



# ADHYATAN

*TPM Newsletter*

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*Across the globe, the use of non-tariff measures has been steadily increasing. Other economies such as USA, China and European Union have long since used non-tariff measures as means to regulate international trade. While India has been a relatively late entrant in the field, the use of non-tariff measures in India has increasingly gained popularity as a way to reduce dependency on excessive imports into the country. The increasing importance of non-tariff measures is evident from the speech of Hon'ble Commerce Minister, Sh. Piyush Goyal, at the 92nd FICCI Annual Convention, where he expressed as under.*

*“I have been pleading ... please tell me which country is using any trade remedial measure or non-tariff barrier which impacts your exports to that country. The government is willing to stand by you. The government is willing to look at retaliatory action. The government is willing to impose similar ... trade remedial measures. We will learn from the NTBs (non-tariff barriers) that others are setting up against your exports and we may learn a few things (about) what India needs to do”*

*The message, therefore, is clear – the Indian government is willing to impose non-tariff measures, to help check dependency on excessive imports into the country. However, owing to the low level of awareness regarding such measures, their use has been limited predominantly to only certain segments of the industry.*

### **What are non-tariff measures?**

*The United Nations Conference on Trade and Development (UNCTAD) defines non-tariff measures as “as policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both”. In simple words, while tariff measures relate to imposition of taxes or duties,*

*NTBs or NTMs can be understood as trade barriers other than duties or taxes that are used to restrict imports or exports of goods or services.*

*Some of the types of NTMs are:*

- *Standards*
- *Sanitary & phytosanitary measures*
- *Packaging and testing procedures*
- *Licensing*
- *Quotas*
- *Import prohibitions*
- *Certifications*
- *Forex restrictions*
- *Logistics or distribution controls*
- *MIP*
- *Government procurement restrictions*
- *Domestic subsidies*

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*non-tariff measures or non-tariff barriers can be understood as trade barriers that are used to restrict imports or exports of goods or services through ways, other than by imposition of taxes/ duties.*

### ***Types of non-tariff measures commonly used***

*On an analysis of the applied measures, it can be seen that technical measures such as sanitary and phytosanitary measures, licenses, standards and certification, are the most commonly applied measures, followed by quantity control measures like quotas and then the price measures such as minimum import price. In general, the following types of non-tariff measures are seen to be commonly used by countries to regulate trade.*

***Import licensing*** – *Licensing is one of the most common type of non-tariff measures, wherein the government grants and allows a business to import a certain type of goods into the country. The WTO Agreement on import licensing procedure defines it as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing member. In simpler words, under such measures, imports are not allowed unless the importer has the license to imports. One such instance of introduction of licensing requirements in India was that in the case of ammonium nitrate in 2012, wherein imports of the product were subject to licensing requirements.*

***Standards and certifications*** – *The standards and certifications are to discourage supply of sub- standard material which can pose as a health hazard, security threat, and safety concerns in a market. While the same are to be typically followed by both domestic industry as well exporters (supplying material) in that market, it may restrict imports unless foreign producers and exporters meet the laid down standards. The Indian government has imposed various standards & certification requirements. Recently the Government has been quite aggressive in controlling supply of sub- standard material by the way of imposing mandatory BIS certification/ registration for a number of products including Acetic Acid, Aniline, Boric Acid, Methanol, Poly Aluminium Carbonate and Caustic Soda. It is often noted that imports show a visible decline when BIS Standards are mandated.*

***Quotas*** – *A quota is a limit in quantitative or value terms that is imposed on the import of a product for a specified period of time. Quotas may be global quotas or with respect to specific countries. Quotas can be imposed unilaterally without negotiations with the exporting country or bilaterally with having negotiations and agreements. They can further be combined with the licensing*

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requirements in order to regulate their flow. The Government may impose quotas, if the same are warranted in public interest. For instance, the Department of Commerce introduced quota restrictions for Urad and Peas.

**Sanitary and Phytosanitary Measures** – The WTO Agreement on sanitary and phytosanitary measures provides that the member countries have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health. The imposition of SPS acts as a check on the imports by ensuring that they meet the international standards and regulations. For instance, the Ministry of Health and Family Welfare has made it mandatory for every package having a mixture of edible oils to have a label immediately below its brand name/trade name on front of pack declaring the name and content of eligible vegetable oil.

