

**No. 15/18/2011-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES
UDYOG BHAVAN, NEW DELHI**

NOTIFICATION

Dated the 10th February, 2012

Final Findings

Subject: Mid-term Review (MTR) investigation concerning anti-dumping duty imposed on imports of Sodium Tripoly Phosphate (STPP) originating in or exported from the China PR.

No. 15/18/2011-DGAD: Having regard to the Customs Tariff Act, 1975, as amended from time to time, (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter referred to as Rules);

A Background of the case

1. In the original investigation, M/s Tata Chemicals Ltd supported by M/s Albright & Wilson Chemicals India Ltd (presently known as Rohdia Speciality Chemicals India Ltd) had filed an application alleging dumping of Sodium Tripoly Phosphate (hereinafter referred to as subject goods) from China PR (hereinafter referred to as subject country) and requested for imposition of anti-dumping duty. Having regard to the Act and the Rules, the original investigation was initiated by the Designated Authority (hereinafter referred to as Authority) vide Notification No. 14/25/2009-DGAD dated the 5th November, 2009 published in the Gazette of India, Extraordinary Part I, Section I.
2. The preliminary finding was issued by the Authority vide Notification No. 14/25/2009-DGAD Dated 21st May, 2009, recommending imposition of provisional anti-dumping duty on the imports of the subject goods originating in or exported from the subject country. The provisional anti-dumping duty was imposed by the Central Government vide Notification No. 96/2010-Customs dated 21st September, 2010. Vide Notification No. 14/25/2009-DGAD dated 3.05.2011, published in the Gazette of India, Extraordinary Part I, Section I, the

Authority notified its final findings, recommending definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject country. The definitive anti dumping duty was imposed on the imports of the subject goods, originating in or exported from the subject country, vide Customs Notification No.58/2011-Customs dated 8th July, 2011.

3. The Act, and the Rules made there under, requires the Authority to review from time to time the need for continuance of the anti-dumping duties in force. M/s TATA Chemicals Ltd, the domestic industry in the original investigation, vide their letter dated 21st July, 2011, informed the Authority that they have mothballed their STPP plant. They further informed that there is no domestic industry for STPP in India and requested for withdrawal of the anti-dumping duty applicable on STPP, considering the larger interest of the consumers of STPP and the end consumers where STPP is used. M/s Rohdia Speciality Chemicals India Ltd (formerly named as M/s Albright & Wilson Chemicals India Ltd and supporter of the original application) also informed vide their letter dated 17th August, 2011 that they have stopped production of STPP and requested to withdraw the anti-dumping duty imposed on the imports of the subject goods originating in or exported from China PR. The Authority also requested the concerned Administrative Department to provide details about the producers and production of subject goods in India, but no information was made available.
4. In view of the above changed circumstances, the Designated Authority considered that the mid-term review of the anti-dumping duty, recommended in the final findings vide Notification No. 14/25/2009-DGAD dated 3.05.2011 and imposed vide Customs Notification No.58/2011-Customs dated 8th July, 2011, would be appropriate and initiated the subject mid-term review investigation under the provisions of Rule 23 of the Rules and Section 9A (5) of the Act.

B. Procedure

5. The procedure described below has been followed with regard to this investigation:
 - a. After initiation of the review investigation, the Authority notified the domestic industry, all known exporters/producers in the subject countries and known importers, calling for response and necessary information in accordance with Rule 6(4);
 - b. The Embassy of the subject country in New Delhi was informed about the initiation of the investigation, in accordance with Rule 6(2).
 - c. The period of investigation for the purpose of the present mid -term review is 1st April 2010 to 30th June, 2011 (15 months). However, injury analysis shall cover the years 2007-08, 2008-09, 2009-10 & the POI.

