

## **DIRECTOR GENERAL (SAFEGUARDS)**

### **NOTIFICATION**

New Delhi, 24<sup>th</sup>- November, 2009

**Subject:- Safeguard investigation concerning imports of Plain Particle Board into India – Final findings**

G S R            having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 thereof.

1. M/s Shirdi Industries Ltd and M/s Bajaj Eco-Tec Products Ltd (hereinafter referred to as applicants) filed petition on 23<sup>rd</sup> March, 2009 before me in accordance with the Customs Tariff Act, 1975, as amended and Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 notified vide Notification no. 35/97-NT-Customs dated 29.07.1997 (hereinafter referred to as Rules), alleging increased imports of Plain Particle Board causing serious injury and threat of serious injury to the Domestic producers. The petition has been supported by M/s Novapan Industries Ltd, M/s Archidply Industries Ltd, M/s Paralam Global Pvt.Ltd, M/s Patel Kenwood Pvt.Ltd, M/s Darshanboard Lam Ltd, M/s Shiv Dhan Boards Pvt.Ltd, M/s Bakelit Hylam Ltd and M/s Greenply Industries Ltd. Having satisfied that the requirements of Rule 5 were met, the notice of initiation of safeguard investigation concerning imports of Plain Particle Board into India was issued on 22<sup>nd</sup> April 2009 and was published in Extraordinary Gazette of India on the same day.
2. A copy of the notice was sent to the governments of all the exporting nations through their embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:

#### **Domestic producers**

- a. Shirdi Industries Ltd, Rudrapur
- b. Bajaj eco-tech products Ltd.,
- c. Novapan Industries Ltd, Hyderabad
- d. Paralam Global Pvt.Ltd, Nagpur
- e. Kenwood Pvt.Ltd, Bharuch
- f. Archidply Industries Ltd, Bangalore
- g. Shiv Dhan Boards Pvt.Ltd, Nagpur
- h. Bakelit Hylam Ltd, Secunderabad
- i. Greenply Industries Ltd, Rudrapur

- j. Kushal Décor Ltd, Secunderabad
- k. Darshanboard L Lam Ltd, Surat
- l. Richa Particle Pvt.Ltd, Matar
- m. Silicon Jewel Industries Pvt.Ltd, Bharuch

### **Exporters**

- a. Bripanel Industries Sdn Bhd, Bukit Pasir Industrial Estate, Muar, Johor Malaysia
- b. Green River Panels (Thailand) Co. Limited, 222 Moo 4, T. Thachang, A. Bangklum, Songkhla, Thailand Zip: 90110
- c. Bripanel Industries Sdn Bhd, Bukit Pasir Industrial Estate, Muar, Johor Malaysia
- d. Genetic Corporation Limited, 778, (Warehouse 7), Charoennakorn Road, Bangpakok, Ratburna, Bangkok – Thailand
- e. Biz Supply Company Limited, 234-Room A108, Raja Resort Building, Soi Ratchada 16,
- f. Ratchadapisek, Hukiawang, Bangkok – Thailand, Pfeiderer AG
- g. Corporate Human Resources, Ingolstadter str. 51, D 92318 Neumarket - Germany
- h. Thermopal GmbH, Wurzacher Str. 32, 88299 Leutkirch im Allgäu, Germany
- i. Wilhelm Mende GmbH & Co., P.O. Box 1513, 37505 Osterode - Germany
- j. Tafisa SA, Ronda de Poniente, 6-B, Centro Empresarial EURONOVA, Tres Cantos 28760 Madrid-Spain
- k. Annovati, Gruppo Trombini Spa, 10060 Frossasco (TO)- Italy –Via, Piscina 13
- l. Chimica Pomponesco S.p.A, Via delle Industrie 1, Pomponesco - 46030, Italy
- m. FINSA, Scariff, Co Clare, Ireland
- n. Linopen NV, Ooigemstraat 16, 8710 Wielsbeke - Belgium
- o. Balkan SA, PO Box 10310, Thessalonikis-Verolas Rd., Thessaloniki, GR-570 11, Greece

