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ADHYATAN

TPM Newsletter

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Message from the Founder



I am happy to forward the anniversary edition of TPM Newsletter on TPM Anniversary Day. As many of you are already aware, TPM was founded 22 years back on 2nd February. Since then, it has stood with domestic producers, seeking protection against dumped or subsidised imports into the Country, which are causing injury to the Indian industry. The laws, policies, procedures and practices have evolved very significantly in last two decades.

The Department has grown from a stage of stage of “Anti-Dumping Cell” to “Anti-Dumping Division” to “Directorate General of Anti-dumping & Allied Duties” to “Directorate General of Trade Remedies” in these years; and has gradually strengthened both in terms of manpower and skills. The Directorate is now handling all spheres of trade defence, not limited to anti-dumping duties in India.

As you may be aware of, Government has brought a number of important amendments in the trade defence laws. These will enhance powers of the Central Government to regulate the period of duty and address circumvention of duties. While the duties were earlier imposed for the period for 5 years, the law now provides that the duty can be upto 5 years, which implies that the Government can impose the duties for a shorter period. Further, the Government is now empowered to suspend duties upto one year. In fact, duties have been suspended on a number of products for the period upto 30th September 2021 in the Union Budget 2021. Consideration of a number of recommendations by Ministry of Finance in the recent past is also indicative of significant change in the thinking of the Ministry of Finance with regard to trade remedial laws and practices. We have covered details of the major amendments in this newsletter.

We welcome your feedback, as it would be a valuable guiding factor in our continuous endeavour to improve.

Regards,
A. K. Gupta

Trade Remedial Actions in India

Number of investigations initiated 1
Number of findings issued 17
Duties recommended but not imposed 3
Ongoing anti-dumping investigations 37
Ongoing anti-subsidy investigations 4
Ongoing safeguard investigations 2

Other Trade Updates

Number of non-tariff notifications by India 17
Number of non-tariff notifications by others 310

Anti-Dumping and Anti-Subsidy Law

Amendment to the definition of domestic industry under the Anti-Subsidy Rules

In the amendments made vide Budget 2020, the definition of domestic industry under Anti-Subsidy Rules had been made quite restrictive², to automatically exclude all producers who have imported the product under consideration or are related to exporter or importer of the product under consideration. Further, the amendment made had rendered the definition inconsistent with the WTO Agreement.

The definition of the domestic industry has now been amended again to allow discretion to the Designated Authority to include or exclude a producer, which has imported the product under consideration or is related to an importer or exporter. The amendment would provide much awaited relief to the domestic industry, which was hitherto being prevented from filing application due to even minor imports, for R&D or during shutdowns. Moreover, the amendment makes the definition of domestic industry under the Anti-Subsidy Rules consistent with the WTO Agreement, as well as in line with the provisions of the Anti-Dumping Rules.

Introduction of anti-absorption provisions

In the amendments made vide Budget 2021, anti absorption provisions have been inserted with respect to anti-dumping duty and anti-subsidy by amending Sections 9 and 9A respectively. Under the newly inserted sub-sections, where the Central Government is of the opinion that anti-dumping or anti-subsidy duty have been absorbed, it may modify such duty to counter the effect of such absorption. Absorption of duty would refer to a situation when export price of an article decreases without commensurate change in resale price in India of goods imported from the exporting country.

Additional timelines imposed for sunset review investigations

The DGTR has prescribed the timelines for filing application for sunset review, which require that, as a general rule, the application seeking extension of duties should be filed 270 days prior to expiry of the duty. As per the existing Rules, any investigation initiated is required to be completed within twelve months from the date of initiation. However, following the recent amendments to the Anti-Dumping Rules and Anti-Subsidy Rules, the sunset review investigation should be completed at least three months prior to the expiry of the duty under review. While the amendment allows the Ministry of Finance to study the need for extension of duties based on the recommendation of the Designated Authority, it also tightens the deadlines on the domestic industry. This amendment would be applicable with effect from 1st July 2021.

² [TPM Newsletter, 2 of 2020 – Special Budget Edition – Definition of domestic industry](#)

Period of imposition of duties

Hitherto, the Customs Tariff Act provided for imposition of anti-dumping and anti-subsidy duties were imposed for a period of five years. However, the provision has now been amended to provide that the duties may be imposed for a period of upto five years, implying that the Central Government has been given explicit power to impose duties for a shorter period.

Suspension of duties for one year

Under the provisions of Customs Tariff Act, anti-dumping and anti-subsidy duty may be revoked where the Central Government is of the opinion that such revocation is not likely to lead to continuation or recurrence of dumping or injury. Vide Budget 2021, the law has been amended to provide that the period of suspension of duties shall not exceed one year at a time.

