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TPM Newsletter

Use of Digital Medium to Adapt to the Pandemic

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The COVID-19 pandemic has brought the world to a standstill, with a number of economies around the globe declaring a partial or complete lockdown. However, in various aspects of business, the world has adapted swiftly to the situation through increased reliance on digital technology. Authorities conducting trade remedial investigations in various jurisdictions have also temporarily switched over to the use of electronic means as an alternative to in-person contact. This article throws light on some such notable measures introduced globally.

European Union

The European Commission took proactive steps to deal with the challenges arising as a result of the pandemic and introduced effective measures on 16th March, 2020 in relation to on-the-spot verifications, managing time limits and conducting investigations. The European Commission suspended all non-essential travel and postponed all face-to-face meetings with visitors from affected areas. Instead, it has decided to consider the information submitted by the parties through electronic medium and cross-check the same against the information available with it. However, if the Commission is not satisfied with the accuracy of information submitted, the findings would be based on the verified facts on record. The Commission also notified that it would provide an extension of seven days or more to the interested parties for filing questionnaire responses, where warranted.

United States of America

On 19th March, 2020, the United States International Trade Commission (USITC) temporarily waived the requirements of paper-based filings and serving of hard copies, CD-ROMs and other physical media until further notice. On 16th April, 2020, the USITC also dispensed with the requirement of in-person appearance to give oral presentations, written testimony, or statements. The USITC has an efficient online hearing mechanism in place and has been conducting hearings via 'Go To Meeting', where anyone can join to view and hear the proceedings.

India

On 10th April, 2020, Directorate General of Trade Remedies (DGTR) implemented temporary measures allowing online filing of applications, questionnaire responses, written submissions, rejoinders and any other document. Further, the DGTR has notified that it would be conducting oral hearings and consultations using video conferencing. Lastly, as per the notice, on-site verification would not be undertaken and all supporting data and information is required to be submitted electronically.

Canada

On 16th April, 2020, Canadian International Trade Tribunal has mandated electronic filing of all case documents and has cancelled in-person appeal hearings for specified cases till 4th September, 2020. In other cases, the Tribunal has decided to reschedule hearings and offer the parties the option to proceed with hearing based on written record, or through telephone conferencing or videoconferencing. The Authorities have also been liberal about the deadlines for filing information. For instance, in one of the cases involving an Indian exporter, the Canada Border Services Agency extended the deadline for filing the response by around 50 days, taking cognizance of the hardships suffered due to the present crisis.

Egypt

Even the Egyptian investigating authority has suspended all on-spot verifications and extended the time-limits for submission of questionnaire responses. However, the period of extension shall be decided on a case-to-case basis. Further, in those cases, where an investigation is concluded and definitive measures are imposed based on the available facts, a review may be initiated as and when the situation improves.

Although other countries like Australia, Malaysia, Singapore etc. have not brought out any special measure to deal with the pandemic, they may decide on necessary procedural changes on a case-to-case basis. This is especially because public hearings and on-site verifications may not be possible due to the present travel restrictions.

While countries such as USA and Canada already had online portals for filing documents, the current pandemic has prompted increased reliance on digital media for various procedural aspects in other countries as well. As of now, there do not appear to be significant difficulties associated with the adoption of electronic medium for various procedures, and work has continued to progress smoothly. This is evident from the fact that during the present lockdown, the DGTR has initiated 14 investigations and issued 7 findings. Further, as the DGTR has allowed online filing of applications, TPM has filed 15 applications during the period of lockdown. The DGTR has also conducted 9 hearings during this period. Therefore, the impact of the pandemic on the investigations has been curtailed significantly. In fact, with the increased use of digital medium during this period, it could present itself as a more long-term alternative, owing to its cost and time effectiveness, and greater transparency.

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The financial sector plays a key role in expansion of Chinese economy, allowing it to emerge as the second largest in the world. The financial sector includes different elements such as the formal banking sector, the interbank market, the bond market, and shadow banking. This article deals with the overview of Chinese formal banking sector and how it is distorted due to subsidization and government intervention.

