

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 23rd February, 2000

Subject : Anti-Dumping investigation concerning imports of Acrylonitrile Butadiene Rubber (NBR) from Taiwan—Final Findings.

22/1/99-DGAD.— Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A PROCEDURE

1. The Procedure described below has been followed-
 - i. The Designated Authority (herein after referred to as the Authority) notified preliminary findings vide Notification no 22/1/99.DGAD dated 28.9.99 and requested the interested parties to make their views known in writing within forty days from the date of its publication:
 - ii. Forwarding a copy of the preliminary findings, all known interested parties were requested to finish their views, if any on the preliminary findings within forty days of the date of the letter;
 - iii. The Authority also forwarded a copy of the preliminary findings to the Taipei Economic and Cultural Centre, New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings.
 - iv. The Authority held a public hearing on 11th November, 1999 to hear views orally. All the parties attending the public hearing were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were requested to offer their rebuttals. The following parties attended the public hearing.
 - Taipei Economic & Cultural Centre, New Delhi.
 - M/s Nantex, Taiwan
 - M/s Sepulchre Brothers (India) Ltd., Bombay.
 - M/s Sealink Bombay Trading Pvt. Ltd., Bombay
 - All India Rubber Industries Association, New Delhi.
 - M/s Plexconcil. New Delhi
 - M/s.Apar Ltd., Mumbai

- v. In accordance to Rule 16 of the Rules Supra, the essential facts/basis considered for these findings were disclosed to all the known interested parties. Comments received on the same have also been duly considered in these findings;
- vi. The views expressed by the exporters, importers and other interested parties involving common issues have not been repeated for the sake of brevity. The views expressed by various interested parties before the preliminary findings and addressed therein have also not been repeated forsake of brevity;
- vii. The investigations have been concluded with in one year of initiation.
- viii. **** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
- ix. Public Hearing : The Authority held a public hearing on 11th November, 1999 to hear the views orally. All interested parties were given the time schedule for written submission/exchange/rebuttals latest by 25.11.1999. Responses received in time have been considered

B. PETITIONER S VIEWS

2. The submissions of the petitioners on the preliminary findings have been examined and considered and dealt with appropriately:

2.1 Petitioners have argued that the normal value was required to be determined on the basis of constructed value. Since sufficient information on cost of production and price actually paid or payable in India was available with Designated Authority, the same should have been used to determine normal value of NBR in Taiwan, in view of the recent amendments (15th July, 1999) to the Rules. Further, it is evident from the preliminary findings that the company has not provided any evidence in support of the price adjustment claim. Since the Designated Authority has already conducted verification before the preliminary bindings the petitioners have requested the Authority to disregard any claim made by the exporter after the preliminary findings and exporter should not be allowed to give any evidence after the preliminary findings as the information, provided after the visit cannot be verified by the Authority.

C. THE VIEWS OF EXPORTERS IMPORTERS AND OTHER INTERESTED PARTIES:

3. The importers and exporters have expressed their views, and the same are briefly mentioned below. The arguments expressed by the exporters and importers, which are similar in nature, have not been repeated for sake of brevity.
4. **Exporters Views:**

4.1 M/s. Nantex industries Company Ltd . Taiwan

The exporters have stated that M/s. Nantex started manufacturing and marketing of NBR in the 80s and their goal was to achieve a dominant position in Taiwan NBK market against the international giants. A separate office has been set up in Taipei in order to serve customers in northern Taiwan as M/s. Nantex is situated at the southern tip of country. The exporters have stated that they offer extensive technical and after sales service to their domestic consumers. The service extends to the holding at required technical training and seminars with domestic consumers. Further, stocks have to be held for two to three months of requirement of domestic consumers. Further, they extend 90-120 day credit term to domestic consumers. All these efforts and investments are clearly meant to enhance the image of 'Nancar' NBR in the domestic market.

