

Indian Co. Can't Block Resin Duties During Suit, CIT Says

By **Nicole Rosenthal**

Law360 (June 9, 2022, 8:37 PM EDT) -- India's top maker of thermal insulation polymer won't be able to avoid duties while it sues the U.S. government over the rate, the U.S. Court of International Trade ruled Thursday, finding that the company can't prove the levies would cause it irreparable harm.

CIT Judge Timothy C. Stanceu denied two requests from Gujarat Fluorochemicals Limited asking the court to lower the duty rate on its products during ongoing litigation and to stop the government from finalizing the duty collection, a process known as liquidation.

GFCL hadn't sufficiently shown the likelihood of irreparable harm should the duties remain on its polytetrafluoroethylene beyond the harm that would normally be anticipated when duties are applied, nor did it properly draft a liquidation-blocking action that the court could consider, Judge Stanceu said.

"For the purpose of ruling on plaintiff's motion for an injunction on the cash deposit rate, the court presumes that the consequences plaintiff alleges — e.g., 'lost business opportunities,' inability to pass on costs and the attendant 'threat of lost revenues on U.S sales through the next year,' 'business uncertainty,' and 'decreased demand' — are true," Judge Stanceu wrote. "But ... the types of harm plaintiff alleges are not unlike those that reasonably could be expected to occur in a typical countervailing duty investigation involving a similar cash deposit rate."

GFCL had told the court that if the cash deposit rate is not lowered, the company will suffer reputational and financial harm affecting current U.S. contracts while waiting for a decision on its challenge to the current levies. Because of the imposition of higher duties following a determination from the U.S. Department of Commerce earlier this year, GFCL has also been forced to renegotiate contracts with existing customers, the company said. GFCL also contends that the U.S. thermal insulation polymer market may see a reduction in product should the levies continue as they are.

Judge Stanceu also denied GFCL's request to block the government from liquidating GFCL entries that are subject to the countervailing duty order.

The ruling stems from an April lawsuit from GFCL that contends the Commerce Department erred in its imposition of 31.89% countervailing tariffs on Indian granular PTFE resin, on top of a 13.09% anti-dumping duty. The duties were put in place in January following a determination by the U.S. International Trade Commission that the domestic polytetrafluoroethylene industry was being harmed.

The 2022 duties are a stark departure from a previous 2017 investigation that resulted in a 3.6% countervailing tariff on the polymer product, according to the company's initial complaint. GFCL attributed the difference to errors by Commerce, including the agency's determination that a wind power affiliate of GFCL passed along its land subsidies to the company.

GFCL and the U.S. government did not immediately respond to requests for comment.

GFCL is represented by John Gurley, Diana Dimitriuc Quaia and Jessica R. DiPietro of ArentFox Schiff LLP.

The U.S. government is represented by Daniel F. Roland of the U.S. Department of Justice.

The case is Gujarat Fluorochemicals Limited v. United States, case number 1:22-cv-00120, in the U.S. Court of International Trade.

--Editing by Jill Coffey.