

**TO BE PUBLISHED IN PART 1 SECTION-1 OF THE GAZATTE OF INDIA-  
EXTRAORDINARY**

**No. 7/23/2017-DGAD  
Government of India  
Ministry of Commerce and Industry  
Department of Commerce  
(Directorate General of Trade Remedies)  
4<sup>th</sup> Floor, Jeevan Tara Building, 5-Parliament Street, New Delhi -110001**

**(Final Finding)**

**Termination of the NSR**

Dated 22<sup>nd</sup> November, 2018

**Subject: - New Shipper Review under Rule 22 of the Anti-Dumping Rules for determination of individual dumping margin for M/s Aman Jute Fibrous Ltd. (Producer) and M/s IB Jute Corporation (Exporter/Trader) in the case of Anti-dumping duty imposed on “Jute Products” viz – Jute Yarn/ Twine (multiple folded/cabled and single), Hessian Fabric and Jute Sacking Bags originating in or exported from Bangladesh and Nepal.**

**A. BACKGROUND:**

No. 7/23/2017-DGAD: M/s Aman Jute Fibrous Ltd. (Producer) and M/s IB Jute Corporation (Exporter/Trader) (hereinafter referred to as the “Applicants”), a producer/exporter of the subject goods from Bangladesh has filed an application in accordance with the Customs Tariff Act, 1975 (hereinafter referred to as the Act) as amended from time to time and 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 referred to as the AD Rules) before the Designated Authority (hereinafter referred to as the “Authority”) requesting for determination of their individual dumping margin in the matter of anti-dumping duties levied on imports of “Jute Products” originating in or exported from Bangladesh and Nepal. The said duties were imposed vide Final Findings Notification No. 14/19/2015-DGAD dated 20<sup>th</sup> October, 2016 and Customs Notification No. 01/2017 – Cus. (ADD) dated 5<sup>th</sup>

January, 2017 and Customs Notification No. 11/2017-Cus (ADD) dated 3<sup>rd</sup> April, 2017 in the original Anti-Dumping case.

2. Whereas, the Designated Authority initiated this NSR investigation on 23.1.2018. Accordingly, Central Government issued Notification No. 31/2018- Customs (ADD) dated 30.5.2018.

**B. PRODUCT UNDER CONSIDERATION:**

3. The product under consideration is same as in the original investigation which is described as under:

*“Jute Products’ comprising of Jute yarn/twine (multiple folded/cabled and single), Hessian Fabrics and Jute Sacking bags.”*

The Authority had recommended separate duty for each type of Jute products in the original investigation to producers.

**C. PERIOD OF INVESTIGATION:**

4. The period of investigation for the purpose of the present review is 1<sup>st</sup> July, 2017 to 30<sup>th</sup> September, 2018.

**D. SUBMISSIONS BY DOMESTIC INDUSTRY AND APPLICANT/EXPORTER:**

5. The Submissions by Domestic Industry are as under:
  - i. It is submitted that the present new shipper review is not appropriate, having regard to the conditions prescribed under Rule 22. Under Rule 22, the applicants should not have exported the product under consideration in any of its form during the investigation period earlier considered by the Authority. Exports of any one form of the product under consideration in that period should disentitle such companies from claiming the status of new shipper review and individual dumping margin. Since the Authority had resorted to sampling in the original case, these companies can at best be given the dumping margin and ADD determined/given to cooperating non sampled companies of the original investigations.
  - ii. The Claim for individual dumping margin under Rule 22 does not imply that the DA is obliged to give dumping margin to these exporters on the basis of their own normal value and export price. It is submitted that as per Rule 17, the Authority is required to determine individual margin of dumping for each known exporter/producer. This obligation is similar to the obligation under Rule 22, as, under both the rules, the DA is required to determine individual margin of dumping for each known exporter. After

comparing rule 17 and rule 22, it would be seen that under Rule 17, the exporters are entitled to their own dumping margin. However, the right available to exporters under Rule 17 gets superseded/ qualified/curtailed/suppressed by the further provision of sampling under Rule 17 which provides as follows.

*“..... Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned :”*

- iii. It is submitted that DA is required to determine individual dumping margin for each known new shipper. This obligation is only on determination of individual dumping margin and not on consideration of individual normal value and export price. This gets clearly established by the language of Rule 17 for both determination of dumping margin as well as sampling. This application is creating burden on the Authority. As per publicly available information, there are about 285 producers of the product under consideration in Bangladesh. Further, after sub-dividing the product into three categories, the DA has granted liberty to reproduces in Bangladesh to claim individual dumping margin if they have not exported any individual product. Thus, considering the product categories and number of producers in Bangladesh, there are about 855 possible combinations in which goods have been exported to India. These channels were not used in the POI of original investigations and therefore there is potentially a very high number of channels which are available for exports to India. Thus, the provision of sampling permitting the Authority to restrict individual dumping margins to calculations of normal value and export price of select few parties and thereafter putting the same to all other cooperating exporters should get applied to cooperating new shippers as well.
- iv. It is submitted that Rule 22 provides for determination of individual dumping margin from time to time. A reading of this provision further shows that the DA is not obliged to undertake a review every time an application has been made. The reading of the word “from time to time” is clearly indicative of bunching of such applications and thereafter determining individual dumping margins. This further shows a possibility of establishing only entitlement as a new shipper and thereafter giving dumping margin based on the dumping margin earlier determined.
- v. It is submitted that producers in Bangladesh may contend that they will be subjected to higher dumping duties if the dumping duties are not based on their own normal value and export price. However, the argument could hold good even for non-sampled cooperating producers who had also cooperated with the authority and were not considered for individual determination of dumping margin. If rights of these non-sampled cooperating producers got curtailed by virtue of sampling provisions, it is not necessary that the Designated Authority should determine dumping margin for these

