

International Trade

amicus

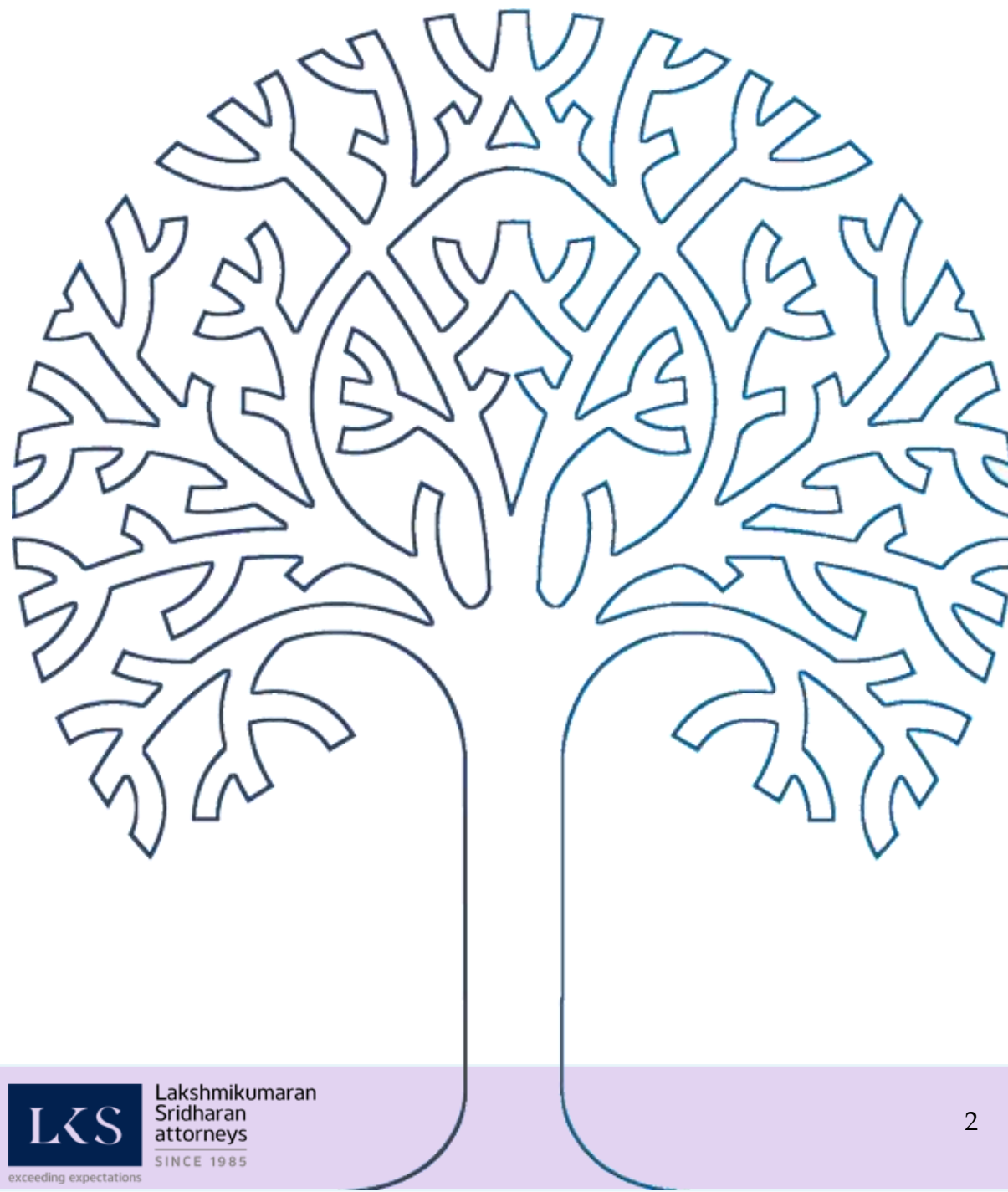
July 2025 / Issue –167



An e-newsletter from
Lakshmikumaran & Sridharan, India

Table of Contents

Article	3
Differential pricing analysis in anti-dumping investigations: US Court ‘invalidates’ the use of Cohen’s D by the US DOC.....	4
Trade Remedy News	10
Trade remedy measures by India	12
Trade remedy measures against India	12
WTO News	15
India Customs & Trade Policy Update.....	17
India FTA Update	20
Ratio Decidendi.....	22





Article

Differential pricing analysis in anti-dumping investigations: US Court 'invalidates' the use of Cohen's D by the US DOC

By **Devinder Bagia and Rizwan Shah**

The article in this issue of International Trade Amicus discusses the recent judgement of the U.S. Court for Federal Circuit in *Marmen Inc. v. United States* wherein the court 'invalidated' the application of Cohen's D test and the implications of the ruling for exporters to the U.S. market. In the context, article traces the origins of this methodology in the WTO's Anti-Dumping Agreement, its evolution over the years in USA's context, and the road ahead after the *Marmen Inc.* judgement. According to the authors, the observable consequence of the latest ruling and consequent changes of methods by the USDOC clearly leads to a possibility of higher dumping margins for the exporters going ahead. They thus recommend a thorough analysis of the export prices variations between purchasers, regions and time periods and strategizing the ways to minimize the dumping margins.

