

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(Directorate General of Anti-Dumping and Allied Duties)

NOTIFICATION

New Delhi, the 17th July, 2000

FINAL FINDINGS

Subject : Anti dumping investigation concerning imports of Oxo alcohols from Poland, South Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and the European Union : Final Findings

No. 15/1/99-DGAD.-Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Custom Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. Procedure

I. The procedure described below has been followed:

- i. Based on the petition filed by the Oxo alcohol Industries Association comprising of, Messrs. Indo Nissan Oxo Chemical Industries Limited, Mumbai, National Organic Chemical Industries Limited, Mumbai and Andhra Petro Chemicals Limited, Hyderabad and in accordance with Customs Tariff (Amendment) Act, 1995 and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, investigation against imports into India of Oxo alcohols from Poland, South Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and the EU (hereinafter referred to as subject countries/territory) were initiated vide notification No. 15/1/99-DGAD dated 29.7.99.
- ii. The Designated Authority (hereinafter also referred to as the Authority) notified - preliminary findings vide notification. dated 3.12.99 on antidumping investigation concerning imports of Oxo alcohols from Poland, South Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and the European Union and requested the interested parties to make their views known in writing within forty days from the date of its publication;

- iii. 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 from the date of its publication;
- iv. The Authority also forwarded a copy of the preliminary findings to the embassies/delegations of subject countries/territory in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in (ii) and (iii) above.
- v. The Authority provided an opportunity to all interested parties to present their views orally on 21.2.2000. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- vi. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request;
- vii. Argument raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in these findings;
- viii. 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;
- ix. The period of investigation (POI) considered is 1.4.98 to 31.3.99;

B. Views of Petitioners, Exporters, Importers and Other Interested Parties and Examination by Authority

2. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paras herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paras herein below.

C. Standing

The Authority notes that there is no argument raised by interested parties on the standing of the petitioners.

D. Product Under Consideration and Like Articles

4. The Product under consideration is acyclic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives, known as Oxo alcohols in the commercial and technical parlance and defined under customs sub-heading No. 2905 of the Customs Tariff Act. The Authority recalls its observations in paras 5, 6 and 18 of the Preliminary findings dated 3.12.1999 wherein it was decided to restrict the investigation only to some forms of Oxo alcohols viz., Normal Butanol, Iso Butanol, Iso Decanol, Iso Ocianol, 2-Ethyl Hexanol & Normal Hexanol on the ground that these are the only t6lrns which are either being produced by the domestic industry or being imported or both during the investigation period.

5. The domestic; industry as well as importers have raised arguments on the issue of scope and definition of product under consideration and Like Article. The domestic industry has submitted that the scope of the present investigation and duties E should extend to al i those types of oxo alcohols which have been produced in India or for which the Indian industry has capacity and capability to produce. They have argued that the fact of actual production of the particular form of Like Article in India is of little consequence and the issue of capacity and capability to produce particular forms is more important. Also exclusion of a particular form from the scope of duty merely because that type was not imported may lead to continued injury to the domestic industry as the importers may start importing this type once duties are confirmed on other types. On the other hand the importers have submitted that the scope of investigation should be restricted only to the forms of oxo alcohol actually being produced by the domestic industry. They have stated that the term domestic industry refers only to those who are actual producers. They have submitted that Normal Hexanol is used to produce DHP whereas 2-Ethyl Hexanol is used to produce DOP and hence Normal Hexanol should not be taken as a substitute for 2-Ethyl Hexanol. On the basis of this the importers have requested to drop Normal Hexanol from the scope of anti dumping investigation as it is not being produced by the domestic industry.

6. These arguments have been examined and it is noted that though normal Hexanoi may not be a substitute for 2-Ethyl Hexanol, the products these are used to manufacture substitute each other and hence exclusion of one from anti dumping duty investigation will have an impact on the usage of others. In view of above and the arguments already given in para 5 of the Preliminary Findings, the Authority does not find any reason to restrict or, expand the scope of definition of product under

consideration or that of 'Like Article' and has decided to continue with the definition adopted in Preliminary Findings. The Authority therefore confirms the scope and definition of 'Like Articles' adopted in Preliminary Findings.

