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**F.No. 6/9/2020-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara building, Parliament Street, New Delhi-110001**

Dated 7th May, 2021

NOTIFICATION

TERMINATION ORDER

Case No. ADD-OI-08/2020

Subject: Anti-dumping investigation concerning imports of 'Plain Medium Density Fibre Board having thickness 6mm and above' produced by M/s. Kim Tin MDF Joint Stock Company, Vietnam.

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' or 'AD Rules') thereof;

A. Background of the case

1. An original anti-dumping investigation concerning imports of the subject goods from Indonesia & Vietnam was initiated by the Authority vide Notification No. 14/23/2014-DGAD dated 7th May 2015. The Authority notified final findings vide Notification No. 14/23/2014/DGAD dated 5th May 2016 recommending definitive antidumping duty on imports of "Plain Medium Density Fibreboard having thickness 6 mm and above" from Indonesia and Vietnam. The definitive antidumping duty was imposed on the subject goods vide Customs Notification No. 34/2016-Customs (ADD) dated 14th July 2016. The duties are effective till 13th July 2021. No anti-dumping duty was levied on M/s Kim Tin MDF Joint Stock Company, Vietnam since its dumping margin was below de-minimis level.
2. M/s Greenply Industries Limited/ M/s Greenpanel Industries Limited, M/s Century Plyboards (India) Ltd., and M/s Rushil Décor Limited (hereinafter referred to as the "Applicants" or "Domestic Industry") thereafter filed a duly substantiated 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"), for initiation of original anti-dumping investigation concerning imports of Plain Medium Density Fibre Board having thickness 6 mm and above (hereinafter also referred to as "product under consideration" or "PUC" or "subject

goods"), produced by M/s. Kim Tin MDF Joint Stock Company, Vietnam. (hereinafter referred to as 'subject exporter')

3. Based on the substantiated application with prima facie evidence of dumping and injury filed by the Applicants, the Authority initiated an anti-dumping investigation vide Notification No. 6/9/2020 – DGTR dated 11th May, 2020, published in the Gazette of India, in accordance with Rule 5 of the Rules to determine existence, degree and effect of alleged dumping of the subject goods produced by M/s. Kim Tin MDF Joint Stock Company, Vietnam, and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged material injury to the domestic industry.

B. Procedure

4. The procedure described below has been followed with regard to the investigation:
 - i. The Authority notified the Embassy of Vietnam in India about the receipt of the present application before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the AD Rules.
 - ii. The Authority issued a Notification dated 11th May, 2020, published in the Gazette of India Extraordinary, initiating investigation concerning imports of the subject goods from the subject exporter.
 - iii. The Authority sent a copy of the initiation notification to the Embassy of Vietnam, the subject exporter, known importers/users, as per the addresses made available by the applicant and requested them to make their views known in writing within 60 days from the receipt of notice in accordance with Rule 6(4) of the AD Rules.
 - iv. The Authority provided a copy of the non-confidential version of the application to the subject exporter, known importers and to the Embassy of Vietnam in India in accordance with Rule 6(3) of the AD Rules.
 - v. The Authority sent exporter's questionnaire to M/s. Kim Tin MDF Joint Stock Company, Vietnam.
 - vi. The Embassy of Vietnam in India was also requested to advise the subject exporter to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the subject exporter.
 - vii. The subject exporter and its following related entities filed exporter's questionnaire response and legal submissions and/or letters of participation in response to the initiation notification:
 - i. M/s. Kim Tin MDF Joint Stock Company
 - ii. M/s. FSC Vietnam Corporation
 - iii. M/s. Kim Tin Investment Corporation
 - iv. M/s. Kim Tin Group Joint Stock Company
 - viii. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations, whose names and addresses were made available to the authority, of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance

with the Rule 6(4):