Exemption to EOUs and SEZs

The application of anti-dumping and anti-subsidy duty to EOUs and SEZs has been redefined. Under the new amended provisions, duties imposed are not applicable to articles imported by a 100% EOU or a unit in SEZ unless such duty is specifically made applicable to such units. Further, the duty shall not apply to such units unless articles imported are cleared to the domestic tariff area or are used to manufacture goods cleared to the domestic tariff area.

Rules applicable to sunset reviews under Anti-Subsidy Rules

The Rules applicable for sunset reviews under Anti-Subsidy Rules have been corrected to provide that the provisions for requirements for initiation of investigation, termination of investigation, suspension or termination of investigation on acceptance of price undertaking, and refund of duty are not applicable to sunset reviews. This has aligned the provisions governing sunset reviews under Anti-Subsidy Rules with the provisions under the Anti-Dumping Rules.

Provisional assessment and provision for guarantee in anti-circumvention investigations

A vital amendment made in the provisions relating to anti-circumvention cases, is the introduction of provisional assessment. According to the amendment, the central government will have the power to provisionally assess imports of goods that are allegedly circumventing anti-dumping or anti-subsidy duty, subject to a recommendation from the Designated Authority, and ask for a guarantee from the importer till a final decision on the imposition of duties is made by the government. The amendment is intended at making administration easier for the Customs authorities and avoid the complexities regarding retroactive duties. Further, with effect from 1st July 2021, any review of anti-circumvention measures must also be concluded at least three months before the expiry of duty.

Safeguard Law

Introduction of machinery provisions governing tariff rate quotas

Vide Finance Bill 2020, the Central Government had been empowered to impose safeguard measures in the form of tariff rate quotas¹. In this budget, the Government has notified Rules governing the manner in which the tariff rate quotas would be determined and applied.

The present amendment has introduced the definition of the term “safeguard measure” which includes safeguard duty or tariff rate quota or any other measure that may be imposed under Section 8B (1) of the Customs Tariff Act, 1975.

Further, Rule 11, governing recommendations by the Director General, has been amended to provide that the Director General may now recommend a measure, either in the form of duty or tariff rate quota, to prevent or remedy the serious injury caused to the domestic industry. Under said sub-rule, it must be ensured that traditional trade flow of article over the representative period, existing and likely demand supply scenario and any other conditions are considered while imposing the tariff rate quota. Further, the tariff rate quota should not reduce the quantity of imports below the level of recent period, which is to be determined based on the average of imports in the last three years.

Tariff rate quota recommended under Rule 11 may either be global or country specific. Where specific tariff rate quota is allocated to the countries, such allocation should be proportional to the share of imports from such country in the representative period. In addition to country specific tariff rate quotas, a residual tariff rate quota shall be provided for all countries.

However, where countries with specific tariff rate quotas exhaust their quotas, they may utilize such residual quota. Any unused tariff rate quota can be carried forward and added to the tariff rate quota for the subsequent period. The Rules have also been amended to provide that the Director General may review the usage and implementation of tariff rate quota for any modifications.

Notification of the exporting country and volume of imports

The Director General is now required to notify, in the notice of initiation for safeguard investigations, the names of the exporting countries and volume of imports.

¹ [TPM Newsletter, 3 of 2020 – March Edition – Budget 2020: Introduction of Tariff Rate Quotas](#)

Exclusion of developing countries, having low volume of exports

While the Safeguard Rules provide for imposition of the measure on a non-discriminatory basis, a proviso has been introduced to Rule 13 to provide that safeguard measures shall not be imposed on articles imported from a developing country, provided that the share of imports from such country does not exceed 3%.

Where there are more than one developing countries, having a share of less than 3%, then no safeguard measures shall be imposed if the aggregate volume of imports from such countries does not exceed 9%. This amendment brings Safeguard Rules in line with the Agreement on Safeguards. However, even before the amendment, India had been following the same approach.

Notification to WTO and Consultations

While India had already been fulfilling the obligation of notifying WTO under the Agreement on Safeguards, the Rules have been amended to codify the obligation under the Indian law as well. Further, before imposition of safeguard measures, an opportunity for consultations must be provided to the members of WTO having substantial interest as the exporters of the product.

Major Updates

India

Appointment of Shri Anant Swarup as Designated Authority

Consequent upon promotion of Shri B.B. Swain as Secretary (MSME), the Govt. has appointed Shri Anant Swarup, Joint Secretary as the Designated Authority.

