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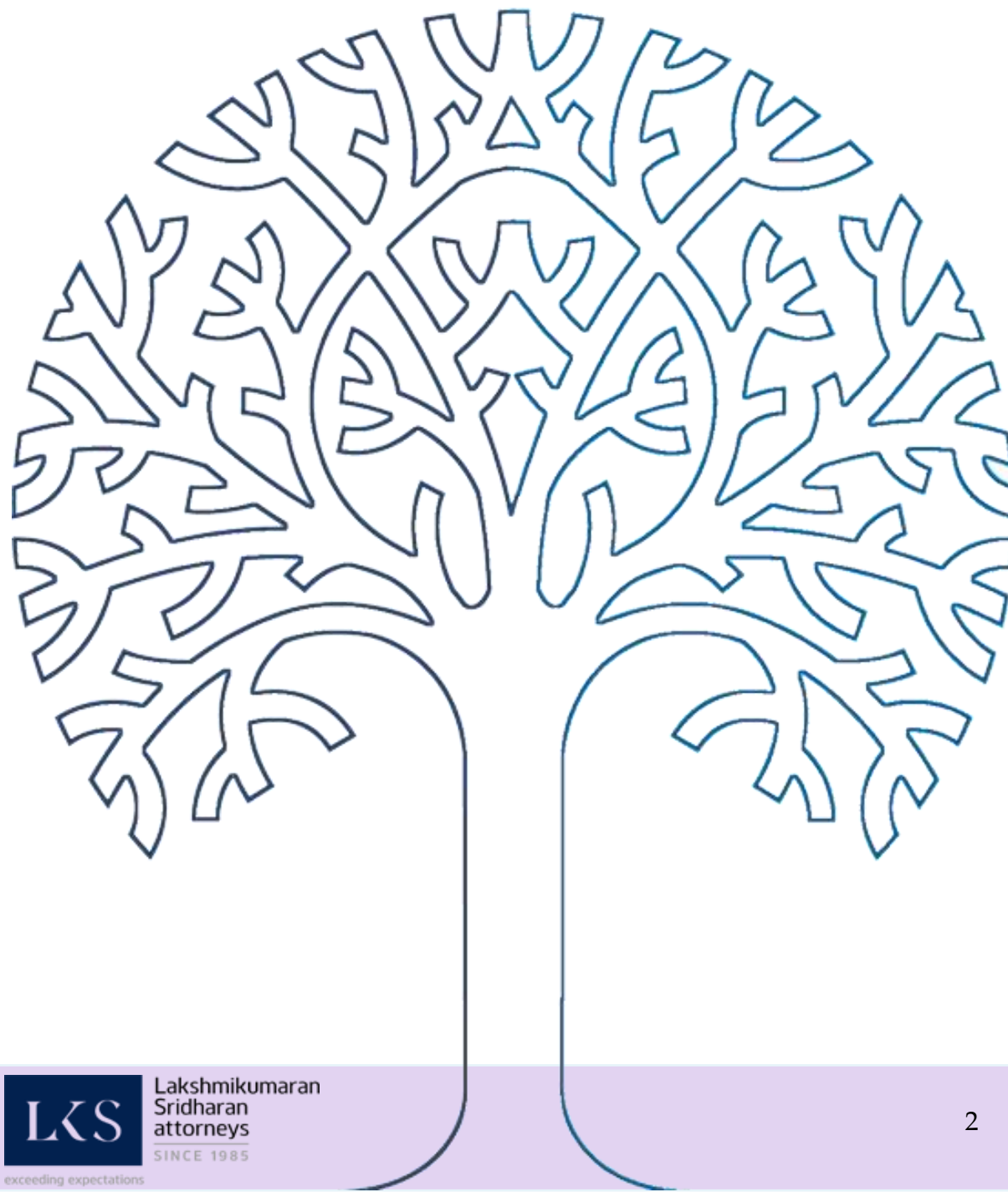
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Article

A missing piece in India's trade remedy law: Codifying 'public interest'

By Devinder Bagia & Arpit Mehra

The article in this issue of International Trade Amicus notes that there is absence of express statutory provisions under the India's AD/CVD laws on how 'public interest' should be assessed by the DGTR and the Ministry of Finance. It discusses the legal status of the public interest consideration in India and the practice of the Finance Ministry to consider larger public interest while deciding to impose duties. It also notes that while the EU has codified public interest criteria which mandates consideration of the interests of consumers and downstream users, in Canada, the Tribunal can conduct a public interest inquiry if there is evidence that duties would negatively affect Canadian public interest. Drawing from the practices of other jurisdictions across the world, the authors also highlight certain criteria which could be adopted by India. Lastly, noting that several cases questioning the powers of the Ministry and the basis for its decisions are pending before the Supreme Court of India and various High Courts, the authors highlight that as per international practice, public interest need not be a threat to effective trade protection.

