

# MINISTRY OF COMMERCE

## NOTIFICATION

New Delhi, the 19th October, 1995

**Subject:** - Anti-dumping investigation concerning imports of Acrylonitrile Butadiene Rubber (NBR) originating from Japan- Final Findings.

**No. 25/ADD/94.** - The Government of India having regard to the Customs Tariff Act, 1975 as amended in 1982 and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985, thereof.

## PROCEDURE

2. The procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to Authority)), under the above Rules, received a written petition from M/s. Gujarat Apar Polymers Ltd., Maker Chambers III, 1st Floor, Jamnalal Bajaj Road, Nariman Point, Bombay-400 021, alleging dumping of Acrylonitrile Butadiene Rubber (hereinafter referred to NBR) originating from Japan.
- ii. The Authority issued a Public Notice dated 28.10.1994 published in the Gazette of India, Extraordinary, initiating anti-dumping proceedings concerning imports of NBR classified under heading 4002.59 of Schedule I of the Customs Tariff Act, 1975 and No. 4002.59.00 under Indian Trade Classification (Based on Harmonised Commodity Description and Coding System) originating from Japan.
- iii. The Authority officially informed the exporters and importers known to be concerned, the representatives of the exporting country and the complainant about the said initiation and gave them an opportunity to make their views known in writing and to request an oral hearing, within 40 days from the date of notification.
- iv. The Authority sent questionnaire, to elicit relevant information to the following exporters:
  1. M/s. Japan Synthetic Rubber Co., Japan.
  2. M/s. Nippon Zeon Co. Ltd., Japan.

- v. The embassy of Japan in New Delhi was also informed on 28th Oct., 1994 about the initiation of investigation and was requested to advise the exporters/ producers from Japan to respond to the questionnaire within prescribed time.
- vi. The embassy of Japan in New Delhi desired names and address of the exporters from Japan, which was also informed to them on 10.11.1994.
- vii. The questionnaire was also sent to the following importers of NBR: -
  - 1. M/s. Mitsui & Co. Ltd, Bombay.
  - 2. M/s. Mitsubishi Corporation, Bombay.
- viii. An opportunity was also given to exporters, importers, petitioners, and other interested parties to express their views in a public hearing held on 3rd Feb., 1995. The said Public hearing was attended by the representatives of the petitioner domestic industry viz. M/s. Gujarat Apar Polymers Ltd., M/s. Mitsubishi Corpn., Bombay. M/s. Bombay Chemicals & Rubber Products Ltd. also attended the hearing on behalf of the exporter, M/s. Japan Synthetic Rubber, Japan. The following interested parties also attended the public hearing:
  - 1. All India Rubber Manufacturers Association, Delhi;
  - 2. M/s. Golden Rolls Pvt. Ltd., New Delhi;
  - 3. M/s. Polyplas Associates;
  - 4. M/s. Sharp International;
  - 5. M/s. PE International;
  - 6. M/s. FOCL
  - 7. M/s. Sujan Group of Industries;
  - 8. M/s. Kashmir Rubber Mills;
  - 9. M/s. Poly Rob Extrusion, Bombay;
  - 10. M/s. Carrosion Engg.;
  - 11. M/s. Rishi Roll Polymers Pvt. Ltd.,
  - 12. M/s. Kasturi International;
- ix. All the parties who attended the said public hearing were advised to make the submissions made in the public hearing in writing for obtaining counter comments from the other party to the investigation and the written submission made by the parties were made available to the other party (ies) for their counter comments.
- x. Another opportunity to exporters, importers, other interested parties and petitioners to express their views was given in the second public hearing held on 12.6.1995 by new Authority. The public hearing was attended by the petitioner and the followings: -

