

MINISTRY OF COMMERCE & INDUSTRY
Department of Commerce
DIRECTORATE GENERAL OF ANTI-DUMPING AND
ALLIED DUTIES
Udyog Bhawan, New Delhi

Final Findings

New Delhi, the 3rd July, 2001

Sub: Review of Anti-Dumping duties concerning imports of Styrene Butadiene Rubber from (SBR) from Japan, Korea, USA, Turkey and Taiwan- Final Findings

No. 34/1/2000-DGAD – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE

1. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received from M/s Automotive Tyre Manufactures Associatin (ATMA) and M/s Rishirop Polymers P Ltd. (also referred to as petitioner in this notification), a request for review of anti-dumping duty imposed on imports of Styrene Butadiene Rubber (SBR) (hereinafter referred to as subject goods) originating in or exported from Japan, Korea, USA, Turkey and Taiwan (hereinafter referred to as subject countries). The authority considering the arguments regarding eligibility of M/s ATMA for seeking review considers it appropriate under Rule 2(c) to recognize M/s ATMA as an interested party eligible to seek review.
- ii. The Authority on the basis of sufficient evidence submitted by the petitioner, decided to initiate review investigations against imports of SBR from Japan, Korea, USA, Turkey and Taiwan. The Authority issued a public notice dated 9-11-2000 published in the Gazette of India, Extraordinary, initiating review investigations concerning imports of SBR originating in or exported from Japan, Korea, USA, Turkey and Taiwan.
- iii. The investigations concluded by the Authority vide notification dated 2.6.99 have been referred to as " the previous investigations" in this notification.

- iv. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of SBR in India during the period of review.
- v. The Authority notified the Embassies of the subject countries in New Delhi before proceeding to initiate the review investigation in accordance with sub-Rule 5(5) of the Rule.
- vi. The Authority held a public hearing on 9-2-2001. The parties attending the public hearing were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were requested to offer their rebuttals.
- vii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained and kept open for inspection by any interested party.
- viii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to all known interested parties on 7-6-2001 and comments received on the same have also been duly considered in these findings.
- ix. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by petitioner and were available earlier during the previous investigation) of Styrene Butadiene Rubber in India and advised them to make their views known in writing within forty days from the date of issue of the letter.
- x. The Authority provided a copy of the petition to the known exporters and the Embassies of the subject countries in accordance with Rules 6(3) supra. A copy of the petition was also provided to other interested parties, wherever requested.
- xi. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers from the subject countries in accordance with the Rule 6(4):

1. M/s Asahi Chemical Co.,Tokyo, Japan
2. Japan Elastomer Co. Ltd, Tokyo, Japan
3. Japan Synthetic Rubber Co., Tokyo, Japan
4. Mitsubishi Kasei Corporation, Tokyo, Japan
5. Nippon Zeon Co. Ltd., Japan
6. Sumitomo Chemical Co., Japan
7. Korea Kumho Petrochemical, Seoul, Korea
8. TSRC Corporation, Taipei, Taiwan
9. Bayer AG, Leverkusen, France
10. Goodyear Chemicals Europe, France
11. Michelinet Cie, France
12. Shell Chimie S.A., France

13. Kombinal VEB Chemische Werke, Germany
14. Petkim Petrokimya AS, Turkey
15. Ameripol Synpol Corporation, U.S.A.
16. DSM Copolymers Inc., USA
17. Firestone Synthetic Rubber & Ltx Co., U.S.A.

However, response to the questionnaire/notification was filed by the following exporters/producers only:-

1. M/s Hyundai Petrochemical Co. Ltd., Korea
 2. M/s Petkim Petrokimya Holding AS, Turkey
 3. Korea Kumho Petrochemical Co. Ltd. (KKPC), Korea filed by M/s Rishiroop Polymers Pvt. Ltd.
- i. The Embassies of the subject countries in New Delhi were informed about the initiation of the review investigation 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 the Embassies, alongwith a list of known exporters/producers.
- ii. A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):
1. M/s Apollo Tyres Ltd., Kochi.
 2. M.s Modistone Ltd., New Delhi.
 3. M/s Birla Tyres Ltd., Calcutta.
1. M/s Ceat Ltd., Mumbai.
 2. M/s Govind Rubber Ltd., Bhiwadi.
 3. M/s J.K. Industries Ltd., New Delhi.
 4. M/s. Modi Rubber Ltd., New Delhi.
 5. M/s MRF Ltd., Madras.
 6. M/s Dunlop India Ltd., Calcutta.
 7. M/s Goodyear India Ltd., New Delhi.
 8. M/s South Asia Tyres Ltd., Aurangabad
 9. M/s Vikrant Tyres Ltd., Mysore.
 10. All India Rubber Industries Association, Mumbai.
 11. All India Footwear Manufacturers Association, New Delhi.
 12. M/s Synthetics and Chemicals Ltd., Mumbai
 13. M/s Synthetics and Chemicals Ltd., New Delhi.
 14. M/s Apar Industries Ltd., Mumbai.
 15. M/s Apcotex Lattices Ltd., Navi Mumbai.

