

Ministry of Commerce & Industry
Department of Commerce

Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan,

NOTIFICATION

New Delhi, the 2nd July, 2002

Subject: Anti-dumping investigation concerning imports of Acrylic Yarn originating in or exported from Nepal - Final Findings.

No. 29/1/2001/DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE

2. The procedure described below has been followed with regard to the investigations:-
 - i. The Designated Authority (hereinafter referred to as Authority), under Rules received a petition from M/s. Punjab Fibres Ltd., Punjab; M/s. Vardhman Spinning & General Mills Ltd., Ludhiana; M/s. Sportking India Ltd., Ludhiana; M/s. Malwa Cotton Spinning Mills Ltd., Ludhiana on behalf of the domestic industry, alleging that Acrylic Yarn (hereinafter referred to as subject goods), originating in or exported from Nepal (hereinafter referred to as subject country) is being dumped in India and causing injury to the domestic industry;
 - ii. Preliminary scrutiny of the application filed by the petitioners revealed certain deficiencies, which were subsequently rectified by the petitioners. The petition was, therefore, considered as properly documented.
 - iii. The Authority on the basis of information and evidence available before it decided to initiate anti dumping investigations against imports of subject goods from the subject country;
 - iv. In accordance with sub-rule 5(5) of the Rules, the Authority notified the Embassy of Nepal in India about the receipt of information and evidence mentioned above before proceeding to initiate investigations;

- v. The Authority issued a Public Notice dated the 3rd July, 2001 published in the Gazette of India, Extraordinary, initiating anti dumping investigations concerning imports of subject goods from subject country.
- vi. The Authority notified preliminary findings vide notification dated 25.9.2001 on anti-dumping investigation concerning imports of subject goods from Nepal and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- vii. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days from the date of its publication;
- viii. The Authority also forwarded a copy of the preliminary findings to the Embassy of Nepal in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in (vi) and (vii) above.
- ix. The Authority provided an opportunity to the interested parties to present their views orally on 27.11.2001. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- x. In addition to the petitioners, responses/information was filed by the following interested parties during the investigation:
 - i. M/s Reliance Spinning Mills Ltd., Nepal
 - ii. M/s. Kaur Sain Traders, Ludhiana.
 - iii. M/s. Goyal Agencies, Delhi.
 - iv. Ludhiana Spinners Association, Ludhiana.
 - v. Forum of Acrylic Fibre Manufacturers.
- xi. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request;
- xii. Arguments raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in these findings;
- xiii. In accordance with Rule 16 of the Rules *supra*, the essential facts/basis considered for these findings were disclosed to known interested parties on 5th June, 2002 and comments received on the same have also been duly considered in these findings;

- xiv. The period of investigation (POI) considered is 1st April, 2000 to 31st March, 2001.
- xv. ***in this notification represents information furnished by the interested party on confidential basis and so considered by the Authority under the Rules;

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY.

- 3. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 4. The product under consideration is "Acrylic Yarn". Acrylic Yarn is made of acrylic fibre. It can be made either from 100% acrylic fibre or in combination of 90% acrylic fibre blended with 10% polyester or viscose or 85% acrylic fibre blended with 15% polyester or viscose. It has been argued by the exporter that:
 - a. In the preliminary findings it has been stated that the investigations are with regard to both Acrylic Grey Yarn and Dyed Acrylic Yarn.
 - b. Legally the two products have been considered to be different marketable commodities and conversion by a process of dyeing is a process amounting to manufacture.
 - c. The finding that the two products are mutually substitutable is contrary to law.
 - d. The normal value and export price for the two products must be fixed separately.
- 5. In the Preliminary Findings the Authority has already stated that the product involved in the present investigation is Acrylic Yarn as mentioned in para 2 of the initiation notification dated 3.7.2001. This included both grey and dyed forms of Acrylic Yarn. At the preliminary findings stage the Authority had

found that the exporter had domestic sales of only Acrylic dyed yarn. Information on the factory cost and profit of domestic sales of acrylic dyed yarn as required in the prescribed form of the questionnaire had not been furnished. Sales price structure for domestic sales had also not been furnished. However, for determining the export price for the preliminary findings the Authority had made necessary adjustments on account of dyeing cost. The normal value determined for Acrylic Grey Yarn had been compared with the export price for Acrylic Grey Yarn and therefore a single dumping margin had been determined for the preliminary findings. Based on information received subsequent to the preliminary findings, the Authority has now determined separate dumping margins in respect of grey and dyed Acrylic Yarn for these final findings. The Authority holds that Acrylic grey yarn and Acrylic dyed yarn are commercially substitutable products. The fact of dyeing grey yarn into dyeing, which may amount to manufacture under the Excise Rules, does not imply that an altogether different product has been manufactured. The dyed Acrylic yarn still remains Acrylic yarn. Therefore, the Authority confirms the findings on product under consideration that Acrylic Yarn covers both Acrylic Grey Yarn and Acrylic Dyed Yarn.

6. No arguments have been raised disputing that the Acrylic Yarn produced by the domestic industry is like article to the product under investigation. The Authority therefore confirms the preliminary findings that the Acrylic Yarn covered by this investigation is like article to the domestically produced Acrylic Yarn.

