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F. No. 07/04/2020-DGTR  
(MTR Case No. 01/2020)  
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

NOTIFICATION (Final Findings)  
MTR Case No. 01/2020

Dated 26<sup>th</sup> November 2020

**Subject: Mid-Term Review to review the product scope of definitive Anti-dumping duty imposed on Certain Float Glass originating in or exported from China PR.**

1. F. No. 07/04/2020-DGTR: Mahalaxmi Dyes & Chemicals Ltd (hereinafter also referred to as the 'Petitioner' or 'Applicant') has filed a mid-term review application seeking exclusion of 'Extra Clear Float Glass' (hereinafter referred to as 'ECFG' or 'product under review') from the purview of anti-dumping duty imposed on imports of "Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes" (hereinafter also referred to as the "subject goods" or "product under consideration" or "PUC") from China PR (herein after also referred to as "subject country"). Anti-dumping duty on EFCG from China PR is presently imposed vide Notification No. 47/2015-Customs (ADD) dated 8.9.2015. The current AD duties were in force till 7.9.2020, and they have been extended by three months vide Notification No 29/2020-Customs (ADD) dated 02.09.2020 i.e. till 7.12.2020.

## **BACKGROUND**

2. Vide initiation notification No. 14/19/2002-DGAD dated 5.7.2002, Designated Authority initiated an antidumping investigation concerning import of "Certain Float Glass", originating in or exported from China PR and Indonesia. The Preliminary Findings were issued by the Authority, vide Notification No. 14/19/2002-DGAD dated 20.11.2002 and provisional duty was imposed by the Ministry of Finance, vide Notification No. 7/2003-Customs, dated 7.1.2003. The Final Findings were issued by the Authority vide Notification No. 14/19/2002-DGAD, dated 22.8.2003 recommending anti-dumping duty on imports of 'Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes' from China PR and Indonesia. Ministry of Finance accepted the recommendation and imposed definitive anti-dumping duty vide Notifications No. 165/2003-Customs, dated 12.11.2003 for a period of five years from the date of provisional duty imposition.

3. Before expiry of the said duty, based upon an application from the domestic industry, Designated Authority conducted the first sunset review. Upon investigation, the Final Findings were issued by the Authority vide Notification No. 15/01/2007- DGAD dated 2.12.2008 recommending continuation of anti-dumping duty on imports of subject goods from China PR and Indonesia. Ministry of Finance issued Customs Notification No. 04/2009-Customs dated 6.1.2009 and continued anti-dumping duty on the imports of the above goods, originating in or exported from the subject countries for a further period of five years i.e., up to 5.1.2014.
4. Further, before the expiry of the duty imposed vide Customs Notification No. 04/2009-Customs dated 6.1.2009, based upon an application from the domestic industry, the Authority initiated the second sunset review investigation vide Notification No. 15/24/2013-DGAD dated 3.1.2014. During the pendency of the review, the validity of the anti-dumping duty on the imports of the subject goods from the subject countries was extended by the Ministry of Finance up to and inclusive of 5.1.2015, vide Notification No. 07/2014-Customs (ADD) dated 23.1.2014.
5. Final Finding was issued vide Notification No. 15/24/2013-DGAD dated 02.07.2015, and the Designated Authority recommended continuation of definitive anti-dumping duty at the rate of USD 218/MT imposed on imports of Certain Float Glass, originating in or exported from China PR. The Designated Authority also recommended withdrawal of anti-dumping duty against Indonesia. The said recommendation was implemented by Ministry of Finance vide Notification No. 47/2015-Customs (ADD) dated 8.9.2015 for a period of five years from the date of the notification. Anti-dumping duty was in force till 7.9.2020 and it has been extended by three months vide Notification No 29/2020-Customs (ADD) dated 02.09.2020 i.e. till 7.12.2020.

## **PROCEDURE**

6. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
  - i. The Authority issued a public notice dated 10.2.2020 published in the Gazette of India Extraordinary, initiating mid-term review of the anti-dumping investigation concerning import of the subject goods.
  - ii. The Authority informed the Embassy of China PR in India about the initiation of the subject investigation and requested for further circulation with concerned exporters/producers.
  - iii. The Authority made available copies of the non-confidential petition to M/s Saint-Gobain India Pvt. Ltd., M/s Sisecam Flat Glass India Ltd., M/s Gold Plus Glass Industry Ltd, and M/s. Asahi India Glass Ltd., also considered as the domestic industry in the original investigation.
  - iv. The Authority made available non-confidential version of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties as per Rule 6 (7). Also, in view of the global pandemic and physical inaccessibility, request was made to all the interested parties to share the non-confidential versions of their submissions with other interested parties via email.

