

MINISTRY OF COMMERCE & INDUSTRY
(Department of Commerce)

NOTIFICATION

New Delhi, the 31st March, 2000

Preliminary Findings

Subject: - Anti-Dumping investigation concerning imports of Phthalic Anhydride from Indonesia.

29/1/99-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

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. Thirumalai Chemicals Ltd., Ranipet and M/s Herdillia Chemicals Ltd., Mumbai , alleging dumping of Phthalic Anhydride, originating in or exported from the Indonesia (hereinafter referred to as subject country);
- ii. The Authority, on the basis of sufficient evidence submitted by the petitioners, decided to initiate investigations against imports of Phthalic Anhydride from the subject country. The Authority notified the Embassy of the subject country 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 1e November, 1999 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of Phthalic Anhydride classified under custom sub headings 2917-3500 of Schedule I of the Customs Tariff Act, 1975, originating in or exported from the subject country;
- iv. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the petitioners) and industry associations and gave them an opportunity to make their views known in writing in accordance with rule 6(2);

- v. The Authority forwarded a copy of the public notice to the known importers of Phthalic Anhydride 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 Phthalic Anhydride for the past three years, including the period of investigations.
- vii. The Authority provided a copy of the, petition to the known exporters and the Embassy of the subject country in accordance with rules 6(3) supra;
- viii. The Authority sent questionnaire, to elicit relevant information, to the known exporter from Indonesia as indicated by the petitioner , as mentioned below in accordance with the Rule 6(4):

Indonesia

- M/s P.T. Petrowidada, Gresik, East Java, Indonesia Exporter has not responded to the questionnaire.
- ix. The Embassy of the subject country in New Delhi was informed about the initiation of the investigations 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 known exporters/producers;
 - x. A questionnaire was sent to the following known importers/ wholesale dealers of Phthalic Anhydride in India calling for necessary information in accordance with rule 6(4):
 - M/s Berger Paints Ltd, Calcutta
 - M/s C.J. Shah & Co, Mumbai
 - M/s Goodlass Nerolac Paints, Mumbai.
 - M/s HMG Industries, Mumbai
 - M/s Jaysynth Dyechem Ltd., Mumbai
 - M/s KLJ Polymers & Chem, New Delhi
 - M/s Kothari Polymers, Madhya Pradesh,
 - M/s Lona Industries Ltd., Mumbai
 - M/s NOCIL, Mumbai
 - M/s PCL Oil & Solvents Ltd, Daman.
 - M/s Phthalo Colours & Chem, Mumbai
 - M/s SBS Colures & Chemiques, Mumbai
 - M/s Shreeji Plasticisers, Diu

The response was, however, filed by the following importers of Phthalic Anhydride: -

- M/s Indian Plasticizers Manufacturers Association, New Delhi
- xi. Additional information regarding injury was sought from the petitioner, which was also received;
- xii. The Authority kept 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;
- xiii. The Authority conducted spot verification of the domestic industry to the extent considered necessary.
- xiv. 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;
- xv. * * * * in this notification represents information furnished by the petitioner on confidential basis and so considered by the Authority under the Rules.
- xvi. Investigation was carried out for the period starting from 1st April, 1998 to 31st March, 1999.

B. PETITIONER'S VIEWS:

2. The petitioner has expressed the following views with regard to dumping of Phthalic Anhydride and the injury to domestic industry as a consequence thereof:

i) ON DUMPING:

- a. Imports from Indonesia have gone up considerably in the past two years. The price in the domestic market as per the Indian Embassy letter is US\$415 nett of any refundable levies.
- b. The imports from the subject country have substantially increased. The total imports in last two quarters of 1996-97 from Indonesia was 126.78 MT as against total imports of 1259.136 MT which was around 10% of the total imports 'increased to 4040 MT in 1997-98 as against total imports of 6326.449 MT which was around 64% of the total imports further increased to 4182.874 MT in first three quarters of 1998-99 as against total imports of 5014.131 MT which was around 83.4% of the total imports.
- c. Predatory Pricing by Indonesian manufacturers has affected not only Indian manufacturers but have also affected share of other countries. As the price was

lowered repeatedly by the Indonesian manufacturers below normal value, manufacturers from other countries have also been driven out of the market.

