

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 14th October, 1997

FINAL FINDINGS

SUBJECT: Anti dumping investigation concerning, imports of acrylic fibre from Thailand, Korea RP and USA - Final Findings.

No. 47/ADD/1W: Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof

A. PROCEDURE

1. The Procedure described below has been followed

- i. The designated Authority (hereinafter also referred to as the Authority) notified Preliminary Findings vide Notification No. 47/ADD/1W dated the 31st March, 1997 and requested the interested parties to make their views known in writing within forty days from the date of its publication.
- ii. The Authority forwarded a copy of the preliminary findings to all known interested parties who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter;
- iii. The Authority also forwarded a copy of the preliminary findings to the Embassies of Thailand, the United States of America (also referred to as USA hereinafter) and the Republic of Korea (also referred to as Korea or Korea RP hereinafter), in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary finding;
- iv. The Authority held a public hearing on 7th July, 1997 to hear views orally. All the parties attending the public hearing were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the written submissions by the opposing parties and were requested to offer their rebuttals. The following parties attended the hearing
 - The petitioners;
 - Thai Acrylic Fibre Company, Thailand - directly as also through their representatives, M/s. Laxmikumaran & Sridharan;
 - Cytec Industries, USA - through their representatives, M/s. Amarchand & Mangaldas & Suresh A: Shroff & Co.;
 - Monsanto Company, USA;
 - Rajasthan Spinning & Weaving Mills Ltd;
 - Indian Spinners Association;
 - Nahar Spinning Mills Ltd;
 - Adinath Textiles Ltd.;

- v. In accordance to Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to all the known interested parties. Comments received on the same have also been duly considered in these finds;
- vi. The investigations have been concluded within the time limit extended by the Central Government;
- vii. Information which- has been claimed as confidential by any of the interested party's and accepted as confidential by the Designated Authority, has not been disclosed in the notification. The symbols *** throughout this notification indicate confidential information.

B. PETITIONER'S VIEWS

- 3. The petitioner raised the following arguments
 - i. The exporters from the subject countries have continued to dump their product in the Indian market. The dumping has intensified from these countries, which is evident from the fact that the exporters from USA and Thailand have reduced their prices to US \$ 1.375 and 1.450, which is 25-40% lower than the prices in the investigation period. The petitioners enclosed an invoice dated 25-7-1996 to establish the export price of US \$ 1.375 from USA;-
 - ii. There is constant threat of injury to the domestic industry from imports from these countries;
 - iii. Sales of the domestic industry in the investigation period would have been still lower, had the domestic industry not tried to increase the same by reducing the prices;
 - iv. The stocks with the domestic industry. were significantly higher not only at the end of the investigation period, but also during the whole of the investigation period;
 - v. Not only the domestic industry, but also the whole of the Indian Industry suffered financial losses from sale of acrylic fibre at prices lower than the cost of production;
 - vi. The reduction in customs duties from 45% to 30% has not been considered by the Authority while recommending the provisional duties and the same should be considered for the final findings;
 - vii. The various indicators affecting domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury;
 - viii. The contention of Thai Acrylic that their production from line A is cheaper and sales from line B in the domestic market is higher seems to be farce to misguide the Authority;
 - ix. The contention of Cytec that discount on end uses given in the domestic market in USA should be allowed, is untenable;
 - x. The financial statement and the balance sheets of all the major Spinning companies have shown a tremendous growth and profits in the last three years. These companies are beneficiary of the dumped prices, from these countries;
 - xi. The contention of the consumers that the anti dumping duty would affect the exports of knitwears has no basis, as no duties (including anti dumping duties) are payable by the exporters, on imports of inputs for exports;
 - xii. The allegations of poor quality, non-supply of material or price fluctuations are untenable.

