ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3153 of 2020
All Pakistan Textile Mills Association and others
Versus
Federation of Pakistan and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	16.02.2021	**Mr. Hassan Kamran Bashir, Advocate for the petitioners** **Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General** **M/s Ahmed Sheraz and Waqas Amir, Advocates for respondent No.2** **Mr. Salman Zaheer Khan, Advocate for respondents No.3 and 4**

Through the instant writ petition, the petitioners impugn the notice dated 02.10.2020 issued by the National Tariff Commission **("N.T.C.")** for the initiation of proceedings for extending the anti-dumping duties on dumped imports of Polyester Staple Fiber **("P.S.F.")** from the People's Republic of China **("China")**.

2. Vide order dated 03.02.2016, the N.T.C. had made an affirmative final determination in terms of Section 39 of the Anti-Dumping Act, 2015 **("the 2015 Act")** imposing definitive anti-dumping duties on dumped imports of P.S.F. (not exceeding 2.0 denier and excluding colored P.S.F. and regenerated P.S.F.), PCT No.5503.2010 into Pakistan originating in and/or exported from the China ranging from 2.82% to 11.51% of C&F value in *ad valorem* terms for a period of five years with effect from 03.10.2015.

3. Section 58(1) of the 2015 Act provides *inter alia* that any definitive anti-dumping duty imposed under the said Act shall be terminated on a date not later than five years from the date of its imposition. Section 58(2) of the 2015 Act provides *inter alia* that the N.T.C. shall, not later than ninety days preceding the

date of the expiry of a definitive anti-dumping duty, publish a notice of impending expiry of such anti-dumping duty in the official Gazette, etc.

4. On 01.07.2020, the N.T.C. issued a notice in terms of Section 58(2) of the 2015 Act that the anti-dumping duties imposed on the P.S.F. pursuant to N.T.C.'s order dated 03.02.2016 was to terminate on 03.10.2020 unless a review under Section 58(3) of the said Act was initiated before the date of termination of the duties. The domestic producing industry of P.S.F. was given the option to file a sunset review application with the N.T.C. within a period of forty five days.

5. The said notice dated 01.07.2020 was assailed by the petitioners in writ petition No.2568/2020 before this Court. Vide order dated 23.09.2020, the said writ petition was disposed of after the learned Advocate who had tendered appearance on behalf of the N.T.C. submitted that before a determination is made on the application for review of the anti-dumping duty, the petitioners shall be afforded an opportunity of a hearing. The petitioners had submitted representation dated 24.08.2020 to the N.T.C. with the request not to initiate the sunset review on the basis of change of circumstances etc. In the said order dated 23.09.2020, this Court had observed that the N.T.C. would take into consideration the petitioners' representation dated 24.08.2020 while giving its determination.

6. The N.T.C. had received an application dated 17.08.2020 from respondent No.3 (M/s ICI Pakistan Limited) and respondent No.4 (M/s Ibrahim Fibers Limited) under Section 58(3) of the 2015 Act for sunset review against anti-dumping duty levied on dumped imports of the P.S.F. from China. Respondent

No.5 (M/s Jiangyin Hailun Chemical Fiber Co., Limited) had submitted an application under Section 59(1) of the 2015 Act with the request to the N.T.C. to re-determine the dumping margin of the said applicant.

7. Section 59(1) of the 2015 Act provides *inter alia* that the Commission shall review the need for continued imposition of anti-dumping duty, where warranted, on its own initiative or, provided that a period of 24 months has elapsed since the imposition of definitive anti-dumping duty, upon a written request submitted by any interested party, which contains positive information substantiating the occurrence of changed circumstances justifying a need for a review including sufficient information to enable the N.T.C. to calculate the export price and normal value of a product in question.

8. On 02.10.2020, the N.T.C. issued a notice of initiation of sunset and change circumstances review of the anti-dumping duties imposed on dumped imports of the P.S.F. from China. In the said notice, it is mentioned that the anti-dumping duty imposed on dumped imports of the P.S.F. from China will remain in force pending the outcome of the review. In this regard, Section 58(3) of the 2015 Act is reproduced herein below:-

> ***"58(3) A definitive anti-dumping duty shall not expire if the Commission determines, in a review initiated before the date of expiry on its own initiative or upon a duly substantiated request made by or on behalf of domestic industry within forty-five days from public notice of impending termination of the definitive anti-dumping duty concerned, that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury <u>and such anti-dumping duty shall remain in force pending the outcome of such a review</u>."***
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> **(Emphasis added)**

9. The affect of the issuance of the said notice is that the definitive anti-dumping duty imposed through

the initial final determination dated 02.02.2016 was not to expire.

10. In the said notice dated 02.10.2020, the date for the conclusion of the review is stated to be twelve months of the date of the publication of the notice of initiation of the review. Now, Section 62(2) of the 2015 Act provides that *"any review conducted under Sections 58 and 59 of the said Act shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review."* It is an admitted position that till date a determination for the continued imposition of the anti-dumping duty has not been made by N.T.C. in terms of Section 58(3) and Section 59(3) of the 2015 Act.

11. Although, the N.T.C. has a period of twelve months from the date of the initiation of the review to make such a determination to continue, the imposition of the anti-dumping duty or to hold that its continuation is no longer warranted, Section 62(2) of the 2015 Act requires the determination to be carried out expeditiously. The petitioners have raised objections to the maintainability of respondents No.3 and 4's applications under Section 58(3) of the 2015 Act on the ground that the said respondents do not fall within the meaning of *"a domestic industry"* as defined in Section 2(d) of the said Act. It is also not disputed that the continuation of the anti-dumping duty in question during the pendency of the review is operating to the detriment of the petitioners. Therefore, I am of the view that the N.T.C. ought not to further delay a decision on respondents No.3 and 4's applications under Section 58(3) of the 2015 Act, and respondent No.5's application under Section 59(1) of the said Act. Learned counsel for the N.T.C. also submitted that efforts shall be made by the N.T.C. to

conclude the review proceedings at the earliest. Therefore, this petition is disposed of with the direction to the N.T.C. to conclude the review proceedings expeditiously and preferably within a period of one month from the date of the receipt of this Order. The N.T.C. shall afford an adequate opportunity of a hearing to the petitioners in support of their objections to the maintainability of respondents No.3 to 4's aforementioned applications. No costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan

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