

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 27th July, 1995

Subject:- Anti-dumping investigation concerning imports of IBB originating from PR China –Final Findings.

No. 14/50/93-TPD/ADD- Having regard to the Customs Tariff Act, 1975 as amended in 1982 and the Customs Tariff Rules, 1985, thereof.

PROVISIONAL MEASURES

1. The Designated Authority as defined under the Rules (hereinafter referred to as Authority) notified preliminary findings in the anti dumping investigation concerning imports of Isobutyl Benzene (hereinafter referred to as IBB) originating from China vide notification No. 14/50/93-TPD dated the 30th August, 1994.

PROCEDURE

2. The Authority addressed a letter to all the companies subject to investigation requesting them to furnish their views on the preliminary findings and to apply to be heard orally and willingness for on site verification of data furnished. A note verbale was also sent on to Embassy of the concerned exporting country in New Delhi forwarding a copy of the preliminary findings with the request that the exporters and other interested parties may be advised to furnish views on the preliminary findings to the Authority and willingness for verification of data.

3. The Designated Authority has received views on the preliminary findings from the respondents as well as petitioners. Except the importers in India, no exporter from People Republic of China has furnished views on the preliminary findings.

4. An opportunity was also given to exporter, importer and petitioner to express their views on the preliminary findings in a public hearing held on 6th February, 1995. A note verbal was also sent to Delhi office of the Embassy of P.R. of China on 13th January, 1995 requesting them to intimate the exporters concerned to participate in the public hearing. The public hearing was, however, attended only by the representatives of the petitioner domestic industry and the following importers:

1. M/s. Cheminor Drugs, Hyderabad
2. C. Well Drugs Pvt. Ltd., Hyderabad

3. E. Merck (I) Ltd., Bombay
4. Seksaria Chemicals, Bombay
5. M/s. Shasun Drugs, Madras

5. Oral submissions made in the public hearing by the petitioner and importers were obtained in writing and were made available to other parties. Comments on these submissions were received from the importers and petitioner. Another opportunity was also given to importers, exporters and petitioners to present their views orally in a public hearing held on 25.5.93. However, the bearing was attended only by the petitioners. The oral views expressed were obtained in writing and made available to the other parties for their comments.

PETITIONER'S VIEWS

6. The petitioners in response to the preliminary findings made the following observations:-

- i. That the fair Selling Price of Rs. 107/- Kg. arrived at by Designated Authority is not correct; that it should actually be Rs. 122/- Kg. based on certain capacity utilization which cannot be more than 90% for the whole industry; and that accordingly there should be increased in the amount of anti-dumping duty.
- ii. That the latest ruling price at the end of investigation period should be taken for calculating the extent of injurious effect instead of average landed price during the investigation period.
- iii. That as per explanations provided by way of a footnote to Article 3, relating to Determination of injury, of "Agreement on implementation of Article VI of General Agreement on Tariffs and Trade, Injury, shall, unless otherwise specified be taken to mean material injury to a domestic industry.." and therefore, extent of injury should be calculated on the basis of industry average figures rather than considering the figures pertaining to the most efficient unit of the industry.
- iv. That the comparison of actual selling price and fair selling would give better picture of the extent to which the industry is injured and, therefore, the same may be considered. The petitioner also stated that when buyer, buys the imported materials, no sales tax is payable whereas the same is payable on sales by domestic Industry. As the domestic industry is forced to downward match the ever decreasing prices of IBB offered by China, average selling price of IBB sold by domestic industry will always be lower than the landed cost of Chinese IBB due to sales tax element.
- v. That mainly due to downward change in depreciation rates under the Companies Act, 1956, the profitability position of domestic industry has

changed. Though the petitioner has provided lower rate or depreciation in Annual according to the company's act, such depreciation rates which assume 19 years as life of the plant, does not reflect the true picture. Due to various factors like dedicated tailor made plant, risk of obsolescence, extent or corrosion due to alkaline nature of catalyst and wear and tear, the effective life of the plant cannot be more than 6 to 7 years. The petitioner has enclosed a certificate from a Chartered Engineer that the effective life of the plant is around 9 years for both the petitioners.

Further, it has been contended that old depreciation rate may be adopted for standard costing notwithstanding the rate followed for financial accounting purpose.

