

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 18th March, 1997

FINAL FINDINGS

Subject: Anti-Dumping investigation concerning imports of Bisphenol-A originating in or exported from USA-Final Findings.

F. No. 15/5/95/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.15/5/957/ADD dated the 25th Oct., 1996 and requested the interested parties to make their view 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 United States of America (referred to as USA hereinafter) in New Delhi with a request that the exporters and other interested parties may be advised to furnish views on the Preliminary findings.
- iv. The Authority has concluded the investigation within the extended time limit allowed by the central Government.
- v. The Authority held a public hearing on 10.1.97 to hear views orally. All the parties attending the public hearing were requested to file written submission of the views expressed orally. The parties were advised to collect copy of the views expressed by the opposing parties and were requested to offer their rebuttals.
- vi. In accordance to Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to all known interested parties and comments received on the same have also been duly considered in these findings.

DOMESTIC INDUSTRY'S VIEWS

3. The views expressed by M/s. Kesar Petroproducts Ltd. (referred to as Kesar hereinafter) in response to the Preliminary Findings are briefly as follows:

- i. As a result of the imposition of the Anti Dumping Duty on imports from Japan, Russia and Brazil, USA started dumping Bisphenol-A in the absence of any international competition in India.
- ii. Kesar has furnished detailed working of injury margin, which comes to Rs. 31,362 per MT and therefore the anti dumping duty should be raised to this level.
- iii. Cumulative injury was caused to the Domestic industry from the Imports from Russia, Brazil and USA.
- iv. Since the investigation against imports from Russia and Brazil already been concluded by the Authority, the data as to reasonable selling price of Kesar have all been finally determined by the Authority, on the basis of which the Authority should levy duty to the extent of Rs. 31362 per MT.

VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

4. None of the exporters expresses any view on the Preliminary Findings announced by the Authority. One company in USA, M/s. First Intercontinental Corporation has, however, written a letter addressed to the Authority, copy of which has been enclosed by the importers. The company has stated that it shall not export Bisphenol-A to India at prices lower than prevailing in USA on a delivered basis for similar type/volume. It has further stated that it has been handling export marketing in India for a producer in USA, M/s. Aristech Chemical Company and the export transactions completed by it in India were comparable in price to the delivered price to local customers in USA. The company requested exemption from proposed levy of Anti Dumping Duty.

VIEWS OF THE IMPORTERS AND OTHER INTERESTED PARTIES

5. M/s. Cibatul Ltd. is the only importer of Bisphenol-A during the period of investigation who has responded to the Authority. A number of other parties have also, however, participated in the investigations and have expressed their views. The view expressed by the importer and other interested parties are briefly as under.

ON NORMAL VALUE

- i. The prices submitted by the Indian Embassy in USA are on the basis of distributor's pricing for only one of the producers in USA and was effective in the post investigation period.
- ii. The Chemical Marketing Reporter (CMR) prices are indicative prices. The prices at which the business is transacted is more relevant and the investigation fails to conclude whether the CMR prices are sample prices or for industrial use. The investigation fails to conclude if any business was transacted at US\$ 3.6 per kg. in USA.
- iii. The Authority could not generate required response and obtain necessary information from the exporters.
- iv. The Indian market may be insignificant to the exporters to respond to the Authority. Discontinuation of imports from USA would severely affect the interests of the user industry.
- v. It is wrong to conclude that none of the other importers co-operated with the Authority, as observed in the preliminary findings. The importers could not, despite their best efforts, collect information on the correctness of the published information.
- vi. The Authority should consider the Domestic industry/s actual Export Price of Bisphenol-A to arrive at dumping and material injury.
- vii. Prices received from Independent Chemical Information service (ICIS/LOR) shows that the price ruling during the investigation period in European market were 1.45 DM to 1.70 DM, establishing that the international market ruling during that period was not as stated by the Authority.

ON EXPORT PRICE

- i. It is incorrect to presume that the Export Price from USA was the price at which Cibatul imported the material. There has been one stray deal of one export to single importer of offspec Bisphenol-A in jumbo pack of 1000 kgs.
- ii. The Export Price of Kesar to various countries should also have been examined by the Authority.

ON COMPARISON OF NORMAL VALUE AND EXPORT PRICE

- i. The imports of Bisphenol-A by Cibatul do not qualify inclusion in the import quantum. If these are excluded there are insignificant imports of Bisphenol-A from USA, which do not account for 2% of total consumption.