ii) ON INJURY:

The petitioner has suffered injury as would be seen from the following: -

- a. There has been a material injury to the Indian manufacturers because of the dumping resorted to by the Indonesian PAN produced.
- b. The prices of Indonesian imports fell from Rs.21, 328 PMT in 1996-97 to Rs 16793 PMT in the year 1998-99.
- c. Dumped imports from Indonesia have grown from an insignificant 0.54% in 1996-97 to 10.40% in 1997-98 and 10.94% in 1998-99 of the total apparent market.
- d. Capacity utilisation of the domestic industry has increased from 35% in 1996-97 to 47% in 1997-98 to 47.18% in 1998-99.
- e. The average stock of the domestic industry has increased from 1066.35 MT in 1996-97 to 3875.2 MT in 1997-98 further increased to 4522 MT in 1998-99.
- f. The domestic sales of the petitioner's have increased by 52.83 % in 1997-98 to 124% in 1998-99 as compared to 1996-97.
- g. The apparent market has increased by 60% in 1997-98 to 141 % in 1998-99 as compared to 1996-97. Thus the petitioner's stake in market share is not increased as compared to growth in apparent market.
- h. The selling price of Phthalic Anhydride in domestic market has gone down in case of M/s Thirumalai Chemicals Ltd. to 95.53% in 1997-98 further gone down to 66.81% in 1998-99 as compared to 1996-97. 'In case of M/s Herdillia Chemicals Ltd. this has gone down to 85.17% in 1997-98 further gone down to 68.9% in 1998-99 as compared to 1996-97.
- i. The profitability of M/s Thirumalai Chemicals Ltd. has gone down by 81.88% in 1997-98 further gone down by 172.26% in 1998-99 as compared to 1996-97. In case of Herdillia Chemicals Ltd. it has gone down by 82.1 % in 1997-98 further gone down to 160.69% in 1998-99 as compared to 1996-97.
- j. Apart from the applicants, the other manufacturers in India have also been injured materially and severely:-
 - Industrial Dyestuff Industries Ltd. (IDI) has closed down its PAN plant with effect from Mid 1998 because it has been unable to withstand the losses arising out of Indonesian dumping.
 - IG Petro Chemicals Ltd, a 100% EOU, has announced losses of Rs.68 crores for the financial year Oct. 97-Sep 98 and further losses during the current year 1998-99.

- Mysore Petro Chemicals Ltd has incurred losses of Rs.1279.79 lacs in the first three quarters of the current year (Apr 98 -Mar 99).
- k. The petitioner's have claimed that there is a threat of injury from the named country because of a significant increase in imports from subject country, exporters has sufficient freely disposable capacity, significant depressing or suppressing effect on domestic prices and inventories of articles being investigated.

C. VIEW. OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES:

3. VIEWS OF IMPORTERS:

The exporters/producers has neither responded to the Authority nor offered any comments.

The importers and/or consumers have expressed their views, and the same are briefly mentioned below:-

- a. Due to unprecedented economic crises in South East Asian country especially Indonesia lead to higher exports of PAN to India during 1997-98 and subsequently. The economic crises were unforeseen. There has been sharp fall in the prices of all Petrochemicals including ortho-xylene (feed stock of PAN) and this resulted to the fall in the PAN prices during the period of investigation 1998-99 in the local and international markets.
- b. The Import Statistics of PAN for 1998-99 period of investigation in the Petition are from April 1998 to December, 1998(9 months) and it is necessary that statistics should cover the full period of investigation.
- c. As per Import data provided on the petition, the value per Kg. of PAN imports from Indonesia is higher than the average value of all other country during April 1998 to December, 1998 and thus no dumping has taken place of Imports of PAN from Indonesia;
- d. The petition also shows that the indigenous production during 1997-98 has been about 20% higher than 1996-97 leading to higher Capacity utilisation by the local industry. It establishes that there has been no dumping of PAN through imports covered under OGL and imports have not affected the local industry adversely.
- e. Under the policy of 100% EOU it is permitted to sell upto 50% of the FOB value of exports in the DTA subject to payment of applicable duties and IG Petrochemicals Ltd. is selling PAN in the local market. In addition, the supplies

