

Government of India
Ministry Of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan

New Delhi, dated the 11th December, 2009

NOTIFICATION

Sub: Anti-Dumping Investigation involving imports of Thionyl Chloride originating in or exported from the European Union – Termination of Investigation.

F.NO. 14/1/2008-DGAD:- Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter 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, (hereinafter referred to as the Rules) thereof:

1. WHEREAS M/s Gwalior Chemicals & Industries Ltd., Nagda and M/s. Transpek Industry Ltd., Vadodara (herein after referred to as the applicants) had filed an application before the Designated Authority (hereinafter referred to as the Authority), in accordance with the Act, and the Rules, alleging dumping of Thionyl Chloride (hereinafter referred to as the subject goods), originating in or exported from the European Union (hereinafter referred to as subject country) and requested for initiation of an investigation for levy of anti dumping duties on the subject goods.

A. Procedure

2. Procedure described below has been followed with regard to this investigation by the Authority :

(i) The Authority on the basis of sufficient evidence submitted by the applicants had issued a public notice dated 23rd June, 2008, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, in accordance with the sub-Rule 5(5) of the Rules and copies

of initiation Notification were sent to the known interested parties and concerned embassies of the subject countries.

(ii) Investigation was carried out for the period starting from 1.01.2007 to 31.12.2007 (POI). The examination of trends in the context of injury analysis covered the periods April, 2004-March, 2005, April, 2005-March, 2006, April, 2006-March, 2007 and the POI.

(iii) The preliminary findings of the investigation were issued by the Designated Authority on 31st March, 2009.

(iv) The Authority held a public hearing on 5.05.09 to hear the interested parties orally, which was attended by representatives of the interested parties. Following the public hearing, written submissions and rejoinders were submitted by the interested parties.

B. Product under Consideration and Like Article

3. The Product under consideration in the present petition is Thionyl Chloride, having chemical formula SOCl_2 , also known as Sulfurous Oxychloride, Sulfurous Dichloride, Sulfinyl Chloride, Sulfinyl Dichloride, Dichlorosulfoxide etc. It is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act, 1975 under subheading no. 28121047 of Indian Trade Classification (Based on Harmonized Commodity Description and Coding system).

C. Domestic Industry

4. The petition for imposition of anti dumping duty was jointly filed by M/S Transpek Industry Ltd. and M/s Gwalior Chemicals Industries Ltd. On the basis of the information received and examination, the Authority noted in the initiation Notification and preliminary findings that the applicant companies constituted a major proportion (86.53% excluding the supporter) in Indian production and therefore the applicants constituted the domestic industry in terms of Rule 2(b) together with production figure of the supporters, the applicants had a clear standing in terms of Rule 5(3) of the Anti Dumping Rules.

5. During the public hearing held on dated 05th May,2009, M/S JSA Associates (Consultants to M/s Lanxees, the subject exporter) informed the Authority that Chemical Business of M/S Gwalior Chemicals Industries Limited is being taken over by M/S Lanxess India Pvt. Limited (i.e. subsidiary of the subject exporter from the subject country) and requested for termination of investigation.

6. On the above issue M/s A.K.Gupta, the authorised representatives of the domestic industries, in their post public hearing submissions, submitted as follows:

(i) Signing of Agreement is a post initiation development and does not vitiate the present investigations. Since Gwalior Chemicals has signed an Agreement with the exporter, the Authority may kindly be revised the scope of the domestic industry. It was also added that Gwalior Chemicals is now related to the sole exporter of the product under consideration from the subject country. Gwalior Chemicals may, therefore, be taken ineligible domestic industry and the scope of the domestic industry may be redefined to include Transpek industries and other domestic producers. Production of Transpek Industries represents a major share in Indian production and, therefore, qualifies as domestic industry. It was also added that the scope of domestic industry gets redefined at each stage of the proceedings. It is quite likely that the scope of the domestic industry at the stage of initiation, preliminary finding and final findings is different., as held by WTO as well.

7. M/S JSA Advocate & Solicitors, in their post public hearing submissions, submitted as follows:

(i) The entire petition, upon which the Hon'ble Authority has acted, proceeds on the basis that the petitioners comprise over 50% as a result of the two petitioners collectively having such a market share. The suggestion that Transpek would have over 50% if Gwalior Chemicals Industries Ltd. was now removed from the domestic calculations half-way through the investigation is both factually incorrect and unsustainable in law. They have also argued that even assuming whilst denying that a petition was maintainable at all by Transpek alone, the Hon'ble Authority would be required to commence a de novo fresh enquiry on the basis of figures provided by only Transpek and discard all calculations and reliance on any Gwalior input. It was also added that the suggestion that the petition can now be maintained by one out of two petitioners is contrary to law.

(ii) M/S JSA requested to rectify the name of the subject producer as Lanxess Deutschland GmbH instead of Lanxess AG as mentioned in the preliminary findings.

