

# MINISTRY OF COMMERCE

## NOTIFICATION

New Delhi, the 15th October, 1999

### Preliminary Findings

**Subject:**—Anti-dumping investigation concerning imports of Sodium Cyanide from United States of America, Federal republic of Germany (FRG), Czech Republic, Korea R P and the Territory of European Union— Preliminary Findings.

**No.8/1/999-DGAD**— 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 has been followed with regard to the investigation:

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s Cyanides and Chemicals Co. on behalf of the domestic industry, alleging dumping of Sodium Cyanides (hereinafter also referred to as subject goods) originating in or exported from United States of America, Federal Republic of Germany (FRG), Czech Republic, Korea R P and the Territory of European Union.
- ii. Preliminary scrutiny of the application filed by petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was therefore considered as properly documented;
- iii. The Authority, on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of Sodium Cyanides from United States of America, Federal Republic of Germany, Czech Republic, Korea R P and the Territory of European Union.
- iv. The Authority notified the Embassy of USA, Federal Republic of Germany, Czech Republic, Korea RP and the Territory of European Union about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-rule 5(5) of the Rules;
- v. The Authority issued a public notice dated 8th March, 1999 published in the Gazette of India, Extraordinary, initiating anti - dumping investigations concerning imports of Sodium Cyanide classified under custom sub-heading

No. 2837.11.00 of the Customs Tariff Act, 1975 originating in or exported from USA, Federal Republic of Germany, Czech Republic, Korea RP and the Territory of European Union (hereinafter also referred to as the subject countries).

- vi. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the petitioner) of the subject goods and industry associations and gave them an opportunity to make their views known in writing in accordance with the Rule 6(2),
- vii. The Authority forwarded a copy of (he public notice to all the known importers (whose details were made available by petitioner) of Sodium Cyanide in India and advised them to make their views known in writing within forty days from the date of issue of the letter;
- viii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of Sodium Cyanide made in India during the past three years, including the period of investigation.
- ix. The Authority provided a copy of the petition to the known exporters and the Embassy of the subject countries in accordance with Rules 6(3) supra. A copy of the petition was also provided to other interested parties, wherever requested;
- x. The Authority sent a questionnaire to elicit relevant information, to the following known exporters, in accordance with the Rule 6(4);

(a) **EU**

- Degussa Antwerp en N.V, Belgium
- Rhone-Poulenc Fibres- France
- Zeneca Agrochemicals Fernhurst
- Baslirus P.A.- Italy.
- Enichem S.P.A., Italy
- DSM Business Unit Intermediate- Netherlands
- Energiæ Industries Aragonesas, Spain
- Moniplet & Esteban SL, Spain
- Degussa AG - Germany
- BASF-Aktiengesellschaft- Germany
- E. Merck- Germany
- Petro/Chemie B Kraft Stoffe- Germany

(b) **USA**

- E.I. Dupont de Nemours & Co. Inc., USA
- Degussa Corporation USA
- FMC Corporation Chemical Product, USA

- Sterling Chemical Inc- USA
- C.P. Chemical Inc.-USA

**(c) Czech**

- Lucebni Zavodyy-Czech Republic

**(d) Korea RP**

- Tong-Suh Petrochemicals Corpn, Ltd- Seoul, Korea
- Taek Wang, Seoul, Korea

- xi. The Embassy of the subject countries/territory in New Delhi was informed about the initiation of the investigation in accordance with rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time, a copy of the letter, petition and questionnaire sent to the exporters was also sent to the Embassies, along with a list of known exporters/producers.
- xii. A number of parties requested for extension of time, which was allowed by the Authority by four weeks. The responses received after the extended time have not been considered for determining the preliminary findings.
- xiii. The following exporters responded:

**EU**

- \* M/s E. Merck
- \* M/s Degussa- Huls
- \* M/s PCK. Raffinerie GmbH

**USA**

- \* M/s Sterling Chemicals
- \* M/s C. P. Chemical sine,

**Korea**

- \* M/s Hanwah Chemicals Corporation

- xiv. A questionnaire was sent to the following known importers of Sodium Cyanide calling for necessary information in accordance with rule 6(4),
- M/s Bakul Aromatics Ltd.
  - M/s Premier Intermediates (P) Ltd.