Differential pricing analysis in anti-dumping investigations: US Court ‘invalidates’ the use of Cohen’s D by the US DOC

By Devinder Bagia and Rizwan Shah

The Cohen’s D Test used as part of the differential pricing analysis (‘DPA’) conducted by the U.S. Department of Commerce (‘USDOC’) to unmask targeted dumping was analyzed in our previous article (see [here](#)). The present article discusses the recent judgement of the U.S. Court for Federal Circuit in *Marmen Inc. v. United States*¹ wherein the court ‘invalidated’ the application of Cohen’s D test and the implications of the ruling for exporters to the U.S. market. In the context, article traces the origins of this methodology in the WTO’s Anti-Dumping Agreement, its evolution over the years in USA’s context, and the road ahead after the *Marmen Inc.* judgement.

WTO’s provisions – The origins of DPA

One of the cornerstones of an anti-dumping investigation is the computation of a dumping margin which is the rate at which an exporter is dumping its goods to the importing country. Article 2.4.2 of the WTO’s Anti-Dumping Agreement (‘ADA’)

equips an investigating authority with a toolkit of methodologies for the calculation of dumping margins. While the methods normally expected to be employed are ‘weighted average-to-weighted average (A-A)’ or ‘transaction-to-transaction (T-T)’, the Article carves out a specific exception allowing for a calculation on the ‘weighted average-to-transaction (A-T)’ basis. The preconditions being –

- **Pattern Clause:** The Authority finds a pattern of export prices which differ significantly among different **purchasers, regions or time periods**, and
- **Explanation Clause:** The Authority provides an explanation as to why the other two methods cannot account for these differences.

The WTO provisions provide for this third method (A-T) to counter the selective dumping focused on specific markets, customers or points in time. Investigating Authorities globally employ various methods to identify targeted dumping, and one

¹ *Marmen Inc. v. United States*, 2025 U.S. App. LEXIS, 9506 (Fed. Cir. 22 April 2025)

of the most well-known statistical techniques employed by the USDOC for this purpose is the 'Cohen's D Test'.

Evolution of targeted dumping analysis – The past

The USDOC derives its authority to conduct DPA from the Tariff Act, 1930 ('Act') which is like Article 2.4.2 of the ADA. The previous US Federal Circuit judgements (*Apex Frozen Foods Private Ltd. v. United States*) have upheld the broad principles applied by the USDOC's in its DPA to the dumping margin calculations as legally sound and based on reasonable and sound interpretation.

Previously in the US, Petitioners were required to allege targeted dumping by exporters for the USDOC to undertake the DPA, absent which the USDOC followed the usual A-A methodology. From December 2008, the regulatory provisions governing DPA were amended in favor of a finer approach to extensively analyze target dumping through the '*Nails Test*'² to identify significant differences in pattern of export prices among purchasers, regions or periods in time. The test comprised two main steps –

- **Standard Deviation Test:** to evaluate differences (*product-specific*) in standard deviation of weighted-average prices of alleged target group v/s all transactions.
- **Gap / Significance Test:** to evaluate the gap in weighted-average prices between the sales to target group and next highest non-target group v/s average gap in weighted-average prices between the non-targeted groups.

If the two-step analysis confirmed the allegation of targeted dumping along with requisite sufficiency, the USDOC evaluated differences between A-A method and A-T method. If the differences in results were meaningful, the dumping margin was calculated using the A-T method for all export sales.

The beginning of Cohen's D

Despite the *Nails Test* being in line with Section 777A(d)(1)(B) of the Act, the USDOC had been keen on continually refining its methodologies by applying alternative methods which are more characteristic of the requirements under section 777A(d)(1)(B) of the Act. Under the new approach, the USDOC, instead of seeking an allegation from the Petitioner, itself started

² The specific details and intricacies of this test are beyond the scope of this article.

conducting the analysis in each anti-dumping investigation. The *Xanthan Gum from China* and *Xanthan Gum from Austria* are two illustrative investigations wherein the USDOC initially applied the new approach.

