CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

ANTI DUMPING APPEAL NO. 51485 OF 2022

(Arising out of Final Findings F.No. 06/27/2020-DGTR dated 07.09.2021 of the Designated Authority, Directorate General of Trade and Customs Notification No. 68/2021-Customs (ADD) dated 06.12.2021)

M/s. Mahle Anand Thermal Systems Private Limited **...Appellant**

VERSUS

1. **Designated Authority, Directorate General of Trade Remedies**
Department of Commerce
Ministry of Commerce & Industry
Parliament Street, Jeevan Tara
Building, 4th Floor, New Delhi-110001

2. **The Union of India**
Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001

3. **Hindalco Industries Limited**
3rd Floor, B Wing, S.K. Ahire Marg,
Worli, Mumbai 400030

4. **Aludecor Lamination Pvt. Ltd.**
Martin Burn Building, Suite 52, Floor 5, 1, RN,
Mukherjee Road,
Kolkata – 700001, West Bengal

5. **Alkraft Thermotechonlogies Pvt. Ltd.**
35A & B/1, Ambattur Industrial Estate,
Chennai 600058

6. **Jiangsu Dingsheng New Materials Joint-Stock Co.**
Jingkou Industrial Park,
Zhenjiang, Jiangsu Province, China

7. **Dingsheng Aluminum Industries**
Flat/RM 1405 14/F 88 Gloucester Road,
Wanchai, Hong Kong

8. **Hangzhou Dingsheng Import & Export Co., Ltd.**
Pingyao Village, Pingyao County,
Yuhang District,
China

9. Inner Mongolia Liansheng New Energy Material Co.
B Zone, Huolinguole Industrial Park,
Tongliao City, Inner Mongolia

10. Indomax Industries
D-19/3, Okhla Industrial Area,
Phase-II, New Delhi – 110020

11. Technova Imaging Systems (P) Limited
E1/2/3, MIDC Industrial Area,
Taloja, District Raigad, Maharashtra, India

12. Jindal (India) Limited
NH No.-6, Mouza-Jangalpur,
PO: Argori, GP-Andul, Howrah: 711 302,
West Bengal, India

13. Raviraj Foils Limited
Survey No. 169, P.O. Chharodi Farm,
Opp. Tata Nano, Tal: Sanand Dist.
Ahmedabad

14. Arconic (Kunshan) Aluminum Products Co., Ltd
No. 111 Yanhu Road Huaqiao Town,
Kunshan City, 215332,
Jiangsu Province, China

15. M/s Granges Aluminium (Shanghai) Ltd.
1111 Jiatang Highway, Shanghai,
China, 201807.

16. Aluminium Secondary Manufacturers Association
1/6B, Asaf Ali Road, New Delhi- 110002

17. ACP Manufacturer Association
2E/7, Jhandewalan Extension,
New Delhi-110055

18. Alutech Packaging Private Limited
DSM-315, DLF Tower,
Shivaji Marg, Moti Nagar,
Delji – 110005, India

19. Greenberry Foils India Limited
Plot No. 6, Valia GIDC Industrial Estate Valia,
Ankleshwar, Bharuch, Gujarat 393135

20. R.S. Foils Private Limited
Rev No. – 811/1/3, Baroda Halol Express Road,
Nr. Liva Pharamaceutical Ltd.,
Village: Kotambi, Dist. Vadodara – 391510,
Gujarat

21. Shree Venkateshwara Electrocast Private Limited
Flat No. 204, Block – B,
Panchsheel Apartment, 493/B/1,
GT Road (S), Shibpur, Howrah,
Kolkata, WB, 711102

22. Hanon Automotive Systems India Pvt. Ltd. **.....Respondents**
Keelakaranai Village, Malrosapuram Post
Chengalpatt 603204
Tamil Nadu, India

APPEARANCE:

Shri V. Lakshmi Kumaran, Shri Devinder Bagia, Shri Ankur Sharma, Shri Jayant Raghu Ram and Shri Ashutosh Arvind Kumar Advocates for the Appellant

