



# ADHYATAN

*TPM Newsletter*

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*Within the European Union (EU), subsidies can lead to significant distortion in the market. As a result, subsidies conferred by members of the EU are regulated under the EU State Aid Rules in order to maintain a level playing field in the EU internal market. However, non-EU territories or non-EU authorities are not bound by any such regulations. A subsidy provided by a non-EU authority to an entity established within their territory can, through their related parties in the EU or their acquisitions of entities in the EU, distort the EU internal market. The lack of transparency and low compliance with the notification requirements under the Agreement on Subsidies and Countervailing Measures (ASCM) often make it difficult to identify such market distorting subsidies. In order to address this issue, the European Commission released a White Paper on 'levelling the playing field as regards foreign subsidies' on 17<sup>th</sup> June 2020.*

*The term "foreign subsidy", for the purpose of the White Paper, refers to a financial contribution by a government or any public body of a non-EU State, which confers a benefit to a recipient and which is limited, in law or in fact, to an individual undertaking or industry or to a group of undertakings or industries.*

*The Commission identified that foreign subsidies impact the competition in the EU internal market, and specifically, the acquisition of EU entities and the public procurement process in the EU. Such foreign subsidies can distort competition in the EU internal market, resulting in an uneven playing field. This results in less efficient operators growing and increasing their market share at the expense of the more efficient ones. With respect to acquisitions, subsidised acquirers would be willing to pay a higher price for an entity than what would reflect the efficiency gains or revenue increase. This not only disadvantages non-subsidised acquirers but also results in a distortion in the valuation of the EU assets. Since foreign acquisition of EU entities are generally with the strategic objectives of establishing a local presence or for technology transfers, ensuring a level playing field becomes critical. The need for a new instrument, according to the European Commission, was necessitated by a failure of the existing EU legal framework in effectively addressing the issue.*

### **Supervisory authorities**

*For the purpose of preventing or remedying the distortive impact of foreign subsidies, the White Paper suggests that both the Commission and the Member States designate supervisory authorities. Authorities designated by the Commission as well as the Member States would be competent to scrutinise foreign subsidies. An investigation may be initiated on information provided by a market player or a Member State. The Commission also has exclusive right to*

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*ex officio* review an acquisition. In case the Commission initiates an investigation into a foreign subsidy being investigated by a national supervisory authority, the latter would have to suspend their investigation. Thus, a foreign subsidy can be investigated by a national supervisory authority or several national supervisory authorities parallelly or the Commission.

### **Investigative process**

*The White Paper proposes a two-step investigation into the distortive impact of a foreign subsidy. First a preliminary review of a possible distortion would be conducted, followed by an in-depth investigation. To facilitate the investigation, the competent supervisory authority may seek information from market players, impose fines on failure to provide information and make fact finding visits. The objective of the preliminary investigation would be to examine the existence of a market distorting foreign subsidy. On establishing its existence, the competent supervisory authority would conduct an in-depth investigation and assess whether the subsidy causes an actual or potential distortion in the EU internal market. During the investigation, the acquisition or the contract awarded under question would be put on hold. The criteria taken into consideration for the distortion analysis would include the relative size of the subsidy, size of the beneficiary, nature of the market concerned, the conduct in question and the level of activity of the beneficiary. The investigating authority would also take into consideration any positive impact due to the supported economic activity.*

### **Addressing the distortion**

*On a finding by the competent supervisory authority that an entity with presence in the EU has received a foreign subsidy, having a distortive impact on the EU internal market, the authority may either impose redressive measures or accept binding commitments, sufficient to mitigate distortion, from the concerned undertaking. The redressive measures could range from structural remedies to behavioural remedies. The authority may order divestment of assets, reducing capacity or market presence, prohibition of certain investment/acquisition, granting third party access, exclusion from procurement process, redressive payments etc. Alternatively, the authority may allow clearance pursuant to binding commitments by the entity. In case of violation of such commitments, the authority may take necessary deterrent action to address the situation.*

*The White Paper is just the first step to the enactment of a new regulation. The European Commission will now receive inputs from stakeholders through an open public consultation. The Commission has invited comments to be submitted by 23rd September 2020.*

