

**No.15/20/2015-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Anti-Dumping & Allied Duties**

Dated the 25th May, 2017

**ORDER**

**Sub: Order issued in compliance with order dated 2<sup>nd</sup> December 2016 issued by the Hon'ble High Court of Delhi in W. P (C) no. 5907 of 2016, W. P (C) no. 6065 of 2016, W. P (C) no. 7603 of 2016 and W. P (C) no. 8036, with regard to the change of name(s) in the duty table of the final findings dated 4<sup>th</sup> April,2014 in respect of Anti-dumping investigation on import of PVC Suspension Resin from European Union (EU) and Mexico**

1. Whereas, Hon'ble Delhi High Court vide its order dated 2<sup>nd</sup> December 2016 in writ petition (Civil) no. 5907 of 2016 , WP(C) no. 6065 of 2016,W. P (C) no. 7603 of 2016 and W. P (C) no. 8036 directed the Designated Authority to consider the request for change of name based on its enquiry into the genuineness of the transaction whereby Solvay SA is said to have divested itself of the shareholding of the Inovyn JV resulting in restoration of status quo ante as it were on the date of rendering of submission of final report dated 04.04.2014, culminating in the notification dated 13.06.2014. The operative part of the order dated 2<sup>nd</sup> December 2016 of the Hon'ble Delhi High Courts is extracted below:

*"8. The basic enquiry as to the present petitioner's margin of profit and the normal price at which they sold the goods was conducted and a detailed investigation which culminated in the final findings resulted in the notification which fixed the margin of anti-dumping duty at US\$ 39.65 per MT for all the four group companies. At that point in time, Solvay SA had no connection with these companies. There is no material on record to point to the contrary. The interregnum as it were, with the reorganization and renaming of the petitioners being accompanied by Solvay SA's acquisition of shareholding in two petitioner companies through joint venture had resulted in the order of the Designated Authority, which quite correctly felt that closer investigation was necessary. Since then, the position appears to have altered again because on 08.06.2016, the European Commission gave a green signal for the divestment of Solvay SA's shareholding in Inovyn JV entirely. As a result, this Court, having regard to the fact that the basic circumstances, i.e. market conditions under which the petitioner companies exported to India and the nature of injury caused by them has already undergone detailed investigation, this Court is of the opinion that the Designated Authority should restrict its enquiry into the genuineness of the*

*transaction whereby Solvay SA is said to have divested itself of the shareholding of the Inovyn JV resulting in restoration of status quo ante as it were on the date of rendering of submission of final report dated 04.04.2014, culminating in the notification dated 13.06.2014. In case the authority concludes that as a matter of fact Solvay SA has no shareholding any longer in the joint venture company which owned 50% or any such significant percentage of shareholding in the petitioner companies, it should proceed to grant the request for change of name in the notification and recommend to that effect to the central government so that appropriate changes can be made by way of corrigendum."*

2. Whereas, in the present case, the Final Findings were issued by the Designated Authority on 4<sup>th</sup> April, 2014 and subsequently a Notification No. 6/2014-Customs (ADD) was issued on 13<sup>th</sup> June, 2014 by the Central Government by levying anti-dumping duty on the imports of PVC Suspension Resin (hereinafter also referred to as subject goods), originating in or exported from European Union (EU) and Mexico (hereinafter also referred to as subject countries).
3. Whereas, on 18<sup>th</sup> December 2015 requests were filed by the representatives of the Inovyn Sverige AB and Inovyn ChlorVinyls Ltd., requesting the Designated Authority to issue a corrigendum notification to the final findings dated 4<sup>th</sup> April 2014 by amending the name of Ineos ChlorVinyls Ltd. as Inovyn ChlorVinyls Ltd. and the name of Ineos Sverige AB as Inovyn Sverige AB, in the duty table of the aforesaid final findings.
4. Against this request , the Designated Authority passed a speaking order dated 28.6.2016 rejecting the request, primarily on the ground that the new entity (the Joint venture company) had Solvay, the non-cooperative exporters in the subject anti-dumping investigation, as one of the participants and therefore the change of name in the duty table would have amounted to granting Solvay, the non-cooperative exporter, the benefit of individual duty margins / lesser anti-dumping duty , which it was otherwise not entitled to.
5. Similarly, a joint request was also filed by Vynova Tessengerlo NV and Vynova Wilhelmshaven GmbH dated 21.12.2015 requesting the Designated Authority to issue a corrigendum notification to the final findings dated 4<sup>th</sup> April 2014 by amending the name of Ineos Chlorvinyls Belgium NV as Vynova Belgium NV and Ineos Vinyls Deutschland GmbH and Ineos Vinyls Sales GmbH as Vynova Wilhelmshaven GmbH.
6. Against the speaking order passed by the Designated Authority the petitioners approached the Hon'ble High Court, based on which the abovementioned order dated 2.12.2016 was passed by the Hon'ble Delhi High Court
7. In pursuance of the aforementioned order of the Hon'ble Delhi High Court, the petitioners again approached the designated authority with the request to change the name(s) in the duty table as under :