### **Importers/consumers**

- a. PLY POINT, 15/228, Kodampuzha Road, Petta, Feroke, Kozhikode, Kerala
- b. SRIVARI TRADERS, 136/53B, Ooty Main Road, Odanthurai, Metupalayam, Tamil Nadu
- c. LABEL SALES CORPN, Indradhanush Apartment, Shope No. 7,8 & 9 T.D.Road, Cochin, Kerala
- d. KRISHNA PLYWOODS, 34 Kamraj road, Karur, Tamil Nadu
- e. THAMARAPALLY BROTHERS, XL/499 Usha Kiran, M.G.Road, Ernakulam, Kochi, Kerala

- f. KALINGA IMPORTS & EXPORTS Pvt. Ltd, 18/777 Kallai Road, Calicut, Kerala
  - g. JACSONS VENEERS AND PANELS P.LTD, XL/499 Usha Kiran, M.G.Road, Ernakulam, Kochi, Kerala
  - h. VICTORY PLYWOOD DISTRIBUTORS, R.No.148, CE-34/640, Stadium Complex, Kannur, Kerala
  - i. MATHEWSONS EXPORTS & IMPORTS P.LTD, 44/2158, First Floor Mathewsons Bldg., Kaloor, Cochin, Kerala
  - j. FEROKE BOARDS LTD, VP 4/394, P>O. Kaarad, Faroke College, Via-Malappuram, Kerala
  - k. R.J.METALS, XL/4039 Faba Complex, Jews Street, Ernakulam, Cochin, Kerala
- 3 Questionnaires were also sent, on the same day, to all known domestic producers and importers and exporters asking them to submit their response within 30 days.
- 4 All requests for consideration of interested parties and extension of the time period were considered and requests were accepted after considering the expediency of investigation.
- 5 The applicants requested for provisional safeguard duty and provided evidences of critical circumstances in case of Plain Particle Board. After expeditious conduct of investigation the preliminary finding was issued on 04<sup>th</sup> May 2009 recommending safeguard duty at the rate of 30% ad valorem on Plain Particle Board when imported into India. However, no provisional safeguard duty was imposed.
- 6 A public hearing was held on 21<sup>st</sup> October 2009, notice for which was sent on 12<sup>th</sup> August, 2009. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.
- 7 As there are large number of interested parties who have filed their submissions, their contentions and the issues arising there from, are dealt with at appropriate places without referring to specific names of the interested party for the sake of brevity.

- 8 The information presented by domestic producers was verified by on-site visits to the plants of the domestic producers, to the extent considered necessary. The non confidential version of verification report is kept in the public file.

**Views of the Domestic Industry**

- 9 The domestic industries viz. M/s. Shirdi Industries Ltd and M/s Bajaj Eco-Tec Products Ltd and supporters constituting major share of domestic production of the product made the following submissions:
- 10 The product under consideration in the present investigation is “Particle Board, Oriented Strand Board (OSB) and similar Boards (for example, Waferboard) of Wood or other Ligneous Materials, whether or not agglomerated with resins or other organic binding substances [hereinafter referred to as particle board or said product], falling under Customs Tariff subheading 4410.” However, particle boards laminated with veneer or papers or decorative laminate are beyond the scope of the proposed product subject to safeguard duty. The product is also known by a number of commercial names, which includes Plain/Raw/Colored Particle/ Fiber Particle/ Bagasse/ Bamboo/ Jute/ Panel board. The product is classifiable under sub-heading No. 4410 of Schedule I of the Customs Tariff Act 1975.
- 11 Imports of the product into India, was 5362 MT/month in 2005-06 and 4752 MT/month in 2006-07. In 2007-08 it increased to 5429 MT/month. After that, it increased to 9180 MT/month in April08-Dec08 with increase in import prices. The domestic prices were lower than import prices during the period. With the start of current recession, imports started increasing rapidly.
- 12 Unforeseen circumstances is in terms of current unexpected and uneven global economic recession. This led to significant reduction in global demand for the product, resulting in plummeting prices of imports and resulting in sudden surge in imports into India, which is still witnessing a positive growth.
- 13 As a result of significant increase in imports, there has been significant fall in domestic production, sales and capacity utilization of product covered during the recent period.
- 14 The imported low density particle boards are directly competitive products. However, they do not have any objection in removing the same from the scope of investigation, as the same is not manufactured by them. They do

not manufacture OSB. They do not have any objection in removing the same from the scope of investigation.