- a. M/s Krishna Plywood Products Private Limited
 - b. M/s Jacsons Veneers and Panels Private Limited
 - c. M/s Label Sales Corporation
 - d. M/s Kalinga Imports & Exports Private Limited
 - e. M/s Srivari Traders
 - f. M/s Victory Plywood Distributors
 - g. M/s Thamarapally Brothers Trading Private Limited
 - h. M/s Mathewsons Exports & Imports Private Limited
 - i. M/s R.J.Metals
 - j. M/s Feroke Boards Limited
- ix. None of the importers/users/user associations have filed submissions or questionnaire responses in the present investigation.
- x. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xi. A list of all interested parties was uploaded on DGTR's website along with the request therein to email the NCV of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic
- xii. The period of investigation for the purpose of the present investigation has been considered from 1st July, 2019 to 30th June, 2020 (POI). The injury investigation period has been considered as the period from 2016-17, 2017-18, April 2018 – June 2019 and the period of investigation.
- xiii. The Non-Injurious Price (NIP) is based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules. It has been worked out so as to ascertain whether duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xiv. Information obtained from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) on transaction-wise import data for the past three years, and the period of investigation has been adopted for determination of volume and value of imports of product concerned in India.
- xv. In accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 26th February 2021. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.

xvi. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this notification.

xvii. Wherever an interested party has refused access too or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded this notification on the basis of the facts available.

xviii. *** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.

xix. The exchange rate adopted by the Authority during the POI for the subject investigation is 1 US\$= 71.34.

C. Major arguments by interested parties concerning maintainability of the present investigation.

5. M/s Kim Tin MDF Joint Stock Company, Vietnam, the sole exporter under investigation in the present investigations, has made following submissions concerning maintainability of the present investigation.

i. The initiation is not maintainable. The investigation was not terminated against the exporter by issue of a public notice, in an express manner, and the levy is still in force. The rule is not that zero or nil duty shall be read as termination. The conclusion in the original findings did not talk about termination either, even though the initiation notification in the present investigation states so.

ii. The observation of the Authority that no review can be initiated against Kim Tin is based on the wrong premise that the case was terminated against Kim Tin.

iii. The petition was filed without considering the stand of the Authority in such cases. The argument made by the domestic industry in a similar case that nil duty in the case of de-minimis margin is legal and exporter with nil duty can be subjected to review was accepted by the Authority and CESTAT. In view of the same, Kim Tin should be subject to review and the present investigation be terminated.

iv. Kim Tin did not appeal for specific termination of previous investigation as competent authorities were of the view that nil duty is also a form of duty and can be subject to review.

6. The domestic industry made following submissions

a. The present application is WTO and Indian law compliant. Authority has previously conducted sunset reviews in PVC Suspension, PVC paste and Phthalic Anhydride where responding exporters had de-minimis dumping margins. Even though the Authority did not accept the argument of the opposing parties that review investigations cannot be conducted against such exporters, since the findings of the review investigations once again exempted these companies, the issue was not agitated any further and therefore, the decision of the Authority has not attained

finality.

- b. The CESTAT, in an appeal challenging the findings issued by the Authority in sunset review investigation where, an exporter who was awarded a de-minimis margin in the original investigation was also subjected to the review investigation, ruled that the review investigation pertaining to the particular exporter was conducted like a fresh investigation.
- c. The domestic industry preferred to file a fresh investigation as the CESTAT decision has not attained finality as the exporter has filed an SLP against the CESTAT order.
- d. Reference was made to WTO Appellate Body decision in Mexico – Beef and Rice and Ukraine – Anti-Dumping Measures on Ammonium Nitrate wherein it was held that an investigation against an exporter whose dumping margin is de-minimis stands terminated once the Authority has reached such a conclusion, and the exporter cannot be included in the review process.
- e. The exporter has shown no illegality in the investigation till date.
- f. The domestic industry decided not to adopt an uncertain approach where legality of investigation was open to challenge before higher authorities.
- g. Countries like European Union and Turkey has conducted similar investigations wherein an exporter whose dumping margin was found to be de-minimis was later subjected to a fresh investigation on finding that the subject exporter was dumping in the country.
- h. Turkey suo moto initiated a fresh investigation against the exempted companies and imposed duties on the companies as well. European Commission also determined the legal basis of a fresh investigation against an exporter with a de-minimis dumping margin, which was also upheld by the domestic courts.
- i. It is the inherent right of the domestic industry to seek relief for the injury being caused due to the dumped imports from the subject exporter.
- j. The Supreme Court in GM Exporter v. Designated Authority stated that the Authority is bound to follow WTO decisions.
- k. The exporter should have appealed against the findings issued by the Authority in the original investigation, in the absence of which, the exporter now cannot claim that the investigation was not expressly terminated.
- l. The impact of a review investigation and a fresh investigation would be the same unless the exporter was planning to strategize its export price according to the timing of the sunset review investigation.

