

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 30th August 1994

Preliminary Findings

Subject: Anti-dumping investigation concerning import of Isobutyl Benzene originating from Peoples Republic of China-preliminary findings.

No, 14/50/93/TPD - B. 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.

C. PROCEDURE

- i. Whereas the Designated Authority under the above rules, received in August, 1993 a written complaint from the Indian IBB Manufacturer's Association, Bombay, who account for the total indigenous production of Isobutyl Benzene in India, alleging dumping of Isobutyl Benzene (hereinafter referred to as IBB) originating in the People's Republic of China;
- ii. Whereas the Designated Authority announced by a Public Notice dated 7.1.1994 published in the Gazette of India, the initiation of an anti dumping proceeding concerning imports into India of IBB falling under heading 2933.40 of Schedule I of India, Customs Tariff Act, 1975 and No. 2933.04.08 under India Trade classification (Based on Harmonized Commodity Description and Coding System) originating from the Peoples' Republic of China.
- iii. Whereas the Designated Authority officially advised the concerned exporters and importer as known to the Designated Authority, the representatives of the exporting country and the complainant and gave them an opportunity to make their views known in writing and to request a hearing.
- iv. Whereas the Designated Authority addressed the questionnaire to elicit relevant information from the following exporters:
 1. M/s. Shenyong Pesticide Factory, China
 2. M/s. Sinochem Lianoning, China
 3. M/s. Sinchent Jilin Branch, China
 4. M/s. Tiaijin Chemicals, Tiajanin, China
 5. M/s. Fushn No. 4 Chemical Plant, Fushan, China

6. M/s. Honshon Chemical Plant, Thinan Province, China
- v. Whereas the Embassy of Peoples Republic of China in New Delhi was also informed about the intimation of investigation and was requested to advise the exporters' producers from China to respond to the questionnaire by 28th February, 1994. The last date for responding to the questionnaire was unilaterally extended upto 31.3.94 to enable the exporters to send a response. The last date was again extended to 30th April, 1994 at the request of the Chinese Ministry of Foreign Trade and Economic Cooperation. Accordingly, the date of public hearing was also postponed from 18th April, 1994 to 18th May, 1994. The exporters neither sent in their response nor attended the public hearing held on 18th May, 1994.
- vi. Whereas the questionnaire was also sent to the known importers and users of IBB and to the Bulk Drugs Manufacturers' Association, Hyderabad. The public hearing held on 18th May, 1994 was attended by the representatives of the petitioner domestic industry and the following importers: (i) M/s. Sumitra Pharmaceuticals and Chemicals Ltd. (ii) M/s. Cheminor Drugs Ltd., and (iii) M/s. C. Well Drugs Pvt. Ltd.

2. The petitioner highlighted the following points:

- a. That no representative of the exporter exporting country i.e. People Republic of China was present at the hearing not did they respond to the questionnaire;
- b. That the export price of IBB originating from the Peoples' Republic of China was continuously falling and was also below their normal value;
- c. That imports from china has caused materials injury to the Indian producers in that the Indian producers had been compelled to reduce domestic price below their fair selling price and hence were suffering substantial losses;
- d. That the provisions of Section 9B (1) of the Customs Tariff Act. (proving of injury) were not applicable to China in the absence of the relevant notification by the Central Government.

3. The views expressed by IBB importers and users and their association in the public hearing and in their written submissions were briefly as follows:

- a. That the Government of India had notified Peoples Republic of China for the purpose of Section 9B (1) of the Customs Tariff Act, 1975 in June 1994 and hence it was necessary to establish injury to the domestic industry.
- b. That IBB was imported for manufacture and export of Ibuprofen, India had emerged as a major producer and exporter of Ibuprofen after USA and UK. Imposition of anti dumping duty might affect exports of Ibuprofen causing problem to the user industry.

- c. That the Indian IBB manufacturers were not operating at optimum levels resulting in extra overheads and high cost.
- d. That there was inadequate material for determining normal value.
- e. That the international prices of IBB were ruling at a similar level.

Finding of the Designated Authority

4. The Designated Authority (D.A.), having considered the arguments and counterarguments highlighted above as well as having perused the relevant records, found that:

- i. People Republic of China has been noticed under Section 9B (1) and hence-keeping in mind the MFN agreement, no procedural distribution should be made. Dumping, injury and causal relationship would, therefore, have to be proved. The Designated Authority has gone by the above requirements as will be seen from the recitals below.
- ii. The Indian IBB producers have had to sell below their Fair Selling Price has not been disputed.
- iii. That the cost of Indian IBB may not be optimum because of low capacity utilisation may be true in 1992-93. However, in 1993-94 the capacity utilisation was 92 per cent. The Designated Authority has given due weightage to this aspect while determining material injury to the domestic injury.
- iv. The argument of the importers that there was inadequate material for determining normal value was not substantiated.

5. The D.A. sought and verified information deemed necessary for the purpose of the preliminary determination. To this end an investigation was carried out at the premises of the following domestic producers.

- i. M.s. Vinati Organies Ltd.
- ii. M/s. Herdillia Chemicals Ltd.