- a) Ineos ChlorVinyls Ltd. as Inovyn ChlorVinyls Ltd
- b) Ineos Sverige AB as Inovyn Sverige AB
- c) Ineos Chlorvinyls Belgium NV as Vynova Belgium NV
- d) Ineos Vinyls Deutschland GmbH and Ineos Vinyls Sales GmbH as Vynova Wilhelmshaven GmbH

8. Whereas the Designated Authority granted hearing to the representatives of these entities on 19<sup>th</sup> January 2017 and heard their oral submissions. Subsequent to the hearing, the petitioners filed written submissions as well on 27.01.2017. They submitted the brief background of the case submitting that the Hon'ble Court has limited the scope of examination by the Authority. They have contended that Solvay SA has no role to play in the subject companies and as evidence have enclosed the following documents to justify their claim that Solvay SA has no shareholding in Inovyn Ltd.

- i. Ineos Press Release dated 07.07.2016 which states that Ineos has completed its acquisition of the full shareholding in Inovyn Ltd., which brought to an end Solvay's part interest in the company.
- ii. Solvay Press Release dated 07.07.2016 which states that Solvay SA has completed the divestment of its shareholding in Inovyn Ltd.
- iii. European Commission order dated 08.06.2016 which approved the exit of Solvay from Inovyn Ltd.
- iv. Annual Returns of the Inovyn Ltd. during the period 01.07.2015 to 07.07.2016 and Annual Return dated 18.09.2016.
- v. The shareholding pattern details filed with the authorities after Solvay SA and Ineos Investment Ltd entered into the Joint Venture (period between 01.07.2015 and 07.07.2016)
- vi. The shareholding pattern details filed with the authorities after Solvay SA exited the Joint Venture

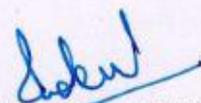
9. Whereas hearings were held with the solicitors of the petitioner companies initially on 19.1.17 and then further on 19.4.17. On 19<sup>th</sup> of April, 2017 the solicitors after not having been able to answer all the queries satisfactorily made a written request seeking further adjournment to ascertain further details from their clients. Based on their request, the final oral hearing was kept on 2<sup>nd</sup> May, 2017.

10. During the course of the all these hearing, the solicitors were asked to explain the shareholding pattern and ownership structure of these entities, whose name(s) were sought to be changed, at different stages (i.e. during the period of investigation, as on 1.7.2015 –the date of entry of Solvay and as on 7.7.2016 –the date of exit of Solvay) Based on the information furnished by the solicitors regarding the shareholding pattern and ownership structure of these companies, the flow chart of these entities (German, Belgian, British and Swedish) with their status at different stages were prepared which is depicted in the Table I, II, III and IV enclosed with the order.

