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**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES**

NOTIFICATION

4th Floor, Jeevantara Building
5 Parliament Street, New Delhi - 110001
Dated 29th June, 2016

FINAL FINDINGS

Subject: New Shipper Review under Rule 22 of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 in respect of the Anti-Dumping Duty imposed on the imports of PVC Flex Film, originating in or exported from China PR, as requested by M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter).

No. 15/23/2011- DGAD: Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

A. Background of the Case

2. Whereas, in the original investigation, the Designated Authority (hereinafter also referred to as the Authority) recommended, inter alia, imposition of anti-dumping duty on the imports of 'PVC Flex Films' (hereinafter also referred to as the subject goods), originating in or exported from China PR (hereinafter also referred to as the subject country), falling under Chapter 39 of the Customs Tariff Act, 1975, under Tariff Sub-Heading Nos. 39201019, 39201012, 39204900, 39219026, 39219029, 39269099, 39199090, 39181090, 39189090, vide Final Finding Notification No. 14/4/2010-DGAD dated 29th July, 2011 and accordingly, imposition of the anti-dumping duty was notified by the Central Government vide Notification No. 82/2011-Customs (ADD) dated 25th August, 2011.
3. Whereas, pursuant to the notification for imposition of anti-dumping duty on the imports of the subject goods from the subject country, M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter)

(hereinafter referred to as the applicants) filed an application before the Authority in accordance with the Customs Tariff Act and Rule 22 of the Anti-Dumping Rules, claiming individual margins.

4. The Authority, having been prima facie satisfied with the conditions laid down under Rule 22 of Anti-dumping Rules, initiated a New Shipper Review investigation, vide Notification No.15/23/2011-DGAD dated 12th April, 2012, for determination of individual dumping margin for the purpose of imposition of the anti-dumping duties levied on the dumped imports of PVC Flex Film, originating in or exported from China PR, in respect of M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter). The period of investigation for the purpose of this new shipper review was fixed by the Authority as 1st April, 2012 to 30th September, 2012 (6 months). A Corrigendum to the aforesaid initiation notification was issued on 1st June, 2012.
5. Having initiated the subject NSR investigation, the Authority recommended provisional assessment of all exports of the subject goods made by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), till completion of the new shipper review, in accordance with the Rule 22 of the Anti-dumping Rules and having regard to Notification No. 82/2011-Customs (ADD) dated 25th August, 2011 and No. 24/2012-Customs(ADD) dated 14th May, 2012, a Corrigendum to Notification No. 24/2012-Customs (ADD) dated 14th May, 2012 was issued vide Notification No. 24/2012-Customs (ADD) dated on 15th June, 2012.
6. The Department of Revenue, Central Government, notified the provisional assessment on all exports of the subject goods made by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), till completion of the present NSR investigation, vide Notification No.24/2012-Customs (ADD) dated 14th May, 2012 and the corrigendum notification dated 15th June, 2012. The said notification stated that pending the outcome of the new shipper review by the Designated Authority, the imports of subject goods in to India, originating in or exported from China PR, by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), shall be subjected to provisional assessment till the review is completed. It also stated that the provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment, if any, in case a definitive anti-dumping duty is imposed retrospectively, on completion of investigation by the designated authority. It further stated that in case of recommendation of anti-dumping duty after completion of the said review by the designated authority, the importer shall be liable to pay the amount of such anti-dumping duty recommended on review and imposed on all imports of subject goods, when originating in or exported from China PR, in respect of the above stated parties, from the date of initiation of the said review.

7. During the pendency of the present new shipper review, the Authority initiated sunset review investigations vide Notification No. 15/13/2015-DGAD dated 27.07.2015 on the basis of an application filed by M/s Pioneer Polyleathers Ltd and M/s SRF Ltd., to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The period of investigation (POI) for the SSR was determined as April 2014 – March 2015. The relevant anti-dumping duty, imposed on the imports of the subject goods, originating in or exported from China PR, was extended by the Central Government vide Notification No. 43/2015-Customs (Anti-dumping Duty) dated 18th August, 2015.

