

To be published in Part-I Section I of the Gazette of India Extraordinary

**F. No. 7/33/2020-DGTR
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building,5, Parliament Street, New Delhi – 110001**

Dated: 3rd August, 2021

NOTIFICATION

FINAL FINDINGS
Case No.-AD-AC-05/2020

Subject: Anti-Circumvention investigation concerning circumvention of anti-dumping duty imposed on imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” originating in or exported from China PR, by imports of “Ceramic Tableware and Kitchenware, excluding Knives and Toilet Items” from Malaysia.

1. **F.No. 7/33/2020-DGTR** – 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 the Rules) thereof;

A. BACKGROUND OF THE CASE

2. The Designated Authority (hereinafter referred to as the “Authority”) vide Notification No.14/05/2016-DGAD dated 4th May, 2017 issued preliminary finding recommending imposition of provisional duties on “Ceramic Tableware and Kitchenware, excluding knives and toilet items” originating in or exported from China PR .The preliminary duty was imposed by the Ministry of Finance vide their Notification No.27/2017-Customs (ADD) dated 12th June, 2017. The Authority, through antidumping investigation and vide Final Findings Notification F.No.14/05/2016-DGAD dated 8th December, 2017, (“Original investigation”) had earlier recommended imposition of anti-dumping duty on imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” originating in or exported from China PR, and the definitive anti-dumping duty was imposed by the Ministry of Finance, vide Notification No. 4/2018-Customs (ADD) dated 21st February 2018.

Present Anti-circumvention investigation

3. Whereas, Ceramic Tableware & Kitchenware Manufacturers Association (hereinafter referred to as the “Applicant” or “Applicant association”) filed an application before the Designated Authority (hereinafter also referred to as the “Authority”), on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred 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 as the “Rules”), alleging that these anti-dumping duties imposed on imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” (hereinafter also referred to as “product under consideration” or “PUC” or “subject goods”), originating in or exported from China (hereinafter also referred to as the “subject countries”) are being circumvented by way of imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” exported from Malaysia [hereinafter also referred to as “Product Under Investigation” or (“PUI”)].
4. Ceramic Tableware & Kitchenware Manufacturers Association Limited (hereinafter also referred to as the “Applicant” or “Applicant Association”) filed an application requesting extension of the anti-dumping duties imposed on imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” from China PR to the imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” processed and exported from Malaysia (hereinafter also referred to as “Product Under Investigation” or “PUI”), in accordance with Section 9A(1A) of the Customs Tariff Act 1975 read with Rule 25 and 26 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The Applicant contended that there is circumvention of anti dumping duties, wherein the product under consideration produced in China PR is being processed in Malaysia and thereafter being declared as originating in Malaysia and exported to India. It was contended that the processing being undertaken in Malaysia is incremental, enabling the exporter to declare country of origin as Malaysia and avoid payment of anti-dumping duties. Therefore, it has been claimed that this constitutes circumvention of anti dumping duty, effect of which is evident from the change in the pattern of trade and undermining remedial effects of the Anti-dumping duties being felt by the domestic industry.
5. Whereas, in view of a duly substantiated application filed by the Applicant under Rules 26 (1), the Authority initiated the investigation vide Notification No. 7/33/2020-DGTR dated 25th September, 2020 to determine the existence and effect of the alleged circumvention of the ADD levied and to consider recommendation of extension of the exiting antidumping duty on the imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” from Malaysia, in accordance with relevant AD Rules.

B. PROCEDURE

6. The procedure described herein below has been followed with regard to the subject investigation.
 - i. The Authority notified the Embassy of Malaysia about the initiation of an Anti-Circumvention petition in accordance with the Act and the Rules.
 - ii. The Authority issued a public notice dated 25thSeptember 2020, published in the Gazette of India, Extraordinary, initiating anti-circumvention investigation concerning imports of product under investigation (hereinafter also referred to "PUI" from Malaysia (hereinafter also referred to as the circumventing country).
 - iii. The Authority forwarded a copy of the initiation notification to the Embassy of Malaysia in India, known exporters/producers of PUI, importers in India as per information available in the application.
 - iv. The Authority wrote to the known exporters/ producers of the PUC/PUI and requested them to file their responses in the prescribed questionnaire and make their views known in writing within the time limit prescribed. A copy of the letter and questionnaires sent to the exporters were also sent to the Embassy of Malaysia, along with a list of known exporters/ producers, with a request to advise the exporters/ producers to respond to the Authority within the prescribed time.
 - v. A copy of the non-confidential version of the application filed by the petitioner was sent to the Malaysian producer/ exporters, and the Government of Malaysia. A copy of the non-confidential version of the application was also made available to the interested parties, on request, through public file.
 - vi. The Authority sent questionnaires to elicit relevant information to the following known producers/exporters in Malaysia in accordance with Rule 6(4) of the AD Rules:

Malaysia

| | | | |
|-----|------------------------------------------|-----|---------------------------------|
| 1. | Actechna Global SDN.BHD | 2. | Advance Smart Traders SDN BHD |
| 3. | Aruni Enterprises SDN BHD | 4. | Gamas Industry |
| 5. | Haifal Enterprise SDN BHD | 6. | M/S Segmant Traders |
| 7. | Morning Mist SDN BHD | 8. | M/S Active SDN BHD |
| 9. | Oriental Ceramic Industry | 10. | Pax Union Resources (M) SDN BHD |
| 11. | PercetakanPmi SDN BHD | 12. | Taeyang World SDN BHD |
| 13. | Tenmoku Pottery (M) SDN BHD | 14. | Vibrant Sky SDN BHD |
| 15. | Yitong Technologies | 16. | Zeolite Mansford SDN. BHD. |
| 17. | Sanroc ('M') SDN BHD | 18. | Granics Holdings SDN BHD |
| 19. | Seed Porcelain And Ceramic ('M') SDN BHD | 20. | GBH Crown Lynn SDN BHD |

- vii. In response to the initiation of the subject investigation, Taeyang World Sdn. Bhd. (Producer/Exporter, Malaysia), filed an exporter questionnaire response. The said exporter however, has submitted a highly deficient response and failed to provide the requisite information as explained in detail herein below, and is thus being treated as non-cooperative. Submissions made, wherever found relevant, have been examined.
- viii. Questionnaires were also sent to the following known importers, users and Associations of the subject goods in India seeking necessary information in accordance with Rule 6(4) of the AD Rules.

| | | | |
|----|--------------------------------|-----|-----------------------------------|
| 1. | K.S.Overseas, | 2. | East Coast Distributors Pvt. Ltd. |
| 3. | Raj Agencies | 4. | YSR Industries Pvt. Ltd. |
| 5. | Wal-Mart India Private Limited | 6. | Whitegold Trading Co. Pvt. Ltd. |
| 7. | ICC Realty (I) Pvt. Ltd. | 8. | Future Retail Limited |
| 9. | Krishna Enterprises | 10. | Karma Trading |

- ix. In response to the initiation notification, none of the above-mentioned importers, users and Associations have responded or filed the questionnaire response.
- x. Following companies who are producers of the subject goods have supported the application against circumvention of measures imposed on the PUC.
- a. M/s Clay Craft India Pvt. Ltd.
 - b. M/s Ceramic Tableware Pvt. Ltd.
 - c. M/s Umberto ceramics International Pvt. Ltd.
 - d. M/s Raghuvar India Pvt. Limited
 - e. M/s Feather Touch Ceramics
 - f. M/s Shan Tableware Pvt. Ltd.
 - g. M/s Conch Ceramic Pvt Ltd
 - h. M/s Central Glass & Ceramic Research Institute (CSIR)
 - i. M/s Eva Ceramics
 - j. M/s Haryana Potteries
 - k. M/s Maa Shakti Ceramics
 - l. M/s Mudrika Ceramic (I) Ltd
 - m. M/s Naresh Potteries
 - n. M/s R.K. Potteries
 - o. M/s SCK Insulator
 - p. M/s Sonaki Ceramic
- xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. Submissions made by all the interested parties to the extent considered relevant at this stage have been taken into account in final findings.
- xii. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the

Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

- xiii. Further information was sought from the applicant and other interested parties to the extent deemed necessary.
- xiv. Verification of the domestic industry was conducted to the extent considered necessary for the purpose of the present investigation.
- xv. Investigation was carried out for the period starting from April, 2019 to March, 2020 (12 months) (hereinafter referred to as the “period of investigation” or “POI”). The examination of trends, in the context of injury analysis covered the period from 2016-17, 2017-18, 2018-19 and the POI.
- xvi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the details of imports of subject goods during the last four years, including the period of investigation, and the same was received by the Authority. The Authority has used the DGCI&S imports data for the computation of the volume and the value of imports and injury analysis.
- xvii. In accordance with Rule 6(6) of the Anti-Dumping Rules, the Authority provided opportunity to the interested parties to present their views orally in hearing held on 23rd February, 2021. All the parties were requested to submit their written submissions and the rejoinder, to the written submissions latest by 2nd March, 2021 and 9th March, 2021 respectively.
- xviii. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this final findings.
- xix. Wherever an interested party has refused access to, or has otherwise not the provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded its observation on the basis of the facts available.
- xx. A Disclosure Statement was issued on 29.06.2021 containing essential facts under consideration of the Designated Authority, granting time up to 06.07.2021 to furnish comments, if any, on the Disclosure Statement. The Authority has considered post disclosure comments received from the interested parties appropriately.
- xxi. *** in this disclosure statement represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxii. Exchange rate considered for the POI for conversion of USD to Indian Rupees is 1USD=Rs. 71.65.

C. PRODUCT UNDER CONSIDERATION/ PRODUCT UNDER INVESTIGATION AND LIKE ARTICLE

PRODUCT UNDER CONSIDERATION

C.1 Views of the Domestic Industry

7. The domestic industry has made the following submissions with regard to the scope of the product under consideration and the like article:
- i. The product involved in the previous investigation and the present investigation is “Ceramic Tableware and Kitchenware, excluding knives and toilet items”.
 - ii. PUC falls within Chapter 69 of the Custom Tariff Act, 1975 under custom sub-heading 6911 and 6912 of the Customs Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.
 - iii. There is no known difference in the subject goods produced by the domestic industry and the subject goods imported into India. They are comparable in terms of the technical specifications, quality, functions or end-uses. The two are technically and commercially substitutable. Hence, should be treated as like articles in accordance with the Rules.

