

**No. 15/25/2008 DGAD**  
**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**(DEPARTMENT OF COMMERCE)**  
**DIRECTORATE GENERAL OF ANTI DUMPING & ALLIED DUTIES**

New Delhi, the 30<sup>th</sup> June 2010

**Final findings**

**Subject: - Sunset Review of Anti-dumping duties imposed on imports of Styrene Butadiene Rubber (SBR) 1900 series originating in or exported from Japan, Korea RP and USA.**

- A.**
1. No.15/25/2008-DGAD. – Whereas having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the AD Rules), the definitive anti-dumping duty was originally imposed vide notification No.107/1999-Customs, dated the 24<sup>th</sup> August, 1999 on import of Styrene Butadiene Rubber (SBR) originating in or exported from Japan, Taiwan, Turkey, Taiwan, France, USA, Germany and Korea RP.
  2. And whereas, the Designated Authority vide its notification No 34/1/2000-DGAD, dated 3<sup>rd</sup> July, 2001 in the Mid-term review had recommended the continuation of anti- dumping duty on imports of Styrene Butadiene Rubber (SBR) originating in or exported from Japan, Korea, USA, Turkey and Taiwan vide Customs Notification No. 56/2002 dated 31/05/2002.
  3. And whereas, the Designated Authority vide its notification No 15/5/2003-DGAD, dated 27<sup>th</sup> July, 2004 in the Sunset review had recommended the continuation of anti-dumping duty on imports of Styrene Butadiene Rubber (SBR) 1900 series, (hereinafter also referred to as the subject goods) originating in or exported from Japan, Korea RP and U.S.A., (hereinafter also referred to as the subject countries). Accordingly, the anti-dumping duties were extended vide Customs Notification No. 100/2004 dated 28<sup>th</sup> September 2004 in terms of Section 9(A)(5) of the Act.
  4. And whereas, in view of the order of the Hon'ble Delhi High Court in the matter of Indian Metal and Ferro Alloys Ltd v/s Designated Authority, Writ Petition (Civil) No. 16893 of 2006 and in accordance with Section 9 A (5) of the Act, read with Rule 23 of AD Rules, the Authority issued a public notice dated 31<sup>st</sup> March 2009, published in the Gazette of India, Extraordinary, initiating the sunset review investigation to review the need for continued imposition of duties in force and to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.
  5. And whereas, the antidumping duties as notified vide Notification No. 100/2004 dated 28<sup>th</sup> September, 2004 were extended up to 27<sup>th</sup> June, 2010 vide Customs notification No. 120/2009 dated 16<sup>th</sup> October 2009 in terms of Section 9(A)(5) of the Act.

**B. PROCEDURE**

6. In this proceeding, the procedure described herein-below has been followed:
- i. The Embassies of Japan, Korea RP and USA in India were informed about the initiation of the investigation, in accordance with Rule 6(2) of the AD Rules.
  - ii. The Designated Authority sent copies of the initiation notification dated 31<sup>st</sup> March 2009 to the Embassies of Japan, Korea RP and USA in India, known exporters from the subject countries, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file the questionnaires' responses and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters were also sent to the Embassies of Japan, Korea RP and USA in India along with a list of known exporters / producers with a request to advise the exporters/ producers from the subject countries to respond to the questionnaires within the prescribed time.
  - iii. Questionnaires were sent to the following known exporters from the subject countries in accordance with Rule 6(4) of the AD Rules to elicit relevant information:

S.N.	Company's Name
1.	M/s Ameripol Synpol Company, USA.
2.	M/s Korea Kumho Petrochemical Co. Ltd, Seoul, Korea.
3.	M/s Nippon Zeon Company Ltd., Japan.
4.	M/s JSR Corporation, Japan.

None of the exporter/producer from the subject countries has filed the questionnaire's response. However, M/s Korea Kumho Petrochemical Co. Ltd., Korea, has made submissions in response to the above notification.

- iv. M/s Apcotex Industries Ltd., a major domestic producer of the subject goods filed their submissions and has pleaded for the continuation of the anti-dumping duties in the instant matter.
- v. Questionnaires were sent to the following known importers, users and associations of the subject goods in India for seeking the necessary information in accordance with Rule 6(4) of the AD Rules:

S.N.	Company's Name
1.	Paragon Rubber Industries, Kerala
2.	Texim International, Madhavaram, Madras
3.	Bykoff Rubber Inds, Kerala

4.	Malaya Trade Impex P.Ltd., Kerala
5.	Josscos Rubbers, Calicut
6.	Paragon Polymer Products P. Ltd., Salem
7.	Leader Rubber Inds, Calicut, Kerala
8.	Veeksay Rubber Inds, , Kerala
9.	Safar Rubbers, Mallappuram,
10.	Kerala Footwear Products, Calicut, Kerala
11.	Arihant Rubber & Chemicals, Calcutta
12.	Chemi Colour Agency, Calcutta
13.	Viking Rubbers P Ltd., Kerala
14.	Bombay Pigments & Allied Products, Kerala
15.	Neo Rubber Foot Crafts P Ltd., Kerala
16.	Footcare Rubber Inds., Kerala
17.	Preston India P. Ltd., Bangalore
18.	Maharashtra Trading Corporation, Mumbai -3
19.	All India Rubber Industries Association, Northern Region, New-Delhi

In response to the above notification, M/s Paragon Rubber Industries and M/s Paragon Polymer Products Pvt. Ltd. have filed their importer's questionnaire responses. However, Rishirop Polymers Pvt. Ltd. Mumbai has filed their submissions in response to the initiation notification.

- vi. The imports data for the period of investigation and proceeding three years was called from Directorate General of Commercial Intelligence and Statistics (DGCI&S).
- vii. The Authority made available non-confidential version of the information/data and evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.

- viii. The Authority examined the information furnished by M/s Apcotex Industries Ltd., to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to analyze the injury suffered and to work out the cost of production, cost to make and sell the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- ix. In accordance with Rule 6(6) of the AD Rules, the Authority also provided an opportunity to all interested parties to present their views orally in a public hearing held on 25<sup>th</sup> February 2010. The parties which presented their views in the public hearing were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered, wherever found relevant, in these findings.
- x. The period of investigation for the purpose of the present review is April 2008 – March 2009 (12 months POI). However, the injury analysis covers the periods 2005-06, 2006-07, 2007-08 and the POI.
- xi. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant matter were disclosed to the known interested parties. The comments received on the disclosure statement have been duly considered in these findings.
- xii. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide non-confidential version of the information filed on confidential basis.
- xiii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the ‘facts available’.
- xiv. \*\*\* In this statement represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.

**C. Comments on the Disclosure statement**

7 (a) Submissions on behalf of M/s Paragon Polymer Products Pvt Ltd and M/s Paragon Rubber Industries:

The following comments, in brief, have been made:

- The submissions made earlier by them may be taken as a part of these comments.
- Standing: Details submissions were made to point out that no mandatory certifications were attached with the application and the effect of such deficiency on the

investigations. The Hon'ble Authority has ignored the submission that there was no mandatory certification filed stating that there were no self import and no relationship with exporters or importers of product under consideration. In view thereof, it cannot be said that the application is filed for and on behalf of Domestic Industry as defined. Further, the certification about the information being true and correct has also not been filed.