C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

The views expressed by the exporters, importers consumer associations and other interested parties are briefly as follows -

Cytec Industries

a. On normal value

- i. Cytec sells only to the spinners in the domestic market as also in the export market. Depending upon the end use of the yarn Cytec gives rebates to the final consumer of yarn. The giving of the rebate is under a pre-determined rebate programme.
- ii. Disallowance of the rebate on the ground that no such rebate is being given by Cytec in the export market is erroneous. It is necessary to deduct all expenses including thereon packing incurred by the company the moment the product leaves the factory. Normally the factors for which adjustments can be made include physical characteristics, import charges, indirect taxes, discounts, rebates and quantities, level of trade, transport insurance, handling, loading and ancillary costs, packing, credit, after-sales cost, commissions, and currency conversions.
- iii. Article 2(10)(c) of the European Commission regulation provides that an adjustment shall be made for differences in discounts and rebates if:
 - the rebate is directly related to the sales under investigation;
 - the rebate is actually paid;
 - the rebate amount is fixed or is determinable;
 - rebate is based on standard business practice or a pre-established rebate schedule;
 - rebate is given to unrelated purchasers.
- iv. In instant case, the rebate claimed is directly related to the sales under investigation, has been actually paid, was under an established rebate programme and given to unrelated persons. The rebate given is liable to be deducted.
- v. Considering the Australian laws also (where a function undertaken in relation to a domestic sale, which is not undertaken in relation to the export sale, the value of that function has to be deducted), the rebate allowed on 1.5 denier sold in the domestic market is liable to be deducted from the normal value.
- vi. Under the US laws also, the Department of Commerce reduces the gross selling price by the amount of rebate, when the seller establishes the terms and conditions under which the rebate will be granted.
- vii. **Commercial Expenses:** Disallowance of selling expenses by the Authority is incorrect. It would be necessary to deduct expenses attributable to Technical Fibres business. Full details of selling expenses which includes the salaries, travel and related costs of the domestic sales force were furnished by the company to the investigating team. Total domestic commercial expenses, works out to US \$ 0.0543 per pound, which should be allowed by the Authority.
- viii. **Corporate expenses:** Disallowance of corporate expenses by the Authority is incorrect. Corporate expenses consists of allocations of acrylic fibre business from the parent corporation for services they provide and these apply equally to domestic and export sales.

b. On injury

There is no injury caused to the domestic industry as a result of exports by Cytec in view of the following:

- i. Sales have increased in 1994-95 over 1992-93 and 1993-94:~
- ii. Stocks have declined for all manufacturers in 1994-95 over 1992-93 and 1993-94;
- iii. Domestic industry has higher production costs than Cytec for reasons particular to its economy. Its cost of production increased because of increase in the prices of Acrylonitrile:
- iv. Cytec has exported only 103.78 MT to India during the investigation period which is very small as compared to total imports of 5622 MT in 1995-96; .
- v. Landed value of imports from Cytec was higher than the value claimed by the petitioners:
- vi. Trend of imports is not sufficient to come to the conclusion that exports of acrylic fibre, in particular from Cytec, have caused any injury to the domestic industry.

Monsanto Company

- i. Monsanto Company (hereinafter referred to as Monsanto) claimed that its sales records do not show any shipments of acrylic fibre to India during the past five years 1991 to 1996. The Company attached copies of their sales data showing sales to different countries. The company claimed that it has no knowledge or reason to believe that a customer of Monsanto's first grade fibre has resold such first quality fibre to India:
- ii. Monsanto further claimed that it sells its off grade acrylic fibre to one company, who might have exported some off grade fibre to India, which is beyond the knowledge of the company:

Thai Acrylic Fibre

- a. The investigation period being considered by the Authority coincides with the period when the Acrylonitrile prices, were very high. The high prices of Acrylonitrile could not be passed on fully to the consumers of acrylic fibre. No reasons for deciding the investigation period have been recorded by the Authority in the preliminary findings. The preliminary findings and the investigation are liable to be terminated on the ground of bias in deciding the investigation period.
- b. The argument that J K Acrylic stopped production because of dumping is not correct. The company has not started till date. The company is facing problems on other fronts.
- c. The argument that the Indian industry has a capacity of 165000 MT as against the demand of 120000 by the year 2000 AD does not mean that there is sufficient capacity and hence imports are not necessary.
- d. The claim of the domestic industry that customs duties on acrylic fibre have come down has to be seen in the light of the fact that duty on raw material especially Acrylonitrile has also come down.
- e. On dumping : The Authority should re-determine the dumping margin after taking into account the following
 - i. The conclusion in the preliminary findings under para 19(i), that normal value was based on four orders, is erroneous. The normal value was based on the quantity of acrylic fibre actually supplied to the four customers, which accounted for 96% of the

total sales in the domestic market. The company has now made available information with regard to the remaining 4% domestic sales. The normal value should be determined accordingly;

- ii. Discounts, commissions and interests claimed by the company have all been based on actual amounts. full information about which was made available to the investigation team. This information has again been made available in the rejoinder, and the deductions claimed should be re-determined based on the information now supplied;
- iii. The claim on account of storage be allowed. The company has made available invoice-wise details of the holding in the rejoinder,
- iv. The deduction on account of cost difference in production from lines I and II should be allowed. The exporter has incurred extra costs in producing acrylic fibre on line II, resulting in higher price in the domestic market;
- v. Details of the amount of duty drawback arrived at by the Authority are not available and therefore, no additional details or comments can be furnished by the exporter;
- vi. The exporter has now furnished details of ocean-freight incurred by it during the enter investigation period on account of exports to India and claimed that adjustment on account of ocean freight should be allowed on the basis of this information now made available;
- vii. Details of the storage cost incurred on export consignments have been furnished invoice-wise and the Authority should allow adjustment on the basis of average storage pod in case of exports.

f. On injury and casual link

- i. The domestic industry should have realised Rs. 122 per kg. (landed price of imports from Thailand, including customs duty and countervailing duty), whereas as per the findings of the Authority, the realisation was Rs. 119 per kg. The entire injury findings based on price suppression is; therefore, factually incorrect.
- ii. The casual link between the alleged dumped imports and the injury to the domestic industry in the preliminary findings is vague. Considering that the reduction in customs duties has no impact on dumping per se and the margin of dumping on exports front Korea and USA (except for one exporter) has been much higher than that of Thailand, the iniury to the domestic industry is due to factors other than dumping by Thailand.
- iii. Other Interested parties : The consumers. importers, trade association and other interested parties have raised the following arguments
 - i. The acrylic fibre has been imported for export of acrylic yarn. If the quantity of acrylic fibre imported and consumed for exports is excluded, the balance quantity forms a very small percentage of indigenous capacity and annual production;
 - ii. The quality of the Indian fibre is much inferior to the imported material;
 - iii. Import duty on acrylic fibre is 30 percent as against 25 percent on viscose fibre. Acrylic fibre is already over- protected; by higher duty;
 - iv. Imposition of anti-dumping duty on acrylic fibre would cause tremendous harm to about 50000 units in small scale sector producing knitwear;
 - v. The problems of acrylic fibre produces do not stem from imports, but the same is because of their own management or technological deficiencies. Closure of J K Synthetics is not because of imports but because of their own financial and other problems:

- vi. The domestic industry increased prices from about Rs. 89 per kg. to Rs. 95 per kg., as soon as the anti-dumping duty was imposed;
- vii. Working performance of dry spun fibre is 5 per cent lower as compared to west spun fibre;
- viii. Quality of Pashupati Acrylon's fibre is very excellent but quality of others is not comparable. Import of the fibre in the country is essential;
- ix. Except for the acrylic fibre produced by Pashupati, other Indian fibre suffers from the following deficiencies:
 - Strength of fibre in case of Indian Acrylic is weak;
 - Dye pick up is lower 5% to 7%;
 - Loading of fibre is less by 6% to 8%;
 - Yarn level of imperfection is high;
 - Superior quality yarn for export cannot be produced by domestic fibre except of Pashupati fibre.
- x. Flexibility in fibre price of Indian producers is very high.
- xi. There are problems in availability of fibre from the Indian producers.
- xii. The stock levels with the domestic industry were not high, as brought out in the preliminary findings.
- xiii. Consumers, who are exporting yarn, have to necessarily import the fibre as the domestic industry is not supplying against advance licence.
- xiv. In case any anti-dumping duty is to be imposed, imports under pre-export duty entitlement pass book scheme should be exempted from payment of such duty.

