

**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING &
ALLIED DUTIES)**

NOTIFICATION

NEW DELHI, the 30th July 2004

Final Findings

Sub: Anti-Dumping Investigation concerning imports of Sun/Dust Control Polyester film originating in or exported from UAE and Chinese Taipei.

NO.14/532002-DGAD: - Having regard to the Customs Tariff Act 1975 (herein after referred to as Act) 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 (herein after referred to as Rules), thereof:

A. Initiation

(1) The Authority, on the basis of sufficient evidence submitted by the Applicant M/s Garware Polysters Ltd. on behalf of the domestic industry, issued a public notice dated 3rd March 2003 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of Specialty Polyester Films/ Sun Control Films (herein after referred to as subject goods and also sun films) classified under Customs Code 392069 of Schedule I of the Customs Tariff Act, 1975 as amended in 1995, originating in or exported from (UAE and Chinese Taipei (herein after referred to as the subject countries) in accordance with the sub-Rule 5(5) of the Rules referred above.

(2) Investigation was carried out for the period starting from 1st April 2002 to 31st December 2002 i.e. the period of investigation (POI).

(3) The Preliminary findings of the Authority were notified on 25th July 2003. Acting upon the recommendations of the Authority, Central Government imposed provisional duty on the subject goods imported from the countries named above vide notification No. 133/2003 Dated 26.08.2003.

B. Further Procedure

(4) Procedure described below has been followed with regard to this investigation after issuance of the public notice notifying the preliminary findings of the Authority.

- i. The Authority provided opportunity to all interested parties to present their views orally in a public hearing held on 31st October, 2003. The parties presenting their views were requested to file written submissions of the views expressed.
- ii. Written submissions made by the parties to the investigation, after the public hearing, has been examined by the Authority in appropriate manner.
- iii. The Authority issued a disclosure statement on 29.06.2004 in accordance with the Rule 16 of the Rules supra, containing general disclosures and confidential disclosures to respective parties and giving methodology of determination and the essential facts of the case on which Authority would base its decision.
- iv. Comments to the disclosure statement received from the interested parties have been appropriately dealt with by the Authority in this finding.
- v. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained for this purpose and kept it open for inspection by the interested parties as per Rule 6(7).
- vi. **** In the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.
- vii. For the purpose of brevity the issues already discussed in the preliminary findings of the authority are not repeated here.

C. Product under Consideration and Like Article

(5) Product under consideration for which the investigation was initiated in the present case is, "Specialty Polyester Film i.e. Sun / Dust Control Polyester Film, also known by different names in the trade and market parlance such as Sun Control Films, Sun Films, Solar films, Solar Control Films, Solar Window Films, Window Films". The product is largely used for heat rejection/glare reduction, U.V. rejection, and safety, by applying on window glasses of automobiles as well as buildings, etc. The ITC (HS) classification of the products is 392089.04. The Authority has examined the issue of product under consideration and like article for various determinations in this investigation as follows:

C.1 Applicant's views

(6) Applicant has, in its various submissions before the Authority, submitted that; Sun control films are broadly categorized as follows:-

Non-reflective films: standard sun control film with different shades, available in different degree of light transmission.

Reflective or semi-reflective films: these are sun control films with a metallised coating/ metallised film lamination. The metallization helps in rejecting higher degree of solar heat.

Matte films: these are films with a matte finish, which ensures that the transmitted light gets diffused. They are also called privacy films.

Safety films: these are thicker films used for protecting the glass from splintering due to accidental breakage. They may be clear or with coloured shades.

(7) They have further submitted that whatever be the types, subject goods with adhesive coating would invariably have lamination with another film. This lamination is done with the release liner and is removed before end application. The adhesive on the subject good helps in sticking the film to the glass.

(8) The process of manufacturing of the subject goods involves Production of Dyed Film from Plain Polyester Film, Siliconizing on the Plain Polyester Film (Liner), Scratch resistant coating on the dyed polyester film, Metallisation on Plain Polyester Film (for reflective / semi reflective films), Lamination of metallized film with dyed polyester film with thermosetting adhesive, Lamination of release liner – the adhesive is applied on the dyed/metallized film and then laminated with Silicon release liner, Slitting and Quality Control.

(9) The Applicants further contend that there is no known difference between the product exported from Chinese Taipei and UAE and the product supplied by the Applicant. There is no known difference between the production process employed by the Applicant and the producer in the subject countries. Therefore, subject goods produced by the Applicant are 'like article' to the goods imported from Chinese Taipei and UAE, within the meaning of the term with reference to the anti-dumping Rules.

C.2 Views of the Exporters and other interested parties

(10) None of the exporters from the subject countries have responded to the initiation notification, except M/s Orpro, UAE, who submitted a limited response to the initiation. However, M/s ORPRO has submitted that they have not exported the

subject goods to India and hence their name should not figure as exporter in the investigation. It has been further argued by M/s.Orpro that the goods produced by the domestic industry and by the Foreign Producers employ different production process which affects their cost.

C.3 Examination by the Authority:

(11) The Authority notes that product under consideration in the present investigation is Specialty Polyester Film i.e. Sun / Dust Control Polyester Film originating in or exported from Chinese Taipei and UAE. The Authority also notes that the Applicant company manufactures Sun/ Dust Control Polyester Films of various grades which are used for reducing the heat/light transmission through the motor vehicle windows and house windows. The films are applied to the inner side of the glass windows and its main function is to reduce the solar heat, ultra violet light and glare that normally would enter through the windows. This film also provides increased shatter resistance. The product is described by several names in the commercial parlance and the Applicant has included all types of sun control films within the scope of this investigation.

