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Article

Implementation of Significant Distortions Methodology by EU in review of anti-dumping duty on exports from China

By **Vikrant Nehra**

The European Union ('EU') amended EU Regulation 2016/1036 of 08-06-2016 ('the Basic Anti-dumping Regulation') on 12-12-2017 through which it introduced Article 2(6a).¹ Through this amendment, the EU created a possibility whereby actual domestic selling price and costs of producer/exporter can be rejected for determining normal value in anti-dumping investigations/reviews where there are 'significant distortions of prices and costs'.

The amendment also created a possibility that if there is no allegation of significant distortions in prices and costs in 'non-market economy' country like China or if existence of significant distortions in prices and costs cannot be established by the European Commission ("**Commission**") in anti-dumping investigation or reviews, the normal value can be determined based on actual domestic selling prices and cost of the producer/exporter in China.² The significant distortions methodology introduced by way of amendment would only apply to original investigations/reviews which get initiated from the date of entry into force of Article 2(6a), i.e. on or after 20-12-2017.

For determining 'significant distortions of prices and costs' during anti-dumping investigation or review, the Commission can rely on one or more of the following criteria prescribed in Article 2(6a)(b) of the Basic Anti-dumping Regulation:

- I. The market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country
- II. State presence in firms allowing the state to interfere with respect to prices or costs
- III. Public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces
- IV. The lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws
- V. Wage costs being distorted
- VI. Access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state

The Commission also published a report on significant distortions existing in China for the purpose of trade defence investigations

¹ See Introduction of Significant Distortions Methodology in the EU's anti-dumping laws, available at: <https://www.lakshmisri.com/insights/articles/introduction-of-significant-distortions-methodology-in-the-eu-s-anti-dumping-laws/>

² China has been traditionally subject to 'non-market economy' methodology by EU, which permitted determination of normal value based on other methods without considering actual domestic selling prices and cost in the exporting country. See *Ibid.*

(“Report”) on 20-12-2017.³ The report was divided into three parts namely, (i) Cross-cutting distortions – review of macro-economic structure and overall legal framework (ii) factors of production distortions – review of land, energy, labour, capital, and raw-materials related market and (iii) sector specific distortions – review of steel, aluminium, chemical and ceramic industry. The EU may rely on this report for determining existence of ‘significant distortions’ in anti-dumping investigations, however, the application of the determination of significant distortion in case of China is not a foregone conclusion due to existence of this Report. It has to be decided on a case to case basis.⁴ Therefore, it requires to be seen how EU has reviewed existence of significant distortion in China in anti-dumping investigations/reviews against China.

The applicant EU industry claimed existence of significant distortions in China in expiry review of anti-dumping duty on *Certain aluminium foil in rolls originating in China* initiated on 13 March 2018. For determining the information regarding the existence of significant distortions, the Commission also sent a questionnaire to the Government of China (‘GOC’). However, there was no response from the Government of China. In the regulation imposing definitive measures⁵, the Commission emphasised on the overall ‘non-market economy’ foundation of the Chinese economic system. However, the Commission based its determination regarding the significant

distortions after analysing information and evidence concerning the aluminium sector in China. Some of the key facts evidencing existence of significant distortions noted by the Commission were as below:

- I. Primary aluminium industry in China are subject to state control, ownership or policy supervision. State owned enterprises (SOEs) enjoy considerable benefit in terms of inputs, government support and finance;
- II. Directors, senior management, supervisors appointed by one state owned aluminium producer were representatives of Chinese Communist Party (“CCP”);
- III. There is also government intervention in functioning of private players. For example, regulating capacity expansion of privately-owned entities;
- IV. Numerous plans, directives, issued at national, regional and municipal level shows that there is high degree of intervention governing every aspect of aluminium sector;
- V. Aluminium producers receive preferential treatment from banks in China and;
- VI. Aluminium foil producers also receive land at less than adequate remuneration;
- VII. Bankruptcies are very low and role of state in insolvency proceedings is very strong;
- VIII. Conventions of International Labour Organisations (ILO) are not ratified. Full access to social security system is limited to local residents. Other employees and work force remain vulnerable and receive lower income.