A missing piece in India's trade remedy law: Codifying 'public interest'

By Devinder Bagia & Arpit Mehra

Introduction

In India, the trade remedial investigations are governed by the Customs Tariff Act, 1975 and the rules issued thereunder i.e. the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ('**Anti-Dumping Rules**') and Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 ('**CVD Rules**').

The Directorate General of Trade Remedies ('**DGTR**'), under the Ministry of Commerce ('**MoC**') is the investigative authority responsible for recommending Anti-dumping ('**AD**') and Countervailing ('**CV**') duties. Under Rule 18 of the Anti-Dumping Rules and Rule 20 of the CVD Rules, the final imposition of duties rests with the Ministry of Finance ('**MoF**'). The MoF considers broader economic policy concerns while deciding whether to impose the duties. In many cases in last 3 years, the MoF has refrained from imposing the duties, despite positive recommendation of the DGTR arguably on the grounds

of larger 'public interest'. To recall, the AD or CV duties tend to increase the prices of the subject products in the domestic market thereby protecting the domestic industry from unfairly priced imports, however they also increase the costs of raw materials/inputs for the downstream industries. This essentially makes the AD/CVD investigations process a *lis* between the domestic industry on one hand and the consumer/user industries on the other hand.

It is pertinent to note there is absence of express statutory provisions under the India's AD/CVD laws on how 'public interest' should be assessed by the DGTR and MoF which creates a legal uncertainty in this area. As India expands its network of free trade agreements and pursues both manufacturing growth and consumer welfare, the need for a structured public interest assessment becomes imperative.

In this regard, other jurisdictions offer valuable insights. The European Union has codified public interest criteria under Article 21 of their Basic Anti-Dumping Regulations, which mandates consideration of the interests of consumers and

downstream users.¹ In Canada, the Canadian International Trade Tribunal can conduct a public interest inquiry if there is evidence that duties would negatively affect Canadian public interest.²

The legal status of the public interest consideration in India

Public interest in Indian trade remedy law occupies a substantively undefined space because there are no enabling provisions under the Customs Tariffs Act or the AD/CVD Rules for DGTR or MoF to consider this crucial aspect while recommending or deciding the imposition or non-imposition of duties. Importantly, there is no guidance on how the DGTR or MoF should balance the interests of domestic industry on one hand and the consumer/user industries on the other hand as part of the wider public interest analysis while deciding to recommend or levy/not levy the duties.

During an investigation, the DGTR under law is bound to invite all stakeholders including the users and consumers of the product concerned to submit public interest arguments. The

DGTR is also bound to record their submissions and deal with them in its final findings as part of the natural justice principles. This creates a situation whereby although DGTR is obligated to take the arguments of users/consumers on record and deal with them but with no power to terminate an investigation in an appropriate case where public interest on users/consumers side is overwhelming.

Arguably, one of the ways in which the consumer/user interest is taken care is by applying the lesser duty rule ('LDR') in AD/CVD proceedings i.e. imposing duties which are lower of the dumping/subsidy margin and the injury margin. This codified principle under the Indian law ensures that duties are remedial, not punitive, and correspond only to the degree of injury actually suffered by the domestic industry. India's adherence to the LDR in AD investigations flows from Rule 4(d)(i) of the Anti-Dumping Rules which corresponds to Article 9.1 of the WTO's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('**Anti-Dumping Agreement**'). This WTO rule effectively permits member countries to apply duties less than the full margin of

¹ Article 21, Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([here](#))

² Section 45, Special Import Measures Act ([here](#))

dumping if such lesser duties are adequate to remove the injury to the domestic industry.³ The rationale behind this approach is generally to avoid inflating costs for downstream industries and consumers while at the same time correcting the unfairly priced imports to the extent necessary to protect the domestic industry.

Interestingly, in June 2018, the DGTR had undertaken a stakeholder consultation for a proposed amendment to Rule 17(b) of the Anti-Dumping Rules which, if enacted, would have permitted DGTR to evaluate whether recommending AD measures would serve the public interest.⁴ The law was not finally amended to implement this proposal.

Therefore, at present, the DGTR cannot choose not to recommend AD duties based only on user/consumer concerns. According to Rules 4 and 17 of the Anti-Dumping Rules, if the DGTR finds evidence of dumping, injury to domestic industry, and a causal connection between them, it must recommend duties—even if in a particular case these duties could substantially harm the consumer/user interests. Any such

negative recommendations by DGTR against imposing duties only on consumer/user interests would exceed its legal authority under the Anti-Dumping Rules.

Practice of MOF to consider larger public interest while deciding to impose duties

The use of the word ‘may’ in Rule 18 of the Anti-dumping Rules gives discretionary powers to the MoF in deciding whether to impose or not impose AD duty. In several recent cases, the MoF has used this as an enabling provision to not impose duty considering the larger public interest. For instance, in the AD investigation on Ofloxacin from China PR, the DGTR recommended the imposition of AD duty in its final findings⁵ because it found evidence of dumping causing injury to the domestic industry but the MoF declined to impose AD duty,⁶ arguably because of larger concerns over healthcare affordability to users in India.