D. DOMESTIC INDUSTRY

7. The petition in the present investigation has been filed by M/s. Punjab Fibres Ltd., Punjab; M/s. Vardhman Spinning & General Mills Ltd., Ludhiana; M/s. Sportking India Ltd., Ludhiana; M/s. Malwa Cotton Spinning Mills Ltd., Ludhiana. As per the petition the petitioners had mentioned estimated production of Acrylic Yarn during April 2000 to March, 2001 as 36.65 million kg and the production of the four petitioners during this period was stated as 19.884 million kg, which accounted for 54.4% of the production. However, the production figures of Acrylic Yarn were got verified by the Authority from the office of the Textile Commissioner, Mumbai prior to initiation of investigation. Only after ascertaining that the four petitioners had a share of more than 25% in the total domestic production, the Authority had initiated the investigation. It has been argued by the exporter that the first condition of Rule 5(3)(a) of 25% of the total production was not satisfied as it was based on estimated figures and the requirement of Explanation to Rule 5(3)(a) of support of domestic producers representing 50% of domestic production has also not been satisfied.

Further it has been argued that the petition was based on the estimates of production figures given by Ludhiana Spinners Association. The exporter has further stated that the information provided regarding production of Acrylic Fibre should be considered as the basis of production of Acrylic Yarn. Therefore, in the views of the exporter, the total production of Acrylic Yarn relied by the Authority for determining standing of the petitioners becomes doubtful. As stated above the Authority had ascertained before initiation that the share of the four petitioners in total production was more than 25% of total domestic production. There was no opposition to the application and thus the petitioners constituted more than 50% of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application as required in the Explanation to Rule 5(3)(a). Therefore, the condition of Rule 5(3) was satisfied before initiation of investigation. The Authority recalls the preliminary findings on the issue of standing of the domestic industry. At the stage of preliminary findings the Authority received confirmation from the office of the Textile Commissioner regarding total production of Acrylic yarn during the period of investigation that was 64.94 million kgs and the share of the four petitioners was 22.59 million kgs which came to 34.79%. The exporter has sought to derive the Acrylic Yarn production figure from Acrylic Fibre production. There is a possibility of use of Acrylic Fibre in manufacture of different blends of yarn, besides, any other usage. There are also some exports of Acrylic Fibre from India. As the exporter has not furnished any authentic data regarding the production of Acrylic Yarn during POI, the authority considered it appropriate to rely upon the information received from the office of the Textile Commissioner, Mumbai and therefore for the preliminary findings, the petitioners, who accounted for more than 25% of the total production of the like article, were treated to represent the domestic industry in terms of Rule 5 supra. Subsequent to the preliminary findings the exporter has again raised the issue of standing of the petitioners as domestic industry under Rule 5(3)(a). An importer has also raised the issue of standing on the similar grounds. It has been argued by the domestic industry that the petition has been jointly filed by M/s. Punjab Fibres Ltd., Nawan Shahar, Punjab; M/s. Vardhman Spinning & General Mills Ltd., Ludhiana; M/s. Sportking India Ltd., Ludhiana; and M/s. Malwa Cotton Spinning Mills Ltd., Ludhiana. The petition has been supported by a number of producers of Acrylic Yarn in India and Ludhiana Spinners Association. The O/o Textile Commissioner has confirmed that the production of Acrylic Yarn in India was 64.94 million kg. in the investigation period. The petitioners along with the supporters satisfy the standing to file the petition and constitute domestic industry within the meaning of the Rules. The Authority has considered the arguments on the issue of standing that have been made

subsequent to the preliminary findings. Considering the arguments raised by the exporter and importer the Authority again requested the office of Textile Commissioner to reconfirm the production figures of Acrylic Yarn for the POI. The Textile Commissioner, in a written confirmation dated 11.2.2002, has reconfirmed that the production of Acrylic Spun Yarn during the period of investigation, i.e. 1st April, 2000 to 31st March, 2001 was 64.94 million kgs. (64940 MT). While confirming this production figure the office of Textile Commissioner has also examined the wide gap between production of Acrylic Staple Fibre (ASF) and Acrylic Spun Yarn as pointed out by the interested parties. It has been observed that this difference is on account of the fact that ASF is consumed for multifarious uses apart from production of Acrylic Yarn. ASF is consumed for production of blended yarn of polyester and cotton and is also consumed in the woollen industry for production of woollen yarn. The pile fabrics are also produced by consuming ASF. In the preliminary findings the Authority has mentioned that following producers have expressed support to the petition:

Name of the domestic producer	Production in 2000-2001 (MT)
M/s. Vardhman Polytex, Ludhiana.	2333
M/s. Garg Acrylics Ltd., Ludhiana.	983.5
M/s. Adinath Textiles Ltd., Ludhiana	895
M/s. Mahavir Spinning Mills Ltd., Ludhiana	3240
M/s. Arisudana Industries Ltd., Ludhiana	3820
M/s. Deepak Spinners Ltd., Chandigarh	2296
M/s. Supreme Woolen Mills Ltd., Ludhiana	4997

The total production of the above producers supporting the petition comes to 18564.5 MT. The share of the four petitioner companies is 22590 MT. Thus the total producers supporting the petition account for 41154.5 MT, i.e. 63.37% of the total production. There is no opposition to the petition and therefore the collective output of the domestic producers supporting the petition constitutes more than 50% of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application. This satisfies the requirement of Rule 5(3).