The first stage (*price pattern determination*) of DPA involves using the 'Cohen's D Test' and the 'Ratio Test'. The Cohen's D test is a popular statistical measure of the extent of the difference in the means between a test group and a comparison group. It evaluates the extent of these differences which are then classified as - small, medium or large, with 'large' variance in export prices providing the strongest indication of targeted dumping. Subsequently, in 'Ratio Test', the Department assesses how much value of the export sales exhibit significant differences as measured by the Cohen's D, and this is grouped in following categories –

- 66% or more, where A-T applied to all sales
- More than 33%, and less than 66%, where a mix of A-T and A-A is applied
- 33% or less, where A-A is applied to all sales.

In the second stage (*Meaningful Difference Test*), the Department evaluates the differences in dumping margins using the A-A method and other alternative methods (A-T or mixed).

Where the result of applying DPA changes the dumping margins by 25% or more, or where the difference makes a margin jump beyond 'de minimis' threshold, it is considered *meaningful*.

The above DPA method has been extensively employed by the USDOC for over a decade, and the approach has received broad legal reinforcement from several judgements of the Federal Circuit Courts (e.g., *Apex Frozen Foods Private Ltd. v. United States*).

The 'Paradox' of Zeroing: Difference between A-A and A-T methods

The USDOC resorts to zeroing the negative margins when it employs A-T method, whereas zeroing is not done in the case of the A-A method. This zeroing results in higher dumping margins because the export transactions of an exporter during the investigated period which have high export prices (and therefore, negatives dumping margins) are ignored or, in other words, the negative margins in those transactions are set to 'zero'. The zeroing approach of DPA has been challenged at the WTO numerous times with most cases directed at the USDOC's practice. The WTO Appellate Body as well as Panels have mostly held that zeroing is inconsistent with Article 2.4.2 of the ADA, although in some cases the Panel has taken a contrary view.

In particular, the Panel in *US-Softwood Lumber (Canada)* partially deviated from the long-held view of the WTO Panels and AB (*US – Washing Machines and US – Anti-Dumping Methodologies (China)*) on zeroing. The Panel re-affirmed the prior decisions that in case of differences in pattern of export prices, A-T methodology must be applied. However, it deviated in case of ‘non-pattern transactions’ and held that all export transactions must be considered to properly assess the pricing behavior of foreign exporter. In effect, the Panel aligned with the USDOC’s practice and held that mixed methodology involving A-T be applied for ‘patterned-transactions’ and A-A for ‘non-patterned-transactions’. The Panel reasoned that if zeroing is prohibited in all cases, it may lead to a mathematical equivalence between A-T and A-A methods causing failure in unmasking targeted dumping.

Marmen Inc., judgement – Cohen’s D meets its fate

The initial observations calling into question the appropriateness of USDOC’s use of Cohen’s D test in certain situations was made by the Federal Circuit Court in *Stupp Corp. v. United States*.

Some of the key underlying assumptions of Cohen’s D test are - *statistical assumptions of normal distribution, equal variability,*

and sufficiently numerous data. In the *Stupp Corp. v. United States*, the Court relied on extensive statistical literature to point out serious flaws in results based on Cohen’s D test when sufficiency of size, normality of distribution, homogeneity-of-variances were absent. The Court held that absence of any of the underlying assumptions in the export price data may undermine the usefulness of interpretative cut-offs prescribed under the test. The Cohen’s D test was found to produce an ‘upward bias’ i.e., tendency to overestimate and produce more ‘passing results’ which eventually result in higher dumping margins. The Court eventually remanded the case back to the USDOC to re-evaluate whether prescribed limits on Cohen’s D test were satisfied in the case or whether those limits are required to be observed in anti-dumping investigations.

Marmen Inc., judgement begins where the *Stupp Corp. v. United States* ended i.e., whether it is unreasonable for the USDOC to apply Cohen’s D as part of its DPA on data that doesn’t satisfy the underlying statistical assumptions.

The Department’s arguments – first, underlying assumptions are irrelevant as the Department uses full population and not sample sales prices. Second, Cohen’s D test is relied not to calculate the weighted-average dumping margin but only to determine if significant patterned variation in export

prices exists. The first argument was rejected citing statistician Jacob Cohen's insistence on the necessity of underlying assumptions remaining true. The Court held that the test determines 'effect size' and the same is independent of whether a sample is taken or an entire population. The essential characteristics remain critical - *normal distribution, equal variability, and sufficiently numerous data*.

Therefore, the Court held that absent underlying assumptions, the Cohen's D test cannot be utilized to conduct 'pattern analysis'.

The road ahead: Case in point - Certain new Pneumatic Off-the-Road Tires from India

As on date, the decision in *Marmen Inc.* is not final and conclusive, as there remains a possibility of rehearing and/or appeal, and the Court's mandate has not yet been issued. Under the Federal Rules of Appellate Procedure, the opinion of the appeals court is not final until it issues its mandate. However, the USDOC has already started to adopt alternative measures in its DPA. For example, in the Preliminary Decision Memo issued in the latest Admin Review (AR) for *OTR – India*,³ the

Department has discontinued the use of the Cohen's D test as well as of the 'mixed method' under its DPA.