(12) The Authority has, in its preliminary findings included all types of sun control films within the scope of the investigation and held that the imported films are like product to the product manufactured by the domestic industry within the meaning of the term in terms of the Rules.

(13) It has been argued by M/s.Orpro that the goods produced by the domestic industry and by the Foreign Producers employ different production process. The Authority, however, finds that while none of the producers in the subject countries responded to the Authority, the above exporter provided no data/information either in the prescribed format or in support of its claim of different production process. In its response to the disclosure statement filed through M/s Little and Co., M/s Orpro Company, LLC UAE, has reiterated its position and have reconfirmed that they are neither the producer nor exporter of the subject goods to India. But elsewhere in the same submission they have contradicted themselves by stating that " it is reiterated that the production process used by Orpro is much more efficient than one employed by the domestic industry". Therefore, not only their submissions are doubtful, their very status in the country of exports is also not clear. In view of the above the Authority holds that the respondent does not have a *locus standi* in this case as an interested party and all their submissions in respect of the like article and cost/price difference has no relevance in this case.

(14) The Authority has examined the production process used by the Applicant Company for manufacturer of the sun control polyester films and finds that the

process of manufacturing involves manufacturing of plain polyester film from DMT and EMG, through extrusion process. As an alternative plain polyester films can also be used as the base film. The polyester film is further processed by way of colour dyeing, siliconising, scratch resistance coating, metallization, lamination, etc depending upon the number of layers required for providing reflective or other properties and providing silicon coated release liner for providing protective layer to the adhesive surface of the film. This being the basic and most common method of manufacturing the films, the argument of M/s Orpro does not seem to hold much ground. Claim of Orpro is with reference to possible differences in the cost of production, which can, at best, have impact on assessment normal value. However, in view of the clear position taken by M/s Orpro about its non-involvement either in the production or exports of subject goods to India, the arguments raised by it in this respect has no relevance.

(15) The Authority notes that the cost of basic raw material i.e. polyester film in the international market ranged between 2 to 2.5 US\$ per Kg during the POI, which exceeds the import price of the finished sun control films as per the import data available with the Authority. Therefore, the argument of cost difference due to different production process does not seem to have any strength

(16) The issue before the Authority is, whether the imported films from the subject countries are like products compared to the domestic product. The Authority notes that the guiding principle in this respect is the physical and chemical characteristics and usage of the products and their commercial and technical substitutability. In this connection the Authority finds that though there is variety of grades of the sun control films manufactured by the domestic industry, and also imported from the subject countries, the basic material and the production process is same. Starting from single ply non-reflective and non-scratch resistant films to double/triple ply, reflective and scratch resistant films, the films vary in sun control property, scratch resistance property and also have incremental processing and consequential incremental price differentiation. This being a direct consumer product, the use of one grade against another depends on the price consideration and perception of the consumer, as all the grades can be used interchangeably.

(17) Rule 2(d) of the Anti-Dumping Rules specifies that "Like Articles" means an Article which is identical or alike in all respects to the product under investigation or in the absence of such an Article, another article, having characteristics closely resembling those of the articles under examination.

In the present investigation none of the opposing interested parties have raised any issue with regard to the Like Article. Even though Orpro claimed that the Foreign Producers employ a different production process, in view of the stand taken by this

party that they are neither the producer nor the exporter of the subject goods to India, their submissions have no relevance in this case. The Authority finds that the goods produced by the domestic industry are like article to the goods exported from the subject countries, on the basis of technical and commercial substitutability of the product.

Accordingly the Authority holds that Sun/Dust Control Polyester Films being produced by the domestic industry are like article to the goods being imported from the subject countries, irrespective of their trade or commercial names, within the meaning of the Rules.

D. Standing of the Domestic Industry

(20) The applicant has been filed by M/s. Garware Polyester Ltd., Mumbai and is the sole producer of the subject goods in the country. The applicant accounts for 100% of the domestic production during the period of investigation of the subject goods in India. The Authority confirms that the Applicant fulfils the requisite criteria to represent the domestic industry, as required under Rule 5(a) and (b) and Rule 2(b).

E. De Minimis Limits

(21) The exports from Chinese Taipei and UAE constitute about 49% and 32% respectively, of total imports of the like article and are above the de minimis level for the purpose of the above investigation.

F. Other issues raised

(22) M/S ORPRO Company LLC, Sharjah, United Arab Emirates in its limited response made the following submissions:

that they are neither the producer nor the exporter of the dumped goods .

that they carry on the business as a trader of the dumped goods within the UAE and not as an exporter thereof to India.

That they have sold goods in question within UAE to a company called Perfect Trading Company who in tern has shipped goods to the customers in India.

That for the reasons indicated above enquiry against alleged dumping of the goods in India has been misconceived and misdirected. Therefore, the investigation against them should be discontinued and dropped.

(23) The Authority notes that M/s Orpro is, admittedly neither a producer nor an exporter of the subject goods to India, nor has it made a detailed response in this regard, which can be taken into account for deciding the matter. In view of the position taken by this party the Authority holds that they are not an interested party in this case and their submissions have no relevance in this case. Authority also notes that the investigation was not initiated against any specific party. M/s Orpro has made its limited submission on its own and at the same time claimed its exclusion as they neither produce nor export the subject goods to India.