- v. The Authority has examined the information furnished by the Applicant and the Domestic Industry to the extent possible to verify the claims made by the Applicant importer in its application.
- vi. Since the petition is for limited purpose of exclusion of a certain type of product under consideration, the Authority did not propose to evaluate either the quantum of dumping or injury, therefore stipulation of a POI was not required.
- vii. Further information was sought from the Applicant importer and the Domestic Industry to the extent deemed necessary. Verification of the data and claims of the Applicant importer was conducted to the extent considered necessary for the purpose of the investigation.
- viii. Verification of data and claims of the Domestic Industry was also carried out to the extent considered necessary for the purpose of the investigation.
- ix. In accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to the interested parties to present their views orally in a public hearing held on 20.10.2020. The parties, who presented their views in the oral hearings, were requested to file written submissions of their views expressed orally, followed by rejoinder submissions.
- x. In accordance with the Rules the Authority disclosed the essential facts of the case before it that forms the basis of its findings in the form of a disclosure statement dated 17.11.2020 and the interested parties were allowed time up to 24.11.2020 to comment on the same. The comments of the interested parties, to the extent relevant, have been considered by the Authority and have been addressed in this finding.
- xi. ‘\*\*\*\*’ in this Final Findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.

## **PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **Submissions made by the Applicant**

7. The submissions made by the Applicant are as follows:
  - a. The product under consideration defined in the original investigation was “*Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes.*” Both ordinary Float Glass and Extra Clear Float Glass are classified under the category “Glass and Glassware” in Chapter 70 of the Customs Tariff Act, 1975 and further under 7005 as per Customs Classification.
  - b. The applicant has sought exclusion of ‘ECFG’ claiming that the said product does not form part of the product scope as defined in Final Findings- Notification No: 15/24/2013-DGAD dated 02.07.2015.
  - c. The Applicant has defined ECFG as “Extra clear, low-iron float glass, which is practically a colourless glass with negligible greenish tint visible on the edge and having a higher degree of light transmission and transparency achieved usually by reducing iron

content in the glass. Extra clear float glass is also known in the market as 'Ultra Clear Float glass' or 'Low Iron Float Glass'" (also referred to as product under review).

- d. The Applicant also placed reliance on RTI Reply dated 16.8.2018 received from DIPP, Ministry of Commerce, which also confirms that none of the glass manufacturers in India make Ultra Clear Glass. It is further submitted that even CESTAT (Ahmedabad) has given a clear ruling in Jajoo Architectural Glass Pvt Ltd vs CC-Ahmedabad on ECFG being a different product than CFG and same to be adopted by DGTR.
- e. There are significant differences between CFG and ECFG in terms of prices, technical aspects, such as raw material composition, production process, physical and chemical properties and other characteristics.
- f. That the Domestic Industry will not suffer any injury if ECFG will be excluded from the levy of anti-dumping duty, as the exclusion does not have any injurious effect on domestic industry. There is low demand for ECFG in India and no volume injury to the domestic industry will be caused as the imports comprise of less than 1% of imports. Similarly, in terms of price, there is no possibility of any adverse price effect to the domestic industry as the prices of ECFG imports are more than 2.5 times the CFG manufactured and sold by the Indian producers.
- g. That a separate BIS standard has been proposed for ECFG and Applicants had relied upon the said draft BIS for ECFG issued in February 2019 to substantiate their request for exclusion. Similar reliance was placed on Australian AD Commission, wherein Australian Authority has excluded low iron glass from the scope of anti-dumping duty.
- h. That the Authority in a recently issued final finding excluded low melting yarn because Domestic Industry conceded that they have not produced the same even though they hold capability to supply the same and the only reason why domestic industry did not supply was the lack for orders from consumers and the fact that the price of such yarn is much higher than the price of other yarns. Similar reliance was also placed on the decision by CESTAT in Indian Refractory Makers Association 2000 (119) ELT 319 (TRI).
- i. That there is no merit in the argument of the domestic producers that Chinese producers' non-participation reflects that there is no difference in PUR and PUC, as they have sourced information from market research and sources, and have also included information supplied by Chinese producer, who have stated that ECFG was not commercially produced before 2005 and there exists significant differences in ECFG and CFG in terms of physical as well as manufacturing process-wise.
- j. That even the Manual of SOP issued by DGTR provides, mere competence without any production or merchant sales may not be sufficient to include an item in the definition of the PUC.
- k. That the Domestic Industry is not producing ECFG and, therefore, it ought to have been excluded as per the consistent practice of the Authority. Needless to say, that an 'unlike article' would never form a part of the Product under Consideration in the first place and, therefore, cannot be subject to anti-dumping duties.

