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No 15/20/2014-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
4th Floor, Jeevan Tara building, 5, Parliament Street, New Delhi

Date: 06.12.2014

Initiation Notification
(Sunset Review)

Subject: Initiation of Sunset Review investigation in respect of anti-dumping duty imposed on the imports of Synchronous Digital Hierarchy Transmission Equipment (SDH Equipment), originating in or exported from China PR and Israel.

No 15/20/2014-DGAD:- Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter also referred to as the AD Rules or Rules), the Designated Authority (hereinafter referred to as the Authority) had issued a Public Notice dated 21st April 2009, initiating the anti-dumping duty investigation concerning imports of Synchronous Digital Hierarchy Transmission Equipment (hereinafter referred to as SDH Equipment or the subject goods) originating in or exported from China PR and Israel (hereinafter referred to as the subject countries). The Authority, having regard to the Act and the Rules, investigated the matter and then recommended imposition of provisional anti dumping duty on the imports of the subject goods originating in or exported from the subject countries vide Notification dated 7th September 2009, and provisional anti-dumping duties were imposed by the Ministry of Finance vide Notification No. 132/2009-Customs dated 8th December, 2009.

2. And whereas the Authority issued Final Findings on 19th October, 2010 recommending imposition of definitive anti-dumping duties on the imports of the subject goods originating in or exported from the subject countries and definite anti-dumping duties were imposed by the Ministry of Finance vide Notification No.125/2010-Customs dated 16th December, 2010.

3. And whereas some interested parties filed appeals before the Hon^{ble} Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, challenging the Final Findings dated 19th October 2010 and the Customs Notification issued by the Ministry of Finance. The Hon^{ble} CESTAT after extensively hearing the interested parties and the domestic industry remanded the matter back to the Authority for affording post-decisional hearing to the appellants and other

interested parties, if any, and for making such modifications to the Final Findings as might be necessary as a result of such post decisional hearing. The Authority, on 10th February, 2012, issued its post decisional Final Findings confirming the Final Findings earlier notified vide Notification No. 14/2/2009-DGAD dated 19th October, 2010.

Request for Review

4. And whereas in terms of the Rules, M/s Tejas Networks Limited (hereinafter referred to as the petitioner or the applicant) representing the Domestic Industry has approached the Authority with a duly substantiated application requesting for continuation of the antidumping duties in force imposed by the Central Government vide Notification No.125/2010-Customs dated 16th December, 2010. The request is based on the grounds that dumping has continued in spite of imposition of antidumping duty on the import of the subject goods from the subject countries and the domestic industry continues to suffer injury on account of dumping from the subject countries as the form and quantum of anti dumping duty in force has been insufficient. The petitioner has further argued that expiry of the measure against the subject countries would be likely to result in continuation or recurrence of dumping and injury to the domestic industry. The petitioner also claims that revocation of anti-dumping measures would result in intensified injury to the domestic industry and, therefore, the duty is required to be continued for a further period of five years.

5. And the Authority on the basis of prime facie evidence given by the petitioner considers that initiation of sunset review proceedings in respect of the anti dumping duty in force on the imports of the subject goods, originating in or exported from the subject countries would be appropriate to examine the need for continued imposition of such duties to offset dumping and whether the injury would be likely to continue or recur if the duties were removed or varied or both.

Domestic Industry and Standing

6. The application has been filed by M/s Tejas Networks Limited on behalf of the domestic producers of the subject goods in India. As per the information available on record, the petitioner accounts for a major proportion in Indian production of the subject goods. Further, on the basis of information furnished by the petitioner, the Authority notes that the petitioner has made imports of some stand alone components from countries not under investigations and some stand alone components have been imported from China PR. The Authority notes that this fact does not disqualify the petitioner from being considered as a domestic industry under Rule 2(b). Imports of stand alone parts or components made by petitioner do not constitute imports of the product under consideration. In any case, imports of stand alone components from subject countries made by the petitioner as per the information provided by the petitioner to the Authority constitute an insignificant percentage in relation to (i) total imports of the subject goods from subject countries to India during the POI (ii) the total Indian production, (iii) the domestic sales of the domestic industry (iv) the total demand for subject goods in India and, therefore, the Authority considers it appropriate to hold that these imports made by the petitioner do not disqualify the petitioner from being treated as domestic industry. Therefore,

the petitioner constitutes the domestic industry within the meaning of the AD Rules and meets the criteria of standing in terms of the Rules.