European Union

Withdrawal of anti-dumping and anti-subsidy measures imposed by European Union, on imports into the United Kingdom (18 Jan)

The European Union has notified that all anti-dumping and anti-subsidy measures in force in the European Union shall no longer be applicable on imports into the United Kingdom with effect from 1st January 2021, and shall only apply on imports into 27 members. Further, if the investigations pending on 1st January lead to imposition of measures, such measures shall not be applicable on imports from the United Kingdom. Further, the European Commission has also notified that any interested party may seek review of duties in force, if it submits evidence that the measures would have been significantly different had the investigation been based on information excluding United Kingdom.

Other Updates

Suo motu initiation of sunset review into imports of porcelain / vitrified tiles (22 Jan)

The DGTR has initiated a sunset review on imports porcelain / vitrified tiles. The application was initiated based on application and information from Gujarat Granito Manufacturers Association, Indian Council for Ceramic Tiles and Sanitaryware, Morbi Ceramics Association and Sabarkantha District Ceramics Association. However, since the tiles industry was fragmented, with almost 244 producers, of which 90% belonged to the MSME sector, the applicants were not able to provide the data for the domestic industry.

Therefore, taking cognizance of the difficulties in collection of information for the domestic industry, the DGTR initiated the review on its own initiative, and has asked the domestic producers to file the data subsequent to the initiation.

Certain types of newsprint included in scope of product under consideration, but excluded from scope of recommended levy (19 Jan)

In a first-off case, in the final findings in anti-dumping investigation concerning imports of newsprint, the DGTR found it appropriate to include newsprint of 42 GSM within the scope of product under consideration, as the domestic industry had manufactured the same. However, considering that the supply of such newsprint was significantly less than the demand for the product, the DGTR did not recommend imposition of duty on newsprint of 42 GSM. Such an approach is a welcome step for the domestic industry as it often happens that the domestic industry has not produced certain product types or produced them in limited quantities, which leads to their exclusion from the scope of product. If the industry later produces such products and suffers injury due to the imports, it would necessitate a fresh investigation for the product. However, with the present approach, the domestic industry would be able to seek inclusion of the product by filing for a mid-term review, leading to a shorter investigation.

Consideration of export restraints on raw materials as provision of subsidies by the Government (15 Jan)

In the anti-subsidy investigation concerning imports of Flat Products of Stainless Steel from Indonesia, the DGTR found that the Government of Indonesia had retained the right of exports of certain inputs used for production of subject goods, namely mineral and coal products. The DGTR found that there were certain restrictions of exports, as the exports of minerals were allowed only if they satisfied a minimum level of processing requirements and there were domestic market obligations in the case of coal. It was also noted that the export of nickel ore was subject to export tax.

As a result of such export restraints, the price of such inputs in the domestic market of Indonesia reduced. Consequently, the DGTR concluded that by placing such restraints, the Government of Indonesia was, in effect, conferring a subsidy on the producers of stainless steel by providing the inputs at less than adequate remunerations. Accordingly, the DGTR quantified the subsidy based on the difference between the price actually paid by the producers of stainless steel and the price that would have been payable in the absence of such measures.

The aforesaid approach has given the DGTR teeth to effectively redress the distortion caused by government-induced distortions in the market, as a result of export restraints. This is particularly necessary as the effect of such distortions is difficult to capture in anti-dumping investigations, whereas they may be a critical factor leading to unfair and uncompetitive imports.

Export subsidies provide an unfair competitive advantage to recipients in competition with other players in the export markets, and accordingly, the Agreement on Subsidies and Countervailing Measures (ASCM) expressly prohibits them. However, certain developing countries have been allowed to continue exports subsidies for a limited period. Annex VII refers to two set of such countries: least developed countries designated as such by the UN which are WTO members and certain developing countries . India was part of the second set of such countries. Further, as per Article 27.2(b) of ASCM, other developing countries were allowed to phase out subsidies over a period of eight years from the date of agreement. Article 27.4 of the ASCM states that any developing country Member referred to in 27.2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner; but shall not increase the level of its export subsidies, and shall eliminate them within a shorter period when the use of such export subsidies is inconsistent with its development needs. Any extension beyond eight years was required to be considered in consultations with WTO committee along with appropriate justification.

In 2018, the United States Trade Representative (USTR) requested consultations in WTO and challenged India's export subsidy programs. USTR claimed that India no more falls in the category of those countries, that may provide certain such subsidies, which are otherwise prohibited by WTO. USTR further mentioned that India is continuing to provide export subsidies to Indian Exporters, as a result of which Indian exports are getting financially benefited or by which they are able to sell their products at low price. The USTR claimed that such subsidies are harming American manufacturers and workers.

The WTO Panel agreed with the United States and found following programs in violation of WTO rules and gave India six months to withdraw these prohibited subsidies.

