

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

Government of India
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

NEW DELHI,
Dated the 11th June 2010

FINAL FINDINGS

Sub:- Anti-Dumping (Mid-Term Review) investigation regarding limited issue of anti dumping duty imposed on imports of Nylon Filament yarn (used for manufacture of fishing nets) originating in or exported from China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea R.P.

No.15/3/2009-DGAD- Whereas the Designated Authority, having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, initiated the original investigation vide Notification No. 14/5/2005-DGAD dated 4th, July, 2005. The Authority issued its final findings recommending imposition of definitive anti dumping duty on imports of Nylon Filament Yarn (hereinafter referred to as subject goods) originating in or exported from China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea RP (hereinafter referred as subject countries), vide Notification No. 14/5/2005 – DGAD dated 3rd July, 2006 and such definitive duty was imposed by the Government of India vide Customs Notification No. 85/2006 dated 29.08.2006.

2. And whereas the Designated Authority in terms of Rule 23 of Anti Dumping Rules and Section 9A(5) of Customs Tariff (Amendment) Act, 1995, received an application from the petitioners namely Indian Fishnet Manufacturers Association (IFMA), Chennai for the review of Anti Dumping Duty on Nylon Filament Yarn meant for fishnet applications. The petitioners claimed that the circumstances have changed substantially requiring a review of anti dumping measures in force. The need for review was pleaded on the following grounds:-

- (i) The principal applicants in the original investigation were largely in textile yarn business and the scope of investigation was relating to textile grade yarn only (<210D & tenacity <60 Centinewtons/Tex.). Fishnet yarn being 210D and above (210, 420, 630, 840, 1260,

1680, 1890) were not covered in the scope of the investigation & no analysis or data were presented & investigated.

- (ii) Since anti-dumping investigation was carried out for Textile yarn (<210D yarn & tenacity <50 GPD) and not on fishnet yarn, of both normal & higher tenacity yarn, petitioner requests that both these categories of Fishnet yarn should be kept outside the scope of this Notification. This would enable the Fishnet industry in India to import Nylon Filament Yarn of 210D yarn and above denierage without Anti-dumping Duty.
- (iii) Fishnet Industry has moved away from developed countries to developing countries & India is expected to emerge as a hub for this industry. In order to meet with the requirements of modern fishing, it is necessary therefore that the Indian manufacturers are allowed to import High Density & Low Density yarn of both high & normal tenacity from the international market with no restriction.

3. And whereas on the basis of the written application received by the Designated Authority substantiating the need for review, the Authority initiated mid-term review investigation vide notification no. 15/3/2009-DGAD dated 19th June, 2009 published in the Gazette of India, Extraordinary.

PROCEDURE

4. In these proceedings the procedure described below has been followed:
- (i) The Authority issued a public notice vide notification no. 15/3/2009-DGAD dated 19th June, 2009 published in the Gazette of India, Extraordinary intimating therein initiation of midterm review investigations.
 - (ii) After initiation of the review investigations, the Authority sent questionnaires, along with the initiation notification, to the known exporters/producers in the subject country in accordance with the Rule 6(4), to elicit relevant information.
 - (iii) Notice was sent to the Indian Producers of NFY seeking relevant information in accordance with the Rules;
 - (iv) The Embassies of the subject countries in New Delhi was informed about the initiation of the investigation, in accordance with the Rule 6(2), with a request to advise the exporters/producers in their country to respond to the questionnaire within the prescribed time.
 - (v) Questionnaires were sent to the known importers of the subject goods in India calling for the necessary information in accordance with the Rule 6(4),

