

MINISTRY OF COMEMRCE AND INDUSTRY
(Department of Commerce)
DIRECTORATE GENERAL OF ANTI-DUMPING AND
ALLIED DUTIES

NOTIFICATION

New Delhi, the 21st September, 2002

FINAL FINDINGS

Subject: - Anti-Dumping investigations concerning Sunset Review of anti dumping duty on imports of Acrylonitrile Butadiene Rubber (NBR) from Korea RP and Germany.

No. 50/1/2000-DGAD. - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and Custom Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Articles and for Determination of injury) Rules, 1995, thereof:

A. PROCEDURE

1. The procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as the Authority) under the above Rules as per Section 9A(5) of the Custom Tariff (Amendment) Act, 1995 and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Articles and for Determination of injury) Rules, 1995 initiated Sunset Review to review the need for continued imposition of Anti Dumping Duty on imports of Acrylonitrile Butadiene Rubber (NBR) (here in after called subject goods) from Korea RP and Germany (hereinafter called subject countries). Subject goods were defined in the original preliminary findings of the Authority dated 30.12.1996 ad thereafter confirmed vide Final Findings dated 17.7.1997. The Anti Dumping Duty after the last mid-term review were notified vide Customs Notification No.91/2001-Cus. Dated 7.9.2001 and the Anti Dumping Duty is present in force vide Custom Notification No. 61/2002 dated 7.6.2002.
- ii. The Authority issued a public notice dated 1.10.2001 published in the Gazette of India, Extraordinary, initiating anti dumping investigations in respect of the above mentioned investigation concerning imports of the subject goods

classified under Chapter 40 Schedule I of the Customs Tariff Act, 1975 as amended in 1995 originating in or exported from Korea RP and Germany.

- iii. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available in the previous investigations conducted earlier) and the industry/user associations and gave them an opportunity to make their views known in writing in accordance with Rule 6(2). The Authority forwarded a copy of the public notice to all the known importers (whose details were available in the views of investigations conducted earlier) of subject goods in India and advised them to make their views known in writing within forty days from the date of the letter in accordance with Rules 6(2).
- iv. Request was made to the central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
- v. The Authority provided a copy of the initiation notification to the known exporters and the Embassies of the subject countries, New Delhi in accordance with Rules 6(3) supra.
- vi. The Authority sent a questionnaire, to elicit relevant information, to the following known exporters/producers, in accordance with the rule 6 (4):
 1. M/s. Korea Kumho Petrochemicals Co. Ltd., Korea RP
 2. M/s. Hyundai Petrochem Ltd., Korea RP
 3. M/s. Bayer AG, Germany.

Response/information to the questionnaire was filed by the following exporters/producers.

1. M/s. Korea Kumho Petrochemicals Co. Ltd., Korea RP
2. M/s. Hyundai Petrochem Ltd., Korea RP
3. M/s. Bayer AG, Germany.

Through M/s. KKPC filed structured response to the questionnaire M/s. Hyundai Petrochem Co. Ltd indicated no desire to furnish the information, and M/s. Bayer AG provided details on exports made by them and their views on their cost of production in general and not as per structured questionnaire response.

- viii. The Embassies of the subject countries in New Delhi were also 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 and questionnaire sent to Embassies of the subject countries in accordance with Rule 6(3).

- ix. A questionnaire was sent to the known importers/user associations of the subject goods whose details were made available by the petitioner for necessary information in accordance with rule 6(4).

Response/information to the questionnaire was filed by the following importers: -

1. Small Scale Rubber Industries Association of India
 2. All India Rubber Industries Association of India
 3. All India Federation of Rubber Footwear Industries
- x. Information regarding injury was sought from M/s. Apar Industries Ltd. the domestic producer of the subject goods.
- xi. Cost investigation of M/s. Apar Industries Ltd., at their premises at Walia, Gujarat was 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 to examine various injury parameters.
- xii. Additional information from M/s. KKPC and M/s. Apar Industries Ltd. was also sought.
- xiii. An opportunity was provided to all interested parties to present their views orally on 7.12.2001. All parties presenting views were requested to file written submissions of the views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- xiv. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file, maintained by the Authority and kept open for inspection by an interested parties as per Rule 6(7).
- xv. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to know interested parties on 13.9.2002. Response to which was filed by M/s. KKPC and M/s. Apar Industries Ltd.
- xvi. On site verification of the exporter, M/s. KKPC, Seoul was conducted on 23rd August, and 24th August of 2002.
- xvii. *** In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xviii. The period of investigation (POI) considered is 1.4.2000 to 31.3.2001.

B. VIEWS OF THE DOMESTIC INDUSTRY, EXPORTERS, IMPORTERS UNDER ASSOCIATIONS AND OTHER INTERESTED PARTIES & EXAMINATION BY THE AUTHORITY

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 paras herein below to the extent are relevant as per rules and have a bearing upon the case. The relevant arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paras herein below.

1. VIEWS EXPRESSED BY M/S. APAR INDUSTRIES LTD.

a) **PRODUCT UNDER CONSIDERATION & LIKE ARTICLE**

- i. Acrylonitrile Butadiene Rubber (NBR) is a synthetic rubber and is popularly known as Nitrile Rubber or NBR. NBR can be of various grades and can be supplied in various forms.
- ii. NBR is normally described in terms of Acrylonitrile and nitrile viscosity.
- iii. Indian Industry produces equivalent of all those grades, which are being imported at present from Korea and Germany.
- iv. Indian Industry is in apposition to produce equivalent of all those grades which are being are not being exported to India at present.
- v. NBR is classified in the Customs Tariff Act under Chapter 40 at six-digit level under 4002.59. Though NBR has been categorised under dedicated Customs sub-head lot of material is allowed to be synthetic rubber. The official statistics of Directorate General of Commercial Intelligence and Statistics (DGCI&S) does not therefore exhibit true and complete picture with regard to volume and value of imports. The issue was brought out before the Designated Authority in earlier investigation regarding imports of NBR from Germany and South Korea also. In fact the information furnished by the exporter from Germany and South Korea confirmed that the exporters of NBR made by them were significantly higher than the imports shown by DGCI&S.
- vi. NBR is primarily used where oil resistance, abrasion resistance and heat resistance applications are involved. It is widely used in defence automobile footwear, fabrics, printers, oil field products industries etc.
- vii. Use of a particular grade of NBR depends on the end use to which the goods could put to use.
- viii. Customers in India as well as the other parts of the world can use NBR produced by any manufacturer interchangeably without making any changes in the plant and equipment. There is no viable substitute for NBR and that there is no significant difference in the NBR produced by the petitioner and that exported from Germany and South Korea. They all have similar characteristic and are technically and commercially substitutable and should be treated as like article.

- ix. There cannot be any difference in the technology adopted by Apar and the technology adopted by the producers in Germany and South Korea as NBR world over is produced by emulsion polymerization technology.
- x. The present investigation is a Sunset Review and therefore the position on product under consideration, like article and Domestic Industry remains the same as decided in the earlier findings.

(b) DUMPING

(i) NORMAL VALUE

- i. The cost of production for the manufacturers in South Korea and Germany has been calculated on the basis of the raw material prices as given by ICIS-LOR and on the basis of other costs as per the best available information. The constructed normal value comes to *** \$/MT
- ii. The information on exports has been compiled from secondary sources viz. Polymers Plastic Rubber Journal (PPR). The material has been cleared by Customs bearing description synthetic rubber. The PPR data has therefore been cross-examined considering the name of importer, description of goods and the price at which it has been imported.
- iii. The ex-factory export price from South Korea and Germany comes to 1.08 \$/kg. and 1.80\$/kg respectively. The adjustments are to be made account of ocean freight, inland freight, marine insurance, commission, inland freight, port handling to an extent of ***\$/MT, ****\$/MT, ****\$/MT, ****\$/MT, *****\$/MT and ****\$/MT respectively.
- iv. The dumping Margin for South Korea comes to 144.94% based on cost and 60.67% based on previous investigation. The Dumping Margin for Germany comes to 48.29% based on cost and 46.94% based on previous investigation.
- v. The Domestic Industry has given their estimation regarding the cost of production for M/s. KKPC and submit that the exporter's NBR operation were not profitable.
- vi. M/s. Hyundai have shown losses during the fist half of 2001 and since the exporter has not responded, we request the Authority to use the best available information.
- vii. M/s. Bayer Germany are transacting at time at low prices causing injury to us and we apprehend that they still are dumping.
- viii. Bayer has been arguing that cost comparison of their medium grade with our medium grade NBR should be done and high grade with high grade. We submit that this method of computation is appropriate.

(c) INJURY & CAUSAL LINK

(i) The Korean and German exporters have increased quantities in the Indian Market since 1995-96 to 2000-2001. The imports and the market share are as under: -

Imports (in MT)

	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
South Korea and Germany	650	2650	2349	3251	1579	1794
Other Imports	2804	1834	2323	2028	1946	2219
Total Imports	3454	4484	4672	5279	3525	4013
Indigenous Sale	****	****	****	****	****	****
Total	****	****	****	****	****	****

Market Share (in %)

	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
South Korea and Germany	18.8	59.1	50.3	61.5	44.8	44.7
Other Imports	81.2	40.9	49.7	38.50	55.2	55.3

(ii) The indigenous NBR production has been very low and consequently the utilization of the plant for NBR has been very poor. As a result of the dismal NBR operations, the plant has been utilized for production of non-NBR products also in order to recover some fixed overhead costs. The NBR production and capacity utilization are as under: -

	1996-97	1997-98	1998-99	1999-00	2000-01
Gross NBR production (including domestic and export qty) (MT)	100	84.68	103.69	112.04	114.56
Polymer Capacity	100	100.00	100.00	100.00	100.00
Polymer capacity utilization (%)	100	84.67	103.66	112.10	114.63

(iii) Domestic industry has been forced to sell at prices below its fair selling price as indicated below:

	1996-97	1997-98	1998-99	1999-00	2000-01
Average NBR Selling Price (Rs./MT)	100	89.40	88.58	82.82	88.85
With Excise Duty	100	89.40	88.58	82.82	88.85
Without Excise Duty	100	90.88	91.17	85.50	91.84

(iv) There has been considerable turnover of the employees cost of low motivation level as the employees have felt that they not be able to grow due to dumping.

