

NO.15/1/2004-DGAD
Government of India
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NEW DELHI, the 27 February '06

Sunset Review

Final Findings

Subject: Sunset Review of the definitive anti-dumping duty on import of Acrylonitrile Butadiene Rubber (NBR) originating in or exported from Chinese Taipei.

NO.15/1/2004-DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

A. Background

2. WHEREAS, having regard to above Rules the Designated Authority (herein after referred to as Authority) initiated an antidumping investigation in 1999 into alleged dumping of Acrylonitrile Butadiene Rubber (NBR) originating in or exported from Chinese Taipei and Provisional Antidumping duty was imposed on imports of NBR from Chinese Taipei, vide customs notification dated 02.11.1999 on the basis of the preliminary findings of the Authority dated 28.09.1999. The final findings of the Authority were notified, vide notification dated 23.02.2000 and the Department of Revenue imposed definitive anti dumping duties on the subject goods, imported from subject country, vide notification dated 06.04.2000.

3. On the basis of a duly substantiated application filed by the Domestic Industry, in 2003 in terms of section 9A (5) of the said Act, requesting for continuation of the duty for a period of another five years, the Designated Authority initiated a sunset review proceedings against the said measure vide notification dated 15th September 2004, to examine whether the expiry of the duty would lead to continuation or recurrence of dumping and injury. Investigation was carried out for the period starting from 1st April 2003 to 31st March 2004 (POI). However, injury examination was conducted for a period from 2001-02 to 2003-04.

B. Procedure

4. The procedure described below has been followed with regard to this investigation:

i) After notification of initiation of the investigation, questionnaires, along with the initiation notification, were sent to the lone known exporters/producers, in the subject country, i.e., M/s Nantex Industry Co. Ltd. Chinese Taipei in accordance with the Rule 6(4), to elicit relevant information. However, none of the exporters from the subject country filed their questionnaire response after the initiation of the investigation.

ii) The Taipei Economic and Culture Centre, New Delhi was informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers from their respective countries to respond to the questionnaire within the prescribed time. Copies of the letters, petitions and questionnaires sent to the exporters, were also sent to the Taipei Economic and Culture Centre, New Delhi;

iii) Central Board of Excise and Customs (CBEC) and DGCI&S were requested to arrange details of imports of subject goods for the past three years, and the period of investigations;

iv) Questionnaires were also sent to the known importers and users of subject goods in India for necessary information. However, none of the importers of the subject goods filed any questionnaire response in the form and manner prescribed. However, the following importers and other interested parties participated in the investigation and filed their general responses/comments at different stages of the investigation.

All India Federation of Rubber Footwear Manufacturers;
All India Rubber Industries Association,
M/s Sundaram Industries Ltd;
M/s Sepulchre Brothers

The views of the above interested parties, to the extent they are relevant, have been examined at appropriate places.

v) Non-confidential version of the evidence presented by various interested parties was made available in the form of a public file kept open for inspection by the interested parties;

vi) The information furnished by the domestic industry was verified to the extent possible to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting

Principles (GAAP) and the information furnished by the applicants so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;

vii) A public hearing was also held on 17th May 2005 to hear the interested parties orally, which was attended by representatives of the domestic industry, and importers/ users of the subject goods and representative of the Taipei Economic and Culture Centre, New Delhi. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been examined at appropriate places;

viii) In accordance with Rule 16 of the Rules supra, the essential facts considered for these findings and basis of determination were disclosed to known interested parties vide general disclosure and confidential disclosures to parties involved vide letters dated 24th August 2005. Comments to the disclosures received from the interested parties have also been duly considered in these findings to the extent the arguments and claims made by various parties are substantiated with evidence and data;

ix) The Authority has examined the confidentiality claims of various interested parties in respect of the data submitted by them. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties alongwith non-confidential summary thereof, has been treated confidential. *** in this Notification represents information furnished by the petitioner on confidential basis and so considered by Authority under the Rules;

C. Product under Consideration and Classification

5. The product involved in the original investigation was Acrylonitrile Butadiene Rubber (NBR), and covered all types and grades of NBR i.e. Low, Medium and High NBR. This being a sunset review investigation, the same product has been covered within the scope of this investigation.

6. NBR is primarily used where oil resistance, abrasion resistance and heat resistance applications are involved. NBR is widely used in Defense, Automobile, Footwear, Fabrics, Printers, Oil field products industries etc. The product is classified under the category of synthetic rubber under sub-heading no. 40.02 at four-digit level and under no. 4002.59 at six-digit level. This classification is only indicative and in no way binding on the scope of present investigation. No significant argument has been made by any interested party regarding the scope of the product under consideration and its classification.

D. Domestic Industry and Like product

7. M/s. Apar Industries Ltd., Mumbai has filed the application for the sunset review of the duty already in force. The applicant is the sole producer of Acrylo Nitrile Butadiene Rubber (NBR) of various types and grades and accounts for complete production of subject goods in India. The product manufactured by the applicant is technically and commercially substitutable to the product being imported from the subject country and therefore, treated as 'like article' within the meaning of the term in the Rules. The applicant constitutes the 'like product domestic industry' within the meaning of the Indian Antidumping Rules. No substantive issue has been raised by any interested party about the scope of product under consideration, like article and the applicant's standing to file this review application.

E. Submissions of interested parties and issues raised

8. Though no questionnaire response has been received from any importer or consumer/industry association, comments of the interested parties received at various stages of the investigation, including in the written submissions after the public hearing, have been taken on record and examined by the Authority as follows:

E.1 All India Rubber Industries Association and All India Federation of Rubber Footwear Manufacturers Association

9. The above interested parties in their brief submissions at various stages in this investigation have argued

- That the petitioner's application is incomplete and does not give complete disclosure of facts and data; and there are many inconsistencies in the data and facts submitted by the petitioner in different public platforms.
- That there is a considerable improvement in the production/productivity and capacity utilization of the petitioner and therefore, there is no material injury caused to them.
- That it is paramount that the interest of the users is also protected.

