To be published in Part-I Section I of the
Gazette of India Extraordinary

No. 15/33/2008-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE &
INDUSTRY DEPARTMENT OF
COMMERCE
DIRECTORATE GENERAL OF ANTI-
DUMPING & ALLIED DUTIES
UDYOG BHAVAN

NOTIFICATION

New Delhi, the 10th February 2012

Post Decisional Finding (Mid Term Review) (CESTAT REMAND CASE)

Subject: Post Decisional Finding following post decisional oral hearing (CESTAT REMAND CASE) in the matter of Mid-term Review of anti dumping duty imposed on imports of Polytetrafluoroethylene (PTFE) originating in or exported from China PR –

No.15/33/2008 DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

Background:

1. Whereas the Designated Authority (hereinafter also referred to as the Authority), 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 Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 as amended from time to time, (herein after referred to as the Rules) recommended imposition of Anti Dumping duty on the imports of Polytetrafluoroethylene (hereinafter also referred to as PTFE or the subject goods) originating in or exported from China PR (hereinafter also referred to as the subject

country) falling under Subheading 39046100. The final findings were notified vide notification No 14/25/2003-DGAD dated 25th July, 2005 and definitive anti dumping duty was imposed vide Notification No. 91/2005-Customs dated 17th Oct., 2005. The petition in that case was filed by M/s. Hindustan Fluorocarbons Limited.

2. And whereas the Rules require the Designated Authority to review, from time to time, the need for continued imposition of Anti-Dumping Duty. In terms of the above provision, Designated Authority received an application from M/s. Gujarat Fluorochemicals Ltd. substantiating the need for review of the anti dumping duty imposed on the subject goods originating in or exported from China PR and request for modification in the form of duty and enhancement/revision in the quantum of the anti dumping duty imposed on subject goods.

3. Having satisfied itself that the petitioner has produced sufficient positive information substantiating the need for a review, the Authority initiated the mid-term review investigation of anti-dumping duty imposed on imports of subject goods originating in or exported from China vide Notification No. 15/33/2008-DGAD dated 27th February, 2009 in accordance with Section 9A (5) of the Act, read with Rule 23 of the AD Rules.

4. And whereas, the Designated Authority having regard to the Act and the Rules, investigated and recommended enhancement of anti dumping duty vide final findings dated 26th February 2010 and the revised duty was imposed by the Ministry of Finance on 5th April, 2010.

5. And whereas, M/s. Trestar Elektroniks (also referred to as the "appellant") filed an appeal before CESTAT, challenging the imposition of Anti-dumping duty on imports of PTFE vide Customs Notification No 42/2010-Customs, dated 5th April, 2010. It is recalled that the appellant had neither requested the Designated Authority during the course of the investigations nor raised any grounds in its appeal for grant of fresh hearing after the change in the Designated Authority. The Hon'ble CESTAT vide its order dated 11th August, 2011 remanded the matter back to Designated Authority for fresh decision (Post decisional hearing) after granting a reasonable opportunity of hearing to the appellant within a period of 6 months. The order stated as follows:

> ***"Accordingly we allow these appeals by remand to the Designated Authority for affording post-decisional hearing to the appellants and for making such modifications to the Final Findings as may be necessary as a result of such post decisional hearing. The respondent-domestic industry and other interested parties, if any, shall also be allowed to participate in such post decisional hearing. Any modifications made in the final findings would be considered by giving effect to the same by the government by carrying out the necessary amendment to the impugned notification imposing anti-dumping Duty. This process shall be completed within 6 months from the date of this order and status quo shall be maintained meanwhile.***

Since we are allowing these appeals by remand, the related stay petitions, MAs and COs stand disposed off."

