

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 22nd January, 1999

FINAL FINDINGS

Subject 0: Anti dumping investigation concerning import of calcium carbide from the People's Republic of China and Romania – Final Findings.

27/1/97-ADD- Having regard to the Customs Tariff Act, 1975, as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for determination of Injury) Rules, 1995- thereof;

A. PROCEDURE

1. The procedure described below

- a. The Designated Authority (hereinafter also referred to as the Authority notified preliminary findings vide notification dated the 24.8.98 with regard to anti-dumping investigation concerning import of calcium carbide from the People's Republic of China (also referred to as China and China PR hereafter, and Romania and requested the interested parties to make their views known in writing within forty days from the date of its publication.
- b. 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 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 People's Republic of China and Romania 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 13.11.98. All parties presenting views orally were requested to file written submission 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 evidence 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 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 Rules 16 of the Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received have been duly considered in these findings.
- h. **** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

B. PRODUCT UNDER CONSIDERATION

2. The product considered in this notification for the purpose of present investigation is calcium carbide of all sizes, Calcium carbide is one of the basic industrial chemicals for manufacture of wide range of Acetylene based chemicals. The basic raw materials used in manufacture of calcium carbide are limestone and coal/coke. Calcium carbide is classified under Custom Code 28.49 (which reads a carbides) of Customs Tariff Act.

C. LIKR ARTICLE

3. In the preliminary findings it was held that Authority considered factors such as physical characteristics, manufacturing process and technology functions and uses, product specification and pricing, distribution and tariff classification of goods in order to establish whether the calcium carbide produced by domestic industry is a Like Article to the calcium carbide exported from said countries. It was further held that calcium carbide produced by the domestic industry is substitutable by calcium carbide imported from China and Romania both commercially and technically and thus a Like Article to the product under consideration.

Argument by Importers

4. It is argued by the importers that calcium carbide produced by domestic industry is though technically substitutable but is nor commercially substitutable as its gas yield (litres per kg) is low. It is claimed that gas yield in the case of Tecil carbide is in the range of 270 Ltrs/Kg while in the case of imported calcium carbide the gas yield range is from 305-315 Ltrs/Kg.

Authority Position

5. The Authority observes that the above arguments is not substantiated with evidence. Moreover it has not been disputed that imported calcium carbide and calcium carbide produced by domestic industry do not have characteristics closely resembling those of the articles under investigation. Mere difference in gas yield, if any, of imported calcium carbide and calcium carbide manufactured by domestic industry do not imply differences in the product under investigation. The Authority therefore, holds that calcium carbide produced by the domestic industry is a Like Article to product under consideration

D. DOMESTIC INDUSTRY

6. It was held in the preliminary findings that the petitioner (excluding Panyam Cement who is an importer of Calcium Carbide during the period of investigation) accounts for more than 25% of domestic production and therefore has a standing to file a petition on behalf of domestic industry under the rules.

Arguments raised by Importers

7. It is argued by the importers that preliminary findings ignore several other small producer of Calcium Carbide whose existence is acknowledged by Designated Authority and petitioner. It is also stated by importers that M/s. DCM Shri Ram who were listed as producer for captive consumption during the period of investigation have not produced any quantity of Calcium Carbide as per their balance sheet and thus the figures relied upon by Designated Authority are not accurate. In addition Tecil, Birla and Panyam are producing for captive consumption. A large quantity of Calcium Carbide being produced by small scale industries has been left out of these proceedings. Calculated on these facts, the petitioner accounts for only 31.6 % of the total domestic industry. Without ascertaining the stand of over 68% of the remaining industry, the petitioner does not meet the condition required for the initiation and accordingly be void ab-initio.

Authority Position

8. The Authority has the information made available by department of Chemical and Petrochemical on the total production of Calcium Carbide in India. It was reported therein that there are six units of Calcium Carbide. Out of six, four are already named as petitioner (viz. ICML, Panyam, Tecil and Birla Corp) and other are M/s. Shri Ram Fertilizer & Chemical and M/s UP carbide and chemical.