- Applicants relationship with Exporters or Importers: The submissions under this heading have been totally been ignored. In view thereof, it cannot be said that Designated Authority has carried out the mandatory tests to examine whether they could have entertained the questionnaire response as having been filed for and on behalf of Domestic Industry. No examination has been undertaken by the Designated Authority in terms of later part of Rule 2(b) in view of absence of declarations made and certificates given by the applicant industry. To that extent no examination has been undertaken to reach a conclusion that the application can at all be treated as having been filed for and on behalf of "Domestic Industry" as defined.
- Confidentiality: The issue of confidentiality was brought forth to the Hon'ble Authority in our earlier submissions also. The documents provided to us also were in the indexed form and did not reveal the full and proper information as required under the Anti-dumping Rules. Thus, in the absence of proper non-confidential version of the documents, we were unable to offer any meaningful comments on the same.
- Computation of Normal Value & NIP: It is respectfully submitted that the disclosure statement is inadequate inasmuch as it does not reveal even the methodology of computation of normal value, export price, dumping margin and the NIP. Further, we have not been provided with Annexure 4 of the disclosure statement.
- Incomplete Public File: It is submitted that the public file does not contain the non-confidential versions of the correspondence exchanged, non-confidential versions of every document given to the Designated Authority on confidential basis and verification reports for the domestic industry. The data obtained from DGCI&S was also not placed in the public file.
- Product under consideration: M/s Apcotex has referred to subject goods as High Styrene Resin (HSR). We would request, the Designated Authority not to alter the definition of product under consideration in any manner for the purpose of present sunset review investigation. We also pray that the scope cannot be enhanced to include KHS 68 which has been categorically been excluded earlier specifically in a situation when such exclusion has merged with the order of the Hon'ble Supreme Court in Rishiroop Polymers case. The Designated Authority could not have restored its own order on product under consideration which stood merged and changed in terms of Supreme Court order.
- Likelihood Analysis Flawed: We are constrained to reiterate that in a sunset review investigation the likelihood of continuance or recurrence of dumping and injury is required to be adjudged in case anti-dumping duties are withdrawn. In the disclosure statement, there is no analysis of this most crucial aspect of likelihood of continuance or recurrence of dumping and injury to the domestic industry in case of cessation of anti-dumping duty. Admittedly there is no injury during the current period of investigation. It may also be noted that while examining likelihood of recurrence of injury and dumping, the following factors are material for making determinations in a sunset review investigation:
  - a) Availability of disposable and unused capacities of the exporters in the subject countries.

- b) The exporters from the subject countries are engaged in supplying the subject goods at lower prices to other countries indicating a likelihood of recurrence of dumping.
- c) Higher level of consumption of goods from the subject countries in the Indian market.
- d) That the exporters were not able to find new market to replace their sales and there is a likelihood of their goods to be dumped into India.

In the present case, in its questionnaire response M/s Apcotex under the heading “Conclusions on injury” has stated as under:

***“Domestic Industry submits that the facts and circumstances of the present case are such that.....***

- b. The volume of imports in the current period were low. Consequently, the domestic industry has not suffered continued injury.***
- c. With the significant decline in the global prices, the Domestic Industry was forced to reduce its prices after Sept. 2008. The price decline continues significantly till March 09.***
- d. With the significant decline in demand for the product, the Domestic Industry faced significant decline in sales volume and consequently production & capacity utilization.***
- e. In the event of revocation .....” (Emphasis added)***

The above extract from the response of M/s Apcotex clearly goes to show that no injury is claimed in the questionnaire response. Reduction in prices and decline in production and capacity utilisation is attributed to global prices reduction and decline in demand. In such a situation, Designated Authority is therefore required to examine whether the cessation / discontinuance of anti-dumping duties in force is likely to lead to continuance or recurrence of dumping and injury.

- The likelihood analysis is flawed and is based on extraneous considerations and data that does not relate to product under consideration. The conclusions on surplus capacities are also not based on data relating to product under consideration and hence flawed.
- Causal link: The causal link analysis is also flawed as admitted facts do go to show that demand had declined. No impact analysis had been undertaken to examine its impact on the applicant. Despite such admission regarding contraction in demand, it has been recorded that there is no indication of any change in the consumption pattern. The decline in demand is only due to change in consumption pattern.

(b) Submissions by domestic industry:

The following comments, in brief, have been made:

- i In response to the disclosure statement, the domestic industry has disputed the proposed determination by the Authority that KHS-68 is not included within the scope of the product under consideration. While reiterating the earlier submissions in this regard, the domestic industry has argued that even when

the submissions made by them have not been disputed by the exporter, the exporter has consistently misled the Authority, available material clearly establishes that KHS-68 is SBR Elastomer Resin, the decision of the Hon'ble Supreme Court does not prevent the Authority from reviewing the previous order for modification; the Authority has rejected their claims/submissions, that too without giving any reasons.

ii With regard to other aspects of the investigation, the domestic industry is in agreement with the proposed determination of the Authority and has argued that the facts of the case clearly establishes continuation or likelihood of dumping and injury to the domestic industry and the anti-dumping duties are required to be extended further.

(c) Submissions on behalf of M/s Kumho Petrochemicals Ltd, Korea (Exporter) and M/s Rishirop Polymers Ltd (Importer):

i It is submitted that in the original investigation the Authority never held that the PUC constituted of all types of SBR classified under Chapter 3903.90. On the contrary, the Authority expressly noted that the synthetic rubbers or articles thereof which are covered under Chapter 40 do not fall under chapter 39. The said Final Findings dated 21.06.99 was challenged by one interested party before the Hon'ble CEGAT, New Delhi. The Tribunal, in its wisdom, had upset the Final Findings vide its order dated 02.02.2000 holding that that Anti-dumping duty is on all grades of SBR, whether falling under sub-heading 4002 or 3903. Pursuant to the order of the Tribunal, the Authority had broadened the scope the product under consideration in the two intervening reviews i.e. Mid-term Review-I and Sunset Review-I. On appeal, however, the Hon'ble Supreme Court vide its decision dated 23.03.06 restored the order of the Authority in the original investigation.

ii Thus, pursuant to the decision of the Hon'ble Supreme Court, the Findings with respect to the product under consideration of the Authority in the original investigation stand as good law today. The Authority having determined that the items falling under sub-heading 3903.90 was beyond the scope of product under consideration for the purpose of imposing antidumping duty cannot modify the same in the present investigation. Further, the Authority had expressly noted "that the item cleared under chapter 39 was "Elastomer Resin KHS 68" and thus it was not under the nomenclature of "Synthetic Rubber". This was ratified by the Hon'ble Supreme Court noting that the finding recorded by the Designated Authority was categorical and not a clerical omission.

iii In the light of the above, it is submitted the Authority may record specifically the following with regard to the scope of the product under consideration:

It is observed that the product under investigation in the original investigation was all grades of Styrene Butadiene Rubber (SBR) classified under customs heading no. 4002.19 of the Customs Tariff Act, 1975 originating in or exported from Japan, Korea RP and USA. The original investigation concluded vide notification dated 2/6/99 recommended duty on SBR 1500, 1700 & 1900 series. However, the scope of duty was restricted to SBR 1900 series vide mid-term review

notification dated 3<sup>rd</sup> July 2001 and was retained so in the first sunset review investigation. Taking into account the above and also the decision of the Honorable Supreme Court in the case of *Rishiroop Polymers P. Ltd. v Designated Authority & Addl. Secretary*, 2006 (196) ELT 129, the product under investigation in this sunset review investigation is held to cover all grades of Styrene Butadiene Rubber (SBR) 1900 series classified under customs heading No.4002.19 of the Customs Tariff Act 1975 and does not include "Elastomer Resin KHS 68" as the same is not under the nomenclature of "Synthetic Rubber" classified under chapter 40.