- Merchandise Exports from India Scheme (MEIS)
- Export Oriented Units Scheme and related sector specific schemes (EOU)
- Special Economic Zones (SEZ)
- Export Promotion Capital Goods Scheme (EPCG); and
- Duty free imports for exporters program (DFIS)

On 19th November 2019, India notified the Dispute Settlement Board of its decision to appeal the decision of the Panel before the Appellate Body, with regard to certain issues of law and legal interpretations in the panel report. India requested the Appellate Body to reverse the

As per the ASCM, developing countries were allowed to continue export subsidies for a limited period. India was one of the countries allowed to continue export subsidies for a specific period.

In 2018, the USTR challenged the export subsidies conferred by the Indian Government on the basis that they are prohibited and harming American manufacturers.

The Panel agreed with the United States and found that certain export subsidies given by the Government of India were in violation of WTO requirements, including MEIS, EOU, SEZ, EPCG and DFIS.

India has challenged the finding of the WTO Panel before the Appellate Body.

¹ https://www.wto.org/english/docs_e/legal_e/24-scm_03_e.htm#annVII

Panel's findings, and that Article 27.2(b) of the ASCM does not apply to developing country members graduating from Annex VII(b). India requested the Appellate Body to find that developing country members graduating from Annex VII(b) are also entitled to an eight-year phase-out period for eliminating their export subsidies. WTO notified India's appeal and circulated to the members on 22nd November 2019.

While the matter is sub-judice, India took cognizance of the situation and began to formulate export incentive programs, which are WTO compliant. The RoDTEP (Remission of Duties or Taxes on Export Products) scheme was therefore conceptualized and has been considered an appropriate substitute in place of MEIS (Merchandise Exports from India Scheme). The scheme aims at refunding all possible taxes and interest applicable from purchase of raw material to finished goods used for exports, which do not get offset; thereby making Indian exports competitive, while at the same time remaining WTO compliant. As per Ministry of Finance: The RoDTEP scheme would refund to exporters the embedded Central, State and local duties/taxes that were so far not being rebated /refunded and were, therefore, placing our exports at a disadvantage. The refund would be credited in an exporter's ledger account with Customs and can be used to pay Basic Customs duty on imported goods. The credits can also be transferred to other importers.

The scheme was slated to be rolled out in phases beginning 1st January 2020. However, the roll out got delayed and the Government extended MEIS scheme for the period upto 31st March 2020. Major developments regarding MEIS discontinuation and introduction of RoDTEP scheme were being expected with new Foreign Trade Policy coming into place. Again, due to COVID-19 pandemic, Foreign Trade Policy FTP 2015- 20 was extended upto 31st March 2021; and MEIS was also extended upto 31st December 2020. Meanwhile, there was not much clarity on what the industry could expect; and experts who studied the basis of fixing rates under RoDTEP were of the opinion that the scheme will give little benefit as compared to MEIS.

On 30th July 2020, Government notified constitution of a committee for determination of ceiling rates under RoDTEP. The committee is responsible for working out the modalities for calculation of duties/taxes/ levies at the Central, State and Local level, borne on the exporter product, including prior stage cumulative indirect taxes on goods and services used in the production of exported product and indirect taxes/duties/levies in the respect of distribution of exported

While the matter continues to be sub-judice, India has begun to formulate export incentive programs which are WTO compliant.

RoDTEP was conceptualized as a substitute for MEIS.

RoDTEP aims at refunding all Central, State and local duties / taxes applicable from purchase of raw material to finished goods used for export, that were so far not being rebated / refunded.

While the scheme was initially slated to be rolled out on 1st Jan. 2020, it has been delayed. In view of the COVID-19 pandemic, MEIS was extended till 31st Dec. 2020.

Government has notified constitution of committee for determination of ceiling rates.

product and recommend in their report the ceiling rates of RoDTEP for the items/ sectors identified by the Government. Exports promotion councils, commodity boards, trade and industry associations and chambers of commerce were notified regarding formulation of the committee along with formats which could be used to give their inputs in the desired manner.

