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F. No.15/22/2016-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti Dumping & Allied Duties)  
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## **NOTIFICATION**

**Date 26<sup>th</sup> July, 2018**

### **(Final Findings)**

**Subject: Final Finding Notification in the New Shipper Review investigation under Rule 22 of the Anti-Dumping Rules for determination of individual dumping margin for the purpose of imposition of anti-dumping duty on dumped imports of 1 1 1 2 Tetrafluoroethane or R 134a originating in or exported from China PR in respect of M/s. Zhejiang Sanmei Chemical Ind. Co., Ltd. (Producer/Exporter), M/s Zhejiang Sanmei Chemical Products Co., Ltd (Exporter) and M/s Jiangsu Sanmei Chemical Ind. Co., Ltd (Producer).**

No.15/22/2016-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, as amended from time to time (hereinafter also referred to as AD Rules), thereof;

#### **A. BACKGROUND**

2. Whereas, the Designated Authority (hereinafter also referred to as the Authority) initiated original investigation and recommended imposition of anti-dumping duty on the imports of “1,1,1,2- Tetrafluoroethane” or R-134a” (hereinafter also referred to as the subject goods), originating in or exported from China PR and Japan, vide Final Finding Notification No. 14/24/2009- DGAD dated 10<sup>th</sup> May, 2011. Accordingly, Central Government imposed anti-dumping duty vide Notification No. 61/2011-Customs (ADD) dated 15<sup>th</sup> July, 2011.
3. Whereas, the Authority initiated sunset review investigation of anti-dumping duties in force on dumped imports of subject goods from China PR and Japan vide Initiation notification no. 15/23/2014-DGAD dated 10<sup>th</sup> April, 2015. After a detailed review, the Authority recommended continued imposition of anti-dumping duties vide notification no. 15/23/2014-DGAD dated 30<sup>th</sup> May, 2016, on imports of subject goods from China

PR. Accordingly, the Central Government issued a notification no. 30/2016-Customs (ADD) dated 11<sup>th</sup> July, 2016 imposing the duties.

4. Whereas, none of the responding exporters (including M/s. Zhejiang Sanmei Chemical Ind. Co. Ltd.) were found qualified for grant of individual duty margin. A residual duty of 1.22 USD/Kg was imposed against import of subject goods from China PR.
5. Whereas, M/s. Zhejiang Sanmei Chemical Ind. Co., Ltd. (Producer/Exporter), M/s Zhejiang Sanmei Chemical Products Co., Ltd (Exporter) and M/s Jiangsu Sanmei Chemical Ind. Co., Ltd (Producer), (hereinafter referred to as “New Shipper” or “Applicants”) filed an application before the Authority in accordance with Rule 22 of the AD Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) in respect of the definitive antidumping duty imposed by the Central Government concerning imports of the subject goods, originating in or exported from China PR.
6. The Act and the Antidumping Rules made there under require the Authority to undertake a New-Shipper Review for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question who has not exported the subject goods to India during the period of investigation (POI) of the original anti-dumping investigation concerning imports of the subject goods from the subject country and that the applicant is not related to any of the exporters and producers in the exporting country who are subjected to the antidumping duty. The applicant claimed that they are not related to any of the exporters/producers in China PR or other subject countries against on which Anti-dumping measures are in force with regard to the product concerned. Furthermore, they claimed that they have not exported the product concerned during the period of investigation of the original investigation.
7. The Authority prima facie examined the information submitted by the applicant and found it sufficient to justify the initiation of a New-shipper review investigation in accordance with the provisions of Rule 22 of the Anti-Dumping Rules. The Authority accordingly initiated the New Shipper Review under Rule 22 of the AD Rules vide Notification F. No. 15/22/2016-DGAD dated 27.2.2017. The period of investigation for the purpose of the present review is 1<sup>st</sup> January, 2017 to 31<sup>st</sup> December 2017 (12 months).
8. Having initiated the New-shipper review investigation, the Authority recommended provisional assessment on all exports of subject goods made by M/s Zhejiang Sanmei Chemical Ind. Co., Ltd., till the review is completed in accordance with Rule 22 of the Rules supra.
9. Ministry of Finance notified the provisional assessment on all exports of the subject goods made by M/s Zhejiang Sanmei Chemical Ind. Co., Ltd., till completion of the

subject New-shipper review investigation vide Notification No. 10/2017-Customs(ADD) dated 24.3.2017.

**B. PROCEDURE**

10. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
  - a. The Authority issued a public notice dated 27.2.2017 published in the Gazette of India, Extraordinary, initiating the subject New-shipper review antidumping investigation.
  - b. The Authority forwarded a copy of the initiation notification to the New-shipper review applicant along with a copy of the exporter's questionnaire to be filled and filed within the stipulated time.
  - c. The Authority also forwarded a copy of the initiation notification to the Embassy of China PR in New Delhi.
  - d. The Authority forwarded a copy of the initiation notification to the known domestic producers in India and gave them opportunity to make their views known in writing.
  - e. As per the procedure, the following applicant exporter filed a response in the form of Exporters Questionnaire in response to the initiation notification. However, none of the applicants filed the supplementary questionnaire response claiming market economy treatment.
    - i. M/s Zhejiang Sanmei Chemical Ind. Co., Ltd.(Producer/Exporter)
    - ii. M/s Jiangsu Sanmei Chemical Ind. Co. Ltd. (Producer)
    - iii. M/s Zhejiang Sanmei Chemical Products Co. Ltd. (Exporter)
  - f. The Authority made available non-confidential version of the evidence presented by interested parties, in the form of a public file kept open for inspection by the other interested parties as per Rule 6(7). Submissions made by all interested parties have been taken into account in this Final Finding Notification.
  - g. The Authority held Oral Hearings on 7.6.2018 to provide an opportunity to the interested parties to present information orally in accordance with Rule 6(6). The interested parties were allowed to present rebuttal rejoinders on the views/information presented by other interested parties. The Authority has considered submissions received from interested parties appropriately.
  - h. Arguments raised and information provided by various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority.
  - i. The period of investigation (POI) for the purpose of the present review is 1<sup>st</sup> January, 2017 to 31<sup>st</sup> December, 2017.
  - j. Transaction-wise imports data for the period of investigation and preceding three years was procured from the Directorate General of Commercial Intelligence and

Statistics (DGCI&S) and the same has been relied upon for the purpose of analysis in this investigation.