³ Report available at: https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

⁴ Article 2(6a)(c).

⁵ Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People’s Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 146, 5.6.2019, p. 63).

Aluminium sector is subject to these same set of labour laws as all other enterprises. This results in wage cost distortion.

The Commission concluded that there were significant distortions of prices and costs by substantial government intervention within the meaning of Article 2(6a)(b) of the Basic Regulation and it was not appropriate to use domestic prices and costs to establish the normal value. Consequently, the Commission constructed normal value for China on the basis of costs of production and sale in Turkey, i.e. an appropriate representative country.

Similarly, the applicant EU industry alleged existence of significant distortions in prices and costs in China in *Expiry review on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in China and Thailand*.⁶ For determining the information regarding the existence of significant distortions, the Commission also sent a questionnaire to the Government of China ('GOC'). However, there was no response from the Government of China.

In the regulation imposing definitive measures, the Commission emphasised on the overall 'non-market economy' foundation of the Chinese economic system.⁷ However, the Commission based its determination regarding the significant distortions after analysing information and evidence concerning the iron and steel sector in China. Some of the key facts

evidencing existence of significant distortions noted by the Commission were as below:

- I. Major producers of steel in China are owned by the State and there is also a strong link between the enterprises in iron and steel sector and the CCP. Out of the 5 steel producers ranked in Top 10 in the world, 4 are SOEs;
- II. CCP cells exist in 70% of privately-owned entities and they have final say over business decision. Management personnel in steel industry are CCP members and functionaries. For example, Vice Chairman of the Jinan Meide Casting Co. Ltd. served as the company's Party committee secretary;
- III. There are export restrictions and taxes on inputs used in the production of product under consideration. Moreover, there is strict control over zinc capacities including zinc mining activities;
- IV. Bankruptcies are very low and role of state in insolvency proceedings is very strong;
- V. Conventions of International Labour Organisations (ILO) are not ratified. Full access to social security system is limited to local residents. Other employees and work force remain vulnerable and receive lower income. Steel sector is subject to these same set of labour laws as all other enterprises. This results in wage cost distortion;
- VI. Access to finance from institutions is affected by strong position of SOEs. Finances are directed towards

⁶ OJ C 162, 8.5.2018, p. 11.

⁷ Commission Implementing Regulation (EU) 2019/1259 of 24 July 2019 imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China and Thailand, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 197, 25.7.2019, p. 2).

encouraged industries as per existing rules and policy objectives. Risk assessment is influenced by the firm's strategic importance to the Chinese government. Borrowing costs have been kept artificially low to stimulate investment.

The Commission determined that there existed significant distortions in prices and costs and it is not appropriate to use domestic prices and costs to establish normal value. The Commission determined Thailand as the appropriate representative country for the construction of the normal value.

Similarly, in the other expiry reviews of anti-dumping duty on exports from China namely (i) Organic Coated Steel Products⁸ (ii) Tableware and Kitchenware⁹ (iii) Tungsten Electrodes¹⁰ (iv) Bicycles¹¹ (v) Ironing Boards¹² and (vi)

Peroxosulphates¹³ that were initiated after the enactment of Article 2(6a), the Commission concluded that there was significant distortions in prices and costs and therefore normal value cannot be determined based on domestic prices and costs in China.

Examination of these expiry review determinations of anti-dumping duty against China by the EU shows that the Commission has determined that there are significant distortions in prices and costs prevailing in China. Even though there is withdrawal of presumption of non-market economy in anti-dumping duty investigations/reviews, it appears that there will be no effective relief for China in fresh investigations/expiry reviews of anti-dumping duty.

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⁸ Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5).

⁹ Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) No 2016/1036 (OJ L 189, 15.7.2019, p. 8).

¹⁰ Commission Implementing Regulation (EU) 2019/1267 of 26 July 2019 imposing a definitive anti-dumping duty on imports of tungsten electrodes originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 (OJ L 200, 29.7.2019, p. 4).