- (vi) Transaction-wise data of imports for the period of investigation and preceding three years were called from Directorate General of Commercial Intelligence and Statistics (DGCI&S) in addition to the data of IBIS provided by the domestic industry.
- (vii) Copies of the initiation notification were also sent to FICCI, CII and ASSOCHAM for wider circulation.
- (viii) The domestic industry for the subject goods responded to the notice of initiation, opposing exclusion of any product type from the scope of duties. No other interested parties filed their response to the initiation notification.
- (ix) The Authority verified the information furnished by the domestic industry to the extent considered relevant;
- (x) The Authority held a public hearing on 30.11.2009 to hear the interested parties orally which was attended by the representatives of interested parties. The written submissions received from interested parties, to the extent relevant, have been considered in this findings;
- (xi) Investigation was carried out for the period of investigation (POI), which is 1st April 2008 to 31st March 2009 (12 months).
- (xiii) In the original investigation, the application was jointly filed by M/s. Modipon Limited, Modinagar, JCT Limited, Hoshiarpur, Shree Synthetics Limited, Ujjain and Gujarat State Fertilizers Company Limited, Vadodara. M/s Century Enka had supported the original application. The Authority had considered that M/s. Modipon Limited, JCT Limited, Shree Synthetics Limited and Gujarat State Fertilizers Company Limited and Century Enka constituted domestic industry.
- (xiv) No questionnaire response or views have been filed by any other interested parties with respect to the present investigation.
- (xv) The Authority issued a disclosure of essential facts under rule 16 to the known interested parties on 28th May, 2010 and the response was received from the petitioner ie. Indian Fishnet Manufacturers Association, Chennai and from the Indian industry producing the subject goods.

PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. The product involved in the original investigation was Synthetic Filament Yarn of Nylon or Polyamides (also described as Nylon Filament Yarn and also referred to as subject goods). Nylon Filament Yarn is a synthetic filament yarn produced by polymerisation of organic monomers. Nylon filament yarn has vast

applications in textiles applications, which includes saree, dupatta, women's dress material / fashion wear, fancy casual knit wear, stockings and socks, intimate wear and foundation wear, lingerie and night wear, briefs, panties, slippers, kids wear, sports wear and active wear, swim wear and beach wear, outer wear, wind wear, fashion accessories, elastic tapes, show/footwear linings, laces/fancy tapes, tie/scarves, feather yarn, ribbons/satin ribbons, etc.

6. The product under consideration in the original investigation included all kinds of synthetic filament yarns of Nylon or Polyamides, other than sewing thread, such as flat yarn - twisted and/or untwisted, fully drawn yarn (FDY), spin drawn yarn (SDY), fully oriented yarn (FOY), high oriented yarn (HOY), partially oriented yarn (POY), textured yarn – twisted and/or untwisted, and dyed yarn, single, double, multiple, folded or cabled, classifiable within Chapter 54 under customs subheading no. 5402, but excludes high tenacity yarn of nylon or other polyamides. The product included all variants of Nylon Filament Yarn or Polyamide Yarns such as flat/textured/twisted/ untwisted, bright/semi-dull/ full-dull (or variants thereof), Grey/colored/ dyed (or variants thereof), single/ double/ multiple/ folded/ cabled (or variants thereof), whether or not sized, but excluded high tenacity yarn of nylon classifiable under customs sub-heading 5402.10 and fishnet yarn, classifiable under customs classification no. 5402.10. Accordingly, all types of high tenacity nylon filament yarn, classifiable under customs classification no. 5402.10 were beyond the scope of original investigation. The Customs classification, however, was only indicative and was in no way binding on the scope of the original investigation.

However, the present mid-term review is for the limited purpose of Nylon Filament Yarn used for the manufacture of fishing nets which is the subject goods for the purpose of this review.

Views of the Applicant (Indian Fishnet manufacturers Association)

7. The following submissions are made by IFMA in their application:

- a) All types of high tenacity yarn and fishnet yarn under the custom classification 54.02.10 are beyond the scope of the present investigation. Therefore, applying ADD on the fishnet yarn of 210D and above, when the product was outside the scope of basic investigation is not justified.
- b) The fishnet yarn does not fall within the scope of the investigation as the portfolio of all the applicants in the original investigation is distinct from the Fishnet Grade Yarn of 210 D & above.
- c) The costing information of the applicants also pertains only to the textile grade yarn & does not include fishnet grade yarn. Also, the goods imported from the subject countries were Textile grade yarn of 40D & upto <210 D and has no relevance to both normal and high tenacity fishnet yarn category with 210D and upto 1890D.

