

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi; the 15 March, 1999

FINAL FINDINGS

Sub: Anti-dumping investigation concerning import of Citric Acid from China P,R. - Final Findings.

No. 29/1/97-ADD: Having regard to the Customs Tariff Act, 1975, as amended in 1995 and the, Customs Tariff (Identification, Assessment and Collection of Anti-clumping duty on Dumped Articles and for determination of injury) Rules, 1995 thereof.

A PROCEDURE

1. The procedure described below has been followed subsequent to the Preliminary findings:

- a. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide notification dated the .20.10.98 with regard to anti-dumping investigations concerning import of citric acidl from China PR and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- b. Tree 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;
- c. The Authority also forwarded a copy of the preliminary findings to the Embassy of the. 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;
- d. The Authority provided-an opportunity to all interested parties to present their views orally on 2.12.98. All parties presenting 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 the opposing parties and offer rebuttals, if any;
- e. The Authority made available the public file to all interested parties containing non-confidential version of all evidences submitted and arguments made by

various interested parties. All parties who made request for inspection, in writing, were allowed to inspect the public file;

- f. Arguments 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 have been appropriately, dealt in the preliminary findings and/or these findings;
- g. 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 same has been duly considered in these findings;
- h. * * * *in this notification represents information furnished by any interested party on confidential basis and so considered by the Authority under the Rules.

B. PRODUCT UNDER CONSIDERATION

2. The product involved in the petition is Citric Acid originating in or exported from China PR as specified in paras of the preliminary findings.. The product is' classified under custom tariff heading 2918.14.

None of the interested parties has raised any argument in respect of product under consideration subsequent 'to preliminary finding notification and.- thus the Authority confirms the preliminary findings in this regard.

C. LIKE ARTICLE

3. The Authority held in para 6 of preliminary findings that citric acid manufactured by the petitioner and citric acid exported from China RP can be used interchangeably and thus can be substituted technically and commercially and they are "like articles" within the meaning of the rules.

None of the interested parties has raised any argument *in* this regard subsequent to preliminary finding notification and therefore Authority confirms the preliminary findings in this regard..

D. DOMESTIC INDUSTRY

4. The petition has been filed by M/s. Citurgia Biochemicals Ltd. Neville House, JN Heredia Marg, Ballard Estate, Bombay, on behalf of the domestic Industry. It was observed by Authority at para 7 of the preliminary findings that the petitioner, share in total production of industry was about 87% and thus the petitioner. has the standing to file the petition on behalf of the domestic industry under the rules.

None of the interested parties has raised any argument in this regard subsequent to preliminary findings notification and thus the Authority confirms the preliminary findings in this regard.

E. DUMPING

5. The rules relating to dumping have already been discussed in the preliminary findings. None of the exporters from China RP submitted any information prior to issuance of preliminary findings notification. The Authority notes that none of the exporters from China RP has furnished further information or disputed the dumping margins calculated by Authority in the preliminary findings.

Argument by Importer

6. Petitioner has not furnished sufficient evidence to arrive at the constructed cost of production and hence its authenticity can not be confirmed. On the basis of invoice dated. 15.6.98 of Chinese exporter and on the basis of information about price in China dated 11.11.98, there is, no dumping. Evidence does not exist in respect of export price.

Authority Position

6(a) The Authority, observe that none of Chinese exporters have responded to the questionnaire and submitted information relating to normal value; export price, dumping margin, during investigation. None of the Chinese exporters have submitted any information for the consideration of Authority even subsequent to the Preliminary findings notification. The Authority has, thus, considered Chinese exporters as non-cooperative exporters and proceeded on best available information with the Authority.

It was observed by the Authority in para 8 of the preliminary findings notification that petitioner has not furnished sufficient evidence to arrive at the constructed cost of production and hence its authenticity could not be confirmed. It was further observed that none of the interested parties viz. exporter, importer had contested the method of calculation, or the factual data used in arriving at the cost and therefore in the circumstances, Authority is constrained to rely on the best available information and determine the constructed cost accordingly.

