

**No. 14/73/92-TPD**  
**Government of India**  
**Ministry of Commerce**

New Delhi, the 10th August, 1993

**Subject:-** Anti-dumping investigation concerning import of Bisphenol-A originating from Japan - Preliminary findings.

**Whereas:** The Government of India, Having regard to the Customs Tariff Act, 1975 as amended in 1982 and the Rules, 1985 made there under, after consultation with the administrative Ministry, namely, the Ministry of fertilizers and Chemicals and Petrochemicals.

**A. PROCEDURE:**

(1) In July, 1992, the Designated Authority under the Customs Tariff Act, 1975 as amended in 1982. received a written complaint, lodged by an Indian Manufacturer of Bisphenol-A, namely M/s. Kesar Petroproducts Ltd., Bombay. M/s. Kesar Petroproducts Ltd. were granted a Letter of Intent in October, 1989 for the manufacture of Bisphenol- A. The Company started construction work in 1990. The commercial production was started in March, 1992. The total capacity of the company is 5000 MT per annum. The company as scheduled to manufacture Bisphenol-A to the tune of 3000 MT in the first full year of commercial operation. M/s. Maharashtra Petrochemicals Corporation Ltd., an undertaking of the State Government of Maharashtra an equity participation to the tune of 26% in M/s. Kesar Petroproducts Ltd. The applicant company has commenced production of Bisphenol-A, an import substitute product.

The applicant company is the sole manufacturer of the products whose production shall be available for domestic consumption. The manufacturer of the product is M/s. Cibatul Ltd. M/s. Cibatul Ltd. Manufacturer for its captive consumption and resort to imports for meeting any additional requirements. Thus M/s. Kesar Petroproducts Ltd. represent "domestic industry" as per rule 2(c) of the Customs Tariff (Identification, Assessment and Collection of Duty on dumped Articles and for Determination of Injury) Rules, 1985. The complaint has alleged that the foreign supplier from Japan is exporting Bisphenol-A to India at prices lower than the prices at which the product is sold by the foreign supplier in its domestic market, i.e. Japan and that this has adversely affected the establishment of the company, viz. M/s. Kesar Petroproducts for the manufacture of Bisphenol-A. This was considered sufficient to justify the

initiation of the proceedings. The petitioner requested that anti-dumping Duty be levied as per the provisions of Articles 9(A) & 9(B) of the Indian Customs Tariff Act, 1975, as amended in 1982.

(2) The Designated Authority, accordingly, announced by a Public Notice No. 14/73/92-TPD dated 12.8.1992 in the Gazette of India, the initiation of anti-dumping proceedings concerning imports into India of Bisphenol-A falling under H.S. Customs Heading No. 29072300 originating in Japan and commenced investigation.

(3) The Designated Authority officially advised the exporter and importers known to be concerned, the representative of the exporting country and the complainant and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing. The petitioner had named M/s. Mitsui & Co. Ltd., Japan in their petition as the sole exporter of the product, to whom the Designated Authority addressed a questionnaire to elicit the relevant information.

(4) M/s. Mitsui & Co. Ltd., Japan, in their written reply stated that they are not a manufacturing company but a trading company and they export Bisphenol-A to India which they buy from the manufacturers of the product in Japan and for their services they get commission which is calculated as percentage on the CIF/C&F value of the product. During the course of oral submission. M/s. Mitsui & Co. submitted that the total capacity of Bisphenol-A in Japan of the five manufacturers is 3,20,000 M.T. of which the capacity of M/s. Mitsui Chemicals alone is 1,05,000 M.T. It was further stated by M/s. Mitsui & Co. Ltd., that due to over capacity and drop in demand and other constraints, the average capacity utilisation of the Japanese manufacturers of Bisphenol-A is only about 70%. In addition, Japan also imports annually from the USA about 20,000 M.T. M/s. Mitsui further stated that domestic demand in Japan is over 2,00,000 M.T. and about 40,000 M.T. is exported worldwide. It, was also stated by M/R. Mitsui that US\$ 900 CIF is the prevailing standard international price. M/s. Mitsui admitted that there are slab prices varying widely depending on the quantum of such purchase by the domestic buyer in Japan.