Shri Ameet Singh, Ms. Bhawna and Ms. Nidhi, Advocates for Designated Authority

Shri S. Seetharaman and Shri Darpan Bhuyan Advocates for the Respondent No. 3

Ms. Reena Asthana Khair, Ms. Shreya Dahiya, Advocates for Respondent No.15

Shri Devesh Tripathi, Shri Rajesh Sharma, Ms. Roopali Sharma and Shri Nikhil Sharma, Advocates for Respondent No. 10 and 17

Shri M.V. Mukunda, Advocate for Respondent No. 5

Shri Nagendra Yadav, Authorized Representative for the Central Government

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA MEMBER (JUDICIAL)

Date of Hearing: 10.11.2022
Date of Decision: 13.04.2023

FINAL ORDER NO. 50470/2023

JUSTICE DILIP GUPTA:

Mahle Anand Thermal Private Limited[1] has filed this appeal to assail the final findings dated 07.09.2021 issued by the designated authority and the consequential customs notification dated 06.12.2021 issued by the Central Government imposing anti-dumping duty on

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1. **the appellant**

'certain flat rolled products of aluminium'[2] from China PR. The alternative relief that has been claimed is to grant exclusion to **clad with compatible non-clad aluminium foil** from the scope of the product on which anti-dumping duty has been imposed.

2. During the hearing of the appeal, Shri V. Lakshmi Kumaran, learned counsel for the appellant assisted by Shri Devinder Bagia, Shri Ankur Sharma, Shri Jayant Raghu Ram and Shri Ashutosh Arvind Kumar, restricted his submissions to the alternative prayer.

3. It transpires from the records that Hindalco Industries Limited[3], which has been impleaded as respondent no. 3 in this appeal, had filed an application before the designated authority on behalf of the domestic industry under the provisions of the Customs Tariff Act, 1975[4] and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and Determination of Injury) Rules, 1995[5] for initiation of anti-dumping investigation on the imports of certain flat rolled products of aluminium originating in or exported from China PR[6]. The investigation was initiated by the designated authority by a notification dated 08.09.2020 to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry. The investigation was conducted for the period from 01.04.2019 to 31.03.2020 and the injury analysis period was notified to be from 01.04.2016 to 31.03.2019 and the period of investigation. The designated authority provided an opportunity to all the interested

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2. **the subject goods**
3. **Hindalco**
4. **the Tariff Act**
5. **the 1995 Rules**
6. **the subject country**

parties to present their submissions orally in the hearing conducted on 25.05.2021 and the interested parties who presented their views were advised to file written submissions of the views expressed orally by them. The interested parties were also provided an opportunity to file rejoinder submissions to the views expressed by the opposing interested parties. A disclosure statement containing the essential facts which would form the basis for the final findings was issued to the interested parties on 26.08.2021 and the interested parties were allowed time upto 02.09.2021 to give their comments. The final findings of designated authority were notified on 07.09.2021. The conclusion and the recommendation made by the designated authority in the final findings are as follows:

> "**L. CONCLUSION**
>
> 127. After examining the submissions made by the domestic industry and the other interested parties and issues raised therein and considering the facts available on record, the Authority concludes that:
>
> a) Considering the normal value and export price for the subject goods, dumping margin for the subject goods from the subject country has been determined, and the margin is positive and significant.
>
> b) The domestic industry has suffered material injury and the injury margin is positive. The examination of the imports of the subject product and the performance of the domestic industry shows that the volume of dumped imports from the subject country has increased in both absolute and relative terms. The volume of the subject goods has increased by more than 60% whereas demand has increased by only 18%. It is also noted that the imports of the subject goods from the subject country are suppressing the prices of the domestic industry. The production and the sales of the domestic industry have remained

largely stable in the period of investigation while the capacity utilization remains suboptimal. It is noted that the market share of domestic industry has declined by 12% in the period of investigation whereas market share of the imports from the subject country has increased by 35%. The performance of the domestic industry has significantly deteriorated in respect of profits, cash profits and return on capital employed. The domestic industry has suffered financial losses, cash losses and negative return on investments in the period of investigation.

c) The material injury suffered by the domestic industry has been caused by the dumped imports.

M. RECOMMENDATION

128. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to the domestic industry, the exporters, the importers and the other interested parties to provide information on the aspects of the dumping, the injury and the causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that imposition of anti-dumping duty is required to offset the dumping and the injury. Therefore, the Authority recommends imposition of the anti-dumping duty on the imports of subject goods originating in or exported from the subject country.

129. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of the anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury so as to remove the injury to the domestic industry. The Authority, therefore, considers it necessary to recommend imposition of the definitive anti-dumping duty equal to the amount mentioned in the column (7), on all imports of the subject goods described at Column (3) of the duty table, originating in or exported from China PR, from the date of notification to be issued in this regard by the Central Government.”

4. The Central Government, thereafter, issued the notification dated 06.12.2021 imposing anti-dumping duty on flat rolled products of aluminium for a period of 5 years from the date of publication of the notification. However, the following two products were excluded from the scope of the subject goods.

> "i. Can-body Stock–also includes Can End Stock (CES) used to make aluminium cans.
>
> ii. Aluminium Foil up to 80 microns."

5. The appellant is using **certain flat rolled products of aluminium** including **clad with compatible non-clad aluminium foil** to manufacture heat exchangers, condensers, evaporates, radiators, HVAC systems and engine cooling modules at its units located at Chinchwad (Maharashtra), Chennai (Tamil Nadu), Sanand (Gujarat), Noida (Uttar Pradesh). The appellant supplies these products to various customers including to some of the major passenger and commercial vehicle manufacturers in India like Tata Motors, Mahindra and Mahindra, Maruti Suzuki India Ltd. and Ashok Leyland. The customers of the appellant use products in their vehicles, and it plays an important part in manufacturing of vehicles across India.

6. The appellant imports aluminium strip/coil which is clad with compatible non-clad aluminium foil from China PR for use in manufacture of the aforesaid products. Clad with compatible non clad aluminium foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry such as radiator,

condenser, evaporator, intercooler, oil cooler and heater. Clad aluminium foil contains a number of metal constituents that make it adaptable to be used in heat exchangers for specific functions. According to the appellant, condensers, evaporators, radiators, engine cooling modules and HVAC systems are manufactured from **clad coils** as well as **non-clad aluminium foil** which are the crucial and principal raw materials used in manufacturing the above products. The present appeal concerns exclusion of **clad with compatible non-clad aluminium foil** from the scope of the product under consideration in the final findings and the customs notification.

7. The product has a history of anti-dumping investigations. The earlier investigations were on aluminium foil up to 80 micron thickness. The present investigation is on certain flat rolled products of aluminium. Aluminium foil is a subset of certain flat rolled products of aluminium.

8. The **first** anti-dumping investigation for the period April 2014 to March 2015 was initiated on 15.12.2015 on aluminium foil from 5.5 micron to 80 micron from China PR based on the application by the domestic industry including Hindalco. In the final findings issued on 10.03.2017 and the customs notification issued on 16.05.2017 **clad with compatible non-clad aluminium foil** was excluded from the product.

9. The **second** anti-dumping investigation for the period April 2019 to March 2020 was initiated on 20.06.2020 on aluminium foil of 80 micron and below from China PR, Indonesia, Malaysia and Thailand based on the application by domestic industry including Hindalco. Clad with compatible non-clad aluminium foil was excluded in the final

findings dated 18.06.2021 and the customs notification dated 16.09.2021.

10. The **third** anti-dumping investigation (sunset review) for the period of April 2020 to March 2021 was initiated on 23.09.2021 and the exclusion on clad with compatible non-clad aluminium foil which was granted in 2017 continued in the final findings of the sunset review.

11. The **present** anti-dumping investigation for the period of April 2019 to March 2020 was initiated on 08.09.2020 on certain flat rolled products of aluminium from China PR based on an application by Hindalco. Domestic industry in its application excluded articles covered by anti-dumping customs notification dated 16.05.2017 read with final findings dated 10.03.2017, which were issued pursuant to the first anti-dumping investigation. The final findings concerning the present investigation were issued on 07.09.2021 and the customs notification was issued on 06.12.2021. The product scope defined by the designated authority includes clad with compatible non-clad aluminium foil.

12. The contention of the learned counsel for the appellant is that the designated authority incorrectly included clad with compatible non-clad aluminium foil in the product scope holding that the domestic industry **can** manufacture cladded coil, though there is no finding by the designated authority that the domestic industry had actually manufactured and made commercial supplies of clad with compatible non-clad aluminium foil during the period of investigation.