- Subsequent to the issue of disclosures, the exporter has maintained that the petition suffers from want of standing. No additional grounds have been brought in support of such an argument. The petitioners have argued that the exporter's understanding that the production of the petitioners should constitute more than fifty per cent of the Indian production is grossly misplaced and incorrect. In this case, the petitioners without support of other producers account for 34.79 % of Indian production. Further, petitioners along with

support of various other producers constitute 63.70 % of total Indian production.

9. The Authority considers that the office of Textile Commissioner, Mumbai under the Ministry of Textiles is the appropriate administrative Ministry in the matter of confirmation of production of Acrylic Yarn. The share of the four petitioner companies was 22.59 million kgs or 34.79% in the total Indian production during the POI. Further, with the support of the other domestic producers the petitioners account for 63.37% of the total production. The Authority therefore holds the view that requirement of standing of petitioners as domestic industry under Rule 5(3)(a) is satisfied.

E. EXAMINATION OF ISSUES RELATED TO NORMAL VALUE, EXPORT PRICE & DUMPING

10. The Authority sent questionnaires to the known exporters and the embassy of the subject country in India for the purpose of determination of normal value in accordance with section 9A(1)(C) of the Act. Only one exporter from Nepal viz. M/s Reliance Spinning Mills Ltd., Nepal have responded to the questionnaire. The Authority recalls the preliminary findings on the issue of determination of normal value wherein it was found that the information provided by M/s Reliance Spinning Mills Ltd. was deficient on a number of grounds as stated in the preliminary findings. Therefore, the Authority had disregarded the costing information furnished for the preliminary findings and had held that the claims made by the exporter in relation to various aspects of cost determination like cost of raw material, accounting of interest and financial expenses, allocation of costs per frame, dyeing and chemicals cost, etc. would be subject to verification on receipt of complete information. Subsequent to the preliminary findings the exporter M/s. Reliance Spinning Mills Ltd., has submitted the information relating to the investigation period on the prescribed format of the questionnaire and further details as asked by the Authority. The exporter claims that based on the information furnished regarding the normal value based on cost of production and the export price; there is no margin of dumping. The Authority has also conducted on the spot verification of the exporter's information in Nepal.

Claims made by interested parties subsequent to the Preliminary Findings:

11. The following submissions have been made by the petitioners regarding normal value and dumping margin subsequent to the preliminary findings and issue of Disclosures:

- i. The Nepalese exporter procures Acrylic Fibre from M/s. Thai Acrylic Fibre, Thailand and M/s. Consolidated Fibres and Chemicals Ltd., Kolkata, India. As per the export data of the Thailand Customs, the volume of exports made from Thailand to Nepal are quite close to the requirement of M/s Reliance Spinning Mills of Nepal. The CIF export price to Nepal as per Thai Customs data comes to Baht 53.34 per kg and in rupee terms, it comes to Rs. 57.46 per kg at CIF Kolkata Port. the expenditures incurred from Calcutta Port to the exporter's factory should be included in the cost.
- ii. The minimum conversion cost from Acrylic Fibre to Acrylic Yarn (Grey) cannot be below Rs.25/kg.
- iii. The full cost of production should be Rs.93/kg. and the normal value should be Rs.98/kg. for the Nepalese exporter.
- iv. It has been admitted by the Nepalese exporter in some meeting organized in Nepal that the conversion cost in Nepal and in India are same, i.e. between Rs.18-40/kg.
- v. The electricity tariff in Nepal should be NR 5.5/unit for medium voltage and NR 4.35/unit for high voltage.
- vi. The lending rates of commercial banks in Nepal should be in the range of 12.50 - 15% for working capital loan and 13.5 - 14 % for project finance.
- vii. M/s. Pasupati Spinning Mills is an affiliate of M/s. Reliance Spinning Mills and is also producing Acrylic Yarn. The exporter has not denied that none of its affiliate is producing and selling Acrylic Yarn in Nepal.
- viii. The exporter has sold at an average price of Rs.70/kg. CIF to India. After reducing the price for Acrylic Fibre the margin remains Rs.7.45 and it is hard to believe that for any producer of Acrylic Yarn that a contribution of Rs.7.45 would be sufficient to recover remaining costs. Therefore, the cost of production claimed by the exporter is strongly disputed.
- ix. In case the exporter has claimed conversion cost below Rs. 20 per kg, the same cannot be true and correct. In case the conversion cost of exporter is above Rs. 20 per kg, the cost of raw material would be below Rs. 51 per kg.
- x. While it may be true that the exporter does not have sufficient representative sales for Acrylic Grey Yarn, the exporter is having sufficient representative sales of Acrylic Dyed Yarn. Therefore, the normal value for Acrylic Dyed Yarn is required to be based on profitable domestic selling price, after following the procedure laid down in Annexure I to the Rules.
- xi. Since the cost of Acrylic Fibre as derived from the Thai Customs data and that taken into account by the Authority on the basis of exporter's books of accounts show variation, the data of Thai Customs should be adopted and the exporter's information should be discarded as the Authority is not duty bound to accept their information.

- xii. The exporter has disowned the paper presented by one of their Directors, whereas the paper was presented in a seminar jointly organized by Embassy of India, Kathmandu and Nepal-India Chamber of Commerce and Industry. Thus the credibility of the exporter is doubtful.
- xiii. The Authority has worked out separate dumping margin in respect of Grey and Dyed Acrylic Yarn. The eventual anti-dumping duty should be one which would be a weighted average of the Grey and Dyed Yarn.
- xiv. While determining normal value, the profit margin should be considered which are based on actual data on production and sale in the ordinary course of trade.

