



ADHYATAN

TPM Newsletter

2

*Consideration of
USA as a Non-
Market Economy*

6

*Trade Remedies
Updates*

15

*Other Trade
Updates*

16

*From the
WTO Panel*



In recent preliminary findings concerning imports of N-Propanol, originating in United States of America (USA), China's Ministry of Commerce (MOFCOM) concluded that non-market economy conditions exist in the energy and petrochemical sector in the USA. This is perhaps for the first time, in any trade remedial investigation across the globe, that USA has been considered as a non-market economy.

The term "non-market economy" refers to an economy where the costs and prices are not freely governed by market forces. The implication of designation as a non-market economy is that the domestic prices and costs of exporters in such an economy are not considered for determination of dumping margin and anti-dumping duty in trade remedial investigations. For instance, China PR is treated as a non-market economy in investigations conducted by the DGTR in India, due to which the Chinese costs and prices are considered distorted. Therefore, in order to determine whether Chinese exporters are dumping in India, the DGTR compares the price of exports from China PR to prices prevailing in a surrogate or comparable country.

Investigations by China PR

The claim that USA may be treated as a non-market economy was first raised before MOFCOM in the anti-dumping investigation into imports of Styrene. The applicant alleged market distortions in production factors such as raw material and energy on the basis that the US Government extends vast influence in resource allocation by means of legislation, policies, transferring exploitation rights of state-owned resources and various other support measures. However, in this case, MOFCOM did not agree with the applicant.

Subsequently, in the preliminary findings concerning imports of N-Propanol, MOFCOM has taken a different view, that non-market economy conditions exist in the energy and petrochemical sector in USA. The facts considered in this case were almost similar to the claims in earlier Styrene investigation. However, MOFCOM has concluded differently in the two cases.

In recent preliminary findings concerning N-Propanol from USA, the Chinese investigating authority has concluded that non-market economy conditions prevail in USA's energy and petrochemical sector.

This implies costs and prices in these sector are not governed freely by market forces.

The view taken by Chinese authority is inconsistent with its earlier findings in the investigation concerning imports of Styrene from USA, despite similar facts in the two cases.

In reaching its conclusion, MOFCOM relied upon supervision and control exercised by the US Government over the power industry, regulation of the power market, and control over electricity exports and electricity prices. MOFCOM has also noted that the Government conferred incentives such as financial support, tax reduction and tax exemptions to encourage investment and development of industry. Further, MOFCOM observed that the US Government provided significant financial support to domestic chemicals companies, which has affected the allocation of resources in the chemical market in USA; and that there was price distortion in ethylene, hydrogen, and synthesized gas. Interestingly, such a conclusion is restricted to energy and petrochemical sector of USA, and not the economy as a whole.

Again, in a recently initiated anti-dumping investigation concerning imports of ethylene glycol and propylene glycol monoalkyl ethers originating in USA, applicants have claimed existence of non-market economy conditions in USA. While it is expected that MOFCOM may arrive at the same conclusion in this investigation as well, it is not clear whether such findings can be sustained under the WTO legal framework. This is especially in light of MOFCOM's quick conclusion regarding existence of non-market economy conditions, without considering existence of particular market situation first and the difference in conclusions reached in the two investigations, as highlighted above, when the prevailing situations and the alleged claims were the same. It is important to note that despite concluding non-market conditions, MOFCOM has calculated normal value on the basis of "facts available" only, that is, they found that the US exporters did not cooperate to the best of their ability.

Compliance with GATT

The first anti-dumping investigation concerning a non-market economy was undertaken by USA concerning imports of bicycles from Czechoslovakia in 1960. Eventually, the world trading system invented the term non-market economy" though it has not been defined under

Factors relied upon by China

- US Government supervision and control over power industry
- Regulation of power market
- Control over electricity exports
- Control over electricity prices
- Financial support, tax reductions and exemptions offered
- Financial support to US chemical companies
- Distortion in prices of ethylene, hydrogen and synthesized gas.

Findings restricted only to the energy and petrochemical sector

the WTO regime. In fact, there is no specific provision, which as such allows a country to be treated as a “non-market economy”.

