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**F.No.22/3/2019 - 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 13 April 2020

Notification

Case No. (SG) 03/2019

**Subject: Safeguard investigation concerning imports of Phenol into India-
Termination of the Investigation**

A. Introduction

1. 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 and Assessment of Safeguard Duty) Rules, 1997, as amended from time to time (hereinafter also referred to as the “Rules”) thereof, M/s Hindustan Organic Chemicals Limited and M/s Deepak Phenolics Ltd (hereinafter referred to as “the Petitioners” or “the Applicants”) filed an application (petition) before the Director General in accordance with the Act and Rules supra for initiation of Safeguard investigation and imposition of Safeguard duties concerning imports of “Phenol” (hereinafter also referred to as the subject goods or product under consideration) into India alleging increased imports of subject goods and consequent serious injury and threat of serious injury being caused by such increased imports of Phenol.

2. The Director General on the basis of prima facie evidence submitted by the Applicants, issued a public notice vide Notification No. 23/3/2019-DGTR dated 23rd August 2019, published in the Gazette of India, Extraordinary, initiating the subject Safeguard investigation in accordance with the Rule 5 of the Rules, to determine whether as a result of unforeseen developments, the imports of the product under consideration constitute increased imports, and whether the increased imports have caused and/ or are threatening to cause serious injury to the domestic industry of like and/or directly competing products. As per initiation notification, Applicants constitute Domestic industry in terms of Clause (b) of the Sub Section (6) of Section 8B of the Custom Tariff Act, 1975.

B. Procedure

3. In accordance with sub-rules (2) and (3) of Rule 6 of the said Rules, a copy of the Notice of Initiation (NOI) dated 23rd August 2019 and a copy of a Non-confidential Version (NCV) of the application filed by the Domestic Industry were forwarded to the Central Government in the Ministry of Commerce & Industry, Ministry of Finance and the Governments of major exporting countries through their Embassies in India, and the interested parties mentioned in the said application. Further, questionnaire were sent to foreign producers, exporters, importers and other domestic producers, as prescribed under Rule 6(4) of the said Rules with a request to make their views known in writing within 30 days from the date of issue of the NOI.

4. In addition, the questionnaire to be answered by the exporters / importers / domestic producers, as prescribed under Rule 6(4) of the said Rules, was forwarded to the known interested parties with a request to make their views known in writing within 30 days from the date of issue of the notice of initiation.

5. In response to the initiation notification, following exporters/foreign producers and Government of exporting countries filed a questionnaire response:

- i. M/s. Mitsui & Co. (Asia Pacific) Pte. Ltd.
- ii. Bureau of Foreign Trade, Ministry of Economic Affairs of the Republic of China (Taiwan)
- iii. M/s. Formosa Chemicals and Fibre Corporation
- iv. Kingdom of Saudi Arabia
- v. Embassy of the Federative Republic of Brazil
- vi. M/s. Kumho P&B Chemicals, Korea RP
- vii. Public Authority for Industry, State of Kuwait
- viii. M/s. Chang Chun Plastics Co. Ltd., Taiwan
- ix. Trade Representation of the Russian Federation in the Republic of India
- x. M/s. LG Chem Ltd.
- xi. Korea Petrochemical Industry Association
- xii. M/s. PTT Phenol Company Limited
- xiii. M/s. Mitsui Phenols Singapore Pte. Ltd.
- xiv. M/s. Sumitomo Chemical Asia Pte. Ltd.
- xv. M/s. Chang Chun Chemical (Jiangsu) Co. Ltd.
- xvi. Government of Indonesia
- xvii. M/s. Rhodia Poliamida e Especialidades S/A

6. The request to consider as an interested party and/or submissions/importer's questionnaire response was received from the following importers, users and their associations:

- a) M/s, Vinati Organics Limited
- b) M/s. Exim Corp
- c) M/s. Meghmani Organics Ltd.

- d) M/s. Versalis Spa
- e) M/s. Century Plyboards (India) Limited
- f) M/s. Rabigh Refining and Petrochemical Company
- g) M/s. Atul Ltd.
- h) M/s. CJ Shah and Co.
- i) M/s. Akin Chemicals Pvt. Ltd.
- j) M/s. Jupiter Dyechem Pvt. Ltd.
- k) M/s. Hazel Mercantile Limited
- l) M/s. Hareshkumar & Co.
- m) M/s. Haresh Petrochem Pvt. Ltd.
- n) Federation of Indian Plywood and Panel Industry
- o) Atul Ltd.,
- p) Meghmani Organics Ltd.

7. The period considered for the purposes of present investigation is 2016-17, 2017-18, 2018-19, April to June 2019 (Q1 of 2019-20). The applicants claimed surge in imports in Q1 2019-20.