- 15 The fact that applicants are importers too, is not relevant for the investigation.
- 16 The applicants requested for safeguard duty for two years. Further, in view of critical circumstances, applicant has requested for immediate imposition of provisional safeguard duties.
- 17 Safeguard duty must be imposed on imports from all developing countries such as Malaysia, Thailand, Bangladesh, Sri Lanka, South Africa, Nepal, as all these countries have either in the past or at present exported the subject goods in significant volumes. Further, these countries have significant potential to export the product in future as well. In particular, safeguard duty must be imposed on imports from South Africa and Indonesia, given that the producers in these countries have very recently booked huge orders for supply of the said product and the shipments for these have already started arriving in India.
- 18 The imposition of the safeguard duty is in larger public interest. The manufacturers in India are not able to utilize their plants at optimum capacity resulting into threat to not only capital expenditure but also large scale employment, plantation activity, income to farmers, adverse impact on rural economy and threat for deforestation. Early imposition of safeguard duty will address all these problems.

#### **Views of the exporting nations**

- 19 Article 12.1(a) of the WTO Agreement on Safeguards requires immediate notification to the Committee on Safeguards of the initiation of a Safeguard investigation. The present safeguard investigation was initiated on 22 April 2009 and till 18 May 2009, no official notification to the committee seems to have been made. This delay clearly shows that India has failed to immediately notify the Committee on safeguards and has thus violated Article 12.1(a) of the ASG.
- 20 The data provided by the applicants raises serious doubts about the existence of serious injury. Indeed, production and sales volumes of the applicants show an increase of 18% and 23 % respectively between 2007-2008 and April-December 2008, thereby indicating that production and sales activity is not negatively affected by imports from other countries.

- 21 Losses suffered by the domestic industry were not caused by increased imports, but due to the applicants' huge investment in capacity expansion. Further, the capacity of Indian producers had increased drastically starting from 2005-06 to April-Dec 08 by 136%. However, the demand/consumption showed only 46% increase during the same period. Therefore, the erroneous decision of the Indian producers to increase capacity without proper analysis and not surge of imports is responsible for serious injury, if any, caused to the domestic industry in terms of low capacity utilization.
- 22 It is evident that the production of domestic industry, and its production capacity have been increasing since 2005. Therefore, there was no serious injury suffered by domestic industry in terms of production and production capacity. Further, the applicants claimed that they were unable to increase sales as per the increase in demand in spite of offering competitive prices. This may be due to customers' preferences in quality, standards, brand loyalty and delivery of the product under consideration.
- 23 DG's findings in the PF on market share were not accurate. Further, PF did not contain any data on employment, productivity and inventory. Thus, the investigating authority has not been transparent in presenting the relevant data in making objective evaluation for injury determination. Article 4.2(b) of the WTO Safeguards Agreement requires the investigating authority to establish a causal link between the increased imports and injury for the application of safeguard measures. The authority must also identify injury caused by factors other than increased imports. However, no analysis of these other factors has been done.
- 24 The proposed adjustment plan was not to prevent or remedy the injury but merely to stabilize the capacity expansion done by the domestic industry. In such a scenario, if the safeguard measures are imposed, the domestic industry would not only monopolize but cease the operation of their domestic competitors in downstream industry (i.e. laminated particle board) and the Indian market would be denied competitively priced product.
- 25 The application shows a constant increase in the landed price over the whole investigating period (from ca. 7.5 to 9.5) which, in fact points to the opposite direction. The application should have shown trends of both import and domestic prices, over the investigating period as well as a more detailed explanation concerning the methodology followed for the undercutting calculations.

- 26 From the adjustment plan, it seems that the applicants suffer from high costs, due to higher consumption of wood and higher wood prices, which are exceptionally high. The domestic industry seems to have been facing losses during the overall investigating period. These losses were especially important in 2005-06. This certainly confirms that factors other than imports contributed to the alleged injury. Moreover, losses per unit are decreasing over time, which would break the causal link with the increasing imports. The effects of the global economic crisis and the (positive) evolution of the imports' price level should also have been carefully analyzed.
- 27 The issue of public interest has not been addressed in the preliminary findings. The needs of the other players on the Indian market, like the users and the importers of the product, have not been taken into account.
- 28 The injury analysis is incomplete, not objective and inconclusive. No causal link analysis has been done to separate and distinguish between the effect of imports and other factors.