(5) The complainant Indian producer made their views known in written. These are briefly as follows:-

1. The export price of Bisphenol-A for India, originating from Japan, was well below their normal value.
2. Imports from Japan of Bisphenol-A are causing material retardation to the establishment of industry in the Republic of India.
3. Indian producer is unable to market its product at an economically viable price although the quality is good and hence is suffering substantial losses.

4. Since the Indian producer is not able to market its product, the inventories are piling up,
5. A number of Bisphenol-A Users in India, to whom a reference was made, also made submissions. They are briefly as follows:-
  - a. The quality of the domestic producers of Bisphenol-A inferior. However some of the local consumers also expressed satisfaction about the quality of Bisphenol-A manufactured by M/s, Kesar Petroproducts Ltd.
  - b. The decline in the prices of Bisphenol-A is in line with the price of the product world over and is mainly due to worldwide recession in the Petrochemicals Industry.
  - c. The raw-material used for production of Bisphenol-A attract very high import duties in the Republic of India .
  - d. Bisphenol-A should be available to the Indian producers at a realistic price and the consumer should not be penalized for under utilisation of capacity by the domestic industry.
7. The Designated Authority sought and verified information it deemed necessary for the purpose of a preliminary determination.
8. The investigation of dumping covers the period from 1st January, 1992 to 31st July, 1992.

## **B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND INDIAN INDUSTRY**

### **1. Production under consideration.**

(9) The product covered by the notice of initiation of this anti-dumping proceeding is Bisphenol-A falling under H.S. Customs Heading No.29072300.

Bisphenol-A is an organic chemical product and manufactured out of Phenol A Acetone and is used for the production of Epoxy, Resins, Polycarbonate etc.

### **2. Like Product.**

(10) By and large, the Bisphenol-A exported from Japan to India is alike, in all respect, to the Bisphenol-A produced and marketed by M/s. Kesar Petroproducts Ltd.

### **3. Indian Industry**

(11) The size of the Indian market has been relatively small. The domestic requirement, excluding those of M/s. Cibatul Ltd., the production of -which is for

captive consumption , has been net mainly through imports. Total imports of the production in the Republic of India during the financial years (April-March) 1988-89, 1990-01 and 1991-92 were of the order of 1493 M.T. 1244 M.T. respectively. Imports during April to July 1992 were of the order of 465 M.T. Japan is the main supplier of the product to India. of the above imports, imports from Japan were 328 M.T. during 1988-89, 820 M.T. during 199-91, 786 M.T. during 1991-92 and 248 M.T. during April-July, 1992 thus having a share of 22%, 41%, 63% an 53% respectively of the domestic market during the respective period.

## **C. NORMAL VALUE**

(12) Normal value is based on pricing in the exporting country, i.e., Japan. M/s. Mitsui & Co. Ltd. furnished domestic invoices showing domestic sale of Bisphenol-A in February, July & August, 1992. In the absence of any other available reliable data,, the normal, value in the exporting country has been determined based on the information provided by M/s. Mitsui & Co. Ltd.

## **D. EXPORT PRICE**

(13) The export prices to India of Bisphenol-A during the investigation period were determined on the basis of the prices actually paid for the product, based on the data available from Directorate General of commercial Intelligence and Indian Customs Authority, which was found to be reliable and related to the period of investigation.

## **E. COMPARISON**

(14) For the purpose at a fair comparison between the normal value and the export price and in accordance with Section 9(A)(2) of the Customs Tariff Act, the Authority took into account the available information as outlined in the paragraphs above. All comparisons were made after making due allowance for differences in conditions and terms of sales for differences in taxation and other differences affecting price comparability based on the information made available by the exporter from Japan.

