

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 12th November, 1996

FINAL FINDINGS

SUBJECT: - Anti-dumping investigation concerning imports of Dead Burnt Magnesite (DBM) originating in or exported from the People's Republic of China- Final Findings.

7/2/94-ADD. - 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.

PROCEDURE

2. The Procedure described below has been followed: -

- i. The Designated Authority (hereinafter referred to as the Authority) notified Preliminary Findings vide Notification No. 7/2/94-ADD, dated the 10th June, 1996 and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- ii. Forwarding a copy of the Preliminary Findings, all known interested parties were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter;
- iii. The Authority also forwarded a copy of the Preliminary Findings to the Embassy of the People's Republic of China (referred to as China PR hereinafter) in New Delhi with a request that the exporters and the other interested parties in China PR may be advised to furnish views on the Preliminary Findings:
- iv. In accordance to Rule 16 of the Rules supra, the essential facts/ basis considered for these findings were disclosed to all the known interested parties and comments were sought on the same, which have also been duly considered.

PETITIONER'S VIEWS

3. The petitioner in response to the Preliminary Findings made the following submissions: -

- a. The petitioner had requested for imposition of Anti-dumping Duty amounting to Rs. 5800/- per MT against which the Authority recommended provisional duty ranging between Rs. 1333/- to 1925/- only.
- b. The Authority should ensure that the landed price of DBM having MgO content greater than 92% is not less than the landed price of the reference grade DBM. A floor price should be fixed below which Chinese DBM of any quality should not be permitted to be imported into India.
- c. The reduction in Customs Duty should be considered for recommending definitive Anti-dumping Duty.

VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES:

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

a. On "Like article":

1. The petitioner has failed to clearly describe the product.
2. The conclusion arrived at by the Authority at para 11 of the preliminary findings about like article is erroneous.
3. DBM is a generic term and has different grades, each having a particular purpose and is not inter-changeable.
4. DBM having 85.89% MgO content is not imported by the members of IRMA.
5. The classification of DBM with reference to MgO content only is erroneous, other important factors such as Silica content and bulk density should also be considered. In view of this and non-availability of DBM with less than 4% Silica content, the Government of India had earlier permitted imports at concessional duty.
6. DBM produced in India has MgO content between 85-90% with very high impurities. Technological changes in steel and other industries require DBM of over 90% MgO content and very low impurities.
7. DBM having 90-92% MgO content and less than 4% Silica content is not produced in India. The product imported from China PR and that produced in India are not like articles. Anti-dumping Duty should not be imposed on DBM having MgO content 90-92%.

b. On Normal Value

1. Normal Value of DBM with 90% MgO content was RMB 426.67 per MT (or US \$ 40.64 per MT) on the basis of domestic prices prevailing in China PR,

and the same corresponds to FOBT (Free on Board Transfer) price of exports to India and the same is evidenced from an invoice raised in the China PR.

2. Fax message from Mineral Resources Company Ltd. shows that Normal Value in China during 1993-94 was US \$ 81 per MT as against Export Price to India ranging between US \$ 79-88.
3. Export Price from China PR to Egypt (which is not producing DBM) were also at the same price levels or lower compared to Export Price to India.
4. The cost of production cannot be constructed for China PR in any other surrogate Country due to the following reasons:
 - i. India cannot be considered as a reference country for working out Normal Value because of deficiencies in the nature of Magnesite deposit, quantum of overburden to be removed, closeness to surface, scale of production and market, and other inherent cost aspects in India and China. The disadvantage to India as compared to China PR works out to 250-300%.
 - ii. The manufacturing process in India and China are different.
 - iii. The overburden ratio in China PR is approx. 1 : 2.5 as against 1: 8/9 in India.
 - iv. Per capita production in China PR is much higher (212.5 MT) compared to India (12 MT).

c. On Export Price:

It is incorrect to work out FOB Export Price from CIF Export Price by deducting ocean freight as the basis and principles of the two are different. Further it is grossly incorrect to work out ex-works Export Price from China PR.

d. On injury:

The major issues with regard to the issue of material injury to the Domestic Industry are as under:

1. The petitioner has not disclosed its production of reference grade DBM It is difficult to comment on the injury suffered by the petitioner unless the production figures are made known.
2. The petitioner has failed to provide grade-wise installed capacity of its members.
3. Due to technological changes in the steel industry, demand for DBM having MgO content less than 90% is reducing.

e. On Casual Link:

There is no causal link between imports from China PR and injury the Domestic industry for the following reasons:

1. DBM being imported from China PR has MgO content 90% or above and therefore, cannot affect the Domestic Industry producing DBM having 85-89% MgO content.
2. Production of DBM having 90-92% MgO content in the Country in the Country is negligible.
3. Reduction in production for the Domestic industry was due to recession in the Steel industry and labour trouble in the mines.

f. On other issues:

1. Since DBM having MgO content of 90% and above is not available in the country, the user industry would be adversely affected with the imposition of Anti-dumping Duty.
2. Levy of Anti-dumping Duty is not proper in view of the liberalization policy of the Government.
3. DBM is being imported to cover the shortfalls in indigenous supplies as the indigenous sources have not been able to supply the ordered quantities.
4. All the Indian manufacturers have increased prices by about Rs. 1,000 per MT in the month of July, 96.
5. Although the product covered in the investigation relates to DBM having MgO content ranging between 85-92%. Govt. of India levied Anti-dumping Duty on all types of DBM, which was amended prospectively to cover only DBM with MgO content ranging between 85-92%.