12. Following claims have been made by other interested parties viz., Forum of Acrylic Fibre Manufacturers, Ludhiana Spinners Association, M/s Garg Acrylics Ltd., M/s Supreme Yarns Ltd, M/s Arisudana, M/s Sportking Ltd. subsequent to the disclosures:

- i. The dumping margin of 9.74% assessed for grey Acrylic Yarn is grossly inadequate to give due protection to the domestic industry.
- ii. The cost of production of exporter at Nepal can never be below Rs. 85 per Kg. The cost of production assessed by the authority apparently in the region of Rs. 71 per kg. is factually not correct keeping in mind that process of manufacturing acrylic yarn is almost standardized world over. Cost of conversion of acrylic yarn in Nepal could not be below Rs. 20 per kg.
- iii. The exporter can not claim the acrylic fibre prices below what has been officially published by the Thai Custom Authority and as per this information the acrylic fibre price for Nepal comes to Rs.62-64/kg.
- iv. The Authority is under no legal obligation to simply follow the claims made by the exporter and disregard every other information, including information provided by a government agency of the country which has supplied 90% of acrylic fibre to the exporter.
- v. The data provided by the exporter is unreliable and manipulative and it can not be relied upon.

Normal Value

13. Under Section 9A(1)(c), normal value in relation to an article means:

- i. i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic

market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -

- a. a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- b. b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

14. For the purpose of preliminary findings the Authority had found that the domestic sales of Acrylic Yarn were not sufficient for a proper comparison. The Authority had considered normal value determination as per Section 9A (1)(c)(ii)(b) of the Act, i.e. on the basis of the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs and for profits as determined in accordance with the Rules.

15. As regards the petitioners' argument that Normal value in respect of Dyed Acrylic Yarn should be based on the domestic sales of Dyed Acrylic yarn, the Authority found that all the domestic sales of Acrylic Dyed yarn of the exporter were below the cost of production. Therefore, these sales could not be considered for normal value determination. As per information furnished, the exporter has not made exports of subject goods to any other third country. Therefore, in accordance with the Section 9A (1)(c)(ii)(b) of the Act, the Authority has determined normal value for cooperative exporter on the basis of cost of production of Acrylic Yarn taking into account the information furnished by M/s Reliance Spinning Mills Ltd. Nepal subject to the elements of cost found as correct in the views of the Authority upon on the spot verification. As regards the cost of major raw material, i.e. Acrylic Fibre the records of purchase/imports by the exporter have been verified by the Authority with reference to the payments made against import L/Cs. The expenses incurred on account of clearing and transportation charges from Kolkata, Jogbani Customs clearing charges, and unloading/detention charges were verified from the records of the exporter. It was also verified that the exporter had received volume discount on its purchases of Acrylic Fibre from their major supplier. Complete details of raw materials procured and used during the POI were verified. Based on such verification the cost of Acrylic Fibre is thus considered as Rs.*** /kg. This cost of Acrylic fibre may be at variance with the claim of the petitioners but the authority does not find any merit in the claim of the petitioner to reject the exporter's information which is based on the books

of account maintained as per Generally Accepted Accounting Principles as per para 1 of annexure I of anti-dumping Rules. The Authority also examined the claim of the petitioner to base the price of the raw material Acrylic Fibre on the basis of Thai Custom's data and found it as unacceptable as the Rules require the Authority to consider the cost of production as per the books of accounts and other records maintained by the exporter. As regards the various claims made by Petitioner and other interested parties that the data published by the Thai Customs about the exports of Acrylic Fibre show a different price, the Authority's views are that such a difference can be on account of various reasons like:-

- a. the dates of export from Thailand would be different than the dates/months in which the material would have been accounted for by the Nepalese exporter due to transit time.
- b. There could be more than one importer of Acrylic Fibre in Nepal.
- c. Exchange rate used in conversion of Thai exports from US\$ into Thai Baht for the Thailand Customs data; and the exchange rate used in conversion of the US\$ into Nepalese Rupees by the Nepalese exporter can also result in different prices.
- d. Discounts allowed to the Nepalese importer of fibre by the Thai exporters may not be reflected in the Government data.

These are some of the factors that probably could have led to the difference in the raw material prices as being claimed by the Petitioners and those reflected by the books of accounts of the exporter. These cannot be said to be exhaustive reasons for the said difference. As regards other elements of cost, the information provided in Appendix-8 has been verified with reference to the records kept by the exporter. Assessment of cost of production has been made on the basis of elements of costs related to the production of subject goods during the POI. These have been accepted to the extent found appropriate.

16. Keeping in view the information furnished by the exporter and the allocations considered as appropriate by the Authority the normal value based on cost of production for Acrylic Grey Yarn comes to US\$.***/kg. and for Acrylic Dyed Yarn US\$***/kg.

Export Price

17. The Authority recalls the preliminary findings for the determination of export price. Adjustments had been made on account of freight (factory to Nepal border) insurance, certificate of origin charges, loading charges and Nepalese customs charges as the Authority had found that the export invoices did not

show any terms of delivery i.e., FOB or CIF. The Authority had held that as these charges are incurred up to the point of goods reaching the Nepal border and as the importer pays for the amount as per the export invoice only, adjustments were made on these accounts from the invoice value. In the submissions made subsequent to the preliminary findings the importers and the exporter have clarified that the invoice amount represents the sum received towards the supply of goods and does not include the insurance charges, handling/forwarding charges, Nepal customs duty, chamber of commerce charges, and freight. All these charges are on the account of the importer and the importers pay for the same. Sufficient evidence has been produced by the importers to this effect. The export price is therefore determined as per the weighted average price of the invoice value and no further adjustments have been made. The export price so determined is US\$ ***/kg. for Acrylic Grey Yarn and US\$ ***/kg. for Acrylic Dyed Yarn.