¹¹ Commission Implementing Regulation (EU) 2019/1379 of 28 August 2019 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China as extended to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka, Tunisia, Cambodia, Pakistan and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) No 2016/1036 (OJ L 225, 29.8.2019, p. 1).

¹² Commission Implementing Regulation (EU) 2019/1662 of 1 October 2019 imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation

(EU) 2016/1036 of the European Parliament and of the Council (OJ L 252, 2.10.2019, p. 1).

¹³ Commission Implementing Regulation (EU) 2020/39 of 16 January 2020 imposing a definitive anti-dumping duty on imports of peroxosulphates (persulphates) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 13, 17.1.2020, p. 18).

Trade Remedy News

Trade Remedy actions by India

Product	Country	Notification No.	Date of Notification	Remarks
1-Phenyl-3-Methyl-5-Pyrazolone	China PR	13/2020- Cus. (ADD)	09-06-2020	Provisional anti- dumping duty imposed for 6 months.
Acrylic Fibre	Thailand	10/2020-Cus. (ADD)	29-05-2020	Anti-dumping duty extended till 30-11-2020
Acrylonitrile Butadiene Rubber	China PR, EU, Japan, Russia	F. No. 6/18/2020-DGTR	26-05-2020	Anti-dumping investigation initiated.
Aniline or aniline oil	China PR	F. No. 6/42/2019-DGTR	12-06-2020	Preliminary findings recommend anti-dumping duty.
Aluminium Foil 80 micron and below	China PR, Indonesia, Malaysia, Thailand	F. No. 6/21/2020-DGTR	20-06-2020	Anti-dumping investigation initiated.
Black Toner in powder form	China PR, Malaysia, Chinese Taipei	F. No. 6/6/2020-DGTR	18-06-2020	Provisional anti-dumping duty recommended.
Ciprofloxacin Hydrochloride	China PR	F. No. 6/36/2019-DGTR	15-06-2020	Provisional anti-dumping duty recommended to be imposed.
Coated/Plated Tin Mill Flat Rolled Steel Products	EU, Japan, USA, Korea RP	F. No. 6/9/2019-DGTR	17-06-2020	Definitive anti-dumping duty recommended to be imposed.
Electronic calculators	China PR	9/2020-Cus. (ADD)	27-05-2020	Anti-dumping duty continued pursuant to sunset review.
Electronic calculators	Malaysia	12/2020-Cus. (ADD)	03-06-2020	Definitive anti-dumping duty imposed.
Flat rolled product of steel, plated or coated with alloy of aluminium and zinc	China PR, Vietnam, Korea RP	16/2020-Cus. (ADD)	23-06-2020	Definitive anti-dumping duty imposed.
Flexible Slabstock Polyol	Singapore	14/2020-Cus. (ADD)	09-06-2020	Anti-dumping duty continued pursuant to sunset review.

Product	Country	Notification No.	Date of Notification	Remarks
Hot Rolled Flat Products of Stainless Steel of ASTM Grade 304	China PR, Malaysia, Korea RP	11/2020-Cus. (ADD)	03-06-2020	Anti-dumping duty extended till 04-12-2020
Measuring Tapes	China PR	F.No. 7/24/2019-DGTR	18-06-2020	Anti-dumping recommended to be continued, after sunset review.
Nylon Tyre Cord Fabric	China PR	15/2020-Cus. (ADD)	10-06-2020	Anti-dumping duty extended till 11-12-2020
Polystyrene of all types except expandable Polystyrene	Iran, Malaysia, Singapore, Chinese Taipei, UAE, USA	F. No. 6/10/2019-DGTR	12-06-2020	Definitive anti-dumping duty recommended.
Polytetrafluoroethylene (PTFE)	China PR, Korea RP	F. No. 7/22/2020-DGTR	19-06-2020	Initiation of Anti-Circumvention investigation concerning alleged circumvention of (i) anti-dumping duty imposed on imports from Russia by imports from Korea RP and (ii) anti-dumping duty imposed on imports from China.
Rubber Chemical PX-13	China PR, Korea RP and USA	F. No. 6/20/2020-DGTR	27-05-2020	Anti-dumping investigation initiated.

Trade remedy actions against India

Product	Country	Notification No.	Date of Notification	Remarks
Commodity Matchbox	USA	85 FR 36834 [A-533-848]	18-06-2020	Affirmative sunset review of anti-dumping duty order issued.
Forged Steel Fittings	USA	85 FR 32007 [A-533-891]	28-05-2020	Preliminary affirmative determination of sales at less than fair value, postponement of final determination, and extension of provisional measures.

Product	Country	Notification No.	Date of Notification	Remarks
Forged Steel Fittings	USA	85 FR 36835 [C-533-892]	18-06-2020	Scope of preliminary affirmative CVD determination amended
Oil Country Tubular Goods (OCTG I & II)	Canada	OS 2019 RI	25-05-2020	Notice of conclusion of re-investigations.
Polyethylene terephthalate (PET)	EU	Commission Implementing Regulation (EU) 2020/738	04-06-2020	CVD – Implementing Regulation amended
Prestressed Concrete Steel Wire Strand	USA	85 FR 38846 [C-533-829]	29-06-2020	Affirmative sunset review of countervailing duty order issued
Quartz Surface Products	USA	85 FR 37422 [A-533-889] and 85 FR 37431 [C-533-890]	22-06-2020	Anti-dumping duty and Countervailing duty Orders issued



WTO News

Indian import restrictions on peas, lentils, beans and other pulses questioned

Australia, Canada, the European Union, the Russian Federation, Ukraine and the United States have again questioned India's import restrictions on peas, lentils, beans and other pulses. In a virtual meeting of the Good Council held on 10-11 June 2020, Members asked India to explain how the measure conforms with the WTO Rules. According to India, the measure was intended to secure the livelihood of farmers amid domestic surplus. India stated that the

government continues to review the market situation.

WTO Panel finds Saudi Arabia's measures violative of TRIPS

WTO's DSB Panel has on 16-06-2020 issued its report in the dispute *Saudi Arabia - Measures concerning the Protection of Intellectual Property Rights* (DS567). The Panel found that the measures taken by Saudi Arabia prevented a Qatar company to engage a Saudi legal counsel to enforce its IP rights through civil enforcement procedures before Saudi Courts and Tribunals. It was held that hence Saudi Arabia acted in a

manner inconsistent with Article 42 and Article 41.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”). Saudi Arabia was also found to have acted inconsistently with Article 61 of the TRIPS Agreement. The security exception claimed by Saudi Arabia was also rejected by the Panel.

Australia’s Tobacco Plain Packaging provisions not violate WTO Rules – Appellate Body upholds Panel report

WTO’s Appellate Body has on 09-06-2020 issued its report in “*Australia - Certain measures concerning trademarks, geographical indications and other plain packaging requirements applicable to tobacco products and packaging*” (DS435). It held that the measures adopted by Australia were essential for achieving the policy objective of reducing the use of, and exposure to, tobacco products. The Appellate Body also upheld the Panel report that the complainants had not demonstrated that the TPP measures are more trade-restrictive than necessary to fulfil a legitimate objective, within the meaning of Article 2.2 of the Technical Barriers to Trade (“TBT”) Agreement. Further, in respect of Article 16.1 of the TRIPS Agreement also, the Appellate Body upheld the Panel’s finding that the said Article does not establish a trademark owner’s right to use its registered trademark, but, rather only provides for a registered trademark owner’s right to prevent certain activities by unauthorized third parties under the conditions set out in the first sentence of said Article.

Safeguard investigations initiated across the globe

Indonesia launches safeguard investigation on carpets and other textile floor coverings:

Indonesia has on 10-06-2020 initiated a safeguard investigation on imports of carpets and other textile floor coverings.

Philippines launches 3 safeguard investigations:

Philippines has on 17-06-2020 initiated safeguard investigation on aluminum zinc sheets, coils and strips; on pre-painted galvanized iron and pre-painted aluminum zinc; and on galvanized iron sheets, coils and strips.