13. Shri S. Seetharaman, learned counsel assisted by Shri Atul Sharma and Shri Darpan Bhuyan for the respondent no. 3 and Ms.

Reena Khair, learned counsel for the respondent no. 15, however, support the final findings and the customs notification and submitted that the designated authority correctly did not exclude clad with compatible non-clad aluminium foil from the product scope. However, Shri M.V. Mukunda, learned counsel for the respondent no. 5 and Ms. Rupali Sharma, learned counsel appearing for the respondent no's. 10 and 17 supported case set out by the appellant.

14. It would, therefore, be necessary to appreciate what is **clad with compatible non-clad aluminium foil** and how it is used by the appellant to manufacture, radiators, evaporator, etc. A cladded coil is composed of three layers of flat rolled products of aluminium that are metallurgically bonded. The top and bottom layers are called Clad 1 and Clad 2 layers, which are aluminium-silicon alloy layers having silicon content in the range of 6.8% to 8.2%. The middle layer is the core layer with very high aluminium content (more than 95%) and other minor elements. These three layers are produced by rolling process and are independently flat rolled products of aluminium. Thereafter, all the three layers i.e. the clad layers and the core layer (which is unclad) are metallurgically bonded to form a cladded coil. All the three layers must be compatible with each other, which is why the description is 'clad with compatible non-clad aluminium foil. Thus, a cladded coil or clad with compatible non-clad aluminium foil is not a simplicitor flat rolled product of aluminium, but it is a coil which has been manufactured out of three flat rolled products of aluminium. There can also be a cladded coil with clad layer on one side, where the clad layer is metallurgically bonded with the core layer.

15. It needs to be noted that the present investigation was only on **certain flat rolled products of aluminium** and not on products that are manufactured out of flat rolled products of aluminium.

16. It also needs to be noted that the designated authority in the final findings dated 10.03.2017, in the context of the **first** anti-dumping investigation, had defined clad with compatible non-clad aluminium foil in the following manner:

> "31. In view of the foregoing, the scope of product under consideration for the purpose of present investigation and proposed measures is as follows:
>
> Aluminium Foil whether or not printed or backed with paper, paper board, plastics or similar packing materials of a thickness ranging from 5.5 micron to 80 micron excluding.
>
> vii. Clad with compatible non clad Aluminium Foil: Clad with compatible non clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater."

17. The radiator is a safety critical item which ensures engine cooling of a vehicle. During movement of the vehicle at high speeds, the radiator should not fall apart. Therefore, the brazing operation should ensure that the fin perfectly join with the tubes, header plate and end plate.

18. The domestic industry had excluded aluminium foil up to 80 microns by reference to customs notification dated 16.05.2017. In this regard, the appellant made the following legal submissions before the designated authority.

> "**13.** In the petition submitted by the domestic industry, the following products were sought to be excluded from the product scope:
>
> a. Can-body Stock – also includes Can End Stock (CES) used to make aluminium cans' and
> b. Aluminium Foil up to 80 microns attracting anti-dumping duty vide Customs Notification no. 23/2017-Customs (ADD) dated 16th May 2017 issued pursuant to the final findings dated 10th March 2017, notification no. F. No. 14/06/2015-DGAD.
>
> **14.** However, the initiation notice does not mention the above exclusions. We request the Authority to exclude the above products from the product scope.
>
> **15.** Furthermore, we also request the Authority to not give the exclusion with reference to the Customs Notification and Final Findings. In the Customs Notification referred above, various products have been excluded from the product scope and hence, these do not attract anti-dumping duty in terms of the said Notification. In case the exclusion is defined with reference to the Customs Notification and Final Findings, it may create a confusion that the products which do not attract duty under the said Notification, will be covered in the present investigation. In order to avoid any such ambiguity, we request the Authority to exclude the products by providing their detailed description and not by mere reference to the Customs Notification and Final Findings."

19. Since the customs notification 16.05.2017 already excluded several articles including clad with compatible non-clad aluminium foil, the appellant had requested the designated authority to provide detailed descriptions of the said exclusions mentioned in the said customs notification rather than merely referring the customs notification number for excluding the products.