1. M/s. Golden Rolls Pvt. Ltd., Delhi;
  2. M/s. Bombay Chemicals & Rubber products Ltd., Bombay;
  3. M/s. All India Rubber Manufacturers Association, Delhi;
  4. M/s. Mitsubishi Corporation;
  5. M/s. Sharp International;
  6. M/s. PE International;
  7. M/s. FOCL.
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- xi. All the parties who attended the said public hearing were advised to make the submissions made in the public hearing in writing for obtaining counter comments from the other party to the investigation and the written submissions made by the parties were made available to other party for their comments.
  - xii. The Authority sought and verified information deemed necessary for the investigation, and to this end investigations were carried out at the premises of M/s. Gujarat Apar Polymers Ltd. also.
  - xiii. The Authority also conducted cost investigation and worked out optimum Cost of Production and Cost to make and Sell in India on the basis of Generally Accepted Accounting Principles so as to ascertain as to whether anti-dumping duty lower than the dumping margin would be enough to remove the injury.
  - xiv. The investigations covered the period from 1st April, 1993 to 31st March, 1994.
  - xv. The Authority has conducted the investigations under the Rules supra, and not under the new Rules. The Rules becoming effective from 1.01.1995 have no bearing on these investigations. The Authority obtained legal opinion also on this issue.

## **PETITIONER'S VIEWS**

3. The petitioners reproduced the gist of its complaint, and made the following submissions in the oral hearings:
  - a. As NBR produced by the petitioner gained acceptance in the market, the Japanese manufacturers began dumping NBR in India at prices significantly lower than the domestic prices in Japan;
  - b. Due to dumping of NBR by Japanese manufacturers, the petitioner has been significantly injured resulted in under-utilisation of existing capacity and incurring of losses;
  - c. The petitioner follows quality control systems and procedures of international standard, has well qualified and experienced technical personnel, got repeat orders from the same clients, its NBR exports are picking up, and the Nation's interest at large would be served if the domestic NBR manufacturer exists;

- d. The petitioner has submitted comments also on the views expressed by various parties to the investigation, which have also been considered by the Authority while notifying these findings.

## **EXPORTER'S VIEW**

4. The two exporters from Japan not responded in the prescribed questionnaire sent by the Authority while notifying the initiation. However, both the exporters expressed their views vide their letters dated 14.12.1994 as follows:

- a. The prices offered by them to India are same as that of their standard NBR prices offered to other countries;
- b. NBR export prices are being changed from time to time, depending upon Acrylonitrile monomer price, Butadiene monomer price, Exchange rates, Ocean freight, Market prices in the world and so on;
- c. Other suppliers has offered much lower prices to Indian market during the period;
- d. The exporters heard that customers in India preferred their materials due to quality reason;
- e. Some users in India would be troubled, unless the material from Japan is available;
- f. The petitioner is a monopoly;

5. One of the exporters, i.e. Japan Synthetic Rubber Company, Japan has vide its letter dated 17.02.1995 addresses to M/s. Bombay Chemicals & Rubber Products Ltd., Bombay (hereinafter referred to M/s. Bombay Chemical), and annexed by M/s. Bombay Chemical in its submissions to the Authority also stated that:

- a. The domestic price which are petitioner has furnished in their evidence of dumping is based on data from "The Chemical Daily", which are for their small customers.
- b. In case of sale in the domestic market, the exporter has to deliver the material at any time even if the order is for small quantity, have to frequently visit them, send their technical staff, and do Research & Development in the laboratory, and develop special grades of NBR for each customer.
- c. The business style in case of exports, is very simple and with good efficiency. The expenses involved on visits, technical fee etc. are much less in case of exports.

## **VIEWS OF IMPORTERS AND OTHER INTERESTD PARTIES**

6. Importers and various other interested parties have expressed their views, which are briefly as follows:

- a. The investigations should be carried out in accordance with the Government of India's Rules published under the Notification No. 2/95 Cus. (N.T.). There is no legal authority to continue application of the superseded provisions of law and continue the investigation under the superseded Rules.

The Government of Japan has not been notified PRIOR to initiating the investigations as required under the new Rules.

