

International Trade

# amicus

January 2025 / Issue –161



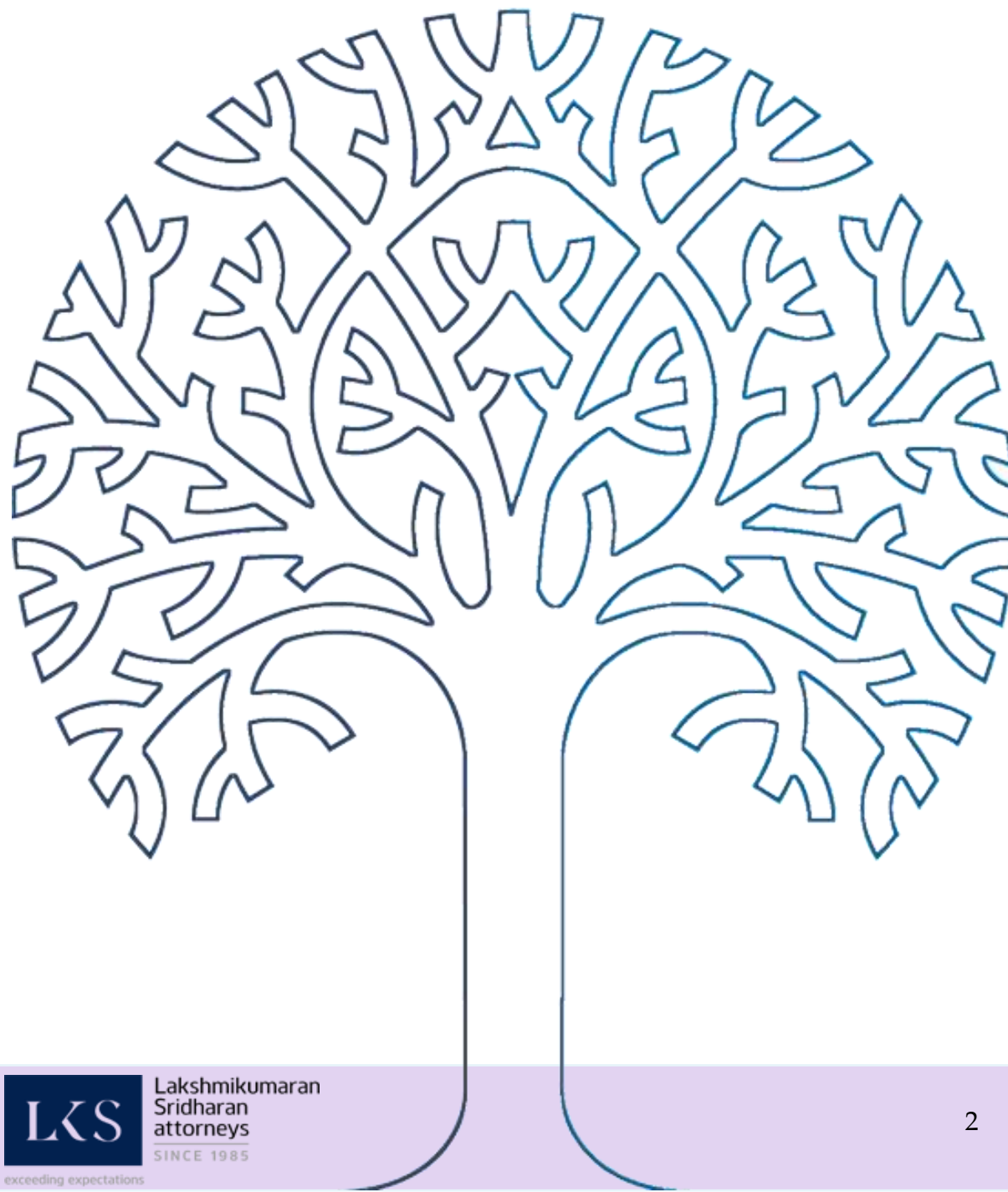
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# Article

## **Beyond borders: The challenge of transnational subsidies in global trade**

*By Abhishek Tripathi*

Transnational subsidies refer to financial support provided by the government of a third country to companies established in the territory of another country (the exporting country) which may cause economic harm to the industries in the importing country. As the WTO member countries grapple with the challenge to counter these subsidies within the framework of the present Agreement on Subsidies and Countervailing Measures (**'SCM Agreement'**), the article in this issue of International Trade Amicus analyses some important developments on this front. The first section of the article focuses on discussing the present framework of the SCM Agreement, the second section focuses on developments in the EU and the USA, and finally the third section discusses the way forward for India. According to the author, it may augur well for India to issue a guidance on the way forward on this front so that the trade and relevant authorities can handle such cases.