### **Submissions made by the Participating Domestic Producers**

8. The domestic producers have made the following submissions:
  - a. That since one of the domestic producers had actually produced and sold the ECFG and therefore, there is no occasion for the Authority to exclude the ECFG from the scope of the PUC. It is further submitted that the other producers of the PUC also have the capability to produce PUR which also supports the point that PUR cannot be excluded from the scope of the PUC. It is also submitted that even in the written submission filed by the applicants, at several places the applicants have themselves admitted that domestic producers are indeed producing the PUC as well as PUR.
  - b. That it is important to note that none of the exporters participated in the investigation to assist the Authority to reach to the conclusion relating to like product, difference in manufacturing process, raw materials, difference in technology, cost associated with PUC and PUR, which is of critical importance in limited mid-term review investigation concerning exclusion of product. In view thereof, the Authority should reject the submission made by the users, as the same are not only incorrect and contrary to the jurisprudence available on the subject, but also not substantiated by any producer from China PR with material evidence. On account of such non-participation and non-cooperation on part of the exporters, the domestic producers had requested that the Authority should reject the submissions made by users.
  - c. That the definition of the product under consideration includes all types of Float Glass except exclusion carved out from the scope of the product under consideration. It is further submitted that since the Domestic Industry is producing the “Extra Clear Float Glass”, the question of its exclusion does not arise and therefore, the domestic producers requested the Authority to terminate the investigation at this stage itself.
  - d. That the product scope is not at all vague and is defined in the most precise manner covering the product which is causing injury to the Domestic Industry. Moreover, the fact that Extra Clear Float Glass (ECFG) as a product variant was indeed in existence even before the initiation of original investigation, proves the fact beyond any doubt that ECFG was very much part of PUC. It is further submitted that if the Chinese producers had started the production of ECFG since 2005 and if ECFG was not a clear float glass, why the issue was not raised in any of the previous investigations. In written submissions, domestic producers comprising domestic industry have reiterated that one of their constituent domestic producers has produced and supplied the ECFG in the market and others have the capability to produce and supply in the market and therefore, ECFG cannot be excluded from the scope of the product under consideration.
  - e. In relation to the certification by one of the Chinese Producers that China PR is producing ECFG since 2005, the Domestic Industry has submitted that this fact is of no consequence as the applicant has failed to prove that the ECFG is not a variant or subset of the PUC. As regards the existence of ECFG as a product variant, it is not relevant as to when did China PR start the production of the same. As a matter of fact, the product was indeed manufactured by the technology supplier of the Domestic Industry and, therefore, the existence of the specific variant of the PUC as a product, is not in question. It was not produced in India earlier as there was no demand for the same. Now when there is demand, domestic producers are producing and supplying the same in the market.

- f. That one of the domestic producers namely SGIPL has imported very miniscule percentage of ECFG from China PR after paying applicable anti-dumping duties only for internal use – to make lacquered and coated glasses. SGIPL has not used any part of imported ECFG for reselling or other trading purposes.
- g. That the RTI reply annexed by the Applicant is of no significance in the instant case for two reasons. Firstly, Saint Gobain India Pvt. Ltd. (SGIPL) is not part of that association and, therefore, the information relating to the said producer could not have been a part of the RTI reply. Secondly, the query pertains to very old period and the applicant has admitted the fact that there is no dispute that SGIPL has produced and sold ECFG.
- h. That the reference to Manual of SOP by applicant is misplaced and based on the wrong appreciation of facts and therefore, the same needs to be rejected. It is further submitted that since SGIPL has actually produced and supplied the ECFG, the paragraph relied upon by the applicant actually supports the case of Domestic Industry.
- i. That from the submissions of the applicant, it appears that they are trying to ride several horses at the same time. At times, the argument is that they are merely seeking a clarification in respect of the PUC. In the very same breadth, it is argued that the PUC never included ECFG. The confusion is further confounded as they are also trying to make out a case of exclusion which, by definition, presumes that the PUR was indeed included in the PUC in the very first place. The Domestic Industry further submitted that each of the grounds for a mid-term review has different implications in terms of the factual and legal premises and the Domestic Industry has a right to comment upon the same. Since the application of the importer suffers from the vice of ambiguity, both legal and factual, the investigations ought to be rejected on this ground alone.
- j. That in relation to the submission about collection of anti-dumping duty on ECFG imported into India, Domestic Industry has submitted that the Customs Authorities are collecting anti-dumping duties on imports of ECFG when the same is imported from China PR, and other countries from where anti-dumping duties are applicable. Moreover, SGIPL has also paid anti-dumping duties for the small quantities they had imported from China PR for their internal consumption for value added products. Therefore, the statement that recently Customs are charging anti-dumping duties is not only irrelevant but incorrect and, therefore, needs to be rejected outrightly.
- k. The Domestic Industry has submitted that the reference of decision of the CESTAT in Jajoo Architectural Glass Pvt. Ltd. V. CC Ahmedabad, has no relevance in the instant investigation for the reason that the said judgement was not made by Principal Bench of CESTAT, which is the only legal authority to pass orders in the context of anti-dumping matters in terms of Section 9C of the Customs Tariff Act, 1975. Moreover, it cannot be overlooked that the decision of the CESTAT bench was passed without even making either the DGTR or the Domestic Industry as a party to the proceedings. Accordingly, the Domestic Industry submits that the said decision of the Hon'ble Tribunal is not only without jurisdiction but also does not have any bearing on the present findings which have not been and could not have been modified by the Hon'ble Bench of the CESTAT. The Domestic Industry also points out that a writ petition has already been filed in the Gujarat High Court challenging the CESTAT order. In view thereof, Domestic Industry humbly submits that the said CESTAT order, not having

