



# ADHYATAN

*TPM Newsletter*

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*The WTO Agreement on Subsidies and Countervailing Measures (“ASCM”) was brought into force to regulate the use of subsidies granted by National as well as sub-national governments. It also covers the remedies that the countries can resort to, in order to counter the effect of subsidies. The Agreement categorically divides subsidies into prohibited subsidies and actionable subsidies. Prohibited Subsidies are further categorized as export subsidies and local content subsidies, under Article 3.1. Article 27 of the ASCM provides for special and differential treatments to developing countries that involves a gradual phasing out of these export subsidies. The purpose of providing such a special treatment and allowing sufficient time for transition is to ensure compliance with the Agreement and increase participation of member countries in international trade while also acknowledging that subsidies play a larger role in the economic development of developing nations.*

### **Developing countries under Article 27**

*Article 27 of ASCM applies to two categories of developing countries, that is the developing countries which have been mentioned in Annex VII of ASCM and other developing countries. Annex VII includes countries like Bolivia, Cameroon, Congo, India, Indonesia, Pakistan etc., which are excluded from application of Article 3.1 (a) till the time they attain GNP per capita of \$1000 per annum. Annex VII also includes least developed countries that are designated as such by the United Nations.*

*Article 27.2 (a) of ASCM states that the prohibition on export subsidies shall not be applicable to developing member nations mentioned under Annex VII and clause (b) states that it shall not be applicable to other developing country members for a period of eight years, from the date of entry into force of the WTO Agreement. The countries falling under clause (b) will have to progressively phase out their subsidies with the time period. Further, the provisions of Article 27.2 (b) shall also apply to the developing countries mentioned under Annex VII (b) once they attain a GNP per capita of \$1000 per annum. For the local content requirement subsidies under Article 3(1)(b), Article 27.3 provides the developing countries a transition period of five years to discontinue such subsidies.*

*Compared to a developing country, least developed countries have been granted an additional transition time to phase out the export subsidies. Accordingly, least developed countries are allowed to maintain such subsidies till the time they declare themselves to be developing countries.*



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*Further, with regards to the local content subsidies, least developed countries are required to phase out the same within 8 years from the of coming into force of the WTO Agreement*

*Under the ASCM, a developing country cannot increase the level of its export subsidies. Rather, if a developing member country is of the opinion that a subsidy is not essential to their economic development, they can choose to eliminate such subsidies even before the expiry of the eight years transition period. In case a developing country wants to extend the transition period, a consultation with the Committee can be requested to determine whether such extension is justified. In case of a positive affirmation, the concerned developing country has to hold annual consultations with the Committee for constant review of such extension.*

*The biggest benefit accorded to developing countries under Article 27 is the additional time to phase out their export subsidies. The other benefit that the developing countries get is termination of countervailing duty investigation if the authorities determine:*

- a. The overall subsidies granted upon the product in question so not exceed two per cent of its value calculated on per unit basis or*
- b. The volume of subsidized imports represents less than 4 per cent of the total imports of the like product in importing member, unless the imports of developing countries collectively account for 9 per cent of the total imports of like product in the importing members.*

*If any of the developing countries, eliminates their export subsidies prior to the eight year period provided to them, the abovementioned two per cent criteria will be made lenient and will be increased to 3 per cent. This benefit is available to these countries for a period of eight years.*

*However, the ASCM also ensures a system of checks and balances on developing countries through the concept of export competitiveness. The term is defined under Article 27.6 and accordingly, it is said to exist in a product if the product has reached a share of at least 3.25% in the world trade with respect to that product. This export competitiveness can be determined based on a notification of developing country itself on reaching export competitiveness or on the basis as determined by the WTO Secretariat at the request of any of its members.*



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Once a developing member nation achieves export competitiveness, Article 27.5 requires such members to phase out their export subsidies within two years of reaching such export competitiveness. An additional benefit granted on the developing member countries mentioned under Annex VII (b) is that on reaching export competitiveness in one or more products, they are required to gradually phase out export subsidies on such products over a period of 8 years. As per the Doha Decision, it was declared that eight year time period for eliminating export subsidies mentioned in Article 27.5 will begin for LDCs as well once they have reached the level of export competitiveness as mentioned in Article 27.6

### **India's status as a developing country**

As mentioned above, Annex VII of ASCM in clause (b) includes countries like India in the list of developing countries which are exempted from the application of Article 3.1 (a) in terms of Article 27.2 (a) till the time they attain GNP per capita \$1000 per annum. As per the WTO Secretariat, India's GNP per capita exceeded \$1000 per annum consecutively for the periods 2013-2015 and 2014-2016. This implies that following the graduation from Annex VII (b), India is no longer excluded from the application of Article 3.1 (a) and that any export subsidies that exist must now be discontinued. However, the transition period allowed for the discontinuation of the subsidies has become a contentious issue.

