

Government of India
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING &
ALLIED DUTIES)

NOTIFICATION

NEW DELHI, the 30th March 2005

Preliminary Findings

Subject: Antidumping investigation involving import of Acrylonitrile Butadiene Rubber (NBR) from the European Union (Excluding Germany), Mexico and Brazil

NO.14/32/2003-DGAD : - Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

2. Whereas M/s Apar Industries Ltd. (herein after referred to as the Applicant) has filed an application before the Designated Authority (hereinafter referred to as this Authority), in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (herein after referred as Rules), alleging dumping of Acrylonitrile Butadiene Rubber or NBR (herein after referred to as subject goods), originating in or exported from the European Union (excluding Germany), Brazil and Mexico (herein after referred to as subject countries/territories) and requested for initiation of Anti Dumping investigations for levy of anti dumping duties on the subject goods.

3. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the petitioner M/S Apar Industries. on behalf of the domestic industry, issued a public notice dated 17th August 2004 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject countries/territories in accordance with the sub-Rule 5(5) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which if levied would be adequate to remove the injury to the domestic industry.

A. Procedure

4. Procedure described below has been followed with regard to this investigation after issuance of the public notice notifying the initiation of the above investigation by the Authority.

- i. The Designated Authority sent copies of initiation notifications dated 17th August, 2004 to the Embassies/representatives of the subject countries/territories in India, known exporters from the subject countries, importers and the domestic industry as per the list available and requested them to make their views known in writing within 40 days of the initiation notification.
- ii. Copies of the non-confidential version of the petition filed by the domestic industry were made available to the known exporters and the Embassies/High Commissions of the subject countries in accordance with Rules 6(3) supra.
- iii. The Embassies/High Commissions/ Representatives of the subject countries in New Delhi were 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 exporter was also sent to the Embassies/High Commissions of subject countries along with a list of known exporters/ producers.
- iv. The Authority sent questionnaire, to elicit relevant information, to the known exporters from subject countries as mentioned below in accordance with the rule 6(4):-

1. Zeon Chemicals Europe Limited (ZCE)
Hayes Road, Sully
Vale of Glamorgan, CF64 5YU,
United Kingdom
2. Bayer Elastomers
BP 41, F-76610 La Wantzenau
France
3. Eliochem
14, Av des Tropiques,
S A De Courtabouef 2,
91955, Les Ulis Cedex, France
4. Enichem S P A (EN)
Elastomers and Styrenics Division
Piazza Boldrini, 1

- 200097, San Donato Milanese
Italy
5. Bayer Rubber Belgium N.V. (BRD)
Canadastraat 21,
B-2070, Zwijndrecht
Belgium
 6. DSM Copolymer Inc. (DSMC)
Postbus 43, 6130 AA,
Sittard
Netherlands
 7. Nitriflex S.A. Industria e Comercio (NX)
Rua Marumbi s/n
Campos Eliseos, Duque de,
Caxias – RJ – Brazil, CE – 25 – 240 - 260
 8. Petroflex Industria e Comercio S.A. (PX)
Rua Marumbi 600
Campos Eliseos
Duque de Caxias – RJ – 25221 – 000; Brazil
 9. Paratec Elastimers LLC (PARA)
Benson Road, Middlebury, CT 06749; Mexico
 10. Industrias Negromex S.A. De C.V. (N)
Bosque de Cirelos 180 3er Piso
Bosque de las lomas, Mexico
- v. In response to the above notification the following exporters from the subject countries/ territories filed their questionnaire responses.
- a. M/s Nitriflex, Brazil
 - b. M/s Petroflex, Brazil
 - c. M/s Lanxess Elastomere AG, Germany
- vi. Questionnaires were sent to known importers and Consumers of subject goods in India calling for necessary information in accordance with Rule 6(4). However, only All India Federation of Rubber Footwear Manufacturers and All India Rubber Industries Association, Association of Butadiene & Styrene Based Industries, M/s Sebok International and M/s Gates India Pvt. Ltd filed brief comments during the course of the investigation. Their comments, to the extent they are relevant to the case, have been taken into consideration in this finding.
- vii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Central Board of Excise and Customs (CBEC) to

- arrange details of imports of subject goods for the past three years, including the period of investigations;
- viii. 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;
 - ix. Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the petitioner on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
 - x. The Authority also carried out verification of the cooperative exporter's data to the extent possible to determine the dumping margin.
 - xi. *** in this Notification represents information furnished by the petitioner on confidential basis and so considered by Authority under the Rules;
 - xii. Investigation was carried out for the period starting from 1.4.2003 to 31.3.2004 (POI).

C. Product under Consideration

5. The product under consideration in the present petition is Acrylonitrile Butadiene Rubber. Acrylonitrile Butadiene Rubber is a synthetic rubber and is popularly known as Nitrile Rubber or NBR in the market parlance. NBR is primarily used where oil resistance, abrasion resistance and heat resistance applications are involved. NBR is widely used in Defense, Automobile, Footwear, Fabrics, Printers, Oil field products industries etc

6. NBR can be of various grades and can be supplied in various forms. In terms of form, NBR can be categorized as Normal NBR, (in Bale form); Powder NBR, (in powder form); Carboxylated NBR (i.e. with a third monomer). Normal NBR is the most common form of NBR and is widely used. Depending upon acrylonitrile content and mooney viscosity, Normal NBR may be further divided into three types i.e. Low Nitrile, Medium Nitrile, High Nitrile NBR.

7. This investigation covers all grades of NBR in bale form only. Other forms of NBR exported from the subject counties are therefore, not covered under the product under consideration. A doubt was raised by the interested parties whether the product under consideration also covers Carboxylated NBR which is also manufactured in Bale form. It is clarified that the present investigation covers only normal NBR in bale form, which excludes powder NBR and carboxylated NBR. The domestic industry has also confirmed this as the scope of the product under investigation.

8. Acrylonitrile butadiene rubber (NBR) is classified in the category of rubber and articles thereof under chapter 40 of the Customs Tariff Act, and ITC HS Classification under the category of synthetic rubber under sub-heading no. 40.02 at four-digit level and under no. 4002.59 at six-digit level. Though the above is the dedicated head for NBR the Authority notes that import of NBR has been reported under other heads describing NBR merely as synthetic rubber. Therefore, Customs and ITC HS classifications are indicative only and are in no way binding on the scope of the present investigation.

C.1 Like Article

9. In terms of Article 2.6 of the Agreement the term “like product” (“product similaire”) shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration. For the purpose of determination of the normal value the exporters from Brazil have indicated their respective grades sold in the domestic market as well exported to India. Since identical grades are available in the domestic market compared to the grades exported to India for the purpose of determination of the dumping margin of the cooperating exporters the Authority has considered the identical products sold in the domestic market and exported to India as the like products and normal value has been worked out based on these grades only.

10. As far as all other exporters from Brazil, Mexico and the EU are concerned in the absence of details of the grades manufactured and sold in the domestic market the Authority notes that various grades of NBR are produced from the same general raw materials, employs the same basic production technology and follow through the same production process. Various types of NBR are employed for the same general purpose, i.e., to provide resistance to petroleum chemicals.

11. The applicant has also stated that they produce equivalent/comparable of all the grades being imported at present from the subject countries. The Indian industry has capacity and capability to produce equivalents of all those grades, which are being produced by the producers in the subject countries, even if some of them are not being exported to India at present.