Dumping Margin:

18. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. For the purpose of the fair comparison between the normal value and export price, the Authority has made calculations and comparisons at the same level of trade. Normal Value based on cost of production at ex-factory level has been compared with the weighted average export price at ex-factory level. The Authority has given due regard to the fact that additional cost is incurred in dyeing Acrylic Grey Yarn into Acrylic Dyed Yarn. Comparison of Normal Value and export price has been done accordingly. The dumping margin in respect of the cooperative exporter comes to US\$*** (9.74 %) for Acrylic Grey Yarn and US\$***(0.37 %) for Acrylic Dyed Yarn.

Non-Submission of information by an affiliate company:

19. The Petitioner has claimed that M/s. Pasupati Spinning Mills is an affiliate of M/s. Reliance Spinning Mills and is also producing Acrylic Yarn and further the exporter has not denied that none of its affiliate is producing and selling Acrylic Yarn in Nepal. The exporter M/s. Reliance Spinning Mills had furnished a letter dated 8.5.02 from the Office of Company Registrar of H.M.G. Nepal stating that Mr. Shashi Kant Agarwal, Director of M/s. Reliance Spinning Mills Ltd., is not the shareholder or Director of M/s. Pasupati Spinning Mills Pvt. Ltd. Further, the exporter, in response to the comments on disclosure statement, has confirmed that no other company or legal entity in which Reliance Spinning Mills has any shareholding is engaged in the

manufacture and sale of Acrylic Yarn in Nepal. The Authority notes that M/s Pasupati Spinning Mills have not co-operated in the investigation. The Authority is of the view that it cannot compel any producer/exporter of subject goods to submit response to the questionnaire. Any non-cooperating producer/exporter would be subject to findings of the Authority based on best available information under Rule 6(8).

F INJURY AND THREAT OF INJURY

20. Rule 11 of Anti Dumping Rules reads as follows:

Determination of Injury

1. In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;
 2. The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules."
21. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that:
- i. A determination of injury shall involve 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 like article and (b) the consequent impact of these imports on domestic producers of such products.
 - ii. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

Submissions made by domestic industry subsequent to preliminary findings:

22. The domestic industry has made following submissions regarding injury:-

- i. Imports from Nepal have increased significantly in absolute terms and share of such imports in demand has increased significantly.
- ii. The exporters in Nepal have set up production facilities with sole objective of catering to the Indian market.
- iii. The dumped imports has caused severe price under-cutting in the Indian market, the domestic industry has been forced to keep its prices at sub-optimal level.
- iv. Stocks are piling up with the domestic industry.
- v. Landed value of dumped imports is significantly below the cost of production of the domestic industry causing severe price suppression.
- vi. Though production of petitioners have increased, the increased production has resulted into increased financial losses to the petitioners.
- vii. A number of producers have been forced to either suspend production or switch over to other products.
- viii. The dumped imports has caused significant decline in sales volume both actual and potential. Had the domestic industry not reduced its prices and not switched over to production of other types of yarn there would have been more significant decline in sales due to imports.
- ix. The decline in production has directly resulted in significant decline in productivity of the domestic industry.
- x. The decline in profitability of the domestic industry very adversely affected return on investments. The domestic industry has made financial losses which has resulted in significant negative impact on return on investments.
- xi. The domestic industry is not able to raise fresh capital of plan new investments as the domestic industry is struggling hard to sustain its existence. The industry is not able to pay any return to its investors.
- xii. The domestic industry is finding it difficult to raise the wages of its employees.

Submissions made by Exporter subsequent to the preliminary finding

23. Subsequent to the preliminary findings the exporter has made following submissions:-

- i. while determining the injury to the domestic industry all the 15 parameters mentioned in para IV to the Annexure-II to the Anti Dumping Rules should be looked into.
- ii. there is a total absence of injury in view of the fact that the sale price of exports from Nepal is higher than the selling price of the petitioners. In these

circumstances the claim regarding suppression of price is totally unfounded. All the other indicators of injury show sign of growth. In the absence of the price factor, there is neither injury nor the existence of a causal link between the exports and injury, if any. The exporter has further requested that the imposition of duty on Acrylic Yarn from Nepal may be withdrawn.

Views of the importers

24.24. The petitioners claim of suffering injury due to price under-cutting on account of dumping of subject goods is wrong and baseless. According to them, during the period of investigation many Indian manufacturers including U.P. Sahkari Katai Mills Ltd., were selling their goods at much cheaper rates than import price of the product. The sale price of the petitioners have improved and therefore there is no injury to the domestic industry due to imports from Nepal.

Examination by the Authority:

25. The Authority recalls its preliminary findings on injury. In the preliminary findings the Authority had given sufficiently detailed information on injury under paragraphs 18 to 32 which contained examination of factors, viz., natural and potential decline in sales, profits, output, market share, productivity, utilization of capacity, factors affecting domestic prices, i.e. price under-cutting and price suppression, volume effect of the dumped imports and threat of injury.

