

**To be published in Part-I Section I of the Gazette of India Extraordinary**

**F. No. 7/45/2020-DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Trade Remedies)  
Jeevan Tara Building, 5 Parliament Street, New Delhi-110001**

Dated: 8<sup>th</sup> February, 2022

**FINAL FINDINGS**

**(MTR Case No. 26/2020)**

**Subject: Mid-Term Review to review the product scope of definitive Countervailing Duty imposed on “Welded Stainless Steel Pipes and Tubes” originating in or exported from China PR and Vietnam.**

Having regard to the Customs Tariff Act, 1975 (51 of 1975) as amended from time to time (hereinafter referred as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 as amended from time to time (hereinafter referred as the “Rules”);

**A. Background of the case:**

2. Vide Notification No. 6/22/2018-DGAD dated 31.07.2019, the Designated Authority recommended imposition of definitive countervailing duty for a period of 5 years on imports of “Welded Stainless-Steel Pipes and Tubes” originating in or exported from China PR and Vietnam (hereinafter also referred to as the “subject countries”). The definitive countervailing duty was imposed by the Central Government vide Notification No. 4/2019-Customs (CVD) dated 17.09.2019.
3. Kunshan Kinglai Hygienic Materials Co., Ltd. (hereinafter also referred to as the ‘Applicant’) has filed an application before the Designated Authority (hereinafter referred to as the ‘Authority’) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the ‘Act’) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on subsidized Articles and for Determination of Injury) Rules, 1995 as amended from time to time (hereinafter referred to as the ‘Rules’) for initiation of limited mid-term review investigation concerning exclusion of specific grades of “Welded Stainless Steel Pipes and Tubes” having ASME-BPE standards (hereinafter also referred to as ‘subject goods’).

## B. Procedure

4. The procedure described below has been followed with regard to the investigation:
  - i. The Authority issued a public notice No. 7/45/2020-DGTR, dated 11.02.2021 published in the Gazette of India Extraordinary, initiating mid-term review of the anti-subsidy investigation concerning import of the subject goods.
  - ii. The Authority informed the Embassies of China PR and Vietnam in India about the initiation of the subject investigation and requested them to further inform the concerned exporters/producers from their respective countries about the same.
  - iii. The Authority made available copies of the non-confidential petition to Stainless Steel Pipe and Tubes Manufacturer Association, New Delhi; Stainless Steel Pipes & Tubes Manufacturers Association, Ahmedabad; South India Stainless Steel Pipe and Tubes Manufacturer Association; and Haryana Stainless Steel Pipe and Tube Manufacturer Association (hereinafter also referred to as the “petitioners”) who had jointly filed a petition, before the Designated Authority in the original investigation.
  - iv. On the basis of request made by them, the Authority considered following parties as interested parties:
    - a. Trade Remedies Authority of Vietnam;
    - b. Gia Anh Hung Yen Co., Ltd
    - c. TVL Steel Production and Construction Joint Stock Company Vietnam; and
    - d. O S S Daiduong International Joint Stock Company.
  - v. Since it was not possible to maintain physical public file due to ongoing COVID-19 pandemic, all the interested parties were requested to e-mail non-confidential versions (NCV) of their submissions/responses/comments filed by them to all other interested parties.
  - vi. The Authority examined the information furnished by the applicant to the extent possible to verify its claims. in the application.
  - vii. Since the petition is for a limited purpose of exclusion of a certain type of “Welded Stainless Steel Pipes and Tubes” having ASME-BPE Standards, the Authority is not required to evaluate the quantum of dumping and injury. Therefore, stipulation of POI is not warranted.
  - viii. Further information was sought from the applicant producer/exporter to the extent deemed necessary. Verification of the data and claims of the applicant (producer/exporter) was conducted to the extent considered necessary for the purpose of this investigation.
  - ix. Since domestic industry and the other interested parties did not take part in the present MTR investigation, the verification of their data was not carried out.
  - x. In accordance with Rule 7(6) of the Rules, the Authority also provided an opportunity to the interested parties to present their views orally in a public hearing held on

14.09.2021 The parties, who presented their views in the oral hearings, were requested to file written submissions of their views expressed orally, followed by rejoinder submissions.

- xi. Wherever an interested party has refused access to, or has otherwise not provided the necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these final findings on the basis of facts available.