- b. NBR manufactured by the petitioner can neither be held to be equivalent to NBR exported from Japan, nor the same can be held to fall into the category of "like article".
- c. The consulate letter dated 06.09.1993 nowhere provides any basis that the prices in Japan are in the range of USD 3000 to USD 4000 pr MT.
- d. The petitioner has applied the exchange prevalent in Sept. 1994 instead of that as being prevalent in Sep., 1993
- e. The Japanese export price are alike for other countries.
- f. Peculiar domestic market conditions, such as high cost of living costlier services, marketing pattern, special packing, special formulation, extending long credit, etc. are prevalent in Japan.
- g. Total exports of NBR from Japan in the recent has not increased appreciably.
- h. NBR from Japan is of the most superior quality.
- i. The imported NBR's current landed cost works out of Rs. 111 per kg to consumers, which is costlier than the petitioner's selling of Rs. 96 per kg.
- j. The petitioner received the imported raw materials are concessional rates, as the same attracts duty of 15 per cent, as against 65% being payable on imported NBR.
- k. The petitioner has failed to establish injury. The real injury to the petitioner if at all, is due to reduction in the Customs duties.
- l. Substantial imports being under DEEC scheme, it is not understood how injury has been caused to the petitioner.
- m. The petitioner has to blame itself for having high overhead cost inapt size of its plant; poor selection and quality of products for manufacture, R & D facility, location, attending to customer grievances and earnestness to maintain the quality and its costing structure generally.
- n. The petitioner's capacity utilisation is nearly 50% capacity and production being 5000 & 2500 MT respectively.
- o. The petitioner will not be able to meet the demand of the examine consumer industry, which is at 10,000 MT.
- p. The present CIF prices are much higher.

- q. It is unfair and unreasonable, considering overall quantum of export from Japan and quantum available for exports after meeting the domestic requirement of 60% to conclude that there is likely to be any sudden change in the quantum of imports from Japan which would cause any imminent injury.
- r. The quality of the petitioner's NBR is poor.

## **EXAMINATION BY AUTHORITY**

7. The above submissions made by the exporters directly as also through their agent in India, by the importers, petitioner and other interested parties have been examined and considered while arriving at these findings and have been dealt with at appropriate places in these findings.

8. The Authority confirms in the absence of any direct response from the exporters in the prescribed format, the Authority has made the findings on the basis of the information available to it as per Rule 14 supra. The Authority notes that the exporters have not responded to the questionnaire and the Authority had to resort to the principle of best information available.

## **PRODUCT UNDER CONSIDRATION**

9. Acrylonitrile Butadiene Rubber (NBR) is a synthetic rubber, mainly used for manufacturing various rubber articles, such as Oil Seals, Hoses, Automotive products, Gaskets, Rice Dehusking Rolls, Printers fabrics, Oil field products etc. NBR is classifiable under customs heading 4002.59 of Schedule 1 of Indian trade Classification (Based on Harmonised Commodity Description and Coding System) No. 4002.59 – Other Acrylonitrile Butadiene Rubber.

10. The Authority finds that all Nitrile rubbers are copolymers of Acrylonitrile and butadiene and serve the same general purpose of providing resistance to petroleum chemicals, though the same have different specific end applications. Further, variations in Acrylonitrile content merely enhances one of the general property for which NBR is used. The Authority finds that the manufacturing process, equipments, and other facilities needed for producing different grades of NBR are common, and does not involve any special equipment to produce grades of NBR. The authority noted that the total quantity of the product imported from four major non-Japanese sources viz. Germany, France, Korea and USA was almost constant during 1992-93 and 1993-94 whereas imports from Japan have steeply increased from 1863 MT to 3807 MT during the period. The fact, therefore, that various users could switch their requirements between domestic and overseas product from Japan clearly establish that the two are substitutable. Ministry of Chemicals and Fertilizers, Department of

Chemicals and petrochemicals has also opined that the product/grades imported are “like product” as manufactured domestically. The Authority, therefore confirms that NBR produced by the petitioner and that imported from Japan are “like product” within the meaning of the Rules.