- d. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and the period of investigations.
- e. The Authority requested the concerned Administrative Department to provide the list of the manufacturers of STPP in India along with relevant details. But no information was made available.
- f. The Authority wrote to M/s Albright & Wilson Chemicals India Ltd (presently known as Rohdia Speciality Chemicals India Ltd) to offer their views on the request of M/s TATA Chemicals Ltd for withdrawal of the anti-dumping duty imposed on the imports of Sodium Tripoly Phosphate (STPP) originating in or exported from China PR. They were also requested to provide the details regarding their present production and sales of STPP. They were further requested to furnish a certificate from the concerned Central Excise Authority showing the date of closure of their STTP plant. In response, M/s Rohdia informed that due to cheap imports of STPP into India they had incurred heavy losses and as a result they had closed the operations of STPP. They also requested to withdraw the anti-dumping duty applicable on imports of STPP. Subsequently, they informed along with a copy of an acknowledgement certificate from the Central Excise Authority that they have already surrendered the registration certificate of closure of STPP operations at Ambarnath with effect from 16th May, 2011.
- g. M/s Tata Chemicals was also requested to furnish a certificate from the concerned Central Excise Authority showing the date of closure of their STTP plant. However, no response was received from M./s Tata Chemicals Ltd.
- h. The concerned Central Excise Authorities at Mumbai and Kolkata were also requested to provide the exact date from which M/s Tata Chemicals Ltd and M/s Rohdia have stopped production of STPP. While no reply has been received from the Central Excise Authority at Mumbai, the Chief Commissioner Central Excise at Kolkata confirmed that M/s Tata Chemicals have stopped production of STPP wef 1st March, 2011.
- i. The following exporters and importers/users and their representatives have made submissions during the course of the present investigation:
 - i. Wengfu Intertrade Ltd, China PR
 - ii. World Trade Consultants,
 - iii. M/s ELP on behalf of Ardor International**
 - iv. Power Soaps Ltd,
 - v. RSPL Ltd,
 - vi. Fena Pvt Ltd,
 - vii. Hindustan Unilevor Ltd,
 - viii. Detergent Manufacturers Association of India (DMAI)
 - ix. Shlok Chemicals,
 - x. Chem International,
 - xi. Vipul Enterprise,

- xii. Sandeep Organics Pvt Ltd,
- xiii. M.N.Jha on behalf Rohit Surfactants,
- xiv. Nirmesh Enterprises Pvt Ltd

- j. The Authority held an oral hearing on 22nd December, 2011 to hear the interested parties. While representatives of some of the exporters of the subject goods from the subject country and importers in India attended the oral hearing, no representatives of the domestic industry attended.
- k. The essential facts of the investigation were disclosed to the interested parties by the Authority and comments received thereon have been examined and addressed by the Authority in this finding.
- l. *** in Disclosure Statement represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

C. Litigation before various courts

- 6. The following cases were filed before various courts by interested parties during the original investigation;
 - i. M/s Rohit Surfactants Pvt Ltd filed a Special Civil Application No. 7818 of 2010 before Hon'ble High Court of Ahmadabad, challenging the preliminary finding dated 21.05.2010. The Hon'ble High Court vide its order dated 08.07.2010 summarily rejected the petition.
 - ii. M/s Sandeep Organics Pvt Ltd had also filed a similar writ petition before the Hon'ble High Court of Delhi and the same was dismissed by the Hon'ble Court being premature.
- 7. Writ Petitions have also been filed by M/s Ardor International before the High Court of Judicature at Mumbai praying for termination of the subject anti-dumping duty in view of the fact that the domestic industry has stopped production of the subject goods. The said writ petitions are pending before the Hon'ble Court for disposal.

D. Product under consideration

- 8. The product under consideration is "Sodium Tripoly Phosphate" (STPP), having chemical formula $\text{Na}_5\text{P}_3\text{O}_{10}$. It is a polyphosphate of sodium or sodium salt of triphosphoric acid. Broadly there are two grades of STPP viz., Technical Grade and Food Grade. There are various technical grades of STPP – Regular, Medium Temperature Rise, High Temperature Rise, Granular and Hydrated. STPP is a solid inorganic compound used in a large variety of household cleaning products, mainly as a builder, but also in human foodstuffs, animal feeds, industrial cleaning processes and ceramics manufacture. The product under consideration

is classified under Chapter 28 of the Customs Tariff Act, 1975 under subheading 2835.3100. However, Customs classification is indicative only and not binding on the scope of the present investigation.

