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

NOTIFICATION

Udyog Bhavan, New Delhi - 110011
Dated 17th April, 2013

FINAL FINDINGS

Subject: New Shipper Review of anti dumping duty imposed on imports of Acetone, originating in or exported from Chinese Taipei, conducted under Rule 22 of the Anti-dumping Rules in respect of M/s. Chang Chun Plastic Co., Ltd., Chinese Taipei.

No. 15/30/2010-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

1. Whereas, the Designated Authority (hereinafter referred to as the Authority) recommended, inter alia, imposition of anti-dumping duty on the imports of 'Acetone' (hereinafter referred to as the subject goods) originating in or exported from Chinese Taipei (hereinafter referred to as the subject country), falling under Subheading 2914.11 of ITCHS. The final findings were notified by the Authority vide Notification No.14/4/2006-DGAD dated 4th January, 2008 and definitive anti-dumping duty was imposed by the Central Government in the Department of Revenue, on the imports of the subject goods, originating in or exported from the subject country, vide Notification No.33/2008-Customs dated 11th March, 2008.
2. M/s. Chang Chun Plastics Co., Ltd., Chinese Taipei (hereinafter referred to as the applicant) filed a substantiated application before the Authority

in accordance with Rule 22 of the Anti-dumping Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) in respect of the anti-dumping duty imposed by the Central Government vide Notification No.33/2008-Customs dated 11th March, 2008 concerning imports of the subject goods, originating in or exported from the subject countries, falling under Chapter 29 of Customs Tariff Act, 1975.

3. Since the application prima facie satisfied the conditions as laid down under Rule 22 of the Rules, the Authority initiated the subject NSR investigation vide notification No.15/23/2008-DGAD dated 20th April, 2011 to determine separate dumping margin for M/s Chang Chun Plastics Co., Ltd., Chinese Taipei, in respect of the anti-dumping duty imposed by the Central Government vide Notification No.33/2008-Customs dated 11th March 2008 in pursuance of the recommendations made by the Authority vide Notification No. 14/4/2006-DGAD dated 4th January, 2008, concerning imports of the subject goods, originating in or exported from the subject country. The period of investigation for the purpose of the present review is 1st April, 2011 to 30th September, 2011 (6 months).
4. Having initiated the subject NSR investigation, the Authority recommended provisional assessment on all exports of Acetone made by M/s. Chang Chun Plastics Co., Ltd., Chinese Taipei till this review is completed in accordance with the Rule 22 of the Rules Supra and having regard to Notification No. 33/2008-Customs dated 11th March 2008.
5. The Central Government in the Department of Revenue notified the provisional assessment on all exports of Acetone made by M/s. Chang Chun Plastics Co., Ltd., Chinese Taipei till completion of the subject NSR investigation vide Notification No.44/2011-Customs dated 27th May, 2011.

B. PROCEDURE

6. The procedure described below has been followed with regard to the present investigation:
 - i. The Authority issued a public notice dated 20th April, 2011, 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 all the known producers/exporters of the subject goods in the subject country along with a copy of the exporter's questionnaire and gave

them opportunity to make their views known in writing in accordance with the Rule 6(2) of the Anti Dumping Rules.

- iii. The Authority also forwarded a copy of the initiation notification to the Taipei Economic & Cultural Centre, New Delhi.
- iv. The Authority forwarded a copy of the initiation notification along with relevant questionnaire to the known domestic industries in India.
- v. In response to the initiation notification, response in the form of Exporters Questionnaire was filed by M/s Chang Chun Plastics Co. Ltd, the applicant for NSR.
- vi. Submissions made by M/s Hindustan Organic Chemicals Ltd (HOCL), one of the domestic producers in India to the extent considered relevant by the Authority have been duly considered in this finding.
- vii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- viii. No verification to the information and data submitted by the New Shipper producers/exporter has been carried out since the concerned New Shipper has not co-operated with the Authority.
- ix. The Authority held Oral Hearings on 20th April, 2012 and 4th December, 2012 to provide opportunity to the interested parties to make submissions orally, followed by written submissions.
- x. Investigation was carried out for the period of investigation (POI) starting from 1st April, 2011 to 30th September, 2011(Six Months).
- xi. In terms of Rule 16 of the Rules, disclosure statements were issued to the interested parties vide letters dated 17th September, 2012 and 1st March, 2013 disclosing the essential facts of the investigation.
- xii. The submissions made by the interested parties during the course of the investigation, including the post disclosure comments received from them, to the extent considered relevant by the Authority, have been addressed in this final finding.