South Africa launches safeguard investigation on U, I, H, L and T sections of iron or non-alloy steel:

South Africa has on 19-06-2020 initiated a safeguard investigation on imports of U, I, H, L and T sections of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more and other angles, shapes and sections of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded.

Turkey launches safeguard investigation on polyethylene terephthalate chips:

Turkey has on 11-06-2020 initiated safeguard investigation on polyethylene terephthalate chips.

Ukraine launches safeguard investigation on fresh cut roses:

Ukraine has on 28-05-2020 initiated a safeguard investigation on imports of fresh cut roses.



India Customs & Trade Policy Update

Faceless Assessment – First phase of All India roll-out launched at Bengaluru and Chennai

The Central Board of Indirect Taxes and Customs (“CBIC”) in the Ministry of Finance has, with the objective of speedy and uniform assessment practices, launched Phase 1 of Faceless Assessment of bills of entry for goods imported primarily under Chapters 84 and 85 of the Customs Tariff Act, 1975 at Bengaluru and Chennai with effect from 08-06-2020. As per CBIC Circular No. 28/2020-Cus., dated 05-06-2020, this program launched under the umbrella of ‘Turant Customs’ will be rolled out in phases and would be implemented pan India by 31-12-2020. Accordingly, a Bill of Entry which is selected for verification of self-assessment would be assigned to an officer of the Faceless Assessment Group by the Customs Automated System randomly.

The Board has also issued two notifications, in order to operationalise the program. While Notification No. 50/2020-Cus. (N.T.), dated 05-06-2020 enables an assessing officer who is physically located in a particular jurisdiction to assess a Bill of Entry pertaining to imports made at a different Customs station, whenever such a Bill of Entry has been assigned to him in the Customs Automated system, Notification No. 51/2020-Cus. (N.T.), also of the same date empowers the jurisdictional Commissioners of Customs (Appeals) at Bengaluru and Chennai to take up appeals filed in respect of Faceless Assessments pertaining to imports made in their jurisdictions even though the assessing officer is located at the other Customs station. Procedural details of the Faceless Assessment scheme are

available in CBIC Instruction No. 9/2020-Cus., dated 05-06-2020.

LEO and eGatepass copy of shipping bill to be electronically transmitted – Printing of Shipping Bills discontinued

CBIC has from 22-06-2020 discontinued the practice of printing copies of Shipping Bill bearing the Final Let Export Order (“LEO”) for the exporters and for maintaining a docket in the Customs House. As per Circular No. 30/2020-Cus., dated 22-06-2020, the Final LEO copy of the Shipping Bill in PDF will be electronically transmitted to the exporter. The PDF version will bear a digitally signed and encrypted QR code which can be scanned to verify the authenticity of the document. Similarly, the Board has decided to do away with the printing of Transference copies of Shipping Bill. The Directorate General of Systems would henceforth communicate through email, the eGatepass PDF copy of the Shipping Bill to the customs broker and the exporter, if registered. The Principal Commissioners / Commissioners of Customs have been directed to take a decision on allowing printouts only in exceptional situations.

WTO committed in-quota tariffs on specified items notified

Ministry of Finance has notified the In-quota tariff rates and Tariff rate quota quantity for specified commodities falling under 6 Tariff Items. Imports of these commodities under Tariff Rate Quota (TRQ) authorisation will be allowed only upon debiting the TRQ quantity electronically in the ICES system. The commodities specified are Milk and cream in powder, granules or other solid

forms; Maize (corn), other than seed quality; Crude sunflower seed or safflower oil and fractions thereof; and Refined rape, colza or mustard oil and fractions thereof.

Paracetamol API and Hydrochloroquine API – Export Policy relaxed

The export policy of Paracetamol Active Pharmaceutical Ingredients (“APIs”) falling under HS Code 2922 2933 has been revised from restricted to free. Similarly, export policy of Hydrochloroquine API (Heading 2933) and formulations made from Hydrochloroquine falling under Heading 3004 has been revised from prohibited to free. In effect, both the products are now freely exportable. Directorate General of Foreign Trade (“DGFT”) Notifications Nos. 07/2015-20, dated 28-05-2020 and 13/2015-20, dated 18-06-2020 have been issued for the purposes.