**C. Initial submissions made by the Applicant**

5. The submissions made by the applicant are as follows:
  - a. The product under consideration defined in the original investigation is “Welded Stainless Steel Pipes and Tubes”. The input material for welded pipes and tubes is stainless steel sheet/skelp/coil/plates which are formed into required shape and welded through suitable welding process. Further, the sheet/skelp/plates can be of different types, depending upon the requirement. The present review is therefore only for the limited purpose of investigating the need for excluding the above-referred ASME-BPE certified product from the scope of the product under consideration as defined in the original investigation.
  - b. The present application for mid-term review has been filed to request appropriate modification in the product scope in the subject anti-subsidy investigation. The applicant has furnished the following reasons for seeking a review:
    - i. The product under consideration is classified under Chapter 73 of the Customs Tariff Act, 1975, and further classified under customs sub-heading 73064000, 73066100, 73066900 73061100 and 7306210.
    - ii. The applicant has received ASME-BPE certification from the American Society of Mechanical Engineers (ASME) by fulfilling the manufacturing standards set by ASME.
    - iii. The product under consideration and the product proposed to be excluded from the scope of existing Countervailing Duty can be imported under Open General License Policy (OGL Policy). There are no restrictions on the imports of these products.
    - iv. The American Society of Mechanical Engineers grants the ASME-BPE certificate to the manufacturers that meet certain standards and specifications. In order to receive this certification, the products must possess specific and unique qualities and designs which serve the high level of hygiene requirements needed for the bioprocessing and pharmaceutical sectors. The ASME-BPE standard requires production to comply with design standards, raw materials usage, construction, surface finish and inspection – and therefore, the ASME-BPE products are neither technically nor commercially substitutable.
    - v. The ASME-BPE certified PUC are neither produced nor supplied by any of the producers in India. ASME-BPE tubing products are produced by 14 companies only in the world. Hence, all ASME- BPE standard products used in India are being imported from one or more of the 14 companies referred above.

- vi. The applicant has requested that ASME-BPE certified products should be excluded from the purview of anti-subsidy/countervailing duty recommended vide notification dated 31<sup>st</sup> July 2019.

**D. Initial submissions made by the other interested parties**

6. Gia Anh Hung Yen Co., Ltd made the following submissions:
- (i) In the Original Investigation (Case No. 6/22/2018-DGAD), Gia Anh Hung Yen Co. Ltd. had submitted the questionnaire response.
  - (ii) Its products exported to India are:
    - a. ASTM A554 Welded Stainless Steel Ornamental Tubes – Round Tube
    - b. ASTM A778 Welded Stainless Steel Industrial Pipes.
  - (iii) If the PUC was defined as per original investigation, Gia Anh Hung Yen Co. Ltd's products will fall under the PUC definition.
  - (iv) If the PUC is considered as per the application in MTR (Notification No. 6/22/2018), Gia Anh Hung Yen Co. Ltd's products will not fall under the PUC definition.
  - (v) The Gia Anh Hung Yen Co., Ltd submitted that the CVD imposed on it in the original investigation [11.96%] is not supported by law and the facts of the on-going case.
  - (vi) It was submitted that it does not avail any of the subsidies in the programs mentioned in the Original Investigation, therefore it is below de minimus level.
7. The authority held a hearing on 14<sup>th</sup> September, 2021 which was attended by the interested parties. However, none of the domestic producers attended the hearing. The submissions made by the interested parties are as follows

**E. Post hearing submission by Applicant**

8. Applicant made following submissions post hearing:
- a. The applicant stated that it had not participated in the original investigation since it was not aware of that the said investigation being conducted by the Authority.
  - b. The applicant has reasons to believe that the domestic industry had intentionally not provided the name and address of the applicant during the original investigation. Accordingly, the Directorate General of Trade Remedies did not send the initiation notification along with enclosures to us.
  - c. The applicant was totally unaware of the investigation. Hence, it could not raise the issue of exclusion of ASME-BPE certified products from scope of the PUC during the original investigation.
  - d. The CVD duties were imposed on all grades of the Welded Stainless-Steel Pipes and Tubes even though certain grades ought to have been excluded on the basis of the well settled principles in this regard, as the same are not produced by any of the Indian producers.