Similar outcomes have occurred in several AD investigations on various upstream and downstream products⁷ of the textiles

³ Article 9.1 of Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ([here](#))

⁴ Page 3, Public Interest Requirement in Anti-Dumping Investigation ([here](#))

⁵ Final Findings [F. No. 6/12/2021-DGTR] dated 16 August 2022 ([here](#))

⁶ Office Memorandum F. No. CBIC-190354/288/2022-TO(TRU-I)-CBEC dated 15 November 2022 ([here](#))

⁷ Below are certain examples of cases relating to upstream and downstream products of textile industry:

Anti-dumping investigation concerning imports of ‘Caprolactam’ originating in or exported from European Union, Korea RP, Russia and Thailand ([here](#))

Anti-dumping investigation concerning imports of ‘Viscose Rayon Filament Yarn (VFY)’ originating in or exported from China PR ([here](#))

industry. Owing to large users/weavers representations before the MoF and Ministry of Textiles, the concerned ministry i.e. Ministry of Textile has many times recommended to the MoF to not impose duties on imports keeping in consideration the interests of small downstream weavers who are pitted against large companies producing fibres/yarns.

What is noticeable in these MoF decisions is the absence of any reasoning on application of public interest and the manner in which it was exercised.

The case for codification of public interest consideration in India

Public interest assessments inherently involve balancing the protection of domestic producers with broader concerns such as consumer welfare, downstream industry competitiveness, public health, and strategic economic goals. Codification could formalize these considerations into identifiable and measurable factors. Drawing from the practices of other jurisdictions across the world, the following criteria could be adopted:

- Impact on downstream industries and SMEs

- Consumer prices and availability of essential goods
- Employment effects in both protected and affected sectors
- National development goals and public health or energy security

Formalizing these criteria would not constrain discretion but structure it - ensuring that competing interests are weighed consistently and transparently.

Currently, the public interest analysis lacks an institutional process backed by legal provisions. In practice, there is no formal obligation for the MoF to invite or assess public interest submissions. Codification could establish some minimum thresholds or standards of economic data to support claims of parties advocating for and against the imposition of AD/CVD duties.

Comparative perspective

India's public interest framework in trade remedy investigations remains discretionary to a large extent with the MoF's decision making process. In contrast, other jurisdictions

Sunset review of anti-dumping duties levied on imports of 'High Tenacity Polyester Yarn' originating in or exported from China PR ([here](#))

adopt varied approaches. These international models provide valuable lessons for India as it considers codification.

European Union: Structured balancing through the union interest test

The EU's Union interest test, under Article 21 of Council Regulation (EU) 2016/1036, mandates a structured assessment of whether duties serve the broader interests of the EU economy. The Commission evaluates the likely impact of duties on consumers, importers, users, and competition before final imposition and can take a view to terminate a case on wider Union interest in an appropriate case.⁸

One such example is the termination of the AD and CVD proceedings concerning imports of farmed Atlantic salmon originating in Norway and the AD proceeding concerning imports of farmed Atlantic salmon originating in Chile and the Faeroe Islands. The EU considered factors like availability of the product at competitive prices, possibility of closure of

downstream industries from imports of their finished products, inflation, employment and economic growth to determine that it is not in the community interest to apply such measures⁹.

Canada: Discretionary but structured public interest review

Canada provides a hybrid model, where the Canadian International Trade Tribunal (CITT) can conduct a public interest inquiry under Section 45 of the Special Import Measures Act (SIMA) if there is evidence that duties would negatively affect Canadian public interest.¹⁰

Conclusion

As India's trade remedy regime evolves, the increasing reliance on consumers/user interests under the larger public interest analyses as a basis for rejecting duty recommendations by the MoF without a structured enabling provision detailing the factors to be considered for public interest analyses has exposed significant legal gaps.¹¹

⁸ Article 21, Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([here](#))

⁹ Council Regulation (EC) No 930/2003 dated 26 May 2003 ([here](#))

¹⁰ Section 45, Special Import Measures Act ([here](#)).

Appendix 4 of public interest inquiry guidelines provide factors that the tribunal may consider in a public interest inquiry. The factors include availability of

alternative goods, effects of full duties on competition and consumers, impact on input-using producers, access to technology, consumer choice, and potential damage to domestic input producers. ([here](#))

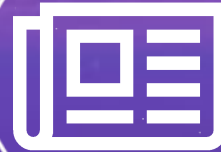
¹¹ Several cases questioning the powers of MoF and the basis for its decisions are pending before the Hon'ble Supreme Court of India and various High Courts.

International practice shows that public interest need not be a threat to effective trade protection. Jurisdictions like the European Union and Canada have demonstrated how structured discretion can strengthen, rather than weaken, the credibility of trade remedies framework. India can draw upon

these models to build a context-specific, developmental framework.