# Beyond borders: The challenge of transnational subsidies in global trade

By Abhishek Tripathi

## Introduction

As the world becomes increasingly interconnected, global trade is facing new challenges to tackle unfair trade practices. One such challenge is to effectively tackle the embedded subsidies in the export goods which may cause economic harm to the industries in the importing country. Traditionally, anti-subsidy investigations, conducted under the World Trade Organization's ('WTO') framework of Agreement on Subsidies and Countervailing Measures ('SCM Agreement'), have focused on subsidies given by the government of the exporting country to companies located within its territorial jurisdiction. Given the text of the SCM Agreement, one may argue that the drafters of the agreement did not envisage a situation where a financial support can be provided by the government of a third country to companies established in the territory of another country (the exporting country), typically called as a '*transnational subsidy*'.

With the expanding horizons of global corporations across continents coupled with a complex set of agreements entered between governments promoting or facilitating trade and funding/investment, this has increasingly become a reality in

today's world. As the WTO member countries grapple with the challenge to counter the transnational subsidies within the framework of the present SCM Agreement, in this article, the author analyses some important developments on this front. The first section of the article focuses on discussing the present framework of the SCM Agreement, the second section focuses on developments in the European Union ('EU') and the United States of America ('USA'), and finally the third section discusses the way forward for India.

## Framework of the WTO SCM Agreement and transnational subsidies

The gaps in the SCM Agreement regarding transnational subsidies have already led to legal challenges, as there are no explicit provisions that address them. On the contrary, certain provisions of the SCM Agreement emphasize territoriality of a subsidy, thereby inferring that cross border or transnational subsidies are out of its scope. To recall, under the SCM Agreement, a 'subsidy' is defined as a financial contribution by a government or any public body within the territory of a WTO

member country which confers a benefit to the recipient entity and is 'specific'.

**Article 2** of the SCM Agreement which defines 'specificity'<sup>1</sup> provides that a subsidy must be granted to an enterprise or industry *within the jurisdiction of the granting authority*. This implies that the recipient of the subsidy must be located within the subsidizing country's territory, thereby inferring that transnational subsidies are not covered in the scope of the SCM Agreement.

Furthermore, **Footnote 63 to Annex IV** reinforces this territorial requirement by specifying that, for the purpose of calculating the subsidies, the recipient firm must be in the *territory of the subsidizing member country*. This provision tries to ensure that only subsidies benefiting firms within the subsidizing member country's territory are considered. **Article 25.2** of the SCM Agreement adds another layer by requiring WTO members to notify the subsidies that are specific and *granted within their territory*, implying that subsidies granted outside the territory of the subsidizing member are not covered. Additionally, **Article 14(a)** of the SCM Agreement requires assessing whether a government's equity contribution deviates

from private investor practices *within the subsidizing member country's territory*. Thus, transnational subsidies present a unique challenge, especially when the government granting the subsidy is not the same as the producing/exporting country's government.

Despite the above provisions, the SCM Agreement has certain provisions which can be interpreted in a manner to provide room for coverage of transnational subsidies. **Article 1.1(a)(1)** of the SCM Agreement defines a subsidy as a '*financial contribution by a government or any public body within the territory of a Member*'. It may be argued that the territorial qualifier '*within the territory of a Member*' applies to the 'government or public body' granting the subsidy and not the 'financial contribution'. This is because the term '*by a government or any public body*' is not enclosed in commas. Moreover, a key interpretational distinction arises from the use of *within the territory of 'a Member'* rather than '*the Member*.' The use of the indefinite article '*a*' suggests that the provision is not tied to a specific Member but applies broadly to any WTO Member. This broader language facilitates the inclusion of financial contributions made by a government in one Member country to a recipient in the territory

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<sup>1</sup> A subsidy is specific if it is granted to 'an enterprise or industry or group of enterprises or industries'

of another, even when the recipient is outside the subsidizing Member's jurisdiction. However, this interpretation of the SCM Agreement can be subject to judicial review given the context of the other provisions in the SCM Agreement as explained above.

## US and EU approach to counter transnational subsidies

Both the USA and the EU have taken concrete steps to address transnational subsidies. On 25 March 2024, the USA finalized a new law aimed at addressing transnational subsidies.<sup>2</sup> This came after the U.S. Department of Commerce ('Commerce') proposed new regulations on 9 May 2023, inviting public feedback and comments.<sup>3</sup> After receiving public feedback, Commerce finalized the rule in March 2024, marking a significant shift in US trade policy to provide stronger tools for ensuring fair competition and addressing the growing challenge of cross-border subsidies. This regulatory shift echoes the legislative ambitions of a bill introduced in Congress in 2021, '*Eliminating Global Market Distortions to Protect American Jobs Act*,' which had sought to amend the definition of a countervailable subsidy to encompass cross-border financial

aids. The bill had defined 'transnational subsidy' as any subsidy given by a foreign government to a producer, exporter, or supplier of a product destined for the USA market, even when that production or export does not occur within the subsidizing country's borders.<sup>4</sup> The need for this change arose from the limitations in existing law, which previously only allowed to countervail subsidies if granted within the same country where the product was made or sold. The issue became more pressing with the rise of foreign initiatives, such as China's Belt and Road Initiative ('CBR'), which allegedly affected the US markets.