(d) Examination by Authority

- As regards 'Standing' related issues, the Authority is of the view that the issues are not relevant as this SSR investigation was initiated on *suo-motto* basis.
- As regards 'Confidentiality' related issues, the Authority has treated the information provided by the interested parties on confidential basis on being satisfied with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide non-confidential version of the information filed on confidential basis
- As regards 'Product under Consideration' related issues, the Authority notes that the present investigation is the Sunset Review investigation and therefore the final findings earlier notified by the Authority and decision of the Hon'ble Supreme Court are binding with regard to the scope of the present investigation. Accordingly, the Authority confirms the disclosure statement and holds that the scope of the investigation does not include KHS-68.
- As regards 'Likelihood Analysis', it has already been clarified that the same is based on best information available on record and is fully consistent with Rule 6(8) of the AD Rules.
- All other issues that have been raised have been appropriately dealt with in relevant section of these findings.

**Product under Consideration and Like Article**

**D. Submissions made by Domestic industry**

8. M/s Apcotex Industries Ltd. has made the following submissions:
  - (i) The product under investigation in the original investigation was all grades of Styrene Butadiene Rubber (SBR) of 1500, 1700 and 1900 series. The scope of duty was restricted to SBR 1900 series vide mid-term review investigation and the same was retained in the first sunset review investigation. The scope of product under consideration in the present second sunset review investigation remains the same, viz.

- all grades of Styrene Butadiene Rubber (SBR) 1900 series, which refers to High Styrene Resin Masterbatch or Emulsion Resin Rubber Masterbatch.
- (ii) SBR 1900 series is a blend of masterbatch of two latexes- Styrene Butadiene Rubber Latex and High Styrene Resin Latex. SBR 1900 series are synthetic rubbers since they meet the technical definition of rubber.
  - (iii) It is classified under subheading no 40.02 at four digit level. It has been categorized as rubber under subheading 4002.19 (Styrene Butadiene Rubber with Styrene content of over 50%). In fact, when the styrene content of the grade is increased further, the grades can be cleared under subheading 3903.90 of the Customs Tariff Act. However, the classification is indicative only and in no way binding on the scope of the present sunset review investigation.
  - (iv) The grades of SBR 1900 series are normally described in terms of Styrene content and Mooney viscosity in the product. The percentage content of the Styrene and Mooney viscosity in SBR 1900 series differentiate one grade of SBR 1900 series with the other grades. All the grades are interchangeably used by fine-tuning the recipe at the application stage. Indian industry produces the grades of SBR 1900 series which are equivalent of all those grades being produced by the exporters/producers in the subject countries.
  - (v) Exporter from Korea RP has misled the Designated Authority by claiming that KHS-68 grade produced and supplied by them was not within the scope of the product under consideration, even when the Designated Authority has confirmed that the High Styrene resin masterbatch was within the purview of the anti dumping Duty.
  - (vi) KHS-58 grade is very similar to KHS-68 with the exception that the styrene content is lower in KHS-58 grade and therefore, KHS-68 is falling under chapter 40 of the Customs Tariff Act.
  - (vii) Flowchart of manufacturing process shows that it is a masterbatch of two latexes as is SBR 1900 series. Another internationally recognized literature by M/s. C. M. Blow also shows that SBR 1900 series refers to a Masterbatch. KHS-68 is nothing but a masterbatch.
  - (viii) International Institute of Synthetic Rubber Producers (IISRP) has defined various SBR series. IISRP has defined SBR 1900 series as an Emulsion Resin Rubber Masterbatch. KHS-68 is also an Emulsion Resin Rubber Masterbatch.
  - (ix) Designated Authority in its Preliminary Findings relating to original investigation (Jan. '99) stated that SBR 1900 series (High Styrene Resin Masterbatch) is covered under PUC. KHS-68 is nothing but SBR 1900 series and is thus liable to duty.
  - (x) Designated Authority in its Final Findings relating to original investigations (Aug. '99) stated that as long as imported product is SBR of specified series ADD should be attracted (regardless of the Customs Heading under which it is imported). Accordingly, the Customs Department has to assess whether the item imported is SBR of specified series and levy ADD.
  - (xi) The order of the Designated Authority in the original investigation was challenged by some interested parties before CESTAT. CESTAT in its Order stated, *inter-alia*, that ADD is on SBR whether imported under 4002.19 or 3903.90. Accordingly, the ADD is imposed on both Customs Codes.
  - (xii) Customs Dept. has levied ADD on imports of KHS-68. One of such levy was challenged by Relaxo before CESTAT and misrepresented that the product involved was not an SBR. CESTAT held that the Anti Dumping Duty was wrongly collected. However, the Ministry of Finance has challenged the order of CESTAT before Supreme Court. Customs Dept. has thereafter instructed all customs houses to collect

Anti Dumping Duty on imports of KHS-68 reported in the Country. Subsequent consignment of KHS 68 made by Relaxo was again levied Anti Dumping Duty.

- (xiii) Relaxo again challenged the order and eventually filed appeal before CESTAT. However, by this time, since the Ministry of Finance had come to know about misrepresentations before CESTAT, the Ministry of Finance brought in sufficient evidence before CESTAT, including Technical information about the product, which was suppressed by Relaxo and the exporter from Korea. CESTAT, after detailed arguments by all parties, including detailed cross examinations, held that the representations by Relaxo were incorrect and the Customs Dept. should check the matter afresh. Accordingly, the matter was remanded back to Customs Dept. Customs Dept. after reconsideration of all the facts & circumstances relating to KHS-68, has confirmed that Anti Dumping Duty was required to be levied on KHS-68.
- (xiv) KKPC, the company producing and selling KHS-68, had been advertising KHS 68 as SBR for many years from the early 90's. Only when the issue of antidumping duty arose, in order to circumvent the antidumping duty and in order to suppress vital facts, the advertisement has been changed to show that KHS 68 is High Styrene Resin. The essential properties, functions & uses and customers remain the same for the product inspite of change in details.
- (xv) KKPC's Brochures clearly show KHS 68 as a High Styrene Rubber. It is to be noted that the Company shows this product as a "Rubber" and not a "resin" or "plastic", as the company is now attempting to claim.
- (xvi) IIT Kharagpur – Polymer Dept. has given an opinion that KHS 68 should fall under SBR 1900 series. Similar opinions have been given by a number of other independent organizations and experts.
- (xvii) The levy of Anti Dumping Duty on KHS-68 was challenged before the Hon'ble High Court at Calcutta. The Hon'ble High Court (in Dec. '01) after hearing the entire matter held that KHS-68 was liable to Anti Dumping Duty.
- (xviii) The end use of the KHS 68 is identical to the SBR 1900 series produced by the domestic industry and other producers world over, i.e., footwear application. Numerous letters of consumers are on record stating that KHS 68 is interchangeably being used with the domestic producers' SBR 1900 series and/or SBR 1900 series rubber being supplied by other producers world over.
- (xix) In the Mid-term Review investigations conducted by the Designated Authority, it has been re-iterated that product under consideration SBR 1900 series is High Styrene Resin Masterbatch. KHS 58, KHS 65 & KHS 68 are included under the head of High Styrene Rubber. The applications are common for these grades.
- (xx) The KKPC's literature shows KHS 68 as a HSR / High Styrene Resin Masterbatch; the manufacturing process is explained as a blend of SBR Latex and High Styrene Resin Latex, which meets the exact definition of SBR 1900 series.
- (xxi) Domestic industry referred to the website of M/s. KKPC wherein it was found that the company has shown various products under the head of "synthetic rubber" and "synthetic resins". It is found that High Styrene Rubber is included under the head of synthetic rubbers. Further the web-page / literature on High Styrene Rubber (HSR) elaborates the product as High Styrene Resin Masterbatch.
- (xxii) Since SBR 1900 series covers High Styrene Resin Masterbatches, it follows that all the grades, which are High Styrene Resin Masterbatches, are covered under SBR 1900 series. Accordingly, KHS 68 is very much within the scope of product under consideration.
- (xxiii) It is argued by the exporters that in the light of Supreme Court decision, Designated Authority cannot review the issue that whether the KHS-68 is SBR 1900 series or not.