11. It was submitted by the solicitors that the companies by the name of Inovyn Sverige AB, Sweden, Inovyn Chlorvinyls Limited, UK, Vynova Wilhelmshaven GmbH. and Vynova Belgium NV did not exist during the period of investigation or on the date of final finding i.e. 4.4.2014, but there were different entities namely, Inovyn Sverige AB, Sweden as INEOS Sverige AB, Sweden; Inovyn Chlorvinyls Limited, UK, as INEOS Chlorvinyl Limited; Vynova Wilhelmshaven GmbH as INEOS Vinyl Deutschland GmbH and Vynova Belgium NV as INEOS Chlorvinyl Belgium NV. It was also submitted that Solvay invested in Inovyn Limited on 1.7.2015 when simultaneously changes in names of UK and Swedish companies from Ineos ChlorVinyls Ltd. to Inovyn ChlorVinyls Ltd and Ineos Sverige AB to Inovyn Sverige AB took place and that finally Solvay did exit Inovyn Ltd on 7.7.2016.
12. Whereas based on the submissions made by the solicitors during the hearings it was noted that in respect of all these entities (except in case of German entity), it was a chain of wholly owned 100% subsidiaries with the holding company at the top. During the course of the hearing, it also came to the light that full facts of this case were never brought out earlier by the petitioners or their solicitors either before the Designated Authority or before the Hon'ble High Court of Delhi and that it was on account of the suppression/ non-disclosure of these essential relevant facts that the Designated Authority was misled into believing that the exit of Solvay from the Joint Venture company Inovyn Limited would result in restoration of status quo ante, thereby entitling these entities to change of name(s) in the duty table as requested. Orders dated 2.12.16 of Hon'ble High Court was based on these facts presented by the petitioner. Petitioner has contended before the Hon'ble High Court that Ineos AG was the original holding company of all these four companies (para 3 of the judgement dated 2.12.2016). But during the hearings, a different picture was presented with respect to Belgium & Germany based entities (See Table III & IV). This became clearly evident from the fact that Solvay had no participation at any stage in the German and Belgian entities and therefore the question of Solvay joining and leaving these entities at any stage did not arise at all. This was admitted clearly by the solicitors representing petitioners during the hearing. Therefore, the fact of verification of exit of Solvay as ordered by the Hon'ble Court will have no bearing on the petitioner's request for change of names of the German and Belgian entities namely Ineos Vinyls Deutschland GmbH and Ineos Vinyls Sales GmbH to Vynova Wilhelmshaven GmbH and Ineos Chlorvinyls Belgium NV to M/s Vynova Belgium NV.
13. Whereas the scrutiny of facts of the case also revealed that even in case of entities belonging to UK and Sweden namely M/s Inovyn Sverige AB, Sweden and M/s Inovyn Chlorvinyls Ltd., UK, Solvay had joined as 50% equity holder in the Inovyn Limited, which was a second stage 100% subsidiary of the holding company M/s Ineos AG and did not exist during the period of investigation. Therefore, fresh revelations by the solicitors of the petitioners to the effect that M/s Inovyn Ltd as a

company did not exist at all during the period of investigation under any name whatsoever and that it was a fresh entrant in the chain of holding companies subsequent to the period of investigation go to establish that the exit of Solvay from Inovyn Limited would not restore the status quo ante, as erroneously claimed by the petitioner before the Hon'ble Court. The petitioners' contention would have had merit if the name of these entities e.g. Ineos ChlorVinyls Ltd & Ineos Sverige AB would only have changed as Inovyn ChlorVinyls Ltd & Inovyn Sverige AB respectively, without any change in any other factor/ parameter including that in the ownership structure and shareholding pattern of these entities. This however, is not the case and the change of name of UK and Swedish entities on the contrary is accompanied by the entry of a new company namely Inovyn Ltd in the ownership structure. Thus post-POI (i.e. subsequent to the Period of Investigation), a new entity namely, Inovyn Limited came into existence on 1.7.2015 and therefore even after exit of Solvay on 7.7.2016 from Inovyn Ltd., the status quo ante ( i.e. status existing during the Period of Investigation ) does not get restored. The solicitors representing petitioners were not even able to satisfactorily explain as to how exit of Solvay from the joint venture company Inovyn Limited did not result in corresponding rise in shares of the lone shareholder Ineos Group Investment Limited when there was no change in the face value of shares. They were not able to confirm or deny whether current holding companies in the ownership structure of the German and Belgian entities existed during the period of investigation.

14. In view of the foregoing, it is concluded that it is not just a case involving mere change of name but that of change in the entire ownership structure and the shareholding pattern of all the entities. The observation of the Hon'ble Delhi High Court to restrict the scope of enquiry is based on non-disclosure/ selective disclosure of facts as exit of Solvay has no relevance in case of German and Belgian entities and does not result in restoration of status quo ante for other two (UK and Swedish) entities. Accordingly, the request for change of name(s) in the duty table in the above-referred final findings is declined.



