

MINISTRY OF COMEMRCE

NOTIFICATION

New Delhi, the 1st April, 1999

Subject:- Review of anti-dumping duties concerning imports of NBR -Final Findings.

No. 38/6/97-ADD.-Having regard to the Customs Tariff Act, 1975 as amended in 1995 and Custom Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Articles and for Determination of injury) Rules, 1995, thereof:

A. PROCEDURE

1. The procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as the Authority) issued a public notice vide Notification No. 38/4/97-ADD dated the 12th May, 1998, initiating review of definitive Anti Dumping Duty recommended on imports of NBR originating in or exported from Japan vide Notification dated 19th Oct., 1995.
- ii. The investigations concluded by the Authority vide Notification dated 19th Oct., 1995 have been referred to as “the previous investigations.”
- iii. The Authority issued a public notice dated 12th May, 1998 published in the Gazette of India, Extraordinary, initiating review of anti dumping duty concerning imports of NBR classified under customs heading 4002.59 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from Japan (also referred to as the subject country hereinafter);
- iv. The Authority forwarded a copy of the public notice to all the known exporters and industry associations (whose details were made available by Gujarat Apar Polymers Ltd., the petitioners in the previous investigations) and gave them an opportunity to make their views known in writing in accordance with Rule 6(2).
- v. The Authority forwarded a copy of the public notice to all the known importers and consumers of NBR in India (whose details were made available by Gujarat Apar Polymers Ltd. in the previous investigations) and advised them to make their views known in writing within forty days from the date of the letter.
- vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of NBR in India during the period of review.
- vii. The Embassy of the Japan in New Delhi was informed about the initiation of the review investigations in accordance with rule 6(2) with a request to advise

- the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the exporters was also sent to the Embassy, alongwith a list of known exporters/producers. No exporter/producer, however, filed any response.
- viii. The questionnaire was sent to known importers and/or consumers of NBR in India calling for necessary information in accordance with the rule 6 (4).
 - ix. A questionnaire was sent to Gujarat Apar Polymers Ltd. (also referred to as Gujarat Apar hereinafter) calling for necessary information in accordance with the rule 6 (4). Gujarat Apar filed its response.
 - x. The Authority held a public hearing on 17th Nov., 1998 to hear the views orally. The parties attending the public hearing were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were requested to offer their rebuttals.
 - xi. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained and kept open for inspection by an interested party;
 - xii. Investigation was carried for the period starting from 1st April, 1997 to 31st March, 1998.
 - xiii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to all known interested parties and comments received on the same have also been duly considered in these findings.

B. VIEWS OF GUJARAT APAR

2. Gujarat Apar made the following submissions:

- a. Although the anti-dumping duty imposed on Japan and other countries have helped Gujarat Apar survive, the company has been constantly subjected to severe unfair competition. The present level of duties is not sufficient and the imports continue at dumped prices.
- b. The exporters from Japan have not furnished any information with regard to dumping. The normal value of NBR in Japan can be determined on the basis of the prices published in Japan Chemical Week, which works out to an average of Yen 440 per kg. considering average exchange rate, the normal value works out to US\$ 3562 pmt.
- c. The export price cannot be determined on the basis of the information published by DGCI&S as the importers are clearing NBR through different H.S. Code. The export price should be determined on the basis of the

information compiled by various agencies, which indicates that 887 MT NBR was imported from Japan at an average CIF price of Rs. 61.28/kg.

- d. The export price, when adjusted for expenses incurred on exports to India establishes that massive dumping of 200% plus continues.
- e. The landed cost, including anti-dumping duty is not sufficient to fetch a reasonably profitable price. Accumulated losses continues and the company has not been able to pay any dividends since inception.
- f. The exporters have bigger potential to cause injury in future, which is evident from imports before the imposition of duty.
- g. The fair selling price of NBR in India should be such so as to enable the domestic industry to recover costs of R & D, technical services, cost of capital etc. The capacity utilisation should be based on specific circumstances of the domestic industry rather than any hypothetical levels.
- h. Variable anti-dumping duty should be fixed in Dollar terms.
- i. Anti dumping duty on imports from Korea be increased to an appropriate level.

C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

3. None of the exporters/producers have responded to the Authority and offered any comments. Some of the importers as also All India Rubber Industries Association furnished their views, which are as under:

- a. The Authority recommended a lower duty of Rs. 19306 pmt as the injury margin was less than the dumping margin.
- b. Based on FOB export price US\$ 1058 pmt during 1993-94, the fair selling price of the domestic industry works out to Rs. 89483 pmt (for the investigation period) including anti-dumping duty but excluding CVD.
- c. Article 11.2 of the Agreement on Anti Dumping provides that the review should examine whether the injury would be likely to continue or recur if the duty were to be removed or varied or both. Material injury to Gujarat Apar has been eliminated after the imposition of anti-dumping duty and the same is borne out by the annual report of the company for 1996-97, wherein the Director's report mentions that Gujarat Apar is in a comfortable position due to the imposition of anti-dumping duty on NBR. This is borne out by the fact that the Gujarat Apar has made profit subsequent to imposition of anti dumping duty. It is therefore necessary to examine whether the injury is likely to recur if the duty were removed or varied.
- d. Imports of NBR during the investigation period were 857 MT at an average CIF price of US\$ 1695.