- M/s United Phosphorous Ltd.
- M/s Daurla Sugar Works
- M/s DauralaOrganicsLtd,
- M/s Cheminor Dmgs Ltd.
- M/s Divis Laboratories Ltd.
- M/s Suven Pharmaceuticals
- M/s Sudarshan Dmgs & Intermediate Ltd.
- M/s Suvi Chem
- M/s Anis Rasayan P. Ltd.
- M/s Shri Benzophan Inds, Ltd.
- M/s Mitsu Industries Ltd.
- M/s Bharat Rasayan
- M/s Deluxe Metal Processing
- M/s Chem star Organic s Ltd.
- M/s Ankur Agrochem
- M/s Siris Ltd.

xv. Response to the questionnaire was filed by the following importers :-

- M/s Bakul Aromatics Ltd.
- M/s Premier Intermediates (P) Ltd.
- M/s Daurala Organics Ltd.
- M/s Cheminor Drugs Ltd.
- M/s Mitsu Industries Ltd.
- Kores India Ltd,

- xvi. Additional information regarding injury was sought from the petitioners, which was also furnished;
- xvii. The Authority conducted on-the-spot investigation at the premises of the petitioner to the extent considered necessary;
- xviii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
- xix. Cost investigations were also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner;
- xx. \*\*\*\* in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
- xxi. Investigation was carried out for the period starting from 1st April, 1998 to 31st December, 1998.

## **B. PETITIONER'S VIEWS**

2. The petitioner have raised the following major issues in their petition and their subsequent submissions:-

- a. The total production of Indian Industry is 5626 M.T, during the period of investigation out of which the share of the petitioner is 78.44%. The petitioner have, therefore, submitted that the application made by them may be treated as made by or on behalf of the domestic industry and they may be treated as the domestic industry under Rule 2(b).
- b. The petitioner have claimed Normal Value in the case of the alleged dumping countries, namely USA, Federal Republic of Germany, Czech Republic, Republic of Korea and EU, on the basis of constructed cost of production.
- c. The petitioner have claimed that European Union could be considered as an exporting territory for determination of Normal Value. They have submitted that Germany is a member of European Union where no Customs Barriers exist among the member countries. There are many other producers of Sodium Cyanide in the European Union and in view of this, imposition of Anti-Dumping Duty on Germany alone may not be effective in case, duty is not imposed on the entire European Union. Hence, the request by the petitioner to investigate and levy anti-dumping duty on the European Union collectively as a territory and on Federal Republic of Germany individually.
- d. As regards the injury, the following submissions are made by the petitioner:
  - i. that the petitioner constitutes domestic industry within the meaning of Rule 2(b). The injury suffered by them could, therefore, be considered as evidence of material injury suffered by the domestic industry.
  - ii. The petitioner is claiming injury on account of the following :
    - increase in imports from the subject countries.
    - significant decline in export price from the subject countries.
    - increase in market share of the imports
    - significant decline in the selling prices of the petitioner.
    - significant decline in profitability.
    - significant increase in inventory level.
- e. Further, the petitioner have raised the issue relating to comparison of landed price of imports with the fair selling price on transaction-to-transaction basis. In this regard, they have stated that the export price of Sodium Cyanide from the subject countries declined steeply. The reason for this steep decline is intensified dumping by the exporters from these countries. In view of this, the

petitioner have submitted that the comparison of the fair selling price with landed price of imports should be done on transaction to transaction basis. They have submitted that it is necessary as all exports to India might not have caused material injury to the industry. The concern of the industry is only with regard to those exports which have injured the domestic industry. Since the landed value of imports declined significantly, the comparison of the same on weighted average basis would not be appropriate.

- f. Furthermore, the petitioner have requested for recommending anti-dumping duty on variable basis as the weighted average export price during the investigation period may not reflect the extent of injury being suffered by the domestic industry from the dumped imports, especially when there is a steep decline in export price, particularly from Czech Republic and Korea RP.