been passed under Section 9C of the Customs Tariff Act, has no bearing on the current proceedings.

- l. That the Applicant has compared one subset of product under consideration with other subset of the product under consideration, without appreciating the principles of fair comparison as envisaged under paragraph 6 of Annexure-I to the Anti-dumping Rules and Article 2.4 of the Anti-dumping Agreement. It is further submitted by the Domestic Industry that the ECFG imported from China PR is severely undercutting the prices of the Domestic Industry when proper comparison is made. Moreover, the landed value of ECFG is significantly below the fair selling price of ECFG sold by the Domestic Industry. Thus, ECFG imported from China PR is also injuring the Domestic Industry and hence, cannot be excluded from the product scope.
- m. It is further submitted by the Domestic Industry that if the proposition advanced by the Applicant is accepted then in that case, the Authority will have to exclude all products having different specification with price differences in each and every case. This would be in serious violation of the concept of fair comparison and PCN-based analysis which is well-enshrined in the anti-dumping laws, jurisprudence and practice. The domestic industry has submitted that mere price difference between two subsets of the same product cannot become a ground for exclusion.
- n. That the applicant has misunderstood the production process and the requirements of inputs to produce all variants of the subject goods. It is submitted by the Domestic Industry that merely because of less iron content in the one subset of the product under consideration, it does not make it a case for exclusion. Moreover, it is important to note that it remains undisputed that the raw materials used to produce the subject goods are same. The slight differences in the specification (iron content) of some of the inputs do not make the product different. It is further submitted that even for the Glass manufactured by different players in India, the iron content is different. Therefore, difference in the iron content does not render ECFG as a separate product justifying its exclusion. As a matter of fact, even if the raw material for different subsets are significantly different, this cannot be a ground for exclusion. The Domestic Industry submits that the above submissions are without prejudice to their contention that the entire case of the applicant falls flat in view of the admitted fact that the Domestic Industry is producing the said variant of the PUC.
- o. In addition to above, it is submitted that the as per the Applicant's own admission, the difference between the import prices of ECFG from China PR and from other countries is very huge. This further proves that even the alleged higher prices of ECFG from China PR will be injurious to the Domestic Industry when a proper comparison is made in terms of the established principles of comparison. From the information on record, it is amply evident that the ECFG imported from China PR is severely undercutting the prices of the Domestic Industry. Moreover, the margin of price underselling is also significant. Thus, Chinese imports of ECFG are also injuring the Domestic Industry. In view thereof, the Domestic Industry requests the Authority to terminate this investigation.
- p. The manufacturing process and inputs required to produce ECFG or any other variant of PUC are identical. The ratio of the two types of iron is important in all categories of glasses, and it is not something peculiar to ECFG. The addition of the chemicals, such as CeO<sub>2</sub>, sodium sulfate and sodium nitrate mentioned in the written submission for

the purpose of chemical decolorization of ECFG are also added in production of normal Clear Glass.