It is observed that none of the Chinese exporters have responded subsequent to the Preliminary findings notification nor have disputed any of the findings of Designated Authority although sufficient opportunities were provided to them. None of the Chinese exporters have represented their case in the oral hearing. The Authority observes that the information submitted by importers on normal price is based on few

invoices/quotation, which are dated 15.6.98 and 11/11/98. These dates are beyond the period of investigation which is from April 96 to July 97 and therefore can not be considered. Moreover, the Authority can not determine the normal value on the basis of few invoices or some other similar information as it is not clear whether the prices at the point of sales are of producer or trader, whether they are at ex-factory level or otherwise, what is the credit period involved, what are the levels and terms of trade and whether they are in the ordinary course of trade or not. To this extent the Authority considers the information as incomplete and therefore the normal value can not be calculated on the basis of incomplete information. It is also observed that importer has now submitted some bill of entries which are dated October 98 and November 98 and requested to calculate the export price accordingly. The Authority observes that these bill of entries relates to period which is beyond the period of investigation and therefore can not be considered. The Authority is thus constrained to rely on the best available information in respect of export price also and confirms the dumping margin at 81.25% of the export price (at ex-factory level) as calculated at para 9 of the preliminary findings.

F. INJURY & CAUSAL LINK

7. (i) Argument by petitioner

- M/s Bharat Starch Industries Ltd. who have commenced production of citric acid has an internationally sized plant and their cost at optimum level of production is more than the cost of Citurgia which confirms that the latter is running their plant efficiently.
- Total production capacity of Indian citric acid industry i.e. Citurgia together with Bharat Starch is more than adequate to take care of domestic requirement.
- Various economic parameters show that the domestic industry has suffered injury.

(ii) Argument by importers

There is no injury to the domestic industry due to the facts that

- Imports from China were 85% during period of investigation as against 97-98% earlier.
- Other source of supply was selling at nearly the same price when compared to Chinese prices..
- Bharat Starch Industries Ltd. had produced and sold material during the period of investigation which is disregarded by Authority.
- Sales may have been depressed due to entry of M/s Bharat Starch Ltd.

- Increase in imports in later period of investigation is due to seasonability factor.
- Production and capacity utilization were better in period of investigation.
- Cost of production is high in case of petitioner because the plant has a capacity of 6250 MT per annum. The minimum economic size of citric acid plant would be in the region of 20000 MT per annum.
- Growth of domestic industry is not retarded with the start of M/s Bharat Starch Ltd. with a capacity of 20000 MT. per annum.
- There is a gap in demand & supply. The supply from domestic industry can not meet the demand.
- The erosion of margin of profit is due to sharp escalation in the prices of molasses and power tariff and reduction in import duty from 40% to 30%.
- Imposing anti-dumping duty will be detrimental to Indian Industry.
- The petitioner has been unable to control their cost because of their inefficiencies. The production plant of the petitioner is a vintage. Production yields in case of M/s Citurgia are considerably lower as compared to standard norms.
- There is no injury to petitioner on account of holding of closing stocks.
- There is no causal link between the alleged import and injury. Imports are essential.
- The petitioner is a monopoly producer of citric acid and known to employ restrictive/unethical trade practices

Authority Position

7 (a) The Rules governing injury, and various injury parameters have already been discussed in preliminary findings wherein it was held that domestic industry has suffered material injury. The Authority holds that all economic parameters relating to domestic industry need not indicate injury nor one or several of various economic parameters necessarily give decisive guidance with regard to injury suffered by the domestic industry. Examination of the impact of dumped imports on the domestic industry includes evaluation of all relevant economic factors. Cumulative assessment of all relevant factors only could indicate whether the domestic industry has suffered material injury. In case, the domestic industry operates below the optimum level of efficiency its effect is offset, as injury to domestic industry is assessed on the basis of optimum cost of production and cost to make and sell the subject goods on the basis of generally accepted accounting principles. The domestic industry is not allowed by Authority to take advantage of its inefficiency if any and pass it on to user industry. Anti-dumping investigations are carried out as per rules and anti- dumping duty is recommended which would be adequate to remove the injury, where applicable, to the domestic industry provided that anti-dumping shall not exceed the dumping margin.

Regarding the argument that other source of supply are selling at the same price when compared to Chinese prices, the Authority observe that these are not alleged as dumped goods by the petitioner.

Regarding the argument relating to comparison of cost of M/s Bharat Starch Industries Ltd. and of petitioner, the Authority observes that these companies use different raw materials and hence it may not be appropriate to compare the cost. Moreover the plant of M/s Bharat Starch is not fully operational and therefore the estimated cost data of Bharat Starch at higher level of productions are not on the basis of actuals. The petitioner, even otherwise, satisfies the condition on standing of domestic industry for the purpose of assessment of injury.

