

MINISTRY OF COMMERCE

New Delhi, the 2nd June, 1999

FINAL FINDINGS

Subject: Anti-dumping investigation concerning import of Styrene Butadiene Rubber from Japan, Korea RP, Turkey, Taiwan, USA, Germany and France - Final Findings.

No. 30/1/97-ADD.- 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 subsequent to the preliminary findings:
 - a. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide notification dated the 21.01.99 with regard to anti-dumping investigations concerning import of Styrene Butadiene Rubber (SBR) from Japan, Korea RP, Turkey, Taiwan, USA, Germany and France and requested the interested parties to make their views known in writing within forty days from the date of its publication;
 - b. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter;
 - c. The Authority also forwarded a copy of the preliminary findings to the Embassy of the Japan, Korea RP, Turkey, Taiwan, USA, Germany and France in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views, on the preliminary findings;
 - d. The Authority had provided an opportunity to all interested parties to present their views orally on 10.11.1998 before the preliminary findings notification was issued. After the preliminary findings notification, the Authority provided an opportunity to exporters on 25.2.99 and to petitioner, importers and other interested parties, on 26.2.99 to present their views orally. All parties presenting views orally 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 offer rebuttals, if any ;

- e. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted and arguments made by various interested parties. All parties who made requests for inspection, in writing, were allowed to inspect the public file;
- f. Arguments raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties have been appropriately dealt with in the preliminary findings and/or these findings;
- g. In accordance with Rule 16 of the Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on same have been duly considered in these findings;
- h. The Authority had sought extension from Government by two months to complete the investigation, which was allowed by the Central Government. The investigation has been completed within the extended period.
- i. * * *In this notification represents information furnished by an interested party on confidential basis and so considered by the-Authority under the Rules.

B. INITIATION OF INVESTIGATION:

2. The Authority issued a Public notice dated 7th April,1998, published in the Gazette of India, Extra Ordinary, initiating anti-dumping investigations concerning imports of SBR classified under custom code 4002.19 of schedule I of the Customs Tariff Act 1975 originating in or exported from Japan, Korea RP, Turkey, Taiwan, USA, Germany and France.

Argument by Importer

3. The petitioner had failed to provide evidence on normal value and relied on many presumptions and assumptions Application submitted by the petitioner was deficient since there was no evidence of normal value of SBR in respect of Korea RP and petitioner had failed to produce prima-facie evidence of dumping from Korea RP. The Authority had initiated the investigation without examining the accuracy and adequacy of the evidence provided, to the Authority by petitioner. Hence the initiation of the investigation is void ab-initio.

Examination by Authority:

4. It is evident from the petition filed by the petitioner that information on normal value and export price were provided in respect of all countries. The basis of calculation of such value/price were also indicated in the petition. The petitioner is

also entitled to rely upon the secondary information which are publically available. The rules also permit the construction of normal value and export price in the absence of exact information. Therefore, during the course of investigation, all interested parties are provided with opportunities to comment upon the information provided by petitioner which are duly considered by Authority.

It is incorrect to say that Authority had initiated the investigation without examining the accuracy and adequacy of information. In the initiation notification, the Authority had clearly provided the necessary information on Like Articles, Domestic Industry, Dumping, Injury and Causal link. It is also incorrect to say that petitioner had failed to provide prima-facie evidence on dumping. The petitioner had indicated in the petition as to how the normal value , export price and dumping margin had been claimed. Since the petitioner had furnished the necessary information to initiate the investigation, the Authority on being satisfied, had initiated the investigation in accordance with Rules and therefore, the Authority hold that investigation initiated is valid and is not void ab-initio.

C. PRODUCT UNDER CONSIDERATION:

5. Product involved in the present investigation is Styrene Butadiene Rubber (SBR) originating in or exported from the subject countries classified under custom sub heading 4002.19 of the Custom Tariff Act, which has been explained in para 5 of the preliminary findings dated 21st January, 1999. The Authority had, inter-alia held at para 5 of the preliminary findings that product under consideration is SBR of 1500 series, 1700 series and 1900 series under Customs sub heading 4002.19 of the Custom Tariff Act.

Argument by petitioner

6. (i) SBR 1900 series is also being imported under chapter 39 of the Customs Tariff and consequently the recommendation of the Authority should cover not only chapter 40 but also chapter 39, entry No. 3903.90(polymers of styrene in primary forms - other). Once the product has been identified as SBR, the and-dumping duty is to be levied on all the imports of the product irrespective of custom code under which it is imported. The scope of the product for imposition of the duty needs to be modified. The petitioner has alleged that high Styrene Rubber of 1900 series had been imported under the trade name of KHS 68 under the Custom Code Chapter 39 as well as under chapter 40 from Korea RP.

Arument by Importer & Exporter

6. (ii) This submission of the petitioner is erroneous. Chapter 39 of the Custom Tariff specifically provides that chapter 39 does not cover Synthetic Rubber or articles thereof as defined in chapter 40. Consequently if SBR imported from these countries does not satisfy the definition of synthetic rubber (vide note 4 to chapter 40) it will cease to be synthetic rubber and may be treated as articles of plastics. SBR 1900 series, as the name itself suggests are a synthetic rubber and not an article of plastic. The exporter from Korea RP has also argued that KOSYN KHS 68 is a polymer resin falls under chapter 39 as it contains 68% Styrene and about 32% of Butadiene.