On 31st December 2020, Ministry of Finance announced roll out of the scheme for all export goods with effect from 1st January 2021. However, RoDTEP rates are yet to be notified based on recommendation of RoDTEP committee. Once the rates are notified, eCom system would automatically calculate the RoDTEP amounts for all the items where RoDTEP was claimed. In this regard, DGFT has notified advisory, along with step by step guide, on ICEGATE. The advisory states as follows:

“A new scheme, RoDTEP (Remission of Duties and Taxes on Exported Products) has been launched by the government for exporters. The scheme provides for rebate of Central, State and Local duties/taxes/ levies which are not refunded under any other duty remission schemes. The broad provisions are as under:

- I. To avail the scheme exporter shall make a claim for RoDTEP in the shipping bill by making a declaration.*
- II. Once EGM is filed, claim will be processed by Customs*
- III. Once processed a scroll with all individual Shipping Bills for admissible amount would be generated and made available in the users account at ICEGATE,*
- IV. User can create RoDTEP credit ledger account under Credit Ledger tab. This can be done by IECs who have registered on ICEGATE with a DSC*
- V. Exporter can log in into his account and generate scrip after selecting the relevant shipping bills.*

2. As of now the users can log into their ICEGATE account and create the RoDTEP Credit Ledger Account, as scrip generation provision will be made functional on the issuance corresponding notification by the department and availability of the budget. Implementation of scheme in Custom Automated System has been developed”

While Government prepares to notify rates under RoDTEP and an advisory has been issued for industry to follow, industries are not clear how and to what extent this new scheme shall be an appropriate substitute to MEIS in terms of benefits. Further, while it is intended that the scheme and rates under the same will be WTO compliant, it needs to be seen how WTO members perceive it in the long term.

The Government has notified export promotion councils, commodity boards, trade and industry associations and chambers of commerce, seeking inputs in fixing ceiling rates.

While the rates have not yet been notified, the Ministry of Finance has announced roll out of the scheme with effect from 1st Jan 2021. However, the RoDTEP rates have not yet been notified.

DGFT has issued an advisory, with step-by-step guide on ICEGATE.

It is still unclear to what extent this new scheme shall be an appropriate substitute to MEIS, or how it would be perceived by the WTO members in the long-term.

² As on 1st Feb 2021. Notification of rates is expected anytime soon

³ https://content.dgft.gov.in/Website/RoDTEP_Advisory.pdf

Trade remedial actions in India

Initiation of investigations

- Sunset review investigation initiated concerning imports of Vitrified / Porcelain Tiles from China PR. (22 Jan)

Mid Term reviews concluded

- Final findings in mid term review investigation concerning imports of Nylon Filament Yarn from Russia recommending exclusion of BCF yarn with denierage from 650 decitex to 10,000 decitex from scope of anti-dumping duty. (22 Jan)

Duties recommended

- Final findings issued recommending continuation of anti-dumping duty on imports of Phthalic Anhydride from Russia and cessation of anti-dumping duty from Japan. (5 Jan)
- Final findings issued in sunset review investigation after re-examination of likelihood of continuation/recurrence of dumping and injury in case of expiry of current measures in force in view of the directions of CESTAT recommending continuation of anti-dumping duty on imports of Nonyl Phenol from Chinese Taipei. (7 Jan)
- Final findings issued recommending imposition of anti-dumping duty on imports of Ciprofloxacin Hydrochloride from China PR. (7 Jan)
- Final findings issued recommending continuation of anti-dumping duty on imports of Plain Medium Density Fibre Board from Malaysia, Thailand and Sri Lanka (8 Jan)
- Final findings issued recommending imposition of anti-dumping duty on imports of Dimethyl Formamide from China PR and Saudi Arabia. (11 Jan)
- Final findings issued recommending imposition of countervailing duty on imports of Flat Products of Stainless Steel from Indonesia. (15 Jan)
- Final findings issued recommending imposition of anti-dumping duty on imports of Newsprint in rolls or sheets, excluding glazed newsprint from Canada, European Union, Russia, Singapore, Australia and UAE. (19 Jan)
- Final findings recommending imposition of anti-dumping duty on imports of Soda Ash from Turkey and USA. (19 Jan)
- Final findings recommending continuation of anti-dumping duty on imports of Methylene Chloride from China PR. (20 Jan)
- Final findings recommending continuation of anti-dumping duty on imports of Cold-Rolled Flat Products of Stainless Steel from China PR and Korea RP and cessation of duties when imported from European Union, Taiwan, USA, Thailand and South Africa. (20 Jan)

Duties recommended

- Final findings recommending imposition of anti-dumping duty on imports of Aniline from China PR. (20 Jan)
- Final findings in anti-circumvention investigation recommending extension of anti-dumping duty on imports of PTFE from Russia to Korea RP and extension of anti-dumping duty on imports of Polytetrafluoroethylene from China PR to PTFE products i.e. Rod, Sheets, Tape, Tube and Thread Steel Tape. (27 Jan)
- Final findings recommending imposition of anti-dumping duty on imports of Black Toner in Powder Form from China PR, Malaysia and Taiwan. (28 Jan)
- Final findings recommending imposition of anti-dumping duty on imports of Phenol from Thailand. (28 Jan)
- Final findings recommending imposition of anti-dumping duty on imports of Toluene Di-Isocyanate from European Union, Saudi Arabia, Chinese Taipei and UAE. (28 Jan)
- Final findings recommending imposition of anti-dumping duty on imports of 1-Phenyl-3-Methyl-5-Pyrazolone from China PR. (28 Jan)

