

Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan

NOTIFICATION

Final Findings

New Delhi, the 7th December, 2004

Subject : Anti-dumping investigation concerning import of Acrylic Fibre from Belarus - Final Findings.

No. 14/5/2003-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A : PROCEDURE:

2. The procedure described below has been followed with regard to the investigations:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written application from the Forum of Acrylic Fibres Manufacturers, New Delhi through the participating companies, viz., M/s. Indian Acrylics Ltd., Chandigarh, M/s. Consolidated Fibres and Chemicals Ltd., Kolkata, M/s. Pasupati Acrylon Ltd., New Delhi and supported by M/s Indian Petrochemicals and Chemicals Ltd., Vadodara and M/s Vardhman Acrylics Ltd., Ludhiana, alleging dumping of Acrylic Fibre (hereinafter referred to as subject goods) originating in and exported from Belarus (hereinafter referred to as subject country);
- ii. Preliminary scrutiny of the application revealed certain deficiencies, which were rectified by the applicants;
- iii. The Authority notified the Embassy of subject country in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iv. The Authority issued a Public Notice dated 1st July, 2003 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Acrylic Fibre covered under heading/subheading 5501.30 and 5503.30 of Schedule I of the Customs Tariff Act;
- v. The Authority forwarded copy of the said public notice to the known exporters, importers and to the complainants and gave them an opportunity to make their views known in writing;
- vi. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the application to the following known exporters and Embassy of subject country in India;

1. JSC "Polymir"
211440, Novopolotsk,

- Vitebsk Region,
Republic Of Belarus.
2. Novopoliteks Llc
208, West State Street,
Trenton,
New Jearsey,
USA
 3. Pumica Trading Corp. Ltd.
Tisha Street
Riga
Latvia
- vi. Request was made to the Central Board of Excise and Customs (CBEC) and Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods;
- vii. The Embassy of the subject country was informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to them;
- viii. A questionnaire was sent to the following known importers/users/industry's associations of subject goods in India calling for necessary information in accordance with Rule 6(4);

Vardhman Spinning & Gen. Mills Ltd.
Chandigarh Road,
Ludhiana - 141 001.
PUNJAB

Nahar Spinning Mills Limited,
373, Industrial Area - A,
Ludhiana - 141 003.
PUNJAB

Malwa Cotton Spg./Mills Ltd.
Industrial Area - A,
Ludhiana - 141 003.
PUNJAB

Rajasthan Spinning & Weaving Mills Ltd.
Bhilwara Bhawan,
40-41, Comm Centre,
New Delhi - 110 065.

Winsome Textile Industries Limited
SCO 144 - 145, Sector 34A,
Chandigarh - 160 022.

Siddartha Super Spinning Mills Ltd.
211, Gagan Deep,

12, Rajendra Place,
New Delhi - 110 008.

Bhiwani Textiles Mills
Bhiwani District Hisar
HARYANA

Adinath Textiles Limited
Village : Bholapur
PO Sahabana, Mundia
Ludhiana (Punjab).

Shruti Synthetics Limited,
Village : Loyaran,
Gagunda Road,
Udaipur,
RAJASTHAN

Indian Spinners' Association,
C/o The Millowners' Association,
Elphinstone Building,
10, Veer Nariman Road, Fort,
Mumbai - 400 001.

Ludhiana Spinners Association,
75, Industrial Area-A,
Ludhiana - 141 003.

- The Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 27th April, 2004. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- The Authority made available to all interested parties the public file containing non-confidential version of evidence submitted by various interested parties for inspection, upon request as per Rule 6(7);
- Arguments made by the interested parties after initiation of the investigation, subsequent to the public hearing have been appropriately dealt in the disclosure statement. Arguments made in response to the disclosures have been dealt with in these findings;
- In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 26th October, 2004 vide a disclosure statement and comments received on the same have also been duly considered in these findings;
- Cost investigations including spot verification (as deemed necessary) of the domestic industry were also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the domestic industry;

- The Authority conducted on the spot verification of information furnished by the exporter M/s JSC Polymir, Novopolotsk, Belarus;
- *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- The investigation covered the period from 1st April, 2002 to 31st March, 2003. The injury analysis covered the three preceding years 1999-2000, 2000-2001, 2001-2002 and the POI.
- Copies of the Initiation Notice were also sent to FICCI, CII, ASSOCHAM etc. for wider circulation.

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

3. The views expressed by various interested parties have been discussed in the disclosure statement. The views which have not been discussed earlier in the disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below.

4. After the initiation of the investigation, response had been received from the following:

Exporter: -

M/s JSC Polymir, Novopolotsk, Belarus;

Importers:

On behalf of the importers, Indian Spinners Association (ISA) submitted arguments. However, none of the importers submitted questionnaire response. The Authority had also advised ISA to impress upon the importers to file questionnaire response. The domestic industry has argued that ISA does not have locus standi to represent the interest of spinners. The Authority considered the arguments made by the domestic industry as regards the claim of ISA to represent the interests of Spinning Industry. ISA has represented the spinners in the earlier investigation concerning imports of Polyester Staple Fibre (PSF) and Acrylic Fibre. The Authority considered it appropriate to examine the arguments made by ISA in this investigation.

5. Product under Consideration :

The product under consideration in this investigation is Acrylic Fibre in all Deniers (hereinafter referred as subject goods). Acrylic Fibre is a long chain of synthetic polymer composed of at least 90% by weight of Acrylonitrile units. Acrylic Fibre can be Acrylic staple fibre, acrylic tow or acrylic top. Petitioners have claimed that Acrylic Fibre is classified under Chapter 55 of Customs Tariff Classification Major Heads 5501 and 5503 with respective six digit classification 5501.30 and 5503.30. These Custom classifications are however, indicative only and are in no way binding on the scope of the present investigation.

It has been argued by ISA that acrylic fibre and tow are two distinct and different items, which cannot be clubbed together. There are two separate Customs classification, one for tow and another for fibre. While fibre is used as raw materials on spindles, tow is used for knitting purposes. It has also been argued by ISA that Authority should have asked the domestic industry to segregate data and submit the same for unbiased consideration. It has been argued by the exporter M/s JSC Polymir that they did not produce mod acrylic fibre during the investigation period and hence did not sell it. The acrylic fibre should be distinguished from mod acrylic fibre due to technical characteristics and consumer properties, price factor. Acrylic and mod acrylic fibre are not like article in all respects and there are no features proving their close similarity.

The Authority has considered these arguments, and is of the view that acrylic fibre and tow are produced by the same manufacturing process. Tow is long and continuous chain of fibre and staple fibre is cut in various lengths as per the requirement of the consumers. The domestic producers produce both forms. The producers of acrylic fibre report their entire annual reports mentioning the product as acrylic fibre only. The issue had also been decided by the Hon'ble CESTAT in an appeal No.C/73/99-AD of M/s Oswal Woollen Mills in the matter of final findings issued by the Designated Authority in respect of imports of acrylic fibre from Japan, Spain, Portugal and Italy. The Authority holds that the product under consideration is acrylic fibre which can be acrylic staple fibre, acrylic tow or acrylic top. As regards the arguments of M/s JSC Polymir regarding mod acrylic fibre, Authority found that the exporter had neither produced nor exported mod acrylic fibre during the POI. The domestic industry had also produced acrylic fibre in the POI. The comparison is being made between the acrylic fibre only and there was no requirement to make any separate calculation for mod acrylic fibre.

6 : Like Article :

The petitioner has claimed that there is no difference between the product manufactured by them and the imported product. They have also stated that the subject product manufactured in India by the domestic producers is commercially and technically substitutable to the imported product. The acrylic fibre produced by the Indian industry and imported from the subject country is comparable in terms of characteristics such as physical and chemical, manufacturing process and technology functions and uses, product specification and tariff classification. The Authority has examined the arguments of M/s Polymir as regards like article and has found that the product exported by Polymir was acrylic fibre and the product manufactured by the domestic producers was also acrylic fibre. The imported product is identical to the domestically produced acrylic fibre and is therefore, considered as like article.

7. Domestic Industry :

The application had been filed by Forum of Acrylic Fibres Manufacturers, New Delhi through the participating companies, viz., M/s. Indian Acrylics Ltd., Chandigarh, M/s. Consolidated Fibres and Chemicals Ltd., Kolkata, M/s. Pasupati Acrylon Ltd., New Delhi. The petitioners' share in the total domestic production of Acrylic Fibre is more than 50% and the petitioners satisfied the criteria of standing to file the petition in terms of Rule 5(3) (a) of the Rules supra. Two other domestic producers, viz., M/s. Indian Petrochemicals and Chemicals Ltd., Baroda; and M/s. Vardhman Acrylics Ltd., Ludhiana supported the petition. M/s Vardhman Acrylics Ltd. also filed information relating to costing and injury. The Authority has considered the four domestic producers viz., M/s. Indian Acrylics Ltd.,

Chandigarh, M/s. Consolidated Fibres and Chemicals Ltd., Kolkata, M/s. Pasupati Acrylon Ltd., New Delhi, and M/s Vardhman Acrylics Ltd. to represent the domestic industry within the meaning of Rule 2(b) as their collective output of the subject goods constitute a major proportion of the total domestic production of the subject goods.

C : EXAMINATION OF CLAIMS REGARDING NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN.

8. Copy of Initiation Notice was sent to the Embassy of subject country, the exporters, importers and domestic industry. In response to the initiation notification M/s JSC Polymir Novopolotsk, Belarus (Polymir) had furnished response to the exporter questionnaire. They also furnished response to the Market Economy Treatment (MET) questionnaire. The Authority conducted on-the-spot verification of information furnished by Polymir at their plant and office at Novopolotsk. The information furnished by Polymir in respect of their exports, domestic sales, cost of production relating to Acrylic Fibre was verified. Their claim regarding market economy treatment was also examined and verified. The verification team also held discussions with the officials of Belarusian State Concern for Oil and Chemistry- 'BELNEFTEKHIM', Dept of Foreign Economic Relations, Government of Belarus at Minsk in respect of market economy treatment to the company. A copy of the verification report was sent to M/s Polymir and the Embassy of Belarus in India. However, no comments were received thereon.

9. Domestic sales as shown in the Appendix I

The Company had given information regarding sales of *** MT of Acrylic Fibre in home market during the POI i.e. April 2002 to March 2003. The Company made sales in home market on uniform sales price taking into account concluded contracts. In the home market, the Company sold dyed and undyed fibre. During the verification, it was confirmed that the information regarding sale price given in Appendix 3B was in respect of undyed fibre. The Company had made the exports to India of undyed fibre. On verification, it was seen that the Company had converted the prevailing contract price shown in Belarusian Rouble (BRB) into US Dollar by taking the exchange rate. The exchange rate used was as per the rate established by the National Bank of Republic of Belarus. The information relating to domestic sales, quantity and price was found to be in order. The domestic sales were made on FCA Novopolotsk basis i.e. ex-factory. All charges relating to transportation are traders' responsibility. The payment terms were 100% in advance.

10. Cost of Production & Market Economy Treatment

The Company had claimed that it works by market principles of pricing and structuring of the cost and that the accounting of the costs on production of Acrylic Fibre authentically reflects the costs connected to its production and sales. The Company further claimed that the cost of raw material and materials used for production of the Acrylic Fibre corresponds to the market value. Further, by the law of the Republic of Belarus (about pricing), it is established that in the Republic of Belarus, free prices are applied and all legal persons are given the right to establish the price of a good independently or as agreed to the buyer. As per the company, the

sales of acrylic fibre on all sales markets including internal, European, Asian and Indian are made under the prices not lower than the costs of production plus profit.

It was also claimed by the company that the market character of economy confirms the circumstance that in the constitution of Belarus, the principles of inviolability of the property (Article 44) is fixed. As per this constitution, it is established that the forced withdrawal of a property from a proprietor is not allowed, except for cases, when the withdrawal of property is made on motives of public necessity at observance of conditions and order determined by the law, with duly and complete compensation of cost of withdrawn property, and also according to the decree of the Court.

As regards exchange rate, it has been claimed that the currencies exchange rates are determined by market principles by results of trade on the Belarusian currency stock exchange.

11. In response to the Disclosure Statement, M/s Polymir has argued that:

- The purchase of hydrocarbon feed stock is carried out on open tender basis and it has the effect of market principles with allowance of supply and demand.
- The price of acrylonitrile (ACN) is determined by its cost of production.
- The approach to determination of price of ACN by Polymir is reasonable and is based on specific features of technological process and by no means is stipulated by influence of the State.
- The prices of utilities are not special for Polymir. The prices are established on the basis of the tariffs, based on which the utilities are imported to Belarus.
- The accounting is carried out according to the legislation of the Republic of Belarus about accounting and reporting and is based on the constitution of the Republic of Belarus.
- The influence of the State is ensured only at a legislative level and it affects all legal entities irrespective of the form of ownership which are registered in the Republic of Belarus. The state regulation is aimed to increase efficiency of purchases and sale to increase of profitability and reduction of production costs.
- The fact that the State is the main shareholder of the company, cannot be an evidence that JSC Polymir does not work on the basis of market principles.
- JSC Polymir further argued that the information furnished by them in response to MET questionnaire and also the arguments made in response to the disclosures deny the claim that JSC Polymir is not the company working by principles of market economy.
- Further, it has been argued that for constructing the normal value for acrylic fibre, the cost of acrylic fibre should be taken, including ACN at the manufacturer of acrylic fibre in the third country and such manufacturer should possess the capacity for production of ACN.

12. Examination by Authority

The cost of production of acrylic fibre as given in questionnaire response was verified with reference to the basic financial reports of the company relating to the POI. Cost of basic input Acrylonitrile (ACN) was verified from purchase records.

The company has capacity of *** mt/per year for Nitron D, *** mt/per year for Nitron C and *** mt/ per year for Nitron M. These are the acrylic fibers and known by these descriptions. The company was earlier state enterprise and in September 2002 (during POI) became a joint stock company. However, 99.9% shares are with the state. A supervising council appoints the In-charge of the company and the council is represented by shareholders of the company. As 99.99% shares are with the Ministry of Economy, Belarus, thus the supervising council appointing the In-charge cannot be said to be acting independently and without interference from state.

The Authority has considered the argument made by M/s JSC Polymir in response to the Disclosure Statement. As per the verification conducted by the DGAD as regards the arrangement for procurement of Naphta and production of ACN it could not be established that the price of ACN as reflected in the cost of production of Acrylic fibre is fully reflecting the price of raw material driven by market signals reflecting supply and demand conditions as there appeared significant state interference. There was also presence of barter arrangement in respect of sale of significant quantity of Acrylic fibre during the POI. This sale of barter arrangement was also confirmed by the Company. There was also an indication that Electricity/power is provided to the company at special prices. It could also not be clearly demonstrated that the company followed Generally Accepted Accounting Principles (GAAP) during the POI.

During verification of information, it was noted that there is a Law of Republic of Belarus of May 10, 1999, N 255-3 about Pricing. Chapter 3 is regarding Pricing Control. As per Article 7 of this Chapter, there is an application of controlled prices (tariffs) in respect of goods of subjects of economic management having the leading position on the merchandize market of Belarus and included in the state register. During verification it was confirmed that sale of acrylic fibre in domestic market is covered by the above provisions of pricing law.

The main shareholder of M/s JSC Polymir is the Ministry of Economics of Republic of Belarus which possesses 99.904% of the shares. As per Company's own statement, the State's influence in setting up prices, expenses, expenditures, including raw materials, the cost of technology and manpower is put into practice only in form of standard law acts, that are obligatory to execution by all companies of Belarus independent of ownership's form. In view of the applicability of above law relating to pricing on the home market sales of acrylic fibre and also almost 100% State ownership of the company, the Authority found it difficult to accept the contention of the company that it is free to make decision about prices and expenditure etc. by itself taking into account the demand and supply levels, market situation, production cost. As regards the arrangement for procurement of Naphta and production of ACN it could not be established that the price of ACN as reflected in the cost of production of Acrylic fibre is fully reflecting the price of raw material driven by market signals reflecting supply and demand conditions as there appeared significant state interference. The Authority holds that there is rather a strong possibility and evidence of significant State interference in the decisions of the company regarding prices, costs and inputs, including raw materials, cost of technology, investments. Therefore, the Authority holds that the cost of production as shown in the books of accounts may not be reflecting fully the cost of production.

The presumption of JSC Polymir being a company from non-market economy has not been fully rebutted on the basis of information furnished and verification made as per the requirement of para 8(3) of Annexure I of Anti Dumping Rules. Therefore, market economy

treatment has not been accorded to JSC Polymir. Accordingly, normal value determination cannot be based on domestic sales price of acrylic fibre in Belarus. In accordance with para 7 of Annexure I, normal value may be determined on the basis of constructed value for the price actually paid or payable in India for the like product, duly adjusted to include a reasonable profit margin. The Authority does not find the argument of M/s Polymir acceptable as regards fixing the normal value of acrylic fibre with reference to a producer in third country having capacity for production of ACN. As per the provision of para 7 of Annexure I of Anti Dumping Rules, normal value in respect of imports from non-market economy country can be determined on the basis of price actually paid and payable in India for the like product duly adjusted if necessary, to include a reasonable profit margin. Accordingly the authority has constructed normal value on the basis of price actually paid or payable in India for the like product. For this the international price of major raw material Acrylonitrile has been considered taking into account the actual evidence of imports in India. The conversion costs, selling, general and administrative expenses have also been considered keeping in view the most efficient domestic producer. A reasonable profit margin has been added to arrive at the normal value of US\$ *** for Belarus.

13. Export Price :

The Company had made exports of *** MT of Acrylic Fibre to India during the POI. These sales were made to three customers on FCA Novopolotsk basis. The payment terms were ***. No credit was involved. There was no payment of commission to any agent. No adjustment on account of inland freight, overseas transportation was involved as the delivery was FCA Novopolotsk. The authority found that the volume of export from Belarus as shown in Polymir's response almost corresponds to the DGCI&S statistics. There is no evidence of any other producer/exporter of Acrylic Fibre from Belarus. The weighted average export price for Belarus is determined as US\$ ***

14. Dumping Margin :

The Authority followed the consistent practice of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I to the anti-dumping rules. Dumping margins have been determined on the basis of a fair comparison of Export Price with the Normal Value in pursuance of the principle laid down in Para 6 of Annexure-1 to the Rules. The comparison is at the same level of trade, i.e. Ex-factory level. Normal Value at ex-factory level has been compared with the export price at ex-factory level of comparable type of acrylic fibre. Based on the Normal Value and export price as determined above, the Authority found the following dumping margin for Belarus (%):

| | |
|------------------|--------|
| Normal Value | \$*** |
| Export Price | \$*** |
| Dumping Margin | \$*** |
| Dumping Margin % | 49.14% |

D : INJURY TO THE DOMESTIC INDUSTRY

15. Rule 11 of Anti Dumping Rules reads as follows:

“Determination of Injury:

(1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on 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 II to these rules.”

16. The principles for determination of injury set out in Annexure-II of the Anti- Dumping Rules lay down that:

- a. A determination of injury shall involve 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 like article and (b) the consequent impact of these imports on domestic producers of such products.
- b. 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 terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

17. Issues raised by the domestic industry :

Domestic Industry had furnished information on all injury parameters and cost of production. It has been claimed by the domestic industry that it has suffered injury due to dumping in this period from various countries including the subject country, investigation against which were either under process or anti dumping duty is in force. The surplus unutilized capacity of the product world over is resulting in exports of the product below prevailing normal value. This has resulted in continued dumping and continued injury to the domestic industry. The injury to the domestic industry is required to be seen in the light of existing duties and on-going investigations against other countries. It has further been argued by the domestic industry that Indian Spinners Association (ISA) does not have locus standi to represent the interests of Spinners. Further, they cannot be treated as interested party within the meaning of Rule 2(c).

18. Issues raised by ISA :

- i. ISA is a representative body of consumers. Letters of few spinning mills have been furnished in this regard.
- ii. There is a need to make separate calculation for filament tow and acrylic fibre.
- iii. Domestic industry has failed to establish Belarus as non-market economy.
- iv. Although anti dumping duty is in force for quite sometime on imports of acrylic fibre from practically all the acrylic fibre producing countries in the world, the domestic

industry still continues to allege that it continues to suffer because of imports. It only means that the alleged sufferings of the domestic industry are not because of imports but are due to some other reasons, which is the multi-fibre policy adopted in our country.

- v. Because of the outmoded technology used by some of the units of the domestic industry, cost of production was unduly high in some cases and not in alignment with realistic price structure. The unrealistically high benchmark for cost of production coupled with the imposition of anti dumping duty practically from all countries of the world has helped the domestic industry to maintain the prices of subject goods at an artificially high level.
- vi. It is not possible to make exports of value added items like yarn or fabrics or garments containing acrylic fibre at such high prices charged by domestic industry. Hence to service export markets developed by the manufacturers of value added items, users of acrylic fibre are importing acrylic fibre under advance licensing system.
- vii. Another reason for increase in imports is that there is a sudden spurt in exports of acrylic fibre from India. Exports jumped from 321 tons in 2001-02 to 5176 tons. This has considerably reduced availability of quality fibre from the domestic industry.
- viii. Decline in sales can not be a valid argument as total sales including export sales should be considered.
- ix. As regards selling price, domestic industry has accepted that selling prices have increased. Also it has contended that the increase in selling prices is due to increase in cost of production. This clearly means that prices have been increased much more than the increase in the cost of production and increased prices now neutralize the losses made by the industry in the earlier years.
- x. Domestic industry's arguments of price suppression/ depression are bald statements and not relevant.
- xi. As regards profitability, if selling prices has neutralized the increase in cost of production and past losses as contended by the domestic industry, there is no adverse point so far as profitability is concerned
- xii. Productivity has shown improvement and hence no injury.
- xiii. Acrylic fibre is a substitute for wool and garments manufactured from acrylic fibre are used by the poor strata of society as winter clothing. No injury has been sustained by the domestic industry.

In response to the Disclosure Statement, ISA has given comments on the various injury parameters. As per ISA, the Authority has found that factors such as production, capacity utilization and productivity have recorded improvement. The conclusion about the volume of dumped imports is wrong because there is no deduction of imports of mod acrylics. Imports are mostly under advance licences and also the impact of increased exports of acrylic fibre has not been taken into account. In the views of ISA, there is no case for imposition of anti dumping duty on imports of acrylic fibre.

19. Examination by the Authority :

The Authority has considered the arguments made by the domestic industry as regards the claim of ISA to represent the interests of Spinning Industry. ISA has represented the spinners in the earlier investigation concerning imports of Polyester Staple Fibre (PSF) and Acrylic Fibre. None of the members of ISA, i.e. the importers and users of acrylic fibre have filed a questionnaire response in this investigation, though few importers had given authorization to ISA to represent their interests. It would have been appropriate for the importers to have filed

information on questionnaire response to assist the Authority. However, the Authority has considered it appropriate to examine the arguments made by ISA in this investigation. The arguments made by ISA have been dealt with appropriately under the relevant injury parameters. After analysis and evaluation of information furnished by domestic industry and verification made, the Authority found the following injury information.

20. Volume of Imports :

The volume of imports as per DGCIS published data has been as under:

| Imports | Unit | 1999-00 | 2000-01 | 2001-02 | 2002-03 |
|-----------------|------|---------|---------|---------|---------|
| Belarus | MT | 0 | 171 | 40 | 1839 |
| Other Countries | MT | 14258 | 13797 | 9629 | 19254 |
| Total Imports | MT | 14258 | 13967 | 9669 | 21093 |

The imports from Belarus were nil during 1999-2000 and were 171 MT in 2000-01. These increased to 1839 MT during POI. There was an increase of imports from subject country from 1.22% in 2000-01 to 8.72% as a share of total imports during the POI. Therefore, there was an increase in imports of subject goods from subject country in absolute terms.

As regards the arguments of ISA that the volume of import data cannot be relied as it included imports of mod acrylic, the Authority has found that the imports of mod acrylic fibre was mainly from Japan of about 1300 MT. The imports from subject country i.e. Belarus, were of acrylic fibre. Exclusion of mod acrylic fibre from total imports would only result in the higher percentage of imports from Belarus as the total imports of acrylic fibre would get reduced. Therefore, the inclusion of mod acrylic fibre in the total imports has not distorted the results of the analysis. As regards the arguments that most of the imports are against advance licence, the Authority found that such imports, as long as these are of the like article, are to be considered as part of the examination for injury analysis of volume effect of imports.

21. Market share:

The Authority found that the market share of the domestic industry and the imports from the subject country in the demand of subject goods has been as under :

| Demand | Unit | 1999-00 | 2000-01 | 2001-02 | 2002-03 |
|----------------------------|---------|---------|---------|---------|---------|
| Sales of domestic industry | MT | 83000 | 75233 | 86053 | 74080 |
| Sales of IPCL | MT | 16346 | 15084 | 17866 | 18981 |
| Total Imports | MT | 14258 | 13967 | 9669 | 21093 |
| Demand | MT | 113604 | 104285 | 113587 | 114154 |
| Trend | Indexed | 100.00 | 91.80 | 99.99 | 100.48 |
| Market share in Demand | | | | | |
| Domestic industry | % | 73.06 | 72.14 | 75.76 | 64.89 |
| Trend | Indexed | 100.00 | 98.74 | 103.69 | 88.81 |
| IPCL | % | 14.39 | 14.46 | 15.73 | 16.62 |
| Trend | Indexed | 100.00 | 100.53 | 109.32 | 115.49 |
| Other Countries | % | 12.55 | 13.23 | 8.48 | 16.88 |
| Trend | Indexed | 100.00 | 105.41 | 67.86 | 136.25 |

| | | | | | |
|-----------------|---------|------|--------|-------|--------|
| Subject Country | % | 0.00 | 0.16 | 0.04 | 1.61 |
| Trend | Indexed | 0.00 | 100.00 | 21.52 | 981.18 |

The Authority has found that the share of imports of subject goods from subject country as a % of demand has increased from 0.16% during 2000-2001 to 1.61% during POI. There is thus an increase in the dumped imports from subject country in relation to the demand of the product in the country. However, the share of subject country in demand is quite small. The share of domestic industry in total demand has however, gone down from 73.06% in 1999-2000 to 64.89% during the POI. ISA has made the argument that if domestic production has increased more than imports, the market share of domestic producer has gone up. The Authority found the argument as not tenable because the demand is computed taking into account the sales of the domestic industry and total imports. The Authority found that the methodology adopted for computing the demand and market share is correct and as per the analysis the share of domestic industry in demand has come down whereas the share of imports from the subject country has increased.

22. Production and Capacity Utilisation:

The production and capacity utilization of the domestic industry has been as under :

| | Unit | 1999-00 | 2000-01 | 2001-02 | 2002-03 |
|----------------------|---------|---------|---------|---------|---------|
| Capacity | MT | 89500 | 89500 | 89500 | 89500 |
| Production | MT | 81592 | 77462 | 81754 | 82742 |
| Capacity utilization | % | 91.16 | 86.55 | 91.34 | 92.45 |
| Trend | Indexed | 100.00 | 94.94 | 100.20 | 101.41 |

The Authority found that there has been improvement in the capacity utilization of the domestic industry during the period of investigation in comparison to the earlier years.

23. Sales Volume:

Sales volumes of domestic industry decreased from 83000MT in 1999-2000 to 74080 MT in POI as under :

| 1999-2000 | 2000-2001 | 2001-2002 | 2002-2003 |
|-----------|-----------|-----------|-----------|
| 83000 | 75233 | 86053 | 74080 |
| 100 | 90.64 | 103.68 | 89.25 |

The Authority found that the volume of sales of domestic industry have decreased during the POI in comparison to year 1999-2000. It has been argued by ISA that sales volume should include domestic and export sales. The Authority is of the view that for examination of injury as per sub-para (iv) of Annexure II of Anti Dumping Rules, the economic factor relating to decline in sales is to be seen in the context of domestic sales as it would be relevant to examine the impact of the dumped imports on the domestic industry. The export performance of the domestic industry is to be examined in the causal relationship of the dumped imports under sub-para (v) of Annexure II of the Rules. Accordingly, the Authority holds that the methodology for analysis of domestic sales volumes of the domestic industry is appropriate.

24. Inventory :

The inventory of finished stock and inventory as number of days sale in stock has been as under :

| Unit | 1999-2000 | 2000-2001 | 2001-2002 | 2002-2003 |
|------------------------------|-----------|-----------|-----------|-----------|
| MT | 3660 | 5744 | 1020 | 5061 |
| Indexed | 100 | 156.94 | 27.86 | 138.28 |
| Number of days sale in stock | 16.09 | 27.87 | 4.32 | 24.93 |
| Indexed | 100 | 173.21 | 26.85 | 154.94 |

The Authority found that the inventory of finished goods held by the domestic industry has increased considerably at the end of POI in comparison to the year 1999-2000. In terms of number of days sale in stock also the inventory was high as seen by the indexed figures of 154.94 in POI in comparison to 100 in base year.

25. Price Undercutting

The price undercutting due to the dumped imports was found as under during POI:

| Average NSR | *** |
|---------------------------|-------|
| Landed Value | 66672 |
| Price Undercutting | *** |
| %age Price Undercutting | ***% |
| Price under-cutting range | 6-15% |

Arguments have been made by ISA that there is a need for separate calculation for filament tow and acrylic fibre. During the verification, the Authority did not find any material difference in the sales price of acrylic fibre or tow to warrant a separate comparison. On a comparison of the weighted average net sales realization of total acrylic fibre of the domestic industry with the landed value, the price undercutting was found to be significant. It has also been argued by ISA that comparison of landed value of imports is to be made with the selling price of domestic industry at the mill gate of the consumers. The Authority has made comparison of net sales realization of domestic industry after excluding excise, discounts, freight and sales tax with the landed value of imports at the port. Therefore, the comparison is at the same level and has not led to any distortion.

26. Price underselling

The Authority found the price underselling as a result of dumped imports as under :

| Landed Value | 66672 |
|--------------------------|--------|
| NIP | *** |
| Price underselling | *** |
| % Price underselling | ***% |
| Price underselling range | 15-25% |

The Authority found the price under selling as a result of dumped imports to be significant. ISA has argued that incidence of transportation from the port to consumers, handling charges, sales tax, octroi should be added to the landed value for comparison with the NIP. The Authority holds that the computation of non-injurious price (NIP) is at the ex-factory level

and its comparison with the landed value does not lead to any distorted analysis. The Authority also does not find merit in the argument of ISA that the export price of the domestic industry should be the NIP. There is no logic in the argument to treat export price of domestic industry as NIP because the export price can be dependent on several factors like refund of draw back, any other tax refund, pricing decision influenced by any strategy to enter a particular market.

27. Factors affecting domestic prices :

The Authority notes that the selling prices of the domestic industry are linked to the raw material cost and the prices of imports of subject goods from different countries. The price of major raw material Acrylonitrile underwent volatility during the period of injury analysis. The domestic industry has increased its productivity, however, the selling price of acrylic fibre was under pressure due to the dumped imports. There is significant price undercutting of the domestic industry by the dumped imports from subject country. The dumped imports also had an effect of depressing the prices of the domestic industry. The domestic industry was forced to protect its market share by lowering their prices to meet the low priced imports. The export price from Belarus and the sales realization of domestic industry has been as under:

| | 2000-01 | 2001-02 | POI |
|--|---------|---------|-------|
| Belarus Export Price Rs. | 57930 | 63430 | 55010 |
| Indexed | 100 | 109.49 | 94.95 |
| Sales Realization of domestic industry Rs. | *** | *** | *** |
| Indexed | 100 | 83.76 | 92.32 |

The ISA has argued that factors affecting domestic prices can be inefficiency of the domestic industry, prices of competing fibres or uneconomic size of the plant. The Authority found that the capacity utilization and productivity of the domestic industry had improved during POI and therefore, these cannot be held as ground of injury. The demand of the subject goods has not come down hence prices of competing fibres cannot be held as a factor affecting domestic prices. As regards the uneconomic size of the plant, this has to be seen in the Indian context. The perceived efficiency, if any, of any foreign producer on account of economic size of the plant gets reflected in the normal value analysis for that country. Moreover, no data giving any comparative cost advantages was furnished which could be commented upon by the domestic industry. As for the exporter in question, the Authority had examined the records and even on the basis of the exporter's cost of production (though not accepted on account of NME), the exports made were at dumped prices.

28. Magnitude of the margin of dumping :

The Authority found that the magnitude of the margin of dumping of subject goods from the subject country was 49.14% and which is considered significant.

29. Employment :

The employment level of the domestic industry has been as under :

| 1999-2000 | 2000-2001 | 2001-2002 | 2002-2003 |
|-----------|-----------|-----------|-----------|
| 100 | 99 | 95 | 91 |

The Authority found that there was a decline in the level of employment of the domestic industry, though the production of the domestic industry had increased. This could be attributed to the attempts of the domestic industry to bring down costs.

30. Wages :

The wages paid by the domestic industry has been as under:

| | 1999-2000 | 2000-2001 | 2001-2002 | 2002-2003 |
|----------------|-----------|-----------|-----------|-----------|
| Wages Rs. lacs | 1906.68 | 2107.68 | 2139.75 | 2191.21 |
| Indexed | 100 | 110.54 | 112.22 | 114.92 |

31. Profitability:

The profitability of the domestic industry in the sale of Acrylic fibre has been found to be as under:

| Year | Net Sales Realization (Rs./PMT) | Cost of Production (Rs./PMT) | Profit/Loss per MT | Indexed |
|-----------|---------------------------------|------------------------------|--------------------|----------|
| 1999-2000 | *** | *** | *** | 100 |
| 2000-2001 | *** | *** | *** | (-)12000 |
| 2001-2002 | *** | *** | *** | (-)10371 |
| 2002-2003 | *** | *** | *** | (-)2066 |

The authority found that the domestic industry has suffered direct losses on per unit sale of subject goods during the POI. The per unit losses on the sale of subject goods have though decreased during the POI in comparison to the previous two years, however, the domestic industry suffered losses in sales.

The profitability on capital employed (gross fixed assets) for the domestic industry has been found as under :

| | 1999-2000 | 2000-2001 | 2001-2002 | 2002-2003 |
|---------|-----------|-----------|-----------|-----------|
| Indexed | 100 | (-) 11857 | (-) 11142 | (-) 2542 |

The domestic industry is found to be making financial losses on the gross fixed assets. ISA has argued that the profitability of domestic industry is as a result of technology used by two producers and also the uneconomic plant size. The Authority found these arguments as not sustainable as discussed in earlier analysis. The profitability of the domestic industry is linked to the sales realization which was impacted by the dumped imports.

32. Evidence of Lost Contracts

There was no specific evidence regarding loss of orders. However, the sourcing of acrylic fibre from subject country by the domestic user industry made it evident that the domestic industry had lost some orders to the dumped imports from subject country.

33. Actual and potential negative effect on cash flows

The Authority found that the cash flow position of the domestic industry showed decline during the POI in comparison to the year 1999-2000, however, the cash flow position had improved during the previous year 2001-02. The domestic industry suffered financial loss which has caused strain on the cash flow position of the domestic industry. ISA has made arguments that M/s Vardhman Acrylics Ltd. was able to make profit because of its capital restructuring and recourse to efficient management practices. The Authority holds the view that the performance of domestic industry as a whole is to be analyzed and any positive indicator of any single producer cannot be selectively identified to project absence of injury. Moreover, Authority's conclusions on injury are to be based on an overall assessment of the state of the domestic industry and not merely based on only one injury parameter.

34. Growth:

The Authority found that the production of the domestic industry remained somewhat flat during POI, showing a marginal increase. It was 82742 MT during POI in comparison to 81592 MT during 1999-2000. In between, the year 2000-01 saw a decline in production to 77462 MT. The domestic industry, however, lost market share as its sales declined during POI. The overall demand of the product also remained somewhat flat during the period with a marginal increase of 0.48% during POI with reference to the base year. In the face of a flat demand, and constant flow of dumped imports from subject country and other sources, there did not appear to be any clear sign of growth in the domestic industry.

35. Productivity :

The productivity of the domestic industry has been found as under :

| | 1999-2000 | 2000-01 | 2001-02 | POI |
|------------------------|-----------|---------|---------|-----|
| Production MT/employee | *** | *** | *** | *** |
| Indexed | 100 | 95.75 | 105.53 | 111 |

The productivity of the domestic industry has improved during the POI. This is largely due to lesser number of employees during the POI in comparison to the year 1999-2000.

36. Conclusions on injury:

The Authority found that factors such as production, capacity utilization, showed marginal improvement during the POI in comparison to the year 1999-2000. The productivity of the industry also improved during POI. The volume of dumped imports from subject country as a share in the total imports of subject goods has, however, increased significantly from 1.22% during 2000-01 to 8.72% during POI. This indicated that the volume of dumped imports has increased in absolute terms. There is also an increase in the volume of dumped imports in relation to the consumption of the subject goods in India as the share of dumped imports in demand has increased from 0.16% during 2000-01 to 1.61% during the POI. This share in demand, though not significant, had risen from nil share during 1999-2000. The share of the domestic industry in the domestic demand has declined to 64.89% during POI from 73.06% during 1999-2000. Though the loss of market share of domestic industry could not be fully attributed to the exports from the subject country but the share of the dumped imports from subject country in the demand indicated material injury.

The price effect of the dumped imports is evident from the price undercutting suffered by the domestic industry as a result of the dumped imports. The Authority also found price depression as a result of the dumped imports as the domestic industry was forced to protect its market share by lowering their prices to meet the low priced imports. The industry also has suffered price underselling as the landed value of dumped imports is significantly lower, in the range of 15-25%, than the non-injurious price of the domestic industry. The industry has suffered financial losses in the sale of subject goods. The Authority thus concludes that the domestic industry has suffered material injury.

37. Causal Link

Arguments have been made by Indian Spinners Association that the alleged suffering of the domestic industry is not because of imports but due to other reasons which are the multi-fibre policy adopted in the country. As per ISA, the domestic industry uses old technology and its cost of production was unduly high. The Authority, in its analysis has not found any material impact in the cost of production of domestic industry as a result of use of production technology. The domestic producers are using the contemporary technology for production of acrylic fibre. The Authority also saw the attempts made by the domestic industry to cut down on the cost of production. The productivity of the domestic industry has increased. The manufacturing process / technology of the exporter in this case was similar to that used by the domestic producers. The Authority also does not find the increase in exports of acrylic fibre made by the domestic industry, from 428 MT during 1999-2000 to 4620 MT during POI, as a cause of injury. The Authority did not find the higher exports made by the domestic industry as cause of the injury because the profitability of the domestic industry in its sales realization in domestic sales had been compared and was found that the domestic industry was making losses. The demand of the product has remained almost same during the injury analysis period. It has, however, not declined and cannot be a cause of the injury. The Authority also did not find as valid, the argument of ISA regarding non-availability of acrylic fibre for export of value added items like yarn / fabric / garments, since the requirement for import of acrylic fibre for production and export of value added items is covered by the duty exemption scheme of Advance Licence. The Authority also did not find the argument of ISA as valid as regards the increase in selling prices of the domestic industry, which was more than the increase in cost of production. The Authority clearly found that the dumped imports were under cutting the sales realization of the domestic industry. The landed value of the dumped imports was significantly lower than the non-injurious price of the domestic industry.

It has been argued by the exporter, M/s JSC Polymir that exports made by them cannot be a cause of injury to the domestic industry. The Authority has found that the share of imports of subject goods from subject country in total imports has increased from 1.22% in 2000-01 to 8.72% in POI. This indicates increase in absolute terms. Moreover, the share of the dumped imports from subject country was found to be 1.61% in total demand. This share in demand, which is at dumped price, has the potential to further depress the sales of acrylic fibre of the domestic industry. The Authority has found that the entire exports from subject country were at dumped price. As regards exports made from other sources, 18064MT were accounted for by exports from sources attracting anti-dumping duty. In the recently concluded sunset review of anti dumping duty on exports of Acrylic Fibre from Italy, Spain, Portugal and Japan, the Authority found in the findings issued on 10 November 2004, that the material injury suffered by the domestic industry at present was overwhelmingly on account of the dumped imports from other sources not attracting anti-dumping duty at present. The Authority had also found in the said sunset review that there was no likelihood of recurrence

of injury to domestic industry if duties were revoked in respect of imports from Spain, Portugal and Italy. Authority also found in this investigation that exports from remaining countries not attracting anti dumping duty, excluding Belarus, were either de-minimis or insignificant. No other material factor that may be a cause of injury has come to the notice of the Authority.

E. INDIAN INDUSTRY'S INTEREST

38. The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country.

39. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the subject goods or the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. With a view to minimize the impact on the downstream industry, the Authority has considered it appropriate to recommend anti dumping duty based on the lower of the dumping and injury margins. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

F : CONCLUSIONS

40. The Authority has, after considering the foregoing, come to the conclusion that:

- i. Acrylic fibre has been exported to India from subject country below the normal value;
- ii. The domestic industry has suffered material injury;
- iii. The material injury has been caused by the dumped imports from subject country;

41. It is considered necessary to impose definitive anti-dumping duty on the imports of subject goods. Accordingly, the Authority recommends imposition of anti dumping duty on the imports of Acrylic fibre.

42. It is decided to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. The landed price of imports was also compared with the non-injurious price of the domestic industry, determined for the period of investigation. Accordingly, it is proposed that definitive anti-dumping duties be imposed on Acrylic fibre originating in or exported from the subject country falling under Heading 5501.30 and 5503.30 of the Schedule I of Customs Tariff Act. The anti-dumping duty shall be the difference between the amount mentioned in Col. 9 in the following Table and the landed value of imports of the subject goods in US\$/MT, if the landed value of imports of subject goods is lower than the amount mentioned in column 9 below:

| S. | Sub- | Descriptio | Specificatio | Countr | Countr | Produce | Exporte | Amoun | Unit of | Currenc |
|----|------|------------|--------------|--------|--------|---------|---------|-------|---------|---------|
|----|------|------------|--------------|--------|--------|---------|---------|-------|---------|---------|

| No | Heading | n of Goods | n | y of Origin | y of Export | r | r | t | Measurement | y |
|-----------|--------------------|-------------------|------------|--------------------|--------------------|-----------------|-----------------|-------------|--------------------|----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 1. | 5501.30 5503.30 | Acrylic Fibre | All Denier | Belarus | Any country | Any producer | Any exporter | 1681.3 5 | MT | US\$ |
| 2. | 5501.30 5503.30 | Acrylic Fibre | All Denier | Any country | Belarus | Any producer | Any exporter | 1681.3 5 | MT | US\$ |

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

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

(**Christy L. Fernandez**)
Designated Authority