16. Automotive Tyre Manufacturers Association, New Delhi.
17. M/s Rishiroop Polymers (P) Ltd., Mumbai.

Response to the questionnaire/notification was filed by the following Importers/user Associations:

1. M/s Automotive Tyre Manufacturers Association (ATMA), New Delhi.
 2. M/s Rishiroop Polymers Pvt. Ltd., Mumbai
 3. All India Federation of Rubber Footwear Manufacturers, New Delhi.
 4. All India Rubber Industries Association, New Delhi.
 5. Paragon Rubber Industries, Kerala
 6. M/s Leo Rubbers Kerala
 7. M/s MRF Chennai
 8. M/s J.K. Industries, New Delhi
 9. M/s CEAT Ltd., Mumbai
- i. Information regarding injury was sought from the domestic industry as defined in previous investigation, and also from the two domestic producers viz. M/s Apar Ltd. and M/s Apcotex Lattices Ltd. for SBR 1900 series. M/s SCL also furnished information pertaining to injury.
 - ii. Cost investigation was also conducted for SBR 1900 series so as to work out optimum cost of production and cost to make and sell SBR 1900 series in India on the basis of Generally Accepted Accounting Principles (GAAP) .
 - iii. ****in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
 - iv. Review investigation was carried out for the period starting from 1-7-99 to 30-6-2000 i.e. the period of investigation (POI).

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

The views expressed by the various interested parties have been stated in the disclosure statement. The views raised in response to the disclosure statement are discussed in the relevant paras herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paras herein below.

A) PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

I. M/s Apar Industries Ltd. and M/s Apcotex Lattices have made the following submissions:-

1. SBR 1900 series is High Styrene Resin Master Batch, we request the DA to clarify this in the Final Findings.
2. DA wanted to impose anti dumping duty on all grades of SBR irrespective whether it is under heading 3903 or 4002.
3. KHS-68 grade is nothing but SBR 1900 series. An order in this respect has been passed by Dy. Commissioner of Customs, Calcutta.
4. The company from Korea has claimed KHS 68 as synthetic rubber.
5. The company is trying to mislead DA and Govt. of India and is trying to circumvent duty.
6. Various letters from consumers of SBR specify that they are using KHS-68 interchangeably with the domestic industry's SBR.
7. We request for clarification in the review findings notification that SBR 1900 series is High Styrene Resin Master Batch/ Emulsion Resin Rubber Master Batch, regardless of the customs Head. As regards, KHS 68, it is a high Styrene Resin Master Batch/emulsion resin master batch and is commercially and technically substitutable with domestic industry's product.
8. It is not the case of M/s ATMA and M/s Rishiroop that SBR 1900 series (also known as HSR) is not being produced in India. Their whole case relates to SBR 1500 and 1700. However, DA has initiated review investigation of all types of SBR including 1900 series. The present investigation may, therefore, be withdrawn against HSR.
9. Initiation of review investigation was not warranted in respect of SBR 1900 series as the same is being produced in the country and the whole initiation is based on the fact that the production of SBR 1500 and 1700 series has been stopped. The scope of investigation may, therefore, be restricted to SBR 1500 and 1700 series.
10. There is lot of confusion created regarding the SBR 1900 series and we request DA to clarify SBR 1900 series as High Styrene Resin Master Batch. It is logical to hold that there is a domestic industry in respect of SBR grade of 1900 series.
11. In response to the disclosure statement, it has been submitted that DA should clarify in the Final Findings the scope of the present investigations and also the description of SBR 1900 series as High Styrene Resin Master Batches/Emulsion Resin Rubber Masterbatch. It has also been submitted that a particular grade may be subject to anti dumping duty if it falls in SBR 1900 series and that it is not necessary for this grade to meet the customs definition of synthetic rubber.

II. M/s Automotive Tyre Manufacturers Association (ATMA) has made the following submissions:-

1. Since during the period of investigation i.e. 1.7.99 to 30.6.00, M/s SCL did not produce, they deserve no consideration. In the Para E(5) of the Preliminary Findings dot. 12.1.99, DA excluded SBR 1000 series which was not produced by M/s SCL. On this analogy since SBR 1500 and 1700 grades are not at all being produced in India during the period of review, the anti dumping duty is required to be withdrawn.

