

Ministry of Commerce and Industry
Directorate General of Anti-Dumping & Allied Duties

Notification

New Delhi, the 15th October, 2004

Subject: Re-Commencement of Anti-Dumping investigations concerning imports of Hexamine from Iran on violation of Price Undertaking.

14/35/2002-DGAD – Having regard to the Customs Tariff Act 1975 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

1. M/s Kanoria Chemicals & Industries Ltd., Mumbai, had filed an application before the Designated Authority (hereinafter referred to as the Authority) in accordance with the Customs Tariff (Amendment) Act, 1995 and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 alleging dumping of Hexamine originating in or exported from Iran and had requested for initiation of anti-dumping investigations and levy of anti-dumping duties.

2. On the basis of sufficient evidence submitted by the petitioner the Designated Authority issued a public notice dated 18th Sept., 2002 published in the Gazette of India Extraordinary initiating Anti Dumping Investigations concerning imports of Hexamine classified under customs sub heading no. 2921.2901 of Chapter 29 of the Customs Tariff Act 1975, originating in or exported from Iran.

3. Vide Notification No.14/35/2002-DGAD dated 23rd December, 2002, the Authority notified the preliminary findings and noted the following in Para 4(A) of the said findings:

- i. The information provided by the exporter was not strictly as per the questionnaire or in the same order as in the questionnaire. No supporting documents had been attached.
- ii. No evidence has been attached to claims made with regard to the price adjustments claimed from the export price. The exporter has exported Unstabilised Hexamine to India and to third countries. It was further noted that the selling price to India was lower than the selling price to third countries.

- iii. The confidential information was not accompanied by a non confidential summary.
- iv. General information under part (A) of the exporters questionnaire had not been provided.
- v. There was no information relating to sales in the home market (Appendix 1). The Authority noted, therefore, that there was no information and no claim with regard to normal value in the domestic market in Iran.
- vi. The Authority further noted that there was no information on licensed capacity , installed capacity, production and sales have been provided (as per Appendix 7). The information/data required under part 'D' of the questionnaire response had not been furnished.
- vii. In Appendix 8 (Factory Cost and Profit of Exports to India) the quantity consumed per unit of raw materials, utilities and overheads, the rate thereof and the total cost had not been specified.
- viii. There was no information on profit determination (part 'E', customer information (in the format set out in Appendix 5) and third country information as required under part 'H' of the questionnaire. Copies of the trading and profit and loss account and balance sheet for the period of investigation and previous two years showing the determination of gross profit, details of selling and administration and other costs and net profit had not been furnished.

4. In the examination on normal value, the Authority noted in Para I (i)of the preliminary findings that the information in the relevant appendice of the questionnaire regarding domestic sales have not been submitted by M/s Sina Chemical Industries Co. Since data and information on domestic sales has not submitted, a determination on normal value as per provisions contained in Section 9A (1) (C) (I) and (ii) read with sub-rule 2 (i) and (ii) of Annexure 1 of the Anti-Dumping Rules cannot be made. Under the circumstances the Authority had been constrained to determine the normal value on the basis of 'facts available' as per Rule 6(8).

5. As regards the export price the Authority noted that the export price claimed by M/s Sina Chemicals, Iran, had not been supported with documentary evidence which was also lacking in respect of the adjustments claimed from the export price. However, the export price claimed had been accepted for the purpose of the preliminary findings subject to verification and submission of documentary evidence by M/s Sina Chemicals.

6. The dumping margin determined by the Authority was 67.75 % of the export price.

7. On 23rd December 2002, Designated Authority vide Notification No. 14/35/2002-DGAD issued preliminary findings, recommending the amount of anti-dumping duty equal to the margin of dumping or less which if levied, would remove the injury to the

domestic industry. It was proposed that provisional anti-dumping duties be imposed, from the date of notification to be issued in that regard by the Central Government, on Hexamine originating in or exported from Iran, falling under customs sub-heading no. 2921.2901 of the Customs Tariff Act, pending final determination. The anti-dumping duty recommended was as follows:

Country	Name of the producer/Exporter	Amount (USD/MT)
Iran	(a) M/s. Sina Chemicals	122.53
	(b) All other producers/exporters	122.53

8. Subsequent to the preliminary findings, the Designated Authority held an oral hearing on 9 July 2003. In the meantime, the exporter conveyed that it was willing to extend a price undertaking in accordance with Rule 15 of the Anti-dumping Rules.

9. The Designated Authority held a meeting when the representatives of the exporter as also domestic industry were present. The said meeting was held on 19 August, 2003 which was attended by the exporter, the domestic industry and the Embassy of Iran. At the time of the said meeting/hearing, the exporter reiterated its willingness to offer a price undertaking.

10. In accordance with paragraph 3 of the undertaking, M/s. Sina Chemical agreed not to sell the subject goods to any importers in India at prices lower than CIF Indian Customs Frontier, Basic Customs Duty Paid Price of US \$ ***. This price was based on the average methanol price of USD *** per MT during the period of investigation. In case of any variation in the price of Methanol, the price was to be changed as per formula explained in Appendix 'B' to the price undertaking extended by the exporter. Operative para of the undertaking is reproduced below:-

“All prices are quoted in US \$ per MT CIF Indian Customs Frontier, Customs Duty Unpaid. The selling prices in the undertaking price grid shall apply to shipments of the subject goods that are imported into India on or after the date of acceptance of this undertaking by the authority.”