However, the Supreme Court has not given a decision on merit. It has only attempted to interpret the decision of designated Authority. In that case, it cannot be said that the Designated Authority cannot review this issue.

- (xxiv) The sole imports during the earlier SSR were of KHS 68 and Designated Authority determined dumping, injury and causal link recommending an extension of duty. Therefore, it cannot be said that Designated Authority has considered in the past that KHS 68 is not an SBR 1900 series.
- (xxv) Technical specifications of SBR 1900 series produced by the domestic industry are similar to those being exported from the subject countries. Also, it is technically and commercially substitutable with SBR 1900 series imported from the subject countries. Imported and domestically produced material is used interchangeably with direct competition between the two products. Both are alike in all essential, physical and technical characteristics.
- (xxvi) The issue of like article has been settled by the Designated Authority in earlier investigations as well as CEGAT wherein the subject goods produced by the domestic industry and the subject countries were considered as like articles.

## **D.2. Views of the importers, consumers, exporters and other interested parties**

9. The following submissions have been made by the importers (M/s Paragon Rubber Industries and M/s paragon Polymer Products Pvt. Ltd.):

- (i) The submissions made in Oral hearing for the inclusion of KHS-68 never formed the part of the application and were raised for the first time.
- (ii) Scope of the product cannot be enhanced at this stage of review.

9.1 The following submissions have been made by M/s Korea Kumho Petrochemical Co. Ltd, Seoul, Korea (KKPC)

- (i) All types of SBR were not included in the investigation and it is against the order of the Supreme Court to classify SBR under Customs heading 3903.90.
- (ii) The designated Authority in its preliminary finding has held that SBR under 3903.90 is not product under consideration. Also in its Final finding it was held that KHS 68 falling under Chapter 39 is beyond the purview of investigation.
- (iii) Including SBR under Customs heading 3903.90 will be contempt of the Supreme Court.
- (iv) Following the order of the CEGAT, the Designated Authority has broadened the scope of product under consideration in MTR and SSR.
- (v) The scope of the product under consideration cannot be modified in a Sunset review investigation. In fact, the present is the second Sunset review.

## **D.3. Examination by the Authority**

10. The Authority notes that M/s Apcotex Industries Ltd has argued that KHS-68 is a SBR and falls within the scope of the PUC and that the exporters and importers have misled the Authority to hold that "Elastomer Resin KHS 68" is not under the nomenclature of "Synthetic Rubber" and that significant imports of KHS 68 have been made during the POI.

11. It is, however, noted that in the final findings dated 2<sup>nd</sup> June 1999, in its para 7, the Authority has recorded as follows:

*“7... 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.”*

12. It is observed that the product under investigation in the original investigation was all grades of Styrene Butadiene Rubber (SBR) classified under customs heading nos. 3903.90 and 4002.19 of the Customs Tariff Act, 1975 originating in or exported from Japan, Korea RP and USA. The original investigation concluded vide notification dated 2/6/99 recommended duty on SBR 1500, 1700 & 1900 series. However, the scope of duty was restricted to SBR 1900 series vide mid-term review notification dated 3<sup>rd</sup> July 2001 and was retained so in the first sunset review investigation. Thus, the product under investigation in this sunset review investigation remains the same, viz. all grades of Styrene Butadiene Rubber (SBR) 1900 series and does not include "Elastomer Resin KHS 68".
13. The classification is, however, indicative only and in no way binding on the scope of the present Sunset review investigation.

#### **E.1. Scope of the Domestic Industry**

##### **Submissions made by the Domestic industry**

14. M/s. Apcotex Industries Ltd., has made the following submissions:

In the original investigations, petition was filed by M/s. Synthetics & Chemicals Limited. Subsequently, the company was forced to suspend its production. At the time of review, M/s. Apar Industries Limited and Apcotex Industries Limited constituted domestic industry. In the present period, there are only two producers of SBR in India. Apcotex is a major producer of the subject goods in India.

#### **E.2. Submissions made by the importers, consumers, exporters and other interested parties**

15. The following submissions have been made by the importers (M/s Paragon Rubber Industries and M/s paragon Polymer Products Pvt. Ltd):

- (i) Present response is without the Authorization on behalf of Domestic Industry. The declaration that the domestic industry has not imported the subject goods or is not related to exporter or importer is without certification. No examination has been conducted by the Authority in this regard.
  - (ii) According to the Trade Notice No. 3/2007, Designated Authority is at liberty to close the investigation if duly substantiated application is not filed by the Domestic industry.
  - (iii) Apcotex has unnecessarily treated all the information regarding injury and causal link as confidential without giving proper reasons. There is no proper indexation done with respect to the non-confidential information. Such information is therefore to be rejected.
16. No other interested party has made any submission in this regard.

### **E.3. Examination by the Authority**

17. At the time of the initiation of this review investigation, Rule 2(b) of the AD Rules read as follows:-

*"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers only":*

18. However, the Rule 2(b) of the AD Rules has recently been amended to read as:

*"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers only"*

19. In the present review investigation, the Authority notes that the M/s Apcotex Industries Limited is a major producer of the subject goods in India. Therefore, M/s Apcotex Industries Limited constitutes 'domestic industry' within the meaning of the AD Rules.

### **F.1. Likelihood of Continuation or Recurrence of Dumping**

#### **20. Submissions made by the Domestic Industry**

- None of the exporters and producers from the subject countries has responded to the Designated Authority by filing the exporter's questionnaires responses. M/s Korea

Kumho Petrochemical Co. Ltd, Seoul, Korea (KKPC) has also not filed any questionnaire response, even though the company has exported the subject goods in the investigation period. Such being the situation, the exporters/producers from all the subject countries should be treated as non-cooperative.

- Domestic industry has provided a detailed estimation of normal value in the subject countries, which may be adopted for determination of dumping margin in the present review.
- The imports shown by DGCI&S cannot be considered. SBR 1900 series is classified under customs sub-heading no. 4002.1902 and 3903.9000. The importers are getting it cleared under other sub-headings. The official statistics of the Government of India published by the Directorate General of Commercial Intelligence and Statistics, does not, therefore, exhibit true and complete picture with regard to volume and value of the imports. They have provided evidence establishing that the importers are getting SBR 1900 series cleared under other sub-headings also. Furthermore, the imports under customs sub-heading 3903.9000 cover other products besides SBR series. It is therefore submitted that the imports shown by DGCI&S cannot be considered.
- They have compiled import statistics as per information made available by the Customs and compiled by secondary sources. Such imports of SBR 1900 series are being compiled by Polymers Plastics & Rubber Journal (PPR), based on the information made available in the Customs Daily Lists. It is submitted that the imports compiled as per information published by PPR at the best can be considered as minimum imports of the subject goods in India. The domestic industry has thus determined the export price for the reasons stated above, as per the imports reflected in PPR.
- It may also be noted that although the imports have been cleared under Chapter 40 of the Customs Tariff, the manufacturers from these countries are in a position to produce various grades, some of which would fall under chapter 39 of the Customs Code. Hence, it is imperative that the Anti-dumping duty is imposed on all the relevant Customs Codes.
- Considering the normal value and export price it would be seen that exporters from the subject countries have continued to export at dumped prices in the Indian market. None of the foreign exporters or producers has provided information in the prescribed form and manner. Also it is not established by any of the foreign exporters or producers that there is “no dumping” or “no likelihood of dumping”. Exporters have failed to establish that the dumping is unlikely in the event of revocation of anti-dumping duty.
- In a Sunset review, the Authority is required to examine the likelihood of continuation or recurrence of dumping and injury to arrive at a decision to continue or vary or remove the duty so as to offset dumping. It has, *inter alia*, submitted the following:
  - (i) That the domestic industry has suffered injury from the dumped imports for quite some time as confirmed by the original determination and subsequent review determinations. There is a great possibility that the expiry of duty will result in