E.2 Sepulchre Brothers (India) Pvt. Ltd.

10. M/s Sepulchre Brothers (India) Pvt. Ltd, in its brief submissions have stated that

- They are the sole indenter/ distributors of NBR exported from Chinese Taipei. But they have not been able to do much business on account of

- the AD duty in force against that country and during the POI they have a meager business of only **** MT.
- That their import price was approx. US\$**** per MT CIF and the landed cost to their customers inclusive of CVD and ADD was approx Rs****/- per MT, which was much above the locally available NBR.
 - That their sales are to the niche market, only for limited number of customers needing NBR for specific application, which cannot be manufactured out of locally available NBR. These grades are either not produced by the domestic industry or their quality is not up to the satisfaction of the customers.
 - While the capacity of their Taipei principals is good, they are unable to cater to the Indian market, because of huge demand and better price appreciation elsewhere.
 - That the ADD on the product exported by their principals should be drastically reduced, if not fully lifted, in order to enable the Indian industry to play important role international trade.

E.3 M/s Sundaram Industries Ltd, Madurai

11. M/s Sundaram Industries Ltd. has filed a brief response as the importer of the subject goods from Taipei and has inter alia submitted that;

- That while the domestic industry's interest is being protected through antidumping duty, the consumers of this product have no protection against significant cost escalation;
- That compared to the POI of 2003-04, the current scenario of supply and demand, as well as prices, are entirely different. There is a tight supply position and prices of all types of rubber and rubber chemicals have gone up substantially in the last one year.
- That at present question of dumping is irrelevant as the product is offered to the customers, by the overseas producers, on allocation basis due to tight supply position. Therefore, if the decision is taken on the basis of past data, the consumers will be affected as the situation has completely changed;
- That the Authority should also consider the limitation of capacity and capability of the domestic industry to meet requirements of the domestic users in terms of quantity and variety of grades required by the users;
- That switching over from one grade to other can be done only with the support of the respective manufacturer. Therefore, in spite of price difference, switching of products is not always feasible;

E.4 Views of the Domestic Industry

12. The domestic industry has submitted that the exporters from Chinese Taipei have intensified the dumping into Indian market by absorbing the increase in associated cost of production and raw materials cost. They have further

submitted that in a sunset review investigation, the Designated Authority is required to examine whether cessation of anti dumping Duty in force is likely to lead to continuance or recurrence of dumping and injury and therefore, current dumping and injury are not relevant. They have argued that as the anti dumping duty has been in force since last five years, the injury parameters have to be examined in the context of exiting duties and the review should examine whether injury to the domestic industry would continue or recur in case of revocation of Anti Dumping Duty.

13. In this connection they have referred to the findings of other Authorities (EC finding in the matter of imposition of Anti Dumping duty on imports of Calcium Metal originating in Russia and China), in which it has been held that even though certain trends regarding the Community industry operations e.g. sales and market share had improved, it was considered that the community industry was suffering material injury, consisting in particular, of continuous price pressure and losses. The domestic industry has further argued that in another case (EC findings in the matter of Ferro Silico Manganese), it was held that though the situation of the domestic industry improved between the injury period, the positive development is to be seen in conjunction with the effect of the measures imposed on imports from other countries.

14. The domestic industry has further argued that though after imposition of anti dumping duty on imports from Taiwan has declined, significant commercial volumes of the product have continued after imposition of anti dumping duty at dumped prices. They have further argued that imports from Chinese Taipei are continuing at dumped prices, in spite of the antidumping duty being in force, and the domestic industry still suffers material injury due to the dumped imports. In any case the Authority is required to examine the likelihood of recurrence dumping and likelihood of recurrence of injury if the duties are removed in case the Authority finds no current dumping and injury. In this connection the domestic industry has cited the Appellate Body decisions in the United States - Sunset Review of Antidumping Measure on Oil Country Tubular Goods from Argentina. In the said matter the Appellate Body upheld the Panel finding that the obligation set out in Article 3 of ADA does not apply to likelihood-of-injury determination in sunset review. The Appellate Body also held that the ADA does not preclude the investigating authorities from cumulating the effects of likely dumped imports in the course of likelihood-of-injury determination. It also held that the conditions of Article 3.3 of ADA do not apply in the context of sunset review. Therefore, the arguments of the interested parties on the current dumping and causal links are immaterial in this investigation.

15. The domestic industry has further contested the arguments of the importers that the imports from Taipei was for the niche market and at a higher price than the domestic industry's price and have argued that the landed value (without ADD) from the subject country are much less than the domestic

industry's price for the equivalent grades. They have also contested the claim that the imported grades have different finish specifications.

16. They have also contested the arguments that the exporter from the subject country is finding difficult to cater to the Indian market because of better demand and price elsewhere. They have submitted that the gap between the prices to the Indian customers and other countries have significantly reduced in the injury period.

17. The domestic industry has further argued that the situation subsequent to the POI can neither be legally considered, nor factually seen in isolation. A host of parameters might have changed in the post POI period and any selective reference to the same would be unfair. They have argued that increase in prices in the global market does not mean no dumping.

18. The views of the parties to this investigation have been taken note of and appropriately addressed in these findings to the extent they are relevant.

F. Examination of confidentiality claims

19. The non-confidential submissions of the domestic industry were examined by the Authority. The applicant domestic industry has provided information on import data, estimated normal value and export prices on non-confidential basis and has claimed confidentiality on commercially sensitive information, such as evidence collected by them on the price of the product in the exporting country, their own sales and production data, as well as other injury information. However, indexed data in respect of most of the injury information has been provided on non-confidential basis. The information, which are by nature confidential or which have been provided on a confidential basis by the interested parties, alongwith non-confidential summary thereof, have been treated confidential. No other interested party has filed any substantial information on confidential basis.

