

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 20th November, 1995

Subject:- Anti-dumping investigation concerning imports of Bisphenol-A from Russia and Brazil- Final Findings.

No. 9/11/94-ADD- The Government of India having regard to the Customs Tariff Act, 1975 as amended in 1982 and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985, thereof.

PROCEDURE

2. The procedure described below has been followed:

- i. The Designated Authority (referred to Authority hereinafter) under the above rules received a written complaint from M/s. Kesar Petroproducts Ltd., 7, Nagin Mahal, 2nd Floor, Bombay –400 020, alleging dumping of Bisphenol-A originating from Russia and Brazil.
- ii. The Designated Authority issued a public notice dated 30th December, 94 published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning imports of Bisphenol-A classified under the Customs Tariff Code 29072300 (Harmonized system) from Russia and Brazil.
- iii. The Authority informed the exporters and importers known to the concerned, the representatives of the exporting countries and the complainant about the said initiation and gave them an opportunity to make their views known in writing and to request for oral hearing within 40 days from the date of notification i.e. 8th February, 1995.
- iv. The Designated Authority sent a questionnaire to elicit relevant information from the following exporters:
 - a. M/s. Rhodia SSA, Brazil
 - b. M/s. Vintl. Ind. Quimica Ltd., Brazil
 - c. M/s. Magatec Serciacao Tecnios Ltd., Brazil
 - d. FENOLAC Expresa Brasiletra De Fenole Acetona Ltd., Brazil
 - e. Chief of Foreign Realtions deptt. Netchimkombinat, Russia.
 - f. Proivodstvennoe Ohedinenie "Chimprom", Russia

- v. The Embassy of Russia in New Delhi and the Embassy of Brazil in New Delhi were also informed about the initiation of investigation and were requested to advise the exporters/producers in Russia and Brazil respectively to respond to the questionnaire within 40 days.
- vi. The questionnaire was also sent to the following importers of Bisphenol-A in India.
 - a. M/s. Bengal Poly Resins P. Ltd., Calcutta
 - b. M/s. Beta International, Bombay
 - c. M/s. Bharat Geno. Textile Industry, Calcutta
 - d. M/s. Chimanlal Maganlal and Co., Bombay
 - e. M/s. Cibatul Limited, Gujarat
 - f. M/s. Delta Inds. Resins (P)Ltd., Bombay
 - g. M/s. EECK Ind. Co. Ltd. Pune
 - h. M/s. M.J. Exports Pvt. Ltd., Bombay
 - i. M/s. Parikh Chem. Industry, Kanpur
 - j. M/s. Parikh Resins & Polymer, Kanpur
 - k. M/s. Pragati Chemicals Ltd., Bombay
 - l. M/s. Speciality Chemicals Ltd., Bombay
 - m. M/s. Uttamlal and Co., Bombay
- vii. Russian Trade Representative, on request were provided list of importer/exporters.
- viii. Extension sought by importers and exporters in submission of required information in the prescribed proforma/questionnaire were granted by the Authority M/s. Cibatul Ltd, Gujarat and M/s. Parikh Resins Polymers, Kanpur the importers and one exporter from Brazil. M/s. Rhadia SA have submitted information in the prescribed proforma. In fact the Brazilian exporter sought extension upto the end of April, 95 which was agreed to. None of the other importers and exporters have furnished the information to the Authority in the prescribed proforma within the time limit.
- ix. An opportunity was also given got exporters, importers and petitioners to express their views in a public hearing held on 23.2.95. Some of the importers, though did not submit the desired information nor asked for the copy of the petition within the prescribed time limit of 40 days from the date of initiation, requested the Authority during the public hearing to make available non-confidential portion of the petition to enable them to express their views are requested for the postponement of the public hearing. Though it was a late request, the Authority made available the non-confidential portion of the anti dumping petition to the representatives of he importers and agreed to postpone the public hearing till 9.3.1995.