And whereas, in compliance with the said order of the CESTAT, the Designated Authority held a hearing on 12th December 2011 granting opportunity to the appellant and other interested parties. The oral hearing was granted without prejudice to the right of the Designated Authority to challenge the orders of the Hon'ble CESTAT on matters of law and principle

Procedure:

6. The procedure described below has been followed:

i. The Authority notified final findings vide its notification No.15/33/2008 DGAD dated 26th February 2010 recommending enhancement of Anti dumping duty, which was considered by the Central Govt. and definitive Anti Dumping Duty was imposed on the subject goods vide Customs Notification No 42/2010-Customs, dated 5th April, 2010.

ii. M/s. Trestar Elektroniks filed an appeal before CESTAT, challenging the imposition of enhanced anti-dumping duty on imports of PTFE vide Customs Notification No 42/2010-Customs, dated 5th April, 2010.

iii. The Hon'ble CESTAT vide its order dated 11th August, 2011 remanded the matter back to Designated Authority for fresh decision after granting a reasonable opportunity of hearing to the appellant and other interested parties within a period of 6 months.

iv. Pursuant to the order of CESTAT, the Authority provided an opportunity to the appellant and other interested parties to present their views orally in a hearing held on 12th December, 2011. The interested parties who presented their views orally at the time of hearing were advised to file written submissions of the views expressed by them orally and were allowed to offer rejoinders to the submissions made by the opposing parties. Following interested parties attended the hearing

- M/s. Trestar Elektroniks
- Domestic industry comprising of M/s M/s. Gujarat Fluorochemicals Ltd.through their legal consultants

No other interested party attended the hearing.

v. Submissions made by the appellant and domestic industry pursuant to the oral hearing held by the Authority have been examined in detail in the light of facts and legal provisions and the same have been considered in the present disclosure statement.

vi. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant investigation were disclosed to the known interested parties. The comments received on this disclosure statement, if any, to the extent considered relevant, have been considered in the Authority' findings. ***It is noted that comments to the disclosure statement have been made by M/s Trestar Elektroniks and by the domestic industry.***

vii. **** in this disclosure statement, represents information furnished by an interested party on confidential basis and so considered by the Authority on merits under the Rules. The Arguments made by various interested parties pursuant to the oral hearing are examined by the Authority in this disclosure statement at appropriate places.

Submissions raised by M/s. Trestar Electronics Ltd., in written submissions and rejoinders

7. Following are the submissions made by M/s. Trestar Electronics Ltd in written submissions and rejoinders after the second oral hearing on 12th December, 2011 pursuant to the orders of the Hon'ble CESTAT dated 11th Aug., 2011.

i. Scope of the domestic industry once determined during the initiation of an investigation cannot be arbitrarily enlarged during the final stage of an investigation.

ii. HFL participated only in the public hearing and did not respond to initiation notification. Rule 6 (7) provides that oral information submitted by the party would be taken into account only when it is subsequently produced in writing. The written submission filed pursuant to hearing had submissions only with regard to material retardation to the establishment of an industry in India. Therefore, no reason to believe HFL was participating in the investigation.

iii. M/s HFL were not interested in continuing the Antidumping investigation as their sales reduced in the year 2005-06, 2006-07 but they didn't file petition.

iv. GFL produces only moulding grade. In fact, during the public hearing, representative from GFL agreed in the PH that they are manufacturing only

moulding grade. They only have planned to produce it in future. Therefore. When grades are not manufactured in India, imposition of ADD is bad in law.

v. There is no injury to the industry, no case has been made out on likelihood of injury and the need for extension of AD in force. Therefore ADD on Fine powder should be withdrawn.

vi. GFL started production in Dec 2007. POI is for the period of Oct 2007 to Sept 2008. Therefore, It cannot take the ground that injury to domestic industry i.e M/s GFL has been caused through dumping. An industry needs min 2 years to get the results and as such their request should be set aside. ***Post disclosure, it is noted that the appellant has reiterated all their submissions made in their written submissions.***

C. **Submissions raised by Domestic Industry in written and rejoinder submissions**

8. Following are the submissions made by domestic industry in written submissions and rejoinders.

i. Fine Powder PTFE was included by the Authority, in the previous investigation, within the scope of product under consideration following an due process of investigations. It was established by the Authority that Fine Powder PTFE was required to be included within the scope of the product under consideration.

ii. M/s GFL has now set up manufacturing facilities for production of fine powder. It has already started offering material to various customers, which was in fact admitted by the party at the time of oral hearing. Further, the Authority is required to consider domestic industry and not the petitioner while considering the scope of product under consideration and duty in a midterm review.