- e. ASME-BPE Tubing Products are not produced in India. The tubing manufacturers in India provide tubing for general engineering and industrial applications, which do not cater to the stringent standards and finishing requirements of the Biopharmaceutical Industry.
- f. The domestic industry has decided not to participate in the present Mid-Term Review investigation. This shows that the domestic industry does not have production facilities for the manufacture of ASME-BPE products, and are therefore not affected by the exclusion of the same from the scope of CVD duties.
- g. ASME-BPE Certification is a company level certification conferred by the American Society for Mechanical Engineers to organizations manufacturing or supplying tubing and fittings that comply with certain standards. The ASME standard for "Bioprocessing Equipment" dictates specific conditions for design, materials, construction, surface finish and inspection of the product. Only upon satisfying the ASME that these conditions are met, will an organization be granted the ASME-BPE certificate.
- h. BPE standards have additional acceptance criteria for surface finishes and quality control. They have an extensive list that addresses issues such as pits, nicks, inclusions and cracks. To ensure that the products meet these standards, each piece of BPE tubing is visually inspected using a borescope. None of the Indian manufacturers follow this process.
- i. This certification is intended for companies that manufacture or supply tubing and fittings for the bioprocessing and pharmaceutical sectors, as well as other applications which require very high levels of hygienic requirements.
- j. ASME-BPE tubing products are products manufactured by a certified company that meets the highly demanding technical and quality requirements of the BPE Standard. The applicant is certified by the American Society of Mechanical Engineers to produce the high standard PUC.
- k. ASME-BPE tubing products should be excluded from the PUC on the ground that the domestic industry does not produce the same. Also, since the domestic industry has not participated in the present investigation, it is presumed that it has no objection to the exclusion of ASME BPE certified products.
- l. Due to the stringent demand of finish and quality that is required by the biopharmaceutical industry, the BPE standard is a very difficult standard to meet and hence the cost of the tubing that meet these standards is very high. Thus, these specification of Welded Stainless-Steel Pipes and Tubes are not technically or commercially substitutable by the goods produced by the domestic industry.
- m. The average CIF price of the applicant is US\$/MT is \*\*\*. Whereas, as per Final Findings of the original anti-subsidy investigation, Landed Price from China for residual category is Rs. \*\*\* which means the price of the products produced by the applicant exporter is \*\*\* times more than the price of other goods.
- n. ASME-BPE products have a specialized market which is completely separate from the subject goods. Thus, there is no injury to the domestic industry from the exclusion of this product. Accordingly, imposition of CVD of 29.88% on the applicant's product is not warranted.

- o. Reference is made to anti-dumping investigation concerning imports of seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel (other than cast iron and stainless steel), whether hot finished or cold drawn or cold rolled of an external diameter not exceeding 355.6 mm or 14'' OD, originating in or exported from China PR, wherein the Authority excluded specialized products such as ASTM A213/ASME SA 213 and ASTM A335/ ASME SA 335 or equivalent BIS/ DIN/ BS/ EN. The same analogy should be applied in the present investigation.
- p. Importers/end-users are facing difficulty due to non-availability of ASME-BPE certified products in India and accordingly, they have to import such goods with countervailing duty. Such duty is causing extra burden on them by increasing their cost.

**F. Submissions made by the Importers**

9. The Mid-Term-Review application filed by Kunshan Kinglai Hygienic Materials Co., Ltd. is supported by importers namely Biocon Biologics India Ltd., Sartorius Stediam India Pvt Ltd., EF Site Technologies Pvt Ltd., Equipment Fabricators, Lyophilization Systems India PVT Limited and Praj Hipurity Systems Limited. These importers have made the following submissions:
10. Some of the projects of the importers require an environment of high cleanliness, and only ASME- BPE Certified tubes can meet this requirement. Thus, the importers need to use ASME-BPE certified tubes for their projects in Pharma and Bio pharmaceutical companies. There is no company in India that is a certified manufacturer of ASME-BPE tubes, due to which the importers must import this specific type of tubes. However, the countervailing duty imposed on welded stainless-steel tubes from China PR will result in increased cost for imports, which will cause undue burden to the importers. This adversely impacts their ability to compete with global manufacturers of process systems for pharmaceutical and bio pharmaceutical application.

