

# MINISTRY OF COMMERCE

## NOTIFICATION

New Delhi, the 28th September, 1999

### **Preliminary Findings Report**

**Subject:-** Anti-dumping investigation concerning imports of Acrylonitrile Butadiene Rubber (NBR) from Taiwan- Preliminary Findings.

**No. 22/1/99-DGAD.**— The Government of India 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**

The procedure described below has been followed with regard to the investigations:

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received written application from M/s Gujrat Apar Polymers Limited (now Apar Industries Limited) Mumbai; on behalf of the domestic industry, alleging dumping of Acrylonitrile Butadiene Rubber (NBR), originating in or exported from Taiwan;
- ii. The Authority, on the basis of sufficient evidence submitted by the Petitioner, decided to initiate investigations against imports of NBR from Taiwan. The Authority notified the Taipei Economic & Cultural Centre in India about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the Rules;
- iii. The Authority issued a public notice dated 19th April, 1999 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of NBR, classified under heading 4002.59 of Schedule 1 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 Taiwan. The classification is, however indicative only and in no way binding on the present investigations;
- iv. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the petitioner) and industry associations and gave them an opportunity to make their views known in writing in accordance with the rule 6(2);

- v. The Authority forwarded a copy of the public notice to the known importers of NBR in India and advised them to make their views known in writing within forty days from the date of the letter
- vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of NBR for the past three years, including the period of investigate on
- vii. The Authority provided a copy of the petition to the known exporters and the Taipei Economic & Cultural Centre in India in accordance with rules 6(3) supra;
- viii. The Authority sent questionnaire, to elicit relevant information, to the following known exporters viz. M/s Nantex Industry Company Limited, Kaoshiung Hsrien, Taiwan, in accordance with the rule 6(4);

Response was filed by the following Exporter:

(1) Nantex Industry Co Ltd, Taiwan

- ix. The Taipei Economic & Cultural Centre in New Delhi was informed about the initiation of the investigations in accordance with rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to them, alongwith the list of known exporters and producer from Taiwan;
- x. The questionnaire was also sent to the following importers of NBR in India calling for necessary information in accordance with rule 6(4);
  - 1. Precision Rubber Industries P Ltd, Thane
  - 2. Seed Rubber Products. Mumbai
  - 3. Zenith Rubber & Plastic Works, Mumbai
  - 4. Scalink Bombay Trading P Ltd., Mumbai
  - 5. Coimbatore Cots & Coatings Ltd., Coimbatore
  - 6. Sundram Industries Ltd., Madurai
  - 7. Liberty Rubber Products. Kukatpally, Hyderabad
  - 8. Lyallpur Rubber Mills, Jalandhar
  - 9. Latvia Rubber Mfg Co P. Ltd , Mumbai
  - 10. Inarco Ltd. , Thane
  - 11. All India Rubber Ind. Association, Mumbai
  - 12. SEA Link Bombay Trading Pvt Ltd.,
  - 13. Puneet Resins Ltd . Mumbai

Response was filed by the following Importers / Users:

1. Sepulchre Brothers(India) Limited, Bombay.
  2. All India Rubber Industries Association, Mumbai,
  3. Sealink Bombay Trading Pvt. Ltd.. Mumbai
  4. Lathia Rubber Mfg Company Private Limited, Mumbai,
  5. Puneet Resins Limited, Mumbai;
  6. All India Federation of Rubber Footwear Manufacturer, New Delhi
  7. Sundaram Industries Ltd, Madurai
  8. Inarco Limited. Thane:
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- xi. Additional information regarding injury was sought from the petitioner, which was also received;
  - xii. A number of parties made request for extension of time, which was, upon good cause shown, allowed by the Authority;
  - xiii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
  - xiv. The Authority sought and verified information deemed necessary for the investigation, and to this end investigations were carried out at the premises of Exporter and Petitioner's head office and works;
  - xv. 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.
  - xvi. The investigations covered the period from 1st April. 1998 to 31st December, 1998 (9 months);
  - xvii. \*\*\*\*in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;