III. M/s Rishiroop Polymers Private Limited has made the following submissions:-

1. There was no evidence provided by the petitioner in the original investigation that styrene butadiene co-polymer resin falling under chapter 3903.90 was Like Article to SBR and was also the product under consideration and was substitutable with the SBR falling under 1900 series. The authority on the contrary has made clear findings in Para E(5) of the Preliminary Findings. No appeal was pressed against these findings by the domestic industry or the Indian Government and the same have attained finality. DA had also specifically indicated that KHS 68 by name is not the subject item and no duty has to be levied on it. Our understanding of the final Findings is that if an importer tries to circumvent paying anti dumping duty on SBR falling under chapter heading 4002.19 by mis-declaring it under any other customs chapter heading no. then the customs authorities were to classify the goods properly and to levy anti dumping duty on styrene and butadiene falling under chapter 3903.90.
2. M/s Apcotex Lattices have tried to imply that SBR as well as styrene butadiene copolymer resin are the subject matter of this investigation which is not true.
3. In response to the disclosure statement M/s Rishiroop Polymers Private Limited have indicated that the authority in light of the CEGAT's judgement in the matter of M/s Relaxo Footwer V/s Commissioner of Customs, ICD, Delhi should re-clarify the finding that there would be no anti dumping duty leviable on KOSYN KHS 68 since it is not SBR falling under 1900 series.

EXAMINATION BY THE AUTHORITY

The authority recalls the Final findings NO. 30/1/99- ADD dt. 2.6.99 viz. the previous investigations and notes that Para C(5) of the findings indicate product under consideration as

"Styrene Butadiene Rubber (SBR) originating in or exported from the subject countries classified under custom sub heading 4002.19 of the Customs Tariff Act

which has been explained in Para 5 of the preliminary findings dated 21.1.99. The Authority had, inter-alia held at para 5 of the preliminary findings that product under consideration is SBR 1500 series, 1700 series and 1900 series under customs sub heading 4002.19 of the Customs Tariff Act."

The authority notes that while examining specific issues pertaining to tariff classification in Paras C(6) and C(7) the authority has confirmed para E(5) of Preliminary Findings dt. 21.1.99. The authority also notes the circumstances and scope of the present review and confirms the product under consideration as indicated in paras C(5) to C(7) of final Findings dt. 2.6.99 and also para E(5) of the Preliminary Findings dt. 21.1.99 wherein various series of SBR viz. 1000, 1500, 1700 and 1900 have been defined as hot type, cold type, cold type oil extended and high styrene resin master batches respectively. The authority also notes that subsequent to order no. 21/2000-AD dt. 2.2.2000 of the Hon'ble CEGAT Deptt. of Revenue has notified vide its notification no. 73/2000 dt. 22.5.2000 the anti dumping duties on all the three series of SBR clarifying the classification of the product under consideration in light of the CEGAT's judgement. The authority confirms the same.

In regard to submission made by M/s Apar Ltd. and M/s Apcotex Lattices Ltd. and M/s Rishirop Polymer Pvt. Ltd. regarding clarification on the product under consideration, the authority notes that the present review is with reference to the series of SBR as already indicated in the previous investigation dated 2-6-99 and also as clarified above. The other issues pertaining to classification have already been clarified in the previous investigation dated 2-6-99 as also further examined and clarified by Hon'ble CEGAT's judgement dated 2-2-2000.

The authority notes that no specific argument has been made on the issue of Like Article and in view of this the authority confirms Para D(8) of the Final Findings dt. 2.6.99 thereby also confirming para F of Preliminary Findings dt. 21.1.99.

B) DOMESTIC INDUSTRY

I. M/s Synthetics and Chemicals Limited (SCL) have made the following submissions:-

1. M/s SCL are the single largest manufacturer of the product namely, SBR in India and they make the grades namely SBR 1500 and 1700.
2. As per Rule 2(b), M/s SCL is engaged in the manufacture and temporary suspension of production does not take it out from the definition of the domestic industry as defined in Section 2(b).

3. There is no provision in the Act or in the Rules to discontinue imposition of anti dumping duty if it is due to deteriorating economic conditions caused by prolonged effect of dumping.
4. Rule 11 of the Rules uses expression established industry and not domestic industry.
5. Nowhere it has been contemplated either for the purpose of initiation of proceedings for levy of anti dumping duty and/or for its continuation that actual production has been going on in the domestic industry at every point of time during the period of duty.

II. M/s Apar Industries Ltd. and M/s Apcotex Lattices have made the following submissions:-

1. DA in various cases have earlier reviewed the structure of domestic industry viz. in Theophylline and Caffeine case, sunset review of 3,4,5, Tri Methoxy Benzaldehyde (TMBA) from China, review of PVC dt. 29.9.97, sunset review of 3,4,5 TMBA from China, review of acrylic fibre dt. 1.4.99, review of Sodium Ferrocyanide from China review of NBR dt. 1.4.99 etc.
2. Rule 23(3) does not empower the authority to conduct a review. Rule 23(1) empowers the DA to conduct the review. Rule 23(3) merely provides the manner in which it has to determine injury and Rule 2(b) and 2(d) get invoked automatically.
3. The Designated Authority has to examine injury to any established industry as per Section 9(B) (1)b(ii) and Rule 11 (1).
4. Injury to the domestic industry by application would mean injury to any established industry and is therefore, not restricted to only domestic producers which exist at that point of time.
5. DA is not required to examine injury to the petitioner but to the domestic industry. if Rule 2(b) is not invoked, there is no way DA can determine injury.
6. The definition of the domestic industry would not imply the company who had earlier filed the petition. Though Rule 23 dealing with review does not include the applicability of Rule 5, DA would have to first define the scope of domestic industry before examining the injury to the domestic industry.
7. It has been argued by some interested parties that DA will have to consider the domestic industry of all the types as a whole with all the three types i.e. SBR 1500, 1700 and 1900 series. If this is the contention then there was not any necessity for the DA to initiate review investigations in the present matter since M/s Apar Ltd. and M/s Apcotex Lattices continue to produce SBR 1900 series.

