

**TO BE PUBLISHED IN PART 1 SECTION-1 OF  
THE GAZATTE OF INDIA- EXTRAORDINARY**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**(Directorate General of Anti Dumping & Allied Duties)**  
**Jeevan Tara Building, 5, Parliament Street**  
**New Delhi 110001**

Dated: 07<sup>th</sup> March, 2016

**FINAL FINDINGS (MID TERM REVIEW)**

**Subject: Mid Term Review of the anti dumping duty imposed on imports of Metronidazole, originating in or exported from China PR.**

No. 15/11/2015- DGAD:- Having regard to 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 Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter referred to as “the Rules”) thereof;

**A. BACKGROUND**

2. No. 15/11/2015-DGAD - Whereas having regard to the Act and Rules supra, the Designated Authority, in the Ministry of Commerce and Industry, Department of Commerce, Govt. of India, appointed under the Rules supra, (hereinafter referred to as “the Authority”) notified its Final Findings on the 2<sup>nd</sup> Sun Set Review anti dumping investigation vide Notification No.15/18/2010—DGAD dated 29.06.2012 recommending continued imposition of definitive anti-dumping duty on imports of Metronidazole (hereinafter referred to as the subject goods) originating in or exported from China PR (hereinafter referred to as the subject country).

3. And whereas definitive anti dumping duty was imposed on the subject goods vide Customs Notification No. 40/2012- Customs (ADD) dated 30.08.2012.

4. And whereas the Customs Tariff Act and the AD Rules require the Authority to review from time to time the need for the continuance of anti dumping duties. M/s

Hubei Hongyuan Pharmaceutical Technology Co., Ltd, (the producer-cum-exporter), formerly known as M/s Hubei Hongyuan Pharmaceutical Co., Ltd, 428 Yishui North Road, Fengshan, Luotian, Hubei, China PR has filed an application for a change in its name in the relevant customs notification from M/s Hubei Hongyuan Pharmaceutical Co., Ltd to M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd following a change in the name of the company. In the Final Findings as well as in the relevant Customs Notification of the last sunset review investigation, the anti dumping duty on the imports of the subject goods originating in or exported from the subject country has been imposed on the producer/exporter M/s Hubei Hongyuan Pharmaceutical Co., Ltd. In its MTR application, M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd has stated that the change in the name has been effected without any change in the constitution of the company, address of the factory premises where the subject goods are produced etc. They have further claimed that in view of the same, all their exports will be in the name of M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd and accordingly, duties applicable to the exporter/producer under the name M/s Hubei Hongyuan Pharmaceutical Co., Ltd should be now made applicable to the new name of the exporter/producer that is M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd.

5. And, whereupon in accordance with Section 9A (5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority issued a public notice dated 17<sup>th</sup> July, 2015, published in the Gazette of India, Extraordinary Part I Section I, initiating the Mid Term Review investigation regarding import of Metronidazole originating in or exported from China PR. The review is only limited to the aspect of the name change as claimed by M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd with regard to the Final Findings of 2<sup>nd</sup> Sunset Review notified vide No.15/18/2010-DGAD dated 29.06.2012 and the definitive anti dumping duty imposed vide Customs Notification No. 40/2012- Customs (ADD) dated 30.08.2012.

## **B. PROCEDURE**

6. In this investigation, the procedure described herein-below has been followed:
- i. The embassy of the subject country in India was informed about the initiation of the investigation, in accordance with Rule 5(5) of the AD Rules.
  - ii. The Authority sent copies of initiation notification dated 17<sup>th</sup> July, 2015 to the embassy of the Subject County and known domestic producers of subject goods in India as per the available information. Parties to this investigation were requested to file their responses and make their views known in writing within the prescribed time limit.

- iii. There was no period of investigation set for the purpose of the present investigation as the scope of the investigation was restricted to the aspect of change of name of the applicant.
- iv. The Authority made available non-confidential version of the submissions presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- v. The Authority has examined the information furnished by the exporter with regard to the changed circumstance for accuracy and adequacy of the information so provided.
- vi. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to all interested parties to present their views orally in the public hearing held on 27<sup>th</sup> October, 2015. The parties which presented their views in the public hearing were requested to file written submissions of the views expressed orally followed by rejoinders. The arguments made in the written submissions and rejoinders thereon received from the interested parties to the extent considered relevant for the present investigation have been considered in the Disclosure Statement.
- vii. Information provided by interested parties on 'confidential basis' was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- viii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has examined the issue on the basis of the 'facts available'.
- ix. In accordance with the Rule 16 of the Anti-dumping Rules, the essential facts under consideration before the Authority were disclosed to the known interested parties on 17<sup>th</sup> February, 2016.
- x. The submissions received from the interested parties during the course of the present investigation including the comments received on the disclosure statement, to the extent considered relevant, have been considered in this final findings.
- xi. \*\*\* marked in this Final Findings represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Anti-dumping Rules.