11. Some of the importers and users have written to the Authority about poor quality of NBR supplied by the petitioner. The Authority gave adequate opportunity to them to support their contention about poor quality of the petitioner’s product with authentic documentary and reliable evidence. On the other hand petitioner has been able to submit test reports from international/national laboratories, alongwith copies of the various letters written to them about good quality of the product and repeat orders from the consumers, the importers have failed to submit documentary evidence from any authentic laboratory/source. The Authority considered the evidence and came to the conclusion that the contentions of the importers/ users about the poor quality of the domestic products is not proved.

## **DOMESTIC STATUS**

12. The petition has been filed for and on behalf of M/s. Gujarat Apar Polymer Ltd. Maker Chamber III, 1st Floor, Jannalal Bajaj Road, Nariman Point, Bombay-400 021 having its works at Village Dungari, Tal. Valia, Distt. Bharuch, Gujarat and registered office at Opp. ‘D’ Cabin, Chhani Road, Dhrmsinh Desai Marg, Vadodara-390 002. M/s. Synthetic & Chemicals Ltd., also Products NBR in small quantity. However, the petitioner accounts for a majority of production of NBR in India and hence, satisfies the domestic industry status in accordance with Rule 2© of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985.

## **NORMAL VALUE**

13. The petitioner has provided information on domestic price of NBR in Japan based on a letter from the Indian Embassy in Japan and prices published by Japan Chemical Week in their periodic bulletin. Though none of the exporters have furnished information in the questionnaire prescribed for the purpose, M/s. Japan Synthetic Rubber ahs confirmed to their Indian agent i.e. M/s. Bombay Chemicals & Rubber Products Ltd., vide letter dated 17.02.1995 that the prices published in the Japan Chemical Week are their price of retail customers. The exporter has further explained various differences in the level of trade between exports to India and sales in the domestic market, as detailed din para 4 supra.

14. The authority accepts the contention of the exporter that the prices in the Japan Chemical Week are the prices to retail customer, and there are differences in the levels of trade between sales by the exporter in their domestic market and exports to India. Though the exporters has not quantified the differences in the level of trade in monetary terms, yet the same have been considered in determining Normal Value as per the best available information about the impact of the differences in the level of trade on prices. The Normal Value after making these adjustments has been considered at USD 3677 pr MT. The Authority has considered exchange rates applicable during Sept., 1993.

15. The Authority notes that there could be differences in the market situations, as prevalent in Japan and India, as contended by some importers. Though these peculiar market conditions or their impact have not been substantiated with sufficient evidence, the Authority has adjusted the domestic market price in Japan, as per the best information available to account for the peculiar market situation prevailing in Japan.

## **EXPORT PRICE**

16. The export price has been determined on the basis of the weighted average price reported by the importers for the purpose of Custom clearances, as compiled by DGCIS, Calcutta, which has been found reliable. The CIF export price, as appearing in DGCIS Statistics under Code No. 4002.59, have been adjusted for ocean freight for working out the FOB price. The FOB export price has been treated as ex-works price based on the information available.

## **COMPARSON**

17. For the purpose of a fair comparison between the normal value and export price and in accordance with Section 9(A) (2) of the Customs Tariff Act, 1975 and Rule 14 supra, the Authority took into account the information supplied by the petitioner and one of the exporters, i.e. M/s. Japan Synthetic Rubber, Japan through M/s. Bombay Chemical & Rubber Products, Bombay and the best available information with in the absence of any direct response in the prescribed manner and proforma from the exporters in Japan, who were given ample opportunity to make available the relevant information from their end. The weighted average export price obtained during the period of investigation has been compared with the normal Value.

18. The Authority notes that the Normal Value and Export Price during the investigation period only are relevant for deciding dumping, and the current Export price to India or international prices are not relevant for the purpose.