26. The Authority has taken into account various indices regarding injury while doing the final determination. This involved all relevant facts viz., volume of dumped imports, their effect on price in the domestic market and its subsequent effect on domestic producers, production, capacity utilisation, profitability, net sales realisation etc. While determining the non-injurious price for the like article for the domestic industry, the Authority has considered the optimum cost of production for the domestic industry which would take into account the normated best consumption norms and would also take into account the actual price of the raw materials during the POI which go into the production of the product under consideration. Also, while arriving at the injury margin, the Designated Authority has taken into account optimum capacity utilisation for arriving at a fair selling or non-injurious price.

Production of the domestic industry

27. The production of the domestic industry has been as under:- (Production: MTs)

	1998-99	1999-2000	2000-01
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Production of four petitioner companies	20309	22300	22594
Total Indian production	67660	60480	64940

There has been slight increase in the production of the petitioners as well as the total production of the domestic industry in the year 2000-01 in comparison to the previous year. However, the domestic industry has been prevented from utilization of higher capacity due to dumped imports.

Market Share

28. The Authority finds that the share of the domestic industry in the total demand has come down to 30% during the POI from 32.7% in 1999-2000. The share of imports from subject country in the total demand was 6.5% in 1998-99 which grew to 12.8% during the POI.

Volume of Imports

29. The volume of imports of Acrylic Yarn from subject country and their share in total imports is as under:-

(Volume in MTs)

	1998-99	1999-2000	2000-01
Imports from Nepal	4790	7481	9572
Total imports of subject goods	5674	7599	9694
Share of imports from Nepal	84.4%	98.44%	98.74%

The Authority notes that there has been a significant increase in the volume of imports of subject goods from the subject country both in absolute terms as well as in relation to the demand.

Significant Price Under cutting

30. The Authority finds that average net sales realization of the domestic industry during the POI has been Rs. *** per kg. and the average landed value of imports of the subject goods from subject country has been Rs. *** per kg. For the purpose of comparison of landed value with the net sales realization, the Authority has considered the landed value at the point of import of subject goods into India and the net sales realization value is taken without the Excise Duty. As regards some claims made by the importer that Acrylic Yarn was being sold by some of the Indian manufacturers including UP Sahakari Katai Mills Ltd. at much cheaper prices than the import price of the product, the Authority finds that the said manufacturer were not the petitioners in the

present investigation. Further, the price at which the said manufacturer are stated to be selling the Acrylic Yarn in the domestic market, does not even recover the cost of basic raw material i.e. Acrylic Fibre. The Authority has also verified the selling price of the subject goods during the POI and finds that the alleged sales by some of the domestic producers other than the petitioners do not represent the prevailing rates in the major market of Acrylic Yarn in Ludhiana. The Authority finds that due to the landed value of imports being significantly lower than the net sales realisation of subject goods there is significant price undercutting by the dumped imports.

Price Suppression

31. The Authority finds that the domestic industry has been able to raise its selling price to Rs. *** per kg. during the POI from previous level of Rs. *** per kg. This has been due to increased cost of raw material and other costs. However, in view of dumped imports the domestic industry has not been able to raise the selling price to a level to recover its full cost of production and to achieve a reasonable return. The average landed value of imports of subject goods from subject country has been Rs. *** per kg. which is significantly lower than the cost of production. This has prevented the domestic industry to raise its selling price to a remunerative level. The Authority thus concludes that the dumped imports have caused price suppression of the like product produced by the domestic industry.

Inventory

32. The Authority notes that the inventory of the finished goods of the petitioner companies has increased and therefore, the industry has also suffered material injury on account of higher inventory.

Demand of the Product

33. The Authority finds that the demand of the product has not decreased and has, therefore, not contributed to injury to the industry.

Profitability and return on investment

34. The Authority has found that there is a decline in the profitability of domestic industry. The domestic industry has made financial losses in the production and sale of Acrylic Yarn. This has resulted in significant negative impact on return on investments.

Ability to raise capital investment

35. The Authority finds that the domestic industry has not been able to raise fresh capital or plan new investments as the industry is already struggling hard to sustain its existence. The industry has not been able to pay return to its investors.

Wages

36. The authority finds that the domestic industry is finding it difficult to raise the wages of its employees. The domestic industry being faced with losses in the manufacture and sale of subject goods and is also faced with the legal requirement to give annual increase in the wages, which it is finding it difficult to manage.

Threat of Injury

37. 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.....*". Further to above, regarding threat of injury, para (vii) of Annexure II of Rules *supra*, reads as under:-

" (vii) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the designated authority shall consider, *inter alia*, such factors as:

- a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;
- c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- d. inventories of the article being investigated."

38. The Authority recalls its preliminary findings on the threat of injury. The volume of imports of subject goods from Nepal has been as under:-

(Imports : MTs)

1998-99	1999-2000	% increase over 1998-99	2000-01	% increase over 1999-00
4790	7481	56%	9572	27%

The Authority finds that the increase in imports from 1998-99 to year 2000-01 (POI) was 99.83%. Further as per the renewed Indo-Nepal Treaty imports of 10,000 MT/annum of Acrylic Yarn are allowed without any basic Customs Duty. Thus, the Authority also finds every likelihood of these dumped imports continuing in the years to come.

39. The Authority finds that the dumped imports from subject country have caused severe price undercutting. The domestic industry has not been able to realize a fair selling price. . During the period of investigation the average Net sales realization of the domestic industry for the product involved has been Rs.***/Kg. whereas the average landed value of imported product has been Rs.***/Kg. This clearly signifies price under-cutting.