III. M/s All India Tyre Manufacturers Association (ATMA) has made the following submissions:-

1. Tyre manufacturers use SBR 1500 and 1700 series and since M/s SCL have closed down, it is now undisputed that there is no domestic industry for SBR 1500 and 1700 series.
2. There is no domestic industry producing SBR and hence the question that domestic industry is suffering material injury cannot exist.

IV. M/s All India Federation of Rubber Footwear Manufacturers have made the following submissions:-

1. Designated Authority should decline to review the composition of domestic industry, product under consideration and also decline to recommend the continuance of anti dumping duty as Rule 23(3) does not empower DA to review composition of the domestic industry and the product under consideration.
2. Since applicability of Rule 2(b) is not contained under Rule 23(3), DA cannot review the definition of domestic industry. Since M/s SCL has not produced SBR since July, 99, the injury is on account of something else and not by dumping.
3. M/s Apar Industries Ltd. and M/s Apcotex Lattices were not part of domestic industry in original petition before DA and nor do they manufacture all grades.
4. Rule 23(3) does not empower DA to redefine the structure of domestic industry and the product under consideration.
5. In response to the disclosure statement it has been mentioned that for SBR 1900 series a correct procedure should be a new petition and not a review. The other submissions already made have been reiterated.

In response to disclosure statement, M/s Banik Rubber Industries, Calcutta, have indicated that no conclusive evidence has been given by M/s Apar Limited and M/s Apcotex Lattices Ltd. that they produce SBR 1900 series or like article and that in such an event there could be no determination of dumping margin or injury.

EXAMINATION BY THE AUTHORITY

The authority notes that Para G(7) of the preliminary findings dt. 21.1.99 subsequently confirmed vide para E(9) of the Final Findings dt. 2.6.99 acknowledged M/s Synthetics and Chemicals Ltd. (SCL), M/s Apar Ltd. and M/s Apcotex Lattices as the producers of SBR. M/s SCL, the petitioner was acknowledged as accounting for more than 25% of the domestic production and thereby having the standing to file petition on behalf of the domestic industry under the Rules. The authority notes that subsequent to the closure of M/s SCL, which is the basis of the present review, M/s Apar Ltd and M/s Apcotex Lattices continue to be the two producers solely producing SBR 1900 series only. The authority notes, that though arguments have been made by

interested parties regarding the redefinition of the domestic industry, the authority had acknowledged M/s Apar Ltd and M/s Apcotex Lattices as two producers of SBR in the previous investigations also. The authority notes that it has been its consistent practice to review and redefine the domestic industry at the stage of the review investigations. The authority during the review investigations in order to look at the aspect of injury determination would necessarily have to look at the present status of the domestic industry as well. M/s Apar Ltd and M/s Apcotex Lattices would in the review investigations be the only domestic producers in the SBR 1900 series thereby constituting the domestic industry for this series of SBR only. However, there is no production of the SBR 1500 and 1700 series and, therefore, no domestic industry for these series.

The Authority in regards to the submission made regarding the goods manufactured by M/s Apar Limited and M/s Apcotex Lattices Limited notes that sufficient evidence has been provided by the domestic producers regarding their goods being of SBR 1900 series.

C) NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

I. M/s Hyundai Petrochemical Co. Ltd. has made the following submissions:-

1. Hyundai produces only 1500 and 1700 series of SBR. The other manufacturer in Korea is M/s Korea Kumho which manufactures all the three series namely SBR 1500, 1700 and 1900. During the earlier POI, Hyundai did not produce/supply any SBR to India. The Authority has fixed higher landed value for us even though we did not export during POI. During the current period we have not exported a single Kg. of SBR 1700 series to India. Since the sole producer of SBR 1500 and 1700 series i.e. M/s SCL is closed, there is no justification whatsoever in continuance of the duties.

II. M/s Petkim Petrokimya Holding A.S., Turkey has made the following submissions :

1. The exporter has provided information pertaining to sales in home market with respect to Grade SBR 1502 in the POI viz. the factory cost and profit and the sales price structure for domestic sales. The exporter has provided details of exports of SBR 1502 grade made by them to India in the POI.