## **INJURY**

19. Under Rule 18 supra, when a finding of injury is arrived at, “such finding shall involve an examination of facts which the Designated Authority considered relevant under the circumstances including the volume of dumped imports and their effect on price in the domestic market for like products and the consequent impact of such imports on domestic producers of such products”. 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 product in India, or whether the defect of such imports in otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

20. For the examination of the impact on the industry in India, the Authority considered such further indices having a bearing on the state of industry as production, capacity utilization, sales, stock, profitability and net sales realisation.

### **(a) Volume and Market Share of Dumped Import**

21. Total imports of NBR in India increased from 309 MT in 1992-93 to 5633 MT in 1993-94, showing an increase of approx. 81 percent. The Authority noted that total quantity imported from 4 major non-Japanese sources viz. Germany, France, Korea, and USA is almost constant but the percentage share of these has significantly dropped in 1993-94 to a mere 20% of the imports and to 14% of the total demand. But imports from Japan have increased steeply from 1863 MT in 1992-93 to 3807 MT in 1993-94, showing an increase of 104% in absolute terms. The share of Japan in the total imports, as a consequence, increased from 60 percent (92-93) to 68 percent (93-94). While the imports in absolute terms increased significantly in 93-94 as compared to the previous period, the CIF import price declined from 37.02 per kg. in 92-93 to 36.21 in 93-94, which resulted in a decline of approx. 9 percent the landed prices of Japanese NBR in India after considering customs duty (but considering additional duty of customs).

22. Market share of Japan in the total consumption of NBR in India also rose sharply by 11% (from 36% in 92-93 to 47% in 93-94), whereas the share of the domestic industry fell by almost same proportion from 37% to 28% during the correspondence period.

### **(b) Production Trend and Capacity Utilisation**

23. Production of NBR of the petitioner increased from 2178 MT (92-93) to 2380 MT (93-94). However, production during May and June 1994 remained very low. Further,

the overall capacity utilisation was still far below optimum level, and the petitioner had to resort to production of non-NBR products (which otherwise does not require such plant & technology as are available with the petitioner for producing NBR) at the fag end of the investigation period in order to keep the plant running improve capacity utilisation, and absorb fixed overhead expenditure on larger production)

**(c) Sales in absolute quantity**

24. Though sales of the domestic industry in absolute terms in India increased from 1916 MT in 92-93 to 2271 MT in 93-94 yet the same are still low, considering the capacity of the petitioner and the size of the Indian Market. The petitioner has lost approx. 9 per cent market in 1993-94 as compared to the previous period, in spite of increase of sales in absolute terms

**(d) Selling Price Trend**

25. Average realisation from sales of NBR (exclusive of central excise duty) to the petitioner declined sharply from Rs. 61793 MT (1992-93) to Rs. 58592 PMT in 1993-94. The reduction in custom duty coupled with decline in import price from Japan in 93-94 as compared to the previous period forced the petitioner to reduce its selling significantly to unremunerative levels, much below its cost of production.

**(e) Stock Trend**

26. Stock of the finished product with the domestic industry increased from 431 MT as 31.3.92 to 546 as on 31.3.94. The stock as on 31.3.94 represents approx. three months sales in stock.

**(f) Profitability Trend**

27. The petitioner is suffering net losses from the sales of NBR at prices much below its cost of production.

**(g) Conclusion on Injury**

28. The Authority find that:

- i. The imports in absolute terms from Japan increased significantly during the investigation period as compared to the previous period.
- ii. The share of Japan in the total imports in India increased significantly during the investigation period as compared to the previous period.

- iii. The market share of Japan in the total demand of the country increased sharply by approx. 11%.
- iv. As a consequence of reduction in import prices by Japan and reduction in custom duty by the Government of India the imports value from Japan (after considering custom duty but before considering Additional Customs duty) declined by approx. nine per cent.
- v. The exports from Japan resulted in price undercutting and forced the domestic industry to reduce its prices to unremunerative levels.
- vi. The various indicators relating to domestic industry such as Production, Capacity Utilization, Sales Quantities Average Sales Realisation, Profit/Loss etc. establish that the domestic industry has suffered material injury.