EXAMINATION BY AUTHORITY

5. The submissions made by the petitioner and importers have been examined and considered by the Authority while arriving at these endings and, wherever appropriate, have been dealt hereinafter.

6. The Authority confirms, in the absence of any direct response from the exporters from China PR in the form and manner prescribed, having made these findings on the basis of the facts available to it as per rule 6(8) supra.

LIKE ARTICLES AND DOMESTIC INDUSTRY

7. Under Rule 2(d) “like article” means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence

of such an articles, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

8. The product under consideration which has been investigated for dumping has been defined in para 10 of the preliminary findings. Submissions have been made by the exporters/ importers that the goods produced by the domestic industry in India are not like articles as various important factors such as silica content, bulk density etc. have not been taken into consideration by the Authority while determining the scope of “like article” for the purpose of this investigation.

9. The Authority notes that the articles produced by the domestic industry have the characteristics closely resembling those of article under investigation and therefore the criteria prescribed in the definition under Rule 2(d) are adequately satisfied. It is not necessary that all characteristics features or properties of the product under consideration should be matched particularly in view of the fact that the articles imported from China PR have substituted the articles produced by the domestic industry both commercially and technically.

10. The Authority therefore confirms paras 9-13 of the Preliminary Findings relating to the definition of like articles and confirms that the reference grade DBM exported to India originating in or exported from China PR and produced by the Domestic Industry are like articles within the meaning of the rules supra.

NORMAL VALUE

11. Under Section 9A(1) (c) normal value in relation to an article means:

- i. the comparable price in the ordinary course of trade for the like article when meant for consumption in the exporting country on territory as determined in accordance with the rules made under sub-section (6) : or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory or when because of the particular market situation low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third counter as determined in accordance with the rules made under sub-section (6) ; or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative selling and general costs, and for profits as determined in accordance with the rules made under sub-section (6).

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

12. The Authority had sent exporters questionnaires to all the known exporters for the purpose of determination of normal value in terms of the section cited above. However, the Authority notes that none of the exporters from China PR has cooperated with the Authority and no information has been furnished in the form and manner prescribed. None of the exporters from China has also offered itself for verification by the Authority.

13. M/s. Sima Resources GmbH, an exporter from Germany (referred to as Sima, Resources hereinafter) has submitted relevant information to the Authority in the prescribed form and manner, Sima Resources has merely transshipped the goods originating from China PR and therefore the Normal Value has to be determined with reference to the country of origin i.e. China PR in terms of proviso to sub-section 1© of section 9A. It has submitted to a copy a price contract (in Chinese language) through its authorised agent M/s. Magus Marketing Private Ltd., Calcutta. The Authority observes that the invoice produced by the said exporter is totally incomprehensible and does not provide any indication whatsoever to enable the Authority to arrive at a comparable price in the ordinary course of trade in terms of clause (c)(i). Moreover, in view of the particular market situation in China PR its being a non-market economy and in the view of the non-availability of relevant information, the Authority has no option but to resort to clause (c)(ii) of section 9A for the determination of the Normal Value.

14. Under clause (c)(ii) of section 9A(i), the Authority has the clear option of resorting either to sub-clause (i)(a) or (ii) (bb), Sima Resources has supplied a copy of their proforma invoice for supply of DBM to Egypt. There is no other information or evidence made available to the Authority for determination of normal value under sub-clause (ii) (a). The Authority considers that the solitary proforma invoice can neither be considered as comparable nor representative price of the like article. Under the circumstances, the Authority considers it appropriate to determine the normal value in terms of sub-clause (ii) (b) on the basis of cost of production with appropriate adjustments.

15. The Authority conducted cost investigation on the premises of the two of the petitioner companies after preliminary determination and based on facts collected, normal value has been worked out. The Normal Value has been considered at US\$ 163 per MT. The Normal Value has been reduced compared to Preliminary Findings

as the cost of production constructed by the Authority for China PR has come down after full verification of the data furnished by the petitioner.

16. Except as detailed in the foregoing, the Authority confirms the paras 16 to 19 of the Preliminary Finding with regard to Normal Value of reference grade DBM from China PR.

EXPORT PRICE

17. Sima Resources filed response in the form and manner prescribed by the Authority. The Authority has therefore, worked out ex-works Export Price for Sima Resources on the basis of data is furnished by it. Since the exporter has furnished as purchase price ex-Bayuquan, the same have been treated as ex-works in the absence of further information with regard to the expenses upto the port.