## **C. VIEWS OF EXPORTERS.IMPORTERS AND OTHER**

### **INTERESTED PARTIES:**

#### **3. I. Importers' views:**

- a. The importers of Sodium Cyanide, who use it for manufacturing the drug intermediates for antibiotics, such as Ampicillin, Cephalexin, cephtradin etc., which are exported from India to a great extent, have stated that any increase in import duty on Sodium Cyanide will trigger off cost and price increase of the inter-mediate, which will have a highly adverse effect on the export of Antibiotics. Alternatively, the intermediates manufactured by the domestic industry will be imported thereby damaging the interests of the domestic industry for drug intermediates.
- b. The petitioner themselves are exporting the subject goods at prices much lower than domestic prices. They wish to take advantage of the fact that there are only two manufacturers of Sodium Cyanide in India and thus, the domestic prices have been artificially maintained at a level much higher than the International prices, Any increase in import duty, coupled with near monopoly situation in India, is bound to result in significant increase in the domestic price of Sodium Cyanide to the great detriment of the drug and drug intermediates industries.
- c. The cost of production of Sodium Cyanide can't be higher than the prevailing international prices, at which the petitioner themselves are exporting i.e. about Rs. 38,000 to Rs. 40,000 per MT.
- d. Further, it is stated that the petitioner have resorted to the use of constructed value to arrive at the Normal Value of the subject goods. The need to use constructed value arises in case of non-market economies. In the present case,

no difficulty can be envisaged in obtaining details of Normal value from exporters from the subject countries,

- e. There are two manufacturers of Sodium Cyanide, the petitioner and M/s Gujarat Alkalies and Chemicals Ltd. The latter have not joined as a co-petitioner presumably because they are more efficient.
- f. There is a past history of the two domestic manufacturers forming a cartel and indiscriminately increasing the price of Sodium Cyanide as in 1991 when the import of this product was restricted. The 1991 scenario would be repeated if the Anti-Dumping duty is levied on the product.
- g. It is further stated that the actual production of both the local manufacturers has always been less than the country's requirements in spite of large installed capacity on paper by both the manufacturers. In the past, whenever there was more production, the same was exported at very low prices, presumably subsidised by higher local selling price.
- h. Some products like Theophylline, Etofyleine etc. which use Sodium Cyanide as an input fall under DPCO and the price is fixed by the Government. The DPCO price of these products has been fixed based on the current price of Sodium Cyanide. If the price of this material increases consequent upon the levy of Anti-Dumping duty, the importers have to seek price revision from Government of India which is a very lengthy process and can take upto 2 years.
- i. If anti-dumping duty is imposed on Sodium Cyanide, the price of Sodium Cyanide will be increased by the two local manufacturers in which case the cost of production of Phenyl Acetic Acid, Potassium Phenyl Acetate, Benzyl Cyanide and Pencillin will go up. Therefore, the domestic industries manufacturing these finished products out of Sodium Cyanide have to suffer by having to close their units on account of non- viability. The request is, therefore, to impose anti-dumping duty on finished items such as Penicillin and their further derivatives in stead of the same on basic input materials such as Sodium Cyanide.

### **3. II. Exporters' Views :**

- a. The exporters from the Federal Republic of Germany (FRG) have stated that due to the fundamental differences in the market structure and market requirements of the Indian and domestic (EU) market as well as significant differences in quality, the two markets can be treated only as separate. They have denied the allegations of injury as the already higher market share of the Indian producers based on a considerably high import duty base than WTO country average testify their domination of the market.
- b. The FRG exporters have pointed out that the principal differences between domestic unit selling price and export unit price to India are based on

completely different cost structures for both the markets. For Germany, the corporate cost, manufacturing-selling-Administration overhead as well as packing cost are incomparably higher than for India.

- c. The respondent exporter from Korea have stated that the case of dumping of Sodium Cyanide in India by them is misleading as their cost of production is lower than their domestic selling price and further their export price for Sodium Cyanide are higher than their domestic market prices in Korea.
- d. The Korean exporter, M/s. Hanwha Chemical Corporation, who have responded to the questionnaire, have submitted that the cost of production of their producing company, namely, M/s Tong Suh Petrochemicals Corporation Ltd. is lower as compared to that of Indian manufacturers for the basic reason that their production facility for Sodium Cyanide is basically a downstream project using the bye products from their Acrylonitrile Plant. The major raw material i.e. HCN Gas used in the production of Sodium Cyanide comes to them as a bye product from the Acrylonitrile production. Further, Caustic Soda Lye the prices of which have been falling sharply in the global market, are received by their plant through a pipeline from a plant situated next door. All these factors reduce their cost of production of Sodium Cyanide to a large extent.
- e. The exporter from FRG have pointed out the differences in the specification and processing for Sodium Cyanide Manufactured by them and the same from the petitioner. Their product is claimed to be manufactured according to the DIN ISO 50971 standard with a content of max. 0.005% insoluble products. The Indian product does not conform to this standard and has a ten times higher content of insoluble compounds. The Customers of the FR Germany exporter are stated to be specialized in the manufacture of pharmaceutical intermediates and end products, which have to have a high purity and a minimum of impurities of insoluble compounds- during their production. The exporter's product is claimed to fulfill these criteria of purity. In view of this, they do not agree to the petitioner's claim that there are no Significant differences in their product and the imported product and that the two are like articles and that the goods are imported due to their availability at dumped prices.
- f. As regards the domestic EU market, it is stated that the marketing efforts differ markedly from those for Indian market. The additional costs involved in the former are on account of cost - intensive charge and discharge of Sodium Cyanide in intermediate bulk containers, a high level of technical advice, Cyanide destruction technology, and compliance with the strict EU environmental regulations. In order to meet the different legal requirements of each member of the EU, they have developed specially designed programs comprising safety instructions for use of Sodium Cyanide, training sessions and surveys of Cyanide ware houses. Their distribution network in the EU is quite