ON INJURY

- i. The increase in production, sales volume and prices of Kesar, which is a prime consideration for assessment of injury, does not indicate that the Domestic Industry has suffered material injury.
- ii. The imports of Bisphenol-A have not increased to more than three-fold, as observed by the Authority, if "one stray case" of 300 MT of imports is excluded.
- iii. Capacity utilisation of the Domestic Industry has been as high as 84% - 87% for three years ending 1995-96. The production cost, however, does not seem to be proportionate to the such high capacity utilisation. This shows that the Domestic Industry has uneconomical plant size, inferior technology and high project cost;
- iv. The Phenol and Acetone consumption of the Domestic Industry, as shown in the Balance Sheet, is much higher than the consumptions published in the prospectus. The Phenol consumption has significantly increased over the years, in spite of increase in the capacity utilisation.
- v. Increase in selling price for Kesar was more than increase in raw material costs in 1995-96 as compared to the previous period, resulting in better contributions to Kesar.
- vi. Since the Authority has concluded that injury ha been cumulatively caused by the imports from USA alongwith imports from Russia and Brazil and the Authority already recommended Anti Dumping Duties against imports from Russia and Brazil, the impact that can be given on the imports from USA would be only marginally high. If the injury caused from imports from Russia and Brazil is removed, there is no base of injury due to imports from USA.
- vii. Kesar has made a loss of Rs. 8.88 lacs against job work done by it for a local party.
- viii. Kesar is making profit before interest.

OTHER ISSUES

- i. The Authority has considered 18th months to cover all imports from various countries including USA
- ii. It is unfair that the benefit of non-cooperation by the exporters is given to the domestic producer of Bisphenol-A.

EXAMINATION BY AUTHORITY

6. The submissions made by Kesar, the importers and other interested parties have been examined and considered by the Authority while arriving at these findings and, wherever appropriate, have been dealt hereinafter. The comments made subsequent to

the disclosure of the essential facts have also been appropriately dealt with hereinafter.

7. The Authority confirms, in the absence of any direct response from the exporters 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

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

9. The product under consideration which has been investigated for dumping has been defined in para 9 of the preliminary findings, which is Bisphenol-A.

10. A number of parties have raised arguments that the Bisphenol-A imported by Cibatul was off-spec and sub-standard material: The Authority, however, finds that the off spec material purchased by Cibatul was consumed for the similar purpose for which material produced by Kesar was meant for. The material imported by Cibatul has clearly substituted the material produced and sold by Kesar-both commercially and technically. The Authority, therefore, notes that the articles produced by the domestic industry had characteristics closely resembling those of article under investigation and therefore the criteria prescribed in the definition under rule 2(d) are adequately satisfied.

11. The Authority confirms para 9 of the Preliminary Findings and confirms that Bisphenol-A produced by the Domestic Industry was like article to the Bisphenol-A exported to India originating in or exported from USA within the meaning of the rules supra.

NORMAL VALUE

12. Under Section 9A(1)©, normal value in relation to an article means:

- i. the comparable price, in the ordinary course of trade, for the like article which meant for consumption in the exporting country or 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 or 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 country 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 alongwith 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 cost of import of the article from a country other than the country of origin and where the articles has been merely transhipped through the country of export or such article is not produced in the country of export or there is not comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

13. The Authority had sent exporters questionnaire 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 producers/exporters from USA has co-operated with the Authority and no information has been furnished in the form and manner prescribed. None of the producers/exporters has also offered itself for verification by the Authority.

14. The Authority appreciates that the prices indicated in the Chemical Marketing Reporter may not reflect the prices at which business was transacted in USA. However, the exporters/producers have failed to furnish any information inspite of repeated opportunities provided to them, nor have the importers furnished any evidence with regard to the prevailing prices in the domestic market in USA. Moreover, the importers themselves have agreed that the prices indicated in the CMR are in fact indicative of the prices prevailing in the domestic market.

15. The prices indicated in ICIS/LOR are irrelevant, as the same do not indicate the prices prevailing in the USA market. Ruling international prices are irrelevant to determine normal value for an exporter/producer in USA.

16. In the light of foregoing the Authority considers it appropriate to determine normal value in accordance with the prices published in CMR, with appropriate adjustments for levels of trade.

17. Except as detailed in foregoing, the Authority confirms the paras 12 to 17 of the preliminary findings with regard to Normal Value of Bisphenol-A in USA.