flooding of the material in the Indian market. That the domestic industry did not suffer significant injury in the current period due to low volume of the imports. However, expiry of the anti dumping duties is likely to result in increased volumes at dumped prices from the subject countries causing injury to the domestic industry.

(ii) That, even after exporting the subject material and selling in their domestic market, the producers in these countries are having excess unutilized capacities. Evidently surplus capacities have been created considering the export markets. Expiry of the present duty would therefore result in significant exports to the Indian market.

(iii) That the imports reported in the investigation period were undercutting the domestic prices. Therefore, in the event of revocation of anti dumping duties, the domestic industry is likely to face decline in demand for its product. This would have significant depressing/suppressing effect on the domestic industry.

(iv) The burden of proof is on the exporter that the dumping is unlikely to continue or recur in the event of revocation of the anti dumping duties.

## **F.2. Submissions made by the Exporters/Importers/Other interested parties**

21. Neither any exporter or producer has filed the questionnaire response in the form and manner prescribed, nor has any interested party offered any comment or submissions with regard to the Normal value, Export price and determination of the dumping margin.

## **F.3. Examination by the Authority**

22. It is seen that the subject goods have only been imported from Japan to the extent of 29 MTs and there has not been any imports of the subject goods during the POI from Korea RP and USA. It is further noted that out of the total demand of about 9000 MTs, the imports from the subject countries account for only 29 MTs. Thus, the Authority observes that imports of this quantity of the subject goods may not have had a significant adverse impact on the performance of the domestic producers. It is, however, possible that the imports may not have been made due to the imposition of the anti dumping duty in force.
23. Therefore, as mandated under the law, the Authority further examined the likelihood of recurrence of dumping, in case the anti dumping duty in force is allowed to cease. It is noted that a specific questionnaire, *inter alia*, eliciting information regarding likelihood of recurrence of dumping and consequent injury was sent to all known exporters/producers from the subject countries. However, no exporter/producer has responded to the same and thus has not co-operated in this investigation. Thus, the Authority has no recourse but to rely on the facts available on record to examine the likelihood of recurrence of dumping. Therefore, the Authority has examined the issue of likelihood of recurrence of dumping and consequent injury on the basis of best information available.

24. The Authority tried to find the relevant data which could establish the prices at which the subject goods have been exported from the subject countries to the third country markets. For this purpose, the data as made available by Korea International Trade Association (KITA), UNCOMTRADE and World Trade Atlas were checked and it was found that the data was not available for the subject goods and instead covered all types of SBR. It was found that the Customs classification is not dedicated for the product and the classification includes other types of SBR as well.
25. The domestic producer has submitted a report, namely World Rubber Statistics, 2008, of IISRP (a leading international journal relating to this product, which provides details of capacities available with various global players and country wide consumption patterns). From a perusal of the report, it is noted that globally the producers report the capacities for SBR as a whole, irrespective of their types. However, a perusal of the journal shows that there are surplus capacities to manufacture SBR in the subject countries, which also includes the subject goods. Besides, the domestic industry has contended that some of the global producers, in fact, interchangeably use the production facilities for producing different kinds of SBR. Even the web-sites of some of the producers of the subject goods were seen but the relevant information about the capacities and other details thereof was not found. While these websites did not disclose the information with regard to production, capacity, demand etc. dedicated for the subject goods but only revealed the information in respect of various products produced by them.
26. The Authority, however, notes that 29 MT of the subject goods have been imported from the subject countries during the POI. In view of the non-cooperation from the exporters/producers from the subject countries and in absence of the availability of relevant data in respect of the subject goods; the Authority considers that in case the anti dumping duty ceases to operate, the imports of the subject goods from the subject countries are likely to enter into India at similar prices. Besides, from the data available in respect of the capacities of SBR and consumption patterns thereof in the subject countries in the afore-stated journal, it is quite possible that these idle/surplus capacities could be utilized for exporting the subject goods to India in the event the anti-dumping duty in force ceases to operate. Thus, in a situation when there are unutilized capacities, even if it is assumed that third country exports would not be diverted to Indian market (in the absence of the relevant data in respect of exports of the subject goods from the subject countries to the third country markets), the likelihood of recurrence of dumping in the event of cessation of the anti-dumping duty is apparent. Accordingly, the likelihood of dumping and the dumping margin has been estimated on the basis of the best information available on record. The dumping margins so estimated works out to 323.55 US\$/MT in respect of Japan; 393.38 US\$/MT in respect of Korea RP and 493.71 US\$/MT in respect of USA.

**G. INJURY AND CAUSAL LINK**

27. The Authority notes that this being a Sunset review of the anti-dumping duty already in force, likelihood of continuation or recurrence of material injury needs to be examined in the context of actual or likely imports of the subject goods from the subject countries.

## **G.1 Likelihood of Continuation or Recurrence of Injury**

### **Submissions made by the Domestic Industry**

28. The submissions made by the domestic industry with regard to injury and causal link, in brief, are as follows:
- (i) WTO Rules states that the anti-dumping duties should remain in force till such time that the product continues to be exported at dumped prices and the domestic industry continues to be injured or there is a possibility of recurrence of dumping in case duties are revoked with consequent possibility of recurrence of injury to the domestic industry. Therefore, duties should remain in force to the extent necessary to counteract the dumping which is causing injury.
  - (ii) Indian Rules also states that the anti-dumping duty once imposed shall remain in force unless designated Authority in a Review is of the opinion that the cessation of such duty is unlikely to lead to continuation or recurrence of dumping and injury.
  - (iii) In accordance with Rule 11, in the sunset review investigation, injury to the domestic industry has to be examined on a mutatis mutandis basis.
  - (iv) The exporters from Japan and Korea continued dumping of the material in the Indian market. Though the volume of imports is low, the same was clearly at the dumped prices.
  - (v) The landed price of imports which is below the domestic selling price has further decreased. Revocation of anti dumping duty will therefore result in price undercutting.
  - (vi) The margins of dumping from the subject countries are more than the limits prescribed. Though the export prices have increased subsequent to previous investigation conducted by the Designated Authority, the export prices have increased in Rupee terms only and not in US \$ terms. Actual realization to the exporter (which is linked to US \$) has declined. Moreover, the cost of production of the Foreign Producers has increased due to increase in the raw material costs.
  - (vii) The position of the domestic industry improved significantly in the period as the dumped imports were not available in the market. Further, it would be seen from the submissions given below that should the Anti-dumping duty be revoked, the injury to the domestic industry would recur.
  - (viii) Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like goods offered by the domestic industry in the Indian market. The Authority is, therefore, requested to assess injury to the domestic industry cumulatively from the subject countries.
  - (ix) Sufficient freely disposable capacities exist in the exporting countries. The consumption in the exporting countries is far less than their capacities built-up and the exporters in these countries have no option but to look for some markets to sell their surplus. Such being the situation, revocation of Anti-dumping duty at this stage would result in flooding of the imports in the Country. It would not be difficult for these Foreign Producers to export volumes to the extent of Indian demand.