could be made against Export Production/Advance and REP Licenses. Thus it would not be appropriate not to treat IG Petrochemicals as a domestic producer. The same applies to Indian Dyestuff Industries even if they have imported PAN from Indonesia. Further Asian Paints and Mysore Petrochemicals need to be included as domestic producers;

- f. Department of Chemicals and Petrochemicals, Ministry of Chemicals & Fertilizers is the Administrative Ministry for PAN and their views/comments ' on the Anti Dumping petition must be obtained;:
- g. Thirumalai's and Herdillia's value of Exports during 1996-97 to 1998-99 has not been given to arrive at export realisation. Further export realisation of IG Petrochemicals and others need to be compared with the imports from Indonesia to determine dumping of PAN, if any.
- h. The drop in PAN local: sale price during 1997-98 and 1998-99 is on account of recession of Petrochemicals in the World and sudden drop in the International prices of Petrochemicals. Besides the Petrochemicals are highly sensitive and fluctuate with the crude prices internationally. The PAN prices have been lowered by all country including Indonesia during the period of investigation. Thus the imports of PAN during 1998-99 at lower prices cannot be treated as dumping to India and the period of investigation selected by the Petitioners is not appropriate.
- i. Without indicating the basis and value taken in US\$ for Normal Value and Export Price, arriving at a -dumping margin of 18% is not appropriate and needs to be spelt out with details/basis;
- j. The fall in the prices of PAN is a Global phenomenon during 1998-99 and there is nothing peculiar about Indonesia;
- k. Capacity utilization of domestic industry, decrease in sales volume etc. have been based on two units, i.e. Applicants units. This should have been based on the industry as a whole constituting of six units;
- l. Unless the methodology adopted by the Petitioners for arriving at Normal Values and Export Prices is explained and duly substantiated by records, these values cannot be taken for alleged dumping;
- m. Phthalic Anhydride is adequately protected by rupee devaluation and by lower levies on raw materials and the high duty on imports of PAN @35% and surcharge @ 3.5% totaling 38.5% with Sadd @ 4% is at par with .Phthalate Plasticizers. As per Government announcement and accepted policies of Chelliah and other Committees, the Import Duty on Intermediates like PAN has to be lower than the finished Phthalate Plasticizers. This undue protection to PAN is affecting the increase in the prices of Phthalate Plasticizers leading to larger imports of the Plasticizers. Thus PAN is already enjoying high protection and there is no justification for further levy of anti dumping duty on imports of PAN to India from Indonesia;

- n. The local manufacturer's plants are too uneconomic, inefficient to compete with the international technological upgradation. The Annual capacities of the local plants and present production capacity need to be stepped up to meet the local demand and exports;
- o. The manufacture of Phthalate Plasticizers is exclusively reserved for the Smallscale sector and most of the units are in SSI sector. This sector is providing a lot of direct and indirect employment. The local Plasticizers manufacturers are facing stiff competition due to heavy imports of Phthalate Plasticizers who are exporting DBP and DOP at very low prices. In the circumstances, the levy of anti dumping duty on PAN would lead to the massive unemployment due to the closure of the PAN;
- p. There is no injury due to imports of PAN to indigenous manufacturers. No new/additional capacity of PAN is either under implementation or approved and none of the existing units are keen to upgrade their technology and effecting expansions to achieve the International scales of production to be cost competitive;
- q. As the local manufactures are not having adequate stocks and there is rise in the prices, it further establishes that there is no dumping of PAN into India.
- r. Claim of dumping by domestic industry only on the basis of letter from Indian High Commissioner would be misleading conclusion because the Indian High Commissioner is not competent authority to properly check prevailing domestic prices abroad.