Instead, the USDOC relied upon '*Price Difference Test (PDT)*' and '*(modified) Ratio Test (MRT)*'. In the PDT, the USDOC examined whether the weighted-average net export price from a foreign producer/exporter to a given purchaser, region or time-period is within +/- 2% of the weighted average net export price to all other purchasers, regions or time periods in the US. If the difference were beyond +/- 2 % threshold, the export prices were identified as differing significantly and hence, passing the test. Next, in the case of the MRT, if more than 33% of the total export transactions in terms of sales value pass PDT, then the Department concludes that a differential pattern in export prices exists for applying the A-T method (with zeroing). Thereafter, the Department performs the 'meaningful difference test' i.e., whether using the A-T method yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method.

Conclusion

The observable consequence of the latest ruling and consequent changes of methods by USDOC clearly leads to a

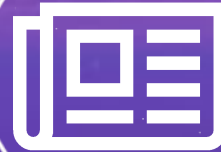
³ *Certain New Pneumatic Off-the-Road Tires from India* (A-533-869), 89 FR 23973, 5 April 2024.

possibility of higher dumping margins for the exporters going ahead. This is because the threshold of $\pm 2\%$ price differential seems to be very low compared to 0.8 (large deviation) under the Cohen's D. Further, USDOC no longer follows the mixed approach, and the dumping margins are computed basis either extremes A-A or A-T. This increases the possibility that more transactions may be subject to 'zeroing' and thereby inflating in dumping margins. The exporting businesses to the US must plan their exports in a manner that they are not caught dumping heavily to the US under the revised methodology. This requires a thorough analysis of the export prices variations between purchasers, regions and time periods and strategizing the ways to minimize the dumping margins.

'Targeted dumping' has remained one of the most contentious issues of international trade investigations and is expected to remain so in the foreseeable future. The evolving nature of trade, global geo-political dynamics, and the USDOC's adamancy in resorting to 'zeroing' through novel statistical techniques is likely to keep the chase going. It is exceedingly important for exporters to keep track of the USDOC's moves proactively and ensure proper up-to-date methods are employed in their simulation margin runs.

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

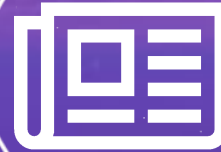
Trade Remedy News.



- Aniline from China PR – India continues anti-dumping duty after sunset review
- Brass Rod from India – USA initiates anti-dumping administrative review
- Clear Float Glass from Malaysia – India extends anti-dumping duty till 10 February 2026
- Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India – USA initiates anti-dumping administrative review
- Continuous Cast Copper Wire Rods from Indonesia, Malaysia, Thailand and Vietnam – India continues countervailing duty after sunset review
- Crystalline Silicon Photovoltaic Cells from India – USA initiates anti-dumping and countervailing duty investigations
- Freight Rail Couplers and Parts from India – USA initiates anti-dumping and countervailing duty investigations
- Glycine from India – USA initiates anti-dumping and countervailing duty Administrative Reviews
- Granular Polytetrafluoroethylene Resin from India – USA issues Preliminary results of sale at less than normal value in anti-dumping duty administrative review for period 1 March 2023 till 29 February 2024
- New Pneumatic Off-the-Road Tires from India – USA issues preliminary determination that countervailable subsidies were provided during 1 January 2023 till 31 December 2023 – CVD Administrative Review
- New Pneumatic Off-the-Road Tires from India – USA issues preliminary determination of sales at less than normal value from 1 March 2023 till 29 February 2024 – Anti-dumping duty Administrative Review
- Non-Refillable Steel Cylinders from India – USA initiates anti-dumping and countervailing duty administrative reviews
- Oil Country Tubular Goods from India – USA initiates anti-dumping duty and countervailing duty sunset reviews



Trade Remedy News.



- Oleoresin Paprika from India – USA initiates countervailing duty and less-than-fair-value investigations
- Organic Soybean Meal from India – USA issues preliminary determination that sale was made at less than normal value from 1 May 2023 till 30 April 2024 by Tejawat Organic Foods. Rescission, in Part, of Anti-dumping Duty Administrative Review; 2023-2024
- Overhead Door Counterbalance Torsion Springs from India – USA issues preliminary affirmative determination of critical circumstances in countervailing duty investigation and preliminary affirmative determinations of critical circumstances, in part, in the less-than-fair value investigations
- Quartz Surface Products from India – USA initiates anti-dumping administrative review
- Raw Honey from India – USA initiates anti-dumping administrative review



Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Aniline	China PR	25/2025-Cus. (ADD)	18 July 2025	Anti-dumping duty continued after sunset review
Clear Float Glass	Malaysia	22/2025-Cus. (ADD)	10 July 2025	Anti-dumping duty extended till 10 February 2026
Continuous Cast Copper Wire Rods	Indonesia, Malaysia, Thailand and Vietnam	6/2025-Cus. (CVD)	3 July 2025	Countervailing duty continued after sunset review

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Brass Rod	USA	2025-14096 (90 FR 35268)	25 July 2025	Anti-dumping Administrative Review initiated
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel	USA	2025-14096 (90 FR 35268)	25 July 2025	Anti-dumping Administrative Review initiated
Crystalline Silicon Photovoltaic Cells	USA	2025-13756 (90 FR 34518)	22 July 2025	Anti-dumping and countervailing duty investigations initiated
Freight Rail Couplers and Parts	USA	2025-14232 (90 FR 35734)	29 July 2025	Anti-dumping and Countervailing duty investigations initiated

Product	Investigating Country	Document No.	Date of Document	Remarks
Glycine	USA	2025-14096 (90 FR 35268)	25 July 2025	Anti-dumping and Countervailing duty Administrative Reviews initiated
Granular Polytetrafluoroethylene Resin	USA	2025-12937 (90 FR 30842)	11 July 2025	Preliminary results of sale at less than normal value from 1 March 2023 till 29 February 2024 – Anti-dumping duty Administrative Review
New Pneumatic Off-the-Road Tires	USA	2025-12948 (90 FR 30863)	11 July 2025	Preliminary determination that countervailable subsidies were provided during 1 January 2023 till 31 December 2023 – CVD Administrative Review
New Pneumatic Off-the-Road Tires	USA	2025-12947 (90 FR 30871)	11 July 2025	Preliminary determination of sales at less than normal value from 1 March 2023 till 29 February 2024 – Anti-dumping duty Administrative Review
Non-Refillable Steel Cylinders	USA	2025-14096 (90 FR 35268)	25 July 2025	Anti-dumping and Countervailing duty Administrative Reviews initiated
Oil Country Tubular Goods	USA	2025-12052 (90 FR 28722)	1 July 2025	Anti-dumping duty and countervailing duty sunset reviews initiated

Product	Investigating Country	Document No.	Date of Document	Remarks
Oleoresin Paprika	USA	2025-13696 (90 FR 34433)	22 July 2025	Countervailing duty investigation initiated
Oleoresin Paprika	USA	2025-13696 (90 FR 34433)	22 July 2025	ADD – Less than fair value investigation initiated
Organic Soybean Meal	USA	2025-12957 (90 FR 30854)	11 July 2025	Preliminary determination that sale was made at less than normal value from 1 May 2023 till 30 April 2024 by Tejawat Organic Foods. Rescission, in Part, of Anti-dumping Duty Administrative Review; 2023-2024
Overhead Door Counterbalance Torsion Springs	USA	2025-14338 (90 FR 35660)	29 July 2025	Preliminary Affirmative Determination of Critical Circumstances in Countervailing Duty Investigation
Overhead Door Counterbalance Torsion Springs	USA	2025-14337 (90 FR 35662)	29 July 2025	Preliminary Affirmative Determinations of Critical Circumstances, in Part, in the Less-Than-Fair Value Investigations
Quartz Surface Products	USA	2025-14096 (90 FR 35268)	25 July 2025	Anti-dumping Administrative Reviews initiated
Raw Honey	USA	2025-14096 (90 FR 35268)	25 July 2025	Anti-dumping Administrative Reviews initiated



WTO News

- WTO releases 2025 Edition of World Tariff Profiles
- WTO reports strong growth in World Merchandise Trade for Q1 2025

WTO releases 2025 Edition of World Tariff Profiles

WTO published the 2025 edition of its annual *World Tariff Profiles*, offering detailed data on bound (maximum) tariffs and applied tariffs across agricultural and non-agricultural products for each economy, based on figures up to the end of 2024, along with non-tariff measures by sector. A key focus of this year's publication is the prevalence of Most-Favoured-Nation (MFN) trade: despite ongoing global trade tensions, approximately **74 % of global trade continues under MFN terms** as of May 2025.

WTO reports strong growth in World Merchandise Trade for Q1 2025

World Trade Organization reported a robust performance in global merchandise trade during the first quarter of 2025, with volumes increasing by **3.6% quarter-on-quarter** and **5.3% year-on-year**. This growth was primarily driven by anticipatory purchasing ahead of anticipated tariff hikes, particularly following the United States' announcement of new tariffs on 2 April. The WTO's earlier forecast of a **0.2% decline** in global merchandise trade for 2025 has been revised upward to **0.1% growth**, reflecting this stronger-than-expected performance.