4.2 Exporters have stated that they have initiated and extended market activities in India through their authorised agents and stockists. Amongst other things they receive from Sepulchre Brothers, (Indian agents) require a reports on forthcoming requirements from Indian customers alongwith reports on market information. Upon the receipt of confirmed orders from exporters through their agents they schedule and produce according to exporter orders. The stocks, therefore, do not linger too long in the warehouse.

4.3 M/s. Sealink Trading (their stockiest in India) submit to them a demand forecast to their import requirements for all grades of NBR for the future three months. Accordingly they plan their production schedule. With this arrangement the exporters have retired that it becomes unnecessary for them to maintain high level of inventory for Indian customers as well.

5. Importer Views

5.1 M/s Sealink Bombay Trading Pvt. Ltd.. Bombay :

Importers have submitted that the observations of Designated Authority in the provisional findings that adjustments for domestic sales viz. technical service charges insurance etc. have not been granted by the Authority. The exporters from Taiwan categorically have stated that they in cuffed additional expenses for their domestic market at the public hearing and hence to be considered.

5.2 Petitioner had manipulated its injury where none exists.

5.3 There is no bar on repeated application from the domestic industry on the same product against different countries However, it is incumbent upon the Honorable

Designated Authority and in the interest of nation at large that a higher analysis of injury is undertaken.

5.4 The petitioners have themselves admitted that "NBR project was envisaged and up in era of substitution and 'License Raj'. M/s. Gujarat Apar was not allowed to put up a world size plant and the capacity was restricted. The petitioners balance sheet and annual report for the period 1998-99 refer to expansion of capacity, installation of co-generation, captive power and steam plant that would achieve saving in utility cost.

5.5 Honorable Designated Authority must consider, size of exporter plant In Taiwan and make necessary adjustments for the economies of scale.

5.6 Importers have submitted that Synthetic and Chemicals Ltd. closed down its NBR production nearly 5-6 years ago and this was long before there were any imports From Taiwan.

5.7 The average unit sales realisation of domestic industry declined, significantly, without taking into account that the prices of monomer which have decreased dramatically.

5.8 The petitioner is horizontally integrated manufacturer with the NBR forming the base for several products and poly blend produced by them.

5.9 Petitioners' annual accounts for 1998-99 reports that they had diverted use of NBR plant in order to mitigate losses. This is improbable and misleading as the petitioner is operating in excess of 100% capacity.

5.10 The importers have stated that the sale in absolute terms cannot be viewed in isolation as the petitioner is diverting its NBR plant and facilities to manufacture other allied products, which bring them greater profitability, it will be observed that the prices from Korea even after the imposition of anti dumping duty has reduced dramatically and the volumes from Korea have increased as well. Further more, the volumes from Japan and Germany have decreased while the prices have increased. By contrast the volume of imports from Taiwan have marginally increased while prices have diminished in keeping with the reducing cost. It has been stated that injury if any, is being caused by import by Korea and not by Taiwan. The growth of market share from Taiwan needs to be considered in light of total market demand and the capacity of petitioner coupled with the anti dumping duty on traditional suppliers such as Japan and Germany.

5.11 The importers have prayed for removal of provisional duty imposed on imports from Taiwan.

6. Taipei Economic and Cultural Centre, New Delhi

They have stated that they are greatly concerned about the statement made by the attorney of petitioner during the public hearing that Taiwan is neither a member of WTO, nor the country of Most Favoured Nation Treatment rendered by India, Taiwan case is not appropriate to apply safeguard measures under the agreement of Customs Tariff Act.

6.2 They have reiterated that Taiwan is an observer of the WTO and has already reached the final stage of becoming the member of WTO.

6.3 They have also stated that they have no diplomatic relations with India, however the Taipei Economic and Cultural Centre, New Delhi & Taipei Association in Taipei both office handle not only visa related matters but also participate in the Government negotiations as normally embassies does its function.