6. The investigation covered the period from 1st April, 1993 to 31st December, 1993

7. In the absence of any response from the exporters, the Designated Authority has made the preliminary finding on the basis of the information available to it as per Rule 14 supra.

E. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND INDIAN INDUSTRY:

(a) Product under consideration and like product.

8. The product covered by the investigation is Isobutyl Benzene falling under heading 2933.40 of schedule I of Indian Customs Tariff Act. 1975 and No. 2933.40.08 under Indian Trade Classification (Based on Harmonised Commodity Description and coding system).

9. The product is manufactured out of toluene propylene, methanol, potassium carbonate, sodium metal etc. It is an organic, aromatic, neutral, colourless liquid having a specific gravity of around 0.852. It is also known as 2-methyl-L phenyl propane. It is used in the manufacture of ibuprofenean analgesic, anti-inflammatory drug. By and large IBB exported from Peoples Republic of China is alike in all respects to the IBB produced and marketed in India.

E. Indian Industry

10. The petition has been filed on behalf of M/s. Vinati Organies Ltd., B-12 and B-13/1, MLDC Industrial and M/s. Herdillia Chemicals Ltd., Air India Building, Nariman Point, Bombay-100021. In India, IBB is manufactured by these two producers only and hence they constitute domestic industry in accordance with Rule 2 (e) of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985.

F. Normal Value:

11. The petitioners did not furnish information on domestic prices of IBB in China nor did they furnish the comparable price of the product when exported to any other, third country, as China was a non-market economy. They had suggested that normal value be determined as per their Cost of productions. As details of cost production in China were also not available and as none of the exporters furnished factual information in response to the questionnaire sent to them, the Designated Authority decided to determine the normal value on the basis of best available information in India about the cost of production of IBB. The normal value was determined at the ex-factory level.

G. Export Price

12. Since none of the exporters responded to the Authority's request to make available the relevant information, the export price was determined on the basis of the price actually paid for the product sold as reported by the petitioners which were found to be reliable. The export price was also correlated with the data submitted by the three

importers who responded to the questionnaire. The cif export price, was adjusted for insurance and freight for working out the f.o.b. price. The FOB price was treated as ex-factory price in the absence of data on the cost of inland transportation.

H. Comparison

13. For the purpose of a fair comparison between the normal value and export price and in accordance with section 9(A) (2) of the Customs Tariff Act and Rule 14 supra, the Authority took into account the best available information with it in the absence of any response from the exporters in People's Republic of China who were given ample opportunity to make available the relevant information from their end. The average export price obtained during the period of investigation was compared with Normal price.

I. Dumping Margin

14. The Normal value (at ex-factory level) as determined above was compared with the average FOB price (which was also the ex-factory level price) obtained during the period of investigation. The Designated Authority determined the margin of dumping @ 39.5 per cent of the average cif value of the imports.

J. Injury

15. 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 prices 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 an identical 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.

16. For the examination of the impact on the industry in India, the Designated Authority considered such indices having a bearing on the state of industry as production trend, capacity utilisation sales stock, profitability and net sales realisation.

K. Trend of Imports – Volume and Price effect

17(a) Petitioners have alleged that import of IBB originating from the People's Republic of China increased from 162.06 MT in 1990-91 to 783 MT in 1991-92 and 731.95 in 1992-93.

(b) During April to December, 1993 the imports from People's Republic of China declined to 287 MT. The reason for decline in imports, despite the decrease in average import price, is attributable to the availability of indigenous product at lower rate consequent upon the coming up of domestic industry in later half of 1992. The price of IBB from China has shown a marked decline between 1990 and 1993-94. The average price which was \$3098 per MT in 1990, fell to \$ 2757 in 1991, \$ 2458 in 1992-93 and to \$ 1945 per MT during the period of investigation. The price in 1993-94 fell by 37 per cent with reference to 1990 and by 20.8 per cent with reference to 1992-93.

L. Production Trend and Capacity Utilisation

18. The Indian industry for IBB started production only in July 1992. The total production of Isobutyl Benzene was 860 MT in 1992-93 (9 months) and 1512 MT in 1993-94 (April to December 1993) which shows a rising trend. The capacity utilisation has increased from 54 per cent to 92 per cent.

M. Sales Trend

19. The total sales of IBB show a rising trend from 717 MT in 1992-93 (9 months) to 1607 MT during April-December, 1993.

N. Price Trend

20. The Indian industry was able to realize Rs. 121.03 per kg. on an average on its sales in 1992-93. In 1993-94, the average price fell to Rs. 85.96 per kg a fall of 29 per cent which is directly attributable to the fall in prices of IBB imported from China.

O. Stock Trend

21. The closing stock of IBB was 140.3 MT on 31st March 1993 and 57.4 MT on 31st December 1993 showing a declining trend.

P. Profitability Trend and Net Sales Realisation

22 (a) Both the companies constituting the domestic industry incurred losses in 1992-93 and in 1993-94. The loss aggravated steeply in 1993-94 due to the lower average

prices. The total losses increased from Rs. 249.71 lakhs in 1992-93 to Rs. 284.39 lakhs in 1993-94 despite increased production and sales.

