

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES
UDYOG BHAVAN, NEW DELHI

NOTIFICATION

New Delhi, Dated the 11th October 2010

**Final Findings
(Sunset Review)**

Subject: - Sunset Review of Anti-Dumping investigations concerning imports of Mica Pearl Pigment from USA & European Union.

No.15/5/2009-DGAD – Whereas the Designated Authority, 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, recommended imposition of definitive Anti Dumping Duty on imports of Mica Pearl Pigments originating in or exported from USA & European Union (hereinafter referred to as subject countries), vide Notification No. 14/22/2003-DGAD dated 22 December, 2004 and such definitive duty was imposed by the Govt. of India vide Customs Notification No. 30/2005 dated 21 March, 2005.

B. BACKGROUND AND PROCEDURE

2. WHEREAS in terms of the Customs Tariff Act, 1975 as amended in 1995 the Anti Dumping Duty imposed shall unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Rules supra require the Authority to review from time to time, the need for continued imposition of Anti Dumping Duty.

3. AND WHEREAS following the completion of 4 years of the anti dumping duty imposed, alert letters dated 4 May,2009 and 21 August,2009 were sent to the domestic industry stating that the Designated Authority is contemplating to undertake Sunset Review under Section 9A(5) of Customs Act with a view to ascertain whether the cessation of the anti dumping duty in this case is likely to lead to continuation or recurrence of dumping and injury and they were requested to give full information regarding extent of imports from subject countries and evidence relating to dumping, if any, and impact of cessation of the anti dumping duty in this case.

4. AND WHEREAS M/s. Sudarshan Chemical Industries Ltd., 162, Sangam Bidge Dr. Ambedkar Road, (Wellesley Road), Pune – 411001, who was the domestic industry in the original Final Findings dated 22nd December, 2004 did not file duly substantiated petition for Sunset Review within the stipulated time.

And whereas the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 16893/06 vide Judgment dated 1.11.2007 has held that

“(a) Sunset Review is mandatory

(b) Sunset Review is required to be conducted in accordance with the procedure laid down in Rule 23 of the Rules”

5. Pursuant to the above said Order of the Hon'ble High Court of Delhi, the Authority initiated this sunset Review investigation on 15th October 2009 to examine the likelihood of continuation or recurrence of dumping and injury on imports of Mica Pearl Pigment originating in or exported from China PR, Japan, USA & European Union on the event of cessation of the duty. A corrigendum was later issued on 20th November 2009 wherein para no 4 of the said initiation notification was modified so that all references to China PR and Japan stand deleted as no duty was recommended and imposed on these countries during original investigations.

6. The review covered all aspects of notification No. 14/22/2003-DGAD dated 22nd December, 2004.

7. The territories/countries involved in the present Sunset Review are USA & European Union. (referred to also as subject countries hereinafter).

Following the initiation, following procedure has been followed:

- i). The Embassies/Representatives of the subject countries in India were informed about the initiation of the investigation in accordance with Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.
- ii). The Period of Investigation for the purpose of the present review is from 01.04.2008 to 31.03.2009. However, injury analysis shall cover the period 2005-06, 2006-07, 2007-08 and POI.
- iii). A copy of initiation notification along with exporters' questionnaire were sent to the following known exporters from subject countries in accordance with the rule 6(4) to elicit relevant information:

- (a) Eckart GMBH & Co. KG. Kaiserstrasse, Germany
- (b) Merck KGaA, Germany
- (c) Eckart America L.P., New Jerse, USA
- (d) Merck & Co. Inc., USA
- (e) BASF Corporation, USA

None of the above-mentioned exporters/producers or other producers/exporters from subject countries except M/s BASF India on behalf of M/s BASF Corporation USA have filed any response to the questionnaire and in response to the above notification.

- iv) Initiation notification and importers questionnaire were sent to the following known importers/consumers of the subject goods in India calling for the necessary information in accordance with Rule 6(4).

- (a) M/s India Dyechem, New Delhi

- (b) M/s Lakshmi Sales Corp., New Delhi
- (c) M/s Prakash Dye Chem, New Delhi
- (d) M/s Parth Chem, Mumbai
- (e) Plastiblends India Ltd., Mumbai
- (f) Asadnad Sons, Mumbai

None of importers/users except M/s Parakash Dye Chem and M/s All India Printing Ink. Manufacturer's Association (AIPIMA) have filed response to the above notification.

- vi) The Authority made available non-confidential version of the evidence presented by the interested parties in the form of a public file maintained by the authority and kept open for inspection by the interested parties.
- vii) M/s Sudarshan Chemical Industries Ltd, Pune responded to the notice of initiation and requested the Authority to conduct sunset review investigation and recommend extension of anti-dumping duty. Since M/s Sudarshan Chemical Industries Ltd, Pune has requested for the extension of anti- dumping duty, the Authority has treated the company as the "petitioner" in the present case. It is noted that M/s Sudarshan Chemical Ind. Ltd, Pune was treated as domestic industry in the original investigations.
- viii) M/s Sudarshan Chemical Ind. Ltd, Pune claimed itself as the domestic industry and submitted the injury information/data. The Authority verified the information furnished by the petitioner to the extent possible to examine the injury suffered and the need for continuation of the Anti dumping duty imposed earlier.
- ix) In accordance with Rule 6(6), the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 1st June 2010. The parties, who presented their views in the public hearing, were advised to file written submissions of the views expressed orally. The written submissions as well as rejoinders received from the interested parties have been considered in the final findings.
- x) The Authority has considered all the views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.
- xi) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever necessary, parties who have provided the information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xii) Whenever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the facts available.

