissions have been made:-

- i. That the entire proceedings were initiated on the basis of deficient application, viz. the petitioners furnishing of location of their plant with the written submission after completion of preliminary findings is itself proof of the deficient application. On this ground alone the investigation should have been dropped but the reason why the same was not dropped by the anti dumping Authority is best known to them.
- ii. We have not received any satisfactory reply either from the petitioner or from the Designated Authority with the regard to our submission about the authenticity of the claim that synthetic rubber is being cleared under Chapter 39.

e) M/s Sharma Associates, New Delhi have made the following submissions:-

- i. In response to the information provided by the Authority, **M/s Sharma Associates** have stated that the import figures relied upon by the Domestic Industry have been provided rather than the data as sought by them and that the actual data has been concealed. Designated Authority has merely acted upon as post office and forwarded certain information purported to be enclosure to the written submission. The information is grossly inadequate, incomplete, and misleading. The investigation is continuing without any regard to the principle of natural justice. The Designated Authority should give us oral hearing to comment on the methodology and other issues relating to injury margin conclusion. No final decision may be given without hearing us in person.

f) M/s Banik Rubber Industries, Calcutta have made the following submissions:-

- i. M/s Banik Rubber Industry have indicated that the application of the petitioner was incomplete and deficient and that the accuracy of the information given by the Domestic Industry was not verified and therefore the findings are not according to 1995 Rules and are absolutely bad, illegal and without jurisdiction.

2. EXAMINATION BY AUTHORITY

The Authority notes the various submissions regarding non-supply of certain non-confidential information by the petitioners to other interested parties for an effective defence. The Authority also notes the requests made by the various interested parties regarding the rules provision and the role of the Designated Authority in dealing with such a situation. The Authority keeping in view the Rule 7 of the Anti Dumping Rules, notes that the non-confidential petition/and information as provided by various interested parties has been placed in the public file and made available to all interested parties as and when requested. This practice has been followed uniformly and consistently.

The Authority as such during the course of investigation taking note of the submissions made by various interested parties and their desire to have additional information for an effective defence, requested the interested parties for making available the additional information sought so that effective defence can be made by all concerned parties for a fair determination. In this regard, the Authority recalls that one of the interested parties, i.e. M/s Sharma Associates who had made request for information and for a personal hearing was provided opportunity not only to inspect the public file but also to make a presentation personally. However, while such an opportunity was granted, the interested party did not appear and offered a blanket criticism indicating the Designated Authority as post office.

The Authority notes that all available non-confidential information on different aspects as requested by certain parties was provided to the desiring parties and placed in public file. In response to the disclosure, M/s Sharma Associates has indicated that they were not in a position to make arguments in absence of the required data and hence did not come for a personal hearing. The Authority notes that as indicated above all essential ingredients as desired and to the extent they were non-confidential were made available to various interested parties. The confidential information on costing including the components like raw material for both Domestic Industry and the cooperating exporter from Poland could not be provided to M/s Sharma Associates as it was confidential data. Supply of information on ratio of raw material to the domestic selling price would also lead to revealing of confidential information on raw material. The personal hearing sought by this importer was on injury and NIP determination methodology on which arguments on methodology could have always been provided. The issue of availability of data on raw material prices should not have hampered the interested party to make such arguments. Further the Authority notes that NIP determination which is a vital parameter to quantify injury due to price suppression is made on the basis of confidential cost data of the Domestic Industry and which in any way is not available to interested parties in other such investigations also. The Authority therefore holds that due opportunity and all relevant information

as per anti dumping rules was made available to this interested party for an effective defence.

The Authority therefore holds that this interested party has only referred generic criticism without providing and assisting the Authority with any meaningful data. The Authority also notes that due procedure has been followed as provided in the Anti Dumping Rules.

The information on imports data from CBEC which was also requested by certain interested parties was not available from CBEC. However updated DGCIS data which is compiled on the basis of customs data only has been released by DGCIS.

The Authority also notes that it has been indicated that the initiation was not done on the basis of reliable data as per Rule 5(3)(a). The Authority in this regard notes that the initiation took considerable time in fact more than seven months since Authority had to satisfy itself on the availability of prima facie evidence regarding dumping, injury and causal link and only after all parameters regarding initiation were satisfied, the Authority initiated the anti dumping investigation as per Rule 5(3)(a) as done consistently for all its cases.

As regards accuracy and authenticity of data filed by various interested parties including Domestic Industry, the Authority has adopted the data after due verification and satisfaction.

F.1 NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

a). The following submissions have been made by M/s Apar Industries Ltd. and M/s Apcotex Lattices Ltd.:-

- i. The Authority had forwarded the questionnaire to the known exporters/producers from subject countries and Embassies of subject country/territory in India. However, only one exporter from Poland and one exporter from European Union has responded to the Designated Authority. The responses filed by the exporters are far from sufficient for the purpose of determination of dumping and dumping margin. The exporters have adopted a selective and pre-decisive approach and vital information has not been provided to the Designated Authority. While the exporter from Germany has even conceded not having supplied full information, the response filed by the Polish exporter deserves to be rejected, being incomplete and insufficient.

- ii. M/s Firma Chemiczna Dwory SA, Poland has not filed complete information as prescribed under the questionnaire and that the response filed is incomplete, insufficient and unreliable. The non-confidential response filed by them does not tantamount to disclosure of information on non-confidential basis.
- iii. From the response filed by the exporters M/s Firma Chemiczna Dwory SA it is evident that the exporter has selectively provided information and has pre-decided a number of issues without giving full information.
- iv. The final findings in the matter of catalysts which were also upheld by Hon'ble Supreme Court are relevant.
- v. As per the Initiation notification dated 20th Dec., 2000 stated that the product under consideration in the present investigation is *High Styrene Butadiene Copolymer, also called High Styrene Resin/Rubber (HSR) of all grades and forms.....*" It is abundantly clear that all grades and forms of HSR are covered in the scope of the product. However, while replying to the questionnaire, the exporter has provided information only with regard to one grade of HSR, having decided that information in respect of home market is required to be provided only for the grade exported to India. In its response, the exporter has states as under:

"Details in connection with the total quantities and net sales revenue from the sales of KER 1904 ('the relevant product') to India, the market (Poland) and other third countries during the previous years and the relevant period is set out in Appendix 3.

The exporter has withheld complete information with regard to other types/grades of HSR (**in fact the exporter has not even disclosed the fact that it has other grades of HSR**). The view taken by the exporter is unsupported by the Rules and the order of the Supreme Court and would prevent the Designated Authority from deciding the matter. For instance, the Designated Authority is now prevented from determining the propriety of information with regard to cost of production (selling, general, administrative expenses) and in assessing the level of reasonable profits.

As a result of the above, the exporter has succeeded in getting minuscule dumping margin at the stage of preliminary findings by not disclosing full information.

- vi. Another major deficiency in the response filed by the exporter is that there are wide gaps between the information provided by the exporter and information sought by the Designated Authority in the questionnaire.

- a. We have assessed the cost of production of the Polish exporter and find that the exporter could not have under any circumstances recovered its full cost of production.
- b. The Polish exporter itself has admitted having made losses in sales to some of the customers as per the Preliminary Findings on Normal Value. It is our contention that all the transactions are below the full cost of HSR.

