

NO.15/5/2004-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties

New Delhi the 6th June 2005

MID TERM REVIEW
FINAL FINDINGS

Sub: Mid-term Review of anti-dumping duty imposed on imports of (Acrylonitrile Butadiene Rubber) NBR originating in or exported from Germany and Korea RP.

No. 15/5/2004-DGAD - WHEREAS, the Designated Authority, having regard to the Customs Tariff Act, 1975 as amended in 1995 (herein after also referred to as the ACT) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (herein after also referred to as Rules), conducted a sunset review of the antidumping duty in force against import of NBR into India from Korea RP and Germany, vide initiation notification dated 1st Oct. 2001 on the basis of an application filed by the M/s Apar Industries Ltd, Mumbai, the domestic producer in India. And Whereas, vide Notification No. 50/1/2001 dated 21st September 2002 the Authority, concluded that the cessation of antidumping duty on NBR from Korea RP and Germany will lead to continuation or recurrence of dumping and injury and recommended continued imposition of definitive antidumping duty on imports of the subject goods. Definitive antidumping duty was imposed on the subject goods vide Customs Notification No. 111/2002-Customs dated 10th October 2002 for a further period of 5 years from the date of this notification. However, in the sunset review the form of duty was changed to reference price basis from the fixed duty imposed in the original investigation. The exporter challenged this shift from fixed to reference price on the landed value basis in the (Customs Excise and service Tax Appellate Tribunal) CESTAT among other issues. CESTAT vide its order No. 14-18/04-AD dated 1/7/2004 modified the form of duty from reference price to fixed duty and the duty amount was fixed as US\$106.16 Per MT against the appellant exporter from Korea i.e. M/s Korea Kumho Petrochemicals Corporation

2. The Designated Authority, received an application on 27th February 2004 from one of the importer in India of the subject goods from Korea RP i.e. M/s Rishiroop

Polymers Ltd on behalf of a Korean Exporter of the subject goods i.e. M/s Korea Kumho Petrochemicals Corporation for review of the antidumping duties levied on the subject goods, on the grounds of changed circumstances. On the basis of positive information submitted by the above-mentioned applicant the Designated Authority considered that mid-term review of the Anti Dumping Duty in force would be appropriate in view of the changed circumstances brought to the notice to the authority by the exporter. The Authority issued a public notice dated 29.03.2004, published in the Gazette of India, Extraordinary, initiating Anti-Dumping mid term review investigation under Rule 23 of the Antidumping Rules read with Article 11.2 of the Agreement on Antidumping, in respect of the duty in force against the subject countries as above, to determine whether the continued imposition of the duty is required to offset dumping, and whether injury would be likely to continue or recur if the duty were removed or varied, or both.

B. PROCEDURE

3. The procedure described below has been followed with regard to this investigation:
 - i. After initiation of the review the Authority sent questionnaires, along-with the initiation notification, to all known exporters/producers in the subject countries, and domestic industry in India in accordance with the Rule 6(4), to elicit relevant information;
 - ii. The Embassies/High Commissions/ Representatives of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.
 - iii. Questionnaires were sent to known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4).
 - iv. Investigation was carried out for the period starting from 01.01.2003 to 31.12.2003 (POI). However, injury examination was conducted for a period from 2000-01 to 2002-03 and POI.
 - v. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations;
 - vi. No response to the initiation notification was received from any other exporter from the Korea RP except the applicant for this review
 - vii. No other exporter from any of the other countries named, have submitted any response, in any manner, to the initiation notification. M/s Lanxess AG, (Bayer) Germany in its brief submission intimated the Authority that Bayer has

internally decided not to invest further resources and expenses arguing its case as it has been reviewed many times by Bayer without any success.

- viii. M/s Apar Industries Ltd. Mumbai, the domestic producer of the subject goods and the original petitioner in the original investigation submitted its responses opposing the review;
- ix. Following other interested parties filed their responses to the initiation notification at various stages of the investigation:
 - a. All India Federation of Rubber Footwear Manufacturers
 - b. All India Rubber Industries Association
- x. The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.
- xi. The Authority made available non-confidential versions of the evidences presented by various interested parties and submissions made by them during the investigation in the form of a public file kept open for inspection by the interested parties;
- xii. The Authority verified the information furnished by the domestic industry to the extent possible to examine the injury suffered and 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 applicants so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- xiii. The Authority also verified the data of the cooperating exporter and applicant for the subject review, to determine the normal value and dumping margin as per the Rules and prepared a report on the basis of verification carried out in the premises of the exporter. The verification report was made available to the applicant exporter seeking its comments on the same. The exporter however, did not file any comments to the above verification report.
- xiv. The Authority held a public hearing on 15.07.2004 to hear the interested parties orally, which was attended by representatives of the domestic industry, exporters of the subject goods from the subject countries. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this finding;
- xv. The Authority disclosed the essential facts of the case on the basis of which the determinations have been made through separate disclosure statements dated 15th March 2005, to all interested parties. The interested parties were asked to file their comments by 23rd March 2005. The applicant exporter from Korea

RP sought an extension of the time for submission of the comments and also sought a hearing before the Authority before the final findings are issued. The exporter was allowed additional time and also two opportunities of hearing before the Authority. However, the exporter did not avail the opportunity of the hearing granted.

- xvi. Comments to the disclosure statement filed by the interested parties, including the applicant exporter, to the extent they are valid and relevant have been considered in these findings.
- xvii. **** In the Notification represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND ‘LIKE ARTICLE’

4. The product involved in the said original investigation was Acrylonitrile Butadiene Rubber (NBR) falling under heading No. 40025900 in Chapter 40 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. No argument has been extended, by any interested party, on the issue of product under consideration or like article except the arguments of the applicant exporter that the initiation of the original investigation itself and the product involved in that were disputed by them and the matter is still subjudice. Therefore, the Authority confirms the product under consideration as per the original investigation. This classification is however, indicative only and in no way binding on the scope of the present investigation.

D. Initiation of the Review and arguments raised

D.1 Views of the applicant for the review i.e., M/s Korea Kumho Petrochemical Corporation (KKPC) and M/s Rishiroop Polymers Ltd.

5. The application for the review has been filed by M/s Rishiroop Polymers Ltd. on its own behalf and on behalf of M/s Korea Kumho Petrochemicals Ltd. (KKPC) Korea RP.

6. The applicants in their original application seeking review made the following submissions:

- That market conditions have changed substantially requiring a review of the antidumping measures.
- That the import prices have gone up substantially and the condition of the domestic industry has also improved.

- That there is a significant reduction in the customs duty on the NBR from period of investigation in the earlier review investigation from 38.5% to 20% and therefore, the antidumping duty now collected on reference price basis as a difference between the reference price and the landed value far exceeds the actual dumping margin determined in the sunset review investigation, in violation of Section 9A (1) of the Customs Tariff Act.

7. In summary, the applicant has pleaded that there were sufficient grounds for a changed circumstances review of the antidumping duty in force against them and review initiated is in order.

D.2 Views of the domestic industry:

8. The domestic industry, in its various submissions, has opposed the initiation of the review and has *inter alia* submitted:

- That the present review has been initiated without sufficient justification and based on misleading representation filed by the applicant for the review.
- That the exporter has in fact intensified dumping by absorbing the increase in cost of associated raw materials.
- That quantum of antidumping duty should actually be enhanced to suitably redress the injury to the domestic industry.
- That the applicant exporter failed to provide adequate non-confidential disclosures of its application for review
- That the review should not have been extended to Germany on the basis of a review request made by Korean exporter.