B. Procedure

8. The procedure described below has been followed with regard to the present investigation:

- i. The Authority issued a public notice vide Notification No. 15/23/2011-DGAD dated 12th April, 2012, published in the Gazette of India, Extraordinary, initiating the subject NSR anti-dumping investigation.
- ii. The Authority forwarded a copy of the initiation notification to the NSR applicants along with a copy of the exporter's questionnaire and gave them opportunity to make their views known in writing.
- iii. The Authority also forwarded a copy of the initiation notification to the concerned embassy in India.
- iv. The Authority forwarded a copy of the initiation notification to the known domestic producers in India and gave them opportunity to make their views known in writing.
- v. In response to the initiation notification, response in the form of Exporters Questionnaire was filed by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), the applicants for NSR.
- vi. M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) also filed questionnaire response claiming market economy treatment (MET).
- vii. The Authority made available non-confidential version of the evidences, presented by various interested parties, in the form of a public file, kept open for inspection by the interested parties.
- viii. The Authority held an oral hearing on 5th November, 2014 to hear the interested parties orally. The interested parties present at the time of

the oral hearing were advised to file written submissions of the views expressed orally and were also given an opportunity to file rejoinders to the views expressed by other interested parties. The Authority provided another opportunity of oral hearing to the interested parties on 4th May, 2016 consequent upon change in the incumbent Designated Authority and in line with the judgment dated 7th January, 2011 of the Hon'ble Supreme Court in the Automotive Tyre Manufacturers Association (ATMA) Case vide Civil Appeal No. 949 of 2006.

- ix. A disclosure statement was issued by the Authority on 21st June, 2016 disclosing the essential facts of the investigation.
- x. The submissions made by the interested parties during the course of this investigation, including comments made by them post disclosure, have been examined and addressed in this finding.
- xi. Investigation was carried out for the period of investigation (POI) starting from 1st April, 2012 to 30th September, 2012 (6 months).
- xii. *** represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

C. Submissions by the interested parties.

9. The submissions made by the NSR applicants during the course of the investigation and considered relevant by the Authority are as follows:

- i. The applicants have not exported the PUC to India during the POI of the original investigation and are not related to any of the exporters or producers in the subject country who are subject to anti-dumping duty.
- ii. The applicants have fulfilled the requirement under Rule 22 of the anti-dumping rules for seeking individual dumping margins.
- iii. The argument of the domestic producer that the present investigation is infructuous in view of the SSR investigation initiated by the Authority has no legal tenability.
- iv. The contention of the domestic producer that the 'new shipper' should have participated in the ongoing SSR investigation has no legal basis. Any review investigation concerning PUC shall be applicable only after conclusion of the present NSR investigation.

- v. India is a signatory to WTO Agreement and is bound by the legal provisions of AD Agreement. The present new shipper investigation, initiated as per the domestic law and Rule 22 of AD Rules, is in conformity WTO law and WTO jurisprudence.
- vi. The POI fixed in the present investigation is in line with the decision of Hon'ble Delhi High Court in the matter of H&R Johnson (India) Ltd. vs. Union of India.

10. Submissions made by the domestic producers during the course of the investigation and considered relevant by the Authority are as follows:

- i. Rule 22 has been found to have been misused by a number of exporters/producers all over the world. The applicants in the present review investigation may misuse the legal provision. The applicants are aware of the level of duty and other details through the final findings in the original case and have the opportunity to manipulate his prices in a pre-determination manner.
- ii. The evidences provided by the petitioners are equally vague and grossly insufficient to establish that the petitioners are eligible as new shipper.
- iii. Prior to initiation of the investigation, the applicants were not the producers or exporters of subject goods to India. A party who has never exported the product in the exporting country till the filing of petition cannot qualify for applying for initiation of new shipper review under Rule 22. Therefore, the new shippers were not entitled to initiation of investigation.
- iv. The period of investigation should be retrospective and not prospective. The new shipper must have actually exported the subject goods prior to filing of NSR application. The applicant may export at a higher price for the prospective period and get favourable low dumping margins.
- v. The period of review has to be fixed for the purpose of initiation of NSR investigation and the transactions taking place during the course of investigations will be relevant for the determination of individual dumping margin.
- vi. The importer of the subject goods does not appear to have filed importer's questionnaire response.