Unlike the USA, which has taken steps to amend its laws, the EU has relied on the principle of 'attribution' within its existing legal framework to deal with transnational subsidies under its anti-subsidy laws. This principle allows the EU to attribute financial contributions made by one country to another, when the latter effectively 'adopts or facilitates' those actions. In practice, this means that even if subsidies originate from a third country, they can be attributed to the exporting country in which the beneficiary enterprise is located, provided that the exporting country's government plays a role in adopting or endorsing

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<sup>2</sup> US law, available [here](#).

<sup>3</sup> US DOC proposal, as available [here](#).

<sup>4</sup> Bill defining 'Transnational subsidy, available [here](#).

those subsidies. A key example of this approach can be seen in the case of certain glass fiber fabrics imported from Egypt (**Commission Implementing Regulation (EU) 2020/870, 24 June 2020**), wherein the European Commission ('EC') imposed countervailing duties on Chinese enterprises based in Egypt. The Commission argued that, although the subsidies originated in China, the government of Egypt had effectively '*adopted*' them, making them subject to countervailing measures under WTO rules of the SCM Agreement. This approach targeted not only direct subsidies from Egypt, but also indirect subsidies provided by China to its enterprises operating in Egypt.<sup>5</sup> The matter was also litigated by the Egyptian entities in the EU courts. The General Court (First Chamber, Extended Composition) ('GC') affirmed the EC's view, holding that EU law does not require the financial contribution to come directly from the government of the country of origin or export. Instead, it is sufficient for the subsidies to be attributed to the country of origin or export, even if the financial contribution is granted by a third country, such as China.<sup>6</sup> An appeal filed with the European Court of Justice ('ECJ') against the General Court's decision was also rejected. The ECJ emphasized that the provisions of the SCM Agreement

do not exclude financial contributions originating from one WTO member government to another, as long as they meet the criteria for subsidies. The Court applied customary international law principles, particularly Article 31 of the Vienna Convention, interpreting the agreement in good faith by considering its ordinary meaning, context and purpose.<sup>7</sup>

## Way forward for India

India may also sooner than later consider addressing transnational subsidies to protect its domestic industries from unfair competition. The transnational subsidies, granted by foreign governments to companies in third countries, may result in goods being exported to India at artificially low prices, potentially harming local industries. Currently, India's CVD framework aligns with the provisions of the SCM Agreement. However, subsidies granted by foreign governments to companies in third countries were treated as countervailable if the host country played a role in accepting or facilitating those subsidies.

It remains to be seen if India could consider a similar approach if evidence on record shows that such subsidies

<sup>5</sup> Commission Implementing Regulation (EU) 2020/870, available [here](#).

<sup>6</sup> Available at: [CURIA - Documents](#)

<sup>7</sup> [EUR-Lex - 62023CJ0269 - EN - EUR-Lex](#)

significantly impact Indian markets. It may augur well for India to issue a guidance on the way forward on this front so that the trade and relevant authorities can handle such cases. The guidance could *inter alia* outline the conditions under which transnational subsidies could be treated as countervailable. By drawing insights from the frameworks established by the USA and the EU, India has the opportunity to refine its trade defence

mechanisms and protect its industries. The approach India takes moving forward will play an important role in responding to the evolving dynamics of international trade.

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# Trade Remedy News.