12. It therefore, appears that there is no difference in the products produced by the domestic industry and imported from subject Countries/territories. The products are being directly imported by the user industries and also by traders for supply to other industries. The consumers are using the domestic and corresponding import products interchangeably. The products produced by the domestic industry and imported from

subject Countries/territories being identical in all essential characteristics are treated as like articles within the meaning of the term as per the Rules.

13. The Authority has noted the arguments of the interested parties in respect product under consideration and like article determination for the purpose of determination of normal value and export prices in the countries of exports and also for the purpose of imposition of the duty and holds that the normal value and dumping margin determination shall be done grade-wise for the exporters who have provided their data on grade basis before the weighted average dumping margin is established.

D. Standing of the Domestic Industry and initiation of the investigation

14. The petition has been filed by M/s. Apar Industries Ltd., Mumbai, which is the sole producer of the subject goods in India. The petitioner, therefore, accounts for complete production of subject goods in India and constitute domestic industry within the meaning of the Indian Antidumping Rules. Other interested parties have not raised any argument in this regard.

E. De Minimis Limits

15. Imports have been reported from several EU member countries. However, for the purpose of this investigation the EU has been taken as a single customs territory. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary sources the imports of the individual products from the USA, EU, China and Taiwan are above the de minimis level.

16. However, the Government of Mexico has submitted that as per their export statistics there is no export of the subject goods from Mexico to India during the POI. However, the Authority notes that the information available in the petition filed by the domestic industry indicates that there are at least two producers namely, M/s Paratec Elastomer LLC and M/s Industrias Negromax SA in Mexico. M/s Paratec's business consists of two companies: a company incorporated in Mexico called Para Tec S.A. de C.V. in care of manufacturing with technology acquired from its partner Uniroyal Chemical, with plant facilities located at Altamira, Tamaulipas, with a rated capacity of 40000 Metric Tons of NBR and a company called ParaTec Elastomers, LLC incorporated in the United States, in care of marketing its products worldwide under the trademark PARACRIL with the worldwide sales and distribution force coverage of UCC. The petitioner has also submitted some invoices which indicate the port of loading as Mexican port though the invoices have been drawn by the exporter in Los

Angeles, USA. As per the import data available with the Authority Mexico has exported 207 MT of NBR of various grades to India during the POI

F. Other submissions and issues raised

F.1 Domestic Industry

17. The domestic industry had pleaded that imports of NBR have been reported under various heads of Customs and segregation of NBR is difficult from the DGCI&S transaction-wise data because of the fact that DGCI&S data does not reflect complete description of the product. Therefore, they have relied upon the import data published in the Plastics and Polymer Review (PPR) for the relevant period. The Authority has examined the transaction level data of DGCI&S and also the import data published by PPR, pruning the DGCI&S data of the unrelated products to the extent possible.

18. However, because of the description and classification problem highlighted above the data from these two sources show substantial differences. Moreover, the Authority notes that DGCIS data shows much lower imports from Korea compared to the export data provided by the cooperating exporter from that country in a parallel antidumping review investigation against that country. It is also noted that PPR does not report import through all ports. Therefore, for the Authority has taken note of the above data anomalies and has adopted the DGCI&S data after adjusting it for the imports from Korea based on data available with it.

F.2 M/s. Petroflex, Brazil

19. M/s Petroflex, one of the cooperative exporters from Brazil, in its preliminary submissions have commented on the level of non-confidential disclosures by the domestic industry and has argued that no investigation ought to have been initiated in the first instance for lack of proper disclosure of relevant figures and material. It has further argued that the DA has wrongly relied on Petitioner's data that is derived from a secondary source [Polymers, Plastics and Rubber Trade Intelligence (PPR)] for information relating to export of subject goods instead of relying on DGCI&S data. They have further argued that recourse to Anti-Dumping proceedings is essentially a remedial measure but the Petitioner has sought to use anti dumping proceedings only to establish its monopoly. They have argued that there is no injury to the domestic Industry and the Petitioner has only sought to 'manipulate injury' where none exists, to initiate an investigation.

20. They have further argued that the sales channel and distribution process followed by Petroflex for sale of the subject goods exported for sale in the Indian Market are sold in the Indian market solely through Commissioned Agent(s). Thereby implying

that the fixation of the end price of the subject goods for sale in India is not decided or controlled by Petroflex.

F.3 M/s Nitriflex, Brazil

21. M/s Nitriflex, the other cooperative exporter from Brazil, in its preliminary submissions has argued that the Designated Authority has erred in initiating the investigation on the basis of the prima facie wrong data submitted in the Petition on the issues relating to the quantum of imports, production, sales information. They have argued that the data provided in the Petition is in contravention to the data as verified by the Authority in the sunset investigation on the dumping of NBR from Korea, RP and Germany. They have further argued that evidence as to calculation of normal value in the Non Confidential version is incomplete and the Petitioner is unable to verify and comment upon the allegations of dumping of imports of the subject goods from Brazil. They have also submitted that methodology to calculate Normal value in Brazil has not been disclosed by the petitioner for others to counter the allegations made by the Petitioner. Therefore, the Petitioner has not fulfilled even the bare minimum requirement of providing non-confidential summaries of the information relied upon in arriving at the normal value and has significantly hampered the right of Nitriflex to defend itself in this investigation.

F.4 M/s Lanxess Elastmere

22. M/s Lanxess Elastomere AG is the only exporter from the European Union who has partially cooperated in the investigation and has filed a part of the questionnaire response. In their preliminary submissions they have argued that the petitioner has kept the “estimates” of Normal Value, and estimates of expenses used in determining Export Price confidential. These being only estimates should not have been kept confidential. They have argued that the preliminary findings of the Authority should be issued only after disclosing these figures.

23. They have further argued that their facility in France has a capacity of ***** metric tonnes dedicated to NBR only (excluding other polymers) whereas the exports to India comprise approximately ***** metric tones. Therefore, they have argued that it is absurd even to suggest that Lanxess would restructure their entire business and shift production from Germany to France with the intention of servicing such a minute part of their business. The commencement of production of NBR from their plant in France and the closure of the production facilities for NBR in Germany was effective in 2002 as part of an exercise in corporate restructuring and rationalization and has nothing whatsoever to do with the imposition of anti-dumping duties in the previous NBR proceedings in 1997.

24. With regards to the allegation of antitrust proceedings against them in the USA the exporter has submitted that it is wrong to draw certain inferences from the fact that Bayer had made payments of penalties in certain proceedings in the USA with respect to pricing of NBR and attempted to state that the high price in the USA was meant to offset dumping prices in India. They have pleaded that USA proceedings do not relate in any manner to any issues of dumping such as would establish that Bayer were following any systemic pattern of dumping

25. They have further argued that the petitioners also exported the product under investigation. No details with respect to the same, or the prices at which the same have been sold, have been provided.

26. Regarding their partial cooperation in the investigation the exporter has submitted that in view of the ex facie lack of merit in the petition and the failure to provide essential evidence of injury or causal link, the petition merits summary dismissal even assuming, whilst denying, that the information provided by them is insufficient.

27. The Authority has taken note of the submissions made by the exporters in respect of determination of their normal values and export prices of the products under consideration and the arguments on confidentiality.