### **Views of the Exporters**

- 29 Import data presented by the petitioners is grossly understated. Total import quantities have declined by 21% during 2008-09 as compared to 2007-08. The imports during 2008-09(annualized) declined to 131075 CBM compared to 165070 CBM during 2007-08. The actual imports differ with those shown in the preliminary findings. The petitioners have grossly understated the quantity of imports for 2007-08 with the sole purpose of showing increased imports during 2008-09.
- 30 The present case is a peculiar case in which the domestic industry engaged in manufacturing of pre-laminated board has filed an application against import of an intermediate article (particle board). The final product manufactured and sold by the domestic industry is competing with the final product made in India from imported particle board. However, by no stretch of imagination can a pre-laminated board be held to be like a product to particle board, which is the product under consideration.
- 31 Injury parameters do not show any injury. On the contrary, they show a robust growth for the domestic industry. When market share of domestic industry increased by 99%, imports declined by 21% in absolute terms. Further, there is no surge in imports as required under Sec 8B(1) of the Customs Tariff Act,1975. Consumption level in India has come down from 229780 CBM in 2007-08 to 189308 CBM(annualized) in 2008-09 reflecting a reduced demand for the subject goods in the period of investigation

compared to the previous year, 2006-07. The production of domestic industry increased by 58% in 2008-09 as compared to 2007-08 and the sales of domestic industry increased by 64% in 2008-09 as compared to 2007-08. Improvement of sales in a shrinking market is testimony to the fact that allegations of injury made by the domestic industry are baseless and wholly contradicted by relevant data.

- 32 There is no price undercutting. In the absence of undercutting, there is no causal link between the imports and injury suffered by domestic industry.
- 33 Overall loss of the domestic industry and supporters has come down in the period of investigation(Apr-Dec 2008) as compared to the previous year(2007-08) from Rs 2913 Lacs to Rs 2061 Lacs. It is noteworthy that when the supporters reduced their losses by 50%, the domestic industry continued to suffer losses. The improvement of the situation of the supporter industry when compared to the domestic industry establishes that imports during April-Dec 2008 are not causing injury but factors unique to the applicant domestic industry are causing the alleged injury. The injury is by no means representative of the injury suffered by the domestic producers taken as a whole.
- 34 The initiation notice for the safeguard investigation failed to undertake a comprehensive non-attribution analysis of the causes of the domestic industry's poor performance, and failed to examine all the relevant factors relating to injury as required by Article 4.2(a) of the WTO Agreement on Safeguards.
- 35 M/s Bajaj Eco-Tech Products Ltd has come into production in April, 2008 i.e., it is in the first year of its operation. On the other hand, the other applicant M/s Shirdi Industries Ltd came into production only in 2006-07 i.e. it was not in production in the base year of the injury period viz 2005-06. None of the domestic producers who were in production in both the current period as well as in the base year of injury period have come forward with data as an applicant which simply shows the manipulative attitude of the domestic producers.
- 36 The domestic demand for the subject goods increased from 130335 MT in 2005-06 to 191192 MT in April-December 2008(254923 MT annualized). Demand has registered a growth of 196% over 3 years period. However the domestic producers have increased their production capacity from 132380 MT in 2005-06 to 416833 MT in 2008-09(annualized). The domestic industry did not have prudence to foresee the near future. They have

increased their capacity disproportionately which is a complete failure to make a proper projection of future demand.

- 37 Out of total production in 2005-06, about 69% was captive consumption. When the total demand of the subject goods were 130335 MT in 2005-06, domestic production was 66707 MT out of which 45849 MT were captive consumption and only 20143 MT was available for outside customers. In such a situation, imports were the only option for user industry.
- 38 The majority of the domestic producers of the subject goods have abstained from participating in the investigation keeping them as supporters. In the absence of complete data of such supporters the data of the two applicants cannot be considered sufficient for a free and fair investigation.
- 39 As per the data provided in the petition, Plain Particle Board imports increased from a number of countries, the largest among them being Malaysia, Thailand, Bangladesh and Spain. The record of this proceeding is devoid of any discussion of how the alleged increase in imports from these countries resulted from the unforeseen developments mentioned in the petition.
- 40 Two companies who filed this petition(i.e. the petitioners) constitute only 30.36% of total production in India. However, this percentage is inflated. A large number of domestic particle board producers are not included in this calculation – namely Vilsons Particle Board Industries Ltd (Vilsons) and Ecoboard Industries Ltd (Ecoboard). These companies have a combined production capacity which is almost three times the production capacity of Petitioner company Shirdi Industries. If these two companies alone have a combined production capacity which is approximately three times that of petitioner company Shirdi Industries, it becomes quite clear that the 30.36% share of Indian production, which the petitioner claims to occupy, will decrease dramatically. Assuming a production capacity of 450 CBM per day at 312 days per year (or 6 days per week). Petitioner's share of Indian production capacity decreases to 20.95%. By no stretch of imagination, can 20.95% or even 30.36% of total Indian production be considered a “major share” of the total domestic Indian production.
- 41 Despite the fact that the Indian safeguard law does not contemplate the concept of “supporting” companies, the investigating authority has relied on the figures for the purportedly “supporting” companies as provided in the petition for purposes of initiating the instant proceedings.