## **G.2. Submissions of other interested parties**

29. The following submissions have been filed by M/s Paragon Rubber Industries and M/s Paragon Polymer products Pvt. Ltd (Importers). No other interested party has advanced any argument on injury & causal link. M/s Paragon Rubber Industries and M/s Paragon Polymer products Pvt. Ltd have, *inter alia*, contended that:
- (i) Apcotex has unnecessarily treated all the information regarding injury and causal link as confidential without giving proper reasons. Also no proper indexation has been done with respect to the non-confidential information. Such information is therefore to be rejected.
  - (ii) During the hearing, no submissions were made by Apcotex on their case on dumping, injury and causal link.
  - (iii) No injury is claimed by Apcotex in its application and by its own admission that the global meltdown is the cause of the deterioration if any. Therefore, it is the Authority's obligation to examine the likelihood of dumping and injury.
  - (iv) Continuation of duties cannot be claimed from USA as there are no imports from the country and hence no causal link has been established.
  - (v) No evidence of divergence of exports from third countries to India, pricing behaviour or their capacities, demand, sales projections or likely prices in other markets has been provided.
  - (vi) Designated Authority has not provided access to the public documents. There is no proper maintenance of the public file.
  - (vii) There is a flaw in the calculation of the landed value as the data for excluded products is also included.
  - (viii) Designated Authority should made available the data relied to file questionnaire response by Apcotex, non-confidential version of the correspondences between the Apcotex and other parties, the T/T DGCI&S data and data procured from other sources, DGCI&S data for Styrene Monomer and Butadiene, the methodology for the calculation of the normal value, the basis for taking U.S.A power rates, the evidence of adjustments to calculate the export price and the source of the sales of other Indian producers, the evidence of the capacities of producers from the subject countries.
  - (ix) The CIF price is miscalculated.
  - (x) There is duplication of the entries for 2005-06.

## **G.3. Examination by the Authority**

30. The Authority has taken note of the arguments on injury examination and addressed the issues raised at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties.
31. It is stated that the public file has been duly maintained and has been made accessible to all the interested parties from time to time as per mutual convenience.
32. Annexure-II of the AD Rules provides for an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the

dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

33. As regards the impact of the dumped imports on the domestic industry Para (iv) of Annexure-II of the AD Rules states as follows.

*“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment wages growth, ability to raise capital investments.”*

### **G.3.1. Likelihood of Continuation of Injury**

34. The Authority has first examined whether there is likelihood of continuation of injury to the domestic industry on the basis its performance during the period of investigation (POI).
35. For the purpose of current injury analysis the Authority has examined the volume and prices effects of imports of the subject goods from subject countries on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any.

#### **Volume effect**

##### **a) Assessment of Demand**

36. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of the domestic industry and other Indian producer have been added to the total imports into India, which has been summarized as under:

	<b>Unit</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>POI</b>
<b>Imports from Subject countries</b>					
Japan	MT	86	248	26	29
Korea RP		-	-	-	-
USA		-	-	-	-

<b>Imports from other countries</b>	MT	50	7	-	33
Total imports	MT	136	255	26	61
<b>Sale of domestic industry</b>	MT	4473	3742	6794	4531
<b>Sales of other Indian Industry</b>	MT	4752	4090	7116	4463
<b>Total Demand</b>	MT	9,361	8,087	13,936	9,055

The Authority notes that there is significant demand of the product under consideration in the period of investigation though the demand of the product has declined in the POI as compared to the base year and as well as the immediately preceding year. There has also been a decline in the volume of imports from the subject countries over the years and only a marginal increase in the period of investigation as compared to the immediately preceding year.

**b) Import volumes and market share**

37. Annexure-II (ii) of the AD Rules provides that “while examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports either in absolute term or relative to production or consumption in India ...”. Thus, with regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.
38. The table below summarises the position with regard to import volumes and market share: -

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Imports from Subject countries					
Japan	MT	86	248	26	29
Korea RP	MT	-	-	-	-
USA		-	-	-	-
Imports from other countries	MT	50	7	-	32
Total Imports	MT	136	255	26	61
Indian Production	MT	9157	7882	14083	9189
Demand	MT	9,361	8,087	13,936	9,055
Subject imports in relation to					
Total Imports	%	63.58	97.12	100.00	46.91
Production	%	1.96	6.54	0.38	0.61

Consumption	%	0.92	3.07	0.19	0.32
Market share of domestic industry in demand	%	47.48	46.27	48.75	50.04

From the above, the Authority notes that:

- (i) The demand of the subject goods has been in the range of 9,361 to 9,055 except during the 2007-08 period. The domestic industry has claimed that the demand had increased in 2007-08 due to increase in the prices of natural rubber which led to the substitution of natural rubber with the product under consideration.
- (ii) With the negligible volume of dumped imports from the subject countries in the period of investigation, the market share of the subject countries has also declined in comparison with the base year. There are no imports from USA and Korea RP; whereas the imports from Japan are not in significant volumes.

### **G.3.2 Price effect of the dumped imports on the Domestic Industry**

39. In order to ascertain the price effect of the imports of the subject goods from subject countries on the domestic industry, the Authority has examined whether there has been a significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
40. In order to assess the extent of price undercutting, the Authority has compared the net sales realization of the domestic industry with the landed value of the imports. The net sales realization was arrived, after deducting all rebates and taxes. The landed value of the imports was compared with the net sales realization of the domestic industry, even after considering the anti-dumping duties in force and it is noted that the Landed value of the subject goods from the subject countries including the applicable customs duty is significantly lower than the net sales realization of the domestic industry.

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Net Sales Realization	Rs./MT	***	***	***	***
Trend	Indexed	100	108	107	134
Landed Value	Rs./MT	***	***	***	***
Trend		100	106	111	102
Antidumping duty Benchmark	Rs/MT	***	***	***	***
Trend		100	103	92	103

Price undercutting amount	Rs./MT	(***)	(***)	(***)	***
Trend		(100)	(100)	(128)	36
Price undercutting %	%	(***)	(***)	(***)	***
Trend		(100)	(93)	(120)	27

### **Price suppression/depression**

41. In order to assess whether the imports from the subject countries were suppressing/depressing the prices of the domestic industry, the Authority has compared the cost of production and net selling price of the domestic industry along with the landed price of imports over the injury period, which is given in the following table:

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Cost of Production	Rs./MT	***	***	***	***
Trend	Indexed	100	116	97	113
Net Selling price	Rs./MT	***	***	***	***
Trend	Indexed	100	108	105	134
Profit/Loss	Rs./MT	(***)	(***)	(***)	***
Trend	Indexed	(100)	(178)	(31)	39

The Authority notes that both the cost of production and the net selling price increased in 2006-07 and then dipped in 2007-08 and again increased in the POI. The domestic industry has claimed that the increase was a result of global increase in the input costs. Apparently, the domestic industry was able to increase its prices appropriately along with the increase in the cost of production. However, this needs to be seen in the context that there have not been any significant volume of imports of the subject goods from the subject countries during the POI. Therefore, it further needs to be examined, whether the situation is likely to be the same, once the anti-dumping duties cease to operate.

