

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 24th July, 1998

FINAL FINDINGS

Subject: Anti dumping investigation concerning imports of magnesium from China
PR-Final Findings

No 7/1/97/ADD.— Having repaid 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 dated the 6th Feb., 1998 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 the 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 embassy of the People's Republic China (hereinafter to as China PR) in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings.
- iv. The Authority provided an opportunity to all interested parties to present their views orally on 2nd April, 1998. All parties presenting views orally were requested to file written submissions of the view expressed orally. The parties were advised to collect copies, of the expressed by the opposing parties and offer rebuttals, if any. The following parties attended the hearing;
 - The petitioner, M/s. Southern Magnesium & Chemical Ltd
 - Industrial Metallics (India) Pvt. Ltd.
- v. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties.

All Parties who made request for inspection in writing, were allowed to inspect the public file.

- vi. Argument raised by the interested parties before announcing the preliminary findings, which have been bought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties have been appropriately dealt in the preliminary findings and/or these findings.
- vii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings.

B. PETITIONER'S VIEWS

2. The petitioners raised the following arguments:

- a. The preliminary findings of the Authority have not yet being notified by the Customs Authorities. As a consequence, there is large scale dumping of magnesium resulting in distressed sales of petitioner. Sales of the petitioner reduced from 253 MT (1996-97) to 112 MT (1997-98).
- b. The average selling price of magnesium has declined by Rs. 21.57 per kg. In the last quarter of the financial year (1997-98)
- c. In the current financial year, the sales of the petitioner would have been still lower but for the existing contracts. Sales of commercial grade magnesium have reduced in the last three months to about 5 MT per month.

C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

3. The views expressed by the importers and the exporters on the product under consideration, like article, domestic industry, dumping, injury and causal link are discussed in relevant paras herein below. Other views expressed by them are briefly mentioned below:

- a. The petitioner's production accounts for 30% of the demand of magnesium in India. Though it is true that the petitioner, due to dumping by Chinese producers at a lower price could not even get production costs, it will not be in a position to meet the demand of the product in India. Anti-dumping days is not a solution unless the petitioner increases its capacity to meet the entire demand of the country;

- b. Imposition of anti-dumping duty will benefit single producer of magnesium in India at the cost of a number of consumers of the goods;
- c. The quality, technical specifications and other aspects of the petitioner do not conform to the requirements of the consumers, compelling them to imports;
- d. Export price of Rs. 81 per kg. Claimed by the petitioner is not correct. The correct export price, after considering prevailing level of duties comes to Rs. 149 per kg.
- e. Chinese magnesium contains more impurities and is not suitable for nuclear applications. These are being imported from Canada and Europe;
- f. Anti-dumping duty on China PR was imposed by EU/USA because there was much higher production than demand;
- g. The rates of other suppliers besides China PR are also similar;
- h. The Authority should have taken views of BALCO, HINDALCO, INDAL Nuclear Fuel Complex, TELCO, Ordnance & Defence Factories, Small Extrusion plants, who are the consumers of the subject goods;
- i. The Authority has compared the prices of two different grades while comparing Chinese and Western goods.
- j. Jindal Aluminum Ltd. wrote that even though it is one of the major users of imported magnesium, the Authority has not called for necessary information from the company.
- k. The landed price of magnesium from China PR (Rs. 149 per kg.) was higher than the indigenous price. The selling price of the petitioner may include its inefficiencies.
- l. International price, irrespective of the country of origin, is almost the same.
- m. In response to the disclosure statement, one of the interested party has argued that the goods being imported from China PR is very high quality with 99.9% minimum magnesium metal, whereas the output of the petitioner is of lower quality which cannot be utilised to replace the material being imported.

D. EXAMINATION BY AUTHORITY

4. The submissions made by the petitioner, exporters, importers and other interested parties have been examined, considered and, wherever appropriate, dealt hereinafter. With regard to inviting views from the consumers of magnesium, the Authority notes that the initiation notification, as also the provisional findings, were published in the Gazette of India Extraordinary, inviting all interested parties to offer their comments. The onus of responding to the notice of initiation or provisional findings rests with the interested parties. Under the Rules, the Authority may collect necessary information from the known exporters and importers of the subject goods. The Authority requested such information from known exporters and importers and the same have

been relied upon to the extent relevant. With regard to the submissions made by Jindal Aluminum the same have been brought out and dealt in these findings.

