

No.15/10/2009-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES
UDYOG BHAVAN
NOTIFICATION
Final Findings

New Delhi- 19th July , 2010

Subject:-New Shipper Review (under Rule 22) of Anti-Dumping duty imposed on imports of Cathode ray Colour Picture Tubes from Korea RP.

No. 15/10/2009-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, (hereinafter referred as Rules) 1995 thereof;

Procedure

2. The procedure described below has been followed:
 - I. M/s. Meridian Solar & Display Company Ltd (MSD) from Korea RP filed an application for a New Shipper Review under Rule 22 and requested the Designated Authority to initiate a 'new Shipper' review of the anti dumping duty levied on 15th May 2009 on imports of certain cathode ray colour picture tubes (CPT) originating in or exported from Malaysia, Thailand, China PR and Korea RP pursuant to the final findings dated 17th February 2009 read with the corrigendum dated 17th April 2009 in the anti dumping investigation no. 14/8/2007-DGAD.
 - II. The applicants claimed that they are not related to any of the exporters/producers in Korea RP presently subject to anti dumping measures in force with regard to the aforesaid product concerned. Furthermore, they claimed that they have not exported the product concerned during the period of investigation of original investigation. They began to export after the said POI and after receiving transfer of CPT business and related assets of LPD Korea. The Authority, after *prima facie* examination of the information submitted by the applicants and based on the documents submitted considered it sufficient to justify the initiation of a new shipper review investigation in accordance with the provisions of Rule 22 of Anti Dumping Rules.
 - III. The Designated Authority initiated the New Shipper Review on the basis of request made by M/s. Meridian Solar & Display Company Ltd (Producer / Exporter) from Korea RP under Rule 22 vide notification No.15/10/2009-DGAD dated 13th November 2009. The Authority recommended provisional assessment of all exports of Cathode Ray Colour Television Picture Tubes by M/s. Meridian Solar & Display Company Ltd (Producer / Exporter) from Korea RP till the completion of the review initiated in accordance to the

Rule 22 of Indian Anti Dumping Rules. The same was notified vide Customs Notification No.144/2009-Customs on 23rd Dec 2009.

- IV. The Authority sent a copy of exporter questionnaire to M/s. Meridian Solar & Display Company Ltd (Producer / Exporter from Korea RP) to elicit relevant information.
- V. The period of investigation in this new shipper review is from 1st July, 2009 to 31st December, 2009.
- VI. The Authority intimated the Exporting Country about the initiation of the new shipper review investigation and gave an opportunity to all the interested parties concerned to make their view known in writing within 40 days from the expiry of the POI i.e. 1st July 09 – 31st December 2009.
- VII. The Authority provided an opportunity to all the interested parties to present their views orally in the public hearing held on 15th February, 2010. All parties who attended the hearing and presented the views orally were requested to file written submissions. The parties were also advised to collect copies of the views expressed by the opposing parties in their submissions and offer rejoinders, if any. The submissions, so made, have been taken into account in the Disclosure statement.
- VIII. The Authority made available the public file as per Rule 6(7) of the Rules containing non-confidential version of the information/ submissions made by various interested parties.
- IX. **** in the findings represent information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

Product under Consideration & Like Article

3. The product under consideration in the original investigation is “complete or incomplete cathode ray colour television picture tubes”, more elaborately described as “thermionic, cold cathode or photo cathode valves and tubes such as vacuum or vapor or gas filled valves and tubes, mercury arc rectifying valves and tubes, also called cathode ray tubes, television camera tubes or cathode ray colour television picture tubes, or colour television picture tubes, or colour picture tubes etc.” and has been referred to as colour picture tubes or “CPT” or “CRT” in this notification. Video and computer monitor cathode ray tubes are beyond the scope of the present petition.

4. The subject goods fall under Chapter 85 of the Custom Tariff Act, 1975 under subheading no. 8540.11. The customs classification is indicative only and is in no way binding on the scope of the present investigation.

5. The product under consideration in this investigation is “complete or incomplete cathode ray colour television picture tubes”, as determined in the original case. There is no argument made by any of the interested parties on the product under consideration and like article. It is noted that the applicants have claimed that goods produced and exported by M/s. Meridian Solar

& Display Company Ltd (Producer / Exporter from Korea RP) and also exported by LG International (S'Pore) Pte.Limited, Singapore (Exporter) within the meaning of the Rules. In view of the foregoing, the Authority holds that product under consideration in the present investigations is the same as considered in the original investigation i.e., "complete or incomplete cathode ray colour television picture tubes" classifiable under Chapter 85 of the Custom Tariff Act, 1975.

Views expressed by interested parties.