### **Economic Parameters relating to the Domestic Industry**

42. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to determination of consequent impact of these imports on domestic producers of such products, the AD Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude

of the margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments.

Production, sales, capacity and capacity utilization

43. The production, sales, capacity & capacity utilization of the domestic industry has been as follows:

	Unit	2005-06	2006-07	2007-08	(POI)
Capacity	MT	10,000	10,000	10,000	10,000
Production	MT	4,405	3,792	6,967	4,726
Capacity utilization	%	44.05	37.92	69.67	47.26
Domestic sales	MT	4,449	3,742	6,794	4,531
Demand	MT	9,361	8,087	13,936	9,055
Production in % of demand	%	47.06	46.89	49.99	52.19
Sales in % of demand	%	47.53	46.27	48.75	50.04

It is noted that the performance of the domestic industry in terms of production, capacity utilization and sales has moved in tandem with the demand. However, the domestic industry has claimed that performance of the domestic industry would again be adverse if the anti-dumping duties in force cease to operate, as (a) there is excess capacity in subject countries; (b) there is a huge domestic market in India and (c) the price attractiveness of Indian market as would be evident from the existence of significant price undercutting during the POI.

Profitability

44. The cost of production, net sales realization & profit/loss of the domestic industry is shown below:

	Unit	2005-06	2006-07	2007-08	2008-09
Cost of Production	Rs./MT	***	***	***	***
Trend		100	116	97	113
Net Sales Realization	Rs./MT	***	***	***	***
Trend		100	108	105	134
Profit/Loss	Rs./MT	(***)	(***)	(***)	***
Trend	Rs./MT	(100)	(178)	(31)	39

The Authority notes that the domestic industry has improved its performance and has started earning profits in the POI.

Market share

Market Share in Demand	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Subject Countries					
Japan	%	0.92	3.07	0.19	0.32
Korea RP		-	-	-	-
U.S.A		-	-	-	-
Other Countries	%	0.53	0.09	-	0.36
Domestic industry	%	47.78	46.27	48.75	50.03
Other domestic producer	%	50.77	50.57	51.06	49.29

A comparison of the sales of the domestic producers and imports from the subject countries shows that there is low volume of imports, which may be due to the existence of the anti-dumping duties. However, if the present duties cease to operate, it needs to be further examined, whether the domestic industry is likely to suffer loss on profitability or the market share due to the likely presence of the dumped imports, if any, in light of the significant price difference.

Employment and Wages

- 45 The position with regard to employment, wages and productivity is as follows:

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Employees	No.	***	***	***	***
Trend		100	99	111	104
Wages	Rs.lacs	***	***	***	***
Trend		100	106	132	158
Productivity per day	MT/day	12.24	10.53	19.35	13.13

The Authority notes that the productivity of the domestic industry has apparently not suffered.

46. Return on investments and cash flow

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
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ROI - GFA Basis	%	(***)	(***)	(***)	***
Trend	Index	(100)	(142)	(37)	46
ROI - NFA Basis	%	(***)	(***)	(***)	***
Trend	Index	(100)	(144)	(36)	58
Cash Profit	Rs.Lac	(***)	(***)	(***)	***
Trend	Index	(100)	(201)	(32)	140

The Authority notes that with the decline in the import volumes, the return on investment has improved. In absence of any significant volume of the imports entering the Indian market during the period of investigation, the domestic industry's performance has taken a positive turn in respect of ROI and cash profit. However, with the current price difference between the landed value of the subject goods and the net sales realisation and as well as the non-injurious price of the domestic industry; it needs to be further examined, whether there is likelihood of injury to the domestic industry, if the anti-dumping duties in force cease to operate.

47. Inventories

	Unit	2005-06	2006-07	2007-08	2008-09
Average Inventories	MT	212	127	92	109

It is seen that the inventories of the domestic industry have increased during the period of investigation as compared to the previous year, which appears to be due to the decline in demand in the POI as compared to the previous year. However, the inventories have declined in comparison to the base year.

It has been claimed by the domestic industry that the withdrawal of anti-dumping duty is likely to lead to recurrence of dumping, which would cause injury to the domestic industry and that would include increase in the inventory levels as well.

48. Ability to raise capital

The Authority notes that the domestic industry does not have too many operations and any adverse performance of the product is likely to impact its ability to raise capital.

Magnitude of Margin of Dumping

49. The Authority notes that though significant volumes of imports of the subject goods have not been made during the period of investigation, but the volume of imports that have been made during the POI, being in commercial quantities, the dumping margin is quite significant. The dumping margin in the period of investigation is also indicative of likely future behaviour of the exporters from these countries.

### Growth

50. The Authority notes that though there has been a positive growth in terms of most of the parameters; but it needs to be further examined, whether the domestic industry would continue to perform in a similar manner, once the anti-dumping duties in force cease to operate.

### Magnitude of Injury and Injury margin

51. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared to the landed value of the exports from the subject countries for determination of the injury margin during the POI. Thus compared, the injury margin works out as under:

NIP	Rs./MT	***
Landed Price	Rs./MT	***
Injury Margin	Rs./MT	***
Injury Margin (%)	%	***
Range	%	10-15

### Likelihood of recurrence of injury

52. Submissions made by the domestic industry

The domestic industry has contended that:

- the exporters/producers in the subject countries are likely to resort to dumping of the subject goods in the Indian market due to the excess capacities in the subject countries.
- None of the interested parties has participated and co-operated in the present investigation and thereby have failed to establish that there is no likelihood of the continuation or recurrence of dumping and consequent injury in the event of revocation of the anti dumping in force.
- the price difference between the domestic and imported material has been significant and that there is no reason to believe that the subject countries would not divert significant volumes of the subject goods to the Indian market in case the anti dumping duties are withdrawn, more so when freely disposable capacities exist with the foreign producers.
- It has not been demonstrated by the exporters that withdrawal of anti-dumping duty would not lead to likelihood of recurrence of dumping and injury to the domestic industry and continued imposition of the duty was unnecessary to offset dumping.

### **Examination by the Authority**

53. As stated above, while apparently the domestic industry has not suffered injury during the POI, due to small volume of imports of the subject goods from the subject countries; therefore it has been further examined whether there is likelihood of recurrence of dumping and consequent injury, if the anti-dumping duties cease to operate.
54. The arguments and submissions made by the interested parties have been examined; and all such factors that have been brought to the notice of the Authority have been evaluated to find out whether there is a likelihood of recurrence of injury in the event of cessation of the anti-dumping duty. For this purpose, parameters such as capacity, production, landed value of imports, surplus capacities in the subject countries, likelihood of exports, domestic demand, net sales realisation of the domestic industry, the non-injurious price as determined by the Authority etc. have been considered.
55. The Authority has noted that the subject goods have been imported in the Indian market (although in small quantity) at dumped prices, despite the existence of the duties in force. It is likely that the subject goods from the subject countries may be exported at similar prices from the subject countries in the event of cessation of the anti-dumping duty, as has already been noted in the relevant section of these findings.
56. Therefore, the Authority has further examined the likelihood of injury, in case of recurrence of dumping, if the anti dumping duties in force cease to operate. It has been noted that imports of small volumes (but in commercial quantities) have been effected during the POI at dumped prices. No exporter/producer has co-operated in this investigation by submitting the questionnaires' response. Whereas the domestic industry has provided information regarding capacity, production and demand of the subject goods of the exporting countries based on a report, namely World Rubber Statistics, 2008, of IISRP (a leading international journal relating to this product, which provides details of capacities available with various global players and country-wide consumption patterns). From the perusal of the report, it is noted that there are surplus capacities to manufacture SBR in the subject countries, which also includes the subject goods. Besides, the domestic industry has contended that some of the global producers, in fact, interchangeably use the production facilities for producing different kinds of SBR.
57. In view of the non-cooperation, the Authority has little recourse but to determine the likelihood of injury on the basis of the facts available on record. It has been seen that the landed value of the imports during the POI have been significantly lower than the net sales realization and the non-injurious price of the domestic industry. Assuming that the price trends remain similar, it is likely that the domestic industry's performance would be adversely impacted due to the recurrence of dumping of the subject goods.
58. Besides, it is observed that the subject countries are exporting to a number of countries and therefore possibilities of diverting third country exports to India are not ruled out.