iii. Chinese manufacturers have already started circumventing the present antidumping duty by resorting to dumping of PTFE compounds therefore it is requested to extend the present anti-dumping duty to the imports of PTFE compounds as well.

iv. There is no prescription by the Designated Authority that the application should be filed by or on behalf of domestic industry for the mid term review. On the contrary, petition can be filed by any interested party and a domestic manufacturer. An interested party or domestic manufacturer does not mean “domestic industry as a whole”. Constituents of domestic industry individually constitute interested party and are therefore eligible to file a petition.

v. It is factually incorrect that HFL has merely provided information considered relevant to the investigations. In fact, written submission heavily argued that HFL has to be included as a domestic industry.

vi. In Midterm Review investigations the Authority cannot freeze the scope of domestic industry. The Designated Authority has to decide scope of domestic industry based on domestic producers who have provided information to the authority and who are participating before the authority.

vii. Decline in production of HFL and low production of HFL in fact justified the application filed by GFL and the enhancement in the quantum of Anti-dumping duties.

viii. The issue of product types is relevant for the purpose of deciding the scope of product under consideration after that, the issue becomes irrelevant for the purpose of injury determination.

ix. If imports of the product under consideration are segregated into Dispersion and Fine Powder category, it would be seen that imports are significant in both the categories. Thus, it is not a situation that imports are only in Fine Powder category.

x. Oral hearing was attended by the domestic industry and Trestar Elektroniks, Ghaziabad. No other party attended the oral hearing.

xi. The Authority has conducted a Sunset Review and has already recommended revised duties which have also been imposed by Ministry of Finance, it follows that the present investigations have in any case become in fructuous.

xii. The rules clearly provide that the domestic producer who is facing material retardation to its establishment can request the authority for imposition of anti-dumping duties. The Designated Authority has conducted several investigations so far wherein the domestic industry had commenced commercial production during the investigation period or just before the investigation period.

xiii. At the stage of initiation, what the Designated Authority is required to consider is whether there is sufficient evidence which justify investigations. It is not necessary that the information should, in fact, establish a need for revision or revocation or enhancement of the duty. Therefore, it is without any justification and basis that information with regard to HFL was required to be necessarily provided prior to initiation of investigation. ***Post disclosure, it is noted that the domestic industry has reiterated all their submissions made in their written submissions.***

Examination by the Authority:

9. The Authority has duly considered various submissions and issues raised by various interested parties in arriving at the present disclosure statement. The Authority notes that the investigations are being conducted in accordance with the Act and Rules made

therein as referred above. Further, the Authority has relied upon "positive evidences" made available by the interested parties during the course of investigations. The Authority notes that in case an interested party has advanced arguments without providing positive evidence and where it is not possible to verify the authenticity and correctness of the argument , it is not possible to accept such arguments. With regard to submissions raised during the second public hearing, the Authority has analysed the same in the appropriate headings of the disclosure statement.

Product under Consideration, Like Article & Domestic Industry

10. The product under consideration in the present case is "Polytetrafluoroethylene (also referred to as PTFE) originating in or exported from China PR. PTFE is produced in various grades, such as moulding grade, fine powder, aqueous dispersions and compound grades of filled grades. All grades that were included in the scope of the previous case (original investigations) are within the scope of the present review. It is noted that PTFE is primarily used in electrical, electronic, mechanical and chemical industries for their unique characteristics which are chemical inertness, electrical and thermal insulation, low coefficient of friction, non toxic, non flammable, resistance to radiation, low level of static and dynamic friction and outstanding electrical properties over a wide frequency range.

11. Polytetrafluoroethylene (PTFE) is classified under subheading no 390461 under Customs tariff Act and at subheading no. 39046100. Customs classifications are indicative only and, in no way, binding on the scope of the investigations.

12. The Authority has examined the contention of the interested party that M/s GFL only produces moulding grade of PTFE and therefore duty should not be imposed on all other grades.