**G. Submissions by Associations of stainless-steel pipe manufacturers:**

- i. It was submitted by the Association representing Indian Steel Manufacturers that it is false to say that no producer in India is producing or supplying welded stainless-steel pipes and tubes having ASTM-BPE Standard and that at least two domestic manufacturers are producing the products referred to in this application:
  - M/s Raajratna Stainless Pvt. Ltd., Ahmedabad, Gujarat, and
  - M/s Rohit Ferronet & Engineering Pvt. Ltd., Bharuch, Gujarat.
- ii. The products have limited demand in India and is expected to grow in the future.
- iii. Indian Pipe and Tube Manufacturers are fully capable of producing products containing the above specifications.
- iv. The products are visually difficult to differentiate from other similar products, therefore it would not be possible for customs authorities to differentiate between products which possess the specifications and products which do not.

11. In order to get further clarity on the nature of exemption demanded by the applicant it was considered necessary to seek further clarifications from the interested parties, including the domestic producers. Further, in order to provide opportunity to the applicant to defend its interests and clarify factual position with regard to the facts that were likely to be stated by the domestic producers, the Authority provided opportunity to the applicant and other interested parties as well to attend the meeting and defend their interests. Accordingly, another hearing/meeting was held by the Authority on 4<sup>th</sup> January, 2022, wherein an opportunity was provided to all the interested parties, including the applicant, domestic producers and other interested parties to clarify the factual position. The submissions made by the interested parties are as under.

#### **H. Submissions by the applicant post second hearing**

12. The applicant made the following submissions: -

- a. The Authority should not consider the arguments made by the domestic producers at such a belated stage since they did not file comments within the time period notified in the initiation notification and the extensions given by the Authority. In Guatemala – Cement II, the Panel concluded that sufficient opportunity must be provided to the interested parties whether or not any time limits are set. The Authority provided sufficient opportunity in terms of 80 days to register as an interested party.
- b. In case the Authority considers inclusion at this stage, it must record the same in the Final Findings with relevant dates.
- c. OSS Daiduong International Joint Stock has been removed from the updated list of interested parties without providing any sufficient reason.
- d. The interested parties have not circulated the non-confidential version of their submissions in response to the notification issued by the Authority on 28<sup>th</sup> December 2021. The investigation is based on facts and evidence, mere statement that the industry is MSME and due to limited resources, it did not participate earlier assuming that there is no such product as ASME BPE is incorrect.
- e. Gia Anh Hung Yen Co. Ltd. did not provide the non-confidential version of the response within the time period set by the Authority. The request made by the company is different from the scope of the present investigation and is without any evidence that the domestic industry is not manufacturing the product sought to be excluded by them. Thus, such exclusion requests should not be addressed in the present investigation.
- f. Getting ASME BPE certification is a costly and a time-consuming process. Such certification can be obtained only by companies working on large scale as MSME companies cannot afford this certification.
- g. ASME BPE products can be identified by the customs as the tubes and fittings are marked. The invoices and packing list also indicate ASME BPE certified products. Further, in case of exclusion, the applicant is willing to mark ASME BPE on certificate of origin on future exports to India and attach a copy of ASME BPE certificate on the shipping mark of outer packaging for inspection of customs.

- h. Sales of ASME BPE certified products is 8 – 10 times higher than non-certified products. While the applicant is catering to the high-end products for bio-processing industry (both certified and non-certified products), the exports from China PR to India are mostly of low-end products.
- i. The BPE standard products are difficult to produce and hence, the cost and price of such product is higher. These products are not technically and commercially substitutable and do not compete with those manufactured by the Indian industry.
- j. The ASME BPE products are different from non-certified products in terms of the elementary composition of raw material is different as the Sulphur content has to be 0.005% - 0.017%. There are higher requirements for mechanical properties and welded stability of the raw material for the certified products. While the surface roughness requirement for the certified product is  $RA < 0.375$  and an additional electrolytic polishing process for internal surface is necessary, there is no specific requirement for non-certified products. The requirements for inspection standard, process control, product traceability is much higher than non-certified product. The profit rate of certified products is higher due to less supply of such product.
- k. While the landed price of the applicant is Rs. \*\*\* lacs, as per the Final Findings, the landed price of residual category is Rs. \*\*\* lac. Thus, it is evident that such products have a different market separate from the product under consideration in the original investigation.
- l. The domestic industry in the previous investigation was aware that the applicant produces high end product which was not causing injury to it and accordingly, the applicant was not included in the list of known producers / exporters.
- m. 30% duty is a burden to the end-users; however, the end-users are buying from the applicant as there is no alternative in the domestic market.
- n. The consumers have not filed the present application due to lack of technical data and export data. However, as such consumers are facing difficulty due to non-availability of ASME BPE certified products on account of anti-subsidy duties on imports from China PR, such consumers have supported the present application.
- o. Even though the end-users have requested the domestic producers to provide the product under consideration of specific grades, the domestic producers have not made any efforts to do so.

