ADHYATAN

TPM Newsletter

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Under WTO law, members are required to provide equal treatment to all products originating from any other member state, that is, all members of WTO shall be subject to the same duties or other restrictions. However, as an exception, preferential treatment in the form of lower customs duties may be allowed in respect of products originating in certain countries which have special arrangements amongst them, such as Free Trade Agreements (FTAs), Preferential Trade Agreements (PTAs), Comprehensive Economic Partnership Agreements (CEPAs), etc. Under such agreements, the Rules of Origin play a crucial role in determining whether imported products shall receive most-favoured nation (MFN) treatment or preferential treatment in the form of reduced duties. The Rules of Origin are the norms used to establish the national source of a product.

India has entered into FTAs and CEPAs with several countries, including Japan, South Korea, Singapore and ASEAN, with the aim of significantly reducing or eliminating import duties on a number of goods traded between them. To avail such benefits, a 'certificate of origin' issued by the exporting authorities is required to be presented at the time of import.

Abuse of the earlier provisions

Recently, it had been observed that exporters from different countries, that are not parties to the Trade Agreements with India, have been able to indirectly gain benefit of preferential treatment by violating the rules of origin. Producers or exporters from other countries have set up new entities or have acquired defunct companies in countries, with which India has Trade Agreements, such as Vietnam, in order to use these shell enterprises to re-label and export goods to India without any material value addition, exploiting these Agreements.

In a recent case of imports of welded steel pipes from Vietnam, it was emphasized by the domestic producers that steel was being imported into Vietnam from China, processed with insignificant value addition into welded pipes and thereafter exported to India for the purpose of availing preferential duties under the ASEAN FTA. In another case, it was apprehended that hot rolled steel was being imported from China & South Africa and, after minor processing, cold rolled steel was then exported from Malaysia to India claiming preferential duties under ASEAN-India FTA, without meeting the minimum value addition requirement.

The FTAs generally require minimum 35-40% value addition on the product in the FTA country to be eligible for benefit. However, if the exporting authorities issue the certificate of origin without necessarily ensuring such value addition, it may lead to abuse of the FTAs.

Fixing the problem

Against this backdrop of increasing misuse of FTAs due to lenient Rules of Origin and to keep a check on abuse of benefits under the Trade Agreements, Section 28DA was inserted in the Customs Act, 1962 which provides a scheme for verification of the country of origin of the goods imported under preferential tariff provisions of Trade Agreements with different countries.

It empowers the customs authorities to verify the certificates of origin, rather than accepting them as provided by the importer, particularly when the certificate is insufficient or non-satisfactory and to call for additional information and documents consistent with the Trade Agreement. Additionally, Section 111 of the Customs Act, 1962 has also been amended which provides for confiscation of goods that have been imported by unduly claiming FTA benefits, by using a false certificate of origin.

Further, on 21st August, 2020, the Government notified the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('the Rules' or "CAROTAR 2020"), which shall be effective from 21st September, 2020. These rules provide for the procedure that shall be followed where goods are imported into India claiming preferential duties by virtue of Rules of origin under various FTAs, PTAs, CEPAs or any other trade agreement.

Salient Features of the Rules

a. Information to be provided by importer

Under the new rules, the importer or the agent of the importer shall be required to make a declaration in the bill of entry, at the time of importation, that the goods qualify as originating goods for preferential rate of duty under the relevant FTA. Further, the importer or the agent shall be required to indicate the respective customs notification against each item, on which preferential rate of duty is claimed. In addition, the importers are also required to furnish the details of the certificate of origin in the bill of entry as well. Previously, the importer was just required to present the certificate of origin as issued by the exporting authorities with no reference of it in the bill of entry.

b. Rejection of claim for preferential duties

Earlier, a claim for preferential duties could be rejected only if found incorrect on verification. However, under the new rules, this claim can be rejected by an officer without any verification, in the following situations

- *where the certificate of origin is incomplete*
- *where the certificate is not as per the prescribed format*
- *where any alterations have been made to the certificate, which is not authenticated by the authority issuing such certificates*