**Government procurement restrictions** – The Government Procurement Restrictions act as barrier to trade by exercising control over purchase of goods by government agencies. If imposed, the government agencies are then mandatorily required to prefer purchasing from national suppliers over imports. A well-known instance of such a non-tariff measure is that in the case of iron and steel products where the government has made it mandatory for government undertakings to source a prescribed percentage of their requirement from entities that are registered and established in India.

**Minimum import price** – Minimum import price is a temporary measure which acts as check on the imports of goods at low prices. It sets a minimum price below which imports cannot take place. For instance, the Government has, in the past, prescribed minimum import price for products such as peas, granite, certain iron and steel products, etc.

It can be argued that the recent developments on climate change, financial and economic crisis, growing concerns over food safety, have also aided in the increase of non-tariff measures. Along with the tariff measures, the governments have now started using non-tariff measures as a measure for restricting the imports. Even in India, non-tariff measures gained limelight. It would be seen that recently, BIS Standards have been made mandatory on many products to ensure quality, safety and security. However, while these may have been the primary objectives of such standards, they have no doubt acted as barriers to trade and helped in curbing the flow of imports. It cannot be denied that the global economies have found non-tariff measures as an effective tool to achieve their goals of trade regulation. As a result, the use of non-tariff measures has continued to grow. It can, thus, be expected that non-tariff measures are likely to play a key role in the foreseeable future of international trade.



*The world today has come to a near halt due to the COVID-19 (Coronavirus) pandemic. While undoubtedly the pandemic has unleashed a horror in terms of high infection and mortality rates, its severe impact on the global economy is also a cause of great worry. As the pandemic spreads its claws over the globe, a number of countries, including India, have been left with no option but to announce a lockdown. It is well recognized that the pandemic is likely to affect all sectors of the economy, and in particular, the global trade. In view of the significant impact of the virus, there is no doubt that trade remedial investigations would not be left unscathed as well. The impact of the pandemic on the various stages of trade remedial investigations has been discussed as below*

## ***Impact on collection of data and filing of applications***

*As a result of safety measures, the industries are not in a position to collect and provide the necessary information necessary to file the application. While the delay may not impact the industry as adversely in case of fresh investigations, it is likely to have an adverse impact in terms of sunset reviews. The present procedure of DGTR requires that a review application be filed at least 270 days before the expiry of anti-dumping duty. Further, the DGTR may allow an extension of 30 days, on due cause been shown. However, with all industries being impacted by the lockdown, it is likely that the industry may require further extension of time to file the applications.*

## ***Impact on initiation of investigation***

*While the DGTR continues to make efforts to minimize disruption of work, it is inevitable to avoid delays. The impact is likely to be more noticeable in terms of delays in initiation of investigations. A key issue which may arise from the delay in initiation is the possible need for change in period of investigation, that is, the period for which dumping or subsidy margin are determined. As per rules, this period cannot be more than six months old at the time of initiation of investigation. Therefore, wherever a period of more than 6 months has elapsed since the end of period of investigation, the DGTR would have to modify the period of investigation at the time of initiation. This may be difficult for the industries, that are already suffering from lack of resources owing to lockdown, and they would not be able to provide the necessary information in these conditions. Further, changes in period of investigation tend to be difficult for smaller producers, that face challenges in compiling data on a quarterly basis.*

*Another impediment caused by the lockdown is that, before initiation of an anti-subsidy investigation, the DGTR needs to provide opportunity for consultation to the government of the exporting country. This may be a real challenge, as such*

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*consultations may not be possible in the present scenario, resulting into delay in initiation of an investigation for an indefinite time.*

### ***Impact on ongoing investigations***

*Due to the severe precautionary measures imposed by the respective governments, it has become difficult for interested parties to furnish the information called for the investigating authorities. Already, the DGTR has granted multiple extensions in several cases, recognizing the fact that the interested parties would not be in a position to furnish the relevant information, in the present situation. Even other investigating authorities across the globe are adopting a more lenient position with regard to extensions of time for filing the responses. However, this would imply delays in investigations, which may add to the suffering of the domestic industry.*

*Moreover, the DGTR is required to provide an opportunity of oral hearing to all interested parties. If the interested parties waive the right to a hearing, the DGTR may dispense with oral hearings during this pandemic and instead, rely on written submissions which would allow completion of investigations. However, if the interested parties do not cooperate with the DGTR, it would lead to inordinate delays in completion of investigations.*

