

MINISTRY OF COMMERCE
(Directorate General of Anti-Dumping and Allied Duties)

NOTIFICATION

New Delhi, the 20th April, 2000

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of Pure Terephthalic Acid (PTA) from Japan, Malaysia, Spain and Taiwan- Final Findings.

No. 27/1/98-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1975 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 the preliminary finding vide notification dated 22.10.99, on anti-dumping investigation concerning imports of Pure Terephthalic Acid (PTA) from Japan, Malaysia, Spain and Taiwan (hereinafter also referred to as subject countries) 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 finding within forty days of the date of the letter;
- iii. The Authority also forwarded a copy of the preliminary findings to the embassies of Japan, Malaysia, Spain and Taiwan in New Delhi with a request to them to advise the exporters and other interested parties to furnish their views on the preliminary findings in the time frame as stipulated in (i) and (ii) above.
- iv. The Authority provided an opportunity of public hearing to all interested parties to present their views orally on 2.12.99. A further opportunity of hearing was granted by the Authority 2.2.2000 on the specific request of an interested party and intimation in this regard was sent to all the interested parties. All parties presenting their views were requested to file written

- submissions of the views expressed. The parties were advised to collect copies of the view; expressed by the opposing parties and other rebuttals, if any;
- v. The Authority made available the public tile to all interested parties containing non-confidential version of all evidence submitted by various interested panics for inspection, upon request,
 - vi. 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 the sake of brevity. However, the arguments raised by the interested parties subsequently to the extent they are relevant under the Rules 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 in the Disclosure statement did. 16.3.2000 and comments received on the same have also been duly considered in these findings
 - viii. The period of investigation (POI) considered in this case is 1.4.98 to 31.12.98.

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 the 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 the Rules and have a bearing upon the case. The arguments raised by the interested parties have been examined and wherever appropriate, dealt in the relevant paras herein below.

C. PRODUCT UNDER CONSIDERATION

3. The product involved in the present investigation is Pure Terephthalic Acid (PTA) originating in or exported from the subject countries, classified under Customs Subheading 2917.36 of Customs Tariff Act. The Classification is only indicative and in no way binding on the scope of present investigation. PTA is a white free flowing crystalline powder free from any visual contamination. PTA is normally used in the manufacture of polyester staple fibre/filament yarn/polyethylene terephthalate (PET) (Textile Grade) and polyester films.

D. "DOMESTIC INDUSTRY" STANDING OF THE PETITIONER

4. The petition has been filed by M/s Reliance Industries Ltd., 3rd Floor, Maker Chamber-IV, 222, Nariman Point, Mumbai -400021 who are the only producer or PTA in India. Since the petitioner accounts for the total production of PTA in India, they have the requisite standing to file the petition as per rule 5(3) (b) of the Anti-Dumping Rules. Here an argument has been raised that the test of standing is required to be applied with reference to the like article and it is the admitted position of the Designated Authority that DMT and PTA are like articles. Therefore, the standing is required to be seen with reference to producers of like articles. This aspect has been examined by the Authority and it is reiterated that the present petition for PTA alone which, by itself, is an article which could be considered for anti dumping investigation. Therefore, the reference to DMT in regard to determination to standing is not relevant since the DMT producers are not a party to the present complaint.

E. LIKE ARTICLE

5. The Authority finds that the petitioner's product and that imported from the subject countries are comparable in technical specifications, manufacturing process and technology, functions and uses. The Authority also finds that both have similar end uses and both are used by the importers and consumers interchangeably. Thus, the Authority observes that PTA produced by the domestic industry in India has characteristics closely resembling the same of PTA imported from the subject countries. Both are technically and commercially substitutable and, therefore, are treated as Like Articles under the meaning of the Anti-Dumping Rules

6. The Authority, therefore, confirms the findings of para 6 of the preliminary finding, dated 22.10.99 on like article.

F. ASSESSMENT OF DUMPING: NORMAL VALUE AND EXPORT PRICE

7. The parameters of dumping, namely, the Normal value and export price, in relation to the exporter of the subject countries are examined and determined in terms Section 9 A (1) (c) of the Customs Tariff (Amendment) Act, 1995.