9. In response to the objection of the domestic industry to the initiation of the review the applicants have further submitted that:

- They have requested the authority to initiate a limited and expedient review to revise the reference price so that the anti dumping duty collected did not exceed the dumping margin as the custom duty was revised from 38.5% to 20% during the intervening period. This by itself was adequate evidence constituting changed circumstances necessitating a review. It is an obligation cast on the Authority to undertake mid-term reviews to examine the need for continued imposition of the duty.
- That the domestic industry has been contradicting itself in demanding that a limited review against one country cannot be initiated while an earlier review petition filed by them in 1999 concerning the same matter was withdrawn by them and review terminated by the Authority on the grounds that the Authority could not undertake a limited review against one country when the measure

was cumulated against more than one countries and that investigation against all countries was needed to be reviewed simultaneously.

- Against the claim of intensified dumping by the domestic industry the applicant for the review has argued in such a situation the domestic industry should actually support the review rather than opposing it.

D.3 Views of the other interested parties:

10. None of the other interested parties have made any substantial submission in regard to the initiation of the review.

D.4 Examination by the Authority

11. The Authority has carefully examined various submissions made by the interested parties in connection with the initiation of this review investigation.

12. Section 9A (5) read with Rule 23 of the Anti Dumping Rules provides that the Designated Authority shall, from time to time, review the need for continued imposition of anti dumping duty and if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty, shall recommend to the Central Govt. for its withdrawal.

13. Article 11.2 of the Agreement provides that the Authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti dumping duty is no longer warranted, it shall be terminated immediately.

14. The domestic industry has argued that under Article 11.2 of ADA read with Rule 23 of Indian Antidumping Rules, substantiation of grounds of review are mandatory and the applicant has failed to do so. Therefore, the initiation of the review is flawed. The applicant exporter has argued that the Indian Law requires the Authority to review the need for continuation of duty from time to time and does not cast an obligation on the party seeking a review to provide substantial evidence. However, they had provided positive information, as required under Article 11.2 of ADA, on several grounds and sufficient information was available with the Authority to initiate a review. They have further argued that substantial reduction in customs duty after

imposition of the duty on reference price basis in itself is a sufficient ground to initiate a review as the duty amount collected exceeds the dumping margin violating Section 9A (1) of the Customs Tariff Act and also relevant Articles of the Agreement. .

15. The Authority has examined these arguments and is of the view that the condition 'satisfaction' in Rule 23 refers to the satisfaction of the Authority of the need of continued imposition of duty after conducting a proper investigation and not for initiation of the review. What is required for initiating a review is positive information with the Authority on which the Authority can rely upon to decide whether a review is required to examine the need for continued imposition of the duty. In the instant case the applicant had filed sufficient positive information before the Authority in its review application and the review was initiated based on the positive information filed. Production of evidence to substantiate the claims and counter claims by various parties are the matter of investigation and are to be submitted by the parties including the party making a request for review during the course of investigation. The outcome of the review will however, depend upon the quality of evidence submitted by various parties to the review.

16. It has also been argued by the domestic industry that the review should not have been extended to the other country involved i.e. Germany since the request for review was from a single exporter from Korea RP. The Authority is of the view that the Agreement as well the Rules casts an obligation on the Authority to review the need for continuation of the measures in force. Therefore, nothing in the Agreement or in the Antidumping Rules prevents the Authority from including all countries within the scope of the review when the positive information available with the authority suggests that such a review is appropriate.

17. The Authority has examined all other arguments raised during the investigation and in the post disclosure submissions by the interested parties to the extent they are relevant to the investigation and have analysed them in the findings at appropriate places.

E. DUMPING DETERMINATION

E.1 Republic of Korea

18. Only one exporter/manufacturer from Korea RP i.e. the applicant for the current review, M/s Korea Kumho Petrochemicals Corporation filed its questionnaire response after initiation of the review. The questionnaire response submitted by the exporter was also verified by the Authority as per the procedure prescribed and the dumping margin has been determined as follows:

E.1.1 M/s Korea Kumho Petrochemicals Corporation (KKPC), Korea RP

Normal Value:

19. M/s KKPC filed a detailed questionnaire response with the details of domestic as well as export sales of various grades of NBR produced by its Ulsan Plant. It was observed during the period under consideration the exporter has exported three grades of NBR to India i.e. KNB35, KNB35LM and KNB40M. The exporter also had substantial sale of these grades in its domestic market. Therefore, for the purpose of determination of dumping margin these grades have been accepted as like article within the meaning of the term as per the Agreement.

20. Cost verification of the manufacturer i.e. M/s KKPC, their domestic sales transactions, including various adjustments claimed, were carried out from their records during the on the spot verification. On the basis of the on-the spot verification conducted, a copy of the verification report was sent to the exporter seeking their comments and clarification on various aspects of the verification. However, the exporter did not file any comments even after requesting for additional time for the same. In its post disclosure statement they have argued that the verification report sent to them was without jurisdiction and without any procedure laid down and therefore, not valid. The Authority notes that the verification was duly conducted by competent officers on behalf of the Authority as per the procedure laid down in Annex I to the Agreement and the exporter participated in the said verification. On the basis of verification done and under the authority of the Designated Authority the observations of the verification team, including various elements of the determinations, were communicated to the exporter in the spirit of Article 6(9) of the Agreement. The exporter was also requested to comment on various observations and provide additional information wherever required. The exporter requested for additional time to comment but failed to file any comment or additional information. Therefore, it was presumed that they did not have anything to comment or oppose in the said report.

21. As far as cost of manufacturing and sales are concerned the Authority notes that the Company incurred substantial expenses towards various R&D expenses in its Rubber manufacturing activities. The exporter has claimed that these expenses are not applicable for the NBR business as the R&D process during the period under investigation covered only specific products. The exporter has reiterated this stand in its post disclosure submissions also. However, the exporter did not file any reply in this respect though this issue was communicated to them through the verification report. The Authority also notes that the exporter has claimed several improvements in NBR productivity in terms of reaction time, consumption norms etc. through their in-house R&D. Therefore, the claim of the Company was not found acceptable as the

R&D involved several improvements and developments in the production process covering all products. Accordingly, the R&D cost has been charged to all products on pro-rata basis.

22. Similarly differential adjustment claimed towards packing and transportation claimed for domestic sales and export sales have not been found admissible as no difference was demonstrated between the packing meant for export and domestic sales at the time of verification.

23. Similarly the exporter has not clarified the method of allocation of SGA expenses and factory overheads between various products. The exporter however, did not file any comment to the verification report. Therefore, the issues raised in the verification report were presumed to have been accepted by the exporter. Accordingly, necessary adjustments have been done on these elements of cost to arrive at reasonable cost of production for the exporter. Therefore, cost of production of the subject goods for the exporter has been worked out as US\$ ***** Per MT.

24. KKPC had substantial domestic sales of ***** MT including various grades of NBR during the period under investigation. On the basis of the cost of production so determined, ordinary course of trade test was conducted on their domestic sales transactions. The weighted average of the domestic sale transactions found in the ordinary course of trade has been accepted for determination of their normal value. The exporter has claimed various adjustments to the domestic sale transaction values to arrive at the net ex-factory price. However, the Authority finds that differential adjustments claimed towards inland transportation and packing for the domestic sales and export sales were not adequately substantiated and therefore, the adjustments towards these elements have been admitted on average basis. After applying various admissible level of trade adjustments to the domestic selling price, the ex-factory normal value for this exporter has been determined as US\$ ***** Per MT.