Examination by Authority

7. The Authority observes that, in the preliminary findings it was inter-alia held that product under consideration in the present investigation is Styrene Butadiene Rubber (SBR) originating in or exported from the subject countries classified under Custom sub heading 4002.19 of the Custom Tariff Act which was explained at para S of the preliminary findings dated 21st January, 1999. The Authority had inter-alia held that product under consideration is SBR of 1500 series, 1700 series and 1900 series under Custom -sub-heading 4002.19 of custom Tariff Act. None of the interested parties has raised any argument in this regard and therefore the Authority confirms its preliminary findings in this regard.

The Authority notes that petitioner is claiming that SBR is also being cleared under custom chapter 39 entry no. 3903.90 (polymers of styrene in primary forms) and therefore the anti-dumping duty should be imposed under this head also. On the contrary it is argued by exporter and importer that chapter 39 relates to plastic and does not cover SBR and therefore duty should not be imposed on products covered under chapter 39 entry no. 3903.90. The Authority observes that chapter 39 covers "Plastic & Articles Thereof" whereas chapter 40 covers "Rubber & Article Thereof". Styrene Butadiene Rubber as the name suggest is a synthetic rubber and is covered under chapter 40. It is also observed that as per note no. 2(h) of chapter 39, the synthetic rubbers or articles thereof which are covered under chapter 40, do not fall under chapter 39. It is also observed that while giving the import statistics, the petitioner had submitted information in respect of custom heading No. 4002.19 only. While submitting the evidence that SBR 1900 series is also being imported under chapter 39, the Authority observes that the item cleared under chapter 39 is "Elastomer Resin KHS 68" and thus it is not under the nomenclature of "Synthetic Rubber". In view of this, the Authority does not find justification to cover item falling under sub-heading 3903.90 for the purpose of imposing antidumping duty.

However, the Authority agrees with the argument of the petitioner to the extent that product under consideration is Synthetic Butadiene Rubber of specified series as stated, irrespective of custom heading. The Authority thus holds that whereas it is not

justified to cover all items falling under the sub heading 3903.90, for the purpose of imposing anti-dumping duty in present case the anti-dumping duty however is payable on Styrene Butadiene Rubber of specified series as stated, even if it is sought to be cleared under any other heading of the Custom Tariff Act. The Custom Authorities are at liberty and expected to classify the goods correctly, if the goods offered for clearance are not classified correctly.

D. LIKE ARTICLE:

8. The Authority notes that no argument has been made by any interested party in this regard after the preliminary findings notification was issued. Therefore the Authority confirms its preliminary findings in this regard.

E. DOMESTIC INDUSTRY:

9. The Authority notes that no argument has been made by any interested party in this regard after the preliminary findings notification was issued and therefore the Authority confirms the preliminary findings in this regard.

F. DUMPING: .

10. The rules relating to dumping have already been discussed in preliminary findings. The submissions made by exporter subsequent to preliminary findings and its examination by Authority is as under :-

(i) Country-USA

Exporter -- Ameripol Synpol Corpn.

The exporter has submitted that grade 8401 falls under 1700 series but has maintained that this is not a like article to the product under consideration and they are sole producer of this grade in the world.

They have not yet submitted the costing information as observed in preliminary findings and therefore the information submitted by them on normal value can not be accepted. Therefore the Authority confirms the dumping margin of 30.55% of export price as determined in the preliminary findings.

(ii) Country : France

Exporter: Bayer

They have not submitted any further information relating to calculation of dumping margin and therefore the Authority confirms the dumping margin of 28.20% of export price as determined in the preliminary findings.

(iii) Country: Germany

Exporter - BSL

They have not submitted any further information relating to calculation of dumping margin and therefore the Authority confirms the dumping margin of 24.86% of export price as determined in the preliminary findings.

(iv) Country - Taiwan

Exporter-Taiwan Synthetic Rubber Corpn.

The exporter has not submitted any further information in respect of dumping margin calculated earlier in the preliminary findings. Further they have neither contested the methodology nor the calculation of dumping margin as determined in the preliminary findings. Therefore the Authority confirms the dumping margin at 6.68% of export price in respect of SBR 1502 grade and at 6.07% of export price in respect of SBR 1712 grade as determined in the preliminary findings.

(v) Country- Turkey

Exporter- Petkim holding AS

The exporter was explained the methodology of calculating the dumping margin and the figures used for the calculation at their request when they attended the public hearing on 25/2/99. Thereafter, the exporter has revised its claim on domestic price and claimed a lower dumping margin. It is claimed that inflation rate in Turkey is high which requires a price adjustment amounting upto 5-8% monthly. It is further claimed that domestic price declared in response to the questionnaire were the average of all applied prices including interest rate for credit facilities whereas interest rate in export price declared were excluded. Moreover the exports to Indian Market were made at introductory prices.

They have revised the domestic price claiming the effect of inflation and have requested that due to this their dumping margin be revised to 12.47% in respect of S 1502 grade from 28.82% determined earlier in preliminary findings and dumping margin be revised to 9% in respect of S 1712 grade from 13.66% determined earlier in preliminary findings. However no evidence has been produced to substantiate their

claims. After the disclosure statement was issued, they have further revised their claims and requested that their dumping margin be revised to 14.06% in respect of S 1502 grade and dumping margin be revised to 6.65% in respect of 1712 grades.

Examination by Authority:

The Authority observes that the exporter has revised the domestic prices as explained above after the preliminary findings were notified and after the Authority had held oral hearing with exporters. They have also revised their claim on domestic prices subsequent to issue of disclosure statement. Even during the oral hearing the exporter did not disclose that they shall be revising their domestic price for the purpose of determining the normal value. The Authority thus notes that revised information has been submitted at such a late stage that other interested parties have not got a reasonable opportunity to comment on such information. Further, the revised information has not been substantiated with evidence. Considering that the information has not been submitted in time and that they are unsubstantiated, the Authority did not consider it appropriate to verify the information and is constrained to ignore the revised information submitted due to reasons explained above. In view of this the -Authority confirms the dumping margin at 28.82% of export price in respect of SBR 1502 grade and of 13.66% of export price in respect of S 1712 grade, as determined in the preliminary findings.

