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Trade Remedial Actions in India

Number of investigations initiated	2
Number of findings issued	5
Duties imposed or continued	.....	3
Duties recommended but not imposed	.....	5
Ongoing anti-dumping investigations	.....	35
Ongoing anti-subsidy investigations	.....	3
Ongoing safeguard investigations	.....	0

Other Trade Updates

Number of non-tariff notifications by India	.....	2
Number of non-tariff notifications by others	.....	251

India

CESTAT sets aside orders of Ministry of Finance deciding not to impose duties recommended by DGTR. (27 Oct)

The Central Excise and Service Tax Appellate Tribunal (CESTAT) has set aside the Office Memorandum of the Ministry of Finance wherein it had notified its decision not to impose duties recommended by the DGTR on imports of Choline Chloride from China PR, Malaysia and Vietnam. The Tribunal has held that the decision of Central Government to not impose duties can be challenged in appeal. Further, the Tribunal has held that the Central Government was required to record reasons to indicate considerations made before reaching a decision, especially where the Central Government decides not to follow the recommendations made by the DGTR. For more details, kindly refer Page 20.

WTO

WTO members exchange views on measures, practices at Anti-Dumping Committee meeting (27 Oct)

The WTO Committee held a meeting to review anti-dumping practices of WTO members and the latest notifications of new and amended anti-dumping laws and regulations. This includes views on new notifications issued by India, Columbia and United Kingdom. In case of India, the notification regarding the period of investigation and revised timelines for sunset review investigations was discussed. 45 members notified the Committee regarding anti-dumping actions undertaken by them in the period covering 1st January – 30th June 2021. Russia also placed on agenda the issue of “United States – Examination Whether to Continue to Treat the Russian Federation as a Market Economy Country for the Purpose of Anti-Dumping Duty Law.”

Introduction of anti-absorption provisions in India

Namrita Raghuwanshi, Joint Partner

One of the amendments made vide Budget 2021 was the introduction of anti-absorption provisions with respect to anti-subsidy and anti-dumping duties levied by inserting Section 9(1B) and Section 9A(1B)¹ in the Customs Tariff Act respectively. This amendment was long due since trade remedial laws in other jurisdictions like European Union, United States of America etc., have had such provisions in place since inception. Recently, the Central Government vide Notification No. 84/2021-Customs (N.T.) dated 27th October 2021 notified rules for conducting an anti-absorption review. The Rules provide for the procedural requirements for conducting an anti-absorption investigation.

Meaning of absorption of duties – The anti-dumping duties or anti-subsidy duties under the Rules, are absorbed when export prices of an article from the exporting country(ies) decrease post imposition of the anti-dumping duty without any commensurate change in (a) cost of production of such article or (b) export prices of such article to countries other than India or (c) resale price of such article in India imported from the exporting country(ies).

The definition of absorption of duties provided in the Act and the Rules considers a situation where the export price has declined. There can be a situation where the resale price of the imported goods does not increase sufficiently post imposition of duty, leading to a decline in ultimate export price. For example, assuming that post imposition of duty, the CIF export price has remained the same. However, the importer, having imported the goods after payment of duty, does not increase its own resale price sufficiently to reflect the impact of the anti-dumping duty. This will lead to decline in net export price for dumping margin determination. This would result in the anti-dumping duty being ineffective, as the importer did not pass on the price increases to the consumer. As a result, the price in the market remains low, and does not allow the desired price increase in the market.

When can an application for anti-absorption review be filed – The Rules provide that the domestic industry or any other interested party can file an application seeking initiation of review normally within two years from the date of imposition of definitive anti-dumping duty. The use of the word “normally” ensures flexibility in the time limits prescribed, provided the reasons for consideration of application after two years are recorded by the Authority before acceptance thereof. The Rules, however, also state that the application for anti-absorption review shall not be accepted in cases with less than twelve months’ period remaining for the anti-dumping duty to expire.

In Budget 2021, provisions concerning anti-absorption review were introduced in anti-dumping and anti-subsidy laws.

Vide Notification dated 27th October 2021, the Central Government has notified the rules for conducting such reviews. These rules contain the procedural requirements for an anti-absorption review.

Absorption refers to a situation where the export price of the product decline post imposition of duty, so as to negate the effect of duties.

An application for review may be filed normally within two years of the imposition of duty. No application can be filed less than twelve months before expiry of duty.