EXAMINATION OF THE ISSUES RAISED:

The submissions made by the exporters, importers, petitioner and other interested parties have been examined and issues raised with reference to the Rules and having a bearing on this case have been considered and dealt with at appropriate places in the notification.

D. PRODUCT UNDER CONSIDERATION & SCOPE OF INVESTIGATION:

4. The product considered in the present investigation is Phthalic Anhydride originating in or exported from Indonesia. Phthalic Anhydride (PAN) also variously referred to as Phthalic Anhydride Flakes, Phthalic Anhydride (98% min) Phthalic Acid Anhydrous etc.). Phthalic Anhydride is classified, under the Custom-sub heading 2917.3500 of the Custom Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation. .

E. LIKE ARTICLES: -

5. (a) Rule 2(d) of the Anti-Dumping Rules specifies that "Like Articles" means an article which is identical or alike in all respects to the product under investigation or in the absence of such an article, another article, having characteristics closely resembling those of the articles under examination.

(b) The petitioner has claimed that the Phthalic Anhydride produced and sold by them and those imported from the subject country have similar characteristics and should be treated as Like Articles. They have claimed that this is a standard product with simple and uniform specifications; products made in India, is of the same specifications as those made in USA, Indonesia, Korea, Taiwan, etc. They have also claimed that there is no substitute of Phthalic Anhydride. Regarding manufacturing process, Petitioner explained that there is no major difference in the manufacturing process of PAN being produced by us and that produced by other manufacturers worldwide. The process and plants are identical.

(c) In view of the same, the Authority holds that Phthalic Anhydride being produced by the domestic industry and those being imported from the subject country can be used interchangeably and thus are commercially and technically substitutable and therefore, are Like Articles within the meaning of the Rules.

F. DOMESTIC INDUSTRY:

6. The petition has been filed by Ws. Herdillia Chemicals Ltd. and M/s Thirumalai Chemicals Ltd. Ltd., having, its Registered Office at Ranipet and Mumbai respectively. The petitioners account for more than 50% of production. of Phthalic Anhydride in the domestic industry. Therefore, the petitioners account for a major proportion of the production of the subject goods in India and fulfil the requisite criteria to represent the domestic industry, as required under the Rules.

G. DUMPING:

EXPORTER FROM INDONESIA:

NORMAL VALUE:

7. The Authority has examined Normal Value in relation to an article as per the Rules in Section 9A(1)(c).

8. (a) The Authority provided opportunity to the exporters from Indonesia to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority also wrote to the Embassy of Indonesia in

India. However, none of the exporters from the subject country have responded to the Authority's request for information.

(b) The claim made by the petitioner with regard to the determination of normal value has also not been disputed by any interested party(ies). The Authority has, therefore, proceeded on the basis of Rule 6(8), i.e., best information available.

EXPORT PRICE

The export price has been determined on the basis of the information compiled by the DGCI&S. The average export price has been adjusted for insurance, inland freight, overseas freight as claimed by the petitioner.

DUMPING MARGIN

9. 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 merits, for differences which affect price comparability, including differences in conditions and terms of sales, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

10. Based on the Normal Value and the Export Price, as discussed above, the dumping margins in respect of the Indonesian exports are 13%.

H. INJURY & CAUSAL LINK:

11. 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 increases, which, otherwise would have occurred, to a significant degree.

12. 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 of dumping, etc. in accordance with Annexure II (iv) of the rules supra.

13. The various parameters indicating injury to the domestic industry are as follows: -

(n) **PRODUCTION:**

The production of the petitioner company has increased from 33802 MT in 1996-97 to 45030 MT in 1997-98 to 45107 MT in the period of investigation.

(b) **SALES QUANTITY:**

The total sales of the petitioner's has increased 100%(base year) in 1996-97 to 110.5% in 1997-98 to 147.35% during the period of investigation but the petitioner's market share has not increased as compared to growth in apparent market.