Termination of investigation

- Countervailing duty investigation into imports of Soda Ash from Turkey terminated. (27 Jan)

Duties recommended but not imposed

- Anti-dumping duty on imports of Carbon Black from China PR and Russia. (5 Jan)
- Provisional anti-dumping duty on imports of Rubber Chemical PX-13 from China PR, Korea RP and USA. (6 Jan)
- Continuation of anti-dumping duty on imports of Front Axle Beam meant for use in Medium and Heavy Commercial Vehicles from China PR (28 Jan)

Customs Notifications

- Extension of anti-dumping duty on imports of Melamine from China PR till 28th February 2021. (6 Jan)
- Continuation of anti-dumping duty on imports of Steering Knuckles used in Medium and Heavy Commercial Vehicles from China PR. (28 Jan)
- Imposition of definitive bilateral safeguard measures on imports of Polybutadiene Rubber from Korea RP. (28 Jan)

Trade Remedial Actions against India

USITC issues final determination that countervailable subsidies are being provided to producers of Fluid End Blocks from China PR, Germany, India and Italy. (6 Jan)

USITC has found that the industry in US is materially injured as a result of dumped and subsidized imports of fluid end blocks from China PR, Germany, Italy and India.

Initiation of anti-dumping and countervailing investigation on imports of Granular Polytetrafluoroethylene (PTFE) Resin from India and Russia. (27 Jan)

USITC has initiated investigation to determine whether material injury is being caused by dumping of granular PTFE resin when imported from India and Russia and whether countervailable subsidies are being provided on such products.

Other Trade Remedial Actions

Argentina

- Initiation of sunset review investigation of anti-dumping duty concerning imports of Air Conditioning Equipment from Thailand. (4 Jan)
- Initiation of anti-dumping investigation concerning imports of Electric Heaters from China PR. (11 Jan)

Australia

- Initiation of continuation inquiry regarding anti-dumping duty imposed on Pineapple (Consumer and FSI) from the Philippines and Thailand. (25 Jan)

Canada

- Termination of anti-dumping investigation on imports of Hot-rolled Carbon Steel Heavy Plate and High-strength Low-alloy Heavy Plate from Turkey by Ereğli Demir ve Çelik Fabrikaları T.A.Ş. (7 Jan)
- CBSA issued final determination of dumping on imports of Certain Hot-rolled Carbon Steel Heavy Plate and High-strength Low-alloy Heavy Steel Plate from Chinese Taipei and Germany. (7 Jan)
- Termination of anti-dumping and countervailing investigation on imports of Certain Decorative and other Non-structural Plywood exported from China PR in respect of certain companies, and final determination of dumping and subsidization in respect of the other exporters from China PR. (21 Jan)
- Initiation of normal value review regarding exports of Carbon Steel Fasteners by certain exporters from China PR and Taiwan. (25 Jan)

European Union

- Imposition of provisional anti-dumping duty on imports of Certain Hot-rolled Flat Products of Iron, Non-Alloy or Other Alloy Steel from Turkey. (7 Jan)
- Initiation of partial interim review of anti-dumping duty imposed on imports of Certain Hot-Rolled Flat Products of Iron, Non-Alloy or Other Alloy Steel from Russia. (18 Jan)

Eurasian Economic Commission

- Extension of anti-dumping duties on imports of Seamless Stainless-steel Pipes from Ukraine from February 26, 2021 to October 18, 2021. (4 Jan)

Gulf Cooperation Council

- HS Codes applicable in safeguard investigation concerning imports of Certain Steel Products modified. (18 Jan)

Malaysia

- Termination of safeguard investigation on imports of Ceramic Floor and Wall Tiles Products imported into Malaysia. (11 Jan)
- Revision of anti-dumping duty pursuant to an administrative review of anti-dumping duty imposed on imports of Cold Rolled Coils Alloy and Non-Alloy Steel from Vietnam. (23 Jan)

Philippines

- Provisional findings issued recommending imposition of safeguard measures on imports of Motor Vehicles. (7 Jan)

Turkey

- Initiation of anti-dumping investigation concerning imports of Hot Rolled Flat steel from European Union and Korea RP. (9 Jan)
- Extension of safeguard measure on imports of Toothbrushes for a period of 3 years till 2 Feb 2024. (13 Jan)
- Initiation of safeguard investigation into imports of wallpaper and similar wall coverings. (16 Jan)

Ukraine

- Termination of anti-dumping investigation on imports of Aluminium Wheels from China PR and Russia. (16 Jan)