D. Documents Relied upon for Examination

8. While examining the issue following documents were received and relied upon for examination by the Authority:

(i) M/S Gwalior Chemicals Industries Limited had intimated in writing vide their letter dated 26th August, 2009 the sale of their chemical business to M/s Lanxess India Private Ltd., informed their withdrawal from the petition and requested for termination of investigation.

(iii) Further, vide letter dated 02nd October, 2009, M/s Gwalior Chemical Industries Ltd. informed that they have sold their Chemical Business, located at Nagda, to M/S Lanxess India Pvt. Ltd. as on 1st September, 2009.

(iv) Subsequently, M/S Gwalior Chemical Industries Limited, vide their letter dated 02nd September, 2009 has informed the listing Department of Bombay Stock Exchange and National Stock Exchange of India Ltd. that the transfer of chemical business situated at Nagda to M/s Lanxess India Pvt. Limited has been completed w.e.f 01st September, 2009.

(v) M/S JSA, Advocate & Solicitors, vide their letter dated 27th October, 2009 have confirmed that the sale/purchase of the business has been completed with the signing of the closing memorandum on 01st September, 2009.

(vi) Copy of the Business Transfer Agreement dated 08th June, 2009 and copy of Closing Memorandum dated 01st Sep., 2009 signed between M/S Gwalior Chemicals Industries Limited and M/S Lanxess India Pvt. Limited.

E. Examination by the Authority

9. In terms of Rules 2(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry.

10. In terms of Rule 5- Initiation of Investigation.- (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

Rule 5 (3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless –

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding-

- (i) dumping,
- (ii) injury, where applicable; and
- (iii) where applicable, a casual link between such dumped imports and the alleged injury , to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

11. In terms of Rule 14- The Designated Authority shall, by issue of a public notice, terminate an investigation immediately if-

“(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;”

12. While examining the various clauses laid down in the Business Transfer Agreement dated 08th June, 2009 and the Closing Memorandum dated 01st September,2009 signed between M/S Gwalior Chemicals Industries Limited and M/s Lanxess India Pvt. Ltd. and furnished by the concerned parties, it has been noted that the title to, and risk in, the Transferred Business has stood transferred and passed to the purchaser with effect from the signing of the Closing Memorandum i.e. 01st September,2009.

13. It has also been noted that at the time of initiation of investigation as well as Notification of preliminary finding of investigation, the standing of the constituents of the domestic industry was as follows:

	Production share during POI (in Mt)	Percentage of Share
Party	Jan07-Dec07 (POI)	POI
Gwalior Chemicals	26,353	51.76
Transpek Industries	17,704	34.77
Total petitioners	44,057	86.53
Shree Sulphuric	6,861	13.47
Minakshi Chemicals	-	-
Emparco Chemicals	-	-
Total Indian production	50918	100

14. M/S Gwalior Chemicals Industries Limited had a major share (App. 52%) in the domestic production at the time of initiation of investigation as well as at the time of Notification of preliminary findings. Since the business transfer transaction was completed with the signing of the closing memorandum on 01st September,2009, it is observed that at the time of requesting for the termination of the investigation, M/S Gwalior chemicals Industries Limited had very much constituted part of the domestic industry in terms of Rule 2 (b).

15. It is noted that at the time of initiation of investigation the petitioners M/S Gwalior Chemicals Industries Limited and Transpek Industries Limited alongwith the support had clear standing in terms of Rule 5 and constituted

domestic industry in terms of Rule 5(3) read with Rule 2(b) by virtue of accounting for 86.53% of total domestic production, but with the withdrawal of M/S Gwalior Chemicals Industries Limited from the petition, with effect from 26th August, 2009 i.e. the date on which they informed their withdrawal to the Authority in writing, the other petitioner i.e. M/S Transpek Industries Limited along with support constitutes less than 50% of total domestic production and therefore does not fulfill the criteria of standing laid down under Rule 5 (3) read with Rule 2(b).

16. On the basis of the facts mentioned above and examination, the Authority observes that the business transfer transaction has been completed on 01st September, 2009 with the signing of Closing Memorandum and therefore M/S Gwalior Chemicals Industries Limited had constituted domestic industry, by virtue of holding more than 51% share in the domestic production, as on the date on which they informed in writing their withdrawal from the petition and requested for termination of the investigation.

17. Authority observes that in para 78 of preliminary findings the name of M/S Lanxess AG has been erroneously mentioned as producer, which should be read as Lanxess Deutschland GmbH.

F. CONCLUSION

18. Therefore, under the Provisions of Rule 14(a) supra the Designated Authority hereby terminates this investigation which was initiated vide Notification No. F.NO. 14/1/2008-DGAD dated 23rd June, 2008 against imports of Thionyl Chloride originating in or exported from the European Union and recommends revocation of the provisional anti-dumping duty imposed vide Customs Notification No.40/2009-Customs dated 29th April, 2009.

R. Gopalan
Designated Authority

