

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)

NOTIFICATION

New Delhi, the 13th November, 2000

Sub: - Anti Dumping investigation concerning imports of Pthalic Anhydride (PAN) from Indonesia - Final Findings.

29/1/99, DGAD - 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 dated the 31st March, 2000 on anti-dumping investigation concerning imports of Pthalic Anhydride (PAN) hereinafter also referred to as subject goods) from Indonesia (hereinafter referred to as subject country) and requested 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 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 Indonesia 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 (i) and (ii) above;
- iv. The Authority provided opportunity to all interested parties to present their views orally. All parties presenting their views orally were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views -expressed by opposing parties and offer rebuttals, if any. The written submissions thus received from interested parties have been considered by Designated Authority in this finding.
- v. The Authority made available the public file to all interested parties containing non-confidential version of the submissions, submitted by various interested parties, for inspection, upon request;

- vi. Arguments raised by interested parties before announcing of preliminary findings, which have been brought out in the preliminary findings notified earlier have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties after preliminary findings have been appropriately dealt in this findings;
- vii. in accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to the known interested parties on 23.10.2000 and comments received on the same have also been duly considered in these findings.
- viii. **** in the Notification represents information furnished by interested parties, on confidential basis and so considered by Authority under the Rules.

B. VIEWS OF PETITIONER, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY:

2. None of the exporters/producers have responded to the questionnaire forwarded by the Authority nor have furnished any information.

The petitioners and importers have expressed their views, and the same are briefly mentioned below:-

(a) PETITIONERS' VIEWS:

- i. The non-injurious price determined by the Authority is less by about 5% as per information supplied by the domestic industry. The petitioners have argued that as the concept of the injury margin is based on the lesser duty rule, any reduction in the non-injurious price results in a lower duty even though dumping margin is determined to a much higher degree. They have requested that in case the Indonesian exporters have decided not to cooperate, the Authority should determine the cost of production on the basis of information supplied by them. They have also requested to make available the details of cost of production used by the Directorate so that they could submit their comments, if any, on the determination.

Authority Position

The Authority has disclosed the Non-Injurious Price to the Domestic Industry as part of confidential Annexure IV, A separate meeting was also held as on 24.10.2000 between domestic industry and officials of Directorate to discuss the issue of methodology for determination of Non-Injurious Price. Domestic Industry has no

comments on non-injurious price, as mentioned in their comment to disclosure statement.

- ii. The domestic industry has requested for determination of landed value by excluding 2% handling charges as the Authority is not considering 2% handling charges for the purpose of calculation of landed value in the cases where variable anti dumping duties are recommended.
- iii. The domestic industry has requested for fixed anti dumping duty. in US dollar terms.

(b) VIEWS OF THE OTHER INTERESTED PARTIES

The Indian Plasticizers Manufacturers Association has made the following submissions:-

- a. The rate of Indonesian imports of PAN in the first quarter is higher than that furnished by the Indian Embassy and this establishes no dumping of PAN. Considering vast variation in the rates of Indonesia imports in the last three quarters, it is essential that the comparison be made of the local Indonesian price to the period it refers to. There was a wide variation in the rates due to rapid fall in the prices of Ortho Xyelne (input of PAN). In addition to that Indian Embassies are not equipped and competent to determine the local prices of industrial products. Therefore, export of domestic industry to Indonesia and other countries should have been used for determination of normal value and dumping margin.
- b. PAN is adequately protected by rupee devaluation and lower levies on raw material, namely, Ortho Xyelne @ 15% plus 10% surcharge totaling 16.5% and the highest import duty on PAN @ 35% plus surcharge 10% totally 38.5%. As per the Government accepted policies as well as Chelliah and other Committees recommendation on Tax Reforms, the import duty on intermediates like PAN has to be lower than the Phthalate Plasticizers attracting the same import duty of 38.5%. This undue protection to PAN is already affecting the increase in the prices of Phthalate Plasticizers leading to larger imports of the Plasticizers. Thus PAN is already enjoying the highest protection and there are no justifications for further levy of Anti Dumping Duty on Imports of PAN to India from Indonesia.
- c. Import data of the petition is at variance with that published by DGCI&S.
- d. The price of imports from all other countries were higher during 1996-97 and 1997-98 vis-a-vis Indonesia whereas it has been slightly low for Indonesia vis-a-vis other countries during April-December, 1999. This clearly established that there has been no dumping from Indonesia during the period of investigation.