(c) **CAPACITY UTILISATION:**

Capacity utilisation of the domestic industry has increased from 35% in 1996-97 to 47% in 1997-98 to 47.18% in 1998-99.

(d) **SALES REALISATION:**

The average sales realisation of the petitioner company during 1997-98 was Rs. * * * */MT. There was a decline in the sales realisation during the period of investigation and the same was at Rs. * * * */MT. However, the sales realisation of the Petitioner Company during the period was below its cost of production.

(e) **PROFITABILITY:**

During the financial year ending 31st March, 1997, the profit of the company from the Phthalic Anhydride operation was Rs. * * * * lacs. The profit further reduced to Rs. * * * * lacs during the year 1997-98 further gone into loss lacs during the year 1998-99.

(f) **CLOSING STOCK**

The average stock of the domestic industry has increased from 1066.35 MT in 1996-97 to 3875.2 MT in 1997-98 further increased to 4522 MT in 1998-99.

(g) **TOTAL IMPORTS:**

Dumped imports from Indonesia have grown from an insignificant 0.54% in 1996-97 to 10.40% in 1997-98 and 10.94% in 1998-99 of the total apparent market.

(h) PRICE SUPPRESSION:

The prices of Indonesian imports fell from Rs.21,328 PMT in 1996-97 to Rs.16793 PMT in the year 1998-99.

14. The Authority, therefore, notes from the above that the imports from the subject country have been at a price below the selling prices of the domestic industry. Further, the imports into India have been at a price lower than the non-injurious price for the domestic industry. As a consequence thereof the petitioner was forced to sell its product at a price significantly below its reasonable selling price resulting in financial losses, to the petitioner. The petitioner was also prevented from increasing the level of capacity utilisation as compared to growth in market demand. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

I. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES:

15. The purpose of anti dumping duties, in general, is to eliminate dumping which is causing injury to the petitioner companies 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 petitioner companies. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the petitioner companies and help maintain availability of wider choice to the consumers of Phthalic Anhydride. Imposition of anti dumping measures would not restrict imports from the subject country 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 petitioner companies, the Authority has relied upon non - injurious selling price of Phthalic Anhydride in India for the petitioner companies, by considering the optimum cost of production at optimum level of capacity utilisation for the petitioner companies.

J. LANDED VALUE:

18. The landed value has been determined on the basis of export price of Phthalic Anhydride from Indonesia as detailed r above in the Para relating to dumping, after adding the prevailing level of customs duties and one percent towards landing and two percent towards handling charges,.

K. CONCLUSIONS:

19. After considering the foregoing the Authority concludes that:

- a. Phthalic Anhydride (PAN) originating in or exported from Indonesia 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 by the imports from the subject country.

20. It is considered necessary to impose anti dumping duty, provisionally, pending final determination, on all imports of Phthalic Anhydride originating in or exported from Indonesia pending investigations.

21. The authority considered recommending 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 Company, determined for the period of investigations. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. It is considered necessary to impose antidumping duty, provisionally, pending final determination on .all imports of Phthalic Anhydride originating in or exported from Indonesia pending further investigation.

22. Accordingly, the Authority recommends that provisional duties be imposed, on all imports of Phthalic Anhydride originating in or exported from Indonesia. The Anti-Dumping duty shall be the amounts indicated in the table below, to be imposed from the date of Notification to be issued in this regard by the Central Govt. on all the imports of Phthalie Anhydride falling under Chapter 29 of the Customs 'Tariff, originating in or exported from the country :mentioned below: . _

S. No. Exporters/ Amount

(Rs. per MT)

1. INDONESIA: All Exporters 786

23. 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 under Section .3, 3.a, 8B, 9. 9A of the Customs Tariff Act 1975.

L. 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; 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 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.
- c. The Authority would provide opportunity to all the interested parties for oral submissions to be rendered thereafter in writing.
- d. The Authority would conduct further verification to the extent deemed necessary.
- e. The Authority would disclose essential facts before announcing final findings.

RATHI VINAY JHA...
Designated Authority