- d) In the process, the fishnet yarn with normal tenacity got included with ADD applicable products but it is unjustified to include the NFY of 210D and above for the applicability of the duty.
- e) The total demand of fishnet yarn in India is estimated to be around 600 Mts/month on the average out of which that of 210D fishnet is 90 Mts/month. Applicants are contributing just less than 15% and do not fulfill the total demand of the market. The fishnet industry in India is expected to grow and therefore it will be disadvantageous to charge duty on the fishnet yarn.
- f) The scope of the original investigation was relating to the textile grade yarn only (<210D with tenacity <50 centinewtons/Tex). Fishnet Yarn being 210D & above, (210D & upto 1890D) were never investigated & no data relating to this product was analyzed by the investigating authorities.
- g) As per the Central Institute of Fisheries technologies (CIFT), the Nylon Filament of lower grams per denier (GDP) is used for the Fishnet manufacturers. As per the BIS standard the Nylon Yarn having a minimum tenacity of 6.3 GDP (57 Centinewtons/Tex) and above are absolutely suitable for the fishnet manufacture.
- h) As per the current notification, only NFY with 60 newtons/tex and above are exempted from the scope. NFY with 57 centinewtons/tex should also be exempted as these yarns are used extensively in the manufacture and repair of fishnets.
- i) Demand-supply trend for the period 2008-09 for NFY makes it evident that the LD-FNY (210D, 420 D and 630 D) import is not significant (17.8% of the total demand is being imported).
- j) Quality of imported LD-FNY is superior to Indian sources as per the feed back collected from all the fishnet producers in India (in terms of consistency in denier, elongation & tenacity and evenness).
- k) Century Enka yarn quality is indicated as 6.3 GPD (57 centinewtons/tex). While the 6.3 GPD yarn is acceptable to Indian Customers, the package is not suitable for most of the Indian manufacturers in India.
- l) Designated Authority is requested to amend the existing notification as “synthetic filament yarn including synthetic mono filament of less than 67 decitex of nylon or other polyamide falling under chapter 54, excluding all high tenacity yarn & tenacity measuring 57 centi newtons/tex & above, originating in or exported from China, Taiwan, Malaysia & Indonesia, Thailand and Korea when imported into India are liable for anti dumping duty as per the table here under in addition to all other applicable duties”
- m) In order to facilitate the faster growth of the fishnet industry, the import of fishnet yarn with tenacity of 57 centinewtons/tex and above may be exempted from the anti-dumping duties.

Post-Disclosure submissions of IFMA

8. The following submissions have been made by IFMA in response to the disclosure statement:-

- (a) The original investigation was conducted by the Authority on the basis of cost data, trade data and information on denierage etc. only of textile grade yarn which falls below 210 denier and with tenacity below 50 centi-newtons/tex.. No technical data or information was submitted by the petitioners for NFY of 210 denier and above which is used for manufacture of fishnets. Therefore, NFY of 210 denier and above cannot be included in the scope of NFY and the anti dumping duty imposed thereon.
- (b) Inclusion of NFY of 210 denier and above in the scope of anti dumping duty irrespective of its tenacity is unjustified as this category of NFY was not a part of the original petition and the dumping was taking place in the case of NFY below 210 denier used in the textile sector.
- (c) It is agreed that there is production capacity in India for manufacturing NFY of 210 denier and above and supplies are being made by some Indian producers. But other manufacturers are predominantly in the textile grade NFY and they supply to fishnet industry as a matter of 'fall-back' strategy.
- (d) It is an accepted policy of the Government of India that imports are allowed freely for all raw materials. Therefore, there is no justification to impose anti dumping duty on NFY of 210 denier and above with normal tenacity even if there is capacity to manufacture the item domestically. A customs duty of 27.2% on the CIF price is an adequate tariff barrier to give full protection to Indian manufacturers.