7. All India Rubber Industries Association, New Delhi

7.1 The Association have stated that they would like to draw the attention of Designated Authority to the objections raised by M/s. Rishiroop Polymers, a member of their association during the course of proceedings of anti dumping concerning imports of NBR from South Korea on 7.10. 99

7.2 M/s. Rishiroop Polymers had filed objections that Mr. A.K Gupta, Ex-Asstt. Director who was earlier handling the case was now representing the petitioner (Apar industries Ltd.) as a consultant. This had prejudiced their case and was against the principle of natural justice Further the Designated Authority had clarified that legal opinion would be obtained from Ministry of Law in the matter.

7.3 It has been stated that no action in the anti dumping case against Taiwan to be taken till the decision about the validity of representing the interests of petitioner by Shri A.K. Gupta is taken.

7.4 That the entire anti dumping procedure be conducted de-novo from the very beginning and the rules of WTO and the principles of natural justice be followed religiously without any exceptions.

7.5 They have prayed that no person who was earlier working in the Directorate General of Anti dumping and Allied Duties should be allowed to appear before the Designated Authority in all cases which were initiated during the time when these officers were working in the Anti dumping Directorate General of Anti dumping and Allied Duties

D. EXAMINATION BY THE AUTHORITY :

8. The submission made by the petitioner, exporters, importers and other interested parties have been examined and considered and wherever appropriate, have been dealt hereinafter.

8.1 As regards to request by (he petitioner to disregard any evidence given by the exporter after the preliminary findings Authority holds that the contention of petitioner is unfounded.) as certain adjustments were allowed and disallowed based on the evidence produced before /after verification of exporter information. If the exporter could furnish detailed evidence with regard to some of the adjustments disallowed in the preliminary findings, the same could be considered by the Authority in final Findings in accordance with Rule 7(4);

8.2 As regards to arguments raised by M/s Nantex, Authority requested the exporter to furnish evidence on sales and technical service charges, insurance and financing cost storage and handling and the amount of expenditure incurred thereon. It is noted that the additional information submitted by the exporter, it is noted that the evidence furnished is sketchy. They have not furnished details of total expenses for NBR and other operations of the company separately. In the absence of information with respect to production and sales details of Latex and Elastomer separately it has not been possible to allocate the expenses with regard to technical service charges, insurance and finance cost, storage and handling expenses against Domestic and Export sales of NBR effected by the exporter. In view of the above, Authority has disregarded the adjustment claimed on these counts.

8.3 As regards to arguments raised by Taipei Economic and Cultural Centre, Authority considers appropriate to go ahead with the present anti dumping investigations not withstanding the fact that Taiwan is not a member of WTO, as anti dumping action has not been limited only to WTO members.

8.4 As regards to objection raised by one of the interested party during the course of the public hearing on 11th November 99 to Sri. A .K. Gupta (ex-Asstt. Director) representing the petitioners as a Consultant, the Authority examined the issue and has held that Shri A K Gupta should not appear in such cases General instructions have also been issued in this regard

E. PRODUCT UNDER CONSIDERATION:

9. The product under consideration which has been investigated for dumping has been defined in the preliminary findings which is Acrylonitrile Butadiene

Rubber (also referred as NBR). The Authority notes that the articles imported originating from the Taiwan were substitutable by the articles produced by the domestic industry, both commercially and technically. The scope of the present investigation was defined in the notice of initiation. The Authority confirms para F of the preliminary findings relating to product under consideration .

F. LIKE ARTICLES AND DOMESTIC INDUSTRY:

10. The arguments that findings relating to anti dumping investigations against Germany and Korea have concluded and anti dumping duty have been imposed and hence imports from these countries are affecting the domestic industry and imports from Taiwan is not injuring the domestic industry is not supported by any evidence. The observations made by the Authority in any particular case are based on the facts on records of that particular case and cannot be taken cognizance of other anti dumping cases. The Authority confirms the view on Like Article given in Para F of the preliminary findings dated 28.9.99.

