

**MINISTRY OF COMMERCE**  
**(Directorate General of Anti Dumping & Allied Duties)**

**PRELIMINARY FINDINGS**

**NOTIFICATION**

New Delhi, the 14th October, 1998

**Subject:** Anti dumping investigation concerning imports of Ortho Chloro Benzaldehyde- preliminary Finding.

**26/1/97/-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 Article and for Determination of Injury) Rules, 1995- thereof:

**A. PROCEDURE**

1. 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. Benzo Petro International Pharmaceuticals Limited, on behalf of the domestic Industry, alleging dumping of Ortho Chloro Benzaldehyde (also referred to as OCB hereinafter), originating in or exported from the People's Republic of China (referred to as China PR hereinafter);
  - ii. The Authority, on the basis of sufficient evidence submitted by the petitioner decided to initiate investigations against imports of Ortho Chloro Benzaldehyde 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 19th March, 1998 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of Ortho Chloro Benzaldehyde, classified under custom sub-headings 291300 of Schedule 1 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 exporter (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 o-f the public notice to tie known importers of Ortho Chloro Benzaldehyde in India and advised them to make their views Known in writing within forty days from the date at the letter,
- vi. Request was made to the Central Beard of Excise and Customs (CBEC) to arrange details of imports of Ortho Chloro Benzaldehyde for the past three years, Including the period of investigations;
- vii. The Authority provided a copy of the petition to the known exporter 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 exporters of China PR, in accordance with the Rule 6 (4). No information was, however, received from any exporter from China PR.
  - a. Changzhou Chemical Research Institute, China
  - b. Jinning Chemical Plant, China
  - c. Lanxi Agricultural Chemical Plant, China
  - d. Wesian Agricultural Chemical Factory, China
  - e. Wenzhou Fude Dyes Company Ltd., China
- ix. The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with rules 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 exporter was also sent to the Embassy, along with a list of known exporter/producer.
- x. A questionnaire was sent to the following known importers of Ortho Chloro Benzaldehyde in India calling for necessary information in accordance with rule 6(4):
  - a. Cepham Organic Industries
  - b. Sol Pharmaceutical Industries
  - c. Aurobindo Pharma Limited
  - d. Merven Drug Products Limited
  - e. Kopran Limited
  - f. Artek Surlin

No information was, however, filed by any importer

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

- xiii. 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 to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xiv. Investigation was carried out for the period from starting 1st April, 1996 to 30th June, 1997.
- xv. \*\*\*\* in this notification represents confidential information.

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

2. The petitioner has raised the following issues in its petition.

- a. Chinese producers are offering the material at throw away prices in order to capture the Indian Market. The normal value of the goods in China based on constructed cost is Rs. 193 per kg.
- b. The Chinese exports are substituting the product of domestic industry. The petitioner had five major customers in 1994-95, which was reduced to three in 1995-96. One of three major customers purchased only 50% of its requirement of OCB in 1996-97 from the petitioner as compared to 1995-96.
- c. The imports from China PR increased from 22MT in 1995-96 to 213.446 MT in 1996-97.
- d. Market share of imports increased from 10% in 1995-96 to 64% in 1996-97 and 84% in first months of 1997-98.
- e. The petitioner's sales, which were 172114 kg in 1995-96 reduced to 118357 kg in 1996-97 and 33920 kg. in 1997-98
- f. Petitioner's capacity utilisation in respect to domestic sales, which was 41% in 1995-96 reduced to 28% in 1996-97.
- g. Market share of the petitioner declined from 77% in 1995-96 to 64% in 1996-97 and 16% in first 3 months of 1997-98.
- h. Though the consumption of Ortho Chloro Benzaldehyde in India has been growing over the years, the petitioner has been forced to reduce its production. The production of the petitioner was 192184 kg. in 1995-96 and the same reduced to 161080 kg in 1997-98 on annualised basis.
- i. The petitioner has been forced to reduce its prices in the Indian market in view of the reduction in the prices by the Chinese exporter. The selling prices of the petitioner are based on cost of production, in spite of which the petitioner is not able to compete with the prices offered by the exporter from China PR. selling prices of the petitioner include an 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 has not been able to earn any return on capital.

### **C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES**

3. None of the exporters from China PR has responded to the notice of initiation. One of the companies in India, who is a part of user industry, has offered its comments. The company has stated that cost of exports from India would increase if anti-dumping duty is imposed, which would result in loss of export market. The company has further argued that though refund of anti-dumping duty is possible, the procedure is very dilatory and time consuming. Anti dumping duty is not justified in view of falling prices of downstream materials. The company has also suggested collection of cost data of the other two companies also.