(24) The Authority further notes that no other substantive or general issue has been raised by any party in connection with this investigation and therefore, proceeds with the determination on the basis of the facts available with it in terms of paragraph 1 of Annexure-II of Antidumping Agreement.

G. Determination of Dumping Margin

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

- i. "The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. When there are no sales of the like article in the ordinary course of trade in domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:-
- iii. Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- iv. The cost of production of the same article in the country of origin along with reasonable addition for administrative, selling and general costs and for profits, as determined in accordance with the rules made under sub-section (6);
- v. Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin."

(26) The Authority provided opportunity to the exporters from subject countries to furnish information relevant to the investigations and offer comments, if any, in

accordance with the Rules cited above. The Authority wrote to the Embassies/High Commissions/Representatives of subject countries in India also.

(27) None of the exporters from the countries named in the initiation notification have responded and provided any information in respect of the normal value of the product in the countries of export and their export price to India. Only M/s Orpro, UAE made a very limited submission while admitting that they have not exported the product to India have argued that the domestic industry and the foreign producers employ different production process. This claim is however, not substantiated with any evidence of the process and cost of manufacturing of the product by the producers in the country of export.

(28) The Authority therefore, constructed the normal value of the products on the basis of facts available. The Authority found that the process of manufacturing of the films involves using plain polyester film (made out of polyester granules from DMT and M.EG.) as the base film and is processed further by way of siliconising, scratch resistance coating, metallization, lamination, etc. For arriving the cost of manufacturing the Authority relied on the Standard Input-Output Norms (SION) published by Directorate General of Foreign Trade and the international prices of the relevant raw materials and the processing cost based on best available information, including that provided by the domestic industry in terms of paragraph 1 of Annexure II of Antidumping Agreement.

G.1 NORMAL VALUE (Chinese Taipei)

(29) As far as normal value in Chinese Taipei is concerned the applicant has argued that they have substantial exports of the same product to Chinese Taipei. The applicant has argued that the price at which the goods have been imported in Chinese Taipei represents the price at which goods have been purchased in Chinese Taipei for consumption and must be considered comparable to the price at which goods must be sold in Chinese Taipei. Therefore, this price should represent the normal value on the basis of their export price to Chinese Taipei, by estimating all the expenses upto arrival of the goods in Chinese Taipei. The Authority notes that this argument has considerable force. The product exported by the Applicants to the same country from which dumping has been alleged enters the commerce of that country at a price which would be a reasonable estimate of the normal value in that country. However, Authority also proposes to estimate the normal value on the basis of constructed value method and adopt the most conservative method, even if there is no cooperation from any interested party in this case.

(30) The Authority notes that sun control films manufactured and sold by the domestic industry are of various types and the cost of different types vary according to

the number of plies of films used, and types of coating used. The prices of the product also vary depending upon the above characteristics as well as consumer perception of price. While it is possible that various types of Sun films might have been imported from the subject countries during the POI, it is not possible to segregate the same due to total non-cooperation of the exporters from the subject countries. More over, examination of the prices of the subject goods imported from the countries named, as reflected in the import data available with the Authority indicates that average price is as low as Rs 67/- per Kg which does not seem even to cover the cost of the basic raw material i.e Polyester films. In this connection the Authority refers to the international prices of 12 micron Polyester films as reported in the Quarterly Business Report of Polyester Films for various quarters in 2002-03, which indicates the price varied between US\$2 to US\$2.5 PER Kg during the POI. Therefore, the Authority is of the view that the type-wise or grade-wise comparison of the products for the purpose of the dumping margin calculations is meaningless in a situation like this. Again considering the level of cooperation by the concerned parties, and the data available with the Authority, the Authority adopted most conservative estimates of normal value in order to ensure fair comparison, by resorting to lowest possible estimates of normal value based on the most basic product i.e. Single ply non-scratch resistant and non-reflective films.

(31) The normal value assessed on two alternate basis have been compared and assessment of normal value on the basis of estimates of cost of production appears to be more conservative and reasonable. Under the circumstances, as explained above, normal value has been based on estimates of cost of production with reasonable addition for selling, general, administration costs and profit in accordance with Rules 6(8) supra. However, level of trade adjustments on variable selling expenses has been allowed on the constructed normal value to rationalize it. Accordingly, the Normal Value of Sun/Dust Control Polyester Film for all exporters from Chinese Taipei has been constructed as Rs***** (US\$ ***) per Kg at the exchange Rate of Rs48.44=US\$1.00

G.2 NORMAL VALUE (UAE)

(32) The Authority notes that none of the exporters/producers from UAE have provided any response or information on the normal value as per the prescribed questionnaire. The Authority therefore, holds that none of the exporters from UAE has cooperated with the Authority as envisaged under the Rules. The Authority also notes that the Applicant has exported a small quantity of the subject goods to UAE, but that does not represent a reasonable quantity for assessing the normal value in UAE as explained in the earlier section.

(33) Under the circumstances, the Authority has constructed the normal value based on estimated cost of production with reasonable profit of Sun Dust Control Polyester Film in UAE as per the best available information available under the Rules 6(8) supra. The same principles including the level of trade adjustments as explained in the earlier section have been applied in the case of UAE also. Accordingly, the Normal Value of Sun/Dust Control Polyester Film for all exporters from UAE has been determined as Rs***** (US\$ ***) per Kg at the exchange Rate of Rs48.44=US\$1.00

G.3 EXPORT PRICES

(34) None of the exporters from Chinese Taipei and UAE or importers in India has submitted details of export price in reply to the Questionnaire. Even though Orpro responded to the notice of initiation and admitted having sold some material to Perfect Trading, neither Orpro nor Perfect Trading provided any information with regard to their exports to India.