*Another hurdle which the DGTR may face is that it would have to suspend or postpone verification visits. In such a case, the DGTR may opt to call for further clarifications, explanations and evidences in the form of supplementary questionnaires, to satisfy itself of accuracy and adequacy of the information provided. In fact, such an approach is already being adopted by the other countries such as European Union and Egypt in their trade remedial investigations.*

*Nevertheless, at present, there are no concerns of the investigations themselves becoming time barred as the DGTR is allowed twelve months to complete the investigation. Further, the Central Government may allow a further period of six months for completion of the investigation, if so required. Therefore, there is no apprehension that the lockdown may result in investigations being defeated.*

### ***Need for provisional duties***

*Considering the injury to the domestic industry and delays in investigation due to COVID-19 pandemic, it is imperative that the DGTR consider recommending interim or provisional duties. As per the Rules, provisional duties can be imposed at any time after the completion of 60 days from the date of initiation for a period of 6 months. There is no upper limit to the time period within which such duties should be recommended. These duties would safeguard the industry*

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*from the cheap unfair imports and would allow additional time to DGTR to conduct investigations. These would also be fair to the foreign producers, as they will get additional time to provide required information.*

### ***Need for extension of duties***

*Barring some exceptions, there may not be a need for extension of existing duties in ongoing sunset review investigations so long as the effect of present lockdown remains contained. As stated above, applications for sunset review investigations are filed at least 270 days before the expiry of duty. Therefore, these investigations were initiated much before the expiry of duty. Further, the DGTR is making efforts to ensure that the investigations are completed within nine months from date of initiation. However, if, in any case, it is noted that the existing duties may lapse, the duties may be extended by the Central Government for further period of one year, for the duration of review.*

### ***Impact on future applications***

*COVID-19 pandemic is likely to have adverse impact on the future applications. In the present scenario, the demand itself has declined, leading to low imports. It may be more challenging for industries to establish that they have suffered injury in terms of increased imports. The DGTR may have to consider this period as an abnormal period, and, excluded it from consideration. This would need to be determined on facts and circumstances of individual cases.*

*Moreover, with almost all industries being impacted by the COVID-19 pandemic, it is likely that the industries suffer on account of the dumped / subsidized imports, as well as on account of the pandemic. Thus, it may become relatively difficult for the industries to prove causal link between dumping / subsidization and injury suffered. The industry would, therefore, have to establish, on facts, that it has suffered injury due to the imports, even if the effect of injury suffered due to the lockdown is identified and removed.*

*From the above, it is clear that although there is no doubt that the trade remedial investigations would be impacted by the pandemic and the ensuing lockdown, such impact would not be severe. It is indeed heartening for the domestic industry to see that the DGTR has been proactive in ensuring that the effect of disruptions is minimal. It is a testament to the efforts of the Directorate that, despite the pandemic affecting normal operations four findings have been issued during the month, of which three have been issued in the second half of the month. In fact, the DGTR has even issued findings during the period of lockdown. Therefore, the challenges being faced must be treated as only temporary hiccups, and the industry may rest assured that it would not be denied the necessary relief against unfair imports, on account of the virus.*

## Trade Remedial Actions in India

### Initiation of investigations

- *Sunset Review investigation into imports of Plain Medium Density Fibre Board originating from China PR, Malaysia, Thailand and Sri Lanka. (28 Feb)*
- *Anti-subsidy investigation into imports of Soda Ash originating from Turkey (2 March)*

### Duties recommended

- *Final findings issued recommending imposition of bilateral safeguard duty on imports of Refined Bleached Deodorised Palmolein and Refined Bleached Deodorised Palm Oil from Malaysia (28 Feb)*
- *Final findings issued recommending imposition of anti-dumping duty on imports of Nylon Multi Filament Yarn from China PR, Korea RP, Taiwan and Thailand (4 Mar)*
- *Final findings issued recommending continuation of anti-dumping duty in sunset review investigation on imports of Flexible Slabstock Polyol from Singapore (17 Mar)*
- *Final findings issued recommending imposition of anti-dumping duty concerning imports of Electronic Calculators from Malaysia (18 Mar)*
- *Final findings issued recommending continuation of anti-dumping duty in sunset review investigation concerning imports of Electronic Calculators from China PR (26 Mar).*



### Customs Notifications

- *Imposition of anti-dumping duty concerning imports of Chlorinated Polyvinyl Chloride Resin (CPVC) from China PR and Korea RP (7 March)*
- *Extension of anti-dumping duty on imports of Sheet Glass from China PR till 12th March 2025. (12 March)*