The Commercial Bank Law of the People's Republic of China states that commercial banks shall conduct their business of lending as per the needs of the national, economic and social development and as per the industrial policies of the State. As per Article 38 of Commercial Bank Law, a commercial bank shall fix its interest rate on loans in accordance with the ceiling and floor rate of interest set by the People's Bank of China (PBoC). While China amended its law in 2015, it left Article 38 untouched. Article 15 of the General Rules on Loans provides that pursuant to the State policy, relevant departments may grant interest discounts on loans to promote growth of certain industries and regional economic development. This implies that the banks in China do not set interest rates based on market determined rates. Instead, the Government, at the central and local levels, maintains and exercises effective control over the lending rates.

The "Big Five" commercial banks in China namely Bank of China (BoC), Industrial and Commercial Bank of China (ICBC), China Construction Bank Corporation (CCBC), Agriculture Bank of China (ABC), and Bank of Communications (BCM) – all operate large branch networks nation-wide. There are also three specialized policy banks namely Shenzhen Development Bank (SDB), Agricultural Development Bank of China (ADBC) and the Export-Import (EXIM) Bank – with an operational focus on infrastructure projects and pillar industries, agricultural goods procurement and rural development projects, and the expansion of external (foreign) trade, respectively.

Financial sector in China plays an important role in the emergence of the country as the second largest economy in the world.

Banks provide loans based on the national policy and having regard to ceiling and floor rates of interest set by People's Bank of China.

Discounted interest rates are often granted to promote development of certain industries and regions.

Government exercises control over the lending rates, and thus such rates are not determined freely by market forces.

The US Department of Commerce (DOC) has determined[1] that there is significant market distortion in the determination of lending rates in China PR. While state ownership, per se, does not necessarily mean that interest rates are fundamentally distorted or not market-determined, the State's role in the Chinese market extends far beyond just state ownership. State-owned and government-linked entities dominate both the supply and demand sides of the bond market. 94% of all bonds are issued by government-owned entities, including policy banks, State-Owned Enterprises (SOEs) and local governments. With commercial banks holding over 60% of all bonds and over 70% of Treasury bonds, the majority holdings are also held by government-owned entities. The presence of state ownership on both sides leads to significant distortions in lending decisions. Further, the implicit government guarantees on loans made by state-owned banks to SOEs are also a consequence of state ownership and the strategic importance that the government attaches to SOEs.

Over the last few years, the Government of China has taken steps to facilitate further development of the market's role in Chinese economy. In July 2013, the PBoC removed the floor on retail bank lending rates, and in October 2015, the PBoC removed the cap on retail bank deposit rates. As a result of these administrative actions, bank lending and deposit interest rates are now nominally free of direct government control. However, the Chinese government's intervention in the banking system is not only through the fixing of maximum and minimum interest rates; the Government and party leaders also exert considerable influence behind the scenes, constantly forcing loans to specific companies, sectors or regions to fulfill their political agendas. This is made possible due to close relations between the government and banking system, as well as widespread power of the Communist Party.[2]

Investigating authorities have also found that the Chinese government confers countervailable subsidies in

Presence of significant state ownership in the financial sector.

Further, there is significant state-ownership in the borrowing entities as well.

Due to state-ownership on both borrowing and lending sides, loans often carry implicit government guarantees.

Intervention by the government is not limited merely to ownership.

Government and party leaders exert significant influence over the loans provided, due to widespread power of the Communist Party.

1. US- Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China-2019
2. The Chinese Financial System - An Introduction and Overview", of 2013, by Douglas J. Elliott and Kai Yan

the form of preferential lending. For instance, European Commission found that the government loans were granted on terms more favourable than the recipient could obtain in the free market. The European Commission further found that even the non-government loans in China do not provide an appropriate market benchmark as such rates were also distorted due to government intervention, and considered a benchmark interest rate, constructed based on standard lending rate of the People's Bank of China and adjusted to reflect normal market risk. Similarly, even Brazil determined that the Chinese financial system is not governed by market rules, but by the Chinese government, both through its regulation and through government participation in Chinese financial institutions, thereby rending the lending rates distorted.