- *where the certificate has expired*
- *where the goods in question, for which the certificate is issued, are not eligible for preferential duties under the trade agreement.*

c. Verification of certificates of origin

The new rules empower the customs officers to verify whether the goods have indeed originated in the country declared, by taking note of minimum value addition to goods or change in customs heading, in order to avail preferential duties under that agreement. For this, the officer can demand information and documents from the importer and complete the verification within 45 days. Where the information is found insufficient, the officer can request the verification authority in the exporting country to provide additional information. Unless such information is received, preferential treatment would not be allowed and can be suspended. Upon verification, if the officer is convinced that goods do not meet the origin criteria given under an agreement, the claim for preferential duties will be rejected.

d. Responsibilities of importer

These rules also cast additional responsibilities on the importer by requiring him to ensure that all information necessary under Form 1 is submitted with reasonable care and caution as to the correctness and accuracy. The importer must also possess the documents for at least five years from the date the bill of entry is filed and present the same when called upon. Earlier the responsibility to possess information and to retain the same for two years, was on the verification authority of the exporting country.

Effect of new provisions

CAROTAR, 2020 have in effect ensured more stringency and efficiency in the existing regime, in a way that it dissuades the exporters from resorting to undue claims under the FTAs by mere labelling, re-labelling and exporting products without fulfilling the origin criteria under the respective trade agreement. The Rules aim at preventing the exploitation of benefits by ineligible exporters that arise out of FTAs out of fear of suspension of their preferential duty treatment. The Rules also increase the responsibilities of the importer in the sense that they are obliged to provide all the necessary information and documents beforehand and ensure their correctness and accuracy. Further, these rules confer more powers on the customs officer in terms of verification, extra-verification, call for information and suspension in case of insufficient information. Thus, the Rules are expected to go a long way in curbing abuse of the concessions given under FTAs.

Generally an investigation for imposition of anti-dumping duty, is initiated by the Authority upon receiving an application that is filed by or on behalf of "domestic industry", which means

a. *the domestic producers as a whole engaged in the manufacture of the product concerned and any activity connected; or*
b. *those producers whose collective output of the concerned product constitutes a major proportion of the total domestic production.*

For an industry that purely comprises of producers engaged in the merchant market, the domestic industry is easily defined. However, in industries, where the product in question may be captively consumed, the question that arises is whether producers, captively consuming the product, should be included in defining the domestic industry.

The Rules, cognizant of exceptional circumstances, provide that the domestic industry may be defined in relation to a product sold in two or more "competitive markets" and the producer within each of these markets will be a separate industry. However, the same is subject to two conditions:

a. *the producer in such a market sells all or almost all of the production in that identified market; and*
b. *the demand in that market is not supplied substantially by producers located elsewhere in the territory.*

Therefore, upon reading the basic definition combined with the proviso, it can be considered that the law recognises different competitive markets and that producers in each market thus, constitutes a separate industry. Thus, in this sense, it may be construed that producers selling in merchant market, and those producing for captive consumption, are both catering to different competitive markets. However, it should not be overlooked that the proviso also uses the word "sell". From a cursory and plain reading of the text, it appears that while defining domestic industry, as such no distinction has been laid out between producers producing the subject goods for the merchant market, and those producing for the subject goods for captive consumption. However, does this imply that the definition of domestic industry necessarily precludes segmentation, and hence only focuses on merchant market?

WTO's observation

The WTO has examined the issue in detail, and attempted to capture the complexity of the issue at hand, albeit under different agreements

The Appellate Body in the case of United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan, found that the definition of domestic industry is product oriented and not producer oriented.

The product in this case was combed cotton yarn and the issue was whether captive production of yarn i.e. those producers of yarn that are producing and consuming for their own use, should be excluded from the scope of domestic industry. The Appellate Body, stated that the term "producing", in itself cannot be given a different meaning based on what the domestic producer chooses to do with its product. The rationale behind the decision of the Appellate Body was as follows:

1. *The vertically integrated fabric producers compete with independent fabric producers who purchase their requirement of yarn in the merchant market. Vertically integrated fabric producers make their "make or buy" decisions with respect to input of yarn considering the opportunity cost of doing so.*
2. *Individual vertically integrated fabric producers may enter the merchant market for selling their production or buying their requirements of yarn. A difficulty in production of fabrics, could compel a vertically integrated fabric producer to rely on merchant market for yarn. Or instead, competitive conditions in the fabric market may compel a producer to sell a part of its yarn production in the merchant market.*
3. *Further, an approach that excludes producers consuming the product captively would lead to constant variations in the size of the domestic industry. This is because, as illustrated above, if such producers are automatically excluded, then at any given point in time if such a producer chooses to enter the merchant market, then the size of the domestic industry would change, thus changing the subsequent analysis. The converse is also true.*
4. *Also, a measure imposed against imported yarn would benefit vertically integrated fabric producers with respect to totality of yarn production, that is, not only yarn sold in the merchant market but also for captive consumption.*
5. *Finally, exclusion of such producers, consuming yarn captively, from the domestic industry implies that a fabric producer importing from a foreign plant that it owns, would have to be excluded from calculation of surge in imports and from any proposed measure. While such a situation might not exist, and all imports could be competing in the merchant market, but it could very well change in future. Captively produced imports, exempt from measures, could be sold in the merchant market if its prices were lower than those in the merchant market, which would then undermine the effectiveness of the measure.*

The Appellate Body in its consideration has not only factored in present situation in the market, but all events that could likely occur and eventually affect the analysis of the Authority. It has deliberated on the market considerations of a captive producer and opportunity cost involved, that makes the imports directly competitive even with goods that are produced for captive consumption. It can be seen that the Appellate Body attempted to cover all possible scenarios, in order to make the measure effective. Such an analysis of the domestic industry is anything but myopic, and has been done keeping in mind the stipulations of a producer as well as a buyer.

Hence, based on this interpretation, it follows that it would be proper to include captive producers as well in the scope of domestic industry, since no distinction has been expressly provided between merchant market and captive. As long as the producer is producing the subject goods, the question of what it does with the product become irrelevant.

Another case, wherein this aspect was extensively discussed, was United States-Hot Rolled Steel, wherein the Appellate Body held that investigating authorities are not entitled to conduct a selective examination of one part of a domestic industry. Where one part of an industry is the subject of separate examination, then other should also be examined in like manner. This implies that where the merchant market is being examined separately, then the captive market should also be examined in a similar manner. Thus, one cannot be selective in analysing just parts or segments of a domestic industry, as that would not be an objective examination.

However, in the case of United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan, the Body expressly clarified its position that their observation of such producers being "shielded from direct competition" did not mean that goods produced captively are not directly competing with imported product for the merchant market.

Therefore, for one to proceed with injury analysis of the domestic industry, one must have a clear and express definition of domestic industry. For inclusion and exclusion of any one producer would lead to a skewed and unfair analysis of injury suffered by the producers. The Appellate Body has made it clear that it must take into account all factors and consider producers, consuming the product captively, within the scope of domestic industry.

Indian Perspective

While the Appellate Body has ruled that the scope of domestic industry includes producers selling the product in merchant market as well as those consuming it

captively, European Commission and DGTR have excluded such producers in the past.

In the past, the Designated Authority has deemed domestic producers engaged in captive consumption of the product as a separate category of producers and has excluded them from the purview of scope of the domestic industry. In this regard, a notable case is that of the anti-dumping investigation into the imports of Low Ash Metallurgical Coke, wherein the Designated Authority considered producers of Met Coke, producing for captive use, outside the purview of the investigation on the basis that their production was not in competition with the imported goods, and economics of production were different from the producers for sale. Thus, for the purposes of determining the "standing" of the domestic producers, that is, the share of total domestic production accounted for by such producers, only the producers selling the subject goods in the merchant market were considered. In the findings, the Authority noted that the facts of the cases before the Appellate Body were different from the facts of the investigation being conducted. Moreover, those cases did not rule on standing of the domestic industry.

On appeal, the Customs, Excise and Service Tax Appellate Tribunal has concurred with the findings of the Designated Authority. In the case of Pig Iron Mfrs. Asscn. v. Designated Authority (2000), the Tribunal held that the two producers are different categories of producers and can be dealt as separate domestic industries. Therefore, in that investigation it was considered that the applicants fulfilled the criteria of standing and domestic industry legally. Similar view was taken by the Tribunal again in the case of Kalyani Steels Ltd. v. Union of India, wherein the Tribunal noted the rulings of the Appellate Body but found that the Appellate Body did not deal with the issue of standing, that is, whether the share of domestic industry in total production was required to be construed after including such producers, which are consuming the product captively. In fact, in this dispute India filed third party submissions and stated that the provision refers to the "domestic industry producing like and/or directly competitive products", not to the domestic industry selling those products and it defines the domestic industry as the entire domestic industry producing like and/or directly competitive products. India stresses that vertical integration is one form of autonomous industrial adjustment in response to the liberalization of trade in textiles and clothing and interpretation of the domestic industry definition as allowing a range of different industry is prejudicial to meaningful liberalization of trade in textiles and to autonomous industrial adjustment.