C.2 Views of the Opposing Interested Parties

8. None of the exporters, importers, consumers and other interested parties have filed any comment or submissions with regard to the product under consideration and like articles.

PRODUCT UNDER INVESTIGATION (PUI)

C.3 Views of the Domestic Industry

9. The product under investigation in case of Malaysia is “Ceramic Tableware and Kitchenware, excluding knives and toilet items” originating in or exported from Malaysia (product under investigation or PUI). Classified under 6911 and 6912, and is the object of circumvention in the present investigation.
10. The producer in China is exporting the product under consideration to Malaysia, and the exporter from Malaysia is exporting the product under investigation to India. The value addition being carried out in Malaysia is woefully below the conditions prescribed under the law. The exporter from Malaysia is not availing even customs duty concession available under the trade agreement between India and ASEAN which itself establishes that the value addition is below the conditions prescribed under the trade agreement. On facts, the value addition is negligible, leave aside the levels prescribed under the law.

C.4 Views of the Opposing Interesting Parties

11. None of the exporters, importers, consumers and other interested parties have filed any comments or submissions with regard to the product under investigation.

C.5 Examination by the Authority

12. The present investigation is an anti-circumvention investigation of duties imposed on imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” originating in or exported from China PR. Therefore, the scope of the product under consideration in the present investigation, remains the same as defined in the last conducted investigation, i.e. final findings dated 08.12.2017, which is reproduced herein below:

“7. The product under consideration in the present investigation is defined as “Ceramic table wares and kitchen wares, excluding knives and toilet items” (hereinafter referred to as ‘subject goods’ or PUC).

8. It is noted that bone china, stoneware and porcelain-ware all constitute ceramic products and therefore the product under consideration includes kitchenware and tableware of bone china, stone and porcelain. Ceramic tableware and kitchenware products are used for the purpose of eating, drinking and serving food and beverages in homes and hotels.

19. Subject goods are classified under Chapter 69 of Customs Tariff Act, 1975. It is imported under various subheadings under HS code 6911 and 6912. However, the HS codes are indicative only and product description is the determining factor for the purpose of present investigation.”

13. The applicant contended that there is circumvention of duties, wherein the product under consideration produced in China is being processed in Malaysia and thereafter being declared as originating in Malaysia and exported to India. It was contended that the processing being undertaken in Malaysia is incremental, enabling the exporter to declare country of origin as Malaysia and avoid payment of anti-dumping duties. Therefore, it has been claimed that this constitutes circumvention of anti dumping duty, effect of which is evident from the change in pattern of trade and undermining remedial effects of Anti-dumping duties being felt by the domestic industry.
14. The Authority notes from the information on record that the subject good produced by the domestic industry is “like article” to the goods imported from Malaysia. The subject goods produced by the Indian industry and imported from Malaysia are comparable in terms of technical specifications, functions or end-uses product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

15. Further, in the present anti-circumvention investigation the Authority has considered the product under investigation (PUI) as “Ceramic Tableware and Kitchenware, excluding knives and toilet items” originating in or exported from Malaysia also referred to as “Product under Investigation” or “PUI” classified under sub-heading no 6911 and 6912 of the Customs Tariff Act.
16. The above-stated classification of the product under investigation considered, however, is indicative only and in no way binding on the scope of the present investigation.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1 Views of the Domestic Industry

17. The domestic industry has made the following submissions with regard to the domestic industry and standing:
 - i. Ceramic Tableware & Kitchenware Manufacturers Association has filed the application for anti-circumvention investigation.
 - ii. The following producers have expressed their concern on the circumvention of the ADD and have requested for the extension of the current ADD on imports of the product under consideration from China to imports of PUI from Malaysia:
 - a. M/s Clay Craft India Pvt. Ltd.
 - b. M/s Ceramic Tableware Pvt. Ltd.
 - c. M/s Umberto ceramics International Pvt. Ltd.
 - d. M/s Raghuvar India Pvt. Limited
 - e. M/s Feather Touch Ceramics
 - f. M/s Shan Tableware Pvt. Ltd.
 - g. M/s Conch Ceramic Pvt Ltd
 - h. M/s Eva Ceramics
 - i. M/s Haryana Potteries
 - j. M/s Maa Shakti Ceramics
 - k. M/s Mudrika Ceramic (I) Ltd
 - l. M/s Naresh Potteries
 - m. M/s R.K. Potteries
 - n. M/s SCK Insulator
 - o. M/s Sonaki Ceramic
 - iii. CSIR-Central Glass & Ceramic Research Institute, a government body providing R&D in glass and ceramic for economic, environmental and societal benefit, has also expressed support to the application and to the extension of duties.
 - iv. Reliance is placed on Authority’s practice and understanding on the scope of the domestic industry and standing in previously conducted anti-circumvention investigations. In the final finding of anti-circumvention investigation concerning ADD imposed on imports of jute sacking bags from Bangladesh dated 19th March 2019, the Authority held that test of 25% and 50% are not per se applicable under

rule 26. Further, in the final findings of anti-circumvention investigation concerning cold rolled steel from China PR, Korea, European Union, South Africa, Taiwan, Thailand and USA dated 18th August 2017, it was held that test of 25% and 50% are not per se applicable in circumvention investigations. Notwithstanding, the applicant satisfies the standing requirement and constitutes the domestic industry within the meaning of the AD Rules.

