CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

ANTI DUMPING APPEAL NO. 52233 OF 2018

(Arising out of Final Findings vide Notification No. 17/2018-Customs (Add) dated 27 March, 2018 and Corrigendum Notification No. 25/2018-Customs (Add) dated 10 May, 2018 issued by the Designated Authority, Directorate General of Anti Dumping & Allied Duties, New Delhi)

Exotic Décor Pvt. Ltd. **......** **Appellant**
C-44, Sector-2
Noida – 201 301
Uttar Pradesh

VERSUS

Designated Authority, Directorate General of Anti Dumping & Allied Duties **......** **Respondent**
Ministry of Commerce & Industry
Parliament Street
Jeevan Tara Building, 4th Floor
NEW DELHI – 110 001

WITH

ANTI DUMPING APPEAL NO. 52239 OF 2018

(Arising out of Final Findings vide Notification No. 17/2018-Customs (Add) dated 27 March, 2018 and Corrigendum Notification No. 25/2018-Customs (Add) dated 10 May, 2018 issued by the Designated Authority, Directorate General of Anti Dumping & Allied Duties, New Delhi)

M/s Lotus Kaleen Pvt. Ltd. **......** **Appellant**
M-59, IInd Floor
Lajpat Nagar Part-2
New Delhi – 110 027

VERSUS

Designated Authority, Directorate General of Anti Dumping & Allied Duties **......** **Respondent**
Ministry of Commerce & Industry
Parliament Street
Jeevan Tara Building, 4th Floor
NEW DELHI – 110 001

APPEARANCE:

Mr. Sharad Bhansali & Mr. Jitendra Singh, Advocates for the Appellant

Mr. Ameet Singh & Mr. Arun, Advocates for Designated Authority

Mr. Rakesh Kumar, Authorised Representative for the Revenue

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50689-50690/2020

DATE OF HEARING : 11 March, 2020
DATE OF DECISION : 12 June, 2020

JUSTICE DILIP GUPTA :

These two Appeals have been filed by Exotic Décor Private Limited[1] and M/s Lotus Kaleen Private Limited[2] to assail the Customs Notification dated 27 March, 2018 by which the Central Government, after considering the final findings of the Designated Authority, imposed definitive anti-dumping duty on the subject goods for a period of five years from the date of publication of the Notification in the Official Gazette. The Appellants are also aggrieved by the corrigendum Notification dated 10 May, 2018 which seeks to substitute the 'Explanation' contained in the earlier Notification dated 27 March, 2018.

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1 Exotic Décor
2 Lotus Kaleen

2. The Appellants, Exotic Décor and Lotus Kaleen are trading companies engaged in the business of Engineered Wooden Floorings and similar products. Greenlam Industries Limited [3] filed an application before the Designated Authority under rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury), Rules, 1995[4] for imposition of anti-dumping duty on imports of "Veneered Engineered Wooden Flooring"[5] originating in or exported from China PR, Malaysia, Indonesia and the European Union[6]. The Designated Authority issued a Notification dated 17 February, 2017 initiating anti-dumping investigation concerning imports of the subject goods from the subject countries. The period of investigation was notified to be from October, 2015 to September, 2016 and the examination of the trends in the context of injury analysis covered the period 2013-14, 2014-15 and 2015-16 as also the period of investigation. The Designated Authority provided opportunity to the interested parties to present their views orally in the hearing held on November 28, 2017. Thereafter, all the parties who had attended the oral hearing, were advised by the Designated Authority to file written submissions in regard to the views expressed by them orally at the time of hearing. The Designated Authority also advised the parties to collect copies of the views expressed by the opposing parties so as to offer their rebuttals.

3 domestic producer
4 the 1995 Rules
5 subject goods
6 subject countries

3. The Appellants participated in the hearing and filed written submissions before the Designated Authority on 05 December, 2017 and rejoinders to the written submissions were also filed before the Designated Authority on 18 December, 2017. The Designated Authority issued a disclosure statement on 31 January, 2018. The comments to the disclosure statement were filed by the Appellants on 06 February, 2018. The Designated Authority thereafter issued the final findings on 13 February, 2018. The product under consideration was construed to be as :

> "Veneered Engineered Wooden Flooring typically has three layers of wood viz "Top Layer", "Middle Layer" and "Bottom Layer". Top Layer is real wood which gives attractive look (owing to its wooden texture) and additional strength to overall construction. It can be made of one strip of wood, two strips of wood or three strips of Wood. Middle Layer which forms core of the overall construction and it can be made of "fibre board (MDF/HDF)". Bottom Layer is real wood which provides support to the overall construction. The PUC can however be of two or three layers also".