View of the Applicants i.e M/s. Meridian Solar & Display Company Ltd (Producer / Exporter from Korea RP): -

6. MSD was established on 10th April 2009 as a wholly owned subsidiary of MGA Holding Corp. Ltd organized and existing under the laws of Korea. The certificate of corporation with Business license no. 110111-4075936 was issued on 20th May 2009. In 2009, the Articles of Association of Meridian Solar & Display came into effect and became a document with binding effect regulating the organization and conduct of company and relationships between the company and shareholders and among shareholders. So far as MSD / Promoter are concerned, there are no affiliates and MSD is not related to any exporters or producers who are subject to anti-dumping duties on CPT in Korea.

7. MSD had never exported CPT to India during the POI of the original Investigations. MSD began to export CPT to India after the said POI in fact after receiving transfer of CPT business and related assets of LPD-Korea in July, 2009.

8. LPD-Korea continues to survive as distinct legal entity but no longer in the CPT Business. Thus, MSD is a new shipper.

9. MSD had proposed that the NSR Investigation Period be from 24th July 2009 to 31st January 2010 or as may be decided by the Hon'ble Authority. The Hon'ble Authority chose the POI for this NSR from 1st July 2009 to 31st December 2010. In any case MSD never claimed DM re-determination on the basis of any exports prior to 24th July 2009. MSD has no objection to the Hon'ble Authority not considering the period 1st -23rd July 2009 in the NSR POI.

10. Neither on the date of NSR request nor on the date of NSR Initiation had there been any export to India by MSD through any trader. Thus there was no suppression by MSD. But since the original Investigations included CPT originating in any of the Subject Countries, by way of abundant caution only, and to avoid any allegation of suppression or non-cooperation by an unrelated trader the single unaffiliated trader India export at the end of the NSR POI was reported by MSD and the unaffiliated trader (namely LG International (S'Pore) Pte. Limited, Singapore) was requested to file a supporting trader Response which it did. All other India exports were directly by MSD. Thus, MSD can receive NSR DM re-determination based on its own response. In any case all exports by MSD were at the others rate till NSR initiation and on bond thereafter.

11. MSD does not share any shareholder or Director with LPD-K, LPD, LG, LGE, LGI etc or with the Court appointed Administrators of LPD. MSD is also not owned or controlled by any

third company that owns or controls LPD-K, LPD, LG, LGE, LGI. Obviously for marketing MSD as a new entrant to the business will rely on the established experience of its acquired assets in producing quality CPT.

12. The COO is not on MSD's Board of Directors and was neither COO nor comparable seniority in LPD-K/LPD. It is not common for all executives below Director Level to be changed whenever there is such a sale. That only 1 executive has continued at that level reflects the overall complete change of 'control'.

13. The Domestic Industry has challenged the Authority's decision to initiate the New Shipper Review. The grounds of their grievances are simply inaccurate and ill-conceived. The applicant producer exporter is a legal entity created by law and not a natural person. A company created by law comes into existence only when it gets its registration or in other words when it is incorporated. The certificate of incorporation or registration shows the conclusive evidence as regards the date when a legal entity like MSD comes into existence. We have submitted a copy of registration certificate to the Authority evidencing that the company came into being only in 2009. Hence it is confirmed that during the period of investigation of the original investigation it did neither exist nor did export the subject goods to India. Being a new entrant to the product, it is surely a new exporter and eligible for a separate dumping margin to be determined by a New Shipper review as provided by the India Anti-Dumping Law. LPD-K continues as a separate unrelated legal entity in Korea.

14. From the submissions by the consultants for the Domestic Industry, it appears that they are confused about change of name and coming into existence of a new entity. In case of a change of name, the entity continues with the same with old registration number and date but gets an approval from the registering Authority for change of name with effect from the date of such approval. No new certificate of registration is issued. It was made amply clear before the Authority that our company is a new one registered with the concerned Authority. It is nowhere stipulated that a new company is required to establish a new production facility of its own. It is well authorized by modern governments in almost all countries that a new company or entity can acquire an existing plant and start production therein instantly. In India also many Indian production facilities are being acquired by new entities. Acquiring the production facility of an existing unit does not mean that the new company existed or produced the concerned goods before its date of incorporation. Our company was incorporated only in 2009 and hence the question of production or exports in the original investigation does not arise.

15. The Domestic Industry seems to be confused over the term 'Producer'. Being themselves confused, they have tried to confuse the Authority by equating 'producer' with 'production facilities'. Producer is one who produces irrespective of the ownership of the production facilities. A producer may not own a production facility but gets its production in other's factory on 'job work' basis or on rental. So ownership is no issue so far as 'production' or 'producer' is concerned. Producer is one, either a natural person or a legal entity, who produces irrespective of ownership of the production facility. It's not obligatory for a producer to own a plant/factory. MSD has purchased an existing unit and got the subject goods produced after its incorporation. So MSD has become a producer of the Subject Goods only after 22nd July, 2009 and not earlier. Hence there is no doubt about its status as a new producer.