- x. The public hearing held on 9.3.95 was attended by the representatives of the petitioner domestic industry and the following:
1. M/s. Cibatul Ltd., Gujarat
 2. M/s. Pragati Chemicals ltd., Bombay
 3. M/s. Delta Inds. Resins Pvt. Ltd., Calcutta
 4. M/s. Sip Resins Ltd., Madras
- xi. All the parties who attended the said public hearing were advised to make the submissions made in the public hearing in writing for obtaining counter comments from the other party to the investigation and the written submission received from the parties were made available to the party for their comments.
- xii. M/s. USPE Chimpron, Russia replied that they have never exported Bisphenol-A to India. Scrutiny of importers reply and the evidence about imports provided by the importers revealed that Bisphenol-A of Russia origin was exported by M/s. Helm AG. Hamburg, Lognacon GmbH Kaarst Hamburg and M/s. Alfa Group (Hong Kong) Ltd., Hong Kong. Accordingly these exporters directly as also through their embassies were informed about the anti dumping investigation of Bisphenol-A and were requested to provide the relevant information in accordance with Rule 6 of the Rules supra. M/s. Helm AG and M/s. Lignaon GmbH Kaarst did not submit the required details but confirmed having exported Bisphenol-A of Russian origin which as merely transshipped by them to India.
- xiii. Another opportunity was given to the exporters, importers and petitioners to express their views in the public hearing, held on 13.6.95 by the newly appointed Designated Authority. The said public hearing was attended by the representatives of the petitioner domestic industry as the following:
1. Trade representative from Russia
 2. Indian representative of M/s. Rhodia SA, Brazil
 3. M/s. Pragati Chemicals Pvt. Ltd.
 4. M/s. SIP Resins Ltd.
 5. M/s. Delta Ind. Resins Pvt. Ltd., Calcutta
 6. M/s. Bharat General Textiles Industries Pvt. Ltd.
 7. M/s. Cibatul Ltd.
- xvi. All the parties who attended the said public hearing were advised to give the submissions made in the public hearing in writing for obtaining counter comments from the other parties to the investigation. The written submissions received from the parties were made available to other parties for their comments.

- xvii. A team from M/s. USPE Chimrpon, Russia visited the office of the Authority during June 95 alongwith representative from Chamber of Commerce and Industries, Republic of Beskostostan, showed willingness to give undertaking to avoid dumping and agreed to submit the information in prescribed proforma within a fortnight. The Russian producer has, however, failed to submit the information required by the Authority to notify the exporter the extent of undertaking necessary to eliminate injurious dumping.
- xviii. The investigation covered the period from 1st April, 93 to 30th September, 94. The Authority obtained and verified the information deemed necessary. An investigation was also carried out at the premises of M/s. Kesar Petro Products Ltd.
- xix. The Authority also conducted cost investigation and worked out optimum cost of production and cost to make and sell in India on the basis of Generally Accepted Accounting Principles so as to ascertain as to whether anti-dumping duty lower than the dumping margin be enough to remove the injury.
- xx. The Authority has conducted the investigation under the Rules supra, and not under the new Rules. The Rules becoming effective from 1.1.95 have no bearings on the investigations which were initiated before 1.1.95.

PETITIONERS VIEWS

3. Petitioner highlighted the following main points:

- i. Imports from Russia and Brazil are sold at less than their normal value in these countries.
- ii. Due to dumping by Russian and Brazilians exporters, they were forced to reduce their selling price below the cost of production in order to match the falling prices of imports from Russia and Brazil.
- iii. Due to dumping M/s. Cibatul Ltd., Gujarat closed their plant for production of Bisphenol-A.
- iv. In case of Russia though the imports are coming from the parties in Germany and Hong Kong. Proviso to Rule 6 of Rules 1985 lays down that wherever an articles is not from the country of origin but from the intermediate country the price at which the article is sold shall be compared with the price in the country of origin whenever an article is only transshipped through the intermediate. Therefore, even when the imports were not directly from Russia, the Russian origin material is being dumped in India attracting the provisions of rule 6 of the Rules, 1985.
- v. The quality of their product matches with international standards as is evident from the fact that their export sales have been improving year after year in spite of international competition and the importers/actual users themselves are