8. The Authority provided opportunity to the known exporters to furnish information on Normal value and Export price in accordance with the provision cited above. The

following exporters/producers, who responded and furnished requisite informations on Normal Value and Export Price, have been assessed as under -

Country : Japan:

Exporter : Mitsui Chemical Inc.

The Authority notes that the exporter have claimed Normal Value on the basis of weighted average domestic price of their sales in Japan and the adjustments made thereon on account of inland freight and storage which the Authority allows to reach the domestic selling price at ex-works level. Therefore, the Authority confirms the Normal Value at US\$ xxx/M.T provisionally determined in the Preliminary Findings.

As regards Export price, the same was determined in the Preliminary Findings by the Authority on the basis of consolidated Value at Exports reported by the exporters. However, on further analysis of the exporter's information, the weighted average c&f price of exports is found different when calculated on the basis of transaction and invoice-wise details of quantity and value of exports to India furnished by the exporter for the period of investigation. The Authority, therefore, for Final Findings, determines the weighted average c&f price of exports on the basis of transaction-wise details furnished by the exporter. Adjustments claimed by the exporter on account of inland freight and overseas freight are allowed by the Authority. Thus, the Authority arrives at the ex-works export price of US\$ xxx /MT in the Final Findings

The comparison of the Normal Value and export price so determined calculates the dumping margin as US\$ xxx/ M T. which is 34 26% of the export price.

Country : Japan

Exporter : M/s. Mitsubishi Chemical Corporation:

Here, the Authority finds that the exporter have claimed Normal value on the basis of weighted average selling price of their domestic sales during the period of investigation and adjustments thereon claimed on account of discounts/commission, inland freight and sight discount. The Authority finds the inland freight claimed in Normal value calculation to be on a much higher side as compared to the same claimed in export price structure. The Authority determines the amount under this head at par with the same in export price structure and allows adjustments claimed under other heads. Thus the Authority confirms the Normal Value at US\$xxx/MT determined in the Preliminary Findings.

As regards export price, the Authority finds that the exporter have claimed the same on the basis of weighted average cif value of exports to India during the POI. Month wise Value and quantity of exports have been furnished for the relevant period. Adjustments are claimed on account of discounts/commission, inland freight, handling and overseas freight, which are allowed by the Authority. The Authority, thus, determines the export price at US\$ xxx/M.T at ex-factory level.

The dumping margin is thus calculated at US\$ xxx/MT which works out to 29.90% of the export price

Country : Malaysia:

Exporter: Amoco Chemical (Malaysia)

Normal Value:

In regard to the Normal Value, the Authority confirms the position taken in the Preliminary Findings. In the absence of complete informations and proper corroboration of the domestic selling price, the Authority has no other alternative but to rely upon the informations provided by the petitioner as the best available information for determination of Normal Value. Thus, the Normal Value is determined at US\$. 553/M.T.

Export Price

As regards Exports Price, the same, on a further analysis of the exporter's informations, is found to have been corroborated by the copies of invoices, evidencing, Export price to India during the POI. The Authority finds this information to be reliable and on the basis of this information determines the weighted average c&f export price to India for the POI at US\$xxx/M.T. The adjustment claimed by the petitioner towards freight has been allowed by the Authority and the export price at ex- factory level is determined at USS xxxx/M T

The dumping margin is thus calculated at 68.20%.