- k. Information provided by the interested parties on confidential basis were examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties.
- l. A Disclosure Statement was issued to interested parties on 12.7.2018 containing essential facts under consideration of the Designated Authority, giving time up to 19.7.2018 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.

### **C. PRODUCT UNDER CONSIDERATION**

11. The product under consideration (PUC) in the present investigation is 1,1,1,2-Tetrafluoroethane or R-134a of all types. R-134a, is also called as Tetrafluoroethane, Genetron 134a, Suva 134a or HFC-134a, HFA-134a, and Norflurane. It is a haloalkane refrigerant with thermodynamic properties similar to R-12 (dichlorodifluoromethane), but without its ozone depletion potential. It has the chemical formula  $\text{CH}_2\text{FCF}_3$ , and a boiling point of  $-26.3\text{ }^\circ\text{C}$  ( $-15.34\text{ }^\circ\text{F}$ ).
12. The product under consideration may be primarily used as a "high-temperature" refrigerant for domestic refrigeration and automobile air conditioners. Other uses include plastic foam blowing, as a cleaning solvent and as a propellant for the delivery of pharmaceuticals (e.g. bronchodilators), gas dusters, and in air driers, for removing the moisture from compressed air.
13. The product under consideration are being imported under subheading 29033919 as "Other Fluorinated Derivatives", under tariff heading 2903 of Chapter 29 of the Customs Tariff Act. The Domestic Industry has, however, claimed that the product under consideration does not have any dedicated customs classification code and are being imported under various other customs sub-headings. However, the customs classification is indicative only and in no way binding on the scope of this investigation.
14. The Authority notes that since the present investigation is a New Shipper Review, the scope of the product under consideration is the same as that of the previously concluded investigation.

### **D. FACTS OF THE CASE**

#### **I. Submissions by Petitioner Exporter at the time of application**

15. The submissions made by the NSR applicants in the application and considered relevant by the Authority are as follows:
- a. The present application is fully documented and contains sufficient evidence to justify that the applicants are entitled for determination of individual dumping margin.
  - b. The applicants are LLPs registered in China
  - c. Information regarding related companies of Zhejiang Sanmei Chemical Ind. Co. Ltd. is provided on confidential basis.
  - d. The applicants have neither exported directly nor its affiliated companies have ever exported the subject goods to India during the POI of SSR vide which duties were recommended and are still in force.
  - e. In the SSR investigation, Zhejiang Sanmei Chemical Ind. Co. Ltd. had informed the Authority by filing exporter questionnaire response that it had not exported the subject goods during the POI of Sunset Review and the same has been noted in the Final Findings issued by the Authority.
  - f. The applicants have no other related companies around the world which deals with the subject material. Accordingly, the applicants are not related to any of the exporters or producers in China PR who are subject to the anti-dumping duties on the product.
  - g. The applicants are filing the application for initiation of New Shipper Review and fixation or determination of individual dumping margin based on their own data/information in accordance to the Rules.
  - h. The applicants satisfy various conditions relating to market economy status and determination or fixation of individual dumping margin and are willing to provide all relevant information to the Authority during the course of the proposed investigations. Further, even if the applicants do not satisfy market economy status, the same in any case does not prejudice their rights to claim individual dumping margin.
  - i. The applicants intend to export the product under consideration to India produced by the applicants themselves.
  - j. The applicants are entitled for a new shipper review initiation in order to determine individual dumping margin in respect of their exports.
  - k. The applicants request consideration of 1<sup>st</sup> October, 2016 to 31<sup>st</sup> March 2017 as the proposed period of investigation.
  - l. Pending detailed investigations, the applicants may be allowed to export and its importer may be allowed to clear its goods without payment of anti-dumping duties.

## **II. Submissions by Petitioner Exporter during the course of the investigations**

16. The submissions made by the NSR applicants in their submissions post initiation of investigations and considered relevant by the Authority are as follows:

- a. Zhejiang Sanmei has not changed its legal form in the past three years but there were some changes to ownership structure.
- b. Zhejiang Sanmei has 7 affiliates engaged in production and sale of the subject goods. The information has been provided on confidential basis.
- c. The production facility for PUC has been set up prior to levy of ADD.
- d. Zhejiang Sanmei has two affiliated producers. One is Jiangsu Sanmei and M/s Fujian Qingliu Dongying Chemical Co. Ltd., whose name is provided on confidential basis.
- e. Jiangsu Sanmei does not export R-134a to India or to any other country.
- f. Zhejiang Sanmei made five sales to India post levy of ADD with one sale in 2016 and four in 2017.
- g. The pricing policy is same for domestic market or third countries or to India. The sales price must be over full cost of production resulting in the decent profit.
- h. The export to India will be done in terms of the market demand and profit margin along with the determination of new shipper review.
- i. Zhejiang Sanmei itself produces R134a and sells the same in domestic market as well as exports the same to India and third countries. It is a regular exporter of subject goods to India and intends to further export the subject goods through Zhejiang Sanmei Chemical Products Co., Ltd., a trading company; this is why it is included in the present investigation.
- j. Jiangsu Sanmei Chemical Ind. Co., Ltd. sells R134a to Zhejiang Sanmei. It does not export R134a to India or any third country.
- k. Zhejiang Sanmei has exported the subject goods prior to POI of the SSR investigation and post POI as well
- l. Applicants have filed complete questionnaire responses with the Authority and further provided documents with regard to exports. They have provided all the information as and when sought by the Authority and request the Authority to conclude the present investigation as per information available with the Authority.
- m. M/s Zhejiang Sanmei Chemical Ind. Co., Ltd. in its post hearing submissions clarified that it did not participate in the original investigation.
- n. Zhejiang Sanmei has regularly exported the subject goods prior to POI specified in sunset review investigation and during the POI as specified in the present NSR investigation. Details of exports to India during the period of investigation of the present investigation have been placed on record on confidential basis.
- o. The details of export to India since the formation of the company are also placed on record.
- p. The applicants have not filed supplementary questionnaire for claim of market economy status but have mentioned that the Designated Authority may determine the MET status as per the Rules.
- q. The applicants have neither exported the product under consideration to India during the period investigated (1st April 2008 to 31st Mar 2009) in original investigation nor in the POI (1st Oct 2013 to 31st Sep 2014) of sunset review investigation initiated by the Designated Authority.
- r. The applicants have exported the product under consideration to India produced by the applicants themselves during the present POI.

- s. The Authority may determine individual dumping margin in respect of the exports of the applicants.

### **III. Submissions by the Domestic Industry**

17. Submissions made by the domestic industry (as constituted in the sunset review investigation) during the course of the investigation and considered relevant by the Authority are as follows:

- a. The requirements of new-shipper review and determination of individual dumping margin are not fulfilled before initiation of investigations
- b. The applicants have provided nothing in their application which would constitute sufficient evidence to justify the requirements of the law.
- c. When there is no export price, there can be no dumping margin. The law does not recognize potential imports for determination of dumping margin. Thus, the present initiation is void in view of (a) absence of export price, (b) absence of information and (c) absence of relevant evidence.
- d. The Applicants have claimed confidentiality on all the evidences in the Application which has significantly impaired the ability of the domestic industry to defend its interests which is in violation of principles of natural justice and hence, the investigation needs to be terminated on this ground itself. The Applicants have failed to provide good cause for the purpose of claiming confidentiality on essential facts in the investigation and have further failed to provide non-confidential summaries that permit a reasonable understanding of the substance in the Application, as required under Rule 7 of the AD Rules and Article 6.5 of the WTO ADA.
- e. The applicants in the present application have sought confidentiality on business license, registration form, articles of association of the applicants and list of the related companies and their products and activities, in toto. In China, the business license is required to be prominently displayed at the place of business. Thus, in no stretch of imagination, it could be kept confidential. Articles of Association and Memorandum of Association of the company could not be treated as confidential as the same are available with the registrar of companies to any person.
- f. The applicants have not provided registration form of foreign trade operator in the non-confidential version of the application. It is submitted that even if they are provided in future, the same cannot establish when the company commenced commercial production of the product, whether the company had exports to India in the past or whether the company is related to a producer or exporter of the product who exported to India in the past. The applicants have submitted the registration “form” and not registration “certificate”.
- g. The domestic industry fails to understand that how vital information regarding related parties can be kept confidential. The fact which forms the very basis of initiation cannot be kept confidential. Such information needs to be given to the

other parties in order to give an opportunity to the domestic industry to analyze and comment whether the applicants are related to any such producer/exporter as mentioned in Rule 22. This information is easily available on Zhejiang Sanmei's website, the evidence has been put on record.

- h. The Rules require the applicants applying for new shipper review to show that they are not related to any of the exporters or producers in the exporting country who were subject to the anti-dumping duties on the product. There is nothing in the application which shows that this requirement is fulfilled. Therefore, pertinent requirement of Rule 22 has not been met by the applicants before seeking new shipper review and the investigations were initiated (referred to decision in H&R Johnson (India) Limited Vs. Designated Authority).
- i. The present application is de-facto reduced to an argument that they have filed new shipper review application and the Designated Authority may complete the investigations. The application is sketchy with absolutely no substance in the same. The application is nothing but merely claims without any corroborative evidence.
- j. The application has following lacunas which seriously hinders the interest of domestic industry to comment on the application and the initiation thereof:
- k. The application is undated.
- l. The applicants have not mentioned their date of commencement of production
- m. The applicants have not mentioned their date of exports to India
- n. It remains very uncertain when the application was filed, when did the production commence or when did they export to India before filing new shipper review application or after filing the new shipper review application.
- o. The applicants have failed to provide the name of the law under which they have been established/registered/incorporated.
- p. If the goods have not been exported, there is no export price and there can be no dumping margin.
- q. The Authority is required to examine the details of all the sales made by the applicants.
- r. It is not established whether any trader who bought the subject goods from producer applicants have exported the same to India. It is also relevant to examine the status of the applicants as new-shipper review producer admittedly is not new entrant in the market. There is all likelihood that they were selling in the domestic market through traders and the same may have been exported to India.
- s. If applicants have not made any subsequent shipments, the same should have been mentioned in the application. But, there is nothing in the application.
- t. A plain reading of Rule 22 would reveal that there is no provision for giving the power to the Designated Authority to fix prospective period of investigation.
- u. If such review period falls subsequent to the filing of date of the application or initiation, the same would be like giving an opportunity to the applicants to manipulate the data by projecting figures during the prospective period of review. It leads to an apprehension that an unscrupulous new shipper may sell and report his exports at higher price for the prospective period and get a

favorable dumping margin. The same is unwarranted and would distort the entire scheme and purpose of imposition of anti-dumping duty, to the grave disadvantage of the domestic industry that had earned the protection of anti-dumping duty.