Export Price:

25. During the POI KKPC had exported ***** MT of various grades of NBR to India. Based on the actual CIF price of exports to India net ex-works export price to India has been worked out after adjusting the CIF export price for ocean freight and insurance, inland freight, commission and packing. The claim of the exporter for differential adjustments towards inland transportation and packaging could not be accepted due to lack of sufficient justification and evidence for the same. Based on the above weighted average net ex-works export price has been determined as US\$ ***** Per MT

E.1.2 All other exporters from Korea RP

Normal Value

26. No other exporter from Korea RP made any submission before the Authority in response to this review investigation. Therefore, for all other exporters from Korea the Authority proposes to determine the normal value on best facts available basis in terms of Rule 6.8 of the Antidumping Rules. For the purpose of this determination highest domestic transaction value of the cooperative exports has been adopted as normal value after allowing admissible adjustments based on cooperative exporter's data. Accordingly the normal value for all other exporters have been determined as US\$***Per MT.

Export Price

27. The net export price has been determined based on the lowest export transaction value from Korea based on the DGCI&S data, after allowing for adjustments towards transportation, ocean freight commission etc. Net export price works out to US\$***per MT.

E.2 Germany

28. The Authority notes that none of the exporters from Germany has responded to the initiation of the review investigation. As noted earlier M/s Lanxess AG, (Bayer) Germany in its brief submission intimated the Authority that Bayer has internally decided not to invest further resources and expenses arguing its case as antidumping duty against this product has been reviewed many times without any success to Bayer. Therefore, the Company has not filed any questionnaire response or cooperated in any manner in the investigation. No other producer/exporter from Germany has filed any response to the investigation. Therefore, the Authority has determined the normal value of the subject goods in Germany on the basis of facts available in terms of Rule 6.8 of the Antidumping Rules. Accordingly, the normal value for all exporters from Germany has been determined as US\$***Per MT.

29. The export price from Germany has been determined based on the weighted average export price reported by DGCI&S during the POI after allowing for admissible adjustments towards ocean freight, insurance, inland freight, and commission on the facts available basis. Accordingly, net ex-works export price for all exporters from Germany has been determined as US\$ ***Per MT.

E.3 Dumping Margin

30. The weighted average normal values determined at the ex-factory level has been compared with the respective weighted average net export prices determined at the ex-factory level to determine the dumping margins for the subject countries as follows:

Dumping Margin Calculations				
	Normal Value US\$/ MT	Export Price US\$/ MT	Dumping Margin US\$/ MT	Dumping Margin %
M/s KKPC, Korea RP	****	****	****	13.22%
All Others exporters from Korea RP	***	***	***	48.75%
All exporters from Germany	***	***	***	93.115

31. The Authority notes that the dumping margin so determined are substantial and above the de minimis levels prescribed.

32. In its post disclosure submissions M/s Rishiroop Polymer, acting on behalf of the applicant exporter, asked for several information, including explanation of the methods of determination of normal value and export prices, as well as adjustments allowed. They also asked for a hearing before the Authority before issue of the final findings and moved a writ petition in the Mumbai High Court in this regard. The Authority accorded several opportunities to them for the said hearing, which they did not avail.

33. M/e Rishiroop in its submissions has argued that the new Designated Authority did not hear the matter before issuing the disclosure. The Authority notes that there is no provision in the Rules for providing a fresh hearing merely because one person is succeeded by another in the post of the Designated Authority. It may be noted that even in quasi-judicial or judicial enquiries the evidence recorded by one quasi-judicial or judicial Authority forms the part and parcel of the material on record and the succeeding person applies his mind on the material on record to arrive at a decision. Rule 6(6) of the Antidumping Rules provide that the oral submissions made by the interested parties before the Authority in the public hearings are necessarily to be reproduced in writing for being taken on record. The written submissions made by the parties after the hearing forms the part and parcel of the records of the investigation on the basis of which the Authority takes the final decision. In the instant case the written submissions made by all interested parties including the applicant, subsequent to the oral hearing held by the earlier Designated Authority, were taken into account by this Authority before issuance of the disclosure statement. However, on the request of the applicant, the Authority extended three opportunities to them to appear before it and make their submissions after the disclosure even though this is not a normal practice of the Authority. But in spite of their own request for hearing the applicant did not avail these opportunities. Therefore, the Authority does not find any merit in the argument of the applicant in this respect.

34. In their various submissions M/s Rishiroop has raised several issues in respect of power of investigation, power to issue verification report, power of the Authority to conduct the review etc. The Authority notes that the same issues have been raised by them before the Hon'ble Supreme Court earlier and the matter is subjudice without any restraint on the Authority to carry out its investigation as per the Act. The Authority also notes that the investigations are being conducted as per well established practices followed world over and no where the Agreement or the Indian Antidumping Law contemplates that the DA himself will conduct the investigation. Therefore, the arguments of the exporter are not tenable.

35. M/s Rishiroop has also contested the determination of the dumping margin by the Authority. They have argued that the packing cost and inland freight differential between the domestic sales and the export sales as claimed by them have been wrongly disallowed though the same was allowed in the earlier investigations. In this connection the Authority notes that a detailed verification report highlighting the packing and inland freight and R&D expenses issues were sent to the exporter in November 2004. Vide this report several clarifications were also required to be submitted by the party. The exporter, vide its letter dated 19th November asked for time till 30th November to file its response but did not file any comment on the said report till date. Therefore, it was presumed that they did not have anything to comment on the averments made in the said report and the Authority was constrained to proceed on the basis of the facts available with it.

36. The Authority also notes that instead of commenting on the facts brought to their notice much in advance through the verification report, which were in the nature of disclosure of the facts, the exporter has agitated these issues only after the disclosures were issued. However, the Authority has taken note of their objections in their post disclosure comments. It is noted that the difference claimed in the packing cost was disallowed on the basis of actual verification of the production and packing process as well as the data submitted by them and was accordingly, intimated to them in advance. It is further noted that several contradiction have been noticed between their questionnaire response and post disclosure submission regarding the nature of domestic as well as export packing for India. The Authority also notes that in another on-going investigation concerning the same product from other countries no packing difference has been claimed by the exporter, as the packaging is essentially same. Wherever, boxes are used for domestic sales the same is reused for at least 6 to 8 cycles and cost difference becomes negligible.

37. As far as the issue of freight differential is concerned the Authority notes that no inland freight bills in respect of the domestic and export sales were made available for verification with respect to individual invoices. Random invoices produced could not be linked to any specific sale invoices. The whole claim was made on the basis of

estimated freight for containerized cargo and road transportation by trucks and the difference appeared to be high in the absence of actual figures for specific invoices. This aspect was also communicated to the exporter through the verification report. The exporter has not produced further evidence to substantiate its claim. Therefore, the freight element has been worked out on average basis and differential claimed has been disallowed.

38. In view of the above, the Authority is of the view that the dumping margin for them has been determined on the basis of their verified data as intimated to them much in advance and the basis of determination has also been adequately explained to them. Therefore, the Authority does not find any merit in their arguments as far as dumping determination is concerned.

39. In its post disclosure submissions the domestic industry has argued that the dumping margin estimated for the exporter is grossly inadequate as several aspects of their costing has not been taken into account by the Authority in order to arrive at the cost of production in the country of export for the purpose of ordinary course of trade test. They have argued that the costs of principal raw materials have gone up substantially and the exporter seems to have underreported these costs and conversion costs.

40. The Authority notes that the cost of production for the cooperating exporter and the applicant for review in this case was determined by the Authority after verification of their data and after adjusting the same wherever discrepancies were noted. Therefore, the Authority finds no merit in the arguments and confirms the above dumping margin.

F. INJURY DETERMINATION

41. The Rule 23 of the Antidumping Rules provides for review of the need for continued imposition of the antidumping duty from time to time. Such a review requires the Authority to examine whether dumping continues, the degree and extent of such dumping, and injury caused to the domestic industry due to such dumped imports as well as the likelihood of continuation or recurrence of dumping and injury if the duties are removed or modified. Having determined that the imports of the subject goods from the subject countries are entering the Indian market at dumped prices, the Authority examined the injury suffered by the domestic industry and the causal link between the dumped imports and injury to the domestic industry.