III. M/s Automotive Tyre Manufacturers Association (ATMA) has made the following submissions:-

1. The proposed arrangement with M/s Kolmar Petrochemicals is irrelevant to the issue as it is a development which has taken place outside the review POI. The Agreement with M/s Kolmar cannot be subjected to the continuance of the duty as anti dumping duty is dependent on other factors such as normal value, export price, cost of production etc.

IV. M/s All India Federation of Rubber Footwear Manufacturers have made the following submissions:-

1. Any pre-condition for the so called revival plan of M/s SCL that anti dumping duties should continue is not permissible under the Law and cannot be used as a protective measure.
2. The domestic industry's statement that it is dumping which has led to erosion of capital and stoppage of production is unsubstantiated. The domestic industry should have approached the Designated Authority for imposition of duties earlier. In fact, domestic industry did approach the authority but no initiation was made by DA.

V) Importers have made the following submissions :-

1. M/s CEAT Limited, Mumbai have provided details of imports made in POI from the subject countries, i.e. Japan, Korea, Taiwan of the grades SBR 1502 and 1712.
2. M/s J K Industries, New Delhi have provided information as per the questionnaire indicating details of imports made from Turkey of grades of SBR 1712 and 1502 in the POI.
3. M/s MRF, Chennai, have provided information as per the questionnaire indicating details of imports made from USA, Korea, and Taiwan during POI of grades of SBR 1502 in the POI.
4. M/s Leo Rubbers, Kerala have provided information as per the questionnaire indicating details of imports made from Japan for SBR grades HS 860 and HS850, Brazil for grades 1502 and USA for grade 1904 in the POI.
5. M/s Paragon Rubber Industries, Kerala have provided information as per the questionnaire indicating details of imports made from Japan for SBR grade HS 860 and 850, from Korea for HS 860, HS 1502 from Brazil and 1904 from USA in the POI.

VI) M/s Synthetics and Chemicals Limited (SCL) have made the following submissions:-

1. M/s SCL is making efforts and incurring expenses towards the expansion of the capacity. However, all their efforts proved futile as it was noticed that dumping

had been going on for the last several years in respect of SBR which had cascading effect thereby eroding our capital. As a result the production came to a halt somewhere in the month of July, 99.

2. Exporters cannot be allowed to dump goods merely because of temporary suspension of production by the domestic industry.
3. This is only a passing phase and it has to be appreciated and evaluated in the light of the bonafide steps which are being taken by the affected domestic industry to restart the production.
4. Determination of injury has been dealt with under Rule 11. The applicants who are seeking the review are not denying that the goods are being dumped in India. While the applicants admit dumping yet shelter is being sought by alleging that there can be no injury caused as there is no established industry carrying on production. This perception is legally misconceived.

VII) M/s Apar Ltd. and Apcotex Lattices Ltd. has made the following submissions:-

1. M/s Hyundai by its own admission has claimed that they do not produce SBR 1900 series and they cannot even make any comments on 1900 series.
2. The request to withdraw duties from 1900 series is without any legal basis. If the rubber and footwear manufacturers are suffering from dumping on their end product then they should request for imposition of anti dumping duty rather than requesting withdrawal of anti dumping duties on the raw materials.
3. There is continued dumping from Korea of SBR 1900 series. This has resulted in significantly low landed prices, severe price undercutting and under selling.

VIII) M/s Rishiroop Polymers Private Limited has made the following submissions:-

1. KKPC did not export any SBR falling under chapter 4002.19 during the review POI as well as original POI and have not caused any material injury to the domestic producer.
2. Based on the data from the balance sheet of M/s Apar Ltd. and M/s Apcotex Lattices the companies have reported profits in their balance sheets. From the non confidential summary of the confidential submissions made by M/s Apar Ltd. and M/s Apcotex Lattices Ltd., it is noted that they have claimed that we have requested authority to withdraw anti dumping duty on SBR grades of 1500 and 1700 series which is not correct and that we have requested for withdrawal of anti dumping duty on all grades of SBR.
3. M/s Apcotex has mentioned that there exist significantly high capacities for SBR series with the subject countries. No evidence has been provided on this. This is not true with KKPC.
4. In response to the disclosure statement, M/s Rishiroop Polymers Private Limited on behalf of their principal M/s KKPC have mentioned that there were

no exports of SBR 1900 series during the review POI as well as the original POI. In view of this, there is no causal link for any injury to the domestic industry. Therefore, the authority should hold that there is no need to calculate any dumping margin or to impose anti dumping duty on SBR 1900 series exports from KKPC which should be in line with the authority's decision for M/s Petkim Petrokimay Holding AS., Turkey.

IX) All India Rubber Industries Association has made the following submissions:

1. The anti dumping duty on imports of two series of SBR viz. 1500 and 1700 series from subject countries be withdrawn and whatever anti dumping duty has been collected from importers of the above series of SBR since July, 99 i.e. since the closure of the sole producer's plant should be refunded to the importers.