#### **I. Submissions by the other parties post second hearing**

13. Other parties made the following submissions: -

- a. The exclusion requested for the product by the exporter is although different from the scope of the product under consideration as defined in the initiation notification for the mid-term review, it is covered under the product under consideration as defined in the final findings issued by the Authority in the original investigation.
- b. There is no company in India producing ASME BPE certified tubes and also ASTM A554 and ASTM 778/A312 tubes. Accordingly, the exporter should be exempted from the anti-subsidy duty.

- c. The exporter has been registered as an interested party since April 2021 and should not be disqualified as an interested parties at this stage of the investigation.

**J. Submissions by domestic producers post second hearing**

14. The domestic producer made the following submissions: -

- a. Exclusion request for ASTM A554 and A778 should not be considered as the same are being produced in India and the present mid-term-review investigation was initiated pursuant to request for exclusion for ASME BPE certified product only.
- b. The present investigation should not have been initiated as the Indian industry is producing and supplying ASME BPE compliant products which are identical in specification and characteristics such as thickness, surface finish, tolerance, grade of steel used and end usage.
- c. While the request for exclusion has been made by the exporter, the consumers who pay the actual duty have not participated in the present investigation.
- d. The intention of the applicant is to evade duties which is evident from the fact that although, there are only 14 ASME BPE certified companies globally, the applicant is looking for country wide exclusion.
- e. ASME BPE certification is given for the process and not for the product. In terms of essential parameters, there is no difference in ASME BPE certified and non-certified products.
- f. Once a company receives ASME BPE certification, it may use it on all its products. Exclusion granted based on certification will lead to exclusion of all products manufactured by a company.
- g. The Indian producers have received 3A certification for production process which is similar to ASME BPE certification. The Authority concluded in anti-dumping investigation on imports of PVC Paste Resins that products produced using different technology does not render the product different.
- h. The Authority is required to consider the difference in product which should be significant for customs authorities to identify and not plant condition for exclusion of a product.
- i. ASME BPE certification is not mandatory and does not hold any credible standard in India as the same is provided by a private organization.
- j. No evidence has been placed on record by the applicant regarding the inability of the Indian industry to supply the product for pharmaceutical sector.
- k. Exclusion of ASME BPE products will lead to circumvention of duties as the customs authority will not be able to determine whether or not the product is produced in ASME BPE certified plant. Any exporter can mark its product as ASME BPE complaint and evade the duties.
- l. Regarding the contention that the Authority cannot add new interested parties as it has to conclude the investigation within 1 year, it is submitted that no prejudice will be caused to the interests of the applicant in case the Authority takes an extension in the present investigation as it has done in a number of investigations to give a just finding.