16. The following extracts from the written submissions of the Domestic Industry also substantiate their confusion,

“The followings collectively form a producer –

- a) Ownership – in as much as they bring the capital and own the assets & assume the liabilities;
- b) Management – a company is managed by a number of persons who are known as management;
- c) Manpower – a company is run by a number of manpower, which includes skilled, semi-skilled and unskilled manpower;
- d) Machines – a company produces the article using machines, especially deployed and used to produce the product;
- e) Materials – a company uses laid down materials in order to produce the product;
- f) Money – a company requires money to run its operations.

Domestic industry submits that when all of the above is put together, an entity gets formed who produces and sells the goods in the market.

17. In the context of dumping margin and anti dumping duty, the relevance of the above is explained below:-

- (a) The management of the company is responsible for day to day production and sale of the product under consideration. It is this management who decides the volume and the price that should be sold in a particular market. It is the management of the company who takes a decision on where to sell the product, at what prices and what volumes. While it is true that the management takes directions or orders from the Board, it may be recognized and appreciated that day to day sale of the product and the price is generally governed by the management.
- (b) The normal value is intrinsically linked to cost of production. Such cost of production is a sum of costs on account of materials, labor cost, processing/manufacturing cost, depreciation, and other costs.”

18. From above the Domestic Industry feels that when all of ownership, management, manpower, machines, materials and money are put together, an entity gets formed who produces and sells the goods in the market. They are confused again. Ownership does not mean the producer needs to be the owner of the production facilities. Along with the production facilities of others a producer can use the manpower of the latter. If DSM Anti-infective produces 6APA in the factory of Alka Remedies on job charges basis DSM Anti-infective remains the producer.

19. While analyzing the relevance of the above factors in the context of anti-dumping duty they are again confused. Not the ownership but the management is more important. Neither production facility nor the ownership influences the cost of production, selling price, sales volume. It is the efficient management that converts a loss making company to a profit making one. The cost, price and profitability of IPCL changed when the management has gone to RIL. The same manufacturing facility gives different results with the change of management from an inefficient to an efficient one. The domestic industry assumes that cost of production, normal

value, export price everything will continue to be the same as the production facility of our company has been taken over from an existing company. The management makes all the changes as has been done to IPCL when it has been taken over by RIL. MSD has its own management and own vision and cost and marketing strategy. MSD has its own production, own cost and own marketing policy. MSD is open to the Authority to verify its cost, domestic selling prices, export prices. If the Hon'ble Authority finds any dumping it will determine separate dumping margin and recommend AD duty accordingly. The Authority is right in considering MSD as a new producer and initiating the investigation as per Rules after careful consideration of the Request and documents filed. The objection of the Domestic Industry is based on misconception only.

20. MSD is committed to co operate the Authority in the investigation with all relevant information. Moreover, the Domestic Industry has not led any evidence to indicate that the shareholders of LPD-K and MSD are common or that there are any common Directors on the respective Boards of Directors or that MSD and LPD-K are owned by a common company. There is no such common shareholding, Director or common control or any affiliation.

21. It is ownership and management that is responsible for dumping and not plant or machinery. Otherwise there would be no provision for individual dumping margin determination and various Authorities, including DGAD, would not have found different dumping margins for different companies having similar plant and machinery even, at times, from the same country in so many investigations across jurisdictions. Hence, the Domestic Industry's submissions are contrary to the very basis and logic of anti-dumping investigations.

22. The facts of the FDY MTR concerning Malaysia are *prima facie* different since it is no where recorded in the Findings that there were no common Directors between Hualon and Recron or that Hualon Malaysia legal entity survived the acquisition (though without its assets), and also since the new owners, Reliance Group, were admittedly in existence during the POI of the concerned original investigations and were admittedly producers of the Subject Goods in the POI of the concerned original investigations. The facts on record in respect of MSD are completely different.

23. MSD as a producer exporter can gain individual determination in this NSR either on its own or also together with LGI. MSD does not oppose POI commencing 22 July 2009. MSD **requests** the Hon'ble Authority to also keep in mind the doctrine of 'Balance of Convenience'. The alternative would not be convenient to the Hon'ble Authority, *i.e.*, immediately initiating a MTR on the basis of MSD's request for NSR (treating the same as MTR Request).