NORMAL VALUE, EXPORT PRICE & DUMPING MARGIN

The authority notes that only M/s Petkim Petrokimya Holding A.S., Turkey has responded to the questionnaire sent to them. M/s Rishiroop Polymers Ltd. on behalf of KKPC has mentioned that they have not exported SBR 1900 series during the review POI and also during the initial POI. None of the other exporters/producers have responded to the questionnaire. The authority also notes the present review has been initiated on the request from the importers/user industry that the sole producer of SBR 1500 and 1700 series has stopped production. As regards, SBR 1900 series, there has been no claim by any of the interested party that there are no domestic producers for this series of SBR in India. Also there is no response from any of the exporters/producers on the information pertaining to dumping of SBR 1900 series except no export claim by M/s KKPC. The authority notes that since M/s KKPC has claimed no exports of SBR 1900 series in a review POI it may not be possible to review the dumping margin already determined in the previous investigation dated 2-6-99. The authority in view of this considers it appropriate to reference the dumping margins as already determined in the previous investigation for the SBR 1900 series. As regards, the SBR 1500 and 1700 series is concerned, the authority in view of the fact that there has been no domestic production of this series during the review period and consequently no domestic industry for these grades, and therefore it may not be appropriate to evaluate the dumping margins for these series/grades of SBR on the basis of the available response.

D) INJURY, CAUSAL LINK AND DETERMINATION OF INJURY

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.

For the examination of the impact of the imports on the domestic industry in India, we may consider such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the Rules supra.

I. M/s All India Federation of Rubber Footwear Manufacturers have made the following submissions:-

1. M/s Synthetics and Chemicals is not producing SBR since July, 99 and there is a shortage of main input to the user industry causing hardship to user industry. There is already dumping of finished rubber goods from subject countries. The anti dumping duties, therefore, may be withdrawn.
2. The plant of M/s SCL is lying closed Since April, 1999. Despite the existence of anti dumping duties which establishes the fact that it is on account of other factors and not on account of dumping.
3. Since the Plant is closed for the entire POI, legally it is the duty and right of Designated Authority to take cognizance of the fact whether any injury can be caused to the domestic industry that does not produce despite the existence of anti dumping duties.
4. It should be not presumed that the domestic industry would get hurt when it factually does not exist. Assessment of injury is not an academic exercise but DA has to look into real business issues. There is no provision under anti dumping laws to take cognizance of restructuring plans of M/s SCL.

II. M/s Automotive Tyre Manufacturers Association has made the following submissions :-

1. Rule 23(3) indicates that the provisions of Rule 11 among other rules shall be applicable in case of a review. It is to determine the existence of injury to the domestic industry. As there is no domestic industry of SBR for 1500 and 1700series, therefore, the question of injury continuing or occurring if the duty is removed does not arise. There is no case for actual material injury, threat of

material injury and material retardation to the establishment of a domestic industry. ATMA, therefore, requests the authority to recommend the immediate withdrawal of the anti dumping duty on SBR 1500 and 1700 series.

2. In response to the disclosure statement it has been submitted that authority has shown more indulgence towards the domestic industry by giving them an opportunity to commence production by end of May, 2001 which was uncalled for as the domestic industry is required to be examined only with reference to the period of review i.e. 1.7.99 to 30.6.2000.

III. M/s Apar Ltd. and Apcotex Lattices Ltd. has made the following submissions:-

1. It is factually incorrect that M/s Apar Industries Ltd. and M/s Apcotex Lattices did not participate in the previous investigations. Since M/s SCL constituted more than required proposition, DA did not consider it appropriate to seek relevant information from the company.
2. In case DA undertakes to review the injury margin, then the dumping margin also requires to be reviewed.
3. The injury to domestic industry has rather intensified in the review period and there is a strong reason to increase the present duty levels.
4. With regard to SBR 1500 and 1700 interests, the strong and organized tyre industry in India is well aware of its own interests.
5. M/s Apar Ltd. and Apcotex Lattices participated in the final stage of hearing and also in the Preliminary stage.
6. We have provided costing information regarding imports from Poland and EU which clearly show that the profitability of the domestic industry has further deteriorated. The present investigations are a review of existing duty and, therefore, DA is not required to assess injury to the domestic industry in terms of performance of the domestic industry. DA is only required to merely re-determine injury margin.
7. With regard to increase in prices of the domestic industry, it is submitted that the costing information is on record with DA and which shows that the performance of the domestic industry has rather deteriorated.
8. M/s Apar Ltd. and M/s Apcotex Lattices have suffered injury on account of loss in profitability, price depression and undercutting, declining profit margins, piling up of stocks, sub-optimal capacity utilisation etc.
9. In response to the disclosure statement it has been reiterated that as provided under Section 9A(5), the Designated Authority is required to examine whether the discontinuation of the existing duty is likely to lead to continuation or recurrence of dumping and injury. The present investigation being a review in the event of re-determination of dumping, injury and causal link, Designated Authority is merely to re-determine the injury margin.