D. EXAMINATION BY AUTHORITY

- 5. The submissions made by the petitioners, exporters, importers and other interested parties have been examined, considered and wherever appropriate, dealt hereinafter.

E. LIKE ARTICLES AND DOMESTIC INDUSTRY

- 6. Under Rule.2(d) "like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.
- 7. The product under consideration which has been investigated for dumping has been defined in the preliminary findings, which is acrylic fibre.
- 8. Arguments have been raised that quality of the acrylic fibre produced by the Indian industry is not comparable with the imported fibre. Argument has also been raised by one of the parties, M/s. Shuti Synthetics Ltd. that the fibre produced by Pashupati is of excellent quality. It has not, however, been disputed by any interested party(ies) that the article produced by the domestic industry were substitutable by the articles imported from the subject countries--both commercially and technically. The articles produced by the domestic industry, therefore, have characteristics closely resembling those of the article under investigation and the criteria prescribed in the definition under Rule 2(d) are adequately satisfied
- 9. The Authority confirms para 9 of the preliminary findings and confirms that acrylic fibre produced by the domestic industry is a like article to the product under

consideration i.e., acrylic fibre exported to India originating in or exported from the subject countries within the meaning of the rules supra.

F. DUMPING

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

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs. and for profits, as determined in accordance with the rules made under sub-section (6)

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

11. The Authority determined normal values in the preliminary findings in accordance with the Section 9(A)(1)(c)(i) which has not been disputed by any interested party. Determination of normal value in accordance with this provision is, therefore, confirmed.
12. The arguments raised by Cytec and Thai Arcylic with regard to adjustments made by the Authority have been mentioned earlier. Cytec and Thai Arcylic adduced further evidence to substantiate their claims. The adjustments which have been carried out in the normal values for the purpose of final findings are discussed here in below.

Cytec Industries Ltd.

13. In the preliminary findings, the Authority considered that Cytec has sold fibre to Customer 1 with rebate base @a its end-use. No evidence was produced by the exporter before the investigating team to establish that the price at which goods were transacted with the Indian importers also took into consideration the end-use the importers are catering to. Even the Indian importers have not indicated that the prices offered to them have any relation to the end-use their finished products would be put to. Moreover, in this particular case the articles have also been sold to another domestic customer, namely, Customer 2 without any element of rebate. In the circumstances,- prices to Customer 2 offer a better and more appropriate comparison

to the export price. The Authority, therefore, considered the price to Customer 2 as the normal value for the purpose of comparison with the export price. It was also considered that the rebate to Customer 1 is not admissible as an adjustment not due to the fact that non-rebated price to Customer 2 is available but on the rationale that the ehd4si based discount or rebate is not available to the exporters also as indicated by the facts on record.

Cytec has still not adduced any evidence to suggest that the end-use based discounts or rebates were available in case of exports also. The exporter has merely argued that all expenses incurred by the exporters should be allowed. Cytec has cited the relevant provisions of EU, US and Australian laws.

Cytec has also admitted that it sells only to the spinners in the domestic market as also in the export market and depending upon the end use of the yarn, the company gives rebates to the final consumer of yarn. Although, the grant of rebate is under a pre-determined rebate program. Cytec gives rebates after the proof of the end-use (by way of sales to customers, etc.) is made available to the company. The company has very clearly admitted that the rebates are not given at the time of the sales. Discounts and rebates which are not known at the time of sale, either in terms of incidence or quantum cannot be permitted as an adjustment having a bearing on sales price.