- vii. The present investigation has become infructuous as the original anti-dumping duty has expired and SSR investigation has been initiated by the Authority.
 - viii. SSR investigation has been initiated by the Authority on 27.7.2015 and the applicant producer and exporter are non-cooperative in the ongoing SSR investigation. In a situation where the exporters have not cooperated in the SSR investigation, they will be subject to residual category.
 - ix. The applicant producer should not be treated as a manufacturer as they are producer of fabric only. The applicant producer has purchased lamination line subsequent to imposition of Anti-Dumping Duty.
 - x. The applicants have claimed market economy status in the present investigation. It is submitted that China is a non-market economy country and the applicants do not qualify to be treated as operating in market economy conditions.
11. In the questionnaire responses filed by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and Manna, Korea (exporter), the following claims have been made:
- i. Haining Tianfu Warp Knitting Co. Ltd. (hereinafter referred to as Tianfu) is a privately owned company.
 - ii. The shares of Tianfu are held by private Chinese individuals and it has no government relationship or control.
 - iii. There is no relation between Tianfu and any other company engaged in production and sale of PVC Flex Film.
 - iv. Tianfu has only one factory involved in production of the subject product
 - v. There are no subsidiaries or related companies either in China or in any other country including India, which are involved in production of product under consideration.
 - vi. In the domestic market of China, the Company sells the product concerned directly to end-users.
 - vii. The exports to India have been made by Manna, Korea RP (exporter). Tianfu sold the subject goods to Manna, Korea and made arrangements for physical transportation of the goods directly to the

Indian customer. Invoices were raised by Tianfu on Manna, Korea, who then raised invoices on the Indian customer. The goods moved directly from China to India.

- viii. Manna made payment to Tianfu as per agreed upon payment terms.
- ix. Two raw materials involved in the production of PUC are PVC Film and Fabric. The company purchases PVC Film from the market and captively produces the Fabric. The PVC Film and Fabric is laminated with the help of a laminating machine and there after the roll packing is done to complete the production process.
- x. Tianfu got Business license for the subject goods on 26.01.2011 and the company set up the plant to produce the subject goods thereafter. Therefore, he is entitled for new shipper review.
- xi. Sales details of Tianfu during the original POI, NSR POI and post NSR POI are as under:

	NSR POI		Original POI		Post NSR period to till date	
	Qty (MT)	Value (RMB)	Qty (MT)	Value (RMB)	Qty (MT)	Value (RMB)
Domestic market	***	***	None	None	-	-
Export to India	***	***	None	None	None	None
Export to Third countries	***	***	None	None	-	-

- xii. Manna is a personal proprietorship trading firm based in Korea RP. Manna exported *** MT of the subject goods supplied by Tianfu during the NSR POI for the gross invoice value of ***.
- xiii. In the EQ response filed by Manna, the following sales position of subject goods during NSR POI, pre POI and post POI has been claimed:

Period	Exports to India		Domestic Market Sales		Exports to Third Countries		Total Sales of the Company	
	QTY (Kg)	FOB Value (USD)	QTY (Kg)	FOB Value (USD)	QTY (Kg)	FOB Value (USD)	QTY (Kg)	FOB Value (USD)

2nd Previo us Year - 2010	-	-	-	-	-	-	-	-
1st Previo us Year- 2011 Period of Investi gation	-	-	-	-	-	-	-	-
Apr-12	-	-	-	-	-	-	-	-
May- 12	***	***	-	-	-	-	***	***
Jun-12	-	-	-	-	-	-	-	-
Jul-12	***	***	-	-	-	-	***	***
Aug-12	-	-	-	-	-	-	-	-
Sep-12	***	***	-	-	-	-	***	***

- xiv. During the NSR POI, Manna, Korea procured the materials from Tianfu, China only and sold them to the unrelated Indian importers. In all cases, the products were shipped by Tianfu, China to India directly.

D. Examination by the Authority

12. Rule 22 of the Anti-Dumping Rules provides as follows –

“22. Margin of dumping, for exporters not originally investigated.

(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.”

13. Article 9.5 of the WTO Agreement states as under –

“9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.”

14. In terms of the aforesaid Rules and provisions in the WTO Agreement, the Designated Authority is required to review, for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question, who has not exported the subject goods to India during the period of investigation of the earlier anti-dumping investigations concerning imports of the subject goods from the subject country and that the applicant is/are not related to any of the exporters and producers in the exporting country who are subjected to the anti-dumping duty.

