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Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi-110001

Dated: 3rd March, 2020

Case No.: (SG) 01/2020
INITIATION NOTIFICATION

Subject: Initiation of Review Investigation for continued imposition of Safeguard Duty on imports of “Solar Cells whether or not assembled in modules or panels” into India.

1. An application for review and extension of safeguard duty has been filed under Rule 18 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter also referred as the “ Rules”) by (i) M/s Mundra Solar PV Limited, a unit in a Special Economic Zone ("SEZ unit"); (ii) M/s Jupiter Solar Power Limited, a unit in the Domestic Tariff Area ("DTA unit") and (iii) M/s Jupiter International Limited, a DTA unit, through the Indian Solar Manufacturers Association (ISMA), seeking continued imposition of the Safeguard Duty, imposed on imports of “Solar Cells whether or not assembled in modules or panels” [hereinafter referred to as “Product Under Consideration” or “PUC”] into India to protect the domestic producers of like and directly competitive articles (to the PUC) from serious injury or threat of serious injury caused by such increased imports.

2. The current application seeks continued imposition of the said duty for a further period of four years, pursuant to the first proviso to sub-section 4 of Section 8B of the Customs Tariff Act 1975 (hereinafter also referred as the “Act”) read with the first proviso to Rule 16(2) of the Rules.

Background

3. The original investigation was initiated on 19th December 2017 on an application filed under Rule 5 of the Rules by five Indian producers through ISMA seeking imposition of safeguard duty against imports of the PUC. The then Director General (Safeguards) issued preliminary findings on 5th January 2018 recommending levy of a provisional safeguard duty. However, no provisional duty was imposed. The Director General of Trade Remedies issued final findings on 16th July 2018, based on which the safeguard duty was imposed for a period of two years vide Customs Notification No. 1/2018-Cus (SG) dated 30 July 2018 at the rates shown below:

- a) from 30th July 2018 to 29th July 2019: @25% ad valorem
- b) from 30th July 2019 to 29th January 2020: @20% ad valorem
- c) from 30th January 2020 to 29th July 2020: @15% ad valorem

The Duty is, however, not applicable on imports from developing nations, as listed in Notification No.19/2016-custom(NT) dated 5th February,2016, except China PR and Malaysia in terms of proviso to Section 8B (1) of the Act.

Domestic Industry (DI)

4. After a detailed examination, the scope of Domestic Industry (DI) was restricted to Domestic Tariff Area (DTA) units/ Export Oriented Units (EOU) vide Para 27 of the original findings dated 16th July 2018.

5. The review application has been filed by three applicants, which includes two units in the DTA and one unit in SEZ, through ISMA. The Applicants have requested for reconsideration of the original decision of excluding SEZ units from DI.

6. Following the same rationale as cited in Para 27 of the original findings, the Director General has considered the scope of DI restricted to DTA units. Therefore, M/s Jupiter Solar Power Limited and M/s Jupiter International Limited, which account for a major proportion of the total production of the like and directly competitive articles in India, are considered as DI in accordance with Section 8B of the Act.

Product Under Consideration (PUC)

7. The product under consideration in the original investigation was as follows:

“Solar Cells whether or not assembled in modules or panels” classifiable under Tariff Heading 8541 and Tariff Item 85414011 of the Customs Tariff Act, 1975. Solar Cells are also known as Photovoltaic Cells in the market parlance. Photovoltaic technology enables direct conversion of sunlight into electricity at the atomic level and Solar Cells are solid state electrical devices that convert sunlight directly into electricity by the photovoltaic effect. For practical use, Solar Cells are packaged and connected into an assembly and such an assembly of Solar Cells is referred to as a Solar Panel or Solar Module. The electrical connections are made to the Solar Cells in series to achieve desired output wattage and / or in parallel to provide a desired current capability.

8. The Director General has considered the PUC as in the original investigation. However, it is noted that the tariff item 8541 4011 (solar cells, whether or not assembled in modules) is proposed to be split, vide the 3rd schedule of *The Finance Bill 2020*, into the following tariff items, namely:

- 8541 4011- Solar Cells, not assembled
- 8541 4012- Solar Cells assembled in modules or made up into panels

9. It is expected that such modification will take effect shortly, within the period of investigation. Therefore, the PUC considered in this review is “Solar Cells whether or not assembled in modules or panels” classifiable under the Tariff Headings 8541 and Tariff items 85414011 & 85414012 of Chapter 85 of the Act. The Customs tariff classification is, however, indicative only and is in no way binding on the scope of the present investigation as was also mentioned in final findings dated 16th July 2018.

Period of Investigation (POI)

10. The period of investigation (POI) for the present investigation is 1st April 2016- 31st March 2017, 1st April 2017- 31st March 2018, 1st April 2018- 31st March 2019 and 1st April 2019- 30th September 2019. The said period is long enough to take into consideration the market conditions and other factors that are relevant for ascertaining the need for continued imposition of Safeguard Duty. The Director General may, however, at its discretion, consider post-POI data, if and to the extent, considered necessary.

