

TO BE PUBLISHED IN PART 1 SECTION-1 OF GAZETTE OF INDIA

**F. No. 7/38/2018-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi**

Dated: - 24th September 2019

FINAL FINDING

Subject: New Shipper Review under Rule 22 of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 pertaining to Anti-Dumping Duty imposed on the imports of “Saturated Fatty Alcohols” originating in or exported from Indonesia, Malaysia, Thailand and Saudi Arabia, as requested by Pt. Energi Sejahtera Mas, (PTESM) (Producer from Indonesia) and Sinarmas Cepsa Pte. Ltd. (SCPL) (Exporter from Singapore) initiated on 15.01.2019.

F. No. 7/38/2018-DGTR: Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter 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 thereof, as amended from time to time (hereinafter referred to as the Anti-Dumping Rules) thereof Pt. Energi Sejahtera Mas, (PTESM) producer from Indonesia) and Sinarmas Cepsa Pte. Ltd. (SCPL) exporter from Singapore (hereinafter also referred to as “the petitioner”) have filed applications before the Designated Authority (hereinafter also referred to as “the Authority”) in accordance with the Act and the “Anti-Dumping Rules”, for initiation of New Shipper Review against the product “Saturated Fatty Alcohols” (also referred to as “the subject goods”), originating in or exported from Indonesia, Malaysia, Thailand and Saudi Arabia and requested for determining individual dumping margin for exporters/producers of the exporting country in question.

A. Background of the Case

2. Whereas, in the original Anti-Dumping (AD) investigation, the Designated Authority, (hereinafter also referred to as “the Authority”) recommended inter alia anti-dumping duties for a period of five year on the imports of “Saturated Fatty Alcohol” from Indonesia, Malaysia, Thailand and Saudi Arabia falling under Chapters 29 and 38 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), vide its final findings

notification No. F. No.14/51/2016-DGAD, dated the 23rd April, 2018. The Central Government notified the definitive anti-dumping duty vide notification No. 28/2018-Customs (ADD) dated 25th May 2018.

3. Pt. Energi Sejahtera Mas, (PTESM) producer from Indonesia and Sinarmas Cepsa Pte. Ltd. (SCPL) exporter from Singapore filed an application for New Shipper Review (NSR) in terms of Rule 22 of the Anti-dumping Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) claiming individual dumping margin in respect of imports of the “Saturated Fatty Alcohol” from Indonesia, Malaysia Thailand and Saudi Arabia, which was not exported by them during the period of investigation hereinafter referred to as POI of the original investigation wherein AD measure has been imposed vide Custom Notification No. 28/2018-Customs (ADD) dated 25th May 2018 and amended later through Customs Notification No. 48/2018-Customs (ADD) dated 25th September, 2018.

4. The Act and the AD 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 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 the subject country against whom 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.

5. The Authority, having been prima facie satisfied with the conditions laid down under Rule 22 of Anti-dumping Rules, initiated a New Shipper Review investigation, vide Notification No. 7/38/2018-DGAD dated 15th January 2019, for determination of individual dumping margin for the purposes of imposition of the anti-dumping duties levied on the dumped imports of “Saturated Fatty Alcohol” from Indonesia, in respect of Pt. Energi Sejahtera Mas, (PTESM) producer from Indonesia and Sinarmas Cepsa Pte. Ltd. (SCPL) exporter from Singapore.

6. The Authority also recommended provisional assessment on all exports of the subject goods made by the Petitioners till this review is completed, in accordance with Rule 22 of the AD Rules and having regard to Customs Notification No. 28/2018 dated 25 May, 2018 (ADD) and amended later through Customs Notifications No. 48/2018 (ADD) dated 25 September, 2018.

7. The period of investigation for the purpose of this New Shipper Review was fixed as January 1, 2018 to December 31, 2018.

B. Procedure

8. The procedure described herein below has been followed by the Authority with regard to the present investigation:

(i) The Authority issued a public notice vide Notification No. 7/38/2018-DGTR dated 15th January 2019, published in the Gazette of India, Extraordinary, initiating the subject NSR anti-dumping investigation.

(ii) The Authority forwarded a copy of the initiation notification to the applicant along with a copy of the exporter's questionnaire format and gave them opportunity to make their views known in writing, and filing relevant data in the prescribed Questionnaire.

(iii) The Authority also forwarded a copy of the initiation notification to the Embassy of the Republic of Indonesia in India.

(iv) 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.