G. Determination of Dumping Margin

28. The Authority notes that only two exporter from Brazil have fully cooperated in the investigation and submitted complete questionnaire responses, which have been duly verified by the Authority. Only one exporter from the European Union i.e M/s Lanxess AG, has filed a partial response. In response to the Authorities communication advising them to file complete response the exporter has not submitted any useful information about its domestic sales price and cost of production to estimate dumping margin, if any, with respect to its exports to India. No other exporter from these countries has filed any response to the initiation in respect of this product. For the purpose of the preliminary determination the Authority has examined the data submitted by the responding exporters as follows:

G.1 Brazil

29. The Authority has received full cooperation from two manufacturer-exporter from Brazil and their respective data has also been verified. On the basis of the submissions made by them and their data on normal value and export price the dumping margin for Brazil has been determined as follows;

G.1.1 M/s Nitriflex, Brazil

30. M/s Nitriflex, Brazil has filed a detailed questionnaire response to the investigation and based on their response and deficiencies therein certain additional information were also called for. The questionnaire response of this exporter and the data submitted therein were verified by the Authority. On the basis of the data submitted by this exporter the Authority has worked out its normal value, export price and dumping margin as follows:

a) Normal Value

31. M/s Nitriflex produces several grades of NBR including normal NBR in the Bale form. The producer has also substantial domestic sales of the product under consideration in their domestic market covering various grades. However, during the POI only two grades of NBR i.e. N-608 and N-615 B have been exported to India. The exporter has also substantial sale of these two grades on NBR in the domestic market. Therefore, for the purpose of determination of normal value these two grades have been treated as the like products to the product under consideration and the domestic sales price of these two grades only sold in the ordinary course of trade has been examined. The exporter has claimed several adjustments to the gross sales values on account of domestic taxes, inland transportation and insurance, commissions and interest costs on sales made on credit terms. The adjustments have been verified from the record of the exporter and admitted for arriving at the net ex-works Normal Value of the like article in the country of exports. Accordingly, the normal value for this exporter works out as follows:

Grade	Gross Domestic sales price US\$/MT	Adjustments US\$/MT	Normal Value US\$/MT
N-608	*****	*****	*****
N-615 B	*****	*****	*****

b) Export Price

32. Verified export sales transactions of the two grades of NBR has been adjusted for taxes and local levies, inland transportation, ocean freight and insurance, commissions and other adjustments as verified. No adjustments towards packing were found necessary as the packaging condition for domestic as well as export sales were found to be same. Accordingly, net ex-works export prices for the two grades worked out as follows:

Grade	CIF export Price US\$/MT	Adjustments US\$/MT	Net export Price US\$/MT
N-608	*****	*****	*****
N-615 B	*****	*****	*****

c) Dumping Margin

33. For the purpose of determination of dumping margin the ex-works normal value so determined has been compared with the export price determined at the same level of trade. No other adjustment towards other factors affecting price comparability has been claimed. Accordingly, the dumping margin has been provisionally determined as follows:

Dumping Margin Nitriflex, Brazil					
	NV	EP	DM	Weighted Average DM	DM %
N-608	*****	*****	*****	*****	27%
N-615 B	*****	*****	*****		

G1.2 M/s Petroflex, Brazil

34. M/s Petroflex, Brazil has also filed a detailed questionnaire response to the investigation and based on their response and deficiencies therein certain additional information were also called for. The questionnaire response of this exporter and the data submitted therein were verified by the Authority. On the basis of the data submitted by this exporter the Authority has worked out its normal value, export price and dumping margin as follows:

a) Normal Value

35. M/s Petroflex produces several grades of NBR including normal NBR in the Bale form. The producer has also substantial domestic sales of the product under consideration in their domestic market covering various grades. However, during the POI only two grades of NBR i.e. NBR 3350 and NBR 3960 have been exported to India. Therefore, for the purpose of determination of normal value these grades have been treated as like products to the product under consideration and the domestic sales price of these grades only sold in the ordinary course of trade has been examined.

Grade	Domestic sales price/Normal Value US\$/MT	Adjustments US\$/MT	Normal Value US\$/MT
NBR3350/p	*****	*****	*****
NBR3960	*****	*****	*****

b) Export Price:

36. Verified export sales transactions of the respective grades of NBR has been adjusted for taxes and local levies, inland transportation, ocean freight and insurance, commissions and other adjustments as verified. Accordingly, net ex-works export prices for the two grades worked out as follows:

Grade	CIF export Price US\$/MT	Adjustments US\$/MT	Net export Price US\$/MT
NBR3350/p	*****	*****	*****

NBR3960	*****	*****	*****
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c) Dumping Margin

37. For arriving at the dumping margin the export price has been compared with the normal value at the same level of trade, i.e. at ex-works level, during the POI. The exporter has not claimed any adjustments towards the differences which affect price comparability, including differences in conditions and terms of sales, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability.

38. Accordingly, the dumping margins for the producers/exporters of the subject goods in the subject countries have been determined as under:-

Dumping Margin Petroflex	NV	EP	DM	Weighted Average
NBR3350/p	*****	*****	*****	*****
NBR3960	*****	*****	*****	

G.1.3 All other exporters from Brazil

39. Normal value for all other exporters from Brazil has been determined provisionally based on the highest transaction value of the cooperative exporters from Brazil as best facts available. Accordingly, the Normal Value for all other exporters from Brazil has been assessed as follows:

Grade	Domestic sales price/Normal Value US\$/MT	Adjustments US\$/MT	Normal Value US\$/MT
All Grades	*****	*****	*****

40. Ex-works Export Price has been determined provisionally on the basis of lowest export price from the cooperative exporter from Brazil after allowing for adjustments towards commissions, inland freight, ocean freight and insurance which is provisionally assessed as US\$ ***** per MT.

41. Accordingly, dumping margin for all non-cooperative exporters from Brazil has been estimated as US\$*****per MT.

42. The dumping margins so assessed are above the de-minimus limits and are considered significant

G.2 European Union

43. As mentioned earlier, the only responding exporter from the European Union i.e. M/s Lanxess Elastomere has filed only a partial response to the investigation. This

exporter was asked to supplement the response with additional information in the form and manner prescribed for determination of dumping margin, if any. However, the exporter in response to this advice of the Authority has further submitted that there is no necessity for them to enter into and produce detailed data in view of the numerous defects in the application itself, which merits the termination of the investigation in limine. They have further submitted that the onus of proving dumping is entirely on the applicants and unless they provide full information on how they have arrived at the fact of there is no cause for them to provide further information without even being given an opportunity to deal with the basic contentions in the application. They have further submitted that the data provided by them is more than sufficient for the proceedings

44. Though the exporter has submitted partial response and certain data related to its exports sales to India, they did not submit any information on their domestic sales and normal value of the product in the home market. The data is incomplete in many respects and the exporter has not provided any data related to the cost of production of the product under consideration. The exporter has also not submitted any information in the form and manner prescribed towards various adjustments to arrive at the normal value and export prices at the ex-works level.