24. Moreover, the Hon'ble Authority will be mindful of its well established practices and Indian provisions. The Domestic Industry did not in the NCV WS enclose the relevant extracts from or citation of the evidence of EU/EC practice that they relied on though these would be published material and thereby could not be deemed to be confidential by any stretch of the concept. MSD reserves the right to comment further on this once the details are disclosed. As can be seen from the FDY MTR case above relied on by the Domestic Industry the relevant facts of each case must be carefully assessed on their own.

LG International (S'Pore) Pte. Limited, Singapore (Trader/Exporter).

25. LGI is not related to MSD, LGE, LPD, LPD Korea or the Netherlands Court appointed Administrators of LPD. The shareholders and Directors are different and LGI is not owned or controlled by any common company.

26. LGI is not related to any exporters or producers who are subject to anti-dumping duties on CPT in Korea.

27. Neither on the date of NSR Request nor on the date of NSR Initiation had there been any export to India of the concerned CPT by LGI. Thus there was no suppression by LGI. But since the original Investigations included CPT originating in any of the Subject Countries, by way of abundant caution only, and to avoid any allegation of suppression or non-cooperation by an unrelated trader LGI agreed to MSD's request to file a supporting trader Response Thus, LGI can receive NSR DM determination based on its own response for MSD products. The Domestic Industry conceded at the Hearing that a single transaction is sufficient.

28. The Hon'ble Authority is bound by Rule 22 and the ADA. The Rules emphasize 'control' for which ownership is a test. LGI does not share any shareholder or Director with MSD, LPD-K, LPD, LG, etc or with the Court appointed Administrators of LPD. LGI is also not owned or controlled by any third company that owns or controls MSD, LPD-K, LPD, LGE. LGI is not related now or in the POI to MSD, LGE, LPD-K etc. Moreover, the Domestic Industry has not led any evidence to indicate that the shareholders of LGE, LPD-K and LGI are common or that there are any common Directors on the respective Boards of Directors or that LGI and LPD-K are owned by a common company. There is no such common shareholding, Director or common control or any affiliation.

29. LGI would not be eligible for a Corrigendum hence a Review is appropriate. LGI must be eligible for some remedy. Since LGI does not believe it's a related party it believes it is eligible to participate in this NSR.

30. Original LPD Holding Company was a CPT specific joint venture owned 50:50 by certain LG and Philips group companies that were themselves special vehicles within the respective groups in order to avoid LG and Philips groups being treated as a combination for all products under the similar relationships provisions in most jurisdictions in company law and competition law.

31. It is not a case where a LG group company would own 50% and the balance dispersed. Here a Philips group company owned the entire balance 50%. So on the basis of shareholding on this case neither LG nor Philips groups could be said to control the LPD Group. Further, in any case from early 2006 the Netherlands court appointed independent Administrators to control the management of LPD. Hence, neither LG nor Philips Groups were in law in any manner involved in the management of LPD group companies in the POI in the original investigations or thereafter. LGI also does not object to the NSR POI commencing from 22 or 24 July 2009 instead of 1st July 2009. For all these reasons LGI believes it is an eligible new shipper and entitled to participate in the instant NSR and seek individual DM determination.

32. The domestic industry conceded that even one transaction is sufficient so LGI would be entitled to Review. In case of MTR the Hon'ble Authority would be constrained to for the same transaction again open a file, initiate MTR, devote resources, and conduct the same verification in Korea and Singapore and so on. Thus from the 'balance of convenience' point of view too LGI may be permitted to participate in the said NSR.

33. In case, Hon'ble Authority takes a different view, LGI's Response may be treated as an Application for MTR as over a year has passed since provisional duties and the Hon'ble Authority may initiate a MTR.

34. It is ownership and management that is responsible for dumping and not plant or machinery. Otherwise there would be no provision for individual dumping margin determination and various Authorities, including DGAD, would not have found different dumping margins for different companies having similar plant and machinery even, at times, from the same country in so many investigations across jurisdictions. Hence, the Domestic Industry's submissions are contrary to the very basis and logic of anti-dumping investigations.

35. The facts of the FDY MTR concerning Malaysia are *prima facie* different since it is nowhere recorded in the Findings that there were no common Directors between Hualon and Recron or that Hualon Malaysia legal entity survived the acquisition (though without its assets), and also since the new owners, Reliance Group, were admittedly in existence during the POI of the concerned original investigations and were admittedly producers of the Subject Goods in the POI of the concerned original investigations. The facts on record in respect of LGI are completely different.

36. LGI as a supporting trader can gain individual determination in this NSR together with MSD. The Hon'ble Authority may also keep in mind the 'Balance of Convenience' both to itself as well as to LGI and MSD. LGI also does not oppose POI commencing 22nd July 2009. Alternately, the Hon'ble Authority may treat LGI's supporting response as a request for MTR.