G. NORMAL VALUE AND EXPORT PRICE:

11. The exporter has furnished some additional information on domestic prices. Informations regarding some adjustment like technical service charges, storage and handling etc. after the preliminary findings. As these evidences furnished by the exporter do not substantiate/reconcile with the expenses concerning total NBR operation by Nantex. Authority is constrained to disregard the information.

The Authority confirms para 11 & 12 of preliminary findings relating to normal value and export price.

12. **Comparison :** For the purpose of fair comparison between normal value and export price the Authority took into account the information furnished by exporters and other information available with the Authority. The normal value and export price has been compared at Ex-works level.
13. **Dumping Margin:** Since there is no other exporter from Taiwan, the Authority has not worked out dumping margins in respect of other producers/exporters. Based on the above, the comparison of normal value and export price the dumping margin in respect of Nantex Industries Co. works out to **** per MT. The dumping margin expressed as a percentage of export price of said producer works out to 13.39%.

H. INJURY

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

Rule (iii) of the Annexure II to the Rules requires that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the Authority will cumulatively assess the effect of such imports. The such assessment can be, however, made only if it is determined that:

- a. the margin of dumping in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the import of the like article in India, and
- b. the cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.

15. In the present case the dumping margin in respect of the exporter as also the country is more than the limits prescribed Further cumulative assessment of the effect of imports is appropriate in the light of the conditions of competition between the imported article and the like domestic article. The Authority has, therefore, cumulatively assessed (he effects of these Imports on the domestic industry.

16. For the examination of the impact of the imports on the domestic industry in India, the Authority may consider both (a) volume of dumped imports and [the](#) effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products. The Authority may, for the purpose of assessing the impact of the dumped imports on domestic producers, consider such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the rules supra.

17. Arguments by Petitioner.

17.1 The petitioner has alleged that Taiwan is neither a Member of WTO nor Government of India has accorded Most Favoured Nation status to Taiwan. Hence, the petitioners were not required to establish that they have suffered material injury and that the Designated Authority was not required to record findings with regard to the injury to the domestic industry. Since the Designated Authority called for information on Injury the petitioners provided the same, which nearly established that the domestic industry has suffered material injury because of dumping.

17.2 Imports from Taiwan have increased in absolute terms.

17.3 Significant increase in imports to India from Taiwan has resulted in significant increase in market share of import originating from Taiwan.

17.4 The indigenous NBR production has been low and consequently, the capacity utilization has been poor. Partly, the NBR plant has been utilised for the production of non NBR products in order to recover some fixed overhead cost:

17.5 The selling price of indigenous NBR is under tremendous pressure and has seen reduced significantly. The prices are not remunerative and Apar Ltd has been forced to sell below its fair selling price.

17.6 There has been considerable turnover of employees because of low motivation level.

17.7 The profitability of NBR operation of the company has been very poor since its inception. The domestic industry was making losses earlier also from its sales relating to NBR. The losses being made in the past were on account of dumping from countries like Japan, Korea and Germany. The losses suffered by domestic industry in the past have to be therefore, seen in the context of injury suffered by domestic, industry from the dumping of NBR from other countries. In view of the continued adverse conditions Apar Ltd. had proposed to merge itself with M/s GAPL.

17.8 With regard to decline in prices of Acrylonitrile and Butadiene, the petitioners have submitted that the decline in prices of these raw materials should affect NBR prices in both markets and thus would not make any difference with regard to act of dumping. Moreover, decline in export price in India is far more than decline attributable to cost reduction as a result of decline in raw material prices.

17.9 It is evident from submissions made by the exporters that it has resorted to dumping. Substantial increase in volumes is a result of aggressive and competitive marketing done by the exporters and the price reductions offered to the consumers, thus directly causing material injury to the petitioners.

18. Volume and Market share of Dumped imports:

Imports of NBR from Taiwan increased from 79 MT (1996-97) to 208 MT (1997- 98) and 375 MT in April-Dec. 1998 (500 MT on annualized basis) The imports have increased significantly in absolute terms.