- using their product on a continuous basis and the quantity purchased by them was also increasing year after year.
- vi. The losses to the petitioner are due to dumping of Bisphenol-A and not in any way because of their being in efficient unit as alleged by importers/users of Bisphenol-A.
 - vii. The non-confidential information was submitted at the time hearing on 9.3.95 and it was pointed out that confidential information such as information relating to domestic sales, cost of production, source of information regarding the domestic price in exporting countries etc. cannot be disclosed.
 - viii. None of the importer or the representative from Russia who attended the hearing came forward with any argument/evidence whatsoever, to rebut the domestic price in Russia furnished by the petitioner.
 - ix. Regarding applicability of amended provisions of Customs Tariff Act w.e.f. 1.1.95 it was represented that-
 - a. GATT 1994 anti-dumping provisions are applicable only if the cases are initiated in accordance to Agreement on implementation of Articles VI of GATT 1994.
 - b. Under section 6 of the General Class Act the proceedings in the present case were initiated prior to 1.1.95 and therefore, the old provisions will only apply. In accordance with the CAGAT decision in the case of Atma Steels (1984) (17) (ELT 331) by a five member bench. If the proceedings are initiated on a particular date under rule 10 which was later on rescinded and new section 11 A was enacted then proceedings already initiated will be governed by the law on the date of initiation of proceedings. Thus, in the present case since the proceedings were initiated prior to the new provisions enacted on 1.1.95 the old provisions would only apply in terms of the CEGAT judgment.
 - c. It was represented that though the earlier rules 1985 were superseded yet there is a saving clause with respect to things done before super session. Thus this will protect the current proceedings which was initiated under the old provisions. Since the proceedings in the present case have been initiated in accordance with the old provisions, the amendments made in Customs Tariff Act with effect from 1.1.95 shall not apply.

Exporters Views

4. The major views expressed by the exporters/producers are as follows:

- a. Export of Bisphenol-A from Brazil account for less than 10 per cent in volume of the total Indian market.

- b. The prices offered by the Rhodia S.A. were defined by prices prevailing in the Indian and International market.

Views of Importers and other interested parties

5. The main views of importers and users are summarised as under:-

- i. With effect from 1.1.95 Sec. 9A of the Customs Tariff Act and Anti Dumping Rules 1985, has been substituted superseded by new Sections and new Rules of 1995. The investigation initiated under the provisions since superseded will be governed by the new provisions.
- ii. The original petition was made on 31st March, 1994, whereas, the investigation period was taken from 1st April, 1993 to 30th September, 1994.
- iii. The information relating to the alleged dumping has not been furnished cogently and contained a lot of misrepresentation when compared with the figures furnished by the petitioner and the figures notified in the preliminary findings relating to anti-dumping investigation of Bisphenol-A imported from Japan.
- iv. The petitioner has excess installed capacity as compared to the domestic demand.
- v. Product manufactured by petitioner was not fully approved for its quantity.
- vi. The volume of imports from the countries under investigation are about 10 per cent of total imports and could not have affected the prices of like articles in the domestic market.
- vii. The imposition of anti dumping duty can only cause injury to the Epoxy Resin manufacturers.
- viii. The petitioner is an inefficient unit.
- ix. Since therefore are no imports from 1-4-94 till date from Brazil, there was no dumping of the product and investigation itself need to be dropped at this stage.
- x. Russia has not exported any quantity directly to India and most of the shipments come through either Germany or Singapore. The prices at which the Russians must have exported to Germany or Singapore should be lower than the export price of the dealers in Germany and Singapore, who also add their margin of profit.
- xi. There are two grades of Bisphenol-A. Epoxy grade and Poly carbonate grade. It is not clear as to injury to the petitioner is from Epoxy grade or Poly carbonate grade of Bisphenol-A.

EXAMINATION BY AUTHORITY

6. The above submissions made by the exporters, importers, petitioner and other interested parties have been examined and considered while arriving at these findings and have been dealt with at appropriate places in these findings.

7. In the absence of any direct response from the exporters from Russia in the prescribed format, the Authority has made the findings with regard to Russia on the basis of the information available to it as per Rule 14 supra and the principle of best information available.