Ongoing  
anti-dumping  
investigations  
**45**

Ongoing  
anti-subsidy  
investigations  
**6**

Ongoing  
safeguard  
investigations  
**5**

Investigations  
initiated  
**2**

Findings  
issued  
**5**

### **WTO Updates**

#### ***Turkey initiates WTO dispute complaint against European Union ('EU')***

*Turkey requested WTO dispute consultations with regard to the imposition of safeguard measures in the form of tariff-rate quotas by the European Commission against imports of certain steel products. with the European Union regarding EU's safeguard measures on imported steel products. The request accordingly was circulated to the WTO members on 19th March 2020. Turkey claims that EU safeguard measures are inconsistent with a number of provisions of the Agreement on Safeguards and General Agreement on Tariffs and Trade, 1994 ('GATT 1994').*

## ***Trade Remedial Actions against India***

### **European Union**

#### ***Initiation of partial interim review of the anti-dumping and countervailing measures on certain graphite electrode system originating in India (02 Mar)***

*The review has been initiated on request by HEG Limited, on the grounds that there has been a change in the circumstances, owing to which the profits of the industry have improved significantly. The investigation shall examine whether there is a need for continued imposition of duty, pursuant to improvement in prices and profits for the product.*

#### ***Termination of partial interim review of the countervailing duty applicable to imports of tubes and pipes of ductile cast iron originating in India (02 Mar)***

*The review had been initiated pursuant to a request by Electrosteel Casting Limited, India. Since ECL withdrew the request, the review has been terminated.*

### **USA**

#### ***Findings issued in respect of imports of investigation into subsidized imports of Carbon and Alloy Steel Threaded Rod from China & India (19 Mar)***

*United States International Trade Commission ('USITC') determined that US industry is materially injured by reason of subsidized imports of carbon and alloy steel threaded rod from China and India.*

#### ***Initiation of Countervailing and Anti-Dumping Duty Investigations of Common Alloy Aluminum Sheet (03 Mar)***

*The USITC has initiated preliminary phase anti-dumping and countervailing duty investigation into imports common alloy aluminum sheet. While the anti-subsidy investigation has been initiated into imports from Bahrain, Brazil, India and Turkey, the anti-dumping investigation covers these four countries, plus Croatia, Egypt, Germany, Greece, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain and Taiwan.*

**Argentina**

***Initiation of anti-dumping investigation on import of certain measuring tapes from India (03 Mar)***

*An anti-dumping investigation has been initiated into imports of measuring tapes for anatomical measurements from India excluding measuring tapes for tailoring and non-metal measuring tapes.*

***Other Trade Remedial Actions***

**Canada**

- *Preliminary determinations notified in anti-dumping and anti-subsidy investigation into imports of certain corrosion resistant steel from Turkey, United Arab Emirates and Vietnam (20 Mar)*

**European Union**

- *Imposition of definitive anti-dumping duty and definitive collection of provisional duty imposed on imports of steel road wheels originating in the China PR (04 Mar)*
- *Imposition of provisional countervailing duty on imports of continuous filament glass fibre products originating in Egypt. (06 Mar)*

**USA**

- *USITC makes affirmative determination in five-year sunset review for continuation of existing anti-dumping duty on imports of small diameter graphite electrodes from China. (04 Mar)*
- *Initiation of anti-dumping investigation into imports of ultra-high molecular weight polyethylene imported from Korea (04 Mar)*
- *USTIC determines U.S. industry materially injured by reason of imports of difluoromethane (R-32) from China. (05 Mar)*
- *USITC determines that alleged dumped imports of acetone from Belgium, Korea and South Africa injures U.S. Industry (13 Mar)*
- *USITC determines that the US industry is materially injured by reason of alleged subsidized imports of corrosion inhibitors from China (19 Mar)*
- *USITC determines that subsidized imports of wooden cabinets and vanities from China injure the US industry (24 Mar)*

**Free Trade Agreements (PTA)**

*Due to COVID-19 pandemic, producing Certificate of Origin (COO) for preferential treatment under FTAs exempted. COOs would be issued retrospectively after concerned Indian agencies open their offices*

**Foreign Trade Policy (FTP)**

**Extension of FTP**

*Vide Notification dated 31<sup>st</sup> March, 2020, the Foreign Trade Policy 2015-20 has been extended upto 31<sup>st</sup> March, 2021*

