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Trade Remedial Actions in India

Number of investigations initiated	0
Number of findings issued	3
Duties imposed or continued	2
Duties recommended but not imposed	0
Ongoing anti-dumping investigations	32
Ongoing anti-subsidy investigations	3
Ongoing safeguard investigations	0

Other Trade Updates

Number of non-tariff notifications by India	11
Number of non-tariff notifications by others	295

India

Requirements prescribed for application filed by fragmented industries simplified (18 Nov)

The DGTR has issued Trade Notice 11/2021 modifying the conditions prescribed for application filed by an association in case of a fragmented industry. The new trade notice amends the previously issued Trade Notice 9/2021 aimed at simplifying the difficulties faced by fragmented industries.

In case of a fragmented industry, an application can be filed by an association on behalf of such industry. As per the new Trade Notice, where an application is filed by an association in case of a fragmented industry, the domestic producers constituting "a major proportion" are required to provide their injury data. The previous Notice provided that domestic producers constituting at least 50% of the domestic production must provide entire injury data. As a result, the requirement for applications filed by an association on behalf of fragmented industry was much higher than if the application was filed collectively by the producers. Through the latest trade notice, the Authority has modified such requirement and has provided relief to such fragmented industries.

WTO

Consultations requested by Brazil concerning measures relating to the importation of certain poultry meat preparations (8 Nov)

Brazil requested consultations with the European Union with respect to the application of Salmonella food safety criteria on fresh poultry meat and certain poultry meat preparations, and the appropriate level of sanitary protection necessary to address risks to human health from the contamination of Salmonella in products under these food categories. Brazil claims that the European Union presently applies a Salmonella food safety criterion to fresh poultry meat that is different from and less stringent than that applied to poultry meat preparations, without adequate technical or scientific evidence. This in turn has adversely affected Brazilian exports of poultry meat preparations to the European Union, in particular exports of salted poultry meat and turkey meat with pepper. Such measures by the European Union have been claimed to be violative of Article 2.2, 2.3, few provision of Article 5 of the Sanitary and Phytosanitary Measures Agreement of WTO and also Article III(4) as they do not permit same treatment to Brazilian import and the goods produced in European Union. Further, Brazil has claimed that the measures are inconsistent with Article IX(1) of GATT, 1994 by restricting the importation of certain poultry meat preparation into the European Union.

Suspension of Duties: Global and Indian Perspective

Nehwath Fathima, Associate

Anti-dumping law is intended to counteract the practise of dumping by foreign exporters and protect the domestic producers from unfairly low-priced imports whereas countervailing duties are imposed to neutralize adverse effects of export subsidies on the domestic industry of importing countries. As such, the imposition of duties globally, including in India, is governed by elaborate statutory provisions and prescribed procedures. Most duties, once imposed, subsist in principle for five years, unless reviewed.

In the event of a significant change in the market situation after the imposition of duties, WTO members may resort to a temporary revocation of duties. This suspension of duties has been invoked in different situations such as alterations in the market conditions, including shortage of supply, excessive pricing by the domestic producers, in the interest of public, force majeure etc.

Suspension of ADD/CVD around the world

Some countries have shied away from incorporating suspension clauses. Countries such as India and GCC have incorporated a provision empowering the concerned Authorities to suspend duties but does not provide an established procedure for the same. Detailed and structured provisions on suspension can be seen in the laws of countries like Argentina, Brazil, Turkey, European Union etc.

The European Commission (EC)[1] permits the suspension of anti-dumping measures, where there is a temporary change in market conditions which makes the continued imposition of such measures temporarily inappropriate. However, the European Commission may recommend suspension only when the injury is unlikely to resume during the suspension. The duties may be suspended for a period of nine months which may be extended for a year.

The Advisory Panel of the European Commission follows an elaborate procedure where the suspension application is scrutinised for the change in market situation. The procedure involves participation from the domestic industry and receive comments from the interested parties. A thorough examination of likelihood of recurrence of injury in the event of suspension of duty and the interest of domestic industry is considered before suspending duties.

Similarly, in Brazil[2], duties may be suspended for a period of one year, which can be extended further for another year, in the event there is a provisional alteration in the market conditions. However, this is subject to likelihood of non-recurrence of injury during the period of suspension as well as consultation with the domestic industry.

While duties are normally imposed for a period of five years, such duties may be temporarily suspended by WTO members in certain situations.