Country : Spain

Exporter: M/s. Interquisa:

The Authority has examined the claim the exporter that their exports to India are below de minimus with reference to total imports of PTA into India during the period of investigation. However, the Authority finds that even though the petitioner initially

provided information on expected arrivals of PTA from Spain into India, furnished later the details of actual import from Spain during July-August, 1998 arriving at ICD, Nagpur and JNPT. The data of which are not captured by the official agency, i.e. DGCIS, in their provisional figures. The Authority, on the other hand, finds that the exporter themselves, in their response have informed about the volume of 4024 M.T. of PTA exported by them to India during the period of investigation, which the Authority relies upon. Further, with regard to the total volume of imports of P TA into India of 226000 M.Ts. during the POI quoted by the exporter from the source published by PTA-xylenes and Polyester Ltd, the Authority finds that the said figure is only in the nature of forecast data and not actual data. The actual figure of total imports of PTA into India is determined by the Authority at 87,497 M.T. on the basis of DGCI &S data and the data from other sources. Considering the volume of PTA exported by Interquisa to India during the POI as claimed by them vis-a-vis the aforesaid actual figure of total import of PTA into India as determined by the Authority, the Authority finds that the imports from Spain constitute 4.60% of total imports into India and, thus, the same are above the de- minimus level.

As regards the exporter's claim to terminate the investigation against them as the injury caused by the imports from them is negligible, the Authority notes that as per the Rules, it is the cumulative impact of imports, on the domestic industry, and not the impact of imports from an individual country or exporter, which is to be taken into account in injury determination in cases where imports from more than one country are being simultaneously subjected to anti-dumping investigation.

The Authority, therefore, upholds the investigation against the country and the exporter. The Authority notes that the exporter have claimed Normal value on the basis of weighted average domestic selling price of all sales in Spain during the period of investigation and the adjustments claimed on account of inland freight, import taxes, additional production cost and long term contract. The Authority, while allowing the adjustments claimed on inland freight and long term contract, however, does not take into consideration the adjustments claimed on import taxes and additional production cost as these do not seem to be expenses incurred after the ex-factory stage. Further, these charges claimed by the exporter are not corroborated/evidence. Thus, the Authority confirms the Normal value at US\$xxx/M.T. determined in the Preliminary findings.

Export price is claimed on the basis of weighted average C & F value of exports to India during the POI and the adjustments claimed on account of discounts/commission, inland freight, handling, taxes, overseas freight and others which the Authority allows' Thus the Authority determines the export price at US\$xxx/M.T at ex-factory level, which is a confirmation of the same determined in the Preliminary findings;

The dumping margin is, thus, calculated at US\$ xxx/M.T. which is 15% of the export price

Arguments raised

In this regard some interested parties have submitted that the prices at which the complainant has exported goods to Spain in particular and to the European Union in general are the prices (and hence Normal value) of PTA in Spain. When these prices are taken into account, there would be no dumping at all.

Examination by the Authority

The Authority has examined the aforesaid view point and holds that the export price of the complainant to the subject country i.e. Spain, is not a relevant factor to determine the normal value of the subject goods in that market specially when the exporter themselves have furnished information on their domestic selling price. The Authority has considered it appropriate to rely upon the domestic selling price as per the information of the exporter themselves to arrive at the Normal Value for M/s Interquisa. Further Normal Value, under the Rules, is exporter specific and not country specific. Therefore, the Authority does not consider it proper to rely upon the price in Spain for the determination of Normal Value of an individual exporter, especially when the individual exporter has furnished information on its domestic selling price which, vis-a-vis their export price as per their own information-evidences dumping in their case.

Country : Taiwan

Exporter: Tuntex Petrochemicals Ltd.

The position stated by the Authority in respect of Taiwan under the appropriate sub-paragraph of para II of the Preliminary Findings has not been controverted by any interested party. Therefore, the Authority confirms the said position taken in the Preliminary Findings and terminates the anti-dumping proceedings initiated against Taiwan.