(vi) Country: Korea

Exporter - Korea Kumho Petrochemicals Ltd.

The exporter was explained the methodology and figures used in calculating the dumping margin, as determined in the preliminary findings, during the verification which has not been disputed. In their subsequent submissions they have requested to allow the claims on account of storage, technical services, promotional travelling expenses, bad debts expenses and advertisement which were not allowed earlier while determining the normal value. During the verification, they have made claims on account of R & D expenses and donations while determining normal value and also stated that they shall be making a claim on account of " interest", the details of which are not received so far. They have revised the amount per tonne in respect of certain claims which were allowed earlier. On the basis of their revised claim they have claimed de-minimus dumping margin.

Examination by Authority:

Normal Value

The normal value is calculated on the basis of weighted average of domestic price. The Authority allows the adjustment on account of discount/credit interest, packing, inland freight and taxes as verified during the course of verification. The adjustment claimed on account of technical services, promotional travelling expenses, R&D expenses and advertisement is not allowed as it is not substantiated how the benefit of these expenses are being restricted to domestic market only. The adjustment on account of storage . is not allowed as it is a post manufacturing expense. The adjustment on account of bad debt expenses are now allowed as the incidence of these expenses are not known at the time of sales. The adjustment on account of donation is not allowed, as it is a non-operational expense. The adjustment on account of handling is not allowed as it was not substantiated during the verification. Thus the normal value is determined at US\$ *** PMT in respect of SBR 1502 and at US\$ *** in respect of SBR 1712 grade.

Export prices:

The export price is calculated on the basis of weighted average of export sales to India. The adjustment claimed on account of discount/commission, packing, inland freight, inspection fee, overseas freight and overseas insurance are allowed as verified during the verification. The export price is determined at US\$ *** PMT in respect of SBR 1502 grade and at US\$ *** PMT in respect of SBR 1712 grade. The dumping margin is calculated at US\$ *** PMT in respect of SBR 1502 grade which is 16.82 % of export price and at US\$ * * * PMT in respect of SBR 1712 grade which is 10.94 % of export price.

The authorised representative of exporter in India had requested to lift the confidentiality of information. However the exporter *has* still requested to maintain the confidentiality. As the exporter has not lifted the confidentiality, the Authority has considered it appropriate to treat information as confidential wherever these were claimed as confidential.

(vii) Country: Japan

Exporter: JSR Corpn.

The exporter was explained the methodology and figures used in calculating the dumping margin, as determined in the preliminary findings, during the verification, which has not been disputed. In their subsequent submission, they have requested to allow their claim on account of extra grades produced for domestic market, which was earlier disallowed by Authority in the preliminary findings. During verification, they also claimed an adjustment on account of the fact that whereas in the export sales, the sales are through agent to whom commission is payable but in the domestic market

sales are made direct to customers and hence there is a difference in the level of trade. It is claimed that commission paid in the case of export sales be equally allowed in the case of domestic sales also. They have claimed de-minimus dumping margin.

Examination by Authority

Normal Value

The normal value is calculated on the weighted average price in the domestic market. The adjustment on account of inland freight, insurance and interest are allowed as verified during the verification. The claim on account of storage cost is not allowed as it is post-manufacturing expense. The claim on account of extra grades produced for *the* domestic market is based on estimates and is not actually incurred by the exporter and hence not allowed. The claim was -not substantiated with evidence during verification also. The adjustment on account of commission due to difference in the level of trade is not allowed *as it* is on the basis of estimates and is not actually incurred by the exporter.

Export Price:

The export price is calculated on the basis of weighted average price. The claim on account of commission to Japanese Trading House, Indian agents, Inland freight, insurance, overseas freight and insurance, interest and commission are allowed as verified during the verifications. The dumping margin is determined at US\$ *** 1 PMT in respect of 1500 grade which is 3.36 % of export price, is determined at US\$ *** PMT in respect of 1502 grade which is 17.32% of export price and is determined at US\$ *** PMT in respect of S 1712 grade which is 7.64 % of export price.

11. Dumping margin in respect of non-cooperating exporters and other issues on dumping have been dealt with in the subsequent paragraphs:

Argument by petitioner

12. The Authority has recommended uniform duty on all the exporters including the non-cooperating exporters from a country based on the responses and data submitted by one or two exporters only. Some of the exporters might be dumping with higher dumping margin as claimed by the petitioner. Therefore anti-dumping duty equivalent to the dumping margin established by the petitioner in their petition be imposed on all exporters who have not responded or are non-co operative.

Examination by Authority

13. In respect of non co-operative exporters from subject countries who has not responded to questionnaire the Authority had determined dumping margin at the highest dumping margin determined for the co-operative exporters from each country in the preliminary findings.: Thus the dumping margin as percentage of ex-factory export price for non-cooperating exporters from Taiwan was determined at 6.68%, from Turkey 28.82%, from Korea at 11.66% and from Japan at 17.32%.

The Authority notes that not only the petitioner but even the co-operating exporters are of the opinion that the non-cooperating exporters should not be benefited in any way in view of their act of non-co-operation. The Authority also holds the same view and therefore determines the dumping margin as claimed by petitioner in their petition in respect of non-cooperating exporters. Thus the dumping margin is determined at 30.55 %, 28.20%, 24.86%, 9.21%, 77.6%, 18.78 %, 90.79 % respectively for non-cooperating exporters from USA, France, Germany, Taiwan, Turkey, Korea RP, and Japan. However anti-dumping duty is levied as per law which provides for the lower of the dumping margin and injury margin.