Countries such as India and GCC have incorporated a provision empowering suspension of duties, but do not provide a procedure for the same.

Countries such as Argentina, Brazil, Turkey, European Union have codified procedures for suspension of duties.

In case of European Union, all interested parties are allowed to participate in the investigation. The Commission examines change in market situation and likelihood of injury in the event of suspension of duty.

1. Art. 14(4) Regulation (EU) 2016/1036 of the European Parliament and of the council of 8 June 2016
2. Art. 60 of Decree No. 1602 of 23 August 1995

Thus, the essentials for suspending duties can be summarised as:

i. Existing anti-dumping duty in force.
ii. Temporary change in the market conditions.
iii. No likelihood of recurrence of injury resulting from suspension.
iv. Domestic industry's participation and interest.

Temporary changes in the market conditions

What constitutes as temporary change may vary from case to case. However, the following instances have been considered as temporary changes by various jurisdictions.

i. Turkey (Anti-dumping duty on unbleached kraft liner paper against imports from USA, Brazil, Finland, Poland and Russian Federation)

Pursuant to enactment of Turkish regulation that levied 10% customs duty on all products originating in USA, Turkey suspended the anti-dumping duty on imports of liner paper citing temporary change in market conditions as the anti-dumping duty would have been an additional financial liability for USA.

ii. EU (Anti-dumping duty on imports of silicomanganese originating in China PR and Kazakhstan)

In the aforesaid case the price of Silico Manganese, a key raw material for Steel production, increased due to temporary supply shortage. Such increase coupled with high global demand was considered to warrant suspension of anti-dumping duties for a period of nine months, which was later extended for a further period of one year.

iii. EU (Anti-dumping duty on imports of glyphosate originating in China PR)

European Commission suspended anti-dumping duty for a period of nine months on the grounds that the performance of the Union industry has improved and later extended the same for a period of 1 year after recording low volume of imports during the period of suspension.

iv. Public Interest, in light of COVID-19 pandemic, has been cited by Argentina and Brazil as alterations in the market condition, while temporarily revoking duties.

Suspension of ADD/CVD in India

The introduction of provision related to suspension of duties in India was brought about by the Finance Bill, 2021. Under this amended provision, the Central Government suspended anti-dumping duties on *straight length bars and rods of alloy steel from China, high-speed steel of non-cobalt grade from Brazil, China and Germany &*

The law in Brazil allows suspension for a period of one year, further extendable for a period of one year, in case of provisional alteration of market situation.

The Brazil Authority would examine likelihood of recurrence of injury to the domestic industry and seek comments from the domestic industry, in analyzing need for suspension.

Various situations such as increase in customs duty, increase in price of raw material, shortage of supply, improvement in performance of domestic industry, and impact of Covid-19 have been considered as temporary changes, warranting temporary suspension of duties.

flat-rolled product of steel, plated or coated with alloy of aluminium or zinc from China, Vietnam, and South Korea and countervailing duty on *Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products from China*.

Despite the enabling provision in the Act on suspension of duties, the rules laying down procedure, or review mechanism for such suspension of duties is yet to be enacted. Currently, the suspension of duties is guided by the proviso inserted to the recently amended Section 9(6) and 9A (5) which reads as follows:

> *"Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time."*

The orders issued by the Ministry of Finance, suspending duties for the steel imports were silent on the reasons or need for such revocation or the 'change in the market condition'. However, in the annual budget for Financial Yar 2021-22, the Government of India announced that such suspension of duties arose owing to a spike in global and domestic prices which has affected the MSMEs and other user industries. The suspended duties on the steel imports were expected to be back in force by September 2021 but are further extended until January 2022.

The current regime for suspension of duties in India looks bleak, given the lack of codified rules. The interested parties are not provided opportunity to represent or defend their interest. While the duties are imposed following a detailed investigation, the duties were suspended without examining the recurrence of dumping / injury consequent to the suspension. By not providing opportunity to the domestic industry and failing to provide a speaking order, the current application of suspension laws in India violates principles of natural justice.

A structured and elaborate procedure governing the process and grounds for suspension of duties is essential in India. This would allow user industry to apply for temporary revocation of duties, in the event of 'altered market condition'. Therefore, such provisions would cater to superior public interest. Additionally, to conclude on the necessity to temporarily suspend the duties, it is essential that a thorough examination be done on the likelihood of injury in the event of suspension of duties, and the duration for such revocation. Such quantified information will enable the interested parties to actively defend their interest and to pursue further recourse including appeal, in the event they feel the suspension of duties adversely impact the domestic industry.