(b) The domestic industry has, thus to reduce its selling prices substantially to by and large, match it with the imported price of IBB to remain in the market. This has resulted in huge losses to the newly created domestic industry. The following table establishes this trend.

Period	Average landed price Rs. Per Kg.	Average domestic price Rs. Per Kg.
May 93	104.60	94.41
June 93	93.62	84.40
Oct. 93	89.80	81.20
Dec. 93	85.41	78.14

It is evident from the above that the average domestic price of Rs. 121 in 1992-93 had to be brought down in 1993-94 in line with the falling prices of IBB from republic of China. Ever time the price was reduced by the Indian industry, the prices were further reduced by the exporter from People Republic of China.

Q. Cost of Production and Fair Selling Price

23. The Designated Authority found that the falling import prices prevented the domestic prices from increasing to meet even the cost of production. The price suppression was around Rs. 21.093 PMT based on the Fair selling price of IBB produced by the most efficient unit among the domestic producers.

R. Injury

24. Even though the quantum of imports from China have come down and factors such as production, capacity utilisation, sales and stock trend of the domestic industry have shown improvement, the Designated Authority found that price was the most important factor of customers in determining the source of supply. Therefore, the improvement in production, sales etc. were a direct consequence of the lowering of the prices by domestic industry to match the imported price. The domestic producers have been prevented from selling at a price level which would allow reasonable profit to even the most efficient Indian producer. The Designated Authority is, thus, led to the inescapable conclusion that the pricing of the dumped imports have caused material injury to the domestic producers.

S. Causal Link

25. In determining whether material injury to Indian industry was caused by the dumped imports, the Authority took into account the following facts:

- i. Price depression of imports which occurred over the last few years became more severe since the two Indian producers started manufacturing Isobutyl Benzene; and
- ii. Price undercutting by these exporters, below normal value forced the domestic industry to reduce its selling price to a level below its cost of production to market its product and coincided with the coming into existence of the domestic industry.

T. Indian Industry's Interest

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

(b) The Authority recognized that the imposition of anti dumping duties might affect the price levels of the products manufactured out of IBB and exported and consequently might have some influence on relative competitiveness of their products in the export market. However, it is not envisaged that fair competition, on the Indian market will 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. On the contrary, the removal of the unfair advantage gained by dumping practices is designed to prevent the decline of the Indian industry and thus to help maintain the availability of the widest choice to the consumers.

(c) In view of the fact that when capacity has been created for the first time to manufacture IBB indigenously, the Indian industry has been forced into the unhealthy situation caused by the dumped imports, the Authority considers that in the absence of intervention, the disappearance of Indian Industry is quite possible. This could lead to reduction of the choice of suppliers which is not in the interest of users.

U. Interest of other parties:

27 (a) Arguments have been raised that the imposition of anti dumping measures would be contrary to the Indian public interest because they would result in less competition, higher prices for consumers of ibuprofen and may harm India's exports.

(b) Although it is clear that price advantages based on unfair practices are unjustifiable and may in the longer term be harmful even to the interest of consumers

when they have the effect on weakening competitors and promoting their disappearance. There has been earlier experience in many commodities that once the domestic industry disappeared prices were artificially increased for the consumers. In any case for the consumers of ibuprofen the imposition of protective or punitive measures will not result in substantial higher prices since Isobutyl Benzene is only one of the raw materials which had to be processed before reaching the consumer.

(c) As far as the processing industry is concerned, the extent of any price rise is expected to be limited in view of the fact that a competition between the Indian producers and exporters will not be reduced.

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

- i. Exporters from Peoples' Republic of China have sold IBB in India below normal value.
- ii. the Indian industry has suffered material injury; and
- iii. that the dumped imports were the cause of the material injury suffered by Indian Industry.

(b) In conclusion, the Authority considered that the imposition of anti-dumping measures in the present case will re-establish fair competition by eliminating the injurious effects of dumping practices.

(c) The Authority considers it necessary to impose a provisional anti dumping duty in order to remove the material injury to the domestic industry. The export price, normal value and the margin of dumping in this case were determined by the Designated Authority as:

	\$ MT	Rs. MT
Normal Value	2603	81995
Export Price	1834	57771
Margin of Dumping	769	24224

(d) The Designated Authority considered whether a duty lower than the dumping margin would be enough to remove the injury. For this purpose, the average landed price of the Chinese imports was compared with the fair selling price of IBB produced during the period of investigation. This difference was less than the dumping margin and accordingly the Designated Authority considered that an anti dumping duty of Rs. 13,089 per MT be imposed on imports of IBB originating in the Peoples Republic of china falling under Code No. 2933.40.08 of the Custom Tariff.

(e) This duty would also be applicable to new or any other exporter from People Republic of China who are not parties to the present proceedings.

(f) The parties/exporters concerned may make known their views and apply to be heard orally by the Authority within one month of the publication of this findings.

J.K. BAGCHI,
Designated Authority of anti Dumping & Additional Secy.