

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
(DEPARTMENT OF COMMERCE)
DIRECTORATE GENERAL OF ANTI DUMPING AND
ALLIED DUTIES
UDYOG BHAWAN NEW DELHI

NOTIFICATION

Dated the 27th September, 2005.

Subject:-Anti-Dumping investigations concerning imports of Partially Oriented Yarn (POY) originated in or exported from Indonesia, Taiwan, Thailand and Malaysia.

No.15/8/2005-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, the Designated Authority vide its Final Findings No. 19/1/2000-DGAD dated 4th January, 2002 recommended Anti Dumping Duty in respect of imports of Partially Oriented Yarn (POY) originated in or exported from Indonesia, Taiwan, Thailand and Malaysia. Anti Dumping Duty in the above case was imposed by the Central Government vide Notification No. 15/2002-Cus dated the 8th February, 2002. During the course of investigation M/s PT. Polysindo Eka Perkasa offered a Price Undertaking under Rule 15 of the Anti Dumping Rules, which was not accepted by the Designated Authority.

2. An appeal No. C/299/02-AD challenging the above mentioned Final Findings of the Designated Authority and consequent Customs Notification of the Ministry of Finance was filed by M/s PT Polysindo Eka Perkasa Tbk, Indonesia. In this appeal the Customs, Excise and Services Tax Appellate Tribunal (CESTAT) in Final Order No. 03/05-AD dated the 20.06.2005 has given the following direction in Para 19 of the said Order:

3. FINAL ORDER:

“The price undertaking of the appellant, therefore, requires to be considered on merits as per Rule 15 and that part of the impugned Notification and the final findings, in which the price undertaking is held to be not acceptable is hereby set aside with a direction to the Designated Authority and the Central Government to reconsider the price undertaking offered by the appellant and take a fresh decision thereon, in

accordance with law, as regards its acceptance, in the light of this judgment and modify the final findings and the impugned Notification relating to imposition of anti-dumping duty on the appellant to the extent that it may become necessary on the basis of such fresh decision, within two months from today. The appeal is accordingly, partly allowed.”

4. 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 and the orders of the Hon'ble Tribunal mentioned above, the Designated Authority re-examined the price undertaking offered by the M/s PT Polysindo Eka Perkasa Tbk, Indonesia.

5. PROCEDURE:

The Procedure described below has been followed:

- a. The Designated Authority issued a letter dated 5th August, 2005 addressed to M/s Polysindo Eka Perkasa whereby the exporter was requested to furnish the indexation formula and clause thereof offered vide letter dated 24th March, 2002 and other details relevant in arriving at fair decision in this matter. The exporter was requested to furnish this detail as early as possible but not later than 22.8.2005.
- b. Response (both confidential as well as non-confidential version) was received from M/s.PT. Polysindo Eka Perkasa on 22nd August, 2005. A copy of the non-confidential version was placed in the Public File and all interested parties were informed. The Public File was also inspected by the representative of the domestic industry.
- c. Documentary evidences with regard to the prices of PTA and MEG (main raw materials) claimed to be appearing in publication PCI-Contract price (CFR) for the period January – December, 1999 and January-June 2005 were sought from the exporter by the Designated Authority vide letter dated 29th August, 2005. The last date for submission of documentary evidence was 07.9.2005.
- d. An e-mail response was received from the exporter on 1st Sept., 2005.
- e. A reminder was issued on 6th September, 2005 to the exporter.
- f. Exporter vide letter dated 7th September, 2005 informed that they subscribed to ICISLOR (Independent Commodity Information Service –London Oil Report). No documentary evidence was attached.
- g. Subsequently, exporter vide letter dated 23rd September, 2005 changed the price undertaking dated 18.8.2005 stating that price quoted for January-December, 1999 and January-June, 2005 are as given in ICISLOR and not as given in PCI. Further, there appears to be some minor errors in the prices

indicated for the months January-June, 2005. After rectifying these errors, the price-undertaking for October-December, 2005 would be US \$ ***.