40. The Authority also notes that the exporter holds significant capacity for production of Acrylic Yarn. The domestic sales of the exporter of subject goods were not very significant. The exporter has also not exported to any third country. The Authority is of the view that the bulk of the manufacturing capacity of the exporter is to target the Indian market. The Authority thus concludes that the significant rise in imports of subject goods from Nepal in a short time, the significant price undercutting suffered by the domestic industry due to these imports and building up of significant manufacturing capacity aimed at the Indian market together hold a significant threat of injury to the domestic industry.

G. CAUSAL LINK

41. As regards the impact of the dumped imports on the domestic industry the principle (iv) of Annexure-II of the Anti-Dumping Rules states:

"The examination of the impact of the dumped imports on the domestic Industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity; factors affecting domestic prices, the magnitude of margin of dumping;

actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments."

42. The Authority has examined various economic factors and indices and has come to the following conclusions:

- i. There has been a significant increase in the dumped imports of subject goods from subject country in absolute and relative terms.
- ii. The dumped imports had a significant effect on the domestic prices of subject goods which resulted in price undercutting.
- iii. The dumped imports of subject goods have caused price suppression.
- iv. The profitability of the domestic industry has been adversely affected resulting in financial losses on account of manufacture and sale of subject goods.
- v. The inventory of finished goods with the domestic industry has increased due to dumped imports.
- vi. The market share of the domestic industry has declined in the total demand.
- vii. The decline in profitability of the domestic industry has adversely affected on the returns on the investments.
- viii. The domestic industry has not been able to raise fresh capital or plan new investment.
- ix. The domestic industry is facing difficulty to raise the wages of its employees.
- x. The above factors cumulatively have caused material injury to the domestic industry.

H. OTHER EXPORTERS/PRODUCERS OF NEPAL

43. Normal Value

As no other exporter/producer has provided information, the Authority has determined the Normal Value for non cooperative exporters from Nepal on best available information as per Rule 6(8).

44. Export Price

The Authority has considered the lowest export price from the information submitted to it for arriving at the export price in respect of other non cooperative exporters/producers.

45. Dumping Margin

The dumping margin in respect of the other exporters/ producers who have not given information comes to 25.2 %.

I. OTHER ISSUES:

(A) Indo-Nepal Treaty:

46. The Authority recalls the Preliminary Findings in respect of various submissions made on the issue of Indo-Nepal Treaty. The exporter had argued that recommendation of duty is in contravention of the provisions of Article V and the protocol of the Indo-Nepal Treaty. The exporter had also placed reliance on the orders of the Hon'ble Supreme Court claiming that anti-dumping duty is a duty of customs. The Authority had adequately addressed the arguments of the exporter in para 33 of the preliminary findings. The exporter has made fresh arguments that in view of renewed Indo-Nepal Trade Treaty, anti-dumping duty cannot be levied on imports of subject goods from Nepal. The exporter has further claimed that Article IX of the Treaty provides the mechanism for consultation of the Joint Committee set up by the two Governments in the event that the imports under the Treaty cause or threaten to cause injury to the domestic industry. The exporter has claimed that the definition of 'injury' and 'threat of injury' is similar to that under the anti-dumping provisions. Therefore, there is no requirement for any further action against the manufacturers in Nepal under the anti-dumping provision or under any other law for the time being in force.
47. In response to the disclosures, the exporter has stated that under the Indo-Nepal Treaty the total export of Acrylic Yarn has been restricted to 10,000 MTs. Special Additional Duty (SAD) has also become leviable on these exports from Nepal. The quantum of exports being restricted by mutual consent of the two Governments, there can be no injury to the domestic industry. The exporter has thus reiterated their earlier submissions on this issue.
48. The Petitioners have stated that Anti-dumping investigations are being conducted under the Customs Tariff Act and the Rules made there under, which are in conformity to the WTO Agreement. The WTO Agreement being much larger in its scope as compared to bilateral Indo-Nepal Treaty, such Treaty cannot take precedence over the Agreement. Further, it has been argued that the Authority has recently made recommendations in respect of imports of Zinc Oxide from Nepal. These recommendations were made subsequent to the signing of the new Treaty. The Government of India has since imposed Anti-dumping Duty on these recommendations relating to Zinc Oxide.
49. The Authority's view is that the fact of 'injury' or 'threat of injury' can be established only after the Authority completes the investigation and records the finding. Also the Anti-dumping investigations are time bound, governed by the Anti Dumping Rules which are WTO compatible. The two sets of mechanism for taking measures to protect the Indian industry from adverse impact of

exports from Nepal, i.e. one under the Anti Dumping Rules and the other under the Indo-Nepal Treaty, do not overlap or contradict each other.

50. Therefore, the Authority reiterates the Preliminary Findings on this issue and considers it appropriate to issue the final findings in the present investigations relating to Acrylic Yarn keeping in view the material facts relating to dumping, injury and causal link .