Views of the Indian Industry for Nylon Filament Yarn

9. In response to the application filed by IFMA following are the submissions of the Indian Producers of NFY:
- a) The present review concerns with the exclusion of (a) fishnet yarn of 210 deniers and above (210, 420, 630, 840, 1260, 1680, and 1890) and (b) fishnet yarn of both normal and high tenacity.
 - b) The review conducted is limited to nylon filament yarn meant for fishnet applications and is not extended to other aspects of the original investigation relating to the product under consideration, like article, scope of the domestic industry, dumping, injury and causal link. Supreme Court decision in the matter of Rishiroop Polymers v. Designated Authority was relied upon wherein it was held that the scope of midterm review under Rule 23 should be limited to the grounds brought out by an interested party.
 - c) There is no information provided by the applicants to explain as to what fishnet yarn is and why Nylon Filament Yarn (<210D yarn & tenacity <50 GPD), of both normal & higher tenacity yarn, should be excluded from the scope of the product under consideration.

- d) The nylon filament yarn produced and sold for making fishnets, can be both high and low tenacity yarns. The domestic industry is regularly producing and supplying low tenacity yarns in significant volumes.
- e) As the final findings and the consequent customs notifications already exempts the high tenacity yarn of nylon classified under 5402.10 from the scope of the anti dumping duties, the present investigation cannot include this yarn within the scope of the present investigation. Thus, there is no justification for conducting this review.
- f) The Indian producers being conscious of the nature of the user industry for this particular segment, this product is priced in such a way that the profitability of Indian producers in this product is already less favourable to them as compared to the other types of nylon yarn. Infact, the Indian Industry is selling the product at financial losses to the fishnet industry.
- g) The grounds stated in the initiation notification are insufficient to justify the exclusion of the product concerned.
- h) The high tenacity yarn of nylon is already exempted from the scope of the product under consideration and product attracting anti dumping duties. To such an extent, the present investigation is redundant and must be terminated.
- i) Certain types of low tenacity yarn (below 630 deniers) are produced by the domestic industry and supplied by the domestic industry and therefore were included in the product under consideration. When domestic industry continues to produce and supply the same, there is no justification for the exclusion of these types of yarns. The evidence regarding the same is submitted with the authorities on a confidential basis.
- j) Petitioner has misled the authority in claiming that there were changes in circumstances necessitating the review.
- k) Review with respect of the product under consideration can be sought only on two grounds namely commencement of a new product or discontinuation of the existing product by the domestic industry. Review cannot be sought by any other interested party.
- l) The scope of the review enquiry by the designated authority as determined by the Supreme Court in the matter of Rishirop Polymers v. Designated Authority is limited to the satisfaction as to whether there is sufficient justification for the continued imposition of such duty on the information received by it. In the absence of any new material in the present case, the designated authority is not justified to apply afresh all parameters or criteria enumerated in Para (iv) of Annexure-II, which had already been done at the initial stage of the imposition of anti dumping duty.
- m) NFY of 210D, 420D & 630D with normal tenacity of 60 centinewton/tex are used in lower code fishnet construction whereas NFY of 840D, 1050D, 1260D, and 1890D with tenacity of 60 centinewton/tex and above are used in higher code fishnet constructions. The nylon yarn of 840D and above is produced as high tenacity yarn, whereas nylon yarn upto 630D are low or normal tenacity yarns.