42. The Authority notes that imports of the subject goods are simultaneously entering the Indian market from several countries, including the subject countries for which

investigation has been initiated by the Authority. The Authority also notes that imports from several countries have already been treated as dumped imports. Therefore, dumped imports from all such sources have been cumulated for the purpose of examination of the impacts of dumped imports on the domestic industry.

F.1 Continuation of Injury

F.1.1 Views of the interested parties

43. The domestic industry argues that it continues to suffer material injury due to continued dumping from the subject countries even after imposition of the duties. They have interalia submitted

- That the antidumping duty protection has helped them to improve their performance marginally. But due to intensified dumping by the exporters from the subject countries including the applicant for the review they have not been able to benefit much out of it.
- That In spite of improvement in its productivity and volume of output, reduction in cost of production through various cost cutting measures undertaken, they have failed to realize remunerative prices to recover their cost due to continued dumping from various sources including the subject countries.
- That the applicant exporter has absorbed much of the rise in cost of raw materials and still continues to dump at prices which are unreasonable and thereby causes cash loss to the domestic industry as they are forced to sell below their cost of production in order to retain their market share in the domestic market.

44. The exporters and other interested parties in their various submissions have claimed that performance of the domestic industry has improved and the domestic industry does not suffer material injury. For the sake of brevity various arguments raised by the interested parties in their various written submissions have not been repeated in this finding. However, various submissions have been summarized as follows:

- That Apar's performance has been excellent and that there exists no causal link for any injury caused to them. Their financial results show that they have improved their performance tremendously. All economic indicators are extremely positive for them;
- That Apar's Directors' report annexed to their balance sheets of 1998-99 and 1999-2000 itself reported that they are expanding production capacity to 10000 M ton p.a. Apar would not expand production capacity if it was not operating at high level and are not making adequate profits;

- That world over a production unit of NBR with a capacity of less than 15,000 TPA is considered uneconomical and not viable. Apar's production capacity is said to be 4,000 TPA which is too low a capacity to be cost-effective and profit-worthy;
- That Apar is dependent on others for supply of their raw materials. As the raw material prices are very volatile by nature, they have no control whatsoever, over their production cost and have no option but to subject themselves to vagaries of cost escalation and production losses.
- That there is no shrinkage of Apar's production, sale as well as profit. Their growth rate has been 6% to 7% in line with the growth rate of rubber industry. Taking requirements of NBR during the next 5 years Apar's capacity would not be able to meet total demand of the industry.
- That their production and sales of Acrylonitrile Butadiene Rubber have gone up significantly. As such, imports of NBR from Korea Republic, Germany or from any other country have no adverse impact on their production, sales and profit. As a matter of fact, their sales and profits continue to rise handsomely.
- That Acrylonitrile and Butadiene Monomer are the basic inputs for the manufacture of NBR. Due to sharp decline in prices of these inputs, there has been downtrend in international prices of NBR over the last four years. Hence, decrease in price of NBR imports from Korea Republic and Germany is no exception.
- That the Indian rubber industry has been put at a disadvantage on account of imposition of anti dumping duty on NBR as their finished products costs are much higher as compared to manufacturers in the neighboring countries.
- That the industry's requirement, both quantity-wise and grade-wise, is far higher than the production capabilities of APAR and as such, the imports are inevitable to meet the demand.
- That Nitrile rubber is produced worldwide in many grades numbering over fifty, which the domestic producer has only 4 to 5 grades to offer to the industry. Therefore, a blanket levy of anti dumping duty on all imported grades is not proper when 90% of the grades are not produced in the country.
- That the petitioners are the sole producers of this product in India. They produce about 4000 M. tons of NBR p.a. whereas the annual consumption is over 10,000 M tons. It defies all logic that even for the quantities that the petitioners have no capacity to produce; the consuming industry is forced to pay anti dumping duty.
- That Apar's annual accounts are in the form of merged balance sheet and it is very difficult to make out clearly about production, sale and profitability of NBR. All businesses of Apar in other areas are going down and substantial growth has been going on in NBR and HSR areas only. The data from first period of investigation till date has been based on their consolidated balance

sheet, which contains data on NBR, SBR etc, and they are deliberately doing this to mislead everybody.

45. M/s Rishiroop Polymers in its submissions have argued that the anti dumping measures in India are based on the lesser duty rule and since the dumping margin was found to be lower than the injury margin, the DA applied the measure in the previous period based on the dumping margin thereby leaving a shortfall in the profitability for the domestic industry post the last review. To the extent the gap between the injury margin and the dumping margin determined by the DA in the Sunset review POI, no cause can be attributed for lack of adequate profitability to imports from KKPC and such an impact has not to be attributed to any alleged injury caused by imports from KKPC. They have further argued that there were imports from other sources including those from countries simultaneously being subjected to anti dumping measures and so the impact of imports from those countries at similar or lower landed value needs to be taken into account by the DA while determining any price effect. There was a reduction in the customs duty in the intervening period between the sunset review and the mid term review POIs and to the extent of the reduction in the landed values of imports from all countries there can be no price effect attributed to KKPC. The conscious act of the Indian Government, to reduce the basic customs duty on the product would have resulted in a price effect on the domestic industry. But that cannot be blamed on the exporter as a ground of lack of adequate profitability to the domestic industry.

46. They have further argued that the DA is incorrectly evaluating the parameter of price undercutting or price suppression and the exporter cannot be held responsible for the landed value of the goods. KPC has control only on the CIF price of the goods that it offers to the Indian importers and any variation in the landed value due to variation in customs duty or exchange rate, etc. is a factor beyond control of KKPC and such factors affecting the evaluation of price undercutting or price suppression during the review POI cannot be attributed to KKPC and must be normalized by the DA when the evaluation of this parameter is made. It is submitted that once this is done the DA will find that there was no cause, since the measures were in force during the review POI far in excess of those required based on reference price level, there was no way that the final landed price could have caused any price undercutting effect on the domestic industry.

47. They have further argued that almost all the economic parameters of the domestic industry are positive, and the main complaint of the domestic industry appears to be lack of adequate profits and it is for the DA to look for the likely reasons for this, which is not due to the imports from KKPC in the review POI.

F.1.2 Views of the Domestic Industry

48. The domestic industry has argued that the claim of the interested parties that there are no losses to Apar industries, and no company, including Apar, can make losses continuously for such a long period, is not correct. They have argued that it is not that the domestic industry has all along made losses or seeking undue protection. The injury information filed by them clearly shows that they have sometime made profits also in respect of this product.

49. They have argued that they have three main business/divisions i.e. Special Oils, NBR/SBR and conductors. Company is performing reasonably well in special oils and conductors. Special oils and conductors business was earlier part of Apart Ltd. and NBR operations were part of Gujarat Apar Polymers Ltd. Company was making continuous losses in NBR business. Continuous losses in NBR business forced the company to merge Apart Ltd. into Gujarat Apar Polymers Limited and pump profits of Special Oils and conductors in NBR-SBR operations. Apart Limited was merged into Gujarat Apart Polymers Limited and name of the Gujarat Apar Polymers Limited was changed to Apar Industries Limited. Therefore, the allegations of projecting artificial losses by the domestic industry or camouflaging their profits are baseless.