Details of the investigation:

7. The Authority notes that it also received a duly substantiated application from M/s Formosa Chemical & Fiber Corporation, Chinese Taipei requesting the Authority to undertake a Mid-Term Review of the anti-dumping duty imposed on the subject goods originating in or exported from Chinese Taipei. Having satisfied itself that the applicant produced sufficient positive information substantiating the need for a review, the Authority initiated the mid-term review investigation of anti-dumping duty imposed on imports of the subject goods originating in or exported from the subject country vide Notification No.15/2/2011-DGAD dated 15th April, 2011 in accordance with Section 9A (5) of the Act, read with Rule 23 of the AD Rules. The period of investigation for the MTR investigation was 1st October 2009 to 30th September 2010 (12 months) and the injury period was 2007-08, 2008-09, 2009-10 and the POI.
8. The Authority conducted the mid-term review investigation and recommended withdrawal of the anti-dumping duty imposed on the imports of the subject goods from the subject country vide Final Finding Notification No.15/2/2011-DGAD dated 10th April, 2012. The Central Government in the Revenue Department vide their Notification No.29/2012-Customs (ADD) dated 29th May, 2012 notified the withdrawal of the anti-dumping duty earlier imposed on the imports of the subject goods originating or exported from the subject country vide Notification No. 33/2008-Customs dated 11th March 2008.
9. In respect of the subject NSR investigation, the Authority held Oral Hearing on 20th April, 2012, followed by written submissions and rejoinder submissions by the interested parties. After examining and addressing the submissions made by the interested parties, the Authority had issued a disclosure statement on 17th September, 2012, inter alia, stating that it is obvious that the NSR investigation, that has emanated from an anti-dumping measure, which itself has been put to an end by the Authority through the MTR, should be terminated without undertaking further detailed investigations and goods exported by M/s Chang Chun Plastics Co., Ltd., Chinese Taipei., after the date of initiation of New Shipper Review Investigation i.e. 20th April, 2011, which has been provisionally assessed by Customs Authorities, should be cleared without payment of any Anti-Dumping duty.
10. However, subsequently, the Authority desired to verify the data/information furnished by M/s. Chang Chun Plastics Co., Ltd., Chinese Taipei and requested them to furnish certain additional

information and documents relevant to the investigation along with their consent for verification.

11. However, M/s. Chang Chun Plastics Co., Ltd., Chinese Taipei neither furnished the required information/documents nor consented for verification of data submitted by them.
12. In view of the change in the incumbency in the office of the Designated Authority, in terms of the judgment of Hon'ble Supreme Court in the ATMA Case, another oral hearing was held by the Authority on 4th December, 2012 and opportunity was provided to the interested parties to make oral submissions followed by submissions in writing. However, M/s. Chang Chun Plastics Co., Ltd., Chinese Taipei was neither represented in the oral hearing held on 4th December, 2012, nor made any submissions in writing thereafter.

C. SUBMISSIONS MADE BY THE INTERESTED PARTIES

C.1. Submissions made by M/s Hindustan Organic Chemicals Ltd (HOCL)