(v) In response to the initiation notification, Questionnaire response was filed by Pt. Energi Sejahtera Mas, (PTESM) producer from Indonesia and Sinarmas Cepsa Pte. Ltd. (SCPL) exporter from Singapore, the applicants for NSR.

(vi) The Authority made available non-confidential version of submissions/information filed by various interested parties, in the form of a public file, kept open for inspection by interested parties.

(vii) The Authority allowed time for filing the questionnaire response initially up to 24th February 2019, which was later extended up to 8th March 2019.

(viii) The Authority held an Oral Hearing on 9th May, 2019 to provide an opportunity to interested parties to present information orally in accordance with Rule 6(6) followed by written submissions.

(ix) All relevant Submissions/comments made by interested parties, during the course of this investigation have been considered and included in this Disclosure Statement.

C. Product Under Consideration and Like Article

9. The product under consideration in the present investigation is “All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C-8) and Decyl Alcohols(C-10) and blends of C8 and C10”.

D. Submissions by the domestic industry

10. The Domestic Industry has not participated in this investigation.

E. Submissions by the Applicant/ New Shipper Review M/s Pt. Energi Sejahtera Mas, (PTESM) producer from Indonesia and Sinarmas Cepsa Pte. Ltd. (SCPL) exporter from Singapore.

11. The Applicant Producer/exporter have submitted that they were not producers/exporters of the PUC in the POI of the original investigation. Further they were subject to an all-others’ rate of USD ***/MT levied on imports from Indonesia (which was the highest rate among all subject countries in the original investigation. It was only after issuance of custom notification no 13/2019 which came into effect after initiation of current investigation that the provisional assessment was given to Applicants.

12. The Applicant exporter of the new shipper review has submitted that they have provided ample evidence vide their applications and questionnaire and subsequent communications that they have met the criteria to be eligible for the determination of the individual margin which includes :-

- (a) New Shipper has not exported the PUC during POI of the original investigation.
- (b) New Shipper is not related to any of the Producer/Exporter of the PUC who are subject to the anti-dumping duties in the original investigation.

13. The additional requirement imposed by the designated authority via trade notice 1/2019 dated 29 January 2019 specifies that NSR applicant should export to India in commercial quantities.

14. The Applicant has raised his reservations with regard to the Trade notice mentioned above issued by the Designated Authority stating that the authority has acted in excess of the mandate provided by Rule 22 of the AD Rules as well as Article 9.5 of the AD Agreement.

15. The notice requires Applicant to show commercial quantities of exports to India to be eligible for individual margin. The applicant has supported his argument by stating the noting of Panel and Appellate body in Mexico while interpreting the Article 9.5 of the Anti-Dumping Agreement states that *Article 9.5 of the AD Agreement does not allow the*

authority to deny a review for other than those provided in Article 9.5 of the AD Agreement.

16. In the past the Designated Authority in a majority of its decisions has not considered value of exports as prerequisite for being eligible for individual margin. The applicant in his application has also referred to *the European Regulation Article 11(4) of the EU Regulation 2016/1036*. The majority of the decisions in the EU have not considered exports in significant quantities as a prerequisite to grant individual margin to the new shipper. Minority of the decisions have considered significant quantities as a pre-requisite for New Shipper review however it has been considered in the context where the exporter/producer has entered into an irrevocable contract reflecting commitment to export significant quantities.

17. The WTO laws i.e. Article 9.5 of AD Agreement or the Indian Law i.e. the AD Rules make no specific mention of the significant quantities to be shown by the new shipper to be eligible for individual margin.

18. The Applicant submits that in spite of the reservations mentioned above, the exports made by them to India are not only in commercial quantities but also significant and representative enough to be afforded an individual margin under Rule 22 of the AD Rules.

19. The Applicant submits that they have exported PUC to India under *** transactions in the period of investigation of the current investigation specifically making sales in the month of February, March, June, July and August 2018. Sales have been made by applicants to four unrelated customers in India.

20. The sales have been made at price comparable to the total import price of the Product under consideration into India from Indonesia. Under each of the transactions the applicants has exported either about *** MT, *** MT, *** MT, *** MT or *** MT to India. A detailed analysis of the DGCI&S transaction wise data of Product under consideration from Indonesia suggests that large number of transaction that were sold from Indonesia to India in the POI of current investigation are in same range of quantities as that of applicants. The applicants have additionally received a purchase order of *** MT and *** MT from two different Indian customers in the period post the period of Investigation. The relevant details of the same have been filed with the Authority.

21. The applicants herein have not only exported the PUC to India in commercial quantities in POI but also have committed to export PUC to India. Further the exports were made at reasonable prices at par with the range of prices from other producers in Indonesia, showing the reasonability of prices.