4. The Central Government accepted the recommendations made by the Designated Authority and issued the Customs Notification dated 27 March, 2018. On the request of the Appellants, a

corrigendum revising the scope of the product under consideration was issued by the Designated Authority on 02 April, 2018 and by Central Government on 10 May, 2018. The scope of the product under consideration was amended by excluding three layer products not having fibre board (MDF/HDF) as the middle layer.

5. This Appeal has been filed on the following three main grounds :

(A) Two layer products having Ply Board as the bottom layer should also have been excluded from the scope of the product under consideration;

(B) Products having inlay work on the top layer should also have been excluded from the scope of the product under consideration; and

(C) The Designated Authority should have provided a soft copy of the import data in excel format to the Appellants as it is in this format and manner that the data was taken on record for the purpose of investigation.

6. Elaborating the aforesaid three submissions, Shri Sharad Bhansali, learned Counsel appearing for the Appellants assisted by Shri Jitendra Singh, Advocate, made the following submissions.

(A) TWO LAYER PRODUCTS HAVING PLY BOARDS AS THE BOTTOM LAYER SHOULD ALSO HAVE BEEN EXCLUDED FROM THE SCOPE OF THE PRODUCT UNDER CONSIDERATION :

(i) The product under consideration in the present investigation is restricted to wooden flooring having three layers, necessarily having the top and bottom layer of real wood. Therefore, it is apparent that the initiation notification intended to cover only those products which had three layers. Thus, all products having only two layers, including the two-layer products having 'Ply wood' and not real wood as the bottom layer, could not have been a part of the product under consideration.

(ii) The initiation notification specifically stated that the product under consideration has three layers and each of the layers was further described. The inclusion of two-layer products having plywood as the bottom layer was not even envisaged in the initiation notification. The Designated Authority, therefore, clearly travelled beyond the scope of the product under consideration as defined in the initiation notification as even two layer products were also included; and

(iii) Even the application submitted by the domestic producer did not seek the inclusion of two layer products for the purpose of investigation. In fact, the description given by the domestic producer in the application is the same as mentioned in the initiation notification.

(B) INLAY PRODUCTS SHOULD HAVE BEEN EXCLUDED FROM THE SCOPE OF THE PRODUCT UNDER CONSIDERATION :

(i) The Designated Authority failed to appreciate that wooden floorings having inlay work on the top layer could not have been included in the product under consideration as such products were not manufactured by the domestic producer;

(ii) Thus, veneered flooring having decorative inlay work on the top layer should have been excluded from the scope of the product under consideration, but the Designated Authority erroneously included the same for the purpose of imposition of anti-dumping duty;

(iii) While dealing with the contention of the Appellants that the products having inlay work should be kept out of the product under consideration, the Designated Authority even after noting that such products were not manufactured by the domestic producer, erroneously held that the domestic producer, being a new industry, may not be producing each and every product falling within the veneered engineered wooden flooring and was only producing products having a demand; and

(iv) The Designated Authority should have excluded the products not manufactured by the domestic producer in view of the settled legal position that the products not manufactured by the domestic producer cannot possibly be the cause of any material injury to the domestic producer. To support this contention reliance has been placed on certain decisions of the Tribunal as also on the findings of the Designated Authority in other matters wherein such products not produced and supplied by the domestic industry have been excluded from the zone of the product under consideration.

(C) THE DESIGNATED AUTHORITY SHOULD HAVE PROVIDED A SOFT COPY OF THE IMPORT DATA (IN EXCEL FORMAT) TO THE APPELLANTS AS IT IS IN THIS FORMAT AND MANNER THAT THE DATA HAS BEEN TAKEN ON RECORD FOR THE PURPOSE OF INVESTIGATION :

(i) It was incumbent upon the Designated Authority to provide the import data in the same form and manner in which the same was taken "on record” for the purpose of investigation. However, the Designated Authority, as a matter of practice, does not provide the soft copy of the import data used in the investigations in the same format as received from the domestic producer or from the Directorate General of Commercial Intelligence & Statistics (DGCI&S). This practice of the Designated Authority severely curtails the right and the ability to make appropriate comments on various aspects of the investigation, including but not limited, to the injury analysis;