(Dr. Inderjit Singh)

Additional Secretary & Designated Authority

Copy to:

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Table I-Sweden based entity

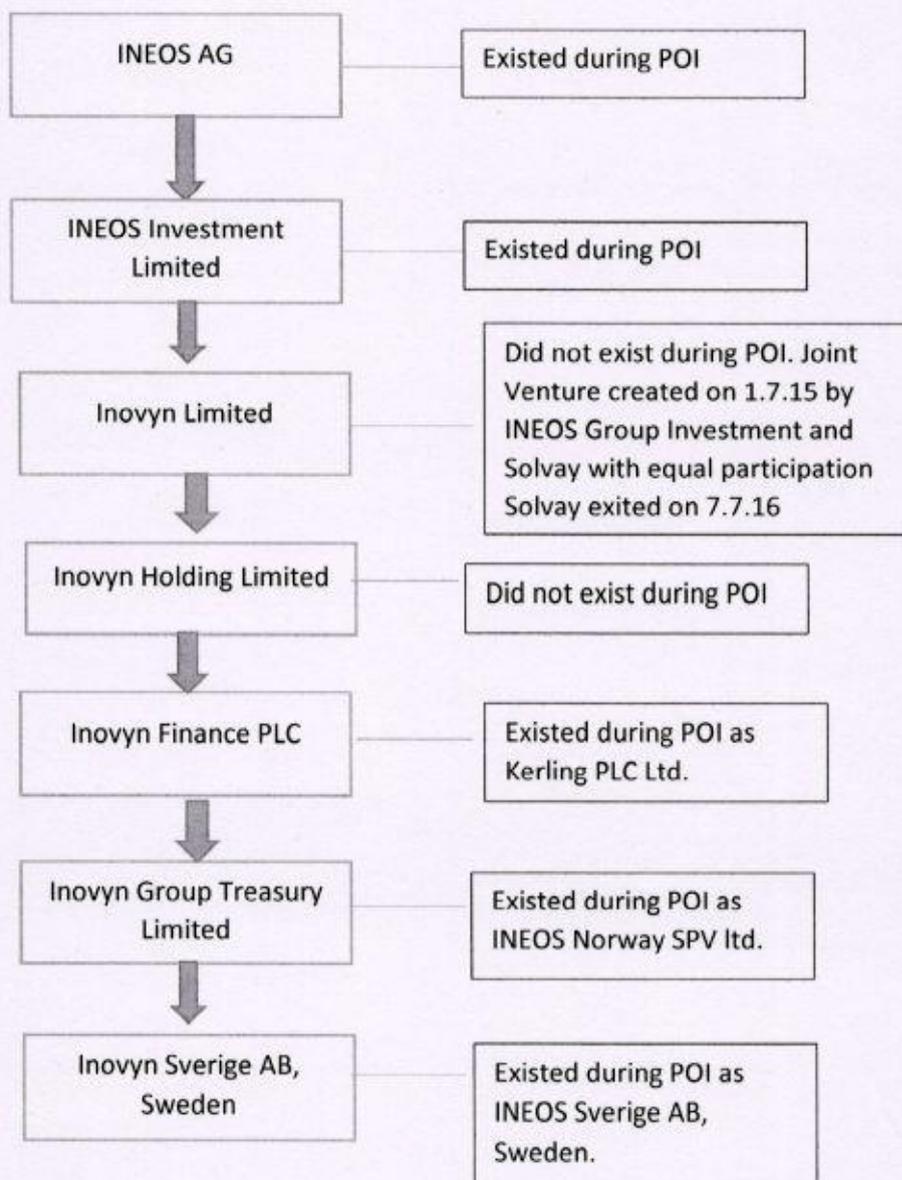