India Customs & Trade Policy Update



- Steel imports – Mandatory QCO adherence requirement for input steel exempted for certain imports
- No mandatory warehousing for clearance of imported goods under Authorisation issued after the date of shipment
- India-Mauritius CECPA – Acceptance of electronic Certificate of Origin
- Plastic raw material importers to mandatorily register on centralized EPR Portal for plastic packaging
- Organic textiles – Transaction certificate not required at the time of export

Steel imports – Mandatory QCO adherence requirement for input steel exempted for certain imports

The Ministry of Steel has exempted the mandatory QCO adherence requirement for input steel for imports of steel products in specified circumstances. Steel imports with Bill of Lading having shipped on board date on or before 15 July 2025 have been exempted from the mandatory compliance of Steel and Steel Products (Quality Control) Order, 2024 in respect of input steel. Further, as per Ministry of Steel Order dated 15 July 2025, reiterated in CBIC Instruction No. 23/2025-Cus., also dated 15 July 2025, the mandatory adherence requirement of input steel for the final products supplied by Integrated Steel Plants (ISPs) shall be exempted after verification of such licences by BIS.

No mandatory warehousing for clearance of imported goods under Authorisation issued after the date of shipment

The DGFT has clarified goods already imported / shipped / arrived, in advance, but not cleared from Customs may also be cleared for home consumption against an Authorisation issued subsequent to the date of shipment (date of Bill of lading) but

before their clearance from Customs, without any mandatory requirement for warehousing. As per DGFT Policy Circular No. 2/2025-26, dated 22 July 2025, any interpretation of Para 2.12 of the Foreign Trade Policy to make warehousing of goods, a mandatory requirement even in cases where Authorisation has been issued before the arrival of the imports or their customs clearance, defeats the purpose intended under the said Para, and only adds to the costs of imports.

India-Mauritius CECPA – Acceptance of electronic Certificate of Origin

The CBIC has clarified that electronic certificates of origin issued electronically by the issuing authority of Mauritius under the India-Mauritius CECPA, is a valid document for the purpose of claiming preferential treatment under the FTA. As per Instruction No. 24/2025-Cus., dated 22 July 2025 the integrity of e-CoO can be verified by the QR Code on the certificate or by use of online verification portal. Also, the e-CoO must be mandatorily uploaded on e-Sanchit by the importers/Customs brokers for availing the benefit. Further, for defacement, a printed copy of the e-CoO must be presented to the Customs Officer.

Plastic raw material importers to mandatorily register on centralized EPR Portal for plastic packaging

The CBIC has reiterated a recent communication of the Central Pollution Control Board to state that plastic raw material importers have to mandatorily register on centralized EPR (Extended Producers Responsibility) Portal for Plastic Packaging at the time of clearing their consignments of Plastic raw material. CBIC Instruction No. 21/2025-Cus., dated 2 July 2025 issued for this purpose notes that as per the provisions of Plastic Waste Management (Amendment) Rules, 2024 dated 14 March 2024, importer means *‘a person who imports for commercial use, any plastic packaging or any commodity with plastic packaging or carry bags or plastic sheets or like material, or plastic raw material including in the form of resin or pellets, or intermediate material to be used for manufacturing plastic packaging such as films or preforms’*, and that

all such importers are required to be registered on the EPR Plastic Portal.

Organic textiles – Transaction certificate not required at the time of export

The DGFT had on 15 July 2025 issued Policy Circular No. 1/2025-26, which had *vide* its para 4 stated that for export of organic textiles, the exporters need to furnish a valid Transaction Certificate issued by the certification bodies designated through Textile Exchange, Global Organic Textile Standard or as mandated by the buyer(s) at the time of export. The said para 4 has now been deleted by Policy Circular No. 3/2025-26, dated 31 July 2025. The latest Circular in this regard notes that exports of organic textiles are certified under globally recognized frameworks wherein the Transaction Certificate is issued only upon completion of the export process, based on post-shipment documents including the shipping bill, bill of lading and the final invoice.



India FTA Update

- India and UK sign landmark FTA-Comprehensive Economic and Trade Agreement (CETA)

India and UK sign landmark FTA-Comprehensive Economic and Trade Agreement (CETA)

With negotiations starting in January 2022, the deal marks a more than three-year effort to enhance bilateral trade between the two countries. It is expected to enhance bilateral trade, which reached \$20.5 billion in 2024, by removing barriers facilitating investment, improving supply-chain resilience, and promoting inclusive development. It unlocks tariff-free access on 99% of

Indian exports to the UK, covering nearly 100% of trade value-including labour-intensive sectors advancing the 'Make in India' initiative and setting the stage for bilateral trade to increase to USD 120 billion by the next five years. As per Ministry of Commerce Press Release available [here](#), the Agreement will also exempt Indian workers and their employers from social security contributions in the UK for up to three years, significantly improving take-home pay and reducing costs for Indian companies.