The USA has been treating China PR as a non-market economy since 1981 and when China became a WTO member in 2001, Article 15 of China’s Protocol of Accession permitted all the WTO members to treat China as a non-market economy. Therefore, it is by virtue of the Accession Protocol that WTO members are able to treat China PR as a non-market economy. Similarly, in 2007, when Vietnam became a WTO member, it agreed in its Protocol of Accession that all WTO members may treat it as a non-market economy. However, there is no such agreement or provision to treat the USA as a non-market economy.

Further, while the GATT contains a provision for disregarding the domestic selling price, the same is applicable only to a member nation where there is complete or substantial monopoly on its trade and where all domestic prices are fixed by the State. However, it may not be possible for China to establish that such situation exists in the USA.

Instead, MOFCOM has referred to Article 41 of the Chinese “Foreign Trade Law”, which provides for possibility of taking anti-dumping measures and further referred Article 6 of the Chinese Anti-dumping regulation regarding fair comparison rules for normal value calculation. Relying on the provision, the MOFCOM has concluded that a proper comparison is not possible owing to the distortions in the prices of input material for the subject goods. Interestingly, Chinese “Foreign Trade Law” and “Anti-dumping Regulation” do not mention “non-market economy” or “particular market” situation. A conclusion that there exist non-market economy conditions in the US gas and petrochemical sector, based merely on a general provision stipulating fair comparison rules, lies on very shaky legal grounds.

The MOFCOM could have instead relied on the provisions of Article 2.2(iii) of Anti-Dumping Agreement to allege that

China’s Protocol of Accession permitted US and other WTO members to consider it as a non-market economy, and accordingly, China PR has been considered as a non-market economy under the provisions of the Accession Protocol.

There is no Agreement or GATT provision, which allows US to be treated as a non-market economy.

The Chinese law does not even mention the term “non-market economy”.

Findings of China lie on very shaky legal grounds.

there exists a “particular market situation” in the US gas and petrochemical sector. The Anti-Dumping Agreement allows the investigating authority to exercise discretion and disregard the domestic selling price of exporters when because of a “particular market situation”, sales in the domestic market of the exporters do not permit a proper comparison for calculation of dumping margin. While the phrase “particular market situation” has not been defined under the law, it is often used to denote a situation in which the costs or prices of the product under consideration in the country of export are distorted or are not reliable due to state interference. While establishing particular market situation and rejecting prices on that basis might have involved its own challenges, it could have been a more viable alternative to the present position taken.

Thus, MOFCOM’s determination seems to lack the legal reasoning for finding non-market conditions. While it throws light on distortions in a particular sector arising out of government policies and intervention, MOFCOM has not explained how its determination is consistent with the provisions of the WTO Agreements. Further, these factors were argued before MOFCOM in earlier investigations against USA as well, where it took a different view. The change in stance may perhaps be an indicator of shift in the domestic policy and a new turn in the US-China Trade War. Nevertheless, such a conclusion can only be considered as an arbitrary use of exceptions carved out for extreme situations.

A more viable alternative may have been reference to the provision of “particular market situation” under GATT, which refers to a situation where costs and prices in a country are not reliable due to state interference.

Change in stance of the Chinese authority may mark a new turn in the US-China Trade War and shift in domestic policy.

Key Highlights

Trigger price form of duty

The DGTR has recommended imposition of a trigger price form of duty in the anti-dumping investigation concerning imports of Acetone from Korea RP, Saudi Arabia and Taiwan. Till now, duties have been recommended in majorly three forms, that is, (i) a fixed quantum based on volume of imports; (ii) as a percentage of import price; and (iii) a benchmark price, that is a price above which no duty would be levied. However, imports below the benchmark price are subject to a duty, which is equivalent to the difference between the benchmark price and the price of imports.