- m. No prejudice has been caused to the interest of the applicant by registration of new interested parties as the Authority has given ample opportunity to all the interested parties in terms of a second oral hearing and time to make submissions.
- n. The Authority in numerous investigations have accepted belated responses including that on Barium Carbonate and Biaxially Oriented Poly Propylene Film.
- o. Since ASME BPE is a certification for process and not specification for the product, there is no product with ASME BPE specifications.
- p. Any exclusion request by the Vietnamese producer should not be considered as it has not filed a proper application with appropriate details and evidence.
- q. Since ASME BPE certification is a company level certification, the exclusion requested is not of a specific product but of all the products produced by the company.
- r. With regard to the contention that MSME companies cannot afford ASME BPE certification, it is submitted that lack of certification does not show inability of the Indian industry to supply the same product. The Authority in anti-dumping investigation on Stainless Steel FRP concluded that lack of process-based certification does not determine the inability of the industry to supply the product.
- s. Self-certification of goods is not sufficient evidence, and the customs authority does not have a mechanism to check if the products are actually ASME BPE certified. This will lead to circumvention of the present duties. Since there is no requirement of ASME BPE certificate in India, the customs authority is not under an obligation to check for ASME BPE certified products.
- t. ASME BPE Certified product priced 8-10 times the price of comparable product and priced above Rs. \*\*\* lacs can be excluded for payment of anti-subsidy duties.
- u. With regards to the difference in specification of ASME BPE products, it is submitted that the Indian industry is producing products as specified by the applicant. The product produced has Sulphur content between 0.005% - 0.017% with RA<0.38 and electropolished surface.
- v. As opposed to the contention that name of the applicant was not given in list of known producers and exporters, it is submitted that the obligation on the domestic industry was to provide information on producers and exporters to the best of its knowledge. The domestic industry neither excluded the product from the scope of product under consideration due to it being ASME BPE certified nor segregated it in the import data due to it being a high-priced product.
- w. As opposed to the contention that the duty is a burden on the end-users and that Indian industry is not providing such product, it is submitted that ASME BPE compliant product is available in India and the decision to import the product is a business decision.
- x. As opposed to the contention that the consumers did not file the application due to lack of technical and export data, it is submitted that it is not possible for the consumers which are importing the said product to not have import or technical data of the product that they require.
- y. The consumers cannot be said to be suffering as neither the consumers have filed any submissions substantiating the claim of unavailability of the product nor have they participated in the oral hearing.

**K. Examination by the Authority**

15. The Authority notes that in the original investigation, the product under consideration was defined as “Welded Stainless-Steel Pipes and Tubes” originating in or exported from China PR and Vietnam.
16. The present mid-term review investigation is limited to examining the request for exclusion of “ASME-BPE certified products” from the scope of the PUC as defined in the original investigation. In other words, the present application seeks to exclude “ASME-BPE certified products” from the countervailing duty imposed on the subject goods in the original investigation. The Authority also notes that the applicant did not participate in the original investigation.
17. The Authority notes that Kunshan Kinglai Hygienic Materials Co., Ltd. is one of the companies certified by the American Society of Mechanical Engineers (ASME).
18. The applicant submitted that the standards set by the American Society for Mechanical Engineers for its BPE certification require increased quality in design, materials, construction, surface finish and borescope inspection, which is necessary for the bioprocessing and pharmaceutical sectors.
19. The Authority also notes the applicant’s claim that only 14 companies in the world are certified by the ASME-BPE standard and many others are in the process.
20. The Authority further notes the applicant exporter’s claim that it has exported the subject goods to India at significantly higher prices for an import volume of approximately \*\*\* MT after imposition of the anti-subsidy duty on the subject goods. The applicant in particular claimed that its export price of this certified product is 8-10 times the price of normal product.
21. The Authority notes that there is also no participation from any of the actual users in India whose demand necessitate supply of ASME-BPE standard material.
22. With respect to the final findings cited by the Applicants in Case no. 14/2/2015-DGAD, wherein the Designated Authority allowed exclusion of certain grades from the scope of the product under consideration, it is noted that in that investigation, the exclusion of ASME, ASTM, and other specialized products happened at the stage of initiation itself. It is to be noted that the application filed by the domestic industry therein itself defined the PUC by excluding ASME, ASTM and other specialized products. The exclusion of ASME, ASTM and other specialized products was not requested by the exporter in that investigation. The exporter had sought exclusion of pipes and tubes used for high pressure gas cylinders from the scope of the Product Under Consideration. The reasons for exclusion given by the exporter/producer were that the domestic industry was not manufacturing tubes and pipes for high pressure gas cylinders since it had not obtained statutory license and permission/certification from the competent authority. The facts of the above cited case are entirely different from the present investigation. The above case referred to by the applicant was a case where possession of a certificate was a precondition for manufacture and sale of a particular grade of PUC. The Authority had therein observed that the DI was not in a position to manufacture tubes and pipes for High Pressure Gas Cylinders since it had not obtained mandatory certification from the concerned government departments to manufacture

and supply the same and therefore exclusion was given by the Authority on account of commercial non-substitutability.