Appendix-B attached with the said undertaking read as under:-

“In accordance with paragraph 5 of the undertaking, the Company hereby agrees to provide the Department with the following documents: -

- i. Changes in the prices of Methanol, the principal raw material, by more than US \$ *** per MT as compared to previous quarter shall be appropriately reflected in the price of Hexamine. For the purpose, it shall be considered that with each US \$ change in the prices of Methanol, price of Hexamine should change by

US \$ *** per MT (i.e., a factor of *** MT Methanol per MT of Hexamine would be applied). The changes in the prices of Hexamine would be effected on quarterly basis. The first such revision would be done in the month of March, 2003 for shipments, which would be effective for the period April-June, 03. The change in the prices of Methanol shall be considered on the basis of average prices during the quarter mentioned in ICIS-LOR, as applicable for west Asia region. The quarter for the purpose of this agreement shall mean Jan-March, April-June, July-Sept., Oct.-Dec.

- ii. An amended Appendix "A" will also be telefaxed to the Authority before the start of each Quarter. The original document will be forwarded to the Department by express delivery in conjunction with the documents noted in section (i) above.
- iii. These documents will be forwarded under a covering letter referring to this undertaking to:

The Designated Authority, Ministry of Commerce
Udyog Bhavan, New Delhi, India

Vide Appendix-C and in accordance with Appendix 6 of the undertaking, the exporter agreed to provide to the Authority the invoice and/or the commercial invoice with respect to each shipment of the subject goods with the information as specified in Appendix C. In addition, the Company agreed to certify on each commercial invoice raised as under: -

"This invoice is in accordance with Sina Chemicals Price Undertaking accepted by the Designated Authority on Anti Dumping, Ministry of Commerce, Govt. of India."

11. On the basis of price undertaking by the exporter, Designated Authority suspended the investigations in terms of the provisions of Rule 15 of Anti Dumping Rules vide notification dated 17th September 2003.

B. APPARENT FAILURE TO COMPLY WITH THE PRICE UNDERTAKING

12. The Price Undertaking had been accepted by the Designated Authority in terms of Rule 15 of Anti Dumping Rules. Accordingly no anti dumping duty was to apply in the case of exports of all types of Hexamine by M/s. Sina Chemical Industries Co. However, in the case of any violation in the execution of this undertaking by the exporter, the duties, as set out in the preliminary findings, would provisionally apply, pending specific recommendations by the Designated Authority in this regard.

13. As per Rule 15(5), the information provided by the exporter from time to time has been examined by the Authority and it appears from the documents submitted by the exporter that the information contained therein do not fulfill the requirements of the undertaking as export sales of the subject goods have been made to India at prices which are below the minimum price stipulated in the price undertaking.

14. The applicant M/s Kanoria Chemicals & Industries Ltd., Mumbai has also filed a representation dated 27 April 2004 with regard to violation of the price undertaking.

C. PROVISIONAL MEASURES

15. Under these circumstances, there are reasons to believe that the price undertaking accepted by the Designated Authority from M/s. Sina Chemical Industries Co. has been violated.

16. In view of the foregoing, the Authority reiterates its views in Para O 16 of the preliminary findings and observes that:

- a. Hexamine described under para 6 of the preliminary findings dated originating in or exported from Iran has been exported to India by M/s Sina Chemicals Co. Ltd., at a price which is below the price agreed upon in the price undertaking;
- b. the domestic industry has suffered material injury;
- c. material injury has been caused by imports from the subject country.

17. The Authority hereby cancels the price undertaking given by M/s. Sina Chemicals Co. Ltd., Iran and withdraws the suspension of investigation order dated 17th September, 2003.

18. In view of the violation of the price undertaking, the Authority recommends that the provisional anti-dumping duties as set out in para 17 of the preliminary findings dated 23rd December, 2002 be re-imposed with immediate effect from the date of notification to be issued in this regard by the Central Government, on Hexamine originating in or exported from Iran, falling under Chapter 29 of the Customs Tariff Act and ITC no. 2921.2901, pending final determination.

D. FURTHER PROCEDURE

19. The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority invites comments on the preliminary findings 23rd December 2002 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 of the despatch of this notification. 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 interested parties for oral submissions during the public hearing which would be held later as part of this investigation.
- d. The Authority would disclose essential facts before announcing the final findings.

20. The period of investigation for the purpose of the present investigations is 1st April 2001 to 30th June 2002 (15 months) as notified in the preliminary findings.

21. The exporters in the subject countries and the importers in India known to be concerned are being addressed separately to submit relevant information in the form and manner prescribed and to make their views known to the Designated Authority, Ministry of Commerce, Directorate General of Anti- Dumping, Udyog Bhavan, New-Delhi –110011. Any other interested party may also make its submissions relevant to the investigation in the prescribed form and manner within the time limit set out below.

22. Any information relating to the present investigations should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days from the date of publication of this notification. The known exporters and importers, who are being addressed separately, are, however, required to submit the information within forty days from the date of letter addressed to them separately. It may kindly be noted that no requests whatsoever shall be entertained for extension of the above-stated time limit for submission of the required information.

23. Anti-dumping investigations being a time bound exercise, the Designated Authority may record its findings on the basis of facts available on record in accordance with the Rules supra, if no response is received within the time stipulated or the information is incomplete in any respect.

24. In terms of Rule 6(7), any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

25. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

ABHIJIT SENGUPTA
DESIGNATED AUTHORITY