E. Normal Value and Export Price

7. The Authority provided opportunity to the known exporters to furnish information in accordance with Section 9A (1) (e) of the Customs Tariff Act, 1975, as amended in 1995, cited above. The argument raised by the exporters who responded are discussed in the following paragraphs.

8. Argument raised by M/s. Zakłady Azolowe Kedzierzyn SA (ZAK) Poland: M/s. ZAK, in their submission have stated that they have supplied to the Indian market very small quantities of oxo alcohols which is 0.7% of their total export and only 1.1 % of Indian production. Their sale to India was made by trading companies from EU and it is these companies that should be considered for dumping. It is therefore, argued that these EU companies should be treated as real exporter of their oxo alcohols to India with their independent right to create their own export price. It has, therefore, been submitted that taking the above mentioned facts into consideration, there is no basis to bring ZAK into the charge of using the dumping methods in case of export of oxo alcohols into India.

Examination of by the Authority: For the purposes of de minimus import volume, the calculations are done with reference to total import volume of the product and it is seen that imports of oxo alcohols into India originating from Poland are more than de minimus. In anti dumping investigation it is the origin of the goods from the source of manufacturer that is considered as the point of export and source of dumping. Since goods dumped have been manufactured at M/s. ZAK, Poland, the information regarding the normal value was requested from them which they have not submitted.

9. Arguments raised by M/s. LG Chemicals, South Korea: In their submissions M/s. LG Chemicals vide their letter of 3.1.2000 have stated that they exported only 4129 MTS of oxo alcohol to India during the period of investigation which is less than the amount stated to have been exported from Korea as mentioned in the preliminary finding issued by the Designated Authority. They promised to submit additional information for their normal value.

Examination by Authority: In the preliminary findings issued by the Designated Authority it was the total volume of export from South Korea which was mentioned. There might have been exporters other than M/s. LG Chemicals from Korea as the export data from DGCIS provides data country-wise and not exporter-wise. However,

even the volume of exports from LG is substantial enough to pass the de-minimus test. LG have not provided any additional information regarding their normal value in their submissions made subsequent to the preliminary findings. The observation regarding their export price and normal value in the preliminary findings have not been addressed by the exporters. The Authority therefore confirms the methodology adopted for computation of normal value: and export price in case of Korea RP as detailed in para 9 of the Preliminary Finding.

10. Arguments raised by M/s. OXENO Olefinchemic GmbH, Germany: In their submissions dated 20.10.99, received by the Designated Authority after the expiry of the time period allowed for making submission before the preliminary findings, they have stated that their products are exported to India at competitive prices and they do not pursue dumping policy of any kind. The prices in the period under investigation were determined exclusively by the prevailing market conditions and the prices of products being exported to India fall within the international price range prevailing at that time, without exception. They have further stated that Art. 2.1 of WTO Agreement on Anti Dumping Agreement stipulates that a product has to be considered as being dumped if, introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade for the like-product when destined for consumption in the exporting country. The company has submitted that from the above it is evident that no significant difference in price exist between sales on their domestic market and the export markets. In view of the above they feel that there is no need to draw up further details on price and cost structures. M/s. Oxeno have submitted that they believe that on the sole basis of their sales figures, the charge of dumping oxo-alcohol export in India is not only non-obvious, but has already been disproved and the initiated investigation be suspended on the above grounds.

Examination by the Authority: In the communication addressed to M/s. Oxeno, Germany, it was stated that the domestic sale price is taken as normal value only if these sales are in the ordinary course of trade which implies that it has to be proved that these sales are at a price sufficient to recover total average cost of production and normal rate of profit. The company was requested to furnish the information regarding price and cost of sales in the form given in the questionnaire which was sent to them. They were also asked to give details of domestic sales transaction-wise alongwith the adjustment claimed supported by documentary evidence. However, no such information has been received by the Designated Authority. In view of the above, the Authority cannot use the information furnished by M/s. Oxeno for the purposes of calculation and has to rely on the best information available which has been provided by the petitioners.

11. Arguments made by M/s. Al Jubail Fertilizer Company (SAMAD): In their submissions the company has given details of their relation with M/s. Sabic Marketing Limited. Regarding the import of 2-EH, it is stated that there is a marketing agreement between SAMAD and M/s. SABIK in terms of which SABIK pays SAMAD "netback price" for all the products sold. This Net back price is equal to the price at which the product is actually sold to the third party less expenses and marketing fee, The expenses are costs associated with ocean freight, insurance, port charges etc. These adjustments have been claimed for arriving at the Net Export Price which have been allowed.