(35) Applicant has provided information on imports on the basis of actual imports, as reported by private data providing agency, (transaction wise information on imports, as compiled and provided by M/s. INFORMANT, MUMBAI). However, during the course of investigations, the Authority requested relevant information from the DGCI&S, who provided transaction wise details of imports made from the subject countries, including Chinese Taipei, in the investigation period. The information so provided was examined in detail and volume and value of imports assessed on this basis. In the absence of actual export price from the exporters, the Authority has adopted this information for assessment of the export price from the countries involved.

(36) The Authority has worked out the weighted average export price of all comparable transaction in respect of imports from the subject countries to arrive at the CIF export price to India. The export price so assessed, being the CIF export price, adjustments towards ocean freight, insurance and commission totaling to US\$ ***/Kg based on the facts available, have been considered in view of complete non cooperation by the concerned exporters.

(37) Accordingly the Ex-factory export price in the Period of Investigation thus works out as follows:

Chinese Taipei

CIF Price of imports from Chinese Taipei Rs***/Per Kg US\$*** Per Kg

Adjustments US\$*** Per Kg

Ex-Works export price from Chinese Taipei US\$*** Per Kg

UAE

CIF Price of imports from UAE Rs*****/Per Kg US\$*** Per Kg

Adjustments US\$*** Per Kg

Ex-Works export price from UAE US\$*** Per Kg

G.4 DUMPING MARGINS

(38) The rules relating to comparison of export price to the normal value of the subject goods in the country of exports provides as follows:-

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

(40) In terms of the above Rules the authority carried out comparison of weighted average ex-factory normal value with the weighted average ex-factory export price for evaluation of dumping margin.

(41) As indicated earlier, in view of the lack of cooperation, the normal values of the subject goods in both the countries named have been constructed on the basis of best available information based on the lowest grade of the product. This value has also been adopted as the weighted average ex-factory normal value for the purpose of determination of dumping margin. The weighted average ex-works export price has also been estimated on the basis of DGCI&S import data with admissible adjustments as stated earlier. The Authority thus considers that the comparison of normal value with the export price is fair within the meaning of Annexure I to the Rules.

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

COUNTRY-WISE EXPORTERS / PRODUCERS	NORMAL VALUE (\$/MT)	EXPORT PRICE (\$/MT)	DUMPING MARGIN	DUMPING MARGIN (%)
UAE.				
All Exporters	***	***	***	390%
CHINESE TAIPEI				

All Exporters	***	***	***	448%
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(43) The dumping margins so assessed are above the de-minimus limits and are considered significant.

(44) The Applicant Company, in its response to the disclosure statement, submitted that the dumping margin has been significantly altered between the preliminary findings and the disclosure statement in respect of Chinese Taipei and requested that the normal value should be reconsidered in respect of Chinese Taipei. However, the Authority notes that the normal values in both the countries have been constructed on the basis of best information available and the basis of determination of normal value has already been disclosed to the parties. As far as the export price is concerned the earlier determination was based on secondary data, which has now been worked out on the basis of DGCI&S data. Accordingly the Authority confirms its findings on dumping margin determination as above.

H. injury determination

H.1 Views of domestic industry

(45) The applicant in its application has submitted: -

- that there is a very significant increase in the imports of the subject goods from the subject countries. The imports have increased in absolute terms and the increase is significant and material;
- that the imports have increased significantly from Chinese Taipei / UAE in relation to imports of the product in India;
- that the imports have increased in relation to production of the domestic industry in India
- that the imports have increased in relation to demand of the subject goods in India;
- that as a result of increase in imports, the sales of the domestic industry have declined.
- that the production of the domestic industry, which had been increasing till 2001-02 declined in the period of investigation.
- that it should also be seen that the domestic industry has significant export activities. Thus, increase in production till 2001-02 is due to higher export volumes. The domestic sales of the domestic industry have declined in period of investigation when compared to previous years;
- that the sales volumes in the domestic market of the Domestic Industry , which has been increasing till 2001-02, declined in investigation period. Due to

dumping of subject goods from subject countries, the domestic industry has not been able to increase its sales in spite of increase in demand of product in India.

- That should the dumped imports from subject countries continue, the domestic industry would lose further sales, as in spite of reducing prices, the imports are significantly undercutting the prices of the domestic industry
- that the price at which subject goods are being imported is ridiculously low. The extent of price undercutting is unprecedented and is high.
- that the Domestic Industry is making financial losses from the sales in the domestic market.
- that the price at which the imports have been made have serious suppressing / depressing effect on the prices of the Domestic Industry.
- that the Domestic Industry has been forced to reduce the prices below the cost of production as a result of significant dumping in the country. The financial situation of the Domestic Industry has deteriorated significantly. The Domestic Industry has been forced to a situation of significant financial losses from a situation of profit.
- that the price at which the material has been exported to India is far below the raw materials cost associated with production of the subject goods.
- that the price at which material is being exported is even below the price at which plain polyester film is being imported.
- that considering the normal value and export price the dumping margin is not only significant but also substantial.
- that the landed price of imports after charging prevailing level of customs duties is significantly below the selling price of the domestic industry. Thus, the domestic industry is facing severe price undercutting. As a direct result, the domestic industry has lost significant sales volumes;
- that the landed price of imports is significantly below the non-injurious price of domestic industry causing price underselling
- that the selling price of domestic industry is below the non-injurious price of the domestic industry. The imports are thus resulting in price underselling in the market.
- that the price at which material is being imported do not permit recovery of even raw material cost, leave aside other variable cost. The domestic industry can not even think to match the price of imported material.
- That in spite of very competitive pricing, the company is losing volumes, rather than increasing the same, due to unfairly priced dumped imports.
- that in spite of reduction in production, the domestic industry is faced with increasing inventory levels.
- that even when the demand for the product has been growing and is positive, the growth of the company in the domestic market has been negative due to dumped imports.