- e. Over the period, the domestic industry's domestic sales have increased and exports have come down. It establishes that home market was more lucrative and profitable than exports. Had the imports affected the local market, the petitioners would have at least kept up their levels of exports.
- f. The decline in raw material prices of PAN has resulted in lowering the cost of production of PAN further resulting in lowering of the prices of PAN. Thus the imports of PAN during 1998-99 at lower prices cannot be treated as dumping to India.

C. EXAMINATION OF ISSUES RAISED:

3. The submissions made and the issues raised by the importers, petitioners and other interested parties have been examined and considered only to the extent they are relevant under the Rules and have -a bearing on this case and dealt with at appropriate places in the notification.

D. DISCLOSURE OF ESSENTIAL FACTS MADE BY THE AUTHORITY

The views 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 on the case.

E. PRODUCT UNDER CONSIDERATION:

5. The product considered in the present investigation is Pthalic Anhydride originating in or exported from Indonesia. Pthalic Anhydride (PAN) also variously referred to as Pthalic Anhydride Flakes, Pthalic Anhydride (98% min.), Pthalic Acid Anhydrous etc. Pthalic Anhydride is classified under the Custom Sub heading 2917.3500 of the Custom Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

F. "DOMESTIC INDUSTRY" STANDING OF THE PETITIONER

6. The petition has been filed by M/s. Thirumalia Chemicals Ltd. and M/s Herdillia Chemicals Ltd. having its Registered Office at Ranipet and Mumbai respectively. The petitioners account for more than 50% of production of PAN in the domestic industry. Therefore, the petitioners account for a major proportion of the subject goods in India

and fulfil the requisite criteria to represent the domestic industry, as required under the Rules.

G. LIKE ARTICLES:

7. (a) Rule 2(d) of the Anti-Dumping Rules specifies that "Like Articles" means an article which is identical or, alike in all respects to the product under investigation or in the absence of such an article, another article, having characteristics closely resembling those of the articles under examination.

(b) The petitioner has claimed that the Phthalic Anhydride produced and sold by them and those imported from the subject country have similar characteristics and should be treated as Like Articles. They have claimed that this is a standard product with simple and uniform specifications; products made in India, is of the same specifications as those made in USA, Indonesia, Korea, Taiwan, etc. They have also claimed that there is no substitute of Phthalic Anhydride. Regarding manufacturing process, Petitioner explained that there is no major difference in the manufacturing process of PAN being produced by us and that produced by other manufacturers worldwide. The process and plants are identical.

(c) No argument has been raised by any of the interested parties with regards to Like Article after preliminary findings.

(d) In view of the same, the Authority holds that Phthalic Anhydride being produced by the domestic industry and those being imported from the subject country are identical or alike in all respects and having characteristics closely resembling, and therefore, are Like Articles within the meaning of the Rules.

J. NORMAL VALUE EXPORT PRICE & DUMPING MARGIN INDONESIA:

- a. The Authority provide- opportunity to the exporters from Indonesia to furnish information relevant to the investigations and offer comments, if any, in accordance with the Rules. The Authority also wrote to the Embassy of Indonesia in India. However, none of the exporters from the subject country has responded to the Authority's request for information.
- b. The claims made by the petitioners with regard to determination of normal value has been disputed by the importers stating that the Designated Authority should have determined the Indonesian local prices based on the exports from India plus levies applicable in Indonesia rather than on the basis of Embassy's information. In this regard, the Authority notes that in the present case none of

the exporters from the subject country has responded to the Authority's request for information. The Authority, therefore, proceeded on the basis of Rule 6(8), i.e. best information available. Accordingly, the Authority considers the information relating to the domestic selling price of PAN in Indonesia, contained in the letter of Indian Embassy in Indonesia as provided by the petitioner as the basis for determination of Normal Value.