Subsequent to preliminary finding the company requested that the normal value calculated on the basis of the information submitted by petitioner should not be relied upon and instead the information provided on the cost of production by them should be used for arriving at the normal value. As there is no domestic sale of 2EH in Saudi Arabia the relevant information for normal value is the cost of production. The company has provided data on month wise cost of production during the period of investigation and it is observed that there is significant variation in the average cost of production month-wise which (according to company) is because of fluctuating cost of the raw material. It was submitted by the company that dumping margin should be determined based on the comparison of the cost of production of the month preceding the month of export with the export price as there are only 4 export transactions to India during the entire period of twelve months. It was therefore submitted by them that the comparison of the export price and average cost of production on transaction to transaction basis is the most appropriate method of determining dumping margin. As per para 2(ii) of Annexure I of the Anti Dumping Rules, it is further contended that the comparison of selling price with the corresponding cost of production is the permitted method of fair comparison and only when the said selling prices are below the cost of production of that particular transaction, there is a need to find out whether the selling prices were above or below weighted average cost of production for the period of investigation to consider these transactions having been in the ordinary course of trade.

In the reference made to the company in reply to their submissions, the company was asked to clarify the basis of their request for using the average cost of production of the month preceding the month of export for arriving at the normal value. It was also pointed out to them that para 2(ii) of Annexure I of the said Rules, quoted by them relates to situation where domestic sale transactions are to be used for arriving at the normal value. It was also pointed out to them that even if the Designated Authority decides to use month wise average cost of production for arriving at the normal value, it will be more appropriate to use the cost of production for the month in which the order for export transaction being compared was indented.

In their subsequent communications, it was admitted by the advocates for the company that para 2(ii) of Annexure I of the Anti Dumping Rules relates to evaluation of domestic sale transaction and not to cost of production but they had referred to the said para as an illustration to show the principle recognised therein. It was further stated that the principle is that a particular transaction could either be above the cost of production at the time of sale or it could be above the weighted average cost for the period of investigation and in both situations the transaction is to be treated as in the ordinary course of trade. It was also admitted that as they had incurred losses ;or the period of investigation and they do not have domestic sales it becomes necessary to determine the normal value with reference to their cost of production plus selling, general and administrative expenses plus profit. However, there have been violent fluctuations in the prices of propylene, a major raw material, during the period of investigation which has resulted in significant variations in the monthly average cost of production. It was in this light that they had requested to compare the export transaction which are only 4 with the monthly average cost of production. Regarding the question of which month's cost of production to be used, their submission was to use the preceding month's cost of production on the ground that the goods are normally manufactured in the preceding month and that should be duly reflecting the cost of production of the goods being exported.

Examination by the Authority: After having gone through the detailed submissions made by M/s. SAIVIAD, most of the arguments presented by them have been accepted by the Authority. Adjustments claimed as expenses such as ocean freight, insurance, port charges for arriving at 'net back price' and marketing fee payable to SABIK is allowed as claimed. Also using transaction by transaction approach and use of average monthly cost of production for arriving at a dumping margin as argued and requested by the exporter is also allowed. However, the logic that previous month's average cost of production should be used as normal value for a particular export transaction is not acceptable. It is more appropriate to use the average cost of production in the month in which the export order was indented as the cost of production of that particular month is likely to be the basis for quoting a particular price for sale. Though the company would work on some expectations but as admitted by the exporters themselves there have been violent fluctuations in the cost of propylene which constitutes 80% of the variable cost of production. It is, therefore, not possible for the exporter to anticipate the likely cost at the time of production for export. So it is most appropriate to take the average cost of production for the month in which particular export transaction is indented for the purpose of comparison and arriving at dumping margin. The calculations for dumping margin have been done accordingly.

It was stated in the Disclosure Statement that the Authority intends to use the methodology explained above for arriving at the dumping margin. In response to the disclosure statement, the advocates for the exporter have made further submission that the prices are not based on the cost of production but only on the prevailing international prices and that the prices indicated in these indents are agreed upon depending on the timing of the shipments indicated by the purchaser.