G. Dumping Determination

20. The Authority has noted the arguments made by the applicants on the methodology and practices adopted by various Authorities in their Sunset Reviews and the relevant WTO jurisprudence on the subject. The Authority notes that this being a sunset review investigation it is required to look at the continuation and likelihood of recurrence of dumping in the event of withdrawal of duty. Therefore, the issue has been examined as follows:

G.1 Continuation or recurrence of dumping

21. No response has been received from any exporter of the subject goods from the subject country. Though one of the importers has stated that they have imported small quantity of the product from M/s Nantex Industry Co. Ltd. Chinese

Taipei, no evidence has been placed before the Authority by any interested party, including this importer about the normal value of the subject goods in the subject country. Therefore, the Authority has estimated the dumping margin on the basis of facts available.

G.2 Normal Value

22. The domestic industry has provided certain evidence of selling price of certain grades of low and medium NBR, in the domestic market of the exporting country. Comparison of grades, for which information has been provided, and the details of the grades indicated in the exporter's product list, as supplied by the applicant, indicates that price information of about 3 grades of Medium NBR and two grades of High NBR. For the purpose of the determination of normal value, this information has been accepted as the best facts available with the Authority.

23. As per the import data only two types of NBRs, i.e. Medium NBR and High NBR have been exported from the subject country to India during the POI. Therefore, for the purpose of normal value determination these two types have been considered as 'like products'. Accordingly, weighted average normal values have been determined on facts available basis as US\$****per MT for Medium NBR and US\$****per MT for High NBR.

G.3 Export Price

24. The export price has been determined on the basis of DGCIS transaction data as best facts available. The weighted average CIF import prices reported in DGCIS transaction-wise data has been adjusted for the inland transport and ocean freight, insurance, handling and commission on facts available basis to arrive at ex-works price. Accordingly, net export price of NBR has been determined as US\$ ****per MT for Medium NBR and US\$ ****per MT for High NBR.

G.4 Dumping Margin

25. On the basis of the estimated normal value in the country of export and export price to India the current dumping margin works out as US\$**** Per MT i.e. 25% of the export price.

G.5 Likelihood of continuation of dumping

26. The examination of dumping during the POI indicates that the dumping margin in respect of the subject goods, exported from the subject country, is significant though the volumes are low. The interested parties have argued that there is a substantial change in the scenario after the POI due to several factors, including change in raw material prices and low availability of NBR from the subject country. They have argued that the NBR is supplied by the producers on allocation basis because of unavailability of the product in the world market due

to rationalization of the capacities world over in the recent past and therefore, the question of dumping does not arise in such a tight supply situation.

27. The domestic industry has argued that the producers in the subject country have significant capacity, whereas demand in their home market is significantly lower. Quoting Worldwide Rubber statistics, 2004, published by International institute of Synthetic Rubber Producers Inc., the domestic has claimed that annual capacity of the producers in Chinese Taipei is about 24000 MT per annum. After exporting about 16000MT of the product these producers have excess capacities to enable them dump the product in the Indian market once the duty is revoked.

28. The Authority notes that market intelligence report submitted by the applicant indicates that at present M/s Nantex is the only producer of NBR in the subject country. The data submitted by the applicant shows that Chinese Taipei exports about 16000MT of the subject goods to the world market, whereas exports to India is about 300 MT per year, throughout the injury investigation period, accounting for about 2% of its total exports. However, the Authority notes that antidumping duty was in force against this country on fixed duty basis and therefore, volume and prices during this period may not be a very good indicator of likelihood of continuation of dumping.

29. The interested parties have claim that in the changed market dynamics of the price structure and supply demand scenario there would not be any need for any producer to dump the goods in India. Though the likelihood test is required to take into account the changed market dynamics to examine whether there is a likelihood of continuation of dumping in the event of removal of duty, no credible evidence has been provided by any interested party in this respect.

30. The Authority notes that the price difference between the home market sales of the producers in the subject country and their export price to India has remained significant, in spite of the duty being in force. The world trade data indicates that the export price of the subject goods to the world market, from the subject country has been higher than the export price to India for the comparable periods and the price difference has remained to be significant.

31. Considering the above arguments and facts available, the Authority is of the view that in spite of the changed market dynamics it would be difficult to conclude that the price difference between the home market price and the export price to India would be completely eliminated and therefore, exports would likely to continue to enter the Indian market from the subject country at dumped prices in the event of revocation of the duty.

H. INJURY DETERMINATION

32. The Authority notes that this being a sunset review of antidumping duty already in force, continuation of material injury to the domestic industry, as well as likelihood of continuation or recurrence of material injury, needs to be examined in the context of import of the subject goods from the subject country.

H.1 Continuation of Injury

33. The Authority notes the arguments of the domestic industry that injury and causal link determination is not mandatory in a sunset review investigation as has been held by the Appellate Body in its final report in the matter cited earlier. However, having established positive dumping margin for the subject goods exported from the subject country, during the injury investigation period, the Authority has also examined the injury, if any, suffered by the domestic industry during the same period. For the purpose of the injury examination the domestic industry constitutes the sole domestic producer and the petitioner company in the instant case.

34. The Authority notes that NBR is being imported from a number of countries, including the countries/territories under parallel investigation. The Authority also notes that definitive antidumping duty is in force against Japan, Korea RP, Germany and provisional duty is in force against imports from the European Union, Brazil and Mexico.

H.2 Material Injury

H.2.1 Views of the interested parties

35. The interested parties have argued that after imposition of antidumping duty against several countries there is a considerable improvement in the production/productivity and capacity utilization of the petitioner and therefore, there is no material injury caused to them.