- q. That the manufacturing process to produce ECFG or any other variant of PUC are identical. It is further submitted that different types of glass may require adjustments in the parameters which, in any case, do not make the manufacturing different. In any case, the argument of the applicant is also completely misplaced as it is a settled principle of law that the products do not become unlike merely because the production processes are different.
- r. That in relation to the claim of different BIS standards, Domestic Industry has submitted that the argument is completely misconceived and flawed. The product under consideration in anti-dumping investigations are not governed by the BIS standards. It is not uncommon to have different BIS standards for the product variants of the very same Product under Consideration. The purpose of BIS is for setting quality standards and norms. Further, even the BIS standards for ECFG, to the best of the information of the Domestic Industry, are still in draft stage. In any case, the applicant has failed to give any ground, let alone any evidence, to establish that the ECFG is not clear float glass. This is without prejudice to the fact that SGIPL is producing ECFG.
- s. That the Applicant has tried to mislead the Authority by comparing normal Clear Float Glass with ECFG. However, to substantiate differences, Applicants ought to have made comparison between ECFG produced by SGIPL and imported by them. Since no such exercise was undertaken, all such arguments need to be rejected as the same are based on incorrect comparison.
- t. It is submitted that ECFG produced by SGIPL and imported by Applicant are like articles. Moreover, importers in India prefer to buy ECFG from China PR solely for the reason of price. It is submitted that the arguments related to price difference is misplaced and hence need to be rejected. It is important to note that the applicant has filed the application for exclusion of ECFG which by itself, is an admission that the same was always a part of the Product under Consideration
- u. That the domestic producers in Australia have not included "Low Iron Glass" as part of product under consideration, and, therefore, reliance on Australian Float Glass Case does not advance the case of the Applicant. Moreover, product under consideration of one information cannot be a basis for inclusion or exclusion of any product.
- v. Domestic Industry has submitted that by deciding to not participate in the instant investigation and also in the ongoing sunset review investigation, the exporters strategically withheld the critical information relating to subsets of the PUC and their manufacturing process and difference in inputs. Since none of the exporters has assisted the Authority by providing actual data/information or the production process, the Domestic Industry humbly requested rejection of mid-term review investigation.
- w. That since none of the interested parties had challenged the previous findings, in any court of law, the decision taken in that investigation attained finality. Further, the provision of the mid-term review is made to seek amendment in the previous findings, provided there are reasons to believe that facts and circumstances prevailing at the time of previous completed investigation have changed. In view thereof, since the applicant has failed to show any change in the facts and circumstances that requires exclusion of

ECFG post final findings of the Authority in 2015, the submissions advanced by the Applicant is devoid of any merit and therefore, need to be rejected.

- x. That the Authority may conduct any required verification or test to examine the factual position of the issue at hand. In fact, the Applicant has been changing the required specifications of the subject product frequently which shows the intention of the Applicant is only to avoid the duties and there are no merits in their contentions.

### **Examination by the Authority**

9. The Authority has carefully examined the scope of the Product under Consideration in the original investigations from which an exclusion has been sought. While defining the scope of the PUC, the Authority in of the initiation notification has mentioned an exhaustive list of specific categories of Float Glass which have been excluded from the product scope. They are reflective glass, processed glass meant for decorative, industrial or automotive purposes.
10. In the present application, the applicant has sought an exclusion of Extra Clear Float Glass (referred to as ECFG or PUR). The application mentions the following grounds of review under the heading “grounds of review”:
  - a) ECFG or low iron glass are different in physical appearance as ECFG is ultra-clear whereas Clear float glass is affected by a slight green tinge.
  - b) There is higher degree of light transmission in ECFG as compared to Clear Float Glass.
  - c) ECFG or ultra-clear float glass product contains 75% less iron content as compared to standard clear float glass. The typical iron content in silica sand used for CFG in around 650 ppm to 850 ppm whereas for ECFG, it is around 100 ppm to 200 ppm. Most of the iron oxide content present in silica sand is removed for manufacturing ECFG.
  - d) A separate BIS standard has been proposed for ECFG.
  - e) Domestic Industry did not produce Extra Clear Float Glass at the time of original investigation as well as until the conclusion of last sunset review investigation. According to the information available with the applicants, the domestic industry is importing significant quantities of ECFG and reselling them in India.
  - f) Since ECFG was neither produced by the Indian domestic industry nor imported into India at the time of original investigation, the existing measures do not cover ECFG.
  - g) Import prices of ECFG are significantly higher than that of CFG, indicating that they are not substitutes for each other in the marketplace.
  - h) ECFG and Clear Float Glass is advertised differently by companies worldwide and market perception is also quite different.
  - i) Applicant claims that application of ECFG is completely different from normal CFG applications. It is further claimed that several applications can only use ECFG due to the functional and aesthetic limitations of CFG. Such applications are glass for solar panels that require maximum light transmissions, glass for light fixtures, viewing glasses, space applications, etc.
  - j) CESTAT Ahmedabad vide order no. A/11068-11069 /2019 dated 05.07.2019 has held that “Extra Clear glass” is altogether a different variety of glass as compared to Clear Float glass and as a result, concluded that anti-dumping duty is not payable on imports of ECFG.
  - k) ECFG has been excluded by other jurisdictions, such as Australia, wherein number of variants, including low iron glass (or extra clear float glass) were excluded from the scope of anti-dumping measures on Clear Float Glass in nominal thicknesses of 3 to 12 millimeters (mm).