extensive and substantial sales force and technical services are necessary to support and supply the highly diversified EU market structure. Therefore, in contrast to the Indian market, the selling costs are significantly higher.

- g. As to dumping, the FRG exporters have highlighted fundamental differences between their domestic market and the Indian market in terms of infrastructure, supplier- purchaser relationship, the amount of funds spent to conform with the technical and environmental demands of their domestic market. According to them dumping can not be ascertained under Section 9-A(1)(C) on the ground that comparison is not possible between the domestic market cost structure and the same for the Indian market in view of differences in the terms and circumstances of the respective markets.
- h. In the matter relating to injury the FRG exporter have stated that there is already very high market share of the Indian producers based on a considerably higher import duty base, which indicates the domination of the local producers in Indian market. As regards the price, it is stated that there is a worldwide decline in Sodium Cyanides price as evidenced by the figures from the Chemical Trade Intelligence, India. The Indian Chemical Export Price List shows a FOB prices of US\$ 881/MT for the period March-December, 1998. A more detailed export list reveals that the petitioner on the other hand exported at prices ranging from US \$ 835 to US \$ 1000 FOB. This would correspond to US \$ 890-1050 CIF/MT and would be on the lower end of the World market price at that time.
- i. The FRG exporters have pointed to the drastic decline of the World market prices in the last three years due to stagnant and decreasing demand compared with new production facilities in Asia (about 30000 tonnes/year of additional capacity). As a consequence, none of the producers managed to keep up its price level and ad to implement major cost reduction programmes. However, despite this global declining trend, the petitioner not only managed to increase its sales quantity but also was able to maintain a domestic price which is 35.2/o above the World market price of Sodium Cyanide.
- j. Comparing differences in the specification and processing of Sodium Cyanide from the FRG exporter and the petitioner the farmer have pointed to the significant quality and packaging advantages of their product over the petitioner's product.

The costs to support the sophisticated technical and logistical requirement, which are indispensable in order to guarantee a safe handling and supply of Sodium Cyanide in the European market places, includes added values like Quality and packaging systems emergency response systems; Responsive care activities; and Patented technologies such as control systems, detoxification systems to optimise the usage of Cyanide, as an integral part of the domestic

selling price of the exporters. Thus, the exporter's argument is that their domestic market (EU) and the Indian market are characterised by such fundamental differences that Normal Value can not be ascertained on the basis of domestic sales price. Therefore, their contention is that there is no dumping from them.

k. The petitioner have not suffered injury as:

- The Indian producers already have a very high market share of well above 80% and domination in the market based on a considerably higher import duty base.
  - On price front, there is a decline of World market price which has also an impact in the Indian market.
  - Contrary to the petitioner's claim, the petitioner's sales volume in the domestic industry has shown an increase of 587 tonnes or 14% in the last three years as per the evidence provided by themselves.
- l. On the question of Causal link, it is stated that contrary to the petitioner's claim, the demand in Indian market has increased by 833 Tonnes or 11.94% between 1995-96 and 1998-99 which is a considerable increase compared to World market decline of roughly 5%. Whereas the percentage figures of market share of the domestic producers declined marginally from 86.09% to 81.87%, the actual quantity sold increased by 15.7 tonnes.

Further, it is stated that there are evidences that Indian producers have quoted their exports at prices far below the prices generated by them, i.e. the FRG exporter, in Indian market and at the low end of the World market price. This evidence disputes the fact that the material is dumped in India and that the petitioner suffered injury from imported material.