- Acrylic solid surfaces from China PR and Japan – India's DGTR recommends anti-dumping duty on goods from China PR
- Carbazole violet pigment 23 from India – USA initiates anti-dumping and countervailing duty administrative reviews
- Corrosion-resistant steel sheet from India – Canada issues notice of initiation of expiry review investigation
- Cypermethrin from India – China PR issues preliminary ruling on anti-dumping investigation
- Finished carbon steel flanges from India – USA issues affirmative anti-dumping duty administrative review; 2022– 2023
- Glycine from India – USA continues with anti-dumping duty and countervailing duty
- Hard Empty Capsules from India – USA postpones preliminary determination in countervailing duty investigation
- Nylon filament yarn from China PR and Vietnam – India's DGTR issues corrigendum to initiation notification for anti-dumping investigation
- Oil country tubular goods – USA rescinds CVD administrative review for period 1 January 2023 till 31 December 2023
- Oil country tubular goods from India – Canada issues notice of conclusion of reinvestigation for anti-dumping duty
- Overhead door counterbalance torsion springs from India – USA postpones preliminary determination in countervailing duty investigation
- Para nitrotoluene from European Union – India terminates anti-dumping investigation
- Poly Vinyl Chloride (PVC) paste resin from European Union and Japan – India initiates anti-dumping investigation
- Roller chains from China PR – India's DGTR recommends imposition of anti-dumping duty
- Welded carbon steel standard pipes and tubes from India – USA rescinds ADD administrative review for period 1 May 2023 till 30 April 2024
- Welded stainless steel pressure pipe from India – USA rescinds CVD administrative review for period 1 January 2023 till 31 December 2023



## Trade remedy measures by India

Product	Country	Notification No.	Date of notification	Remarks
Acrylic Solid Surfaces	China PR and Japan	F. No. 06/06/2023-DGTR	26 December 2024	Anti-dumping duty recommended on goods from China PR
Nylon Filament Yarn	China PR and Vietnam	F. No. 6/48/2024-DGTR	15 January 2025	Corrigendum to initiation notification for anti-dumping investigation
Para Nitrotoluene	European Union	F. No. 6/35/2024-DGTR	23 January 2025	Anti-dumping investigation terminated
Poly Vinyl Chloride (PVC) Paste Resin	European Union and Japan	F. No. 06/33/2024-DGTR	24 January 2025	Anti-dumping investigation initiated
Roller Chains	China PR	F. No. 06/26/2023 - DGTR	26 December 2024	Anti-dumping duty recommended

## Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Carbazole Violet Pigment 23	USA	FR Doc No: 2025-01751	27 January 2025	Anti-dumping and Countervailing Duty Administrative Reviews initiated. ADD for period 1 December 2023 till 30 November 2024. CVD from 1 January 2023 till 31 December 2023.

Product	Investigating Country	Document No.	Date of Document	Remarks
Carbazole Violet Pigment 23	USA	FR Doc No: 2025-01124	17 January 2025	Antidumping Duty Administrative Review; 2022-2023 – No sale below normal price
Corrosion-Resistant Steel Sheet	Canada	COR1 2024 ER	16 January 2025	Notice of initiation of expiry review investigation issued: CIIT
Cypermethrin	China PR	Ministry of Commerce Announcement No. 2 of 2025	7 January 2025	Preliminary ruling issued on anti-dumping investigation
Finished Carbon Steel Flanges	USA	A-533-871	02 January 2025	Affirmative anti-dumping duty Administrative Review; 2022– 2023 issued
Glycine	USA	FR Doc No: 2025-01795	28 January 2025	Anti-dumping duty and Countervailing duty continued
Hard Empty Capsules	USA	FR Doc No: 2025-00658	15 January 2025	CVD investigation – Preliminary determination postponed
Oil Country Tubular Goods	Canada	OCTG 2024 RI	31 January 2025	ADD – Notice issued of conclusion of re-investigation
Oil Country Tubular Goods	USA	FR Doc No: 2025-01750	27 January 2025	CVD Administrative Review for period 1 January 2023 till 31 December 2023 rescinded

Product	Investigating Country	Document No.	Date of Document	Remarks
Overhead Door Counterbalance Springs	USA	C-533-937, C-570-187	2 January 2025	Preliminary determinations in Countervailing Duty investigations postponed
Welded Carbon Steel Standard Pipes and Tubes	USA	FR Doc No: 2025-01750	27 January 2025	ADD Administrative Review for period 1 May 2023 till 30 April 2024 rescinded
Welded Stainless Steel Pressure Pipe	USA	FR Doc No: 2025-01750	27 January 2025	CVD Administrative Review for period 1 January 2023 till 31 December 2023 rescinded





# WTO News

- China initiates dispute complaint against USA for new additional 10% tariff measures
- EU disputes Chinese patent licensing measures
- EU's measures on Palm Oil and Oil Palm crop-based biofuels found to partially violate certain provisions of TBT Agreement
- South Africa initiates safeguard investigation on corrosion-resistant steel coil

## China initiates dispute complaint against USA for new additional 10% tariff measures

China has on 5 February 2025 initiated a disputes complaint against USA for the latter's latest tariff (10% additional tariff) measures on goods originating from China. The 10% additional tariff measures are imposed under Section 1702(a)(1)(B) of International Emergency Economic Powers Act (IEEPA), as part of an alleged attempt to address the 'national emergency' with respect to alleged influx of synthetic opioids into the United States. According to China, the 10 per cent additional *ad valorem* duties, as well as measures with respect to the availability of drawback and duty-free *de minimis* treatment, which apply to all products of Chinese origin, are inconsistent with USA's most-favoured-nation (MFN) obligations under Article I:1 of the General Agreement on Tariffs and Trade (GATT) 1994 and US tariff obligations under Article II:1(a) of the GATT 1994.