- l) Applicant has claimed that levy of anti-dumping duty on ECFG is adverse affecting his business as anti-dumping duty is being levied on imports of ECFG though no domestic alternative is available in the market.
11. The first issue for the consideration of the Authority is whether the ECFG was at all a part of the PUC in the original investigations or not. In this context, it is noted that the principal arguments of the applicant are two-fold. One, that ECFG was not produced in China PR prior to 2005 and, therefore, the same could not have been a part of the PUC. Two, even the Domestic Industry did not produce ECFG during the original period of investigation. Before deliberating on this issue, it is important to consider whether ECFG can be considered as a part of the PUC or not. In this regard, the following examinations have been made.
12. It is noted from the examination of submissions on record that the technical specifications of the ECFG are more refined as compared to the standard clear float glass. It is also not disputed that the raw material used is also of a higher standard or purity. At the same time, the production parameters are also stricter to get the desired quality/specifications of the glass. Even if all these contentions are accepted, the only inescapable conclusion that can be drawn is that ECFG is merely a subset of the larger category of float glass (PUC).
13. Having considered that ECFG is merely a subset of the PUC, the contentions of the applicants has been examined. The claim of the petitioner that ECFG was not manufactured in China PR and not exported to India before 2005 is of no consequence as this issue was never raised during any of the previous investigations. Moreover, SGIPL, the domestic producer, which is a constituent of the domestic industry, is currently producing ECFG, and has submitted details of production of ECFG and domestic sales made by them.
14. In relation to enclosed certificate by one of the Chinese manufacturers, it is noted that since the said producer has not participated in the investigation, the same has little relevance in the current investigation, as the claim made by them could not be verified by the Authority.
15. As regards the fact that the proposed BIS for ECFG is different, the Authority agrees with the contention of the Domestic Industry that different BIS standards *per se* for the different subsets within the PUC are of little consequence in anti-dumping investigations. It is not uncommon to have different BIS standards for the product variants of the very same Product under Consideration. The purpose of BIS is for setting quality standards and norms and cannot influence the scope of the PUC. Further, though of no consequence, even the BIS standards for ECFG are admittedly still in draft stage. In any case, the applicant has failed to give any ground, let alone evidence, to establish that the ECFG is not clear float glass.
16. The Authority is of the view that one of the principal criteria for exclusion of any product from the purview of the Product under Consideration is whether the Domestic Industry is manufacturing the same or not. In this context, it is noted that the Domestic Industry has indeed produced and sold ECFG in reasonable quantities prior to the filing of this application. This fact has been verified from the records of the company. In fact, the applicant has also not disputed the fact that one of the domestic producers has produced and sold the PUR. The fact that they did not produce ECFG during the original POI is not relevant for the purpose of this investigation.
17. As regards the contention that the use of the ECFG is different from that of the standard glass, the evidence on record indicates to the contrary. It was demonstrated by the Domestic Industry through the submission filed by them, that the ECFG can easily be used for the

applications where traditionally clear float glass is being used. It may, in any case, be mentioned that usage of a particular subset of the PUC for a particular purpose, cannot be a ground for exclusion so long as the same is a part of the PUC. The fact that producers produce different variants of the PUC, is only because the specific usage could be different. As mentioned earlier, the fact remains that the Domestic Industry has been producing the said variant of the PUC and has submitted evidence of the same during the investigations.

18. With regard to the claim that the prices of ECFG are much higher than those of the standard clear float glass, the Authority is of the view that even if the contention of the applicant is accepted, the only consequence is that the price comparison has to be done in an appropriate manner as envisaged under paragraph 6 of the Annexure I of the Anti-dumping Rules and Article 2.4 of Anti-dumping Agreement. In this context, it is important to reiterate that there has been no participation by any of the Chinese producers/exporters either in this mid-term review or the parallel sunset review against China PR. No detailed verifiable information has been produced by any of the interested parties to carry out a detailed price comparison as envisaged under the Rules.
19. Without prejudice to the above, the Authority has called the DG Systems import data to analyze the claim of the petitioner that due to varied thickness in single bill of entry, import prices from DGCI&S do not give correct position of import prices, as DGCI&S reports only one thickness in one bill of entry. The Authority has found credence in the request of the petitioner that DGCI&S import data may not reflect true import prices in all transactions. After examining the information as made available by the petitioners, DGCI&S and DG systems, it is noted that though the prices of the ECFG reflected in the import transactions have been found to be higher than subject goods, these are nowhere as high as claimed by the petitioners. Moreover, as indicated above, in the absence of any verifiable information about export price, the contention of price difference could not be further substantiated.
20. As regards the reference to the decision of the CESTAT in Jajoo Architectural Glass Pvt. Ltd. V. CC Ahmedabad, it is noted that said judgment has neither changed the final findings nor modified the product under consideration. In any case, only the Principal Bench constituted under Section 9C has the jurisdiction to either amend or modify the final findings of the DGTR.