While there have been some reforms, that allow higher degree of private participation in hitherto State-Owned Commercial Banks, China's banking sector still exhibits a higher degree of state-ownership as compared to banking sectors in other countries at similar stages of economic development. This has resulted in the government using the banking sector as a key policy instrument to allocate capital to priority industries. Due to this important policy role assumed by the government, the banking sector in China is distorted. Therefore, for the purpose of anti-subsidy investigations, the lending rates/loans offered by the government owned banks in China are often considered as subsidized. The anti-subsidy investigations by DGTR against China have also shown that the Government of China provides preferential lending to producers, including SOEs. Further, DGTR has noted that there is significant government intervention in the banking sector, due to which the rate of loan provided does not reflect the rates that would be found in a functioning market. Thus, the DGTR found that China is providing countervailable subsidies to the industry by providing loans at rates less than the benchmark rate.

Investigating authorities in USA, European Union and Brazil have found that the Government of China provides subsidies to borrowers, in the form of preferential lending.

Further, considering the market in China to be distorted, investigating authorities have found that the lending rates in China cannot be used for determination of subsidy margins.

Same approach has been followed in India as well, where DGTR has referred benchmark rates for subsidy margins.

Trade Remedial Actions in India

Initiation of investigations

- *Anti-dumping investigation into imports of Natural Mica based Pearl Industrial Pigments excluding cosmetic grade from China PR (9 May)*
- *Sunset review investigation into imports of Phthalic Anhydride originating from Japan and Russia (11 May)*
- *Anti-dumping investigation into imports of Plain Medium Density Fibre board produced by M/s Kim Tin MDF Joint Stock Company, Vietnam (11 May)*
- *Sunset review investigation into imports of Carbon Black used in Rubber Application from China PR and Russia (20 May)*
- *Anti-dumping investigation into imports of Phthalic Anhydride from China PR, Indonesia, Korea RP and Thailand (21 May)*
- *Anti-dumping investigation into imports of Polyester Spun Yarn from China PR, Indonesia, Nepal and Vietnam (21 May)*
- *Anti-dumping investigation into imports of Acrylonitrile Butadiene Rubber from China PR, European Union, Japan and Russia (26 May)*
- *Anti-dumping investigation into imports of Rubber Chemical PX-13 from China PR, Korea RP and USA (27 May)*

Provisional duty recommended

- *Preliminary findings issued recommending increase in rate of custom duty in bilateral safeguard investigation on imports of Phthalic Anhydride from Korea RP (11 May)*
- *Preliminary findings issued recommending increase in rate of custom duty in bilateral safeguard investigation on imports of Polybutadiene Rubber from Korea RP (12 May)*

Definitive duties recommended

- *Final findings issued recommending imposition of anti-dumping duty concerning imports of Digital Offset Printing Plated from China PR, Japan, Korea RP, Taiwan and Vietnam (15 May)*

Termination of Investigation

- *Termination of anti-circumvention investigation concerning imports of Polytetrafluoroethylene originating in Russia and exported from Korea RP, post withdrawal of application (8 May)*

Customs Notifications

- *Extension of anti-dumping duty pursuant to sunset review on imports of Sodium Citrate from China PR till 18th May 2025 (19 May)*
- *Extension of anti-dumping duty pursuant to sunset review on imports of Electronic Calculators from China PR till 26th May 2025 (27 May)*
- *Extension of anti-dumping duty on imports of Acrylic Fibre from Thailand till 30th November 2020, while revoking anti-dumping duty levied against imports from Korea RP (29 May)*

Ongoing anti-dumping investigations	Ongoing anti-subsidy investigations	Ongoing safeguard investigations
56	**6**	**4**

Investigations initiated	Findings issued
8	**3**

Trade Remedial Actions against India

Brazil

PET Films from China, Egypt and India

On 21st May 2020, the Special Secretariat for Foreign Trade and International Affairs initiated the review investigation of anti-dumping duty concerning imports of PET Films originating in or exported from China, Egypt and India.

Canada

Certain Oil Country Tubular Goods and Certain Seamless Casings from China, Chinese Taipei, India, Indonesia, Penghu, Philippines, South Korea, Taiwan, Thailand, Turkey, Ukraine and Vietnam.