(B) Duty In Terms of US Dollar:

51. In response to the disclosure statement, the exporter has submitted that trade between India and Nepal is in Rupee terms and, therefore, Anti-dumping Duty, if any, should be imposed in Rupee terms and not in US Dollar. As per the exporter, the apprehension that the duty would stand eroded in the currency of trade, on account of the exchange rate fluctuations is not valid in the present case. If the duty is fixed in Rupee terms, its impact for the exporter would not stand reduced or the protection to the domestic industry would not be reduced by virtue of any change in the exchange rate between Indian Rupee and US Dollar. The exporter has cited orders of the Hon'ble CEGAT in the case of Pig Iron Manufacturers' Association and in the case of BLA Industries and others. As per the exporter, the reasoning which weighed with the CEGAT in fixing Anti-dumping Duty in US Dollar was that the trade was carried out in Dollar terms and unless the duty is fixed in Dollar, there may be an erosion of the quantum of production on account of changes in the exchange rate.
52. As per the Petitioners the Anti-dumping Duty were converted in US Dollar by the CEGAT so that erosion in quantum of production does not take place with the changes in exchange rate. The rationale given by the CEGAT is not solely based on the fact that the business was in terms of US Dollar. As per the Petitioner, in the case of Metcoke, coal was the major raw material, which was paid in US Dollar. In the instant case, Acrylic Fibre is the major raw material, which is imported and paid in US Dollar. Further, even the domestic prices of Acrylic Fibre are directly linked to the US Dollar as Acrylonitrile, the major raw material for Acrylic Fibre, is imported and paid in US Dollar. In the case of Calcium Carbide, CEGAT had held that "this Tribunal is consistently taking the view that Anti-dumping Duty must be in US Dollar to safeguard the interest of the domestic industry". The Petitioners have requested that the Final Duty may also be imposed in US Dollar terms.
53. The Authority notes that in the light of earlier orders of Hon'ble CEGAT Anti-dumping Duty have been imposed in US Dollar terms only. It may be true that the Indo-Nepal trade in the instant case may be in Rupee terms, however, the prevailing exchange rate between US Dollar and Indian or Nepalese Rupees does have a bearing on the export price of Nepalese exporter as well as the

Indian industry's prices. This is because raw materials procured for manufacturing of the subject goods have an import content at certain stage, which does get influenced by the prevailing exchange rate of US Dollar and Rupees. The Authority, therefore, is of the view to follow the consistent practice of recommending Anti-dumping Duty in US Dollar terms.

(C) Average Anti-Dumping For Different Types:

54. In response to the disclosures the Petitioners have argued that though the Authority has assessed separate dumping margin in respect of Grey and Dyed Acrylic Yarn, the eventual Anti-dumping Duty should be one which would be a weighted average of the Grey and Dyed Acrylic Yarn. The petitioners have quoted several earlier cases where single duty has been recommended although the Product involved contained more than one type of product e.g. in the case of Choline Chloride in liquid form or with carrier; Caustic Soda -Lye and solid; Nylon Tyre Cord Fabric Grey and Dipped etc.
55. The exporter has argued that practice of the Authority has been to impose separate duties on different grades, types etc. of products. The exporter has also cited several cases in support of their argument.
56. The Authority has examined these submissions. The Authority has made a determination as regards 'Product involved' and 'Like Article' in these findings in the earlier part. The Authority has held that Acrylic grey yarn and Acrylic dyed yarn are commercially substitutable products. The fact of dyeing grey yarn into dyed yarn, which may amount to manufacture under the Excise Rules, does not imply that an altogether different product has been manufactured. The dyed Acrylic yarn still remains Acrylic yarn. Therefore, the Authority has held that the product under consideration i.e., Acrylic Yarn covers both Acrylic Grey Yarn and Acrylic Dyed Yarn. Therefore in the views of the Authority levy of a single duty based on the weighted average of the dumping margin of grey and dyed Acrylic yarn would be appropriate in this case.

(D) Offer of Price Undertaking:

57. In response to the disclosure statement the exporter made an offer of price undertaking. The offer of price undertaking made by the exporter was linked to several conditions viz., variation in raw material prices, the export duty levied on Acrylic Yarn, value addition norms and reselling price of Acrylic Yarn. After examining all the aspects related to the determination of the undertaken price and the conditions built in the offer, the Authority found that it was impractical to implement several of the conditions linked to the offered price undertaking and therefore, the price undertaking could not be accepted by the Authority.

J. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

58. The Authority reiterates that the purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.
59. The Authority recognises that the imposition of anti dumping duties might affect the price levels of the product in India. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject country in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

K. FINAL FINDINGS

60. After considering the foregoing the Authority concludes that -
- i. Acrylic Yarn has been exported from the subject country to India below its normal value;
 - ii. the Indian industry has suffered material injury on account of price undercutting, price suppression and significant increase in the volume of dumped imports from subject country and is being threatened with further injury;
 - iii. the injury has been caused to the domestic industry by the dumped imports from the subject country.
61. The Authority proposes to recommend the amount of anti-dumping duty equal to the margin of dumping, being lesser than the injury margin, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury margin, the landed price of imports has been compared with the non injurious selling price of the petitioner company determined for the period of investigation.
62. The Authority recommends imposition of definitive anti dumping duty on all imports of Acrylic Yarn falling under Customs heading 5402 and 5509 of first Schedule to the Customs Tariff Act originating in or exported from Nepal. The anti dumping duty shall be as follows:-

Country: Nepal	Anti dumping duty (US\$ per kg.)
Exporter/Producer: M/s.Reliance Spinning Mills Ltd.	0.14
All other exporters/producers of Nepal	0.35

63. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.
64. Subject to the above, the Authority confirms the preliminary findings dated 25th September 2001.
65. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, *supra*.

L. V. SAPTHARISHI
Designated Authority