## **F. DUMPING MARGIN**

(15) Since export varied considerably, normal value for the domestically sold Variety of the exports were compared with the export price (FOB) of the comparable variety, at the same level of trade.

(16) The Authority has based on the information available, preliminarily determined the export price and normal value and found the existence of dumping in respect of Bisphenol-A originating from Japan; the margin of dumping being as follows:

(US Dollar per M.T.)

Export Price 861

Normal Value 1154

Margin of Dumping 293

## **G. INJURY**

(17) The Authority considered that the effects of imports originating from Japan of Bisphenol-A were to be analysed in the light of the fact that a new Indian Industry is being set up with substantial investment. It is manufacturing the like product which is comparable to the product imported into this country.

(18) Under Rule 18 supra, for determination of material Injury or threat there of raw-material retardation of the establishment of an Indian industry, the designated Authority has to consider the volume of dumped imports and their effect on the prices in the domestic market for like products and the subsequent impact of such imports on domestic producers of such products. As regards volume of the dumped imports, the Authority took into Account the fact that the demand of the product in the country is very limited which earlier in the absence of any domestic Indian manufacturer, was mainly being met by imports. A new unit is now being set-up in India for production of Bisphenol-A in the country. In considered the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price under cutting by the dumped imports as compared with the price of an identical product in India or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred, and in turn making the domestic industry economically unprofitable because of dumping .

(19) For the examination of the impact on the establishment of an industry in Indian the Designated Authority considered such indices as having a bearing on the state of industry, as utilisation of capacity, sales, inventories, profits and price trends.

### **2. Consumption of India**

(20) The size of the Indian market has been relatively small. The total market was estimated at around 2000 tonnes per annum only. The availability of Bisphenol-A during the past years has been mainly met by the imports.

### **3. Volume and market share of dumped imports**

(21) Total import of Bisphenol-A during the years 1988-89, 1990-91, 1991-92 and four months period in 92-93 (April 92 to July 92) were 1493 MT, 1983 MT, 1244 MT and 465 MT respectively of which imports from Japan were 328 MT, 820 MT, 786 MT and 248 MT respectively which constitute 22%, 41%, 63% and 53% of the total imports. Thus, exports from Japan are substantial and have clearly shown an upward trend.

### **4. Prices of the dumped imports between U.S.Dollar and Indian Rupee**

(22) The import prices of Bisphenol-A from Japan in US Dollar roistered a declining trend from US\$ 1418 per MT during 19988-89 to US\$ 1350 MT during 1990-91 and US\$ 1125 per MT during 1991-92. The declining trend continued during April to July, 1992 when the average import price was US \$ 1012 per MT: the import price declining to US \$ 900 per MT during July, 1992. The steep decline during 1991-92 and thereafter coincided with the plan of the petitioner to set up the domestic industry for manufacture of Bisphenol-A in the country and with the commencement of commercial production by the petitioner in June, 1992 thereby affecting the price that could be realised in the domestic market.

### **5. Other relevant economic factors - effect on Industry**

#### **(a) Installed Capacity arid Capacity Utilisation;**

(23) The Installed Capacity of Indian domestic industry, M/s. Kesar Petroproducts Ltd., which commenced its production in march 1992 is 5000 MT. The capacity utilisation of M/s. Kesar Petroproducts Ltd., is 29.1% and 23.3% during the months of June 1992 and July 1992 respectively or prorate basis.

#### **(b) Inventory**

(24) The closing stock position of Bisphenol-A of the domestic industry may be seen from the following:

(M.T.)

July '92	204
August '92	397
September '92	402
October '92	582
November '92	728
December '92	1000

The closing stock of Bisphenol-A has been continuously Increasing soon after commencement of commercial production by the domestic Indian manufacturer.