### **C. SUBMISSIONS MADE BY INTERESTED PARTIES**

7. The following submissions have been made by M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd, the applicant producer-cum-exporter from China PR:

- i. Aarti Drugs Ltd has responded to the present MTR as domestic producer. The Authority may note this company is an importer cum producer of subject goods.
- ii. "Domestic industry" concerning MTZ in India as per Final Findings of last applicable SSR i.e M/s Unichem Laboratories Ltd has not objected to the name change. This shows that the interest of domestic industry is no way impacted by the name change request made by the exporter.
- iii. In the Final Findings as well as in the relevant Customs Notification of the last sunset review investigation, the anti dumping duty on the imports of the subject goods originating in or exported from the subject country has been imposed on the producer/exporter M/s Hubei Hongyuan Pharmaceutical Co., Ltd. However, the name of the company stands changed to M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd. This necessitates an amendment in Customs Notification No. 40/2012-Customs (ADD) dated 30.08.2012 to change the name of the exporter/producer from M/s Hubei Hongyuan Pharmaceutical Co., Ltd to M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd.
- iv. The change in the name has been effected without any change in the constitution of the company, address of the factory premises where the subject goods are produced etc. It is essential and inalienable now to amend the relevant notifications to reflect the changed name of the exporter/producer so as to enable the company to continue to export at the individual duties.
- v. All the exports will be now in the name of M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd and accordingly, duties applicable in the name M/s Hubei Hongyuan Pharmaceutical Co., Ltd should be made applicable to the new name of the exporter/producer i.e M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd, which is within the rights of the exporter/producer.
- vi. The present case is all about a name change to restore the existing legal rights of the applicant which would in no way prejudice the interests of other parties.

- vii. The name change of the Company to include the word “Technology” in it was contemplated by the Company to reflect its business model better as a part of its marketing strategy as the company sells pharmaceutical technologies also apart from pharmaceutical products/medicines.
- viii. The said name change did not necessitate or lead to any change in the operating structure, ownership, management, legal representative of the company, production facility and plant, legal structure, or any other fundamental aspects of its business model which can have a bearing on the Company and its right to carry forward the individual duties applicable to it. Also, the name change is not the outcome of any such changes.
- ix. The company has also not undergone any mergers or demergers or acquisitions etc. Also, nature of various activities of the company vis-à-vis production, export, sale etc of subject goods remained the same as compared to the position in the SSR investigation.
- x. The substantial right of M/s Hubei to continue to avail the individual duties while exporting the subject goods to India is no way vitiated by the change in name of the company from M/s Hubei Hongyuan Pharmaceutical Co., Ltd to M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd. M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd is well within its rights to continue to export the subject goods as per the individual margins granted to M/s Hubei Hongyuan Pharmaceutical Co., Ltd and for that amendments in the relevant notification are essential.
- xi. The Authority may recommend amendments in Notification No.40 /2012-Customs (ADD) dated 30th August, 2012 read with Notification No.15/18/2010—DGAD dated 29th June, 2012 to reflect the change in the name of the exporter/producer from M/s Hubei Hongyuan Pharmaceutical Co., Ltd to M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd.
- xii. Authority treated Aarti Drugs as an importer in the last SSR investigation and Aarti have continued to import the subject goods. Aarti’s submissions should be considered as that of an importer cum producer and not as that of representative domestic industry. Treating submissions of Aarti Drugs as that of a bonafide Indian manufacturer or domestic industry will lead to distorted conclusions qua the actual bonafide interests of true Indian producers who is not engaged in import of the subject goods from China PR. We request the Authority not to take on record the submissions made by Aarti Drugs for the purpose of this review.