- vi. That DPCO (Drug Price Control Order) Price of Ibuprofen was last revised during 1989 by taking price of IBB as around 114 has progressively reduced to an average of Rs. 86/- per lower average landed price than was considered in the DPCO., the Ibuprofen manufacturers have earned undue profits at the cost of domestic IBB manufactures.
- vii. That the normal value of USD 2603 pmt. considered in preliminary findings is extremely on lower side as compared to USD 4642 pmt. provided by the petitioner in their initial application.

RESPONDENTS VIEW

7. The respondents have made the following points in response to the preliminary findings:-

- i. That the Indian manufacturers have also exported IBB at the same international price level to UK, which confirms that the prevailing IBB market prices are at par with Chinese IBB prices and there is no dumping at lower prices by China in the Indian market.
- ii. In the absence of cost data of China, it is unjustified to conclude that goods are dumped into India below cost price. It is erroneous to assume that consumption norms of raw materials and other inputs are on par with an Indian manufacturer.
- iii. The differential value between the price at which IBB is being imported from China (fob) and the ex-factory price of IBB manufactured in India has to be looked into from the fact that the Indian IBB manufacturers are not in continuous production with optimum capacity utilisation due to various technical problems including difficulty in import of catalyst, which would have pushed up the cost of production of IBB.

- iv. That the proposed levy of anti dumping duty would defeat the very object of reducing the import duties to permit fair play in the economy.
- v. The fact that Indian IBB producers have had to sell below the fair selling price misses the basic point that the price in the domestic market is bound to be more than the international price due to multistage levy of taxes and duties which has a cascading effect. If the Government is keen to compensate and protect India IBB manufacturers, the more realistic approach would be to grant reliefs in Central Excise and other taxes imposed on raw materials used in manufacture of IBB.
- vi. That in so far as IBB is imported against advance licence, there is no warrant to impose anti dumping duty as the user of IBB in the 100 per cent EOUs and FTZs are not subject to the anti-dumping duty.
- vii. That according to the Directors Report for the year ended 31.3.94, M/s. Vinati Organics a petitioner company, has made a profit of over Rs. 50 lakhs. Further they have achieved capacity utilizations of more than 100 per cent.
- viii. That China has exported IBB to M/s. Korea Chem. Tech Co. Ltd. Korea at a price less than the price at which it has been imported into India. Therefore, the allegation that prices have been depressed in order to cause material injury to domestic producers in India is factually incorrect.

EXAMINATION BY AUTHORITY

8. The Authority has examined the points made by the respondents and the petitioners. These are dealt below in seriatim:-

- i. The argument adduced by the respondent that the petitioner is also exporting IBB at a price comparable to Chinese prices is not a factor relevant to the investigation. However, Indian IBB Manufacturers Association categorically stated in their reply that none of their members has exported the IBB.
- ii. Since none of the exporters cooperated or replied to the questionnaire, the normal value was determined on the basis of best available information in India about the cost of production of IBB in accordance with Section 9 (A) (2) of the Customs Tariff Act.
- iii. The contention that Indian IBB manufacturers are not operating at optimum levels does not appear to be correct. From a perusal of cost data furnished, it is clearly evident that the domestic industry is operating at a capacity utilisation of more than 92 per cent on weighted average basis which cannot be considered as sub-optimal.
- iv. The object of levy of anti dumping duty on a product is to remove the injury to the domestic industry caused by dumped imports.
- v. The argument raised by the respondents that the Govt. can compensate domestic industry by means of reduction in central Excise and other taxes is not

- tenable. In fact, the dumping margin is determined by a comparison of the export prices and normal values at ex-factory level i.e. without taxes.
- vi. 100% EOU and units in EPZ are entirely on a different footing from imports under Advance Licence Scheme. It has been clarified that final anti dumping duty paid on DEEC material is liable to be refunded as drawback, in accordance with drawback rules.
 - vii. In determining the quantum of anti dumping measures, the working results of the petitioner companies have been taken into account and the anti dumping duty determined accordingly.
 - viii. The fact that China has exported IBB to M/s. Korea Chem. at a price less than the price at which it has been imported into Indian is not a factor relevant to the investigation sine the price at which the goods are exported into India vis-à-vis the normal value is the only relevant criteria for determining dumping.
 - ix. The major contentions of petitioners are considered as follows: The cost of production and fair selling price have been worked out on the basis of actual data collected/verified for the industry as a whole. Depreciation rate has been adopted on the basis of economic life of the plant as per Chartered Engineer evaluation. Petitioners contention to consider the latest ruling price at the end of investigation period for working out dumping margin and injury thereto can't be accepted because the normal value derived as per para 22 below is considered as an average for the investigation period and, therefore, it to be compared with average export price during that period.