8. The import volume provided in the Application for the years 2016-17, 2017-18 and 2018-19 was based on Directorate General of Commercial Intelligence & Statistics (DGCI&S) data but import volume for Q1 of 2019-20 was sourced from a secondary source. After initiation of investigation, the Authority procured the transaction-wise data from DGCI&S for the entire period considered for present investigation.

9. The non-confidential version of the evidences presented by various interested parties in the form of a public file were kept open for inspection by the interested parties.

10. In accordance with Rule 6(6) of the Rules, the Director General provided an opportunity to all interested parties to present their views orally in a hearing held on 4th December 2019. In terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, all the interested parties who participated in the public hearing were requested to file written submission of the views presented orally.

11. Written submissions filed by one interested party were made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.

C. Submission by Domestic Industry

12. The following submissions have been made by the Domestic Industry during the course of the investigation:

- a) Imports have increased under such conditions that the same has caused injury to the domestic industry.
- b) Factors such as imposition of ADD in China, Fresh capacities in China, Global oversupply, fresh capacities in India and US-China Trade issues have led to such increased imports.
- c) There is a significant decline in import prices of the subject goods.
- d) Imports of subject goods into India are in excess to the essential quantities as per the Demand of Phenol.
- e) The increased imports have an adverse effect on profitability, selling prices, inventories and sales of the Domestic Industry.
- f) Surge in imports with the steep fall in prices in the most recent period is threatening serious injury to the domestic industry.

D. Submission by Other Interested Parties

13. The following submissions have been made by other interested parties during the course of the investigation:

- a) The import volume provided in the petition for 2016-17, 2017-18 and 2018-19 is based on DGCI&S data but import volume for Q1 of 2019-20 has been sourced from an undisclosed 'secondary source' and is therefore not verifiable and is unreliable. The import volume of Phenol obtained from DGFT database reveals relatively much lower figures for Q1 of FY 2019-20. Therefore, there is no surge in imports to justify the initiation of Safeguard investigation on imports of the subject goods into India.
- b) It is a settled legal position that for safeguard investigations, increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough to cause or threaten to cause 'serious injury'. While on year to year basis there is an insignificant increase in imports of 1% as compared to 2016-17, there is a significant decline in imports between 2017-2018 and 2018-2019 amounting to 20%.
- c) There is no serious injury to the Domestic Industry. Most economic parameters show a positive trend and improvement in performance.
- d) None of the identified developments could be termed as "unforeseen" in terms of Article XIX(1)(a) of GATT. Mere imposition of trade remedy measures by major consumption markets such as China could not be termed as unforeseen.

- e) Application is incomplete as no adjustment plan has been provided by the Domestic Industry.
- f) Production, sales, installed capacity, capacity utilization, and employees of the domestic industry increased year on year. The domestic industry has also shown significant improvement in return on capital employed and profits.
- g) Any alleged injury suffered by Deepak Phenolics is due to teething issues and cannot be attributed to the subject imports. SI group, which in past has always participated in trade remedy investigations regarding Phenol and holds nearly 30% of the production in India is missing from this petition.
- h) Deepak Phenolics was not in existence for majority of the POI i.e. for 31 months of the POI. No proper assessment of injury can be made of the domestic industry, whose one of the constituents was not in existence for first 31 months of the POI.
- i) HOCL is suffering injury due to other factors for a very long time such as non-availability of working capital for continuous operation, lack of funds for modernization of plants, transfer of land to other PSU for settling liabilities etc. The production of HOCL was suspended during the POI.
- j) Safeguard duty, if imposed, would result in increase in prices and would fuel the already existing gap between domestic demand and supply. This would have an adverse effect on the connected industries and would put at stake the employment and livelihood of several families.
- k) The users are in no position to incur any extra cost on imported phenol. Any increase in the cost of phenol will only decelerate the consumption of phenol regardless of whether it is domestic or imported and dent its pricing further.

E. Withdrawal of application by Domestic Industry

14. While the Director General was in the process of examining all the issues raised by various interested parties, and making a conclusion on the basis of analysis, the Applicants vide their letters dated 20th March 2020 and 23rd March 2020 withdrew the application for imposition of safeguard duty stating:

- a. That the current jurisprudence and interpretation of Safeguard law does not remedy the increased import of Phenol into India,
- b. That the Applicants are, therefore, seeking remedy under the Anti-dumping laws.

F. Examination by the Director General

15. In view of the request made by the domestic industry withdrawing its application, there is no requirement for the Director General to issue its findings in response to the factual and legal submissions made by the domestic industry and other interested parties during the course of the investigation as the application filed by the domestic industry has become infructuous after the withdrawal of application.

G. Conclusion

16. Since the Applicants have withdrawn the application, it is considered appropriate not to continue with the present investigation. Accordingly, in view of the request made by the Applicants, the Director General, hereby, terminates the present Safeguard investigation concerning imports of “Phenol” into India initiated vide Notification No. 23/3/2019-DGTR dated 23rd August 2019.

(Bhupinder S. Bhalla)
Additional Secretary & Director General