(v) The profitability of the industry has been very poor since its inception. The industry had to undergo the financial rehabilitation, which involved significant sacrifices on part of the promoters.

(vi) The injury margin is quite significant and there has been a severe injury to the Domestic Industry and is further threatened in case appropriate duties are not imposed at the earliest.

(vii) Some other countries have dumped NBR and the anti dumping duties have already been imposed on them. The existing anti dumping duties are as under: -

	1997-98		1998-99		1999-2000		2000-01	
	Price Rs/Kg	Qty MT						
Subject Countries	55.64	2349	45.64	3251	46.93	1579	52.84	1794
Countries attracting duties	59.78	1094	58.89	799	58.57	729	69.67	699
Other countries	79.93	1228	79.86	1229	86.19	1217	108.09	1519

(viii) The demand of NBR has been stable with small growth and that injury to the Domestic Industry is not on account of any recession or contraction of any demand.

(d) OTHER ISSUES

(i) We have not been able to find any document from Bayer, which mentions that they have stopped supplies of NBR from Germany. Our understanding is that they have consolidated their entire NBR production in France, and are supplying NBR to India from France. Since this development is pot-POI, we believe that the DGAD may not be able to take this into consideration.

In response to the disclosure, the following submissions have been made by M/s. Apar Industries Ltd.

- At the outset, we submit that the present investigation is a sunset review investigation. In the review investigation, the Designated Authority is required to examine recurrence of dumping and/or injury. The Anti Dumping Duty has been in force on the product, Various injury parameters are, therefore required to be seen in the light of existing duties and recurrence of injury.
- In the instant case also, it is evident from the disclosure statement that even the dumping continuation from the subject goods. Therefore, the present situation is that of continuation of dumping rather than recurrence of dumping. It is therefore, vital to continue the duty for a further period of five years.
- We would also like to state that because of the action by DGAD in the form of an anti dumping duty, have been able to survive this far. We have tried our level best to optimize on production, plant utilization and sales volumes. However, we have been continuously forced to sell sub-optimal priced due to the severe undercutting by the imports.

- The present investigation is a sunset review investigation. The position with regard to product under consideration and like article remains the same. There is no change in the structure of the industry. The scope of the domestic industry remain the same. These have been acknowledged by the Designated Authority in the disclosure statement. We request the Designated Authority to confirm the earlier findings in this regard.
- With regard to issue of various grades are being like article, though it is acknowledged by the Designated Authority that the argument is not substantiated by the opposing interested parties, we submit that the domestic industry is required to produce like article to goods imported into country. Different grades of an article may not per se be substitutable. However, it does not mean that they are not like article. Reliance is being placed upon various investigation conducted by the Designated Authority, which included DMT/PTA, BOPP, Acrylic Fibre etc. and Anti Dumping Investigation by European Commission against, inter alia, India concerning polyester film.
- Notwithstanding above, it is submitted that various grades of NBR are like products as these are comparable in terms of various products characteristics, such as physical and chemical characteristics, product specification, raw material, production technology and manufacturing process, functions & uses pricing, tariff classification, etc. It is relevant to point out that slight variations in the values of various parameters per se does not imply different product. Slight variations in various product parameters is nothing peculiar to this product. This is so far almost every product.
- It is also relevant to point out that the Designated Authority has also held that various NBR are like product in the investigations earlier conducted on this product. Such being the case, there is no merit in the argument that various types are different products.

Dumping by Korea Kumho

- The disclosure statement shows that the dumping margin is just 10.60% Apparently, the submissions mad by Kumho are inconsistent with the submissions made by the exporter in the previous review.
- The dumping margin assessed in Review 1 was 27.94% or \$ 248.3/mt. If we assume momentarily that there are no other changes in the production cost, then the dumping margin in the Sunset Review on account of the changes in the raw material costs and the selling prices should have increased to US\$ 350/mt or more.
- Our contention that the dumping margin has increased in the Sunset Review is corroborated by the fact that Kumho's losses have increased very substantially. Kumho has incurred heavy losses of 24.257 Billion Won in calendar year 2000,

and a loss of 9.249 Billion Won in the 1st half of 2001. Thus, it is clear that in the Period of Investigation (2000-01), Kumho has incurred very heavy losses on account of the higher raw material costs and disproportional increases in finished product prices.

- We would like to bring to the attention of the Designated Authority that, in our opinion, the dumping margin of 10.60% is not only less than, expectations of the domestic industry but also much less than the facts.

The following would also be relevant with regard to the two reviews: -

- a. The investigation period in the instant case is 2000-01 year, which differs from financial year of the exporter, who maintains accounts on calendar year basis. It is not clear from the disclosure statement that whether the exporter has provided information for the period of investigation.
- b. In the review I, the issue of various reconciliation statement was raised by the Designated Authority. Considering the response of the exporter in the previous review, it is important whether the exporter has now provided such information and various reconciliation to the Designated Authority.
- c. With regard to consumption of raw materials, we submit that the consumption factors earlier adopted by the Designated Authority in the Review I need be applied in this case also, given the complexity of the operations of the company and behaviour of the exporter in the previous case.
- d. At least two elements of costs could not have been considered based on the information given by the company. These are (a) Conversion Cost and (b) Other Plant Cost considering experience in review I.
- e. It appears that the exporters has again shown lower cost of production. Either the raw material costs are understated or the conversion cost is understated. We request element wise comparison of previous cost of production with the present cost of production. In case it is found that some elements of costs have been claimed much lower than what these were shown earlier, it is submitted that such claimed deserves reconsideration.

In line with earlier study submitted during Review 1, the cost of production would be as low as US\$ 890/mt.

- It may be noted that Korea has increased capacities far in excess of its domestic requirement, The Korean capacity for this product is in region of 40,000 MT, as against their relatively small domestic demand. Thus, the producers in Korea are always having the problem of excess capacity. To compound the problems further for them, one of the producers- Hyundai- had set up facilities about 4-5 years back and thus had tremendous pressure on its sales and on Kumho's sales. The exporters are obviously exporting as well as

selling in their own domestic market a marginal cost. Unfortunately, they have to sell even below their full cost of production and are suffering losses in the process.

- Another issue relevant to dumping here is that both the Korean producers are having their own Butadiene, Which they might be making profits. However, profits made on Butadiene cannot be offset against losses being suffered on NBR. As is known, anti-dumping investigations are product specific investigations. The exporters must establish that their NBR operations were profitable- which is impossible since the factual position shown otherwise. Therefore, the raw material produced by the company should be considered at market price of such material.

It is also submitted that the following issues are relevant with regard to the dumping margin determined by the Designated Authority

- a. Packing Costs: - Even if it is assumed that the form of packing is different in case of domestic market, KKPC has vehemently argued in CEGAT and before the Designated Authority and is our market knowledge, KKPC is using such kind of packing material that the same can not be described "consumable". The same material is recycled by the company. Cost incurred on packing material can not be, therefore, considered as the packing cost. Such being the case, at best, depreciation on such packing materials and cost of recycling can be considered as the packing cost. It is also submitted that there is very likelihood that the exporter should have already included the transportation charges associated with return of the packing material under the adjustment on inland freight. Therefore, no price adjustment on this account could be claimed by the exporter. It would be relevant to point out in this regard that the life of such material would be at least ten years. Further, it is submitted that the entire cost of depreciation cannot be charged to single shipment. There should have been several shipments made by the exporter using the same packing material. Thus, number of cycles for which the packing material has been used it required to be considered while considering the cost of packing.

It is submitted that the claim of the exporter appears to be based on sample calculations of packing cost involved rather than accounting information. It would be perhaps necessary to consider the total expenses incurred on packing material by the exporter during the whole year rather than cost of packing material.

- b. US\$ denominated sales in the domestic market: - The exporter has US\$ denominated sales in the domestic market. However, these appear to be deemed export sales of the exporter. It would be relevant here to point out that the

exporter has a trading arm as its affiliate. It is possible that some of the sales of the exporter are through the trading arm. In case, however, the material has physically moved out of Korea, these sales can not be described as domestic sales and are required to be excluded.

- c. Level of trade: - The argument on level of trade does not concern the dumping margin calculations. The level of trade between exports of India and domestic sales is the same. With regard to injury margin (a) the exporter as also domestic industry is selling at the same level of trade (b) the injury margin is substantially higher than the dumping margin.
- d. Amortization expenses: - Amortization of intangible assets is similar to depreciation on common facilities. Since depreciation on common facilities is loaded onto the products, amortization of intangible assets cannot be excluded from the full cost of production, particularly when the cost of production is required to be determined after considering SGA.
- e. Duty Drawback: - The exporter has never before claimed an allowance on this account. Further, the exporter has resorted to import of duty free material. It is, therefore, not understood how the exporter can now claim duty drawback as an adjustment.
- f. Butadiene Price: - As argued earlier, Butadiene is required to be considered at the price at which the exporter has purchased Butadiene. In any case, the cost of production of Butadiene should be full cost of production including SGA.