F.2 Examination by the Authority

50. The Authority has taken note of various arguments raised by various parties in their submissions and issue of continuation of injury to the domestic industry has been examined in the light of these arguments made before the Authority. The Authority notes that the duty was originally imposed on reference price basis against all exporters from Korea and Germany in the original investigation. The applicant exporter filed an appeal before the Appellate Tribunal against the determinations of the DA and the Appellate Tribunal converted the duty in respect of the appellant into fixed duty basis. It is also noticed that the original request of the applicant in the current review was for a limited review of dumping margin in view of the fact that the duty was on reference price basis and after reduction of the basic customs duty the antidumping duty being collected was exceeding the dumping margin. Therefore, after pronouncement of the new duty structure by the Appellate Tribunal, the basic ground of review by the applicant becomes in fructuous.

51. However, the applicants have challenged the said orders of the Appellate Tribunal in a petition filed in the Hon'ble Supreme Court of India on several grounds and have intimated the Authority that their submissions before the Authority are without prejudice to the outcome of the appeal filed before the Hon'ble Court. Therefore, the Authority notes that since a review has been initiated in terms of Rule 23 of the Antidumping Rules, which requires the Authority to examine the need for continuation of the duty from time to time, this review has been conducted to examine the degree and extent of dumping and injury and the need for continuation of the duty

in view of various arguments raised by various interested parties during the investigation.

52. Article 3.1 of the ADA and Annexure II of the AD Rules provide 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 authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

53. For the purpose of current injury analysis the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its impact on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The arguments of the exporter that the injury to the domestic industry caused by other sources and reduction in basic customs duty has also been addressed by the Authority in its causal links, as well as price undercutting and underselling analysis.

54. Since positive dumping margin has been established for the exports from the subject countries, entire exports from those countries has been treated as dumped imports for the purpose of injury analysis and causal links examination.

(A) VOLUME EFFECT: Volume Effect of dumped imports and Impact on domestic Industry

55. The effects of the volume of dumped imports from the subject countries as well as imports from other countries have been examined as follows:

i) Import Volumes and share of subject countries:

56. The domestic industry had pleaded that imports of NBR have been reported under various heads of Customs and segregation of NBR is difficult from the DGCI&S transaction-wise data because of the fact that DGCI&S data does not reflect complete description of the product. Therefore, they have relied upon the import data published in the Plastics and Polymer Review (PPR) for the relevant period. The Authority has

examined the transaction level data of DGCI&S and also the import data published by PPR for comparison purpose.

57. However, because of the description and classification problem highlighted above the data from these two sources show substantial differences. Moreover, the DGCIS data shows much lower imports from Korea compared to the export data from that country. It is also noted that PPR does not report import through all ports. Therefore, for the purpose of injury analysis the Authority has adopted the DGCI&S data adjusted on the basis of data available with it from other sources. The exporter, in its post disclosure submissions argued that use of such hybrid data for injury analysis is faulty and would benefit the non-cooperating exporters. In this connection the exporter has argued that Para 7 of Annex I to the Agreement and Article 6.8 of the Agreement has not been invoked by the Authority. The Authority notes certain imports have not been accurately captured in the national trade statistics because of misclassification at the time of imports. Therefore, to the extent such misclassified import data was available with the Authority from other sources, they have been used to reasonably estimate the total imports for the purpose of this investigation. At best this estimation is a conservative estimate of the imports of subject goods and does not prejudice the interest of the exporter. Accordingly, the import figures of the product under consideration have been accepted as follows:

Quantity in MT

Particulars	2000-01	2001-02	2002-03	POI
IMPORTS				
Korea	2080	2320	2590	2870
Germany	144	43	36	10
Dumped Imports from Subject Countries	2224	2362	2625	2879
Trend	100	106	118	130
EU, Brazil, Mexico (dumped Imports)	633	847	1709	2094
Others attracting duty (Dumped imports)	356	494	484	553
Dumped imports from all sources	3213	3703	4818	5526
Trend	100	115	150	172
Other un-dumped imports	0	118	217	173
Total	3213	3821	5034	5699
Trend	100	119	157	177

Source: DGCI&S

58. The data shows that dumped imports from the subject countries have increased by 30% from the base year in spite of the fact that the imports from these countries are already attracting antidumping duty. Cumulated dumped imports from all sources also show substantial increase of over 70% in the same period. The Authority notes that in

a parallel investigation being carried out against the European Union, Brazil, Mexico, and Korea RP for the same product the imports from these countries/territories have been treated as dumped imports. Therefore, for the purpose of the above analysis the imports from these countries have been treated as dumped imports. It is also noted that duty is in force against the imports from Taiwan and Japan. Therefore, dumped imports from all sources have been cumulated for volume analysis.

ii) **Demand, Output and Market shares**

a) Production of the Domestic Industry

Quantity in MT

Capacity & Production	2000-01	2001-02	2002-03	POI
INSTALLED CAPACITY (NBR)	6,250	8,350	8,800	8,800
Indexed	100	134	141	141
TOTAL PRODUCTION (NBR)	*****	*****	*****	*****
Indexed	100	130	130	142
GROSS PRODUCTION (NBR BALE ONLY)	*****	*****	*****	*****
Indexed	100	123	121	130
CAPACITY UTILIZATION - % (NBR)	*****	*****	*****	*****
Indexed	100	97	92	101

59. The production data of the domestic industry reveals that there has been substantial capacity addition in the year 2001-02 and thereafter. However, this addition to the capacity is mainly due to de-bottlenecking of the existing capacity. The domestic industry has also improved its production compared to the base year. The capacity utilization has also improved marginally. However, the capacity addition and production is also to be examined with reference to the growth in demand in the domestic market and the ability of the domestic industry to sell in the domestic market.

60. It is noticed that the demand for NBR in India has shown considerable growth. The domestic industry has submitted that considering sustained positive movement in demand, they had enhanced their capacity by de-bottlenecking the plant capacities incurring an investment of Rs ***** Crores and enhanced the capacity from 6250 MT to 8800 MT. However, they have not been able to increase its production proportionate to increase in capacity as a result of its inability to increase its sales in spite of higher demand. Resultantly, its capacity utilization has not improved and has remained lower than optimum. The domestic industry has claimed that as a result of the adverse NBR operations, the plant has been utilized for production of non-NBR products in order to recover part of the fixed overhead costs.

61. The Authority notes that the increase in capacity of the domestic producer is mostly through de-bottlenecking process and not because of major physical addition to capacity. The increase in capacity was in line with the rise in demand for the product, which is evident from the above data. The production and capacity utilization of the plant also shows a similar trend. But still a part of the capacity has remained unutilized in spite of healthy growth in demand. However, production and capacity utilization when examined along-with the sales of the product during the same period indicates that sales of the domestic producers has not been able to catch up with the demand and production, resulting in inventory built up.

b) Sales of Domestic Industry

Quantity in MT

Particulars	2000-01	2001-02	2002-03	Jan 03 - Dec - 03
Opening Stock	*****	*****	*****	*****
Indexed	100	42	145	78
Production	*****	*****	*****	*****
Indexed	100	123	121	130
Domestic sales	*****	*****	*****	*****
Indexed	100	114	118	127
Export sales	*****	*****	*****	*****
Indexed	100	136	138	147
Captive Consumption	*****	*****	*****	*****
Indexed	100	80	98	96
Closing Stock	*****	*****	*****	*****
Indexed	100	341	315	213

62. The data above shows that though the production increased by about 30% compared to the base year and 9% compared to the previous year, the domestic sales has increased by 27% and 9% during the corresponding years. The major increase in the sales is in the export segment though the export volume is low.

c) Demand and Market Share

Quantity in MT

Particulars	2000-01	2001-02	2002-03	Jan 03 – Dec – 03
IMPORTS				
Korea	2080	2320	2590	2870
Germany	144	43	36	10
Imports from Subject Countries	2224	2362	2625	2879
Trend	100	106	118	130