## **B. PETITIONER'S VIEWS**

2. Petitioner has raised the following issues in their petition:

1. NBR project was envisaged and set up in the era of import substitution and Licence Raj. Gujarat Apar was not allowed to put up a world size plant and capacity was restricted. As soon as the project was commissioned, the liberalisation regime began and the customs duty was brought down drastically from 212% to 40%. Further dumping from far east producers started in a massive way to India.
2. Domestic industry is manufacturing and marketing full range of NBR grades, which can be broadly, classified into light Nitrile, medium Nitrile and high Nitrile. Within each of these broad classifications, there are many grades of NBR. Unlike SBR, where there are internationally demanding nomenclature for

various grades in N8R there is none since it is a specialty rubber. The product under consideration is NBR and accordingly the Designated Authority in the past has always been recommending one anti dumping duty on NBR regardless of the grade. In view of this we believe that average value of imported NBR should be considered for the purpose of computing dumping margin end injury margins.

3. As regards the import data, the petitioners have provided import information as reported by DGCI&S, Calcutta and also data published by Polymers Plastic & Rubbers, Mumbai based on daily custom list. They had requested the Authority not to rely upon the data published by DGCI&S as they have not released import statistics after December, 1997 and the volume of imports indicated by DGCI&S source is very low.

### **C. VIEWS OF EXPORTERS, IMPOPTERS AND OTHER INTERESTED PARTIES.**

3. The exporter, importers and a number of other interested parties have responded to the authority and have raised a number of issues:-

#### **(1) M/s Nantex Industry Co. Ltd., Taiwan:**

As a manufacturer of NBR the objective of Nantex is to produce material that meets the demands of our customers in forms of quality and price without renegeing in our firm commitment to our stockholders embodied by the idea that Nantex has been established to be a profitable and progressive company that produce's NBR, among others;

With a big domestic market of an east 10,000 MT per year (1998), the Nantex activity of NRR is focused on the domestic market. M/s Nantex has invested heavily into putting up the proper infrastructures to service the needs of the Taiwan customers. Further. Nantex has to consistently maintain a high level of product inventory that is more specifically meant for the domestic customers.

The activities of Nantex in all their export markets have been focused on marketing and selling OT their NBR through agents and /or distributors to end-users. Except in India, a majority of our exports is to stock resellers and no commissions are paid out. Also, in their major export destination Japan, freight is collected at he point of destination.

The sliding prices of acrylonitrile and butadiene, the two most important raw materials in producing NBR, also contributed -to a great extent to the drop in prices to

export markets. The international price levels in Jan 98 for acrylonitrile and butadiene were USD722/MT and USD 430/MT while in Dec 98 they were down to USD 495/MT and USD 304/MT, a slide of around 30% and 29% respectively;

The growth in sales, especially percentage-wise, was in fact more a product of the aggressive and combined marketing / sales efforts and promotions initiated by the agents and stock resellers, matched only by quality, consistency and supply availability from Nantex. It is admitted that competitive pricing did play a factor, but as the figures will show that they are certainly not at dumping levels.

**(2) Sepulchre Brothers (India) Ltd Mumbai:**

They have stated that they are the authorised representatives in India for M/s Nantex Industries. Co. Ltd., Taiwan for their Nitrile rubber.

**(3) Puneet Resins Ltd. Mumbai:**

They have stated that they are importers of NBR and have requested the Authority to register their name in the list of interested parties in the investigation.

**(4) All India Rubber industries Association:**

The petitioner company M/s. Gujarat Apar Js a non-entity at present and hence the petition has no legal standing as of now.

Against the annual demand of about 9000 tons *by* the consuming industry the petitioner produces around 4000-4500 tons of NBR a year. Thus the petitioner has assured domestic market sales.