- e. Based on weighted average CIF price, the landed value during the period of review works out to Rs. 111683 pmt, without including countervailing duty. The domestic price could have been higher than Rs. 111683 pmt plus 5%. Gujarat Apar could have, therefore, sold NBR at about Rs. 112000 pmt. The domestic price during April, 1997 was Rs. 91000 pmt and the ex-factory price works to Rs. 83500 pmt. This price is much below landed value of imports from Japan without changing anti-dumping duty. The removal of anti-dumping duty will still enable Gujarat Apar to realise a reasonable price for their NBR.
- f. The customs duty on NBR has been reduced from 85% (1993-94) to 45% as on 31.3.1998. During the same period, the duty on Acrylonitrile has been reduced from 40% to 15%, resulting in constant reduction in the cost of NBR.
- g. Material injury to Gujarat Apar cannot recur since the company is selling NBR much below the landed value in case the anti-dumping duty is removed. The reasons for inability of the company to sell at a price equivalent to landed value of imports are not attributable to imports from Japan. It has been admitted by Gujarat Apar that it has been forced to sell at a competitive price in view of imports from Korea.
- h. The share of imports of NBR from Japan has gone down from 66% in 1995-96 to 17.5% in 1997-98.
- i. The CIF export price from all other countries is higher than the export price from Japan in view of the fact that common standard grades are imported from Japan as compared to special grades imported from other countries, in spite of which the landed cost of imports from Japan is higher than other countries (in view of anti dumping duty in force).
- j. The imports have further become expensive after introduction of special additional duty of 4% which works out to 6.844%. Imports are therefore taking place under DEEC or only when the grades required are not substitutable with grades available from local sources.
- k. The anti-dumping duty on imports from Japan should be removed in view of the following:
 - i. Increase in import price
 - ii. Reduction in customs duties
 - iii. Increase in exchange rates
 - iv. Increase in landed value of imports
 - v. No injury to Gujarat Apar
 - vi. Reduction in production costs of Gujarat Apar.

In view of the foregoing, the anti dumping duty on imports from Japan should be removed.

D. EXAMINATION BY AUTHORITY

4. The submissions made by Gujarat Apar, importers, consumers and other interested parties have been examined, considered and, wherever appropriate, dealt hereinafter.

E. PRODUCT UNDER CONSIDERATION, DOMESTIC INDUSTRY AND LIKE ARTICLES

5. The final findings notified earlier with regard to the product under consideration, domestic industry and like articles remains unchanged.

F. DUMPING

6. None of the exporters or producers from Japan have responded to the Authority. None of the importers or consumers of NBR in India have furnished any information relevant to determination of dumping. Gujarat Apar has claimed that the dumping countries from Japan and has claimed that normal value of NBR in Japan be determined on the basis of the prices published in Japan Chemical Week. Since none of the other interested parties have furnished any information, the Authority considers it appropriate to determine normal value of NBR in Japan based on the information published in Japan Chemical Week. Further, since none of the other interested parties have furnished any information with regard to price adjustments, the same have been allowed on the basis of information furnished by Gujarat Apar and the basis considered in the previous investigations.

7. With regard to export price, the Authority notes that while Bombay Chemicals & Rubber Products have claimed an export price of US \$ 1695 pmt, Gujarat Apar has claimed export price of US \$ 1500 pmt. Further, Bombay Chemicals & Rubber products have furnished necessary evidence in terms of relevant invoices. The Authority, therefore, considers it appropriate to determine the export price on the basis of the information furnished by Bombay Chemicals & Rubber Products.

8. The export price has been adjusted for expenses which the exporters should have incurred on exports to India on the basis of information furnished by Gujarat Apar and the information considered in the previous investigations in the absence of any direct information from the exporters from Japan.

9. The normal value and export price so arrived at are considered as ex-factory prices. Since none of the exporters from Japan have co-operated with the Authority, the Authority has not assessed separate dumping margins for different exporters. The dumping margin comes to 113.4%.

G. INJURY AND CAUSAL LINK

10. The argument that the selling prices of Gujarat Apar are lower than the landed value of imports after charging the prevailing level of anti-dumping duty or even without charging the prevailing level of anti-dumping duty is not relevant to determine whether injury to the domestic industry would recur in case the anti-dumping duty in force is suspended. The only relevant factors to decide whether the duties in force should be continued or not are the dumping margin and the extent of injury without considering the prevailing anti-dumping duty. The actual selling prices of Gujarat Apar are a function of a number of other factors. The Authority has determined fair selling price and has found that the landed value of imports in the investigation period were lower than the fair selling price of the domestic industry in case the anti-dumping duty in force is not considered. Further, mere statement in the Director's report that the company is in a comfortable position due to imposition of anti-dumping on NBR does not imply that the duty in force should be suspended. In fact, if the position of the domestic industry has improved as consequence of the imposition of anti-dumping duty, it merely reinstates the demand of the domestic industry that it should be provided due protection from unfairly traded dumped imports. Comfortable position in the past does not imply comfortable position in future, particularly when the comfortable position in the past could be due to the measures being reviewed. The decline in the market share of Japan also does not warrant suspension of duties. With regard to lower landed value of imports from Korea forcing the domestic industry to sell lower and request of the domestic industry to appropriately increase anti-dumping duty on imports from Korea, the Authority notes that the present investigations are only against Japan. The anti-dumping duty on imports from the Republic of Korea cannot be altered without following the due process of investigation even if the imports from these sources are causing injury to the domestic industry and the level of duties are inadequate.

H. FINAL FINDINGS

11. The Authority concludes, after considering the foregoing, that:

- a. a. NBR originating in or exported from Japan has been exported to India below its normal value;
- b. The domestic industry would suffer material injury from dumped imports in case the anti-dumping duty in force is removed.

12. It is considered appropriate to continue the anti dumping duty in force on imports of NBR originating in or exported from Japan. The anti dumping duty shall be Rs. 7882/- per MT.

13. Subject to above, the final findings notified vide notification 19th Oct., 1995 are unaltered.

14. An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act supra.

RATHI VINAY JHA,
Designated Authority & Addl. Secy.