[The authors are Partner and Senior Associate, respectively, in International Trade and WTO practice at Lakshmikumaran & Sridharan Attorneys, New Delhi]

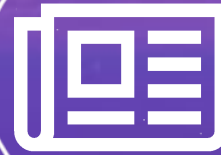
Trade Remedy News.



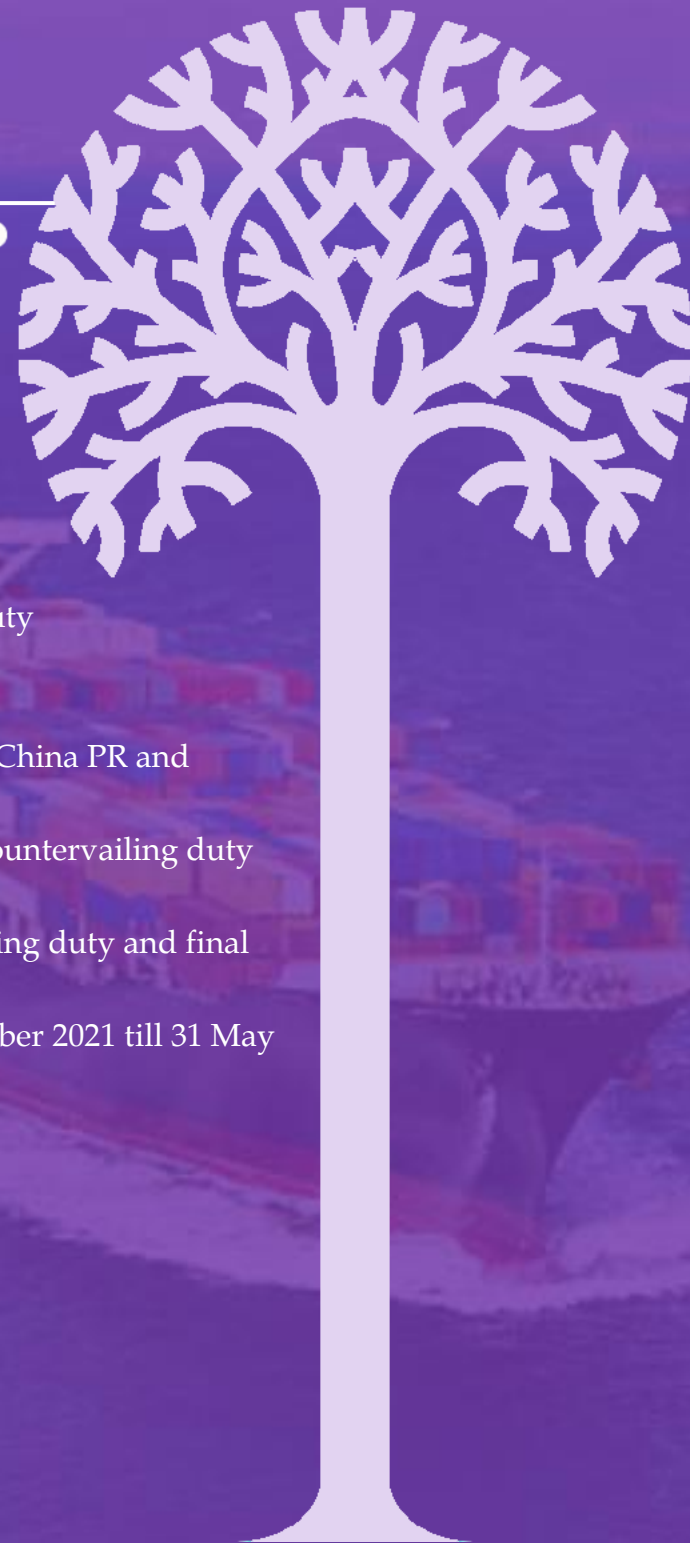
- 2,4-Dichlorophenoxyacetic Acid from India – USA issues final affirmative countervailing duty determination and final affirmative determination of sales at less than fair value.
- Aniline from China PR – India's DGTR recommends continuation of anti-dumping duty after sunset review
- Carbazole Violet Pigment 23 from India – USA issues preliminary determination of provision of countervailing duty from 1 January 2022 till 31 December 2022
- Carbon and alloy steel wire from India – Canada initiates anti-dumping investigation
- Ceramic tile from India – USA issues Final affirmative countervailing duty determination and final negative determination of sales at less than fair value
- Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India – USA issues determination that Goodluck India Limited and Tube Products of India Ltd. made sales at prices below normal value from 1 June 2022 till 31 May 2023
- Continuous Cast Copper Wire Rods from Indonesia, Malaysia, Thailand and Vietnam – India's DGTR recommends continuation of countervailing duty after sunset review
- Epoxy Resins from India – USA issues final affirmative countervailing duty determination and final affirmative determination of sales at less than fair value
- Glycine from India – USA issues determination of sale below normal value from 1 June 2022 till 31 May 2023



Trade Remedy News.