15. Thus, the basic intent of the WTO Agreement as well as the AD Rules, as far as the provisions of NSR investigation is concerned, is determination of individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation. It does not, however, mean that any exporter with a paltry sum of export during the POI of the NSR investigation and without any continued involvement in the exports of the subject goods to India would be automatically entitled for individual dumping margin. Such an approach would encourage fly by night operators to take advantage of the rules and get a favourable dumping

margin determined through a few stage managed export transactions as a license to dump.

16. The subject review was initiated on the basis of an application and information furnished by M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), for determination of individual dumping margin, in respect of the definitive anti-dumping duty imposed by the Central Government vide Notification No. 82/2011-Customs (ADD) dated 25th August, 2011, concerning imports of the subject goods, originating in or exported from China PR and the authority recommended provisional assessment on all exports of imports of PVC Flex Film made by M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), till this review is completed in accordance with the Rule 22 of the Rules Supra. Accordingly, the Central Government in the Department of Revenue, vide Notification No.24/2012-Customs (ADD) dated 14th May, 2012 and the corrigendum notification dated 15th June, 2012, notified the provisional assessment on all exports of the subject goods made by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), till completion of the present NSR investigation. The said notification stated that pending the outcome of the new shipper review by the Designated Authority, the imports of subject goods in to India, originating in or exported from China PR, by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), shall be subjected to provisional assessment till the review is completed. It also stated that the provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment, if any, in case a definitive anti-dumping duty is imposed retrospectively, on completion of investigation by the designated authority. It further stated that in case of recommendation of anti-dumping duty after completion of the said review by the designated authority, the importer shall be liable to pay the amount of such anti-dumping duty recommended on review and imposed on all imports of subject goods, when originating in or exported from China PR, in respect of the above stated parties, from the date of initiation of the said review.
17. Subsequent to the initiation of the investigation, M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), filed the exporter questionnaire responses in respect of the claimed exports made by them to India during the POI. M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) also filed MET questionnaire response claiming market economy treatment.
18. As regards market economy claim by M/s Haining Tianfu Warp Knitting Co Ltd, China PR, the Authority notes that as per Paragraph 8 of Annexure I of the Anti-Dumping Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the

basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The responding exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:

- (a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- (b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy, system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- (c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- (d) the exchange rate conversions are carried out at the market rate.

19. The Authority notes that M/s Haining Tianfu Warp Knitting Co Ltd, China PR has not provided sufficient documentary evidence to justify their claim for market economy treatment. Moreover, the Authority further notes, none of the WTO Member countries have granted market economy status to Chinese producers on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph 8(3). No country has granted market economy country status to China after following detailed evaluation procedure and examination. China PR is a non-market economy and the same has been held in a number of investigations by the Indian authority and other investigating authorities. Furthermore, the consideration of market economy and non-market economy treatment is relevant for determination of normal value, which is not called for in the present review investigation for the reasons detailed in this disclosure statement.

20. As per EQ responses filed by the applicants, except the export of a nominal volume of subject goods during the POI, neither the producer nor the exporter concerned have exported the subject goods to India during the post POI. Interestingly, Manna, Korea has not exported a single consignment of subject goods to India either prior to the POI or post POI. As per the available information, even the concerned Indian Importer M/s Harihar Traders has not imported the subject goods to India either during pre-POI or post POI.