1. Article on “Anti-absorption provisions for ensuring desired effect of duties”, Newsletter 3 of 2021 <https://tpm.in/wp-content/uploads/2021/04/Adhyatan-TPM-Newsletter-Issue-3-of-2021.pdf>

Initiation of investigation – The Authority may initiate the investigation either upon receipt of written application or suo moto. The application should contain sufficient evidence as to the existence of the circumstances pointing to absorption of the anti-dumping duty in force. The requirement of sufficient evidence though could be easily met in case where export price has declined. But in case the resale price has not increased sufficiently, the interested parties can at best provide sample sales invoices by importers as evidence. Further, response from the importers will be as equally important as response from exporters in an anti-absorption review.

Investigation procedure – The procedure for anti-absorption review will be similar to anti-dumping and anti-subsidy investigations governed by Rule 6 and Rule 7 respectively of Anti-Dumping Rules and Anti-Subsidy Rules. However, following specific procedural rules have been notified for anti-absorption review:

1. The Designated Authority may make recommendations to the Central Government for provisional assessment of the imports, pending conclusion of the review, based on which the Central Government may ask a guarantee from the importer.
2. The investigation will be limited only to re-computation of dumping / subsidy and injury margins, and injury and causal link would not be required to be re-established.
3. The investigation shall be concluded within six months from the date of initiation. However, in special circumstances, after recording reasons in writing, the time limit for completion of the investigation can be extended for another three months.

Determination of Absorption – Once the Designated Authority concludes that the anti-dumping or anti-subsidy duties were being absorbed, it may recommend modification of (a) form or basis of duties (b) quantum of duties (c) or both. Further, such modification may apply retrospectively from the date of initiation of investigation.

The framing of the Rules is a welcome step towards ensuring effectiveness of the trade remedial measures. Now that the Rules are notified, the interested parties, including the domestic industry, can seek remedy against such practices. In the past, there have been cases where the duties were absorbed by the exporters. In such cases, the domestic industry had to seek remedy either by filing an application for mid-term review or wait for the sunset review. Since the practice of the Indian Authority is to conduct full investigation in reviews including determination of dumping/subsidy, injury and causal link, it imposed a greater burden to the domestic industry to address the absorption of duties. With the introduction of these Rules, the domestic industry can seek relief in an expedited manner.

The Authority may initiate the review based on an application, containing sufficient evidence of absorption of duty. The review may also be initiated suo moto by the Authority.

The Authority may prescribe provisional assessment of imports, pending conclusion of such review.

Injury and causal link are not required to be re-established in the review, as it concerns determination of margins only.

The investigation must be concluded within a period of six months, extendable upto nine months.

Pursuant to a review, the Authority may modify the form or quantum of duties.

Margins for non-sampled producers – An unresolved conundrum

Anand Nandakumar, Associate and Dhanya P. K., Associate

The WTO Anti-Dumping Agreement mandates that an investigating authority should calculate individual dumping margins for all cooperative producers/exporters from the subject country. However, in investigations where there are a large number of cooperative producers/exporters, calculating individual dumping margins for each of them may not be feasible. In such exceptional situations, the investigating authority may restrict their examination to a limited number of producers for whom individual dumping margins will be calculated. This process is called “sampling”. The sample should either be statistically valid or include the producers/exporters having the largest percentage of export volumes from the subject country which can be reasonably investigated by an authority.

Where an authority resorts to sampling, three categories of dumping margins are required to be calculated by the investigating authority:

- (i) individual dumping margins for each of the sampled producers/exporters (referred to as the “sampled category”) – the margins and quantum of duty for these producers is based on their own information
- (ii) a single dumping margin for all non-cooperative or non-participating producers/exporters (referred to as the “residual category”) – the margin and duty quantum for these producers is based on facts available and is generally higher than the duty levied on cooperative producers
- (iii) a single dumping margin for all cooperative producers / exporters, that were not considered as part of the sample by the authority (referred to as the “non-sampled category”) – the present article deals with the determination of dumping margin for this category.

As per the WTO Agreement, dumping margin for non-sampled category shall not exceed the weighted average of dumping margins calculated for the sampled category. However, in calculation of the weighted average margin, the investigating authority has to exclude:

- a. Margins below 2% (referred to as “de-minimis margins”) and
- b. Margins calculated based on facts available i.e., best verifiable information available with the investigating authority. The authority may determine the dumping margin based on facts available where the concerned producer / exporter does not cooperate fully with the authority, or the authority is unable to verify certain information.