The rebate given by Cytec to Customer 1 is, therefore not admissible and the Authority has determined Normal value based on the prices to Customer 2, as was done at the time of preliminary findings.

Commercial expenses: Cytec furnished a detailed statement showing calculation of marketing and other expenses worked out by the company. Claim of the company on account of selling expenses was disallowed by the Authority at the time of preliminary determination on the grounds that there was no evidence adduced by Cytec to establish that these selling expenses were incurred exclusively on sales in the domestic market only. Cytec has still not adduced any evidence to suggest that these expenses were incurred exclusively on domestic sales force, as contended by the company. The claim is, therefore, rejected.

Corporate expenses : Cytec itself has accepted that corporate expenses consist of allocations to acrylic fibre business from the parent corporation for services they provide and these apply equally to the domestic and the export sales. Since the expenses equally apply to both the domestic and the export sales, no adjustment on account of the same is necessary.

The Authority confirms the methodology adopted and adjustments carried out in the preliminary findings with regard to the determination of normal value in case of Cytec.

Thai Acrylic Fibre

14. The methodology adopted and adjustments that may be allowed for determination of normal value in case of Thai Acrylic are discussed thereinbelow. Selling prices : Since Thai Acrylic has furnished details of all sales made in the home market, the claim of the company with regard to selling price has been allowed. The company has now claimed selling price of US \$ 2793 as against US \$ 2791 claimed earlier.

Adjustments claimed on account of discounts, commissions, guarantee commission to cover risks with respect to all the sales made by Thai Acrylic in the home market have been allowed. Adjustment on account of interest has also been substantiated by the company in so far as the sales on credit are concerned and, therefore, allowed.

The exporter has claimed adjustment on account of difference in storage time resulting in different storage costs for goods meant for domestic consumption when compared to those meant for export. Adjustment on account of storage cost is not allowed as the same is neither attributable to production costs accounting for difference in prices nor are they related to any function/activity which is carried out exclusively in respect of sales in either of the two markets.

With regard to the adjustments claimed on account of Line I & Line 11 production and extra costs of Line II material, the exporter has neither furnished grade wise details of production and sales from each line nor furnished details of grade wise sales made in the domestic and export market. The exporter has, therefore, failed to establish that any cost has been exclusively incurred by it on account of any activity conducted with the export sales. The claims on these account are, therefore, rejected.

Except for the foregoing, the preliminary findings with regard to the determination of normal value in case of Thai Acrylic are confirmed.

Monsanto & Exporters from Korea RP

15. Since Monsanto has not exported any acrylic fibre to India during the investigation period, it attracts rule 22. The Authority has therefore not determined separate margin in case of Monsanto.

There is no response from the exporters from Korea RP. The preliminary findings with regard to dumping (normal value and export price) in case of exports from Korea RP are confirmed.

G. DUMPING MARGIN

16. There is no argument raised against the methodology adopted for the comparison of normal value and export price in the preliminary findings and therefore, preliminary findings with respect to the comparison are confirmed. The revised dumping margin comes as follows:

Exporter	Dumping margin (% of export price)
Export from USA	
A. <u>Cvtec Industries</u>	
- in case of 1.5 denier	9.3%
- in case of 1.7 denier -	-
any other denier	9.3%
B. <u>Any other exporter</u>	64.29%
Export from Thailand	
A. <u>Thai Acrylic Fibre</u>	14.34%
B. <u>Any other exporter</u>	14.34%
<u>Korea RP</u>	40.69%

H. INJURY

17. The arguments of the interested parties that the sales and/or production of the domestic industry have increased and, therefore, domestic industry has not suffered injury, cannot be accepted. The argument that imports from Cytec did not increase substantially and therefore the domestic industry has not suffered injury is also not accepted. Preliminary findings with regard to the injury to the domestic industry are not based on imports from any one, of the subject countries or any single parameter affecting the domestic industry, such as production, sales, stocks, profit/losses etc. The Authority has very clearly held in para 39(x) of the preliminary findings that various indicators relating to the domestic industry, collectively and cumulatively establish that the domestic industry has suffered material injury. Since imports from more than one country are being simultaneously subjected to anti-dumping investigations, the injury to the domestic industry has to be assessed cumulatively from the imports from these countries, as the conditions specified in Annexure II are adequately satisfied. Para 31 of the preliminary findings states that cumulative assessment of the effect of imports from the subject countries is appropriate: No argument with regard to the cumulative assessment done in the preliminary findings has been made.