E. Standing and scope of the Domestic Industry

9. In the original investigations, M/s Tata Chemicals Ltd supported by M/s Albright & Wilson Chemicals India Ltd (presently known as Rohdia Speciality Chemicals India Ltd) had filed the petition before the Designated Authority for imposition of Anti-dumping duty on the imports of the subject goods from the subject country. In the present investigation, both Tata Chemicals Ltd and Rohdia Speciality Chemicals India Ltd have informed that they have stopped production of the subject goods and requested for withdrawal of the duties on the imports of the subject goods, originating in or exported from the subject country. The Department of Chemicals and Petro Chemicals, the concerned administrative ministry, was requested to provide the list of the producers of the subject goods in the country, but no information was made available to the Authority.

F. Dumping Determination

10. Determination of normal value, export price and dumping margin are not relevant in the present investigations as neither the domestic industry nor any other interested parties have submitted the required information. The mid-term review has been initiated on the basis of the request of the domestic industry on the ground that they have stopped production of the subject goods and there is no other producer of the subject goods in the country.

G. Injury and Causal link Determination

11. The present mid-term review has been initiated on the basis of the request of the domestic industry on the ground that they have stopped production of the subject goods and there is no other producer of the subject goods in the country and continuation of the anti-dumping duty is detrimental to the interests of the user sector of the country. The Authority had also requested the concerned Administrative Department to provide details about the producers and production of subject goods in India, but no information was made available. Therefore, due to the changed circumstances and in absence of any domestic industry as on date, analysis of injury and causal link determination by the Authority are not relevant in the present investigation.

H. Likelihood of continuation or recurrence of dumping and injury

12. Present investigation is a mid-term review and has been initiated at the behest of request of the domestic industry on the ground that they have stopped production of the subject goods and there is no other producer of the subject goods in the country and continuation of the anti-dumping duty is detrimental to the interests of the user sector of the country. Thus, the question of examining likelihood of continuation or recurrence of dumping and injury does not arise in this case as the sole domestic industry has already closed down and stopped production.

I. Submissions made by the exporters/importers/users/other interested parties during the course of the investigation

13. The following are the submissions made by the interested parties during the course of the present MTR investigation:

- i. During the original investigation itself both Tata Chemicals and Rohdia had stopped production of the subject goods and thereby ceased to be domestic industry under the Rules. Instead of recommending imposition of anti-dumping duty the Authority should have terminated the investigation.
- ii. The absence of domestic industry in the public hearing and their failure to make submissions before the Authority corroborates that there is no domestic industry. Therefore the subject anti-dumping duties should be removed at once.
- iii. As per information provided by the concerned Central Excise Authority, Tata chemicals have shut down production of STPP since March, 2011, but intentionally refrained from communicating the fact to the Authority. Had they informed, under Rule 14 of the AD Rules it was incumbent upon the Authority to terminate the investigation. Post disclosure, the interested parties reiterated that Tata Chemicals had stopped production of the subject goods with effect from 01st March, 2011 and the Authority had notified final findings on 03rd March, 2011 without considering this fact.
- iv. The relevant information/document on the basis of which the subject MTR was initiated was not provided by the Authority.
- v. The Authority should have terminated the ADD immediately after receiving the information from Tata Chemical and Rohdia that they have stopped production.

- vi. DA should recommend suspension of collection of ADD till conclusion of the MTR investigation.
- vii. Delay on the part of the Authority in initiating the MTR.
- viii. Designated Authority should allow relief back dated and the importers should be allowed refund of anti-dumping duty. Post disclosure the interested parties re-iterated their submission for back dated relief by withdrawing the duty on retrospective basis.

J. Submission by M/S Tata Chemicals Ltd.

14. Post Disclosure, the following submissions have been made by M/S Tata Chemicals Ltd.;

- i. The company has merely mothballed and not permanently terminated the production of subject goods.
- ii. The company has requested for withdrawal of duty since they have no plans as of now to restart production of subject goods.