- Granular Polytetrafluoroethylene Resin from India – USA issues preliminary determination that countervailable subsidies were provided to Gujarat Fluorochemicals Limited from 1 January 2023 till 31 December 2023
- Hard empty capsules from India – USA issues preliminary affirmative countervailing duty determination
- High Chrome Cast Iron Grinding Media from India – USA issues final affirmative countervailing duty determination and final affirmative determination of sales at less than fair value
- Melamine from India – USA issues anti-dumping and countervailing duty orders
- Non-Alloy and Alloy Steel Flat Products from all countries other than developing countries, except China PR and Vietnam – India imposes provisional safeguard duty
- Overhead Door Counterbalance Torsion Springs from India – USA issues preliminary affirmative countervailing duty determination
- Polyester Textured Yarn from India – USA issues affirmative finding in sunset review of anti-dumping duty and final affirmative sunset review of countervailing duty
- Raw honey from India – USA issues determination of sale at less than normal value from 23 November 2021 till 31 May 2023
- Stainless Steel Flanges from India – USA rescinds countervailing duty Administrative Review 2023



Trade remedy measures by India

Product	Country	Notification No.	Date of notification	Remarks
Aniline	China PR	F. No. 7/10/2024-DGTR	22 April 2025	Sunset review recommends continuation of anti-dumping duty
Continuous Cast Copper Wire Rods	Indonesia, Malaysia, Thailand and Vietnam	F. No. 07/07/2024 - DGTR	4 April 2025	Sunset review recommends continuation of countervailing duty
Non-Alloy and Alloy Steel Flat Products	All countries other than developing countries, except China PR and Vietnam	1/2025-Cus. (SG)	21 April 2025	Provisional safeguard duty imposed

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
2,4-Dichlorophenoxyacetic Acid	USA	FR Doc No: 2025-05885	7 April 2025	Final affirmative countervailing duty determination
2,4-Dichlorophenoxyacetic Acid	USA	FR Doc No: 2025-05888	7 April 2025	Final affirmative determination of sales at less than fair value

Product	Investigating Country	Document No.	Date of Document	Remarks
Carbazole Violet Pigment 23	USA	FR Doc No: 2025-06288	14 April 2025	Preliminary determination of provision of countervailing duty from 1 January 2022 till 31 December 2022
Carbon and alloy steel wire	Canada	SW 2025 IN	22 April 2025	Anti-dumping investigation initiated
Ceramic tile	USA	FR Doc No: 2025-06909	23 April 2025	Final affirmative countervailing duty determination
Ceramic tile	USA	FR Doc No: 2025-06908	23 April 2025	Final negative determination of sales at less than fair value
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel	USA	FR Doc No: 2025-06323	14 April 2025	Determination that Goodluck India Limited and Tube Products of India Ltd. made sales at prices below normal value from 1 June 2022 till 31 May 2023
Epoxy Resins	USA	FR Doc No: 2025-05749	3 April 2025	Final affirmative countervailing duty determination
Epoxy Resins	USA	FR Doc No: 2025-05756	3 April 2025	Final affirmative determination of sales at less than fair value
Glycine	USA	FR Doc No: 2025-06362	15 April 2025	Determination of sale below normal value from 1 June 2022 till 31 May 2023
Granular Polytetrafluoroethylene Resin	USA	FR Doc No: 2025-06230	11 April 2025	Preliminary determination that countervailable subsidies were provided to Gujarat Fluorochemicals Limited during 1 January 2023 till 31 December 2023

Product	Investigating Country	Document No.	Date of Document	Remarks
Hard Empty Capsules	USA	FR Doc No: 2025-06219	11 April 2025	Preliminary affirmative countervailing duty determination
High Chrome Cast Iron Grinding Media	USA	FR Doc No: 2025-07287	28 April 2025	Final affirmative countervailing duty determination
High Chrome Cast Iron Grinding Media	USA	FR Doc No: 2025-07288	28 April 2025	Final affirmative determination of sales at less than fair value
Melamine	USA	FR Doc No: 2025-06100	9 April 2025	Antidumping and countervailing duty orders issued
Overhead Door Counterbalance Torsion Springs	USA	FR Doc No: 2025-05759	3 April 2025	Preliminary affirmative countervailing duty determination
Polyester Textured Yarn	USA	FR Doc No: 2025-05638	2 April 2025	Affirmative finding in sunset review of anti-dumping duty
Polyester Textured Yarn	USA	FR Doc No: 2025-05925	7 April 2025	Final affirmative sunset review of countervailing duty
Raw honey	USA	FR Doc No: 2025-06864	22 April 2025	Determination of sale at less than normal value from 23 November 2021 till 31 May 2023
Stainless Steel Flanges	USA	FR Doc No: 2025-06844	22 April 2025	Countervailing duty Administrative Review 2023 rescinded



WTO News

- India's tariffs on certain goods in ICT sector – DSB again delays adoption of panel report on request of India and Chinese Taipei
- Hot rolled flat steel – Egypt launches safeguard investigation
- EU's countervailing duties on battery electric vehicles from China – WTO panel established
- EU initiates appeal arbitration in IP dispute with China

India's tariffs on certain goods in ICT sector – DSB again delays adoption of panel report on request of India and Chinese Taipei

India and Chinese Taipei have again requested additional time for the DSB to consider for adoption the panel report circulated on 17 April 2023 in the case initiated by Chinese Taipei regarding India's tariffs on certain high-tech goods. DSB has thus agreed to further delay the consideration of the panel report until 24 October 2025. As per reports, the DSB had agreed to six previous requests from India and Chinese Taipei to delay consideration of the reports.