D.2 Views of the other Interested Parties

18. None of the exporters, importers, consumers and any other interested parties has filed any comment or submission with regard to the standing of the domestic industry.

D.3 Examination by the Authority

19. The application has been filed by the Ceramic tableware and Kitchwenware Manufacturers Association.
- i. Companies who are members of the Association and who have provided relevant information are:
 - a. M/s Clay Craft India Pvt. Ltd.
 - b. M/s Ceramic Tableware Pvt. Ltd.
 - ii. Companies who are members of the Association and who have supported the petition
 - c. Mudrika Ceramic (I) Ltd
 - iii. Companies who are not members of the Association and who have supported the petition
 - d. M/s Umberto ceramics International Pvt. Ltd.
 - e. M/s Raghavar India Pvt. Limited
 - f. M/s Feather Touch Ceramics
 - g. M/s Shan Tableware Pvt. Ltd.
 - h. M/s Conch Ceramic Pvt Ltd
 - i. M/s Eva Ceramics
 - j. M/s Haryana Potteries
 - k. M/s Maa Shakti Ceramics
 - l. M/s Naresh Potteries
 - m. M/s R.K. Potteries
 - n. M/s SCK Insulator
 - o. M/s Sonaki Ceramic
20. It is noted that two members of the applicant Association, M/s Clay Craft India Pvt. Ltd. And M/s Ceramic Tableware Pvt. Ltd., have submitted information on capacity, production, sales value and volume.

21. Information on record shows that the production by the M/s Clay Craft India Pvt. Ltd. And M/s Ceramic Tableware Pvt. Ltd. Who are members of applicant Association constitute approximately 30% of the total Indian production, and the petition is supported by 42% of the Indian production. These two domestic producers i.e. M/s Clay Craft India Pvt. Ltd. And M/s Ceramic Tableware Pvt. Ltd are considered as eligible domestic industry in terms of Rule 2 (b). It is however, noted that in any case, the test of 25% and 50% are not per se applicable for an investigation initiated under Rule 26.

E. EVIDENCE OF CIRCUMVENTION

E.1 Views of the Domestic Industry

22. The following submissions were made by the domestic industry:
- i. The PUI of Ceramic tableware and kitchenware, excluding knives and toilet items exported from Malaysia is the object of circumvention in the present investigation. Under the Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) and Asean-India Free Trade Agreement (AIFTA), the PUI is exempted from payment of custom duties.
 - ii. Under Annexure 5 and 6, it is seen that significant imports consigned from Malaysia are entering the Indian market after payment of full customs duty.
 - iii. Exporters from Malaysia are not able to fulfil the conditions prescribed to claim country of origin and value addition under MICECA and are not claiming any concession on applicable duties.
 - iv. EU Regulation 2019/2131 found that anti-dumping duty imposed on imports of ceramic tableware and kitchenware originating in China is being circumvented. Exporters in China were printing misleading information regarding country of origin, which was destined for export to a third country outside EU that had also imposed ADD on China.
 - v. China's circumvention has resulted in (a) loss of Indian industry's market share in demand; (b) significant price undercutting; and (c) dumping margin.
 - vi. One of the exporters, namely Taeyang World Sdn. Bhd., had misled the Authority by statements made on its website to claim that it is a producer but in fact, it is merely a trader and does not undertake production within the meaning of the circumvention law. Its EQR (E.4 (a)) states that it is involved in distribution channel in India, which raises suspicion.
 - vii. Authority may investigate (a) source of raw materials; (b) value addition carried out by the exporter as it does not have sufficient manufacturing facilities. Authority may examine if exporter is actually 'producing' the subject goods or is merely processing Chinese goods.
 - viii. Yitong technologies has been provided as another distribution channel for overseas, however, its name while providing sales channel to India has not been disclosed. Authority may verify their data.

- ix. From their website, Yitong technologies is a part of China-based Yitong Industries Co. Ltd./Dongguan Yitong Arts and Crafts Co. Ltd. Which manufactures sublimation mugs. The link of the exporter with this Chinese company cannot be denied. It seems Taeyang is procuring Chinese material and routing it from Malaysia.
- x. As per EQR (Exporter Questionnaire Response), Taeyang exports to Egypt, Indonesia, Turkey and Brazil other than India, have imposed duties on Chinese ceramic tableware.
- xi. Authority may inspect and verify the capacity of 8 million pieces per year reported, as the domestic industry suspects it to be an exaggeration.
- xii. Authority may consider the (a) intention of exporters and importers; (b) adverse impact of circumvention on the imposed duty; (c) nature of circumvention; (d) value addition in the process by exporters, if any; and I relevance and importance of knowledge with the exporters and importers, for the present anti-circumvention investigation.
- xiii. As per para C.4(ix), exporter stated that Taeyang Distribution Services Singapore has been appointed as the marketing agent in India, Pakistan, Sri Lanka and Bangladesh. However, YitongTechnologies exported product to India, which is merely a Chinese company engaged in producing sublimation mugs. Suppression of such vital facts raises serious question on the claimed status of the exporter as a producer.
- xiv. The selling price is low and significantly below the normal value.
- xv. The normal value should be determined based on the normal value originally established.
- xvi. While it is justified that an exporter explores market opportunities, the exporter cannot resort to circumvention practices in order to gain market access. The responding exporter has resorted to circumvention practices in order to gain market access, and not genuine exports of their own production.