## EU disputes Chinese patent licensing measures

The European Union has on 22 January 2025 requested for consultations with China on the latter's certain patent licensing measures. EU disputes the legal instruments giving Chinese courts the authority to take, without the consent of both parties,

decisions setting the conditions for worldwide licences for standard essential patents (SEPs), which are binding on both parties and enforceable in China, including with respect to non-Chinese SEPs. According to the European Union, this measure appears to curtail the ability of the parties, SEP owners and implementers, to enforce their rights and ensure the respect of obligations with respect to non-Chinese SEPs in the courts of the jurisdictions where the non-Chinese patents were granted. EU also alleges that this curtails the ability of the courts of the jurisdictions where the non-Chinese patents were granted to adjudicate actions relating to those patents in the respective jurisdictions. The measures are alleged to be in violation of various provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement').

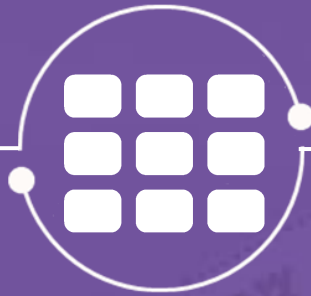
## EU's measures on Palm Oil and Oil Palm crop-based biofuels found to partially violate certain provisions of TBT Agreement

The Dispute Settlement Board's panel has held that certain provisions of the European Union on palm oil and oil palm crop-based biofuels from Indonesia violate various provisions of the Agreement on Technical Barriers to Trade ('TBT Agreement'). It was held that the European Union administered the high ILUC-

risk cap and phase-out inconsistently with Article 2.1 of the TBT Agreement by failing to conduct a timely review of the data used to determine which biofuels were high ILUC risk, and because there were deficiencies in the design and implementation of the low ILUC-risk criteria, which resulted in arbitrary or unjustifiable discrimination between countries where the same conditions prevail. The high ILUC-risk cap and phase-out was also held to be inconsistent with Articles I:1 and III:4 of the GATT 1994. ILUC refers to Indirect Land Use Change. Similarly, the low ILUC-risk certification procedure was also held to be inconsistent with Article 5.1.2 of the TBT Agreement since deficiencies therein had created unnecessary obstacles to international trade.

## South Africa initiates safeguard investigation on corrosion-resistant steel coil

South Africa has on 17 January 2025 initiated a safeguard investigation on the imports of flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated, with aluminium-zinc alloys, of a thickness of less than 0.45 mm, classifiable under tariff sub-headings 7210 61 20 and 7210 61 30 and flat-rolled products of other alloy steel, of a width of 600 mm or more, otherwise plated or coated with zinc, of a thickness of less than 0.45 mm classifiable under tariff sub-headings 7225 92 25 and 7225 92 35. The period of investigation for data evaluation for the purposes of determining the allegation of serious injury is from 01 May 2021 to 30 April 2024. As per document circulated in the WTO on 3 February, the surge in imports in South Africa is expected to be augmented by the recent economic slowdown in China and by the fact that China's export markets are contracting rapidly.



# India FTA Update

- India and Oman decide to expedite trade pact talks – Sign protocol to amend tax treaty
- America First Trade Policy – India examines US Trade memo for bilateral trade deal
- India-EU free trade agreement talks may get delayed due to elections in EU member states – CBAM, deforestation regulation, etc., remain major hurdles



## India and Oman decide to expedite trade pact talks – Sign protocol to amend tax treaty

India and Oman have decided to expedite the discussions for an early signing of a bilateral Comprehensive Economic Partnership Agreement (CEPA). As per *Economic Times* new report available [here](#), the two sides have also signed the Protocol to amend the India-Oman Double Taxation Avoidance Agreement (DTAA), aligning it with international standards on cross-border taxation. Further, as per news report available [here](#), India is not seeking customs duty concessions on over 100 product categories such as liquor, and cigarette in the proposed free trade agreement.

## America First Trade Policy – India examines US Trade memo for bilateral trade deal

India is examining the US President's memorandum - America First Trade Policy - to assess its impact on the bilateral trade with the US, which is its largest trading partner. As per *Economic Times* news report available [here](#), the White House directive to the United States Trade Representative (USTR) to identify

countries with which the US can negotiate agreements on a bilateral or sector-specific basis is a positive development for countries like India.