- xiii) *** in this notification represents the information furnished by the interested parties on confidential basis and so considered by the authority under the Rules

C. Product under Consideration and Like Article

8. In the original investigations in the final findings, the Authority had defined product under consideration as "Mica Pearl Pigment excluding automotive and cosmetic grades. The present investigation is a Sunset Review and the product under consideration remains the same as has been defined in the original investigation which is "Mica Pearl Pigment excluding automotive and cosmetic grades" (herein after also referred to as subject goods).

9. It has been claimed by the domestic industry that the subject goods under consideration are like articles to the goods originating in or exported from the subject countries.

D. Initiation, review, standing and domestic industry

10. There are no arguments with regards to initiation as well as standing and domestic industry in this case. After examination, the authority holds that M/S Sudharshan Chemical Industries Limited who is also the petitioner in the subject sunset review, constitutes domestic industry within the meaning of Rule 2 (b) of the anti-dumping rules having accounted for a major proportion of the production of the subject goods in the country.

E. Submissions of various exporters and importers

11. In their response, responding producer and exporter M/s BASF Corporation (BASF) has made submissions with regard to the fact that not all the grades of the domestic like product exported by them are being manufactured by the domestic industry. Further, it was also added that every range of effect pigments has different pricing based on the process technology and exporters quote prices to their customers depending on customer segmentation which is directly linked with size of the business with BASF and volumes of the specific products. It has also been submitted by them that petitioner's prices are lower than BASF prices. The responding exporter BASF has also submitted that selection and preparation of Mica are the most important steps in determining the quality of final pearl scent pigments. It has been submitted by the producer and exporter that import of subject goods from the subject countries can not cause injury because the domestic industry has shown marked improvement during POI in almost all the injury factors and also the trend of import from these countries (USA & European Union) is insignificant and immaterial.

12. M/s Parkash Dye Chem an importer of the subject goods has supported the views submitted by the exporter M/s BASF with regard to product under consideration, like article and inability of domestic industry to provide all the grades of the subject goods. They have also added that mica pearl pigments imported by them are not substitutable commercially and technically and these are different products and not the like article. They have also added that sale prices of subject goods imported by them are much higher than the selling prices of mica pearl pigment produced by domestic industry.

13. Another importer and user of subject good M/s All India Printing Ink Manufacturer's Association (AIPIMA) has also echoed the submissions made by the exporter and the

importer as mentioned in the earlier paragraph with regards to the product range. They had drawn the attention of the Authority to the fact that the domestic industry can not provide wide range of subject goods to choose the right quality for variety of applications.

14. All the aforesaid three parties have requested the authority to terminate the investigation.

F. Submissions made by domestic industry

15. The domestic industry has submitted that exporters' response is grossly deficient and hence should not be accepted. They have highlighted the fact that M/s BASF and MERCK have manufacturing facility in US, Europe and China and ever since the anti dumping duty have been imposed, they have shifted their source of export and the current exports are being made from China PR. They have added that since Chinese exports are also at dumped prices and they are filing a petition for imposition of anti-dumping duties on imports of the product originating in China. Once anti-dumping duties are imposed on imports from China, the exports would once again start from Europe/US and therefore the likelihood of dumping is therefore, clearly established.

16. In the petition in the subject case, the domestic industry has claimed dumping of subject goods from subject countries and continuation and likelihood of continuation of injury once the anti-dumping duty is revoked. It has been further added by domestic industry that the petitioner has been increasing his capacity. However, dumping from China PR and the possibility of dumping from Europe/US once the duty is imposed on China PR is preventing the petitioner from moving expeditiously with the expansion plans. They have disputed the claims made by importers and exporters with regard to quality and specification standards and has further submitted that they have been supplying the subject goods in a wide range to a large number of customers including some international companies. With regard to the injury to the domestic industry, they have added that the situation of domestic industry is fragile and are likely to suffer injury in case of revocation of anti-dumping duties

G. Subsequent developments

Submission made by Domestic Industry M/s Sudharshan Chemicals Industries Limited on 24th September, 2010

17. A letter has been received from the domestic industry on 24th September, 2010. In the subject letter, they have stated that they are at present facing significant injury because of imports being reported from China PR. In view of this fact, they have sought withdrawal of their petition for extension of current anti-dumping duties on imports from Europe & USA with a liberty to reapply in due course in case the foreign producers once again start resorting to dumping.

H. Conclusions and Recommendations

18. On the basis of the application made by the domestic industry requesting withdrawal of the application for review of imposition of anti-dumping duty on subject goods from subject countries, the Authority concludes that there is no justification for the continued imposition of the anti-dumping duty and therefore the Authority recommends discontinuation of anti dumping duty on Mica Pearl Pigments excluding cosmetic and automotive grade originating in or exported form subject countries as recommended by the Designated Authority in final findings vide Notification No.14/22/2003-DGAD dated 22nd December, 2004 and imposed by Customs as per Notification No. 30/2005 dated 21.3.2005.

P.K. Chaudhery
The Designated Authority