E.2 Views of the Opposing Interested Parties

- 23. The opposing interested party, namely Taeyang World SdnBhd, made submissions as under:
 - i. Taeyang Distribution Services and Yitong Technologies were engaged to carry marketing activities in India, Sri Lanka, Pakistan and Bangladesh. Both are not related to each other nor related to Taeyang World. The service was terminated on 31st December 2020.
 - ii. The exporter is concerned about the nature of the investigation and applicant's motive in seeking information about cost, suppliers and clients around the world.
 - iii. The company started exporting from 2014, and went through tough competition to build its clientele world over.
 - iv. The data requested by the Authority is confidential and important for core survival, and therefore cannot be shared with the Authority.

- v. The exporter is not involved in dumping and the selling price is in the range of USD 0.35 to USD 0.45.
- vi. The exporter is unclear whether this investigation is an anti-dumping investigation or anti circumvention investigation.
- vii. The exporter has no idea why the applicant has mentioned EU case because that was not the market where the exporter is selling its product. To rebut applicant's argument that Taeyang's export markets such as Brazil, Indonesia, Egypt and Mexico have imposed duties on China, it is stated that at least EU is not their market. Any importer looks for alternative supplier in order to sustain business.
- viii. Applicant brought this to action to monopolise Indian market which would lead to quality and price issue.
- ix. Taeyang in Malaysian market also facing competition from China and is improving variety and quality of products to sustain.

E.3 Examination by the Authority

24. (1) The Authority noted that the submissions made by various interested parties and the relevant provision of the Act/Rules as under:

“Section 9A(1A) of the Customs Tariff Act Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.”

Rule 25 of Anti-Dumping Rules:

“25. Circumvention of anti-dumping duty.- (1) Circumvention shall be considered as a change in the pattern of trade between any country and India or between individual companies in any country subject to measures and India, as a result of a practice, process or work for which there is insufficient cause or economic justification other than the imposition of the duty; and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities or both of the like product; and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary with appropriate changes or adjustments or in accordance with the provisions of rule 10.

(2) The practice, process or work referred to in the sub-rule (1) includes, inter alia,-

(a) where an article subject to anti-dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in any other country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping duty in force if, -

(i) the operation started or increased after, or just prior to, the anti-dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and

(ii) the value added to the inputs brought in, during the assembly or completion operation, is less than 35% of the manufacturing cost:

Provided that for calculation of value addition, expenses on account of procurement of technology, such as patents, copyright, trademark, royalty, technical know-how, consultancy charges, etc., shall not be included in the value of the parts brought in.

Explanation I. – 'Value' means the cost of assembled, complete or finished article less value of imported parts or components.

Explanation II. – For the purposes of calculating the 'value', expenses on account of payments relating to intellectual property rights, royalty, technical know-how fees and consultancy charges, shall not be taken into account.

(b) where an article subject to anti-dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti-dumping duty in force if the alteration of the description or name or composition of the article subject to anti-dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any;

(c) where an article subject to anti-dumping duty imported into India through any exporter or producer or country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through any exporter or producer or country not subject to anti-dumping duty;

(d) any other manner whereby the anti-dumping duty so imposed is rendered ineffective."

25. For the purposes of examination of imports of both PUC and PUI, the Authority has considered transaction wise data of DGCI&S and DG System.

26. The Authority noted that the AD measure is producer/exporter specific. The producers/exporters subjected to an AD investigation need to provide relevant data/information so that the Authority can make a determination. The Authority notes that the sole exporter from Malaysia who has responded in the present investigation has preferred non-cooperation, and has not provided all the relevant information. The Authority notes that while the exporter has not filed a complete questionnaire response, the Authority wherever necessary has considered the exporter's data/submission, in this final findings.
27. The Authority sent questionnaires to the known producers/exporters from the circumventing country, advising them to provide information in the form and manner prescribed by the Authority. Taeyang World Sdn. Bhd., an exporter from Malaysia filed the Exporter Questionnaire Response. However, the Authority for the following reasons finds that the response is grossly inadequate to ascertain relevant facts for the purpose of the present investigation:
- a. At para E.4(a) of its response, the exporter has stated that Taeyang Distribution Services is involved in its distribution of goods in India. However, the said company has not filed response before the Authority. Instructions of the Authority as provided in the questionnaire are stated herein below:
- "6. Where a parent, subsidiary or any other related entity located in India is involved in the production, sales, marketing or support service of the product under consideration and/or product under investigation to the India, a separate questionnaire has to be completed for each such related company concerned.*
- 7. Where a parent, subsidiary or any other related company located outside India is involved in the sales of the product under consideration or product under investigation domestically or to India or is producing the product under consideration or product under investigation, this questionnaire has to be completed separately by each such entity/company in question."*
- b. It is seen that incorrect and incomplete facts have been presented by the exporter. At paras C.4(ix) and E.4(a) of the Exporter Questionnaire Response filed, it has been stated that PUI enters India via Taeyang Distribution Services or Taeyang World directly. While YitongTechnologies was not stated to have been part of the distribution channel to India, it was seen to have been declared as part of sales channel under "overseas market" under Appendix D-6. However, upon the applicant's submission that Yitong Technologies had exported to India and any submission to the contrary is misleading, the exporter then admitted in its written submission that Yitong Technologies was involved to carry marketing activities in India as well. Therefore, as cited above,