In case where there are a large number of cooperative producers / exporters, the investigating authority may determine the dumping margin based on a sample of producers / exporters.

The dumping margin for the sampled producers/exporters would be based on their individual data.

The margins for non-cooperative producers would be based on facts available.

As per the Anti-Dumping Agreement, the dumping margin for non-sampled cooperative producers / exporters shall not exceed the weighted average margins determined for the sampled producers.

For instance, assuming an authority selects a sample of 5 producers, out of 20 cooperative producers. Of these, the dumping margin for one producer is below 2%, and the dumping margin for another producer is determined based on facts available. In such a case, the dumping margin for the 15 non-sampled cooperative producers would be based on the weighted average margin of the 3 remaining producers only.

However, an issue may arise where the dumping margins for all 5 producers in such a case is below 2% or are determined based on facts available. The WTO Agreement is silent on the methodology to be followed by an investigating authority in such cases, when all the individual dumping margins calculated for the sampled producers/exporters fall within these excluded categories.

Decisions of the WTO Panel and Appellate Body

This issue came up in United States – Laws, Regulations and Methodology for calculating Dumping Margin (Zeroing), wherein the Appellate Body observed that the WTO Agreement does not prescribe any methodology for the determination of dumping margin for the non-sampled category. Instead, it only imposes a ceiling limit, as it prescribes that the dumping margin shall ordinarily not exceed weighted average of the dumping margins for the sampled producers/ exporters. The Agreement also requires an investigating authority to exclude margins below de minimis, and margins calculated based on facts available in calculating this ceiling limit.

The Appellate Body recognized the lacuna in the Agreement when the margins of all the sampled companies have to be excluded. The Appellate Body also stated that this lacuna should neither be interpreted as lack of any obligation nor cause prejudice to the non-sampled companies. However, the Appellate Body did not suggest how the dumping margin can be calculated in such situations.

Practices in India and other jurisdictions

The provisions contained in the Indian Anti-Dumping Rules and European Union's Anti-Dumping Regulations are the same as that contained in the WTO Anti-Dumping Agreement. These provisions provide that the margins for the non-sampled category cannot exceed the weighted average dumping margin of the sampled category. Such provisions also mandate the exclusion of de-minimis margins and margins based on facts available while determining the maximum limit for margins for the non-sampled category.

However, in determination of the margins for the non-sampled producers/exporters, the margins of those sampled producers that have a margin of less than 2%, or where the margins have been determined based on facts available, shall be excluded.

An issue may arise where the dumping margin for all sampled producers/exporters is below 2%, or is determined based on facts available.

There is no WTO jurisprudence with regard to the manner of determination of dumping margin in such cases.

The law in India and European Union is *pari materia* to the WTO Anti-Dumping Agreement.

In Australia, the margins for the non-sampled category is calculated by comparing the weighted average normal value and the weighted average export price of the sampled category. The law provides that in such a determination, the following should be taken into consideration:

- a. The export price of non-sampled category should not be less than the weighted average of the export prices of the sampled category.
- b. The normal value of the non-sampled category should not exceed the weighted average normal value of the sampled category.
- c. Export price and normal value of producers/exporters found to be not dumping or having margins less than 2% must be excluded.

Therefore, India, the European Union and Australia face the same limitations as under the WTO Agreement.

According to the law of the United States of America, the margins for the non-sampled category cannot exceed the weighted average dumping margin of the sampled category after excluding de-minimis margins or margins based on facts available. However, in case where all margins of the sampled category are below de-minimis or margins based on facts available, the Authority may adopt a reasonable method to calculate the margins for non-sampled category, including averaging of these individual margins.

Possible solutions to the dilemma

The situation of all the sampled producers/exporters being awarded de-minimis margins may be quite rare, but not impossible. Possible methods to determine the margins for the non-sampled category in such situations, have been explained by means of an illustrative example.

For instance, in an anti-dumping investigation, the investigating authority has sampled 3 producers/ exporters namely A, B, and C. The dumping margins of these producers/exporters are negative, zero and positive but less than 2%.

Basis	Domestic sales (MT)	Normal value (Rs./MT)	Export sales (MT)	Export price (Rs./MT)	Dumping margin (Rs./MT)	Dumping margin (%)
Producer A	100	1,050	200	1,035	15	1.45
Producer B	125	980	125	980	0	0
Producer C	200	935	100	950	-15	-1.58
Weighted average	425	975	425	999		

The laws in Australia, European Union and India do not clarify as to what approach can be adopted in case the margins for all sampled producers/exporters are below 2%, or based on facts available.