9. Regarding the claim of the importers that preliminary findings ignore other small producer of calcium carbide and that large quantity of calcium carbide being produced by small scale industries has been left out, the Authority notes that the interested

parties have neither given the name and address of small scale producers nor the quantum of production of calcium carbide by such small scale producers. While going through the responses to questionnaire filed by the importers, the Authority could not find the name of any major producer of calcium carbide who had supplied manufacturer had responded to Authority regarding support or opposition during the investigation except to the extent specified in the preliminary findings. Therefore the Authority note that this claim of the importer is not substantiated.

10. The Authority observes that the argument of imports that Shri am Fertilizer is not producing Calcium Carbide is factually incorrect. It is confirmed by M/s. Shri Ram Vinyl & Chemical Industries (A division of DCM Shri Ram consolidated Ltd.) that their installed capacity is 56100 Tonnes and they produced Calcium Carbide in the year 1996 and 1997 for captive consumption only. The department of Chemical & Petrochemical has also confirmed that DCM Shriram is producing Calcium Carbide during the period of investigation.

11. An importer has argued that M/s. ICML (a petitioner) and M/s. Chemplast (an importer) are related, as the Chairman of India Cement Ltd. is also an executive vice President of Chemplast, and the Managing Director of India Cement Ltd. is a Director on the Board of Chemplast. Thus they are related and therefore ICML be disqualified from being a petitioner.

Authority's Position

12. The Authority observes that as per rules, the procedures shall be deemed to be related to exporters or importers only if:

- a. One of them directly or indirectly controls the other or
- b. Both of them are directly or indirectly controlled by a third person or
- c. Together they directly or indirectly control a third person

The Authority observes that importer has not demonstrated and established that either Chemplast controls ICML or ICML controls Chemplast. Also it is neither established that both of them are directly or indirectly controlled by a third person nor that together they directly or indirectly control a third person. Two companies can not be stated to related to each other merely on the ground that they have a common executive or direct. To demonstrate that two companies are related, any of the three criteria state above should be fulfilled which is lacking in this case and thus these case and thus two companies can not be stated to be related to each other

13. Moreover, M/s. Chemplast Sanmar Ltd., has clarified that this arguments/statement was not made by M/s. Chemplast Sanmar Ltd.

14. In view of this, the Authority hold that petitioner accounts for more than 25% of domestic production and therefore have a standing to file the petitioner on behalf of domestic industry under the rules.

E. DUMPING

15. The rules relating to dumping and claims of various exporters have already been discussed in the preliminary findings. The Authority notes that none of the exporters from China and /or Romania has furnished further information or disputed the dumping margins calculated by Authority in the preliminary findings.

Importer's Argument

16. The importers have furnished copy of few invoices by Chinese exporters and by exporters from Romania, which are stated to be domestic invoices and claimed the normal value in China and Romania on the basis of these invoice. Importer have also furnished copies of the local Chinese trade journal- China Chemical Reporter (CCR) to show the domestic price of Calcium Carbide prevailing in China during the period of investigation. The importer has also estimated the cost of Calcium Carbide in China and requested that Authority should adopt the same in case Designated Authority chooses to construct the normal value.

Authority Position

17. The Authority observes that none of the exporters from China and/or Romania has neither responded to the preliminary findings nor 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 hearings. In the case of Romania, exporters have not provided further information to dentine the normal value although they have claimed that there is no dumping. The Authority can not determine the normal value on the basis of a few invoices or on the basis of trade journals wherein it is not clear whether the prices at the point of sale are of producer or traders, whether they are at ex-factory level or otherwise, what is the credit period involved, what are the level and terms of trade and whether they are in the ordinary course of trade or not. To this extent the Authority consider the information, as incomplete therefore normal value can be determined on the basis of incomplete information. Regarding the cost of Calcium Carbide estimated by importers, the Authority finds that the are estimates only with no authenticity from the producers in China. The Authority considered the cost estimates so submitted as incomplete and unauthentic information and therefore that information can not be taken into account for computation of normal value.

18. In view of above, the Authority holds that exporters from China and Romania have not co-operated in the investigation by not providing complete and authentic information.

19. Regarding the export price, there is no argument by any interested parties.

20. Thus, the Authority confirms the dumping margin as calculated in preliminary findings, which are 9.58% of export price in the case of China and 46.03% of export price in the case of Romania.