The exporter has further provided details of the customer-wise sales rather than of all the transactions. We strongly urge the Designated Authority to direct the exporter for the details of all the sales transactions. Customer wise sales can not be substitute for a transaction-wise sales. Even when sales to a customer were at a profit, it is quite possible that some of the transactions were at a profit and some at a loss for that customer, thus resulting in average profitability for that customer. However, the Designated Authority has to ignore all loss making transactions while assessing the selling price in the home market. This is the consistent practice of the other investigating authorities also.

- c. It has been argued by the exporter that the loss making transactions can be ignored in accordance with Annexure I only when the Designated Authority has compared these sales with the cost of production at the time of sale. The order of the CEGAT in the matter of acrylic fibre against Thailand was cited in this connection. We wish to submit that:
 1. The Designated Authority has, in the preliminary findings, found that **average selling price to a customer** was at a loss. The Designated Authority has not found that the transactions were at a loss. The question of comparison with the cost of production at the time of sale did not arise in the preliminary findings.
 2. While on the one hand the exporter has not provided transaction-wise sales in the home market, on the other hand, the exporter has argued about the comparison with cost of production at the time of sale.
 3. While the exporter has argued about comparison with the cost of production at the time of sale, the exporter has not considered it appropriate to provide such information (cost of production at the time of sale) to the Designated Authority. Thus, the exporter has urged upon the Designated Authority to consider cost of production at the time of sale without providing relevant information. Or alternatively, the exporter wish the Designated Authority to ignore compliance to Annexure I since the cost of production at the time of sale was not made available by the Designated Authority.
 4. The data provided by the exporter with regard to domestic and export sales is on different basis. While the exporter has provided transaction-

wise details of exports made to India, the sales in the home market are customer-wise. Thus, the exporter has provided data on different basis, thwarting the efforts of the Designated Authority to ensure fair comparison.

- d. In view of the foregoing, we submit that full and sufficient details have not been provided by the exporter. We request the Designated Authority to disregard the entire response filed by the exporter in view of deficient critical information. The exporter should not be given another opportunity to supplement the response or provide new information, as this would simply tantamount to bonus for selective co-operation. The situation cannot be resolved even by conducting spot investigations, as the purpose of spot investigations is not to compile the information. Spot verification visits are not data compiling visits. The purpose of the spot investigations is to merely verify the information already provided by the exporter. When the exporter has not fully provided information, the question of its verification does not arise. We rely upon the Annex I to the WTO Agreement in this regard.
- vii. As the exporter M/s Bayer International SA has not filed full information and has been admitted also by the exporter, there is no reason to grant another opportunity to the exporter to provide remaining information, nor any other investigating Authority world over provides repeated opportunity to an interested party. The preliminary determination in respect of this company is thus fully justified and is required to be confirmed.
- viii. Also with regards to Bayer, we understood in the Hearing that they wish to submit their data to the Designated Authority at this stage. Bayer's counsel mentioned that their selling prices of HSR in EU and India did not differ much. This suggests that Bayer was also selling HSR in EU at a loss since the write-up of costs (as detailed in the above section pertaining to Dwory) is also applicable for Bayer. Hence, we request the Designated Authority to scrutinise the cost of production of HSR manufactured by Bayer also critically.

In response to the Disclosure, the following submissions have been made:-

- i. While the disclosure is self-explanatory with regard to grossly incomplete, insufficient and misleading information filed by M/s Firma Chemiczna Dwory, it is found that the Designated Authority has still proposed to proceed further with the response filed by the exporter. The petitioners strongly object to admission of the response and the information of the exporter for determination of Normal Value. Such a kind consideration and treatment by the Designated Authority to the exporter would be a big bonus to the exporter. Further, this would encourage similar behaviour by the other exporters also. It would also be

relevant to point out that in the matter of investigation relating to review of duty from Korea, the Domestic Industry had repeatedly pointed out towards inconsistencies in the information furnished by the exporter and yet the exporters information was admitted.

- ii. The petitioners had reportedly argued that the Polish exporter in particular and all exporters in general could not have recovered their cost of production, given the prices at which these parties had exported HSR to India and the prevailing raw material prices. It is indeed interesting to note that the exporter has vehemently objected to consideration of Normal Value based on estimates of cost of production and it shows the finding of the Designated Authority that majority of the sale of the exporter was at loss.
- iii. It is submitted that the Dumping Margin assessed in the disclosure statement for M/s Firma Chemiczna Dwory is inadequate. Further, there is sufficient ground for rejecting the entire information of the exporter. At the same time, we are not aware of what supplementary information has been filed by the exporter subsequent to our exposures with regard to the exporter in the public hearing and subsequent submissions. We request a complete set of information filed by the exporter after the visit by the officers.
- iv. It is submitted that Bayer International is a company outside European Union, is apparently a trader and an affiliate of the concerned producer. The response filed by the company is grossly inadequate. It is not clear whether the producer concerned had responded. Accordingly, it is submitted that Normal Value can only be determined in accordance with Rule 6(8).
- v. The argument made by Enichem with regard to low volume of exports made by them is untenable. If Enichem is not keen in responding, considering this as unimportant, the Authority is requested to confirm Dumping Margin in respect of this company in accordance with Rule 6(8).
- vi. As regards other non-cooperative exporters from the subject countries the methodology proposed by the Designated Authority be confirmed in the Final Findings.

b) M/s Enichem Elastomeri S.r.i Italy have made the following submissions:-

- i. M/s Enichem Elastomeri S.r.i., Italy have indicated that they have exported 22 MT in the year 2000 and that negligible quantities cannot cause injury to the indigenous producer and therefore they strongly feel that imposing Anti Dumping Duty on HSR on supplies from Enichem Elastomeri. Italy has caused injustice not only to them but also to their valued customers in India

In response to the Disclosure, the following submissions have been made:-

- i. According to our database records of sales, we have been sold our HSR type, i.e HS65, only in 1999, during July, August and October months, for a total of approx 328 tons, you will find all details of these sales in the summary sheet, we have sent to your attention by separate cover.
- ii. Enichem export price for these sales in 1999 to India was 840 USD/mt, as per a.m. documentation; this price has been kept for the whole July-October period. We are in position to show evidence of related invoices at later stage.
- iii. At the rate of exchange of the period, as per a.m. documentation, our selling price corresponded to a range of 1510-1591 Lire/Kg..
- iv. Encihem official price list on HS65 for Italian market, dated 15.6.99 (for 3rd quarter 1999) was 1420 Lire/kg. With reference to this price our Italian States Managers had a max, discount tolerance of 5%(i.e. down to 1349 Lire/kg) as per our internal procedure, to sell HS65 in Italy. We are in position to show evidence of related document (i.e. a.m. Price List) at a later stage. We have also supplied to others Asian countries at similar prices.
- v. Between June 1999 and October 1999 we sold in our domestic market, Italy, volumes of approx 50 tons/month to representative customers at prices between 1300 Lire/Kg (under Management approval) and 1480 Lire/Kg.. We are in position to show evidence of related invoices at later stage.
- vi. Based on comparison of a.m. prices (domestic vs. export prices to India) we do not see any reason to be involved in a dumping situation vs. Indian market; our selling prices in Italy were always below, or at least comparable with our export prices to India.
- vii. We did not sell any quantity during years 2000 and 2001.
- viii. In view of the above we fell that by imposing the Anti Dumping Duty on HSR supplies from Enichem Spa Italy, the Authority has caused injustice not only to us, but also to our valued customers in India.
- ix. We do agree that Italy is part of European Union but a sweeping duty on all the countries of the Union is not fair to the country who is not indulging in dumping activity.
- x. Hence we request to exempt import of HSR from Anti Dumping Duty.
- xi. By withdrawing the Anti Dumping Duty on our exports and charging such duty on exports from countries who are indeed indulging in such malpractice, the Authority will do justice to those countries and the Indian buyers who are not indulging in such unfair practice.

c.) M/s Bayer International S.A., Switzerland have made the following submissions:-

M/s Bayer International SA., Switzerland have indicated that at the time of hearing it was pointed out that they were non-cooperative and that it was misconceived.