The trigger price form of duty is a combination of the fixed quantum and benchmark form of duty. In this, no duty is levied if the imports are priced higher than the trigger price. However, if the imports enter the market at a price below the trigger price, a fixed quantum of duty expressed as a specified amount per MT shall apply. This form of duty would, therefore, combine certain advantages of the benchmark and fixed form of duty. It would help ensure that imports, which are not injurious to the domestic industry, are not unnecessarily subject to duties. At the same time, it would discourage injurious imports by ensuring that they are adequately penalized.

Initiation of 22 investigations in only one month

During a period of only one month, the DGTR has initiated 22 investigations, including 13 anti-dumping investigations, 3 anti-circumvention investigations, 3 sunset reviews, and one anti-subsidy investigation, mid-term review and bilateral safeguard investigation each. This is possibly the highest ever number of investigations initiated within one month in India and is in addition to 6 findings issued during the month.

Under the law, an investigation can only be initiated with a period of investigation of not older than 6 months. Since most producers find it easier to provide data for April to March, a higher number of investigations are usually filed towards August, every year. However, since this time, the subsequent quarter of April to June, 2020 was further impacted by COVID-19 and the lockdown, the last few months saw a higher number of applications being filed before DGTR, leading to the highest number of initiations this month.

Suo motu initiation of investigations by the DGTR

The DGTR suo motu initiated an anti-circumvention investigation of anti-dumping duty imposed on Axle for Trailers from China PR on 15 Sep. The investigation was initiated on receipt of information from Commission of Customs (Import), Nhava Sheva that the anti-dumping duty imposed on Axle for Trailers was being circumvented by import of the product in CKD / SKD (complete knock-down / semi knock-down) form, as “parts for trailers”. Taking cognizance of the alleged circumvention, the DGTR has, on its own motion, initiated an investigation to examine whether the duty levied on Axle for trailers needs to be extended to parts in CKD / SKD form.

Subsequently, in another first, the DGTR has also suo motu initiated an anti-subsidy investigation into imports of Copper Tubes and Pipes from Malaysia, Thailand and Vietnam on 25 Sep. In this case, the DGTR has initiated the investigation based on a representation by the Bombay Metal Exchange, highlighting a steep decline in production in India due to significant increase in imports.

Trade remedial actions in India

Initiation of investigations

- *Anti-dumping investigation into imports of Vitamin C from China PR. (04 Sep)*
- *Anti-dumping investigations into imports of Certain Flat Rolled Products of Aluminium from China PR. (08 Sep)*
- *Bilateral safeguard investigation into imports of PVC Suspension Grade Resin from Japan. (08 Sep)*
- *Anti-circumvention investigation into imports of Axle for Trailers from China PR. (15 Sep)*
- *Mid-term review limited to change of name of producer/exporter from Korea RP in the anti-dumping investigation into imports of Aluminium and Zinc Coated Flat Products. (15 Sep)*
- *Anti-dumping investigation into imports of Sodium Hydrosulphite from China PR and Korea RP. (16 Sep)*
- *Anti-dumping investigation into imports of Untreated Fumed Silica from China PR and Korea RP. (22 Sep)*

Investigations initiated (contd.)

- *Anti-circumvention investigation into imports of Measuring Tapes originating in China PR, being exported from Singapore and Cambodia. (21 Sep)*
- *Sunset review investigation into imports of Melamine from China PR. (22 Sep)*
- *Anti-dumping investigation into imports of Ceftriaxone Sodium Sterile from China PR. (24 Sep)*
- *Anti-circumvention investigation into imports of Ceramic Tableware and Kitchenware originating in China PR, being exported from Malaysia. (25 Sep)*
- *Anti-subsidy investigation into imports of Copper Tubes and Pipes from Malaysia, Thailand and Vietnam. (25 Sep)*
- *Sunset review investigation into imports of Glass Fibre and articles thereof from China PR. (25 Sep)*
- *Anti-dumping investigation into imports of Persulphates from China PR and the United States of America. (28 Sept)*
- *Anti-dumping investigation into imports of Hydrofluorocarbons Component R-32 from China PR. (28 Sep)*
- *Anti-dumping investigation into imports of Silicone Sealants from China PR. (28 Sep)*
- *Anti-dumping investigation into imports of Calcined Gypsum Powder from Iran, Oman, Saudi Arabia and UAE. (29 Sep)*
- *Anti-dumping investigation into imports of Elastomeric Filament Yarn from Singapore. (30 Sep)*
- *Anti-dumping investigation into imports of Caprolactam from European Union, Korea RP, Russia and Thailand. (30 Sep)*
- *Anti-dumping investigation into imports of Decor Paper from China PR. (30 Sep)*
- *Anti-dumping investigation into imports of Hydrofluorocarbon Blends from China PR. (30 Sep)*
- *Sunset Review investigation into imports of Methyl Acetoacetate from China PR. (30 Sep)*