Product under consideration

8. Bisphenol-A, an organic chemical, is manufactured out of Phenol and Acetone. There are two grades of Bisphenol-A namely Epoxy grade and Polycarbonate grade. Their chemical names, molecular formula and other properties like molecular weight, boiling point, melting point, specific gravity, specific heat etc. are same. Major uses of the two grades are also same except that polycarbonate grade can also be used for polycarbonate resins. In view of the above and after examining the various aspects vis-avis dumping rules relating to "like product", it is considered that the Bisphenol-A being produced in India and imported from Russia and Brazil are like products. The product Bisphenol-A is classified under the Customs Tariff Code 29072300 and falls under open general license category.

9. Regarding allegation made by some of the importers that the product manufactured by the petitioner was not fully approved with respect to its quality, the Authority notes that whereas no authentic and reliable documentary evidence was made available by the complainants, some of the complainants themselves are using the product manufactured by the petitioner regularly. The petitioner also exported more than 3200 MT of the product during the investigation period. The Authority therefore concludes that the contentions of the importers users about the poor quality of the domestic product is not proved.

DOMESTIC STATUS

10. The demand of the product during 1993-94 is examined at around 3000 MT per annum. M/s. Kesar Petro products Ltd. is the major producer of Bisphenol-A. M/s. Cibatual Ltd., was producing the product for captive consumption and were also importers and therefore, do not form part of the domestic industry under the Rules supra. There were threw other manufacturers, namely M/s. Piramal Organic Chemical, Bombay, M/s. Enlite Chemicals, Bombay Ltd., M/s. Alpha Chemical, Calcutta, who have stopped production as per information submitted by M/s. Cibatual Ltd., vide their letter dated 12.7.95. The petitioner accounts for a majority of Bisphenol-A

production in India and hence constitute domestic industry in accordance with Rule 2(c) supra.

Normal Value

11. As per information provided by the petitioner the Domestic price of the product in Russia was USD 1052.63 pmt and export price to third country by Brazil was USD 1100 pmt. The petitioner also constructed the price on the basis of cost of production of Bisphenol-A and stated that it is around USD 2068 pmt.

12. The Brazilian exporter furnished details of domestic price, export to third country and cost of production along with the export price of India. The domestic price of the product in Brazil does not cover the full cost of production and the exporter is incurring losses. Amount seventy per cent of domestic sales in Brazil are at losses and therefore, the domestic price in Brazil cannot be considered in the ordinary course of trade. Export sales of third country are also at losses and therefore, export price to third country can also not be considered for determining Normal value. The Normal Value of the product in respect of exports from Brazil has, therefore, been considered on the basis of the cost of production including the administrative, selling and general expenses, as furnished by the exporter. The ex-factory price after providing for a reasonable profit works out to USD 1087.82 per MT in case of Brazil.

13. regarding normal value of the product from Russia, neither the Russian producers nor the exporters of Russian origin material to India has furnished information in the prescribed questionnaire. Representatives from M/s. Chimpron Russia have also not submitted the information in spite of their assurance during the visit in June, 1995. M/s. Helm AG and M/s. Lignacon, German exporters of the product to India confirmed having directly shipped Russian origin product in India. None of the importers or exporters furnished information in this regard in spite of adequate opportunity provided to them.

14. Under the circumstances, normal value under the rules is determined on the basis of best available information and therefore the information as provided by the petitioner regarding the domestic home in Russia has been accepted. The normal value of the product has been considered at USD 1052.63 per MT in case of Russia.

EXPORT PRICE

15. The Authority noted that the information compiled by DGCIS, Calcutta about imports of various goods in India based on information furnished by the importers for the purpose of customs clearance cannot be considered for working out export price of

the product Bisphenol-A, as the custom code under which this has been classified covers imports of goods other than Bisphenol-A also.

16. Export price in case of Brazil has therefore, been considered on the basis of the information furnished by the exporter, M/s. Rhodia S.A. The weighted average export price has been adjusted for ocean freight, insurance to work out the ex-works export price of USD 641.16 per MT.

17. Though two exporters from Germany have confirmed having transshipment of Russian origin material without further processing to India they have not furnished the details called for. One of them stated having purchased the product from Russia up to US\$ 520 including freight and banking cost. Since this not been substantiated with evidence and also no information has been furnished the Russian producer or the exporters of Russian origin material the export price in case of Russia has been determined on the basis of consignment wise country wise information on imports of Bisphenol-A in India submitted by the petitioner and correlated with the information furnished by the importers to the Authority. The weighted average export price of Bisphenol-A from Russia after adjusting for freight, insurance and commission to German exporter works out to USD 618.34 per MT.

Comparison

18. For the purpose of a fair comparison between the normal value and export price in accordance with Section 9(A) (2) of the Customs Tariff Act, 1975 and Rule 14 supra, the Authority took into account the information supplied by the petitioner and the exporter from Brazil i.e. M/s. Rhodia S.A. Rule 6 supra provides that in case where an article is imported into India not from the country of origin but from an intermediate country, the price at which the article is sold from the intermediate country shall be compared with the comparable price in the intermediate country. In the absence of any direct response in the prescribed manner and proforma from the exporters of Russian origin material who were given ample opportunity to make available the relevant information from their end and in view of confirmation by M/s. Helm AG and M/s. Lignacon, the German exporters that the Russian origin material to India transshipped without further processing, the Authority under the proviso to Rule 6 supra compared the export price determined above with the price in the country of origin. The weighted average export price obtained during the period of investigation has been compared with the Normal Value.

Injury

19. Under Rule 18 supra, when a finding of injury is arrived at "such finding shall involve an examination of facts which the Designated Authority considers relevant under the circumstances including the volume of dumped imports and their effect on price in the domestic market for like products and the consequent impact of such imports on domestic producers of such products". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the lime product in India or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred to a significant degree.

20. For the examination of the impact on the industry in India, the Authority considered such further indices having a bearing on the state of industry as production, capacity, Utilization, sales, stock, profitability and net sales realization.

(a) Volume and Market Share of Imports

21. Export from Brazil increased from nil in 1991 to 194 MT in 1992 and 389 MT during the investigation period as per the details furnished by the exporter M/s. Rhodia SA, representing over 100% increase during the investigation period as compared to the previous year. The export price to India at the same time declined from around USD 711 per MT in 1992 to USD 652 during Apr., 93 to Dec., 93 and USD 613 per MT during Jan., 1994 to Sept., 1994.

22. Exports from Russia have also increased from nil in 1992-93 to 242 MT in 1993-94 and to 410 MT during the first six months of 1994-95, registering an increase of more than 238% in 1994-95 (6 months) on annualized basis as compared to the previous years. The export price of USD 713 in 1993-94 steeply declined to USD 619 per MT during first six months of 1994-95. The Authority considered that during the investigation period the volume of dumped imports from Brazil and Russia cannot be regarded as negligible, and have impact on influencing the prices of the product in Indian Market.

(b) Production

23. Production of the petitioner increased from 1711 MT (1992-93) to 4181 MT (1993-94) and 2610 MT (first six months of 1994-95), resulting in increase in capacity utilization from around 68% to 84% and 87% respectively. The petitioner increased its installed capacity from 5000 MT to 6000 MT during 1993-94. However, the Authority noted that production for export sales and undertaking the job work contributed for achieving higher capacity utilization.

(c) Inventory

24. The petitioner was having stock of 1052 MT of Bisphenol A as on 31.3.1993, which declined to 823 as on 31.3.1994 and 803 MT as on 30.9.1994. Reduction in inventory appears to be due to increased domestic sales at reduced prices and export sales.

(d) Sales in absolute terms

25. Sales of the petitioner in the domestic market has increased from 181 MT during six months in 1992-93 (production commenced in October, 1992) to 1966 MT during 1993-94 and 1390 MT in the first six months of 1994-95.

(e) Average Sales Realization

26. Average sales realizations from the sales of Bisphenol-A in the domestic market declined from Rs. 66366 per MT in 1992-93 to Rs. 40670 per MT in the first six months of 1994-95, representing a decline of about 40%.

(f) Profit/Loss

27. The petitioner is suffering losses which increased from 353 lacs in 1992-93 to Rs. 837 lacs during 1993-94 and declined to Rs. 110 lacs during the first six month of 1994-95. The petitioner has been forced to sell Bisphenol-A at price much below its cost of production.

(g) Conclusion of Injury

28. (i) The quantum of imports from Russia and Brazil increased significantly in absolute terms during the investigation period as compared to the previous period.

(ii) The share of Russia and Brazil in the total imports in India increased during the investigation period as compared to the previous period.

(iii) As a consequence of reduction in import prices by Russia and Brazil and reduction in custom duty by the Government of India, the import value from Russia and Brazil (after considering Customs duty but before Additional Duty of Customs) declined significantly.

(iv) The market share of Russia and Brazil in demand of the country increased during the investigation period as compared to the previous period.

(v) Though production, capacity utilization and sales in absolute terms have shown improvement, the Authority found that the price was the most important factor to customers in determining the source of supply. Therefore, the improvement in production capacity utilization and sales were a direct consequence of the lowering of the prices by domestic industry to match the declining import prices, coupled with increased exports and job work. The domestic industry have been prevented from selling at a price which would allow them a reasonable profit.

29. The Authority is, thus, led to the conclusion that the domestic industry has suffered material injury.

CASUAL LINK

30. In determining whether materials injury to the domestic industry was caused by the dumped imports, the Authority took in to account the following facts:

(i) The import of the product from Russia and Brazil increased significantly in absolute terms and also relative to the consumption of the product in India. The share of Russia and Brazil in the total imports also increased during the period.

(ii) The lower value of the imports from Russia and Brazil coupled with higher volumes forced the domestic industry to reduce its selling prices to unremunerative level.

(iii) The imports from Russia and Brazil suppressed the prices of the domestic industry to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sales of Bisphenol-A in India.

Indian Industry's Interest

31. The purpose of anti dumping duty is in general to eliminate dumping which is causing injury to the domestic industry and to re-establish the situation of open and fair competition in the Indian market which is in the general interest of the country.

32. Arguments have been raised that the imposition of anti-dumping measures would be contrary to the Indian public interest because they would result in higher prices and may harm the epoxy resin industry. However, fair competition on the Indian market will not be reduced by the anti dumping measures particularly if the levy of the anti dumping duty is limited to the amount necessary to redress the injury to the domestic industry. On the contrary, it would remove the unfair advantage gained by the

dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of Bisphenol-A.

33. The Authority confirms that it has worked out reasonable selling price of Bisphenol-A in India for the domestic industry, by considering the optimum cost of production at attainable level of Capacity Utilization to ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry.

34. Injury being caused to the petitioner from factors other than dumping have not been considered by the Authority while recommending the amount of Anti Dumping Duty necessary to remove the full extent of injury to the petitioner.

Findings

35. The Authority accordingly, has come to the conclusion that:

- i. Exports from Brazil and the exporters supplying Russian origin material have sold Bisphenol-A in India below its normal value;
- ii. The Indian industry has suffered material injury;
- iii. The injury has been caused by the imports from Russia and Brazil;

36. The Authority considers it necessary to impose a definitive anti-dumping on imports of Bisphenol-A originating from Russia and Brazil in order to remove the material injury to the domestic industry. The export price, normal value and the margin of dumping were determined by the Designated Authority as under.

	Brazil		Russia	
	USD/MT	Rs./MT	USD/MT	USD/MT
Normal value	1087.80	34320	1052.63	33210
Export Price (fob)	644.16	20323	653.82	20628
Margin of Dumping	443.64	13997	398.81	12582

37. The authority considered whether a duty lower than the dumping margin would be enough to remove the injury. The weighted average landed price of the imports, for the purpose, was compared with the fair selling price of Bisphenol-A produced by the domestic industry, determined at an optimum level of capacity utilization, for the period of investigation. The difference was less than the dumping margin and accordingly the Authority recommends that an anti dumping duty of Rs. 10,263 (Rs. Ten Thousand Two Hundred Sixty Three) per MT on imports from Brazil and Rs. 12,559 (Rs. Twelve Thousand Five Hundred Fifty Nine) per MT on imports, originating margin, Russia, which are less than dumping margin, but sufficient to remove the extent of injury to the domestic industry caused directly by export from

Russia and Brazil, be imposed on all imports of Bisphenol-A originating from Russia and Brazil falling under Chapter 29 of the Custom Tariff.

T.S. VIJAYRAGHAWAN,
Designated Authority and Addl. Secy.