- i. We had been subjected to the investigation to the same product in the earlier proceedings with respect to SBR and
- ii. that all relevant documentation and data had already been submitted in those proceedings.
- iii. Immediately, however, on the learned authority expressing its dissatisfaction with our response in the preliminary findings we have by our response April, 19, 2001 provided complete details as also the requisite exporters questionnaire.
- iv. In view of the above we apologise for our misunderstanding and respectfully submit that we may not be treated as non-cooperative exporters. It was never our intention not to cooperate with this authority.
- v. At the outset it was pointed out that the produce which market is under the name Krylene HS 260. This same product namely Krylene HS 260 was the relevant product in previous investigation. No other grade of SBR under investigation has been exported by us. In the current investigation the only grade of SBR under investigation is the same product namely Krylene HS 260.
- vi. In the previous proceeding the Final Findings were arrived at which inter-alia found that the dumping margin for all grades of SBR exported from France was 28.2%. A further finding is recorded whereby it was found that the landed value of our product was significantly higher compared to the reasonable selling price of the domestic industry and therefore was not causing injury to the Domestic Industry.
- vii. From the above, it is abundantly clear that this same product was in fact investigated, dumping margin was determined, but the export price did not cause injury to the domestic market.
- viii. It was further pointed out by the Actual users and Trade Associations during the hearing that as per Rubber Board data demand amounted to the region of 30600 MT per annum. If the total exports made by us which amount to 437 MT (all invoices submitted) the pro-rata percentage for the 9 months period or investigation would amount to less than 2% of the demand which is well below the requirements of Rule 14 of the Anti Dumping Rules. Further, even if the EU is to be considered as a block, we submit, that to the best of our knowledge, there is no other exporter making any significant exports to India and therefore even collectively EU imports would be below the prescribed percentage in the said Rule. We would also like to point out that the price of \$850 MT does not appear to be in line with this grade of SBR and may be related to other types of SBR.
- ix. We may point out that at no stage have the petitioners production figures been disclosed or provided during the course of investigation and therefore it is impossible to ascertain the same in view of the petitioners facility being a multi product one. Further, no details with respect to the alleged price of \$850 PMT

or the product upon which the price is based even provided to us. It is submitted that unless such figures are disclosed it is not possible for us to make any adequate or accurate submission in this regard to defend ourselves.

- x. Further, the Dumping Margin determined by the Authority in the preliminary findings amounts to 103.3%. We are unable to counter the same view of the fact that we have no information as to what export price has been taken into consideration for this purpose. If the same is the export price mentioned by the petitioner viz. \$ 850 PMT, the same is ex-facie erroneous in view of the invoices provided by us.
- xi. Without prejudice to our contention that the price in the domestic market is comparable to the export price as evidenced by the domestic price invoices provided to the Authority it is submitted that the same may be taken into consideration for arriving at the normal value and not the petitioners data.
- xii. The Authority has discarded the price provided for the Domestic market. However, the basis for disregarding the same appears to be that no cost of production details have been provided and therefore, the transaction is not in the normal course of trade. It is respectfully submitted that the Authority has erroneously discarded the price provided for the Domestic Industry in the preliminary findings.

In response to the Disclosure, the following submissions have been made:-

- i. We have been subjected to the investigation of the same product in the earlier proceedings with respect to SBR and absolutely all relevant documentation and data has been submitted by us.
- ii. The findings at that time indicated that the export price by us did not cause any injury to the domestic market.
- iii. We fail to understand why having exported insignificant quantities at price comparable to the domestic market and other international markets, the findings this time are different.
- iv. We have always cooperated and supplied all data required by the Authority.

d) M/s Firma Chemiczna Dwory S.A., Poland have made the following submissions:-

- i. The petitioners have argued that the submission made by the Polish exporter deserves to be rejected, being incomplete and insufficient. In this context, it is submitted that the petitioners have perhaps conveniently glossed over the specific provisions of the WTO Agreement (paras 5 & 6 of Annex II), which were read out during the course of the hearing. This is without prejudice to our contention that we had supplied all information as required in the Exporters' Questionnaire to the best of our understanding and ability. We reiterate our

stand and offer all cooperation to the Designated Authority for any other further information, which may be needed under the Indian rules and the WTO provisions now or during the course of the verification visit. The specific provisions of the WTO Agreement (paras 5 & 6 of Annex II) are reproduced below:

"5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations."

- ii. It is regretful that the decision of the Hon'ble Supreme Court (Haldor Topsoe case) has been cited entirely out of context. This judgement of the Hon'ble Supreme Court was in the context that the exporter in this particular case preferred not to disclose the details of the export price of the concerned catalysts to an appropriate third country even though the same was available with the respondent. Further, the reasons advanced by the respondent for not furnishing the information were not found worthy of acceptance by the Authority. The citation and the *ratio decidendi* of the Hon'ble Supreme court's decision has no relevance in this case as all information asked for by the Designated Authority has been furnished to the best of ability of the exporter and the exporter is also willing to submit any further information which the Designated Authority may consider necessary for the findings in the case.
- iii. On page 9 of the written submissions, we are surprised to see the conclusion reached by the petitioners with regard to the information to be supplied by the exporters. If a particular grade is not exported, where is the question of determining the dumping margin on that product. The assertion of the petitioners that the "Designated Authority is now prevented from determining the propriety of information with regard to cost of production", is without any logical basis. Such statements are made only to mislead and bias the Hon'ble Designated Authority, which we respectfully submit, should be ignored.
- iv. The petitioners have stated that the exporter should not be given another opportunity as it would tantamount to bonus for selective cooperation. It has further been stated that the situation cannot be resolved even by conducting spot investigations, as the purpose of spot investigations is not to compile the

information. Reliance is placed on Annex I to the WTO Agreement. In this connection, we wish to reproduce the relevant provision from Annex I of the Agreement:

". . . the main purpose of the on-the-spot investigation is to verify information provided *or to obtain further details, . . .*"

The same Annex goes on to state that:

". . . it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

Annex II of the Agreement states as under:

"5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefore, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations."

- v. Thus, it is clear that the WTO provisions prove beyond any doubt that the arguments of the petitioners with regard to the so-called deficiencies deserve to be ignored.
- vi. The petitioners have rightly selected the international prices of major raw materials for the estimate but have fatally flawed the determination of the Normal Value in EU and Poland by assuming "All other costs" on the basis of expenses incurred by them in Para III of the non-confidential version of the petition. Thus, it is clear that even at the time of initiation the information available with the Designated Authority was conceptually and legally inadequate and an initiation could not have been initiated on that basis. We also respectfully submit that this defect at the time of initiation is incurable and cannot be rectified at any subsequent stage. We place reliance on the case Guatemala-Mexico cement case, which has been adequately cited in our written submissions, and not being reproduced for the sake of brevity. Other arguments

taken at the time of the public hearing have not been addressed by the domestic industry.