21. The Authority notes that during the POI, M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter) have claimed to have exported a nominal volume of *** MT of subject goods to India. They have not exported a single consignment of subject goods to India after the NSR POI, till date, despite the provisional assessment notification No. 24/2012-Customs(ADD) dated 14th May, 2012 by Central Government to the effect that pending the outcome of the new shipper review by the Designated Authority, the imports of subject goods in to India, originating in or exported from China PR, by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter), shall be subjected to provisional assessment till the review is completed. It adequately demonstrates that the applicant's intention was apparently to somehow get the lowest or nil duty based on a nominal volume of exports of subject goods to India and thereafter facilitates intensified dumping in to India with the help of minimal or nil dumping margin through a few stage managed transactions. Applicant's intention is further established by the fact that they have not participated and cooperated in the on-going sunset review investigation. The applicants were very much aware of the level of duty and other details through the final findings in the original investigation and thereby had the opportunity to manipulate their prices in a pre-determined manner. Although M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) has claimed a huge domestic sale, they exported a minuscule volume of subject goods to India during the POI as compared to the total business of the exporter.
22. The Authority notes that during the POI, M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) has exported a paltry volume 38.65 MT of subject goods to third country. This shows that the basic intent of the concerned Chinese producer was to somehow or other obtain an individual dumping margin from the Indian Authority with the help of a few stage managed transactions and stage managed exporter and importer, so that they would be in a position to continue to dump the subject goods in to India.
23. As per the available information, the Authority notes that the concerned exporter Manna Korea has not exported the subject goods to India during pre POI as well as Post POI periods. It is only involved in exports of the nominal volume of subject goods produced by applicant producer only during NSR POI. The Authority notes that the concerned Chinese producer may not be involved in the production and sale of subject goods prior to the POI, but Manna, Korea could have exported the subject goods to India or to third countries either during pre POI or post POI. But, as per the information furnished by Manna, Korea, the Authority can safely hold that it is has been created or roped in for the stage managed transactions with India during the NSR POI.
24. As per the available information, the Authority notes that the Indian importer involved in the export transaction during the POI has also not made any import of

subject goods either during Pre POI or Post POI periods. It appears that even the Indian importer has been stage managed to facilitate the unfair transactions during the NSR POI. This is confounded by the fact that the concerned importer did not file questionnaire response along with relevant information and documents despite request.

25. As per the information furnished by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer), they have exported a paltry quantity to third country, but at a lower price as compared to their exports to India. This further proves that the exports made by Haining Tianfu to India during the NSR POI is stage managed with the obvious intent of obtaining a favourable dumping margin.
26. In terms of the Anti-dumping Rules and provisions in the WTO Agreement concerning NSR, the Designated Authority is required to review, for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question, who has not exported the subject goods to India during the period of investigation of the earlier anti-dumping investigations concerning imports of the subject goods from the subject country and that the applicant is/are not related to any of the exporters and producers in the exporting country who are subjected to the anti-dumping duty. Considering the facts and circumstances of the present case, wherein the concerned Chinese producer has exported only a paltry quantity of subject goods to India during the POI and has no exports to India thereafter despite continued provisional assessment, wherein the concerned Korean exporter has no export of subject goods either during POI or post POI periods to either India or third countries and domestic sales as well. Even, the concerned Indian importer has not made any imports of subject goods from subject country or any other country, either during the pre POI or post POI periods and did not file importers questionnaire response despite request by the Authority. In such circumstances, the Authority notes that the entire transactions appear to have been stage managed to obtain a favourable dumping margin to facilitate dumping. The facts of the entire case smacks of a deliberate arrangement for the sole purpose of taking advantage of antidumping duty through the NSR route.
27. The nature of review under Rule 22 is case specific with a defined purpose of determining individual margins for such exporter/producer that did not exist or export, either directly or indirectly, during the original investigation. But, this provision does not contemplate to enable a shell entity, created for the avowed purpose of obtaining an individual dumping margin as a license to dump. In a non-market system prevailing in China, it is just not possible to segregate the non-related and identify the related entities to establish veracity in the claims made by the new shipper applicants as far as relationship aspect in a new shipper investigation aspect. Thus, the object and intent of the Rule 22 is not to permit anybody and everybody as new shippers and grant the accompanying

benefit of individual dumping margin, without analysing the tone and tenor of the applicants and their seriousness and continued involvement in the exports of subject goods to India. The objective of the new shipper review is to enable new shippers to continue to export without being saddled with the burden of residual duty and not to become a conduit to facilitate fly by night operators.

28. In the present investigation, M/s. Haining Tianfu Warp Knitting Co Ltd (producer) has exported a nominal volume of subject goods to India during the POI, without any continued export activities during post POI till date and both the concerned exporter and the importer have not demonstrated with documentary evidence their involvement in the exports of the subject goods either prior to the POI or post POI. The Authority, therefore, notes that the entire NSR period performance has been stage managed by the applicants to obtain either nil or low dumping margin with the ulterior motive to circumvent the duty imposed on the subject goods and to continue dumping.