### **D. EXAMINATION OF THE ISSUES RAISED**

4. The submissions made by various interested parties have been examined, considered and have been dealt at appropriate places hereinafter. With regard to effect of anti-dumping duty on exports, it is clarified that anti-dumping duty is not payable in such cases and, therefore, imposition of duty shall not affect those users who consumers the goods for export production.

### **E. PRODUCT UNDER CONSIDERATION**

5. The product considered in the present investigation is Ortho Chloro Benzaldehyde is a fine chemical used as intermediate in the production of CIMC Chloride, which is a raw material for Cloxacillin Drugs. Ortho Chloro Benzaldehyde is also used in Electro Plating Industries. Dyes Industries and Pharmaceuticals industries. Ortho Chloro Benzaldehyde is produced by Chlorination of Ortho Chloro Toluene.

6. Ortho Chloro Benzaldehyde is classified under custom sub-heading 2913.00 of Schedule 1 of the Customs Tariff Act, 1975 and under 2913.00.00 of International Trade Classification. The manufacturing process, function & uses and tariff classification described above are, however, indicative only and are in no way binding on the scope of the present investigations.

### **F. LIKE ARTICLE**

7. The petitioner has claimed that the Ortho Chloro Benzaldehyde produced by it has characteristics closely resembling to the Ortho Chloro Benzaldehyde imported from China PR and the two are consumed interchangeably. None of the interested parties has disputed the claim of the petitioner. In order to analyse that the Ortho Chloro Benzaldehyde produced by the domestic industry is a like article to the Ortho Chloro Benzaldehyde exported from China PR, characteristics such as physical characteristics (size, chemical, composition, raw material), manufacturing processes and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods have been considered. It is found that Ortho Chloro Benzaldehyde produced by the domestic industry has characteristics closely resembling to the Ortho Chloro Benzaldehyde originating in or exported from China PR. The authority therefore, holds that the Ortho Chloro Benzaldehyde produced by the petitioner is a like articles to the Ortho Chloro Benzaldehyde imported from China PR with in the meaning of Rule 2(d).

## **G. DOMESTIC INDUSTRY**

8. The Petition has been filed by M/s. Benzo Petro International Limited, 5, Welcome Shopping Centre, Opp. Punit Nagar, Old Padra Road, Vadodara. There are three producers of Ortho Chloro Benzaldehyde in India and the petitioner constitutes a major proportion in India. The petitioner, therefore, satisfies the standing to file the present petition and constitutes domestic industry within the meaning of the Rules.

## **H. DUMPING**

### **Normal value:**

9. Under Section 9A(1) ©, normal value in relation to an article means:

- i. The comparable price, in the ordinary course of trade, for the like article when meant consumption in the exporting country or territory as determined in accordance with the rules 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:-
  - a. Comparable representative price of the lime 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):

Provide 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 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.

10. 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 exporter from China PR has respond to the Authority's request for in format.

11. None of the importers of the subject goods in India or other interested parties has responded to the notice of initiation of investigations nor has any interested party furnished any information relevant for determination of normal value. The claim mad by the petitioner with regard to the determination of normal value has also not been dispute by any interested party. The Authority has, therefore, proceeded on the basis of Rules 6(8), i.e. best information available.

12. The normal value was determined at the time of initiation on the basis of the constructed value of Ortho Chloro Benzaldehyde. The Authority has considered the same basis of determination of normal value in view of non-cooperation from the exporters from China PR and no other information available contrary to the claimed made by the petitioner. The petitioner has constructed the normal value as Rs. \*\*\* per kg. considering \*\*\*% profits. The Authority has, however, allowed profit @\*\*\*% as per the usual practice in such cases. The normal value this comes to \*\*\* per kg.

### **Export Price**

13. None of the exporter from China PR has responded to the notice of initiation and furnished information requested by the Authority. The importer and other interested parties have also not furnished relevant information.

14. The petitioner had furnished export price on the basis of information compiled by Chemical Weekly, Colour-chem and International Mega Services. However, imports of Ortho Chloro Benzaldehyde are classified under dedicated custom sub-heading and , therefore, the import details compiled by DGCI&S represent more authentic information with regard to the volume and value of imports of Ortho Chloro

Benzaldehyde in India. The export price has, therefore, been worked out on the basis of quotations of Chinese exporters to Indian importers has been ignored. The export price comes as under:

Year	Export Price (CIF)
1996-97	119.22
1997-98 (April-June)	104.11
Investigation Period	114.95

15. None of the exporters have furnished information with regard to price adjustment in the export price to work out ex-work out ex-factory export price. The importers and other invested parties have also not furnished any information, which may be considered for determining ex-factory export price.