In response to the Disclosure, the following submissions have been made:-

- i. In response to our letter dated 26.11.2001 requesting for details of normal value, since we have not heard from the Directorate, we are offering our comments on other issues at this stage. It is reiterated that the Authority may kindly provide us with the details as required in our earlier letter.
- ii. The detailed disclosure would also be in line with the principles of natural justice as well as the guidelines of the WTO.
- iii. We are not in a position to effectively response to the disclosure statement and would like to state that while the disclosure narrates some of the arguments on issues of confidentiality, adequacy and accuracy of information at the time of initiation, non-availability of certain crucial information, the same has not been addressed in the disclosure statement..

e) M/s All India Federation of Rubber Footwear Manufactures and M/s Paragon have made the following submissions:-

- i. The Honourable Designated Authority in the preliminary finding has rejected certain transactions provided by the Polish Exporter on the ground that the sales to certain customers in the domestic market are below the cost of production as claimed by the producer/exporter and are, therefore, not in the normal course of trade.
- ii. It is respectfully submitted that whether particular transactions are below cost of production are subject to a two part test as set out in Annexure I to the Anti Dumping Rules.
- iii. This aspect was also recently dealt with by the Hon'ble CEGAT in the matter of M/s Thai Acrylic Fibre Co. Ltd. V/s Ministry of Finance, Designated Authority (2001(75) ECC 197 (Tri.)). The Honourable CEGAT stated:

"In view of the.....understanding of the provisions contained in Clause (2) of Annexure I, the da was clearly in error in rejecting all sales which were effected at prices below per unit cost of production for the period of investigation. Only those sales at prices below per unit cost of production at the relevant time should have been excluded as not having been effected in the ordinary course of trade. This should have been subject to the provisions contained in sub-clause (1) and (2). Even in apply this, it should have been examined whether such sales were within the reasonable period of not less than six months and whether such sales were in relation to substantial quantity of not less than 20% of the volume".

- iv. It is respectfully submitted that on the basis of the information provided by the exporter to the Honourable Designated Authority, this two parts test enumerated above must be carried out. We are hopeful that there would be no dumping margin if both the tests are applied in the case of exporter from Poland.
- v. Furthermore, the Honourable Designated Authority has disallowed certain adjustments for expenses incurred exclusively for domestic sale. It is respectfully submitted that the exporter from Poland has substantiated the adjustment with documents supplied on a confidential basis. Accordingly it is respectfully submitted that the Honourable Designated Authority give full and complete effect to the same.

In response to the disclosure, the following submissions have been made:-

M/s Banik Rubber Industries have stated that rejection of certain transactions carried by the Polish exporters on certain grounds need in-depth scrutiny with regard to cost of production as per anti dumping rules before determining the dumping margin. Two part test must be carried out to know the actual position of the adjustments for the domestic sales by the exporters should also be taken into account.

- i. M/s All India Rubber Industries Association and Small Scale Rubber Industries Association and M/s New India Works Pvt. Limited have also reiterated the above comments made by M/s Banik Rubber Industries.

EXAMINATION BY AUTHORITY:

2(a) M/S FIRMA CHEMICZNA DWORY SA, POLAND

(i) NORMAL VALUE

The Authority notes the various submissions made by the interested parties regarding the computation of the normal value for M/s Firma Chemiczna Dwory S.A., Poland. The Authority notes that in response to the disclosure statement, wherein a confidential disclosure on the evaluation of Normal Value and Dumping Margin was provided to the exporter indicating the methodology and the basis of various cost elements, the exporter had indicated that disclosure is non-speaking and desired that detailed computation and cost components be provided to them. The Authority keeping in view the request of the exporter granted a personal interaction with the Directorate. The representative of the exporter interacted with the Directorate, wherein it was reiterated that detailed methodology, and basis of computation of cost of production has already been given in the disclosure. The Authority in this regard holds that as per the anti dumping rules and standard practice of the Directorate, the

detailed methodology and basis of computation of normal value has been indicated in the confidential disclosure which is in fact based on the documents provided to the verification team by the exporter themselves and which have been clearly indicated in the confidential disclosure statement issued to the exporter.

The Authority notes that the questionnaire response filed by the exporter did not reconcile with the original records of the exporter and therefore the data as provided by M/s Firma Chemiczna Dwory S.A. to the verification team at the time of on site verification has been referenced and on the basis of this data provided to the verification team, the cost of production of the subject goods in the period of investigation (KER 1904 grade) comes to ****\$/MT. This cost of production is above the weighted average domestic selling prices in the period of investigation for the grade KER 1904. The Authority has therefore disregarded the domestic selling prices of the subject goods in the period of investigation as these are not in the ordinary course of trade as per Annexure 1 to the Anti Dumping Rules. The Authority also notes that during the Period of investigation, the domestic sales transactions have not been able to recover the costs as indicated in Annexure 1 to the Anti Dumping Rules and therefore the recovery test as argued by the exporter is not relevant. The Authority has therefore constructed the Normal Value on the basis of cost of production details as made available to the verification team for the subject goods in the period of investigation as per the Anti Dumping Rules.

The weighted average normal value for the subject goods in the period of investigation comes to ****\$/MT.

(ii) EXPORT PRICE

As regards the export price, the Authority notes that the exporter has provided the weighted average CIF price to India for the subject goods in the period of investigation. The Authority also notes that the exporter has claimed adjustments on inland freight, ocean freight, packing, commission and VAT to an extent of ***, ***, ***, ***, ***, and ****\$/MT.. The Authority has considered these adjustments on the basis of data as verified by the verification team. The total value of transportation cost which is inclusive of ocean freight, ocean insurance and other port expenses has been considered as adjustment as provided to the verification team. As regards the adjustments on VAT, it is noted that the exporter has claimed this adjustment to an extent of ****\$/MT. During the verification, the verification team was informed by the exporter that the VAT has been claimed only on an actual basis as paid by them on the various inputs which have gone into the export production. The Authority has therefore allowed the VAT refund adjustment to an extent of ****\$/MT.,

The weighted average Ex-Factory Export Price comes to ****\$/MT.

(b) OTHER NON-COOPERATIVE EXPORTERS/PRODUCERS FROM POLAND

(i) NORMAL VALUE

As regards the non-cooperative exporters/producers other than M/s Firma Chemiczna Dwory S.A., Poland, the Authority has constructed the normal value of the subject goods in the period of investigation on the basis of the cost of production data for subject goods in Poland.

The weighted average normal value for the non-cooperative exporters/producers is considered at ****\$/MT.

(ii) EXPORT PRICE

As regards the export price, the Authority has considered the least export selling price of subject goods from Poland to India in the POI with adjustments as the petitioners data and as co-related by the data given by M/s Firma Chemiczna Dwory S.A., Poland. These adjustments are ocean freight, inland freight, port expenses, commission and ocean insurance.

The weighted average Ex-factory Export Price is considered at ****\$/MT,

(c) TERRITORY OF EUROPEAN UNION (EU)

M/s Bayer International S.A., Switzerland & M/s Bayer International, France (M/s Bayer)

(i) NORMAL VALUE

The Authority notes the various submissions made by the Domestic Industry and M/s Bayer International S.A., Switzerland regarding the evaluation of the dumping margin. The Authority notes that it has been admitted by M/s Bayer that they did not provide the complete information before the preliminary findings. The Authority also notes that the subsequent to the preliminary findings M/s Bayer has provided certain additional information. However, the Authority notes that the same was found to be grossly deficient. The Authority had requested M/s Bayer to provide the cost of production and information as per the prescribed questionnaire. No such information was made available by M/s Bayer. The Authority in confidential disclosure issued to the exporter indicated the non-availability of cost of production of subject goods in the Period of Investigation and indicated inability to hold the domestic sales made by them in ordinary course of trade. Basis of constructing the normal value for subject

goods in the Period of Investigation was also indicated. In response to the disclosure, the exporter has indicated that in the earlier investigation of SBR they had provided all data. However no cost of production in the current Period of Investigation was made available.