G. ASSESSMENT OF DUMPING MARGIN : COMPARISON OF NORMAL VALUE AND EXPORT PRICE:

9. The Authority has determined the dumping margin for various exporter/ producers on the basis of a fair comparison between the Normal value and the Export price and on the basis of the principles laid down in Annexure 1 to the Rules. For the purpose of

fair comparison between the Normal value and the Export price, the Authority has taken into consideration the information furnished by the exporters and other information available which the Authority has treated as the best available informations. The Normal value and the export price determined for the cooperative exporters, as detailed above, are at same level of trade i.e at ex-factory level, and the comparison is weighted average to weighted average for the purpose of determining the dumping margin. In the case of cooperative exporters, where reliable information is available on the individual export transactions, weighted average Normal value has been compared with export price on a transaction to transaction basis.

10. Assessment of Non cooperative/Residual Exporters:

In respect of non-cooperative exporters and the exporter/producers not named by the petitioner from the subject countries excluding Taiwan, the Authority determines the dumping margin at the highest dumping margin determined for the cooperative exporter/ producers from each country.

11. Thus, the dumping margin as % of export price in respect of the subject countries/territory and the exporters is determined as under :-

Country	Exporter	Dumping Margin
1. Japan	1. Mitsui Chemicals Inc.	34.26%
	2. Mitsubishi Chemical Corpn.	29.90%
	3. All other Exporters	34.26%
2. Malaysia	1. Amoco Chemical (Malaysia)	68.20%
	2. All other Exporters	68.20%
3. Spain	1. Interquisa	15%
	2. All other exporters	15%

12. Landed value

The landed value of imports is determined as a sum of the cif value of imports, 1% thereof towards landing charges, 2% thereof towards handling charges and the prevailing level of Customs duties, except the duties levied under section 3, 3A, 8B, 9 and 9 A of the Customs Tariff Act, 1975.

H. ASSESSMENT OF INJURY:

13. In the Preliminary findings, the Authority had noted the injury to the domestic industry on account of dumped imports from the subject countries. The Authority had reached the conclusion about injury after Liking into account all relevant fact and in accordance with Rule 11 Supra and the Principles set out in Annexure II to the Rules.

For determination of injury, the Authority had examined the impact of dumped imports on the domestic industry. In this regard, the Authority had considered such indices having a bearing on the state of industry as net sales realisation, profitability and magnitude and margin of dumping etc. in accordance with Annexure II (iv) of the Rules Supra. To this extent, the Authority confirms the findings relating to injury to the domestic industry under para 12 and 13 of the Preliminary Findings.

Arguments raised:

The arguments raised by the interested parties in regard to the findings on injury have already been dealt with in the disclosure statement dtd. 16.3. 2000. However, the same are reiterated as under: -

- i. Here, it is stated that the performance of the petitioner of various parameters shows no material injury to the petitioner during the POI. The market share and sales of the petitioner has increased. The production and capacity utilization have also increased. The petitioner have carried out expansion and have set up two new plants.
- ii. The exporter from Malaysia have submitted that cumulative assessment of injury is not warranted in the case in view of the conditions of competition in which their export price have declined by only 5% as compared to the export prices from country such as Japan which have declined by about 30% to 35%.

Examination by Authority :

- i. The Authority in this regard holds that it is not necessary to find injury on all economic indicators. The factors which the Authority has considered in Preliminary findings for determination of injury, namely, decreasing sales realization and increase in losses, are sufficient to constitute material injury to the domestic industry
- ii. Cumulative assessment of injury is warranted in the present case as per the parameters laid down in Annexure II (iii) of the Rules. The conditions of completion as stated in the said provision are satisfied in the case of export from ACM Malaysia vis-à-vis the Like domestic article irrespective of the extent of decline in the formers export price.

CAUSAL LINK

14. Arguments raised by the petitioner

- a. It is stated that there is no statutory basis for determination of Causal link solely on the basis of a comparison between the non-injurious selling price and the

landed value of imports. Hence, to take it as the sole basis for establishing causal link is not sustainable in law.