DUMPING BY HYUNDAI

- With regards to dumping by Hyundai, their losses have been astonishingly increasing. The calendar year 2000 showed a loss of 378.35 Billion Won and 1st Half of 2001 showed a loss of 144.482 Billion Won.
- So, the dumping margin for Hyundai is obviously much higher than Kumho, also considering that it is a newer plant and accordingly would have higher interest and depreciation costs. That could be the reason for no questionnaire response by the company. Since the exporter has preferred not to respond, we request the Rule of Best Information Available in respect of this company.

DUMPING BY BAYER

- The Review 1 clearly shows that dumping continues in these countries and we apprehend that dumping still continues. Further, they have been transacting at times at low prices causing injury to us. One issue, which Bayer has raised, is that the company has been exporting High Acrylonitrile level NBR (in short-high NBR) and Medium Acrylonitrile level NBR (in short-medium NBR) to India. We are also producing these types. Bayer has been arguing about cost comparison of

their medium with our medium NBR and their high with our high NBR. We submit that we do not have any objection to this method of comparison.

INJURY AND CAUSAL LINK

- On the injury front, we have been forced to sell at much below our Non-injurious price due to the heavily dumped imports particularly from South Korea. While our operations have increased in terms of production, sales, capacity utilization; our margins have been under tremendous strain and we have been incurring losses in the NBR business.
- It is submitted that the present investigation is a sunset review of existing anti-dumping duty. Examination of various economic parameters, such as production, sales volumes, selling prices, profit/loss, etc are to be examined in the context of an anti dumping duty being in force on the product. Recurrence of injury is also equally important in a case of review, even though the facts of this case clearly show continuance of injury. It is also submitted that with anti dumping duty being in force, improvement in some of the parameters could be a result of anti-dumping duty in force, which merely justifies continued imposition of such duty. The only relevant parameters in such reviews are the fair selling price of the domestic industry and landed price of imports so as to ascertain the existence of injury margin. As may be seen from the costing information provided by us, the injury margin has substantially increases in this case, thereby necessitating imposition of higher duties.
- Price undercutting: the dumped imports are undercutting the price in the Indian market. The landed price of imports from Korea has been significantly lower than the selling price of the domestic industry and the Non-injurious price even after imposition of anti-dumping duty on imports from Korea. The landed price of imports from Germany is lower than the Non-injurious price for the domestic industry.

The injury incurred by the domestic industry is evident from some of the following facts:

- a. Substantial capacity available with the exporters in the subject countries given, that the domestic market is not big enough to absorb all their production and enhanced capacities which have become available after the previous investigation period.
- b. Imports are entering India at prices, which have a significant depressing effect on domestic prices. In spite of increase in the cost of production, we are not in a position to increase the selling prices.
- c. Imports are resulting in severe price undercutting and consequently the domestic industry is not able to at its fair selling price.

- d. The domestic industry has not been able to improve its operating margins in spite of imposition of anti-dumping duty.
- e. Stock with the domestic industry has piled up. The industry as a result was forced to decrease its production of NBR.
- f. Capacity utilization of the industry has remained sub-optimal. The industry has been forced to make other products to increase the utilization of them plant.
- g. Domestic industry's market-share has been low and is likely to decline further in case the anti dumping duty on imports from Korea is not appropriately enhanced.
- h. Employees of the domestic industry are demoralized as a result of continues dumping of the product in the market.
- i. The domestic industry's lack of profits are hampering its growth. The promoters have done their utmost in investing dumping, the investments competitiveness. However, with the continued dumping, the investments being made will be un-remunerative. Also, no fresh investments would be possible thereafter since investors will not be confident of their returns.

DUTY ON VARIABLE BASIS

It is requested that the revised duty may be recommended on variable basis in terms of US\$. This would be appropriate in view of the following:

1. There is considerable decline in the export price in respect of the exporter after the investigation period. This is in spite of no significant decline in the associated raw material costs. Thus, the dumping has intensified in the post investigation period. The whole purpose of variable duty being check on intensified dumping; the variable duty would be most appropriate basis.
2. The customs duty on this product has also declined after the investigation period. The duty may decline in future. One of the purpose of variable duty being to check injury to the domestic industry due to decline in the customs duty, it would be appropriate to have variable duty.
3. The Designated Authority has already imposed variable duty on this product in case of imports from Japan in the sunset review investigations. Thus, the last investigations on this product has variable from of duty.
4. The Designated Authority had recommended variable duty in the past on acrylic Fibre, a product having significant consumption of Acrylonitrile, which is one of the major raw, materials in the case.
5. The export price of the exporter have not proportionately/changed with the changes in the associated raw material costs. The enclosed table demonstrates that the exporter has absorbed changes in the cost of production on account of raw materials to a very significant extent.

6. The Designated Authority as also CEGAT has held in various cases that variable duty is appropriate benchmark to handle the situation of intensified dumping.

In view of the above, it is prayed that the final duties may kindly be recommended in terms of US\$ on variable basis.

Non injurious price

We have no comments on the non injurious price of Rs. **** determined by the Designated Authority

2. IMPORTER'S VIEWS

(a) PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

1. The following submissions have been made by All India Rubber Industries Association:

- i. Apar do not produce all grades of NBR which are produced by M/s. KKPC and as well as by Bayer. Apar's NBR grades are also not like article to the NBR grades produced by KKPC and Bayer as well as there would be a need to depend on imports.
- ii. There is no justification in imposition of anti dumping duty on such grades of NBR which are not produced by Apar industry.

2. The following submissions have been made by All India Federation of Rubber Footwear Industries: -

- i. Apar does not produce all grades of NBR as produced by KKPC and Bayer.

3. The following submissions have been made by Small Scale Rubber Industries Association of India: -

- i. The Authority must also examine the specifications and chemical composition of various types of NBR produced by the Domestic Industry.

(b) INJURY

1. The following submissions have been made by All India Rubber Industries Association: -

- i. M/s. Apar has claimed that DGCI&S data is not reliable and have argued to depend on PPR data. Association urges Designated Authority to rely on the official DGCI&S statistics for the analysis.
- ii. The market share of the Domestic Industry has increased from 28% in 1994-95 to 52% in 2000-2001 and their production has gone upto 2452 MT in 1994-95 to 5280 MT in 2000-2001 which proves that there is no injury to the Domestic Industry by way of exports from KKPC and Bayer.
- iii. The high cost of production of NBR by Apar are solely related to their multiproduct plant and due to inefficient operation of the plant, high raw material cost due to limited range of products and without any control on the volatility of the market and uneconomic plant capacity.
- iv. Designated Authority should consider all the applications of the Domestic Industry for imposition of anti dumping duty on various grades of synthetic rubber because of the transfer of the capacity and production from one item to another.
- v. Apar have jacked up various prices by more than 80% and there is no injury to them.
- vi. The non-injurious price for Apar would now be lower has they have increased their plant capacity and improved upon their claims for utilities and there would be no injury in the forthcoming period by the imports from KKPC and Bayer.

2. The following submissions have been made by All India Federation of Rubber Footwear Industries: -

- i. Apar has increased their capacity, but is not sufficient to meet the demand of NBR.
- ii. We request Designated Authority to depend on DGCI&S data for analysis and not on the PPR data as claimed by Apar.
- iii. Apar has sold material above the non-injurious price and made good profits.
- iv. The landed price of German NBR is higher than the Apar ex-factory selling price even without taking into account the anti dumping duty and that imports of NBR from Germany have declined and their prices have increased.

3. The following submissions have been made by Small Scale Rubber Industries Association of India: -

- i. The review period of investigation should be changed suitable to cover upto 30.9.2001 so as to reflect the present position. The individual cost of the Domestic Industry is far less now and M/s. Apar Industries Ltd. had made huge profits.
- ii. M/s. Apar's performance has been excellent and there exists no causal link for the injury caused due to imports from the subject countries.

- iii. M/s. Apar's capacity remains low and is not cost effective and profit worthy.
- iv. Apar produced NBR and a few other item which dot not have the advantage of manufacture of a large diversified range of products with a result that they have to depend on the volatility of the prices of the raw materials and have to no control on the prices of the inputs/sales, loosing out on the price front to the international manufactures.
- v. Apar's plant is located at a place which involves substantial transportation cost of raw materials and other overheads.
- vi. Apar industry should submit detailed account of production figures, sales, cost of production etc.
- vii. Apar must come with detailed information indicating the production of various types of rubber such as NBR, SBR and HSR.
- viii. A team of Cost Accountant, Chartered Accountant, Engineers and process analyst must be formed to examine/investigate the manner in depth and submit the Report before the Anti Dumping Authority.

OTHER ISSUES

1. The following submissions have been made by All India Rubber Industries Association

- i. The Anti Dumping Authority did not follow the appropriate procedure for holding the public hearing on 7.12.2001
- ii. M/s. Rishirop Polymers Pvt. Ltd. have apprehension that they cannot get a fair and impartial decision from the Authority and have requested the Authority to step aside from this investigation and have asked the Government to nominate another Designated Authority who will hearing their case do novo. We support this stand of M/s. Rishirop Polymers Pvt. Ltd. for fair and quick opportunity to be provided both to the representatives of the Domestic Industry as well the consumer industry.

2. The following submissions have been made by All India Rubber Industries Association: -

- i. The production by the Domestic Industry will not be able to meet the total demand of NBR in the country since there is an annual growth of 6.67% of the demand of NBR.

3. The following submissions have been made by Small Scale Rubber Industries Association of India:

- i. Continuance of anti dumping duty on the basic inputs of rubber industry will open floodgates of imports of finished rubber products and will be extremely difficult for India rubber manufacturers to keep their foothold in the domestic market.
- ii. The consumer industries would appreciate a fair trade war between the Domestic Industry and the exporting industry and the fair competition must not be closed. A team of Cost Accountant, Charters Accountant, Engineers and Process analyst must be formed to examine/investigate the matter in depth and submit the Report before the Anti Dumping Authority.