- v. The applicants are not entitled to individual dumping margin;
- w. Since the applicants are independent legal entities, each legal entity should have filed a separate questionnaire response. A combined exporter questionnaire response is not accepted by the authority, as established by numerous investigations conducted by the Designated Authority. It is an established practice in India that each entity files a separate questionnaire response. Even if there was some exception, the same cannot overrule the general practice applied. The situation has also resulted in grossly deficient/incomplete information, as several questions have been answered only for one entity, whereas each question is required to be answered separately for the three entities.
- x. The applicants have claimed excessive confidentiality in the exporter questionnaire as well.
- y. The applicants have claimed confidentiality on key elements like name of shareholders, related parties involved with the product under consideration, their products and activities among other. There are information like incentives granted/received have been kept confidential at one place while answered at other place. Information on related parties has been readily available in public domain and on Zhejiang Sanmei's website as well.
- z. NSR requirements are not met due to absence of key element of initiation is a new shipper review investigation as absence of exports during original period of investigation is not established. The investigation was initiated without this information as not even a declaration is made with regard to this in the application and during oral hearing also; the applicants admitted ignorance on the question whether the applicants had exported to India during the POI for original investigation.
- aa. The applicants made effectively no substantive submissions at the time of oral hearing. The submissions of the applicants were de-facto reduced to an argument that they have filed new shipper review petition and the Authority may grant them individual margin.
- bb. During the public hearing, of the three applicants, one i.e. Zhejiang Sanmei Chemical Products Ltd. has withdrawn its application for seeking individual dumping margin. In view of this, the present investigation cannot be further carried.
- cc. Withdrawal of petition by one entity leaves the other companies, which are related to Zhejiang Sanmei Chemical Products Ltd., with an incomplete value chain. The Designated Authority has denied individual dumping margin in the past when the value chain itself was incomplete.
- dd. The applicants have given contradictory statements in its various submissions. While in one submissions, they have submitted that they have no related parties dealing with subject goods, in other submissions it is mentioned that it has 7 related parties involved in the production and sales of PUC. However, the names

of these companies have been kept confidential. Further, in other submission, it is mentioned that Zhejiang Sanmei has two affiliated producers, while the name of one related producer which is one of applicants has been given; the name of other has been kept confidential. Such unreasonable claims of confidentiality and contradictory statements should not be allowed.

- ee. An essential procedural requirement i.e. completion of value chain remains unfulfilled as one of the affiliated producers has not taken part in the investigation. It is impossible to understand whether the third related producer has exported the subject goods to India or not. There is sufficient ground to deny individual dumping margin to the applicants.
- ff. In the application, the applicants claimed market economy status by merely stating that they fully satisfy various conditions relating to market economy status and determination of fixation of individual dumping margin. No evidence or arguments have been advanced in this regard. They did not file the Market Economy Treatment questionnaire. During the public hearing, the applicants withdrew their claim of market economy treatment.
- gg. The applicants claimed MET in the application without substantiating their claim with any evidence. They did not file the Market Economy Treatment questionnaire response. During the public hearing, the applicants withdrew their claim of market economy treatment. Such pick and choose approach should not be allowed and the applicants should not be given MET.
- hh. No importer has filed importer questionnaire response and thus, the appropriateness of import price cannot be ascertained.
- ii. The requirements under Rule 22 are not met as the applicants merely intended to export while filing the applications which mean that there were no exports by the exports. In Tiles Lugno case, even firm commitment was rejected. It was held that when the review applicants had neither exported nor sold for export during the relevant period of review, they were obvious non-starters and were not eligible to claim new shipper review under rule 22. Thus, the present investigation has been initiated only on the basis of intention of the applications to export. Here it becomes more relevant when one of the applicants has not at all exported during the period of investigation and has withdrawn the application.
- jj. It is not clear that the applicants have made sales prior to the filing of the application for NSR or after making NSR application. In one of their submissions, it has been merely stated that Zhejiang Sanmei has made only five sales to India post levy of anti-dumping duty, with one sale made in year 2016 and other in POI. While the present investigation was initiated on February 27, 2017, the file no./notification no. i.e. No.15/22/2016 makes it clear that the application was made somewhere in 2016. The application filed by the applicants is undated and the applicants have not provided this information even after objections. The lack of fulfillment of condition of sales in between the period after original POI and the application for NSR has been treated as a ground to deny NSR to the applicants in Tiles Lugno Case.

- kk. Zhejiang Sanmei has made merely 4 transactions during the present period of investigation. There is nothing in their submissions to show that the export price reported is bonafide, reasonable, appropriate and reliable, that the volume of exports made are significant enough and not ceremonial exports made to obtain a lower or no dumping margin order.
- ll. The volumes of exports made by the applicants to India are miserably low having regard to the volume of exports by other Chinese producers and consumption in India. In a situation where other Chinese producers could export so significant volumes despite existing anti-dumping duty, the exporter must show why it was not able to export higher volumes during the present period. The entire effort appears highly stage managed. Domestic industry also referred to position in USA with regard to need to establish bonafide sales.
- mm. There were admittedly exports by the applicants in the past. Instead of considering those exports, the present investigation is based on prospective POI, which is inappropriate.
- nn. By the reason of prospective period of investigation, the applicants have been able to manipulate and doctor the data by doing only four transactions at high prices during period of investigation. The concept of prospective POR has been criticized by the CESTAT in Tiles case.
- oo. The purpose of new shipper review is to determine individual dumping margin. Dumping margin being the difference of normal value and export price, in any case, there can be no question of determination of dumping margin when there is either no normal value or no export price. In the present case, there was no export price when the application was filed. Since there was no export price at the time of filing the application, they could not have been any claim of individual dumping margin.
- pp. The rules do not recognize threat of dumping. The dumping has to be actual. Any actual dumping can only be established on the basis of actual normal value and actual export price at the time of application. By the same rationality, there should be exports made before dumping margin can be claimed.
- qq. The Authority may consider determination of normal value on the basis of price of the product in a market economy third country. The domestic industry has sold the product to a large number of third countries. Further, exports to some of these countries have been quite significant. In view of the same, it would be appropriate to determine normal value on the basis of the price of the product in a market economy third country.
- rr. The domestic industry has considered its export price as normal value to determine dumping margin. The domestic industry has offered the basis for normal value of the exporters: on the basis of all exports, top 5 major exports countries, by volume, and top 10 major exports countries, by volume, by domestic industry. The dumping margin is positive and significant.