45. The Authority has taken note of the arguments and submissions made by the interested parties.

46. Article 2 of the Agreement on Antidumping provides that

“2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of

production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.“

47. The Authority notes that adequate opportunity was provided to the exporters from subject countries, including M/s Lanxess Elastomere from the EU, to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The sole responding exporter from the EU in respect of the above product i.e M/s Lanxess Elastomere has produced only a partial response which does not allow an appropriate determination of their normal value and export price. Therefore, the Authority is constrained to declare this exporter non-cooperative for the purpose of the preliminary determinations.

48. The Authority notes that the partial cooperating exporter from the EU is the major producer and accounts for major portion of the exports to India from the European Union. However, in view of the non-cooperation from the exporters from the European Union the Authority has determined the provisional dumping margin based on facts available in respect of all exporters from the European Union.

a) Normal value: All exporters from the EU

49. The export data of the partial cooperating exporter shows export both High and medium NBR to India during the POI though export of High NBR is much less compared to Medium NBR.. However, as noted above the exporter has not provided the data on its domestic sales to estimate the dumping margin. Therefore, for the purpose of this preliminary determination the Authority has ignored the incomplete data submitted by this exporter and estimated the Normal Value in the European Union on facts available basis in terms of Rule 6.8. The Rules referred above read with Paragraph 1 of the Annex II to the Agreement provide that if the interested party does not provide the information within a reasonable time the Authority shall be free to make the determination based on the facts available including those contained in the application for initiation of the investigation by the domestic industry. Accordingly normal value for all exporters in the EU has been provisionally estimated as US\$**** Per MT for Medium NBR and US\$***** Per MT for High NBR after allowing for level of trade adjustments on facts available basis to bring the normal values to ex-works level.

b) Export Price

50. The data submitted by the partially cooperating exporter indicates substantial export of Medium NBR and High NBR during the POI. The exporter has however not provided any information on the level of trade adjustment required to determine the net export price at the ex-factory level. Therefore, the net export price has been estimated after adjusting the actual export price reported on facts available basis as follows:

Export Price	Average CIF	Adjustment	Net EP
Medium NBR	*****	*****	*****
High NBR	*****	*****	*****

c) Dumping Margin

51. On the basis of the normal value and export price provisionally estimated as above the dumping margin for all exporters from the European Union has been provisionally determined as follows:

Dumping Margin	NV	EP	DM	Weighted Average	DM %
Medium NBR	*****	*****	*****	*****	26%
High NBR	*****	*****	*****	*****	

G.3 Mexico

52. The Authority notes that no response has been received from the exporters from Mexico. The Government of Mexico has represented that there has been no export of the subject goods from Mexico. This argument has been addressed by the Authority earlier in this finding. The petitioners have submitted that exports from Mexico are basically off-spec material. Nevertheless they affect the market share and price in the domestic market.

a) Normal Value

53. The Authority notes that the prices reported in the transaction-wise data of DGCIS in respect of imports from Mexico clearly shows a different price structure, which confirms the claim of the petitioners that these are off-spec material. Accordingly, the Authority has constructed the normal value for Mexico for the off-spec material based on the normal value of the prime materials in Brazil and after necessary adjustments towards level of trade and also adjusting the normal value for the off-spec material by a factor of *****%. The normal value so estimated works out to US\$ *****per MT

b) Export Price

54. The net ex-factory export price has been determined from the DGCI&S data after adjusting the same for the ocean freight, insurance and handling, inland freight, local levies etc. on the facts available basis and the same has been provisionally estimated as US\$ *****Per MT.

c) Dumping Margin

55. On the basis of the provisional estimates of normal value and export price for the off-spec materials from Mexico the dumping margin for all exporters from that country works out to US\$ *****Per MT.

G.4 Dumping Margins: Summary

Country	Exporter	NV	EP	DM	% DM
Brazil	Petroflex	*****	*****	*****	21%
	Nitriflex	*****	*****	*****	27%
	All Others	*****	*****	*****	28%
EU	All Exporters	*****	*****	*****	26%
Mexico	All Exporters	*****	*****	*****	50%

56. The dumping margins so determined provisionally are significant and above de minimis

H. injury determination

57. Having examined and provisionally establishing positive dumping margin for the subject goods exported from the subject countries/territories, the Authority has also examine the injury, if any, suffered by the domestic industry and the causal link between the dumped imports and the injury to the domestic industry. For the purpose of the injury examination the domestic industry constitutes the sloe domestic producer and the petitioner company in the instant case.

H.1 Cumulative Assessment of Injury

58. The Authority notes that imports of the subject goods are simultaneously entering the Indian market from several countries including the subject countries/territories for which investigation has been initiated by the Authority. Therefore, the Authority proposes to examine whether the conditions of cumulative assessment of the effect of dumped imports from the subject countries/territories on the domestic industry have been satisfied.

59. The interested parties have argued that the Cumulation is only permissible if the imports from various countries compete with each other and also compete with like products manufactured by the domestic industry. They have argued that in the present instance, the Domestic Industry has simply concluded that since the imports from the subject countries have similar characteristics with goods offered by the domestic industry, conditions of competition are also similar, thereby justifying cumulation. Nowhere in the Petition has the domestic industry fulfilled the second requirement of showing that conditions of competition between the imported products themselves are alike. They have argued that subject exports cannot be said to be competing inter se or with each other for the following reasons:

- i. That the imported products from subject countries do not have similar price levels for instance, imports from Mexico have been sold at approximately 37% of the price of the Brazilian imports and at 28% of the price of EU imports.
- ii. That the Petitioner states that consumers are solely guided by the price offered by the supplier but this is not borne out by the PPR summary. If price were the only criteria then imports from Mexico would have garnered a larger market share than the one reflected in the PPR summary.
- iii. Similarly, price as the basis for competition between the imports is not evident from the Petition. In the period from April 2003 to March 2004, Brazil's market share was 25% of the EU market share in spite of the higher prices of the EU imports. Points (ii) and (iii) illustrate that something other than price determines consumers choices and also reinforces the fact that subject imports do not compete with each other on this basis.
- iv. Moreover, as per the Petition, the subject goods exported by Mexico are an off spec grade being sold at a very low price which cannot be used interchangeably with the grades exported by Brazil and EU at a much higher price. Imports from Mexico do not bear the same technical specifications as imports from Brazil, which again impairs the cumulative assessment of the effects of the subject imports on the domestic industry.
- v. Additionally, Domestic Industry acknowledges that substitution among NBRs manufactured by different producers implicates costs to NBR consumers, as stated in the Petition at page 2, "have to fine tune their production process to suit NBR produced by different producers". The existence of such cost constitutes evidence that all grades of NBR are neither necessarily effectively interchangeable nor effectively compete inter-se.

60. They have reiterated that all the grades/ types of subject goods that are imported from the subject countries are not manufactured by the domestic industry. In spite of this, the Petitioner has assessed conditions of competition between the imports and the grades produced by the domestic industry.

61. Therefore, the interested parties have argued that the subject goods being exported by various exporters from other subject countries do not compete inter se and thus the conditions of competition between the subject goods are not alike. This clearly proves that the Petitioner has erred in interpreting and analyzing Article 3.3 of the WTO Anti-Dumping Agreement and the analysis of cumulative assessment of injury should be disregarded forthwith.