H.2.2 Views of the Domestic Industry

36. The domestic industry has argued that in spite of antidumping duty protection against imports from Japan, Chinese Taipei, Germany and Korea RP, the domestic industry has suffered continued injury on account of the dumped imports from several sources. They have argued that though the antidumping duty protection against the above countries has helped them to improve their performance marginally, due to dumping from new sources and intensified dumping from the certain countries attracting duty they have not been able to benefit much out of it, and continue to suffer material injury. They have further submitted that in spite of improvement in its productivity, volume of output, and reduction in cost of production through various cost-cutting measures, they have

failed to realize remunerative prices to recover their cost, due to continued dumping from various sources.

37. The domestic industry has further argued that the parameters listed in Article 3.4 are neither exhaustive nor one or several of these factors necessarily can give decisive guidance. It is, therefore, not necessary that every injury parameter must reflect injury to the domestic industry. Quoting several decisions of the European Commission the domestic industry has argued that as per EC practice deterioration in performance of the domestic industry after improvement means deterioration, even if POI parameters are better than the base year parameters. They have argued that even when some parameters improved; it was held by the EC that the Community industry suffered material injury.

H.2.3 Examination by the Authority

38. The Authority has taken note of various arguments raised by various parties with regard to the material injury to the domestic industry. The Authority also notes that antidumping duty is in force against Japan, Korea and Germany, in addition to the subject country and reviews against Korea, Germany has confirmed continued dumping and injury from these countries. In its final determination in respect of European Union, Brazil and Mexico, the Authority has determined that the imports from these countries are also at dumped prices. Therefore, for the purpose of injury and causal link analysis, the imports from these countries also have been treated as dumped imports.

39. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

40. For the purpose of injury analysis the Authority has examined the volume and price effects of dumped imports of the subject goods from the subject country on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

(A) VOLUME EFFECT: Volume Effect of dumped imports and Impact on domestic Industry

41. The effects of the volume of dumped imports from the subject country, as well as dumped imports from other countries have been examined as follows:

i) Import Volumes and share of subject country:

42. For the purpose of injury determination, the Authority examined the DGCI&S transaction-wise data as well as PPR data submitted by the Applicant. However, written submission of one of the importer shows higher import volumes from the subject country compared to the volume reflected in DGCIS and PPR. The applicant also submitted data based on world trade atlas, which showed higher volumes of exports of the product involved from the subject country to India. Therefore, the Chinese Taipei Authorities were requested to provide inputs and confirm the trade statistics submitted by the applicant from secondary sources. Taipei Authorities have submitted their Customs data, which approximately corresponds to the world trade atlas data, submitted by the applicant and the importer in their submissions.

Country	Quantity in MT			
	2000-01	2001-02	2002-03	2003-04 (POI)
Chinese Taipei	301.25	340.22	297.71	303.86
Trend	100.00	112.94	98.83	100.87
Countries under investigation (EU, Brazil, Mexico)	633.16	847.06	1708.51	2343.49
Others With AD Duty	2278.75	2516.78	2812.29	3844.14
Others	0	117.93	216.95	200.02
Total	3213.16	3821.99	5035.46	6691.51
Trend	100	119	157	208
Share of Taipei in total imports	9%	9%	6%	5%

43. While total imports have increased by about 108% compared to the base year the import from the subject country has remained more or less constant and its share in total imports of the subject goods has dropped by 4% compared to the base year.

44. The volume of imports has also been analyzed with respect to the growth in demand and market shares.

	Qty in MT			
	2000-01	2001-02	2002-03	2003-04
Total Imports	3213	3822	5035	6692
Trend	100	119	157	208
Domestic sales	****	****	****	****
Indexed	100	114	118	133

Captive consumption	****	****	****	****
Indexed	100	80	98	101
Demand	****	****	****	****
Indexed	100	114	131	159

45. The above data indicates a healthy growth in demand for the subject goods in the domestic market. Whereas total demand of the product shows a growth of 59% over the base year, the import from the subject country has remained more or less same during the injury investigation period.

ii) Demand, Output and Market shares

a) Production of the Domestic Industry

Quantity in MT

Capacity & Production	2000-01	2001-02	2002-03	POI
INSTALLED CAPACITY	6,250	8,350	8,800	8,800
Indexed	100	134	141	141
TOTAL PRODUCTION	****	****	****	****
Indexed	100	130	130	149
CAPACITY UTILIZATION - %	****	****	****	****
Indexed	100	97	92	106

46. The Authority notes that the capacity addition in the year 2001-02 and thereafter, are mainly by way of de-bottlenecking in the existing capacity in response to healthy demand scenario for the product in the domestic market. The data also shows domestic industry has improved its production compared to the base year. The capacity utilization has also improved.

b) Sales of Domestic Industry

Quantity in MT

Particulars	2000-01	2001-02	2002-03	2003-04 (POI)
Opening Stock	****	****	****	****
Indexed	100	42	145	136
Production (NBR Bale)	****	****	****	****
Indexed	100	123	121	137
Domestic sales	****	****	****	****
Indexed	100	114	118	133
Export sales	****	****	****	****
Indexed	100	136	138	179
Captive Consumption	****	****	****	****
Indexed	100	80	98	101
Closing Stock	****	****	****	****
Indexed	100	341	315	354

47. The data above shows that the production increased by about 37% compared to the base year and 16% compared to the previous year and the domestic sales has increased by 33% and 15% during the corresponding periods. The data also shows substantial rise in inventory as the closing stocks have increased by 254%. Major increase in the sales is in the export segment though the volume is low.

b) Demand and Market Share

MT

Particulars	2000-01	2001-02	2002-03	2003-04
Import from Subject Country	301.25	340.22	297.71	303.86
Indexed	100	112	111	101
Import from Other Countries	2911.91	3481.77	4737.75	6387.65
Indexed	100	119.57	162.70	219.36
Total Imports	3209.71	3818.60	5029.23	6692.07
Trend	100	126	166	208
Total Domestic Sales	****	****	****	****
Indexed	100	114	118	133
Captive Consumption	****	****	****	****
Total Domestic Demand	****	****	****	****
Trend	100	114	131	159
Share in Demand (Indexed)				
Domestic Industry	100	101	90	83
Subject Country	100	99	75	63
Others	100	105	124	138
Captive Consumption	100	71	74	64
Total share of imports in Demand	100	105	119	131

48. While domestic demand of the product under consideration has increased by about 59% from the base year, the share of the domestic industry in the total demand has declined from 54% to 45% during the same period. At the same time the share of the dumped imports from the subject country has also declined from 3.58% to 2.26%, while share of imports from other sources, including dumped imports from countries attracting duty has significantly increased by about 13%.