Against nearly 50 grades of NBR internationally available, the petitioner produced only few grades, which are no usable in some specific end products like cots and aprons for textile industry etc.

There have been several complaints about inconsistent quality and supplies of NBR produced by the petitioners.

The petitioner has been seeking to have import since last four years. In 1995 they alleged dumping from Japan in 1996 they claimed dumping from Korea and Germany and now in 1999 from Taiwan. Thus, the petitioner attempts to gradually eliminate over-seas supplies one by one. The imports figures mentioned in the petition are very secondary source and as such cannot be relied upon. The Authority should rely upon DGCI&S figures which is regarded as most authentic source of information on foreign

trade. The petitioner has failed to establish the causal link. In view of the foregoing, the petition is defective, misleading and deserves to be rejected.

#### **5. All India Federation of Rubber Foot wear Manufacturers, Delhi**

- a. The petitioner has alleged that since Taiwan is neither a member of WTO nor the Government of India has accorded Most Favoured Nation status to Taiwan, the appellant is not required to include an evidence of injury nor is the Designated Authority required to investigate injury to the domestic industry. This obviously implies that the Authority should not analyse the petitioner's position objectively and should accept whatever is stated by them. The petition lacks basic facts and does not fulfill the criteria laid down for imposition of anti dumping duty and, therefore, the petition deserves to be dismissed;
- b. That the Government of India wanted to impose Anti Dumping duty on import of NBR from Germany, Japan and Korea during 1995 and 1996. This Federation at that point of time had represented that the Government should not import duty as there was no case;
- c. That the Government is erectly helping a single monopoly supplier, which does not constitute even an industry, is directly helping the petitioner at the cost of the entire rubber consuming industry;
- d. That the Designated Authority has powers to review the earlier decision and need for the continued imposition of the anti dumping duty. Such a review is to be based on the information available. It calls for not only withdrawing of the orders already passed imposing anti dumping duty but also the present investigation should be terminated forthwith;

#### **6. Petitioner's comments on AIRIA's representation:**

- a. It is incorrect that M/s. Gujarat Apar Polymer Ltd. (GAPL) is a non- entity at present. GAPL has been merged with Apar Industries Ltd (AIL) and continues to be the petitioner. It is currently invoked in the manufacture of synthetic rubber including NBR as in the past Merging of the company with other company in no way affects the status of the company as the petitioner in the present case.
- b. It is denied that AIL is enjoying monopoly status in supply of NBR and/or its prices. Had AIL been in a monopolistic situation, it would not have been forced to approach the Designated Authority repeatedly for protection against unfair dumped imports. It is a proved fact that AIL faced immense unfair competition from dumped imports in the past and continues to face the same at present. The Designated Authority has dealt with the issue of monopoly in various cases investigated so far. AIL is not the only company which is capable of producing NBR. Another company has set up facilities for manufacturing

NBR: but has not been operating the NBR business because of the dumping of cheap imports. Moreover, imports from all the countries into India are giving fair as well as unfair competition to the petitioner.