- b. The relevant provisions as to injury and causal link under Rule 11 and Annexure-II to the Rules require that the effect of imports on the sales price and profitability must be ascertained. In the proceedings it has been established that there has been a significant decline in the sales realization and increase in losses during the POI.
- c. If at all the basis of comparing the non-injurious price with the landed value is permissible and appropriate, for determination of relevant criterion it would be proper to consider for comparison only those import (dumped imports) where the landed cost is lower than the NIP.
- d. Under Rule 11(2) of the Rules it is mandatory that the Designated Authority shall determine the injury to domestic industry and a causal link between dumped imports and injury taking into account all the relevant factors, including:
 - i. the volume of dumped imports,
 - ii. their effect on prices in the domestic market for like articles and
 - iii. the consequent effect of such imports on domestic producers of such articles.

The indicative issues as listed above are required to be determined in accordance with the principles set out in Annexure-II to the Rules. The effects on prices in the domestic market is merely one of the indicative factors to be considered when determining the issues of injury and causal link. The statement in the Disclosure, that:

"therefore the causal link has to be examined as per the Rules with respect to the effect of dumped imports on prices"

indicates that the relevant provisions have been misread and unduly constricted by identifying the effect on prices as the only relevant issue.

- e. Paragraphs (n) and (iv) of Annexure-IT to the Rules both deal with the different indices which must be examined to determine injury. While paragraph (ii) identifies the factors to be looked at for appraising effect of the dumped import on prices, paragraph (iv) specifies that an examination of the impact of the dumped import on domestic industry shall include an evaluation of relevant economic factors and indices having a bearing in such an industry including .
 - i. Decline in sales, profits, output, market share, productivity, return on investment, utilization of capacity .
 - ii. Factors affecting domestic prices;
 - iii. The magnitude of margin of dumping.

- iv. Indicative effect on cash flow, inventories, employment, wages, growth and ability to raise capital investments

As per the provisions of Annexure-II the effect on prices is clearly not the sole or principal factor for a determination of injury and the indicative list of factors to be considered itself specifies various issues other than price, which must be considered.

- f. The Non-injurious Price (NIP), as set out in the Disclosure, which the Authority has adopted for determining the issue of Causal Link, is flawed and erroneously computed. The findings as to an absence of Causal Link, based on NIP as calculated are consequently unsustainable

Examination by Authority

- a. Regarding causal link, Annexure-II (ii) to the Rules provides that for determining the effect of dumped imports on prices, the Designated Authority shall consider whether there has been a significant price under cutting or whether the effect of such imports is to depress prices or to prevent a price increase which otherwise would have occurred. Therefore, the causal link has to be examined as per the Rules with respect to the effect of dumped imports on prices.
- b. In regard to the effect of dumped imports on the sales price and probability in terms of price-undercutting or price-depression, the Authority, in the Preliminary Findings, stated that though there is dumping of the product and there is injury suffered by the petitioner, there is no causal link between the two. In this connection, the Authority found that the landed value of imports from each of the known exporters was higher vis-a-vis the non-injurious selling price for the petitioner as determined by the Authority. Hence, the causal link between dumped imports and the injury suffered by the petitioner was not established.

The same position was reiterated by the Authority in the Disclosure which reads as under:-

"In the present proceedings the Authority does not establish injury to the domestic industry on account of decline in the sales realization and profitability. However, its causal link with dumped imports is not established because the landed price of imports is found to be higher than the non-injurious price resulting in negative injury margin and the selling price of the petitioner is found to be lower than the landed price. Since the landed prices of the imports are found to be higher than the sales realization there is no evidence of price under cutting or price depression resulting from the dumped imports."

While the aforesaid finding of the Designated Authority still holds good and is therefore, confirmed in respect of known exporters from Japan and Malaysia namely, M/s Mitsui Chemicals, M/s Mitsubishi Corporation and M/s Amoco, the Authority on analysis of the information available, does not find the same applicable in the case of M/s Interquisa, Spain. In the case of M/s Interquisa the Authority has, on assessment, found the Landed value to be lower than the Non Injurious Selling Price determined for the petitioner. This implies a positive injury margin where by price under-cutting and therefore, Causal link is proved. The Authority has adopted the dumped imports for the purpose of comparison of Landed value with Non-injurious selling price for determination of injury margin.