20. In response to the specific request of the appellant, the domestic industry admitted that they do not object to a clarification from the designated authority with respect to the items that are excluded by

customs notification dated 16.05.2017, but the domestic industry submitted that clad with compatible non clad aluminium foil should be included in the scope of the product. This statement of the domestic industry is recorded in the final findings and as follows:

> "e. Exclusion requests: With regard to exclusion requests made by the interested parties, the domestic industry has submitted as follows:
>
> Aluminium Foil up to 80 micron with the Customs Notification No. 23/2017 imposing anti-dumping duty on Aluminium foil up to 80 micron.
>
> i. the domestic industry does not object to a clarification from the Authority with respect to the items that are excluded under Customs Notification No. 23/2017-Customs (ADD) dated 16th May, 2017. However, the domestic industry requests that such clarification explicitly makes note of the fact that "Aluminium composite panel stock" or "ACP mill finish" and Clad with compatible non clad Aluminium Foil are in fact included in the scope of this investigation……"

21. The domestic industry stated that it had supplied material to the relevant interested parties in past in 2016 but had never received orders in future. This has been recorded by the designated authority and is reproduced below:

> "Cladded coil for Tube, Header Plate and End Plate, Unclad Finstock and Unclad Coil
>
> xiii. The domestic industry can manufacture Unclad Finstock, Unclad Coil and Cladded Coil for Header Plate and End Plate. The domestic industry had in fact supplied material to the relevant interested party with the required specifications to users in the past (in 2016) but never received orders in the future. A one-off complaint by a user cannot be a ground for exclusion. This is particularly important in the case of trial and commercial orders. Since trial orders are small and made in different casts, it is possible that not all batches will meet all specifications to the mathematical

> precision. That cannot be a ground for exclusion. No metal manufacturers supply products at all times meeting all specifications. There are few rejections and there are processes to resolve and address such rejections."

22. The designated authority, thereafter, decided not to grant exclusion for clad coil and the relevant findings are as follows:

> "Cladded coil for Tube, Header Plate and End Plate, Unclad Finstock and Unclad Coil
>
> 31. The interested parties have argued that the domestic industry cannot provide high quality and technical products needed in the auto industry while the domestic industry has submitted that it can manufacture Unclad Finstock, Unclad Coil and Cladded Coil for Header Plate and End Plate.
>
> 32. With respect to the quality of products, the Authority reiterates that quality issues cannot be grounds for exclusion in an antidumping investigation.
>
> 33. Therefore, the Authority has determined not to exclude such a product from the scope of the PUC."

23. The contention of the learned counsel for the appellant is that the designated authority could not have rejected the product exclusion merely because the domestic industry can manufacture clad with compatible non-clad aluminium foil. It was imperative for the designated authority to have examined whether the domestic industry had made commercial supply of clad with compatible non-clad aluminium foil during the period of investigation. The domestic industry also failed substantiate that it had made commercial supplies of clad with compatible non-clad aluminium foil in commercial quantities during the period of investigation.

24. In regard to the notification dated 16.05.2017 issued by the Central Government for the **first** anti-dumping investigation, the

Bombay High Court in **Mahle Anand Thermal Systems Private Limited** vs. **The Union of India, through Join Secretary, Ministry of Commerce, Department of Commerce & Ors.**[7], after noting the clarification issued by the Directorate General of Anti-Dumping and Allied Duty on 01.02.2018, allowed the Writ Petition and the relevant paragraphs are reproduced below:

> "**5.** ***** **Petitioner's representation and explanation that both clad as well as unclad/non-clad aluminium foil were expressly excluded from the scope of the investigation and final findings of Respondent No.5 at the request of the domestic industry itself as there was no injury caused to the domestic market went unheeded. This is despite a clarification issued by Respondent No.5 by a letter dated 1st February, 2018** in effect confirming the stand of Petitioner. Paragraphs 4, 5, 6 and 7 of the said letter dated 1st February, 2018 reads as under :-
>
> > "4. In the aforesaid final findings read with the customs notification, eight (8) exclusions have been granted from the product scope. The exclusion (vii) as given in the aforesaid notification is worded as follows :-
> >
> > > Clad with compatible non clad Aluminium Foil : Clad with compatible non clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater.
> >
> > 5. **The aforesaid exclusion was granted as the domestic industry had admitted that it could not produce the above products, namely**
> >
> > > i) clad aluminium; and