Regarding the argument that there is a gap in demand and supply the Authority observes that by recommending the imposition of antidumping duties, the quantum of imports is not restricted in any way. Even after imposition of anti-dumping duties, the user industry can import the subject goods to fill the gap if any in demand and supply. Moreover it is not disputed that M/s Bharat Starch Industries Ltd. shall be producing citric acid with an installed capacity of 20000 MT p.a. which shall be adequate to meet the demand of citric acid in the future. The Authority has already discussed the Indian Industry's Interest and other related issues in para 20 of the preliminary findings wherein it was inter-alia held that the purpose of anti-duties, in general, is to eliminate dumping which is causing injury to domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country. Therefore the Authority hold that imposition of antidumping duty is not detrimental to Indian Industry's interest.

G. Other Issues

Argument raised by petitioner

8. The floor price of Rs. 58925 per MT fixed for computing the anti-dumping duty on import of citric acid is very much on lower side. Actual usage of raw material should be considered instead of standard norms and the optimum level of capacity utilization.

Authority position

8(a) The Authority considers the fair 'selling price on the basis of optimum cost of production and cost to make and sell the subject goods on the basis of generally accepted accounting principles.

Argument raised by importer

9. Interest of actual user segment has been ignored. Soft drinks and pharmaceuticals, which contribute nearly 40% of the user segment, have not been given an appropriate chance to represent their views.

Authority Position

9(a) The Authority had sent initiation notification dt. 18.3.98 to all known importers, exporters and other interested parties as per details furnished by the petitioner. The initiation notification was also published in the Gazette of India for the information of all concerned. Initiation notification was also sent to major business associations like FICCI, CII, Assocham etc. with a request to publicize it for the benefit of all concerned. All responses received even after the preliminary findings have been taken into account for final determination. Therefore, the Authority considers that the argument of the importer is not substantiated with facts.

Argument raised by importer

10. Sixteen months period has been considered as period of investigation. 16 months period of investigation has permitted inclusion of 2 peak periods (April-July) because of seasonability factor in the sale of citric acid which results in drastic distortion of presentation of data.

Authority position

10(a). As already stated, the Authority considers the fair selling price on the basis of optimum cost of production and cost to make and sell the subject goods on the basis of generally accepted accounting principles. The Authority assesses the injury on cumulative basis and a single factor can not necessarily give decisive guidance with regard to injury suffered by domestic industry.

Argument raised by importer

11. If heavy subsidies given by Govt of China is the cause of low export price then this may be a case of countervailing duty and not of antidumping duty.

Authority position

11(a). The instant case has been investigated under the Anti-dumping rules and regulations. Anti-duty if any is recommended as per rules.

Argument raised by importer

12. If anti-dumping duty is imposed, it will' hike the basic raw material price of citric acid when used by the user industry. In this way, prices of goods wherein citric acid is used as raw material shall be non-competitive in the export market and thus the country will lose valuable foreign exchange.

Authority Position

12(a) The Authority finds that the argument is generic in nature and is not substantiated with facts. Wherever imported citric acid is used as a raw material, the Indian exporters can avail of export promotion schemes in existence and thus remain competitive in the export market.

Argument raised by importer

13. Levy of anti-dumping duty will be detrimental to the users as well as to the common public, because the levy will result in increase in prices of bulk drugs/formulation.

Authority Position

13(a) The subject of this investigation concerns dumping, injury and causal link to the domestic producers of citric acid in India as per the rules on the subject. The investigation and recommendations have been carried out as per the rules.

14. The Authority confirms its, preliminary findings on injury that various parameters collectively and cumulatively establish that the domestic industry has suffered material injury.

15. In establishing that the material injury to the domestic industry has been caused by the imports from the subject country, the authority, hold that increase in market share of imports from China resulted in decline in the market share of petitioner. The dumped material forced the domestic industry to hold higher stock. The export of citric acid from China forced the domestic industry to keep its prices to un-remunerative levels and prevented it to recover its fair price resulting in losses/decrease in profits.

H. FINAL FINDINGS

16. The Authority after considering the foregoing concludes that

- a. Citric acid has been exported from China RP at a price lower than the normal value resulting into dumping of citric acid.

- b. The domestic industry has suffered material injury.
- c. The causal link between dumping and injury is established. The Authority confirms the preliminary findings and recommends imposition of definitive anti-dumping duties on import of citric acid falling under chapter 29 as specified in the Para relating to product under consideration originating in or exported from China RP. The Anti-dumping duty shall be the difference between Rs.60324 Per MT and the landed value of imports per MT.

17. 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, 3A, 8 B, 9 and 9 A of the Customs Tariff Act, 1975.

18. Subject to above the Authority confirms the preliminary findings dated 20.10.98.

19. 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