The Designated Authority took a different view in the Anti-dumping investigation concerning imports of O-Acid from China PR, wherein the Designated Authority observed that in a case where the dumping is materially retarding establishment of the "domestic industry" in addition to causing "injury" to the present capacities, the absence of actual merchant sales upto the period of investigation should not deprive the producer from being treated as a "domestic industry". In this case, the Designated Authority held that the applicant could utilize its production only for captive use and hence had to curtail the production to that extent thereby the imports prevented the "domestic industry" from achieving its projected target of sales.

Also, in all such cases where the applicant companies had both captive and merchant sales, the authority examines both captive and merchant sales separately. The injury analysis is undertaken twice - once including captive consumption and once excluding captive consumption. Further, the Authority determines standing of the applicant companies based on gross production of such companies. The Authority does not exclude either captive consumption or export production of applicant companies for the purpose of determining standing. It is only in case of non-petitioning domestic producers, that the Authority considers that if such non-petitioning domestic producers have significant captive consumption then standing of the applicants is determined by excluding captive consumption. Thus, the approach taken by the Designated Authority cannot be construed as inconsistent with the observations of the Appellate Body. However, there is no consistent approach taken by the Authority in India.

Key Highlights

The DGTR has recommended continuation of anti-dumping duty on imports of Acrylic Fibre from Thailand, pursuant to the fourth sunset review investigation into the same. This is the longest ongoing anti-dumping duty in India, which has been in force since 1997. Even pursuant to the fifth investigation into the product, the Designated Authority found that the producers in the subject country were dumping the goods in the Indian market, and causing injury to the domestic industry. The domestic industry in the present case, was represented by TPM Consultants.

Trade remedial actions in India

Initiation of investigations

- *Mid-term review for change of name of producer/exporter from Korea RP regarding anti-dumping duty imposed on imports of Poly Vinyl Chloride (PVC) Paste/Emulsion Resin from China PR, European Union, Korea RP, Malaysia, Russia, Taiwan and Thailand. (03 Aug)*
- *Anti-dumping investigation into imports of Glass Fibre and articles thereof from Bahrain and Egypt. (04 Aug)*
- *Mid-term review for change of name of producer/exporter from Korea RP regarding anti-dumping duty imposed on imports of Toluene Di-Isocyanate (TDI) from China PR, Japan and Korea RP. (05 Aug)*
- *Sunset-review investigation into anti-dumping duty imposed on imports of Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles from China PR. (18 Aug)*
- *Anti-dumping investigation into imports of Aceto Acetyl Derivatives also known as Arylides from China PR. (21 Aug)*
- *Sunset review investigation into anti-dumping duty imposed on imports of 2-Ethyl Hexanol from European Union, Indonesia, Korea RP, Malaysia, Taiwan and USA. (28 Aug)*

Investigations initiated (contd.)

- *Sunset review investigation concerning anti-dumping duty imposed on imports of Normal Butanol from European Union, Malaysia, Singapore, South Africa and USA. (31 Aug)*
- *Sunset review investigation concerning anti-dumping duty imposed on imports of Methylene Chloride from China PR. (31 Aug)*

Duties recommended

- *Final Findings issued recommending imposition of anti-dumping duty on import of Clear Float Glass from Malaysia. (20 Aug)*
- *Final Findings issued recommending imposition of safeguard duty on imports of Single Mode Optical Fibre. (21 Aug)*
- *Final Findings issued recommending imposition of anti-dumping duty on imports of Choline Chloride in all forms from China PR, Malaysia and Vietnam. (25 Aug)*

Provisional duties recommended

- *Preliminary findings issued recommending imposition of anti-dumping duty on imports of Polyethylene Terephthalate from China PR. (05 Aug)*
- *Preliminary findings issued recommending imposition of countervailing duty on imports of Flat Products of Stainless Steel from Indonesia. (07 Aug)*
- *Preliminary findings issued recommending imposition of anti-dumping duty on imports of Dimethyl Formamide (DMF) from China PR and Saudi Arabia. (19 Aug)*
- *Preliminary findings issued recommending imposition of anti-dumping duty on imports of Phenol from Thailand and USA. (20 Aug)*
- *Preliminary Findings issued recommending imposition of anti-dumping duty on imports of Soda Ash originating in or exported from Turkey and USA. (21 Aug)*