If the arguments of the exporter was to be accepted then the use of month-wise cost of production as normal value has no basis. This contradicts the request of the exporter for using average cost of production of month as normal value. Hence the argument of the exporter is not accepted by the Authority and the calculation as done above are taken into account for arriving at the dumping margin. However, there was a calculation error in dumping margin given in Disclosure Statement which has been since corrected.

12. Argument by the domestic industry: In their submissions regarding dumping margin, the domestic industry has contended that DGCIS information used by the Designated Authority for arriving at the export price contains some abnormal transactions suggesting unusually high export prices. They have listed some of these transactions in their submissions made in the public hearing and the written submissions made thereafter.

Examination by Authority: This has been examined and it is noticed that some of these transactions may refer to sale in drum packing. It is, therefore, decided to ignore only two of those transactions for which evidence has been furnished to the Designated Authority. The dumping margin has been recalculated accordingly.

13. Other Countries : The information as required to be submitted in the prescribed format by the exporters has not been received from any exporter from the rest of subject countries i.e. Iran, Poland, Indonesia, Russia, USA and the European Union. As no information on normal value in these countries has been furnished by the exporters or other interested parties, the Authority has, therefore, considered the information provided by the petitioners for the purpose of arriving at normal value for these countries. The normal value in such cases has been constructed on the basis of cost data of the Indian industry with appropriate adjustments, in accordance with Rule 6(8) of Anti Dumping Rules and Section 9A(1)(c) of Custom Tariff Act, 1975 as amended in 1995 which authorise the Authority to work out cost of production in the country of origin on the basis of the facts available with it. Here it may be stated that in arriving at constructed cost of production, international prices of raw materials with adjustments, wherever applicable, are used. Regarding the export price the information available from DGCIS as well as that furnished by the importers has been

used for arriving at the export price at ex-factory level after making necessary adjustments.

14. **New exporters** : Some of the exporters/manufacturers have claimed that they have not exported to India during the period of investigations. It has been the practice to allow these exporters to apply for review as new exporter under Rule 22 of Anti-Dumping Rules mentioned above as and when they export to India.

F. Dumping - Comparison of Normal Value and Export Price and Dumping Margins

15. On the basis of the best information available, the Authority has arrived at the dumping margins in percentage terms (as % of export price after adjustments) in the case of subject countries for products under consideration as follows:

Dumping Margins

Country	NBA	1BA	2EHA
Poland	69.82		56.65
South Korea	106.73	140.19	109.05
Russia	102.73	111.94	
Iran	107.85	130.1	
USA	50.67	77.85	69.79
EU	110.09	130.77	45.5
Indonesia		164.03	104.23
Saudi Arabia			13.08

Dumping margins as determined for M/s. LG Chemicals have been used for South Korea as a whole. Also dumping margins for M/s. Al Jubail Fertilizers Company (SAMAD), a subsidiary of M/s. Saudi Basic Industries Corporation (SABIC) are applicable to all the imports from Saudi Arabia to India. Wherever the DGCIS data show no import of a particular form of oxo alcohol from a particular subject country to India, the box relating to dumping margin for that particular form of oxo alcohols from the particular subject country has been left blank.

G. Injury and Causal Link

16. As already discussed in paragraph 11 of the preliminary finding, the injury parameters have been considered as per the requirement of Annexure II to the Anti Dumping Rules referred to in Rule 11 wherein the parameters to be considered for injury analysis have been outlined. In view of the reasons given therein, the injury determination has been done cumulatively for the imports from the subject countries

as these imports were directly competing with the domestic industry in the Indian market and also satisfying other conditions required for cumulation. On the basis of the factors such as trend in the imports from the subject countries, their market share, the share of total demand, trend in the export price and various other parameters, the Authority had arrived at certain conclusions at the time of Preliminary finding on injury which are reproduced below:-

- a. Imports from the subject countries have increased significantly in absolute terms;
- b. imports from the subject countries have increased in relation to total imports of Oxo Alcohols in India;
- c. Imports from the subject countries have increased in relation to demand of Oxo Alcohols in India. As a direct consequence, the market share of the domestic industry has declined;
- d. Production of Oxo Alcohols of the domestic industry has declined;
- e. Capacity utilization of the domestic industry has declined;
- f. Sales in absolute volume & value of the domestic industry have declined;
- g. Selling prices of the domestic industry have declined steeply;
- h. Imports are significantly undercutting the selling prices of the domestic industry;
- i. The profitability of the domestic industry has been severely eroded.