3. EXPORTER'S VIEWS

1. M/S. KOREA KUMHO PETROCHEMICAL CO. LTD. (KKPC), KOREA RP

a) PRODUCT UNDER CONSIDERATION & LIKE ARTICLE:

- i. M/s. Apar does not produce all grades of NBR which are produced by KKPC and M/s. Bayer and that Apar's grades are not like article to the grades produced by KKPC and that the matter is also sub-judiced before the Delhi High Court.
- ii. There are several grades of NBR such as Carbo Oxylated NBR which are not produced by M/s. Apar Industries and that there should not be any anti dumping duty on these grades.

b) DUMPING

- i. M/s. KKPC has filed the exporter questionnaire and have provided data on the cost of production of various grades of NBR, domestic selling price of grades sold in domestic market and the export prices to India and other countries during the Period of Investigation (POI).
- ii. M/s. KKPC has claimed adjustments on the domestic selling prices on account of packing and inland freight to the extent of ****\$/MT and ****\$/MT respectively.
- iii. M/s. KKPC have also claimed adjustment on the export price to India on account of inland freight, ocean freight, ocean insurance, duty drawback and packing and commission to M/s. Rishiroop Polymers Pvt. Ltd. to an extent of ****\$/MT, ****\$/MT, ****\$/MT, ****\$/MT, *****\$/MT and *****\$/MT respectively. M/s. KKPC has also indicated that their exports to India are made to the wholesalers whereas the sales made by M/s. Apar Industries Ltd to the end users and adjustments on account of this level of trade to an extent of ****\$/MT should be considered.

- iv. The exporter has also provided information pertaining to SGA expenses, R & D expenses and interest charges as sought for during the verification conducted on 23-24th August, 2002 at M/s. KKPC's premises at Seoul. M/s. KKPC vide their letter dated 27th August, 2002 and in response to the Authority's letter dated 10.6.2002 and have indicated their explanation pertaining to their domestic sales in certain cases being in US dollar, exports sales being on sight basis, type of packing charges on exports to Indian clarifications on SGA expenses and consumption norms and financial expenses in the cost of production.
- v. M/s. KKPC had also sought adjustments on account of small volumes sold in the domestic market and no large volumes sent to India without any technical support. The adjustments of 7.5% for difference in this level of trade has been sought.
- vi. it is indicated that M/s. Apar continues to mislead the Authority on the constructed cost of production for KKPC. The dumping margins for M/s, KKPC presented by Apar are inflated and misleading.
- vii. M/s. KKPC have also indicated that there has been no dumping during the Sunset Review POI and have highlighted the method of allocation of selling and administrative expenses to be considered for evaluating the cost of production for M/s. KKPC.

c) INJURY

- i. M/s. KKPC has also in response to the Authority's letter dated 10.6.2002 provided views regarding Injury to the Domestic Industry indicating that there has been a significant decline in the exports of NBR to India during the Sunset Review Period and that there was no likelihood for substantial increase of exports into India from KKPC. It has also been indicated by M/s. KKPC that they do not have any freely disposable capacity or plan for expansion of capacity in immediate future. It has also been indicated that exports price from M/s. KKPC to India has increased during the Sunset Review POI and coupled together with the depreciation of the Indian currency during the POU. It has also been indicated that M/s. KKPC does not have any excess inventories of NBR for disposal or export to India.
- ii. It is submitted that while evaluating the Apar's economic status for their NBR plant, the Authority should adjust/discount the installed capacity pertaining to capacity operating cost, return on investment etc for the quantum of HSR produced by them at their Walia plant where they make their NBR from the total cost of operations. Therefore, there is a need to examine as to how the various costs and capacities have been apportioned by the Authority for their NBR and HSR operation at Walia. The interest cost for M/s. Apar to make and sell NBR calculating for its Non-Injurious Price should be reworked since it

works out to only 3.85%. The Authority should uniformly apply the principle for determination of NIP for NBR made by Apar by taking their cost of production and adding a 5% profit. The non-injurious price should be calculated on the expended capacity of Apar.

- iii. The price data of new grade of ANB-35L introduced by Apar in review POI should be excluded from the analysis of selling price of Apar.
- iv. Apar had incorrectly submitted that they are not having profits from their operations of NBR and hide the facts and that there is no evidence of injury to them.
- v. M/s. KKPC have also indicated methodology to determine the NIP for M/s. Apar Industry.
- vi. M/s. Apar has given various official statistics on import data from DGCI&S and PPR. We request the Authority to give a clear findings on the subject matter when it publishes its final findings so that very basis of its analysis is not distorted and a consistent practice is followed even though it may not be perfect.

d) OTHER ISSUES

- i. Importer has mentioned that the appropriate procedure was not followed for holding the public hearing indicating that the Designated Authority was not available during the hearing and that the meeting was delayed. The Authority also indicated from any side stated that the doors of CEGAT and High Court are open to anybody who were unhappy with the Authority's decision. M/s. Rishiroop Polymers Pvt. Ltd. representing M/s. KKPC have also quit4ed Article 6.3 of WTO related to the matter.
- ii. The findings should be completed within end of January, 2002
- iii. The NBR demand for all grades by 2006 would be about 17336 MT per annum and that there is going to be a demand supply gap for NBR in India.
- iv. There exists no provision in any Indian law for any adjudicating Authority to levy anti dumping duty in currency other than India rupee and therefore levy of anti dumping duty should not be indicated in dollar terms.

In response to the disclosure, the following submissions have been made by KKPC:-

Preliminary Objections:

- The Disclosure statement is not signed by Designated Authority and is invalid in law. Rules 16 of Anti Dumping Rules and Article 6.9 of WTO and case relevant laws have been mentioned.
- The Sunset review initiated in violation o Trade Notice 1/99 issued by the department is invalid in law as in the present case, an earlier review was

completed on 20.7.2001 against which the revenue notification was issued on 7.9.2001 and the sunset review initiated on 1.10.2001 i.e. well within one year's time period. The Designated Authority ought to have known about this requirements and should not to violate several case laws of the Apex court have been cited.

- The views of the Designated authority at the Public hearing were biased and proceedings at the public hearing were importer as Designated Authority had a prejudged mind set and asked 2 of the exporters to agree to give a price undertaking. This was also in violation of Article 8.2 of the WTO Rules.
- KKPC has also expressed that views that oral submissions are followed by written submission indicating that they can substitute oral submissions is nor proper.
- Article 6.2 and sub-rule (6) of Rule (6) has been cited in this regard.

Product under consideration and Like Article

- As regards product under consideration, the decision on this subject matter is sub-judice with the Supreme Court and that our appeal has been admitted by it and matter is pending for hearing. It is also admitted position of the domestic industry that they do not produce Carboxylated NBR and still the authority chooses to continue to levy the anti dumping duty on it. There is no justification for the same. The authority has every right to apply the anti dumping duty to an narrower class of products as compared to the original investigation based on additional information with t. Since APAR does not produce Carboxylated NBR, we request the authority to exclude the same from levy of any future anti dumping duty by refining the class of products of NBR for levy of duty. This would be consistent with the Authority's own decision in the matter of SBR anti dumping investigation wherein for the grades of SBR not produced in India during the POI, the authority had held that anti dumping duty was not to be levied. Same should be followed in the present case for Carboxylated NBR

NORMAL VALUE

Cost of Production of KKPC's NBR

- The Authority has incorrectly chosen basis of allocation and apportionment of costs on cost of sales of manufactured goods basis KKPC recognizes from the disclosure statement that the Authority has decided to determine the cost of production and allocation of expenses for interest and SGA based on the ratio of cost of sales. KKPC cannot accept the same. The basis of cost of allocation and apportionment followed by KKPC is in accordance with the Korean GAAP law and, furthermore, this basis of cost allocation by KKPC has also been

consistently followed by KKPC and it has been previously accepted by the Authority in the previous investigations for NBR (original in 1997) as well as the SBR anti dumping investigation. Article 2.2.1 and Rule 1 of the WTO has been cited.

- The authority should accept KKPC methodology for cost allocation since these are based on the basis of records kept by it and followed constantly for several years and are in accordance with the generally accepted principles of accounting in Korea. These records also reasonably reflect the costs associated with the production and sale of the articles under consideration, The officers of the department who has visited KKPC's office for verification had stated that KKPC's methodology for cost allocation based on ratio of quantity of NBR produced to total quantity of all products made by the company after deducting the SGA for trading and indenting sales is inappropriate as for one item, namely, steam the SGA costs are disproportionate to its selling price. That may appear to be the case, but it is a policy adopted by KKPC and KKPC has consistently followed the cost allocation method since long time. This cannot be the reason to reject KKPC's method of cost allocation as it is acceptable in Korean standards.
- Notwithstanding our objection to the methodology for cost allocation adopted by the authority for argument sake and without prejudice, the following is submitted:
 - a. The Authority has not allocated any SGA cost for trading sales and indent sales.
 - b. KKPC has requested the authority to allow the apportionment of SGA expenses for trading sale at Won**** and for indent sales expenses at Won *** before apportioning any cost to NBR production.
 - c. KKPC does not agree with the disallowance of advertisement expenses, commissions and R & D costs. The same have been elaborated, indicating that

For the Commission expenses, in fact the authority is silent in the disclosure statement. That is no reference to it at all. This adjustment is legitimately claimed as it would tantamount to double accounting if this is not deducting from the SGA expenses as it is considered separately as post ex factory cost whilst determining the same from the CIF price of the sale of NBR to India.