*The DGTR, on 11<sup>th</sup> May, initiated an anti-dumping investigation into imports of Plain Medium Density Fibre Board exported by Kim Tin MDF Joint Stock Company from Vietnam. This is the first instance of an investigation being conducted against an individual exporter, as opposed to the general practice of investigations against countries as a whole in the past.*

*In the present case, the imports of Medium Density Fibre Board from Indonesia and Vietnam were subject to anti-dumping duties with effect from 14<sup>th</sup> July, 2016. However, the exports by Kim Tin MDF Joint Stock Company (Kim Tin) were exempt from the aforesaid duties, as it was found that the exporter was not dumping, that is, the dumping margin was below de minimis. The domestic industry in India has, however, now prima facie shown that the exports from Kim Tin are being exported at dumped prices and are causing injury to the domestic industry. Therefore, the domestic industry has requested that anti-dumping duties be imposed against imports of Kim Tin as well. Pursuant to an application by the domestic industry, the DGTR has found that there is sufficient prima facie evidence of dumping and injury to warrant initiation of investigation.*

*Another issue that is interesting about the initiation is that, in the past, if an exporter was not found to be dumping in India or causing injury to the domestic industry in the original investigation, its margins were nevertheless subject to review in a mid-term review or a sunset review. For instance, in the anti-dumping investigation concerning imports of the same product, Plain Medium Density Fibre Board, from China PR, Malaysia, Thailand and Sri Lanka, the DGTR noted that “where an exporter was awarded zero duty in an original investigation and is now found to be dumping and the same is likely to cause injury to the domestic industry, then duties must be imposed considering the dumping margin and injury margin found in the present review investigation period.” Similar approach was followed in a number of other investigations, such as those relating to imports of Phthalic Anhydride from Korea RP, Taiwan and Israel; imports of Polyvinyl Chloride (PVC) Suspension Grade from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA; and imports of Polyvinyl Chloride (PVC) Paste/ Emulsion Resin from Korea RP, Taiwan, China PR, Malaysia, Thailand, Russia and European Union, to name a few.*

*However, in the present case, the DGTR has initiated a separate anti-dumping investigation into imports from Kim Tin, rather than a review investigation. The deviation from past practice stems from the findings of the WTO Panel in Ukraine – Anti-Dumping Measures on Ammonium Nitrate<sup>1</sup>, wherein the Panel*

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*considered a similar practice adopted by the investigating authorities in Ukraine. In the facts of this case, the Ukrainian authority included an exporter EuroChem, which was previously not found to be dumping, within the scope of a sunset review investigation. The inclusion of the EuroChem was challenged by Russia on the grounds that once an exporter is found to be not dumping, the investigation against such exporter should be terminated and accordingly, they cannot be subject to a review investigation later.*

*The Panel examined the issue and the legal standards in detail, and in particular, the provisions of Article 5.8 of the Anti-Dumping Agreement, which provides that “there shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis”. Based on the same, the Panel found that “once an investigation is terminated, or brought to an end against a producer, it cannot subsequently be revived through an interim or expiry review”. The Panel, therefore, concluded that “the inclusion of such a producer in an interim or expiry review as well as the subsequent anti-dumping duty imposition on it following such reviews would be inconsistent with the obligation under the second sentence of Article 5.8 to immediately terminate the original investigation against it.” Similar findings were also given by the Panel earlier in Mexico – Definitive Anti-Dumping Measures on Beef and Rice<sup>2</sup> in the context of administrative reviews and mid-term reviews. The findings of the Panel were upheld on appeal by the Appellate Body<sup>3</sup>, which noted that once an exporter was found to have a de minimis margin, and excluded from the scope of anti-dumping duty; it cannot be brought into the scope of levy in a subsequent review.*

*Therefore, the Reports of the Panel and Appellate Body are clear in that once it is found that the dumping margin for an exporter was de-minimis, the investigation against the exporter was required to be terminated. Therefore, the dumping margin for such an exporter could not be again subjected to re-determination in a review investigation. As a result, the only alternative available would be subjecting the exporter to a fresh investigation, for examination of dumping, injury and causal link. The initiation against an individual exporter in MDF, therefore, plays an important role in making the Indian practice consistent with the provisions of the Anti-Dumping Agreement and bringing it in line with the practice of other countries.*

1. WT/DS493/R, Report of the Panel dated 20<sup>th</sup> July, 2018
2. WT/DS295/R, Panel report dated 6<sup>th</sup> June, 2005
3. WT/DS295/AB/R, Appellate Body report dated 29<sup>th</sup> November, 2005