Argument by petitioner

14. The adjustment claimed by exporter in determining the dumping margin appears to be high. Korean exporter and its local agent are trying to mislead the Authority by claiming baseless and incorrect adjustment. The Authority has correctly disallowed certain adjustment in preliminary findings. However claim of exporter with regard to packing and other adjustment allowed by Authority does not appear to be based on the actual expenses incurred by company.

Examination by Authority:

15. The argument of petitioner is generic in nature and is not substantiated with facts and evidence. The Authority had verified the information in respect of exporter from Japan and Korea RP, to the extent considered necessary. The examination of claims have already been discussed above. The Authority holds that allowance of claim as discussed in relevant x paragraphs is justified as they are based on verification of information by Authority.

Argument by petitioner

16. In a recent decision, US Govt. have imposed anti-dumping duty on SBR producers from South Korea, Brazil & Mexico. The quantum of duty imposed is at 119% of FOB value for certain producers from Korea which indicates that the quantum of anti-dumping duty being imposed needs to be substantially increased as there can not be

any significant difference while computing prices by the two anti-dumping, Authorities.

Examination by Authority.

17. The petitioner has not substantiated its claim. The Authority has already explained its methodology for calculation of dumping margin which is not contested and is in accordance with Anti-dumping Rules. The Authority does not consider it appropriate to compare the dumping margin in respect of two different countries in the absence of necessary details regarding the period of investigation, product under consideration, normal value, export price etc.

18. Based on above the dumping margins are determined as under :-

Country	Exporter	Grade	Dumping Margin as % of export price
USA	All Exporters	All Grade	30.55
France	All Exporters	All Grade	28.20
German	All Exporters	All Grade	24.86
Taiwan	(i) Taiwan Synthetic Rubber Corpn.	S 1502 S 1712	6.68 6.07
	(ii) Other Exporters	All Grade	9.21
Turkey	(i) Petkin Petrokinya	S 1502 S 1712	28.82 13.66
	(ii) Other Exporters	All Grades	77.60
Korea R.P.	(i) Korea Kumho	S 1502 S 1712	16.82 10.94
	(ii) Other Exporters	All Grades	18.78
Japan	(i) JSR Corpn.	S 1500	3.36
		S 1502	17.32
		S 1712	7.64
	(ii) Other Exporters	All Grades	90.79

Note : None of the co-operative export Shave submitted information in respect of 1900 series SBR. Hence for 1900 series SBR, they shall fall under the "other exporter" category.

G. INJURY AND CAUSAL LINK

19. The rules relating to injury and causal link has been discussed in the preliminary findings notification. Various factors, which are causing injury and the establishment of causal link has also been discussed in preliminary findings.

20. The following arguments have been raised by importers/exporters/other interested parties.

- i. Determination of issue as to whether imports from subject countries showed significant increase has to be made not with reference to 95-96 which was not a normal year but with reference to a normal year like 94-95. With reference to 94-95, the imports have shown a marginal decline and thus there is no significant increase either in absolute terms or in relative terms to domestic production or consumption with reference to 94-95. Hence there is no material injury.
- ii. The increase in closing stock on 31.8.97 with reference to 31.3.95 can not at all show material injury. The closing stock is the stock held on a particular day and can be subject to wide fluctuation.
- iii. The decline of about 4% in market share of the domestic industry during the period of investigation with reference to 94-95 is entirely caused by the imports from other countries. However if the market share during the period of investigation is analysed with reference to 95-96, the Petitioner Company had lost a market share of 7.7%. However 5.14% of the said loss was because of the increase in market share of imports from other countries and only 2.56% of the decline in market share can, if at all, be attributable to the imports from the subject countries.
- iv. The fall in the domestic price of SBR are due to fall in the raw material prices, lowering of custom duties, lowering of excise duty. Thus the conclusion of the Authority that reduction in price had caused material injury is unsustainable. The losses in April-August 97 are not attributable to the allegedly dumped imports.
- v. The findings of the Authority on causal link is incorrect due to the fact that there is no decline in market share to domestic industry if evaluated with reference to 94-95 as the base year. If 95-96, is taken as the base less than 2% of the fall in the market share could only be attributed to the import from five countries. Similarly the alleged price under cutting in 97-98 has been demonstrated to have been caused by the reduction in custom duties and the reduction in excise duty. In view of this, there is neither a material injury to the domestic industry nor causal link between the alleged dumping and material injury has been established.
- vi. The factors, which are actually causing injury to the petitioner, are not alleged dumped imports. The factors, which are causing injury to petitioner are outdated and obsolete plant, improper location of the plant site, improper arrangement for procurement of raw material and inventory management, inadequate and improper financial management.
- vii. Injury determination should be considered separately for each like product. Three type of SBR has been referred to in the investigation. However cumulative injury determination has been made for all three type of SBR.

- viii. The other producers of SBR who are operating smaller capacity plants are running efficiently and profitability. Petitioner is not managing their affairs efficiently.
- ix. The petitioner has not suffered injury due to the following facts: -
- The imports have decreased marginally w.r.t. 1994-95.
 - Decline in the market share to domestic industry during the period of investigation is caused by imports from other countries.
 - Installed capacity of 41000 MT p.a. of the petitioner has never been achieved in the past by the petitioner.
 - There is a stable production and capacity utilisation.
 - There is a higher marginal-quantum of sales in period of investigation as compared to 1995-96. Sales, demand and market share of petitioner does not lead to injury.
 - Other producers are running efficiently.
 - Inventory is not much.
 - Reduction in employment is not substantial.
 - There is no decline in profit if profit and loss figures of petitioner are corrected.
 - Petitioner has not been able to commission the view plant for the last five years. For last six months their plant is working very erratically and supplies are disrupted.
 - Causal link between dumping & injury is not established.