- d. KKPC has already submitted in its earlier letter to the authority that it did not incur any expenses for advertisement in India for sale of any of its products during the POI. The advertisement expenses incurred by KKPC during the POI as reflected in the SGA list as solely for the sales of NBR to India. In order to arrive at like for like comparison of apples to apples comparison of price at ex Factory level between cost for domestic sales and for export to India of the

NBR produced by KKPC this adjustment of advertisement expenses should be allowed by the authority.

- e. As regards R&D expenses, KKPC submits that it the very least the authority should consider to allow at least 50% of the R&D expenditure allocable to KLESL center where research work is only being carried out on life sciences and which we categorically submit has no correlation to any synthetic rubber business of KKPC.
- f. Valuation of transfer price for BD captively produced and consumed, is incorrect. KKPC has consistently followed the practice of valuing all its captively consumed products at the cost of ex Factory production cost and not on sales cost. This practice is in accordance with the Korean GAAP laws and also it is in accordance with the Indian costing rules followed by the Indian Government itself. Section 209 of the Companies Act has been cited.
- g. Ratio of 55.65% of assets deployed taken by Authority for allocating the interest cost for operations is incorrect. KKPC request the authority to reconsider its decision to allocate 55.65% of the funds deployed towards production activities as against KKPC's allocation of 46.5% for the production activities.
- h. Assessment of Cost of Production of NBR produced by KKPC is incorrect. KKPC had submitted data to the authority showing the ex-factory cost of production at USD 977.53 per MT. As against this the authority has worked out the cost of production at USD 1079.39 per MT based on the main differences resulting from the raw material costs (BD transfer pricing), interest cost and SGA costs. Thus the authority has inflated the cost of production by USD 101.86 per MT. The authority has not stipulated its methodology deployed for excluding some of its domestic sales. No explanation has been offered in this regard. The authority in such cases is required to consider a price band whilst allowing some variation in price below the rated average cost of production. In this regard we object to the procedure adopted by the authority and request you to reconsider the same.
- i. Determination of Normal Value for KKPC's NBR sales is incorrect. The authority has adopted a unfair cut off level to exclude certain sales transaction in domestic sales if they fall below the figure of cost of production so determined by it without providing for a price variation band around that figure. The Indian Anti dumping rules governing the determination of normal value are cited:

Principles governing the determination of Normal Value.

- The corresponding WTO Rule Article 2.2.1 for determination of normal value is also cited.

- In the confidential disclosure the authority is silent with regard to the adjustments to the commission but by interpolation we are presuming that the authority has forgotten to include it in the adjustments. This may kindly be confirmed. The authority has not allowed any adjustments in the level of trade for sales to India as it considers it as not being relevant for determination of normal value but appropriate for emanation of injury determination.
- KKPC submits that the adjustments of duty drawback of USD 1.7/MT should be made to the cost of production and to the domestic ex factory selling price and not to the ex-factory export price since to provide for an apple to apple comparison it is the cost of the raw materials consumed for domestic sales which need to be reduced by USD 1.7/MT and not the post production cost as has been adjusted by the authority.

INJURY DETERMINATION FOR APAR

- The authority has not revealed in index form its determination of the assessed economic parameters as required under the rules. The authority has simply published index extracts from the submissions made by the domestic industry and has not published in index form or otherwise its comments on all the economic factors for the domestic industry for the POI as compared to the previous years a separate assessment is required to be made by the authority for determination of factors other than imports from KKPC which are causing or may be causing injury to the domestic industry.

Principles for determination of injury (ANNEXTURE II)

- Rule (V) and Article 3.5 have been cited.
- It is reiterated that some of the major factors causing injury, if any, to the domestic industry other than imports of NBR from KKPC are:
 1. Imports from other countries simultaneously being subjected to anti-dumping duty such as Japan, Taiwan, etc.
 2. Imports at similar price level as that from KKPC from countries not subject to any anti dumping duty.
 3. Substantial reduction in custom duty from the original POI to the sunset review POI thereby resulting in a substantial reduction in landed value of the goods.
 4. Small operational capacity of the domestic industry vis-à-vis all other international competitors.
 5. Improper location of plant site by increasing cost of BD.

We request the authority to arrive at separate and distinctive quantifiable findings from factors other than imports from KKPC which are causing or may be causing injury to the domestic industry in accordance with the governing rules cited above.

- Causation and Non-Attribution-Article 3.5 of WTO is required to be followed, WTO case laws have cited.
- In support of their submission that there is absence of any causal link between the imports from KKPC and the alleged injury, if any, to the domestic industry, the calculations indicating injury due to KKPC's exports and as per factors of Designated Authority has been done for appropriate consideration.
- Utilization of concept of landed value including custom duty without adjustment for variation in customs duty to original POI for determination of injury margin invalid in law. Injury incidence due to fall in custom duty has been submitted.
- The Indian rules governing the anti dumping investigation require the authority to recommend levy of any anti dumping duty only in the event of its arriving of injury findings. The relevant Section 9B, 11(20 and Rule has been cited.
- Throughout our various submissions we have clearly shown to the authority that all the economic parameters as required to be evaluated for any injury determination are positive for APAR for the POI. It appears that the only issue that is in the mind of the authority is on the aspect of profitability. We would like to remind the authority that it has been empowered to take action solely for "trade protection" or for "assurance of profitability" to any domestic industry.

Adjustment for level of trade/differences in conditions of sale/taxes

- We had requested the authority to make due adjustment for the difference in the level of trade between KKPC's sale to Indian customers and APAR's sale to its customers in order to make a fair comparison of the price of the imported goods to the end user with that of the price from the domestic industry. We request the authority to make this adjustment whilst assessing the injury margin and in determination of the so called price undercutting effect as well.
- In view of the foregoing, we request the authority to kindly allow this adjustment and to take into account the net impact of such sales through intermediary level in the supply chain to the customer. We reiterate that this would be appropriate for making an apply to apply comparison as APAR sells its product directly to the end user and it does not charge any sales tax to its customers as they are exempted from the same for a period of 15 years from the start of commercial operations due to incentive given by the Government of Gujarat to them.

Adjustment for 4% Special additional duty (SAD)

- We submit that we had made a claim with the authority for adjustment for the 4% Special additional duty paid by the importers of NBR from KKPC which is normally supposed to bring level playing field between the domestic producers

and exporters. In the present case, however, since APAR has special incentive of no sales tax on its sales this SAD tax constitutes a disadvantage to the importers of NBR vis-à-vis APAR's sales NBR Article 2.4 of WTO rule as under for making adjustment for "differences in conditions of sale".

Interest of consumers and community at large to be considered.

- From the analysis of the statistical data it will be clear that as against an estimated market demand of about 13,000 to 14,000 MT of NBR in sunset POI, APAR has sold only about 5100 MT which is about 40% or so of the market. Approximately 60% if the end users are, therefore, forced to pay anti-dumping duty for their imports from one source or the other. APAR is operating at about 115% of their production capacity so the authority ought to see the larger community interest as well whilst arriving at any affirmative determination of levy of anti dumping duty.

Levy of any anti dumping duty in terms of US Dollars is illegal

- It is our submissions that the levy of any anti dumping duty based on any foreign currency such as the US Dollar is not lawful. This matter has already been taken up by us under an appeal which is pending with the Honorable Supreme Court and we do not elaborate on it here.

2. HYUNDAI PETROCHEMICAL CO. LTD.

a) DUMPING

- i. From our past experience, we decide not to furnish the information in the prescribed format.
- ii. There are only two exporters of NBR in Korea, viz. KKPC and Hyundai Petrochemical Co. Ltd. Before the Designated Authority published its final findings on 17th July, 1997, we represented to the Authority that we had commissioned NBR production plant in October, 1996 and do not produce nor have exported any quantity to NBR in India during the first initial period of investigation.
- iii. The Authority should have acknowledged in the preliminary findings dated 30.12.1996 and also in final findings dated 17.7.1997 that during the POI there was only one manufacturer viz. KKPC from Korea RP. Despite our oral and written submissions, the Authority recommended imposition of anti dumping duties at the rate of 8975 Rs/MT. The anti dumping duty if at all should have been applicable to NBR produced by KKPC whereas Hyundai Petrochemical

- should have been kept out of the imposition of anti dumping duty for the simple and clear reason that during the POI it did not export any quantity to India.
- iv. The Hon'ble CEGAT vide its order dated 2.2.2000 has modified the duty to dollar from and the Authority should have modified the anti dumping duty in dollar form only for KKPC. Hyundai Petrochemical however did not contest the above notification and findings of the Designated Authority.
 - v. During the mid-term review vide Notification No. 27/1/2000-DGAD dated 20.7.2001, the Authority reduced the anti dumping duty from 264 \$/MT to 248.35\$/MT for KKPC whereas recommended imposition of highest ever anti dumping duty of 679 \$/MT from 264 \$/MT for us. This enhancement has been made despite the fact that we exported at prices higher than KKPC.
 - vi. Our exports to India were for negligible quantity of 600 MT which is far less than 10% of the total consumption of NBR in India.
 - vii. M/s. Apar do not manufacture NBR grades equivalent to ours as the major application of NBR in India is for production of rice rolls constituting more than 50% of NBR production. Our NBR is not used in the rice rolls application at all.
 - viii. During the Sunset Review we have sold a total quantity of 600 MT on NBR constituting of different grades. We have however not sold any NBR since imposition of highest anti dumping duty of 679 \$/MT.
 - ix. The various facts and circumstances therefore compel us to believe that there is no use to submit information in the prescribed format.

b) INJURY

- i. The exporters of NBR from Bayer have reduced in quantity substantially from 20334 MT in 1996-97 to 467 MT in POI.
- ii. Our average CIF prices have also increased during the current period of investigation as compared to the initial period of investigation for which the anti dumping duty was levied.
- iii. During the current POI, the prices of NBR from Bayer was higher than the domestic industry's ex-factory selling price without considering the anti dumping duties. There is no prima facie evidence for review of anti dumping duty at Bayer AG's exports price but there is a warrant to remove the whole of anti dumping duty of 110.64\$/MT in force at present.
- iv. Capacity utilization for Domestic Industry has improved significantly from 34% in April, 1994-95 to 84% in the present POI. From the Domestic Industry's Annual Report, it has been seen that for the years 1994-95 onwards it has made profits whereas in the year 2000-2001 there has been a net loss which has indicated to be temporary on account of squeeze in margins due to intense competition and the abnormal rise in cost of raw materials and interests.