EXPORT PRICE

18. The exporters have failed to furnish ex-works export price. All those who imported Bisphenol-A during the period have not furnished factual information to the Authority, in spite of repeated opportunities provided by the Authority. Under the circumstances the export price has to be worked out on the basis of information made available by Cibatul, other interested parties and information available with the Authority.

19. The Authority notes that Cibatul and other interested parties agreed that there were only two import transactions of import of Bisphenol-A during the investigation period:

- * 300 MT off-spec Bisphenol-A imported by Cibatul in Jumbo packing in single deal;
- * 8.040 MT Bisphenol-A imported by Uttamlal.

20. The Authority recognizes that the material imported by Cibatul was off-spec, in jumbo packing size and was imported in bulk, through single deal. Therefore, the price at which Cibatul imported Bisphenol –A did not reflect the correct export price. However, there is another import transaction in small volume of good quality Bisphenol-A. Moreover, Cibatul has also confirmed that there has been import of good quality Bisphenol-A at the price of US\$ 770 to 1067 per MT, based on imports by other importers. However, since Cibatul has reported transactions beyond the period of investigation also the export price has been worked out based on the import during the period of investigation, which was at US\$ 770. This would be a reasonable basis of the export price of good quality Bisphenol-A imported during the period. The CIF export price has been accordingly arrived at US\$770 per MT.

21. The CIF export price has been adjusted for ocean insurance, ocean freight and other charges incurred exclusively on exports by the exporters from USA on the basis of best information available in accordance with rule 6(8) in view of non-cooperation by the exporters.

22. Except as detailed in the foregoing, the Authority confirmed the paras 18 to 26 of the Preliminary Findings with regard to export price of Bisphenol-A.

COMPARISON

23. The Authority worked out normal value of good quality Bisphenol-A in the Preliminary Findings. The issue of off-spec is relevant for the purpose of

determination of export price only if the export price of good quality Bisphenol-A is not available. Since the price at which Cibatul imported Bisphenol-A was an export price of off-spec material and Cibatul itself had furnished price of good quality Bisphenol-A, the price of good quality Bisphenol-A imported in India was considered in the preliminary findings. This has been very clearly brought out in the preliminary findings (para 24 of the findings). The observations of the importers that the Authority has compared normal value with export price of off-spec Bisphenol-A imported during the period is, therefore, incorrect. The Authority also notes that the volume of imports is immaterial for determination of export price and comparison of the same with normal value to arrive at the dumping margin.

24. The authority confirms the paras 27 to 28 of the preliminary findings with regard to comparison of export price and normal value.

INJURY

25. The off-spec Bisphenol-A imported by Cibatul was consumed by it for the purpose for which it would have purchased and consumed good quality Bisphenol-A. The effect of the import was, therefore, to off-set the demand of good quality Bisphenol-A in India, whether supplied by Kesar or overseas sources. Since the off-spec material imported by Cibatul has off-set the market of good quality Bisphenol-A, the importers have grossly erred in disregarding the same while arguing that the volume of imports from USA was less than 2% of total consumption. The off-spec material imported by Cibatul can neither be considered as a stray deal nor negligible, given the volume of the material imported by Cibatul its requirements of Bisphenol-A and the demand of the product in India. The imports of off-spec material made by Cibatul appears to be a conscious business decision, with a view of obtain cheaper product, compromising on quality, which has resulted in off-setting the demand of the product, which has resulted in off-setting the demand of the product from other foreign or Indian sources by the proportionate quantity. There is, therefore, no ground in disregarding these significant imports. When these imports are considered, the volume of imports from USA is more than de-minimum limits.

26. Production, capacity utilisation, sales, selling prices of Kesar do show improvement. However, it is found as brought out in para 36 of the preliminary findings, that that Kesar had not been able to realise its price and was forced to sell below its cost of production and reasonable profits. No business Organisation can continue to produce and sell its products at prices below fair price for a considerable period. Price is one of the most important factors in determining injury to Keser and it is not disputed that Kesar has been prevented from recovering its cost of production and earn reasonable profit.

27. The importers have grossly erred in ignoring the imports made by Cibatul of while holding that the imports have not significantly increased. The fact is that the imports by Citabul of off-spec material resulted in loss of market for Kesar and the material imported substituted good quality Bisphenol-A.