Termination of investigations

- *Termination of anti-dumping investigation on imports of Naphthalene in both its forms – Crude Naphthalene from China PR, European Union, Russia, Iran and Japan and Refined Naphthalene from China PR, European Union and Taiwan. (04 Aug)*

Continuation of duties recommended

- *Final Findings issued recommending continuation of anti-dumping duty on imports of Phosphoric Acid from Korea RP. (06 Aug)*
- *Final Findings issued recommending continuation of anti-dumping duty on imports of Woven Fabric, having more than 50% flax content, known as Flax Fabric, from China PR and Hong Kong. (17 Aug)*
- *Final Findings issued recommending continuation of anti-dumping duty on imports of Acrylic Fibre from Thailand. (31 Aug)*

Customs Notifications

- *Imposition of provisional anti-dumping duty on imports of Black Toner in powder form from China PR, Malaysia and Chinese Taipei till 9th February 2021. (10 Aug)*
- *Extension of anti-dumping duty on imports of Flax Fabrics from China PR and Hong Kong till 11th November 2020. (11 Aug)*
- *Extension of anti-dumping duty on imports of Diketopyrrolo Pyrrole Pigment Red 254 from China PR till16th November 2020. (14 Aug)*
- *Extension of anti-dumping duty on imports of Caustic Soda from China PR and Korea RP till 17th Nov 2020. (17 Aug)*
- *Extension of anti-dumping duty on imports of Acrylonitrile Butadiene Rubber from Korea RP till 3rd Dec 2020. (21 Aug)*
- *Imposition of anti-dumping duty on the imports of Phosphoric Acid from Korea RP till 20th August 2025. (21 Aug)*

Ongoing anti-dumping investigations	Ongoing anti-subsidy investigations	Ongoing safeguard investigations
56	**7**	**2**

Findings issued	Investigations initiated
12	**8**

Trade Remedial Actions against India

Canada

Oil Country Tubular Goods from Chinese Taipei, India, Indonesia, South Korea, Thailand, Turkey, Ukraine and Vietnam (07 Aug)

CBSA issued statement of reason concerning the expiry review determination of anti-dumping duty on certain oil country tubular goods from the aforesaid countries. The CBSA, on 23rd July 2020, determined that that expiry of anti-dumping duty is likely to result in continuation or resumption of dumping, for the aforesaid countries, but not due in relation to imports from Philippines.

China

Single Mode Optical Fiber from India (13 Aug)

MOFCOM recommended continuation of anti-dumping measures concerning imports of single mode optical fiber from India. The duties have been in force since August 2014.

United States of America

Preserved Mushrooms from Chile, China PR, India, and Indonesia (03 Aug)

The Department of Commerce and USITC issued sunset review investigation concerning imports of certain preserved mushrooms from Chile, China, India, and Indonesia. The anti-dumping measure is set to expire on 2nd September, 2020.

Common Alloy Aluminium Sheet from Bahrain, Brazil, India and Turkey (14 Aug)

The Department of Commerce issued affirmative preliminary determinations that countervailing subsidies are being provided to producers of common alloy aluminium sheet in the aforesaid countries.

Polyethylene Terephthalate (PET) Film, Sheet and Strip from India and Taiwan (27 Aug)

The USITC determined that revocation the existing anti-dumping and countervailing duty orders on imports of Polyethylene Terephthalate (PET) film, sheet and strip from India and Taiwan would likely to lead to continuation or recurrence of material injury. As a result, the existing orders will remain in force.

Other Trade Remedial Actions

Argentina

- *Imposition of definitive anti-dumping duty on imports of HFC Mixed Refrigerant from China. (18 Aug)*

Australia

- *Initiation of sunset review investigation of anti-dumping duty concerning imports of Ammonium Nitrate from Russia. (20 Aug)*

Canada

- *Termination of anti-dumping duty investigation regarding OCTG exported from South Korea by Hyundai Steel Company and from Turkey by Borusan Mannesmann Boru Sanayi ve Ticaret A.S (07 Aug).*
- *Termination of anti-dumping duty investigation regarding Hot Rolled Steel Plates exported from South Korea by Hyundai Steel Company. (07 Aug)*
- *Initiation of anti-dumping investigation on imports of Wheat Gluten from Australia, Austria, Belgium, France, Germany and Lithuania. (14 Aug)*