TABLE

Country	2008( '000 MT)						
	Capacity	Demand	Surplus Capacities	Exports	Imports	Derived Production	Available surplus capacities
Japan	564	416	148	148	98	466	246
USA	1,125	767	358	313	278	802	636
Korea RP	516	229	287	453	31	651	318
India*	17	9	8	0	0	9	8

Source: IISRP- World Rubber Statistics, 2008, Export-import data from UNCOMTRADE.

- Indian data is for Product under Consideration only and other country data is for SBR as a whole.
59. Considering that there is significant demand of the subject goods in the country and that the subject countries have the potential to raise their production and export volumes, the cessation of the anti-dumping duties is likely to make the Indian market attractive to the exporters/producers from the subject countries, by reason of price. In such an event it is likely that the imports of the subject goods are effected at similar prices at which they have been made during the POI (albeit in small volumes). Assuming so, there is likely to be a case of significant price undercutting and as well as of significant price underselling that is likely to adversely impact the domestic industry.
60. Further, the possibility of lowering the prices by the exporters/producers from these countries cannot be ruled out in view of dumping and likelihood of recurrence of dumping. Such price behaviour of exporters/producers from the subject countries coupled with their ability to deliver significant quantities of the subject goods is likely to have a price depressing impact on the price-sensitive domestic market. Thus, the Authority notes that in the event of cessation of the present anti-dumping duties, there is likelihood of recurrence of injury to the domestic industry.

#### H. Causal Link

61. The Authority has examined the submissions with regard to the significance and relevance of causal link in a sunset review investigation. It is important to note that under Section 9A(5) of the Act, the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the product under consideration during the review investigation period or not. It was, however, examined whether other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It is noted as follows:

##### Volume and Prices from Other Countries

62. The Authority notes that there is a significant increase in the volume of imports from the other countries. However, the injury to the domestic industry has not been caused due to these volumes as the prices of the imports from the other countries are significantly higher.

### Contraction in Demand and / or Change in Pattern of Consumption

63. It is noted that the demand of the subject goods has decreased in the period of investigation as compared to the previous year. The domestic industry has, however, claimed that the demand had increased in 2007-08 due to increase in the prices of natural rubber which led to the substitution of natural rubber with the product under consideration. This fact has not been disputed by any other interested party. It has thus been seen that there is no indication of any change in the consumption pattern.

### Trade Restrictive Practices of and Competition between the Foreign and Domestic producers

64. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic producers compete amongst one another and at the same time compete with the landed prices of the subject goods. The price of the domestic industry is influenced substantially by the landed price of the subject goods. Moreover, no evidence has been submitted by any interested party even to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

### Development of Technology

65. Neither any party has raised any issue with regard to developments in technology as being the cause of injury to the Domestic Industry, nor there appears to be any significant development in technology that the same could be the principal cause of injury to the domestic industry.

### Export Performance

66. There have been marginal exports of the subject goods by the domestic industry. In any case, the Authority has considered profitability and other price parameters only in respect of domestic operations.

### Productivity

67. It is noted that the productivity of the domestic industry has not suffered in the absence of dumping.
68. The Authority thus notes that other listed known factors have not caused injury to the domestic industry.
69. In determining whether dumped imports of the product are causing injury to the domestic industry, the Authority considered the following parameters:
- a) The imports are still continuing at dumped prices, though the quantum of dumped imports has remained low, which could be due to the presence of anti-dumping duty. It would be examined whether the imports of the subject goods would increase on the cessation of anti-dumping duties and whether as a direct consequence thereof, the domestic industry is likely to lose its market share.

- b) The market share of the domestic industry has remained more or less stable. It would be, however, seen whether the recurrence of dumping is likely to have any impact on the market share of the domestic industry in the event of cessation of the anti-dumping duty.
- c) Whether the imports of the subject goods are likely to undercut the prices of the domestic industry.
- d) There is an improvement in profits, return on capital employed and cash profits of the domestic industry which could be due to the presence of anti-dumping duty; therefore, it would be further seen whether the recurrence of dumping is likely to have any impact on these parameters in the event of cessation of the anti-dumping duty.
- e) Growth of the domestic industry has shown positive improvement in respect of a number of parameters, which could be due to the presence of the anti-dumping duty in force. Therefore, it would be further examined whether the recurrence of dumping is likely to have any impact on these parameters in the event of cessation of the anti-dumping duty.

## **I. CONCLUSIONS**

70. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings and on the basis of the above analysis of the likelihood of recurrence of dumping and consequent injury, the Authority concludes that:

- (i) The subject goods are likely to enter the Indian market at dumped prices if the anti-dumping duties in force cease to operate.
- (ii) The situation of domestic industry is likely to deteriorate if the existing anti dumping duties are allowed to cease.
- (iii) The deterioration in the performance of the domestic industry is likely to be because of dumped imports from the subject countries
- (iv) Thus the anti-dumping duties are required to be extended.

## **J. RECOMMENDATIONS**

71. Having concluded that the subject goods are likely to be exported at dumped prices, and there is likelihood of recurrence of dumping and consequent injury to the domestic industry, if the anti-dumping duties cease to operate. Thus, the Authority is of the opinion that the measure is required to be extended as specified in the duty table below.

72. Having regard to the lesser duty rule followed by the Authority, the Authority recommends continuation of the imposition of anti-dumping duties so as to remove the likelihood of injury to the domestic industry. Accordingly, the antidumping duty as per amount specified in Col 8 of the table below is recommended to be imposed in the event of acceptance of these recommendations by the Central Government, on all imports of the subject goods originating in or exported from the subject countries.

### Duty Table

Sl. No	Heading/ Sub-heading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	4002.19	<i>Styrene Butadiene Rubber of 1900 series</i>	Korea RP	Any country other than those attracting anti-dumping duty	Any	Any	0.0689	Per kg	US\$
2	4002.19	<i>Styrene Butadiene Rubber of 1900 series</i>	Any country other than those attracting anti-dumping duty	Korea RP	Any	Any	0.0689	Per kg	US\$
3..	4002.19	<i>Styrene Butadiene Rubber of 1900 series</i>	Japan	Any country other than those attracting anti-dumping duty	Any	Any	0.1045	Per kg	US\$
4.	4002.19	<i>Styrene Butadiene Rubber of 1900 series</i>	Any country other than those attracting anti-dumping duty	Japan	Any	Any	0.1045	Per kg	US\$
5.	4002.19	<i>Styrene Butadiene Rubber of</i>	USA	Any country other	Any	Any	0.197	Per kg	US\$

		<i>1900 series</i>		than those attracting anti-dumping duty					
6.	4002.19	<i>Styrene Butadiene Rubber of 1900 series</i>	Any country other than those attracting anti-dumping duty	USA	Any	Any	0.197	Per kg	US\$

73. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of Customs except duties under Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

74. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**P.K. Chaudhery**  
**The Designated Authority**