K. Examination by the Authority

15. The relevant rules provisions are as follows:

- i) Rule 14 of the AD Rules provides that 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;
 - (b) it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;
 - (c) it determines that margin of dumping is less than two percent of the export price;
 - (d) it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three percent of the imports of the like product, unless, the countries which individually account for less than three percent of the imports of the like product, collectively account for more than seven percent of the import of the like product; or
 - (e) it determines that the injury where applicable, is negligible.

ii) Rule 23 of the AD Rules provides that-

(1) The Designated Authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9/10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.

iii) Sub Rule 1 of Rule 23 was amended vide Notification No. 15/2011-Custom(NT) dated 1st March, 2011 which inter alia provides that the Designated Authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

16. The submissions made by the interested parties during the course of the investigation are examined by the Authority as follows:

i. In the original investigation the application for imposition of anti-dumping duty on imports of STPP from china PR was filed by M/s. Tata Chemicals Limited and supported by M/s Albright & Wilson Ltd (presently named as Rohdia Speciality Chemicals India Ltd). Together they constituted 100% of the production of the subject goods in the country. None of the interested parties had raised any issue concerning scope of domestic industry and standing then. Moreover, during the entire course of the original investigation none of the interested parties had brought to the notice of the Authority with documentary evidence that the domestic industry had stopped producing the subject goods. Rather, in the post disclosure comments of the original investigation some interested parties had submitted that currently/presently, M/S Tata Chemical Limited had stopped production of STPP for the purpose of expansion. Stopping production activity for expansion purpose cannot be construed as termination of production.

- ii. All the known interested parties including the known domestic producers of the subject goods in the country were invited for the oral hearing held by the Authority on 22nd December, 2011. While some interested parties attended the hearing and made oral as well as written submissions, none of the domestic producers of the subject goods in the country including M/s Tata Chemicals neither attended the hearing nor made any written submissions. Post disclosure, M/S Tata Chemicals made submissions that they have merely mothballed their production and not permanently terminated the production of subject goods. Nevertheless, the above submission is merely reiteration of their earlier position and no new fact has been brought to the notice of the Authority.
- iii. Rule 14 of the Anti-dumping Rules provides that the Designated Authority shall, terminate an investigation immediately if 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. During the course of the original investigation none of the interested parties including M/s Tata Chemicals themselves had brought to the notice of the Authority the fact of stoppage of production of the subject goods by them. Even while informing the Authority vide their letter dated 21st July, 2011 that they have mothballed their STPP plant and requested for withdrawal of the duty, they did not inform the Authority from what date they had stopped producing the subject goods. The Authority further requested M/s Tata Chemicals to let them know the exact date from which the production of the subject goods has been terminated by them, but no reply has been received from them. However, vide letter No.C.No.V(30)42/CE/CC/Tech/Kol/2010/17072 dated 20/12/2011 the concerned Central Excise Authority has informed that M/s Tata Chemicals have stopped production of STPP with effect from 1st March, 2011. It is unfortunate that M/s Tata Chemicals did not inform the Authority the developments that occurred in March, 2011 while they were pressing for the anti-dumping duty even in their submissions made after the disclosure statement was issued by the Authority. Most interestingly in the 2nd oral hearing held on 18th March, 2011 while none of the interested parties informed the Authority about the fact of stoppage of production of STPP by Tata Chemicals, the said company itself was vehemently arguing for imposition of anti-dumping duty on the imports of STPP from China PR and kept the Authority in complete dark about the stoppage of production of STPP by them as early as 1st March, 2011. Further, M/s Rohdia informed that they surrendered the registration certificate of their STPP plant at Ambarnath to the concerned Central Excise Authority with effect from 16th May, 2011. It may not be true that M/s Rohdia decided to terminate their STPP plant overnight. In fact, during the POI itself they stated to have produced an insignificant quantity of STPP. M/s Rohdia also failed to inform the Authority about the developments in their STPP plant and kept the Authority in dark. The

Authority notes that this does not reflect well of a responsible domestic industry and amounts to concealment of facts. Had they informed the Authority about stoppage of production of STPP by them, the Authority could have considered termination of the investigation under Rule 14 of the Rules.