USA approached the WTO Dispute Settlement Body for discontinuation of the export subsidies provided under the following schemes/measures by India:

1. Export oriented unit (EOU) scheme and sector specific schemes including electronic hardware technology parks (EHTP) and bio-technology parks (BTP) scheme;
2. Export promotion capital good (EPCG) scheme;
3. Merchandise exports from India scheme (MEIS);
4. Special Economic Zones (SEZ) scheme; and
5. Duty-free imports for exporters scheme (DFIS).

Among other contentions regarding the validity of the subsidies provided under the above-mentioned schemes, one of the major contentions put forth by US was regarding India's status as a developing country and the transition period allowed for discontinuation of export subsidies.



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*Accordingly, USA argued that India attained the GNP per capita of more than \$1000 per annum in the years 2014-2016 and therefore, it should have discontinued the above-mentioned export subsidies immediately, since the 8 year transition period available to developing countries from the date of coming into force of WTO agreement, had already expired.*

*Contrarily, India was of the view that the developing countries so mentioned in Annex VII (b) must be given the transition period of 8 years provided under Article 27.2 (b) from the time it attains GNP per capita more than \$1000 per annum and not from the date of coming into force of the WTO agreement. Therefore, the transition period for discontinuation of subsidies extended till 2025 as claimed by India and did not end in 2003, as claimed by USA. Further, India argued that any interpretation otherwise would render “Article VII(b) ineffective or inutile, and would run contrary to the object and purpose of the SCM Agreement.”*

*The Panel rejected India’s arguments and held that Annex VII(b) clearly provides that conditions under Article 27.2 (b) were applicable to members mentioned therein when they achieved GNP per capita more than \$1000 per annum. Thus, the 8 years transition period applicable to countries mentioned under Article 27.2 (b) which expired on 1st January, 2003 was applicable to India and thus, India was no longer excluded from the application of Article 3.1 (a). The Panel further held that this interpretation would not render Article VII(b) ineffective since the transition period enjoyed by countries mentioned therein was in no way less than the 8 years. Accordingly, the Panel recommended that India must discontinue the export subsidies provided under the five schemes within a period of 6 months. India has already appealed against the decision of the WTO Panel which will have implications regarding the status of developing countries. While the dispute is pending before the now dysfunctional WTO Appellate Body, India is not required to discontinue the contentious export subsidies.*

*The special and differential treatment provisions under ASCM allows that the developing countries and least developed countries be given some flexibility and additional time for proper and full implementation of the ASCM. They provide the developing countries to apply measures in order to increase their trade opportunity and to safeguard their interests. The WTO Panel report is expected to have serious implications for developing countries who continue to grant subsidies for their economic development.*



## Trade Remedial Actions in India

### Termination of investigations

- *Anti-dumping investigation concerning imports of Isononanol (INA) originating or exported from European Union and Singapore; 2-Propylheptyl Alcohol (2-PH) from European Union and 2-Ethyl Hexanol (2-EH) from Saudi Arabia and Singapore. (11 Nov)*
- *Anti-dumping investigation concerning imports of Mono Ethylene Glycol originating or exported from Kuwait, Oman, Singapore and UAE. (20 Nov)*

### Final Findings

- *Final findings issued recommending non-exclusion of ECFG from the scope of the product under consideration of anti-dumping duty imposed on imports of Certain Float Glass originating or exported from China PR. (26 Nov)*