(ii) In the absence of the soft copy in excel or similar format, it is practically impossible to offer comments, and assist the Designated Authority in arriving at a correct conclusion;

(iii) The present practice of providing the import data in PDF format defeats the very purpose of providing the data as it is practically impossible to analyze the data which, more often than not, runs into thousands of entries;

(iv) In order to ensure a fair, non-discriminatory and transparent investigation, it is important to share the import data with all the interested parties who have a legitimate right on such information, subject to the provisions of confidentiality envisaged under rule 7 of the 1995 Rules;

(v) No interested party, including the Domestic Industry, can claim confidentiality with regard to the import data or its soft format. In fact, the domestic producer had not even claimed any confidentiality on the soft format of the import data and it is only as a matter of practice that the Designated Authority does not provide the import data in soft format; and

(vi) The approach of the Designated Authority in withholding the import data in the form received from the Domestic Industry and taken on record disregards the decision of the Supreme Court in **Reliance Industries Vs. Designated Authority[7],** wherein it has been held that the Designated Authority does not have any right to claim confidentiality in terms of Rule 7 of the 1995 Rules."

7. Accordingly, the Appellants have claimed the following two reliefs :

7 2006 (202) ELT 23 (SC)

(i) Veneered Engineered Wooden Flooring having only two layers, including those having plywood as the bottom layer, should be excluded from the purview of the product under consideration; and

(ii) Veneered Engineered Wooden Flooring having inlay work on the top layer should be excluded from the purview of the product under consideration.

8. Shri Ameet Singh, learned Counsel for the Designated Authority supported the impugned order and made the following submissions :

(i) The Designated Authority has correctly indentified the product under consideration after taking into account the comments filed by the Appellants to the disclosure statement;

(ii) There is no error in the finding recorded by the Designated Authority that the product under consideration can be of two or three layers also;

(iii) The Appellants are not justified in asserting that the wooden floorings having inlay work on the top layer should have been excluded from the scope of the product under consideration; and

(iv) The Appellants were not entitled to receive the soft copy of the import data in excel format.

9. Shri Rakesh Kumar, learned Authorized Representative of the Department supported the impugned order and for this purpose has adopted the submissions made by Shri Ameet Singh, learned Counsel for the Designated Authority.

10. Despite notices having been issued to the domestic producer, no one has appeared on behalf of the domestic producer.

11. The submissions advanced by learned Counsel for the parties have been considered.

12. As noticed above, the Appellants are trading companies engaged in the business of 'Engineered Wooden Flooring' and similar products. The domestic producer had filed an application under rule 5 of the 1995 Rules for initiation of investigation for imposition of anti-dumping duty on imports of "Veneered Engineered Wooden Flooring" originating in or exported from China PR, Malaysia, Indonesia and the European Union.

13. The issue that arises for consideration is about the product under consideration and in this context two issues have been raised by the Appellants. The first is that two layer products having ply wood as a bottom layer should be excluded from the scope of the product under consideration and the second is that the products having inlay work on the top layer should also be excluded

from the scope of the product under consideration. These two issues have been noted as (A) and (B) above. They shall be dealt with separately.

(A) EXCLUSION OF TWO LAYERED PRODUCTS HAVING PLY BOARD AS BOTTOM LAYER :

14. To appreciate this issue, it would be necessary to examine what was stated by the domestic producer in the application that was filed by it for initiation of anti-dumping investigation. The relevant portion of the application is reproduced below :