Alcohol-based hand sanitizers – Export Policy relaxed

Export of alcohol-based hand sanitizers in containers with dispenser pumps, falling under any ITC (HS) Code including Headings 3004, 3401, 3402 and sub-heading 3808 94, only is prohibited. As per amendments by DGFT Notification No. 8/2015-20, dated 01-06-2020 in Notification No. 4/2015-20, dated 06-05-2020, export of alcohol-based hand sanitizers in any other form/packaging is now free.

Tyres – Import policy tightened

The import of new pneumatic tyres falling under ITC (HS) Codes 4011 10 10, 4011 10 90, 4011 20 10, 4011 20 90, 4011 40 10, 4011 40 20, 4011 40 90, 4011 50 10 and 4011 50 90 has been revised from “free” to “restricted”. DGFT Notification No. 12/2015-20, dated 12-06-2020 issued for this purpose amends specified entries in Chapter 40 of the Schedule-1 to ITC (HS) Classification of Export and Import Items.



Ratio Decidendi

Valuation – Lower price from principal to compensate for marketing services, not wrong

In a case involving imports from the foreign principal and other foreign affiliates, CESTAT Bangalore has held that it is not correct to reject the transaction value just because there were imports by third parties at a higher price. Allowing the appeal, the Tribunal found justified, the objections that the principals offered a lower price to compensate appellant for the services

rendered in marketing the product and in obtaining orders and that profit percentage earned by the appellants cannot by itself be a matter of suspicion. It also noted that the goods were imported at pre-notified inter-company price list and that the Appellate Authority while rejecting the declared value, did not discuss on the methodology to arrive at the import price and hence said Order could not be implemented. [*Ebro Armaturen India Private Limited v. Commissioner* – 2020 (6) TMI 95 CESTAT Bangalore]

Valuation – Value cannot be enhanced merely based on DGOV Circular

CESTAT Ahmedabad has held that when the enhancement is not based on any contemporaneous import, particularly when the invoice price of the assessee is not disputed on the basis of any evidence of wrong declaration of the value, the enhancement of the value merely on the basis of the DGOV Circular is illegal and incorrect. The Tribunal observed that the enhancement of value was based on DGOV Circular irrespective of the mention made in the consent letter that the assessee had gone through the contemporaneous import data. It noted that the Assessing Authority must examine each and every case on merit for deciding its validity and that he cannot reject transaction value only on the basis of a general criteria based on DGOV Circular. [*Guru Rajendra Metalloys India Pvt. Ltd. v. Commissioner – 2020 VIL 245 CESTAT AHM CU*]

Hot-rolled brass sheets – Classifiable under Heading 7407 covering bars and rods

The Court of Justice of the European Union has held that Heading 7407 of the EU's Combined Nomenclature ("CN") must be interpreted as

meaning that copper or copper alloy ingots in a rectangular shape, the thickness of which exceeds one-tenth of the width and which are hot-rolled, but which have irregular pores, holes and cracks in their cross-section are capable of falling under that heading. It may be noted that Heading 7407 covers copper bars, rods and profiles. The importer had relied upon Note 1(d) to Chapter 74 of the CN and had sought classification of Hot-rolled copper or copper alloy ingots in a rectangular shape under Heading 7403 covering refined copper and copper alloys, unwrought. It had plead that the product was not covered within the concept of 'bars and rods' because of its giant pores, holes and cracks which were visible in the cross-section and cannot be regarded as having a 'uniform' 'solid' cross-section along its whole length. The Court however rejected the plea observing that the requirement for a 'uniform' cross-section refers to the shape and cross-sectional dimensions of the product, and that from the requirement of a 'solid' cross-section, it must be understood as excluding only hollow products. [*Valsts ieņēmumu dienests v. SIA Hydro Energo – Judgement dated 18-06-2020 in Case C-340/19, Court of Justice of the European Union*]

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