In India, the Customs Tariff Act has been amended to allow suspension of duty, for a period not exceeding one year at a time.

In 2021, the Ministry of Finance suspended anti-dumping and countervailing duties on certain steel products, upto September 2021. This period was further extended upto January 2022.

Lack of codified procedure in India precludes interested parties from defending their interests. An elaborate procedure governing the process would allow user industry to apply for temporary suspension of duties, in the event of 'altered market condition'; and allow examination of likelihood of injury in the event of suspension of duties.

Trade Remedial Actions in India

Duties recommended

- Continuation of anti-dumping duty on imports of Vitrified / Porcelain Tiles from China PR (26 Nov)
- Continuation of anti-dumping duty on imports of Uncoated Copier Paper from Indonesia and Singapore (26 Nov)
- Anti-dumping duty on imports of Glass Fibre and Articles thereof from Bahrain and Egypt. (30 Nov)

Customs Notifications

- Imposition of anti-dumping duty on imports of Untreated Fumed Silica from China PR and Korea RP. (11 Nov)
- Extension of anti-dumping duty imposed on imports of Steel and Fibre Glass Measuring Tapes originating in China PR and exported from Singapore and Cambodia. (12 Nov)
- Recission of anti-dumping duty on imports of Plain Medium Density Fibre Boards from Indonesia and Vietnam. (14 Nov)

Trade Remedial Actions against India

Australia

Initiation of exemption investigation on imports of Zinc Coated (Galvanised) Steel from China PR, Korea RP, Malaysia, India, Taiwan and Vietnam. (18 Nov)

The Anti-Dumping Commission has initiated an investigation, pursuant to an application filed by an Australian importer, to determine whether there exists a need to exclude 'hot dipped zinc-aluminium-magnesium alloy coated steel coils' of particular prescribed specifications from the scope of the product currently attracting anti-dumping duty since 2013.

Brazil

Revocation of anti-dumping duty on imports of Cast Iron Pipes from China PR, India and UAE. (01 Nov)

The Brazilian Authority discontinued the duties imposed on imports from China PR, India and UAE in absence of any sufficient likelihood information or any other new information submitted by the SGC. The duties had previously been suspended for a year on grounds of public interest.

European Union

Imposition of anti-dumping duty on imports of Stainless-Steel Cold-Rolled Flat Products from India and Indonesia. (18 Nov)

The European Commission has determined that stainless-steel cold rolled flat products are being dumped and are causing material injury to the domestic industry. The Commission has imposed definitive anti-dumping duties on exporters from India and Indonesia to remedy the injury to their domestic industry. The investigation was initiated on 30th September 2020 on an application from European Steel Association.

USA

DOC issues affirmative preliminary determination in the anti-dumping investigation into imports of Organic Soybean Meal from India. (02 Nov)

US DOC has preliminarily determined that organic soybean meal from India is being dumped in the USA and has determined the dumping margins in the range of 3.11% to 18.85%. The USTIC will now initiate its investigation into whether such dumped imports are causing injury to the domestic industry.

USITC finds that material injury is being caused to US industry by imports of utility wind towers from India and Malaysia (16 Nov)

USITC has determined that imports of utility wind towers from India and Malaysia are causing injury to the US domestic industry. The US DOC has previously determined that such imports were being dumped from both countries and producers of such goods in India also received countervailable subsidies. Pursuant such findings, the DOC will now impose anti-dumping and anti-subsidy duty on such imports.

DOC issues affirmative preliminary determination in the anti-dumping investigation into imports of Raw Honey from Argentina, Brazil, India, Vietnam and Ukraine. (23 Nov)

US DOC has preliminarily determined that raw honey from Argentina, Brazil, India, Vietnam and Ukraine is being dumped in the USA. The dumping margins for Vietnam have been determined as high as 412% while the dumping margin for India is the lowest, being 6.48%.

Vietnam

Imposition of anti-dumping duty on imports of Sorbitol products from China PR, India and Indonesia. (23 Nov)

The Vietnam Ministry of Industry and Trade initiated an investigation on the subject goods from the subject countries in December 2020. The Authority concluded that the dumped imports of the subject goods was the main cause of significant injury to the domestic industry, and recommended imposition of anti-dumping duty on the imports.