In the United States of America, the law provides that in case where the margins for the sampled producers are below de-minimis or based on facts available, the authority may adopt a reasonable method for non-sampled category, including averaging of these individual margins.

- a. Adopting the US methodology: The margins for the non-sampled category can be determined by just taking the average of the margins of Producers A, B and C. This calculation will lead to a dumping margin of -0.35% for the non-sampled producers.
- b. Calculation of dumping margin for the non-sampled category by comparing the weighted average normal value and the weighted average export price of the sampled category - The investigating authority may calculate the dumping margin based on weighted average normal value and weighted average export price of Producers A, B and C. The dumping margin so determined will be -2.36%.
- c. Consideration of a second sample – Alternatively, the investigating authority may choose an additional number of producers/exporters selected on the basis of their export volumes, as a second sample. Since Producers A, B and C have been awarded negative, zero and de-minimis margins, the weighted average of dumping margins of producers/exporters in the second sample may be considered as dumping margin for non-sampled category. Further, in such a situation, the producers/exporters included in the second sample should also be awarded individual dumping margins. The only challenge that an investigating authority may face while applying this method would be the adherence to strict statutory timelines.

Since the WTO does not prescribe any particular methodology, the investigating authorities in different countries have the option of devising different methodologies to address the issue at hand, while also taking into consideration the time constraints of trade remedial investigations.

A few options which authorities may consider in such cases are

a. Consideration of average margins of the sampled producers / exporters.

b. Calculation of dumping margin based on weighted average normal value and weighted average export price.

c. Consideration of a second sample. However, the challenge that an authority may face here would be that an investigation would have to be concluded within statutory timelines.

Trade Remedial Actions in India

Initiation of investigation

- Sunset review of anti-subsidy duty on imports of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products from China PR (08 Oct).
- Mid-term review for change in name of exporter from Korea RP in anti-dumping investigation on imports of Aluminum and Zinc Coated Flat Products. (13 Oct).

Duties recommended

- Continuation of anti-dumping duty on imports of '1,1,1,2-Tetrafluoroethane or R-134a from China PR. (08 Oct).
- Continuation of anti-dumping duty on imports of Colour Coated/Pre-Painted Flat Products of Alloy or Non-Alloy Steel from China PR and European Union. (08 Oct).
- Continuation of anti-dumping duty on imports of Axle for Trailers from China PR. (27 Oct).
- Continuation of anti-dumping duty on imports of Wire Rod of Alloy or Non-Alloy Steel from China PR. (28 Oct).

Cessation of duties

- Anti-dumping duty on imports of PVC Flex Films from China PR. (28 Oct).
- Anti-dumping duty on imports of Phenol from Singapore. (20 Oct).

Duties recommended but not imposed

- Anti-dumping duty on imports of Melamine from China PR. (01 Oct)
- Continuation of anti-dumping duty on imports of Glass Fibre from China PR. (31 Oct)
- Continuation of anti-dumping duty on imports of Phenol from European Union. (20 Oct).
- Continuation of anti-dumping duty on imports of Polytetrafluoroethylene (PTFE) from Russia. (22 Oct).
- Anti-dumping duty on imports of Vitamin C from China PR. (27 Oct)

Customs Notification

- Extension of anti-dumping duty on imports of Jute Products from Bangladesh and Nepal till 31st May 2022. (01 Oct)
- Extension of anti-dumping duty on imports of Ceramic Tableware and Kitchenware, excluding knives and toilet items originating in China PR exported from Malaysia, pursuant to an anti-circumvention review. (04 Oct)
- Imposition of anti-dumping duty on imports of Aceto Acetyl Derivatives of Aromatic or Hetrocyclic Compounds also known as Arylides from China PR. (14 Oct)
- Continuation of anti-dumping duty on imports of Seamless Tubes, Pipes and Hollow Profile of Iron, Alloy or Non-Alloy Steel from China PR. (28 Oct)

Trade Remedial Actions against India

Australia

Initiation of sunset review investigation of anti-dumping and anti-subsidy measures on imports of Zinc Coated (Galvanized) Steel from India, Malaysia and Vietnam (06 Oct)

The Australian Anti-Dumping Commission initiated a sunset review investigation of anti-dumping measures on imports from India, Malaysia and Vietnam and anti-subsidy measures on imports from India. The measures are set to expire on 16th August 2022. The review was initiated pursuant to an application from Blue Scope Steel Limited.

Turkey

Initiation of review investigation of anti-dumping measures on imports of Metallized Textile Yarn from China PR, India, Korea RP and Taiwan (12 Oct)

The Ministry of Commerce has initiated a review of anti-dumping measures on imports of the product from China PR, India, Korea RP and Taiwan pursuant to an application filed by Simfleks Tekstil ve Ambalaj San. Trade Inc. and Hira Mensucat Fabric Tekstil Demir Tic. and San. Ltd. Sti. The anti-dumping measures on the subject goods have been in force since 2004.

United States of America

Initiation of sunset review of anti-dumping and anti-subsidy duties on imports of Welded Stainless Pressure Pipe from India (01 Oct)

US DOC has suo moto initiated the five-year sunset review of anti-dumping and anti-subsidy duties imposed on Welded Stainless Pressure Pipes from India. The duties were first imposed on 17th November 2016 and are due to expire this year.

DOC issues final affirmative determination in the expedited sunset review of anti-subsidy measures on imports of Cold Rolled Steel Flat Products from India (01 Oct)

US DOC has determined that revocation of existing anti-subsidy measures is likely to result in continuation of provision of countervailable subsidies to the producers of Cold Rolled Steel Flat Products in India. Pursuant to the review, JSW Steel Limited and JSW Steel Coated Products Limited have been accorded a 10% subsidy margin.

DOC issues final affirmative determination in the expedited sunset review of anti-dumping duty on imports of certain Cold-Rolled Steel Flat Products from Brazil, China PR, India, Japan, Korea RP and United Kingdom (05 Oct)

US DOC has determined that revocation of anti-dumping duty on imports of Cold Rolled Steel Flat Products is likely to result in continuation of dumping from such countries. The weighted average dumping margin determined for India is 7.60%, which is the lowest while the margin determined for China PR is as high as 265.79%.

DOC issues final affirmative determination in the expedited sunset review of anti-subsidy measures on imports of Corrosion-Resistant Steel Products from India (05 Oct)

US DOC has made affirmative determination regarding the likelihood of continuation of provision of countervailable subsidies if anti-subsidy measures are revoked. While other producers have been allotted a subsidy margin below 7%. Interestingly, Uttam Galva and Uttam Value Steels Limited have been allotted a margin of 530.74%.

DOC issues final affirmative determination in expedited sunset review of anti-dumping duty on imports of Corrosion-Resistant Steel Products from China PR, India, Italy, Korea RP and Taiwan (06 Oct)

US DOC has made affirmative determination regarding the likelihood of continuation of dumping if existing anti-dumping duty is revoked. The duties were originally imposed in July 2016. The margin for India has been determined as 4.43% only.

DOC issues final affirmative determination in anti-dumping and anti-subsidy investigation concerning imports of Utility Scale Wind Tower (Wind Towers) from India (13 Oct)

US DOC has determined that imports of Utility Scale Wind Towers from India are being dumped and subsidised. The USITC will make its determinations within 45 days, pursuant to which duties may or may not be imposed.

Vietnam

Continuation of anti-dumping measures on imports of Polyester Long Fibre Products from China PR, India, Indonesia and Malaysia (13 Oct)

The Ministry of Industry and Trade has decided to impose anti-dumping measures on imports from India, Indonesia, Malaysia and China PR on finding that dumping of the subject goods have caused material injury to the domestic industry. The investigation showed that the imports in the first 6 months of 2021 increased by 37% as compared to the same period in 2020.

Other Trade Remedial Actions

Argentina

- Continuation of definitive anti-dumping measures on imports of Tableware from China PR. (13 Oct)
- Continuation of definitive anti-dumping measures on imports of Air Conditioning Equipment from China PR. (13 Oct)
- Continuation of definitive anti-dumping measures on imports of Domestic Pipe Fittings from China PR. (13 Oct)

Australia

- Continuation of anti-dumping measures on imports of Clear Float Glass from Indonesia. (06 Oct)

Canada

- Imposition of preliminary anti-dumping and anti-subsidy measures on imports of Certain Container Chassis from China PR. (21 Oct)
- Imposition of preliminary anti-dumping measures on imports of Certain Oil Country Tubular Goods from Austria. (25 Oct)

China PR

- Continuation of anti-dumping measures on imports of Polyamide-6,6 slices from USA. (13 Oct)
- Imposition of preliminary anti-subsidy measures on imports of Polyphenyl Ethers from USA. (14 Oct)

European Union

- Suspension of anti-dumping measures on imports of Aluminium Flat-Rolled Products from China PR. (11 Oct)
- Continuation of anti-dumping measures on imports of Wire Rod from China PR. (13 Oct)
- Imposition of provisional anti-dumping measures on imports of Graphite Electrode Systems from China PR. (15 Oct)
- Imposition of anti-dumping measures on imports of Calcium Silicon from China PR. (15 Oct)

Korea RP

- Initiation of anti-dumping investigation into imports of Seamless Copper Tube from China PR and Vietnam. (29 Oct)

Malaysia

- MITI recommends continuation of anti-dumping measures on imports of Cold Rolled Coils of Alloy and Non-Alloy Steel from China PR, Korea RP and Vietnam. (08 Oct)

Mexico

- Initiation of sunset review investigation of anti-dumping measures on imports of Aluminium Cookware from China PR. (05 Oct)
- Initiation of review investigation of anti-dumping measures on imports of Coating Ceramics for walls and floors from China PR. (07 Oct)

Peru

- Imposition of provisional anti-dumping measures on imports of Plain Weave Fabrics from China PR. (27 Oct)

Philippines

- Termination of safeguard investigation into imports of Pre-Painted Galvanised and Pre-Painted Aluminium Zinc. (05 Oct)
- Termination of safeguard investigation into imports of Aluminium Zinc (GL) Sheets and Coils. (05 Oct)
- Termination of safeguard investigation into imports of Galvanised Iron Sheets, Coils and Sheets. (05 Oct)

Tunisia

- Initiation of safeguard investigation into imports of Minibuses. (01 Oct)

Turkey

- Initiation of anti-dumping investigation into imports of Metallized Textile Yarn from Georgia. (12 Oct)
- Initiation of safeguard investigation into imports of Grinding Balls and similar articles of mills. (13 Oct)

Ukraine

- Initiation of safeguard investigation into imports of Tricone Drilling Bits. (13 Oct)
- Revocation of safeguard measures imposed on imports of Wires. (13 Oct)

United Kingdom

- Initiation of transition review of anti-dumping measures on imports of Aluminium Road Wheels from China PR. (07 Oct)

United States of America

- DOC issues final affirmative determination in the expedited sunset review of anti-subsidy measures on imports of certain Corrosion-Resistant Steel Products (Core) from Korea RP. (01 Oct)
- Initiation of sunset review of anti-dumping measures on imports of Chlorinated Isocyanurates from China PR and Spain. (01 Oct)
- DOC issues final affirmative determination in the expedited sunset review of anti-subsidy measures on imports of Cold Rolled Steel Flat Products from China PR and Korea RP (04 Oct).
- DOC issues final affirmative determination in expedited sunset review of anti-dumping measures on imports of Stainless-Steel Wire Rod from Japan, Korea RP and Taiwan (08 Oct).
- DOC issues final affirmative determination in the anti-subsidy investigation into imports of certain Mobile Access Equipment and Subassemblies from China PR. (19 Oct)
- USITC finds that material injury is caused to US industry by imports of Aluminium Foil from Armenia, Brazil, Oman, Russia and Turkey. (19 Oct)
- USITC finds that material injury is likely to continue or recur on revocation of anti-dumping measures on imports of Tissue Paper from China PR. (22 Oct)
- DOC issues final affirmative determination in the anti-dumping investigation into imports of Polyester Textured Yarn from Indonesia, Malaysia, Thailand and Vietnam. (25 Oct)
- Initiation of anti-subsidy investigation into imports of Freight Rail Coupler Systems from China PR. (25 Oct)
- USITC finds that material injury is caused to US industry by imports of Thermal Paper from Germany, Japan, Korea RP and Spain. (26 Oct)
- Continuation of anti-dumping and anti-subsidy measures on imports of Polyethylene Retail Carrier Bags from China PR, Indonesia, Malaysia, Taiwan, Thailand and Vietnam. (27 Oct)
- USITC finds that material injury is likely to continue or recur on revocation of anti-dumping measures on imports of Alloy Magnesium from China PR. (28 Oct)
- Continuation of anti-dumping measures on imports of Petroleum Waxed Candle from China PR. (29 Oct)

Vietnam

- Initiation of review investigation of anti-dumping measures on imports of H-shaped Steel Products from China PR. (19 Oct)
- Termination of anti-dumping investigation into imports of Liquid Sugar products extracted from corn starch from China PR and Korea RP. (20 Oct)

Foreign Trade Policy

Enlistment under Appendix 2E to issue Certificate of Origin (18 Oct)

The DGFT has authorised agencies listed under Appendix 2E of FTP 2015-20 to issue Certificate of Origin (Non-Preferential) (CoO NP) for all India jurisdiction with effect from 1st November 2021. Following are the enlisted agencies:

1. Export Promotion Council for EOUs and SEZs
2. Urban Exim Care Association
3. Federation of Industries and Association

These agencies were required to ensure on-boarding exercise for mandatory electronic filing of CoO (NP) through the Common Digital Platform latest by 31st October 2021.

Amendment in the Handbook of Procedures (29 Oct)

The Handbook of Procedures has been amended to provide that no export authorisation is required for supply of SCOMET items (Special Chemicals, Organism, Materials, Equipment and Technologies) from DTA to SEZ/EOU. Export authorisation is however, required if the SCOMET items are to be physically exported outside the country from SEZ/EOU, to another country. All such supplies will be reported to the Development Commissioner (DC) of the respective SEZ/EOU by the supplier in the prescribed proforma within a week of such supplies getting effected. Further, an annual report of such supplies from DTA to SEZ/EOU shall be reported to SCOMET Section, DGFT by the respective DC by 15th May of every financial year in the prescribed proforma.

Free Trade Agreement

India and Australia aim to finalize FTA by end of 2022

India and Australia plan to hammer out an early harvest trade deal by Christmas of 2021. Both countries also plan on finalizing a broader free trade agreement (FTA) by the end of 2022.

Israel and India set to resume FTA negotiations from November

On 18th October, India and Israel agreed to resume free trade agreement negotiations from November. Both countries are confident in finalizing the agreement by June 2022.

UK and India working towards FTA

India's Foreign Secretary, Shri Harsh Vardhan Shringla, said that both nations are negotiating a free trade agreement in line with the 2030 roadmap on the countries' relationship.

India-UAE FTA likely to be finalized by March 2022

India and UAE began formal negotiations for a free trade agreement from 23rd September 2021. Both sides are aiming to conclude negotiations by December 2021 and sign a deal by March 2022.

India looks to sign FTA with Oman and numerous other nations

The Minister for Commerce and Industries, Shri Piyush Goyal, has stated that the Indian government is currently negotiating a number of free trade agreements with various nations and blocs including Oman, UK, Australia, Canada, EU, Russia and South African Customs Union (SACU).

Shri Piyush Goyal pushes for ASEAN-India FTA re-negotiation

The Minister for Commerce and Industries has called for a re-negotiation of the ASEAN-India free trade agreement to avoid its misuse by various third parties and further removing trade barriers and non-tariff barriers. He also mentioned that the misuse has adversely impacted Indian exports since the pact became operational in 2010.

Bureau of Indian Standards

Amendments to existing Standards (01 Oct)

The following standards have been amended on 27th September 2021. However, the earlier standards shall continue, without amendment, till 26th October 2021.

- Textiles – Pugree Cloth, Cotton Khadi, Bleached or Dyed (IS 3769 : 2019)
- Textiles – Long Cloth, Cotton Khadi, Bleached (IS 3771 : 2019)
- Textiles – Dusters, Cotton Khadi, Bleached (IS 3777 : 2019)
- Textiles – Dungri Cloth, Cotton Khadi, Bleached (IS 3778 : 2019)
- Textiles – Sheeting Cloth, Cotton Khadi, Bleached (IS 3779 : 2019)
- Textiles – Sponge Cloth, Cotton Khadi, Grey (IS 3782 : 2019)
- Textiles – Bunting Cloth, Cotton Khadi, Dyed (IS 4106 : 2019)
- Automotive Vehicles – Wheel Guards for Vehicles of M1 Category (IS 13943 : 2017)

Introduction of Standards (07 Oct)

Quality Control Order applicable to Flat Transparent Sheet Glass (IS 2835: 1987) has been introduced and would apply with effect from the 1st April 2022.

Change of date for application of Quality Control Order (08 Oct)

The Quality Control Orders for the following products have come into force with effect from 12th October 2020:

- 100% Polyester Spun Grey and White Yarn (PSY)
- Ethylene Vinyl Acetate Copolymers
- Linear Alkyl Benzene
- Polyester Continuous Filament Fully Drawn Yarn
- Polyester Industrial Yarn
- Polyester Partially Oriented Yarn
- Polyester Staple Fibres
- Polyethylene Material for moulding and extrusion
- Synthetic Micro-Fibres for use in Cement Based Matrix

Substitution of Standards (08 Oct)

A revised Standard for Textiles – Determination of Twist in Yarns (IS 832 (Part 1) : 2021/ISO 2061 : 2015) has been introduced on 28th September 2021. However, the earlier standards had continued without amendment, till 27th October 2021.