new shippers based on their own individual normal value and export price. It would be appropriate to give them the same dumping margin as has been worked out for other non-sampled cooperating exporters from Bangladesh.

- vi. It is proposed that the cooperating non-sampled producers at the time of original investigations cannot be at a disadvantage as compared to a new shipper. The cooperating non-sampled producers had also responded to the authority and had extended full cooperation for determination of individual dumping margin. The Designated Authority however decided not to determine dumping margin based on their data. Status of a party who did not export during the original period cannot be more advantageous as compared to status of the party who had exported during relevant period and had cooperated with authority but was denied dumping margin based on their own data by virtue of sampling law.
- vii. It is contended that non granting of individual dumping margin based on their own normal value and export price might lead to exaggerated dumping margin and these exporters may be made to pay a higher quantum of ADD as would have been payable, had that authority considered their own data. However, this situation clearly exists even in case of sampling in original investigations which in turn implies that the sampling law is illegal. However, in a situation where exporter needs to pay a duty higher than its own dumping margin is clearly addressed in the review laws. If any of the exporters feel that they have been made to pay a higher quantum of ADD than the dumping margin in their own data, such exporters are entitled to claim a review and refund of anti-dumping duty so collected.
- viii. It is also relevant to consider that the ADD that may be attracted by an exporter may be higher or lower than the dumping margin that might exist in the current export transactions. While the dumping margin gets established on the basis of POI data, it is quite possible that the dumping margin in the present exports is higher or lower than dumping margin and ADD determined for the exporter. However, if such dumping margin is lower than the dumping margin and ADD paid, the exporters are entitled to seek a refund through a review. Further, the DI is also entitled to seek a mid-term review and request enhancement of dumping margin. However, if the current dumping margin is higher than the dumping margin determined in the original investigation, the DI has no option but to suffer for the period of review. By contrast, the exporter can seek a review of ADD and the importer gets a refund. Thus, no prejudice is caused to exporters.
- ix. It is submitted that during original investigation, the DA has resorted to sampling on the basis of volume of exports made by the responding exporters which proves that relevance and importance of import volumes cannot be undermined for new shipper review case. At this stage, the authority may kindly consider and compare the import volumes that have been reported by responding exporters and compare the same with the import volumes that were reported by responding exporters at the time of original investigations. It would be seen that volume of exports made by these entities are quite

low as compared to the volume of exports that were considered for determination of individual normal value and export price on the basis of individual questionnaire response. Thus, the Authority need not determine individual dumping margin on the basis of individual questionnaire response, and respective normal value and export price of the exporters.

- x. It is submitted that since the export price is the price at which goods have been exported for consumption in Indian market, the price at which different buyers in India have purchased the goods from different suppliers from Bangladesh cannot be materially different. For example, if one of the Bangladesh producer is selling at a price of US \$ 1000/ MT, the consumer shall not buy the product from any other supplier at a price materially higher than this price. Thus, there cannot be material difference in the export price of different exporters. Further, while considering the geographical situation of Bangladesh, location of individual Bangladesh plants from Indian ports, there cannot be a material difference in the expenses that have been incurred by different producers in Bangladesh. Thus, in normal competitive situations, there cannot be material difference in export price of different suppliers.
- xi. In view of the above, the DI submits that the authority should restrict the result of present investigations a determination whether the responding exporter constitutes a new shipper within the meaning of Rule 22. If the exporters seeking reviews constitute “new shipper” within the meaning of the Rules, then the Authority may determine dumping margin as the weighted average dumping margin earlier determined for cooperating non-sampled producers. The said dumping margin was determined at the below mentioned levels and therefore we request the authority to kindly fix this quantum of duties for these new shipper entities, subject to the fulfillment of NSR requirement and obligations by these parties. If these parties however fail to satisfy the NSR requirements, in any case, they shall not be entitled to even these dumping margins and these parties should be relegated to the residual duty earlier imposed.

