

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 18th February, 1994

Subject:- Anti dumping investigation concerning imports of Bisphenol-A originating from Japan- Final Findings.

No. 14/73/92-TPA- Having regard to the Customs Tariff Act, 1975, as amended in 1982 and the Rules, 1985. Made thereunder, after consultation with the administrative Ministry, namely, the Ministry of Chemicals and Fertilizers.

PROVISION MEASURES

1. The Designated Authority as defined under the Rules (hereinafter referred to as Authority notified preliminary findings in the anti-dumping investigation concerning imports of Bisphenol-A hereinafter referred to as BPA) originating from Japan vide notification No. 14/73/92-TPD dated the 10th August, 1993

PROCEDURE

2. The authority addressed a letter on 10th August, 1993 to M/s. Mitsui & Co. Ltd. (respondent); M/s. Kesar Petroproducts Ltd., (Petitioner) and other interested parties to furnish their views on the preliminary findings before final determination is made in the investigation. They were also requested to indicate their willingness for on site verification of the data furnished. A note was addressed to Embassy of Japan, New Delhi, forwarding a copy of the preliminary findings with the request that other interested parties may be advised to furnish their views on the preliminary findings to the authority indicating their willingness for on site verification on the comments so furnished.
3. The authority has received views on the preliminary findings from the respondent, petitioner and importers of the product in India, except the respondent no other exporter from Japan has furnished views on the preliminary findings.
4. The respondent has made the following points in the response to the preliminary findings:-
 - i. During the period of investigation i.e. January – July, 1992 prices in any export market were more or less the same at around US Dollar 900 MT/ C&F/CIF

destinations. The respondent referred to the evidence submitted by it regarding its export to third country at prices lower than to India during January- July, 1992.

- ii. Japan has imports demand from USA, France and Republic of Korea at CIF prices varying US dollar 900-1000MT CIF Japan. Japanese producers have never claimed on this fact as an unhealthy competition in Japanese domestic market on this account caused by imported Bisphenol-A.
- iii. The respondent desired to know how the average normal value and export price were determined.
 - i. The respondent desired to know how the comparison between "normal value" and 'export price' was made i.e. difference in exchange rate, tax, volume of the business, delivery point for the comparison.
 - ii. The petitioner is exporting Bisphenol-A at far lower price than the price at which they are settling in Indian domestic market.
 - iii. It is not only Japan which sold Bisphenol-A at lower price but other countries also.
 - iv. The respondent thought that the petitioner's Bisphenol-A was not approved by major users in India.
 - v. The petitioner's installed capacity is of 5000 MT against domestic demand of 2000 MT per annum. The share of Japanese Bisphenol-A is between 22 per cent – 63 per cent in the Indian market. Thus imposition of anti-dumping duty on imports from Japan will protect approximately 450-1260 MT per year out of the total capacity of 5000 MT per annum. Hence unfavourable results in the petitioner's capacity utilisation, financial return from investment are inevitable.
 - vi. Increase in the share of Japan in the Indian Bisphenol-A market, commencement of production by petitioner and fall in prices are totally independent and should be regarded as coincidence.
 - vii. It is generally understood word-wise that minimum economic capacity of a Bisphenol-A plant is 50,000 MT per annum to survive. It is advisable to lower import duty of phenol before considering higher import duty on Bisphenol-A.
 - viii. The market size of Epoxy and PC resins in India requiring Bisphenol-A as raw material is far bigger than the market size of Bisphenol-A. Hence general interest of Indian industry should be considered to project Epoxy resin market and establish the coming PCV design market while not to protect smaller Bisphenol-A market itself.
 - ix. The preliminary finding recommending anti-dumping duty is discriminatory in as much as imports are also taking place from third countries is India.
- 5. The petitioner in its response to the preliminary finding requested for early imposition of anti-dumping duty.

6. The authority has received views, from four importers. One importer has adduced the reason for the decline in prices in respect of imports from Japan to the change in the exchange rate between yen and US Dollar during the last 2-3 years. The importer has also referred to the interest of user industry. Another importer has reiterated the points made by the respondent and also commented on the monopoly position of the petitioner while referring to the interest of the Epoxy Resin industry in India. The importer has stated that the quality of the product by the petitioner is yet to standardize in regard to colour, free phenol content, iron content, moisture content, and isomers content. The points raised by the remaining two importers are in the nature of the reiteration of some of the points made by the respondent.
7. The authority has examined the points made by the respondent and the producers. These are dealt below in serialim: -
 - i. The respondent referred to the ruling international price, Determination of dumping is made by making a fair comparison between export price and domestic price at the same level of trade after making required adjustments in differences and terms and conditions of the two sales. Hence the argument that the import price is in accordance with the ruling international price during the period of investigation is not a relevant factor in making determination of dumping.
 - ii. The respondent has referred to import demand in Japan and the import prices. As mentioned in sub-para (i) above, it is not the relevant factor in making determination of dumping.