## India-EU free trade agreement talks may get delayed due to elections in EU member states – CBAM, deforestation regulation, etc., remain major hurdles

Upcoming elections in several European Union (EU) member-states, including Germany, Romania and Croatia, are expected to delay India's plans to finalize the free trade agreement (FTA) with the 27-nation bloc. As per *Live Mint* news report available [here](#), experts caution that political uncertainties within individual member states often slow decision-making at the EU level, as trade talks require consensus among all 27 members. Also, as per a news report by *Business Standard* as available [here](#), India-EU FTA negotiations a tough nut to crack as key issues unresolved. It is stated that major hurdles in the way of talks have been EU's stance on sustainable development, since the trade bloc is set to implement regulations such as CBAM, deforestation regulation law, and supply chain law.

# India Customs & Trade Policy Update



- Union Budget 2025 – Changes made/proposed in Customs law and duty rates
- Synthetic or reconstructed diamonds – Mandatory additional qualifiers in import/export declarations relaxed for certain goods
- De-oiled rice bran – Export prohibited till 30 September 2025
- Vessels under ITC(HS) Code 8906 90 are now freely importable
- Glufosinate and its salts of CIF value below INR 1289/kg – Import policy relaxed to 'restricted' from 'prohibited'; MIP condition extended
- Diamond Imprest Authorisation scheme to be implemented from 1 April 2025
- Tur/Pigeon Peas – Import to be 'Free' till 31 March 2026
- Synthetic Knitted Fabrics – Minimum Import Price condition extended till 31 March 2025
- SCOMET – Guidelines issued for voluntary disclosure of failure to comply with the Regulations

## Union Budget 2025 – Changes made/proposed in Customs law and duty rates

The Union Budget 2025-26 was presented in the lower house (Lok Sabha) of the Indian Parliament on 1 February 2025. Number of changes have been made or proposed in the Customs law – both legislative changes and changes related to rate of duty. A few important changes are highlighted below.

- Provisional assessment would be required to be finalized within 2 years (extendable by one year), subject to certain specified exclusions – Section 18 of Customs Act, 1962 proposed to be amended.
- Voluntary revision of entry post clearance of export/imported goods to be introduced, with certain exclusions – New Section 18A also provides for verification of revision by proper officer. Consequential changes have also been proposed in Sections 27 and 28.
- Settlement Commission shall cease to operate from 1 April 2025 and shall be substituted by an Interim Board for disposal of applications pending before the Settlement Commission as on 31 March 2025.
- Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 amended to increase the

time limit for fulfilling end use from the current six months to one year. Further, the importers will now have to file only a quarterly statement instead of a monthly statement.

- Changes in rates of customs duties – Few important changes are highlighted below. *See LKS Customs Update No. 6 of 2025 [here](#) for a detailed analysis on customs duty rates.*
  - Social Welfare Surcharge removed on 82 tariff lines that are subject to a cess.
  - 36 lifesaving drugs and medicines added to the list of medicines fully exempted from Basic Customs Duty (BCD).
  - 6 lifesaving medicines added to the list attracting concessional customs duty of 5%.
  - 37 more medicines along with 13 new patient assistance programmes added under programmes run by pharmaceutical companies.
  - Cobalt powder and waste, the scrap of lithium-ion battery, Lead, Zinc and 12 more critical minerals fully exempted.
  - Two more types of shuttle-less looms added to the list of fully exempted textile machinery.
  - Interactive Flat Panel Display (IFPD) – BCD increased from 10% to 20% while reduced to 5% on Open Cell and other components.

- 35 additional capital goods for EV battery manufacturing have been exempted
- 28 additional capital goods for mobile phone battery manufacturing exempted
- Ship building – Exemption continued on raw materials, components, consumables or parts for the manufacture of ships
- Carrier Grade ethernet switches – BCD reduced from 20% to 10%
- 9 items added to the list of duty-free inputs for manufacture of handicraft goods for exports.
- Wet Blue leather fully exempted from BCD
- Crust leather exempted from export duty
- Frozen Fish Paste (Surimi) for manufacture and export of its analogue products; and fish hydrolysate for manufacture of fish and shrimp feeds – Customs duty reduced to 5%.

### **Synthetic or reconstructed diamonds – Mandatory additional qualifiers in import/export declarations relaxed for certain goods**

The Central Board of Indirect Taxes and Customs under the Ministry of Finance has decided that in case of export of Lab Grown Diamonds (HPHT/CVD) weighing less than one carat,

declaration of additional qualifiers will only be voluntary. As per Circular No. 3/2025-Cus., dated 29 January 2025, for all other cases, the mandatory additional qualifiers will remain applicable as per earlier Circular 21/2024-Cus. The Circular in this regard notes that it was pointed out that identification or differentiation of these diamonds during export was resulting in increased dwell time.