"SECTION-1

IMPORTED PRODUCT INFORMATION

Product Description

xxxxxx xxxxxx xxxxxx

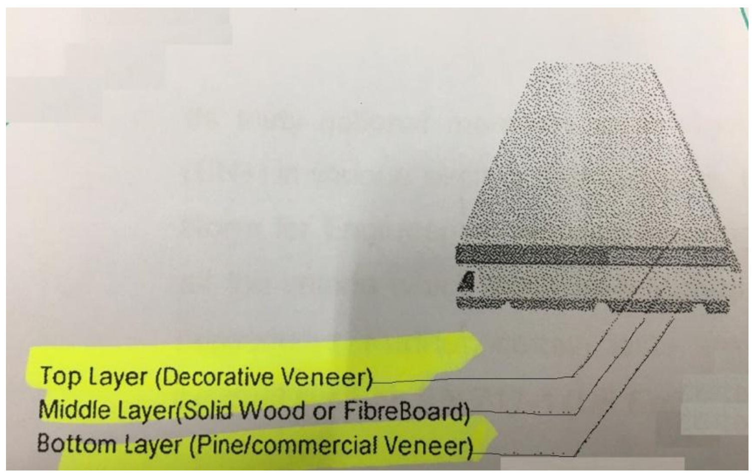
5. The product under consideration in the present petition is **"Veneered engineered wooden flooring"** (hereinafter also referred to as "the product under consideration"). The scope of the product under consideration specifically excludes following kind of floorings -

a. laminated flooring,
b. flooring not made of wood,
c. flooring not having veneered top layer,
d. solid wood flooring

6. Wooden Flooring referred to in the present petition implies **"Veneered engineered wooden flooring"**. Wooden flooring typically has three layers of wood viz "Top Layer", "Middle Layer and "Bottom Layer"- (a) Top Layer is real wood which gives attractive look (owing to its wooden texture) and additional strength to overall construction. It can be made of 1 Strip of wood, 2 Strips of Wood or 3 Strips of Wood; (b) Middle Layer is real wood, which forms core of the overall construction. It can be made of either "solid wood" or "fibre board" and (c) Bottom Layer is real wood which provides support to the overall construction.

7. Veneered engineered wooden flooring is a real wood product. The top layer of wood called the veneer ranges from 0.5 mm

to 4 mm thickness. Overall board thickness ranges from 8 mm to 25 mm. Due to its multiply structure the veneered engineered wooden flooring is more suitable than solid wood and is less susceptible to shrinking and expanding with changes in temperature and humidity. A typical veneered engineered wooden flooring is shown below:



8. Product under consideration is made by pressing a veneer layer on top of the core at temperature of 100-110 Degree C and at a specific pressure of around 10-20kg/m2. The layered plank is then cut to size as per the required length and width. The planks so produced then go through calibrating sanding and profiled in T&G or Click and Lock profile and then coated with UV lacquers for giving a long lasting finish and surface resistance properties like abrasion resistance, scratch resistance and impact resistance. The coated planks are then packed in corrugated boxes and then shrink wrapped and then shipped out to the customer as per the requirement.

9. Veneered engineered wooden flooring are normally produced and sold in certain standard sizes. They can, however, be produced in sizes as per the requirements of customer."

15. Thereafter, the Ministry of Commerce & Industry issued the Notification dated 17 February, 2017 for initiation of anti-dumping investigation and the relevant portion of the Notification is reproduced below :

"**<u>A. Product allegedly being dumped and like Article</u>**

2. The applicant have alleged that the imports of "Veneered Engineered Wooden Flooring" specifically excluding following kind of floorings from the countries named in the present notification are entering the Indian market at dumped prices and such imports are causing injury to the like product domestic industry.

a) laminated flooring,

b) flooring riot made of wood,

c) flooring not having veneered top layer,

d) solid wood flooring

3. The above mentioned product has been referred as "Veneered Engineered Wooden Flooring" or product under consideration in the present notification. Veneered Engineered Wooden Flooring typically has three layers of wood viz "Top Layer", "Middle Layer" and "Bottom Layer". Top Layer is real wood which gives attractive look (owing to its wooden texture) and additional strength to overall construction. It can be made of onestrip of wood, twostrips of wood or threestrips of Wood. Middle Layer is real wood, which forms core of the overall construction. It can be made of either "solid wood" or "fibre board". Bottom Layer is real wood which provides support to the overall construction.

4. Veneered engineered wooden flooring is a real wood product. The top layer of wood called the veneer ranges from 0.5 mm to 6 mm thickness. Overall board thickness ranges from 8 mm to 25 mm. Due to its multiply structure the engineered wooden flooring is more suitable than solid wood and is less susceptible to shrinking and expanding with changes in temperature and humidity.

5. The above product is normally produced and sold in certain standard sizes and specifications. It can, however, be produced in different sizes to meet the requirements of customer. Different product types can be categorized on the basis of sizes and specifications.