Other Countries Attracting Duty	356	494	484	553
Dumped Imports from Other sources	633	847	1708	2343
Total Others	989	1459	2409	2820
Total Imports	3213	3821	5034	5699
Trend	100	119	157	177
Total Dumped Imports	2857	3209	4333	5222
Domestic sales	*****	*****	*****	*****
Indexed	100	114	118	127
Captive consumption	*****	*****	*****	*****
Indexed	100	80	98	96
Demand	*****	*****	*****	*****
Indexed	100	114	131	144
Share in Demand				
Domestic Industry	54.39%	54.77%	48.97%	48.03%
Dumped Imports from Subject Countries	26.41%	24.70%	23.71%	23.74%
Others (Including dumped imports from other sources)	11.74%	15.26%	21.76%	23.25%
Captive Consumption	7.46%	5.28%	5.56%	4.99%
Share of all dumped imports in Demand	33.92%	33.55%	39.14%	43.05%
Total share of imports in Demand	38.15%	39.95%	45.47%	46.99%

63. Total domestic demand of the product under consideration, has increased by about 44% from the base year but the share of the domestic industry in the total demand has decreased from 54% to 48% during the same period. The share of imports from the subject countries has also declined marginally though there is a substantial increase in absolute term. However, the shares of all imports as well as share of the dumped imports from all sources have increased substantially in spite of the duty in force against the subject countries as well as certain other countries. The data also shows that in spite of increase in production and sales by the domestic industry it has lost substantial market share.

(B) Price Effect of the Dumped imports on the Domestic Industry

64. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the weighted average cost of production, weighted average Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry (worked out after normating the costing information of the Domestic Industry) have been compared with the landed cost of imports from the subject countries.

(i) Price undercutting and underselling effects

Values in Rs/MT

Price Undercutting and Underselling					
Particulars		2000-01	2001-02	2002-03	Jan 03 Dec - 03
Cost of Production	Rs./MT	*****	*****	*****	*****
Trend	Indexed	100	82	90	94
Selling Price	Rs./MT	*****	*****	*****	*****
Trend	Indexed	100	99	92	96
Landed Value (Subject countries) (without antidumping duty) (Cumulated)	Rs./MT	*****	*****	*****	*****
Landed Value (Cumulated)	Rs./MT	*****	*****	*****	*****
Price undertaking (Subject countries)	Rs./MT	*****	*****	*****	*****
Price under Cutting (Cumulated)	Rs./MT	*****	*****	*****	*****
% Price undercutting (Subject countries)		0-15%	5-15%	0-15%	5-20%
% Price undercutting (Cumulated)	Rs./MT	0-10%	0-10%	Negative	5-15%
Non Injurious Price	Rs./MT				*****
Price underselling (Subject countries)					*****
Price underselling (Cumulated)	Rs./MT				*****
Price underselling % (Subject Countries)	%				5-20%
Price Underselling % (Cumulated)	%				5-15%

65. The selling price (net sales realization) of the domestic industry shows significant decline though the cost of production after showing a significant decline in 2001-02, has increased substantially. The data also shows that the domestic industry has not been able to raise its prices to remunerative levels to realize its full cost of production.

66. Price undercutting has been determined by comparing the weighted average landed value of dumped imports from the subject countries over the entire period of investigation with the weighted average net sales realization of the domestic industry for the same period. For this purpose landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the value reported in the DGCI&S data of import prices from the subject countries.

67. In determining the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been rebated.

68. For the purpose of price underselling determination the weighted average landed price of imports from subject countries has been compared with the Non-injurious selling price of the domestic industry determined for the POI and cost of production for the remaining years.

69. The Authority notes that Imports from the subject countries have been significantly below the net sales realization of the domestic industry, thus resulting in significant price undercutting. The price undercutting and price underselling (without considering the antidumping duty in force) has been found to be substantial. The Authority notes that the subject goods are being simultaneously dumped from certain other countries for which investigations are in progress and the price effect of dumped imports from all sources have been examined cumulatively. The dumped imports from all such sources have been found to have significant price undercutting and underselling effects on the domestic prices.

(ii) Price suppression and depression effects of the dumped imports:

70. The price suppression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values from the subject countries.

71. The cost of production of the subject goods shows substantial increase after showing significant drop in 2001-02. The increase in cost of production is significant due to increase in the cost of raw materials, which constitute major portion of the cost of production. However, the selling price shows decline during the corresponding period indicating the inability of the domestic industry to raise its prices to recover full cost due to price effects of the dumped imports from the subject countries.

72. The interested parties have argued that the price effect of imports from other dumped sources should also be examined for price undercutting and underselling effects. However, the Authority notes that the imports from all dumped sources have been cumulated for the purpose of injury examination both in terms volume and price effects on the domestic industry as the imports from these sources are like articles entering the Indian market through similar channels during the same period of time and are competing among themselves as well as with the domestic products in the same market. The cumulated imports shows significant price undercutting as well as underselling effect on the domestic prices.

F.3 Examination of other Injury Parameters

73. The Authority has examined the parameters like the actual and potential decline in sales actual and potential decline in capacity and capacity utilization, actual and potential decline in production and market shares etc in the foregoing section which indicated that though there is no decline in sales or production in actual terms the growth in production and sales are much below the potential growth in view of a very healthy growth in demand in the country. The Authority also notes that there is a decline in market shares in spite of good demand and the volume of imports further

indicates that there is a further potential for drop in market share, After examining these parameters the Authority has examined the other mandatory economic factors and indices having bearing on the state of the industry as follows:

i) Actual and potential decline in Productivity

Particulars	Unit	2000-01	2001-02	2002-03	Jan 03 - Dec - 03
Productivity	Per Employee	*****	*****	*****	*****
Indexed		100.00	124.18	124.35	138.69
Productivity	MT/Day	*****	*****	*****	*****
Indexed		100	123.21	120.54	130.22
Productivity per Day - (Considering 360 days of production in a year)					

74. Productivity of the domestic industry has been measured in terms of its labour productivity of the output and daily output and it has been noticed that the productivity has improved substantially. It appears that the industry has attempted to improve its productivity to cut cost and remain competitive. However, improved productivity has not resulted in commensurate profitability because of low realization of its sales.

ii) Profits and actual and potential effects on the cash flow

75. The Authority has taken note of the arguments of the interested parties and the Domestic Industry regarding the financial performance of the Company in its published annual Reports. However, it is also noted that the current investigation is against a specific product manufactured by a multi-product company and the injury examination is to be confined to the domestic operation of the product under consideration and injury if any due to other external factors.

Particulars	Unit	2000-01	2001-02	2002-03	Jan - Dec - 03
Cost of Sales	Rs./MT	*****	*****	*****	*****
Indexed		100	85.44	91.05	96
Selling Price	Rs./MT	*****	*****	*****	*****
Indexed		100	98.85	92.47	96
Profit/Loss	Rs. MT	(*****)	****	(*****)	(*****)
Indexed		(100)	19.03	(48.03)	(94.70)
Total Profit/Loss on Domestic Sales	Rs. Lacs	(*****)	*****	(*****)	(*****)
Indexed		(100)	55.46	(84.58)	(113.15)
Depreciation	Rs. Lacs	*****	*****	*****	*****
Indexed		100	100.09	96.49	90.43
Cash Profit/Loss from NBR	Rs. Lacs	(*****)	*****	(*****)	(*****)
Indexed		(100)	325.69	(63.89)	(152.61)

76. The examination of this parameter reveals that though total revenue and cash flow of the domestic industry from its domestic operations of the product under consideration has improved due to increase in domestic production and sales, the industry continues to suffer loss in this product from its domestic operations during the investigation period due to declining per unit realization. The industry has not been able to realize a fair price to recover its cost due to prevailing price level of dumped imports. The only year in which the domestic industry had a decent profit margin was in the year 2001-02 and thereafter, the financial performance of the company on account of the subject goods have been bad mainly due to low per unit realization.

iii) Actual and potential impact Employment and wages

77. The employment level has declined marginally. But the expenses on account of salary and wages have increased by about 14%. However, increase in the expenses towards salary and wage is in tandem with the increase in production during the comparable periods.