In view of the non-availability of specific cost of production data for the POI, the Authority notes that the export prices to the third countries other than India as indicated by M/s Bayer cannot be referenced for Normal Value and also the domestic prices as indicated by M/s Bayer cannot be held in the ordinary course of trade. The Authority also notes that even on the basis of the domestic selling prices and ex-factory export price information as provided by M/s Bayer, dumping of subject goods in POI is evidenced. The Authority in this regard notes that as per Anti Dumping Rules, the Authority has no option but to construct the normal value for M/s Bayer as per Rule 6(8) on the basis of the data on various cost elements viz. raw materials etc. at international prices and other duly normated cost elements as available from the petitioners data .

The weighted average constructed normal value for M/s Bayer International S.A., Switzerland, the exporter and M/s Bayer International, France, the producer comes to ****\$/MT.

(ii) EXPORT PRICE

As regards the export price, the Authority has considered the weighted average export price for subject goods (KS 260) in the period of investigation as indicated by the exporter. The Authority has allowed adjustments on inland freight, overseas freight, overseas insurance, handling, sales tax and credit on the basis of the data as provided by the exporter. The weighted average ex-factory export price for the subject goods in the period of investigation is considered at ****\$/MT.

(d) **M/s Enichem Elastomeri S.r.l Italy (M/s Enichem)**

The Authority notes the submissions made by M/s Enichem, Italy regarding low volume of exports made by them and the submissions made subsequent to the disclosure. Since the investigation is for European Union as a territory and that the total imports from EU are above the de-minimis, as per rules, M/s Enichem cannot be excluded from the scope of the investigation.

The Authority notes that M/s Enichem has reported that no quantity of subject goods has been sold by them during the year 2000 and 2001. The Authority therefore notes that in view of no exports being made during the Period of Investigation, the exporter would be attracted under the Rule 22 of the Anti Dumping Rules. The exporter may

make a request under Rule 22, however, pending the Rule 22 investigation, the exporter shall be treated along with other exporters/producers category other than M/s Bayer International as indicated below.

(e) OTHER NON-COOPERATIVE EXPORTERS OTHER THAN M/S BAYER INTERNATIONAL S.A., SWITZERLAND

(i) NORMAL VALUE

The Authority has adopted the same methodology for the normal value as for M/s Bayer for exporters/producers who have not responded i.e. the normal value has been constructed as per Rule 6(8) on the basis of the data on various cost elements viz. raw materials etc. at international prices and other duly normated cost elements as available from the petitioners data.

The weighted average normal value is considered at *****/MT.

(ii) EXPORT PRICE

As regards the export price the Authority has considered the least export price from European Union in the POI with appropriate adjustments as per data provided by M/s Bayer including commission to the agent in India.

The weighted average Ex-factory Export Price is considered at *****/MT..

5. DUMPING-COMPARISON OF NORMAL VALUE AND EXPORT PRICE

The rules relating to comparison provides as follows:

"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

The Authority has carried out comparison of weighted average normal value with the weighted average ex-factory export price in POI for evaluation of dumping margin.

The dumping margin for the producers/exporters of the subject goods in the subject countries in the POI are as under:--

Exporters/producers	Normal value (\$/MT)	Export price (\$/MT)	Dumping margin(%)
Territory of European Union			
M/s Bayer International S.A. Switzerland and M/s Bayer International, France All other exporters/producers of Territory of European Union	***** *****	***** *****	87.2 107.48
Poland			
M/s Firma Chemiczna Dwory S.A. All other exporters/producers of Poland	***** *****	***** *****	26.7 55.68

The above dumping margins are above the de-minimus limits

G.1 INJURY AND CAUSAL LINK

Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, ".....taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II(iv) of the rules supra.

The following submissions have been made by various interested parties

a) M/s Apar Industries Limited and M/s Apcotex Lattices Limited have made the following submissions:-

- i. The demand of HSR in the country in 1999-2000 as assessed by various interested parties in the region of 30601 MT is wrong as per the information received from Rubber Board. It has been indicated that the figure of 30601 MT

includes all types of the synthetic rubber viz. NBR, EVA etc. Based on our assessment the demand of HSR in the country is in the region of 17000 MT.

- ii. Though the preliminary findings already confirms that the exporters from subject country/territory are dumping HSR in the Indian market, it is submitted that there is injury to the domestic industry, there is threat of material injury to the domestic industry due to dumping of the subject goods in the Indian market. We submit that the domestic industry has earlier suffered material injury as a result of dumping from a number of countries which are now attracting anti-dumping duties. So severe was the extent of damage to the domestic industry that one of the producers, M/s. Synthetics & Chemicals was even forced to suspend its production. The petitioners note with amusement the interest being shown by the consumers now in the goods produced by Synthetics & Chemicals, notwithstanding their stiff opposition and argument to imposition of anti-dumping duty on SBR earlier consequent to the petition filed by that company. Furthermore, in view of the imposition of anti-dumping duty on imports of SBR from some of the countries, the injury to the domestic industry is required to be seen in the context of existing duties and impact thereof.
- iii. During the course of the oral hearing, it has been argued by the exporter/importer that in the anti dumping investigation of NBR, it has been stated by the Domestic Industry that NBR is the cause of its poor profitability while now the Domestic Industry is claiming that HSR is the cause of its poor profitability.
- iv. We submit that the Designated Authority has conducted a number of investigations on the basis of the verified data/information provided by the company. Different investigations pertain to different investigation period and it would not be appropriate to assume that the financial performance of the company in different period remained the same. The information furnished by the company in various investigations is true, correct and as per books of accounts. We are prepared to give any further information which the Designated Authority may require in this connection.
- v. The material injury and threat of material injury suffered by the domestic industry as a result of dumped imports is evident from following parameters:
 - The injury to the domestic industry is required to be cumulatively assessed.
 - Imports have increased significantly in absolute terms from the two countries.
The actual volume of imports from Poland have increased to a level of about 1000 MT from no imports till 1999.
 - Imports from the subject countries have increased in relation to demand of the product in India.
 - Imports from the subject countries have increased in relation to production in India.

- Market share of domestic industry in demand of the product in India declined.
- Significant rise in dumped imports from subject countries in a very short period which indicates the likelihood of substantially increased importation in future,
- Substantial capacity available with the exporters in the subject countries.
- Sufficient freely disposable capacities available in the subject country/ territory.
It is understood that the Polish company has reduced its production and sales of HSR in the last few years. Further, the company is having significant surplus capacity.
- The existing capacities in the subject country/territory is much more than demand of HSR in the subject country/territory.
- The export price is significantly below the fair selling price of the domestic industry, causing severe price suppression/depression in the Indian market.
- The landed price of Imports is significantly below the selling price of the domestic industry, causing severe price undercutting in the Indian market.
The price undercutting is forcing the domestic industry to reduce its price levels and the domestic industry is finding difficult to hold on to their prices.
- Losses of the domestic industry have piled up. The industry has been forced to sell at prices below the optimum cost of production and reasonable return on investments
- Operating margins of the domestic industry have been declining substantially as a result of severe price undercutting.
- Stock with the domestic industry have piled up.
- Capacity utilisation of the industry has remained sub-optimal. The industry has not been able to utilise its plant optimally in spite of imposition of antidumping duties on other countries.
- Employees with the domestic industry are demoralised. The company is finding it difficult to retain its talented employees as a result of continued dumping of the product in the market.
- The domestic industry is unable to grow as a result of continued dumping of this product in the Indian market. This is in spite of rising demand of the product.
- Due to severe dumping and injury to the domestic industry earlier from other countries and now from subject country/territory, one manufacturer have already applied to BIFR.

