

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 6th February 1998

PRELIMINARY FINDINGS

Subject: Anti dumping investigation concerning imports of magnesium from China PR- Preliminary Findings.

7/1/97/ADD. - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of injury) Rules, 1995, thereof:

A. PROCEDURE

The procedure described below has been followed with regard to the investigations:

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received written application from M/s. Southern Magnesium & Chemicals Ltd., on behalf of the domestic industry, alleging dumping of magnesium, originating in or exported from China PR;
- ii. The Authority, on the basis of sufficient evidence submitted by the petitioner, decided to initiate investigations against imports of magnesium from China PR. The Authority notified the Embassy of China PR about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub rule 5(5) of the Rules;
- iii. The Authority issued a public notice dated 31st July, 1997 published in the Gazette of India, Extraordinary, initiating anti- dumping investigations concerning imports of magnesium, classified under custom sub- headings 8104.11 and 8104.19 of Schedule I of the Customs Tariff Act, 1975, originating in or exported from China PR;
- iv. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the petitioner) and industry associations and gave them an opportunity to make their views known in writing in accordance with the rule 6(2);
- v. The Authority forwarded a copy of the public notice to the known importers of magnesium in India and advised them to make their views known in writing within forty days from the date of the letter;

- vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of magnesium for the past three years, including the period of investigations. No information was however, received from CBEC;
- vii. The Authority provided a copy of the petition to the known exporters and the Embassy of China PR in accordance with rules 6(3) supra;
- viii. The Authority sent questionnaire, to elicit relevant information, to the following known exporter, in accordance with the rule 6(4);
 - Taiyuan East-United Smelt Magnesium Co. Ltd., China
 - United Siji Metal Magnesium Co. Ltd., China
 - Hebi Siji Metal Smelting Co. Ltd., China
 - Shanxi Lucheng Fenghua Smelting Ltd., China
 - Nanjing Ube Magnesium Co. Ltd., China
 - Chemetals International Ltd., Hong Kong
 - Yue Pak Co. Ltd., Hon Kong

The Embassy of the Subject country 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 Embassy, along with a list of know exporters/producer;

A questionnaire was sent to the following known importers of magnesium in India calling for necessary information in accordance with rule 6(4)

- Jayesh Trading Co., Mumbai
- Industrial Metallics, Mumbai
- J Poonamchand & Sons, Mumbai
- Metco Marketing India Ltd., Mumbai
- Asia Metal Corpn., Mumbai
- Amogh Alloys, Mumbai
- Metal Alloys, Mumbai
- Sanjay Commercial Corpn., Calcutta
- Kothari Metals Pvt. Ltd., Calcutta
- Bahti Udyog, Calcutta
- Impex Metal Pvt. Ltd., Delhi

Additional information regarding injury was sought from the petitioner, which was also received.

The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.

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 so as ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

Investigations was carried out for the period from starting 1st April, 1996 to 31st Dec., 1996.

B. PETITIONER'S VIEWS

The petitioner has raised the following issues in their petition.

i) On Dumping

- The petitioner has stated that a major part of dumping is originating from small producers of magnesium in China PR. Chinese manufactures are offering the metal at throw away prices in order to capture the Indian Market;
- Anti- dumping duties have been imposed by USA on Chinese magnesium in view of dumping by the Chinese exporters;
- Exports of Chinese magnesium to Europe are at a dumped price, as a result of which 150-200 smaller producers of magnesium have gone out of business;
- As, the markets for export of Chinese magnesium is getting blocked all over the world, India has become a potential market for dumping of Chinese magnesium;
- The normal value of magnesium in China is based on constructed cost of production;

ii) On injury:

The petitioner has suffered injury as seen by the following:

- Distress sale by the petitioner at lower prices, resulting in non- recovery of depreciation and interest costs;
- The petitioner has not been able to earn any return on capital
- Sates of the petitioner has drastically declined.

- Though the consumption of magnesium in India has been growing over the years, production of the petitioner has remained stagnant inspite of increase in the plant capacity by the petitioner;
- The selling prices of the petitioner are based on cost of production, in spite of which the petitioner is not in able to complete with the prices offered by the Chinese exporters. The prices offered by the Chinese exporters are unrelated to their cost of production;
- Selling prices of the petitioner include on element of sales tax on raw materials, other inputs and finished goods, whereas the imports from China PR do not have to bear this cost;
- The petitioner may not be able to continue its operations for long even though it is not an inefficient producer.

C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

3. None of exporters addressed to by the Authority has responded to he questionnaire M/s. Kothan Metals Ltd.. Calcutta has responded to the Authority's request for information whereas M/s. Escorts Metal Ltd. has merely expressed its views without furnishing any information. These parties argued that the petitioner is the only manufacturer of magnesium in India and its total production is not sufficient to meet the total demand in the country. There is therefore, no justification in imposing anti-dumping duty, these parties have argued.