62. The Authority has taken note of the arguments by the interested parties on the question of cumulative assessment of injury to the domestic industry on account of simultaneous dumping of the product from various sources. The Annexure II (iii) of the Anti Dumping Rules requires that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the designated authority will cumulatively assess the effect of such imports, in case it determines that

- i. the imports from individual countries are above de minimis or cumulatively account for more than 7% of imports:
- ii. the dumping margin against individual countries are above 2%; and
- iii. cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles

63. In this connection the Authority considered the following for examining the issue of cumulative assessment of injury and observed that:

- i. The margins of dumping of the subject goods from each of the subject countries are more than the de minimis limits.
- ii. The volume of imports from each of the subject countries is more than the de minimis limits.
- iii. The Authority notes that various grades of NBR imported into India from the subject countries/territories and other countries under investigation and the NBR produced by the domestic producer are like articles in terms of their technical and commercial substitutability. It is further noted that though the present investigation is restricted to the import of NBR in the bale form and excludes powder and carboxylated NBR. It is also noted that Import of NBR in Powder and carboxylated forms is very negligible. Therefore, the dumped imports from all these sources are liable to be cumulated for injury analysis in terms of Annexure II (iii) of the Anti Dumping Rules.
- iv. Imported products and domestically produced subject goods are interchangeable and are being interchangeably used. Transaction wise information on imports from the subject countries shows that the imports are being made by actual users as well as traders who have purchased the material

for reselling. Goods supplied by the countries involved are entering the Indian markets through the similar channels of distributions and directly competing in the Indian market.

- v. Products supplied from the subject countries are being marketed in India during the same period through comparable sales channels and under similar commercial conditions.
- vi. The domestic producer and exporters in the subject countries are selling the product to the same category of consumers.
- vii. Imports from the subject countries are competing amongst themselves as well as with the Indian products and significantly undercutting the prices of the domestic industry in the market.

64. The arguments of the interested parties about the lack of inter-se competition between the imported products have been examined by the Authority. It is noted that NBR is produced in several grades in various countries but they are basically classified in terms of their AN and BD contents and the mooney viscosity. For different grades of NBR produced in different countries there is always a similar or equivalent grade available in other countries as well as in the domestic market and at individual grade levels they appear to compete with each other in terms of price. The price levels argument raised by the interested parties does not appear to be correct as the prices in the summary data is the average price from the individual countries and depends upon the composition of the various grades in the export basket. Though Mexico's exports are admittedly of off spec material, it does effectively displace the market share of the prime because of its price effect. As far as exports from Brazil and EU are concerned they are clearly in the same price ranges and do compete inter se in the Indian market. The Authority notes the arguments of the domestic industry that its own regular customers have shifted to imports due to price differential of the imported goods.

65. Therefore, the Authority provisionally holds that cumulative assessment of injury is appropriate in this case since the exports of the subject goods from the subject countries/territories were directly competing amongst themselves as well as with the like goods offered by the domestic industry in the Indian market.

H.2 Material Injury

H.2.1 Views of the interested parties

66. The domestic industry in its submission before the Authority has argued Domestic industry is suffering injury from a number of sources. Exports from Japan, Taiwan, Germany and Korea are already attracting anti dumping duties. Injury to the domestic

industry is required to be assessed in view of the fact that the domestic industry has suffered continued injury from dumped imports.

67. They have inter alia argued that though the antidumping duty protection against the above countries has helped them to improve their performance marginally due to dumping from new sources i.e the countries/territories named in this investigation and intensified dumping by the exporters from the certain countries attracting duty they have not been able to benefit much out of it and continue to suffer material injury. They have further submitted that in spite of improvement in its productivity, and volume of output, reduction in cost of production through various cost cutting measures taken they have failed to realize remunerative prices to recover their cost due to continued dumping from various sources including the subject countries/territories.

68. The exporters and other interested parties in their various submissions have claimed that performance of the domestic industry has improved and the domestic industry does not suffer material injury. For the sake of brevity various arguments raised by the interested parties in their various written submissions have not been repeated in this finding. However, various submissions have been summarized as follows:

- That Apar's performance has been excellent and that there exists no causal link for any injury caused to them. Their financial results show that they have improved their performance tremendously. All economic indicators are extremely positive for them.
- That Apar's Directors' report annexed to their balance sheets of 1998-99 and 1999-2000 itself reported that they are expanding production capacity to 10000 M ton p.a. Apar would not expand production capacity if it was not operating at high level and are not making adequate profits.
- That world over a production unit of NBR with a capacity of less than 15,000 TPA is considered uneconomical and not viable. Apar's production capacity is said to be 4,000 TPA which is too low a capacity to be cost effective and profit worthy.
- That Apar is dependent on others for supply of their raw materials. As the raw material prices are very volatile by nature, they have no control whatsoever over their production cost and have no option but to subject themselves to vagaries of cost escalation and production losses.
- That there is no shrinkage of Apar's production, sale as well as profit. Their growth rate has been 6% to 7% in line with the growth rate of rubber industry. Taking requirements of NBR during the next 5 years. Apar's capacity would not be able to meet total demand of the industry.

- That their production and sales of Acrylonitrile Butadiene Rubber have gone up significantly. As such, imports of NBR from Korea Republic, Germany or from any other country have no adverse impact on their production, sales and profit. As a matter of fact, their sales and profits continue to rise handsomely.
- That Acrylonitrile and Butadiene Monomer are the basic inputs for the manufacture of NBR. Due to sharp decline in prices of these inputs, there has been downtrend in international prices of NBR over the last four years. Hence, decrease in price of NBR imports from Korea Republic and Germany is no exception.
- That the Indian rubber industry has been put at a disadvantage on account of imposition of anti dumping duty on NBR as their finished products costs are much higher as compared to manufacturers in the neighboring countries.
- That the industry's requirement, both quantity-wise and grade-wise, is far higher than the production capabilities of APAR and as such, the imports are inevitable to meet the demand.
- That Nitrile rubber is produced worldwide in many grades numbering over fifty, which the domestic producer has only 4/5 grades to offer to the industry. Therefore, a blanket levy of anti dumping duty on all imported grades, is not proper when 90% of the grades are not produced in the country.
- That the petitioners are the sole producers of this product in India. They produce about 4000 M. tons of NBR p.a. whereas the annual consumption is over 10,000 M tons. It defies all logic that even for the quantities that the petitioners have no capacity to produce; the consuming industry is forced to pay anti dumping duty.
- That Apar's annual accounts are in the form of merged balance sheet and it is very difficult to make out clearly about production, sale and profitability of NBR. All businesses of Apar in other areas are going down and substantial growth has been going on in NBR and HSR areas only. The data about production, sale and prices of Apar is going totally blind. Nothing clear is emerging. The data from first period of investigation till date has been based on their consolidated balance sheet, which contains data on NBR, SBR etc, and they are deliberately doing this to mislead everybody.

H.2.2 Responding Exporters from Brazil and European Union

69. The cooperating exporters from Brazil in their various submissions have argued that the Petitioner's inefficiency cannot be a ground for initiating anti dumping investigation. The installed capacity of the Petitioner's Plant is 8800 MT per Year, which is insufficient to cater to the demand of the Indian Market. Because of its small scale of production it does not have sustainable economies of scale. They have argued that the limited capacity of the Petitioner, which is the sole domestic producer of the

subject good, is completely insufficient to meet the domestic demand. Thus the disparity between demand and supply can only be satisfied by imports. They have submitted that if anti-dumping duties were imposed, the same would cause harm, loss and injury to the final users of the subject goods in India, as it would only increase the cost for the users of the subject goods who purchase the subject goods from the countries, such as Brazil.