28. The observations of the importers with regard cost of production and raw materials consumption inefficacies are incorrect. The Authority has not allowed actual consumption of raw material by Kesar while arriving at fair swelling price. As per the Generally Accepted Accounting Principles and as per the requirements of the Companies Act, Kesar has shown its gross consumption of raw material in the Balance Sheet, regardless of the fact whether the same is for production of the end product or for other business purposes, such as direct sales. In any event, since the Authority has not allowed the consumption claimed by Keser or consumption appearing in the Balance Sheets, the averments deserve to be disregarded.

29. Findings of the Authority with regard to injury to Kesar from imports from Russia, Brazil and USA on cumulative basis is in accordance with the rules. The findings are with regard to the material injury to the Domestic industry. The importers have erred in correlating the same with the extent of injury suffered by Kesar while holding that the Authority has already allowed full injury suffered by Kesar while recommending Anti Dumping Duties in respect of imports from Russia and Brazil. Profit before interest made by Kesar does not reveal anything about the material injury to the Domestic Industry. The fact of sales below full cost of production and reasonable profit only is relevant, which is, which is un-controverted.

30. Loss made by Kesar from job work does not advance any argument. The company might have tried to keep its capacity utilisation better by utilizing capacity available.

31. It is clarified that the Authority has not merely relied upon the submissions of Kesar while working out fair selling price. The Authority deputed a team for on-the-spot investigation and has worked out, in detail, fair selling price of Bisphenol-A 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.

32. After considering the arguments raised by the interested parties the Authority confirms paras 29 to 41 of the Preliminary Findings relating to injury to the domestic industry.

CAUSAL LINK

33. The Authority notes that the issues such as improper plant size and locational disadvantages have been raised by a number of interested parties. However, since the

fair selling price has been worked out on the basis of normative value, injury to the domestic industry on account of other factors has been nullified.

34. The Authority after considering all related issues, confirms paras 42 and 43 of the Preliminary Findings with regard to causal link between dumping of Bisphenol-A originating from USA and material injury to the domestic industry.

INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

35. The Authority has considered information pertaining to the period of investigation only and has not relied upon any information for the 18 months, as referred to by Cibatul.

36. The Authority has not intended to extend benefit of non-cooperation from the exporters to Kesar. In view of non-cooperation from the exporters, the Authority is left with no other option but to resort to the best information available.

37. The purpose of imposition of duty is not to restrict imports from a particular source. The importers could still maintain two or more sources of their choice. The contention of the importers on this account that imposition of Anti Dumping Duty may reduce sources of supplies is incorrect and misleading.

38. The current rate of customs duty, changes in selling price of Bisphenol-A and any other change subsequent 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.

39. The issue of Kesar being the single producer is also irrelevant in the present proceedings as the right of a single producer cannot be restricted under the Anti-Dumping Act, so long as the petitioner satisfies the criterion of Domestic Industry. Moreover, it observed that the domestic producers are facing direct competition from imports of the subject goods from various sources and they are not in a position to dictate or manipulate the prices or the market of the product in the Indian market. Moreover the purpose of anti-dumping duties, as detailed in para 44 to of the Preliminary Finding, is to remove dumping which has caused injury to the domestic industry and re-establish a situation of fair competition and not to restrain imports from any specific source. The current national and international prices of Bisphenol-A or export price of Kesar are irrelevant for the present investigation.

40. Since first Intercontinental Corpn. Has not exported Bisphenol-A to India during the investigation period, it may apply to the Authority for exclusion in accordance with rule 22 supra.

41. Except as detailed in the foregoing, the Authority confirms the paras 44 to 49 of the preliminary findings.

FINAL FINDINGS

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

- i. Bisphenol-A originating in or exported from USA has been exported to India below its normal value.
- ii. the domestic industry has suffered material injury.
- iii. the injury has been caused to the Domestic Industry by the exports originating in or exported from USA.

43. The Authority therefore, confirms paras 50 to 52 of the preliminary findings and recommends impositions of final Anti-Dumping Duties on all imports of Bisphenol-A originating in or exported from USA at the rates specified below:

Name of the Exporter	Amount of Duty (Rs. per MT)
Mitsui & Company (USA) Inc.	10,000
Exporter other than above	10,000

44. Subject to above, the Authority confirms the preliminary findings dated 25.10.1996.

45. An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, supra.

DIPAK CHATTERJEE,
Designated Authority