18. The exporters other than Sima Resources have failed to furnish ex-works export price and in the absence of any co-operation from the exporters, The Authority notes that ex-works Export Price have to be worked on the basis of the difference in the FOB and CIF quotations, as furnished by the one of the importers. M/s. Burn Standard Company, in accordance with the principle of best available information. The Authority has treated FOB Export Price as ex-works Export Price in the absence of any evidence on the inland freight in China PR.

19. Except as detailed in the foregoing, the Authority confirms the paras 20 to 24 of the Preliminary Findings with regard to Export Price of reference grade DBM from China PR.

COMPARISON

20. The Authority confirms the paras 25 to 26 of the, preliminary findings with regard to comparison and export price and normal value.

INJURY

21. The Authority had disclosed, in sufficient detail, parameters (including production of reference grade DBM by the petitioner) relating to the material injury suffered by the Domestic Industry. The contention with regard to disclosure of reference grade DBM production figures is, therefore, not acceptable. The interested parties had the opportunity, to comment on the production figures disclosed by the Authority in the Preliminary Findings, but no such submissions were made.

22. The Authority has worked out the fair selling price in the Preliminary Findings at an optimum level of capacity utilizations, thus nullifying effects of declining demands, if any.

23. The Authority notes that the petitioner Companies were not required to furnish grade wise installed capacity of its members in the non-confidential version of the petition, as the product under investigation is the reference grade DBM and therefore, the petitioner was required to furnish details for the product under investigation as a whole. Moreover, the Authority had in the Preliminary Findings, disclosed in sufficient detail, factual information relating to capacity utilisation by the petitioner, which is directly related to installed capacity of the petitioner.

24. The Authority notes that the petitioners were not getting remunerative prices for their produce during the period of investigation, as detailed in the Preliminary Findings, and were forced to sell at prices much lower than the cost of production, which could have resulted in its inability to supply the ordered quantities. Moreover, inability to supply goods does not debar the petitioner from claiming relief under the rules.

25. The information relied upon by the Authority in paras 29 to 37 of Preliminary Findings with regard to the injury to the Domestic Industry has also not been controverted.

26. It is clarified that the Authority has not merely relied upon the submission of the petitioner regarding fair selling price. The Authority deputed a team consisting of Cost Accountant for on-the-spot investigation and has worked out, in detail, the fair selling price of reference grade DBM in India for the domestic industry. Since the same is based on confidential data furnished by the petitioner the Authority refrains from discussing the details.

27. After considering the arguments raised by the interested parties the Authority confirms paras 27 to 39 of the Preliminary Findings relating to injury to the domestic industry.

CAUSAL LINK

28. The Authority has considered imports of DBM having 85-92% MgO content and has excluded DBM having above 92% MgO content.

29. The Authority has considered production of reference grade DBM by the petitioner and the same is not negligible.

30. The Authority has worked out Fair selling price of the Domestic Industry and therefore, the effects of extraneous factors like recession in the Steel Industry and or labour trouble in the mines, if any, are nullified.

31. the information relied upon by the Authority in paras 29 to 37 of Preliminary Findings with regard to the injury to the Domestic Industry has also not been controverted.

32. The Authority after considering all related issues, confirms para 40 of the Preliminary Findings with regard to causal link between dumping of DBM from China PR and injury to the domestic industry.

INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

33. The increase in selling prices by DBM producers in the month of July 1996 is a factor beyond the scope of present investigation, as the period of investigation considered by the Authority is 1.4.93 to 31.3.94. However, in case the facts and circumstances have materially changed after the period of investigation, an interested party can approach the Authority with a review request.

34. The Authority had recommended in its Preliminary Findings imposition of anti dumping duty on DBM having MgO content between 85-92% and not on all type of DBM. The Authority has considered imports of reference grade DBM and not grade-wise imports. Further more injury to the domestic industry has been assessed for the reference grade DBM.

35. It is reiterated that the current rate of customs duty change in selling price of reference grade DBM by petitioner and other changes consequent to the investigation period are outside the scope of this investigation. However, any party to the investigation may request the Authority for review of the present findings, in accordance with the Rules supra.

36. The purpose of anti-dumping duties as detailed in paras 41 to of the Preliminary Findings, is to remove dumping which has caused injury to the domestic industry and to re-establish a situation of fair competition and not to restrain imports from any specific source.

FINAL FINDINGS

37. The Authority has, after considering the foregoing come to the conclusion that:

- i. The reference grade DBM of Chinese origin has been exported to India below its normal value.
- ii. The domestic industry has suffered material injury.
- iii. Injury has been caused to the Domestic Industry by imports from China PR

38. The Authority therefore, confirms paras 47 to 49 of the Preliminary Findings and recommends the imposition of final Anti-Dumping Duties on all imports of reference grade DBM originating in or exported from China PR at the rates specified below:

Name of the Exporter	Amount of Duty (Rs. per MT)
China Metal Imports and Exports Corpn, China	705
Sima Resources GmbH, Germany	1264
China Soungang International Trade and Engg. Corpn., China	1150
Exporter other than above	1264

39. Subject to above, the authority confirms the preliminary findings notified on 10.6.1996.

DIPAK CHATTERJEE,
Designated Authority