23. The Authority notes that the applicant has claimed that ASME-BPE specification of Welded Stainless-steel Pipes and Tubes are not technically or commercially substitutable by the goods manufactured by the domestic industry. However, in the current investigation, the mandatory requirement of such certification for use in bio-processing and pharma industry is not established before the Authority. There is no governmental regulation which necessitates the use of only ASME-BPE products for use in bio-processing and pharma industry. Further, any of the actual users have not produced any evidence that requirement of ASME-BPE certified tubes and pipes are irreplaceable for pharmaceutical and bioprocessing equipment to the extent that it cannot be substituted by other similar products manufactured by any of the domestic producer in India.
24. The Authority notes that ASME-BPE certification is production process-based certification. ASME-BPE certificate does not relate to specifications of a product. The applicant was directed to identify parameters that clearly distinguish the product which is ASME-BPE certified. The applicant has pointed out two such parameters – (a) ASME-BPE certified products may carry a stamp to that effect on the pipe itself and (b) ASME-BPE certified products have a price which is eight to ten times the price of products without this certification. The Authority also notes that the domestic producers have not disputed this claim of the applicant regarding high price of the ASME-BPE certified products as compared to that of non-certified products. Applicant's claim regarding different sulphur content in ASME-BPE certified products is devoid of any basis as the applicant has not established that there are any differences in the product which are ASME-BPE process certified and those which are not.
25. The Authority further notes that the request for exclusion of ASTM A554 and A778 grade of the product by the Vietnamese exporter cannot be considered in the present review as the present mid-term-review investigation was initiated in response to request for exclusion of ASME BPE certified products only.

**L. POST DISCLOSURE COMMENTS**

26. The Authority issued disclosure statement to the interested parties. The submissions made by the interested parties are summarised as under:
  - a. While Association of Stainless-steel manufacturers neither participated in the 1<sup>st</sup> oral hearing nor was its name in the list of interested parties, the Authority has noted the submissions made by the Association. Such submissions were not circulated to the applicant.
  - b. The submissions made post 1<sup>st</sup> oral hearing should be rejected as the Association did not participate in the oral hearing.
  - c. The companies alleged to produce ASME BPE compliant product and not ASME BPE certified products. Being certified and being compliant are two different things which cannot be substitutable. Since the companies are not certified by ASME BPE org., it is groundless to say that the products they produce are actually compliant with ASME BPE standards. The content on the website is prepared by the company itself and is not reliable, as the company does not have certification from a third party (i.e., ASME BPE org.) to support their claim.

- d. The companies which claim to produce ASME BPE compliant product were not a part of the domestic industry in the original investigation and have not opposed the present investigation by filing a letter. No documentary evidence has been provided by such companies regarding manufacturing of the said product.
- e. The demand for ASME BPE certified product is currently limited but expected to grow. Since no domestic manufacturer is present in the market the current demand has been met by imports.
- f. The applicant has exported the subject goods at reasonable prices which has not caused any injury to the domestic industry.
- g. While the association has submitted that the ASME BPE certified product cannot be differentiated visually, the same is incorrect as the certified product carries a mark. Further, details of such product are reported by the applicant on the invoice and packing list.
- h. In case such product is excluded, the applicant is ready to mark ASME BPE on certificate of origin and attach a copy of the certificate on the shipping mark of outer packing for the customs.
- i. The cost and price of ASME BPE tubes is high due to stringent standard to make for bioprocessing industry. The price of tubes exported by the applicant is 10 times the landed price from China PR.
- j. The following are the differences between ASME BPE certified and non-certified products:
  - i. Certified product is used in pharmaceutical and bioprocessing industries while non-certified is used for industrial applications.
  - ii. Packaging for ASME BPE product is oil free and bears ASME BPE mark.
  - iii. There is strict quality requirement for production of ASME BPE product as there should be no particles found during visual inspection under adequate room lighting.
  - iv. While 2B cold coil with special sulphur control (0.005%-0.017%) is used to manufacture certified product, cold rolled coil / hot rolled coil is used to manufacture non-certified product.
  - v. While there is no strict requirement for welding in non-certified product, certified product must have 100% automatic orbital welding which should comply with ASME BPE MJ chapter.
- k. There is no mandatory requirement that a user shall participate in the investigation. In the present case, a number of importers have supported the application.
- l. The Indian end users are facing difficulty due to non-availability of ASME BPE product and have to pay a heavy duty to import such goods.
- m. In anti-dumping investigation on imports of elastomeric filament yarn from Singapore, Lycra was excluded from the scope of product under consideration. The facts of the said exclusion were similar to the present investigation since Lycra is a brand name which is a specialized and fine quality product. Lycra is manufactured under controlled conditions and price is higher as compared to other brands.
- n. ASME BPE certification is a cumbersome procedure which the domestic producers are unable to undertake due to less resources available with them.