Termination of Investigation

- *Termination of anti-dumping investigation into imports of Non-Woven Fabric from China PR, Malaysia, Indonesia, Thailand and Saudi Arabia. (15 Sep)*

Duties recommended

- *Imposition of anti-dumping duty recommended on imports of Acrylic Fiber from Belarus, European Union, Peru and Ukraine. (01 Sep)*
- *Imposition of anti-dumping duty recommended on imports of Flexible Slabstock Polyol from Saudi Arabia and UAE. (01 Sep)*
- *Provisional anti-dumping duty recommended on imports of Toluene Di- Isocyanate from European Union, Chinese Taipei, Saudi Arabia and UAE. (04 Sep)*
- *Continuation of anti-dumping recommended on imports of Diketopyrrolo Pyrrole Pigment Red 254 from China PR. (08 Sep)*
- *Bilateral safeguard measures recommended in the form of increase in custom duties on imports of Phthalic Anhydride from Korea RP. (28 Sep)*
- *Continuation of anti-dumping duty recommended on imports of Hot Rolled Flat Products of Stainless Steel – 304 Grade from China PR, Malaysia and Korea RP. (29 Sep)*
- *Continuation of anti-dumping duty recommended on imports of Acetone from Korea RP, Saudi Arabia and Taiwan. (29 Sep)*

Customs Notifications

- *Imposition of provisional anti-dumping duty on imports of Ciprofloxacin Hydrochloride from China PR. (02 Sep)*
- *Extension of anti-dumping duty on imports of Float Glass of thickness 2mm to 12mm from China PR till 7 Dec 2020. (02 Sep)*

Ongoing anti-dumping investigations
71

Ongoing anti-subsidy investigations
8

Ongoing safeguard investigations
2

Findings issued
6

Investigations initiated
22

Trade Remedial Actions against India

European Union

Stainless steel cold-rolled flat products from India and Indonesia (30 Sep)

The European Commission has initiated an anti-dumping investigation concerning imports of stainless steel cold-rolled flat products originating in India and Indonesia.

Turkey

Polyethylene Terephthalate (PET) Film from India (15 Sep)

The Ministry of Trade has initiated final review investigation concerning imports of “Polyethylene Terephthalate (PET) film” originating in India. A measure against the subject goods is already in place to offset alleged subsidies in force for the subject goods. The anti-subsidy measure was introduced in 2009 and thereafter extended through review investigation.

Other Trade Remedial Actions

Argentina

- *Initiation of sunset review investigation of anti-dumping duty on imports of bicycle tyres from Thailand, Indonesia and China PR. (17 Sept)*
- *Initiation of sunset review investigation of anti-dumping duty on imports of water pumps from China PR. (18 Sept)*
- *Initiation of sunset review investigation of anti-dumping duty on imports of connection terminals from China PR and Germany. (18 Sept)*
- *Initiation of sunset review investigation of anti-dumping duty on imports of dinnerware from China PR. (24 Sept)*

Australia

- *Notification for expiry of anti-dumping measures imposed on grinding balls from China PR. (01 Sept)*
- *Initiation of review of anti-dumping measures applied on imports of certain steel reinforcing bar from Korea RP, Singapore, Spain and Taiwan. (10 Sept)*
- *Termination of anti-dumping investigation on imports of hot dip galvanised steel angle from China PR. (18 Sept)*

Brazil

- *Continuation of anti-dumping duty on imports of phenol from European Union and the United States of America. (17 Sep)*
- *Continuation of anti-dumping duty on imports of seamless carbon steel pipes from Ukraine. (22 Sep)*