United States of America

- Initiation of expiry review of anti-dumping and countervailing duties on import of Magnesia Carbon Bricks from China PR and Mexico. (4 Jan)
- USITC released findings that no material injury is being caused to the US industry by imports of 4th Tier Cigarettes from Korea RP. (5 Jan)
- DOC issued affirmative final determinations in the anti-dumping and countervailing investigations on imports of Vertical Shaft Engines between 225cc and 999cc and parts thereof from China PR. (5 Jan)
- USITC issued findings that material injury is being caused to the US industry by imports of Fluid End Blocks from Germany and Italy. (6 Jan)
- DOC issued affirmative preliminary determination in the anti-dumping investigation on imports of Passenger Vehicle and Light Truck Tires from Korea RP, Taiwan, Thailand and Vietnam. (6 Jan)
- USITC issued findings that material injury is being caused to US industry by imports of Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine and UAE. (8 Jan)
- USITC issued findings that countervailable subsidies are being provided to produces of Prestressed Concrete Steel Wire from Turkey. (8 Jan)
- DOC issued affirmative final determinations in the anti-dumping investigation on imports of Difluoromethane (R-32) from China PR. (12 Jan)
- Initiation of anti-dumping and countervailing investigations on imports of R-125 (Pentafluoroethane) from China PR. (12 Jan)
- USITC issued findings that material injury is being caused by dumped and subsidized imports of Wood Mouldings and Millwork Products from China PR. (22 Jan)
- Extension of safeguard measures imposed on imports of Large Residential Washers for a further period of 2 years. (22 Jan)
- USITC issued findings that expiry of anti-dumping duty and countervailing duty on imports of Passenger Vehicles and Light Truck Tyres from China PR is likely to lead to injury. (26 Jan)
- DOC issued findings that expiry of anti-dumping duty on imports of Barium Chloride from China PR is likely to lead to continuation or recurrence of dumping. (27 Jan)
- USITC issued findings that expiry of anti-dumping duties on imports of Hand Trucks from China PR is likely to cause injury. (28 Jan)
- DOC issues affirmative final determinations in the countervailing investigation on imports of Corrosion Inhibitors from China PR. (29 Jan)

Foreign Trade Policy

RoDTEP implemented with effect from 1 Jan

The DGFT has notified the implementation of Remission of Duties or Taxes on Export Products (RoDTEP) scheme with effect from 1st January 2021. However, the rates of refund under the scheme have not yet been notified. The DGFT has also issued an advisory explaining the manner in which the benefit under the scheme may be availed.

Authorization to issue Certificate of Origin (8 Jan)

The All India Plastics Manufacturers' Association has been authorized to issue non-preferential Certificate of Origin.

Electronic issuance of Preferential Certificate of Origin for UK (11 Jan)

UK has been added as a country of export on the electronic platform for issuance of Certificate of Origin under the Generalised Scheme of Preferences (GSP). Goods that meet the UK GSP Rules of Origin requirements are eligible to claim a GSP rate of import duty on the basis of valid proof of origin.

Introduction of e-PRC system for seeking policy / procedure relaxations (28 Jan)

The DGFT has introduced e-PRC system for seeking policy / procedure relaxations under the Foreign Trade Policy. With effect from 25th Jan 2021, all applications seeking relaxations are mandatorily required to be submitted online.

Coal subject to Coal Import Monitoring System (28 Jan)

Coal import policy changed to "Restricted" and is subjected to Coal Import Monitoring System (CIMS). Importers are required to apply, no later than 60 days after consignment arrives, and seek registration through online portal. The CIMS system will be effective from 1st April 2021.

Free Trade Agreements

India-Eurasian Economic Union

India- EAEU (The Eurasian Economic Union) FTA appears to be in sight now. Moscow took initiative and has indicated support for the same.

Bureau of Indian Standards

Notification to WTO regarding intention to introduce mandatory BIS

India has notified to the WTO regarding its intention of making BIS mandatory for

- Non-transparent packaging material for water,
- Ortho phosphoric acid,
- 100 Percent polyester spun grey and white yarn,
- Ethylene vinyl acetate copolymers,
- Linear alkyl benzene,
- Polyester industrial yarn,
- Polyester continuous filament fully drawn yarn,
- Polyester partially oriented yarn,
- Polyethylene,
- Polyester staple fibres and
- Styrene-butadiene rubber latex

Modification of Standards

The following standards have been modified. The modified standards were made applicable starting Dec 2020, and the old standards discontinued on 30th Jan 2021

- Phosphorus Oxychloride,
- Cyclohexylamine,
- Hydrazine Hydrate

Pakistan – Anti-dumping Measures on Biaxially Oriented Polypropylene Film from United Arab Emirates

DS538: Panel Report, dated 18 January 2021

The present dispute arose pursuant to the United Arab Emirates (UAE) challenging the anti-dumping measures imposed by Pakistan against imports of biaxially oriented polypropylene (BOPP) film from UAE and other countries along with the sunset review investigation of said duties. UAE particularly challenged the stale evidence used in the investigation, injury analysis, causation analysis, likelihood analysis and the duration of said investigations.