The Authority had concluded on the basis of these assessments that the domestic industry had suffered material injury. It was further stated that the increase in the quantum of imports from subject countries has resulted in decline in the market share of the petitioners and also forced the domestic industry to sell their product below the fair selling price resulting into losses during the period of investigation. On the basis of these assessments, it was established that the material injury to the domestic industry has been caused by the imports from the subject countries. However, in the submissions made subsequent to the preliminary investigation, arguments regarding the injury and causal link have been received from interested parties, which are discussed below.

17. Arguments by Indian Plasticisers Manufacturers Association, and Delegation of EC: It has been argued that increase in total quantum and market share of imports from the subject countries was because of the inability of the domestic producers to meet the domestic requirement. The short fall in the production by the domestic industry was because of reasons not related to dumping at all. In the case of Andhra Petrochemical, it is argued that the plant was closed till 21.5.98 because of non supply of propylene from HPCL refinery. In the case of M/s. Indu Nissan Oxo Chemical Industries Limited, it is argued that due to financial problems they did not pay their water and electricity bills and their water and electric connection were cut for -months

because of which they could not carry on production. In the case of NOCIL it is stated that it being an old plant there were frequent breakdowns. It is therefore, argued that domestic producers were unable to supply required quantities of Oxo alcohols to the local industry which led to increase in the volume of imports from subject countries for meeting the gap between the domestic demand and supply. It is also argued that the domestic capacities of oxo alcohols are very small when compared with multinational corporations and therefore uneconomic and unable to face competition.

It has thus been argued that the injury suffered by the domestic industry is on account of reasons not related to dumping and the Designated Authority is requested to hold that the material injury and causal link have not been established and accordingly terminate their investigation. In their submissions, the Delegation of European Commission in India have also stated that it is not clear whether the Indian Anti Dumping Authorities have also examined causes other than the alleged dumping which might have caused injury to the industry.

Examination by the Authority: The Authority has taken into account all indices regarding injury while doing the injury determination and causal link. This involves all relevant facts viz., volume of dumped imports, their effect on price in the domestic market and its subsequent effect on domestic producers, production, capacity utilisation, profitability, net sales realisation etc. The Authority also determined a non-injurious price for the subject goods after a detailed analysis and scrutiny of information provided by the companies forming domestic industry. The actual cost of production of the subject goods for the domestic industry was used to determine optimum cost of production on the basis of Generally Accepted Accounting Principles.

H. Final Finding

18. After considering the foregoing, the Authority concludes that:

- a. Oxo Alcohols (normal butanol, iso butanol, iso decanol, iso octanol 2-ethyl hexanol and normal hexanol only) originating in or exported from Poland, South Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and the European Union have been exported below normal value, resulting in dumping.
- b. The Indian industry has suffered material injury.
- c. The injury has been caused cumulatively by the dumped imports from the subject countries.

19. The Authority proposes to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed price of imports is proposed to be compared with the non-injurious selling price of the petitioner companies determined for the period of investigations.

20. The Authority recommends imposition of definitive anti dumping duty on import of subject goods in respect of subject countries/territories as per the amounts mentioned in the table below.

Amount of duty recommended

(US \$ Per MT)

Country	Normal Butanol	Iso Butanol	2-Ethyl Hexanol & other Oxo-alcohols
Poland	44	165	165
South Korea	115	187	252
Russia	67	97	97
Iran	79	136	136
USA	58	NIL	87
European Union	145	204	121
Indonesia	197	194	197
Saudi Arabia	47	47	47

The amount of duty mentioned in the last column under the heading "2-Ethyl Hexanol and other Oxo Alcohols" is also applicable to Iso Decanol, Iso Octanol and Normal Hexanol. Wherever the particular form of Oxo Alcohol subject to investigation is not being imported from a particular subject country, residual rate of duty has been recommended in the -table given above on the basis of the data available on other forms of Oxo Alcohols being exported from that subject country.

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 Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

22. Subject to the above, the Authority confirms the preliminary findings dated 3.12.99.

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

RATHI VINAY JHA...
Designated Authority