- xiii. Aarti Drugs is availing the benefits of Chinese origin MTZ under exemption scheme and on the other hand is trying to restrict the other importers/users from importing the material from China PR at the individual duty applicable to Hubei which is US\$1.49/ Kg as compared to US\$2.57/Kg applicable to the residual category. Restricting Hubei would render a monopolistic domestic market for Aarti. The oppositions raised by Aarti Drugs are highly driven by self serving interests.
- xiv. It is an incorrect view of Aarti that the exporter did not give any reason for the name change and name change is a very difficult process and the company has a history of transformation. In this regard, exporter clearly stated that the reason for change in name is to reflect the business of the company better and not merely. Also, complicated legal process etc in name change alleged by Aarti is a fictitious argument of Aarti. Chinese Company law does not prohibit name change. There is a process of law to effect name change etc. Company followed it and in this case got the name changed. Article 7 of Company Law of China PR is relevant in this respect. Transformations in the past have no consequential effect on the present change in the name of the company and such information on previous transformations has been availed to the Authority at the time of SSR investigation.
- xv. It has been alleged by Aarti that the website of the Company talks about restructuring of the company which is nothing but change in the legal form of the company. In this regard, the exporter is not sure which website is Aarti is referring to or what is the authenticity of the said information available on such undisclosed websites. Hubei is not responsible for any information freely available in the public domain which is not authenticated or not provided by the company authorities. Hence the contention needs to be rejected in toto.
- xvi. It is an incorrect observation of Aarti that the company has transformed from LLC to JSC and there is a delay in filing MTR application. In this regard, Aarti has relied upon old provisions of Chinese company law which itself make the contentions untenable. The operating structures of the company remain the same as that at the SSR investigation. Production, sale, export, plant, address, legal person, capacity etc of MTZ remained the same even after name change. The name change was legally effected in April 2014 and the request before the Authority for name change was made when the importers pointed out difficulties before customs on account of name change and not earlier. Aarti has not demonstrated how the mere change in name has impacted the rights of the exporter to continue to avail the individual margin granted to it. Assuming but not admitting that there is a change in the legal structure of the Company from LLC to Company Limited by Shares, even in that case

the change itself doesn't mean the rights of exporter for name change in the relevant notification stands vitiated. In other words any change from LLC to JSC per se is not sufficient to suggest that the rights of the exporter to carry forward individual duties under a new name stand vitiated. Reliance is placed on EC Regulation (EU) 2015/865 of 4 June 2015 concerning anti-dumping duty certain pre- and post-stressing wires and wire strands of non-alloy steel from China PR in this respect.

- xvii. Even certain prerequisites set out by EC applicable to exporters making name change requests as found in AD investigations like certain pre- and post-stressing wires and wire strands etc shows that (a) The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it, (b) any modification in the company's activities linked to production, domestic and export sales associated. Even in light of such practices in EU, M/s Hubei's right to benefit from the duty granted to it by way of last SSR investigation is no way impacted by the name change.

8. The following are the submissions made by the responding domestic producer namely M/s Aarti Drugs Ltd:

- i. M/s Aarti Drugs Ltd is one of the domestic producers of the subject goods in India.
- ii. It appears that the applicant has not disclosed complete and true facts regarding change in name. It doesn't appear that a company will change its name without any reason. Change in name of the company is a complicated legal procedure and involves a number of legal formalities.
- iii. The website of exporter shows a history of transformations. The said change in name of the company is indeed accompanied by a change in the legal form of the company from LLC to JSC. The reference date of restructuring is January 31<sup>st</sup> 2014. No mention of this transformation has been brought to the notice of the DA. And the request for name change is made after more than a year.
- iv. Change in the form of the company from LLC to JSC requires complete restructuring of share holding pattern, capital, MoA etc as given in Article 98 to 101 of the Company Law of China PR. DA may investigate there details.
- v. Also, the exporter needs to satisfy that why they are not a new shipper.
- vi. Also, what is the impact of change in the legal status on the existing dumping margin and injury margin?

### **Post-Disclosure comments made by the interested parties**

9. The applicant exporter reiterated their previous submissions in comments to the disclosure statement and once again requested the Authority for recommendation of name change of the exporter as prayed by them.
10. The responding domestic producer has not made any further comments.