Examination by Authority

21. The Authority notes that many arguments have been made showing that a particular parameter of injury does not show injury to domestic industry and hence the domestic industry has not suffered injury. The Authority has already held the view in a number of anti-dumping notifications issued earlier and also notes in the instant case that all injury parameters relating to domestic industry need not indicate injury to the domestic industry. In accordance with the Anti-dumping rules, the examination of the impact of the dumped import on the domestic industry includes an evaluation of all-relevant economic factors and indices having a bearing on the state of industry. The Authority had assessed the injury cumulatively taking into account all the relevant economic parameters as discussed in the preliminary findings. In the preliminary findings the Authority while establishing the causal link, had stated that increase in quantum of import from subject countries had resulted in decline of the market share of the petitioner and were undercutting prices of domestic product forcing the domestic industry to sell below a reasonable selling price. Resultantly the domestic industry was not in a position to recover a reasonable selling price. Thus the preliminary findings of the Authority is not based on any single parameter but is based on the cumulative assessment of injury.

22. It has been argued that 95-96 was an abnormal year and therefore should not be taken a base year for determining the injury. The Authority, however, assess the injury over the years and it may be incorrect to conclude that injury be determined keeping any particular year as a base.

23. The Authority had observed in the preliminary findings that domestic industry had lost market share due to alleged imports. The fact that domestic industry had lost market share remains undisputed although argument have been made that such loss of market share is not significant.

24. As already determined in the preliminary findings, the domestic industry has suffered injury due to price undercutting from the alleged dumped imports and consequently domestic industry was not able to recover a reasonable selling price. While it is appreciated that certain elements of cost of production and selling price of SBR has declined in view of reduction in raw material prices, lowering of custom duty and excise duty, the Authority however notes that the decline in selling price of domestic industry, particularly towards the end of investigation period was more than the reduction attributable to the decline in cost and therefore there was significant deterioration of profitability of the domestic industry. The decline in the selling price of the domestic industry is a direct consequence of reduction in export price from the subject countries and thus there was an undercutting of prices of domestic industry. Certain Arguments have been made regarding reasons for the reduction in export price. However,, the Authority, notes that it is not required to examine the reasons behind reduction in export price. Dumping, injury and causal links are the subject matter of investigation.

25 In accordance with the anti-dumping rules, anti-dumping duty inter-alia, can be levied to the extent it is sufficient to remove injury to the domestic. injury. Therefore in case, the alleged dumped imports are not under cutting the prices of domestic industry and such imports are taking place at a price which is not injurious to domestic industry, the comparison of reasonable selling price and landed value (injury margin) will not show any injury and Authority will not recommend imposition of anti-dumping duty. For instance, in this case the exports from Germany and France are taking place at a price which is higher than the reasonable selling price and therefore Authority had not found justification to impose duties. In the case of other countries, wherever duties have been recommended, the Authority had found that exports are taking place at a price which is below the reasonable selling price and therefore injury has been quantified. The existence of positive injury margin itself indicate that the domestic industry is not able to recover reasonable selling price and thus there is price-under cutting.

26. The Authority notes that arguments have been made that there are other factors which are causing injury to the domestic industry such as outdated and obsolete plant, improper plant location, improper raw material/inventory management, inadequate and improper financial management etc. The Authority notes that none of the factors have been quantified in terms of their impact on injury to the domestic industry. As already indicated in the preliminary findings, the Authority while ascertaining the extent of anti-dumping duty necessary to remove injury to domestic industry, relied upon reasonable selling price of SBR in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry. In this way, the inefficiencies, if any, of the domestic industry are not allowed to be passed on to the consumers by the Authority.

27. With regard to separate assessment of injury for each like Article, the Authority has already observed in the preliminary findings that though the different types of SBR have different characteristics, usage etc. there are number of processes which use common equipment and facilities, In view of the fact that production processes as well as the production capacities overlap each other in varying proportions, it would neither be appropriate nor feasible to assess the injury to domestic industry for each individual type of SBR. The Authority, therefore in accordance with para 6 of Annexure II to the rules, consider it appropriate to assess the injury for all types of SBR cumulatively.

28. It is argued that other producer of SBR who are operating smaller capacity plant are running efficiently and earning profit and petitioner is not managing their affairs efficiently. The Authority notes, that petitioner satisfied the definition of domestic industry and therefore Authority has determined the injury margin without taking the cost pattern of other small producers. These small producers had neither supported the petition at the time of filing nor submitted detailed costing information during the course of investigation. It may however be reiterated that even otherwise, the assessment of injury by the Authority is in accordance with the anti-dumping rules.

29. In view of above, the Authority confirms its preliminary findings on injury and causal link.

H. OTHER ISSUES:

Argument by petitioner

30. No anti-dumping duty is recommended in respect of certain grades/countries despite the existence of dumping margin. The Authority should impose anti-dumping duty wherever the dumping margin have been determined. For instance dumping

Margin have been established for SBR 1700 series in case of imports from Taiwan and Turkey but no anti-dumping duty has been recommended. Similarly no anti-dumping duty has been recommended for imports from USA in respect of 1500 series. Anti-dumping duty be imposed wherever dumping margins have been determined but duty have not been recommended.