70. The exporters have further argued that from a perusal of the material given by the Petitioner, it is apparent that (i) there is an increase in production (ii) increase in sales (iii) increase in volume. The Petitioner has been able to maintain its price for sale in the Indian market & the price of exports has not affected the Petitioner. Therefore an examination of these parameters shows that no injury has been caused whatsoever and none of the parameters in India for injury are satisfied. Further, they have argued that the Petitioner has not substantiated its bare averment of causal link between the alleged dumping of the subject goods in India by the Respondents during the Period of Investigation and the alleged material injury. It has been submitted that material injury or threat cannot be based on mere allegations, statements or conjuncture. Therefore, they have argued that the Petitioner has taken recourse to these proceedings not as a remedial measure but to ward off competition.

H.3 Examination by the Authority

71. The Authority has taken note of various arguments raised by various parties in their submissions, particularly the state of the condition of the domestic industry and its improvement in performance. The Authority also notes that antidumping duty is in force against Japan, Taiwan, Korea and Germany and reviews are in progress against antidumping duty in force against Korea, Germany and Taiwan. It has been noted that dumping continues from these countries in spite of the duty being in force and issue of continuation and likelihood of continuation of dumping and injury from these sources have been examined by the Authority in the review in progress. The Authority also notes that positive dumping margins have been determined in the instant case from each of the countries/territories named. Therefore, for the purpose of this investigation dumped imports from all sources have been cumulated for the purpose of cumulative analysis of the effects of dumped imports on the domestic industry.

72. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect

of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

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

74. Since positive dumping margin has been established for the exports from the subject countries, entire exports from those countries has been treated as dumped imports for the purpose of injury analysis and causal links examination.

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

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

i) Import Volumes and share of subject countries:

76. The domestic industry had pleaded that imports of NBR have been reported under various heads of Customs and segregation of NBR is difficult from the DGCI&S transaction-wise data because of the fact that DGCI&S data does not reflect complete description of the product. Therefore, they have relied upon the import data published in the Plastics and Polymer Review (PPR) for the relevant period. The Authority has examined the transaction level data of DGCI&S and also the import data published by PPR, pruning the DGCI&S data of the unrelated products to the extent possible.

77. However, because of the description and classification problem highlighted above the data from these two sources show substantial differences. Moreover, the DGCIS data shows much lower imports from Korea compared to the export data provided by the cooperating exporters from that country. It is also noted that PPR does not report import through all ports. Therefore, for the purpose of injury analysis the Authority proposes to adopt the DGCI&S data after adjusting it for the imports from Korea based on export data available with the Authority. Accordingly, the import figures of the product under consideration are as follows:

Country	Quantity in MT	POI
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	2000-01	2001-02	2002-03	2003-04
EU	489.12	435.53	1282.79	1771.17
Brazil	122.04	356.53	321.00	365.17
Mexico	22.00	55.00	104.72	207.15
Subject Countries	633.16	847.06	1708.51	2343.49
(EU, Brazil, Mexico)				
Trend	100.00	133.78	269.84	370.12
Others With Duty	2671.79	2853.61	3103.78	4157.17
Trend	100.00	110.75	120.46	161.01
Others	0	117.93	216.95	200.02
Trend	0	100.00	183.96	116.02
Total	3213.73	3822.45	5035.12	6700.67
Trend	100.00	118.97	156.69	208.49

Source: DGCI&S

78. The data shows that while total imports have increased by about 108% compared to the base year the imports from the subject countries have increased by 270% during the same period. Rate of increase in growth of imports from the subject countries from 2002-03 to POI is about 50% indicating a significant volume effect in the domestic market. The increase in volume of imports have also been analysed with respect to the growth in demand and market shares.

	2000-01	2001-02	2002-03	POI
Total Domestic Demand	*****	*****	*****	*****
Growth in Demand	100	114	131	159

79. Total demand of the product shows a growth of only 59% over the base year whereas the imports from the subject countries/territories show a growth of over 270% in the same period.

ii) Demand, Output and Market shares

a) Production of the Domestic Industry

Quantity in MT

Capacity & Production	2000-01	2001-02	2002-03	POI
INSTALLED CAPACITY	6,250	8,350	8,800	8,800
Indexed	100	134	141	141
TOTAL PRODUCTION	*****	*****	*****	*****
Indexed	100	130	130	149
GROSS PRODUCTION (NBR BALE ONLY)	*****	*****	*****	*****
Indexed	100	123	121	137

CAPACITY UTILIZATION - %	*****	*****	*****	*****
Indexed	100	97	92	106

80. The production data of the domestic industry reveals that there has been substantial capacity addition in the year 2001-02 and thereafter, mainly due to de-bottlenecking in the existing capacity. The domestic industry has also improved its production compared to the base year. The capacity utilization has also improved marginally. However, the capacity addition and production is to be examined with reference to the growth in demand in the domestic market and the ability of the domestic industry to sell in the domestic market.

81. It is noticed that the demand for NBR in India has shown considerable growth of about 59%. The domestic industry has submitted that considering sustained positive movement in demand, they had enhanced their capacity by de-bottlenecking the plant capacities incurring an investment of about Rs. ***** Crores and enhanced its capacity from 6250 MT to 8800 MT. However, they have not been able to increase its production proportionate to increase in capacity as a result of its inability to increase its sales in spite of higher demand. It is also noted that in spite of higher demand the domestic industry still has spare capacity of about 10%, which could not be fully utilized. The domestic industry has claimed that as a result of the adverse NBR operations, the plant has been utilized for production of non-NBR products in order to recover part of the fixed overhead costs.

b) Sales of Domestic Industry

Quantity in MT

Particulars	2000-01	2001-02	2002-03	2003-04 (POI)
Opening Stock	*****	*****	*****	*****
Indexed	100	42	145	136
Production	*****	*****	*****	*****
Indexed	100	123	121	149
Domestic sales	*****	*****	*****	*****
Indexed	100	114	118	133
Export sales	*****	*****	*****	*****
Indexed	100	136	138	179
Captive Consumption	*****	*****	*****	*****
Indexed	100	80	98	101
Closing Stock	*****	*****	*****	*****
Indexed	100	341	315	354

82. The data above shows that though the production increased by about 49% compared to the base year and 18% compared to the previous year, the domestic sales

has increased by 33% and 15% during the corresponding years. The major increase in the sales is in the export segment though the export volume is low. The data also shows substantial rise in inventory as the closing stocks have increased by 254%.

b) Demand and Market Share

Particulars	2000-01	2001-02	2002-03	2003-04
Domestic production	*****	*****	*****	*****
Indexed	100	130	130	149
Import from Subject Countries	633.16	847.06	1708.51	2343.49
Indexed	100	133.78	269.84	370.12
Import from Other Countries	2580.57	2975.39	3326.62	4357.19
Indexed	100.00	115.30	128.91	168.85
Total Imports	3213.73	3822.45	5035.12	6700.67
Trend	100	126	166	209
Total Domestic Sales	*****	*****	*****	*****
Indexed	100	114	118	133
Captive Consumption	*****	*****	*****	*****
Total Domestic Demand	*****	*****	*****	*****
Trend	100	114	131	159
Share in Demand				
Domestic Industry	54.38%	54.76%	48.97%	45.36%
Subject Countries	7.52%	8.86%	15.43%	17.45%
Others	30.64%	31.10%	30.05%	32.45%
Captive Consumption	7.45%	5.28%	5.55%	4.74%
Total share of imports in Demand	38.16%	39.96%	45.48%	49.90%

83. Total domestic demand of the product under consideration, has increased by about 59% from the base year but the share of the domestic industry in the total demand has decreased from 55% to 45% during the same period. However, the share of total imports as well as share of the dumped imports from the subject countries has increased substantially from 7% to 17%. In spite of increase in production and sales by the domestic industry it has lost substantial market share whereas the shares of total imports and dumped imports have increased by over 10%. This provisional examination indicates that the volume of dumped imports from the subject countries/territories have significantly increased in both, absolute terms and in relation to the growth of total demand. The dumped imports have therefore, significantly affected the market share of the domestic industry.