10. The duties may be recommended in \$ terms only.

IV) M/s Synthetics and Chemicals Ltd. (SCL) has made the following submissions:-

1. DA had come to the conclusion that the material injury to the domestic industry is from the imports from subject countries.
2. CEGAT upheld orders of DA vide its order dt. 2.2.00.
3. Withdrawal of anti dumping duty will lead to a situation wherein even after starting the production M/s SCL will not be able to sell at competitive prices resulting in stoppage of production leading to unemployment and loss of scarce foreign exchange on account of imports.
4. M/s SCL have filed an affidavit dt. 2.3.01 indicating a tolling arrangement with M/s Kolmar indicating that based on the situation then existing and subject to just exceptions they would be in a position to commence production by end of May, 2001. M/s SCL have also reported progress made in terms of their tolling arrangements acceptance by financial institutions/banks, receipt of support from UP Government and Labour Unions. The management has indicated that they recently faced problems which are beyond their control viz. three deaths amongst close relations of the management, an unfortunate fire in the factory, holidays in May-June month in the offices of the Government.
5. M/s SCL in response to disclosure statement have reiterated the fact that the injury has been caused to them by continued onslaught of dumping. They have further reiterated that theirs is an established industry with infrastructure and workforce in place and that under =Rule 11 the authority has to look at the injury to the established industry. M/s SCL have further indicated the developments that have taken place with M/s Kolmar Petrochemicals, Germany, regarding tie up for tolling arrangement and also with the financial institution, ICICI, who have agreed to the said arrangement in principal. They have indicated that they would not be able to sell at a competitive price and will face closure if the anti-dumping duty is withdrawn. M/s SCL have further reiterated that it needs to be demonstrated that closure was not at all related to dumping if the anti-dumping duty is withdrawn. M/s SCL have requested for personal hearing to substantiate the matter further.

V) M/s Rishiroop Polymers Pvt. Ltd. has made the following submissions:-

1. Since at the time of original findings M/s Apar Ltd. and M/s Apcotex Lattices Ltd. did not give any data pertaining to SBR1900 series and did not submit themselves for injury assessment, no findings on injury has, therefore, been recorded or established at that point of time and, therefore, there is no justification for continuance of anti dumping duty on SBR 1900 series also. The intention to restart production by M/s SCL has no relevance as it pertains

to post POI period. The original petition filed by M/s SCL has confined only to 4002.19 only.

2. The authority has not forwarded any data for the analysis of injury to the surviving producers of 1900 series.
3. The production of M/s Apar Ltd. and M/s Apcotex Lattices Ltd. in review POI is much higher than 97-98. Their audited accounts show that Apcotex have not made losses.
4. M/s Apcotex Lattices Ltd. has argued that authority is not required to assess injury in the review proceedings as per Section 9A(5). We do not agree with their views and should refer to Rule 23 (3) which clearly indicate that Rule 11 has to be applied to all review cases.
5. In response to the disclosure statement it has been indicated that during the POI since imports of SBR from KKPC were zero, therefore, no causal link can be established for any injury finding.

VI) All India Rubber Industries Association has made the following submissions:-

1. The domestic supplies of SBR 1900 series is to an extent of 25% to 30% only of the annual requirement of the footwear industry.
2. The landed cost without anti dumping duty would also be higher than the domestic price thereby leading to no injury to the local producers.

EXAMINATION BY THE AUTHORITY

As regards M/s SCL's submission regarding the injury caused to them on account of dumping and that subsequent to their tie up with M/s Kolmar Petrochemicals, Germany, they would not be able to sell at competitive price, the authority notes that despite the existence of anti-dumping duty imposed after the initial investigations were notified on 21.1.99, M/s SCL has not been able to start production in its factory. Such a long spell of closure can certainly not be regarded as a temporary phenomenon. In case after going into commercial production, M/s SCL feels injury on account of dumping they may approach the authority for remedial action as per anti-dumping rules. However, the long spell of closure of the factory cannot be attributed to the phenomenon of dumping alone since adequate protection by way of anti-dumping duty on account of dumping has been provided to M/s SCL which has not led to any production of SBR.

As regards the SBR 1900 series, the following trends for production, capacity utilisation, domestic sales, Net Sales Realisation are noted for M/s Apar Limited and M/s Apcotex Lattices :-

- i. The production and domestic sales of M/s Apar Ltd. and M/s Apcotex Lattices Ltd. have increased in the POI as compared to 1998-99 as capacity of both these producers has increased.
- ii. The capacity utilisation for M/s Apar Ltd. has decreased in POI as compared to 1998-99 whereas that of Apcotex Lattices Ltd. has increased in POI as compared to 1998-99. The capacity utilisation during POI is 58.32%.
- iii. The selling price of both the producers at **Rs per kg. and *** Rs per kg. in POI continues to be lower than the Non-Injurious Price (NIP) as determined for these producers. The depressed Net Sales Realisation (NSR) of both the producers on account of low landed values from subject countries are result of price undercutting by dumped subject goods and have consequently led to financial loss to these two producers in the POI.
- iv. The removal of anti-dumping duties on SBR 1900 series from the subject countries would lead to material injury on account of price undercutting to the two producers.
- v. The Authority also notes that price depression in NSR has not been on account of demand of SBR 1900 which has increased from 7764 MT in 97 – 98 to 10674 MT in 98 – 99 and 15082 MT in POI .