D. EXAMINATION OP THE ISSUES RAISED

4. The submissions made by the importers, petitioner and other interested parties have been examined, considered and have been dealt at appropriate placed hereinafter.

E. PRODUCT UNDER CONSIDERATION

5. The product considered in the present investigations is magnesium of all grades/purifies, shapes and sizes. Magnesium is a silvery white metal having density equal to approximately 63% of that of Aluminum.

6. Magnesium is classified under custom sub-heading 8104.11 and 8104.19 of Schedule 1 of the Customs Tariff Act, 1975 and under 8104.11.00 and 8104.19.00 or ITC. The description is, however, indicative only and is in no way binding on the scope or the present investigations.

7. Magnesium is sold in various physical forms and sizes, such as slabs rounds pellets and 15 used in defence, space and nuclear industries. Magnesium is not substitutable with any other material.

F. LIKE ARTICLES

8. The Authority considered factors such as physical characteristics (size chemical composition, raw material), manufacturing process and technology functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods in order to establish whether the magnesium produced by the domestic industry is a like article to the magnesium exported from China PR. The petitioner contended that it uses Pidgeon process for making magnesium, whereas Chinese producers uses electrolyte as well as Pidgeon process. The difference in the production process, however does not result in difference in the end product and the cost of production is also nearly the same regardless of the manufacturing process. The petitioner has claimed that the goods exported from China PR and goods produced by the petitioner are being consumed interchangeably and have characteristics closely resembling each other. There is no argument contrary to the claim of the petitioner on this account. The goods produced by the domestic industry are a like article to the goods exported from China PR within the meaning of the Rule 2(d).

G. DOMESTIC INDUSTRY

9. The petition has been filed by M/s Southern Magnesium and Chemicals Limited, Deccan Chamber, 5th Floor, 6- 3-666/B. Somajiguda, Hyderabad-500082. There is one more producer of magnesium in India, M/s. Tamilnadu Magnesium and Marine Chemical Ltd., (TMML), which has suspended its production since 1992. The petitioner being the sole producer of the magnesium in India, satisfies the definition of the domestic industry in accordance with Rule 2(b) supra.

H. DUMPING

10. 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 rule 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 of 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 t\article from a country other than the country of origin and where the article has been merely transhipped 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.

11. The Authority provided opportunity to the exporters from China PR to furnish information relevant to the investigations and offer comments, if any in accordance with the Section cited above. The Authority wrote to the Embassy of China PR in India also. However, none of the exporters have responded to the Authority request for information.

12. None of the importers or other interested party(ies) have furnished any information relevant for determination of normal value. The claim made by the petitioner with regard to the determination of normal value has not been disputed by any interested party(ies). The Authority, therefore, proceeded on the basis of Rule 6(8) i.e. best information available, for determination of normal value of magnesium in China PR.

13. The normal value was determined on the basis of cost of production constructed for China PR at the time of initiation. The Authority has considered the same basis of determination of normal value in these findings.

14. **Export Price:** None of the exporters from China PR have furnished information requested by the Authority. The information furnished by the importers is insufficient to arrive at a fair average export price of magnesium from China PR for the investigations period. The export price has, therefore. Been worked out on the basis of information published by the Directorate General of Commercial Intelligence and Statistics (DGCI&S). Import of magnesium under custom sub-headings 8104.11.00 and 8104.19.00 have been considered for working out the average export price in the investigations period.

15. The petitioner had furnished export price on the basis of Metals and Minerals Review also. However, since the information compiled by the DGCIS is available exclusively for the product under consideration, the Authority has ignored the information furnished by the petitioner on the basis of Metals and Minerals Review.

16. The petitioner has not claimed any adjustment in the CIF export price, not have the exporters claimed any adjustments in the normal value and/or export price. Further, the normal value is based on the cost of production and has been considered as at ex-work level. Any adjustment on export price would, therefore, necessarily result in increasing in the dumping margin. In view of the non-cooperation from the exporters and no information otherwise available with the authority and in view of the dumping margin being significantly higher than the extent of the injury, it is considered appropriate not to allow any adjustment in the export price. The export price thus determined has been treated as the ex-works export price.

17. For the purpose of fair comparison between the normal value and the export price, the Authority took into account the information furnished by the petitioner and other published information available with the Authority. The normal value and export price determined, as detailed above, are at ex-works level and therefore, the normal value has been compared with the weighted average export price. The dumping margin comes to 62%.

I. INJURY

18. 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 articles... " In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been 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 increases, which otherwise would have occurred, to a significant degree.