- c. It is Hi appropriate to state that the petitioner produces approx.4000- 4500 WT of NBR against an annual requirement of about 9000 MT, suggesting that the producer have certain manufacturing restrictions. It would be more appropriate if AIRIA had mentioned that due to the intense and unfair dumping of cheap imports, the petitioner has been forced to lower its prices to non-remunerative levels. In spite of this action petitioner has not been able to utilise the capacity because the foreign parties have lowered their prices further to under-cut the petitioner. The company has always attempted to sell maximum quantities of NBR; but whenever its stocks have built up, it has resorted to production of other items, so as to ensure optimum plant utilization and lower incidence of overhead costs.
- d. It is factually incorrect that the consumers are con pelted to import due to the inability of the company to produce NBR. On the contrary, the consumers are importing NBR due to its low prices. Had there been imports due to inability of the company to produce NBR, the imports from Japan would have remained at the same level as they were in the period first investigated by the Designated Authority. The fact that the imports from Japan declined clearly implies that the consumers are concerned only about cheap source for their material, be it dumped or otherwise and arc not concerned With the health of the industry and the country.
- e. It is factually incorrect that the company produces only few grades as opposed to many more available in the international market. The petitioner produces all the NBR grades required in the Indian market and is further capable of producing other grades as per further requirements of the market.
- f. It is factually incorrect that the petitioner's quality and supplies of NBR is inconsistent. These issues were raised in the previous investigation. However, evidence produced by the Association and findings of the Designated Authority clearly establishes that the arguments on quality or supplies are incorrect and are attempts to divert from the primary issue of dumping and injury. They have produced number of proofs from consumers and independent. Testing Authorities to support our contention of being a world-class quality producer of NBR in the previous investigations.
- g. The arguments that the petitioner is attempting to gradually eliminate overseas supply sources, one by one, is clearly short sighted and far from the truth. The facts on record are that the petitioner has suffered from unfair practices of dumping first from Japan followed by dumping from Germany and Korea. They have always maintained that the only submission is that the imports be

sold at fair prices in India; it is pertinent to note that the factor of dumping was even clearly admitted by the exporters from Germany at the time of hearing.

- h. GAPL had suffered a loss of more than Rs.16 crores during a short period of three years on an investment of Rs.45 crores. No business enterprise can afford to bear such kind of losses. In fact, the company could have become sick had the Government of India not saved the industry from the unfair practices of dumping and the promoters of GAPL not pumped in huge funds to revive the company.
- i. It is a misconceived argument that the Indian producers of NBR- based products will gradually face closure on imposition of antidumping duties. Such apprehensions were raised in the past also. As noted by the Designated Authority in various cases, imposition of anti dumping duty would bring the price of NBR at a fair level and would help prevent decline of domestic industry in India. The NBR based producers are fearing that they might lose the unfair advantage of dumped NBR.
- j. It has been submitted that the secondary sources are more reliable than DGC1&S figures. It is an established fact that importers are bringing in NBR under various Customs subheading (other than 4002.59) and therefore, DGCI&S doesn't reflect the correct import figures. This was established by the admissions of the exporters themselves in the past cases. In all the past cases, the secondary source data were submitted by us and were verified and found to be matching the data submitted by the foreign exporters. In the instant case also, it is understood that the exporter from Taiwan has responded to the Designated Authority. The factual position is thus available to the Designated Authority.
- k. The nexus between imports and injury is evident from the petition. However, it is maintained that the Designated Authority is not required to assess the injury to the Designated Authority and causal link between dumping and injury and therefore entitled to relief to the full extent of dumping margin.
- l. It is factually incorrect that the production during reference period shows substantial improvement. The capacity utilization of the company is still very low. The petitioner has been forced to produce other products at its Valia plant and has been forced to even add other types of downstream products.
- m. It is clarified that the index of capacity utilization shows 115 in POI with base of 100 for 1996-97. It does not indicate that the capacity utilisation is 115% as incorrectly assumed by AIRIA.
- n. It is submitted that the petitioner has been attempting to export its NBR in larger quantities and will continue to do so in future. In fact, AIL has been already exporting its NBR to a number of countries in the past few years.

- o. It is factually Incorrect that the quantities of dumped Imports from Taiwan has not increased by a very significant amount. The information provided by us show an increase of approximately 240%.
- p. The petitioner has suffered material injury from dumping by the exporters, inter-alia, from Taiwan. It is submitted that all costing information, dearly shows that the petitioner was to sell at unreasonably low prices, which were below the Fair Setting Price. However, it is reiterated that the DA is not required to examine existence of injury and causal link in case of Taiwan and the domestic industry is entitled to relief to the full extent of dumping margin.
- q. It is denied that Carboxylated, Ultra-high and Hydrogenated NBR constitute 450 MT of imports In the POI as stated by AIRIA. The imports are less than 50 MT in the POI. The average price of "Other countries" does not show much decline. In any event, we do not agree to such an exclusion from the definition of the Product under consideration. The attempt of the interested parties is to seek exclusion and then circumvent the duty. It is not even known whether these types of NBR has been exported from Taiwan.