- n) SRF produces only high tenacity yarn and does not produce low or normal tenacity yarn.
- o) NFY does not have any dedicated use in fishnet applications. A product with multiple applications being produced and supplied by the Indian producers leaves no space for the importance of product description. The IS-440-2006 certificate from CIFT is irrelevant for the product description of nylon filament yarn and the present investigations. The product description imported in India and the product description of the goods supplied by the Indian producers is more relevant.
- p) Designated Authority to clarify the scope of the high tenacity yarn excluded from the scope of the product under consideration in the light of the production and supply by the Indian Industry.
- q) The demand of the fishnet manufacturers is substantially being met by the Indian industry denying the claim of the fishnet manufacturers that Indian industry is not capable to meet the demand supply gap.
- r) Capacity of Indian producers for low tenacity yarn of 210 deniers and above is grossly under-utilized. Indian producers have even enhanced their production in the light of increasing demand but the capacity utilization has declined significantly which would further deteriorate on the revocation of the anti dumping duties. The Indian industry continues to face negative profitability, return on investment and cash flow due to dumping of the subject product.
- s) No evidence is provided by the applicant establishing that the injury and dumping are unlikely to continue on revocation of duties. Indian industry contends that there is sufficient justification for including the nylon filament yarn for manufacturing fishing nets under the scope of the measures.
- t) The fishnet manufacturers concede the fact that out of 560-mt demand for LD-FNY, the Indian industry is supplying 460 mt/month. In that case there is no question of quality. IFMA concedes on the technical aspects of the product of century Enka where the argument of package is wholly irrelevant.
- u) Indian producers do recognize the importance of the fisheries industry in India and therefore already sell the yarn to fishnet manufacturers at competitive prices. It may be appreciated that the legitimate business expectations of the manufacturers of the fair market for their product is viable.
- v) Indiscriminate dumping of NFY in the country has earlier caused so significant injury to the industry that Modipon and Baroda Rayon have completely closed and GSF, JCT and Century are also suffering significant financial losses.
- w) Century Enka has even initiated discussions with the Association in order to allay the concerns of the Association and the fishnet manufacturers. The company informed the association that, if need be, the industry is even willing to enhance its capacities in order to meet any additional demand of yarn for fishnet application in future in case the overall demand exceeds supply (the current capacity in fact is higher than the current demand in the Country).
- x) NFY in custom tariff classification has been clearly categorized, irrespective of denier except for monofilament less than 67 decitex, on the basis of tenacity wherein high tenacity is defined as tenacity greater than 60 centinewtons/tex.

- y) Where the denier categorization with 210D lower and above has been mentioned, the applicants are trying to complicate the matter by giving its own definition based on 210 denier with separate tenacity mention of 50 centinewtons/tex where industry is producing many deniers with more than 50 centinewtons/tex for normal textile applications.
- z) The final determination of the authority in the original investigation is self explanatory wherein the high tenacity yarn is excluded.
- aa) The extracts provided by CIFT makes it evident that there is nothing called fishnet yarn and it is NFY only. Also the NFY with tenacity 57 centinewtons (6.3 GDP) and above is suitable for Gill nets and crawl nets.
- bb) Demand of revising the current norms on lower side based on an individual application is unjustified. Customs categorization of high tenacity at 60 centinewtons is based on the accepted international norms for general NFY not alone for any specific application. With the technology up gradation, the revision of norms should be in upward direction and not downward side based on the current high tenacity requirement standards set by the user industry which is >7 GDP.
- cc) Century Enka Limited has installed latest state of art technology machine for this segment and all its properties are at par with the imported yarn of similar tenacity.

Post-disclosure submissions of Indian Industry for NFY

10. The Indian Industry for NFY has reiterated all their previous submissions, particularly those regarding their sufficient capacities to fulfil the demand of Indian fishnet industry and their favourable pricing of NFY used for manufacturing fishnet as compared to other types of yarn. They have stated that the petitioner have failed to establish sufficient ground for excluding NFY for fishnet application from the scope of anti dumping duties. On the other hand, the Indian industry has claimed that the claims of the petitioner are incorrect and the product NFY for fishnet applications was rightly included in the scope of investigation and there is sufficient justification for continuing to include the product within the scope of measures.

Examination by the Authority

11. The Authority has considered all relevant information on record. It is noted that the petition in the instant case was filed by M/s Indian Fishnet Manufacturers Association (IFMA), Chennai, limited in its scope to possible exclusion of Fishnet Yarn on the following grounds:

- a. The principal applicants in the original investigation were largely in textile yarn business and the scope of investigation was relating to textile grade yarn only (<210D & tenacity <60 Centinewtons/Tex.). Fishnet yarn being 210D and above (210, 420, 630, 840, 1260, 1680,

1890) were not covered in the scope of the investigation & no analysis or data were presented & investigated.

- b. Since anti-dumping investigation was carried out for Textile yarn (<210D yarn & tenacity <50 GPD) and not on fishnet yarn, of both normal & higher tenacity, petitioner requests that both these categories of Fishnet yarn should be kept outside the scope of this Notification. This would enable the Fishnet industry in India to import Nylon Filament Yarn of 210D yarn and above denierage without Anti-dumping Duty.
- c. Fishnet Industry has moved away from developed countries to developing countries & India is expected to emerge as a hub for this industry. In order to meet with the requirements of modern fishing, it is necessary therefore that the Indian manufacturers are allowed to import High Density & Low Density yarn of both high & normal tenacity from the international market with no restriction.