- 42 It is not at all clear as to which companies' (Petitioners or the supporting companies) sale volumes or capacity utilization figures the investigating authority relied upon in reaching its affirmative preliminary determination.
- 43 The instant petition is devoid of any substantive/tangible details on the measures the domestic industry proposes to take to adjust to import competition. Rather than a detailed explanation of the adjustments the domestic industry has taken or plans to take, the petition refers to nothing more than "discussions" with wood suppliers concerning the "possible reduction" in wood consumption and wood prices and "discussions" with technology suppliers for taking steps to reduce conversion costs. These are mere generic statements devoid of any substance.
- 44 The imposition of safeguard duties in the instant case is against the public interest. Such imposition would increase the cost of production of both domestic LPM manufacturers which do not captively produce/consume PPM, as well as the Indian furniture manufacturing industry.

**Views of the end users and importers**

- 45 The new capacities of the Applicants namely Shirdi and Bajaj have been set up with full knowledge of the fact that import was a reality and also a necessity. It was necessary to import because the major portion of the domestic product was unsuitable for the processing of final product. It is not the case that imports have commenced after the applicants set up their manufacturing facilities. It has been going on for over a decade in such increased quantities as was necessary to meet the demands of final product-Laminated Particle Board. The applicants were never prevented from making suitable raw particle boards to make final finished product-laminated board to meet the demands of the market. In fact when the applicants themselves and the supporters were regular importers of the suitable raw particle board, the application by a section of the domestic industry to claim injury is frivolous and malicious.
- 46 The Import data presented by the petitioner is grossly understated. The petitioners have grossly understated the quantity of imports, showing significant increase in import quantities as against the significant fall. On annual basis the imports have declined by 21% in the year 2008-09 as compared to 2007-08.
- 47 Particle board of density 500 Kgs/CBM to 900 Kgs/CBM is both manufactured in India and also imported, whereas particle board of 200 Kgs/CBM to 500 Kgs/CBM density is not manufactured in India and can

only be imported. The petitioners have failed to bring on record this threshold distinction in their application. The investigating authority has also failed to take note of this distinction, which is very crucial and goes to the root of the matter.

- 48 When the subject matter of dispute is only particle boards of density 500 kgs/CBM to 900 kgs/CBM produced or manufactured by the petitioners and similar manufacturers, it is shocking to understand that the application seeks imposition of safeguard duty across the board on all particle boards falling under 4410 of the Customs Tariff Act 1975. The application should have been restricted to particle boards falling under density range of 500 kgs/CBM to 900 kgs/CBM quality commonly known as Medium Density Particle Boards in India. It cannot extend to every particle board falling under 4410, especially particle boards which are not even manufactured in India.
- 49 The petitioners are themselves importers of plain particle boards and their major interest lies in selling laminated boards and not plain particle boards. If they have spare capacity and the quality of PPB produced by them is good enough, then what is the need for them to import? This is the reason why they have not revealed any data on their own import of plain particle boards, sale of laminated boards and sale of plain particle boards.
- 50 The quality of the board manufactured by the domestic industry is very poor. The furniture industry using laminated boards is forced to import plain particle boards because of non availability of international standard of plain particle board on consistent basis from domestic manufacturers.
- 51 Imposition of safeguard duty is against public interest. It will render domestic furniture producing units' completely non viable leading to a surge in imported furniture from Malaysia and China. On the one hand, Govt wants the domestic industry to equip itself to compete with the imported furniture from Malaysia on zero duty basis while on the other hand, it wants to kill the domestic industry by imposing safeguard duty on plain particle board which is the basic raw material for producing furniture.
- 52 When the market share of domestic industry increased by 99%, imports declined by 21% in absolute terms. Further, there is no surge in imports let alone sudden surge as required under Sec 8B(1) of the Customs Tariff Act, 1975.
- 53 The consumption level of the product in India has come down from 229780 CBM in 2007-08 to 189308 CBM(annualized) in 2008-09 reflecting a