The argument that imports from Thailand were available at an average price of Rs. 122 per kg. as against an average sales realisation of Rs. 119 is also rejected. The Authority notes that landed value of imports (including the prevailing level of custom duty and additional duty) has been compared by Thai Acrylic with the net sales realisation. (which is exclusive of excise duty) and therefore, the comparison is incorrect.

The argument of Cytec that the stocks declined in 1994-95 as compared to 1992-93 and 1993-94 is irrelevant for the present investigations, as the investigation period considered by the Authority for the purpose of the present investigations is Apr.-Sept., 1995 and the year 1994-95 is beyond the investigation period.

The argument raised by Cytec that the cost of production of the domestic industry increased because of increase in the prices of Acrylonitrile is not sustainable as the prices of Acrylonitrile increased significantly not only for the domestic industry but also world over.

With regard to lower landed value of imports for the exports made by Cytec than the claims made by the petitioners, the Authority has determined the landed values on the basis of the information furnished by the exporters, and, therefore, the claims made by the petitioners in this regard are irrelevant.

The Authority, in view the foregoing, confirms the preliminary findings with regard to the injury to the domestic industry.

I. CASUAL LINK

18. In establishing that injury has been caused to the domestic industry by the dumped imports, the Authority took into consideration the following:
- a. the imports from the subject countries resulted in a situation of price undercutting in the Indian market;

- b. imports from the subject countries forced a situation of price suppression and prevented the domestic industry from increasing its prices;
- c. imports from the subject countries forced the domestic industry to sell its produce at a price significantly below its fair price, resulting in financial losses.

The Authority is thus led to the conclusion that the material injury was caused to the domestic industry by the dumped imports.

J. OTHER ISSUES

19. The level of customs duties on viscose vis-a-vis duties on acrylic fibre, whether higher or lower, is irrelevant to decide the present investigations.

The increase in the selling prices in the post investigation period is irrelevant for the present investigations.

Any interested party(ies) may, however, file a request for review in case the circumstances in the post investigation period have substantially changed.

The argument that the working performance of dry spun fibre is 5 per cent lower as compared to wet spun fibre or there are certain deficiencies in the fibre produced by Indian producers, except Pashupati Acrylon, are unsubstantiated and inconclusive and, therefore, cannot be accepted.

K. FINAL FINDINGS

20. The Authority concludes, after considering the foregoing that

- Acrylic Fibre originating in or exported from USA, Thailand and Korea RP has been exported to India below its normal value; the domestic industry has suffered material injury;
- the injury has been caused to the domestic industry by the exports originating in or exported from USA, Korea RP and Thailand.

The Authority confirms the preliminary findings with regard to imposition of Anti-dumping duty and recommends imposition of definitive Anti-dumping Duties on all imports of acrylic fibre originating in or exported from the subject countries at the rates specified below:

Name of the Exporter	Amount of Duty (Rs. per Kg.)
Exports from USA	
I. <u>Cytec Industries Inc.</u>	
- in case of 1.5 denier	6.30
- in case of 1.7 denier	-
- any other denier	6.30
II. Any other exporter	42.93
Exports from Thailand	
Thai Acrylic Fibre	9.73
Any other exporter	9.73
Korea RP	22.27

Subject to above, the Authority confirms the preliminary findings dated 31-3-1997.

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

DIPAK CHATTERJEE,
Designated Authority