#### **E. EXAMINATION BY THE AUTHORITY**

18. Rule 22 of the Anti-Dumping Rules provides as follows –

*“22. Margin of dumping, for exporters not originally investigated.*

- (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 from 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 the initiation of the review.”*

19. Article 9.5 of the WTO Agreement states as under –

*“9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a 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 the importing Member during the period of investigation, provided that these exporters or producers can 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. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.”*

20. In terms of the aforesaid Rule, provisions in the WTO Agreement and the past practice of DGTR, a New Shipper Review investigation is to be carried out under following circumstances for the purpose of determining individual dumping margin in respect of any exporter or producer from the subject country attracting ADD:

- i. that the exporter or producer has not exported the product under consideration during the period of investigation, and
  - ii. 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.
21. The Authority has in past dealt with the situation wherein the new shipper review applications were filed after sunset review investigation. It has been the consistent practice of DGTR (erstwhile DGAD) to assess whether the new shipper applicants have exported the subject goods during the period of investigation of all earlier investigations including the original as well as the sunset review investigation.
22. In the instant case, M/s. Zhejiang Sanmei Chemical Ind. Co., Ltd. (Producer/Exporter), M/s Zhejiang Sanmei Chemical Products Co., Ltd (Exporter) and M/s Jiangsu Sanmei Chemical Ind. Co., Ltd (Producer) filed an application before the Authority seeking individual dumping margin and requested for initiation of new shipper review investigation.
23. It was stated in the petition that M/s Zhejiang Sanmei produces R134a and sells it in domestic market as well as exports the same to India and other countries. Zhejiang Sanmei is a regular exporter of the subject goods to India and intend to further export the subject goods through Zhejiang Sanmei Chemical Products Co. Ltd., a trading company, this is why it is included in the present investigation. Zhejiang Sanmei had exported the subject goods prior to POI of SSR investigation and post POI as well, however, they did not export the subject goods during the POI, as defined by the Authority, for SSR investigation. They had written to the Authority seeking individual dumping margin which was not granted by the Authority on accounts of 'nil' exports by the applicant during the POI. Thus, they have applied for individual dumping margin in present NSR.
24. The fact that Zhejiang Sanmei Chemical Ind. Co., Ltd., China PR had not exported the Subject goods during the POI of Sunset Review investigation has been reported by the Designated Authority in Para 25(x) and Para 32 of the Final Findings. Also, Para 6(iv) mentions Zhejiang Sanmei Chemical Ind. Co., Ltd., as one of the producers/exporters who have filed Questionnaire Responses.
25. Relevant extracts of the SSR Final Findings are as under:

**Para 25:** *“(x). Zhejiang Sanmei Chemical Ind. Co. Ltd., a respondent exporter, has exported some PUC prior to POI, but not during the POI. Zhejiang Sanmei Chemical Ind. Co. Ltd., requests the authority to confirm the eligibility to apply for individual dumping margins in terms of Rule 22.”*

**Para 32:** *“As regards to the claims of Zhejiang Sanmei Chemical Ind. Co., Ltd., China PR for individual dumping margins despite nil export during POI, the*

*Authority notes that nil export during POI does not entitle Zhejiang Sanmei for individual margins in present investigation.”*

26. The claims with regard to eligibility of the applicant as new shipper were examined to know whether the company had, directly or indirectly, exported the product to India during the period of investigation of the original investigation. The applicant was asked to establish its claim that the applicant or any of its related company had not exported the product concerned to India in the period of investigation of the original investigation. The Applicant submitted certificates stating that:
- a. The Applicant did not export the subject goods to India during the period of investigation of the original investigation.
  - b. The Applicant have two related producers in China PR but same producers have not exported subject goods to India during the period of investigation of the original investigation and even after of POI.
  - c. The related companies of the Applicant did not engage in the manufacture of the PUC and sold in domestic market.
  - d. The related companies of the Applicant are not related to any exporter or producer in China PR who had exported the subject goods to India during the period of investigation of the original investigation.
  - e. The related companies of the Applicant are not related to any exporters or producers in China PR who are subject to anti-dumping duty.
27. The Authority notes that requirement under Article 9.5 is to show that the Applicant (who is a producer-exporter based in China PR) has not exported the product concerned to India during the period of investigation of the original investigation and is not related to any of the exporters or producers in China PR who have exported the subject goods to India during the period of investigation of the sunset review investigation and who are subject to the antidumping duties on the product concerned. The Applicant has clearly satisfied this requirement that they are not related to any producer/ exporter in China PR who have exported the subject goods to India during the period of investigation of the original investigation or are subject to antidumping duties on the subject goods.
28. During the investigation the Authority neither found any evidence regarding relationship of the Applicant with any of the exporters or producers in China PR, who are subjected to anti-dumping duty nor any material evidence in this regard was brought before the Authority by any of the interested parties. The Authority, therefore, notes that the New Shipper Review investigation was initiated as per provisions laid down in Rule 22 of the AD rules which is in conformity with article 9.5 of the WTO AD Agreement. Further, the Authority also finds that the Applicant is not related to any exporter / producer based in any of the countries on which duty is applicable.

29. As regards the period of investigation, the Authority is well within its bounds to determine a period shorter than 12 months, but longer than 6 months. In the case of a New Shipper, it is not uncommon for a shorter period of time to be considered as the period of investigation. It is pertinent to mention here that the period selected is partially retrospective and partially prospective. The Authority notes the Domestic Producer's concerns regarding the risks of selecting a prospective period of investigation and indeed, the concerns are very valid. However, the factual situation of the present case is clearly distinguishable from the factual situation of the *H&R Johnson (2007)* case cited by the Domestic producers. In the *H&R Johnson (2007)* case, the CESTAT clearly noted the invalidity of the initiation of the new shipper review on the following grounds:

- i. The new shippers had not even begun production or exportation to India at the time of filing the new shipper review application.
- ii. The new shippers were found to be ineligible for initiating a new shipper review under Rule 22.
- iii. The entire period of review was prospective.

30. In the initiation of the subject review, the Authority was mindful of these requirements, as laid down by the CESTAT in *H&R Johnson (2007)* case and carefully considered these issues prior to initiation of the subject review. The Authority noted that the Applicants herein had begun production and exports to India in substantial quantity prior to the filing of the new shipper review application. The period selected is part retrospective and part prospective. Further, given the purport of Rule 22 of the AD Rules, it is noted that in a new shipper review, the entire period of investigation cannot always be retrospective. Thus, the selection of the period of investigation is justified.

31. The Authority has examined the submissions made by various interested parties and information provided by them for making a determination. The Authority notes that the applicants have filed response and replies but have not been able to refute with positive evidence a number of contentions of the domestic industry.

#### **I. Contentions of the Domestic Industry not effectively refuted**

32. The domestic industry has raised issue regarding one questionnaire response filed on behalf of all the three applicants which are independent legal entities. It was argued that the situation has resulted in grossly deficient/incomplete information, as several questions have been answered only for one entity, whereas each question is required to be answered separately for the three entities. The applicants have failed to address this issue during the course of this investigation. The examination of information submitted so far to the Authority revealed that they have in fact only filed a combined response even though there exists several legally independent entities.

33. The applicants have failed to address the issue raised by domestic industry regarding excessive confidentiality claimed on key elements like name of shareholders, related parties involved with the product under consideration, their products and activities among other when the information related to related parties forms the basis of new shipper reviews. This is a NSR and the fact of existence of related parties is extremely important as that determines the basic eligibility of the applicant, the applicant could have been more explicit about this information.
34. The applicants have not justified their contradictory statements regarding related parties dealing with product under consideration mentioned in the petition and their subsequent submissions.
35. It has been mentioned in the petition that the applicants do not have any other related parties dealing with product under consideration and the statement is now clearly a factually incorrect statement. The response shows names of 7 related parties dealing in the subject goods.
36. The applicants have not justified keeping some information confidential at one place and providing the same information at another place. When information on related parties has been readily available in public domain and on Zhejiang Sanmei's website as well, the applicants have justified claiming confidentiality on the same.
37. The applicants have not adequately clarified whether all producers of the PUC are part of the applicants. The information and statements filed shows existence of more producers related to the applicants whose identity has not been disclosed by the applicants, nor such producer has been made part of application. Therefore, the value chain in respect of their exports is not complete. An essential procedural requirement remains unfulfilled as one of the affiliated producers has not taken part in the investigation.
38. The applicants have not sold the subject goods in significant volumes vis-à-vis imports from China during the POI even when the applicants were entitled to provisional assessment and other producers/exporters were suffering antidumping duty. They have exported insignificant volumes which does not even merit individual determination. The entire effort in seeking individual dumping margin appears to lack seriousness on the part of exporter to export.
39. The applicants have not filed supplementary questionnaire response pertaining market economy treatment but have been claiming to be given market economy status.
40. In the beginning the petition was filed on behalf of 3 entities which were combined at the time of filing questionnaire response and subsequently they are stating that only one entity namely Zhejiang Sanmei Chemical Ind. Co., Ltd is relevant for the investigation as they only have produced and exported the subject goods to India. This kind of change of applicants renders the standing of the application questionable.

## **II. Incomplete response/participation/ non-cooperation**

41. One of the applicants i.e. Zhejiang Sanmei Chemical Products Co. Ltd. (Exporter) has not exported during the period of investigation. It was claimed in the application that it intends to export the subject goods along with the other applicants. In their application, it was stated that Zhejiang Sanmei Chemical Ind. Co., Ltd. is a regular exporter of subject goods to India and intends to further export the subject goods through Zhejiang Sanmei Chemical Products Co., Ltd., a trading company and the same was the reason for its inclusion in the present investigation. While future exports are intended to be made through Zhejiang Sanmei Chemical Products Co., Ltd., the company has not exported any material during the present POI leading to a situation where the dumping margin can be determined considering Zhejiang Sanmei Chemical Products Co., Ltd. as one of the exporter. The Authority notes that when the review applicant has neither exported nor sold the goods for exports by others during the relevant period of review, the Authority cannot determine export price and consequently dumping margin under Rule 22.
42. The applicants have claimed that Jiangsu Sanmei Chemical Ind. Co. Ltd., a related producer of Zhejiang Sanmei Chemical Ind. Co. Ltd. and one of the applicants in the present investigation, is only a producer and sells R-134a to Zhejiang Sanmei Chemical Ind. Co. Ltd. and does not export R-134a to India or any third country. The Authority notes that Zhejiang Sanmei Chemical Ind. Co., Ltd. has itself accepted that it has two affiliated producers of subject goods. While they were co-applicants, they have not cooperated with the Authority and have not provided detailed response. Since the two producers in the group are related and engaged in production of PUC, individual dumping margin cannot be determined for the applicants unless the related producer also cooperates with the Authority.
43. The applicants have filed only one consolidated questionnaire response on behalf of all the three applicants which are three separate legal identities. It has been the practice of Authority to consider response by each applicant separately. Even otherwise, the response filed by the applicants at several places refers only to one of the applicants, thus leading to significant deficiencies in the response.