Initiation

7. On the basis of positive prima facie evidence of dumping and injury to the domestic industry given by the petitioner, there is felt need for a review. Therefore, the Authority hereby initiates the Sunset Review in accordance with Section 9 A (5) of the Act, read with Rule 23 of Antidumping Rules, to review the need for continued imposition of duties in force on the imports of the subject goods, originating in or exported from the subject countries and to review whether the expiry of the duties would be likely to lead to continuation or recurrence of dumping and injury.

Product under consideration

8. The product under consideration as defined below the duty table in the original Final Findings Notification No 14/2/2009 dated 19th October, 2010 read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings Notification No 14/2/2009 dated 10th February, 2012 was as under:

***Note 1. The product under consideration will include "Synchronous Digital Hierarchy transmission equipment, viz. STM-1, STM-4, STM-16, STM-64, STM-256 in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / sub-assemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of Product under Consideration*

***Note 2. SDH Equipment essentially transmits signals through the medium of Optical Fibre. There may be SDH equipment meant for transmission through electrical Copper Medium or Microwave Radio Medium. The SDH Equipment transmitting the data through optical fibre alone shall be subject to levy of antidumping duty.*

***Note 3. When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the imports.*

***Note 4 PDH, CWDM, DWDM, Microwave systems, GPON ,DSLAM, MSAN, BITS, Routers, PDSN, SGSN, MGW, BTS, BSC, MSC, ONT, HLR, HSS and MRP being non-SDH in any of its form are outside the scope of PUC and therefore not subject to levy of AD Duty.*

***Note 5. Microwave Radio Terminals which could have an STM-1 interface to the SDH transmission equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of payment of AD Duty*

9. In the present sunset review investigation, the scope of the product under consideration remains the same as that in the previous investigations.

10. The product under consideration is classified under Chapter 85 of the Customs Tariff Act, 1975. It is further classified under the heading 851762 and 851770 of schedule-I of Custom Tariff Act as per Indian Trade Classification. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

Subject Countries

11. China PR and Israel are the subject countries in the present Sunset Review investigation.

Normal value

12. The petitioner has claimed that China PR should be treated as a non-market economy and has determined normal value for China PR in accordance with Para 7 and 8 of Annexure I of the Rules. In view of the non-market economy presumption and subject to rebuttal of the same by the responding exporters, normal value of the subject goods in China PR has been estimated in terms of Para 7 of Annexure I to the Rules.

13. For Normal value for Israel, the petitioner has submitted that efforts were made to get information/evidence of price of subject goods in the domestic market of Israel. However, the petitioner was not able to get such information.

14. The petitioner has, therefore, determined normal value for China PR and Israel considering cost of production of the comparable product types which were imported in India after adding selling, general and administration expenses and 5% profit. Cost of production of the domestic industry has been used as a benchmark to determine cost of production of the producer in Israel. Further, in case of China PR, cost of production in India, duly adjusted, has been considered to determine normal value. The normal value has been determined for the product types identified by the petitioner, which as per information provided by the petitioner were imported during the POI.

15. The Authority examined the claim of the petitioner. There is prima facie evidence of normal value of the subject goods in the subject countries.

Export Price

16. The petitioner claimed that it is not possible to determine imports of particular type of SDH equipment using either secondary or DGCI&S data due to the fact that the imports of SDH equipment are primarily not being made as equipment and the imports are being made in CKD-SKD form without any reference to the product type

involved. The product is sold in domestic market to limited customers. Therefore, the petitioner has determined export price on the basis of various orders placed by the consumers. However, request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the period of investigation and preceding three years and the same was obtained and has been relied upon on average basis.

17. The Authority sees prima facie evidence of net export price of the subject goods in the subject countries.

Dumping Margin

18. The Petitioner has provided evidence that the normal values of the subject goods in the subject countries are higher than the net export prices, prima-facie, indicating that the subject goods originating in or exported from the subject countries are continued to be dumped, to justify initiation of review investigation.