LANDED VALUE

The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

The authority notes that the review has been initiated on the representation by the importer/user industry regarding non production of SBR 1500 and 1700 series by M/s Synthetics and chemicals Ltd. (SCL) in India. The authority has noted the contention of the user industry and has accordingly, considered the interest of the user industry vis-à-vis the 1500 and 1700 series of the subject goods which were not produced during the period of review. The authority, however, notes that the SBR 1900 series was still being produced in the country during the review period and is also still being produced. The authority has noted the argument made by various importers/user industries regarding the demand supply gap, the quality of product being produced by M/s Apar Ltd and M/s Apcotex Lattices, unjust enrichment of one producer, and closure of various manufacturing units as reported by the Rubber Board. The authority has also noted the submissions made regarding the prevailing price levels of the SBR 1900 series in India.

The authority recognizes that though the continuation of imposition of anti-dumping duty might affect the price levels of the products manufactured using the SBR 1900 series and consequently might have some influence relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by the anti-dumping measures particularly when the objective of the levy of the anti-dumping duty is only to redress the injury caused due to dumping to the domestic industry and not to provide any generic protection to them. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices and would prevent the decline of the domestic industry and also help maintain availability of wider choice to the consumers of SBR 1900 series. Continuance of anti-dumping measures on SBR 1900 series would not restrict imports from the subject countries in any way and, therefore, would also not affect the availability of SBR 1900 series to the consumers.

FINAL FINDINGS

The authority concludes that:

- a. There has been no domestic production for the SBR 1500 and 1700 series and consequently there has been no domestic industry for these series during the period of review. Also the sole producer of these two series i.e. M/s SCL is still not in production. However, for the other series i.e. SBR 1900, there are two producers viz. M/s Apar Ltd. and M/s Apcotex Lattices Ltd. who for SBR 1900 series constitute the domestic industry as indicted in foregoing para. The authority has evaluated injury and its continuance of SBR 1900 series to these two domestic producers.
- b. M/s SCL has not produced in the Period of Investigation of the present review. There is, therefore, no production of SBR 1500 and 1700 series in the country and accordingly no domestic producers and domestic industry.
- c. None of the exporters/producers from the subject countries have responded on the dumping of SBR 1900 series. The dumping margin as already determined in Final Findings are thereby reconfirmed keeping in view the purpose and scope of the present review.
- d. M/s Apar Ltd. and M/s Apcotex Lattices the domestic industry for SBR 1900 series during the review period of investigation have faced injury due to continued dumping of SBR 1900 series.
- e. The authority recognizes the need for continuation of imposition of definitive anti dumping duty on all imports of SBR falling under Chapter 40, customs Head 4002.19 and Chapter 39 Customs Head 3903.90 originating in or exported from the subject countries as already notified vide customs notification no. 73/2000-Customs dt. 22.5.2000.

- f. The landed value on imports for the purposes shall be assessable value as determined by the customs under the custom Head 1962 and all duties of customs except duty levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.
- g. Accordingly it is proposed that anti-dumping duties as set out in Customs Notification NO. 73/2000-Customs dt. 22.5.2000 be continued to be imposed on SBR 1900 series only while the anti dumping duties as set out in this notification on SBR 1500 and 1700 series are discontinued.

Accordingly, it is proposed that anti-dumping duties as set out below be imposed by the Central Government on all imports of all grades of SBR 1900 Series viz. high styrene resin masterbatch originating in or exported from Japan, Korea, USA, Turkey and Taiwan falling under Chapter 39 and 40, Customs sub-heading 3903.90 and 4002.19 of the Customs Tariff Act, respectively.

Sl.No.	Country	Name of the Producer or Exporter	Grade	Amount (US \$ per metric tonne)
1.	United States of America	All Exporters	1900 Series	189.89
2.	Taiwan	Taiwan Synthetic Rubber Corporation	1900 Series	90.00
		Others	1900 Series	90.00
3.	Turkey	Petkim Petrokimya	1900 Series	272.99
		Others	1900 Series	272.99
4.	Korea	Korea Kumho	1900 Series	204.00
		Other Exporters	1900 Series	204.00
5.	Japan	JSR Corporation	1900 Series	156.93
		Others	1900 Series	156.93

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

L V SAPTHARISHI
Designated Authority and Additional Secretary.