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

(a) Volume and market share of Dumped imports:

20. Imports of magnesium from China PR increased from 441 MT in 1994-95 to 992 MT in 1995-96 and were 766 MT in the investigation period (1021 MT on annualised basis), resulting in sharp increase in imports in absolute terms share of China PR in total imports increased sharply from 28.42% (1994-95) to 68.25% (investigation period). Market share of China PR in total demand in India also increased from 24.41% (1994-95) to 57.9% (investigation period).

(b) Export Price from China:

21. CIF export price of magnesium from China PR declined from Rs. 136 per kg. (1994-95) to Rs. 124 per kg. in April 1996 and averaged Rs. 93.73 per kg, in the investigation period.

(c) Production and Capacity Utilisation:

22. The production of the petitioner increased from 243 MT (1993-94) to 268 MT (1994-95), 277.35 MT (1995-96) and was 205 MT in the investigation period (307 MT on annualised basis). The capacity utilisation of the petitioner declined from 44.6% in 1994-95 to 36.41% in the investigation period.

(d) Sales in absolute terms:

23. Sales in absolute volumes increased from 232.959 MT (1993-94) to 285.369 MT (1994-95) and thereafter declined to 279.211 MT (1995-96) and were 182.35 MT in the investigations period (243 MT on annualised basis).

(e) Stocks:

24. Stock of magnesium with the petitioner were 2.646 MT (1994-95), 0.785 MT (1995-96) and averaged 6.86 MT in the investigation period.

(f) Average Sales Realisation:

25. Average unit sale realisation for the domestic industry from sale of magnesium increased from Rs. 125.71 (1993-94) to Rs. 133.59 per kg. (1994-95), Rs. 166.80 per kg. 1995-96) and was Rs. 168.06 in the investigation period.

(g) Price Undercutting:

26. The import price from China PR was significantly lower than the average sales realisation of the petitioner, resulting in price undercutting in the Indian market. It is

found that the Chinese exports were undercutting the prices of magnesium in the Indian market by 44% during the investigations period.

(h) Price Suppression:

27. The Authority found that in spite of increase in the cost of inputs (the cost of production increased by Rs. *** pmt in the investigation, period as compared to the previous year), the domestic industry was prevented from increasing its prices commensurate with the increase in the cost of production (the selling prices increased Rs. *** pmt only).

(i) Profit/Loss:

28. The profitability of the petitioner declined considerably in the investigation period as compared to the previous year. It is found that the petitioner had incurred a loss of Rs.6.18 lakhs on its sales of Magnesium in 1994-95, whereas it made a profit of Rs. 32.34 lakhs in 1995-96. The same however, declined to Rs. 8.28 lacs in the investigation period (Rs. 11.04 lacs on annualised basis).

(j) Conclusion on injury:

29. Volume of dumped imports in absolute terms as well relative to production and consumption in India, export price of magnesium from China PR and various indicators relating to domestic industry such as production, capacity utilisation, sales quantities average sales realisation, stock, losses collectively and cumulatively establish that the domestic industry has suffered material injury, even though some of the parameters show improvement. The Authority holds that the domestic industry has suffered material injury.

J. CAUSAL LINK:

30. In establishing that the material injury to the domestic industry has been caused by the imports from the subject countries, the Authority hold that increase in market share of the imports from China PR resulting in decline in the market share of the petitioner and forced the domestic industry to keep its prices to unremunerative levels and prevented the domestic industry from recovering its production costs. The material injury to the domestic industry was, therefore, caused by the dumped imports from China PR.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

31. 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.

32. 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 product. 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 any dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of domestic industry and help maintain availability of wider choice to the consumers of magnesium. 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.

33. To ascertain the extent of Anti-dumping duty necessary to remove the injury to the domestic industry, the Authority relied upon reasonable selling price of magnesium in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

L. LANDED VALUE:

34. The landed value of imports from China PR have been determined on the basis of weighted average export price of magnesium from China PR, after adding the prevailing level of customs duties and one percent landing and two percent handling charges.

M. CONSLUSIONS:

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

- a. Magnesium originating in or exported from China PR has been exported to India below normal value, resulting in dumping.
- b. The Indian industry has suffered material injury
- c. The injury has been caused cumulatively by the imports from the subject country.

36. It is considered necessary to impose anti dumping duty, provisionally, pending final determination, on all imports of magnesium originating in or exported from the subject country, pending investigations.

37. It was considered whether a duty lower than the dumping margin would be sufficient to remove the injury. Landed prices of the imports, for the purpose, was compared with the fair selling price of the domestic industry, determined for the period of investigations. Whether the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. Accordingly, the Authority recommends that provisional anti dumping duties @ Rs. 27509 per MT be imposed, from the date of notification to be issued in this regard by the Central Government, on all imports of magnesium originating in or exported from China PR falling under Chapter 81 of the Customs Tariff, pending final determination.

38. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the dispatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings.

RATHI VINAY JHA,
Designated Authority