Hot rolled flat steel – Egypt launches safeguard investigation

Egypt has on 22 April 2025 initiated a safeguard investigation concerning imports of Hot rolled flat steel classifiable under sub-headings 7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.40, 7208.51, 7208.52, 7208.53, 7208.54, 7208.90, 7211.14, 7211.19, 7225.30, 7225.40, 7226.91, 7226.99 within the Egyptian Customs Tariff Schedule. According to the document circulated in the WTO on 29 April, interested parties must make themselves known to the investigating authority within 30 days from the date of publication of the notice of the initiation.

EU's countervailing duties on battery electric vehicles from China – WTO panel established

The Dispute Settlement Board of the WTO has agreed to establish a panel to review the countervailing duties imposed by the European Union on new battery electric vehicles imported from China PR. China had on 4 November 2024 requested consultations with the European Union with respect to the definitive countervailing duties imposed by the latter on the said goods from China, as well as the underlying investigation that led to the imposition of these duties. According to China, the EU measures violate various provisions of the WTO's Agreement on Subsidies and Countervailing Measures and the GATT 1994. India is also one of the third parties to the dispute.

EU initiates appeal arbitration in IP dispute with China

The European Union has initiated arbitration proceedings under Article 25 of the Dispute Settlement Understanding (DSU) to review the findings of a WTO dispute panel in '*China — Enforcement of intellectual property rights*'. According to the EU, the Panel erred in the interpretation of Article 1.1, first sentence, of the TRIPS Agreement by determining that this provision merely requires WTO Members to implement the provisions of the Agreement within their domestic legal systems and does not

require them to refrain from taking measures that undermine the protection and enforcement of IP rights in the territories of other Members. The European Union also appeals the Panel's erroneous legal interpretations of Article 1.1, first sentence, in conjunction with either Article 28.1, 28.2 or 44.1, and of Article

41.1 of the TRIPS Agreement, and has requested the Arbitrators to complete the analysis and find that China's ASI policy and the five individual ASI court decisions are inconsistent with China's obligations under those provisions.

India Customs & Trade Policy Update



- Interactive Flat Panel Displays and Monitors (other than IFPDs) – CBIC clarifies on difference and rate of duty
- Gold and jewellery and parts, and silver article of goldsmiths' or silversmiths' wares and parts – Drawback enhanced
- Synthetic Knitted Fabrics – Import 'restricted' if CIF value is below USD 3.5/kg
- Coal imports – Registration fees under CIMS revised
- Processed areca nuts, including roasted areca nuts – Import 'prohibited' if CIF value is below INR 351/kg
- Maldives – Export permitted of specified essential commodities, even if restricted/prohibited

Interactive Flat Panel Displays and Monitors (other than IFPDs) – CBIC clarifies on difference and rate of duty

The CBIC has clarified that both Interactive Flat Panel Displays (IFPDs) and monitors other than IFPDs are classifiable under Tariff Item 8528 59 00 of the Customs Tariff. Circular No. 12/2025-Cus., dated 7 April 2025 also clarifies that parts of IFPDs, such as Touch Glass Sheets and Touch Sensor PCBs, shall be classified under Heading 8529 attracting BCD rate of 5% as per Sr. No. 515D of Notification No.50/2017-Cus. The Circular also notes that *vide* Notification No. 23/2025-Cus., dated 4 April 2025, S. No. 515C of Notification No. 50/2017-Cus. has been amended to remove the IGCR condition in respect of import of monitors other than IFPDs. The industry associations had sought clarification on compliance of IGCR conditions, as these monitors are not used in further manufacturing activity. It may be noted that after the Budget 2025-26, BCD on IFPDs was increased 20% while monitors are liable to 10% BCD, now without any condition.

Gold and jewellery and parts, and silver article of goldsmiths' or silversmiths' wares and parts – Drawback enhanced

The Ministry of Finance has enhanced the drawback on exports of gold and silver articles of jewellery and parts thereof, and on

silver articles of goldsmiths' or silversmiths' wares and parts thereof. While articles of jewellery and parts thereof, made of gold will now be eligible for the enhanced drawback rate of INR 405.40 per gram of net gold content, articles of jewellery and parts thereof, made of silver and articles of goldsmiths' or silversmiths' wares and parts made of silver, would be eligible for drawback of INR 4950.03 per kg. of net silver content. Notification No. 26/2025-Cus. (N.T.), dated 17 April 2025 has amended Notification No. 77/2023-Cus. (N.T.) for this purpose.