It may thus be seen that all the above parameters individually and collectively establish that the domestic industry has been materially injured and there is severe threat of material injury to the domestic industry as a result of dumped imports. We submit that the Anti Dumping Duty is required to be imposed now, otherwise, it would not be possible for the domestic industry to sustain its existence.

In response to the Disclosure, the following submission has been made:-

We rely upon our arguments advanced earlier, which are not being repeated hereunder for sake of brevity. The various arguments brought by us on the issues of injury and causal link clearly establish that the Domestic Industry has suffered material injury.

b). M/s Sharma Associates, New Delhi have made the following submissions:-

- i. The notification does not give details of injury analysis in the absence of which we are unable to understand in the absence of which we are unable to understand as to how the injury is caused.
- ii. The information on production, figures of Domestic Industry, details of imports from CBEC, ratio of raw-material, cost versus selling prices from the domestic producers and the exporters may be made available.

c) M/s Banik Rubber, Calcutta have made the following submissions:-

- i. There is a gap between demand and supply of HSR and that the quality of HSR produced by Domestic Industry is not upto the standard for manufacturing the rubber products at the time of globalization in the world market. Therefore, the local industries have no other alternative but to depend on the better quality of HSR from imported sources. The question of imposition of anti dumping duty therefore does not arise.

d) M/s All India Federation of Rubber Footwear Manufacturers and M/s Paragon have made the following submissions:

- i. It may also be pointed out that the preliminary findings in this particular case do not reveal the basic information relied upon, as envisaged under Rule 12 or under the WTO Agreement on Anti-dumping. This is a significant departure from the long established practice of giving the details of injury analysis even in the preliminary findings, as was done also in the earlier cases of synthetic rubber. You would kindly appreciate that this severely handicaps the domestic user industry from offering any meaningful comments.
- ii. At the outset it must be submitted that it is incumbent upon the Honourable Designated Authority to consider all the aspects of injury as enumerated in Annexure II (iv).
- iii. In fact the WTO Panel in case of Bed Linen, in which India was a party, considered this aspect.
- iv. This provision is squarely incorporated in the Indian Anti-dumping Rules specifically. Annexure II (iv) clearly states that "the examination of the impact of the dumped imports on the domestic industry concern shall include an

evaluation of all relevant economic factor and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output market shares, productivity, returns 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.

- v. It is an admitted fact the Petitioners are a multi-product companies manufacturing several types of synthetic rubbers including HSR (SBR 1900). It is to be noted that it is an admitted fact that the Petitioners do not manufacture 1500 or 1700 series of SBR.
- vi. Further, it is also note-worthy that M/s. Gujarat Apar / Apar have filed several anti-dumping cases on other forms of synthetic rubber, namely NBR. Admittedly, the plants of M/s. Apar can be used interchangeably to produce different types of synthetic rubbers.
- vii. The first case was filed on or about October, 1994 against Japan.
 - a. The second case again concerning NBR was filed against Korea on or about March, 1995.
 - b. A third case was filed against Taiwan on or about January 1999.

In NBR 1 (period of investigation 1.4.1993 to 31.3.1994) the Honourable Designated Authority noted that the Petitioners "had to resort to production of non-NBR products (which otherwise does not require such plants and technology as are available with the Petitioners +for producing NBR) . . ." It is noteworthy that until 1.4.94 SBR plant belonged to M/s Apar Limited (a Private Limited Company) On 1.4.94, M/s Apar Limited was transferred to M/s. Gujarat Apar.

In NBR II the investigation period was from Ist October 1994 to 31st March, 1995. By this time the SBR capacity has been amalgamated. In this case also the authority notes that the petitioners had been forced to produced non-NBR items which otherwise does not require such plant and machinery as are available with the petitioners. The authorities went on to note that even though the petitioners had reported profits in its published annual accounts, the same is because of sale of non-NBR items.

- i. NBR III case which covered investigation period from Ist April, 1998 to 31st December, 1998. For the third time inspite of record profits and capacity utilisation the petitioners once again claimed injury on the basis that the profits and high capacity utilization in the synthetic rubber business was on account of non-NBR products.

- ii. Not surprisingly in the present case once again M/s Apar have had record capacity utilisation and production with an installed capacity of 11600 MT; in 1999-2000 M/s Apar had produced 12203 MT of synthetic rubber.

In NBR II, M/s Gujarat Apar/Apar also identified that their polymer capacity was 6250 MT out of a total installed capacity for synthetic rubber of 11600 MT. Thus, it is surprising to note that at the public hearing a Director from M/s Apar publicly stated synthetic rubber including HSR(SBR1900). It is to be noted that it is an admitted fact that the petitioners do not manufacture 1500 or 1700 series of SBR. It is submitted that through the abuse of the confidentiality procedure M/s. Gujarat Apar / Apar have been repeatedly seeking the imposition of anti-dumping duty on all the products they manufacture. If the Petition is for NBR, record production on profits is attributed to other forms of synthetic rubber. In this instant case the roles have been reversed and the injury now is being caused to rubbers other than NBR, i.e. HSR.

- xii. It is evident that the proof of injury to the domestic industry was wholly inadequate and each and every parameter showed an improvement in performance over the previous.
- xiii. Within the factual matrix of this particular case, the Petitioners submitted inadequate data on import volume, import prices, etc. A few unsubstantiated claims on injury and on threat of injury were made. Clearly and prima-facie, these are wholly inadequate and cannot be considered as 'sufficient' for the purpose of whether initiation or for further investigations. Further, we respectfully submit that it was incumbent upon the Honourable Designated Authority to examine the accuracy and the adequacy of the data filed by the Petitioners prior to initiating the investigation, as per Rule 5 (3) of the Anti-dumping rules. Due to these incurable defects in the petition by the domestic industry and the Designated Authority not examining the adequacy and accuracy of the submissions made by the domestic industry, we most respectfully submit that the investigations need to be terminated forthwith.

In response to the Disclosure, M/s All India Rubber Footwear Manufacturers have made the following submission:-

- i. The total proceedings in the subject case are shrouded with evasiveness. The Domestic Industry has failed to give a clear cut reply to our queries made from time time viz. no satisfactory reply why HSR was being cleared under Chapter 39 has been given.
- ii. The contention of the petitioners that HSR can be cleared both under Chapters 39 and 40 is highly misleading and cannot be accepted.