E. PRODUCT UNDER CONSIDERATION, LIKE ARTICLES AND DOMESTIC INDUSTRY

5. Product under consideration in the present investigations is magnesium. There is no dispute on the product under consideration and, therefore, the Authority confirms preliminary findings with regard to product under consideration.

Petitioners and domestic industry:

6. With regard to the insufficient capacity of petitioner to meet the demand of the entire country, the Authority notes that there is no legal provision requiring that the petitioner (or Indian industry) should be in a position to meet the demand of the entire country. The purpose of anti-dumping duty is not to restrict imports from a particular country or source or to benefit domestic producers but to eliminate an unfair trade practice of the exporters by resorting to dumping. The only requirement under the law is that the petitioner should satisfy the standing to file the petition and should provide information on behalf of the domestic industry. Both the requirements are met in the present case.

7. With regard to the quality and technical specifications of the magnesium produced by the petitioner and magnesium imported from the subject country, the Authority notes that none of the interested parties has brought out any argument supported by quantifiable evidence. The provisional findings of the Authority that magnesium imported from China PR and magnesium produced in India were substitutable-technically and commercially has not been disputed by any interested party with sufficient evidence.

8. The argument that production of the petitioner is insufficient to meet the demand of the country is irrelevant in the present investigations. The petitioner being the sole producer of the subject goods satisfies the standing to file the present petition and constitutes domestic industry within the meaning of the Rules. Purpose of anti-dumping duty is not to restrict imports from China PR and the imposition of duty would in no way affect the availability of the product in the Indian market. Consumers could still continue to meet their demand from the sources found appropriate by them. Insufficient capacity of the petitioner does not preclude it from suitable measures under the Rules.

9. In view of the forgoing, the Authority confirms preliminary findings with regard to the product under consideration, like article, and domestic industry.

F. DUMPING

10. The Authority notes that there is no response from any exporter or producer in China PR even after the preliminary findings.

11. International price of the subject goods or the export price from other countries are irrelevant to decide dumping from China PR, the only relevant factors being normal value in China PR and export price from China PR.

12. The Authority has not compared the export price from other countries with the export price from China PR in the preliminary findings. The argument raised on this account is, therefore, irrelevant.

13. The Authority, in view of the foregoing, confirms preliminary findings with regard to determination of dumping and dumping margin.

G. INJURY

14. The Authority has not relied upon the information furnished by the petitioner with regard to the export price and landed cost of the subject goods from China PR. The Authority has relied upon the information compiled by DGCI&S, as brought out in the provisional findings, which is on the basis of the actual imports of magnesium in India. The arguments raised by the interested parties on this account are, therefore, without merit.

15. As brought out in the preliminary findings, the landed value of imports from China PR during the investigation period were significantly lower than the average realisation of the petitioner. The argument of the interested parties on this account is, therefore, factually incorrect.

16. The Authority analysed injury to the domestic industry in view of the above the details brought out in the preliminary findings. In addition, the details brought out hereinbelow are being relied upon to hold that material injury has been caused to the domestic industry.

17. Details of tenders floated by one of the consumers for the subject goods establishes that the petitioner lost sales to the Chinese material in view of the lower price offered for the Chinese goods.

H. CAUSAL LINK

18. No party has controverted the preliminary findings with regard to causal link between dumping and injury. The Authority, therefore, relies upon the details brought in the preliminary findings as also detailed mentioned hereinabove with regard on the loss of sales on account of imports from China PR to hold that material injury was caused to the domestic industry by the dumped imports from China PR.

I. FINAL FINDINGS

19. The Authority, after considering the foregoing, concludes that:

- a. Magnesium originating in or exported from China PR has been exported to India below its normal value;
- b. The domestic industry has suffered material injury.
- c. The injury has been caused to the domestic industry by the dumping of the subject goods originating in or exported from China PR

20. The Authority confirms preliminary findings with regard to imposition of Anti-dumping duty and recommends imposition of definitive Anti-dumping on all imports of magnesium falling under chapter 81 originating in or exported from the People's Republic of China. The anti-dumping duty shall be the difference between Rs. 157005 and the landed price of imports per MT, subject to a maximum of Rs. 57852.

21. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of customs except duties levied under section 3 and 3A of the Customs Tariff Act., 1975.

22. Subject to above, the Authority confirms the preliminary findings dated 6-2-1998.

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

(RATHI VINAY JHA,
Designated Authority)