6. COMMENTS OF VARIOUS INTERESTED PARTIES:

In the course of these proceedings the Designated Authority has received responses from the exporter and Domestic Industry. The same has been summarized as under;

(a) COMMENTS OF THE DOMESTIC INDUSTRY:

The Domestic Industry has submitted vide its letter dated 13th Sept., 2005 that the Price Undertaking offered by the exporter cannot be accepted because:

- i. “To the best of understanding and information, PCI does not give any published price information for contract price of PTA & MEG on CFR South East Asia basis. They are, therefore, at a loss to understand the source of the information relied upon by the exporter. Therefore, M/s. PT. Polysindo may please be asked to submit evidence in support of their claim by attaching the photocopies of the relevant PCI reports. It is also submitted that said copies may kindly be provided to the Domestic Industry also for their comments on the actual veracity and the appropriateness of the exporter’s claim.
- ii. We would also like to submit that no confidentiality can possibly be claimed on the excerpts of the journals. We wish to clarify that the Domestic Industry is not insisting on the photocopies of the full journal but we are requesting only for the photocopies of the first page and the relevant pages of all the editions of the journals relied upon by the exporters.”

(b) EXAMINATION BY THE AUTHORITY AND CONCLUSIONS THEREOF:

- i. M/s. P.T. Polysindo Eka Perkasa submitted price-undertaking on 9th November, 2001. An offer for building in the indexation formula and clause thereof, for movement in the prices of raw-material i.e. PTA and MEG was made by M/s. P.T. Polysindo vide letter dated 24th March, 2002. Accordingly, M/s. P.T. Polysindo vide letter dated 18th August, 2005 submitted revised price undertaking (both confidential and non-confidential version) containing the indexation formula for movement in the prices of PTA and MEG, price-undertaking for the quarter Oct-Dec.2005, basis for the future quarterly price-undertaking amounts.
- ii. For indexing the increase or decrease in the raw materials cost, M/s P T Polysindo has proposed the co-efficient i.e., ratio of (PTA +MEG) price during a quarter divided by the (PTA+MEG) price during the period of investigation based on the prices appearing in the publication PCI-Contract

- Prices (CFR South East Asia). M/s. P.T. Polysindo have proposed that the base price for a given quarter will be determined with reference to the PCI contract prices CFR South-East Asia prevailing during the corresponding second previous quarter.
- iii. Since the calculation of base price for the period of investigation as well as price undertaking for Oct-Dec.2005 are based on the PCI-Contract Prices(CFR-South East Asia), M/s. Polysindo, vide letter dated 29th August, 2005 was requested to furnish documentary evidence for checking the accuracy of data i.e. copies of the prices of PTA and MEG claimed to be appearing in publication PCI-Contract Prices (CFR South East Asia) for the period Jan-Dec.1999 and Jan-June,2005.Again, vide letter dated 5th Sept.2005, M/s. P.T. Polysindo was requested to submit the requisite evidence failing which the Designated Authority would be constrained to decide the matter based on available facts. M/s. Polysindo has not been able to submit the requisite evidence in spite of enough opportunity given to them.
 - iv. The domestic industry has questioned the authenticity of data and has stated that “to the best of our understanding and information, PCI does not give any published price information for contract price of PTA and MEG on CFR South East Asia basis”. In brief, while on one hand the domestic industry has questioned the data on the basis of which price undertaking has been calculated, M/s. P.T. Polysindo, have not been able to furnish the documentary evidence to substantiate their accuracy of data.
 - v. The Designated Authority has been directed to reconsider the price-undertaking in a time frame.
 - vi. Ample opportunity has been given to the exporter to submit documentary evidences with regard to their claim of prices of PTA and MEG as prevailing during the period of investigation (Jan-Dec, 1999) and during January-June 2005. The exporter could not substantiate its claims with documentary evidences.
 - vii. Technically the response of the exporter dated 23rd Sept. 2005 is liable for rejection on account of delay. Even ignoring the admitted factual errors in their earlier submissions dated 18.8.2005 and condoning the delays, the revised price-undertaking dated 23rd Sept. 2005 continues to be deficient because no documentary evidence in support of their price data has been submitted even at this belated stage.
 - viii. Considering the inadequacy of supporting documentary evidence in the price-undertaking, it is not appropriate to accept the price undertaking offered by the exporter.
 - ix. Accordingly in terms of powers conferred in Rule 15(3) of the Custom Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 the Designated Authority

hereby rejects the price undertaking offered by M/s PT. Polysindo Eka Perkasa, Indonesia.

CHRISTY L. FERNANDEZ,
Designated Authority