- iii. When the import data from the Government sources, i.e. DGCI&S was available why the Domestic Industry chose to rely upon data from the secondary sources.
- iv. In the petition the petitioners have indicated that total production of HSR equals to 4996+2759 tons whereas in their rejoinder they had indicted that the established demand was of the order of 18000 to 20000 M. tons pa.. The capacity of both the domestic producers, however, taken together, is not more than 10000 to 12000 M. tons p.a..
- v. We deny the contention of the petitioners that the imports have increased. On the other hand imports have actually gone down to 7383 M. tons in 1999-2000 from 11083 M. tons in 1998-99.

e) M/s Firma Chemiczna Dwory S.A., Poland have made the following submissions:-

- i. The petitioners have merely reproduced the contentions made by them in the petition. In this connection, it may be pointed out that the details of the so-called injury have to be mentioned in the preliminary findings after taking into account all the individual economic and financial parameters. Further, the requirements for 'threat of injury' have not been met with in the instant case. There is nothing more than mere assertion that there is threat of injury from the alleged dumped imports just to sensationalize the issue. It is also submitted that the arguments made by the exporter/importers and users during the oral hearing as well as in the written submissions stand un rebutted by the petitioners.
- ii. We also urge the Hon'ble Designated Authority to kindly follow the rule of the Bed Linen case and the position taken by India therein.
- iii. We also request the Hon'ble Designated Authority to kindly take into account the specific production capacities of the petitioners in their different plants for various types of rubber. Our request for the capacities of producing different synthetic by M/s Apar has not been paid attention to by the domestic industry. We are covering this aspect separately in the section relating to confidentiality and adequacy & accuracy of information.

f) M/s Small Scale Rubber Industries of India, New India Rubber Works (P) Ltd., M/s Banik Rubber Industries and All India Industries Association have made the following submissions:-

- i. There is no injury to the domestic producers. The domestic producers have not made any losses, and any pile up of stocks is on account of poor quality of their product. Domestic Industry have increased their capacity and also their selling prices

In response to the disclosure, the following submissions have been made by New India Rubber Works (P) Ltd. and M/s Banik Rubber Industries:-.

- i. There is no injury to the Domestic Industry if a proper and detailed investigation is carried out particularly after considering the fluctuation in the cost of input of the raw materials consumed by the Domestic Industry. Here it may again be referred that one of the Domestic Industry, M/s Apar Industries Ltd. has made a huge profit due to less input cost (please refer the Economic Times, Kolkata dt. 7.11.2001).
- ii. The consuming industry must not be made to suffer due to incapability of the Domestic Industry for non-economic sale of production by using outdated technology by the Domestic Industry. Any increase in cost by the Domestic Industry due to their in-efficiency should be ignored and must not be taken into account while calculating their cost of production. The Authority must not allow itself to be used as a profit generating tool by one or two Domestic Industry employing total workmen within 1000 against thousands of small consuming units employing lakhs of workmen. This is obviously not permissible in a developing country like ours which is always fighting against unemployment, poverty and other social problems. Here we also take the opportunity to respectfully submit that any improper decision affecting the Rubber consuming industry in the country shall have also an indirect impact on the condition of natural rubber growers of the country for which the Government always prefer to look for their interest.

2. EXAMINATION BY AUTHORITY

The Authority after considering the above submissions, the data provided by the Domestic Industry and the imports data observes the following:-

- i. The imports of subject goods from the countries other than the subject countries as per the DGCI&S data is 3487 MT and as per secondary source Polymers Plastics Rubber (PPR) Trade Journal is 4039 MT in POI. The maximum imports from non-subject countries by considering these two sources comes to 5073 MT (Chapter 40 imports of DGCIS and Chapter 39 imports of PPR). On the basis of this data, the Authority notes that the imports from the subject countries are above the de-minimis level.
- ii. The production of the Domestic Industry has increased from 5490 MT in 1997-98 to 6532 MT in 1998-99, to 9224 MT in 1999-2000 and further to 7627 MT in POI (annualised 10169 MT).
- iii. The capacity utilisation has decreased from 72.73% in 1997-98 to 42.14% in 1998-99, to 59.5% in 1999-2000 and has decreased to 57.13 % in POI.

- iv. The domestic sales of the Domestic Industry has increased from 6109 MT in 1997-98 to 7617 MT in 1998-99 to 8960 MT in 1999-2000 and 8352 MT in POI (annualised 11136 MT).
- v. The imports in absolute terms from Poland have increased from 0 MT in 1998-99 to 1160 MT in POI (annualised 1546 MT) and that from territory of EU from 1152 MT to 1250 MT (annualised 1667 MT) during the same period. In terms of market share, the imports from Poland have increased from 0% in 1998-99 to 7.3% in POI, whereas for territory of EU it has increased from 6.16% to 7.9% for the same period.

As proportion of total imports, the imports from Poland have increased from 0% in 1998-99 to 15.5% in POI while for territory of EU the share has increased from 10.4% to 16.7% for the same period. The imports data is referenced from DGCIS and correlated appropriately with PPR data and exporters response to the extent it is feasible.

- vi. The market share of the Domestic Industry has increased from 40.7% in 1998-99 to 55.87% in 1999-2000 and has been 52.74% in POI.
- vii. The profitability of Domestic Industry has declined significantly in POI as compared to 1997-98 and 1998-99.
- viii. Though the production, domestic sales, capacity utilisation and selling prices of the subject goods of Domestic Industry have increased in POI as compared to 1998-99 and 1999-2000, the net sales realisation of the Domestic Industry has been suppressed on account of the low landed values of the dumped imports from the subject countries and has been significantly lower than the non-injurious price thereby leading to financial losses.

2. The Authority also notes the submissions regarding the injury analysis for the Domestic Industry made by various interested parties on the issue of capacity and injury analysis. In this regard, the Authority holds that non-injurious price (NIP) has been evaluated for the Domestic Industry by bench-marking the best consumption norms and normating the various cost components and by considering the dedicated capacity of the subject goods available with the Domestic Industry. In this regard therefore the injury to the Domestic Industry on account of price suppression due to dumped imports has been evaluated with reference to the cost of production in POI of the subject goods only.

3. The Authority notes the various arguments pertaining to demand of HSR in the country. The Authority on the basis of the import data available from DGCI&S and from Polymers Plastics Trade Journal Intelligence (PPR) for the period of investigation evaluates the demand of HSR on the basis of the domestic sales and imports made as 18000 MT approximately. The Authority notes that if the data of

imports under Chapter 39 of PPR and data of imports of Chapter 40 by DGCI&S pertaining to the subject goods is considered, the best demand in the country can be considered of an order of 21000 MT approximately. On the basis of this demand and on the basis of the total available capacity, the Authority notes that there is a demand-supply gap on the basis of the actual production done by the Domestic Industry. The available capacity indicates that this demand-supply gap can be reduced if the domestic industry attains a higher capacity. On the basis of the previous years imports data as available from DGCIS and domestic sales of the Domestic Industry, the Authority holds that the demand of the subject goods is rising and therefore has not been a factor responsible for injury to the Domestic Industry. Also on the basis of the submissions made by various interested parties, the Authority notes that the demand has not been a constraining factor.

The above economic factors collectively and cumulatively indicate that the dumped imports have kept the domestic prices depressed in the Indian market thereby causing material injury to the Domestic Industry by way of depressed Net Sales Realisation below the Non-Injurious Price thus leading to financial losses.