- that volume and value of imports from other countries are either de-minimus or the prices are significantly higher. Imports from other countries are not causing injury to the domestic industry.

H.2 VIEWS OF OTHER INTERESTED PARTIES

M/S ORPRO Company LLC (Orpro), Sharjah, United Arab Emirates.

(46) M/s Orpro has submitted that Garware Polyester Limited (Garware") has not suffered material or injury by the sales made into India from the UAE. On the contrary, Garware has gone on record to say that it expects to increase the turnover of its sun control film division to Rs.50 Crores during the fiscal year 2002-2003. The party has submitted that under Rule 11 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (the "Anti Dumping Rules"), the Designated Authority must record a finding that the import of the Dumped Goods into India causes or threatens a material injury to any established industry in India. Under Rule 11(2) of the Anti Dumping Rules, the Designated Authority is required to take into account all relevant facts including the volume of Dumped imports, their effect on the price in the domestic market for Like Articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure 2 to the Anti Dumping Rules.

(47) It has been submitted by M/s Orpro that point (iv) of Annexure II is very significant because it required the Designated Authority to evaluate all relevant economic factors and indices having a bearing on the State of the industry, including natural and potential decline in the sales, profits, etc. It has been argued by this party that there has been no such natural or potential decline in the sales or profits in the Sun Control Film Division of Garware. It has been submitted that at paragraph 16(b),(2) of the Preliminary Findings , the Authority has noted that effective production of the subject goods has increased significantly. At paragraph 16(b)(3) of Preliminary Findings the Authority has found that the capacity utilization of the domestic industry has increased as a result of the increase in the production. Therefore the Government of India has failed to note that notwithstanding the allegation of dumping, the profits and turnover of Garware have significantly increased and that therefore, it should have held that Garware has not suffered any material injury as a result of such dumping.

H.3 Determination by the Authority:

H.3.1 CUMULATIVE ASSESSMENT OF INJURY

(48) Annexure II (iii) under Rule 11 supra further provides that "in case where imports of a product from more than one country are being simultaneously subjected to Anti Dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual country is less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and cumulative assessment of the imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles".

(49) The Authority considered the following for examining the issue of cumulative assessment of injury and observed that:

- The margins of dumping from each of the subject countries are more than the limits prescribed.
- The volume of imports from each of the subject countries is more than the limits prescribed.
- The domestic product and product supplied by producers in various countries are like articles.

Imported products and domestically produced subject goods are interchangeable and are being interchangeably used. Transaction wise information on imports from various countries shows that the imports are primarily being made by traders who have purchased the material for reselling. Goods supplied by the two countries were, therefore, competing in the same market.

Products supplied from the subject countries are being marketed in India during the same period through comparable sales channels and under similar commercial conditions.

Imports from each of the subject countries have increased.

The domestic producer and exporters in the subject countries are selling the product to the same category of consumers.

Imports from both the countries are significantly undercutting the prices of the domestic industry in the market.

(50) The Authority holds that cumulative assessment of injury is appropriate in this case since the exports from the subject countries were directly competing amongst

themselves as well as with the like goods offered by the domestic industry in the Indian market.

H.3.2 Examination of Injury Parameters:

(51) 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 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.

(52) For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been proposed to be considered in accordance with Annexure II(iv) of the rules supra.

(53) All economic parameters affecting the Domestic Industry as indicated above, such as, production capacity utilization, sales volume etc. have been examined as under:-

(A) Volume effect of Imports

(54) On the basis of information/ data provided by DGCI&S, Calcutta the volume of imports of the subject goods and its effect on the domestic industry has been analyzed as follows:

Indexed data				
Particulars	1999-2000	2000-2001	2001-2002	2002-03
In Kgs	Volume	Volume	Volume	Volume
Imports				
Chinese Taipei	100	917.49	712.98	3998.62
Unit Price (Rs/Kg)		100	85.782	53.32
UAE			100	347.11
Unit Price (Rs/Kg)			100	65.84
Total Volume Subject Countries	100	917.49	1462.78	6601.29
Other Countries	100	20.04	329.48	333.58
Total Imports	100	174.71	524.80	1413.78

Domestic Sales	100	100.73	107.46	92.99
Demand	100	99.32	136.37	183.84
Market share in Imports				
Chinese Taipei(%)	17%	91%	23%	49%
UAE(%)	0%	0%	25%	32%
Subject Countries (%)	17%	91%	48%	80%
Other Countries (%)	83%	9%	52%	20%
Total (%)	100	100	100	100
Share in demand				
Subject Countries	1%	11%	6%	26%
Domestic industry	93%	94%	73%	47%
Other Countries	6%	1%	14%	10%

(55) It is observed from the above data that:

- a. Total Imports from the subject countries has increased substantially from 1999-2000 to the period of investigation (annualized). At the same time import price has shown a falling trend during the same period.
- b. Imports from the subject countries in comparison to the total demand in India have increased phenomenally, from a level of 1% in 1999-2000 to 26% during the POI, whereas the share of the domestic industry has declined from 93% to 47%. The loss of market share of the Domestic Industry has directly been taken over by the dumped imports from the subject countries.
- c. The import prices from the subject countries are very low as against the price offered by domestic industry during the period of investigation. It has also been claimed by the Domestic Industry that they had to reduce their prices due to the dumped imports directly affecting their profits and that the industry is fighting hard to sell its products against the dumped imports at unfair prices.
- d. **Output/Productivity & Capacity Utilization:** The demand for the subject goods has shown steady growth. The capacity utilization of the Domestic Industry has increased from 57% during the year 1999-2000 to 91% during the period of investigation. However, the increase in capacity utilization is solely on account of increase in export sale. Export sale have increased during the same period from **** MT to ***** MT whereas the sales of the subject goods in the Domestic Industry has declined from ***** MT during 2001-02 to ***** MT during 2002-03.
- e. Sale of the domestic industry has declined substantially during the POI with reference to the volume of sales in the previous years. There is also a drastic reduction in the market share of the domestic industry in the total demand, which has been taken over by the imports from the subject countries to a very large extent.

(B) Price effect of Dumped imports

(56) The effects of the dumped imports on prices of the domestic industry, has been assessed by the Authority by analyzing whether there has been a significant price undercutting by the dumped imports 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.

(57) In order to assess price undercutting effect, the Authority compared the weighted average landed value of dumped imports from each of the countries under investigation, over the entire period of investigation, to the weighted average net sales realization of the domestic industry for the same period for the single ply non-SSR non-reflective films. The Authority calculated the landed value of imports by adding 1% landing charges and the applicable basic customs duty to the CIF import price. In determining the net sales realization of the domestic industry, the Authority excluded rebates, discounts and commissions offered by the domestic industry and the central excise duty paid. .

(a) Price Underselling: A comparison of the weighted average Non Injurious Price assessed for the subject goods and the landed cost has been made. The following table shows the extent to which the dumped imports from the subject countries are underselling in the domestic market:

Rs/MT

	UAE	Chinese Taipei
Desirable Selling Price of Domestic Industry (Excluding Excise Duty)	*****	*****
Landed Value of Imported product	*****	*****
Extent of Underselling	*****	*****
% Underselling	600 to 750%	800 to 900%

Price Undercutting: The landed value of the dumped imports is below the selling price of the domestic industry during the period of investigation, showing the existence of price undercutting.

Rs/MT

	UAE	Chinese Taipei
NSR of Domestic Industry	*****	*****
Landed Value of Imported product (CIF price+ landing charges + basic customs duty)	*****	*****
Extent of Undercutting	*****	*****
% Undercutting (range)	400 to 550%	500 to 650%

The margin of price undercutting/ underselling were found to be significant in the case of each of the countries under investigation

(c) Price Suppression Effects

(58) The Authority notes that there is a rise in the cost of production due to increase in the raw material costs. Comparison of unit cost of production with unit selling price shows that whereas both the cost of production and selling price increased over the injury period, the increase in the selling price in the investigation period was less than the increase in the cost of production. The imports were thus preventing the domestic industry from effecting legitimate price increases to accommodate the rise in cost of production, thereby having a price suppression effect on the domestic industry's prices.

(C) **Other Economic parameters**

(59) The Authority has examined all the relevant economic parameters as laid down to examine the extent of injury suffered by the domestic industry. The findings of the Authority on various injury parameters are as follows:

- a. **Employment::** The number of employees has increased from 180 in the year 1999-2000 to 209 during the period of investigation. Employment and wages shows positive improvement. However, this has to be seen in the light of significant export activities of the domestic industry and increase in production.
- b. **Profitability:** Though the Company has been making profit in all the years for which injury analysis has been done, its profitability on the domestic sales has declined and become negative during the POI. On the sales of NR Single Ply Non-SRC films the loss has increased in absolute terms as well as in comparison to the export sales of the same product. It is noted that the loss incurred to the domestic industry is mostly in the segment of non-reflective non-SSR single ply films targeted for economic car models like Maruti and which constitutes the largest proportion (about 87%) of its production mix. This segment being targeted at the low-end market, is extremely price sensitive and also perception of quality is low. Therefore, the dumped imports from the subject countries have been able to erode the market substantially in this segment inflicting severe loss to the company in this segment as well as overall profitability of the company. In the other segments the domestic industry has been able retain its market and reasonable profit because these products are targeted at higher-end consumers, where quality and price perceptions are higher.

- c. **Return on Capital Employed (ROCE):** The Return on Capital Employed is positive during the period of investigation but the return appears to be very low (**%).
- d. **Magnitude of Margin of Dumping:** The margin of dumping works out to 390% and 448% for UAE and Chinese Taipei respectively and therefore, found to be substantial.
- e. **Actual and potential negative effect on cash flows:** Cash flow and return on capital employed follows the trend of profitability, which again became negative in respect of domestic sales in the period of investigation after being positive in the immediately preceding year.
- f. **Growth:** The demand for the subject goods has shown steady growth. However, the Company has not made any additional investments and its installed capacity continues to remain same.
- g. **Export sales** of the domestic industry have shown significant increase during the period of investigation. However, the increase in exports of the domestic industry is due to the fact that the domestic market has been taken over largely by the dumped imports from the subject countries.
- h. **Inventory:** Average stocks with the domestic industry have increased over the period which indicates that the domestic industry is unable to off load its total production to the domestic market in spite of healthy demand.
- i. **Productivity:** Production per working day has increased on the lines of increase in the production levels. However, the productivity increase is largely due to increase in its export activity.