Further even during the period, the cash flow from operating activities was positive.

- v. Considering all these facts, Designated Authority should examine as to what extent NBR business could be contributed to their performance.

C. EXMINATION BY AUTHORITY

The foregoing submissions made by the various interested parties, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

1. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE AND DOMESTIC INDUSTRY

The Authority notes the submissions made by the various interested parties on the product under consideration and like article. The Authority also notes that the present Sunset Review conducted as per Section 9A(5) of the Customs Tariff Act,1995 is with reference to the existing Anti Dumping Duties which were first recommended vide the preliminary findings dated 30.12.96 and thereafter confirmed vide final finding dated 17.7.97. The Anti Dumping Duties were also continued vide Customs Notification No. 91/2001 dated 7th September, 2001 in a Midterm Review and presently levied vide Customs Notification No. 61/2002 dated 7.6.2002. The Authority in the Disclosure Statement had proposed to confirm the scope of the product under consideration as already settled in the earlier main investigation. The Authority notes that though submissions pertaining to like article have been made by some of the interested parties, they are not supported with evidence showing non-interchangeability as far as the like article and scope of the product under consideration is considered, which in the main investigation has already been settled to cover all the grades of NBR. It has however been mentioned by M/s. KKPC that certain goods like Carboxylated grades are not manufactured by the Domestic Industry and be excluded and that this issue is also sub-judiced in the court of law. However, it is noted that M/s. KKPC has not exported the Carboxylated grade but have exported only KNB 35L grade while have demanded exclusion of the Carboxylated grade. The authority has in all its earlier investigations for subject goods from these subject countries have considered all grades of NBR within the scope of investigation and this being a Sunset Review reiterates and reconfirms the product under consideration as "Acrylonitrile Butadiene Rubber, also known as Nitrile Rubber and NBR as indicated in original finding dated 30.12.1996. NBR is mainly used for manufacturing various rubber articles, such as oil seals, Hoses, Automotive products, Gaskets, Rice Dehusking Rolls, Printers Fabrics, Oil Field products. The Domestic Industry supplies the subject goods to various users viz. rice rolls, moulded and

extruded auto and industrial parts, seals, hoses, automotive components, oil seeds, O rings, automobiles hoses, bellows, fuel tubes, fuel hoses and railway and defence products. The Authority recalls and confirms the product under consideration as also indicated in the initial preliminary findings under Para E(1) and E(%) and paras F(\$ and F(%) in final findings dated 17.7.1997.

As regards the standing of the Domestic Industry is concerned M/s. Apar Industries Ltd., is the sole producer and represents the Domestic Industry as per Rule 2(b) of the Anti Dumping Rules.

The Authority therefore reconfirms the scope of product under consideration and like article as indicated in the main investigation earlier and holds that the goods exported from South Korea and Germany and like article to the goods manufactured by the Domestic Industry as per Rule 2(d).

2. NORMAL VALUE AND EXPORT PRICE

DUMPING MARGIN, NORMAL VALUE AND EXPORT PRICE

KOREA RP

A. M/S. KOREA KUMHO PETROCHEMICAL CO. LTD (KKPC)

NORMAL VALUE

The authority recalls its observations in the disclosure statement and reiterates that arguments/submissions made by M/s. KKPC on various aspects of computation of their cost of production for the various grades of NBR sold by them in the domestic market during the POI have been considered appropriately. The submissions/data furnished during on the spot verification on 23-24th August, 2002 and the submissions made by them in their main/supplementary response to the questionnaire and the clarifications offered by them to the Directorate subsequent to the verification have been appropriately considered. The Authority notes the claim of SGA and interest of the exporter regarding apportionment on the production basis does not appear to be justifiable and logical keeping in view the costing principles governing such apportionment in case the company is producing heterogeneous products with wide variations in the per unit cost and the sales realisation. Thus the Authority in disclosure statement proposed to apportion these costs on the basis of cost of sales.

As regards R & D expenses, the Authority notes from the company's literature/broacher provided during the on spot verification that the R & D activities are relevant for all the products including NBR. Further the details on grade-wise cost

of production of NBR shows that the company has incurred substantial amount of R & D expenses on NBR also. Thus these have been considered as part of the SGA expenses. The claim regarding exclusion of bad debts was proposed to be considered by the Authority, as the same is not related to NBR. Similarly the claim regarding amortization of intangible assets was also proposed to be considered by the Authority as done for bad debts as indicated above.

As regards the advertisement expenses, it was mentioned in disclosure that the exporter has not been able to substantiate its claim for exclusion of the expenses related to the advertisement. Hence the same was not proposed to be considered by the Authority.

As regards the interest expenses, the exporter has worked out the percentage of funds available to the production activity by excluding funds related to investment activities. Against the claim of exporter of ****% of funds applicable to production activities, the Authority has assessed the same as ***% after considering of investments made in non-production activities. For allocation of interest to production activities, the exporter has considered net interest cost after deducting interest income. This claim was indicated to be proposed to be considered since the interest income relates to the investment activities of the company and not the production activity. The total amount worked out for SGA and interest has been allocated to different products on the basis of the cost of sales. It has been observed that the transfer price of captively product and captively used Butadiene does not take into consideration the incidence of SGA and interest although for allocation of SGA and interest the incidence of cost of sales related to Butadiene has been considered in the denominator to arrive at the share applicable to various production activities. Accordingly based on the consumption factor of captively produced and used Butadiene in the production NBR, the incidence of SGA and interest was proposed to be duly considered. The Authority had noted that the exporter has provided weighted average domestic selling price of all grades for determination of Normal Value. The cost of production has also been provided by the exporter on the weighted average ex-factory basis for all grades. It was observed by verification team during the on the spot verification of exporter that there is a narrow band of variation in the cost of production for various grades and keeping in view that this is a Sunset Review, the methodology of weighted average to weighted average grade comparison as done earlier was indicated to be adopted for the purpose of evaluation or normal value, cost of production and the export price to India.

In order to evaluate the normal value for the domestic sales, the Authority had excluded all those transactions which have not been made in the ordinary course of trade after evaluating weighted average cost of production as indicated in the para above. After excluding such transactions, the weighted average normal value during POI was indicated as ***\$/MT.

The Authority had proposed to reference the normal value as ****\$/MT. Confidential disclosure was made available to the exporter.

EXPORT PRICE

As regards the evaluation of the ex-factory export price, the Authority proposed to consider the adjustments claimed by the exporter on ocean freight, ocean insurance, inland freight, packing, commission to agent viz. M/s. Rishroop Polymer Pvt. Ltd. and duty drawback. The Authority however noted that in case of inland freight claimed on export to India, there were certain export made through another port viz. Busan Port also as was indicated by the exporter to the verification team during on the spot verification Accordingly, the inland freight is proposed to be considered as ****\$/MT.

The exporters had claimed adjustments on account of their level of trade in the domestic market and also the exports made to India. However during the spot verification, the exporter has foregone their claim as far as the level of trade in the domestic market vs. the exports to India is concerned. Since the domestic market sales were also made both to actual users and the distributors/wholesalers. However they have now submitted that in view of the exports by them to India made to wholesaler unlike the sales made by the Domestic Industry which are at the end user level, they have quantified an adjustment on account of this level of trade. The Authority had indicated that since level of trade adjustments in domestic market and export market has not been claimed and could not be evidenced, the question of considering this adjustment for the purpose of Normal Value does not arise. As regards their claim on level of trade for exports to India is concerned, it was indicated that it can be examined only for the purpose of injury determination as per the Anti dumping Rules and the consistent practice followed for injury evaluation for industrial products by the Authority.

As regards the adjustments on packing, the Authority indicated that there is a variation in the amount of packing cost claimed for exports to India and that claimed for domestic sales and exports to other countries. Two different type of packing have been used for the domestic and exports sales to India, viz box type and bag type respectively. The Authority on the basis of the evidence provided by the exporter during on the spot verification have considered the packing expenses on exports to India as claimed on the basis of the evidence produced. However, after reconciling of the packing expenses with the Profit & Loss Account, adjustments have been considered to an extent of ****\$/MT as far as the domestic sales packaging are concerned were indicated in the confidential disclosure to the exporter.