Canada

- *Initiation of anti-dumping investigation into imports of certain concrete reinforcing bar from Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore and Vietnam. (22 Sep)*
- *Resumption of dumping and countervailing re-investigation regarding dry wheat pasta from Turkey. (28 Sep)*
- *Conclusion of normal value review to update normal value and export price applicable to certain copper pipe fittings from the United States of America (28 Sep)*

Chile

- *Initiation of anti-dumping investigation into imports of steel rods from China PR. (11 Sep)*

China PR

- *Initiation of anti-subsidy investigation into imports of wine from Australia. (02 Sep)*
- *Initiation of anti-dumping investigation into imports of certain monoalkyl ethers of ethylene glycol and propylene glycol from the United States of America. (02 Sep)*
- *Preliminary ruling issued in the countervailing duty investigation concerning imports of N-propanol (NPA) from the United States of America (06 Sep)*
- *Initiation of anti-dumping investigation on imports polyvinyl chloride from the United States of America. (25 Sep)*

Colombia

- *Initiation of sunset review into imports of certain flat-rolled galvanized steel sheets from China PR. (08 Sep)*

Eurasian Economic Union

- *Initiation of anti-dumping investigation into imports of melamine from China PR. (17 Sep)*
- *Imposition of anti-dumping duty on imports of aluminium tape from Azerbaijan and China PR. (22 Sep)*

European Union

- *Initiation of expiry review of anti-dumping and anti-subsidy duty on imports of biodiesel from the United States of America. (14 Sep)*
- *Extension of definitive anti-dumping duty imposed on imports of tungsten electrodes originating in China PR to those consigned from Laos and Thailand, whether originating in Laos and Thailand or not, and termination of investigation concerning imports consigned from India, whether originating in India or not. (14 Sep)*
- *Imposition of provisional anti-dumping duty on imports of aluminium extrusions from China PR. (22 Sep)*
- *Initiation of anti-dumping investigation on imports of optical fibre cables from China PR. (24 Sep)*
- *Imposition of anti-dumping duty on imports of certain polyvinyl alcohols from China PR. (29 Sep)*

Indonesia

- *Imposition of safeguard duty on imports of fructose syrup for imposition of measures. (09 Sep)*
- *Imposition of safeguard duty on imports of carpets and other textile floor coverings. (24 Sep)*

Japan

- *Imposition of anti-dumping duty on imports of certain chemical products used for thermal insulation from China PR. (09 Sep)*

Korea RP

- *Imposition of anti-dumping duty on imports of plywood products from Vietnam. (21 Sep)*
- *Initiation of anti-dumping investigation on flat rolled steel products from China PR, Taiwan and Indonesia. (22 Sep)*

Malaysia

- *Initiation of safeguard investigation into imports of ceramic floor and wall tiles. (13 Sep)*

Mexico

- *Initiation of sunset review on imports of carbon steel plates from Romania, Russia and Ukraine. (10 Sep)*
- *Initiation of anti-dumping investigation into imports of steel slabs from Brazil and Russia. (25 Sep)*

Madagascar

- *Imposition of safeguard measures on imports of edible vegetable oils and margarines. (17 Sep)*
- *Imposition of safeguard measures on imports of lubricating oils. (17 Sep)*
- *Imposition of safeguard measures on imports of soap. (17 Sep)*

Morocco

- *Imposition of safeguard duties on imports of welded steel pipes. (07 Sep)*

Philippines

- *Initiation of safeguard investigation into imports of high-density polyethylene and linear-low density polyethylene pellets and granules. (04 Sep)*

South Africa

- *Provisional safeguard duty recommended on imports of bolts with hexagon heads of iron or steel. (11 Sep)*
- *Initiation of anti-dumping investigation into imports of pasta from Egypt, Latvia, Lithuania and Turkey. (18 Sep)*

Taiwan

- *Affirmative preliminary determination of material injury suffered by domestic industry due to dumped imports of aluminium foils from China PR (28 Sep)*

Thailand

- *Initiation of safeguard investigation into imports of aluminium foil. (18 Sep)*

Turkey

- *Initiation of sunset review investigation into imports of bicycle tyres from China PR, Indonesia and Thailand. (15 Sep)*

Ukraine

- *Initiation of anti-dumping investigation into imports of cement from Turkey. (02 Sep)*
- *Termination of safeguard investigation into imports of syringes. (02 Sep)*
- *Termination of safeguard investigation into imports of caustic soda. (02 Sep)*

Ukraine (Contd.)