(B) Price Effect of the Dumped imports on the Domestic Industry

49. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the weighted average cost of production, weighted average Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry (worked out after normating the costing

information of the Domestic Industry) have been compared with the landed cost of imports from the subject countries.

(i) Price undercutting and underselling effects

Particulars		2000-01	2001-02	2002-03	2003-04
Cost of Sales	Rs./MT	****	****	****	****
Trend	Indexed	100	85.73	90.59	90.96
Selling Price	Rs./MT	****	****	****	****
Trend	Indexed	100	99	92	96
Landed value					
Subject country	Rs/MT	78980	84420	84200	75130
Indexed		100	106.89	106.61	92.38
Duty in force	Rs/MT	6288	6288	6288	6288
AD Duty paid					
Landed Value	Rs/MT	85268	90708	90488	81418
Price Undercutting					
subject country					
Without ADD	Rs/MT	****	****	****	****
	%				0 to 10%
NIP	Rs/MT				****
Price Underselling					
Subject country	Rs/MT				****
Subject country	%				5 to 15%

50. The selling price (net sales realization) of the domestic industry shows significant decline compared to the base year though the cost of sales after showing decline in 2001-02, has shown an increasing trend. At the same time the landed value of imports from the subject countries shows significant decline over the base year.

51. Price undercutting effect of dumped imports from the subject country has been determined by comparing the weighted average landed value of dumped imports from the subject country over the entire period of investigation with the weighted average net sales realization of the domestic industry for the same period. For this purpose landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the CIF value of imports from the subject country.

52. In determining the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been rebated.

53. For the purpose of price underselling determination, the weighted average landed prices of imports from subject countries/territories have been compared

with the Non-injurious selling price of the domestic industry determined for the POI.

54. The Authority notes that Imports from the subject country have been significantly below the net sales realization of the domestic industry as well as the non-injurious price estimated for the domestic industry thus resulting in significant price undercutting and underselling. However, the antidumping duty paid landed value of the subject goods imported from the subject country indicates negative price undercutting effect. The Authority also notes that the domestic selling price of the domestic industry has declined significantly during the injury period indicating significant price depression in response to dumped imports from various sources including the subject country. Therefore, price-undercutting analysis may not provide a proper indication of the price effects of dumped import from the subject country.

(ii) Price suppression and depression effects of the dumped imports:

55. The Authority notes that though the volume as well as share of the dumped import from the subject country is too small to significantly depress or suppress the prices of the domestic industry, decline in domestic selling prices during the injury period is significant in response to dumped imports from several sources including the subject country.

H.4 Examination of other Injury Parameters

56. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments other economic parameters which could indicate existence of injury to the domestic industry have been analysed by the Authority as follows:

i) Actual and potential effect on productivity

Particulars	Unit	2000-01	2001-02	2002-03	2003-04 (POI)
Productivity	Per Employee	****	****	****	****
Indexed		100.00	124.18	124.35	145.99
Productivity	MT/Day	****	****	****	****
Indexed		100	123.21	120.54	136.89

57. Productivity of the domestic industry, measured in terms of its labour productivity of the output and daily output has improved substantially.

ii) Profits and actual and potential effects on the cash flow

58. Total revenue and cash flow of the domestic industry from its domestic operations shows marginal improvement due to increase in domestic sales.

However, after improving its profitability during the year 2001-02, the profitability of the domestic industry has declined and it continues to suffer loss during the POI due to declining per unit realization.

Particulars	Unit	2000-01	2001-02	2002-03	2003-04
Profits					
Cost of Sales	Rs./MT	****	****	****	****
Indexed		100	85.73	90.60	90.96
Selling Price	Rs./MT	****	****	****	****
Indexed		100	98.85	92.47	95.58
Profit/Loss	Rs./ MT	(****)	****	(****)	(****)
Indexed		(100)	48.49	(71.45)	(43.64)
Total Profit/Loss on Domestic Sales	Rs. Lacs	(****)	****	(****)	(****)
Indexed		(100)	55.46	(84.58)	(58.04)
Depreciation	Rs. Lacs	****	****	****	****
Indexed		100	100.09	96.49	98.37
Cash Profit/Loss from NBR	Rs. Lacs	(****)	****	(****)	****
Indexed		(100)	325.69	(63.89)	12.01

iii) Employment and wages

59. The employment level has declined marginally. But the expenses on account of salary and wages have increased by about 20%. However, increase in the expenses towards salary and wage is in tandem with the increase in production during the comparable periods. Therefore, this factor does not indicate injury to the domestic industry.

Particulars	Unit	2000-01	2001-02	2002-03	2003-04
Employment					
No. of Employee	Nos.	****	****	****	****
Trend	Indexed	100	104.51	104.51	102.26
Wages	Rs Lacs	****	****	****	****
Trend	Indexed	100	107.94	113.79	120.15
Wage per Employee	Rs. Lacs	****	****	****	****
Trend	Indexed	100	103.28	108.88	117.50

iv) Return on investment and ability to raise capital

60. The financial performance of the domestic industry has also been analysed in terms of its cash profits and return on investment. The interested parties have argued that the overall performance of the company has improved. However, the Authority notes that though the overall performance of the Company is good its profit from its NBR operation has shown deteriorating performance after showing a profit in 2001-02. The return on capital employed by the domestic industry shows deterioration after improving in 2001-02.