China

- *Initiation of anti-dumping investigation concerning imports of Polyphenylene Ether from United States of America. (05 Aug)*
- *Initiation of anti-subsidy investigation concerning imports of Polyphenylene Ether from United States of America. (16 Aug)*
- *Initiation of anti-dumping investigation concerning imports of Wines in Containers holding 2 litres of less from Australia (18 Aug)*
- *Initiation of anti-dumping investigation concerning imports Monoalkyl Ethers of Ethylene Glycol and Propylene Glycol from USA. (31 Aug)*

Eurasian Economic Commission

- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Seamless Steel Oil Country Tubular Goods from China (11 Aug)*

European Union

- *Extension of anti-dumping duty imposed on imports of Certain Corrosion Resistant Steels originating in the China to imports of Slightly Modified Certain Corrosion Resistant Steels pursuant to anti-circumvention investigation. (Aug 05)*
- *Termination of anti-dumping investigation concerning imports of Pins and Staples originating in the China (14 Aug)*
- *Initiation of anti-dumping investigation concerning imports of Aluminium Flat-Rolled Products from China. (14 Aug)*
- *Re-imposition of anti-dumping duty on imports of Threaded Tube or Pipe Cast Fittings manufactured by Jinan Meide from China PR. (19 Aug)*
- *Initiation of expiry review investigation concerning imports of Stainless Steel Cold-Rolled Flat Products from China and Taiwan (25 Aug)*

Malaysia

- *Imposition of preliminary anti-dumping duty on imports of Flat Rolled Products of Non-Alloy Steel Plated or Coated with Aluminium and Zinc from China, Korea and Vietnam. (14 Aug)*

New Zealand

- *Imposition of provisional anti-dumping duty on imports of Galvanized Wires from China. (26 Aug)*

South Korea

- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Plywood Products from China and Malaysia. (20 Aug)*

United States of America

- *Initiation of sunset review investigation of anti-dumping duty concerning imports of Diamond Sawblades and parts thereof from China. (03 Aug)*
- *Initiation of sunset review investigation of anti-dumping duty concerning imports of Crepe Paper from China (03 Aug)*
- *Initiation of sunset review investigation of anti-dumping duty concerning imports of Chloropicrin from China (03 Aug)*

United States of America (Contd.)

- *Affirmative preliminary determination in anti-dumping investigation against imports of Wood Mouldings and Millwork Products from China (12 Aug)*
- *Negative preliminary determination in anti-dumping investigation against imports of Wood Mouldings and Millwork Products from Brazil (12 Aug)*
- *Continuation of anti-dumping duty pursuant to sunset review investigation concerning imports of Polyethylene Terephthalate (Pet) Film, Sheet, and Strip from China and the United Arab Emirates (14 Aug)*
- *Initiation of anti-dumping investigation concerning imports of Methionine from France, Japan, and Spain (Aug 19)*
- *Affirmative determination in anti-dumping investigation on imports of Polyethylene Terephthalate (PET) Sheets from Korea and Oman. (19 Aug)*
- *Initiation of anti-dumping and countervailing duty investigations concerning imports of Certain Chassis and Subassemblies thereof from China (20 Aug)*
- *Affirmative determination in anti-dumping investigation on imports of Seamless Refined Copper Pipe and Tube from Vietnam (Aug 20)*
- *Affirmative determination that imports of Silicon Metal from Bosnia and Herzegovina, Iceland and Malaysia are causing material injury to domestic industry and that countervailable subsidies are being provided to producers in Kazakhstan (20 Aug)*
- *Affirmative determination by USITC in anti-dumping investigation on imports of Standard Steel Welded Wire Mesh from Mexico (20 Aug)*
- *Affirmative preliminary determination in anti-dumping investigation on imports of Difluoromethane from China. (Aug 21)*

Bureau of Indian Standards

Modification in Standards establishment notified

- *IS 996, Single Phase A.C. Induction Motors for General Purpose*
- *IS 16352, Geosynthetics- High Density Polyethylene (HDPE) Geomembranes*
- *IS 17384, Pigments, Dyestuffs and Extenders – General Terms*
- *IS 17412, Trimethyl Phosphite*
- *IS 16678, Refrigerating Systems and Heat Pumps*

