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Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti Dumping & Allied Duties)

New Delhi

Dated, the 21st April, 2008

NOTIFICATION

Final Findings

Subject: Sunset Review of Anti Dumping Investigations concerning imports of Ferro Silicon originating in or exported from Russia and China PR.

No.15/19/2005-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof, the Designated Authority (hereinafter also referred to as Authority), under the above Rules, initiated a Sunset Review investigation vide notification dated 24.12.2007 into the alleged dumping of imports of Ferro Silicon from Russia and China PR. The Sunset Review investigation was initiated on the directions of Hon'ble High Court of Delhi, vide judgement dated 1.11.2007 in respect of petition filed by Domestic Industry, M/s Indian Metals & Ferro Alloys Ltd., Bhubaneshwar.

2. The background of this case is that the Designated Authority under Rule 5 of the Rules, decided to initiate an anti dumping investigations concerning the import of Ferro Silicon originating in or exported from Russia and China PR. Consequently, an Initiation Notification dated 5th June, 2000 was issued to determine the existence, degree and effect of the alleged dumping of the subject goods originating in or exported into India from the subject countries. On preliminary investigation, the Authority issued a public notice dated 16th Nov., 2000 vide Notification No.28/1/2000 –DGAD where provisional duty was imposed on import of subject goods from subject countries. The provisional anti dumping duty was imposed on the subject goods vide Notification No.152/2000-Customs dated 26th December, 2000. The Designated Authority came out with final findings on 28th May, 2001 and recommended anti dumping duty as the difference between US \$ 764 and the landed value of import per metric tonnes (as mentioned in Column 3 of Para 9 of final findings). The definitive anti dumping duty was imposed by the Govt. of India vide Notification No.67/2001- Customs dated 25th June 2001. The anti dumping duty was applicable for a period of five years from the date of imposition of the provisional duty. The duty was, therefore, applicable upto 25th December, 2005.

3. On completion of 4 years of the anti dumping duty imposed, an alert letter was sent to the Domestic Industry stating that the Designated Authority is contemplating to

undertake Sunset Review under Section 9A(5) of Customs Act with a view to ascertain whether the cessation of the anti dumping duty in this case is likely to lead to continuation or recurrence of dumping and injury and they were requested to give full information regarding extent of imports from subject countries and evidence relating to dumping, if any, and impact of cessation of the anti dumping duty in this case.

4. The Domestic Industry (M/s. Indian Metals & Ferro Alloys Ltd. and M/s. VBC Ferro Alloys) then filed the application for initiation of sunset review on the above subject. The matter was examined and after detailed examination, it was considered appropriate not to review the anti dumping duty imposed on Ferro Silicon on import from subject countries. The applicant was informed vide DGAD's letter dated 21.12.2005 accordingly.

5. Aggrieved by the letter dated 21st December, 2005, the applicant preferred a writ petition CW No.24646 of 2005 in Hon'ble High Court of Delhi and it was prayed that the Order dated 21.12.2005 may be quashed, since the Designated Authority is obliged to conduct a Sunset Review and the Central Government can then take a decision thereon. The Hon'ble Court ordered the Central Government to consider the matter and examine the correctness of the order passed by the Designated Authority.

6. This matter was considered by the Central Government (Department of Revenue) in pursuance of Hon'ble High Court's order and examined the correctness of the order passed by the Designated Authority. The decision of the Central Government was communicated vide letter dated 20th July, 2006. It was concluded that the Designated Authority's earlier decision not to review the anti dumping duty is well-founded and there exist no grounds to take a contrary view. It was, therefore, decided by the Government that a review for continuance of anti dumping duty on imports of Ferro Silicon from Russia and China PR is not required.

7. The petitioner again filed a writ petition on 13th November, 2006 vide – WP(C) No.16893/2006 in Hon'ble High Court of Delhi praying for setting aside the Order dated 20th July, 2006.

The Hon'ble Court in their Judgement dated 1.11.2007 held that:

- (a) A Sunset Review is mandatory and the contention of the Respondents to the contrary is rejected.
- (b) A Sunset Review is required to be conducted in accordance with procedure laid down in Rule 23 of the Rules.
- (c) The Order dated 20th July, 2006 passed by the Central Government is liable to be quashed and we do so.

As a result of above conclusion and relief granted, the Hon'ble Court directed to reconsider the request of the petitioner for Sunset Review in accordance with Rule 23 of Rules. The Hon'ble Court did not lay down any timeframe for the Respondents to take a decision but would, naturally, expect them to do so expeditiously.

8. The Hon'ble Court has also directed that with effect from two months after the date of decision (that is from 1st January, 2008) the Government will ensure that all imports of Ferro Silicon originating in or exported from Russia and China PR are cleared on a provisional basis till the Sunset Review is completed by the respondents and a final decision taken.

9. According to Sub Rule (2) of the Rules 6 Supra, the Authority forwarded a copy of the Initiation Notification dated 24.12.2007 for Sunset Review to the known producers/exporters, importers, industry associates, embassies of the countries concerned and the petitioner and gave them an opportunity to make their views known in writing. Copies of Initiation Notice were also sent to FICCI, CII, ASSOCHAM, etc. for wider circulation.

a) The Authority sent questionnaire to elicit relevant information to the following known exporters from subject countries:

- i) China Hantonind. Ltd Jiangsu – China
- ii) Nanjing No. 3 Ferro-Alloy Plant, Jiangsu
- iii) Tianjing Non-Ferrous Metals – China
- iv) Hunan Ferro Alloy Plant – China
- v) Jinchuan Nono Ferrous Metals Co. – China
- vi) Jinzhou Ferro Alloys Plant – China
- vii) Nanjing Ferro Alloys Plant – China
- viii) Xiber Ferro Alloys Works Gansce – China
- ix) Xinyu Iron & Steel Works – China
- x) Xishui Country Ferro Silicon Plant, Hubei – China
- xi) Zunyi Ferro Alloy Plant Guizhou Province – China
- xii) Chelyabinsk Electro Metallurgical Integrated Plant – Russia
- xiii) Klutchersk Ferro Plant – Russia

b) A copy of Initiation Notification alongwith the importers questionnaire were also sent to the following importers:

- i) OPRK Ferro Alloys Ltd., New Delhi
- ii) ESSEL Mining and Industries Ltd., Kolkata
- iii) Metallic Alloys, New Delhi.
- iv) Durga Chemical Agency, Ludhiana.

- v) Himani Ferro Alloys Ltd., New Delhi.
- vi) British Metal Corpn (I), Pvt. Ltd.,
- vii) Metco Marketing India Pvt. Ltd., New Delhi.
- viii) Oswal Minerals, Bangalore.
- ix) Manohar Manak Alloy Pvt. Ltd., Mumbai.
- x) Sri Ram Enterprises, Chennai.
- xi) Sterling Ferro Alloys Pvt. Ltd., Vadodra
- xii) Kothari Metals, Ltd., Kolkata
- xiii) Sri Laxmi Traders Alloy, Bangalore

10. The Sunset Review Initiation Notification dated 24.12.07 was issued with a request to all concerned, i.e. Domestic Industry, exporters and importers etc. to furnish relevant information in the prescribed questionnaire within 40 days from the date of issue of letter dated 2.01.2008 as per normal procedure. The Domestic Industry was also requested to submit the revised petition as per period of Investigation from October, 2006 to September, 2007 as the data provided for the POI should not be older than 6 months besides 3 previous years to ascertain dumping and injury. The Department of Revenue was also requested to clear all imports of subject goods from subject countries on provisional basis w.e.f. 1st Jan., 2008. The Department of Revenue directed their offices accordingly vide their letter dated 27th December, 2007. The orders of the Hon'ble Court dated 1.11.07 was, therefore, implemented within the time frame.

11. The Domestic Industry did not submit information within the stipulated time and requested two weeks extension for submission of documents/information. One of the exporter also requested extension of three weeks. The Designated Authority approved the extension for both the Domestic Industry as well as exporter. In spite of extension given to Domestic Industry, they did not submit the relevant information/revised petition so far and the extension period expired on 25th Feb., 2008. The extension for submission of information by the exporter M/s Chelyabinsk Electrometallurgical Integrated Plant, Joint Stock company, Russia expired on 3rd March, 2008. However, their representative M/s Strategic Metals Pvt. Ltd., Mumbai submitted information on exporters questionnaire which was received on 14.03.08 i.e. after the due date of extension. This information was incomplete as it did not contain information on Appendix I and II pertaining to domestic and exports sale. Besides above, no response has been received either from the importers or any other interested party.

12. In the absence of any cooperation and information from the domestic industry, no case for continuation of dumping and injury to the domestic industry or likelihood of recurrence of dumping and injury has been made out by the domestic industry requiring continued imposition of anti dumping duty in terms of Sec 9A(5) of the Acts.

13. In view of the above findings, the Authority, does not recommend the continuation of anti dumping duty which had already expired on 25th Dec., 2005 after 5 years of its imposition. Consequently, as no material information for continued dumping and injury have been received from domestic industry, the Authority hereby recommend the withdrawal of provisional assessment of import of subject goods from subject countries w.e.f. 01.01.2008.

14. Any appeal against the Orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

R. Gopalan
The Designated Authority