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

84. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries/territories has been examined with reference to the

price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the weighted average cost of production, weighted average Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry (worked out after normating the costing information of the Domestic Industry) have been compared with the landed cost of imports from the subject countries.

(i) Price undercutting and underselling effects

Price Undercutting and Underselling					
Particulars		2000-01	2001-02	2002-03	2003-04
Cost of Production	Rs./MT	*****	*****	*****	*****
Trend	Indexed	100	82.06	90.44	89.91
Selling Price	Rs./MT	*****	*****	*****	*****
Trend	Indexed	100	99	92	96
Landed value					
EU	Rs/MT	85417.73	95262.55	80768.24	77132.14
Brazil	Rs/MT	62394.59	74330.72	70184.28	73307.80
Mexico	Rs/MT	32257.42	47868.34	34578.20	46884.19
Subject Countries	Rs/MT	79132.98	83374.90	75948.56	73862.44
(Cumulated)					
All Dumped imports	Rs/MT	78178.42	80337.72	77108.14	74016.20
(Cumulated)					
Price Undercutting					
EU	Rs/MT	*****	*****	*****	0-10%
Brazil	Rs/MT	*****	*****	*****	5-15%
Mexico	Rs/MT	*****	*****	*****	50-75%
Subject Countries	Rs/MT	*****	*****	*****	5-15%
(Cumulated)		*****	*****	*****	
All Dumped imports	Rs/MT	*****	*****	*****	0-10%
(Cumulated)					
NIP	Rs/MT				
Price Underselling					
EU	Rs/MT				0-10%
Brazil	Rs/MT				5-15%
Mexico	Rs/MT				50-80%
Subject Countries	Rs/MT				5-15%
(Cumulated)					
All Dumped imports	Rs/MT				5-15%
(Cumulated)					

85. The selling price (net sales realization) of the domestic industry shows significant decline though the cost of production after showing a significant decline in 2001-02,

has increased substantially. The domestic industry has not been able to raise its prices to remunerative levels to realize its full cost of production.

86. Price undercutting has been determined by comparing the weighted average landed value of dumped imports from the subject countries/territories over the entire period of investigation with the weighted average net sales realization of the domestic industry for the same period. For this purpose landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the value reported in the DGCI&S data of import prices from the subject country.

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

88. For the purpose of price underselling determination the weighted average landed prices of imports from subject countries/territories have been compared with the Non-injurious selling price of the domestic industry determined for the POI and cost of production for the remaining years.

89. The Authority notes that Imports from the subject countries/territories have been significantly below the net sales realization of the domestic industry as well as the non-injurious price estimated for the domestic industry thus resulting in significant price undercutting and underselling.

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

90. The price suppression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values from the subject countries.

91. The trend of cost of production of the subject goods shows significant increase after showing substantial drop in 2001-02. The increase in cost of production is significant due to increase in the cost of raw materials, which constitute major portion of the cost of production. However, the trend of net sales realization of the domestic industry shows significant decline between 2000-01 and 2002-03 and a marginal rise during the POI but still significantly below the cost of production indicating the inability of the domestic industry to raise its prices to recover full cost due to price effects of the dumped imports from the subject countries/territories. In fact it appears that the domestic industry has been forced to benchmark its prices with the landed value from the dumped sources to retain its market share. Therefore, the Authority holds that dumped imports from the subject countries/territories have significant price suppression and depression effects on the prices of the domestic industry.

H.4 Examination of other Injury Parameters

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

i) Productivity

Particulars	Unit	2000-01	2001-02	2002-03	2003-04 (POI)
Productivity	Per Employee	*****	*****	*****	*****
Indexed		100.00	124.18	124.35	145.99
Productivity	MT/Day	*****	*****	*****	*****
Indexed		100	123.21	120.54	136.89
Productivity per Day - (Considering 360 days of production in a year)					

93. Productivity of the domestic industry has been measured in terms of its labour productivity of the output and daily output and it has been noticed that the productivity has improved substantially. It appears that the industry has attempted to improve its productivity to cut cost and remain competitive. However, improved productivity has not resulted in commensurate profitability because of low realization of its sales.

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

94. Total revenue and cash flow of the domestic industry from its domestic operations shows marginal improvement due to increase in domestic production and sales. However, the industry continues to suffer loss during the investigation period due to declining per unit realization except for the year 2001-02. The data also shows in spite of improvement in performance in several parameters industry has not been able to realize a fair price to recover its cost due to prevailing price level of dumped imports.

Particulars	Unit	2000-01	2001-02	2002-03	2003-04
Profits					
Cost of Sales	Rs./MT	*****	*****	*****	*****
Indexed		100	85.44	91.05	92.09
Selling Price	Rs./MT	*****	*****	*****	*****
Indexed		100	98.85	92.47	95.59
Profit/Loss	Rs./ MT	(*****)	1422.42	(*****)	(*****)
Indexed		(100)	19.03	(48.03)	(13.49)
Total Profit/Loss on Domestic Sales	Rs. Lacs	(*****)	*****	(*****)	(*****)

Indexed		(100)	55.46	(84.58)	(58.05)
Depreciation	Rs. Lacs	*****	*****	*****	*****
Indexed		100	100.09	96.49	98.38
Cash Profit/Loss from NBR	Rs. Lacs	(*****)	*****	(*****)	*****
Indexed		(100)	325.69	(63.89)	(12.01)

iii) Employment and wages

95. The employment level has declined marginally. But the expenses on account of salary and wages have increased by about 20%. However, increase in the expenses towards salary and wage is in tandem with the increase in production during the comparable periods.

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

iv) Return on investment and ability to raise capital

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

Rs in Lacs

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

Indexed	100	462.23	144.14	107.86
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v) Investment

97. The Authority notes that domestic industry raised its capacity from 6250 MT to 8800 MT by de-bottlenecking the existing capacity with a capital investment of about 14 Crores. There has been no further fresh investment by the domestic industry during the investigation period and there are no plans for further investment as submitted by them.

vi) Magnitude of Dumping

98. Magnitude of dumping as an indicator of the extent to which the dumped imports can injure the domestic industry shows that the dumping margins determined against the countries/territories named, for the POI, are significant.

vii) Factors affecting prices

99. Change in cost structure if any, competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. The Authority notes that Landed values of imported material from subject countries/territories are significantly below the selling price of the domestic industry, causing severe price undercutting in the Indian market. The Authority also notes that there is no viable substitute to this product and M/s Apar Industry is the sole producer of the subject good in India and therefore, domestic competition does not affect the prices.