(c) Volume of sales and market share of Indian Industry

(25) As the production of Bisphenol-A in the country was very limited, mainly being used for captive consumption, the demand of the product including that from M/s. Cibatul had to be [net from imports. Prior to the commencement of production of M/s. Kesar Petroproducts Ltd., there was no Indian industry to meet the domestic requirement. Since the commencement of production by M/s. Kesar Petroproducts Ltd. the company is not able to market its product successfully due to dumped imports.

(d) Price trends and profitability

(26) The indigenous manufacturer was able to sell a very small quantity . The company was able to realise only Rs. 61,000 MT, net of discounts, in June 1992. Almost the same trend continued during the period July-December, 1992. However, the company could hardly sell much material locally: it sold 11 tonnes in June, 1992 and 73 tonnes in July to December, 1992 against production of around 1300 MT during the period June to December, 1992.

(27) The profitability of the manufacturer has been adversely affected due to loss of sale in the wake of continued dumping of the product originating in Japan.

## 6. Conclusion

(28) In order to determine whether the imports from Japan are causing material retardation to the establishment of an Indian industry within the meaning of Rule 18 supra, the Designated Authority took into account the following facts:-

1. The new capacity which has come into production in 1992 could sell less than 10% of the production during June 1992, while during the 7 months period June-December, 1992 it could not sell beyond 6% of its production. ,
2. The capacity utilisation achieved during the June 1992 was only 29% and during the period June 92 December 92. It was 47% on pro-rate basis.
3. Japan, the country under investigation, is a substantial producer of Bisphenol-A.
4. During 1991-92 Japan accounted for 63% of the total import of Bisphenol-A in India compared to 41% in 1990-91. The share of imports from Japan has been steadily rising over the years.
5. The import price Bisphenol-A from Japan has been showing a declining trend since 1988-89 . The price declined from US\$ 1418 per MT in 1988-89 to \$ 1350 MT in 1990-91 & \$ 1125 MT in 1991-92: to US\$ 1012 during April-July, 1992 and further to US\$ 900 MT in July, 1992.
6. Indian domestic producer is forced to sell the product at price even lower than its cost due to imports and imports have clear impact in depress prices and prevent price increase which otherwise would have occurred.
7. Inventory of the product with the Indian Industry has considerably increased from 110 MT in June 92 to 1,000 MT in December'92.

(29) Substantial capacity has been created in the country to meet the present and projected demand of the country. The indigenous industry has not been able to market its product because of competition from imports at cheaper/dumped prices.

Inventories are already showing an upward trend, It is, therefore, felt that overall imbalance in the global demand and supply and the recessionary conditions in the world market will continue to induce the exporting country to sell Bisphenol-A at dumped prices into India. This is likely to result in losses to the Indian manufacturer and consequent decline in profitability, employment, wages, capacity utilisation and financial returns from investment. In view of this, it is considered that the dumped imports from Japan are causing material retardation to the establishment of an industry in India.

## **H. INDIAN INDUSTRY INTEREST**

### **1. General Consideration:**

(30) The purpose of anti-dumping duties is to eliminate dumping which is causing injury threatening material injury to the Indian industry or material retardation to the establishment of an industry in India for securing an open and fair completion on the Indian market which is fundamentally in the general interest of the country.

(31) While the Authority recognized that the imposition of anti-dumping duties may affect price levels of the exporters concerned in the Indian market and subsequently may have some influence on the relative competitiveness of their products, it does not expect fair competition on the Indian market to be reduced by taking of anti-dumping measures particularly if the levy of the anti-dumping duty is limited to the amount necessary to redress the situation of material retardation to the establishment of an Indian in India.. On the contrary, the removal of unfair advantage gained by the dumping practices is designed to prevent the material retardation to the establishment of the Indian industry and, thus, to help maintain in the availability of the wider choice of producers/suppliers.

(32) The Authority also considered and balanced the effects of anti-dumping duties on Bisphenol-A imported from Japan in relation to specific interest of the Indian industry and other interested parties including consumers.