### Duties recommended

- *Interim anti-dumping duty recommended concerning imports of Rubber Chemical PX-13 originating or exported from China PR, Korea RP and USA. (11 Nov)*
- *Continuation of anti-dumping duty recommended concerning imports of Fully Drawn Yarn (FDY) originating or exported from China PR. (23 Nov)*
- *Continuation of anti-dumping duty recommended concerning imports of Float Glass originating or exported from China PR. (26 Nov)*
- *Continuation of anti-dumping duty recommended concerning imports of Acrylonitrile Butadiene Rubber originating or exported from Korea RP. (24 Nov)*
- *Imposition of anti-dumping duty concerning imports of New Pneumatic Radial Tyre of Rubber for Buses and Lorries, with or without Tubes or Flaps originating or exported from Thailand. (27 Nov)*

**Customs Notifications**

- *Extension of anti-dumping duty on imports of Carbon Black used in Rubber Applications till 31<sup>st</sup> December 2020. (9 Nov)*
- *Continuation of anti-dumping duty on imports of Woven Fabric (having more than 50% Flax content) from China PR and Hong Kong. (10 Nov)*
- *Revocation of anti-dumping duty imposed on Acrylic Fibre from Thailand. (11 Nov)*
- *Imposition of anti-dumping duty on imports of Clear Float Glass from Malaysia. (11 Nov)*
- *Extension of anti-dumping duty on imports of Phthalic Anhydride from Japan and Russia till 31<sup>st</sup> January 2021. (19 Nov)*
- *Further extension of anti-dumping duty on imports of Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester from China PR and Thailand upto 31<sup>st</sup> December 2020. (26 Nov)*
- *Continuation of anti-dumping duty on imports of Fluorotelomers (FKM) from China PR. (27 Nov)*
- *Extension of anti-dumping duty on imports of Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles from China PR till 31<sup>st</sup> December 2021. (27 Nov)*

Ongoing anti-dumping investigations

**58**

Ongoing anti-subsidy investigations

**8**

Investigation Initiated

**0**

Ongoing safeguard investigations

**2**

Findings Issued

**6**

## Trade Remedial Actions against India

### United States of America

#### **Initiation of anti-dumping and countervailing duty investigation on imports of Utility Scale Wind Tower. (10 Nov)**

DOC initiated anti-dumping and countervailing duty investigation concerning imports of Utility Scale Wind Tower originating and exported from India, Malaysia and Spain. For India, DOC initiated investigation on 69 subsidy programs

#### **USITC issued affirmative determination regarding dumping of Forged Steel Fittings. (10 Nov)**

USITC issued affirmative determination concerning dumping of Forged Steel Fittings from India and Korea. DOC will issue anti-dumping duty orders on imports of these products from India and Korea and countervailing duty orders on these products imported from India.

### European Union

#### **Termination of partial interim review of anti-dumping and countervailing measures on imports of Certain Graphite Electrode Systems from India. (3 Nov)**

The European Commission terminated the partial interim review of anti-dumping and countervailing measures on imports of Certain Graphite Electrode Systems from India. The measures have been in force since 2004. The review was initiated on an application filed by Hindustan Electro Graphite Limited.

## Other Trade Remedial Actions

### Argentina

- Termination of anti-dumping investigation on imports of Aluminium Tubes from Brazil and China PR. (5 Nov)
- Initiation of anti-dumping investigation on imports of Crowns, Pinions for Chains of the Types used in Motorcycles from China PR. (5 Nov)
- Initiation of anti-dumping investigation on imports of Toluene Diisocyanate from USA. (5 Nov)

### **Australia**

- *Continuation of anti-dumping duty on imports of Steel Reinforcing Bar from Korea RP, Singapore, Spain and Taiwan. (6 Nov)*
- *Continuation of anti-dumping duty on imports of Certain Grinding Balls from China PR. (11 Nov)*

### **European Union**

- *Termination of anti-subsidy investigation on imports of Certain Hot Rolled Stainless Steel Sheets and Coils from China PR and Indonesia. (9 Nov)*

### **China**

- *Preliminary ruling issued concluding dumping and injury to the domestic industry due to imports of m-Cresol from Japan, European Union and USA. (7 Nov)*

### **Indonesia**

- *Initiation of safeguard investigation on imports of Expansible Polystyrene in form of Granules. (18 Nov)*

### **South Africa**

- *Preliminary determination issued for termination of safeguard investigation on imports of U, I, H, L and T Sections of Iron or Non-Alloy Steel. (9 Nov)*

