

**COMPETITION COMMISSION OF INDIA**

**Case No. 54/2012**

Merino Panel Products Limited

Informant

Vs

Gujarat State Fertilizers and Chemicals Limited

Opposite Party No.1

Directorate General of Anti-Dumping and Allied Duties

Opposite Party No.2

Date: 09/01/2013

**Order under Section 26 (2) of Competition Act 2002**

The present information has been filed by Merino Panel Products Limited ('the informant') under Section 19(1) (a) of the Competition Act, 2002 ('the Act') against Gujarat State Fertilizers and Chemicals Limited (OP1) and the Directorate General of Anti-Dumping and Allied Duties, (OP2) Department of Commerce, Ministry of Commerce and Industry ('the opposite parties') alleging inter-alia contravention of Section 3 and Section 4 of the Act.

2. The informant claimed to be in the business of importing and selling of Melamine, a tasteless, odourless, and non-toxic substance, used for laminates to some electrical appliances possessing high mechanical strength. OP 1 is a Public Sector Undertaking engaged in the business of Melamine production in India. OP 2 is Director General of Anti-Dumping and Allied Duties (DGAD), a government agency under Ministry of Commerce and Industry to regulate anti-dumping behavior of the firms in the Indian market.

3. As per the information, in India, OP 1 is the sole producer of Melamine. A number of companies including informant import Melamine from abroad.

The informant submitted that OP 1 initiated two anti-dumping investigations relating to alleged dumping of melamine into India from China. Subsequently antidumping investigation was also initiated against the imports of melamine from EU, Indonesia, Iran and Japan.

4. The first anti-dumping investigation relating to alleged dumping from China was initiated by OP 2 on 16.09.2003. OP 2, after investigation, recommended imposition of antidumping duty on the imports from China. It was recommended to impose a reference price of US Dollar 1284.38 for a cooperating exporter and US Dollar 1456.78 per MT for every other export or produce from China. The customs notification imposing anti-dumping duty recommended by the OP 2, was issued on November 16, 2004.

5. In terms of India's obligations under WTO, anti-dumping duty is reviewed after every five years of duty imposition. In this case, when a review was undertaken, OP 1 again approached OP 2 for continuance of the anti-dumping duty. The OP 2 continued with duty imposition and recommended for all exporters US Dollar 1681.49 per MT. The customs notification imposing the anti-dumping duty was issued on February 19, 2010.

6. It is submitted by the informant that after making import of melamine from China costlier, OP1 turned its attention to imports from EU, Indonesia, Japan and Iran. OP 2, on the basis of request of OP 1, investigated dumping issue from these countries and recommended imposition of antidumping duty on the imports from these countries. OP 2 recommended a reference price of US Dollar 1446 for imports from Iran and US Dollar 1537 for imports from EU, Japan and Indonesia on 1 June, 2012.

7. The Informant alleged that imposition of anti-dumping duty has enabled OP No. 1 to unilaterally increase sale price for its melamine thereby forcing

purchase of melamine from OP1 at an artificially hiked prices, fixed independent of the market forces.

8. The informant also alleged that the agreement between OP 1 and its EU Technology Partner and the conduct of exporters who used to supply melamine in India was anti-competitive under section 3 of the Act as they did not oppose request made by OP 1 to impose anti-dumping duty on imports.

9. It is further alleged by the informant that OP 1 abused its dominant position by falsifying figures to make a case of injury to domestic industry and dumping of Melamine. The action of OP 2 in recommending the levy of anti-dumping on Melamine was a violation of Section 4 of the Act.

10. The informant has approached this Commission only on the basis of imposition of anti-dumping duties by OP 2 on Melamine, action for which was initiated by OP 1. Anti-dumping duties are imposed under Custom Tariffs Act, 1975 as amended in 1995. Before imposition of Anti-dumping duty, due notice is given to the affected parties and a hearing is done under the Act and thereafter recommendations for anti-dumping duty is made by the concerned authority. Any party aggrieved by the imposition of anti-dumping duty has a remedy available under law and can approach the Appellate Authority, namely, Custom, Excise & Service Tax Appellate Tribunal (CESTAT) against the order imposing the anti-dumping duty. The Commission cannot go into the facts whether the data produced by OP 1 before OP 2 was correct or not or the conclusion arrived by DA while recommending anti-dumping duty was as per law or not. During arguments it transpired that the informant had already exercised his right under the Custom Tariff Act of filing appeal against the recommendations of imposing anti-dumping duty.

11. Mere increase in price by OP 1 is not a competition issue. The import of Melamine in India is very much there. The total production of OP 1 is stated to

be 15,000 Metric ton per year while the demand in Indian market is considered 33,000 metric ton. The market share of OP 1 was thus less than 50% and despite anti-dumping duty, the imports had been increasing year after year. The relevant data shows that the market share of OP 1 has been falling year after year. In 2004-05, the market share of OP 1 was 72%, in 2005-06, it was 79.42%, in 2006-07, it was 67.66%, in 2007-08, it was 49.79% and in 2009-10, it was 38.44%, which itself shows that there was enough competition in the market and OP 1 could not have increased the price arbitrarily under a danger of losing market due to its high price.

12. In view of foregoing, the Commission finds that there is no prima facie case of contravention of the provisions of the Act. The case is liable to be closed under section 26(2) and is hereby closed.

13. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

Sd/-	Sd/-	Sd/-
H.C. Gupta (Member)	R. Prasad (Member)	GeetaGouri (Member)
Sd/-	Sd/-	Sd/-
AnuragGoel (Member)	M.L. Tayal (Member)	Justice (Retd.) S.N. Dhingra (Member)
	Sd/- Ashok Chawla (Chairperson)	