## Updates from DGTR

### **Change in Director General**

- *The erstwhile Director General, Shri B. S. Bhalla, IAS was relieved on 22 June, 2020. In his stead, Shri B. B. Swain, IAS has taken charge.*
- *Shri B. B. Swain is from the Indian Administrative Services, Gujarat Cadre, 1988 Batch and is a Special Secretary to the Ministry of Commerce and Industry.*

## Trade Remedial Actions in India

### **Initiation of investigations**

- *Anti-circumvention investigation for examining whether duties levied against PTFE from Russia are being circumvented through importing the same from Korea RP (19 Jun)*
- *Anti-circumvention investigation for examining whether duties levied against PTFE from China are being circumvented through imports of PTFE products, having low value addition (19 Jun)*
- *Anti-dumping investigation into imports of Aluminium Foil 80 micron and below from China PR, Indonesia, Malaysia and Thailand (20 Jun)*
- *Anti-subsidy investigation into imports of Aluminium Wire / Wire Rods above 7 mm diameter from Malaysia (30 Jun)*

### **Definitive duties recommended**

- *Final findings issued recommending imposition of anti-dumping duty concerning imports of Polystyrene from Iran, Malaysia, Singapore, Chinese Taipei, UAE and USA (12 Jun)*
- *Final findings issued recommending imposition of anti-dumping duty concerning imports of Coated/Plated Tin Mill Flat Rolled Steel Products from European Union, Japan, Korea RP and USA (17 Jun)*
- *Final findings issued recommending continuation of anti-dumping duty concerning imports of Measuring Tapes from China PR (18 Jun)*

**Provisional duties recommended**

- *Preliminary findings issued imposition of anti-dumping duty concerning imports of Aniline from China PR (12 Jun)*
- *Preliminary findings issued imposition of anti-dumping duty concerning imports of Ciprofloxacin Hydrochloride from China PR (15 Jun)*
- *Preliminary findings issued imposition of anti-dumping duty concerning imports of Black Toner in Powder Form from China PR, Chinese Taipei and Malaysia (18 Jun)*

**Customs Notifications**

- *Extension of anti-dumping duty on imports of Hot Rolled Flat Products of Stainless Steel of ASTM Grade 304 from China PR, Malaysia and Korea RP till 4 Dec 2020 (3 Jun)*
- *Imposition of anti-dumping duty on imports of Electronic Calculators from Malaysia till 2 Jun 2025 (3 Jun)*
- *Imposition of provisional anti-dumping duty on imports of 1-Phenyl-3-Methyl-5-Pyrazolone from China PR till 8 Dec 2020 (9 Jun)*
- *Continuation of anti-dumping duty on imports of Flexible Slabstock Polyol from Singapore till 8 Jun 2025 (9 Jun)*
- *Extension of anti-dumping duty on imports of Nylon Tyre Cord Fabric from China PR till 11 Dec 2020 (10 Jun)*
- *Imposition of anti-dumping duty on imports of Flat Rolled Product of Steel, Plated or Coated with Alloy of Aluminium and Zinc from China PR, Vietnam and Korea RP till 14 Oct 2024 (23 Jun)*

Ongoing  
anti-dumping  
investigations  
**56**

Ongoing  
anti-subsidy  
investigations  
**7**

Ongoing  
safeguard  
investigations  
**4**

Investigations  
initiated  
**4**

Findings  
issued  
**6**



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

### **Colombia**

#### ***Ceramic tiles***

*Colombia has initiated special safeguard investigation into imports of ceramic tiles. The investigation concerns all WTO members, including India, but excludes Regional Trading Partners, such as European Union, USA, the Andean Community (26 Jun)*

### **USA**

#### ***Commodity matchbooks from India***

*DOC found that revocation of anti-dumping duty on Commodity Matchbooks from India would likely lead to continuation or reoccurrence of dumping. The final determination was pursuant to second sunset review investigation initiated on 2 Mar (18 Jun)*

#### ***Certain quartz surface products from India and Turkey***

*DOC, on the basis of determination made by USITC, found that Quartz Surface Products from India and Turkey are being sold in the United States at less than fair value and are subsidized by the governments of India and Turkey (19 Jun)*