Ratio Decidendi

- Crimp pumps used for dispersal of medicaments is classifiable under Customs Heading 8413 and not under Heading 9616 – *Supreme Court*
- Lithium-ion batteries for manufacture of mobile phones are liable to IGST @ 12% from 1 April 2018 till 31 March 2020 – *CESTAT New Delhi*
- PVC Resin suspension grade is classifiable under Customs TI 3904 21 10 – *CESTAT Kolkata*
- India-Sri Lanka FTA – Non-mention of third-party invoicing in the Certificate of Origin is not material to deny benefit – *CESTAT Mumbai*
- FTA imports – Rejection of certificate of origin should be in consultation with the certificate issuing authority – *CESTAT Prayagraj*

Crimp pumps used for dispersal of medicaments is classifiable under Customs Heading 8413 and not under Heading 9616

The Supreme Court of India has dismissed the Civil Appeal filed by the Revenue department against the CESTAT decision which had held that Crimp Pumps, one of the components of 'Nasal spray device' which is used for dispersal of medicaments which work on the principle of spray forming mechanism, are classifiable under Heading 8413 of the Customs Tariff Act, 1975 and not under Heading 9616 *ibid*. The summary of the Tribunal's decision was covered in March 2025 issue of LKS Indirect Tax Amicus, as available [here](#). After condoning the delay in filing the appeal by the Department, the Apex Court did not find any reason to interfere with the impugned order passed by the Mumbai Bench of CESTAT. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Commissioner v. Glenmark Pharmaceuticals Ltd. – TS 612 SC 2025 CUST]

Lithium-ion batteries for manufacture of mobile phones are liable to IGST @ 12% from 1 April 2018 till 31 March 2020

The CESTAT New Delhi has held that lithium-ion batteries imported for manufacture of mobile phones are covered by entry

at Serial No. 203 of Schedule II to IGST Rate Notification and would be subjected to IGST @ 12% from 1 April 2018 up to 31 March 2020. The Department's submission of liability @ 28% by taking resort to the entry at Serial No. 139 of Schedule IV up to 26 July 2018 and thereafter @ 18% under Serial No. 376AA of Schedule III to the IGST Rate Notification was held as not justified. Agendas for the 31st GST Council Meeting held on 22 December 2018 and the 39th Meeting held on 14 March 2020 were perused for this purpose. The Tribunal, in this regard, also upheld the submission of the assessee that as the IGST Rate Notification is not aligned completely with the Customs Tariff, Section Note (2) to Section XVI of the Customs Tariff Act, 1975 would not apply because of the use of the phrase 'so far as may be' in the Explanation to the IGST Notification, which means that the rules may be generally followed to the extent possible. The Department had relied upon the abovementioned Section Note to contend that parts which are independently classifiable under Chapter 85, cannot be classified as parts of mobile phone. *The number of importers were represented by Lakshmikumaran & Sridharan Attorneys here.* [Samsung India Electronics Pvt. Ltd. v. Principal Commissioner – TS 541 CESTAT 2025 (DEL) CUST]

PVC Resin suspension grade is classifiable under Customs TI 3904 21 10

The CESTAT Kolkata has held that PVC Resin suspension grade is classifiable under TI 3904 21 10 of the Customs Tariff Act, 1975 and not under TI 3904 10 90 as contended by the Revenue department. The period involved was prior to 2017. The Tribunal for this purpose noted that Tariff Item 3904 21 10 was specific for Poly (vinyl chloride) resins, whereas Tariff Item 3904 10 90 covered 'Others', which was a residuary entry. Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule was relied upon. It was also noted that the Department had not conducted any test to ascertain whether the goods are plasticized or not and had not brought in any evidence to dispute the importer's claim that the goods contained many impurities. *The importer was represented by Lakshmikumaran & Sridharan Attorneys here.* [Surabhi Enterprises Pvt. Ltd. v. Commissioner – 2025 VIL 1139 CESTAT KOL CU]

India-Sri Lanka FTA – Non-mention of third-party invoicing in the Certificate of Origin is not material to deny benefit

The CESTAT Mumbai has allowed assessee-importer's appeal in a case where the Revenue department had denied the benefit of

Notification No. 26/2000-Cus., issued under India-Sri Lanka Free Trade Agreement. The Department had objected that since the Certificate of Origin was not having separate indication of details of third-party invoicing, notification benefit cannot be extended. The Commissioner (Appeals) had also interpreted that the COO Certificate should have a specific column for mention of 'Third party invoice' details and in the absence of such column, the entire COO certificate is invalid for extending the benefit of Notification No. 26/2000-Cus. The importer had imported Latex Rubber Surgical Gloves classifiable under CTI 4015 12 00 and had sought benefit under List-5 which are eligible for 50% applied rate of duty.