Examination by Authority

31. As per Anti-dumping rules, anti-dumping duties shall be levied not exceeding the margin of dumping and also that the duty shall be adequate to remove the injury to the domestic industry. Thus the quantum of anti-dumping duty is determined at the lower of dumping margin or the injury margin. The Authority had determined the dumping margin and injury margin in respect of exporters/countries and anti-dumping duties were recommended at the lower of dumping margin and injury margin.

The Authority had found, that in certain cases as cited by the petitioner above, the injury margin were negative implying that the landed value from such countries were non-injurious to the petitioner and therefore the Authority did not find justification to recommend the imposition of anti-dumping duty even though it was found that such countries/exporters are dumping.

Argument by petitioner

32. Quantum of anti-dumping duty is lower and is insufficient to remove the injury to the domestic industry. The base price adopted by Authority is below the cost of production as submitted by petitioner.

Examination by Authority

33. The argument of the petitioner is generic in nature and ,is not substantiated with facts. As per anti-dumping Rules, the Authority recommends the imposition of anti-dumping duty at the lower of dumping margin and injury margin and the Authority has adopted the same procedure in the instant case. The Authority has thus recommended the duties which are, sufficient to remove the injury to the domestic industry. Regarding the argument that the base price adopted by Authority in below the cost of production submitted by the petitioner, the Authority had, while ascertaining the extent of anti-dumping duty necessary to remove the injury to domestic industry, relied-upon reasonable selling price of SBR in India, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry on the basis of generally accepted accounting principles. The Authority has thus determined the reasonable selling price correctly.

Argument by petitioner

34. The quantum of duty lacks the co-relation with the import price of the product. The Antidumping duty has to be more in those cases where the import price is less so that the injury to domestic industry can be removed. However lower duty has been recommended where there is a lower price.

Examination by Authority

35. The extent of anti-dumping duty is determined at the lower of dumping margin and injury margin from a particular country/exporter. The quantum of duty thus can not have co-relation with the import price of the product where different countries/exporters are involved. Thus the argument of petitioner is not in accordance with anti-dumping Rules.

Argument by petitioner

36. The Authority should invoke the provision of retroactivity clause and impose antidumping duty from the date of initiation of the investigation, as there is a history of dumping in the instant case.

Examination by Authority

37. The Authority does not find it necessary to invoke the provision of retroactivity in the instant case.

Argument by petitioner

38. Anti-dumping duty be levied on SBR exports coming from various countries of EU as EU is a custom/trade union and there is no trade barrier among those nations. After adoption of single currency from this year; it is practically equivalent to single nation with free movement of goods and service,

Examination by Authority

39. The Authority observes that the petitioner had submitted the information on normal value, export price etc. from specified countries against which the Authority initiated investigation. The Authority does not consider it appropriate to extend the imposition of antidumping duty to various countries of EU at this stage as the other countries of EU were not provided an opportunity to defend the dumping allegation against them. The Authority notes that imposition of anti-duty on all EU countries at

this stage would amount to extending the scope of investigation, which is not in accordance with the Rules in the instant case.

Argument by petitioner

40. Cost of production of 1900 series is always more than the cost of 1500 series. In some cases the base price recommended for 1900 series is less than the base price recommended for 1500 series which needs to be re-calculated.

Examination by Authority

41. The Authority notes that the argument of the petitioner is not in accordance with the Antidumping rules. The amount recommended at Col. No. 5 of para 22 of preliminary findings have been determined keeping in view the export price from a country/exporter, dumping margin and injury margin etc. Therefore; the Authority observes that the amounts as referred by petitioner in their above argument has been correctly calculated and need not be re-calculated.

Argument by petitioner

42. Anti-dumping duty be imposed on export of product found dumped by an exporter or a manufacturer including exports by its joint ventures, subsidiaries or related exporters irrespective of the country from which the product is originating manufactured or exported.

Examination by Authority

43. The anti-dumping investigation are exporter/country specific and therefore the Authority observes that the argument is not in accordance with law.

Argument by Importer/Exporter

44. M/s. Synthetics & Chemicals Ltd. (S&CL) have completely stopped producing S\$R in view of severe financial constraints being faced by company. Thus by imposition of antidumping duty neither there will be a relief to S&CL nor to the importer resulting in unnecessary burden on economy. The Authority should therefore withdraw the anti-dumping duty.

Examination by Authority

45. The Authority has carried out the investigation in accordance with the Anti-dumping Rules in the instant case. Moreover, as per the practice, the Authority does not consider factors, which relate to beyond the period of investigation.

Argument by Importer/Exporter

46. The Authority has not recommended anti-dumping duty in respect of certain grade/countries despite the existence of dumping margin as the landed value of export from these countries/grades was equal to 'or more than the fair selling price determined for S& CL. Consequently no material injury could have been caused by the imports from these countries/grades. Thus no change is required in this regard.

Examination by Authority

47. The Authority agrees with the argument that wherever landed value are more than the reasonable selling price, no material injury could have been caused by such imports to petitioner.

Argument by Importer/Exporter

48. The exchange rate used for converting the foreign currency into Indian rupee should be the exchange rate notified by the Ministry of Finance for imported goods. Further the average exchange rate for the period of investigation should be the simple average of the exchange rates prevailing in the months in which the exporters had exported the product under consideration to India.

Examination by Authority

49. The Authority observes that petitioner has submitted the exchange rates prevailing during the investigation period as published in the Economic survey of India, which has been relied upon by the Authority. Regarding the argument that the average exchange rate for the period of investigation should be simple average of exchange rates prevailing in the months in which the exporters had exported the product, the Authority is not aware of when the goods were actually cleared by importer and therefore it may not be appropriate to apply the exchange rate as suggested.