13. The following submissions were earlier made by M/s Hindustan Organics Chemicals Ltd (HOCL):
 - a) The subject NSR investigation is not maintainable in view of the concurrent mid-term review conducted by the Authority. The results of the MTR will supersede the original investigations as well as the NSR that has emanated out of the original investigation. The subject NSR should be terminated for the reason that the designated authority has already concluded the mid-term review in respect of the imports of Acetone from Chinese Taipei. Since the relevant duty has been withdrawn vide the stated MTR, the same cannot be reviewed any more for the grant of individual dumping margin for an exporter from Taiwan.
 - b) The domestic industry has no objection to (a) the Designated Authority terminating the subject NSR investigation and (b) the Designated Authority recommending that the anti-dumping duties are not payable in respect of exports already made by the concerned exporter.
 - c) Since the duty in respect of imports of Acetone from Chinese Taipei, itself has been withdrawn; the same cannot be reviewed in order to grant an individual margin of dumping for an exporter from Taiwan who has not exported in the period of investigation of

original investigations. Scope of Rule 22 is attracted only when the product is attracting anti-dumping duty. If the product is no longer attracting anti-dumping duty, the Rule 22 is not even attracted and question of individual dumping margin does not arise.

- d) The instant investigation may be terminated with liberty to allow the import consignments provisionally assessed without payment of anti-dumping duties.

14. After the oral hearing held by the Authority on 4th December, 2012, M/s Hindustan Organics Chemicals Ltd (HOCL) made the following submissions:

- a) HOCL is a domestic producer of the subject goods in India and hence an interested party.
- b) Production of the subject goods by HOCL constitutes a major proportion in Indian production and therefore HOCL constitutes domestic industry under the meaning of Rule 2(b) of the Anti-dumping Rules.
- c) The present NSR investigation is not maintainable and must be terminated for the reason that the Designated Authority has earlier concluded midterm review investigation in respect of the imports of Acetone from Chinese Taipei.
- d) Since the duty itself has been withdrawn, the same cannot be reviewed in order to grant an individual margin of dumping.
- e) The applicant in the present NSR application has not even attended the hearing, nor made any oral or written submissions.
- f) The applicant has not established that anti-dumping duty paid earlier under provisional clearance is in excess of margin of dumping. Therefore, the provisional clearances should be withdrawn and the anti-dumping duty should be collected on all these imports.
- g) The applicant has made no legal and factual claims and no longer cooperating with the Authority. The Authority, therefore, should terminate the investigation without determination of individual dumping margin.

C.2. Submissions made by M/s Chang Chun Plastics Co. Ltd

15. M/s Chang Chun Plastics Co. Ltd, Chinese Taipei did not attend the oral hearing held by the Authority on 4th December, 2012 and did not make any submission thereafter. The Submissions made by M/s Chang Chun Plastics Co. Ltd, Chinese Taipei during the course of the investigation are as follows:

- a) The date of initiation of the MTR and the NSR and their POI are different. The NSR applicant has not exported the subject goods during the POI of the MTR.
- b) As per the Initiation Notification the Designated Authority recommended provisional assessment on all exports of Acetone made by M/s. Chang Chun Plastics Co., Ltd., Chinese Taipei till this review is completed in accordance with the Rule 22 of the Rules Supra and having regard to Notification No.33/2008-Customs dated 11th March, 2008.
- c) Consequent to the Initiation Notification Customs Notification No.44/2011-Customs dated 27th May, 2011 was issued by the Ministry of Finance, Government of India. In the said Customs Notification it has been mentioned that:

“Now therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid recommendation of the designated authority, hereby orders that pending the outcome of the said review by the designated authority, the subject goods, when exported by M/s Chang Chun Plastics Co. Ltd, Chinese Taipei and imported into India, shall be subjected to provisional assessment till the review is completed.

The provisional assessment may be subject to such security or guarantee as the proper officer of the Customs deems fit. 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 exported by, M/s Chang Chun

Plastics Co. Ltd, Chinese Taipei and imported into India, from the date of initiation of the said review.”

- d) In the meantime a Mid-Term Review investigation concerning imports of Acetone from Taiwan, was initiated vide initiation Notification No. 15/2/2011-DGAD dated 15th April, 2011 based on an application filed by the exporters from Taiwan by the Designated Authority. On 10th April, 2012 the Designated Authority has come out with its Final Findings vide Final Finding No.15/2/2011-DGAD dated 10th April,2012, and has concluded that:

61. Having concluded that the subject goods are not likely to enter Indian market at prices, which are causing or likely to cause material injury to the domestic industry; should the measures be withdrawn and that the situation of domestic industry has significantly improved and is likely to remain un-impacted by the imports of the subject goods from the subject country. In view of the above the Authority is satisfied on the basis of information received by it that there is no justification for the continued imposition of the anti-dumping duty on the imports of the subject goods from the subject country and hence recommends for its withdrawal.