Injury and Causal Link

19. The Information of the petitioner has been considered for assessment of injury to the domestic industry. The petitioner has furnished evidence regarding the injury having taken place as a result of the alleged dumping in the form of significant volume of dumped imports, price undercutting, price suppression and depression, price underselling and consequent significant adverse impact in terms of profits, return on capital employed and cash flow to the domestic industry. There is prima facie evidence of the continued injury being suffered by the domestic industry caused by dumped imports from the subject countries review investigation. The petitioner has also furnished prima facie evidence of likelihood of dumping and injury.

Procedure

20. The investigation will determine as to whether the continued imposition of the duties in the form and quantum of anti dumping duties in force or in amended form and quantum is necessary to offset dumping and whether the injury would be likely to continue or recur if the duty were removed or varied, or both.

- i. The review will cover all aspects of Notification 14/2/2009 dated 19th October, 2010 read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings Notification No 14/2/2009 dated 10th February, 2012.
- ii. The period of investigation (POI) for the purpose of the present review proposed by the petitioner is from April, 2013 to March, 2014. The Authority, however, determines the POI from April, 2013 to June, 2014. The injury investigation period will, however, cover the periods April 0-March 1, April 1-March 2, April 2-March 3 and the POI.
- iii. The provisions of Rules 6,7,8,9,10,11,16,17,18,19 and 20 of the Rules

supra shall be mutatis mutandis applicable in this review.

Submission of Information

21. The exporters in the subject country, its government through its Embassy in India, the importers and users in India known to be concerned and the domestic industry are being addressed separately to submit relevant information in the form and manner prescribed and to make their views known to the Authority at the following address:

The Designated Authority
Directorate General of Anti-Dumping and Allied Duties
Ministry of Commerce and Industry
Department of Commerce
4th Floor, Jeevan Tara building, 5, Parliament Street, New Delhi

22. Any other interested party may also make its submissions relevant to the investigation in the prescribed form and manner within the time limit set out below. Any party making any confidential submission before the Authority is required to make a non-confidential version of the same available to the other parties.

Time Limit

23. Any information relating to the present investigation should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days (40 days) from the date of issuance of the letter intimating about the initiation of this investigation. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record its findings on the basis of the facts available on record in accordance with the AD Rules.

24. All the interested parties are hereby advised to intimate their interest (including the nature of interest) in the instant matter and file their questionnaire responses and offer their comments to the domestic industry's application within forty days (40 days) from the date of issuance of the letter intimating about the initiation of this investigation. The information must be submitted in hard copies as well as soft copies.

Submission of information on confidential basis

25. The parties making any submission (including Appendices/Annexure attached thereto), before the authority including questionnaire response, are required to file the same in two separate sets, in case "confidentiality" is claimed on any part thereof:-

(a) one set marked as Confidential (with title, number of pages, index, etc.), and

(b) the other set marked as Non-Confidential (with title, number of pages, index, etc.).

26. The ~~confidential~~+or ~~non-confidential~~+submissions must be clearly marked as ~~confidential~~+ or ~~non-confidential~~+ at the top of each page. Any submission made without such marking shall be treated as non-confidential by the Authority and the Authority shall be at liberty to allow the other interested parties to inspect such submissions. Soft copies of both the versions will also be required to be submitted, along with the hard copies, in five (5) sets of each.

27. The confidential version shall contain all information which are by nature confidential and/or other information which the supplier of such information claims as confidential. For information which are claimed to be confidential by nature or the information on which confidentiality is claimed because of other reasons, the supplier of the information is required to provide a good cause statement along with the supplied information as to why such information can not be disclosed.

28. The non-confidential version is required to be a replica of the confidential version with the confidential information preferably indexed or blanked out (in case indexation is not feasible) and summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, party submitting the confidential information may indicate that such information is not susceptible to summary, and a statement of reasons why summarization is not possible, must be provided to the satisfaction of the Authority.

29. The Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the Authority is satisfied that the request for confidentiality is not warranted or if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information.

30. Any submission made without a meaningful non-confidential version thereof or without a good cause statement on the confidentiality claim shall not be taken on record by the Authority.

31. The Authority on being satisfied and accepting the need for confidentiality of the information provided, shall not disclose it to any party without specific authorization of the party providing such information.

Inspection of Public File

32. In terms of Rule 6(7) of the AD Rules, any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

Non-cooperation

33. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts

available to it and make such recommendations to the Central Government as deemed fit.

J K Dadoo
Designated Authority