#### ***Prestressed concrete wire strands from Brazil, India, Japan, Mexico, Korea and Thailand***

*DOC found that revocation of anti-dumping duty would likely lead to continuation or reoccurrence of dumping. The final determination was pursuant to fifth sunset review investigation initiated on 2 Mar (30 Jun)*



## Other Trade Remedial Actions

### Canada

- *Findings issued recommending continuation of anti-dumping duty in respect of certain hot-rolled carbon steel plate and high-strength low alloy steel plate originating in or exported from Ukraine (4 Jun)*
- *Initiation of anti-dumping and anti-subsidy measures on imports of decorative and other non-structural plywood originating in or exported from China PR (11 Jun)*

### European Union

- *Initiation of expiry review of anti-dumping measures on imports of certain pre and post-stressing wires and wire strands of non-alloy steel (PSC wires and wire strands) originating in China PR (4 Jun)*
- *Initiation of anti-subsidy proceedings concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (12 Jun)*
- *Imposition of definitive countervailing duties and definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in China PR and Egypt (15 June)*
- *Imposition of definitive countervailing duty and recommendation of definitive collection of the provisional CVD imposed on imports of continuous filament glass fibre products originating in Egypt (24 Jun)*

### Philippines

- *Initiation of safeguard investigation into imports of Aluminium Zinc Sheets, Coils and Strips (17 Jun)*
- *Initiation of safeguard investigation into imports of Prepainted Galvanized Iron and Prepainted Aluminium Zinc (17 Jun)*
- *Initiation of safeguard investigation into imports of Galvanized Iron Sheets, Coils and Strips (17 Jun)*

### Indonesia

- *Initiation of safeguard investigation into imports of carpets and other textile floor coverings (12 Jun)*

### South Africa

- *Initiation of safeguard investigation into imports of “U, I, H, L & T sections of iron or non-alloy steel (23 Jun)*

### United States of America

- *DOC releases final determination of anti-dumping and anti-subsidy investigations in certain collated steel staples from China PR (2 Jun)*
- *USITC finds revocation of anti-dumping and anti-subsidy duty on imports of carbon and certain alloy steel wire rod from China PR is likely to lead to continuation or recurrence of injury (3 Jun)*
- *USITC finds revocation of anti-dumping duty on imports of silicon metal from Russia is likely to lead to continuation or recurrence of injury (3 Jun)*
- *DOC releases final affirmative determination of circumvention of anti-dumping duty in investigation for Unpatented R-421A in hydrofluorocarbon blends from China PR (4 Jun)*
- *DOC releases final results in anti-dumping sunset review into imports of monosodium glutamate from Indonesia (4 Jun)*
- *DOC releases final affirmative determination in anti-circumvention investigation concerning imports of steel concrete reinforcing bar from Mexico (8 Jun)*
- *DOC releases final results in anti-dumping and anti-subsidy sunset review into imports of kitchen appliance shelving and racks from China PR (8 Jun)*

### United States of America

- *DOC initiates anti-dumping and anti-subsidy investigation into imports of certain walk-behind land mowers and parts thereof from China PR (22 Jun)*
- *USITC finds dumped and subsidized imports of collated steel staples from China PR caused material injury (23 Jun)*
- *USITC finds revocation of anti-dumping and anti-subsidy duty on imports of calcium hypochlorite from China PR is likely to lead to continuation or recurrence of injury (23 Jun)*
- *DOC releases final results in anti-dumping sunset review into imports of citric acids and certain citric sales from China PR (23 Jun)*
- *USITC finds revocation of anti-dumping and anti-subsidy duty on imports of manganese dioxide from China PR is likely to lead to continuation or recurrence of injury (25 Jun)*
- *USITC finds revocation of anti-dumping and anti-subsidy duty on imports of light-walled rectangular pipe and tube from China PR, Korea, Mexico, and Turkey is likely to lead to continuation or recurrence of injury (26 Jun)*
- *DOC releases final results in anti-subsidy sunset review into imports of oil country tubular goods from China PR (29 Jun)*
- *USITC finds revocation of anti-dumping and anti-subsidy duty on imports of lightweight thermal paper from China PR is likely to lead to continuation or recurrence of injury (29 Jun)*
- *DOC initiates anti-dumping and anti-subsidy investigation into imports of passenger vehicles and light truck tires from Korea RP, Taiwan, Thailand and Vietnam (29 Jun)*