12. During the course of the investigation, the petitioner has added a number of other reasons/justifications in support of their claim for exclusion. The domestic industry has disputed the claim for exclusion of this product type on a number of grounds. It is noted that none of the interested parties have requested the Authority to consider any other aspect relating to the present measures. Considering the petition before the Authority and arguments raised by various interested parties, the Authority notes that the scope of the present investigation is restricted to the specific issue as to whether one or more particular types of yarns used for the manufacture of fishnet are required to be excluded from the scope of the measures.

13. On the spot investigation was conducted at the premises of M/s Century Enka Ltd, one of the producers of the product under consideration. Following aspects were observed during the verification:-

- (a) the company has set up dedicated facilities for manufacturing of various types of nylon filament yarn, the application of one of which is in manufacturing of fishnet.
- (b) the company showed the machines, which are designed for the production of nylon yarn that can be used for manufacture of fishnet. However, in view of lack of demand of the product, the company is forced to utilize this machine for production of other types of yarns.
- (c) the manufacturing facilities for production of NFY consist of a large number of machines. Generally, each machine can produce NFY of different deniers. However, in practice, typically, manufacturers dedicate different machines for specific denierage. Thus Century Enka has deployed a number of machines specifically for manufacturing NFY of 210 deniers and above. However, the

producers can easily change the set-up systems of the machines and produce different denierage depending on market requirements. Thus producers deploy machines for production of yarn of different denierage by striking a balance between marketing requirements.

- (d) The terminology “fishnet yarn” used by the applicant in fact refers to “nylon filament yarn used for fishnet application”.
- (e) The high tenacity yarn including high tenacity fishnet yarn is already exempted from the scope of anti dumping duties vide final findings of the original investigation dated 3rd July, 2006. No review is required for the same.
- (f) The low tenacity yarn below 630D is being produced by the Indian producers and supplied to the fishnet producers. The petitioner has not established that the product sought to be excluded is not supplied by the Indian Producers.
- (g) The subject type of NFY does not have any dedicated use in fishnet applications. This type of yarn is also used in the manufacture of a number of other products.
- (h) A product with multiple application being produced and supplied by the Indian producers leaves no scope for product description or exclusion based on applications.
- (i) The Authority holds that the IS-440-2006 certificate from CIFT is irrelevant for the product description of nylon filament yarn and the present investigation. The description of the product imported in India and the description of product supplied by the Indian producers is more relevant.
- (j) The nylon filament yarn produced and sold for making fishnets can be both high and low tenacity yarn. The domestic industry is regularly producing and supplying low tenacity yarn in significant volumes.
- (k) The high tenacity yarn of nylon is already exempted from the scope of the product under consideration attracting anti dumping duties.
- (l) There is no justification to exclude certain types of low tenacity yarn (below 630 deniers) from the scope of product under consideration as the same are produced and supplied by the domestic industry. This is admitted by the petitioner also.
- (m) The demand of the fishnet manufacturers is substantially being met by the Indian industry and the claim of the fishnet manufacturers on this account is not correct. Further, the claim of the petitioner that the Indian producers are not able to meet the demand is also not established.

(n) Since the petitioner had specifically alleged that their product requirement is not met by domestic manufacturers, the matter was examined in detail. It was observed the installed capacities for the production of this type of yarn in the country are higher than the demand for the product. Now in their post-disclosure submissions, this aspect has been admitted by IFMA who have agreed that there is production capacity in India for manufacturing NFY of 210 denier and above and the same is supplied by certain producers.

14. The Petitioner has referred to “fishnet yarn”. The Authority notes that the nylon filament yarn has several applications, which includes production of fishnets. The following types of yarn of nylon are used in fishnet applications-

- Nylon filament yarn of 210, 420 & 630 denier with normal tenacity of 60 centinewton/tex used in the lower code fishnet construction.
- Nylon filament yarn of 840, 1050, 1260, 1680, 1890 denier with tenacity of 60 centinewton/tex and above used in higher code fishnet constructions.