### **De-oiled rice bran – Export prohibited till 30 September 2025**

The Ministry of Commerce has prohibited export of de-oiled rice bran till 30 September 2025. The goods are covered under ITC(HS) Codes 2302 40 00, 2306 90 19, 2306 90 29, and 2306 90 90. Notification No. 56/2024-25, dated 4 February 2025 Chapter 23 of the Schedule II (Export Policy) of ITC(HS) 2022.

### **Vessels under ITC(HS) Code 8906 90 are now freely importable**

Vessels classifiable under ITC(HS) Codes 8906 90 10 and 8906 90 90 are now freely importable, i.e., import of such vessels is no more restricted as per Foreign Trade Policy. Heading 8906 covers 'Other vessels, including warships and lifeboats other than rowing boats', while sub-heading 8906 90 covers goods other than warships. Code 8906 90 10 covers 'patrol or surveillance



boat, air-cushion vehicle, remote-operated vehicle, while Code 8906 90 90 covers 'Others'. Ministry of Commerce and Industry has issued Notification No. 55/2024-25, dated 29 January 2025 for this purpose.

### **Glufosinate and its salts of CIF value below INR 1289/kg – Import policy relaxed to 'restricted' from 'prohibited'; MIP condition extended**

The Ministry of Commerce and Industry has extended the Minimum Import Price condition for import of Glufosinate and its salts (Purity minimum 95% w/w) for a period of one year, i.e., till 23 January 2026. MIP of INR 1289/kg however remains the same. Further, it may be noted that the amendment by Notification No. 54/2024-25, dated 24 January 2025 also makes imports below the specified MIP as 'restricted'. Earlier, such imports were under the 'prohibited' category.

### **Diamond Imprest Authorisation scheme to be implemented from 1 April 2025**

In order to boost exports of diamonds from India, the Ministry of Commerce and Industry has introduced a new scheme called Diamond Imprest Authorisation scheme which will come into effect from 1 April 2025. The scheme will allow import of natural

cut and polished diamonds including semi-processed, half cut and broken diamonds, each weighing not more than  $\frac{1}{4}$  carat. Physical exports would be required to be made only through Mumbai airport, with minimum value addition of 10% and within 6 months of imports. It may be noted that the Authorisation and material imported under the same shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. The scheme is not available for lab grown diamonds. Notification No. 53/2024-25, dated 21 January 2025 amends Chapter 4 of the Foreign Trade Policy for this purpose. Further, Public Notice No. 42/2024-25, dated 21 January 2025 has been issued for outlining the procedure and other conditions for this scheme.

### **Tur/Pigeon Peas – Import to be 'Free' till 31 March 2026**

The Ministry of Commerce has extended the 'Free' Import Policy of Tur/Pigeon Peas (*Cajanus Cajan*) till 31 March 2026. It means that the said goods covered under ITC(HS) Code 0713 60 00 can be imported free of any restrictions under the current Foreign Trade Policy. The relaxation was earlier only upto 31 March 2025. Notification No. 51/2024-25, dated 20 January 2025 has been issued for the purpose.

## Synthetic Knitted Fabrics – Minimum Import Price condition extended till 31 March 2025

The Ministry of Commerce has extended the condition of Minimum Import Price of USD 3.5/kg of CIF value for import of synthetic knitted fabrics falling under ITC(HS) Codes 6006 31 00, 6006 32 00, 6006 33 00, 6006 34 00, 6006 90 00, 6001 92 00, 6004 10 00, 6004 90 00, 6005 36 00, 6005 37 90, 6006 22 00 and 6006 42 00. The import of these goods is otherwise restricted. Notification No. 49/2024-25, dated 4 January 2025 issued for the purpose also states that this MIP condition shall not be applicable for imports by Advance Authorisation holders, EOUs and units in SEZs, subject to the condition that imported inputs are not sold into the Domestic Tariff Area.

## SCOMET – Guidelines issued for voluntary disclosure of failure to comply with the Regulations

The DGFT has issued Public Notice No. 40/2024-25, dated 15 January 2025 to notify the Standard Operating Procedure/Guidelines for voluntary disclosure of non-compliance/violations related to export of SCOMET items and SCOMET Regulations. The Public Notice elaborates on the types of violations for which voluntary disclosures may be made, the standard operating procedure in case of any voluntary disclosure made, factors for consideration while deciding the liability in case of such voluntary disclosures, etc. SCOMET refers to Special Chemicals, Organisms, Materials, Equipment and Technologies. *Please see LKS Customs Update No. 4 of 2025 for further details and relevant comments from the LKS Customs Team on these guidelines.*