On 25th May 2020, Canada Border Services Agency (CBSA) concluded re-investigation of normal values and export prices of the subject goods. The CBSA has prescribed normal value for future imports of the product.

United States of America

Quartz Surface Products from India and Turkey

On 1st May 2020, USITC issued affirmative findings stating that countervailable subsidies are being provided by India and Turkey in respect of Certain Quartz Surface Products and these products are being sold in the market at less than fair value.

Other Trade Remedial Actions

Australia

- *Initiation of anti-dumping and anti-subsidy investigations concerning imports of Painted Steel Strapping from China and Vietnam (27 May)*

Canada

- *Initiation of expiry review concerning dumping and subsidizing of Certain Photovoltaic Modules and Laminated from China PR (22 May)*
- *Initiation of anti-dumping investigation against imports of Certain Hot-Rolled Carbon Steel Heavy Plate and High Strength Low Alloy Steel Heavy Plate from Chinese Taipei, Germany, Malaysia, Penghu, South Korea, Taiwan and Turkey (27 May)*

European Union

- *Initiation of anti-dumping investigation concerning imports of Certain Hot-rolled Flat Products of Iron, Non-alloy or other Alloy Steel from Turkey (14 May)*

United States of America

- *Initiation of sunset review investigation of anti-dumping and countervailing duty concerning imports of Citric Acid and Certain Citrate Salts from Canada and China (1 May)*
- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Barium Carbonate from China (5 May)*
- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Ferrovanadium from China and South Africa (5 May)*

United States of America (Contd.)

- *Continuation of countervailing duty pursuant to sunset review investigation concerning imports of Certain Crystalline Silicon Photovoltaic from China (6 May)*
- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Certain Crystalline Silicon Photovoltaic from China and Taiwan (6 May)*
- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of PET Films from China and UAE (6 May)*
- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Tow-Behind Lawn Groomers and Certain Parts Thereof from China (6 May)*
- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Oil Country Tubular Goods from China (7 May)*
- *Initiation of anti-dumping investigation concerning imports of Prestressed Concrete Steel Wire Strand from Argentina, Columbia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine and UAE (13 May)*
- *Initiation of countervailing duty investigation concerning imports of Prestressed Concrete Steel Wire Strand from Turkey (13 May)*
- *Determination by DOC that countervailable subsidies are being provided to producers and exporters of Certain Glass Containers from China (22 May)*

Foreign Trade Policy

Export / Import Policy Changes

- *Export policy for Paracetamol API has been changed from restricted to free*

Export Schemes/ Benefits

- *Validity of MEIS/ SEIS scrips has been increased and deadlines for filing applications have been relaxed.*
    - *For MEIS, period between 1st March, 2020 and 30th June, 2020 shall not be counted for submission of various categories of application attracting late cut, falling as on 1st March, 2020*
    - *For SEIS,*
        - *For the services rendered in FY 2016-17, the last date of application with 10% late cut would be 30th June, 2020. No application would be accepted post 30th June, 2020.*
        - *For the services rendered in FY 2017-18, 5% late cut as was applicable on 31st March, 2020, shall continue to be applicable for applications submitted till 20th June, 2020, and thereafter 10% late cut would be applicable for applications submitted till 31st March, 2021.*
- *Interest Equalisation Scheme (IES) for pre and post shipment Rupee Export Credit has been extended for one more year, upto 31st March, 2021. The scope and coverage of the scheme shall remain the same.*

Free Trade Agreement

Issuance of Certificate of Origin

- *Issuing physical copy of Certificate of Origin is restored now for exports to certain partner countries like Thailand and Vietnam under FTAs*

BIS Notifications

Quality control orders issued

- *IS 14887, IS 16208, IS 14968 and IS 14252 quality control order (mandatory IS requirements) issued for HDPE / PP bags for food grains/ sugar. The order shall come into effect from 22nd October, 2020.*
- *IS 5158 quality control order (mandatory IS requirements) issued for Phthalic Anhydride. The order shall come into effect from 22nd October, 2020.*

Non-Tariff BIS Notifications In India	Non-Tariff WTO Notifications by Others
2	**158**

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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