37. Moreover, the Hon'ble Authority will be mindful of its well established practices and Indian provisions. The Domestic Industry did not in the NCV WS enclose the relevant extracts from or citation of the evidence of EU/EC practice that they relied on though these would be published material and thereby could not be deemed to be confidential by any stretch of the concept. LGI reserves the right to comment further on this once the details are disclosed. As can be seen from the FDY MTR case above relied on by the Domestic Industry the relevant facts of each case must be carefully assessed on their own.

Views of Samtel Colour Limited, a constituent of the domestic industry

38. The circumstances stated in the present case are insufficient to consider the present case under Rule 22.

39. The management of the company is responsible for day to day production and sale of the product under consideration.

40. The normal value is intrinsically linked to cost of production. Such cost of production is a sum of costs on account of materials, labor cost, processing/manufacturing cost, depreciation, and other costs.

41. In the instant case, admittedly, it is only the ownership that has changed after the last investigation period. It is not even the case of the petitioner that with the change in the ownership, management, manpower, machines and materials have undergone a change. The applicant has not even claimed that any factor responsible for normal value has changed as a result of ownership.

42. The general practice with respect to name change is that the request for change in name can only be accepted if the change in name in no way affects the findings of the regulation imposing the anti dumping duty.

43. It is for the applicant to demonstrate whether the facts pertaining to their case relate to mere change of name or the change in the ownership is so fundamental with regard to parameters relating to normal value that the dumping margin is fundamentally different than the dumping margin determined earlier.

44. Since *prima facie* full ownership along with manpower, machines, market and material all the assets are transferred from the M/s LG Phillips Displays Korea Co. Ltd. to M/s Meridian Solar Display Company Ltd. then there exists no circumstances which justify consideration of the applicant as a new producer. Mere change in the ownership of the company does not mean that the structure and identity of the company has so fundamentally changed that the applicant can be considered as new producer. All the assets and liabilities of the old company have been transferred to the new company. The applicant does not satisfy the legal requirements under Rule 22 to bring an application before the Authority. The evidence with respect to the structure of M/s Meridian Solar Display Company Ltd. and its relation with the M/s LG Phillips Displays Korea Co. Ltd. is already made available to the Authority at the time of hearing.

45. The Designated Authority is conducting other investigations for situations arising out of almost similar circumstances in the matter of “All fully Drawn or Fully Oriented Yarn/spin Drawn Yarn/Flat Yarn originating in or exported from Indonesia, Korea RP, Malaysia and Chinese Taipei”.

46. Undisputedly, the Plant was under the control of Bankruptcy Trust at the time of original investigations. LPD made certain claims with regard to its legal status and ownership at the time of original investigations. Ownership/control undisputedly continued with the same entity that had ownership/control during the period 1-23rd July 2009. There are admittedly exports during the period. Such being the case, it cannot be established that there were no exports from the same plant during the original investigation period and current investigation period.

47. Investigation period in the present case is from 1st July, 2009. Admittedly, the present company was incorporated w.e.f 22nd July, 2009. Between 1st to 21st July, 2009, the company was being owned and controlled by the same management as was controlling it during the period of

original investigations. Thus, admittedly, the applicant cannot claim that it has not exported during the period of original investigations.

48. Two sales channels have been used by the applicant producer – (a) direct, and (b) through LG International. LG International is clearly related to the producer who was investigated by the Designated Authority.

49. At the time of original investigations, the producer was LG Phillips, a company which was owned by LG, Korea and Phillips.

50. In the current period, exports to India have been made by LG International. Undisputedly, LG International is related to the LG, Korea.

51. In view of the above, the current producer-exporter combination is related to the producer-exporter combination in the original investigations. On this account as well, the conditions relating to new shipper review are not satisfied.

52. Rule 22 refers to both producer and exporter. The said Rule does not restrict at producer. Further, it does not refer to “related exporter” of the producer. Therefore, it is entirely immaterial that the exporter is not related to the producer. The word producer and exporter can be seen interchangeably, when both have been specifically provided under the Rules.

53. The applicant has not established that there were no exports in the period of original investigations. Nor has the applicant established that they were not related to any of the exporter/producer during the original investigation period. Additionally, one of the exporters in the current period is clearly related to an exporter in the previous investigation period. On all these accounts, the petition for separate dumping margin under rule 22 is clearly inappropriate.