reduced demand for the subject goods in the period of investigation strictly compared to the previous year, 2006-07. The production of domestic industry increased by 58% in 2008-09 as compared to 2007-08 and the sales of domestic industry increased by 64% in 2008-09 as compared to 2007-08. Improvement of sales in a shrinking market is testimony to the fact that allegations of injury made by the domestic industry are baseless and wholly contradicted by the statistics.

- 54 Investment to the tune of Rs 2900 million has been made by one of the applicants namely M/s Bajaj Hindustan Limited (parent company of Bajaj Eco-Tech) in setting up plants in three locations. It is submitted that the investment should have been duly adjusted in determining the profitability of the domestic industry. Initial start up costs as well as the costs of entry might have influenced the performance of the domestic industry and injury caused by these factors could not be attributed to increased imports.
- 55 Safeguard measures are a stop-gap arrangement to facilitate the domestic industry, to gear themselves to face international competition. Accordingly, in every case, domestic producers are required to provide a restructuring plan identifying the steps they propose to take to achieve international price competitiveness. In the present case, the restructuring plan merely states that the domestic industry is undertaking capacity expansion. The petition nowhere discloses how domestic industry will achieve increase in productivity, decrease in cost and above all reduction in their selling prices to meet international competition. There is no restructuring plan presented in the petition which meets the objective of such requirement. Further, one of the objectives of the restructuring plan is to decrease the costs and permit positive adjustment. Therefore, a nexus should be established between the proposed reduction in cost with the level of duties in force or the level of duties sought by the domestic industry. However, the petition gives no justification for the level of duties (100%) sought by them. The petition is completely frivolous in this regard.

#### **Findings of D.G.**

- 56 I have carefully gone through the case records and the replies filed by the domestic producers, users/importers, exporters and exporting government. Submissions made by the various parties and the issues arising there from are dealt with at appropriate places in the findings below.
- 57 **Product under consideration:** - The applicant has applied for imposition of safeguard duty on "Particle Board, Oriented Strand Board (OSB) and

similar Boards (for example, Waferboard) of Wood or other Ligneous Materials, whether or not agglomerated with resins or other organic binding substances [hereinafter referred to as particle board or “the said product”], falling under Customs Tariff subheading 4410.” However, particle boards laminated with veneer or papers or decorative laminate are beyond the scope of “the said product” subject to safeguard duty. The product is also known by a number of commercial names, which includes Plain/Raw/Coloured Particle/ Fiber Particle/ Bagasse/ Bamboo/ Jute/ Panel board. The product is classifiable under sub-heading No. 4410 of Schedule I of the Customs Tariff Act 1975.

- 58 The applicant has submitted that the Particleboard is manufactured by mixing wood/agro waste particles/flakes/chips/fibres together with a resin and forming the mix into a sheet. The raw material is fed into a disc chipper between radically arranged blades. The particles, so generated, are first dried, after which any oversized or undersized particles are screened out. Resin, in liquid form, is then sprayed through nozzles onto the particles. There are several types of resins that are commonly used. Urea formaldehyde resin is the cheapest and easiest to use. It is used for most non-water resistant boards. Melamine formaldehyde resin is significantly more expensive, as it is moisture resistant. Phenol formaldehyde is also fairly expensive. It is dark colored and highly durable. These resins are sometimes mixed with other additives before being applied to the particles, in order to make the final product waterproof, fireproof, insect proof or to give it some other quality. Once the resin has been mixed with the particles, the liquid mixture is made into a sheet. The sheets formed are then cold compressed to reduce their thickness and make them easier to transport. They are compressed again to set and harden the glue. The boards are then cooled, trimmed and sanded. They can then be sold untreated/plain or covered in a wood veneer.
- 59 Various interested parties have submitted that the applicants do not manufacture Oriented Stranded Board, All types of Particle Board having thickness above 25mm, low density Particle Board having density of 500 Kg/CBM or below, tubular Particle Board or Tubular structure board. It was also submitted that the product imported are not ‘like or directly competitive’ to the product manufactured by applicants.
- 60 In order to analyze the contention of the interested parties it is necessary to have the detailed information about the physical characteristics, end use, manufacturing process, price relationship and other relevant characteristics of the product. Applicants, however, have neither attended the public

hearing nor submitted any information in support of its claim even after their claim of 'like or directly competitive' was disputed based on facts and law. The information provided in the application is not sufficient enough to justify their original claim. Accordingly, products mentioned in the application are not 'like or directly competitive' to what is manufactured by the domestic industry.