## **D. Examination of the issues raised**

4. The foregoing submissions made by the exporters, the importers, the petitioner and other interested parties, to the extent these are relevant as per Rules and to extent these have a bearing upon the case, have been examined and considered and have been dealt with at appropriate places in these findings.

## **E. Product under consideration**

5. The product involved in the present Investigation is Sodium Cyanide originating in or exported from the subject countries classified under Customs Sub heading 2837.11 of Customs Tariff Act. The classification is only indicative and in no way binding on the scope of present investigation. Sodium Cyanide is a pure, basic inorganic

chemical. It is manufactured by reacting Hydrocyanic Acid (HCN) with Caustic Soda. It is mainly used in extraction of gold from gold ores. Pharmaceuticals and pesticides industries also use it as intermediates, It is also used by industries such as dye intermediates, electroplating chemicals and for manufacture of Heat treatment salts.

## **F. Like articles:**

6. The petitioner have claimed that there are no significant differences in their product and the same imported from the said countries, which can have impact on price and quality. The two are comparable in terms of physical and chemical characteristics (size, chemical composition), manufacturing process and technology, functions and uses, product specifications, distribution and marketing and tariff classification of goods.

The two are technically and commercially substitutable. Importers are interchangeably consuming imported and domestic Sodium Cyanide. The two are, therefore, Like Articles within the meaning of the Anti-Dumping Rules, In this regard, it is observed by the Authority, that though some exporters have claimed differences of their product in processing, quality and packaging over the petitioner's product, these differences do not have any impact on the likeness of two products as both are used by the importers and consumers interchangeably. The Authority finds that both have the same end-uses and both have the similar fundamental technical characteristics. The quality superiority of the imported product in terms of lower heavy metal concentrations and water content as well as lower content of insoluble compounds vis-a-vis the Indian product does not make any difference in the basic technical characteristics of both. The differences are only in degree and not in kind. Thus, the Authority observes that the Sodium Cyanide produced by the domestic industry in India has characteristics closely resembling the same of the Sodium Cyanide imported from the subject countries. Both are technically and commercially substitutable and, therefore, are treated as Like Articles under the meaning of the Anti-Dumping Rules.

## **G. Domestic Industry**

7. The petition has been filed by M/s Cyanides and Chemicals Company, 65, Free Press House, Nariman Point, Mumbai. There is only one more producer of Sodium Cyanide in India, namely, M/s Gujarat Alkalies and Chemicals Ltd.. The total production of Sodium Cyanide in India during the POI was 5628 M.T. out of which the petitioner produced 4413 M.T. of Sodium Cyanide, Thus, the petitioner accounts for more than 25% of domestic production of Sodium Cyanide and, therefore, the Authority notes that they (the petitioner) have the requisite standing to file the petition on behalf of the domestic industry under the Rules.

## **H. Dumping**

8. 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 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 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.

9. The Authority sent questionnaires to the exporters from the subject countries in terms of the section cited above. The claim made by the exporters with regard to normal value and export price are as under:

## **I. Claims of the exporters on Normal Value and Export price**

### **10.(a) EU**

#### **Exporter: PCK Raffinerie GmbH**

The exporter have claimed that they have not exported any Sodium Cyanide to India during the specified period i.e. 1st April, 1998 to 31st December, 1998 and that their production of Sodium Cyanide has ceased on 30th June, 1998. They do not consider it necessary to fill in the questionnaire.

#### **Exporter: E. Merck**

The exporter have stated that they have not invoiced or sold Sodium Cyanide to any party in India. Thus they will not fill in the questionnaire.

**Exporter - M/s Degussa Huls**

The exporter have furnished information in respect of Sodium Cyanide in relation to the domestic price and export price to India.

**Normal Value:**

The exporter have claimed normal value on the basis of weighted average selling price in respect of domestic sales in the entire E.U.(E.U. is considered as the domestic market) and the adjustments thereon. The adjustments are claimed on account of commission, insurance, interest and freight. Thus the normal value, i.e. the domestic selling price at ex-factory level is claimed as US\$ xxxx/M.T.

**Export Price:**

The export price to India is claimed on the basis of weighted average cif value of exports to India during the period of investigation. Adjustments are claimed on account of commission, FOB cost, interest, ocean freight and insurance. Accordingly export price at ex- factory level is claimed as USS xxxx/M.T.

The delegation of European Commission and other exporters from the EU(other than M/s Degussa Huls) have not furnished any information on Normal Value and Export price for the subject goods exported by the exporters of their member countries, which are essential for determination of dumping and dumping margin. Therefore, the Authority considers the information provided by the petitioner in this regard.