considering the Authority's instruction, Yitong Technologies should have also filed a separate response before the Authority.

- c. The domestic industry submitted that sufficient evidence is publicly available showing that Yitong Technologies is part of China-based Yitong Industries Co. Ltd. Dongguan Yitong Arts and Crafts Co. Ltd. Which manufactures sublimation mugs. The exporter has neither provided some evidence to refute this, nor established that it is a producer of the product under investigation from domestic raw material and is not a mere processor.
- d. The domestic industry contended, and the exporter has admitted in other words that markets of countries such as Brazil, Indonesia, Egypt and Mexico, targeted by them have imposed duties on the subject goods from China.
- e. The Authority informed the exporter to rectify the deficiencies vide email dated 10-02-2021. However, the exporter did not respond nor clarified nor rectified the deficiencies raised.

28. In view of the above, the Authority considers it appropriate not to accept the response filed by Taeyang World Sdn. Bhd..

E.4 Change in Pattern of Trade

29. The Authority has examined the stipulated criteria on shift in the trade pattern to PUC from PUC to PUI, whether change in trade pattern is stemmed from an economic justification or is on account of the levy of ADD, in accordance with Rule 25(1).

30. The change in pattern of trade has been analysed from 2016-17 to the POI, analysing the volume of imports of the PUC and PUI-I.

| Years | Imports of PUI from Malaysia (MT) | Imports of PUC from China PR (MT) |
|---------|-----------------------------------|-----------------------------------|
| 2016-17 | - | 16,310 |
| 2017-18 | 2,212 | 12,809 |
| 2018-19 | 4,843 | 9,506 |
| POI | 4,787 | 11,450 |

31. It is seen that imports from Malaysia that were otherwise non-existent till 2016-17. The imports have become significant since 2017-18 and further increased in 2018-19 and thereafter declined marginally during POI. At the same time, imports from China declined till 2018-2019 and thereafter slightly increased in POI.

E.5 Justification Economic or Otherwise Other than Imposition of Anti-Dumping Duty

32. It is noted that the imports from Malaysia are allowed for concessional customs duty under the Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) and Asean-India Free Trade Agreement (AIFTA), and therefore, if the goods are wholly produced in Malaysia, the value addition may be beyond the value addition condition prescribed under the trade agreement. In this investigation, the exporter has not fully cooperated to enable the Authority to verify adequately and determine whether value addition claimed by the exporter is sufficient and as prescribed under Rule 25(2)(a)(ii). Further, none of the other producers/exporters have participated in the present investigation. Because of absence of sufficient cooperation, the Authority could not, therefore, ascertain whether PUI exports to India made during the POI do not constitute goods produced in China, and are processed in Malaysia before exporting to India within the meaning of Rule 25. Further, available evidence shows that a significant proportion of the goods were exported to India without even claiming concessional duties.
33. The Authority notes that change in pattern of trade appears to be a result of imposition of ADD on imports from China.

E.6 Assessment of effect of circumvention on existing Anti-dumping measures and Domestic Industry.

34. An essential aspect in an anti-circumvention investigation is to ascertain whether remedial effects of the anti-dumping duty imposed earlier are being undermined. The Authority therefore examined the manner in which and to the extent the circumvented products are undermining the duty imposed and thereby rendering such duty as redundant. The Authority has examined whether the remedial effects of anti-dumping duties are undermined in terms of market share and price undercutting due to the imports of the product under investigation from Malaysia.

E.7 Market share assessment

35. The Authority has examined the market share of the demand of the subject goods in India and is provided as under:

| Market Share in Demand | Unit | 2016-17 | 2017-18 | 2018-19 | POI |
|---------------------------------------|--------------|----------------|----------------|----------------|------------|
| Sales of DI | % | *** | *** | *** | *** |
| | <i>Index</i> | <i>100</i> | <i>110</i> | <i>126</i> | <i>110</i> |
| Sales of other Indian industry | % | *** | *** | *** | *** |
| | <i>Index</i> | <i>100</i> | <i>97</i> | <i>99</i> | <i>99</i> |
| Subject Country – Malaysia | % | *** | *** | *** | *** |

| | | | | | |
|------------------------------|--------------|--------|--------|--------|--------|
| | <i>Index</i> | - | 100 | 216 | 212 |
| Country attracting ADD China | % | *** | *** | *** | *** |
| | <i>Index</i> | 100 | 76 | 55 | 66 |
| Other Countries | % | *** | *** | *** | *** |
| | <i>Index</i> | 100 | 268 | 245 | 158 |
| Total Demand Share | % | 100.00 | 100.00 | 100.00 | 100.00 |
| | <i>Index</i> | 100 | 100 | 100 | 100 |

36. It is seen that since imposition of duties in 2017-18, imports from Malaysia started and captured a market of 5.74%, whereas that same year, the domestic industry could only increase its share by 1.43%. The Malaysian imports have reached level of 12.16% by the POI the and share of China PR has declined by almost the same proportion. It is thus seen that despite the imposition of duties, the Indian industry has not been able to recover its market share. Rather, the Indian industry lost further market.

F. ASSESSMENT OF DUMPING MARGIN

F.1 Determination of Normal Value

37. Since none of the exporters in Malaysia have adequately cooperated with the Authority by submitting a complete and acceptable questionnaire response, and considering the provisions of Rule 25, the normal value has been determined on the basis of normal value previously established, and without any adjustment. The Authority notes that the exporter has not sufficiently cooperated to establish that there is a need for adjustment to the normal value previously determined. The Authority further notes that considering the nature of the product, it is not necessary to adjust the normal value for possible changes in the costs on account of raw materials.
38. In view of the same and considering insufficient cooperation and participation from the Malaysian producers, the Authority has determined normal value on the basis of normal value previously established at the time of original investigations, and without any modification. Accordingly, the normal value determined is US\$ 2.35/Kg.

F.2 Export Price of PUI

39. The Authority sent questionnaires to the known producers/exporters from the circumventing country, advising them to provide information in the form and manner prescribed by the Authority. Taeyang World Sdn. Bhd., an exporter from Malaysia filed the Exporter Questionnaire Response. However, the Authority for the reasons already explained in the relevant paragraphs found that the response was grossly inadequate to ascertain the relevant facts for the purpose of the present investigation. It may be added that vide email dated 10th January, 2021, the Authority informed the exporter that they had not submitted the information in the form and manner as prescribed in the Exporter's Questionnaire Response, and certifications by legal representative and Chief executive

(Format A, B and C) are not provided with the response. It was also informed that various Appendices (from 1 to 9) prescribed in Exporter's Questionnaire have not been filled up entirely, and in the form and manner prescribed, and are not certified. They were also informed that all the appendices are required to be submitted in the excel sheet with formula linked. It was also informed that since Taeyang distribution services is involved in the distribution channel in India, therefore they need to file a separate response for examination. Their attention was invited to Para 7 of Annex II of Agreement on implementation of Article VI of GATT, 1994 which states that:

“if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favorable to the party than if the party did cooperate.”

40. However, the exporter did not respond or clarified/rectified the deficiencies raised.
41. Thus, it is noted that the sole responding exporter from Malaysia has provided grossly deficient information with regard to exports of the product under investigation to India. For reasons stated herein above, the Authority concludes that the response filed by the exporter cannot be accepted and, therefore, has determined the export price on the basis of the DGCI&S import data.
42. It is seen that DGCI&S data shows imports of 4,787 MT product under investigation at an average export price of 1.09 US\$ per kg. The CIF export price determined from DGCI&S has been adjusted for ocean freight, marine Insurance, commission, bank charges, port expenses and inland freight charges on the basis of facts available to determine export price at ex-factory level. The net export price so determined is US\$ 1.03/Kg.

F.3 Dumping Margin of PUI

43. On the basis of the above stated normal value and export price so determined at ex-factory level, the dumping margin has thus been worked, which is as follows.

| Particulars | Unit | Malaysia |
|--------------------|-------------|-----------------|
| Normal Value | US\$ per Kg | 2.35 |
| Net Export Price | US\$ per Kg | 1.03 |
| Dumping Margin | US\$ per Kg | 1.32 |
| Dumping Margin | % | 128 |
| Dumping | Range | 120-140 |

F.4 Effect of circumvention on Net Sales Realization of PUC of DI during POI

44. With regard to the effect of imports of PUI on the prices, it is required to be analysed whether there has been a significant price undercutting by the circumvented imports as compared to the price of the like products in India. The Authority proposes to consider the same as under;

| Price Undercutting | Unit | 2016-17 | 2017-18 | 2018-19 | POI |
|---------------------------|-------------|----------------|----------------|----------------|------------|
| Import volume | MT | - | 2,212 | 4,843 | 4,787 |
| Landed price of imports | Rs/MT | - | 90,858 | 98,343 | 86,661 |
| Net sales realization | Rs/MT | *** | *** | *** | *** |
| Price undercutting | Rs/MT | *** | *** | *** | *** |
| Price undercutting | % | *** | *** | *** | *** |
| Price undercutting | % Range | - | 120-140 | 120-140 | 170-190 |

45. It is seen that the landed price of imports is significantly below selling price of the domestic industry since 2017-18. The price undercutting increased over the injury period.

F.5 Erosion of Efficacy of existing AD Duty on PUC during POI

46. The Authority has determined the quantum of ADD that would have been payable on imports of the product under investigation from Malaysia. The Table below quantifies the amount of erosion of anti-dumping measures on PUI:

| Period | Imports-Quantity from Malaysia | Anti-Dumping Duty on PUC - China | Exchange Rate | Anti-Dumping Duty | Erosion of AD Duty |
|---------------|---------------------------------------|-----------------------------------------|----------------------|--------------------------|---------------------------|
| | MT | US\$/Kg | | Rs/MT | Rs.Lacs |
| 2016-17 | - | 1.04 | 67.95 | 70,669 | 0 |
| 2017-18 | 2,212 | 1.04 | 65.33 | 67,943 | 1,502.90 |
| 2018-19 | 4,843 | 1.04 | 70.82 | 73,653 | 3,567.01 |
| POI | 4,787 | 1.04 | 71.65 | 74,516 | 3,567.08 |
| Total | | | | | 8,636.99 |

47. It is seen that an amount of Rs. 8637 lacs was payable on these imports, if declared as Chinese origin.

G. POST DISCLOSURE COMMENTS

H. COMMENTS MADE BY THE DOMESTIC INDUSTRY

48. Following submissions have been made by domestic industry:

- i. The domestic industry agrees with the conclusion drawn by the Authority. Nonetheless, it has reiterated that, there is a change in pattern of trade, the responding exporter submitted a deficient response, exporter's related party "Yitong" is part of China based Yitong Industries Co. Ltd. (Dongguan Yitong Arts and Crafts Ltd.), exporter has also submitted misleading statements about its trade channel. It first stated that Yitong is not engaged in distribution in India. But later it corrected, upon being pointed out by the domestic industry that it sells the product in India. No responses filed for Taeyang Distribution and Yitong also shows attempt to hide facts.
- ii. the European Commission has also found circumvention being resorted by Chinese producers/exporters of the subject goods shows that the Chinese producers are habitual of such behaviour, and found an incidence of Chinese exporter/producer fraudulently claiming a different country of origin.
- iii. Circumvention of duties by China PR in the form and manner as seen in this investigation, has also undermined the duties, as would be seen from the impact on market share, levels of price undercutting and significant dumping margin.

I. COMMENTS MADE BY OTHER INTERESTED PARTIES

49. None of the exporters, importers, consumers, and other interested parties has filed any comment or submissions, post issuance of the disclosure statement.

J. Examination by the Authority

50. The Authority notes that most of the submission by the domestic industry and interested parties are repetitive in nature. These submissions have already been examined at appropriate places in this finding.

K. CONCLUSION

51. Having examined the contentions of the domestic industry and other interested parties and based on the analysis as above, the Authority concludes that:
 - a. The Authority notes that there has been a change in pattern of trade in case of PUI. Imports of PUI have increased significantly since 2017-18, and that from China has declined.
 - b. There appears no economic justification other than imposition of duties for such change in pattern of trade.
 - c. Imports of PUI are entering at dumped prices.
 - d. The import of PUI have undermined the remedial effect of existing AD measure on PUC imposed vide Custom Notification No. 4/2018-Customs (ADD) dated 21st February 2018.
 - e. Since dumping margin is above *de minimis*, the commercial gain due to erosion of AD duty on PUC has benefitted producers/exporters by exporting PUI.

L. RECOMMENDATION

52. The Authority keeping in view the aforesaid, recommends extension of the existing Anti-dumping duty on subject goods originating or exported from China PR, imposed vide Custom Notification No. 4/2018-Customs (ADD) dated 21st February 2018, on PUI tabulated as below, subject to following:

The validity of the Anti-dumping duty on PUI would be co-terminus with the duty on PUC i.e. "Ceramic Tableware and Kitchenware, excluding knives and toilet items" originating or exported from China PR, through Custom Notification No. 4/2018-Customs (ADD) dated 21st February 2018.

Duty Table

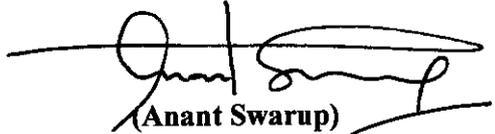
| S. N. | Sub-Heading *** | Description of Goods | Specification | Country of origin | Country of export | Producer | Exporter | Amount | Unit of Measurement | Currency |
|-------|-----------------|-------------------------------------|---------------|--------------------------------------|-------------------|----------|----------|--------|---------------------|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 1 | 6911 & 6912 | Ceramic Tablewares and Kitchenwares | Any | Malaysia | Malaysia | Any | Any | 1.32 | kg | US Dollar |
| 2 | 6911 & 6912 | Ceramic Tablewares and Kitchenwares | Any | Malaysia | Any | Any | Any | 1.32 | kg | US Dollar |
| 3 | 6911 & 6912 | Ceramic Tablewares and Kitchenwares | Any | Any other than Malaysia and China PR | Malaysia | Any | Any | 1.32 | kg | US Dollar |

***Note - Customs classification is only indicative, and the determination of anti-dumping duty shall be made as per the description of the PUC. The PUC mentioned above should be subject to above ADD even when it is imported under any other HS code

53. Landed value of imports for the purpose of this notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

M. Further Procedure

54. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.


(Anant Swarup)
Designated Authority