**New WTO-compliant tax remission policy approved**

*Cabinet approves WTO compliant RoDTEP (Remission of Duties or Taxes on Export Products), which shall replace WTO non-compliant MEIS. The scheme is in its nascent stage, and will be rolled out sector wise after finalization of modalities/ rates/ policy rules*

**Mandatory BIS notified**

- IS 2553 for Safety glass

**Introduction of standards**

- IS 1448 for testing of petroleum and its products
- IS 17252 for test of CO2 Laser Beam Machines
- IS 17319 and IS 17321 for determination of Nickel and Silicon content in Ferronickel
- IS 17320, IS 17322, IS 17323, IS 17324 and IS 17325 for determination of Phosphorous, Sulphur, Carbon and Cobalt content in Nickel, Ferronickel

**Non-Tariff BIS Notifications**

**In India**

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**Non-Tariff WTO  
Notifications by Others**

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**Request for increase in customs duty**

*Amidst the coronavirus scare, while on one hand India is shutting down its units, China PR has restarted its petrochemical plants. It is, thus, likely that India will see a major surge in imports of petrochemical products that will adversely impact the Indian Industry. In light of the above, the Indian industry has requested the Government to increase the customs duty on petrochemical products falling for six months commencing 15<sup>th</sup> April 2020.*



***SI Group India Pvt. Ltd.***  
***versus***  
***Designated Authority, DGAD***

***Miscellaneous Order No. 50114/2020***

*The present application arose in the proceedings for sunset review investigation into imports of Nonyl Phenol from Chinese Taipei. The Authority, while conducting a sunset review investigation recommended that continuation of antidumping duty was not warranted as there was no likelihood of continuation or recurrence of dumping or injury, and accordingly did not recommend extension. On an appeal filed by the domestic industry domestic industry, the CESTAT examined the findings of the Authority and available evidences, and held that determination of likelihood was not carried out properly. The Tribunal, thus, held that there was likelihood of continuation or recurrence of dumping and injury to the domestic industry. Accordingly, the CESTAT directed the Designated Authority to calculate the appropriate anti-dumping duty.*

*The present order rose from a miscellaneous application filed by the Designated Authority, seeking clarification on whether an anti-dumping duty can be extended after the expiry of the period for which the anti-dumping duty was levied. The Designated Authority referred to the decision of the Hon'ble Delhi High Court in the case of Forech India Ltd. v/s The Designated Authority and ors., wherein it was held that once a duty has expired, it cannot be continued pursuant to a sunset review.*

*The CESTAT, after hearing arguments of all the parties, held that the decision of the Delhi High Court in Forech India would not be applicable to the facts of the present dispute as it relates to continuation post determination by the Designated Authority. Thus, the judgement would not be applicable to the present case, and the duty may be continued pursuant to a remand made by the Appellate Tribunal. Thus, the CESTAT found that the decision of the High Court does not prevent the Designated Authority from extending anti-dumping duty in the present case.*

## About Us

*TPM was founded in 1999 at a time when the practice of trade remedies in India was in its infancy and there were only a handful of firms in the field. While other firms added these services to their existing portfolios, TPM dealt exclusively in cases in the domain of trade remedies.*

*TPM began its journey with a staff of merely 2 professionals. Today, it has a team of more than 40 professionals including Cost Accountants, Chartered Accountants, Company Secretaries, Lawyers, Engineers and MBAs.*

*From the beginning, TPM was focused on providing consultancy in the field of trade remedies. TPM helps domestic producers suffering due to cheap and unfair imports into India to avail the necessary protection under the umbrella of the WTO Agreements. TPM has also assisted the domestic producers in other countries to avail similar measures in their respective countries. Besides assisting domestic producers in India and other countries, TPM also assists exporters and importers facing trade remedial investigations in India or other countries. TPM has assisted Indian exporters facing investigations in a number of jurisdictions such as Argentina, Brazil, Canada, Egypt, European Union, GCC, Indonesia, Korea RP, Turkey and USA.*

*TPM has an enviable experience in the field, of more than 700 cases. Its unique experience in the field sets it apart from other firms. While the firm is primarily dedicated to trade remedies, it also provides services in the field of trade policy, non-tariff barriers, competition law, trade compliance, indirect taxation, trade monitoring and analysis. It also represents industries before the Government in matters involving customs policy.*

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