The facts leading to the present dispute are that Pakistan initiated an investigation into imports of BOPP film from UAE and other countries in September, 2010. However, in March 2012, the initiation was held void by Islamabad High Court due to defect in composition of the investigation authority, National Tariff Commission (NTC). The court however permitted the NTC to proceed with complaints pending before it. In April 2012, the NTC initiated a second investigation and made a final determination in February, 2013 imposing anti-dumping duties till August, 2015. However, the Anti-dumping Appellate Tribunal of Pakistan set aside the said findings and remanded the matter to NTC, due to defect in the composition of NTC. In April 2015, the NTC made final determinations in the investigation, which was effectively ratification of the previous findings of 2013 as well as the duties therein. Thereafter, in August, 2015 the NTC initiated a sunset review investigation of the duties imposed on BOPP. However, due to judicial proceedings in an unrelated matter, the Lahore High Court held that one member of the NTC was not qualified. As a result, sunset review investigation was suspended and final determinations were ultimately made in December, 2016 extending the anti-dumping duties.

The UAE challenged the final determinations made in the original investigation in April 2015 as well as that in the sunset review investigation in December, 2016. The UAE claimed that the evidence relied on by the NTC for initiation, determination of dumping and determination of injury in the original investigation was too remote and that the determination of injury based on information pertaining to only one year of the injury period was violative of Pakistan's obligations under the Anti-Dumping Agreement. Further, the UAE claimed that Pakistan exceeded the time-limits prescribed for the original investigation as well as sunset review investigation and that its due process rights were also violated.

Pakistan defended its actions arguing that the evidence relied on for initiation, determination of dumping and determination of injury was sufficient for said purposes in view of the circumstances surrounding the investigation, since it was required to continue with the complaint pending before it. Pakistan also claimed that it analyzed the data for the entire injury period but gave more importance to data from one year as it was the last complete year before the period of investigation. Lastly, Pakistan argued that the time-limits for original and sunset

review investigation were appropriate due to the abnormal circumstances caused by multiple judicial proceedings.

The Panel accepted UAE's claims regarding the remoteness of the evidence relied on for initiation as well as for determination of dumping and injury and held that for evidence to justify the initiation of any investigation, it must pertain to current dumping, injury and causation and must be based on the most recent data. Thus, evidence which was almost two years old at the time of initiation and was more than two years old at the time of final determination was not appropriate for the abovementioned purposes.

Further, Panel accepted UAE's claim regarding the analysis of the volume of imports, price effect and economic parameters and held that an authority cannot base its determinations on evidence for only one year, without explaining the reason for not taking into account conflicting data showing positive trend in the volume, price and economic parameters for the remaining period.

The Panel, however, rejected UAE's claim regarding the duration of original investigation and held that time limits prescribed under Article 5.10 of the Anti-dumping Agreement are applicable only to the final determinations made in an investigation and any judicial review of said determination is not included within such time limit. Thus, in the present case, Pakistan adhered to the time limit for the investigation initiated in April 2012 which was concluded in February 2013, even though said determination was later set aside. Nevertheless, regarding the duration of the sunset review investigation, the Panel held that the sunset review investigations must normally be concluded within 12 months from initiation and such duration may be exceeded in abnormal circumstances, which is not the case on the present investigation. The order of the High Court, that suspended the sunset review investigation cannot be considered abnormal since the proceedings before the court were not isolated but were rather one in a number of proceedings pertaining to the same issue of defect in composition of the authority and thus, Pakistan failed to adhere to the time limits prescribed under the Agreement.

The Panel report lays down important jurisprudence with regard to the need for utilization of recent information at the stage of initiation, and completion of investigations within the prescribed period of time. However, the Indian law already takes care of the issue inasmuch as the definition of period of investigation introduced in Budget 2020 makes it clear that an investigation must use data not older than 6 months at the stage of initiation. Further, while the law allows the Designated Authority to complete an investigation within 12 months, further extendable by 6 months, the DGTR has been completing investigations much earlier than the prescribed time period. Further, with the recent budgetary amendments providing for conclusion of sunset review investigation at least three months before the expiry of duty, it is unlikely that the sunset review in India require a longer time than that prescribed.

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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