- *Initiation of safeguard investigation into imports of wires. (09 Sep)*
- *Affirmative determination to impose anti-dumping duty on imports of certain steel fasteners from China PR. (26 Sep)*

United States of America

- *Initiation of sunset review into imports of prestressed concrete wire strands from China PR. (03 Sep)*
- *DOC and USITC find that expiry of anti-dumping duty on imports of PET film from China PR and UAE is likely to lead to continuation or recurrence of dumping and injury to US industry. (08 Sep)*
- *USITC finds that US industry is materially injured by reason of imports of methionine from France, Japan, and Spain. (11 Sep)*
- *DOC and USITC find that expiry of anti-dumping and countervailing duty on imports of crystalline silicon photovoltaic products from China PR is likely to lead to continuation or recurrence of dumping and subsidization, and injury to US industry. (11 Sep)*
- *USITC finds that US industry is materially injured by reason of imports of chassis and subassemblies from China PR. (11 Sep)*
- *DOC finds dumping of certain glass contained from China PR. (14 Sep)*
- *USITC find that expiry of anti-dumping and countervailing duty on imports of steel concrete reinforcing bar from Mexico and Turkey is likely lead to continuation of material injury to US industry. (16 Sep)*
- *USITC finds that expiry of anti-dumping and countervailing duty on imports of kitchen appliance shelving and racks from China PR is likely lead to continuation of material injury to US industry. (18 Sep)*
- *DOC preliminarily finds that expiry of duty on imports of steel nails from Oman is likely to lead to continuation of dumping. (28 Sep)*
- *DOC preliminarily determines dumping of prestressed concrete steel wire strand is being exported from Taiwan. (30 Sep)*
- *DOC preliminarily determines dumping of certain steel nails from UAE. (30 Sep)*

Vietnam

- *Initiation of anti-dumping investigation into imports of sugar from Thailand. (22 Sep)*
- *Initiation of anti-dumping investigation into imports of sugarcane from Thailand. (23 Sep)*

Foreign Trade Policy

Ceiling / cap on MEIS benefits (2 Sep)

For exports made between 1 Sep 2020 to 31 Dec 2020, the DGFT has imposed a cap / ceiling on the MEIS benefits. The total reward granted for such exports shall not exceed Rs. 2 crores. Further, any IEC holder, which has not exported the goods from 1 Sep 2019 to 31 Aug 2020, or any new IEC obtained on or after 1 Sep 2020 shall not be eligible for any MEIS benefits made subsequent to 1 Sep 2020.

Track and trace system (22 Sep)

The date of implementation of track and trace system for export of pharmaceuticals and drug consignments with respect to maintaining the Parent-Child relationship in packaging levels and its uploading on Central Portal has been extended upto 1 Apr 2021.

Steel Import Monitoring System (29 Sep)

Imports under all HS Codes of Chapter 72, 73 and 86 shall require compulsory registration under Steel Import Monitoring System.

Bureau of Indian Standards

Extension in Effective Date of Implementation

- Acetone Quality Control Order Amended – effective date 14 Mar 2021
- Toy Quality Control Order Amended – 01 Jan 2021

Modification in Standards establishment notified

- IS 662, Anhydrous Ammonia
- IS 869, Ethylene Dichloride
- IS 10951, Polypropylene
- IS 5301, Sodium Chlorate

Free Trade Agreements

The Government has initiated review of India-ASEAN FTA, to review the duty concessions given under various product lines

Non-Tariff BIS
Notifications In India
4

Non-Tariff WTO
Notifications by Others
225

United States — Tariff Measures on Certain Goods from China

DS543: Panel Report dated 15 Sep

This dispute arose pursuant to recent tariff escalations initiated by the United States of America (US), popularly known as “US-China Trade War”. The US had imposed additional ad valorem duties on certain Chinese products, pursuant to an investigation conducted under Section 301 of Trade Act of 1974. Section 301 allows powers to the US Government, to enforce trade agreements, resolve trade disputes, and open foreign markets to US goods and services, by imposing trade sanctions on countries that either violate trade agreements or engage in unfair trade practices.