(60) **Past Losses:** The Authority also examined the reasons for past losses being suffered by the domestic industry in the domestic market. It was found that the Applicant was earlier suffering financial losses due to following reasons:-

Financial Restructuring: - Applicant was earlier suffering from high rate of interest, resulting in high incidence of interest cost. The financial restructuring undertaken by the company resulted in significant reduction in the interest cost. In order to assess the impact of financial restructuring on the profitability of the company, Authority assessed what would have been Applicant's profitability in the period 1999-2001. Authority considers that this profitability is the only relevant profitability for the present purpose, the actual profit/loss being tinted due to higher rate of interest.

Excise Duty: - Applicant was earlier paying excise duty @ 24% ad valorem. Given the nature of the product involved (there is no MODVAT available to the consumers), the Applicant had no option but to bear the excise duty. Higher rate of excise duty in the year 1999-2000 effectively resulted in lower net sales realization to the Applicant. However, the excise duty was reduced from 24% (1999-00) to 16% thereafter. Since the cost on this account was effectively being borne by the domestic industry, this

resulted in improvement in the sales realization and resultant profitability. Considering that it would not be appropriate to treat the losses to the Company in the year 1999-2000 resulting from higher incidence of excise duty, impact of this on losses to the Company have been nullified while arriving at profitability of the product for the present purpose.

Lower plant utilization: - Applicant was earlier not able to produce optimally due to lack of demand in the Country. Export market was also limited. Resultantly, production of the Applicant was lower than expected in the earlier years. This resulted in higher incidence of overhead costs, resulting in higher cost of production of the Applicant. This higher cost could not have been legitimately passed on to the consumers, resulting in injury to the domestic industry. With increase in production, the profitability of the domestic industry improved. However, this remained short lived and the performance again deteriorated in the investigation period, now due to dumping.

It would also be relevant to point out that the applicant has significant export activities, viability of which also depends on viability of the Applicant in the domestic market. The applicant would not be able to sustain itself in the domestic market, which would imply not only injury to the Applicant from the production and sales in the domestic market but also in the export markets.

H.4 Determination of Non-injurious Price of the Domestic Industry

(61) The authority determined a Non-injurious Price for the subject goods after a detailed analysis and scrutiny of information provided by the domestic industry and verified by the authority.

(62) The cost information on all relevant factors concerning the production and the production process were called in the prescribed pro-forma for the period of investigation and for the preceding years. The actual cost of production of the subject goods for the domestic industry has been used to determine optimum cost of production on the basis of Generally Accepted Accounting Principles (GAAP). In the determination of Non-injurious price for the domestic industry, the Authority has examined and analyzed, in detail, all the relevant factors including cost of raw materials used in the production of subject goods, the consumption thereof, the cost of utilities viz. Power, water etc., interest cost, cost of labour, depreciation cost and selling and administrative expenses. The factors such as investments made in Plant and the capacity utilization have also been examined in the cost analysis. All these factors have been determined with reference to the basic books of accounts and production and financial statements. The Non-injurious price for the domestic

industry has been determined by addition to the cost of production of a reasonable profit margin on the capital employed by the Applicant.

(63) Accordingly, weighted average Non-injurious price for the domestic industry has been determined by the Authority as Rs.***** per Kg.

H.5 Magnitude of Injury and injury margin

(64) The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted average landed price of the exports from the subject countries have been arrived at as follows:

Injury Margin Calculation

Rs Per Kg

		Chinese Taipei	UAE
Weighted Average C & F Price as per DGCIS data		*****	*****
Plus Landing Charge	1%	*****	*****
Assessable Value		*****	*****
Plus basic customs duty	30%	*****	*****
Weighted Average Landed price		*****	*****
NIP		*****	*****
Injury Margin as a percentage of landed value		600 to 750%	800 to 900%

I. Causal Link:

(65) After examining the injury parameters and factors affecting the domestic industry, the Authority examined whether there are any other factors that might have caused injury to the domestic industry and whether the dumping can be directly attributed to the injury suffered by the domestic industry. In this respect the Authority makes the following observations:

- i. Examination of the various parameters affecting the domestic industry indicates that the significant price undercutting has resulted in significant decline in market share and resultantly in profitability, cash flow and ROI of the domestic industry. Significant increase in market share of the dumped imports directly resulted in decline in market share of the domestic industry. As a direct consequence, the domestic industry registered decline in sales volumes and negative growth after having positive growth upto 2001-2002. It is thus noted that the performance of the domestic industry deteriorated in the POI after continuously improving between 1999-2000 and 2001-02. This decline in the