16. The petitioner has claimed price adjustment on account of Ocean Freight and Other Charges from the CIF export-price. Since none of the interested parties has furnished any information, which can be relied upon for determining price on ex-works basis, the CIF export price has been adjusted for ocean freight and other charges on the basis of this claim made by the petitioner.

17. The rules relating to comparison provides as follows:

"While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merit, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

18. For the purpose of fair comparison between the normal value and the export price, the information furnished by the petitioner and other published information available with the Authority has been relied upon. The normal value and export price determined, as detailed above, has been considered as at ex-works levels.

19. The dumping margin comes to 62.15% of the export price.

## **I. INJURY AND CAUSAL LINK**

20. 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 of domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has 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.

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

22. Various parameters indicating injury to the domestic industry are as follows:

Parameter	Unit	1994-95	1995-96	1996-97	1997-98 (Apr-Jun)	POI
Imports from China	Kgs	43940	183860	159800	62556	222356
Import Prices	Rs./kg	136.76	126.81	119.22	104.11	114.95
Imports from other countries	Kgs.	130930	17420	38590	0	38590
Ind. Sales	Kgs	41485	172114	118357	8480	126837
Demand	Kgs	216355	373394	316747	112740	429487
<b>Market Share</b>						
Imports from China	%	20.31	49.24	50.45	55.49	51.77
Imports from other countries	%	60.52	4.67	12.18	0	0
Petitioner	%	19.17	46.09	37.37	7.52	29.53
<b>Economic parameters indicating injury</b>						
Capacity	Kgs	226000	226000	226000	565500	282500
Production	Kgs	45985	192184	203687	40270	243957
Capacity Utilization	%	20.35	85.04	90.13	71.27	86.36
Ind. Sales	Kgs	1000	13270	3000	19690	19690
Stocks	Kgs	***	***	***	***	***
Cost of sales	Rs. Lacs	***	***	***	***	***
Cost of Production	Rs/kg	***	***	***	***	***
Average selling prices	Rs/kg	***	***	***	***	***
Unit profit/loss	Rs/kg	***	***	***	***	***
Total Profit/loss	Rs lacs	***	***	***	***	**8

23. It is seen from the above that:

- a. Imports of Ortho Chloro Benzaldehyde from China PR have increased significant in absolute terms and compared to production and consumption in India. The market share of imports from China PR has increased significantly

and the market share of the domestic industry and countries other than India has declined substantially.

- b. Export price from China PR has declined significantly.
- c. Production of the domestic industry has increased significantly. However, increase in production (and consequent increase in the capacity utilisation) of the domestic industry has to be seen in the contest of new capacity created by the petitioner. Further, production in 1995-96 increased substantially in as compared to 1994-95 as 1994-95 was the start up year for the petitioner.
- d. Though the sales of the domestic industry increased significantly, the domestic industry's market share declined significantly, indicating that the domestic industry lost significant sales to the exporters from China PR.
- e. Though the cost of production of the petitioner increased in 1996-97 as compared to previous year, the selling prices declined significantly in the corresponding period, (in cost of production in 1994-95 is apparently not representative in view of the fact the year was the first year of commercial production for the company). The petitioner was forced to a position of losses in the investigation period from a situation of profits in 1995-96.
- f. The above parameters collectively and cumulatively indicate that the domestic industry has suffered material injury, even though some of the parameters show positive movement. It is thus seen that the domestic industry has suffered material injury. It is also seen that the material injury has been caused by the dumped imports.

## **J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

24. 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.

25. 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 Ortho Chloro Benzaldehyde. Imposition of anti dumping measures would nor restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers.

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

## **K. LANDED VALUE:**

27. The landed value of imports may be determined on the basis of export price of Ortho Chloro Benzaldehyde from China PR, determination as detailed above in the para relating to dumping, after adding the prevailing level of customs duties and one percent landing and two percent handling charges.

## **L. CONCLUSIONS:**

28. It is seen, after considering the foregoing, that:

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

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

30. It was considered whether a duty lower than the dumping margin would be sufficient to remove the injury Landed price of the Imports, for the purpose, *was* compared with the fair selling price of the domestic industry, determined for the period of investigations. 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, originating in or exported from China PR tailing under Chapter 29 of the Customs Tariff pending final determination. The anti-dumping duty shall be the difference between Rs. 200.21 and 1 the landed price of imports per kg.

31. 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 34, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

## **M. FURTHER PROCEDURE**

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, 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 despatch of the letter. 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 conduct verifications to the extent deemed necessary. No fresh evidence will be accepted at this stage.
- d. The Authority would provide opportunity to all interested parties for oral submission for which the date and time shall be communicated to all known interested parties separately
- e. The Authority would disclose essential facts before announcing final findings.

**RATHI VINAY JHA,**  
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