6. The product under consideration is classified under Chapter 44 of the Customs Tariff Act. The customs classification above is indicative only and in no way binding on the scope of the product under consideration in this investigation.

7. The applicant has claimed that there is no known difference between the subject goods exported from the subject countries and that produced by the domestic industry. Subject goods produced by the domestic industry and imported from the subject countries are comparable in terms of essential product characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Consumers use the two interchangeably. The applicant has further claimed that the two are technically and commercially substitutable and, hence, should be treated as 'like article' under the Rules. For the purpose of the present investigation, the Authority has treated the subject goods produced by the domestic industry in India as 'Like Article' to the subject goods being imported from the subject country."

16. The Appellants filed written submissions dated 05 December, 2017 pursuant to the public hearing that was held on

November 28, 2017. The written submissions in regard to the product under consideration are reproduced below :

"**13** From the above, it is clear that the following products are clearly excluded from the purview of investigations:

a. Where the "Description contains Laminated woods and Ply woods" referred to in Item (a) above. In other words, any Veneered Engineered Wooden Flooring having plywood as its base is admittedly not a part of the Product under Consideration.

b. Veneered Engineered Wooden Flooring having the core (middle layer) of any material other than fibre board, as mentioned by the Domestic Industry itself in its application under Item (f). In other words, all Veneered Engineered Wooden Flooring having real wood as the core (or middle layer) stands excluded as the Domestic Industry has clearly mentioned by the Domestic Industry that the PUC has to have core of fibre board.

14. In view of the above, we request the Hon'ble Authority to appropriately reflect the above exclusions clearly in the Final Findings.

15 In addition to the above, the respondents submit that the following products ought to be excluded from the purview of investigations for the reasons mentioned below:

S No.	Product	Reasons for Exclusion
	Designed products which needs specific machinery (inlay products)	Not a part of the Product under Consideration as such products are not manufactured by the Domestic Industry or were not manufactured by them during the POI.
	Products having width exceeding 180mm	Not a part of the Product under Consideration as such products are not manufactured by the Domestic Industry or were not manufactured by them during the POI.
	Products having width exceeding 2100mm	Not a part of the Product under Consideration as such products are not manufactured by the Domestic Industry or were not manufactured by them during the POI.

	Products having thickness exceeding 14mm	Not a part of the Product under Consideration as such products are not manufactured by the Domestic Industry or were not manufactured by them during the POI.”

17. The Ministry of Commerce & Industry issued a disclosure statement dated 31 January, 2018 and the relevant portion of ‘Examination’ by the Designated Authority in regard to the product under consideration is as follows :

“Examination by the Authority

25. The product under consideration is "Veneered engineered wooden flooring” excluding following kind of floorings:

a. laminated flooring,
b. flooring not made of wood,
c. flooring not having veneered top layer,
d. solid wood flooring

26. Veneered Engineered Wooden Flooring typically has three layers of wood viz “Top Layer, "Middle Layer" and "Bottom Layer". Top Layer is real wood which gives attractive look (owing to its wooden texture) and additional strength to overall construction. It can be made of one strip of wood, two strips of wood or three strips of Wood. Middle Layer is real wood, which forms core of the overall construction. It can be made of either "solid wood" or "fibre board (MDF/HDF)". Bottom Layer is real wood which provides support to the overall construction.

The PUC can however be of two or three layers also.

27. Veneered engineered wooden flooring is a wood product. The top layer of wood called the veneer ranges from 0.5 mm to 6 mm thickness. Overall board thickness ranges from 8 mm to 25 mm. Due to its multiply structure the engineered wooden flooring is more suitable than solid wood and is less susceptible to shrinking and expanding with changes in temperature and humidity.

28. The PUC is normally produced and sold in certain standard sizes and specifications. It can, however, be produced in different sizes to meet the requirements of customer. Different product types can be categorized on the basis of different sizes (veneer thickness, board thickness, length, width) and specifications of the wood (pine, oak, teak, walnut etc).

29. As regards the contention of the interested parties regarding exclusion of products having inlay work, the Authority notes that import data does not specifically show import of this type of product. Petitioner is a new producer of the PUC in the Country and is establishing itself in the market. Domestic Industry, being a new industry, do not produce each every kind of product falling within the veneered engineered wooden flooring rather producing the product having its demand.