Argument by importer/exporter

50. The weighted average custom duty for the period of investigation should be determined individually for each exporter with reference to the months in which the exports to India took place.

Examination by Authority

51. It has been the practice of Authority to adopt the weighted average custom duty for the period of investigation for the purpose of determination of landed value. Moreover, whereas the Authority is informed about the date/month of dispatch of goods by the exporter, it is not known when the goods were actually cleared by importer. Thus calculation of weighted average custom duty with reference to the month in which the export to India took place may give misleading results and therefore it may not be appropriate to apply the weighted average Custom duty as suggested.

Argument by importer/exporter

52. There is denial of natural justice as these findings are based on material not made available to the interested parties so as to able to defend themselves as many information are treated as confidential.

Examination by Authority

53. In accordance with the Anti-dumping Rules, the Authority had maintained a public file, which was kept open for inspection by any interested party throughout the period of investigation. The file contained information submitted by all interested parties on non-confidential basis. As per the Anti-Dumping Rules, the information submitted by any interested party on confidential basis and so considered as confidential by Authority can not be disclosed to other interested parties. Thus the argument is factually incorrect. The information treated as confidential by Authority are in accordance with anti-dumping rules.

Argument by Importer/Exporter

54. It is surprising and unfair that at the behest of a single monopoly supplier of SBR, the Directorate General of Anti-dumping and Allied duties has recommended to impose antidumping duty on SBR imports completely ignoring the genuine interest of hundreds of SBR consumers.

Examination by Authority

55. The argument is generic in nature. The Authority has carried out the investigation in accordance with the anti-dumping rules in the instant case.

Argument by Importer/Exporter

56. The petitioner is not in a position to meet the entire demand of industry in the country. Their request to the Govt. for anti-dumping duty is an attempt to increase their product price.

Examination by Authority

57. This is an admitted position that the petitioner is not in a position to meet the entire demand of industry in the country and this has been adequately dealt with in the preliminary findings. The argument that the request of petitioner to Govt for anti-dumping duty is an attempt to increase the product price is generic in nature. If the petitioner increases the price as alleged or feared by importers, any interested party can apply for review in accordance with anti-dumping rules so that the injury to the domestic industry if any can be re-assessed.

Argument by Importer/Exporter

58. The petition submitted by petitioner is either false or misleading or factually incorrect or material facts have been suppressed to the utter disregard of the interest of the consuming industry. Non-availability or availability of SBR at a high price will render workers unemployed. The claim of the petitioner that they are capable of producing total requirement of SBR in India is far from truth.

Examination by Authority

59. The argument is generic in nature and is not substantiated with facts. The Authority has carried out the investigation in accordance with the anti-dumping rules in the instant case.

Argument by Importer/Exporter

60. Anti-dumping duty should not exceed the dumping margin. However it is, stated in the preliminary findings that in case the difference between landed value and reasonable selling price is higher than the dumping duty, the duty to be applied will be the difference figure, which is contrary to the Rules.

Examination by Authority

61. The Authority considers that the duties have been recommended as per anti-dumping rules. The Authority has recommended the anti-dumping duties in similar ways in many other anti-dumping investigation, which has been accepted by the Govt. Thus the imposition of antidumping duties in the instant case is not contrary to the anti-dumping rules.

Argument by Importer/Exporter

62. Some of the exporters have stated that they have not exported SBR to India during the period of investigation and therefore they should be excluded from the preview of anti-dumping duty.

Examination by Authority

63. The Authority observes that such exporter may apply for a new shipper review as per anti-dumping rules.

Argument by Importer/Exporter

64. The Authority has not considered the interest of the end user industry. Any levy towards anti-dumping duty would not be in the interest of the consumer industry and would cause irreparable damage to the structure of the industry.

Examination by Authority

65. The argument is generic in nature. The Authority has carried out the investigation as per Anti-Dumping rules in the instant case.

Argument by Importer/Exporter

66. The preliminary findings are not clear and do not constitute a speaking order, as several issues raised have not been decided by Authority. These findings are beyond the jurisdiction of Authority under section 9 A (1) of the Custom Tariff Act 1975 as amended in 1995.

Examination by Authority

67. The Authority notes that speaking orders on the product under consideration, Like Article, Domestic Industry, Dumping & Dumping Margin, Injury, Causal Link etc. has been given . The Authority considers that it has taken into account all arguments and issues raised which can affect the determination of anti-dumping duties in accordance with anti-dumping duty rules. The Authority does not agree with the argument that the findings are beyond the jurisdiction of Authority under Section 9 A (1) of the Custom Tariff Act 1975 as amended in 1995.

Argument by 1mporter

68. The landed value, which determines the reference prices, should be determined by adding only 1% of the CIF value towards landing charges. The present practice of

charging 3% appear to be- incorrect as all tens houses in India apply a uniform rate of 1% of the CIF value in order to arrive at the assessable value. The Authority had used only 1 % in the EPDM case and therefore reference price should be revised:

Examination by Authority

69. None of the interested parties have submitted information on the actual landing and handling charges and therefore the Authority is following a consistent practice to add 1% towards landing charges and 2% handling charges while determining the landed value.

Argument by Importer/Exporter

70. The reference price in column 5 of para 22 of the preliminary findings includes either the dumping margin or the injury margin which ever is lower. Hence the indication of the lower of injury margin or the dumping margin in column 6 as the minimum anti-dumping duty amounts to a double levy of anti-dumping duty.