Post Disclosure Comments

29. Post disclosure, the following comments have been received from the NSR applicants:

- i. The applicants qualify as new shippers in terms of Rule 22 of the AD Rules to get individual margins on the basis of the exports made by them during the POI.
- ii. The concerns expressed by the authority that the entire NSR period performance has been stage managed has no basis.
- iii. There is no legal requirement for post POI exports in NSR investigation.
- iv. No exports could be done in post POI since the buyers were not ready to buy after paying anti-dumping duties or under bond.

30. Post disclosure, the following comments have been received from the domestic industry:

- i. If the Chinese producer indeed had significant interest in the Indian market, they would have been exporting the product under consideration in the Indian market before the POI and after the POI.
- ii. The volume of subject goods exported by the applicants cannot be considered as a commercial volume.
- iii. It cannot certainly be a case that the exporter considers the volumes as commercial volumes for dumping margin determination and at the same time contends that it has not been able to undertake regular commercial exports due to anti-dumping duty in force.
- iv. If the exporter could undertake these transactions as export transactions and claim these as commercial volumes, nothing

prevented the applicant from making exports of higher volumes. Thus, the exports made by the exporter cannot be considered as exports within the meaning of the rules.

- v. Applicant has also not participated and cooperated in the on-going sunset review investigation.
- vi. The basic intent of applicant was to get individual dumping margin to continue to dump the subject goods into India.
- vii. Applicant intended to get lowest or nil duty based on paltry volume of exports of subject goods to facilitate intensified dumping in India. Any exporter with a paltry sum of export during the POI of the NSR investigation and without any continued involvement in the exports of the subject goods to India can never be entitled for individual dumping margin.
- viii. An exporter under the law means a company who has been undertaking regular exports of the product. In the instant case, the Korean company has not undertaken any supplies in the Indian market either in the past or subsequent to POI. The Korean company has not exported the product under consideration in third countries either prior to POI or in post POI period. Thus, the claim made by the applicant that the shipping company is an exporter" is required to be rejected.
- ix. A company who has no past exports to India or third country, skeleton exports to India during POI, no exports to third countries during POI and no exports in Indian market or third countries in post POI cannot claim itself the status of an "exporter".
- x. The Korean trader clearly shows that the Korean trader is a "fly by night" company in Korea, apparently created for the sole purpose of seeking present review.
- xi. There can be no plausible justification for creating a trading company in Korea who would buy product under consideration from China and sell in Indian market. The only purpose of creating this company in Korea is to "doctor the exports to India" once the attempted exception is achieved.

31. The Authority notes that the submissions made by the applicants are mere reiterations of their earlier submissions/arguments which have been adequately addressed in the present findings. Nevertheless, at the cost of brevity, the Authority reiterates that the entire NSR period performance has been stage managed by the concerned NSR applicants to obtain either nil or low dumping margin with the ulterior motive to circumvent the duty imposed on the subject goods and to continue dumping. Despite the continued validity of the provisional assessment until completion of the present investigation, the applicants preferred to restrict their exports to a nominal volume during the POI only and did not

continue their exports activity as a policy of weight and watch. Under the above stated circumstances, the Authority holds that it may not be appropriate to clear the exports of the subject goods made by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea (Exporter), without payment of Anti-Dumping duty.

Conclusion and Recommendation:

32. Based on the facts and circumstances as stated above, wherein the entire transactions have been stage managed to obtain a favourable dumping margin to facilitate dumping, the Authority concludes that the New Shipper Review applicants i.e. M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea (Exporter), cannot be given individual dumping margin by treating them as new shippers under Rule 22 of the Anti-Dumping Rules. The Authority, therefore, recommends that the exports of the subject goods produced by M/s. Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea (Exporter), during the period from the date of initiation of the present NSR investigation recommending provisional assessment i.e. vide Notification No.15/23/2011-DGAD dated 12th April, 2012, may be subjected to levy of Anti-Dumping Duty @ US \$ 0.538/KG, as imposed earlier on the imports of the subject goods, originating in or exported from China PR, until the date of validity of the said duty, notified earlier vide Notification No. 82/2011-Customs (ADD) dated 25th August, 2011 and extended vide Notification No. 43/2015-Customs (Anti-dumping Duty) dated 18th August, 2015.
33. An appeal against the orders of the Central Government arising out of this finding shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

A. K. Bhalla
Additional Secretary & Designated Authority