The Tribunal however noted that there is no specific requirement for indicating the third-party invoicing details in the COO, in terms of legal provisions governing the procedure for grant of India-Sri Lanka FTA concessions. It was also held that invoicing done from the exporter from the exporting country or third country invoicing is not determinative of the COO benefit, and no such rules have been provided under the Customs Tariff Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialist Republic of Shri Lanka and the Republic of India) Rules, 2000. Allowing the benefit, the Tribunal also noted that the goods were 'wholly

obtained' from Sri Lanka and that no 'Verification request' under the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 had been initiated in the present case. [Ansell India Protective Products Private Limited v. Commissioner – 2025 VIL 970 CESTAT MUM CU]

FTA imports – Rejection of certificate of origin should be in consultation with the certificate issuing authority

In a case where the Adjudicating authority had straightway rejected Country of Origin without even taking note of evidence

available on record in form of Phyto Sanitary Certificate and Fumigation Certificate, the CESTAT Prayagraj has reiterated that if the certificate was to be rejected, same should have been done in consultation with Certificate issuing authority. According to the Tribunal, the Customs Authorities have no jurisdiction to challenge documents issued by Government Authorities of other Country. [Anil Agarwal v. Commissioner – 2025 VIL 1073 CESTAT ALH CU]

NEW DELHI 7th Floor, Tower E, World Trade Centre, Nauroji Nagar, Delhi – 110029 Phone : +91-11-41299800, +91-11-46063300 E-mail : Lsdel@lakshmisri.com , lprdel@lakshmisri.com	MUMBAI 2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg, (Near Century Bazar)Prabhadevi, Mumbai - 400025 Phone : +91-22-24392500 E-mail : lsbom@lakshmisri.com
CHENNAI Door No.27, Tank Bund Road, Nungambakkam, Chennai 600034. Phone : +91-44-2833 4700 E-mail : lsmds@lakshmisri.com	BENGALURU 4th floor, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajkumar Road, Malleswaram West, Bangalore-560 055. Phone : +91-80-49331800 Fax: +91-80-49331899 E-mail : lsblr@lakshmisri.com
HYDERABAD 'Hastigiri', 5-9-163, Chapel Road, Opp. Methodist Church, Nampally, Hyderabad - 500 001 Phone : +91-40-2323 4924 E-mail : lshyd@lakshmisri.com	AHMEDABAD B-334, SAKAR-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad - 380 009 Phone : +91-79-4001 4500 E-mail : lsahd@lakshmisri.com
PUNE 607-609, Nucleus, 1 Church Road, Camp, Pune-411 001. Phone : +91-20-6680 1900 E-mail : ls pune@lakshmisri.com	KOLKATA 6A, Middleton Street, Chhabildas Towers, 7th Floor, Kolkata – 700 071 Phone : +91 (33) 4005 5570 E-mail : lskolkata@lakshmisri.com
CHANDIGARH 1st Floor, SCO No. 59, Sector 26, Chandigarh -160026 Phone : +91-172-4921700 E-mail : lschd@lakshmisri.com	GURUGRAM OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A, Gurugram-122001 phone: +91-0124 - 477 1300 Email: ls gurgaon@lakshmisri.com
PRAYAGRAJ (ALLAHABAD) 3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg), Allahabad -211001 (U.P.) Phone : +91-532-2421037, 2420359 E-mail : lsallahabad@lakshmisri.com	KOCHI First floor, PDR Bhavan, Palliyil Lane, Foreshore Road, Ernakulam Kochi-682016 Phone : +91-484 4869018; 4867852 E-mail : lskochi@laskhmisri.com
JAIPUR 2nd Floor (Front side), Unique Destination, Tonk Road, Near Laxmi Mandir Cinema Crossing, Jaipur - 302 015 Phone : +91-141-456 1200 E-mail : lsjaipur@lakshmisri.com	NAGPUR First Floor, HRM Design Space, 90-A, Next to Ram Mandir, Ramnagar, Nagpur - 440033 Phone: +91-712-2959038/2959048 E-mail : lsnagpur@lakshmisri.com

Disclaimer: *International Trade Amicus* is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. Lakshmikumaran & Sridharan does not intend to advertise its services or solicit work through this newsletter. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. The views expressed in the article(s) in this newsletter are personal views of the author(s). Unsolicited mails or information sent to Lakshmikumaran & Sridharan will not be treated as confidential and do not create attorney-client relationship with Lakshmikumaran & Sridharan. This issue covers news and developments till 31 July 2025. To unsubscribe, e-mail Knowledge Management Team at newsletter.itrade@lakshmisri.com or km@lakshmisri.com

www.lakshmisri.com
www.gst.lakshmisri.com
www.addb.lakshmisri.com



© 2025 Lakshmikumaran & Sridharan, India
All rights reserved