Substitution of Standards (11 Oct)

A revised Standard for Steel Wire Ropes (IS/ISO 2408 : 2017) has been introduced on 27th September 2021. However, the earlier standards had continued without amendment, till 26th October 2021.

Substitution of Standards (12 Oct)

A revised Standard for Fibre Ropes (IS 7071 : 2021/ISO 2307 : 2019) has been introduced on 3rd October 2021. However, the earlier standards had continued without amendment, till 2nd November 2021.

Substitution in Standards (16 Oct)

The following standards have been introduced on 10th October 2021. However, the earlier standards shall continue without amendment till 9th November 2021.

- Textiles – Proofed Nylon Leno Fabric (IS 6900 : 2021)
- Alkyd Resins (IS 11811 : 2021)
- Powder Coating (IS 13871 : 2021)
- Natural Gas (IS 15130 (Part 3) : 2021/ISO 6974-3 : 2018)

Quality Control Order (29 Oct)

Quality Control Order concerning Maleic Anhydride, Acrylonitrile and Styrene (Vinyl Benzene) has come into force on 23rd October 2021.

Jubilant Ingrevia Limited
Vs
Union of India

Final Order No. 51899/2021

The domestic industry had filed an appeal challenging the Office Memorandum dated 14th December 2020 issued by the Ministry of Finance, Department of Revenue, Tax Research Unit deciding not to impose duties despite the recommendations of the Designated Authority in the anti-dumping investigation concerning imports of “Choline Chloride in all forms”.

The Appellant claimed that (a) the Central Government had acted in an arbitrary manner and declined to impose anti-dumping duty by a non-reasoned order; (b) the power exercised by the Central Government is quasi-judicial in nature; and (c) the Central Government has to necessarily take into consideration the purpose behind imposition of anti-dumping duty while exercising discretion under Rule 18.

The Central Government claimed that (a) the present appeal is not maintainable; (b) Central Government has a discretion to impose or not to impose anti-dumping duty despite positive recommendation; (c) Superior public interest is a ground to refuse imposition; and (d) recommendations by the Designated Authority do not create any rights for any party and are not binding on the Central Government.

The CESTAT, after hearing arguments of all the parties noted that the Office Memorandum issued by the Central Government is “determination” regarding the existence, degree and effect of dumping in relation to import of any article. Accordingly, an appeal against such Memorandum would clearly lie before CESTAT as per Section 9C of the Customs Tariff Act. The CESTAT also reiterated the observation of the Hon’ble Supreme Court in the case of Reliance Industries vs Designated Authority to hold that the function performed by the Central Government under Section 9A of the Customs Tariff Act is quasi-judicial in nature and not legislative. Further, the Tribunal observed that any arbitrary action, whether legislative or administrative or quasi-judicial, will attract prohibition of Article 14 of the Constitution.

The CESTAT has, in particular, observed the following:

- a. An authority exercising quasi-judicial functions shall be governed by the requirement to record reasons. The extent and nature of the reasons would depend on facts and circumstances of each case.
- b. Reasons should be clear and explicit to indicate due consideration by the concerned authority on the points of controversy.
- c. Every action by the State exercising quasi-judicial power must be guided by Article 14 of the Constitution.

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- d. An authority cannot act beyond the limit of the legislation conferring power on such authority to act.
 - e. Recording of reasons is a must if the Central Government decides not to follow the recommendation made by the Designated Authority.

In view of the same, the CESTAT remitted the matter back to the Central Government to take a fresh decision considering the recommendations made by the Designated Authority. Taking note of the fact that the Rules allow the Central Government a period of only three months to take a decision regarding the recommendations of the Designated Authority, the Tribunal held that such limitation of three months would be waived for the present matter.

Having concluded as above, the CESTAT has also remitted matters back to the Central Government to take a fresh decision concerning the recommendations made by the Designated Authority in the anti-dumping duty investigations relating to imports of Acrylic Fibre; Fully Drawn or Fully Oriented Yarn/ Flat Yarn of Polyester; Methylene Chloride; Acrylonitrile Butadiene Rubber (NBR); and Nonyl Phenol.

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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