Rs in Lacs

Particulars	2000-01	2001-02	2002-03	2003-04 POI
Capital Employed - NFA + Working Capital	****	****	****	****
Indexed	100.00	96.33	101.84	100.52
Profit	(****)	****	(****)	(****)
Indexed	(100.00)	55.46	(84.58)	(58.05)
Interest	****	****	****	****
Indexed	100.00	120.79	106.48	75.78
PBIT	****	****	****	****
Indexed	100.00	445.27	146.79	108.42
Return on Capital Employed - NFA + Working Capital	****	****	****	****
Indexed	100	462.23	144.14	107.86

v) Investment

61. The Authority notes that domestic industry raised its capacity from 6250 MT to 8800 MT by de-bottlenecking the existing capacity with a capital investment of about **** Crores. There has been no further fresh investment by the domestic industry during the investigation period and there are no plans for further investment as submitted by them.

vi) Magnitude of Dumping

62. Estimated margin of dumping from the subject country during the POI is significant.

vii) Factors affecting prices

63. The Authority notes that there is a significant rise in the prices of the principal raw materials in the world market affecting the cost of production of the subject goods for the domestic industry over the injury period after significant decline in 2000-01. In spite of a marginal increase in the net sales realization of the domestic industry in the POI sales realization of the domestic industry does not recover the full cost to make and sale.

64. The Authority also notes that there is no viable substitute to this product and M/s Apar Industry is the sole producer of the subject good in India. Therefore, domestic competition does not affect the prices.

65. The Authority notes that dumped imports of subject good is entering the Indian market from several countries, including the subject country, and investigation is in progress against several countries, including the members of the European Union, Brazil and Mexico. Volume of imports from these countries

is significant and during the period under investigation the imports from these sources seem to have significant price suppression and depression effect on the prices of the domestic industry.

viii) Inventories

Particulars	Unit	2000-01	2001-02	2002-03	2003-04
Inventories - at the end of period	MT	****	****	****	****
Indexed		100	341	315	213
Inventories as % of production		****	****	****	****
Trend	Indexed	100	278.02	263.87	259.33

66. The inventory data of the domestic industry indicates significant inventory built up and inability of the domestic industry to off-load its product in the domestic market.

H.5 Other Known factors and Causal Link

67. The Interested parties have argued that the dumped imports are not responsible for the injury, if any, caused to the domestic industry. They have argued that injury, if any, is due to inefficiency and uneconomical plant size of the domestic industry and cannot be attributed to the dumped imports from the subject countries/territories. They have further argued that due to its limited capacity the applicant is unable to meet the requirement of the domestic demand. The user industry has argued that the scenario of costs and prices have completely changed in the past one year. While the availability is scares and material is supplied on allocation basis dumping is irrelevant because the prices have been continuously moving upwards.

68. The domestic industry has argued that the volume of dumped imports from the subject country has remained more or less same from the base year and constitutes about 2.26% of the total domestic demand, in spite of the fact that antidumping duty is in force against this product from the said country. Therefore, in a situation where the exporter continues to export a significant volume, in spite of the antidumping duty, it would follow that the volume would at best increase with the revocation of the duty. The domestic industry has further argued that this being a sunset review, the standards for examination of volume effects and causality are different. They have argued that even when the volume of import has been zero, antidumping duties have been extended by other countries and in certain jurisdictions a market share of 1% have been found to be significant to cause injury to the domestic industry. Therefore, market share of 2.26% cannot be ignored as insignificant for causing injury.

69. In this connection attention has been drawn to several Panel and Appellate body decisions on the standards of review and applicability of Article 3 (including Article 3.5: causal links) examination in a sunset review. It has been argued that in the United States - Sunset Review of Antidumping Measure on Oil Country Tubular Goods from Argentina, the Appellate Body upheld the Panel finding in the same matter that the obligation set out in Article 3 of ADA does not apply to likelihood-of-injury determination in sunset review. The Appellate Body also held that the ADA does not preclude the investigating authorities from cumulating the effects of likely dumped imports in the course of likelihood-of-injury determination. It also held that the conditions of Article 3.3 of ADA do not apply in the context of sunset review

70. Notwithstanding the above arguments and the accepted view of the Appellate Body that injury and causal link examination under Article 3 of ADA is not a mandated requirement in a sunset review; the Authority has examined the current injury and causal link between the current injury and dumped imports from the subject country as well as likelihood-of-injury simultaneously. In this regard the following indicative factors as laid down in the Rules have been examined.

i) Volume and prices of imports from other sources

71. Article 3.5 mandates examination of volume and value of imports not sold at dumped prices as a factor for non-attribution analysis. The Authority notes that during the POI, other than the subject country, imports have taken place from several other countries including Japan, Korea, European Union, Brazil and Mexico. Volume of the subject goods entering the Indian market at un-dumped prices is insignificant as the dumped imports from all sources account for less than 3% of total imports. While some countries including, Japan and Korea were attracting antidumping duty during the POI, imports were also entering from other countries named above in significant quantities. Imports from these sources have also been found to be at dumped prices and significantly undercutting the domestic industry.

ii) Contraction in demand and / or change in pattern of consumption

72. Total domestic demand of the product under consideration, has shown a very significant increase by about 59% during the period of investigation compared to the base year. There is no significant change in consumption pattern of the product in the domestic market, which can be attributed to the injury to the domestic industry.