- 61 **Domestic industry:** - The application was filed by M/s Shirdi Industries Ltd. and M/s Bajaj Eco-Tec Products Ltd. The applicants submitted that there are several other producers, who have capacity to produce the product under consideration. These are M/s Novapan Industries Ltd, M/s Archidply Industries Ltd, M/s Paralam Global Pvt.Ltd, M/s Patel Kenwood Pvt.Ltd, M/s Darshanboard Lam Ltd, M/s Shiv Dhan Boards Pvt.Ltd, M/s Bakelit Hylam Ltd and M/s Greenply Industries Ltd. All these producers support the petition. The applicant and supporters form a major share of the Indian production.
- 62 Various interested parties have submitted that the names of Vilsons Particle Board Industries Ltd and Eco Board Industries Ltd have been deliberately excluded from the list of manufacturers. Therefore, the total production figures in India are not correct. If the production of these two producers are considered the share of the applicants is reduced to a mere 21%, which is not a 'major share'. Further, there is no concept of 'supporters' in safeguard law and it is not explained as to how the 'supporters' have expressed their support when even their names are not mentioned in the application.
- 63 The applicants did not provide any evidence as to how they can be considered 'domestic industry'. The facts mentioned in the application were contended to be incorrect and contradictory by various interested parties. The applicants did not submit any evidence in support of their claim of being a 'domestic industry' as they neither attended the Public Hearing nor submitted any written submission. Since, no evidence in support of the claim of applicant that they constitute 'domestic industry' is made available by the applicants, the applicants cannot be considered 'domestic industry'<sup>1</sup> in terms of Section 8B(6)(b) of the Customs Tariff Act, 1975.

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<sup>1</sup>Section 8B(6)(b) of the Customs Tariff Act 1975 defines domestic industry as follows:

- (b) *“Domestic industry” means the producers –*  
(i) *as a whole of the like article or a directly competitive article in India; or*

**Increased Imports:**

64 The applicant has submitted the information, as contained in the Table below, about the imports of the product which they claimed to be product under consideration. Various interested parties claimed that the information provided is grossly incorrect. In support of the claim, they have submitted exports data of various countries. They have also referred to the data compiled by United Nations, which shows that the imports in India has fallen to 39,702 MT in 2008 from 99,449 MT in 2007.

**Table**

	2006-07	2007-08	2008-09 (upto December)
Total Imports (CBM)	57030	65152	82621
Average Monthly Imports (CBM)	4752	5429	9180

65 The applicants did not provide any evidence in support of their claim of increased imports when the reliability of data itself was questioned, as they neither attended the Public Hearing nor submitted any written submission. Further, when classification of the product under consideration is in question, the possibility of correct or incorrect import data remains unanswered.

**Serious Injury or Threat of Serious Injury:**

**Statutory framework:**

66 “Serious injury” means an injury causing overall impairment in the position of a domestic industry;<sup>2</sup> and “threat of serious injury” means a clear and imminent danger of serious injury.<sup>3</sup>

67 The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for

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*(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.*

<sup>2</sup> Section 8B(6)(c) of the Customs Tariff Act, 1975.

<sup>3</sup> Section 8B(6)(d) of the Customs Tariff Act, 1975.

different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant decline in sales, employment and productivity which will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.<sup>4</sup>

68 Accordingly, in analyzing serious injury or threat of serious injury all factors of domestic industry, which are mentioned in the rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have to be considered. The determination of serious injury or threat of serious injury needs to be based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.

69 In the instant case, the applicants do not constitute 'domestic industry' and no information on all the relevant factors has been made available by the applicants. In absence of necessary information the existence of serious injury or threat of serious injury cannot be determined.

#### **Conclusion and Recommendation:**

70 Based on the above, no safeguard duty is recommended for imposition.

**Sd-**  
**(Praveen Mahajan)**  
**Director General (Safeguards)**

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<sup>4</sup> Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO