



ADHYATAN

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When I started TPM, the question most frequently posed to me was why I resigned from Government service and started practice in such a small area of trade remedies. Back in 1990s, a news item published in US stated that “the most powerful tool that an economy can have is anti-dumping”. At that time nobody could have envisaged that India would become one of the major users of trade remedial law.

Trade remedial practice in India has developed immensely in the past two decades. From a situation when it would take about 180 days for initiation and 540 days for relief, we have now come to a situation when it takes about 30 days for initiation and 365 days for recommendations, while the government keeps a target of completing the investigation within 240 days. This clearly shows the manner in which the approach of the Government can swiftly change. But the industry remains unaware of these fast changing economic and business situations. Despite recent news items clearly showing that the Government wishes to ensure a level playing field to the domestic industries, and the manner in which time frames have been drastically reduced; the industry continues to consider that a trade remedial investigation is a time consuming, complex and an uncertain process. It was therefore felt that it is very vital to inform the industry about the fast-changing situations in the Government and keep them abreast of the latest developments with regard to trade remedies. It is not only information about investigations initiated or conducted, but also with regard to the trade remedial law, process, practices, policies and methodologies, and changes and developments which concern the industry.

To discharge our obligation towards the industry, we have therefore come out with a newsletter which is intended to be published on a monthly basis. The newsletter would contain articles on live issues, practices, policies and concerns of the manufacturing sector. The newsletter is also intended to be the voice of the manufacturing sector since TPM has devoted itself de-facto to the cause of manufacturing sector in India.

It gives me immense pleasure to present to you the first newsletter of TPM. I welcome your views and suggestion with regard to coverage, topics, frequency of circulation, depth of news, mode of transmission, etc.

**Regards,
A. K. Gupta**

India has been following the lesser duty rule in its anti-dumping and anti-subsidy investigations, which means that duty is imposed to the extent of dumping/ subsidy margin or injury margin, whichever is lower. While the lesser duty rule had been introduced to ensure that the interests of the users are protected and exorbitant duties are not imposed on products, over time, it has turned into a menace for the Indian industry, as it often leads to the entire purpose of trade remedial investigations being defeated. This has led to the domestic manufacturers calling for the removal of the lesser duty rule itself.

Failure of lesser duty rule to meet the desired objective

The primary reason why the domestic producers are calling for the removal of lesser duty rule in India is the manner in which the rule has been followed in the country. The injury margin under the present law is calculated as the difference between the non-injurious price and the landed price. While theoretically, the non-injurious price is supposed to be a fair selling price, at which there would be no injury to the domestic industry; it is sometimes even lower than the cost of production of the product.

This is because the non-injurious price is a factor of an efficient cost of the product calculated based on certain assumptions. As per these assumptions, if there is any change in consumption of raw materials, utilities and capacities over the period, such a change is deemed to be an inefficiency of the domestic industry. However, the approach fails to take into account practical realities such as changes in product mix, substitutability of raw materials, fluctuating quality of raw materials and other bona fide variations. As a result, the costs are unduly suppressed, and the resultant non-injurious price and injury margin are often insufficient to afford due

Call for removal of lesser duty rule due to hardships faced by the Indian industry .

Duty levied based on injury margin may not be sufficient to protect the interests of the industry

Practical realities may not be considered in determination of fair selling or non-injurious price

Fair selling price often below the cost of production of the product

Focus of anti-dumping investigations shifts from dumping margin to injury margin calculation

protection to the domestic industry. Another failure of the lesser duty rule is that the DGTR is often forced to spend maximum effort and resources on the determination of non-injurious price, and the determination of dumping takes the backseat.

However, the worst sufferers of the lesser duty rule are undeniably the small-scale producers. This is because the calculation of non-injurious price requires detailed costing information, which the small-scale producers often find difficult to compile. Therefore, the application of lesser duty rule results in trade remedial measures being available only to the large-scale producers, as the small-scale producers do not have sufficient expertise and resources, or maintain detailed records necessary to provide the requisite information. The removal of lesser duty rule is expected to bring much needed relief to the small-scale producers by ensuring trade remedial measures remain accessible to all.

Removal of lesser duty rule in larger public interest

The removal of lesser duty rule would also help to ensure that India achieves its objectives under the Make-in-India campaign of the Hon'ble Prime Minister. As the country goes through an economic slowdown, the removal of lesser duty rule is expected to give a much-needed boost to the domestic manufacturing sector. By discouraging unfair imports, it would also help to reduce dependency on unnecessary imports, bridge the trade deficit and ease the pressure on the foreign exchange reserves of the country. It would, therefore, be a step in the right direction for the country as it looks to achieve the target of \$5 trillion economy.

Further, it would also promote investment in manufacturing sector in India. Contrary to the popular belief, the removal of lesser duty rule would

Small scale producers are often unable to even file an application due to the stringent costing data requirements under lesser duty rule.

Adequate duties would help prevent unfair imports and provide a boost to the manufacturing sector in India

Removal of lesser duty rule would also help to ensure that India achieves its objective of reducing dependency on imports.

Withdrawal of the rule would also encourage investment by industries and bridge demand-supply gaps.

not increase the demand-supply gap in goods within the country. Instead, protection from unfair imports would encourage industry to undertake capacity additions. Therefore, the removal of lesser duty rule would go a long way towards ensuring a vibrant manufacturing sector in India.

Keeping step with the changing global situation

While the Indian industry had been suffering from the adverse consequences of the lesser duty rule for long, the call for removal thereof became stronger due to the changing regulations and practices in global trade. While India applied lesser duty rule, other countries such as China and USA apply duties to the full extent of dumping or subsidy margin. Further, other countries such as Australia, Mexico and New Zealand applied the rule only selectively. Even European Union amended its law to remove the provisions of lesser duty rule completely under subsidy law and for selective application in anti-dumping law. However, even in cases where lesser duty rule is applied, it is followed in a more liberal manner than it is done in India. Therefore, a need was felt for the law in India to be amended to keep pace with the global practice.

Favorable times ahead

While the lesser duty rule has been a bane for the Indian industry, the situation is soon expected to change for the good. Taking cognizance of the plight of the Indian industry, Shri Piyush Goyal, Hon'ble Minister, Commerce and Industry, had announced in September, 2019 that the lesser duty rule would be removed. It is, therefore, expected that the rule would be amended in the foreseeable future, to allow much needed respite to the industry in India. However, it is imperative that the amendment comes sooner rather than later, to prevent further unnecessary hardships to the domestic producers due to unfair trade practices of the exporters.

Lesser duty rule not applied by any other country globally in the manner as it is followed in India.

Larger economies like USA and China also do not follow lesser duty rule.

European Union has amended its law to withdraw application of lesser duty rule from anti-subsidy investigations and for selective application in anti-dumping investigations.

Necessary that lesser duty rule in India be withdrawn soon to prevent unnecessary hardships to domestic producers.

The World Trade Organisation's crown jewel, the dispute settlement system, is under threat as the Appellate Body has been rendered inoperative due to lack of any new appointment since 2017. All disputes settled by the WTO Panel are appealable before the Appellate Body. However, while the minimum number of Members required on a Bench are three, the Appellate Body has only one member left, due to which, the Appellate Body cannot take up any appeal. The crisis is due to the fact that the United States has vetoed the appointment of any new judge since 2017, citing legal and procedural overreach of the dispute settlement system.

To keep the second tier of the dispute settlement system alive, the European Union, along with 16 other members of the WTO, have resolved to opt for arbitration proceedings as a substitute to an appellate body, as provided under Article 25 of the Dispute Settlement Understanding. This would only act as a contingency measure as the Members continue to look for a permanent solution to resolve the Appellate Body crisis.

The Appellate body had played a significant role in ensuring a consistent, predictable, and stable narrative on the rules-based trading system. The arbitration agreement, born under Article 25 of the Dispute Settlement Understanding, would act as the second step after a Panel Report, which needs to be appealed.

At present, Australia, Brazil, Canada, Chile, China, Colombia, Costa Rica, European Union, Guatemala, Republic of Korea, Mexico, New Zealand, Norway, Panama, Singapore, Switzerland and Uruguay, along with the European Union have agreed to resolve the issue with an arbitration agreement. This interim arrangement will remain open to other WTO members as well, thereby ensuring effectivity with a broader attraction.

This solution provides a parallel dispute settlement structure to the existing WTO framework. Members have the option of choosing arbitration for the entirety of the dispute or just the appeals stage. The solution also provides the members with an option to set up the arbitration procedures similar to those the appellate body follows. Additionally, outside parties to the dispute would not be able to influence the arbitration process, unlike in the selection of judges for the Appellate Body. While the arbitration procedure may carry extra perks, if the United States does not join this arrangement then the WTO enforcement regime would have no power over the world's largest economy.

What is the way forward for India?

At present, it is not clear whether India would become a party to the interim arrangement. If the Government decides to refrain from an external dispute resolution process, it will face many challenges. The most significant problem would be an ineffective closure of disputes, as parties to the dispute can still appeal to the Appellate Body. The appeals would not be rejected, they would only remain open till the Appellate Body is reconstituted to the capacity required to hear the disputes. This lag would allow parties to evade their obligations to follow the Panel Report by sending every report for an appeal so that the dispute remains open indefinitely.

India may also be able to individually agree to arbitrate with certain members for certain disputes, since Article 25 of the Dispute Settlement Understanding allows for such an arrangement. However, India has been sceptical towards international arbitrations because of its history of losing to developed countries. Despite the past, India can consider to be a part of this arrangement, or a similar arrangement, because these arbitrations would most likely to be bound by the WTO rules, under the aegis of this stable and predictable body, and as a second step in the dispute settlement ladder, and not the first. Regardless, the road ahead would be slippery for India in this rules-based trading system, if it chooses to not be a part of this arrangement.

Removing the Appellate Body of the Dispute Settlement Body significantly impedes the effectiveness of the rules-based trade system since it would allow for disputes to be carried on indefinitely, or to continue without a check on them. The stability promised by this system would not be carried forward without this body, which is of utmost importance to the existence of WTO. The Article 25 solution shows promise in fixing these problems. While, it may not work as efficiently without the inclusion of the United States, it will work sufficiently well for a temporary fix.

Trade Remedial Actions in India

Initiation of investigations

- *Anti-dumping investigation into imports of Ciprofloxacin Hydrochloride from China (10 Jan)*
- *Anti-dumping investigation into imports of Viscose Spun Yarn from China, Indonesia and Vietnam (14 Jan)*
- *Anti-dumping investigation into imports of Dimethyl Formamide (DMF) originating from China and Saudi Arabia (14 Jan)*
- *Anti-dumping investigation into imports of Newsprint, in rolls or sheets, from Australia, Canada, European Union, Hong Kong, Russia, Singapore and UAE (20 Jan)*
- *Anti-dumping investigation into imports of Soda Ash from Turkey and USA (22 Jan)*
- *Anti-dumping investigation into imports of Aniline from China (24 Jan)*

Customs Notifications

- *Imposition of countervailing duty on imports of Continuous Cast Copper Wire Rods from Indonesia, Malaysia, Thailand and Vietnam (8 Jan)*
- *Modification of anti-dumping duty on imports of Sodium Nitrite from China (24 Jan)*
- *Imposition of provisional duty on imports of Digital Offset Printing Plates from China, Japan, Korea RP, Taiwan and Vietnam (30 Jan)*

Ongoing
anti-dumping
investigations
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Ongoing
anti-subsidy
investigations
5

Ongoing
safeguard
investigations
6

Investigations
initiated
6

Findings
issued
0

Trade Remedial Actions against India

United States of America

Forged Steel Fluid End Blocks from China, Germany, India, and Italy

On 9th January 2020, U.S. Department of Commerce (DOC) initiated new anti-dumping duty and countervailing duty investigations regarding forged steel fluid end blocks from Germany, India and Italy which are alleged to be receiving unfair subsidies. The petition was filed by FEB Fair Trade Coalition. Final determinations in these cases are scheduled for 27th May 2020 for the CVD investigations and 10th August 2020 for the AD investigations.

Polyester Textured Yarn from China and India

The investigations were initiated following receipt of petition filed by Unifi Manufacturing, Inc., Greensboro, North Carolina; and Nan Ya Plastics Corp. America, South Carolina. The product under consideration is polyester textured yarn. The U.S. International Trade Commission (USITC) notified its final determination that the industry is injured by reason of subsidized imports from China and India. The final affirmative determinations of these investigations were notified by Commission on 3rd January, 2020.

Quartz Surface Products from India and Turkey

The investigations were initiated based on petition filed by Cambria Company LLC, Eden Prairie, Minnesota. On 3rd January, 2020 the USITC issued a notice for scheduling of the final phase anti-dumping and countervailing duty investigations in order to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of quartz surface products from India and Turkey. It has been preliminary determined by the U.S. DOC to be subsidized and sold at less-than-fair-value.

Other Trade Remedial Actions

United States of America

- *Anti-Dumping and Countervailing Duty Investigations regarding Vertical Shaft Engines from China instituted by USITC (16 Jan)*
- *Initiation of full review of the anti-dumping duty on certain Frozen Fish Fillets from Vietnam (14 Jan)*
- *Initiation of Investigation for Primary and Secondary Pure and Alloy Magnesium Metal from Israel by USITC (13 Jan)*
- *Initiation of Antidumping Duty Investigation of Imports of 4th Tier Cigarettes from Korea at less than fair value by USITC (08 Jan)*
- *U.S. Department of Commerce issues Affirmative Preliminary Antidumping Duty Determination on Collated Steel Staples from China (03 Jan)*

Canada

- *Initiation of Scope Proceedings for Certain Fabricated Industrial Steel Components from China, South Korea and Spain (17 Jan)*
- *Initiation of expiry review concerning the dumping of certain Hot-Rolled Carbon Steel Plate exported from Ukraine (07 Jan)*

European Union

- *Initiation of an expiry review of the anti-dumping measures applicable to imports of Monosodium Glutamate exported from China and Indonesia (21 Jan)*
- *Initiation of expiry review of the anti-dumping measures applicable to imports of Citric Acid originating in the China (20 Jan)*
- *Imposition of definitive safeguard measures by European Union against import of certain steel products (16 Jan)*
- *Imposition of definitive anti-dumping duty on imports of Peroxosulphates (persulphates) originating in or exported from China (16 Jan)*

Malaysia

- *Final determination of anti-dumping measures on imports of Steel Concrete Reinforcing Bar Products exported from Republic of Singapore and the Republic of Turkey (21 Jan)*

Standards Notified:

- IS 642 [Varnish Medium for Aluminium Paint],
- IS 900 [Induction Motors],
- IS 1231 [Foot Mounted Induction Motors],
- IS 1410 [Coir Ropes],
- IS 1448 [Petroleum & Its Products],
- IS 1462 [Talc for Cosmetic Industry],
- IS 1611 [Symbols for Rubber and Latices],
- IS 7424 [White Sugar in Solid State],
- IS 11877 [Automotive Vehicles],
- IS 12458 [Fire Resistance of Through Penetration Firestops],
- IS 13360 [Injection Moulding of Thermoplastic Materials],
- IS 15223-1, IS 15305 [Natural Gas],
- IS 16338 [Fibre Ropes],
- IS 60034-8 [Rotating Electrical Machines],
- IS 61508-1 [Electrical/ Electronic/ Programmable Electronic Safety- Related Systems]

Standards Withdrawn:

- IS 2206 (Part1): 1984 [Specification for Flameproof Electric Lighting Fittings Part1 Well-Glass and Bulkhead Types]

Amendments Notified:

- IS 170 [Acetone],
- IS 1391 [Room Air Conditioners],
- IS 2796 [Motor Gasoline],
- IS 11329 [Finned Type Heat Exchanger for Room Air Conditioners],
- IS 12540 [Acrylonitrile],
- IS 17021 [Admixture of Anhydrous Ethanol and Gasoline],
- IS 17076 [Admixture of Anhydrous Methanol and Motor Gasoline]

Extension of Time for Licenses:

- Aniline,
 - Acetic Acid and
 - Methanol
- Mandatory BIS with effect from 3rd August, 2020

Non-Tariff BIS Notifications
In India

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Non-Tariff WTO
Notifications by Others

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Nobel NC Co. Ltd.
versus
Designated Authority, DGAD & Allied Duties
Final Order No. 51668-51669/2019

In the above case, the Thai exporters challenged the determination of normal value by the Authority.

The exporters from Thailand claimed that there were strict licensing requirements imposed by the Thai Government, due to which the prices of the product under consideration in the domestic market of Thailand were distorted. The exporters, therefore, claimed the domestic sales should not be considered for determination of normal value and instead, normal value should be calculated on the basis of exports to third countries.

To ascertain whether licensing requirements would cause price distortion, CESTAT examined the nature thereof. It was seen that the requirements merely seek to regulate the use of the product in Thailand to ensure public safety. There was no restriction on the quantity or value of imports. Further, there was no mechanism to fix the selling price in the domestic market. A user had to obtain the license for the product, whether imported or procured domestically. Thus, CESTAT did not find any merit in the argument that the licensing requirements led to any distortion in the market, as a result of which the normal value could not be determined on the basis of domestic sales.

Further, CESTAT noted that sales of the product in the domestic market of the exporting country, can be disregarded for determination of normal value, as not being in ordinary course of trade, by reason of price. However, the same was not accepted in this case, as it was found that not only were there substantial sales of the product in the domestic market, but also the same were profitable.

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 unenviable 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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