100. The Authority also notes that dumped imports from several sources competing with each other and with the domestic products are simultaneously affecting the domestic market for which cumulative injury analysis has been done. It is also noted that there is a healthy demand of the product in the domestic market.

101. Acrylonitrile (ACN) and Butadiene (BD) are two principal raw materials for production of NBR. Prices of both these monomers have increased world wide. This increase in the prices of major raw materials is reflected in increase in the cost of production for the domestic industry over the injury period. However, the selling prices of the domestic industry declined by over the injury period.

viii) Inventories

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

102. The above data indicates a marginal increase in the inventory in absolute term though as a percentage of production it shows marginal decline compared to the previous year. But compared to the base year both show significant increase indicating substantial inventory built up.

H.5 Conclusion on injury parameters

103. The examination of the above economic parameters indicates that though it might appear that the domestic industry has improved its performance in several parameters including output and sale volumes, this has not translated into improvement in its profitability and the industry still suffers loss in its domestic operation. Therefore, the volume and price effect of dumped imports appear to have significant impact on the prices of the domestic industry forcing the prices below the cost of production and consequent loss to the domestic industry in its NBR operation.

H.6 Other Known factors and Causal Link

104. The Interested parties have argued that the injury if any caused to the domestic industry is due to its own inefficiency and uneconomical plant size and cannot be attributed to the dumped imports from the subject countries/territories.

105. The foregoing analysis indicates that the volume of dumped imports from the subject countries have increased substantially both in absolute terms as well as in relation to the share in demand. The growth of imports from these countries/territories also show a much faster growth compared to the rest and the dumped imports from these sources have significantly displaced the market share of the domestic industry. The landed value of dumped imports from the subject countries also show a significant price undercutting and underselling on the prices of the domestic industry compelling the domestic industry to keep its prices low in order to retain its market share and volume of sales in the domestic market. It also shows that improvement in volume of production and sales has not translated into profit for the domestic industry due to the pulling pressure of the prices of the dumped imports establishing a clear causal link between the dumped imports and the injury suffered due to volume and price effects.

106. However, in the light of these arguments the Authority has examined the issue of causal link and other non-attribution factors as laid down in the Rules to segregate

injury if any caused by other factors. In this regard the following indicative factors as laid down in the Rules have been examined.

i) Volume and prices of imports from other sources

107. The Authority notes that during the POI, other than the subject countries/territories, imports have taken place from several other countries including Japan, Korea, Germany and Chinese Taipei against which antidumping duty is in force and this volume is also substantial. It is also noted that in separate investigation the Authority has concluded continuation of dumping and injury from Korea and Germany. Therefore, imports from all dumped sources have been examined cumulatively to analyse the effect of dumped imports on the domestic industry. The Authority also notes that the antidumping duty paid landed value of goods imported from the sources already attracting duty are above the landed value of the goods imported from the countries involved in the current investigation. Therefore, the injury caused by the imports from other sources has not been attributed to the dumped imports from the subject countries/territories.

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

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

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

109. The interested parties have argued that the sole domestic producer is trying to create a monopoly market by blocking competition through imposition of antidumping duty. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market. M/s Apar Industries Ltd. is the sole producer of the subject goods in the country. There is no restriction on fair trade in the country and imports of the subject goods take place from several countries and compete with the domestic producer. However, major portion of the imports from several sources have either been determined as dumped imports or are under investigation for allegation of dumping. Therefore, the Authority notes that the domestic producer is facing unfair competition from several countries including the subject countries/territories and the current injury to the domestic industry cannot therefore, be attributed to trade restrictive practices or fair competition between foreign and domestic producers.

iv) Development of technology and export performance

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

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

v) Productivity of the Domestic Industry

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

113. No other factor which could have possibly caused injury to the domestic industry has been brought to the knowledge of Authority.

114. On the basis of the above examination it is concluded that the subject goods exported from the subject countries/territories are at prices far below their normal value, Non Injurious Price of the domestic industry and the average sales realization of the subject goods of the petitioner, and the dumping, injury and causal links has been clearly established

I. Magnitude of Injury and injury margin

115. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted

average landed price of the exports from the subject countries and the injury margins have been worked out as follows:

Injury margin Calculations	
Company	Injury Margin
Petroflex	*****
Nitriflex	*****
Others Brazil	*****
EU	*****
Mexico	*****

J. Conclusions

116. After examining the issues raised and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the extent of dumping and injury the authority concludes that:

- i. The dumping margins of the subject goods imported from the subject countries/territories are substantial and above de minimis;
- ii. The domestic industry suffers material injury in terms of loss of market share, low capacity utilization and profitability;
- iii. And the injury has been caused to the domestic industry both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject countries/territories.

K. Indian industry's interest & other issues

117. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

L. Recommendations

118. The Authority notes that the I investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted a preliminary investigation into dumping, injury and causal links between dumping and injury to the domestic

industry in terms of the Rules laid down and having provisionally established positive dumping margin against the subject countries, as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is required to offset dumping and injury pending completion of the investigation.

119. Therefore, Authority considers it necessary and recommends provisional anti-dumping duty on imports of subject goods from the subject countries/territories in the form and manner described hereunder.

120. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount indicated in Col 9 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject countries.

Duty Table

Sl.No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
1	4002.59 or Any other Head of Customs	Acrylonitrile Butadiene Rubber (NBR) (excluding Powder and carboxylated NBR)	In Bale form	Brazil	Brazil	M/s Petroflex, Brazil	Any	136.47	MT	US\$
2	-Do-	-Do-	-Do-	Brazil	Brazil	M/s Nitroflex, Brazil	Any	215.90	MT	US\$
3	-Do-	-Do-	-Do-	Brazil	Brazil	Any producer, other than M/s Petroflex and M/s Nirtiflex	Any	220.73	MT	US\$
4	-Do-	-Do-	-Do-	Brazil	Any Other than Brazil	Any producer, other than M/s Petroflex and M/s Nirtiflex	Any	220.73	MT	US\$
5	-Do-	-Do-	-Do-	Any Other than Brazil	Brazil	Any	Any	220.73	MT	US\$

6	-Do-	-Do-	-Do-	EU (Except Germany)	EU (Except Germany)	Any	Any	164.57	MT	US\$
7	-Do-	-Do-	-Do-	EU (Except Germany)	Any Other than EU except Germany	Any	Any	164.57	MT	US\$
8	-Do-	-Do-	-Do-	Any Other than EU Except Germany	EU (Except Germany)	Any	Any	164.57	MT	US\$
9	-Do-	-Do-	-Do-	Mexico	Mexico	Any	Any	304.37	MT	US\$
10	-Do-	-Do-	-Do-	Mexico	Any Other than Mexico	Any	Any	304.37	MT	US\$
11	-Do-	-Do-	-Do-	Any Other than Mexico	Mexico	Any	Any	304.37	MT	US\$

M. Further Procedures

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

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final finding;
- 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 conduct further verification to the extent deemed necessary;
- d. The Authority would disclose essential facts before announcing final findings.

Christy L. Fernandez
Designated Authority