**(b) Korea RP**

**Producer : Tone Suh Petrochemicals Corporation Ltd.**

**and**

**Exporter : Hanwha Chemical Corporation Ltd.:**

The exporter have submitted information regarding the domestic as well as export price.

**Normal value:**

The exporter have claimed normal value on the basis of average selling price in respect of domestic sales during the period of investigation and adjustments thereon.

Adjustments are claimed on account of local transportation, insurance, value added tax and agency commission. In evidence of domestic selling price, the exporter have furnished copies of two domestic invoices. The average domestic selling price is claimed as US\$ xxxx/M.T. during the relevant period. Taking this into account and the adjustments claimed thereon, the normal value is claimed as US\$ xxxxx/M.T.

**Export price:**

Here the average export price (cif) to India is claimed as US\$ xxx/MT and adjustments are claimed on account of local transportation cost in Korea (factory to port), Ocean freight to India, insurance, container tax, handling charges and margins for agents. Thus the export price at ex-factor)' level is claimed as US\$ xxxxxx/M.T.

**(c) USA**

**Exporter: Sterling Chemicals**

The producer/exporter have stated that they are not a proper party in the present investigation, They claim to be owned by E.I. Dupont and they only produce the subject goods. They do not sell, export or any way market the Sodium Cyanide produced by them. Thus, they claim that they are not a proper party in the investigation.

**Exporter/Manufacturer: C.P. Chemicals**

It is stated that C.P. Chemicals has at no time before, during or after the relevant period 1st April, 1998 to 31st December, 1998, either manufactured or exported Sodium Cyanide.

Thus the Authority finds that no exporter/producer from USA have responded to the questionnaire nor have furnished the requisite information on Normal value and export price. Therefore, the Authority considers the information provided by the petitioner and the export price from DGCIS source as the best available information.

**(d) Czech Republic:**

No exporter/producer from Czech Republic have furnished the requisite information on Normal Value and export price. Therefore, the petitioner's informations on these and export price from DGCIS source are considered by the Authority and, accordingly the Authority determines the Normal value and Export price.

## **J. Examination of the claims of the Exporters by the Authority:**

11. The claims of various exporters in respect of Normal value and export price are examined as under:

### **(a) USA:**

Though two producers/exporters from USA have responded, the Authority notes that no exporter/producer have submitted information on normal value and export price in respect of the product under consideration. Therefore, the Authority considers Ac information provided by the petitioner and the export price from DGCIS source as best available information and determines Normal value and export price at US\$ 1450/M.T, and at US\$ 760MT respectively. Thus, the dumping margin is calculated as US\$ 690/M.T, which is 90.78% of export price.

### **(b) EU**

Exporter: M/s Degussa Huls

Here the Authority notes that the exporter have claimed Normal value on the basis of weighted average domestic price of their sales in the various member countries of the European Union, which as a whole is claimed as the domestic market by the exporter. The Authority also admits the amounts towards adjustments on account of commission, Insurance, interest and freight claimed by the exporter. Thus the Authority determines the Normal Value at US\$ \*\*\*/MT. For the purpose of Preliminary determination subject to verification.

In respect of the export price, the Authority notes that the same is claimed by the exporter on the basis of weighted average cif value of exports to India, The Authority allows the adjustments claimed on account of commission, FOB costs, interest. Ocean freight and insurance. The Authority, thus, determines the export price at US\$ ..... /M T as claimed by the exporter subject to verification. The dumping margin is calculated as US\$ xxxx/MJ, which is 37% of the export price.

The Authority notes that neither the exporters/producers of EU member states (except those mentioned in para A.I. xiii) nor the EC delegation have responded to the questionnaire nor have they furnished informations in relation to Normal Value and export price of Sodium Cyanide. The Normal value and export price in respect of all non cooperative exporters of the European Union and the dumping margin is, therefore, based on the information provided by the petitioner.

The Authority states that while the case was initiated on the request of the petitioner against the FRG and the European Union, considering that FRG is a part of the European Union and the latter is a territory with no trade and tariff barriers, the case has been examined with respect to all the exporters of EU as a territory.

**(c) Czech Republic:**

The Authority notes that no producer/exporter have submitted requisite information on normal value and export price in respect of the product under consideration. Therefore, the Authority considers the information provided by the petitioner and the export price (cif) from the DGCIS source as best available information and determines normal value and export price at US\$ 1581/M.T. and at US\$ 912/M.T. respectively.