Free Trade Agreement

Govt. form norms to enforce rules of origin for imports under Trade Agreements through the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR) which will come into effect on September 21, 2020. The same shall enable enhanced vigilance and will make the importer sufficiently responsible regarding correct disclosure of country of origin including regional value content and other relevant information required for availing preferential treatment with respect to duties

Foreign Trade Policy (FTP)

Import Policy of Refrigerant Gases revised. Conditions applicable for/ during imports:

- *Submit a copy of Bill of Entry within 30 days, to Ozone Cell MoE*
- *HCFC-141b allowed only for feedstock application*
- *Imports of pre- blended polyol not permitted as per Ozone Depleting Substances Amendment Rules*

Non-Tariff BIS Notifications In India	Non-Tariff WTO Notifications by Others
11	**204**

United States — Countervailing Measures on Softwood Lumber from Canada

DS533: Panel Report dated 24 Aug

The present dispute arose pursuant to Canada challenging the countervailing measures imposed by United States (US) on imports of softwood lumber, specifically regarding the determination by US of benchmark prices in case of distorted market prices, adjustments made for comparison of benchmark prices and the grant of financial contribution by the government.

The facts leading to the case are that in Canada, the timber growing on government-owned Crown land is available for harvesting and processing under the stumpage program, under stumpage agreements (tenures or licences) with the governments concerning these trees. The legal rights to harvest timber are transferred through the stumpage agreements. The government is the predominant supplier of such stumpage or harvesting rights, though in some regions, these may be sold by private entities as well. Further, in some regions of Canada, the government prohibit the export of logs without an export permit. The legislation provides for an export-permitting process, that authorizes the export of logs in accordance with specified criteria only, violation of which invites penalty.

US examined the supply of such stumpage by the government and concluded that the government of Canada was the predominant supplier of such rights, whereby the provision of rights resulted in transfer of a countervailable subsidy. For this purpose, the US compared the price of such rights in a different region within Canada, and outside Canada and compared them to the price paid by the concerned producers in Canada. Thus, the US considered an "out-of-market" benchmark based on the prices in a different geographical region. Canada claimed that such benchmark could not be considered under the Agreement on Subsidies and Countervailing Measures (ASCM) as the investigating authorities were required to select an "in-market" or regional benchmark relating to the particular geographical region. Canada emphasized that an "out-of-market" benchmark can be considered only if prices in such a market are found to be distorted due to government intervention. Further, Canada claimed that merely because the government was the predominant supplier of the subject goods, it could not be assumed that the prices charged by the private entities was also distorted.

The Panel found merit in the argument raised by Canada, and held that investigating authorities are required to evaluate subsidies by comparing the alleged subsidized prices to the price of supplies by private entities in the same country. The investigating authorities may use a benchmark other than private prices in the country, only if it is first established that private prices in that country are distorted because of the government's predominant role in providing those goods in the market, and not before such analysis. Further, the Panel upheld Canada's claim that even though it may be presumed that there is price distortion, in a case where the government is the predominant supplier of goods; the investigating authority must still evaluate the evidence on the record to ascertain whether private prices are actually distorted as a result of government intervention in the market.

Further, the Panel also observed that when benchmark prices from a different region in the country are considered for determining quantum of subsidies, the benchmark needs to be adjusted for parameters, such as price, quality, availability, marketability, transportation and other conditions of purchase or sale, to reflect prevailing market conditions in the country of provision.

Further, with regard to the law requiring export permits, US concluded that such law results in a subsidy by the government, inasmuch as it directed private entities to supply logs to consumers in the region. Canada challenged the findings of the US in this regard. The Panel agreed with Canada, and held that where a legislation is enacted for a particular purpose, the indirect effect of the same cannot be considered as a subsidy, especially when such effects are the results of the actions of private parties to such government measure. Even where the legislation provided for a penalty in case of violation, it is to be considered as a measure to enforce the legislation and does not constitute a financial contribution by the government..

The present Panel report adds to an array of disputes between the US and Canada on the countervailing measures imposed by US on the imports of softwood lumber from Canada. As in all previous reports, the US' methods of determining benchmark prices to analyse the adequacy of remuneration of the subsidy in question, have been repeatedly criticized and struck down by the Panel. However, despite repetitive criticism, the US authorities continue to employ the same methods while imposing countervailing measures.

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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