On the basis of the above, the ex-factory export price was indicated as ****\$/MT and the dumping margin as 10.6% (*****\$/MT)

As regards the comments offered subsequent to the disclosure by the representative of M/s. KKPC, the Authority has carefully examined the same as under:-

1. The argument of the exporter that they are historically using the basis for allocation of SGA and interest on quantity basis could not be substantiated by KKPC during the course of verification from basic records as they maintain product-wise cost upto cost of sales only and not afterwards. During the course of verification this was duly explained to KKPC that the methodology for cost allocation based on ratio of quantity of NBR produced to total quantity to all products is inappropriate as for one item namely steam the SGA cost is disproportionate to its cost and selling price. The exporters has agreed to the argument in his response to the Disclosure Statement. On quantity terms the steam constitutes more than 70% of the total production whereas in terms of cost sales the same constitutes about 7% only. Treating steam and other products at per on quantity basis for allocation of SGA and interest is not appropriate. Accordingly, cost apportionment of SGA and interest on the basis of cost of sales was considered appropriate and the same is adopted by the Authority.
2. The exporter has himself accepted that the trading sales and indent sales for foreign suppliers from whom it received indenting or offer sales commission do not get reflected in KKPC's books of accounts. Accordingly, it is difficult to assess the SGA on the basis of sales value. Further, the sales value does not reflected the true and fair value especially in case of NBR which is claimed to be dumped by the exporter. Therefore, the Authority has considered appropriate to adopt cost of sales as most appropriate basis of apportionment/allocation of SGA and interest in the present circumstances.
3. The argument that the Authority disallowed certain adjustment on account of advertisement expenses commission and R & D expenses for determination of net SGA expenses has been examined. It is observed that the Authority considered the claim of KKPC with regard to commission and excluded the same while determining the net SGA cost. With regard to advertisement expenses the Disclosure Statement is clear as to why the same has been considered as part of SGA. With regard to research and development expenses the exporter could not substantiate his claim and now he has stated that in cost statement the R & D expenditure is mistranslated in English. M/s. KKPC, now based on some hypothetical assumption, has desired to at least consider 50% of the R & D expenses only. Since no basis has been given for such assumption it is not possible accept the argument of the exporter in this regard.
4. The argument of KKPC regarding incorrect valuation of transfer price for Butadiene captively produced and consumed by considering share of SGA does not hold as for assessing the share of SGA and interest applicable to NBR the

total cost of sales of all products has been considered by also adding the captively produced and consumed raw materials and utilities. Since the SGA and interest has been allocated on total cost of sales, share applicable to Butadiene (captively produced and consumed) should be added to arrive at real transfer value of the raw material.

5. The Ratio of assets deployed for production activity has been properly considered by excluding non operational development of the funds from the total funds deployed by the Company as at March, 2001. The hypothetical basis of distributing quick assets constituting cash and bank balance and short term loans of 50:50 basis was not substantiated and hence could not be accepted.
6. The cost of production has been properly assessed by the Designated Authority as indicated above.
7. The Authority has determined normal value by applying ordinary course of trade test as prescribed under the Annexure 2 of the Anti Dumping Rules.

The Authority also notes that the representative of M/s. KKPC has sought clarification regarding adjustment on commission on export price and have desired to consider the duty drawback adjustments on the Normal Value. The Authority clarifies that the commissions as claimed by the exporter has been considered for evaluation of the ex-factory export price and that the duty drawback adjustment has now been appropriately adjusted on the Normal Value rather than the export price as claimed, since this adjustment could either be made on the Normal Value or on the export price. The Authority also notes that in response to the disclosure statement, Domestic Industry has also raised issues pertaining to the evaluation of Normal Value for M/s. KKPC. The Authority has considered the submissions and have appropriately dealt the relevant issues as illustrated below:

1. With regard to the observation that the exporter maintains accounts on calendar year basis and the period of investigation is 2000-01 year, it is submitted that the exporter has provided complete information regarding Profit and Loss Account, Balance Sheet and cost of production of different products manufactured including NBR during the period of investigation which has been considered appropriately.
2. With regard to consumption of raw materials the company has furnished complete reconciliation of raw material consumption with books of accounts.
3. On comments on the packing cost it is submitted that the same has been duly reconciled with books of accounts. With regard to amortization expenses it is clarified that the same has not been considered since they are related mining activity of the company and not NBR.
4. The price of the captively produced and consumed Butadiene have been duly adjusted to include cost of SGA and interest as applicable.

Also it was clarified to the representative of the exporter as also acknowledge by him that under the formulation of net interest cost in the disclosure, the Authority had actually intended to convey that interest income related to the investments activities of the company and not production activity and hence the gross interest cost has been considered. The argument of the exporter in this regard has been appropriately examined and the Authority reiterates that the interest income relates only to investment activities and is hence excluded. The Authority further notes the submissions of the exporter that by virtue of this discrepancy in the disclosure the same is invalid. The Authority here submits that purpose of disclosure is to bring out essential facts and also thereby address issues emanating from the response to the disclosure. The issues on methodology, factual to the final determination. The fact that Authority has clarified this to the exporter and it has been acknowledged, the Authority has provided the essential facts and invited the comments thereupon and have also considered these appropriately.

Thus the determination methodology on Normal Value as indicated in the disclosure with the issues raised as clarified now, is confirmed.

Accordingly the Normal Value comes to ****\$/MT and the ex-factory export price comes to ***\$/MT and the dumping margin as ****\$/MT (10.27%).

B. HYUNDAI PETROCHEMICAL CO. LTD.

NORMAL VALUE

The Authority notes that the exporter has not provided any response in the prescribed questionnaire on account of various submissions as indicated in the foregoing para. The Authority under such circumstances has no option but to construct the normal value on the basis of the best available information as per Anti Dumping Rule 6(8). The Authority therefore proposed to reference the highest domestic selling prices as indicated by one of the cooperating exporter viz. M/s. KKPC for the purpose of evaluating the normal value for M/s. Hyundai Petrochemical Co. Ltd.

Since no response has been filed to the disclosure, the Authority, confirms the normal value as ****\$/MT.

EXPORT PRICE

As regards the export price, the Authority notes that the domestic industry has provided on the basis of the secondary sources, the transactions pertaining to exports made by M/s. Hyundai during the POI to India. The Authority proposed to reference the weighted average CIF export price as provided by the domestic industry. The

Authority also proposes to consider adjustments on account of ocean freight, ocean insurance commission, inland freight, packing and port expenses on the basis of the information as made available by the Domestic Industry and also as evidenced/correlated from the data provided by the cooperating exporter.

As no response has been filed to the disclosure, the Authority confirms the ex-factory export price as ****\$/MT.

On the basis of the above, the dumping margin comes to 47.08% (****\$/MT).

C. OTHER NON-COOPERATIVE EXPORTERS/PRODUCERS FROM KOREA RP

In view of no response to the disclosure, the Authority confirms the Normal Value and export price as under:-

NORMAL VALUE

The Authority Proposes to reference the highest domestic selling price as evidence from the data provided by M/s. KKPC for the non-cooperative exporters/producers.

The normal value is therefore referenced as **** \$/MT.

EXPORT PRICE

As regards the export price, the Authority references the least export price as evidence from the data provided by the cooperating exporter and the Domestic Industry.

The ex-factory export prices comes to ***/MT.

On the basis of the above, the dumping margin comes to 49.06% (****\$/MT)

3. GERMANY

A. BAYER AG, GERMANY

NORMAL VALUE

The Authority notes that M/s Bayer has not provided data as per the structured questionnaire but have indicated that the only cost change in their cost of production has happened on account of the cost of Monomers for which they have provided the price. As regards the other production costs, it has been indicted that the costs has not been changed by and large. The Authority in this regard notes that the midterm review

recommendation was given vide Notification dated 17.7.2001. The Authority also notes that the same has not been challenged by M/s. Bayer. The Authority has therefore adopted the same methodology as was done in the earlier review for determination of the Normal Value.

The Authority notes that the export price to India of NBR exported by M/s. Bayer has increased in the present POI for the Sunset Review, even though the monomer prices have increased and consequently the normal value of M/s. Bayer would also warrant an upward revision, the Authority proposes to reference the earlier Normal Value as determined during the past POI, which would be the best available information in the present circumstances.

The Normal Value on the basis on this comes to ****\$/MT. Since there is no response by the exporter to the disclosure, the Authority confirms the Normal Value as ****\$/MT.

EXPORT PRICE

The Authority notes that the exporter has provided the weighted average CIF price during POI along with the quantities exported to India. The Authority has therefore referenced the same for the purpose of determination of the export price. The Authority has on this CIF price considered adjustments on ocean freight, ocean insurance and commission as per the data provided during the earlier midterm review.

The ex-factory export price comes to ****\$/MT.

Since there is no response by the exporter, the Authority confirms the export price as ****\$/MT.

On the basis of the above, the dumping margin comes to 24.87% (****\$/MT)

B. OTHER NON-COOPERATIVE EXPORTERS/PRODUCERS FROM GERMANY

As there is no response to the disclosure, the Authority has evaluated Normal Value and export price as under:-

NORMAL VALUE

The Authority notes that none of the exporters/producers from Germany have cooperated. The Authority under such circumstances therefore has referenced the normal value as determined for M/s. Bayer AG only.

The normal value therefore has been referenced as ***\$/MT.

EXPORT PRICE

As regard the ex-factory export price, the Authority has referenced the least export price of M/s. Bayer AG for the non-cooperative exporters/producers. The adjustments on export price as granted to M/s. Bayer AG have also been considered for these non-cooperative exporters/producers.

The ex-factory export price comes to ****\$/MT.

On the basis of the above, the dumping margin comes to 44.11% (****\$/MT)

4. DUMPING COMPARISON OF NORMAL VALUE AND EXPORT PRICE

The rules relating to comparison provides as follows:

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

The Authority has carried out comparison of weighted average normal value with the weighted average ex-factory export price for evaluation of the dumping margin. While evaluating the Normal Value, the Authority has applied the ordinary course of trade test as per Rule 2 of the Annexure 1 of the Anti Dumping Rules.