54. Barring ownership, nothing has changed between the previous investigation period and current investigation period.

55. Concluding their submissions, the Domestic Industry has stated as under:

- i. Domestic industry and applicant both are agreeable on change of name.
- ii. Change in the legal status does not mean “new company”.
- iii. New shipper review provision has been brought in to address concerns of those producers who either did not export in that period or who came into production subsequently.
- iv. Ownership alone cannot be a barometer of “producer”. Producer is a much wider term and includes ownership, management, manpower, machines, money, and materials.
- v. Barring ownership, nothing has changed. There is no factor due to which normal value or export price or dumping margin could have changed as a result of this ownership. Further, even if dumping margin changes, it is a matter of midterm review.

- vi. If dumping margin is to be reviewed, domestic industry requests imposition of specific duty.
- vii. The application of the Applicant may be rejected;
- viii. The proceedings initiated may be terminated as the application does not satisfy the legal requirements under Rule 22;
- ix. The domestic industry however does not have objection to grant of the same level of anti dumping duty to the applicant as was given to LG Phillips, the company who was investigated by the Designated Authority.

Examination by the Authority

56. The Designated Authority initiated new shipper review keeping in view the provisions of the anti dumping rules, which are reproduced below:

“Rule 22: (1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti dumping duties on the product.

(2) The Central Government shall not levy anti dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee form the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of initiation of the review”.

57. Rule 22 clearly specifies the circumstances under which a new shipper investigation can be carried out for the purpose of calculating individual dumping margin. Individual dumping margin in respect of any exporter or producer from the exporting country in question can be determined provided the following two conditions are satisfied;

- a. That the exporter or producer has not exported the product under consideration during the period of investigation and,
- b. That exporter or producer shows that they are not related to any of the exporter or producer in the exporting country who are subject to the anti dumping duties on the product concerned.

58. It is evident from the above that the intention of Rule 22 is to determine individual dumping margin in respect of an exporter or producer who did not export the subject goods in the period of original investigation. Since such producers/ exporters did not export subject goods in

the period of original investigation, the Designated Authority could not have determined dumping margin in respect of their exports at the time of original investigations. The purpose of the new shipper review provision is therefore to provide an opportunity to such an exporter to claim their own dumping margin considering that these exporters have been granted residual dumping margin during the original investigations.

59. In the instant case, M/s. Meridian Solar & Display Company Ltd (Producer / Exporter from Korea RP) made the application for new shipper review. Subsequent to the initiation and after the POI, the response was filed (apart from M/S Meridian Solar & Display Company Ltd, Korea) also by LG International (S'Pore) Pte. Limited, Singapore (Exporter) claiming to have exported PUC manufactured by the subject producer in Korea RP.

60. In their application, the applicants made, inter-alia, the following claims: -

- a. That the applicants had not exported the material during the period of original investigation;
- b. That the applicants were not related to any exporter or producer who had exported during the period of original investigations.

61. The Authority conducted on-the-spot verification of the data furnished in the form of questionnaire by M/s. Meridian Solar & Display Company Ltd (Producer / Exporter from Korea RP) and LG International (S'Pore) Pte. Limited, Singapore (Exporter). During the physical verification of records of the producer in Korea RP, and at the time of visit to the factory premises at Gumi, it was noticed that the name displayed at the factory continued to be LG Philips Displays, that is what was there before the acquisition of the assets and liabilities by the newly set up Meridian Solar displays, the company that has sought NSR and consequent individual dumping margin. A visit to the warehouse also revealed that they continued to have the same Logo as of the erstwhile LP Displays and the CRT / CPT manufactured were also marketed in the name of LG Philips Displays as per labels affixed on the manufactured product and ready for shipment to different destinations. In its reply to the verification report issued about the rationale of retaining the LOGO etc. of the erstwhile LP Displays, following submissions were made:

- a) As was clear from the BATA (Business and Assets Transfer Agreement) filed, the sale of LG. Philips Displays Korea Co., Ltd. ("LPDK") to Meridian Solar & Display Co., Ltd. ("MSD"), a wholly-owned subsidiary of MGA Holding Corp Limited, registered in Hong Kong, was stage 1 of the 3 umbrella transactions, of which stages 2 and 3 involve acquisition of Indonesia and Beijing units which process is yet to be completed as there are a number of outstanding items to be achieved to close a deal. Subsequently, there may also be a potential acquisition of part of the Brazil operations of former LPD but this isn't yet decided. In case of the acquisition of LPDK under the BATA, the full IPR of LPDK has been included as part of the transferred assets under the BATA to MSD.
- b) The final new logo and brand name will be decided after the completion of the full 3 stages of acquisitions in 3 jurisdictions covering Korea, Indonesia and China. There is thus a plan to change "MSD" to another new name in coming period so the management formed a