The investigation conducted by the US Government revealed that China implemented unfair and immoral laws, policies and practices, which resulted in transfer of US technology and intellectual property to enterprises in China or may otherwise negatively affect American economic interests. For instance, the Chinese law on foreign investment required entities in certain industries to partner with a Chinese entity, thereby forcing transfer of technology to the Chinese entity. The US Government also referred to the discriminatory licensing regulations by the Chinese government; its outbound investment regime whereby Chinese government supported its entities in investing in innovation and technology-related sectors in other countries; and government-supported cyber intrusions into US commercial network. The US Government, thus, concluded that the Chinese policies were unfair and inequitable, and merited action under Section 301 in the form of additional duties.

China challenged the duties imposed by the US before the WTO Dispute Resolution Body, and alleged that the measures were inconsistent with the obligations under the General Agreement on Tariffs and Trade (“GATT”). In particular, China alleged that US violated the provisions of Article I:1 of the GATT, which accords a non-discriminatory treatment to all members of the WTO. Further, China alleged that US had applied duties against imports from China in excess of the bound rates, that is, the maximum ceiling rate, which US had bound itself to adhere to under the GATT.

At the outset, US contended that both the members had agreed to settle this matter outside the WTO system and China had already imposed retaliatory tariffs against US. Accordingly, the Panel should not record legal findings on the issue. However, China contended that the parties had not yet reached mutually satisfactory solution, and did not agree to terminate the proceedings.

Further, the US failed to submit any written document to prove existence of a mutually agreed solution. Therefore, the Panel found that the proceedings must conclude with a legal finding from the Panel.

With regard to the legality of its measures and the allegations raised by China, the Panel noted that the imposition of additional duties on Chinese products resulted in an “advantage” to other countries, which was denied to the Chinese imports. Thus, US had violated the provisions of Article I:1 of the GATT. Further, the Panel noted that the tariff binding of US provides an upper limit on the amount of duty that may be imposed by it. However, in the present case, US had imposed duties in excess of its bound rates, thereby violating the provisions of Article II of the GATT.

In its defence, US claimed that its actions were justified under Article XX(a) of GATT, which carved out exceptions to the obligations under GATT, for protection of public morals. US emphasized that the Section 301 report found that China's acts, policies, and practices amount to "state-sanctioned theft and misappropriation of US technology, intellectual property, and commercial secrets”, which violates the public morals prevailing in US.

The Panel found that even though the instrument imposing additional duties did not refer to public morals, there may be an implied nexus between the measures and public morals objective. However, the Panel opined that the mere invocation of a public morals objective under Article XX(a) does not automatically render any WTO-inconsistent action acceptable. Rather, US was required to show that the measures were “necessary” to protect the public morals objective. However, US failed to show a nexus between the measures applied and the public morals objective. The Panel found that US had not been able to demonstrate how the products, on which additional duties were imposed, benefitted from unfair practices of China. Further, US was not able to explain how the products selected by it for additional duties contributed to its public morals objective. Thus, the Panel found that the measures did not fall under the exception under Article XX(a) and were not consistent with GATT.

The effectiveness of the Panel's decision is yet to be seen as US is clear on its stand that some issues can only be resolved bilaterally. It seems that US is trying to send the message that not all issues can be adjudicated upon. This stand, however, is of a time where “might ruled over law”. Nonetheless, the Panel's Report is important in the current climate where countries are taking actions in the garb of national security, and where “trade war” has become a common term. The Panel's compartmentalised scrutiny of the measures must be borne in mind by member countries before applying such 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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