- performance of the domestic industry in the POI is a direct result of dumped imports in the market.
- ii. The imports from other countries are at higher prices. At the same time, their share has declined in the POI after showing improvement till 2001-2002. Imports from other countries could not have, therefore, caused material injury to the domestic industry, nor there is any quantified evidence brought to the knowledge of the Authority that injury to the domestic industry could have been caused by imports from other countries.
 - iii. Demand of the subject goods has shown an increase. However, the increase in domestic sales growth is negative. Thus, in spite of growing market and significant capacity, Applicant is not able to increase its domestic sales. As a direct result, market share of the domestic industry declined significantly whereas the market share of dumped imports from the subject countries increased significantly. Therefore, possible decline in demand could not have caused material injury to the domestic industry.
 - iv. The domestic industry is exporting the product to a number of countries in the world. Not only that its export price is higher, but also the volumes have increased. Export performance of the domestic industry could not, therefore, have been a cause of material injury to the domestic industry.
 - v. It has been argued by Orpro Company, UAE that the reason for injury to the domestic industry is due to inefficient process employed by Applicant. However, while the claim of Orpro is unsubstantiated and without any verifiable evidence, this party has also contradicted itself in its response to the disclosure.
 - vi. The domestic industry has exported the material to a number of countries in the world including UAE and Chinese Taipei at prices much higher than the price at which the material has been imported into India. The price at which the material has been exported to India from the subject countries is lower than the price of plain polyester film, leave aside cost of other chemicals which form a substantial part of costs and which have to be added to produce subject goods. Further, cost of conversion of the plain film to the subject goods also calls for substantial value addition. It cannot, therefore, be said that the domestic industry has employed relatively inefficient process.
 - vii. It has been further argued by M/s ORPRO that Garware Polyester Limited has not suffered material or injury by the sales made into India from the UAE and on the contrary, Garware has gone on record to say that it expects to increase the turnover of its sun control film division during the fiscal year 2002-2003. However, the Authority notes that the Domestic industry exports a substantial proportion of its sales to other countries at prices much higher than the domestic sales realization. Therefore, exports of the applicant is not a cause of injury.

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

Conclusion on Injury and Causal Links

On the basis of the above examination the Authority concludes that the subject goods exported from the subject countries are at a prices far below their normal value, and the dumping margin determined in respect of the subject countries are substantial and above de minimis;

the subject goods exported from the subject countries are at prices below the Non Injurious Price of the domestic industry and the average sales realization of the subject goods of the Applicant, thus causing price underselling and price undercutting;

the domestic industry has not been able to realize remunerative price for the subject goods due to the price suppression and depression effects of the imported goods from the subject countries;

the domestic industry has suffered material injury due to the dumped imports from the subject countries. Volume and prices of imports from the subject countries at dumped prices have contributed to the material injury of the domestic industry;

There is a clear causal link between the dumped imports and the injury suffered by the domestic industry and the injuries caused by other factors have not been attributed to the injury suffered by the domestic industry..

K. INDIAN INDUSTRY'S INTERESTS AND OTHER ISSUES

(67) The Authority notes that the product under consideration is a product, which is directly used by the consumers and does not go into further processing to any substantial extent. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

I. CONCLUSIONS

(68) After examining the issues raised and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise, as recorded in the above findings, the authority concludes that:

- i. The subject goods originating in or exported from the subject countries have been exported to India below its normal value;
- ii. The domestic industry has suffered material injury; and
- iii. The injury has been caused to the domestic industry both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject countries.

RECOMMENDATIONS:

(69) After concluding that dumping from the subject countries have caused injury to the like product domestic industry and having established the causal link between the dumping and injury, the Authority considers it necessary, and recommends anti-dumping duty on imports of subject goods in the form and manner described hereunder.

(70) Having regards to the lesser duty rule followed by the authority, the Authority is of the view that anti dumping duty equal to the margin of dumping or less, that would remove the injury to the domestic industry will be appropriate in this case. Accordingly the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping so as to remove the injury to the domestic industry caused on account of dumping.

(71) The domestic industry has pleaded that antidumping duty in the form of fixed duty should be imposed in Rupee term in this case. However, considering the nature of the product, the Authority is of the view that imposition of antidumping duty on a reference price basis would be appropriate measure to neutralize the effects of dumped imports. Accordingly, it is recommended that definitive Anti Dumping Duty equal to the difference between the amount indicated in column (9) in duty table annexed to this finding, and the landed value of imports, upon importation into India, be imposed on all grades of subject goods, originating in or exported from Chinese Taipei and UAE.

(72) The definitive duty so recommended shall be collected retroactively from the date of imposition of provisional duty in terms of Rule 20(2)(a).

(73) Subject to the above, the Authority confirms the Preliminary Findings dated 25th July, 2003.

FURTHER PROCEDURES

(74) An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal, in accordance with the relevant provisions of the Act,.

(75) The Authority may review the need for continuation, modification or termination of the definitive measure, as recommended herein, from time to time as per the relevant provisions of the Act, and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party within the time limit stipulated for this purpose.

Annexure

DUTY TABLE

S. No :	Custom sub-heading	Description of goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Reference Price	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	39 20 6	Sun/Dust Control Polyester Film	Any Specification	Chinese Taipei	Any Country	Any Producer	Any Exporter	7.99	Per Kg	US \$
2.	39 20 6	Sun/Dust Control Polyester Film	Any Specification	Any country except UAE	Chinese Taipei	Any Producer	Any Exporter	7.99	Per Kg	US \$
3.	39 20 6	Sun/Dust Control Polyester Film	Any Specification	UAE	Any Country	Any Producer	Any Exporter	8.17	Per Kg	US \$
4.	39 20 6	Sun/Dust Control Polyester Film	Any Specification	Any country except Chinese Taipei	UAE	Any Producer	Any Exporter	8.17	Per Kg	US \$

Abhijit Sengupta
Designated Authority