F. INJURY ANALYSIS & CAUSAL LINK

21. The arguments supporting injury to domestic industry are as under:

- a. Various injury parameters such as increase in imports from subject countries and also in total imports, decrease in price of imports from China & Romania, low production and capacity utilisation, low volume of sales, decline in net realisation and profitability, increase in inventories, shown that domestic industry has suffered injury.
- b. It is stated by domestic industry that but for dumped imports, domestic industry would have earned a reasonable profit with rising production, higher capacity utilization, higher indigenous sales and higher sales realization. This shows a clear causal link between the dumped imports and injury.

The arguments questioning injury to the domestic industry are as under:

- a. The exorbitantly high power tariff coupled with inefficient practice of domestic calcium carbide industry has made this industry unviable in India.
- b. Only Tecil shown a downward trend in their output and injury to Tecil is being passed of as injury to the industry as a whole. Tecil has not responded to power and labour problems that caused injury to them.
- c. The petitioner accounts for only 31.6% of the domestic industry.
- d. The various parameters of injury such as import price, production & capacity utilisation, domestic, sales realisation & profitability do not suggest that domestic injury has suffered injury.
- e. the remedy for calcium carbide producers is safeguard duty and not the anti-dumping duty.
- f. The injury being suffered by domestic industry is not on account of alleged dumping but on account of their inability to meet the market demand, labour problems high power cost, shortage of power and quality problems.

- g. the Authority has ignored the impact from Bhutan as cause of injury to the petitioner, imports from Bhutan went up by over 6000 Tones during the period of investigation over the previous year.
- h. The injury is effectively assessed over a four month period, contrary to all practice and precedent.

Authority Position

22. 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.

23. All economic parameters relating to the domestic industry need not indicate injury nor one or several or 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 includes evaluation of all relevant economic factors. Cumulative assessment of all relevant factors can only indicate whether the domestic industry has suffered material injury.

24. Regarding high power tariff, the Authority observe that this is a cost to the petitioners, which is considered by Authority on actual basis. Regarding downward trend in Tecil, the Authority has already observed in the preliminary findings that the production, capacity utilisation and sales were low in the case of Tecil and their closing stock were higher. The production, capacity utilisation, sales was stable over the years in the case of other petitioner (viz. Birla Corpn. and ICML). The Authority assesses the domestic industry as a whole to determine the injury. If the injury to a particular company in the domestic industry is more server or it 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 of make and sell the subject goods on the basis of Generally accepted accounting principles.

25. The argument of the importers relating to standing of domestic industry is already dealt under the Heading “Domestic Industry”.

26. Regarding the argument of importers that the remedy for calcium carbide producer is safeguard and not anti-dumping duty, the Authority observes that anti-dumping investigation are carried out as per rules. Duty, if any is recommended as per rules.

27. The other parameters such as import quantum, production, capacity utilisation, sales, sales realisation, profitability has already been dealt the preliminary findings.

28. imports from Bhutan are not alleged as dumped imports.

29. The Authority has assessed the injury on cumulative basis for the period of investigation.

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

31. In establishing that the material injury to the domestic industry has been caused by the imports from the subject countries, the Authority holds that increase in market share of imports from China and Romania resulted in decline in the market share of petitioner. Cheap imports of subject goods resulted in reduction in price of domestic product. Further the dumped material forced the domestic industry to hold higher stocks. The material injury to the domestic industry was therefore caused by the dumped imports from the said countries.

G. FINAL FINDINGS

32. The Authority, after considering the foregoing, concludes that:

- a. Calcium Carbide has been exported from China and Romania at a price lower than the normal value resulting into dumping of calcium carbide.
- b. The domestic industry has suffered material injury.
- c. The casual link between dumping and injury is established.

33. The Authority confirms the preliminary findings and recommends imposition of definitive anti-dumping duties on import of calcium carbide falling under chapter 28 as specified in the para relating to product under consideration originating in or exported from China and Romania.

The anti dumping duty shall be amounts mentioned in column 3 hereunder;

S.No.	Country/Exporter	Amount (Rs PMT)
1.	China All Exporters	499
2.	Romania All Exporters	873

34. 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, 8B, 9 and 9A of the Customs Tariff Act, 1975.

35. Subject to above the Authority confirms the preliminary findings dated 24.8.98

36. 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