**Table showing dumping margin (cooperating non sampled producers) and the duty level  
Bangladesh – Dumping Margin and Duty Table**

<b>Description of Goods</b>	<b>Producer</b>	<b>Exporter</b>	<b>Dumping Margin Range (%)</b>	<b>Injury Margin Range (%)</b>	<b>Duty Amount</b>
Jute Yarn/ Twine	Non Sampled Producers/ exporters		10-20	20-30	US\$ 97.19/MT
Sacking Bag	Non Sampled Producers/ exporters		10-20	10-20	US\$ 351.72/MT
Hessian Fabric	Non Sampled Producers/ exporters		60-70	40-50	US\$ 125.21/MT

6. The Submissions by Applicant/producer are as under:

- i. The domestic industry has essentially claimed that the authority should restrict the result of present NSR investigations to determination whether the responding exporters constitute a new shipper within the meaning of Rule 22 and if the exporters seeking reviews constitute “new shipper” within the meaning of the Rules, then the Authority may determine dumping margin as the weighted average dumping margin earlier determined for coordinating non-sampled producers. It is respectfully submitted that the proposal is against the fundamentals of new shipper review as provided in Article 9.5 of the WTO AD Agreement and also Rule 22 of the Indian AD Rules.
- ii. The Agreement and the rules supra clearly says 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 shall be determined, subject to the qualification provisions. Thus, an individual margin ought to be determined afresh and on older margin cannot be applied on such producers. The apprehension of the domestic industry that the new shippers may get negative dumping margin or the non-sampled categories of exporters will be at disadvantageous position etc. cannot be a ground to deviate from the fundamental aspect of new shipper review which is determination of individual margins of dumping for new shippers as defined in the Rule. Thus, the proposal of the DI to apply not to determine individual margin needs to be rejected as legally untenable.
- iii. The sampling done in the original investigation was based on the circumstances of investigative burden at that point in time and any cherry picking of weighted average margin determined in the then sampled categories for the current new shippers are totally an argument to misguide the Authority and to simple slow down the investigation.
- iv. New shippers are coordinating fully with the Authority and it is requested that individual dumping margins as per the normal value and export price applicable to the concerned new shippers alone may be determined by the Authority.

7. Withdrawal of Application:

- i. The Applicant (Exporter) vide its letter dated 10.10.2018 submitted that there are some difficulties due to which our exports of the goods are hindered under consideration to India. The proprietor of the company was hospitalized from 05/07/2018 to 25/09/2018 and the person could not conduct any business as usual during such times. In view of the time lost due to the medical condition as above during which no exports of the goods as per the initiation could be made to India, we requesting the Authority for an extension of POI by another 6 months from 30<sup>th</sup> September, 2018 with due amendments in the initiation notification so that we could export the goods to India as per the Conditions therein for another 6 months.

- ii. The Applicant (exporter) vide its letter dated 19.11.2018 submitted that in view of the absence of any exports during the POI, we hereby withdraw our NSR application. We understand that with the withdrawal of the application, the case will be terminated by the DA to which we have no objections. Nevertheless, we reserve the rights to approach the Hon'ble Designated Authority in the future.

#### **E. EXAMINATION BY AUTHORITY:**

8. The Authority notes that though the DI has made submissions on eligibility and applicability of Rule 22 for the applicant producer/exporter, these are not being addressed as the application has been withdrawn by the Applicant producer/exporter.
9. The Authority notes that the NSR regarding various "Jute products" viz – Jute Yarn/Twine (multiple folded/cabled and single), Hessian Fabric and Jute Sacking Bags was initiated on 23.1.2018 with POI from 1st July, 2017 to 30<sup>th</sup> September, 2018, for M/s Aman Jute Fibrous Ltd. (Producer), Bangladesh and M/s IB Jute Corporation (Exporter/Trader).
10. The Authority notes that the enabling Custom notification No. 31/2018-Customs (ADD) was issued on 30.5.2018. However the applicant producer/exporter neither exported during the historical POI nor during the prospective POI. The Authority notes that it has been stated that the exporter was unable to undertake exports due to his medical condition. However, the Authority notes that the POI was sufficient enough to enable the producer/exporter to undertake some reasonable exports of Subject goods even though such unavoidable eventualities occurred. It is not the Authority's practice to extend the POI in an NSR investigation at the terminal stage of POI.
11. In view of the unambiguous withdrawal of the petition, the Authority does not consider it appropriate to hold oral hearing and issuing a disclosure, which seems redundant now.
12. The Authority notes that the producer/exporter in its withdrawal letter dated 19.11.2018 have stated that they might approach the Authority at a later date with a similar request.
13. The Authority notes the submission and request of the applicant producer/exporter and other relevant submissions and recommends as under:
  - (i) The Applicants M/s Aman Jute Fibrous Ltd. (Producer) and M/s IB Jute Corporation (Exporter/Trader) has not exported any subject goods during the POI.
  - (ii) In view of (i) above, no individual margin can be recommended for the applicant producer/exporter.

- (iii) The Authority therefore terminates this NSR investigation initiated on 23.1.2018 for the above mentioned producer/exporter. The producer/exporter may file NSR afresh as per provisions of the relevant AD Rules, if they so desire.
- (iv) The Producer/exporter would continue to be assessed as per the Custom Notification No. 11/2017-Customs (ADD) dated 3.4.2017 under the residual category as the case is at present.

**Sunil Kumar**  
**Additional Secretary & Designated Authority**