13. It is noted that the present investigation is a Midterm Review investigation and the scope of product under consideration is ordinarily not required to be modified, unless an interested party establishes the need for such a modification. The argument of interested party in this regard is based on the fact that GFL is the applicant seeking review and does not manufacture some grades of PTFE (which are admittedly being produced by HFL). The authority notes that the purpose of mid term review is only to seek an initiation of Midterm Review investigation. The petition filed before the authority is relevant only to decide whether there is sufficient positive evidence substantiating the need for review. Information that is required for determinations at the time of final findings may not even be available in the petition nor the applicant may be privy to all necessary information. The authority is required to call information from the relevant parties during the course of investigation, as prescribed under Rule 6.

14. Having satisfied itself that the petitioner has produced sufficient positive information substantiating the need for a review, the Authority initiated the mid-term review investigation of anti-dumping duty imposed on imports of subject goods originating in or exported from China vide Notification No. 15/33/2008-DGAD dated 27th February, 2009 in accordance with Section 9A (5) of the Act, read with Rule 23 of the AD Rules. During the process of mid term review investigations, the Authority, in accordance with rule 6 of the Rules called information from various interested parties, including domestic producers. HFL filed relevant information and participated in the present Midterm Review investigation. The company provided further information as desired by the authority.

15. The Authority held that the domestic industry for the purpose of present investigation constitutes both HFL and GFL It was noted that M/s HFL was the applicant at the time of original investigation and the petition filed by M/s GFL is with regard to enhancement in the quantum of anti-dumping duty and modification of the form of anti-dumping duty on the grounds that the anti-dumping duties were not serving its intended purpose of eliminating injurious dumping. Since a domestic industry now constitutes both HFL and GFL, the scope of product under consideration and scope of like article produced by domestic industry is required to be considered with reference to the production of both GFL and HFL.

16. It is also noted that under Rule 2(d), like article means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the article**s** under investigation. Further, Rule 11 dealing with injury refers to the domestic industry and provides that the authority shall, in the case of imports from specified countries, record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India. The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules. Thus, the authority concludes that the scope of like article for the purpose of injury determination is required to be considered in respect of the domestic industry as determined for the purpose of present determination.

17. The authority further notes that injury is required to be determined in accordance with Rule 11 which provides that the authority shall determine the injury to domestic

industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules. Thus, the authority is required to determine injury in respect of domestic industry as defined for the purpose of present determination. The domestic industry has been defined as constituting both HFL and GFL. Admittedly, HFL has a long history of production of product under consideration and in any case the authority has determined injury to the domestic industry by considering information for the investigation period and preceding three years. It is also noted that merely because GFL does not have a history beyond two years, the same does not bar the company from seeking relief under the rules. In fact, the rules recognize imposition of Anti-dumping duties if dumped imports of an article are materially retarding establishment of domestic industry.

18. After examination, the Authority notes that since both Gujarat Fluorochemicals Ltd. and M/s Hindustan Fluorocarbons Limited form part of the domestic industry and have cooperated with the Authority in the present investigations by providing relevant information, therefore the scope of product under consideration and like articles is required to be decided based on the goods produced and supplied by these two companies.

19. The Authority further notes that the domestic industry manufactures the domestic like product to the product under consideration and therefore, for the purpose of the midterm review, the scope of the product under consideration remains the same as defined in the original investigations.

Domestic Industry and Standing:

20. The Authority notes that the application for mid term review was filed by Gujarat Fluorochemicals Ltd., Noida (M/s GFL). Further, M/s Hindustan Fluorocarbons Ltd., Hyderabad, (HFL) has cooperated in the present investigation and provided all relevant information. In the original investigations, Hindustan Fluorocarbons Limited (HFL) had filed the petition before the Designated Authority. As regards the submission of the interested party that the scope of the domestic industry once determined at the time of initiation of an investigation cannot be enlarged during the course of the investigation, the Authority notes that the scope of domestic industry is required to be determined based on information from domestic producers who have provided information to the Authority during the course of the investigations. The Authority is required to consider various provisions of Rule 23(3), which provides as follows

(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be *mutatis mutandis* applicable in the case of review.