18. The Appellants filed comments to the disclosure statement. The relevant portion of the comments in regard to the scope of the product under consideration is reproduced below :

"b. <u>Two-layer products having 'Ply Boards' as bottom layer:</u>

9. In relation to the observation of the Authority regarding two-layer products, it is submitted that the product under consideration is a wooden flooring having real wood mandatorily at the top and bottom layer. Therefore, all products having bottom layer of 'Ply woods' and not real wood, irrespective of top layer, should be excluded from the scope of product under consideration. As a matter of fact, the Authority needs to take cognizance of the fact that these products were never intended to be included in the scope of the product under consideration as is evident from the application itself. Inclusion of the two-layer products not having real wood as bottom layer will also be tantamount to increasing the scope of the PUC for which admittedly no application has been filed."

c. <u>Designed products which needs specific machinery (inlay products</u>)

10. It is reiterated that the designed products are not part of product under consideration as such products are not manufactured by the Domestic Industry or were not manufactured by them during the POI. Even from the submissions of the Domestic Industry, finding mention at para xvi on page 9 of the disclosure statement, it is amply clear that Domestic Industry has not produced and sold products having inlay work. In view of the past jurisprudence, we humbly request to exclude products having inlay work on them.

xxxxxxx xxxxxxx xxxxxxx

13. Further, it has been the consistent practice of the Authority to exclude the products not manufactured by the Domestic Industry from the purview of the Product under Consideration. The Authority in the following cases has made exclusions in the product under consideration on the ground that the same was not produced and supplied by the Domestic Industry:

xxxxxxx xxxxxxx xxxxxxx

B. **<u>No comments can be offered on the Injury Parameters in the absence of Segregated Import data</u>**

16. We humbly reiterate our request to provide us the segregated import data used for initiation and for the purpose of the disclosure statement (proposed final findings) so that we can appropriately comment on the injury parameters. You would kindly appreciate that in the absence of the segregated data, our rights to comment upon the same have been severely jeopardized. We reserve our right to place our comments on the same as soon as we receive the requested information for the Authority. We also request you to kindly provide us the soft copy of the import data as the same already forms a part of the official record of the Authority."

19. The final findings were notified by the Designated Authority on 13 February, 2018 and the relevant portion is as follows:

"L.3 **<u>Examination by the Authority</u>**

128. The Authority notes that most of the submissions are repetitive in nature and were already examined suitably, adequately and appropriately addressed earlier in the disclosure statement. The findings above ipso facto deals with these arguments of the interested parties. Further, the authority has examined submissions of interested parties herein below:

(a) With regard to the concern raised by the interested parties concerning disclosure of essential facts, it is noted that most of the facts relevant and raised during the course of investigation, have been addressed at appropriate places in these findings.

(b) With regard to the concern raised by the interested parties concerning product under consideration which is defined in the initiation notification as, "Veneered engineered wooden flooring" excluding following kind of floorings:

i. laminated flooring,
ii. flooring not made of wood,
iii. flooring not having veneered top layer,
iv. solid wood flooring

(c) Veneered Engineered Wooden Flooring typically has three layers of wood viz "Top Layer", "Middle Layer" and "Bottom Layer". Top Layer is real wood which gives attractive look (owing to its wooden texture) and additional strength to overall construction. It can be made of one strip of wood, two strips of wood or three strips of Wood. Middle Layer is

> real wood, which forms core of the overall construction. It can be made of either "solid wood" or "fibre board (MDF/HDF)". Bottom Layer is real wood which provides support to the overall construction. The PUC can however be of two or three layers also. In comments to the disclosure statement, most of the interested parties have stated that the petitioner while defining the product under consideration in their petition and addressing it at Annexure 1.7 concerning detailed methodology used to compile import data for PUC, has stated that the description may contain such wood like pine wood and other such specification like number of strips unit to PUC and the type of core could be either HDF or MDF. It was further stated that the PUC has a core of fibre board. Based on the examination of the issues raised by the interested parties on comments to the disclosure statement, the product under consideration has now been construed as "Veneered Engineered Wooden Flooring typically has three layers of wood viz "Top Layer", "Middle Layer" and "Bottom Layer". Top Layer is real wood which gives attractive look (owing to its wooden texture) and additional strength to overall construction. It can be made of one strip of wood, two strips of wood or three strips of Wood. Middle Layer which forms core of the overall construction and it can be made of "fibre board (MDF/HDF)". Bottom Layer is real wood which provides support to the overall construction. The PUC can however be of two or three layers also".