7. Petitioner's comments on AIFRFM's representation:

- a. That the representation by this association is baseless, twisted, ill conceived and without appreciation of the anti-dumping provisions. It is unfortunate that even an association of user industry hasn't bothered to understand the Rules and the Act even after a number of Anti-dumping investigation relating to Rubber products.
- b. Taiwan is neither a member of WTO nor has been accorded Most Favoured Nation Status by the Govt. of India, evidence of injury to the domestic industry and causal link between dumping and injury are not required to be examined by the DA in accordance with the provisions of the Act and the Rules. However, as desired by the DA, all information pertaining to injury and causal link have been submitted. It is reiterated that the DA should not, in any event, restrict the duty to the injury margin in case the same is tower than the dumping margin.
- c. It is denied that the petitioner has submitted misleading facts in its petition. The Association has tried to confuse the issue of NBR and synthetic rubber. NBR is one of the types of synthetic rubber. Therefore, the import transactions arc stated sometimes as NBR, or the grade name of NBR, or Nitrile Rubber, or Acrylonitrile Butadiene Rubber, or synthetic rubber NBR, etc. depending upon the documentation provided to the Customs Dept. At times, only "synthetic rubber" is shown in the list. However, from the details of the price, customer, source customs sub-heading; we are in the position to know ft the "synthetic rubber" is NBR. All relevant evidence in this regard was provided to the DA in

the previous case relating to Germany and Korea and the findings or the DA are relevant in this regard

- d. This Association is simply interested in ensuring that dumped imports are available to its members.

## **D. EXAMINATION OF THE ISSUES RAISED:**

4. The submissions made by the exporter, importers, petitioners and other interested parties have been examined, considered and have been dealt with at appropriate places therein;

## **E. PRODUCT UNDER CONSIDERATION:**

5. Acrylonitrile Butadiene Rubber (NBR) is 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 custom heading 4002.59 of Schedule 1 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 Taiwan. The classification is, however indicative only and in no way binding on the present investigations;

6. 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 the manufacturing process, equipment, and other facilities needed for producing different grades of NBR are common, and does not involve any special equipment to produce different grades of NBR.

7. Some of the importers and users have alleged about the 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 reports to the effect that their material is of good quality. The Authority, considered the evidence furnished by the petitioners and reject the importers/users

## **F. LIKE ARTICLES**

8 (1) **Definition of Like Article states as under:**

"Like Article means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation".

(2) In order to establish that the NBR produced by the domestic industry is Like Article to the NBR exporter from Taiwan, characteristics such as physical characteristics (size, chemical composition, raw material) manufacturing process and technology, functions and uses, product specification, pricing, distribution and marketing and tariff classification of the goods have been considered along with the issuer deliberated in earlier findings on the subject.

(3) In the light the foregoings, the Authority concludes that NBR produced by the petitioner is a Like Article to the NBR imported from Taiwan.

## **G. DOMESTIC INDUSTRY:**

9 The petition has been filed for and on behalf of M/s Gujrat Apar Polymers Ltd. (now Apar Industries Limited) Bldg No. 5, Corporate Park, Sion-Trombay Road, Chembur, Mumbai-400 071, having its works at Village Dungari, Tal. Valia, Distt Bharuch, Gujarat. M/s. Synthetic Chemicals Ltd also produced NBR in small quantity, but have suspended the production of NBR. The petitioner accounts for a majority of the production of NBR in the country and hence, satisfies the domestic industry status in accordance with Rule 2(C) supra;

## **H DUMPING**

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

- 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. 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. 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. 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 profit, as determined in accordance with the rules made under sub-section(6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin”.