The market share of imports/from Taiwan as a result, increased from 1.76% in 1996-97 to 4.45% in 1997-98 and 11.12 % in 199B-99 (April-Dec).

19. Economic parameters affecting the domestic industry:

i. Production and Capacity Utilisation;

Production of the domestic industry decreased in the year 97-99 compared to 96-97 in absolute terms thereby lowering the capacity utilisation to 69% from 75%. The production has increased during the year 1998-99(annualised) compared to 1997-96 and the capacity utilisation was at 83% as shown below.

However, the increase in production has to be seen in the light of imposition of anti-dumping duty on imports from Japan followed by Germany and Korea

ii. Sale in absolute terms:

	1995-96	1996-97	1997-98	1998-99 (POI)	Annualised
SALES VOLUME (MT)	3535	4141	3659	3165	4220

Though the sales volume has increased the same has to be seen in the context of imposition or anti-dumping duty on imports from Japan followed by Germany and Korea

iii. Stocks:

Stock of NBR with the domestic industry has been as under:

	1996-97	1997-98	1998-99 (POI)	Annualised
Opening Stock (MT)	65	223	183	244
Closing Stock (MT)	223	183	191	255
Average Stock (MT)	144	203	182	243
Production (MT)	4683	4297	3874	5165
Stock number of days of production	11.22	17.24	17.15	17.15

The Authority notes that though stock position has improved (which has to be seen in the context of imposition of anti-dumping duty on a number of countries earlier found to dumping the subject goods), the stock levels are still very high.

iv. **Average Sales Realisation:**

Net average unit sales realisation of the domestic industry, after excluding excise duty, sales commissions paid (if any) and discounts on sales paid (if any) declined significantly as follows

	1996-97	1997-98	1998-99
SALES VOLUME (Rs per Kg.)	91.99	84.77	85.42

The Authority finds that average sales realisation has decreased over the years. Further, the same is significantly below the fair selling price of the domestic industry.

v. **Profit/Loss**

The domestic industry was making losses earlier also from its sales relating to NBR. However, the losses being made in the past were on account of dumping from Japan, Republic of Korea and Germany. The Authority earlier recommended anti-dumping duty on imports from these countries in view of dumping causing material injury to the domestic industry. The losses suffered by the domestic industry in the past have to be, therefore, seen in the context of injury suffered by the domestic industry from the dumping from the other countries. The Authority, however, finds that the domestic industry was forced to sell significantly below its fair selling price and still suffered losses in the investigation period and was not able to earn reasonable profits on its sales relating to NBR.

20. Examination by the Authority: The Authority notes that many arguments have been made showing that a particular parameter of injury does not show injury to domestic industry and hence the domestic industry has not suffered injury. The Authority has already held the VIEW in a number of anti-dumping notifications issued earlier and also notes in the instant case that all injury parameters relating to domestic industry need not indicate injury to the domestic industry. In accordance with the Anti-dumping rules, the examination of the impact of the dumped imports on the domestic industry includes an evaluation of all relevant economic factors and indices having a bearing on the state of industry. The Authority had assessed the injury cumulatively taking into account all the relevant economic parameters as discussed in the preliminary findings.

21. Authority notes that arguments have been made that there are other factors which are causing injury to the domestic industry such as size of the exporter plant, petitioner's inability to expand their capacity, improper raw material and inventory management, improper financial management etc . The Authority notes that none of the factors have been quantified in terms of their impact of injury to the domestic industry As already indicated in the preliminary findings, the Authority while ascertaining the extent of anti-dumping duty necessary to remove injury to domestic industry, relied upon reasonable selling price of NBR in India for the domestic industry through detail analysis, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry. By this, the inefficiencies if any, of the domestic Industry are not allowed to be passed on to the consumers while determining the injury.