Synthetic Knitted Fabrics – Import 'restricted' if CIF value is below USD 3.5/kg

The Ministry of Commerce has restricted the import of Synthetic Knitted Fabrics falling under ITC (HS) Codes 6001 92 00, 6005 36 00, 6005 37 90 and 6005 39 00. The import is however 'free' if the CIF value of imports is USD 3.5/kg or above. It may be noted that as per Notification No. 5/2025-26, dated 23 April 2025, the MIP condition on these items will not be applicable for imports by Advance Authorisation holders, EOUs and units in SEZs, subject to condition that the imported inputs are not sold in the Domestic Tariff Area.

Coal imports – Registration fees under CIMS revised

The Ministry of Commerce has revised the registration fees for obtaining automatic registration under Coal Import Monitoring System (CIMS). The fees will now be subject to the scale of fee mentioned in Appendix 2K. Accordingly, Appendix 2K has also been amended by DGFT Public Notice No. 2/2025-26, dated 15 April 2025 to prescribe a fee of INR 500 for issuance of automatic registration number under Import Monitoring Systems, i.e., under SIMS, CIMS, NFMIMS, PIMS, etc.

Processed areca nuts, including roasted areca nuts – Import ‘prohibited’ if CIF value is below INR 351/kg

The Ministry of Commerce has revised the Import Policy of processed areca nuts, including roasted areca nuts, falling under ITC (HS) Code 0802 80 90 from ‘Free’ to ‘Prohibited’. The import shall however be ‘Free’ if CIF value of the goods is INR 351/kg or above. It may be noted that the MIP conditions is not

applicable to imports by EOUs, units in SEZs and under Advance Authorisation scheme. Further, as per Notification No. 2/2025-26, dated 2 April 2025, roasted areca nuts are not covered under ITC(HS) Code 2008 19 20 as they are specifically covered under 0802 80 90.

Maldives – Export permitted of specified essential commodities, even if restricted/prohibited

Export of specified quantities of eggs, potatoes, onions, rice, wheat flour, sugar, dal, stone aggregate and river sand, during the Financial Year 2025-26, has been permitted to Maldives under the Bilateral Trade Agreement. These exports will remain exempt from any existing or future restrictions or prohibitions during this period. Notification No. 1/2025-26, dated 1 April 2025 issued for the purpose, also states that exports of items, to Maldives, which are otherwise restricted or prohibited shall be allowed only through the six designated ports – Mundra Sea Port, Tuticorin Sea Port, Nhava Sheva Sea Port, ICD Tughlakabad, Kandla Sea, and Visakhapatnam Sea.



Ratio Decidendi

- Classification of goods – Test of ‘most akin’ and not ‘preponderance of probability’ to be followed when laboratory testing not done on all specified parameters – *Supreme Court*
- Safeguards measures – Transitional provisions under FTP para 1.05(b) are not applicable for quantitative restrictions on imports – *Delhi High Court*
- Acceptance of declared value for levying Basic Customs Duty but rejecting same for anti-dumping duty is unjustified – *CESTAT Kolkata*
- FTA imports – Mechanism provided for verification of Rules of Origin is only for originating criterion – Classification of goods can be rejected without verifying the COO – *CESTAT Ahmedabad*
- Clear Float Glass with a Tin layer which is absorbent and non-reflective, is classifiable under TI 7005 10 90 – Classification mentioned in Certificate of Origin is not material – *CESTAT Chennai*

Classification of goods – Test of ‘most akin’ and not ‘preponderance of probability’ to be followed when laboratory testing not done on all specified parameters

In a case where laboratory testing of imported goods was not done on all the specified parameters, the Supreme Court has observed that test of being ‘most akin’ to the specified goods is to be followed rather than considering preponderance of probability. The dispute involved classification of imported goods as base oil or HSD and the High Court in its impugned order had, based on preponderance of probability, held the goods to be HSD.

The Apex Court, however, noted that the High Court had based its conclusion on incomplete test reports where laboratory tests were not done on all the parameters as specified under the BIS IS:1460:2005 and there was a lack of clarity of opinion by the expert. The Supreme Court also noted that the expert had avoided giving satisfactory answers to the questions relating to the ‘flash point’ and its significance in determining the nature of the fuel.

Accordingly, the Supreme Court was of the view that the real test for classification would be as to whether any goods or substance in question is ‘most akin’ or bears the closest resemblance or similarity to any of the specified goods mentioned under the Headings and relative Section or Chapter Notes under the Customs Tariff Act, and not by applying the test of preponderance of probability which does not provide an accurate test. [*Gastrade International v. Commissioner* – 2025 VIL 17 SC CU]

Safeguards measures – Transitional provisions under FTP para 1.05(b) are not applicable for quantitative restrictions on imports

The Delhi High Court has held that transitional provisions incorporated in Clause 1.05 of the Foreign Trade Policy will not apply in the event of a measure/safeguards action under Section 9A of Foreign Trade (Development and Regulation) Act, 1992 read with the Safeguard Measures (Quantifiable Restrictions) Rules, 2012. The Court was of the view that any action taken under Section 9A is not controlled by rigours of Section 3 of the FTDR Act and/or Clause 1.05 of the FTP framed under Section 5 of the FTDR Act.