## **11. Normal Value**

The exporter has furnished information on domestic prices of NBR in Taiwan for the two grades, i.e., Medium High Nitrile NBR and High Nitrile NBR and for both markets, i.e., wholesalers and others. The Authority has adopted a weighted Average price for the two grades, i.e., Medium High Nitrile NBR and High Nitrile NBR and for both markets, i.e., wholesalers and others for the period of investigation. The exporter has claimed the following adjustments:

Commission; Sales and Technical Service Charges; Packing; Inland freight; Insurance and financing costs; Storage and handling;

The Authority provided opportunity to the exporter to substantiate its claims on the above. During the course of the verification also, opportunity was provided to the exporter to provide necessary evidence. However, no evidence has been provided by the exporter, especially with regard to sales and technical service charges, insurance & financing costs, storage & handling, in view of the same, the Authority has disavowed adjustments on these account and allowed adjustments with respect to Commission. Packing, Inland freight for the purpose of preliminary findings.

## **12. Export Price**

The exporter has furnished information on exports to India of NBR from Taiwan for the two grades, i.e., Medium High Nitrile NBR and High Nitrile NBR and for both markets, i.e. wholesalers and others. The Authority has adopted a weighted Average price for the two grades, i.e., Medium High Nitrile NBR and High Nitrite NBR and for both markets, i.e., wholesalers and others for the period of investigation. The exporter has claimed the following adjustments:

Commission; Sales and Technical Service Charges; Packing; Inland freight; Insurance and financing costs; Storage and handling; Overseas freight; Shipping charges; Other shipping charges.

13. The Authority provided opportunity to the exporter to substantiate its claims on the above. During the course of the verification also, opportunity was provided to the exporter to provide necessary evidence. However, no evidence has been provided by the exporter, especially with regard to sales and technical service charges, Insurance & financing costs storage & handling. in view of the same, the Authority has disallowed adjustments on these account and allowed adjustment with respect to Commission Packing, Inland freight, Overseas Freight, shipping Charges and Other shipping charges for the purpose of preliminary findings.

14. The Rules relating to comparison provides comparison provide comparison of normal value and export price provides as follows:

"While arriving at margin of dumping Designated Authority shall make a fair comparison between the export price and the normal value. A comparison shall be made at the same level of trade, normally at ex-works level and in respect of sale made and as nearly possible the same time. Duo allowance shall be made in each case on its merits, for differences which occur price comparability including differences in conditions and terms and sales, taxation, levels of trade quantities, physical characteristic and any other differences which are demonstrated to affect price comparability"

15. For the purpose of fair comparison between normal value and export price the Authority took into account the information available with the Authority. The normal value and export price determined, as detailed above are at ex-works level and, therefore, the normal value has been compared with weighted average export price at ex-work level.

16. Since there is no other known exporter in Taiwan the Authority has not worked out Dumping Margins in respect of other producers/ exporters on the above, the comparison of normal value \*\*\* /MT and export price\*\*\*/MT, the dumping margin in respect of M/s Nantex Industry Co works out to \*\*\*/MT. The dumping margin expressed as percentage of expert price for the said producer works out to 13.39%.

## **I. INJURY**

17. 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 product from more than one country are being simultaneously subjected to anti dumping investigation, the Authority will cumulatively assess the effect of such of imports. The such assessment can be, however, made only if it is determined

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 like article in India, and

b) the cumulative assessment of the effect of import is appropriate in light of the condition of competition between the imported article and the like domestic article.

18. 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 the effects of these imports on the domestic industry.

19. 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 producer 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, the magnitude and margin of dumping, etc in accordance with Annexure II (iv) of the rules supra.