20. It is in the light of the above, that the submissions advanced by learned Counsel for the Appellants that two layer products were not to be included since the product under consideration was restricted to wooden flooring having three layers with top and the bottom layer of the real wood and middle layer of ply wood or fibre board has to be examined.

21. As noticed above, the application that was filed by the domestic producer for initiation of anti-dumping duty made reference to "Veneered Engineered Wooden Flooring" and "Wooden Flooring" was described as having three layers of wood. The top layer was

stated to be of real wood; the middle layer could be either solid wood or fibre board and the bottom layer was again to be of real wood. This is also clear from the diagram indicated in paragraph 7 of the application. It clearly shows top layer (decorative veneer); middle layer (solid wood of fibre board) and bottom layer (pine/commercial veneer). This is also what was notified by the Ministry of Commerce and Industry in the Notification dated 27 March, 2018 for initiation of anti-dumping investigation.

22. In the written submissions filed by the Appellants pursuant to the oral hearing that took place on 28 November, 2017, the Appellants specifically stated that any veneered engineered wooden flooring having ply board as its base would not be a part of the product under consideration. The Appellants also stated that a product having inlay work on the top layer would also not be a part of the product under consideration as such products were not manufactured by the domestic producer and even were not manufactured by the domestic producer during the period of investigation.

23. In the disclosure statement, the Designated Authority, however, even after mentioning that the top layer and the bottom should be a real wood and the middle layer can either be solid wood or fibre board, proceeded to state that the product under consideration could be of two or three layers.

24. The Appellants did file comments to the aforesaid observations made in the disclosure statement. These objections both with regard to two layer products having ply board as the bottom layer and inlay work on the top layer of the product have been reproduced in paragraph 18 of this order. In short, it was stated that since the product under consideration had mandatorily to have top and bottom layer of real wood, all products having bottom layer of ply board and not real wood, irrespective of what was on the top layer, should be excluded from the scope of the product under consideration. It was also pointed out by the Appellants that the inclusion of two layer products having ply wood as bottom layer in the product under consideration would amount to expanding the scope of the product under consideration since the product having bottom layer as fibre board or ply board was not included at all. In regard to the inlay work on the top layer of the product, the Appellants pointed out that they would also not be a part of the product under consideration since they were not manufactured by the domestic producer and were not even manufactured by the domestic producer during the period under investigation. This, according to the Appellants, is also clear from the statement made by the domestic producer that it had not produced or sold products having inlay work on the top layer.

25. The final findings of the Designated Authority do not address the aforesaid issues raised by the Appellants in the comments filed to the disclosure statement. No finding has been

recorded by the Designated Authority as to how two layer products having fibre board as the bottom layer could be included in the product under consideration because what was stated by the domestic producer as also in the Notification initiating anti-dumping duty was that the bottom layer has necessarily of real wood. It appears that in the final findings, the Designated Authority merely reiterated what was stated in the disclosure statement that the product under consideration can be of two or three layers without examining that the Appellants had sought exclusion of two layer products which had the bottom layer of ply board. The Notification issued by the Central Government on 27 March, 2018 and the subsequent corrigendum Notification issued on 10 May, 2018 also do not address this issue.

26. It is, therefore, clear that the scope of the product under consideration has been enlarged by the Designated Authority by including two layer products having plywood as the bottom layer.

27. The second submission advanced by the learned Counsel for the Appellants is that wooden floorings having inlay work on the top layer could also not have been included in the product under consideration. The contention advanced by learned Counsel for the Appellants is that since veneered floorings having decorative inlay work on the top layer were not manufactured by the domestic producer, they should have been kept out of the product under consideration.

28. The Designated Authority, while dealing with this aspect, noted that the domestic producer, being a new industry, may not be producing each and every kind of product falling within the "Veneered Engineered Wooden Flooring", but still it did not exclude such products. It needs to be remembered that it had been specifically pointed out by the Appellants that the products not manufactured by the domestic producer cannot possibly be the cause of any material injury to the domestic producer. It is also not even the case of the domestic producer that products having inlay work on the top layer were manufactured by it. As such, no material injury could have been caused to the domestic producer by this product.