It is noted that nylon filament yarn of 840 denier and above are produced only as high tenacity yarns, whereas nylon filament yarn upto 630 deniers are low or normal tenacity yarns.

15. As regards the issue concerning what constitutes normal and high tenacity, the Authority has examined the same. It is noted in this regard that the Customs Tariff Act specifies the meaning of high tenacity yarn. All those yarns not classifiable as high tenacity are normal (or low) tenacity yarns. The Customs Tariff Act under Chapters 54 and 59 provides for the provisions for the “High Tenacity Yarn” and for the fabrics made from such yarn and states as follows:-

The expression “High Tenacity Yarn” means yarn having tenacity, expressed in cN/tex (centinewtons per tex), greater than the following:

| | |
|---|----|
| Single yarn of nylon or other polyamides, or of polyesters..... | 60 |
| cN/tex. | |
| Multiple (folded) or cabled yarn of nylon or other polyamides, or of polyesters | 53 |
| cN/tex. | |
| Single, multiple (folded) or cabled yarn of viscose rayon..... | 27 |
| cN/tex. | |

16. The domestic industry for NFY provided evidence to show that they were in production of nylon filament yarn exceeding 210 denierage at the time of original investigation. The domestic industry has provided, for the purpose, a copy of company wise and thereafter consolidated denier wise production and sale of various types of NFY from the records of the previous investigation and submitted that this information is already on record of the Designated Authority.. It is seen that there was significant production and sale of NFY exceeding 210

deniers. The domestic industry have demonstrated through following data that both (a) capacity utilization for the 210 and above deniers and (b) the selling price for 210 and above deniers are significantly lower than the same for overall product:-

Capacity Utilization

| Particulars | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|-----------------------|---------|---------|---------|---------|
| 210 deniers and above | 47.78% | 34.99% | 59.54% | 67.04% |
| All NFY | 92.75% | 86.87% | 82.42% | 86.10% |

Selling Price

| Particulars | Unit | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|-----------------------|-------|---------|---------|---------|---------|
| 210 deniers and above | Rs/Kg | 166.15 | 156.67 | 152.56 | 159.84 |
| All NFY | Rs/Kg | 165.38 | 171.32 | 179.35 | 184.03 |
| Difference in price | Rs/Kg | 0.77 | (14.65) | (26.79) | (24.19) |

17. The domestic producers deployed a number of machines for manufacturing different deniers of fishnet yarn. In particular, it was found that the Century Enka has deployed a number of machines to manufacture nylon filament yarn higher than 210 deniers. The production records of the company, in fact, show underutilization of these machines and diversion of these machines for manufacturing of other yarns.

18. The petitioner has argued that fishnet yarn was beyond the scope of product under consideration and beyond the scope of duties recommended in final findings earlier notified by the Authority. The matter has been examined in detail. It is noted that the Authority had recommended exclusion of all high tenacity yarns, including fishnet yarns. Thus, only high tenacity yarns were exempted from the scope of anti dumping duty and fishnet yarn was exempted being high tenacity yarn. Having regard to the final findings notified by the Authority in the original proceedings and the available material including the submissions of interested parties during the course of the present proceedings, the Authority holds that low tenacity nylon filament yarn for fishnet application is within the scope of the product under consideration and the existing measures. Further, the Authority holds that the product of low tenacity was rightly included within the scope of the product under consideration and present measures, given the fact that the product was being dumped into India while the same was being produced and supplied by the domestic industry. It is however clarified that all kinds of high tenacity yarn irrespective of their application, are beyond the scope

of the existing measures. Therefore, high tenacity yarn of nylon used in fishnet manufacture are beyond the scope of the existing anti dumping duties.

19. The authority is of the view that the nylon filament yarn cannot be distinguished or categorized on the basis of its application, such as the textile nylon yarn, fishnet nylon yarn etc. The same can be categorized according to their technical characteristics, namely tenacity and denierage. Accordingly, the authority upholds its findings that all types of high tenacity nylon filament yarn including that used for manufacture of fishnet, classifiable under Customs Classification No. 54.02.10, are beyond the scope of the anti dumping measures, recommended vide its final findings dated 3rd July, 2006 in the original proceedings.

20. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(P.K. Chaudhery)
Designated Authority