### **Examination by the Authority**

27. The Authority notes that most of the submissions made by the interested parties in response to the disclosure statement are repetitive in nature and the interested parties have largely reiterated their earlier submissions. The Authority has further examined the submissions made by the applicant.
- a. With regard to the applicant's contention that the Authority should not accept the submissions made by the association of domestic producers, the Authority notes that it is necessary for stakeholders to adhere to the stipulated time limits during the course of the investigation. Any submission beyond the stipulated time limit can be accepted only if the submission has been made within the extended time limit permitted by the Authority. In this particular investigation, the domestic producers did not even register themselves as an interested party. The acceptance of such belated submission from parties which are not even registered will set a bad precedence. The Authority therefore disregards the submissions made by the domestic producers and/or associations thereof.
  - b. The only distinguishing feature that the applicant has been able to identify between ASME-BPE certified and non-certified product is the price of the product. The Authority considers that significant difference in the price alone cannot be a relevant parameter for identification of the product for exclusion from the scope of the product under consideration. The Authority notes that any exemption must be based on criterion which distinguishes the exempted product in terms of technical specifications and characteristics.
  - c. As regards the submission of the applicant that it will make appropriate documentation or marking on the product, the Authority notes that for the purpose of exclusion only those parameters are required to be prescribed which can be independently verified by the customs authorities. A mere self-certification by the exporter may not suffice for this purpose.
  - d. The Authority notes that the applicant has claimed that price of the product sought to be excluded is much higher due to stringent standards. At the same time, the applicant has also admitted that the only difference is in processing of the product. If the only difference is in the processing, the applicant has provided no verifiable evidence to substantiate that the additional processing requirements are so high as to justify a price differential of 10 times. In fact, no proper reasoning has been provided by the exporter to justify such a huge price difference between ASME and non-ASME product. Moreover, the applicant has not been able to provide any evidence that ASME-BPE standard products are mandatorily required in the bio-pharmaceutical industry. The non-participation of the actual users also validates that there is no mandatory requirement for these standards.
  - e. As regards the issue of Lycra in the investigation Elastomeric Filament Yarn, Lycra was once excluded from the scope of the investigation only on the request of the domestic industry. Lycra otherwise was always included in the scope of product under

non-participation of the actual users also validates that there is no mandatory requirement for these standards.

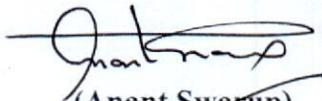
- e. As regards the issue of Lycra in the investigation Elastomeric Filament Yarn, Lycra was once excluded from the scope of the investigation only on the request of the domestic industry. Lycra otherwise was always included in the scope of product under consideration in the Elastomeric Filament Yarn investigations including in the recent final findings issued on 01.02.2022.
- f. The Authority notes that ASME-BPE certification is essentially a process-based certification and does not have anything to do with the specification of the product and the only distinguishing feature is the high price of such product (approx. 8-10 times as claimed by the applicant himself) and the mark/stamp on the product in regard to the certification. Exemption on the ground of process-based certification is prone to misuse and difficult to implement at the border by customs. The volume of such product with ASME-BPE certification exported by the applicant is for approximately \*\*\* MT, which is miniscule as compared with the overall imports of approx. \*\*\* MT in the POI of the CVD investigation and thus not representative.

#### **M. CONCLUSION**

- 28. In view of the above, the Authority is of the view that the exclusion sought by the applicant for ASME-BPE certified product from the scope of the product under consideration is not warranted.

#### **N. FUTRHER PROCEDURE**

- 29. An appeal against the present final findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

  
(Anant Swarup)  
Designated Authority