# Ratio Decidendi

- Communication modules/network interface cards, which are essential parts of communication hubs which in turn are parts of smart meters, are classifiable under Customs Tariff Item 8517 70 90 and not under TI 9028 90 10/ 9028 90 90 – CESTAT New Delhi
- Exemption – Condition of specific use after import does not mean 'actual user' condition – CESTAT New Delhi
- Exemption to WAP products using MIMO technology – Word 'and' in Sl. No. 13(iv) in Notification No. 24/2005-Cus. is to be read disjunctively – Delhi High Court

**Communication modules/network interface cards, which are essential parts of communication hubs which in turn are parts of smart meters, are classifiable under Customs Tariff Item 8517 70 90 and not under TI 9028 90 10/ 9028 90 90**

The CESTAT New Delhi has held that Communication modules/network interface cards, which is an essential part of communication hubs which in turn is part of smart meters manufactured by the importer, is classifiable under Tariff Item 8517 70 90 of the Customs Tariff Act, 1975 and not under TI 9028 90 10/ 9028 90 90. Rejecting the contention of the Revenue department that communication modules should be classified as parts of smart meters, the Tribunal observed that since the charge of duty of customs is only on the goods imported, duty should be assessed on the goods imported, i.e., in the form in which they are imported. The Tribunal was hence of the view that the modules should be classified as parts of communication hubs.

Further, rejecting the Department's submission of collusion, wilful mis-statement and suppression of facts, the Tribunal also noted that the importer was not under any obligation under law to anticipate what view regarding classification of goods may be

taken by the proper officer, DRI or some other investigating agency at any time in future and file Bills of Entry conforming to such anticipated views. *The importer was represented by Lakshmikumaran & Sridharan Attorneys here.* [Secure Meters Ltd. v. Commissioner – Final Order No. 50093-50094/2025, dated 28 January 2025, CESTAT New Delhi]

### **Exemption – Condition of specific use after import does not mean 'actual user' condition**

The CESTAT New Delhi has allowed assessee's appeal in a case where the Department had alleged violation of Notification No. 146/94-Cus. which provided exemption to imports by National Sports Federations. The Department had alleged that the import conditions were violated inasmuch as the assessee-importer had not used the imported arms and ammunition but sold them to the State Rifle Associations and District clubs. Setting aside the finding of confiscation under Section 111(o) of the Customs Act, 1962, the Tribunal noted that the notification did not say that the importer itself must use them for the purpose. Noting that the notification stated that the goods should be used for national or international championships or competitions, the Tribunal observed that when a National Sports Federation imports goods, it does not itself conduct all the championships and competitions



directly, and that it will work through its constituent State and District bodies.

The Tribunal in this regard also noted that goods which were imported as per the licences issued by the DGFT and there is no determination by the DGFT of any violation, the goods will not be liable for confiscation under Section 111(d) if after import, some of the conditions of import licences are violated. *The importer was represented by Lakshmikumaran & Sridharan Attorneys here.* [*National Rifle Association of India v. Commissioner – TS 10 CESTAT 2025 (DEL) CUST*]

### Exemption to WAP products using MIMO technology – Word ‘and’ in Sl. No. 13(iv) in Notification No. 24/2005-Cus. is to be read disjunctively

The Delhi High Court has held that the word ‘and’ used in the exclusion entry (iv) of Serial No. 13 of Notification No. 24/2005-Cus., as amended by Notification No. 11/2014-Cus., should be interpreted disjunctively. The period involved was before 2 February 2021. The High Court hence upheld the Tribunal’s decision allowing exemption to WAP products operating solely on Multiple Input/Multiple Output (‘MIMO’) technology. The

Revenue department had interpreted the excluding entry ‘MIMO and LTE Products’ to apply separately and individually to both MIMO-based and LTE-based products.

The Court in this regard noted that every technology or feature as stated in the notification was followed by words such as ‘products’ or a specific product such as ‘switch’, but the word ‘products’ was put after the words ‘MIMO and LTE’, thereby indicating that ‘MIMO and LTE Products’ includes those products which work on both MIMO technology and LTE standards. It was also noted that if the intention of the Central Government was to include products utilizing either MIMO technology or LTE standard or both, the phrase ‘MIMO or LTE Products’ could have been used, such as in Serial No. 13 (ii) and (iii), or commas would have been used.

Further, the Court also held that the subsequent amendment to the notification, after which the entry read – ‘(i) MIMO products; (ii) LTE products’, will be applicable only from the date of coming into force of these amendments i.e. 2 February 2021. *The importer was represented by Lakshmikumaran & Sridharan Attorneys here.* [*Commissioner v. Ingram Micro India Pvt. Ltd. – TS 20 HC 2025 (DEL) CUST*]

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