- c. The export price has been determined on the basis of the information compiled by the DGCIS, Calcutta. The weighted average export price has been adjusted for insurance, inland freight, overseas freight as claimed by petitioner.

The Rules relating to comparison provides as follows:

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

Based on the comparison of the Normal Value and the Export Price, as determined above, in pursuance of the above Rule, the dumping margin in respect of Indonesian exporters is determined at 16.77%.

INJURY & CAUSAL LINK:

1. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
2. For the examination of the impact of the imports on the domestic industry in India, the Authority considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure 11 (iv) of the rules supra.
3. The authority has also examined factors other than dumped imports viz. uneconomical plant size, inefficiencies, mismanagement, or any other factors etc. as cited which might be injuring the domestic industry at the same time.

The non-injurious price for the domestic industry has been determined by making appropriate analysis of all relevant factors like usage of raw material, usage of utilities, captive consumption, etc. and the actual expenses during the period of investigations including the investments and capacity utilization. The non-injurious price of domestic industry has been determined by considering the optimum cost of production and considering the reasonable return on the capital employed by the domestic industry.

L. CONCLUSION ON INJURY

1. The Authority concludes that

(a) PRODUCTION & CAPACITY UTILISATION:

The production of the petitioner company has increased from 33802 MT in 1996-97 to 45040 MT in 1997-98 to 45107 MT in the period of investigation.

Capacity utilisation of the domestic industry has increased from 35% in 1996-97 to 47% in 1997-98 to 47.18% in 1998-99.

(b) SALES QUANTITY:

1996-97 1997-98 1998-99

POI

Total Imports MT 3646.09 8422.98 11138.71

Domestic Sales MT 21252.00 32481.00 77619.00

Total Apparent Market 24898.09 40903.98 58757.71

Stake of Domestic Industry 85.36 79.41 81.04

in total apparent market (in %) --

The above chart shows that sales of the domestic industry has increased during the period of investigation as against previous years, but the petitioner's market share has not increased as compared to growth in apparent market.

(c) SALES REALISATION:

The average net sales realisation of M/s Thirumalai Chemicals Ltd during 1996-97 was 100% (base year)/MT declined to 91.39% in 1997-98 further declined to 79.02% during the period of investigation.

The average net sales realisation of M/s Herdillia Chemicals Ltd during 1996-97 was 100% (base year)/MT declined to 87.69% in 1997-98 further declined to 70.82% during the period of investigation.

However, the sales realisation of the Petitioners' Company during the period of investigation was below its cost of production.

(d) PROFITABILITY:

During the financial year 1996-97 the profit of the petitioners company jointly from the Pthalic Anhydride operation was Rs.1519.32 lacs. The profit reduced to Rs.274.19 lacs during the year 1997-98 gone into loss 1044.80 lacs during the year 1998-99 i.e. period of investigation.

(e) CLOSING STOCK

The average stock of the domestic industry has increased from 406 MT in 1996-97 to 8519 MT in 1997-98 further reduced to 4522 MT in 1998-99.

(f) TOTAL IMPORTS:

1996-97 1997-98 1998-99

POI

Total imports in India 3646.90 8422.98 11138.71

Imports from Indonesia 366.78 4124.59 6790.18

% of Total Imports 10.06 48.97 60.96

(Indonesia)

Share of Indonesian Imports 1.47 10.08 11.56

total apparent market in%

The above chart shows a significant increase in imports from Indonesia. The share of Indonesian imports as against total imports has increased from 10.06% in 1996-97 to

60.96% during the period of investigation. The share of imports from Indonesia as compared to total apparent market have grown from an insignificant 1.47% in 1996-97 to 10.08% in 1997-98 and 11.56% in 1998-99, i.e. period of investigation.