Source of Information

11. The DI has provided transaction-wise import data for the PUC from Directorate General of Commercial Intelligence & Statistics (DGCI&S), Department of Commerce for the period 2014-15 to 2019-20 (upto September 2019) and the same has been taken into consideration for analysis. The DI has provided data in respect of their own production, sales, inventory, etc., for the period 2016-17 to 2019-20 (upto September 2019).

Adjustment Plan

12. The DI presented prima facie evidence that they are positively adjusting in accordance with the adjustment plan as proposed by them in the original investigation and so taken note of by the Director General in its final findings. The adjustment plan presented in the original investigation contemplated steps, inter alia, to reduce raw material cost, conversion costs, fixed costs, etc. The DI claims that a comparison of current costs with the said adjustment plan shows that the DI has achieved significant cost reduction on account of raw material cost, conversion costs, fixed costs, finance costs, SGA costs, etc., thereby, prima facie showing that the DI is adjusting positively.

Injury

13. The application has been examined and it is found that there is a prima facie evidence that (a) imports of PUC in India continued at increased levels despite imposition of safeguard duty; (b) DI is adjusting positively in terms of reduced cost of sales, increased production & sales and lowered losses; (c) however, imports still continue to undercut and suppress the prices of DI leading to lower realization and thereby continued financial losses, thus, rendering DI's financial position as fragile.

Initiation of the Review Investigation

14. On the basis of the written application by the Domestic industry through Indian Solar Manufacturers Association, and having satisfied itself, on the basis of the prima facie evidence submitted by the domestic industry regarding evidence of serious injury and that the domestic industry is adjusting positively, the Director General, hereby, initiates a review investigation, in accordance with Section 8B of the Act, read with Rule 18 of the Rules, for examining the need for continued imposition of safeguard duty on the PUC.

Submission of Information

15. The exporters in the subject countries, their government through their embassies in

India, the importers and users in India known to be concerned with the subject goods and the domestic industry are being informed separately to enable them to file all the relevant information in the form and manner prescribed within the time-limit set out below.

16. Any other party who wishes to be considered as an interested party may submit a request to this effect to the Director General at the below mentioned address within 15 days from the date of this notification, and may also make its submissions relevant to the investigation in the form and manner prescribed within the time-limit set out below.

17. The information/ submissions may be submitted to:

The Director General
Directorate General of Trade Remedies
Ministry of Commerce & Industry
Department of Commerce
4th Floor, Jeevan Tara Building, 5 Parliament Street
New Delhi – 110001

Time Limit

18. Any information relating to the present investigation should be sent in writing so as to reach the Director General at the address mentioned above within thirty days from the date of receipt of the notice as per Rule 6(4) of the Rules. It may, however, be noted that in terms of explanation of the said Rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the Director General or transmitted to the appropriate diplomatic representative of the exporting Country. If no information is received within the prescribed time-limit or the information received is incomplete, the Director General may record its findings on the basis of the facts available on record in accordance with the Rules.

Submission of information on confidential basis

19. The parties making any submission are required to file the same in two separate sets, in case "confidentiality" is claimed on any part thereof:

- i. one set marked as Confidential (with title, number of pages, index, etc.), and
- ii. the other set marked as Non-Confidential (with title, number of pages, index, etc.).

20. The "confidential" or "non-confidential" submissions must be clearly marked as "confidential" or "non-confidential" at the top of each page. Any submission made without such marking shall be treated as non-confidential by the Director General, and the Director General shall be at liberty to allow the other interested parties to inspect such submissions. Soft copies of both the versions will also be required to be submitted, along with the hard copies in four (4) sets of each.

21. The confidential version shall contain all information which is by nature confidential and/or other information which the supplier of such information claims as confidential. For information which are claimed to be confidential by nature or the information on which

confidentiality is claimed because of other reasons, the supplier of the information is required to provide a good cause statement along with the supplied information as to why such information cannot be disclosed.

22. The non-confidential version is required to be a replica of the confidential version with the confidential information preferably indexed or blanked out (in case indexation is not feasible) and summarised depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, the party submitting the confidential information may indicate that such information is not susceptible to summary, and a statement of reasons why summarisation is not possible must be provided to the satisfaction of the Director General.

23. The Director General may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the Director General is satisfied that the request for confidentiality is not warranted or if the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.

24. Any submission made without a meaningful non-confidential version thereof or without good cause statement on the confidentiality claim shall not be taken on record by the Director General.

25. The Director General on being satisfied and accepting the need for confidentiality of the information provided, shall not disclose it to any party without specific authorisation of the party providing such information.

Inspection of Public File

26. In terms of Rule 6(7) of the Rules, any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

Non-cooperation

27. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Director General may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

(Bhupinder S. Bhalla)
Additional Secretary & Director General