### **Examination by the Authority**

11. The submissions made by the interested parties are addressed herein below:
  - i. M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd, (the producer-cum-exporter), formerly known as M/s Hubei Hongyuan Pharmaceutical Co., Ltd, 428 Yishui North Road, Fengshan, Luotian, Hubei, China PR has filed an application for a change in its name in the relevant customs notification from M/s Hubei Hongyuan Pharmaceutical Co., Ltd to M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd following a change in the name of the company.
  - ii. As per the final findings of the last SSR as well as in the relevant Customs Notification concerning the said investigation, the anti dumping duty on the imports of the subject goods originating in or exported from the subject country produced and exported by the applicant are applicable in the name M/s Hubei Hongyuan Pharmaceutical Co., Ltd which has as per the applicant changed to M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd.
  - iii. In its MTR application, M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd has stated that the change in the name has been effected without any change in the constitution of the company, address of the factory premises where the subject goods are produced etc.
  - iv. The applicant further claimed that in view of the name change, all their exports henceforth will be in the name of M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd and accordingly, duties applicable to the exporter/producer under the name M/s Hubei Hongyuan Pharmaceutical Co., Ltd should be now made applicable to the new name of the exporter/producer that is M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd.
  - v. It has been submitted by the applicant that the name change of the Company to include the word "Technology" in it was contemplated to reflect its business model better as a part of its marketing strategy as the company sells pharmaceutical technologies also apart from pharmaceutical products/medicines. Applicant also claimed that such name change did not necessitate any fundamental change in the constitution of the company or any

such name change is not the result of change in the fundamentals of the company.

- vi. The applicant also produced a certificate issued by HuangGang Industrial and Commercial Bureau and as identified by China Council for the Promotion of International Trade which stated that there is only change in the name of the company clarifying that there is no change in the constitution of the company and/or address of the factory premises of the company.
- vii. It is claimed by the applicant exporter that post change of name of the company, prices of MTZ to India has increased more than the increase in prices of 2MNI i.e the major raw material used to produce MTZ. The prices of MTZ infact increased from 108 points in the year of change of name to 115 points in 2015 in spite of decline of prices of 2MNI during the same period. Thus, as per the exporter, the name change or the listing of a minor quantity of shares (3% of total) in the stock exchange did not have any bearing on the price behavior of the company and the price of subject goods are governed by the raw material prices.
- viii. It has been clarified that the company has listed a very small percentage of its share (around 3%) in National Equities Exchange and Quotations during 2014 but the same has no impact on the controlling position of share holders or the legal status of the company in the context of name change of the company. The Authority notes that the change in name and listing of 3% shares may not have led to a situation of changed management or ability to change the pricing/ dumping.
- ix. The Authority therefore examining the price behavior of the product and the minor listing of shares which has changed the legal form from LLC to JSC without any impact on management structure, holds that the company's name change may not necessitate any change in the management decisions or the policies of the company especially with regard to pricing, production, sales etc. of the subject goods i.e. MTZ produced by the company to India. Thus, in view of the submissions made by the applicant and other interested parties, the Authority recommends to change the name of the producer/exporter as requested by the applicant with the existing anti dumping duty on M/s Hubei Hongyuan Pharmaceutical Co. Ltd. made applicable on M/s Hubei Hongyuan Pharmaceutical Technology Co. Ltd.
- x. With regard to the contention of applicant that the Authority should not take on record the submissions by Aarti Drugs Ltd as they are importer cum producer, the Authority notes that the present MTR does not require any specific finding with regard to eligibility of Aarti Drugs Ltd as an eligible domestic industry under Rule 2 (b) for any purpose of this investigation. The Authority notes their submissions as a responding party to the extent found relevant in the context of the scope of present investigation.

- xi. The Authority notes that the post-disclosure comments made by the interested parties are mere reiterations of their earlier claims which have already been addressed herein above.
- xii. The Authority holds that certain other issues raised by the interested parties are of no relevance in the context of present MTR as its scope is restricted to change of name only.

### **Conclusion and Recommendations**

12. Having considered all aspects of the case, including submissions made by M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd, the applicant producer/exporter from China PR, and other interested parties, the Authority holds that the name of the producer/ exporter i.e. M/s Hubei Hongyuan Pharmaceutical Co., Ltd has been changed to M/s Hubei Hongyuan Pharmaceutical **Technology** Co., Ltd. w.e.f. 08.04.2014. Thus, M/s Hubei Hongyuan Pharmaceutical Co., Ltd and M/s Hubei Hongyuan Pharmaceutical **Technology** Co., Ltd. are the same companies. Accordingly, the Authority recommends the above change in the Table in paragraph 1 of the Notification No. 40/2012- Customs (ADD) dated 30.08.2012, **w.e.f. 08.04.2014** as under:

- i) Against Serial No. 1, in Col. 6, the name of the Producer 'M/s Hubei Hongyuan Pharmaceutical Co., Ltd' may be amended to read as 'M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd'.
- ii) Against serial No.1, in Col. No.7, the name of the Exporter 'M/s Hubei Hongyuan Pharmaceutical Co., Ltd' may be amended to read as 'M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd'.

13. 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.

A. K. Bhalla  
Additional Secretary & Designated Authority