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

73. The interested parties have argued that the sole domestic producer is trying to create a monopoly market by blocking competition through imposition of antidumping duty. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market. M/s Apar Industries Ltd. is the sole producer of the subject goods in the country. There is no restriction on fair trade in the country and imports of the subject goods take place from several countries and compete with the domestic producer. However, major portion of the imports from several sources have either been determined as dumped imports or are under investigation for allegation of dumping.

iv) Development of technology and export performance

74. The interested parties have argued that the inefficient plant size of the domestic industry is one of the causes of injury suffered by it. The production facilities of the cooperating foreign producer in different countries were verified by the Authority during various investigations and it was seen that the producers apply similar production technology. In fact most of the producers in the world use the technology developed by technology leaders like Goodyear. The capacities and volume of production of some of these producers are not very different from the capacity of the domestic producer in India. Therefore, the argument of inefficient capacity or development of technology or inefficient method of production of the domestic industry cannot be treated as a cause of injury to the domestic industry.

75. The Authority notes that the domestic industry has very small export turnover of the product under consideration though it shows steady growth during the investigation period. Therefore, export performance of the domestic industry is very insignificant and does not affect the domestic industry's performance very significantly. Therefore, export performance cannot be attributed as a reason of injury suffered by the domestic industry.

v) Productivity of the Domestic Industry

76. Productivity of the domestic industry in terms of labour output and daily output has shown substantial improvement. Therefore, productivity is not a factor, which can be attributed to the injury of the domestic industry. In fact domestic industry has tried to reduce its losses in its domestic operation through improvement in productivity.

I. Likelihood of continuation or recurrence of Injury

I.1 Views of the domestic industry

77. The domestic industry has argued that injury to the domestic industry is required to be examined in the context of the requirements under sunset review

and not as per the factors laid down for a threat analysis. They have *inter alia* argued

- That the domestic industry is already suffering injury as a result of dumped imports from a number of countries including the subject country;
- That imports from the subject country are still undercutting the domestic prices and should the present duties be revoked, the extent of price undercutting would increase;
- That volume of dumped imports from the subject country would increase considerably;
- That the production capacity in the subject country is significantly higher than their domestic demand and there is significant unutilized capacity in the subject country;
- That export from the subject country has declined in last 2-4 years, which implies that the moment antidumping duty is revoked large shipments are imminent as there is a significant over-capacity in the subject country and there is a threat that a significant portion of the unused capacity would be used to flood Indian market;
- That removal of present duty would result in further price depression and further erosion of the profitability of the domestic industry;
- That the present duty is insufficient to remove the injury to the domestic industry;
- That the producers and exporters from the subject country are dumping the subject goods in other countries also at similar prices. In fact the price at which the goods are exported to other countries is lower than the price at which it is being exported to India. Therefore, India remains an attractive market for the exporters in the subject country and dumping in Indian market would intensify if the duty is revoked;
- That the market share of dumped goods from the subject country has declined because of the duty in force, which has restricted the dumped imports to India;
- That the price at which the material is being exported cannot permit recovery of cost of production of any producer world over;

78. In summary the domestic industry has argued that the domestic industry continues to suffer material injury due to dumped imports from various sources, including the subject country, and there is a strong likelihood that injury would continue or recur, if the duty is revoked.

79. In its post disclosure comments the domestic industry has further argued that the likelihood test for injury should be based on the actual and potential effects of the dumped imports on various parameters and not based on the threat parameters as has been proposed by the Authority. They have argued that it requires an examination of a potential situation when the duties are not in force with reference to the parameters relating to export activities of the exporters in the subject country, in various markets in the world, vulnerability of the domestic

industry, market share of the foreign producers with the existing measures, etc. They have further argued that the exporters in Taiwan are not exporting higher volumes only because of the existing ADD and once the same is withdrawn there is every likelihood that the volumes would go up. Further, continuation of dumping from the subject country clearly established that dumping is likely to continue and rather intensify in the event of withdrawal of duty and would result in increase in price undercutting.

80. It has been further argued that the production capacity of the exporters in Taiwan is significantly higher than their demand. In addition to this capacity the fact that the exporter from Taiwan is setting up a huge plant in China clearly implies that its exports to one of its major market, i.e. China would reduce. In such a scenario the exporter would be faced with a huge unutilized capacity, which would find its place in the Indian market. It has also been argued that Taiwan exports large quantities of this product to Hong Kong, which does not have significant domestic consumption of the same. Therefore, this product is likely to be transshipped from Hong Kong.

I.2 Views of the interested parties

81. The importers and other interested parties have argued that due to rationalization of capacities world over, there is a supply constraint and the goods are now supplied by the foreign producers only on allocation basis. Therefore, in the changed scenario of demand and supply, and in a sellers market of this nature, there is hardly any possibility of dumping to occur. The interested parties have argued that very small quantities have been imported from Chinese Taipei during the POI, only for very specific niche production. They have argued that the post POI price developments should also be taken into consideration, as the current prices have gone up significantly in the world market due to increase in petroleum based raw material prices. Therefore, continuation of duty on the subject country is not warranted.

I.3 Examination by the Authority

82. The domestic industry has argued that the requirement under sunset review is to examine whether revocation of anti dumping duty is likely to lead to continuance or recurrence of injury to the domestic industry and therefore, any examination based on the factors listed for a threat analysis would be flawed. While the arguments of the domestic industry is valid to the extent that any likelihood test should not be based only on a threat perception alone as there are several factors which could be unique to a situation to be examined to find what may happen in the event of withdrawal of the duty. Therefore, all such factors brought to the notice of the Authority, have been examined, to find if there is a likelihood of continuation of injury in the event of withdrawal of the duty: In this connection following factors have been examined:

(a) Rate of increase of dumped imports from the subject country as well as other sources::

	Quantity in MT.			
	2000-01	2001-02	2002-03	2003-04 (POI)
Chinese Taipei	301.25	340.22	297.71	303.86
Trend	100.00	112.94	98.83	100.87
Total Imports	3213.16	3821.99	5035.46	6691.51
Trend	100	119	157	208

83. It is observed that the dumped imports from the subject country have remained almost constant at 300 MT per annum during the period for which duty was in force, while total imports have more than doubled during the same period. The price ranges of the imports from various sources do not indicate a very wide variation. The composition of imports also indicate that in spite of antidumping duty being in force against certain countries like Korea RP there is a significant rise in the volume of dumped imports during the same period, whereas dumped imports from the subject country has remained almost static indicating thereby that the duty has not affected a segment of the market which continues to import, while other segments of the market might have stopped importing the goods from the subject country due to the duty in force. Therefore, in the event of withdrawal of duty the volume of dumped imports is likely to go up.