Examination by Authority

71. In preliminary findings notification, the Authority had stated that the anti-dumping duty shall be the amount mentioned in column 6, provided that the duty shall be difference between the amounts mentioned in column 5 and the landed value of imports per kg in case such difference is more than the amounts mentioned in column 6. The Authority does not consider that the fixation of duty in the preliminary findings amounts to double levy of anti-dumping duty. The argument appears to be factually and conceptually incorrect.

Argument by Importer/Exporter

72. The reference price should be at the CIF level only and should not take into account the prevailing level of custom duties. .

Examination by Authority

73. In accordance with the Anti-dumping rules, the Authority is required to determine the amount, which would be sufficient to remove the injury to the domestic industry. Such amount can be calculated only if the prevailing rates of custom duties are taken into consideration while arriving at the actual landed value during the period of investigation. Therefore, it is necessary that prevailing rate of custom duties are taken into account while determining the injury to the domestic industry as the injury to domestic industry is from the price at which the imported goods are available in the

domestic market. Therefore the Authority does not consider it appropriate to determine the amount indicated in column 5 of the preliminary findings at CIF level.

Argument by importer/exporter

74. The Authority has not imposed anti-dumping duty on Germany and France. There are other exporters from France and Germany who had not co-operated and they should not be allowed to enjoy the benefit of non-cooperation as no anti-dumping duty is proposed on non-cooperating exporters. The Authority should notify the reference price for non-cooperating exporter from Germany and France.

Examination by Authority

75 The Authority observes, that in the case of imports from Germany and France during the period of investigation, the landed value is significantly higher as compared to the reasonable selling price of domestic industry and thus such exports from Germany and France do not warrant imposition of anti-dumping duty. It is not demonstrated by any interested party that export price of any exporter from Germany and France is such which would cause injury to domestic industry and which warrant imposition of anti-dumping duty. The Authority in the circumstance does not find that the exports from Germany and France are causing injury to domestic industry.

Argument by importer/exporter

76. M/s JSR, an exporter from Japan has argued that they export SBR to India not directly but through various trading house viz. JTC and Mitsui. The Authority should indicate the reference price for the combination of JSR-Mitsui and -JSR-JTC. The system of indicating combination rate for the producer-exporter is prevalent in USA.

Examination by Authority

77. It has been the consistent practice of the Authority to assess producers only and to recommend duty accordingly. So long as the importer is able to satisfy the custom Authority that the goods are produced a specific producer whose name is indicated while indicating the amount of duties in this notification, the Custom Authorities would impose anti-dumping duty accordingly. Also, it is not feasible to determine normal value of a trader, who can export goods of any producer. Therefore it is not feasible to levy and monitor anti-dumping duties on traders. The Authority therefore does not consider it appropriate to indicate reference price for the combination of the producer and trader.

Argument by exporter

78. The exporter from Korea has argued that their duping margin and reference price should be determined in Korea currency.

Examination by Authority

79. It has been the consistent practice of the Authority to recommend anti-dumping duty in terms of Indian rupees and therefore the Authority does not consider it appropriate to recommend/impose duties in foreign currency.

I. FINAL FINDINGS

80. The Authority, after considering the foregoing, concludes that:

- a. SBR has been exported from Japan, Korea RP, Turkey, Taiwan, USA, Germany and France has been exported to India below its normal value resulting in dumping of SBR;
- b. the domestic industry has suffered material injury;
- c. the causal link between dumping and injury is established.

81. The Authority confirms the preliminary findings with regard to imposition of Antidumping duty and recommends imposition of definitive anti-dumping duties on imports of SBR falling under custom sub-heading nos. 4002.19 of the Customs Tariff Act as specified under para relating to product under consideration originating in or exported from Japan, Korea RP, Turkey, Taiwan, USA. No anti-dumping duty has been recommended on exports from France and Germany or on 1500 series from USA, 1700 series from Taiwan and 1700 series from Turkey as such exports were not found to be causing injury to domestic industry. The anti dumping duty shall be the amounts mentioned in column 6, provided that the duty shall be the difference between the amounts mentioned in column 5 and the landed value of imports per Kg. in case such difference is more than the amounts mentioned in column 6:-

Sl. No. Country Producer/Exporter Grade Amount Amount

Rs. per Kg. Rs. per Kg. Rs. per Kg

1. USA All Exporters 1500 Series --- ---
1700 Series 48.20 3.48
1900 Series 62.16 6.77

2. Taiwan Taiwan Synthetic 1500 Series 57.33 2.21
Rubber Corpn. 1700 Series --- ---
1900 Series 57.90 3.20

Others 1500 Series 58.33 3.20
1700 Series --- ---
1900 Series 57.90 3.20

3. Turkey Petkim Petrokimya 1500 Series 57.50 8.26
1700 Series --- ---
1900 Series 62.16 9.72
Others 1500 Series 59.82 10.57
1700 Series --- ---
1900 Series 62.16 9.72

4. Korea Korea Kumho 1500. Series 56.10 4.95
1700 Series 48.20 1.08
1900 Series 59.15 7.26
Other Exporters 1500 Series 58.42 7.26
1700 Series 48.20 1.08
1900 Series 59.15 7.26

5. Japan JSR Corpn. 1500 Series 59.82 3.71
1700 Series 48.20 0.92
1900 Series 62.16 5.59
Others 1500 Series 59.82 3.71
1700 Series 48.20 0.92
1900 Series 62.16 5.59

82. Landed value of import for the purpose shall be the assessable value as determined by the customs under the Customs At, 1962 and all duties of customs except duties levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

83. Subject to above the Authority confirms the preliminary findings dated 21.01.1999.

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

RATHI VINAY JHA...
Designated Authority