## **2. Interest of the Indian Industry**

(33) In view of the nature of material retardation to the establishment of an Indian industry, in particular the fact that when a new capacity has come in the Indian industry. It has been forced into the unhealthy competition caused by dumped imports, the Authority considers that in the absence of intervention, the disappearance of Indian producer cannot be ruled out. This could cause stoppage of production leading to loss of investment, employment and any lead to reduction of the choice of suppliers which is not in the interest of Indian consumers.

## **3. Interest of other Parties**

(34) Arguments have been raised that the imposition of anti-dumping measures would be contrary to the Indian public interest because this would result in higher prices, less competition and may harm other Indian Industries.

(35) Although it is clear that price advantages based on unfair practices are unjustifiable and may in the long run be harmful even to the interest of consumers when they have the effect on weakening competitors and provoking their disappearance, it is uncertain in this case that for the consumers of Epoxy Resins the imposition of protective measures will result in substantial higher prices since Bisphenol-A is only a raw material which has to be processed further before reaching the ultimate consumer.

## **4. Conclusion**

(36) In conclusion, after balancing the various interests involved, the Authority considers that the imposition of measures in the present case will establish fair competition by eliminating the injurious effect of dumping practices.

(37) The Authority considers that it is, therefore in the general Interest of the public to impose anti-dumping measures in the form of a provisional anti-dumping duty.

## **I. DUTY**

(38) For the purpose of establishing the level of the provisional duty, the Authority look into account the dumping margin found and the amount of duty necessary to eliminate the material retardation to the establishment of an Indian industry.

(39) Material retardation to the establishment of an Indian industry has resulted from the price depression caused by dumped imports during 1992. The weighted average export prices for the product during the investigation period plus the basic and auxiliary duties of customs were taken as the basis to arrive at the price at which the product entered India. For the purpose of determining the rest of production in India, calculations were made on the basis of actual cost of production data of the petitioner adjusted to full capacity utilisation. After adding reasonable profit margin, the domestic prices were compared with the landed prices of dumped imports. Both excise duty and countervailing duty were excluded from these calculations. Comparison was made between domestic and imported prices to work out the amount of duty necessary to minimise if not to eliminate the impact of material retardation to the establishment of an industry in India.

(40) The Designated Authority has taken into consideration the impact of the Budget presented on 27.2.93. The import duty on Bisphenol-A has been reduced to 85% thereby reducing the landed price of imported product and widening the gap between the price of imported product and the selling price of domestic industry.

## **J. FINDINGS**

(41) The Authority accordingly has come to the conclusion that:

- i. Exporter from Japan has sold in India Bisphenol-A falling under H.S. Nomenclature Code No. 29072300 below normal value;
- ii. The Indian industry is facing material retardation to the establishment of an industry in India to manufacture Bisphenol-A; and
- iii. The material retardation to the establishment of an Indian industry is caused by the dumped imports originating from Japan.

## **K. RECOMMENDATION'S**

(42) Under the provisions of the Indian anti-dumping regulations, it would be permissible to levy anti-dumping duties equal to the margin of dumping. The Designated Authority accordingly recommends imposition of the provisional anti-dumping duty for a period of four months, from the date of Gazette Notification in this regard, at the following rate which is lower than the margin of dumping; -

Percentage of CIF Value

- Exports by M/s Mitsui & Co. Ltd., Japan 28.9
- All other exports originating from Japan 28.9

(43) The provisional anti-dumping duty shall not be added for the purpose of calculation of the countervailing duty.

(44) This duty would also be applicable to new or any other exporter from Japan who are not parties to the present proceedings.

(45) All interested parties are advised to make known their views and apply to be heard orally by the Authority within one month of the date of issue of this notification.

**(Y. Venugopal Reddy)**

Designated Authority & Additional Secretary to the Govt. of India