22. The Applicants conclude by stating that they have not exported the PUC in the POI of the original investigation, they are not related to any of the exporters/producers who

are subject to antidumping duty pursuant to the original investigation and the Designated Authority should follow the lesser duty rule in determining the individual margin as regard the New Shipper Investigation is concerned.

F. EXAMINATION BY AUTHORITY

The Authority initiated the New Shipper Review Keeping in view the provisions of the Rule 22 of the AD Rules, which reads as follows:-

23. *Rule 22 of the Anti-Dumping Rules :-*

“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.”

Article 9.5 of the WTO Agreement states as under –

24. 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 retrospectively to the date of the initiation of the review.”

25. 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.*

26. In the instant case M/s. Pt. Energi Sejahtera Mas, (PTESM) Producer from Indonesia and M/s Sinarmas Cepsa Pte. Ltd. (SCPL) Exporter from Singapore filed an application before the Authority seeking individual dumping margin on the imports of “Saturated Fatty Alcohol” from Indonesia. As regards the eligibility of the aforesaid producer/exporter claiming ‘NSR’, the Authority has correlated the claim of the applicant producer/exporter of not having exported the subject goods during the original POI from the DG-Systems data considered in the earlier investigation. No interested party has provided evidence of non-fulfillment of condition by the applicant producer/exporter for NSR either on, it having made exports earlier or on its relationship with other producer/exporter by way of any substantive evidence. The Authority therefore concludes that the producer/exporter is eligible to seek a New Shipper Review in the instant case.

G. Methodology for determination of Normal Value, Export Price and Dumping Margin

Normal value

27. Under Section 9A (1) (c), normal value in relation to an article means:-

- (i) The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
- (ii) When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*
 - (a) Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (b) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general*

costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

H. General Methodology for working out Normal Value

28. It was first determined by the Authority whether the total domestic sales of the subject goods by the Applicant is representative when compared to the exports of the subject goods to India.
29. Thereafter, it was examined whether their sales are under ordinary course of trade in terms of Para 2 of the Annexure I to the Anti-dumping Rules. The producer and exporter has provided transaction wise details of sales made in home market and same have been accepted by the Authority, the said information has been relied upon to determine the normal value of the subject goods sold in the home market.
30. For conducting ordinary course of trade test, the cost of production of the product concerned was examined with reference to the information provided by the applicant and compared with domestic selling price to determine whether the domestic sales were in the ordinary course of trade or not.
31. While arriving at the Net Export Price, the Authority relied on the DG System transaction wise data in order to verify the correctness of data/information filed by the New Shipper applicant. It is further noted that comparison was made at the same level to arrive at the dumping margin.

I. NORMAL VALUE FOR APPLICANT

32. The Authority notes that the applicant has submitted Exporter's Questionnaire response furnishing details of domestic sales and cost of production of subject goods during the POI. All the sales in the domestic market were made directly to independent customers. Applicant has reported total domestic sales of *** MT of subject goods to unrelated domestic customers for the gross invoice value of *** USD. The domestic sales are in sufficient volumes when compared with exports to India. All domestic sales transactions have been considered for determination of the normal value. To determine the normal value, the authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods and determined whether profit making transactions are more than or equal to 80% or not. Since, all the

transactions were made at profit to unrelated domestic customers, therefore the same has been considered for determination of normal value.

33. The applicant has claimed adjustment on account of credit cost, inland freight, inland insurance and handling charges to calculate Normal Value at ex-factory level. Authority has allowed the adjustments as claimed and determined the normal value at ex-factory level in respect of the producer/exporter as US\$***/MT.

J. EXPORT PRICE

34. As per the Exporter's Questionnaire, during the POI, PT.Energi Sejahtera Mas (Producer) exported *** MT to India out of which *** MT was exported through Sinarmas Cepsa Pte Ltd. the affiliated exporter to Indian customers. However *** MT was sold through Sinarmas Cepsa Pte Ltd. to M/s Oleocomm Global Sdn Bhd an unaffiliated trader which further sold it to Indian customers. No response was submitted by the M/s Oleocomm Global Sdn Bhd, unaffiliated trader, to the Designated Authority of the sales made through unaffiliated trader. The applicant exported *** MT of subject goods to India for the gross invoice value of *** USD. Applicant has claimed adjustment on account of ocean freight, other freight cost, ocean insurance, handling charge, credit cost, credit note, bank charges, SG&A expenses of related exporter and other SG&A expenses of producer to calculate ex-factory export price. The Authority has allowed the adjustments as claimed and wherever it was not claimed the adjustments were calculated on average basis, and accordingly determined the export price at ex-factory level in respect of the producer/exporter which amounts to US\$***/MT.