## Bureau of Indian Standards

- *Quality Control orders regarding mandatory IS requirements issued on 16 Jun for 14 products viz. Acetone, Hydrogen Peroxide, Sodium Formaldehyde Sulphoxylate, Pyridine, Gamma Picoline, Beta Picoline, Morpholine, Sodium Sulphide, Potassium Carbonate, Phosphorus Trichloride, Phosphorus Pentachloride, Phosphorus Oxychloride, Precipitated Barium Carbonate and Sodium Tripolyphosphate. As per the orders, manufacturers have 180 days to obtain license from the date of Gazette Notification, except for Acetone, where 90 days have been provided*
- *Quality Control order regarding mandatory IS requirements issued on 1 Jul for Plain Copier paper. As per the order, manufacturers have 6 months to obtain license from the date of Gazette Notification*
- *New Standards notified*
  - *IS 6392:2020 (Steel Pipe Flanges)*
  - *IS 17404:2020 (Electrogalvanized Hot Rolled and Cold Reduced Carbon Steel Sheets and Strips)*
- *Modification in Standards notified*
  - *IS 15573:2018 (Poly Aluminium Chloride)*
  - *IS 15623:2005 (Melamine)*
  - *IS 695:2020 (Acetic Acid)*
  - *IS 10151:2019 (Poly Vinyl Chloride)*
  - *IS 3205:1984 (Precipitated Barium Carbonate)*
  - *IS 12795:2020 (Linear Alkyl Benzene)*
  - *IS 15226:2002 (Rigid PVC Compounds)*
  - *IS 1709:1984 (Capacitors for Electric Fans)*

### Foreign Trade Policy

- *DGFT is introducing a new digital platform (schedule to go live on 13th July 2020). The new platform shall provide better experience and has additional features like filing application for IEC, Advance Authorization, EPCG electronically*
- *Export Policy of Hydroxychloroquine and its formulations changed back to “Free” from “Prohibited”*

### Free Trade Agreements

*To allow immediate clearance, an additional copy in the form of electronic Certificate of Origin would be generated by EIA, MPEDA and Textile Committee for exports to Vietnam under ASEAN India FTA*

*Non-Tariff BIS  
Notifications  
In India*  
**0**

*Non-Tariff WTO  
Notifications  
by Others*  
**173**

***Exotic Décor Pvt. Ltd.***  
***versus***  
***Designated Authority, DGAD***

***Final Order No. 50689-50690/2020***

*The present appeals were filed against the final findings of the Designated Authority in the anti-dumping investigation into imports of Veneered Engineered Wooden Flooring from China PR, Malaysia, Indonesia and the European Union, wherein the Designated Authority recommended imposition of anti-dumping duty against the said imports.*

*The Appellants claimed that the findings of the Designated Authority had widened the scope of product under consideration as compared to the scope at the stage of initiation. While the initiation notification only referred to product having three layers, the final findings also included product having two layers within the scope of product under consideration. The Appellants also claimed that a product type, which the domestic industry neither produced nor had capability to produce, cannot be included within the scope of the levy. Lastly, the Appellants submitted that the Designated Authority had failed to provide them copy of DGCI&S data in Excel format.*

*The CESTAT, after hearing arguments of all the parties, found merit in the contention of the Appellants. The CESTAT noted that since the domestic producers had sought duty only on flooring having three layers and the initiation notification also defined the product as having three layers, the duty could not be levied on flooring having two layers. Therefore, the scope of product under consideration could not be widened post initiation of investigation.*

*Further, the CESTAT noted that the products not manufactured by the domestic producer could not possibly be the cause of any material injury to it. Thus, the CESTAT, referring to its earlier decisions on the issue, concluded that where the domestic industry has not produced like article to a product type, such product types cannot be included in the scope of product under consideration.*

*Lastly, on the issue of DGCI&S data, the CESTAT agreed with 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.*

## 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.*

### **TPM Consultants**

**Ish Kriti, J-209, Saket, New Delhi – 17**



[011 – 4989 2200](tel:011-49892200)



[info@tpm.in](mailto:info@tpm.in)



[www.tpm.in](http://www.tpm.in)



[TPM Solicitors  
& Consultants](#)

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