29. In this connection, it would be pertinent to refer to a decision of the Anti-Dumping Bench of this Tribunal in **Indian Refractory Makers Association vs Designated Authority**[8]**.** The Bench held that DBM of less than 4% silica content imported by the Appellants from PR China is a different grade/type product from the DBM produced in India and, therefore, would cause no material injury to the Indian DBM manufacturing industry. The relevant paragraph of the decision is reproduced below :

> "**9.** From the above discussions, it is clear that DBM of less than 4% silica content imported by the appellants from PR China is a different grade/type product from the DBM produced in India. The imported DBM is not substituted by the DBM produced in India. The imported DBM is also not in commercial competition with the domestically produced DBM. Accordingly, we accept the

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8 2000 (119) ELT 319 (Tribunal)

> submission of the Indian Refractory Makers Association that the import of DBM containing less than 4% silica by them causes no material injury to the Indian DBM manufacturing industry and that there cannot be a causal link between the import of that grade DBM from PR China and the injury, if any, experienced by the Indian DBM industry."

30. The same view was taken by the Anti-Dumping Bench of the Tribunal in **Oxo Alcohols Industries' Association vs Designated Authority**[9]**.** The relevant paragraph is reproduced below:

> **"8**. Now coming to appeal C/411/2000, the question to be tackled is whether Normal Hexanol is a "like article" like the articles under investigation. As stated earlier, Normal Hexanol has been included in the other categories of the subject under investigation only on the ground that it is also being imported into India. That fact by itself cannot make Normal Hexanol a like article. In the final finding the Designated Authority categorically observed :
>
> > "It is noted that though normal Hexanol may not be a substitute for 2-Ethyl Hexanol, the products these are used to manufacture substitute each other and hence exclusion of one from anti-dumping duty investigation will have an impact on the usage of others."
>
> From this it is clear that the Designated Authority has not come to the conclusion that Normal Hexanol and other Oxo Alcohols are interchangeable or can substitute each other. The Designated Authority has not come to the conclusion that Normal Hexanol has characteristics closely resembling those of the other articles under investigation. What the Authority found is that the products manufactured by use of Normal Hexanol can substitute the products manufactured by other Oxo Alcohols. Even if the products manufactured using these two types of alcohols are interchangeable, they cannot be treated as "like article" in the absence of a finding that they themselves have characteristics closely resembling each other. This is so because of the definition of "like articles" in the Rules.**"**

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9 **2001 (130) ELT 58 (Tri.-Del)**

31. In **Magnet Users Association vs Designated Authority**[10], the Anti-Dumping Bench of this Tribunal also held as under :

> "8. ………….There is no justification for including grades of ring magnets which are not produced in India for the purpose of imposition of anti-dumping duty. Exclusion of such products from the scope of anti-dumping duty is warranted. Customs Notification is required to be suitably modified for this purpose……."

32. Thus, products having inlay work on the top layer have to be excluded from the scope of the product under consideration.

33. The third submission of learned Counsel for the Appellants is that it was imperative for the Designated Authority to provide the import data in the same format and manner in which the same was taken on record for the purpose of investigation. In this connection, it has been pointed out that the practice of the Designated Authority to provide import data in PDF format defeats the very purpose of providing data as it becomes practically impossible to analyse the data, which at times runs into thousands of entries.

34. Neither the domestic producer has claimed any confidentiality on the soft format of the import data, nor it can possibly claim such confidentiality. Learned Counsel appearing for the Respondent has not been able to justify the practice adopted by the Designated Authority. Though this aspect would have no bearing in this case as the first two submissions advanced by the Appellants

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10 2003 (157) ELT 150 (Tri.-Del)

have found favour of the Bench, yet it is appropriate to accept the contention advanced on behalf of the Appellants that the Designated Authority, as a matter of practice, should provide the import data in the same form and manner in which it was taken on record.

35. Thus, for all the reasons stated above, the Appeals deserve to be allowed and are allowed. The following two products shall be excluded from the product under consideration in the Customs Notification dated 27 March, 2018 as also the Corrigendum Notification dated 10 May, 2018 :

(i) Veneered Engineered Wooden Flooring of two layers having plywood as the bottom layer; and

(ii) Veneered Engineered Wooden Flooring having inlay work on the top layer.

(Pronounced in the open Court on 12 June, 2020)

(JUSTICE DILIP GUPTA)
PRESIDENT

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Golay