D. Examination by the Authority

- i. The Authority has noted the arguments and counter-arguments of the interested parties and has examined all aspects. It is noted that in the original investigation an Anti-dumping duty at nil rate was levied on the subject exporter since the dumping

margin was below the de minimis level. The investigation was not terminated against the exporter. The exporter did neither demand termination of investigation then, nor filed any appeal against the decision of the Designated Authority.


- ii. The said exporter in the current investigation has pleaded that it is subject to review and not fresh investigation. The exporter has not contended that the Designated Authority cannot conduct a review investigation against them.
- iii. It is noted that the Designated Authority has been consistently following the practice of giving zero duty to exporters with individual dumping margin of less than 2%, without terminating the investigation against them. The Authority has therefore consistently in the past conducted sunset review investigations against such exporter(s) having zero duty on account of *de-minimis* dumping margin(s) at the stage of original anti-dumping investigation(s).
- iv. It is also worth noting that in another case M/s. Robin Resources Vs UoI, the CESTAT has already upheld the practice being followed by the Designated Authority. An appeal against this decision is pending in the Hon'ble Supreme Court since 2017. The Designated Authority has already filed an affidavit in the Hon'ble Supreme Court defending this practice.
- v. The Hon'ble CESTAT in the matter of Robin Resource vs Designated Authority, held as follows:

"We note that the DA can consider where an exporter was awarded zero duty in the original investigation and has now found to be dumping, which is likely the cause injury to DI, then AD duty can be considered for imposition with reference to dumping margin and injury margin established during the review. We note that the DA followed the requirements of Article 2 & 3 of the ADA and the relevant provisions of AD Rules. We also note that regarding appellants, the DA has examined and reviewed all the aspects of original investigation and in addition examined whether expiry of initial Notification is likely to lead a recurrence of dumping/ injury to the DI. As already noted, that this is like a fresh investigation in so far as appellant is concerned and we find no legal infirmity in such action by the DA."

- vi. The CESTAT held that the Designated Authority had examined and reviewed all the aspects of original investigation and it was like a fresh investigation against such exporter. Therefore, the Authority can examine the exporter having zero duty through sunset review investigation.
- vii. Since the appeal against the decision of CESTAT is pending in the Hon'ble Supreme Court, it is appropriate to continue with the existing practice of conducting sunset review investigations against individual exporters having de-minimis dumping margin.
- viii. Further, it is noteworthy that review investigations conducted by the Designated Authority – whether interim or sunset review – covers all aspects of an investigation and that the Designated Authority has been modifying the level of anti dumping duty also. Such being the case, the purpose of domestic industry is equally

served by undertaking review investigations under Rule 23 and it may not be necessary to launch a fresh investigation under Rule 5.

- ix. In view of the above, it is considered appropriate not to undertake an investigation under Rule 5 and instead undertake review investigation under Rule 23 in such situations where exporter is not subjected to antidumping duty because of de-minimis dumping margin. Accordingly, the Authority terminates the present investigation while granting liberty to the domestic industry to seek appropriate remedy under Rule 23.


(Anant Swarup)
Designated Authority