Based on the normal value and the ex-factory export price as determined above the Authority has evaluated the dumping margin for the subject goods originating in or exported from the subject countries to India as follows:-

Exporter/Producer	Normal Value \$/MT	Export Price \$/MT	Dumping Margin (%)
KOREA RP			
1. Korea Kumho Petrochemical	***	***	10.27
2. Hyundai Petrochemical Co. Ltd	***	***	47.08
3. All Other Exporters/Producers	***	***	49.06
GERMANY			
1. Bayer AG	***	***	24.87
2. All other exporters/producers	***	***	44.11

The above dumping margins are above the de-minimum limit.

5. INJURY AND CAUSAL LINK

The Authority notes that as per Section 9A(5) of the Customs Tariff Act, 1975 as amended in 1995 "the anti dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provides further that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time extend the period of such imposition of r a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year."

Also under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "...taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles..." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compare with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred to a significant degree.

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

Since under the present investigation it is to be evaluated as to whether cession of anti dumping duties would lead to continuance or recurrence of dumping and injury, the Authority has considered appropriate injury parameters as indicated in Annexure II(iv) of the Rules supra to evaluate this aspect.

The Authority observes the various economic parameters pertaining to the subject goods for the Domestic Industry i.e. M/s. Apar Industries Ltd. and imports of subject goods from subject countries as under:-

Economic Parameters	1997-98	1998-99	1999-2000	POI (2000-01)
Capacity (MT)	6250	6250	6250	6250
Gross NBR production (MT)	3785	4609	4990	5154
Effective production (MT)	4300	5366	5742	5360
Capacity utilization based on effective production (%)	69%	86%	92%	86%
NBR indigenous sales (MT)	3149	3750	4073	4637
Gross block (Rs. in lakhs)	4483	4534	5266	5865
Closing stock (MT)	183	279	380	172
Average wage per employee (Rs.)	63095	66667	69645	81695
Maximum established demand (MT)	10142	9934	12372	10481
Total maximum imports (MT)	6693	6184	8299	5844
Share of imports of Korea in total imports (%)	33.59	48.42	53.45	48.58
Share of imports of Germany in total imports (%)	18	9.7	7.23	7.99
% of subject country imports in total imports (%)	51.59	58.12	69.68	56.57
% of imports from South Korea of total demands	23.16	30.14	35.86	27.09
% of imports from Germany of total demands	12.41	6.04	4.85	4.46
% of imports from subject countries of total demands	35.57	36.18	40.70	31.54
% of share of Domestic Industry in total demand	31.05	37.75	32.92	44.24
Net Sales realisation (Rs./MT)	****	****	****	****
Cost of production (Rs./MT)	****	****	****	****
Profitability (Rs./MT)	****	****	****	****

The authority also notes the submissions regarding referencing DGCI&S data for imports made by various interested parties. The Authority recalls its observations in the disclosure statement and has evaluated the maximum demand and maximum imports on the basis of the data available from their responses of the cooperating exporters, DGCI&S and the secondary source viz PPR.

The Authority notes that it has been submitted by M/s. KKPC that various injury parameters and cost of production of M/s. Apar Industries Ltd., should be examined in detail and injury and causal link be appropriately considered. Also various interested parties have raised the issues pertaining to examination of injury to Domestic Industry. The Authority notes that M/s. Apar Industries Limited primarily produced NBR at its Walia plant at Gujarat. During the period of investigation, the company has produced NBR to an extent of about 95% of the total capacity utilised during he period of investigation. The company maintains separate books of accounts for Walia plant, duly audited. Thus the basis for determination of NIP is authentic and the costs and expenses related to NBR only have been considered for the purpose of determination of cost of production and thereby the non-injurious price. Also

consistent with the practice, the production and thereby the non-injurious price. Also consistent with the practice, the Designated Authority has normated the various elements of costs so as not to grant the Domestic Industry any undue benefit or protection which might accrue to them on account of their inefficiencies. Hence the arguments of various interested parties regarding profitability and cross loading of expenses on different related products by the company being a multi-product company are duly taken care of by the Authority during onsite verification of the Domestic Industry.

The above economic parameters in the Table indicates that demand of subject goods has been around 10000 MT to 12000 MT and has therefore not been a factor for cause of injury. The indicators on production and capacity utilization for Domestic Industry show upward trend. Though the share of Domestic Industry in total demand have increased, the imports from the subject countries, especially Korea RP continue to be significant as imports from subject countries as % of demand continues to be significant despite anti dumping duty. This coupled with price undercutting is causing material injury to the Domestic Industry and would also lead to recurrence of injury.

The Authority notes that the net sales realisation of the Domestic Industry during the period of investigation is below the non-injurious price. The dumped imports from the subject countries evidence price undercutting as the landed value of such dumped imports are below the non-injurious price and in case of M/s. KKPC even after imposition of the existing anti dumping duties, there is still price undercutting when landed values with anti dumping duty are compared with the non-injurious price. The argument of M/s. KKPC that the effect of customs duties and SADD should be appropriately considered are also duly considered by the Authority. The Authority notes that NBR is an industrial products and as per the consistent practice it is the ex-factory non –injurious price which is compared with the landed value as defined in this determination below in case the customs duties have fallen during the present period of investigation for the subject goods, the raw material utilised for manufacture of the subject goods by the Domestic Industry have also attracted lower duties and therefore the non-injurious price has also been affected by the fall in customs duties. Thus the practice of comparing non-injurious price during the period of investigation with the landed value in POI is consistent and appropriate. The argument of M/s. KKPC regarding granting the adjustments on the level of trade and the export of M/s. KKPC are made to the wholesalers and not to the end users is also not appropriate since if the whole-sellers in the distribution chain benefit by the dumped imports, ultimately the supplies are only made to the retail level actual users. It therefore has an adverse impact on the sales of the Domestic Industry and thus ex-factory comparison as indicated above is appropriate. As indicated above, the comparison for the evaluation is appropriate at the ex-factory level which the Authority has been doing

consistently. The Authority has therefore followed the same approach. The landed value of dumped goods from M/s. KKPC even with addition of existing anti dumping duty is lower than NBR. The Authority in regard to submissions on high Butadiene cost notes that the Hon'ble CEGAT in its judgement dated 4.2.1997 in case of NBR from Japan has upheld the methodology on NIP determination at optimum level and have taken cognizance of the situational conditions of the Domestic Industry. The various economic factors viz price undercutting by dumped imports, net sales realisation lower than NIP and erosion of profitability imply that if anti dumping duties on subject goods from subject countries are withdrawn, the dumping and injury will continue and recur and will cause intensified material injury to Domestic Industry.

6. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

The Authority notes that the submissions have been made regarding demand and supply mismatch of the subject goods and the effect on export competitiveness as well. The Authority in this regard holds that 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.

The Authority also recognises that though the imposition of anti dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers. Imposition of anti dumping measures would also restrict imports from the subject countries in any way, and , therefore would not affect the availability of the products to the consumers/users.

The Authority notes that it has been mentioned by M/s. KKPC that the disclosure should have been sent under the signature of Designated Authority citing various case laws on the matter. Also the exporter has submitted that the public hearing conducted by the Designated Authority was not appropriately conducted as per Rules and has cited the WTO articles and cases laws pertaining to the same. The Authority in this regard notes Rules regarding that the oral submissions to be made during the investigation and the issuance of the disclosure under Rule 16. The Authority notes that the oral submissions presented during the hearing are only be considered if they are subsequently produced in writing. Therefore an essential requirement is that the oral submissions should be backed by the written submissions so that this could be appropriately considered during the course of investigation. The Authority has

followed this rule position and its consistent practice in holding such a hearing and inviting various interested parties to make their submissions. Further the Authority notes that all submissions made by M/s. KKPC were duly verified on site by the verification team and all relevant submissions have been appropriately considered and addressed. As regards the disclosure, the Authority holds that the disclosure pertains to the information on the essential facts which form the basis for the decision but is not a decision. The Authority has followed the constant practice of disclosing such a information under the signature of the investigation officer on behalf of Designated Authority and therefore holds that the practice adopted under Rule 16 of the Anti Dumping Rules has been adhered to in this case as well.

7. LANDED VALUE

The landed value has been determined for the subject goods after adding on weighted average CIF export price, the applicable level of custom duties (except duties levied under Section 3,3A, 8B, 9, 9A) and the percent towards landing charges.

D. CONCLUSIONS

It is seen, after considering the foregoing that:

- a. The subject goods originating in or exported from the subject countries have been exported to India below its normal value.
- b. The various economic indicators and injury parameters in particular price undercutting by dumped imports imply that the cessation of anti dumping duty on the subject goods from the subject countries will lead to continuance or recurrence of dumping and injury and therefore the Authority recommends continuation of anti dumping duty on the subject goods as indicated below. In this regard the Authority also notes that on NBR imports from Japan in the Sunset Review implemented by Customs vide Notification dated 21.12.2001 a variable duty has been levied, the Authority considers it appropriate to levy anti dumping duty in variable form in this investigation, as well. The authority recalls that levy in dollar terms has been upheld by the Hon'ble CEGAT.
- c. In view of the above, it is recommended that the amount of Anti Dumping Duty in variable form equal to the difference between the amount as indicated in Column 3 of the Table below and the landed value in \$/MT be imposed, by the Central Government on all grades of Acrylonitrile Butadiene Rubber (NBR) originating in or exported from Korea RP and Germany falling under Chapter 40 of the Customs Tariff.

S. No.	Name of the exporters/producer	Amount (\$/MT)
1.	Korea RP 1) M/s. Korea Kumho Petrochemicals Co. Ltd. 2) M/s. Hyundai Petrochemicals Co. Ltd. 3) All Others Exporters	1692.12 1908.28 1902.28
2.	Germany 1) Bayer AG 2) All other exporter/ producers	2314.8 2314.8

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

L.V. SAPTHAISHI..
Designated Authority