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7. **2022 (8) TMI 844 – Bombay High Court [Writ Petition No. 604 of 2021 decided on 10.08.2022]**

ii) **compatible unclad aluminium. This is** also recorded in the final findings at several places, extracts of which are given below:

ii. Exclusion accepted by the domestic industry:

c. Clad with Non Clad Aluminium - 'Aluminium - Manganese - Silicon based and/or clad Aluminium - Manganese - Silicon based alloys, whether clad or unclad : with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.

d. Some interested parties require clad with compatible non clad aluminium foil which is used in heat exchangers used specifically only in radiators in vehicles and engines in cooling systems. This is excluded by petitioner.

6. Further, Para 79 clearly mention that the following is excluded from the scope of PUC.

Aluminium - Manganese - Silicon based and/or clad Aluminium - Manganese - Silicon based alloys, whether clad or unclad: with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.

7. **The Final Finding is Comprehensive and the exclusion is candidly mentioned in relevant portions of the Final Findings.**

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13. Subsequently, there is a clarification issued by the Directorate General of Anti-Dumping and Allied Duties on 1st February, 2018 which is quoted earlier. **Therefore, it is quite clear that clad as well as clad with compatible non-clad or unclad aluminium foil has been excluded from anti-dumping duty.** Respondent No.4 therefore was not justified in insisting on payment of anti-dumping duty for clearance of unclad or non- clad consignment of aluminium foil, more so, when the same product is allowed to be imported from other ports without insisting on payment of levy of anti-dumping duty."

(emphasis supplied)

25. In the aforesaid judgment of the Bombay High Court, reliance has been placed on the letter dated 01.02.2018 issued by the Directorate General of Trade Remedies in connection with the final findings dated 10.03.2017 regarding the exclusion granted to clad with compatible non-clad aluminium foil.

26. It needs to be noted that the Manual of Standard Operating Practices for Trade Remedy Investigations issued by the Directorate General of Trade Remedies, Department of Commerce, Government of India provides in Article 3.10 that mere competence without any production or merchant sales may not be sufficient, to include an item in the definition of the product under consideration. The relevant portions are as follows:

"**3.10.** The PUC is defined to include those items only, which are manufactured by the DI. Mere competence without any production or merchant sales may not be sufficient to include an item in the definition of the PUC. Similarly, if an item is produced and consumed only captively (in-house) without any outside sales the DI's request for an investigation against this product may be considered with caution. The PUC should preferably include those items, which are produced and commercially sold in the domestic market by the respective DI. An exception could be the cases where the applicant is a new industry, who has set up facility for a new product or could be an upstream product of an existing industry and the new industry is facing difficulty in capturing market on account of dumped imports of the product.

****

> **3.26.** The complete process of defining and describing the PUC as mentioned above is carried out during the fresh/original investigation. It is the responsibility of the Investigation team (with the approval of the DG) to clearly and accurately define and describe the scope of the PUC concerned during the fresh/original investigation at the stage of consideration of initiation."

27. Thus, an item which has not been sold by the domestic industry in commercial quantities should not be included in the scope of the product under consideration by the domestic industry.

28. What, however, transpires is that the domestic industry could not demonstrate that it had made any commercial supplies of clad with compatible non-clad aluminium foil during the period of investigation and that clad with compatible non-clad aluminium foil cannot be considered as flat rolled products of aluminium since the cladded coil is made of several surface layers of flat rolled products of aluminium that are metallurgically bonded to high strength aluminium alloy core.

29. In view of the aforesaid, it is not possible to hold that clad with compatible non-clad aluminium foil should not be excluded from the scope of product under consideration as has been contended by learned counsel for some of the respondents for the reason that the imported article is a like article under investigation or that Hindalco has the capability and has produced and sold clad with compatible non-clad aluminium foil.

30. For the reasons stated above, clad with compatible non-clad aluminium foil has to be excluded from the product under consideration and, accordingly, the customs notification dated 06.12.2021 is modified to exclude clad with compatible non-clad

aluminium foil from the scope of product under consideration. The Anti-Dumping Appeal is, accordingly, allowed to the extent indicated above.

(Order Pronounced on **13.04.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Shreya