Particulars	Unit	2000-01	2001-02	2002-03	Jan - Dec - 03
Employment					
No. of Employee	Nos.	*****	*****	*****	*****
Trend	Indexed	100	104.51	104.51	102.26
Wages		*****	*****	*****	*****
Trend		100	107.94	113.79	116.32
Wage per Employee	Rs. Lacs	*****	*****	*****	*****
Trend	Indexed	100	103.28	108.88	113.76

iv) Return on investment and ability to raise capital

78. The return on capital employed by the domestic industry shows deterioration compared to the base year and previous years.

Rs in Lacs

Particulars	2000-01	2001-02	2002-03	Jan - Dec - 03
Capital Employed – (NFA + Working Capital)	*****	*****	*****	*****
Indexed	100.00	96.33	101.84	95.51
Profit	(*****)	*****	(*****)	(*****)
Indexed	(100.00)	55.46	(84.58)	(113.15)
Interest	*****	*****	*****	*****
Indexed	100.00	120.79	106.48	85.35
PBIT	*****	*****	*****	*****
Indexed	100.00	445.27	146.79	34.18

Return on Capital Employed – (NFA + Working Capital)	*****	*****	*****	*****
Indexed	100	462.23	144.14	35.78

v) Ability to raise capital and Investment

79. The Authority notes that domestic industry raised its capacity from 6250 MT to 8800 MT by de-bottlenecking the existing capacity with a capital investment of Rs***** Crore during the period 2001-02, the year in which they had net profit in this product segment. There has been no further fresh investment by the domestic industry during the investigation period and there is no plan for further investment as submitted by them.

vi) Magnitude of Dumping

80. Magnitude of dumping as an indicator of the extent to which the dumped imports can injure the domestic industry shows that the dumping margin determined against the countries named, for the POI, is substantial, even when the antidumping duty is in force.

vii) Factors affecting domestic prices

81. Change in cost structure if any, competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. The Authority notes that Landed value of imported material from subject countries is significantly below the selling price of the domestic industry, causing severe price undercutting in the Indian market. The Authority also notes that there is no viable substitute to this product and M/s Apar Industry is the sole producer of the subject good in India and therefore, domestic competition does not affect the prices.

82. The Authority also notes that dumped imports from several sources competing with each other and with the domestic products are simultaneously affecting the domestic market for which cumulative injury analysis has been done. It is also noted that there is a healthy demand of the product in the domestic market.

83. Acrylonitrile and Butadiene are two principal raw materials for production of NBR. Prices of both these monomers increased worldwide. This increase in the prices resulted in increase in the cost of production for the domestic industry over the injury period. However, the selling prices of the domestic industry declined over the injury period.

viii) Inventories

Particulars	Unit	2000-01	2001-02	2002-03	Jan - Dec - 03
Inventories - at the end of period	MT	*****	*****	*****	*****
Indexed	%	100	341	315	213
Inventories as % of production		*****%	*****%	*****%	*****%
Trend	Indexed	100	276.85	261.61	163.95

84. The above data indicates a marginal increase in the inventory both in absolute term as well as inventory as a percentage of production.

F.4 Other Known factors and Causal Link

85. The exporter/ importer and other interested parties have argued that factors other than the dumped imports have caused injury to the domestic industry. The exporter has argued that since the antidumping duty is based on lesser duty principles injury, if any, caused due to change in basic customs duty structure of the country should not be attributed to the dumped imports from the subject countries particularly Korea. They have also argued that since imports are taking place from several countries already attracting duty or under investigation for alleged dumping the effect of these imports should be examined and injury should not be attributed to the imports from Korea.

86. The Authority is of the view that since lesser duty principle is applied by the Authority the duty would be restricted to the extent of dumping only and injury if any caused by reduction of customs duty would not affect the duty level unless the dumping is more than the total injury. As far as causation due to imports from other sources is concerned the Authority has cumulatively examined the volume and price effects of all dumped imports for the purpose of injury analysis as the dumped imports are simultaneously entering the Indian market from several sources, which are under investigation.

87. Though the interested parties have not made any significant argument in respect of other known factors the Authority has examined the non-attribution factors as per the Agreement as follows:

i) Volume and prices of imports from other sources

88. During the POI, other than the subject countries, imports have taken place from several other countries, including Japan and Chinese Taipei against which antidumping duty is in force. The data also shows substantial growth of imports from the European Union (excluding Germany), Brazil and Mexico for which a separate investigation is in progress and preliminary determination of the Authority indicates substantial dumping from these countries. Therefore, imports from all dumped sources

have been examined cumulatively to analyse the effect of dumped imports on the domestic industry.

ii) Contraction in demand and / or change in pattern of consumption

89. Total domestic demand of the product under consideration has shown a very significant increase by about 44% during the period of investigation compared to the base year. There is no significant change in consumption pattern of the product in the domestic market, which can be attributed to the injury to the domestic industry.

iii) Trade restrictive practices of and competition between the foreign and domestic producers

90. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. M/s Apar Industries Ltd. is the sole producer of the subject goods in the country. Imports of the subject goods take place from several countries, which compete with the domestic producer. Major portion of the imports from several sources have either been determined as dumped imports or are under investigation for allegation of dumping. Therefore, the Authority notes that the domestic producer is facing unfair competition from several countries including the subject countries and the current injury to the domestic industry cannot therefore, be attributed to trade restrictive practices or fair competition between foreign and domestic producers.

iv) Development of technology and export performance

91. The production facilities of the cooperating foreign producer in the subject countries were also verified and it was seen that the producers apply similar production technology. In fact most of the producers in the world use the technology developed by technology leaders like Goodyear. Therefore, development of technology or inefficient method of production of the domestic industry cannot be treated as a cause of injury to the domestic industry.

92. The Authority notes that the domestic industry has very small export turnover of the product under consideration though it shows steady growth during the investigation period. Therefore, export performance of the domestic industry is very insignificant and does not affect the domestic industry's performance very significantly.

v) Productivity of the Domestic Industry

93. Productivity of the domestic industry in terms of labour output and daily output has shown substantial improvement. Therefore, productivity is not a factor, which can

be attributed to the injury of the domestic industry. In fact domestic industry has tried to reduce its losses in its domestic operation through improvement in productivity.

F.5 Magnitude of Injury and injury margin

94. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted average landed price of the exports from the subject countries and the injury margins have been found to be significant. In their post disclosure submission the domestic industry has pleaded that the non-injurious price for them has been fixed at a very lower level as several factors including the cost of raw materials, utilities, and reasonable profit margins have not been adequately evaluated. The Authority has taken note of the submissions made on behalf of the domestic industry and is of the view that the NIP has been fixed after a detailed cost verification and normation and therefore, there is no merit in their arguments.

G. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY

95. The applicant for the review has argued that since there is no evidence of injurious dumping to the domestic industry in the review POI, the DA is required to examine whether the injury is likely to re-occur should the measures are revoked. The applicant has argued that in order to evaluate this parameter the domestic industry was required to submit concrete tangible evidence regarding the likely volumes of imports from subject countries should the measures be revoked and the likely prices at which such imports would be made and the likely impact of such imports on their operations so as to cause them to suffer from a re-occurrence of injury in the near future. They have further argued that the anti dumping measure applied during the last 20 months including the review POI based on the variable duty methodology was far in excess of dumping if any and the domestic industry was given a much higher level of protection than required. Therefore, their current injury could not be on account of the said dumped imports.