**Post Disclosure Comments:**

**Submissions of the Applicants:**

21. The following submissions have been made by the Applicants:
  - a. That the Authority has already made up its mind to reject the application, without waiting for comments on disclosure statement from the parties, this has made the comments on disclosure statement useless.
  - b. That the Authority's examination with respect to price difference violates principles of natural justice being non-speaking as well as is without any application of mind.
  - c. The Authority's examination with respect to issue of production of ECFG during the original investigation as well as post original investigation is without any application of mind and violates principles of natural justice.

- d. That the Authority's examination with respect to accepting domestic industry's contention of present production of ECFG, is completely irrelevant and inconsequential considering the facts of present case.
- e. That the Authority's conclusion with respect to product characteristics of ECFG is incorrect.
- f. That the Authority's examination with respect to substitutability in terms of usage is based on incorrect appreciation of facts on record.
- g. That the Authority's examination with respect to non-applicability of BIS Standards is incorrect.
- h. That the Authority's examination with respect to non-applicability of CESTAT decision in Jajoo Architectural Glass is incorrect and needs to be reconsidered.
- i. That the Authority's insistence on participation by Chinese producers/exporters has absolutely no bearing in the present review.
- j. That the Authority has relied upon the rejoinder submission of the domestic industry which comprises of new submissions, which has been relied upon by the Authority but not disclosed to the Applicants. Whereas, the Authority has neither considered nor addressed several submissions of the Applicants in the disclosure statement.
- k. That the Authority should address that when there was no production of ECFG by domestic producers in India and imports into India of ECFG during the first investigation, how ECFG is said to be included in the PUC. It is further submitted that the current investigation is not for examining whether antidumping duty can be imposed on ECFG, it is to examine whether the 'existing' antidumping duties can be applied on ECFG or not.

#### **Submissions of the participating domestic producer**

22. The following submissions have been made by the domestic producers:

- a. That since the domestic producers are producing the all variants of the subject goods including ECFG, the question of any exclusion from the scope of the subject goods cannot be entertained or accepted. In view thereof, domestic producers requested that the request of exclusion of ECFG from the product scope should be outrightly rejected
- b. That the applicant has failed to provide any basis or evidence to prove that ECFG is not a part of the PUC. On the contrary, the domestic producers have shown that ECFG is merely a subset of the larger product group of clear float glass. In fact, the applicant also refers to ECFG as a different variety of glass having different aesthetic value. Accordingly, it is important to note that ECFG is covered under the definition of the scope of the Product under Consideration as defined in the earlier investigations.
- c. That the specifications mentioned by the Applicant from BIS is factually incorrect, as the same is still in the draft stage and not accepted. Secondly, domestic producers are producing all variants of the subject goods, which meets all the requisite existing standards.
- d. That the Applicant has not provided even a single evidence that their request of purchase or query was rejected by the domestic producers. On the contrary, Applicants and their so-called supporters have not bought the subject goods from domestic producers, only because of the cheap and dumped imports coming from China.

- e. That the applicant itself in their submissions has accepted that one of the domestic producers namely, Saint Gobain India Pvt. Ltd. is producing the ECFG, the variant of the subject goods for which Applicant is seeking exclusion. This self-admission leaves no opportunity for the Authority to accept their request of exclusion.
- f. That the price comparison drawn by Applicant between Extra Clear Float Glass and Clear Float Glass is wrong and misleading, because, the Applicant is comparing ECFG imported from China with Clear Float Glass (CFG) imported from China and produced and sold by the domestic producers. If the prices of ECFG produced by domestic producers and imported from China or any other country is compared, there will be no difference as claimed by the Applicant.
- g. That even if the contention of the Applicant is accepted, the only consequence is that the price comparison has to be done in an appropriate manner as envisaged under the Anti-dumping Rules and Article 2.4 of Anti-dumping Agreement. It is further submitted that as per the best of our knowledge of domestic producers, DGTR or any other agency around the world, has not excluded a product on the ground that the *inter se* prices are different. A different approach will have serious implications for other investigations wherever there is price variation between the different variants of the PUC.
- h. That in anti-dumping investigations, a product can be excluded only if the same is not manufactured by the domestic producers and also are not commercially and technically substitutable or domestic producers do not have the capability to produce the subject goods.
- i. That since none of the producers / exporters has participated in the investigation, the Authority could not verify the information vis-à-vis Chinese producers. In view therefore, it is requested that the Authority should reject the claims of the Applicant and terminate the investigation.