Thus, the dumping margin is determined as US\$ 669/M.T. which is 73.35% of export price.

**(d) Korea RP**

Exporter: M/s Hanwha Chemical Corporation

Producer : M/s Tong Suh Petrochemical Corporation Ltd.

The Authority notes that the exporter have claimed Normal value on the basis of average domestic selling price and adjustments on account of local transportation, insurance, value added tax and agency commission. These adjustments are allowed by the Authority. The Authority also notes that in evidence of domestic selling price, the exporter have furnished copies of two invoices pertaining to the POI. The Authority further notes that production of Sodium Cyanide in this case is a down-stream process using some bye products of another plant of the producer as raw-materials for Sodium Cyanide, thereby reducing the cost of production, The Authority, therefore, determines the Normal value at US\$\*\*\*\*\*/M.T, for the purpose of preliminary determination which is subject to verification.

The export price is claimed on the basis of weighted average export price to India which, the Authority finds, matches with DGCI&S data. Adjustments are claimed on account of local freight in Korea, Ocean freight, insurance, container tax and handling charges and commission for India. These expenses as claimed are allowed by the Authority for preliminary determination subject to verification. The export price is, thus, determined at US\$\*\*\*\*\*/M.T. subject to verification. The Authority finds that the comparison of Normal value and export price so determined shows nil dumping margin.

Non-Cooperative Exporters

In respect of non-cooperative exporters from subject countries/territory who have not responded to the questionnaire, the Authority determines the dumping margin at the same claimed by the petitioner for the respective country/territory as a whole on the basis of their (petitioner's) information on Normal value and export price. Thus the dumping margin as % of ex-factory export price in respect of subject countries/territory and the exporters are determined as follows:

Country	Exporter	Dumping Margin
1. USA	All Exporters	90.78%
2. E.U.	M/s DegussaHuls All other Exporters	37% 54%
3. Czech Republic	All Exporters	73.35%
4. Korea RP	M/s. Hanwha Chemical Corpn, and M/s. Tong Suh Petrochemicals  Corporation Ltd. All other Exporters	NIL

## K. INJURY

12. Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such article..." 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 like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree.

Annexure II(iii) under rule 11 supra further provides that in case where imports of a product from more than one country are being simultaneously subjected to Anti dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

The Authority notes that the margin of dumping and quantum of imports from subject country are more than the limits prescribed above. Cumulative assessment of the effects of imports is appropriate since the export prices from the subject countries were directly competing with the prices offered by the domestic industry in the Indian market.

For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the rules supra.

**(a) Quantum of imports:**

The Authority has considered the statistics of the petitioner and the same published by DGCIS, Calcutta in this regard and finds that there is a marginal variation between the both. However, the Authority has relied upon the data relating to import volume, as published by DGCIS, Calcutta, which is a Governmental body, to analyse the import trend from the subject countries and the injury caused to the domestic industry on this count.

As per the statistics published by DGCI and S, the quantum of imports during the last three years and during the POI is as under:

**(In M.Ts)**

	1995-96	1996-97	1997-98	POI (annualised)
From subject countries:	890	1210	1393	1245 (1660)
From other:	148	304	371	100 (133)
Total:	1038	1514	1764	1345 (1793)

From the above figures, it is observed that (a) the Volume of total imports from the subject countries has registered an increase of 86.5% during the POI (on annualised basis) in absolute terms over 1995-96 (b) the volume of imports from the subject countries constituted 85%, 80%, 79% and 93% of total imports during 1995-96, 96-97, 97-98 and the POI respectively.

**(b) Production capacity and capacity utilisation:**

The petitioner have stated that they are having an installed capacity of 6372 M.T. which has not changed during the last three years. There is no significant change in

production over the years. The capacity utilisation has been 89,78% during 1995-96, 87.29% during 1996-97, 86.94% during 1997-98 and 92.34% during the POI.

**(c) Volume of sales and market share:**

The volume of sales of the domestic industry which was 4201 M.T. during 1995-96 has increased to 4761 M.T. during the POI (annualised). The market share of the domestic industry, which was 74.3% during 1996-97, increased to 79.5% during '1997-98 and declined to 72.35% during the POI.

**(d) Employment:**

It is observed that there is a decline in manpower employed with the petitioner from 334 employees during 1996-97 to 317 during 1998-99.