9. There is no change in the factual position indicated in paragraphs 5 to 10 of Notification dated 30.8.1994.

10. As per Rule 16 of "Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Inquiry) Rules, 1985, final findings are to be complete within one years from the date of initiation of an investigation. However preliminary findings could be brought out after the lapse of considerable time from the date of initiation of the case (almost 8 months) due to delay in obtaining the necessary vital information from the interested parties and sufficient opportunity provided to them to plead their case. Consequently, for final findings, extension of time as per rule 16 referred to above was obtained from the Government.

NORMAL VALUE

11. The normal value has been determined on the basis of best available information as neither domestic prices of IBB in China in the ordinary course of trade nor the highest comparable price of the product from China to any third country, was available as China is a non-market economy.

12. Ample opportunity was given to the exporters in China to provide the required information and to present their views. As none of the exporters furnished information nor availed the opportunity to express their views in the two public hearings on 6.2.1995 and 25.5.1995, the Authority under provision 14 of the Rules supra, decided to determine the normal value on the basis of best available information in India about the cost of production of IBB.

13. Cost of production of IBB for the purpose of normal value has been arrived at as follows: For raw-material, the best of the quantitative consumption norms out of (i) standard input-output and value addition norms specified by the Government under Duty Exemption Scheme. (ii) Standard norms of the petitioner (iii) Actuals obtained by the petitioner and (iv) norms guaranteed by a Chinese firm in one of their project has been used. The raw material cost has been arrived at by multiplying the norms by the international price of the material (without Customs Duties). The other costs have been taken from that the most efficient unit in India.

EXPORT PRICE

14. The petitioners while commenting on provisional findings stated that the export price used for calculating the margin of dumping appears to be on higher side though no further proof was provided by the petitioner company. They have also requested that since they are to match their selling prices based on the latest ruling price of imported IBB from People's Republic of China and not on the basis of average price of investigation period, the export price for calculation of dumping margin and its impact on prices to determine the extent of injury may be taken as that price on which material was imported in India at the end of investigation period. Since the normal value is being considered as average for the investigation period, the export price has also been considered on an average for comparing export price with normal value. Export prices during the investigation period were determined on the basis of the prices actually paid for the product based on the data available from Directorate General of Commercial Intelligence and Statistics and Indian Customs which were found reliable and therefore, the Authority is of the view that no further revision is required in the export price. The Authority confirms has contents of para 13 of the Notification dated 10.8.1993.

15. None of the exporters responded to the Authority's request to make available the relevant data and no importer submitted further data after provisional findings. The Authority, therefore, adopted the same methodology in arriving at the export price as indicated in para 12 of the provisional findings notified on 30th August, 1994.

COMPARISON

16. The methodology adopted for comparison of normal Value and export price as adopted in the provisional findings are confirmed.

FINAL FINDINGS

17. The Authority after considering the interest of Indian industry and all other parties and taking into account the various factors relating to injury and its casual link as indicated in the preliminary findings notified on 30th August, 1994, has come to the conclusion that (i) exporters from PRC have sold IBB in India below normal value (ii) The Indian industry has suffered material injury and (iii) that the dumped imports caused the material injury suffered by Indian industry.

18. Considering the views of various parties, the Designated Authority determined the export price, normal value and margin of dumping in this case as follows:

	USD P.M.T.	Rs/ MT
Normal Value	2603	81,995
Export Price	1834	57,771
Margin of Dumping	769	24,224
Margin of dumping as % of average cif value	30.5%	

19. The Authority considered whether duty lower than margin of dumping would be enough to remove the injury. For this purpose, average landed price of the Chinese imports was compared with the fair selling price of domestic industry worked out on the basis of actual data of the industry. This difference was lower than the dumping margin and accordingly, Authority decided that Anti-Dumping Duty lower than dumping margin would be sufficient to remove injurious effect of dumped imports.

20. The Authority, therefore, recommended that final anti-dumping duty of Rs. 10,634 per M.T. (Rupees ten thousand six hundred thirty four) be imposed on imports of IBB of Chinese origin, falling under Chapter 29 of Indian Customs Tariff.

21. The Authority confirms subject to above the preliminary findings in the case of material injury caused by dumped imports of IBB originating from People Republic of China (PRC) to the domestic industry in Republic of India.

Dr. Y.V. REDDY,
Designated Authority and Addl. Secy.