Other Trade Remedial Actions

Argentina

- Termination of anti-dumping investigation into imports of Expandable Polystyrene in granules from China PR and Taiwan. (03 Nov)
- Initiation of sunset review investigation into imports of Air Conditioner Equipment from China PR. (12 Nov)
- Initiation of sunset review investigation into imports of Measuring Tapes from China PR. (12 Nov)

Australia

- Termination of anti-dumping and anti-subsidy investigations into imports of Copper Tubes from China PR. (12 Nov)
- Termination of anti-dumping and anti-subsidy investigations into imports of Aluminium Zinc Coated Steel of a width less than 600mm from China PR and Vietnam. (15 Nov)
- Initiation of exemption investigation into imports of Hollow Structural Sections from China PR, Korea RP, Malaysia, and Taiwan (18 Nov).
- Initiation of exemption investigation into imports of Precision Pipes and Tubes from China PR and Korea RP. (18 Nov)
- Final determination issued in anti-dumping into imports of Painted Steel Strappings from China PR and Vietnam, and anti-subsidy investigation into imports from China PR. (26 Nov)

Brazil

- Termination of anti-dumping investigation into imports of Cold Rolled Stainless Steel 304 from Indonesia and South Africa. (03 Nov)
- Initiation of anti-dumping investigation into imports of Empty Hard Gelatine Capsules from Mexico and USA. (09 Nov)

Canada

- Termination of anti-dumping investigation into imports of Certain Small Power Transformers from Korea RP. (25 Nov)

China

- Termination of mid-term review investigation into anti-dumping duties on imports of Stainless-Steel Billets and Stainless-Steel Hot-Rolled Plates/ Rolls from Indonesia. (18 Nov)

Eurasian Economic Union

- Final determination issued in expiry review of the anti-dumping duties on imports of Certain Pipes and Tubes of Stainless Steel from Ukraine. (09 Nov)

European Union

- Imposition of anti-dumping duties on imports of Birch Plywood from Russia. (09 Nov)
- Imposition of anti-dumping duties on imports of Mono Ethylene Glycol from USA and Saudi Arabia. (15 Nov)
- Imposition of anti-dumping duties on imports of Optical Fibre Cables from China PR. (17 Nov)
- Initiation of anti-dumping investigation into imports of Certain Aluminium Road Wheels from Morocco. (17 Nov)
- Initiation of anti-subsidy investigation into imports of Certain Graphite Electrode Systems from China PR. (18 Nov)
- Initiation of anti-dumping measures into imports of Fatty Acid from Indonesia. (30 Nov)

Gulf Co-operation Council

- Initiation of anti-dumping investigation into imports of Super Absorbent Polymer from China PR, Belgium, France, Korea RP, Japan and Singapore. (04 Nov)

Indonesia

- Continuation of safeguard measures on imports of Ceramic Flags and Paving, Hearth or Wall Tiles (09 Nov).
- Imposition of safeguard measures on imports of Articles of Apparel and Clothing Accessories (12 Nov).

Mexico

- Termination of anti-dumping investigations on imports of Carbon and Alloy Steel Slab from Brazil and Russia. (04 Nov)

South Africa

- Final determination regarding serious injury issued in safeguard investigation into imports of Bolts with Hexagon Heads of Iron or Steel. (08 Nov)

Thailand

- Imposition of anti-dumping duties on imports of Tinplate ETP from China PR, Korea RP, European Union and Taiwan and Tinfree from China PR, Korea RP and European Union. (16 Nov)

United Kingdom

- Initiation of reconsideration review of anti-dumping duties imposed pursuant to a transition review, on imports of Certain Welded Tubes and Pipes of Iron or Non-Alloy Steel from Belarus, China PR and Russia. (24 Nov)