## **III. Non claim of MET**

44. The Authority notes that the applicants claimed the Market Economy Treatment in the application stating that *“The petitioners hereby submit that they fully satisfy various conditions relating to (1) Market Economy Status and (2) determination or fixation of Individual dumping margin and are willing to provide all relevant information to the Designated Authority during the course of the proposed investigations. Further, even if the petitioners do not satisfy market economy status, the same does not prejudice their rights to claim individual dumping margin”*. The Authority accordingly issued questionnaire to assess market economy status of the applicants. The applicants

however did not even file the supplementary questionnaire response during the course of investigation required for Market Economy Treatment and instead requested the Authority to direct the domestic industry to provide its cost information so that the Authority could determine normal value on the basis of estimates of cost of production in market economy country. The applicants have not even provided details of their domestic sales, third countries sales and cost of production ostensibly on the grounds that they are not claiming MET. The Authority notes that even in a situation where the Chinese producers do not file MET questionnaire response, the Authority requires questionnaire response in the form and manner prescribed with regard to details of domestic sales, third countries sales and cost of production. The applicants have however withheld the information from the Authority.

#### **IV. Low volume of exports by Applicants**

45. The Authority further notes that during the POI of present investigation, M/s. Zhejiang Sanmei Chemical Ind. Co. Ltd. has exported a volume of 80 MT of subject goods to India spread over four transactions. The applicants have provided no information whatsoever to refute the claim of the domestic industry that the present volumes of exports by the applicants is meager having regard to total imports of the PUC in India and considering that even other exporters are exporting so significant volumes despite existing antidumping duty. The present volume of exports by the applicants are despite provisional assessment ordered by the Central Government. The applicants have not effectively refuted the allegation of the domestic industry that the intention of the applicant was to somehow get lower or nil duty based on a nominal volume of exports of subject goods to India and thereafter dump the product in India. Nor have the applicants effectively refuted the allegation of the domestic industry that the current import transactions appear to have been stage managed to obtain a favourable dumping margin to facilitate dumping and the volume of exports by the applicants does not seem to be commercially reasonable for the additional ground that the other producers could export so significant volumes despite existing anti-dumping duty. The allegation of the domestic industry that the facts of the entire case smacks of a deliberate arrangement for the sole purpose of taking advantage of antidumping duty through the NSR route is also effectively unrefuted.

#### **V. Insufficient evidence/claim with regard to conditions under 22**

46. The Authority further notes that the applicants lead the Authority to believe through their petition that they do not have any related companies around the world which deals with the subject matter. However, in their EQR and further submissions, they have provided information regarding their related companies dealing with the subject goods. The domestic industry brought to the attention of the Authority that the applicants have one more affiliated producer, as accepted by them in one of their submissions. No exporter questionnaire has been filed by their related producer in the

present investigation. Since, the third related producer has not participated in the present investigations, the application and the exporter questionnaire response filed thereof are treated as incomplete. Thus, the applicants have given contradictory statements which form the basis of a new shipper review.

47. During the public hearing held on 7 June, 2016, the applicants admitted ignorance on the question whether the applicants had exported to India during the POI for original investigation. In the post hearing written submissions or rejoinder submissions or thereafter, the applicants have provided no documentary evidence to establish that the goods produced by the producer concerned were not exported to India during the POI of the original investigations. The applicants merely made a statement in its prayer part of their post hearing written submissions without substantiating the prayer that there were no exports by them during original case POI.

#### **F. POST DISCLOSURE COMMENTS**

48. The post disclosure submissions have been received from the interested parties. The issues raised therein have already been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity the submissions by the interested parties are being examined as below:

##### **I. Submissions by Petitioner Exporter**

49. The Petitioner Exporter made the following submissions:
  - a. The statements in NSR Questionnaire Response and Exporter's Questionnaire Response are not contradictory since the questions about affiliates and affiliated producers are totally different in both the Questionnaires. In Exporter's QR the question asks us to report companies engaged in production and sale of the subject goods of owner/principle shareholder of Zhejiang Sanmei. So, report of 7 affiliated companies' information including Zhejiang Sanmei was made, not only including the companies engaged in production but also including companies share the same shareholders with Zhejiang Sanmei. Not all of Zhejiang Sanmei are producers of PUC and exporters of the same to India. Some of them are trading companies as described clearly in Exporters the statements that "they have 7 related parties" and "they have two affiliated producers/exporters to India" are correct and not contradictory.
  - b. The Exporters Questionnaire does not require all manufacturers and involved in the sale of subject material must file Exporters Questionnaire Responses. Reference is drawn to relevant instruction parts of the EQ. Had the Authority so desired, we would have happily filed responses on behalf of all related companies dealing with the subject material also. Accordingly, it is submitted that the Applicant has neither mislead the Authority nor filed incomplete response.