29. The Designated Authority is, thus, led to the inescapable conclusion that the domestic industry has suffered material injury.

## **CAUSAL LINK**

30. In determining whether material injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts:

- i. The imports of the product from Japan increased significantly in absolute terms and relative to the consequently the product in India. The share of Japan in the total imports also increased significantly. As a direct consequence the domestic industry has lost its market share to a significant level.
- ii. The lower value of the imports from Japan (after considering customs duty) coupled with higher volumes forced the domestic industry to reduce its selling price to unremunerative level and restricted it from utilizing its capacity to the optimum level.
- iii. The imports from Japan suppressed the prices of the domestic industry to such an extent the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit the sales of NBR in India.
- iv. The inventory of the petitioner has increased despite a decrease in the average sales realisation.
- v. With near consistency in imports in absolute terms from the our major non-Japanese sources despite an appreciable increase in demand for NBR (the increase demand for NBR is being met by domestic production and increased imports from Japan) a steep increase in supply from Japan is attributable only to the lower landed cost arising from dumping which has been injurious to the domestic industry.

## **INDIAN INDUSTRY'S INTEREST**

31. The purpose of anti-dumping duties is in general to eliminate dumping which is causing injury to the domestic industry and to re-establish the situation of open and fair competition on the Indian market which is in the general interest of the country.

32. The Authority recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using NBR and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti-dumping measures particularly if the levy of the anti-dumping duty is limited to the amount necessary to redress the injury to the domestic industry, and on the contrary would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of NBR.

33. The Authority confirms that it has worked out reasonable Selling Price of NBR in India for the domestic industry, by considering the optimum cost of production at attainable level of Capacity Utilisation, to ascertain the extent of Anti-Dumping duty necessary to remove the injury to the domestic industry.

34. Injury being caused to the petitioner from factors other than dumping have not been considered by the Authority while recommending the amount of Anti-Dumping Duty necessary to remove the full extent of injury to the petitioner.

35. The impact of reduction in customs duty on basic raw materials i.e. Acrylonitrile and Butadiene vis-à-vis NBR has been considered by the Authority while working out Cost of Production and reasonable Selling Price of NBR for the domestic industry.

36. It is clarified that the installed capacity of the petitioner is 6250 MT

37. The Authority notes that demand of NBR in India is much higher than the capacities available within the country. However, the imposition of Anti-Dumping Duty on imports originating from Japan will not adversely affect the available of NBR in the country, as even at present the majority of the demand is being met through imports from various countries. Further the imposition of Anti-Dumping Duty on imports originating from Japan will only make the domestic market competitive and remove the unfair advantages enjoyed by dumped products.

## **FINDINGS**

38. The Authority, accordingly, has come to the conclusion that:

- i. Exporters from the Japan have sold NBR in India below its normal value;

- ii. The Indian Industry has suffered material injury.
- iii. The injury has been caused by the imports from Japan

39. The Authority considers it necessary to impose a definitive anti-dumping duty on imports of NBR originating from Japan in order to remove the material injury to the domestic industry. The export price, normal value and the margin of dumping in this case were determined by the Designated Authority as :

	USD/MT	Rs/MT
Normal Value	3677	116,009
Export Price (fob)	1058	33,380
Margin of Dumping	2619	82,629

40. The Authority considered whether a duty lower than the dumping margin would be enough to remove the injury. The weighted average landed price of the Japanese imports, for the purpose, was compared with the fair selling price of NBR produced by the domestic industry, determined at an optimum level of capacity utilisation, for the period of investigation. The difference was less than the dumping margin and accordingly the Authority recommends that an anti-dumping duty of Rs. 19,306 (Rs. Nineteen Thousands Three Hundred and six) PMT, which is less than dumping margin, but sufficient to remove the extent of injury to the domestic industry caused directly by export from Japan be imposed on all the imports of NBR originating from Japan falling under Chapter 40 of the Customs Tariff.

**T.S. VIJAYARAGHAWAN,**  
Designated Authority and Addl. Secy.