Table II- UK based entity

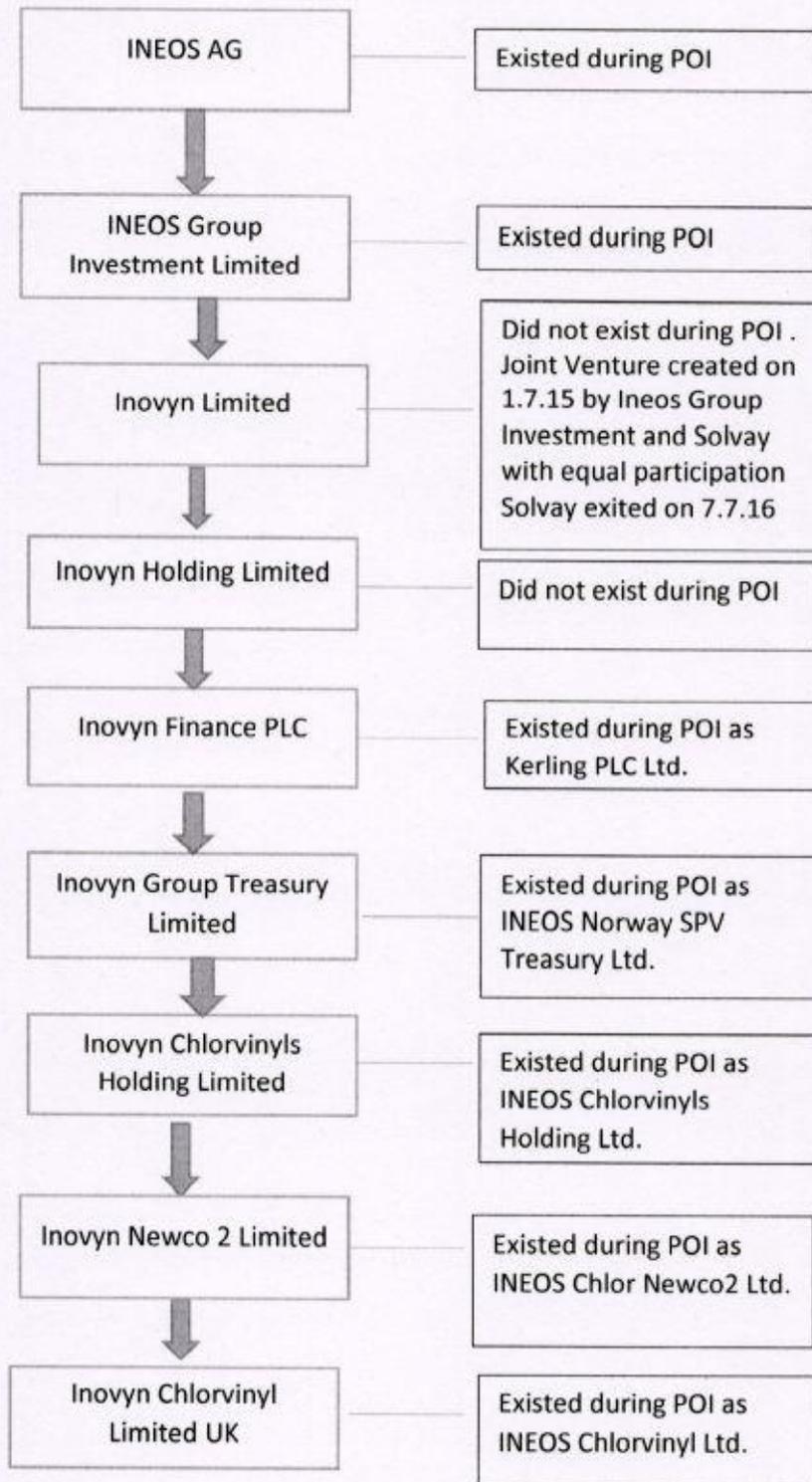


Table III- Belgium based entity

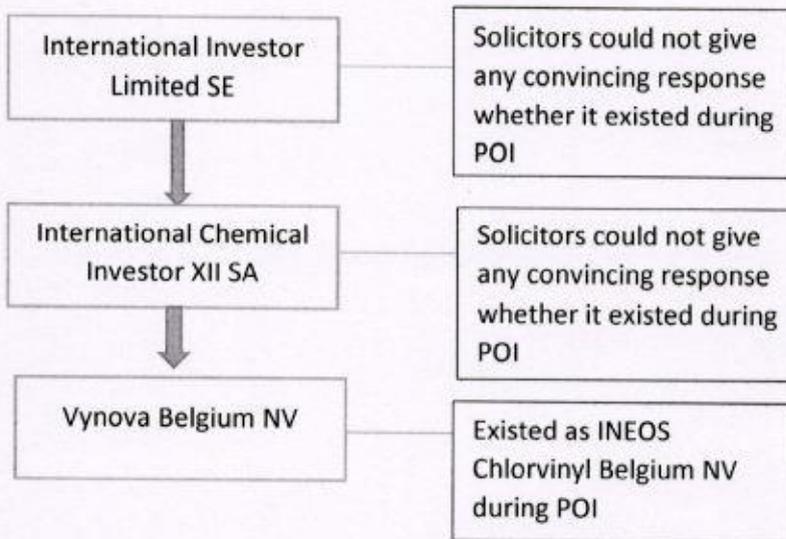


Table IV-Germany based entity