### **Turkey**

- *Initiation of anti-dumping investigation on imports of Tempered or Laminated Safety Glass from China PR and Israel. (14 Nov)*
- *Final Findings issued recommending imposition of safeguard measures for a period of 3 years on imports of Polyethylene Terephthalate Chips (PET). (13 Nov)*

### **United Kingdom**

- *Initiation of anti-dumping investigation concerning imports of Wire Rod from China PR. (5 Nov)*

**United States of America**

- *Initiation of double sunset review investigation of anti-dumping duty on imports of Welded Line Pipe from Turkey and countervailing duty from Turkey and Korea (2 Nov)*
- *Initiation of double sunset review investigation of anti-dumping duty and countervailing duty on imports of Potassium Phosphate Salts from China (3 Nov)*
- *Initiation of sunset review investigation of anti-dumping duty and countervailing duty on imports of Melamine from China (2 Nov)*
- *Initiation of sunset review investigation of anti-dumping duty on imports of Cut-to-Length Carbon Steel Plate from China PR and review of suspended investigation of anti-dumping duty on imports of Cut-to-Length Carbon Steel Plate from Russia and Ukraine. (2 Nov)*
- *DOC imposes preliminary countervailing duty on imports of Passenger Vehicles and Light Truck Tires from Vietnam (4 Nov)*
- *Initiation of anti-circumvention inquiries concerning anti-dumping duty and countervailing duty on imports of Oil Country Tubular Goods from China. (5 Nov)*
- *USITC finds that expiry of anti-dumping duty on imports of Oil Country Tubular Goods from China would likely lead to continuation or recurrence of material injury. (6 Nov)*
- *DOC issued affirmative preliminary determinations in anti-circumvention investigation concerning anti-dumping duty and countervailing duty imposed on imports of Uncoated Paper from China. (9 Nov)*
- *USITC finds that US industry is materially injured by imports of Aluminum Foil from Armenia, Brazil, Oman, Russia and Turkey. (12 Nov)*
- *DOC issued affirmative preliminary determination in anti-dumping investigation into imports of Prestressed Concrete Steel Wire Strand (PC strand) from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia and Ukraine. (13 Nov)*

**United States (cont..)**

- *Initiation of anti-dumping investigation concerning imports of Polyester Textured Yarn from Indonesia, Malaysia, Thailand and Vietnam (18 Nov)*
- *USITC finds that expiry of anti-dumping duty on imports of Non-oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, and Taiwan; and countervailing duty on imports of Non-oriented Electrical Steel from China and Taiwan would likely lead to continuation or recurrence of material injury. (18 Nov)*
- *USITC finds that US industry is materially injured by reason of imports of Thermal Paper from Germany, Japan, Korea, and Spain. (20 Nov)*
- *DOC issues affirmative preliminary determinations in countervailing duty investigation into imports of Twist Ties from China. (24 Nov)*
- *DOC issues affirmative preliminary determinations in countervailing duty investigation into imports of Phosphate Fertilizers from Morocco and Russia. (24 Nov)*

**Vietnam**

- *Initiation of review investigation concerning anti-dumping duty imposed on imports of Certain Aluminium Products from China PR. (18 Nov)*



## *Bureau of Indian Standards*

### ***Mandatory Standards issued***

- *IS 12540, Acrylonitrile*
- *IS 5149, Maleic Anhydride*
- *IS 14707, Methyl Acrylate*
- *IS 14708, Ethyl Acrylate*
- *IS 14709, n- Butyl Acrylate*
- *IS 4105, Styrene (Vinyl Benzene)*
- *IS 12345, Vinyl Acetate Monomer*

### ***Effective date of mandatory standards extended till 17<sup>th</sup> Jan***

- *IS 5158, Phthalic Anhydride*

### ***Free Trade Agreement***

- *India has indicated that talks with EU shall be resumed soon in order to negotiate India-EU BTIA*
- *15 member countries viz. 10 ASEAN countries, Australia, China, Japan, New Zealand South Korea signed RCEP (Regional Comprehensive Partnership Agreement) on 15th November, after 8 years of negotiations.*

### ***Foreign Trade Policy (FTP)***

*DGFT is inviting suggestions regarding New Foreign Trade Policy. Inputs can be given at <https://bit.ly/3khHEI2>*

*Non-Tariff BIS  
Notifications In India*

**9**

*Non-Tariff WTO  
Notifications by Others*

**310**



## 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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