(b) Disposable capacity and potential exports to India

84. Worldwide Rubber Statistics 2004, (International Institute of Synthetic Rubber Producers Inc.) and Chemicals Economics Handbook indicate total production capacity of Nitrile – Solid Rubber in Chinese Taipei as 16000 MT (24000MT of Latex). As per Chemicals Economics Handbook (CEH), Chinese Taipei imports about 9500 MTs and exports about 16000 MTs of Solid Nitrile Rubber per annum. The excess capacity mostly caters to exports to various countries.

85. World Trade Atlas data indicates that major importers of Nitrile Rubber from this country are China PR, Hong Kong, USA and Japan, accounting for about 85% of total exports from Chinese Taipei. India accounts for less than 2% of total exports of the subject goods from this country. . It is clear that the production capacity of the exporters in Taiwan is significantly higher than their domestic demand.

86. It has been brought to the notice of the Authority that the Chinese Taipei producer is setting up a huge plant in China implying that its exports to one of its major market, i.e. China would reduce. In such a scenario the exporter would be faced with a huge unutilized capacity, which would find its place in the Indian market. It has also been noted that Taiwan exports large quantities of this

product to Hong Kong, which does not have significant domestic consumption of the same. Therefore, this product is also likely to be transshipped from Hong Kong to other countries, including India.

(c) Potential effect on prices:

87. The world trade atlas data showing the price trend of this product indicates that while the average export price of the subject goods from Chinese Taipei to the world market is about US\$1.30 per Kg the export price to India is about US\$1.24 per MT. At the same time antidumping duty paid landed value of the imports from the subject country are marginally above the net sales realization of the domestic industry, indicating that the current prices, at which the goods from the subject country are entering the Indian market, have only marginal negative price effect on the domestic prices. However, the Authority notes that dumped imports from all dumped sources have significant price depression effects on the domestic industry. Therefore, in the event of withdrawal of duty the landed value of imports from the subject country is likely to have significant price effect on the domestic industry resulting in further loss to the domestic industry.

88. In view of the above the Authority is of the view that arguments of the domestic industry on the likelihood of continuation of dumping and injury has considerable force, though the interested parties have argued that the imports from Chinese Taipei caters to a niche market and would not affect the domestic industry even if the duties are revoked. Drop in prices of the subject goods during the POI, in comparison to the previous years, also indicate that there is potential price effect of the imports from this country once the duties are revoked. Export orientation of the exporters from the subject country is also evident from the total export figures of that country.

89. In view of the above the Authority is of the view that dumping and injury is likely to continue or recur if the duties are revoked.

J. Determination of Non-injurious Price and injury margin

90. In their post disclosure submission the domestic industry has raised several issues regarding computation of Non-injurious price for the domestic industry and comparison of the same with the landed value for the purpose of injury margin determination. The issues raised have been examined by the Authority and the Non-injurious Price for the subject goods has been worked out taking into account the arguments raised and after a detailed analysis and scrutiny of information provided by the domestic industry in respect of its cost of production. Weighted average Non-injurious price for the domestic industry has been determined by the Authority as Rs****/-per MT.

91. The non-injurious price determined by the Authority has been compared with the landed value of the exports from the subject country for determination of injury margin and the injury margins have been estimated as follows:

Company/ Country	Landed Value	NIP	Injury Margin	Injury Margin Range
Chinese Taipei	*****	*****	*****	5 to 15%

K. Conclusions

92. On the basis of the above examination of the current level of dumping, injury, causal links and likelihood of continuation of dumping and injury the Authority concludes that

1. The subject goods are continuing to enter the Indian market from the subject country at dumped prices;
2. The domestic industry is suffering material injury due to the dumped imports;
3. Dumping of the subject goods from the subject country and injury to the domestic industry is likely to continue if the duties are withdrawn.

M. RECOMMENDATIONS

93. In view of positive determination of likelihood of continuation of dumping and injury on account of imports from the subject country, the Authority is of the opinion that continuation of the measure is required against imports from the said country. Considering the current level of dumping from the subject country and injury suffered by the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, Authority considers it necessary and recommends anti-dumping duty on imports of subject goods from Chinese Taipei in the form and manner described hereunder.

94. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping or margin of injury, whichever is lesser, so as to offset the injury caused to the domestic industry. Considering that the duty in the original investigation was imposed on fixed duty basis the Authority recommends continuation of definitive antidumping duty, on all imports of subject goods originating in or exported from Chinese Taipei as indicated in Col 9 of the table below.

Duty Table

Sl. No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	4002.59	Acrylonitrile Butadine Rubber (NBR)	Nil	Chinese Taipei	Chinese Taipei	Any	Any	187.90	MT	US\$
2	4002.59	Acrylonitrile Butadine Rubber (NBR)	Nil	Chinese Taipei	Any (Other than countries covered in earlier notifications)	Any	Any	187.90	MT	US\$
3	4002.59	Acrylonitrile Butadine Rubber (NBR)	Nil	Any (Other than countries covered in earlier notifications)	Chinese Taipei	Any	Any	187.90	MT	US\$

N. Further Procedures

95. An appeal against the order of the Central Government arising out of this determination shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

96. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party within the time schedules stipulated for this purpose.

**Christy L. Fernandez
Designated Authority**