USA

- Initiation of anti-subsidy investigation into imports of Oil Country Tubular Goods from Korea RP and Russia, and anti-dumping investigation into imports from Argentina, Mexico and Russia. (01 Nov)
- Initiation of sunset review investigation of anti-dumping duty into imports of Seamless Refined Copper Pipes and Tubes from China PR and Mexico and Circular Welded Carbon-Quality Steel Pipes from Oman, Pakistan and UAE. (01 Nov)
- DOC issues affirmative preliminary determination in the anti-dumping investigation into imports of Walk-Behind Snow Throwers from China PR. (05 Nov)
- DOC issued affirmative determination in the sunset review investigation of anti-dumping duty on imports of Hydrofluorocarbon Blends from China PR. (05 Nov)
- USITC finds that material injury is likely to continue or recur on revocation of anti-dumping duty on imports of Potassium Permanganate from China PR. (05 Nov)
- Imposition of anti-dumping duty on imports of Aluminum Foil from Armenia, Brazil, Oman, Russia and Turkey, and anti-subsidy duties on imports from Oman and Turkey. (12 Nov)
- USITC finds that material injury is caused to US industry by imports of Polyester Textured Yarn from Indonesia, Malaysia, Thailand and Vietnam. (16 Nov)
- DOC issued affirmative determination in the anti-dumping investigation into imports of Narrow Woven Ribbons With Woven Selvedge from China PR and Taiwan. (16 Nov)
- Imposition of anti-dumping duty on imports of Thermal Paper from Germany, Japan, Korea RP and Spain. (22 Nov)
- Initiation of anti-circumvention inquiry on imports of Amorphous Silica Fabric between 70 and 90 percent Silica from China PR. (24 Nov)
- Continuation of anti-dumping duty on imports of Magnesium Metal from China PR. (26 Nov)
- USITC finds that safeguard measures must be allowed to continue to provide relief to domestic producers of Crystalline Silicon Photovoltaic Cells. (24 Nov)
- Imposition of anti-dumping duty on imports of Tissue Paper from China PR. (26 Nov)
- Initiation of anti-dumping investigation on imports of Superabsorbent Polymers from Korea RP. (30 Nov)
- DOC issues affirmative determination in the sunset review investigation of anti-dumping duty in imports of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea RP, Mexico and Turkey. (30 Nov)

Foreign Trade Policy

Amendment in the import policy condition of Urea (03 Nov)

In addition to Rashtriya Chemicals and Fertilisers Limited (RCF), import of Urea is allowed through National Fertilisers Limited (NFL) and Indian Potash Limited (IPL) subject to Para 2.20 of Foreign Trade Policy, 2015-2020. The NFL and IPL are designated as STE for import of Urea on Government account. However, IPL is allowed to import Urea on Government account till 31st March 2022 only. The MMTC and STC are de-notified as STE for import of Urea.

Extension of Date for Mandatory electronic filing of Non-Preferential Certificate of Origin (15 Nov)

The DGFT has informed that the electronic platform for Certificate of Origin has been expanded to facilitate electronic filing and issuance for Non-Preferential Certificate of Origin. The transition period for the mandatory filing of the application has been extended till 31st January 2022. All agencies are required to ensure that the onboarding exercise is completed latest by 31st January 2022, failing which the agencies shall be de-notified. Further, two more agencies have been authorized to issue the Non-Preferential Certificate of Origin (CoO):

- Council of Leather Exports
- Udaipur Chamber of Commerce and Industry (UCCI)

Applications for Tariff Rate Quota (TRQ) under India- Mauritius CECPA for the year 2021-22 (22 Nov)

The last date for submission of online applications of Tariff Rate Quota (TRQ) under the India-Mauritius CECPA for the current financial year 2021-2022, has been extended from 31st December 2021 to 31st January 2022.

Electronic Filing of Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) (30 Nov)

A new online common digital platform for issuance of Registration Cum Membership Certificate (RCMC)/ Registration Certificate has been developed which would be a single point access for all exporters/ importers and issuing agencies. Applications for RCMC/RC may be submitted through the common platform with effect from 6th December 2021.

Free Trade Agreement

India and Australia speeding up negotiations of an interim FTA
Both India and Australia are maintaining pace to finalize an interim FTA by December 2021, as officials from both the nations exchanged lists of demands and offers in respect of goods, services and investment.

India targets to finalize an FTA with UAE in the next 100 days
The Commerce and Industries Minister, Shri Piyush Goyal, confirmed that the country is planning to finalize a free trade agreement with the United Arab Emirates in the next 100 days. A working group has been set up to work on the FTA with the six GCC nations as a group.

India and UK FTA negotiation could be delayed to January 2022
FTA negotiations between India and UK could be delayed to January 2022 due to a cabinet change in the UK, as well as a need for more 'pre-negotiation' talks between the two nations.

Bureau of Indian Standards

Amendment to Indian Standards (01 Nov)
The following standards have been amended on 13th October 2021. However, the earlier standards shall continue, without amendment, till 12th April 2022.