view to temporarily leave the Old Co signs (i.e., “LG Philips Displays”) for the time being to avoid repetitive corporate logo change work and costs. Once the new name has been decided in due course, it is expected that all signs of “LG.Philips Displays” will be permanently replaced with the new name directly without having to make an interim change to “MSD”. In the meantime, as part of the management’s efforts to legally sever the past relationship with the Old Co, certain less cost incurring and/or legally necessary or desirable items (e.g., office supplies, stationeries, name cards, email addresses, company website, supplier/customer invoices, shipping documents, bank accounts, property ownership records, etc.,) had already been changed to “MSD”. It may be noted that in Indian Customs are already treating MSD as a new entity and applied the ‘others’ reference price for Korea for exports to India by MSD prior to initiation of the NSR. The reason for another change from “MSD” to the new name is mostly due to legal reasons that the trade name “MSD” had been pre-registered globally by another unrelated company in the US and it has thus become necessary for “MSD” to avoid using “MSD” on a long term and global basis going forward. Further, the management of MSD needs to take into account for a smooth M&A transition process the employees/labor union’s emotional attachment to Old Co’s name as most of the transferred employees from LPDK to MSD had devoted their entire career at “LG” prior to the BATA closing (and this requires some time till the Old Co signs can be finally put away”.

c) There is thus a plan to change “MSD” to another new name in coming period so the management formed a view to temporarily leave the Old Co signs (i.e., “LG.Philips Displays”) for the time being to avoid repetitive corporate logo change work and costs. Once the new name has been decided in due course, it is expected that all signs of “LG.Philips Displays” will be permanently replaced with the new name directly without having to make an interim change to “MSD”. In the meantime, as part of the management’s efforts to legally sever the past relationship with the Old Co, certain less cost incurring and/or legally necessary or desirable items (e.g., office supplies, stationeries, name cards, email addresses, company website, supplier/customer invoices, shipping documents, bank accounts, property ownership records, etc.,) had already been changed to “MSD”. It may be noted that in Indian Customs are already treating MSD as a new entity and applied the ‘others’ reference price for Korea for exports to India by MSD prior to initiation of the NSR.

62. It was stated by the company that they have been catering to the same profile of customers as have been taken over from the erstwhile company and except change in the Board of Directors by having one new Director, Rest of the staff in all the functions of the company being the same.

63. The details in respect of the exports made by the company after the POI and their cost of production were also verified.

64. The authority also analyzed the position of companies namely LG Group, LG International and Meridian Solar & Displays as follows:

a) Regarding the relationship among these companies, it was noted that LG Group holding company is LG Corp., which headquartered in Seoul, Korea. LG Corp. is Korean stock exchange listed company since 1970 and 48% of its shares are held by Mr. Koo, a founder of LG Group and his related parties and other 52% by public.

b) LG Corp. has more than 20 subsidiaries including LG Electronics, LG Chemicals, LG Telecom and others. LG Electronics is a famous electronic company in the world, has more than 75 worldwide manufacturing and sales operations, including LG Electronics India. LG Corp. is a largest shareholder of LG Electronics, has 33% of LG Electronics ownership.

c) LGI (LG International) is trading company owned 100% by public, head office in Seoul and IPO in 1976. LGI has more than 75 worldwide sales operations, including LG International Singapore. LG International is mainly engaged in LG Group products export to other countries, therefore, LG Group allowed to use LG brand in the company name. Thus LGI is not related now or in POI in original investigations by shareholding etc with LG Group including LGE or former LPD

d) In 2001, LG Electronics and Philips Electronics set up 50% and 50% Joint Company, LG Philips Displays in Netherlands and spun off various CRT subsidiaries to LG Philips Displays.

e) Due to declining CRT business, In Feb 2006, LG Electronics and Philips Electronics gave up its ownership to LG Philips Displays, and LG Philips Displays was taken over by Netherland court, and changed company name to LP Displays. LP Displays, has some subsidiaries in Korea (LPD-K), Indonesia and China Beijing and Brazil.

f) In July 2009, LPD-K CRT Business and assets bought by Meridian Solar Display, new Company and 100% owned by MGA Holding Corp. Limited hold by Mr Chris Park. Meridian Solar Display and MGA Holding Corp. did not produce and sale of CRT product before. During the POI (from July 2009 and December 2009), Meridian Solar Display only has Korea CRT operations. Thus LGI is not related now or in POI in original investigations to MSD.

Comments to Disclosure Statement

65. In response to the disclosure statement, the applicant M/S Meridien Solar & Display Co., Ltd (“MSD”), Korea and its supporting trader LG International (S’pore) Pte Ltd (“LGI”), Singapore have pleaded that they are eligible new shipper and consequently a fresh individual dumping margin should be determined for them. It has also been pleaded that while Indian Customs have inspected the products with LPD-Korea labels, they have not extended LPD-Korea (anti dumping duty) rates. Hence, denial of new shipper’s individual determination subjects LPD-Korea to ‘double jeopardy’ as MSD, Korea was denied LPD-Korea rate by Indian customs but is also denied the individual determination and is also denied the benefit of verified lower costs in the NSR POI. MSD thus reiterates its request for individual determination of its verified dumping margin.