- c. There is no mandatory requirement about minimum volume of exports to make a New Shipper eligible to get separate rate of ADD. The low volume of export to India cannot be a reason for applying a NSR. The volume of export cannot be a necessary condition to get a separate of duty in a NSR investigation. In the past number of new shipper investigations volume of exports had never been some criteria to deny separate rate of duty to a new shipper. Zhejiang Sanmei is expanding its business globally. But Zhejiang Sanmei had little customer resource in India before. India was really a new market for Zhejiang Sanmei and it could not have large volume of export to India at the beginning. Zhejiang Sanmei wants to become a competitive exporter and develop more customers in India.
- d. As per Section 15 (a) (ii) of the Protocol on the Accession of the People's Republic of China to the World Trade Organization expired on December 11, 2016. After that date, India no longer has a legal basis under the agreements of the World Trade Organization to calculate normal value in anti-dumping investigation of Chinese products using the non-market economy methodology. Any such action would be inconsistent with the requirements of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement") and other covered agreements. We believe that it is the Ministry of Commerce and Industry's obligation as the Investigating Authority to solicit the information that it requires for calculating the dumping margin in accordance with the WTO Rules. Accordingly, grant "market economy status" to China PR based on the development of market economy of China, conduct any normal value calculation in accordance with Article 2 of the Anti-Dumping Agreement; and at the very least, apply the data on costs and prices provided by the Company in this response for the determination of the normal value rather than applying analogue country data in this instigation.
- e. The applicant has filed complete response. It meets all the criteria for grant of separate rate of duty and the same needs to be granted.

## **II. Submissions by the Domestic Industry**

50. The Domestic Industry made the following submissions:

- a. The disclosure statement mentions that the applicants have stated at the time of application that they have neither exported directly nor have its affiliated companies ever exported the subject goods to India during the POI of SSR vide which duties were recommended and are still in force. The domestic industry submitted that while with respect to Zhejiang Sanmei Chemical Ind. Co. Ltd. and Zhejiang Sanmei Chemical Products Co. Ltd., it has been mentioned in the petition that these have neither exported directly nor its affiliated companies have ever exported the subject material to India during the POI of the SSR investigations, no such declaration has been made with respect to Jiangsu Sanmei Chemical Ind. Co. Ltd. In the petition, towards the end, it has been mentioned that the petitioners did not export the subject

goods during the period of SSR Investigation i.e. 1stOct, 2013 to Sept. 31, 2014 and that the same has been duly reported in the final findings of the SSR investigation dated 30th May, 2016. In such a situation, the domestic industry fails to understand that where such a claim was made by the applicants in the petition.

- b. The disclosure statement mentions that the applicants provided certification regarding no export during the period of investigation of the original investigation. The said certification is noted as one of the criteria for the initiation of new shipper review. The domestic industry contended that (i) such declaration was not made in the petition and (ii) mere declaration is not sufficient for establishing facts.
- c. The domestic industry requested to consider its claim regarding taking into consideration its export price to third countries as normal value to determine dumping margin.
- d. The disclosure statement mentions that Zhejiang Sanmei has justified its confidentiality claim on information on related parties which is available in its website as well. The domestic industry submitted that the applicants have not justified their claim and made no substantive argument.
- e. The domestic industry contended that only one affiliated producer of Zhejiang Sanmei Chemical Ind. Co., Ltd. i.e. Jiangsu Sanmei Chemical Ind. Co. Ltd. is a co-applicant in the present investigation and not the other affiliated producer as mentioned in the disclosure statement. In fact, the applicants have conveniently claimed confidentiality on even the name of the other producer without any good cause.
- f. The applicants in the prayer of their written submission only made a statement regarding no exports during POI of original investigation. Prayer is only a conclusion and not sufficient to show that the applicants have in fact established such facts. Further, such a declaration is not on behalf of the related producers/exporters dealing in the production and/or sales of the PUC.

### **III. Examination by the Authority**

51. With regard to the claim of the domestic industry regarding initiation of the NSR investigation without the fulfillment of essential criteria, the Authority notes that the investigation was initiated on the basis of prima facie evidence and on the basis of facts available in the record. At the stage of initiation, the Authority does not require information of the quality and quantity as is required at the stage of final findings. The purpose of the initiation was to gather information and views of various interested parties and thereafter come to a conclusion.
52. With regard to the claim of the domestic industry regarding taking into consideration its export price to third countries as normal value to determine dumping margin, the Authority notes that the same is not necessary, as the Authority is not satisfied with regard to grant of individual dumping margin. Determination of normal value becomes relevant only when the Authority decides to recommend individual ADD on the exports made by the applicants.

53. The Authority further notes that most of the submissions made by the applicants and domestic industry are mere reiterations of their earlier submissions/arguments which have been adequately addressed in the present findings.
54. A large number of contentions of the domestic industry remained unrefuted. The DI had alleged that the applicants have made insignificant exports inspite of a lower rate of provisional duty available to them indicating their non-seriousness. The Authority noted that the imports of the subject goods from China are in the range of 1,100 MT during POI whereas the applicants have made only 4 transactions for a total quantity of 80 MT only. They had also exported a small quantity during the previous year which further indicates their lack of interest whether the specific rate of duty is available to them or not.

#### **G. CONCLUSION AND RECOMMENDATION**

55. Based on the above stated facts and examination, the Authority concludes that the New Shipper Review applicants i.e. M/s Zhejiang Sanmei Chemical Ind. Co. Ltd. (Producer/Exporter), Zhejiang Sanmei Chemical Products Co. Ltd. (Exporter) and Jiangsu Sanmei Chemical Ind. Co. Ltd. (Producer) have not established that their application in the present form is maintainable and have not been able to justify their claim for individual dumping margin in terms of Rule 22 of the Anti Dumping Rules. The Authority, therefore, terminates the present investigations without determination of individual dumping margin for the applicants and recommends that the exports of the subject goods produced and exported by the applicants, during the period from the date of initiation of the present NSR investigation i.e. 27.2.2017, recommending provisional assessment may be subjected to levy of Anti-dumping Duty @ 1.22 US \$ per KG, as imposed earlier on the imports of the subject goods, originating in or exported from China PR, until the date of validity of the said duty, notified earlier vide Notification No. 30/2016-Customs (ADD) dated 11<sup>th</sup> July, 2016.
56. An appeal against the orders of the Central Government arising out of this finding shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

(Sunil Kumar)  
Additional Secretary and Director General