H.1 INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

The following submissions have been made by various interested parties:-

a) M/s India Federation of Rubber Footwear Manufactures have made the following submissions:-

- i. The Domestic industry is taking undue advantage of the anti dumping system and attempt is being made by the vested interests in the country so that they can increase the price of their products.
- ii. It is respectfully submitted that Public Interest is an aspect which the Honourable Designated Authority must consider prior to the imposition of Anti-Dumping Duty.
- iii. It is further submitted that it is wholly simplistic to assume that any public interest view would essentially condone dumping, which is only beneficial in the short term, thus Anti Dumping Duties must be imposed, irrespective of the consequences on the user Industry.
- iv. In fact the Anti Dumping Rules themselves require that the Honourable Designated Authority take into account the interest of the consuming industry in particular the Rule 6(5).
- v. Clearly, the consumer interest is not to be discarded.
- vi. In the factual matrix of the particular case, the Domestic Industry can admittedly not meet the domestic demand. Further, the user industry has

confirmed that the quality of the domestic product is so poor that it impacts the brand equity of their slippers.

- vii. Further, the end product is rubber slippers consumed by the common citizen of India. By imposing unduly high Anti-Dumping Duties the Honourable Designated Authority may consider the eventual impact on the consuming public.

In response to the Disclosure, the following submissions have been made:-

- i. i. That the sole purpose of the petitioners is to increase the price of HSR on one pretext or the other. The Domestic Industry has increased their prices on four occasions within the last two years from Rs.60/- per kg. to Rs.88/- per kg..
- ii. ii. Apar Industries Ltd. and Apcotex are not providing HSR produced by them at fair prices and very often they jack up the prices on one pretext or the other hurting the viability of the local rubber industry. Their qualities are also not upto the mark. Their supply position is equally bad.

b) M/s Banik Rubber Industries, Calcutta have made the following submissions:-

- i. It has also been indicated that M/s Banik Rubber industries that the anti dumping duty has been imposed without taking into account the concerns of the user industry who employ four lakh workers which is not only bad in law but also without jurisdiction.
- ii. It has also been indicated that imposition of anti dumping duty on HSR in India has resulted in opportunity for the products from Nepal, Bangladesh, Korea and Thailand who are grabbing Indian market.
- iii. M/s Banik Rubber Industry have indicated that the manufactures of rubber are taking advantage of anti dumping duties and have revised their prices on various grounds over the last three years. The goods supplied by the Domestic Industry also do not meet the quality and standard required. M/s Small Scale Rubber Industries Association and New India Works Pvt. Ltd. have also supported the above submissions.

2. EXAMINATION BY AUTHORITY

The Authority notes the submissions made by the user industry on the likely impact of the anti dumping duty on the footwear manufactures. The Authority also notes that it has been indicated that the anti dumping duty will have an adverse effect on the employment in the small scale units. The Authority also notes that the submissions have been made regarding problems related to quality and standards of the goods supplied by the Domestic Industry and also regarding the mis-match in the demand-supply situation in the country. The Authority notes that various interested parties

have also argued that subsequent to the levy of anti dumping duty, the Domestic Industry has raised the prices of the subject goods. It has also been submitted that the levy of anti dumping duty would lead to import of the finished products which the user industry is manufacturing and that the levy of anti dumping duty which is to protect only two units is against the spirit of globalisation and WTO.

The Authority noting the above submissions made by various user industry holds that the purpose of anti dumping duty in general only to redress the injury which has been caused to the Domestic Industry due to unfair practice of dumping and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country.

The Authority recognises that the imposition of anti dumping duties might affect the price levels of the products which are manufactured with the usage of the subject goods and therefore might have some influence on relative competitiveness and price levels of this products. However, the 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 advantages gained by the dumping practices and would prevent the decline of the Domestic Industry and help maintain availability of wider choice of the subject goods to the user industry and the consumers. Imposition of anti dumping measures would also not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the products to the consumers.

Regarding the mis-match in demand and supply, the Authority holds that consequent to the anti dumping measures, the imports of the subject goods from the subject countries would only get regulated at a fair price and in no way these measures are were intended to restrict imports from the subject countries. As regards the quality and standard of the subject goods as indicated by the user industry, the Authority reiterates as indicated in the foregoing para that these claims are unsubstantiated and have therefore not been considered. Also the Domestic Industry has been supplying these subject goods to the user industry in past and during the POI. Since the purpose of anti dumping duty is only to redress the injury caused due to the unfair practice of dumping the Authority keeping in view the interests of the user industry has recommended the anti dumping duty on the basis of lesser duty rule.

I. LANDED VALUE

The landed value has been determined for the subject goods after adding on weighted average CIF export price, the applicable level of custom duties (except duties levied under Section 3, 3A, 8B, 9, 9A) and one percent towards landing charges.

J. CONCLUSIONS:

It is seen, after considering the foregoing that:

- a. The subject goods in all forms originating in or exported from the subject countries have been exported to India below its normal value.
- b. The domestic industry has suffered material injury by way of depressed Net Sales Realization (NSR) on account of price suppression caused by low landed prices of the dumped subject goods from the subject countries leading to financial losses.
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject countries. The authority recommends anti-dumping duty on imports of all forms/grades of subject goods falling under Chapter 40 and Chapter 39 originating in or exported from the subject countries as also indicated in sub-para (d) below.
- d. It was considered to recommend the amount of anti-dumping duty equal to the margin of dumping or less so as to remove the injury caused to the domestic industry. Accordingly, it is proposed that definitive anti dumping duties as set out below be imposed, by the Central Government on all forms and grades of subject goods originating in or exported from Territory of European Union and Poland under Chapter 40, Customs Sub-Heading 4002.19 (ITC Classification 4002.1902) and Chapter 39, Custom Sub-Heading 3903.90 (ITC Classification 3903.9000) of the Customs Tariff. However the goods specifically indicated in foregoing para C(2) as being excluded do not attract the anti dumping duty.

SI.No..	Name of the exporter/producer	Product	Amount of Duty (US\$/MT))
1.	Poland		
	M/s Firma Chemiczna Dwory SA	All grades including KER 1904, 1909, 9000 of High Styrene Resin/Rubber(HSR) covering SBR 1900 series referencing to High Styrene Resin Latex Master Batch/High Styrene reinforcement Polymer, excluding Polystyrene, Thermoplastic elastomer, Acrylonitrile-Butadiene Styrene copolymers and Styrene acrylonitrile copolymers and SBR 1500 and 1700 Series.	248.14
2.	All other exporters/producers		421.05
	Territory of EU N/s Bayer International	Excluding Polystyrene, Thermoplastic elastomer, Acrylonitrile-Butadiene Styrene	359.70

SA, Switzerland and M/s Bayer International, France.	copolymers and Styrene acrylonitrile copolymers and SBR 1500 and 1700 Series.	430.08
All other exporters/producers	All grades including Krylene HS 260 of High Styrene Resin/Rubber(HSR) covering SBR 1900 series referencing to High Styrene Resin Latex Master Batch/High Styrene re-inforcement Polymer excluding Polystyrene, Thermoplastic elastomer, Acrylonitrile-Butadiene Styrene copolymers and Styrene acrylonitrile copolymers and SBR 1500 and 1700 Series.	
	All grades including Krylene HS 260 of High Styrene Resin/Rubber(HSR) covering SBR 1900 series referencing to High Styrene Resin Latex Master Batch/High Styrene re-inforcement Polymer excluding Polystyrene, Thermoplastic elastomer, Acrylonitrile-Butadiene Styrene copolymers and Styrene acrylonitrile copolymers and SBR 1500 and 1700 Series.	

- e. Subject to above, the Authority confirms the preliminary findings dated 13.3.2001
- f. An appeal against this order shall lie to the Customs, Excise, Gold (Control) Appellate Tribunal in accordance with the Act supra.

(L V SAPTHARISHI)
DESIGNATED AUTHORITY & ADDITIONAL SECRETARY