The Court hence rejected the plea of the importer that quantitative restrictions imposed on import of Low Ash Metallurgical Coke by Ministry of Commerce Notification No. 44/2024-25 dated 26 December 2024 should not affect imports for which Irrevocable Commercial Letters of Credit (ICLC) have been opened prior to the issuance of the notification.

It was noted that unlike in the case of an action under Section 3(2), an action under Section 9A is preceded by an elaborate investigation, with the participation of all the concerned stakeholders, to determine the extent/threat of injury to the domestic industry consequent upon increased import of the goods into India. The Court thus observed that the notification under Section 9A(1) is a product of an elaborate quasi-judicial exercise, which is in sharp contrast to a measure taken/notification issued under Section 3 of the FTDR Act read with Clause 2.07 of the FTP. Dismissing the petitions, the Court was also of the view that the leeway afforded to contracting states under Article IX of GATT, 1994 to take action to protect their domestic industry, cannot be whittled down by holding that safeguard measures be subject to 'transition provisions'. *[JSW Steel Limited and Ors. v. Union of India – Judgement dated 28 March 2025 in W.P.(C) 1685/2025 and Ors., Delhi High Court]*

Acceptance of declared value for levying Basic Customs Duty but rejecting same for anti-dumping duty is unjustified

The CESTAT Kolkata has rejected the Revenue department's contention that the assessee had imported Chinese origin Melamine under third country invoices raised by suppliers based in Malaysia and Hong Kong to suppress the actual value and evade anti-dumping duty. Observing that the Department's case was based on conjectures and surmises without any cogent evidence to prove mis-declaration of value or suppression to evade anti-dumping duty, the Tribunal found it unjustified that the Department had accepted the declared assessable value for the purpose of levying Basic Customs Duty but rejected the same for levying ADD.

The Tribunal also noted that the Department was not able to controvert the arguments in respect of the market forces and chemical/technical considerations driving imports of Chinese Origin Melamine through Malaysia and Hong Kong. It also noted that there was no evidence to suggest any parallel invoicing to prove that the goods were misdeclared to evade ADD or the backflow of the alleged variation in prices made to overseas suppliers. *[Commissioner v. Kiran Trading Company – 2025 VIL 588 CESTAT KOL CU]*

FTA imports – Mechanism provided for verification of Rules of Origin is only for originating criterion – Classification of goods can be rejected without verifying the COO

The CESTAT Ahmedabad has held that the mechanism provided for verification of any document such as Rules of Origin, Instruction or any Circular issued in this regard is regarding originating criterion only. The dispute involved alleged misclassification and misdeclaration to claim the benefit of India South Korea Comprehensive Economic Partnership Agreement, where the assessee had classified 'Copper Rod Nominal Dia 8mm with ATSM B49' under TI 74071020 while the Department classification the goods under TI 74081190 of the Customs Tariff Act, 1975. The assessee had submitted that the Tariff Heading declared by it was correct since the same was mentioned in the Certificate of Origin which remained valid and therefore, without verifying the COO, classification cannot be rejected.

According to the Tribunal, the verification process provided in Rules of Origin is to be resorted only when there is doubt/dispute about the criterion of origin of the goods or when the Certificate of Origin itself is doubted to be forged/non-authentic. It was noted that the present case was not about whether the goods

originated from Korea but, involved misclassification to claim the benefit of CEPA. Department's view of classification under TI 7408 11 90 was upheld while the Tribunal observed that Chapter Notes to Chapter 74 clearly excluded the goods in coil form from the definition of Bars and Rods, and that end use has no effect on classification of the goods. [*Shakti Insulated Wires Pvt. Ltd. v. Commissioner* – 2025 VIL 541 CESTAT AHM CU]

Clear Float Glass with a Tin layer which is absorbent and non-reflective, is classifiable under TI 7005 10 90 – Classification mentioned in Certificate of Origin is not material

The CESTAT Chennai has upheld the classification of Clear Float Glass under TI 7005 10 90 and not under TI 7005 29 90 of the Customs Tariff Act, 1975 as classified/assessed by the Department. It was noted that there was a thin Tin layer which was absorbent and non-reflective in the imported Clear Float Glass, thus meriting classification under tariff item 7005 10 90. Further, according to the Tribunal, classification of CFG mentioned in the Certificate of Origin issued in respect of the imports would not be having any bearing on the classification of the imported Clear Float Glass by the assessee. [*Suraj Constructions v. Commissioner* – 2025 VIL 547 CESTAT CHE CU]

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