- Textiles — Polyester Continuous Filament fully Drawn Yarn (IS 17261 : 2019)
- Textiles — Polyester Partially Oriented Yarn (POY) (IS 17262 : 2019)
- Textiles — Polyester Staple Fibres (IS 17263 : 2019)
- Textiles — Polyester Industrial Yarn (IS 17264 : 2019)

Amendment to Indian Standards (12 Nov)
The following standards have been amended on 27th October 2021. However, the earlier standards shall continue, without amendment, till 26th November 2021.

- Textiles — Tests for Colour Fastness (IS/ISO 105-D01 : 2010)

Establishment of Standards (24 Nov)
The following standards have been established on 12th November 2021.

- Wood Pulp (IS 17726 : 2021)

Establishment of Standards (24 Nov)

The following standards have been established on 22nd November 2021.

- Electric Vehicle Conductive Charging Systems Part 23 (IS 17017 (Part 23) : 2021)
- Electric Vehicle Conductive Charging Systems Part 24 (IS 17017 (Part 24) : 2021)

Substitution of Standards (24 Nov)

The following standards have been established on 15th November 2021. However, the earlier standards shall continue without amendment, till their date of withdrawal 14th May 2022.

- Stabilized Hydrogen Peroxide (IS 2080 : 2021)

Amendment to Indian Standards (24 Nov)

The following standards have been amended on 15th November 2021. However, the earlier standards shall continue, without amendment, till 14th February 2022.

- Polyethylene Material for Moulding and Extrusion (IS 7328 : 2020)
- Polypropylene (PP) Materials for Moulding and Extrusion (IS 10951 : 2020)

United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain

WT/DS577/R

The present dispute arose pursuant to European Union challenging the countervailing and anti-dumping duties imposed by United States concerning imports of ripe olives from Spain in 2018. In particular, the following issues arose

a. Under the provisions of Agreement on Subsidies and Countervailing Measures (ASCM), duties may be levied to offset a subsidy only when such subsidy is specific (limited) to certain enterprises, either by virtue of their geographical location, sector, market, or any other parameter. European Union alleged that USA found certain subsidies, namely Single Payment Scheme (SPS), Basic Payment Scheme – Direct Payment (BPS), and Basic Payment Scheme – Greening (GP), were specific subsidies, without adequate evidence. In other words, European Union alleged that USA found that the subsidies were specific, without examining the eligibility conditions and demonstrating that these benefits were limited to certain enterprises;
b. Further, a member country may impose countervailing duty to offset subsidies conferred by the Government of a country in respect of raw materials for a product, where the benefit of such subsidy is passed through to the producer of the downstream product. In this regard, Section 771B of US Tariff Act provides as follows

> "*In the case of an agricultural product is processed from a raw agricultural product in which –*
>
> *(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and*
> *(2) the processing operation adds only limited value to the raw commodity,*
>
> *countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.*"

European Union alleged that the Section requires imposition of countervailable duty on a processed agricultural product without an analysis of whether and to what extent any benefit was passed-through from the raw input product. European Union claimed that such approach resulted in an approach that goes beyond offsetting a subsidy, and therefore was inconsistent with the ASCM.

US Department of Commerce (USDOC) replied to the contentions raised by EU in following manner:

a. The eligibility criteria of a subsidy programme explicitly limiting access to a subsidy to certain enterprises is not the sole way to establish that the subsidies are specific. Even if

there is a limitation on the amounts available under a subsidy programme, such subsidy may be considered as specific;

b. USA argued that the EU failed to establish that Section 771B was inconsistent with obligations under GATT 1994 and ASCM. USA contended that EU should establish that the law itself does not allow US to act in accordance with its WTO obligations.

The Panel agreed with the argument by USA that the condition governing amount of a subsidy to establish limited access may be relied upon while examining whether a subsidy is specific to certain enterprises. However, US determined that SPS, BPS and GP subsidies were specific, as such subsidies were tied to historical olive production during the previous programmes. The Panel concluded that US did not properly examine and account for various features of the rules governing the allocation and valuation of the subsidies, in reaching the conclusion that the subsidy concerned is specific.

As regards Section 771B of the Customs Act, the Panel observed that GATT 1994 and ASCM require an investigating authority to establish that subsidies on raw material have been passed through to the downstream producers. An investigating authority cannot assume that the subsidies given for raw materials are automatically passed through to the downstream user. Section 771B of the US Tariff Act creates such an assumption that the subsidy given in respect of a raw agricultural product are passed through to the processed agricultural product. Therefore, the Panel found that Section 771B was inconsistent with obligations under GATT 1944 and ASCM.

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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