**(e) Average sales realisation and profitability:**

The average sales realisation was Rs...../M.T. during 1995-96, Rs...../M.T. during 1996-97, Rs...../M.T. during 1997-98. It declined in the year 1997-98 to Rs...../M.T, from Rs...../M.T. during 1996-97. During the POI, it is observed that the average sales realisation declined further to Rs...../M.T. It is observed that the petitioner has incurred loss during both 1997-98 and the POI and the loss per M.T. has increased from R5...../M.T. during 1997-98 to Rs..... /M.T. during the POI, i.e. April-December, 1998.

## **L. Conclusion on Injury:**

13. In the light of the above observations on injury parameters, the following conclusions are arrived at:

14.

(a) Quantum of imports from the subject countries and total imports have increased during the POI as compared to the period 1995-96.

The market share of imports from the subject countries increased from 21.54% during 1996-97 to 25.32% during the POI.

(b) The production and capacity utilisation have been stable over the years.

(c) There has been a marginal reduction in the number of employees with the petitioner.

(d) The petitioner's volume of sales in absolute terms was higher during the POI as compared to the period 1995-96. However, the market share of the petitioner has declined during the POI compared to the previous years due to increase in imports from the subject countries.

(e) There has been a decline in average selling price of the subject goods during the POI as compared to the previous year of 1997-98. This has resulted in the increase of losses suffered by the petitioner during the POI.

All the above factors, namely, increase in quantum of imports from subject countries, decline in market share, decline in employment, decline in average sales realisation and increase in the losses incurred, suggest that the domestic industry has suffered material injury.

## **M. Causal link**

14. In establishing that the material injury to the domestic industry has been caused by the imports from subject countries, the Authority holds that increase in quantum of imports from subject countries resulted in decline in the market share of petitioner. This had the effect of under cutting the prices of domestic product forcing the domestic industry to sell below its fair selling price. Resultantly, the domestic industry was not in a position to realise its fair selling price and, therefore, incurred losses. The material injury to the domestic industry was, therefore, caused by the dumped imports from the subject countries.

## **N. Indian Industry's interest and other issues**

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

16. It is recognised that the imposition of anti dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. 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 restricted to an amount necessary to redress the injury to the domestic industry, On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of Sodium Cyanide. Imposition of anti dumping

measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers.

17. To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority may rely upon reasonable selling price of Sodium Cyanide in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

## O. Conclusions

18. After considering the foregoing, it is seen that:

- a. Sodium Cyanide described under para 5 and originating in or exported from Czech Republic, USA, Korea RP and EU except that originating in or exported by M/s Hanwah Chemicals Corporation and M/s Tong Suh Petrochemicals Ltd. of Korea R.P has been exported below normal value, resulting in dumping.
- b. The Indian Industry has suffered material injury.
- c. The injury has been caused cumulatively by the dumped imports from the subject countries.

19. It is considered necessary to impose anti-dumping duty provisionally, pending final determination, on all imports of Sodium Cyanide originating in or exported from the subject countries.

20. The Authority considered to recommend the amount of Anti-Dumping Duty equal to the margin of dumping or less, which if levied, would remove the injury to domestic industry, The average landed price of the imports, for the purpose, was compared with the Non-injurious selling price of the petitioner determined for the period of investigation. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. Accordingly, it is proposed that provisional anti dumping duties be imposed, from the date of notification to be issued in this regard by the Central Government, on all Sodium Cyanide originating in or exported from USA, Czech Republic, Korea RP and EU falling under Customs sub-heading No, 2837,11 of the Customs Tariff Act, pending final determination.

21. The Anti-Dumping duty in respect of subject countries/territory and the exporters shall be the amounts mentioned in column 4 of the following table :

S. No.	Country	Exporter	Amount (Rupees per MT)
1.	USA	All Exporters	401
2.	E.U.	1. M/s. Degussa Huls	No Duty

		2. All other Exporters	3339
3.	Czech. Republic	All Exporters	2470
4.	Korea RP	1. M/s Hanwah Chemical Corpn.	No Duty
		2. M/s. Tong Suh Petrochemicals Corpn Ltd.	No Duty
		3. All other Exporters	11460

22. 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 9 A of the Customs Tariff Act, 1975.

## **P. FURTHER PROCEDURE:**

23. The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioners and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days of the dispatch of this notification. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would disclose essential facts before announcing the final findings.

**RATHI VINAY JHA,**  
Designated Authority...