## **20. Volume and Market share of Dumped imports:**

Country	Imports during POI	Percentage of Market Share
Imports from Taiwan (MT)	375	11.12%
Imports from other countries (MT)	2995	88.88%
Total Imports (MT)	3370	100.00%

Imports of NBR from Taiwan increased from 79MT (1996-97) to 208 MT (1997-98) and 375 MT in April-December 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 1998-99 (April-Dec.)

## 21. Economic parameters affecting the domestic industry:

### i) Production and Capacity Utilisation:

Production of the domestic industry decreased in the year 97-98 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 1997-98 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.

	1996-97	1997-98	1998-99 (POI)	Annualised
Installed capacity (MT)	6250	6250	4687	6250
Eff. Production (MT)	4683	4297	3874	5165
Capacity Utilisation %	75	69	83	83.0

### ii) Sale in absolute terms:

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

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

### iv) 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.

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

	1996-97	1997-98	1998-99
Selling Price (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.

#### vi) **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.

## **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;
- Export 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 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.

## **J. CAUSAL LINK:**

23. In establishing that the material injury to the domestic industry has been caused by the import, from the subject countries, the Authority holds that increase in imports from the subject countries at prices significantly below the fair selling price 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. Further, the Authority notes that lower prices offered by an exporter forced the domestic industry to match the prices of imported goods.

## **K. OTHER ARGUMENTS:**

### **24. Authority position on representation on interested parties:**

As regards to furnishing of evidence of injury to the domestic industry, the petitioner was asked to submit the information on evidence to injury and they have furnished all relevant information to the Designated Authority along with evidence and have cooperated fully with the investigation.

As regard to issue of monopoly, there is no question of 'monopoly' as imports from subject country and other countries are open. Anti dumping duty is not a ban on imports but action against Unfair Trade Practices.

As regard to review of investigations, Anti dumping investigations are carried out strictly as per the Rules on the subject and Reviews are under taken from time to time":

## **L. INDIAN INDUSTRY' S INTEREST & OTHER ISSUES**

25. 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.

26. It is recognised that the imposition of anti dumping duties might affect the price levels of the products manufactured using the subject goods 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 restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti dumping Treasures 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 NBR. Imposition of anti dumping measures would not restrict mi ports from the subject countries in any way and therefore, would not affect the availability of the product to the consumers.

27. To ascertain the extent of Anti-dumping duty necessary to remove the injury to the domestic industry, the Authority may rely upon reasonably selling price of NBR in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilization for the domestic industry.

## **M. LANDED VALUE:**

28. The landed value have been determined on the basis of weighted average export price of NBR from Taiwan after adding the prevailing level of customs duties and one percent landing and two percent handling charges.

## **N. CONCLUSIONS:**

29. It may be seen, after considering the foregoing, that:

- a. NBR originating in or exported from Taiwan has been exported to India below normal value, resuming in dumping;
- b. The Indian industry has suffered material injury;
- c. The injury has been caused cumulatively by the imports from the subject country.

30. It is considered necessary to impose anti dumping duty, provisionally pending final determination, on all Imports of NBR originating in or exported from the subject countries, pending further investigations

31. The Authority considered recommending 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,

(Clause (d) Rule 4 supra as amended). Accordingly, it is proposed that provisional anti-dumping dirties 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, pending final determination.

Sl. No.	Name of the Exporter	Amount of Duty (Rs. Per MT)
1.	Nantex Industry Co. Ltd., Taiwan	6288
2.	Exporter other than above	6288

32. Landed value of imports for the 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.

## **O. FURTHER PROCEDURE :**

33. The following procedure would be followed subsequent to notifying the preliminary findings:-

- a. The Authority invites comments on those findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority who may make known their views, within forty days from the date of the dispatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings.
- c. The Authority would provide opportunity to all the interested parties for oral submissions.
- d. The Authority would conduct further verification to the extent deemed necessary.
- e. The Authority would disclose essential facts before announcing final findings.

**RATHI VINAY JHA...**  
Designated Authority