- iv. The relevant information has been made available in the public file maintained by the Authority.
- v. The Authority had notified the Final Findings in the original investigation on 3.05.2011 recommending imposition of definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject country. The definitive anti dumping duty was imposed by the Central Government on 8th July, 2011. After the final findings were issued by the Authority and after the imposition of the duty by the Central Government, M/s Tata Chemicals and M/s Rohdia informed the Authority about stoppage of production of subject goods by them. Even other interested parties did not bring the facts to the notice of the Authority with documentary evidence. Under the Rules the Designated Authority has no power either to impose or terminate duty. The Rules empower the Designated Authority only to investigate and to recommend. By the time the concerned domestic producers brought to the notice of the Authority the fact of stoppage of production by them, the duty was already in place. In view of that, instead of initiating action under Rule 14 of the Rules, the Authority initiated the present mid-term review for reviewing the changed circumstances under Rule 23 of the Rules.
- vi. There is no provision under the Rules empowering the Designated Authority to recommend suspension of collection of anti-dumping duty.
- vii. The Authority has initiated the present MTR in terms of Rule 23 of the Rules and the investigation has been conducted as per the rules/procedure.
- viii. With regard to the submission of the opposite interested parties that the Designated Authority should allow relief back dated and the importers should be allowed refund of anti-dumping duty on retrospective basis, the Authority notes that the subject MTR anti-dumping investigation has been conducted under Rule 23 of the Anti-dumping Rules. There is no provision under the said Rules for backdated relief in such circumstances.

17. Based on the above facts the Authority conclude that:

- i) M/s Tata Chemicals Ltd and M/s Rohdia Specialty Chemicals India Ltd (formerly named as M/s Albright & Wilson Chemicals India Ltd)

have stopped producing the subject goods and therefore ceased to be domestic industry under the Rules. Further, no information was made available by the Deptt. of Chemicals and Petrochemicals, regarding any other producers of the subject goods in the country. In view of the above, to the best of the knowledge of the Authority, there is no other domestic producer of the subject goods in India.

- ii) M/s Tata Chemicals Ltd and M/s Rohdia Specialty Chemicals India Ltd (formerly named as M/s Albright & Wilson Chemicals India Ltd), the domestic industry in the original investigation and the only known producers of the subject goods in the country have themselves requested for withdrawal of the anti-dumping duty on the imports of the subject goods originating in or exported from the subject country.
- iii) The known importers/users of the subject goods and their representatives have also unanimously opined that since the sole domestic producer has stopped production, the anti dumping duty on the subject goods needs to be revoked forthwith.
- iv) In view of the stoppage of production of the subject goods in the country, if the anti dumping duty on the imports of subject goods is allowed to be continued any further, it may affect the domestic users adversely.
- v) Revocation of the anti-dumping duty on the imports of the subject goods originating in or exported from the subject country may not cause any injury to any domestic producer, the same being not there any more.

L. Final Findings:

18. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submissions of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of production in the country the Authority concludes that should the present anti dumping duties be revoked, no domestic industry is likely to be injured.

M. Indian industry's interest and other issues

19. The Authority recognizes that the continued imposition of anti dumping duties may have cascading effect on the prices of the end products and adversely affect the market competitiveness of the domestic manufacturers of the end products. On the contrary, revocation of the anti dumping measures would not affect any

domestic industry since presently there is none producing the subject goods in the country.

20. The purpose of anti dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Revocation of the anti dumping measures would not affect any domestic industry since presently there is none producing the subject goods in the country.

N. Recommendations

21. Having concluded that the revocation of the anti dumping measures would not affect any domestic industry since presently there is none producing the subject goods in the country; the Authority is of the opinion that the measure is required to be revoked in respect of imports from China PR.
22. Having examined thus, the Authority recommends withdrawal of the Anti-Dumping Duty in place, as recommended by the Authority vide Final Findings Notification No. 14/25/2009-DGAD dated 3.05.2011, published in the Gazette of India, Extraordinary Part I, Section I and notified by the Central Government vide Notification No.. vide Customs Notification No.58/2011-Customs dated 8th July, 2011.
23. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

Vijaylaxmi Joshi
Designated Authority