(iii) &(iv) The respondent desired to know how the normal value and export price were determined and now the two were compared by taking into account the difference in exchange rate. Tax, volume of the business, delivery point for the comparison. The authority convened a disclosure meeting on 22nd November, 1993. The respondent was apprised of the meeting and requested to indicate their participation. The respondent in their reply stated that they were physically not available and they considered that their points had been explained in their earlier letters. The respondent also indicated that they had decided not to attend the meeting and would wait for final determination and requested to allow their New Delhi Office to attend the meeting as an observer. Their representatives were allowed to attend the disclosure meeting on 22nd November, 1993 as observer.

The respondent in their response to the questionnaire sent to it after initiation of investigation and in their response to the preliminary finding furnished the export price of Bisphenol-A exported by it which actually is lower than the export price determined in the preliminary finding. On the basis of import data compiled by the Directorate General of Commercial Intelligence and Statistics, Calcutta and after

making necessary adjustment as per paragraph 8 below the authority has determined the export price has been of these finding. The normal value has been determined taking into account the statement made by the respondent in the public hearing on 15th February, 1993 and on the basis of evidence submitted by it in the form of invoices of domestic sales during the period of investigation. Thus that normal value has been determined based on these invoice after making the adjustment claimed by the respondent. The normal value finally determined on these basis is indicated in para 10 of these findings.

- i. The argument adduced by the respondent that the petitioner is exporting Bisphenol-A at a price far lower than is selling price in the Indian domestic market is not a factor relevant to the investigation.
- ii. The respondent has stated that it was not only Japan but also other countries that were selling Bisphenol-A at lower price. Anti-dumping investigation was initiated in August, 1992. During April, 1990-March, 1991 total import of Bisphenol-A in India was 1983 MT of which 820 MT was accounted for by Japan. Other major suppliers were Brazil, USA and France accounting for import of 531 MT, 209 MT and 154 MT respectively. There were no imports from Brazil from April, 1991 onwards, Imports from the other two suppliers were at a much lower scale and there was an increase in the import price of these imports. The authority is, therefore, of the opinion that there is no discrimination in initiating anti-dumping investigation in respect of imports originating from Japan.
- iii. The respondent thought that the quality of the product manufactured by petitioner was not approved by major users in India. The major users in their response to the preliminary finding and other communications, excepting one importer, did not raise the question of quality. The one producer thought but did not adduce the specific deficiencies in regard to various contents of the product except making a general comment thereon.
- iv. The respondent has argued that being an uneconomical size of plant and domestic demand accounting for 40 per cent of the capacity of the plant the petitioner will continue to face unfavorable results in capacity utilisation and financial returns. The authority has given careful consideration to these assertions. The factors of production differ widely in Japan and India. The authority is satisfied that material retardation of the domestic industry is attributable to the declining price of like product originating from Japan than to the size of the plant commissioned by the petitioner.
- v. The respondent has argued that the increase in share of Japan in import of BPA in India; commencement of production by the petitioner and fall in prices are totally independent and should be regarded as coincidence. The respondent in its response to the preliminary finding had stated that the share of the Japanese

Bisphenol-A has gone up because of its superior and stable quality. They added that during 1991-92 a BPA unit of 145000MT per year started up in Japan. The argument that Japanese Bisphenol-A is of superior and stable quality is not reflected in the comparison of prices of Bisphenol-A imported from different source. The import price is the lowest in respect of imports from Japan vis-à-vis other suppliers.

- vi. The issue of economic size of plant is dealt with in sub-para (viii) above. The other point regarding lowering of import duty on phenol is not a subject matter of anti-dumping investigation. Anti-dumping investigation is conducted taking into account the policy framework invoke during the relevant period.
- vii. Imposition of anti-dumping duty on a product though may have its impact on the user industries, yet the object of anti-dumping duty is to remove the injury is the form of material retardation to the domestic industry caused by dumped imports which is in the long term interest of the domestic industry of like product and the user industry as well.
- viii. This point is covered in sub-para (vi) above.

EXPORT PRICE

- 8. The respondent stated that export price for BPA was US \$ 900 MT CIF India. The authority has determined export price on the basis of total imports from Japan after making necessary adjustments. The export price has been determined on the weighted average basis. Adjustments for ocean freight, insurance, commission and other costs claimed by the respondent has been made. The export price so determined is higher than one given by the respondent which was inclusive of ocean freight ect. For which adjustment has been made.

NORMAL VALUE

- 9. The normal value has been determined on the basis of invoices supplied by the respondent for supplier in the domestic market of Japan and after making necessary adjustments on account of local cost, tax etc. as claimed by the respondent in the invoices supplied by them to the authority. The rate of exchange has been applied between yen and \$ as indicated by the respondent.

FINAL FINDING

- 10. Adjustments have been made on account of height, local cost, insurance, tax and other costs to compare the export price and normal value at the same level of trade. The authority finally determines the export price; normal value; and

margin of dumping in respect of import of Bisphenol-A exported by Mitsui & Co., Japan as under: -

Export price US \$ 874

Normal Value US \$ 1111

Margin of Dumping 23.0 per cent.

The above determination applies equally to import of BPA in India by all other manufacturers/exporters from Japan.

11. The authority confirms, subject to above, the preliminary findings in regard to dumping margin and injury to the domestic industry in the form of material retardation caused by dumped imports originating from Japan to the domestic industry in Republic of India.

J.K. BAGCHI,
Designated Authority and Addl. Secy.