It is thus noted that the provisions of Rule 6, which deals with principles governing investigations, shall apply mutatis mutandis in case of a review. Rule 6 of the Rules requires the Authority to call relevant information from exporters, foreign producers and other interested parties. Interested parties has been defined under the rules to include (i) an exporter or a foreign producer or the importer of the product, (ii) a trader or business association a majority of the members of which are producers, exporters or importers of such an article, (iii) the government of the exporting country; and (iv) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India. Further, the Authority is required to determine injury to the domestic industry. Domestic industry has been defined under Rule 2(b) to mean the domestic producers as a whole engaged in the manufacture of the product or those whose collective output of the product constitutes a major proportion of the total domestic production of that article. The Hon'ble Supreme Court in the matter of Reliance Industries Ltd. Vs. Designated Authority has held that the entire investigation, analysis, recommendation and imposition are for the product under consideration for the *whole domestic industry* and not for the individual companies. The Authority thus holds that it was necessary to call information from other domestic producers for the purpose of the present investigations. Such information was in fact filed by Hindustan Fluorocarbons Ltd. and is required to be considered for the purpose of the present investigations.

The Authority also notes that Hindustan Fluorocarbons Ltd. had participated in the previous public hearing and had submitted the information as per the domestic industry proforma. The company has cooperated with the Authority.

21. In view of the above the Authority, therefore concludes that the domestic industry is validly constituted with Gujarat Fluorochemicals Ltd., Noida and M/s Hindustan Fluorocarbons Limited, Hyderabad.

Determination of dumping margin:

22. The Authority confirms the determination of dumping margin as mentioned in the para 14 to 26 of the final findings dated 26th Feb 2010 in view of the fact that no arguments have been made with regard to dumping margin.

Methodology for Injury Determination and Examination of Causal Links:

23. The Authority notes the interested party has argued that GFL started production in Dec 2007 and the POI is for the period of Oct 2007 to Sept 2008 therefore it cannot take the ground that injury to M/s GFL has been caused through dumping as an industry needs minimum 2 years to get the results. The Authority notes that the Anti-dumping rules clearly provide that the domestic producer who is facing material retardation to its establishment can request the Authority for imposition of anti-dumping duties.

24. The Authority holds that the injury to the domestic industry is evident. After examination of various injury parameters and considering the fact that the anti dumping duties are in place on imports from China and Russia, the Authority proposes to conclude that despite overall growth in demand and addition of fresh capacities in the Country, imports of the product under consideration from China PR have increased significantly both in absolute terms and relative to production and consumption in India. Even though the share of imports in demand/consumption in India in the POI declined as compared to the preceding year, the same was still higher than earlier years. M/s Gujarat Fluorochemicals Ltd., commenced commercial production during the POI. It is noted that injury to the domestic industry has been examined in the light of addition of capacities and fresh production by new company. It is further noted that dumped imports from China PR have been undercutting the domestic prices. Further, the landed prices of subject goods from China PR have caused price depression in the domestic market. With regard to consequent impact of the dumped imports on the domestic industry, it is noted that performance of the domestic industry continued to remain adverse on account of capacity utilization, market share, profits, return on investment, cash profits and inventories though the same should have improved as a result of increase in demand and imposition of anti dumping duties earlier.

Determination of Injury and Injury Margin

25. The Authority confirms the determination of injury and injury margin as mentioned in the para 27 to 61 of the final findings dated 26th Feb 2010.

26. In view of the above, the Authority confirms the final findings issued vide notification no No.15/33/2008 DGAD dated 26th February 2010.

Indian industry's interest & other issues

27. The Authority recognizes that imposition of anti-dumping duties might affect the price level of product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods.

28. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

FINAL FINDINGS:

CONCLUSION & RECOMMENDATION

29. After examining and addressing the submissions made by the interested parties pursuant to the post decisional oral hearing held by the Authority, in compliance with the orders dated 11th August, 2011 by the Hon'ble CESTAT, the Authority concludes that no modification is warranted in the final findings issued by the Authority vide Notification No.. 15/33/2008-DGAD dated 26th February 2010. The Authority, therefore, hereby re-affirms its findings made vide Notification No. 15/33/2008--DGAD dated 26th February 2010 and the recommendations made therein.

(Vijaylaxmi Joshi)
Designated Authority

(