22. **Conclusion on injury**

- The imports of NBR increased significantly in absolute terms from the subject country during the period of investigation;
- The share of the subject country in imports of NBR in India increased significantly during the investigation period;
- Exports of NBR from the subject country forced the domestic industry to keep its prices to unremunerative levels and prevented the domestic industry from recovering its fair selling price, resulting in financial losses to the domestic industry;
- Various indicators relating to domestic industry such as increase in production, capacity utilisation and sales quantities have to be seen in light of the imposition of anti dumping duties on other countries like Japan Korea and Germany. The average sales realisation has been declining and is significantly below the non-injurious price for the domestic industry. The stock levels are still high. As regards to losses the Authority, however, finds that the domestic industry still suffered losses in the investigation period and was thus not able to earn reasonable profits on its sales relating to NBR. Hence, various parameters relating to domestic industry collectively and cumulatively indicate that the domestic industry has suffered material injury.

The Authority thus observes that the domestic industry has suffered material injury.

I. CLAUSAL LINK:

23. In determining the material injury to the domestic industry was caused by the dumping imports the authority took into account the following facts:

- a. The imports of product from subject country cumulatively increased in absolute terms. The share of subject country in total imports also increased during the period as a direct consequence the domestic industry lost market to a significant level which it would have otherwise gained.
- b. The substantial imports of NBR from subject country forced the domestic industry to sell its produce at unremunerative prices, resulting in financial losses. Further the lower prices offered by the exporter forced the domestic industry to match the prices of imported goods. Authority notes overall trend of various parameters indicating injuries to the domestic industry established that the reasons for the same are the imports from subject country.
- c. Authority, after considering all related arguments confirms that the injury to the domestic industry was caused cumulatively by dumped imports from Taiwan.

J OTHER ISSUES:

24. Arguments by the Petitioners: As regards to M/s Puneet Resin Ltd. Bombay request for their inclusion of list of interested parties in the investigation the petitioners have submitted that Puneet Ltd is understood to be a company wherein Mr Arvind Kapoor of Rishiroop Polymer Pvt. Ltd. has substantial interest. Further, it has been stated that to their knowledge M/s Puneet Resins have as never imported any NBR from Taiwan. The participation by the company is motivated with mischievous and ulterior motives.

24.1 Authority's position: M/S Puneet Resins Ltd, requested the Authority to include them as an interested party in the investigations and the Authority has acceded to their request.

25. The purpose of anti dumping duties is not to restrict imports from any source. It would, therefore, be incorrect to say that imposition of ADD would in any way affect availability of product to the consumers. The rules do not provide that the petitioner or even the Indian industry should be in a position to meet the entire demand of the country in case anti dumping duties are to be levied.

26. Except as detailed in the foregoing the Authority confirms para L & M of the preliminary findings with regard to Indian Industries interest and other issues and landed value.

K. FINAL FINDINGS:

27. The Authority after considering the foregoing concludes that:

- a. NBR originating in or exported from Taiwan has been exported to India below normal value, resulting in dumping,
- b. The Indian industry has suffered material injury:

The causal link between dumping and injury is established.

28. The Authority considered to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied would remove the injury to the domestic industry and the date commencement of such duty (clause(d) Rule 4 supra as amended). Accordingly it is proposed that definitive anti dumping duties as set out below be imposed, from the date of notification to be issued in this regard by the Central government on all imports of NBR originating in or exported from Taiwan falling under Chapter 40 of the Customs Tariff Act:

Name of the Exporter	Amount of Duty (Rs. Per MT)
Country of Origin: Taiwan M/s. Nantex Industry Co. Ltd., Taiwan	6288
Exporter other than above	6288

29. Landed value of imports for (he purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 including all duties of customs except Additional duty of Customs levied under Section 3 ,3A 8B, 9 and 9 A of the Customs Act, 1975.

30. Subject to above, the Authority confirms the preliminary findings dated 28.9.99

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

RATHI VINAY JHA...
Designated Authority