- e) During the public hearing, it has been proposed by the Domestic Industry that the ongoing New Shipper Review Investigation shall be concluded and terminated with liberty to allow the exports made by M/s Chang Chun Plastics Co., Ltd., Chinese Taipei, after the Initiation of the New Shipper Review Investigation and provisionally assessed without payment of Anti-Dumping duties.
- f) Department of Revenue, Ministry of Finance, Government of India has issued Customs Notification vide Notification No. 29/2012-Customs (Anti-Dumping Duty) dated 29th May, 2012, in the aforesaid Mid-Term Review investigation. As per the said Customs Notification the Central Government has withdrawn Anti-Dumping Duty in respect of all imports of Acetone from Chinese Taipei.
- g) The New Shipper Review investigation may be terminated with the recommendation that imports made by M/s Chang Chun Plastics Co., Ltd., Chinese Taipei., after the initiation of New Shipper Review Investigation i.e., 20th April, 2011, which has been

provisionally assessed by Customs Authorities, shall be cleared without payment of any Anti-Dumping duty.

D. Examination by the Authority

16. The Authority had initiated a mid-term review (MTR) investigation in respect of imports of Acetone originating in or exported from Chinese Taipei, with the POI as 1st October, 2009 to 30th September, 2010 (12 months) and 2007-08, 2008-09 and 2009-10 and the POI as the injury period. The Authority in the Final Findings of the MTR vide Notification No. 15/2/2011-DGAD Dated 10th April, 2012 concluded and recommended as follows:

“CONCLUSIONS

60. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submissions of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis, the Authority concludes that:

- i. The subject goods are entering the Indian market at prices, which are not causing material injury to the domestic industry.*
- i. The domestic industry's performance has significantly improved and is likely to remain un-impacted by the imports of the subject goods from the subject country.*
- ii. The performance of the domestic industry is unlikely to deteriorate if the antidumping duty is withdrawn.*
- iv. In view of the above the Authority satisfied on the basis of information received by it that there is no justification for the continued imposition on the anti dumping duty.*

RECOMMENDATIONS

61. Having concluded that the subject goods are not likely to enter Indian market at prices, which are causing or likely to cause material injury to the domestic industry; should the present measures be withdrawn and that the situation of domestic industry has significantly improved and is likely to remain un-impacted by the imports of the subject goods

from the subject country. In view of the above the Authority is satisfied on the basis of information received by it that there is no justification for the continued imposition on the anti-dumping duty on the imports of the subject goods from the subject country and hence recommends for its withdrawal.”

17. The Central Government in the Department of Revenue accepted the recommendations of the Authority and notified the withdrawal of the anti-dumping duties earlier imposed vide Notification No. 33/2008-Customs dated 11th March 2008, on the imports of the subject goods, originating in or exported from the subject country, vide Notification No.29/2012-Customs (ADD) dated 29th May, 2012.

18. The Authority in the 1st disclosure statement issued on 17th September, 2012, inter alia observed as follows:

“12. The Central Government in the Department of Revenue accepted the recommendations of the Authority and notified the withdrawal of the anti-dumping duties earlier imposed vide Notification No.33/2008-Customs dated 11th March 2008, on the imports of the subject goods, originating in or exported from the subject countries, vide Notification No.29/2012-Customs (ADD) dated 29th May, 2012. The POI for the said MTR was 1st October 2009 to 30th September 2010 (12 months) and the injury period was 2007-08, 2008-09, 2009-10 and the POI. The Authority notes that the POI determined for the subject NSR was 1st April, 2011 to 30th September, 2011 (6 months). Since in the MTR the Authority has already concluded that the subject goods are entering the Indian market at prices, which are not causing material injury to the domestic industry, it may not be a case when the concerned New Shipper has dumped the subject goods causing injury to the domestic industry. The Authority further notes from the data submitted by the New Shipper that it had exported the subject goods to India at a price above its associated normal value. Moreover, the domestic industry itself has submitted that the subject investigation may be terminated with liberty to allow the import consignments provisionally assessed without payment of anti-dumping duties.

13. The Authority notes that in view of the above position, it is obvious that the NSR investigation, that has emanated from an anti-dumping measure, which itself has been put to an end by the Authority through the MTR, should be terminated without

undertaking further detailed investigations and goods exported by M/s Chang Chun Plastics Co., Ltd., Chinese Taipei., after the date of initiation of New Shipper Review Investigation i.e. 20th April, 2011, which has been provisionally assessed by Customs Authorities, should be cleared without payment of any Anti-Dumping duty.”

19. Subsequently, the Authority requested M/s Chang Chun Plastics Co., Ltd., Chinese Taipei to furnish certain other information/documents relevant to the present investigation and also to provide their consent for verification of the data submitted by them. M/s Chang Chun Plastics Co., Ltd., Chinese Taipei was also invited to attend the oral hearing held by the Authority on 4th December, 2012. However, M/s Chang Chun Plastics Co., Ltd., Chinese Taipei neither furnished the required information/documents, nor consented to verification by the Authority, and did not attend the oral hearing held by the Authority on 4th December, 2012 and did not make any submissions, either orally or in writing, thereafter.
20. The Authority notes that the POI for the Mid Term Review (MTR) investigation was 1st October 2009 to 30th September 2010 (12 months) whereas the POI for the present New Shipper Review (NSR) investigation was 1st April, 2011 to 30th September, 2011 (6 months). It is noted that M/s Chang Chun Plastics Co., Ltd., Chinese Taipei did not cooperate by furnishing required information/documents and did not provide consent to the Authority to verify their information/documents relevant to the present NSR investigation.
21. In view of the non-cooperation of M/s Chang Chun Plastics Co., Ltd., Chinese Taipei, the Authority is unable to determine the Normal value, Export price and Dumping margin in respect of their export of the subject goods to India. Under the circumstances, the Authority holds that it may not be appropriate to clear exports of the subject goods made by M/s Chang Chun Plastics Co., Ltd., Chinese Taipei without payment of Anti-Dumping duty.
22. In terms of Rule 16 of the Rules, another disclosure statement was issued to the interested parties vide letter 1st March, 2013 disclosing again the essential facts of the investigation to all the interested parties.

Comments on the 2nd Disclosure Statement:

23. No post disclosure comment has been received either from M/s Chang Chun Plastics Co., Ltd., Chinese Taipei or from their legal representatives. However, the domestic industry in their post disclosure comments urged the Authority to conclude the subject investigation

holding that the concerned exporter has not established the need for individual dumping margin. They further submitted that the anti-dumping duty is required to be collected on all exports made by the concerned exporter after initiation of the subject investigation.

Conclusion and Recommendation:

24. Based on the facts as stated above and the legal position, the Authority concludes that the Applicant M/s Chang Chun Plastics Co., Ltd., Chinese Taipei cannot be treated as a New Shipper under Rule 22 of the Anti Dumping Rules and is, therefore, not entitled to individual dumping margin. The Authority, therefore, recommends that the exports of the subject goods made by M/s Chang Chun Plastics Co., Ltd., Chinese Taipei during the period from the date of initiation of the present NSR investigation recommending provisional assessment i.e. 20.04.2011 to the date of withdrawal of antidumping duty by Department of Revenue vide Notification No.29/2012-Customs (ADD) dated 29.5.2012, may be subjected to levy of Anti-Dumping Duty of USD 201.27 per Mt, as imposed earlier on the imports of the subject goods, originating in or exported from Chinese Taipei, vide Notification No. 33/2008-Customs dated 11th March, 2008.
25. An appeal against the orders of the Central Government arising out of this order shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Act.

(J.S. Deepak)
Designated Authority