66. LGI in its post disclosure statement submissions has stated that neither the disclosure examination nor tour report deny its submissions nor deny the verified data reported by LGI nor thus LGI may be granted its rate accordingly.

67. The Domestic Industry has reiterated their earlier submissions.

Examination by the Authority

68. The Authority holds that the investigation has established that it is not a case where new production facilities have come in operation. The company which had exported the product under consideration to India during the original investigations period had completely transferred its assets and liabilities to new management and the new management is now undertaking the very same old business. The objective of new shipper review is to determine dumping margin in respect of a business entity for the reason that (a) the entity might not have exported the product to India during the POI of original case and therefore was not able get individual dumping margin, (b) the entity might not have even come into existence at the time of original POI and therefore was not able get individual dumping margin. In the instant case, however, the Authority had determined dumping margin in respect of erstwhile company, which had produced the product under consideration at the same plant and exported to India. It is clearly a case where Corporate Structure of the company has undergone a change. Further, with the change in the ownership, the name of the company has also undergone a change. The Authority therefore holds that it would therefore not be appropriate to consider the applicant as a new shipper. However, the applicant is clearly entitled for all the benefits that were available to its predecessor company. The applicant is clearly entitled for the same level of dumping margin and consequent benchmark as was given to the predecessor company.

69. The Authority considers that the individual dumping margin in respect of exports made by the applicant is not required to be determined. Instead, the applicant is required to be given the same level of dumping margin and consequently the benchmark for payment of anti dumping duties as was given to LG.

70. The Authority has carefully examined the submissions made by the Petitioner. In their submissions, submitted as comments to the Disclosure statement, they have made a mere statement seeking individual DM and facing Double Jeopardy of denial of individual DM earmarked for LPD Korea to them. They however have not come up with any substantive argument contrary to the proposal of the Authority to recommend the same anti dumping duty benchmark at the same rates, as were earlier recommended for LPD Korea, to be considered for the applicant company as well. Further, as regards treatment accorded by the Indian Customs, the Authority observes that unless the name of the company is specifically brought in the duty table, the company has to be considered in "others" category. However, merely because the company was being placed in "others" category in the past, the same does not imply that the company becomes entitled to new shipper review.

Conclusion and Recommendations

71. Having considered all the aspects of the case, including submissions made by the petitioners to the Disclosure Statement, the Authority concludes that:

- a. The investigation has established that it is not a case where new production facilities have come in operation. The company which had exported the product under consideration to India during the original investigations period had completely transferred its assets and liabilities to new management and the new management is now undertaking the very same old business, almost the same composition of board of directors, having same production facilities, utilizing same plant & machineries, producing the same product, deployed the same employees, using the same product logo, same or similar marketing and catering to same customers.
- b. The objective of new shipper review is to determine dumping margin in respect of a business entity for the reason that the entity might not have exported the product to India during the POI of original case and therefore was not able to get individual dumping margin. The entity might not have even come into existence at the time of original POI and therefore was not able to get individual dumping margin. In the instant case, however, the Authority had determined dumping margin in respect of erstwhile company, which had produced the product under consideration at the same plant and exported to India. It is clearly a case where Corporate Structure of the company has undergone a change. Further, with the change in the ownership, the name of the company has also undergone a change. It would therefore not be appropriate to consider the applicant as a new shipper. However, the applicant is clearly entitled for all the benefits that were available to its predecessor company. The applicant is clearly entitled for the same level of dumping margin and consequent benchmark as was given to the predecessor company.

72. In view of the above, the Authority holds that the individual dumping margin in respect of exports made by the applicant is not required to be determined a fresh. Instead, the applicant is required to be given the same level of dumping margin and consequently the benchmark for payment of anti dumping duties as was given to LPD Korea. LPD-K continues as a separate unrelated legal entity in Korea, however confirmedly, without being in the manufacture of the Product under Consideration.

73. Accordingly, the authority recommends following amendments in the Duty table in the Corrigendum No. 14/8/2007-DGAD dated 17th April 2009:

- i) Against serial no. 6, in col. 6, the name of the Producer may be amended to read as M/s. Meridian Solar & Display Company Ltd.

ii) Against serial no.6, in col. No.7, the name of the exporter may be amended to read as M/s. Meridian Solar & Display Company Ltd. or/ and M/s LG International (S'Pore) Pte. Limited, Singapore.

74. 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.

P.K.Chaudhery
The Designated Authority