(g) PRICE SUPPRESSION:

The prices of Indonesian imports fell from Rs.21.83 per kg. CIF in 1996-97 has increased to Rs.23.26 per kg. CIF during 1997-98 drastically came down to Rs.16.98 per kg CIF during period of investigation.

(h) EMPLOYMENT

The manpower of petitioners was 267 in 1996-97 increased to 372 during 1997-98 further increased to 383 during period of investigation.

Apart from the above, Authority also notes that imports from Indonesia has increased sharply. The increase is more than 18 times during period of investigation as compared to 1996-97. Petitioner's claim that exporters have freely disposable capacity has not been challenged by any interested parties. Para (g) above also shows that there is a significant depressing price effect on not only sales realisation but also margins. The inventories of the petitioners have also increased during period of investigation as compared to 1996-97.

The Authority finds that these parameters collectively and cumulatively indicate that there is a threat of injury from the subject country.

2. The Authority, therefore, notes from the above that the imports from the subject country have been at a price below the selling prices of the domestic industry. Further, the imports into India have been at a price lower than the non-injurious price for the domestic industry. As a consequence thereof the petitioners were forced to sell its product at a price significantly below its non-injurious price resulting in financial losses to the petitioners. The petitioners were also prevented from increasing the level of capacity utilisation as compared to the total apparent market.

These parameters collectively and cumulatively indicate that the petitioners have suffered material injury/threat of injury due to the dumped imports.

M. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

1. The purpose of anti dumping duties, in general, is to eliminate dumping which is causing injury to the petitioner companies and to re-establish a situation of

open a pd fair competition in the Indian market, which is in the general interest of the country.

2. It is recognised that the imposition of anti dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures, particularly if the levy of the anti dumping duty is restricted to an amount necessary to redress the injury to the petitioners' company. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the petitioners' company and help maintain availability of wider choice to the consumers of Pthalic Anhydride. Imposition of anti dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers.
3. To ascertain the extent of anti-dumping duty necessary to remove the injury to the petitioners' company, the Authority has relied upon weighted average non - injurious price of Pthalic Anhydride in India for the petitioners' company, by considering the optimum cost of production at optimum level of capacity utilisation for the petitioners' company.

LANDED VALUE:

Landed value of imports from Indonesia is determined considering the weighted average export price after charging the prevailing level of customs duties except duties levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975 and one percent landing charges.

N. FINAL FINDINGS

The Authority, after considering the foregoing, concludes that:

- a. Pthalic Anhydride. originating in or exported from the subject country has been exported to India below its normal value, thereby resulting in dumping;
- b. The domestic industry has suffered material/threat of injury-;
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from Indonesia;
- d. In view or the above, the Authority recommends imposition of definite anti-dumping duty on all imports of Pthalic Anhydride falling under chapter 29 (Custom Sub-heading 2917.3500) originating in or exported from Indonesia.
- e. It was considered to recommend the amount of Anti-Dumping Duty equal to the dumping margin or less which, if levied, would remove the injury to the

domestic industry. Landed value of the imports for individual exporters, for the purposes, were compared with the non-injurious selling price of the domestic industry, determined for the period of investigation. Wherever the difference was less than the dumping margin, a duty lower than -the dumping margin is recommended.

- f. Accordingly, anti-dumping duties may be imposed, ors all imports of Pthalic Anhydride originating in or exported from the subject country. The antidumping duty shall be US\$ 44.27/MT.
- g. Subject to the above, the authority confirms the Preliminary Findings dated 31st March, 2000.
- h. An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act supra.

L. V SAPTHARISHI...
Designated Authority