#### **EXAMINATION BY THE AUTHORITY**

23. The post disclosure submissions have been received from the interested parties, and it is noted that the most of the issues raised are reiterations and have already been raised earlier and also addressed appropriately in the disclosure statement and also in these final findings. Additional submissions have been analyzed as under:
  - a. With regards to the contention of the Applicant that the Authority has already made up its mind to reject the application, without waiting for comments on disclosure statement from the parties, it is noted that the same is not correct as the Authority has merely disclosed the facts and its understanding based on the submissions received from all the interested parties, so that all interested parties can provide their comments based on that and also point out if any material fact is left, which is essential for the final consideration of the Authority. In view thereof, the contention that the Authority has already made up its mind holds no merit.
  - b. In relation to the submission that the Authority has issued disclosure statement without application of mind, it is noted that in terms of the Rule 16, the Authority disclosed all essential facts to the interested parties for their comments, which may form the basis of its decision. Therefore, the understanding of the Applicant is incorrect and is

without merit.

- c. In relation to the submission regarding non-relevance of the participation by Chinese producers/exporters in the instant investigation, it is noted that since the ongoing investigation involves examination of prices, which varies due to thickness, production technology and production process, the participation by the Chinese producers / exporters was quintessential, particularly when domestic producers have contested the claims provided by the Applicants.
- d. As regards the contention of the Applicant that the Authority has relied on new submissions of the domestic producers provided in the rejoinder submissions without disclosing to them, and have not considered their submissions, it is noted that the same are factually incorrect. The disclosure statement is not an ad verbum representation of all the submissions of the interested parties. The Authority has considered all the submissions in the disclosure statement to the extent considered relevant and essential for its determination for the final decision.
- e. In relation to the submission regarding inclusion of the ECFG in the PUC despite non-production of ECFG by domestic producers in India and imports into India of ECFG during the first investigation, the Authority notes that the Applicants have failed to substantiate that ECFG is not part of the Float Glass as defined in the earlier findings. Further, it is noted that the domestic producers have provided evidence of actual production and supply of the same during this mid-term investigation. Therefore, the issue concerning past investigations has no relevance for the present findings, particularly when no interested party has ever challenged those findings on this issue. In view thereof, the contention raised by the Applicant is devoid of any merit.
- f. In relation to the issue of price comparison, it is noted that the comparison made by the Applicant between Extra Clear Float Glass and Clear Float Glass is not appropriate. In this context, it is also noted that when proper comparison is made between ECFG imported from China, and domestic like product produced by domestic producer, there will be no difference as claimed by the Applicant. With regard to determination of landed price of ECFG imported from China PR, it is noted that the Authority has also analysed the import data relied upon by the Applicant which have been procured from secondary sources. It is noted from the analysis that though the prices of the ECFG reflected in the import transactions have been found to be higher than subject goods, these are nowhere as high as claimed by the petitioners. It may also be added that the Authority for the purpose of price determination of ECFG imported from China PR had not gone by DG systems data, and that DG systems data has been used only for the limited purpose of verifying the claims made by the applicants, and not for the final determination. As has been pointed out, the Authority has already accepted the claims of the petitioners with respect to information submitted by them regarding higher price of ECFG vis a vis clear float glass. In any case, the exclusion of a particular variant of the product from the PUC cannot be made only on price variation.
- g. It is further noted that the applicant has failed to provide any basis or evidence to prove that ECFG is not a part of the PUC. On the contrary, the domestic producers have shown that ECFG is merely a subset of the larger product group of clear float glass. In fact, the applicant also refers to ECFG as a different variety of glass having different aesthetic value. Accordingly, the Authority notes that ECFG is covered under the

definition of the scope of the Product under Consideration as defined in the earlier investigations.

- h. The Authority has found merit in the submissions of the domestic producers that since they are producing the all variants of the subject goods including ECFG, and therefore, ECFG cannot be excluded from the product scope. Moreover, the Applicants have failed to provide any material evidence that ECFG is not part of the Float Glass. After examining the submissions made by the interested parties and issues raised therein and considering the facts and evidences available on record, the Authority concludes that the domestic industry manufactures the like product to the ECFG imported from China PR, and it would not be appropriate to exclude the same from the scope of the product under consideration.

### **Conclusion**

24. After examining the submissions made by the applicants, responding domestic producers and other interested parties and issues raised therein; and considering the facts available on record, and its examination as above, the Authority concludes that the ECFG cannot be excluded from the scope of the product under consideration.

### **Recommendation**

25. In view of the above, the Authority concludes that ECFG cannot be excluded from the scope of the product under consideration.
26. An appeal against the order of the Central Government arising out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Customs Tariff Act, 1975.



(B. B. Swain),

**Special Secy. & Designated Authority**