K. DUMPING MARGIN

35. The net export price of the subject good was compared with the normal value arrived for Saturated Fatty Alcohols without packing based on the verified data/information and further corroborated with the DG system transaction wise data.
36. Comparing the aforesaid normal value and export price as determined, the individual Dumping margin determined for the Applicant during the POI is as follows:-

Country	Producer	Exporter	Normal Value (US\$)	Net Export Price (US \$)	Dumping Margin (US\$ MT)	Dumping Margin (%)	Dumping Margin Range
INDONESIA	M/S PT. ENERGI SEJAHTERA MAS	M/S SINARMAS CEPSA PTE. LTD	***	***	***	***	0-10

L. POST DISCLOSURE SUBMISSIONS BY THE EXPORTER/ PRODUCER

37. The Applicant producer and exporter do not have any specific comments to make with regard to the background of the case, product under consideration and like article, however they reserve their right to comment in case the new information is made available.
38. With regard to the examination by the authority and the fulfillment of criteria to be eligible for the new shipper review and calculation of export price the applicants do not have any specific comments to be made.
39. With regard to the normal value calculation, the Applicants would like to bring to the attention of the authority certain SGA expenses borne by SCPL and PTESM in the domestic market – more specifically, the marketing fee paid by PTESM (producer) to SCPL (exporter). As background, SCPL performs all sales and marketing activities for PTESM. Generally, in export markets, SCPL purchases the goods from PTESM and resells the same to final customers. In the domestic market, SCPL is not involved in the invoicing chain of sales, but still conducts marketing functions for PTESM for which it charges PTESM a fixed marketing fee (***) USD/MT).
40. In the dumping margin calculations the authority stated that net export price was compared with the normal value calculated without the consideration of packing based on the verified information submitted by the applicants and DGCIS transaction wise import data . The authority has determined an individual dumping margin ranging from 0 to 10% by the applicants.
41. The Applicants submit that the SGA expenses borne by SCPL (calculated at *** USD/MT by the Hon'ble Designated Authority) should be deducted from the normal value of PTESM as well. This is because, as explained above, SCPL performs various marketing and other administrative activities for PTESM even if it is not

involved in the invoicing chain for domestic sales in Indonesia. Indeed, the SGA expenses considered above pertain to allocated costs for various activities, many of which are common for India and Indonesia. Therefore, it would not be fair to deduct the SGA for export price (India sales) while not deducting the SGA for normal value (Indonesia sales). In view of the above, the Applicants request the Hon'ble Designated Authority to kindly deduct *** USD/MT from the normal value, and accordingly rework the dumping margin.

42. The applicants request the authority to consider adjustments requested for normal value and recalculate the dumping margin in line with the same. In case any new information is made available the applicant reserves their right to comment on the same.

43. The applicant requests the designated authority to recommend an individual new shippers rate based on their data and best practices after accounting for the specified marketing fee.

M. EXAMINATION OF THE AUTHORITY

44. The authority notes that the Applicant producer and exporter do not have any new comments to be addressed by the authority except for the calculation of the normal value. The Domestic industry has not participated in this New Shipper Investigation.

45. As per the channel of distribution submitted to the authority and the details submitted by the producer with respect to domestic sales it is observed that the producer has sold all goods in the domestic market directly to the customers and not through M/s Sinarmas Cepca (SCPL). Therefore the contention of producer and exporter cannot be considered and the question of deduction of SGA expenses of M/s Sinarmas Cepca (SCPL) does not arise.

N. RECOMMENDATIONS AND CONCLUSIONS

46. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:-

47. The investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted investigation into dumping in terms of the AD Rules and having established positive dumping margin, the Authority is of the view that imposition of definitive antidumping duty is required to offset dumping. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of the subject goods from subject country in the form and manner described hereunder.

Duty Table

S.no.	Heading/ Sub Heading	Descripti on of Goods	Country of origin	Count ry of export s	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
1	2905.17, 2905.19, 3823.70	"All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C-8) and Decyl Alcohols(C-10) and blends of C8 and C10".	Indonesia	Singap ore	PT. ENERGI SEJAHTERA MAS	Sinarmas CEPSA Pte. Ltd.	51.64	MT	USD

48. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that :-

49. 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.

50. An appeal against the order 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.

(Sunil Kumar)
Additional Secretary & Designated Authority