- c. The Authority, for comparison, has adopted only the dumped imports, i.e. the import transactions below the normal value. Contrary to the submission of the petitioner, the dumped imports are not defined as those imports where the landed cost is lower than the NIP. The Authority proposes to adopt the dumped imports to the purpose of comparison of landed value with NIP for determining the injury margin. In fact there is no provision in the Act or Rules to consider for comparison only those imports where the landed cost is lower than NIP.
- d. The Authority in this regard holds that Causal Link which is an essential ingredient of any anti dumping investigation is to be assessed with reference only those parameters on which injury has been assessed. In the present case the parameters of injury are sales realizations and profitability

On other indices enumerated in paragraph (iv) of Annexure-II to the Rules, which are mandated for evaluation under the said provision for an examination of the impact of the dumped imports on domestic industry, no injury has been found by the Authority. Since these indices do not reflect any injury to the domestic industry, the Authority does not consider it appropriate to determine Causal Link in regard to these factors.

Since price and profitability are determined as the sole parameters of injury the Authority, as mandated under para (ii) of Annexure-II, has found no Causal Link between the dumped imports and injury to the domestic industry in terms of the impact of the former on the domestic selling price as there is no evidence of price under cutting or price depression. The fact that the landed price of imports is higher than the non-injurious price and actual selling prices implies that the dumped import prices have not caused injury to the domestic industry.

- e. The domestic industry was intimated the Non-injurious price (NIP) in the Confidential Annexure to the Disclosure issued on 16th March, 20010. The Domestic industry had thereafter solicited certain clarifications in this regard. The detailed methodology for assessing NIP and the claims of the petitioner in

this regard were discussed with the representative's of M/s RIL in a meeting on 28th March, 2000. The confidential information submitted by the petitioner dtd. 30th March. 2000 in their response to the Disclosure statement has also been analysed and the Authority holds that the NIP already disclosed needs no change.

J. FINAL FINDINGS

15. After considering the foregoing, it is seen that :

- a. There has been no import of PTA from Taiwan during the period of investigation i.e. 1st April, 1998 to 31st Dec . 1998
- b. PTA described under para 5 and originating in or exported from Japan, Malaysia and Spain has been exported below normal value, resulting in dumping.
- c. The Indian Industry has suffered material injury. -.
- d. However, the causal link between the dumping of the product and injury has not been established in the case of the known exporters from the subject countries export in the case of M/s Interquisa, Spain.

16. In view of the above the Authority recommends imposition of definitive anti dumping duty on all imports of PTA, falling under Customs Sub-heading 2917.36, originating in or exported from Spain only.

17. It was considered to recommend the amount of anti-dumping duty equal to the margin of dumping or less which, if levied, would remove injury to domestic industry Landed value of imports for individual exporter, for the purpose, was compared with the non-injurious selling price of the domestic industry, determined for the period of investigation. Since the difference is found to be less than the dumping margin a duty lower than the dumping margin is recommended.

18. Accordingly, it is proposed that definitive anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Pure Terephthalic Acid (PTA) originating in or exported from Spain only falling under Customs Subheading No. 2917.36 of Customs Tariff Act. The definitive anti-dumping duty in respect of the exporters/producers of the said subject country shall be the amount mentioned in column 4 of the following table:-

Sl. No.	Country	Exporter/Producer	Amount (Rs. Per M.T.)
1.	Spain	(i) M/s. Interquisa	521/-
		(ii) All other Exporters	521/-

19. The appeal against this order shall lie to the Customs, Excise and Gold (Control) Tribunal in accordance with the Act Supra.

RATHI VINAY JHA...
Designated Authority