96. The applicant exporter has further submitted that only claim made by the domestic industry is that there exist sufficient freely disposable capacities with the exporting countries for future likelihood of dumping, which is a general statement without any substantiation and the DA cannot simply rely on it. It is for the domestic industry to produce hard and tangible evidence to stake their claim in this regard. They have further submitted that their production capacity is fully utilized and that it neither has sufficient disposable capacity for export of NBR to India, nor it has any abnormal inventory of the goods to dispose in India. Furthermore, even if there exists such a

production capacity in Korea, then also it does not imply that all of this capacity is available for diversion to the Indian market. Thus wild allegations cannot form the basis of any apprehensions for future likelihood of injurious dumping. Concrete evidence should have been produced by the domestic industry to stake their claim in this regard. They have further submitted that there is no anti dumping measure against KKPC for NBR anywhere else in the world such that it would result in KKPC diverting the goods from such country to the Indian market.

97. The interested parties have argued that likelihood test for continuation and recurrence of dumping and injury is not necessary in a review of this nature. They have argued that Section 9A(5) deals with sunset review and not mid term review and Rule 23 nowhere requires likelihood test for dumping and injury in a midterm review. They have submitted that reference to other countries laws is irrelevant, as those pertains to the situation of revocation of anti dumping duty, whereas the present situation is that of continuation of anti dumping duty. In their view the tests and requirements under sunset and midterm review are not the same nor can the same be interchangeably used, given the huge difference in the basic purpose and intent of midterm and sunset review.

98. The domestic industry has submitted that the exporter from Korea continues to dump the material in the Indian market and dumping continues from the subject countries. Further, the capacities of KKPC, other producers in Korea and Germany are much higher than their respective domestic sales/demand. The price difference between the domestic and imported material being huge and the Indian market being highly price sensitive, there is no reason why the imports from the subject countries would not increase, should the present anti dumping duty be withdrawn.

99. The Authority notes the arguments of various interested parties The Article 11.2 of the ADA provides that

The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party, which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

100. Rule 23 of Indian Antidumping Rules requires the Authority to examine the need for continued imposition of the duty from time to time, which also involves an

assessment of the likelihood situation of dumping and injury in the event of removal of duty. Therefore, the Authority has examined the current and likelihood aspects of dumping and injury in this matter.

101. Notwithstanding the above the domestic industry has quoted the law and practices and standards of reviews in several countries to highlight the factors that may be examined in a review investigation to examine recurrence of dumping and injury'. They have *inter alia* submitted:

- That the exporters from the subject countries in general, and the applicant for the review in particular, are still dumping the material in the Indian market.
- That Domestic industry is suffering continued injury due to dumped import from subject countries and should the Anti Dumping Duty be revoked, the injury to the domestic industry would recur or intensify.
- That export price and landed price of imports from the subject countries has further declined after imposition of Anti Dumping Duty;
- That Volume of import from subject countries has increased after imposition of antidumping duty.
- In spite of increase in the cost of production the export price to India has declined;
- There is decline in selling price of the domestic industry. The price at which domestic industry is selling material is not a remunerative price.
- That the producers in subject countries, particularly the applicant exporter from Korea are holding significant surplus capacities and the demand in the subject countries is significantly below the capacities created by them. Therefore, there is a great possibility that revocation of duty would lead to surge in imports and severe injury to the domestic industry.
- That the producer in Germany M/s Bayer AG has shifted its base to France and imports are taking place from France after imposition of antidumping duty against Germany. Since this producer has production base in many countries including the above named countries, the domestic industry has argued that if the duty is revoked against Germany the exports would continue from Germany at dumped prices, even if the import volume from Germany at present is insignificant.

102. The Authority has examined these arguments in the light of the information available with it about the capacity and production of the applicant exporters and the price levels of the imports from the subject countries. It is noted that dumping is continuing from the subject countries in spite of the antidumping duty in force, though volume of imports from Germany is very less.

103. It has been brought to the notice of the Authority that though the volume of imports from Germany is very negligible during the POI the threat of recurrence of dumping from Germany exists in view of the fact the main producer in Germany, i.e. Bayer AG, has shifted its NBR production facility to France. This being a multinational company operating from several countries in the European Union, the possibility of imports from Germany in the event of removal of duty cannot be entirely ruled out. Authority also notes that Bayer AG, Germany has not made any submission in this respect to refute this argument.

104. The Authority also notes that in spite of the antidumping duty being in force the imports from Korea is entering the Indian market at dumped prices and the domestic industry continues to suffer injury except for a brief recovery during 2001-02. It is also noted that dumped imports are entering the Indian market simultaneously from several sources at a very narrow price range competing with each other. Therefore, it can be concluded that the dumping from the subject countries is likely to continue.

105. As far as continuation or recurrence of injury to the domestic industry is concerned the Authority turns to the price levels at which the goods are entering Indian market from the subject countries in spite of the duty in force. The Authority notes that there is a significant price undercutting and underselling by the exporters from the subject countries including the applicant for the review, when the landed value of current imports without antidumping duty is compared with the net sales realization and non-injurious price of the domestic industry. There is no indication or valid argument that the price structure of imports from the subject countries will change once the duty is revoked. Therefore, Authority concludes that the domestic industry would continue to suffer material injury if the duty is revoked.

H. Conclusions

106. After examining the issues raised and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current dumping and injury and likelihood of continuation or recurrence of dumping and injury the authority concludes that:

- i. The subject goods are entering the Indian market at dumped prices and dumping margins of the subject goods imported from Korea RP and Germany are substantial and above de minimis;
- ii. The domestic industry continues to suffer marginal material injury on account of low per unit realization due to the price effect of dumped imports and erosion of its market share;

- iii. Injury to domestic industry is likely to continue or recur if the duties are revoked in respect of imports from the subject countries.

I. Indian industry’s interest & other issues

107. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

J. Recommendations

108. Having concluded that the domestic industry continues to suffer material injury on account of dumped imports from the subject countries and there is likelihood of continuation of dumping and injury on account of imports from the subject countries if the duties are revoked, the Authority is of the opinion that continuation of the measure is required against imports from these countries. However, considered the current level of dumping from the subject countries and injury suffered by the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, Authority considers it necessary and recommends continuation of anti-dumping duty on imports of subject goods from subject countries in the form and manner described hereunder.

109. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping or margin of injury whichever is lesser, so as to remove the injury to the domestic industry. Considering that the duty in the original investigation as modified by the CESTAT is on fixed duty basis the Authority recommends modification and continuation of definitive antidumping duty on all imports of subject goods originating in or exported from subject countries, as indicated in Col 9 of the table below.

Duty Table

Sl. No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)		
1	4002	Acrylo	Any	Korea	Korea	M/s Korea	M/s Korea	138.39	MT	US\$

		Nitrile Butadiene Rubber (NBR)		RP	RP	Kumho Petrochemicals Corporation	Kumho Petrochemicals Corporation			
2	4002	-Do_	Any	Korea RP	Korea RP	Any	Any	362.75	MT	US\$
3	4002	-Do_	Any	Any	Korea RP	Any	Any	362.75	MT	US\$
	4002	-Do_	Any	Korea RP	Any	Any	Any	362.75	MT	US\$
4	4002	-Do_	Any	Germany	Germany	Any	Any	647.35	MT	US\$
5	4002	-Do_	Any	Germany	Any	Any	Any	647.35	MT	US\$
6	4002	-Do_	Any	Any	Germany	Any	Any	647.35	MT	US\$

L. Further Procedures

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

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

Christy Fernandez
Designated Authority