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Article

Provisional anti-dumping measures in India – Overview of the law and practice

By Nithya S

The article in this issue of International Trade Amicus discusses the law and practice surrounding the provisional anti-dumping measures in India. It elaborately analyses the legal provisions, timelines for imposition of provisional anti-dumping duty ('ADD'), and a few other practical aspects relating to imposition of such duty. The author in this regard notes that the mechanism of provisional ADD is quite different from that of definitive ADD and can be helpful for protecting the domestic industry in critical circumstances where its existence is under threat. However, according to her, given the burden such measures can have on the importer/user industry, a balance must be struck between the competing interests by collecting a bond in lieu of payment of the provisional ADD instead of insisting on full payment of the provisional ADD.

Provisional anti-dumping measures in India – Overview of the law and practice

By Nithya S

Introduction

Anti-dumping duty ('ADD') is a measure intended to rectify the distortive effects of dumping and re-establish fair trade. It is a protective shield to the domestic industry against the injury caused by the unfair trade practice of dumping. Anti-dumping measures are one of the most frequently used trade remedial measures world over with countries like India, the United States of America and the European Union being the leading users of this mechanism. In many instances, they have successfully shielded the domestic industries from the effects of dumped imports.

Anti-dumping measures are imposed subsequent to a detailed investigation to determine the existence of dumping and consequent injury to the domestic industry. Anti-dumping investigations take anywhere upto 18 months for conclusion, depending on the complexity of the case and the number of parties involved in the particular investigation. However, during such time till the anti-dumping measures are imposed, the domestic industry is left undefended and, depending on the particular facts and circumstances, the concerned domestic industry may be under severe economic pressure.

To address such a scenario, anti-dumping law in most jurisdictions supports the imposition of *provisional* ADD to protect the domestic industry, till the conclusion of the investigation. The USA's Department of Commerce routinely imposes provisional ADD in almost all investigations. On the other hand, in India, the usage of provisional ADD has been rather limited. However, in the last one year, there has been an increased recommendation of provisional ADD by the Directorate General of Trade Remedies ('DGTR') in India in comparison to other years.

Since provisional anti-dumping measures are limited in usage in the Indian scenario, this article intends to discuss the law concerning provisional anti-dumping measures and the practice followed in India.

Legal provision regulating provisional anti-dumping duty

Provisional ADD is an interim measure that is imposed on imports of the article under investigation. It is imposed during the continuation of the investigation to protect the domestic

industry in 'critical circumstances'. The objective behind imposition of provisional ADD is to provide a protective shield to the domestic industry from dumped imports till the conclusion of the investigation, as a stop-gap measure.

Under the law of the World Trade Organization ('WTO'), anti-dumping investigations are governed by the Agreement on Implementation of Article VI of the GATT ('**Anti-Dumping Agreement**' or '**AD Agreement**'). Article 7 of the AD Agreement permits Member countries to impose provisional ADD measures.

In India, provisions concerning the imposition of anti-dumping measures are contained in the Customs Tariff Act, 1975 ('**CT Act**') and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ('**AD Rules**'). Section 9A(2) of the CT Act read with Rules 12 and 13 of the AD Rules empowers the Central Government to impose provisional anti-dumping duty.

It is relevant to note that the rate of provisional ADD that is imposed may differ from the rate of definitive ADD that is imposed after the conclusion of the particular investigation. As per Section 9A(2)(ii) of the CT Act, in case the rate of provisional ADD is higher than the rate of definitive ADD, importers are

entitled to a refund of the difference between the two rates of ADD on imports made before imposition of the definitive ADD. However, in case the rate of provisional ADD is lower than the rate of definitive ADD, importers are not liable to pay the higher rate of ADD on imports made before imposition of the definitive ADD.

Timelines concerning imposition of provisional anti-dumping measures

An important aspect of provisional anti-dumping measures is that of timelines. Firstly, as per Article 7.3 of the AD Agreement and Rule 13 of the AD Rules, provisional ADD cannot be imposed before the expiry of sixty days from the date of initiation of the investigation.

Secondly, there is no outer limit for issue of preliminary finding (which form the basis of provisional anti-dumping measures) under the AD Agreement or the CT Act or the AD Rules. However, para 16.67 of the DGTR's *Manual of Operating Practice* notes that preliminary findings should, wherever warranted, preferably be issued within 100 days from the date of initiation of investigation. These timelines were stipulated *vide* Circular No.2 dated 27 February 2018 and further revised *vide* O.M. No.4/7/2018 dated 12 April 2018. However, in the recent anti-

dumping investigation on imports of *Telescopic Channel Drawer Slider* from China PR, the DGTR issued the Preliminary Findings even though more than 100 days had lapsed since the initiation of the investigation.

With respect to the maximum duration for which provisional ADD can be imposed, while Article 7.4 of the AD Agreement permits the imposition for upto four months, Rule 13 permits the imposition for upto six months.

Other practical aspects of imposition of provisional ADD

Unlike in the case of definitive ADD, neither the AD agreement nor the domestic framework envisages a need to provide a hearing before imposition of provisional ADD. Further, both frameworks do not envisage the necessity to issue a statement disclosing the essential facts under consideration before imposition of provisional ADD. Thus, the importers and exporters are not given an opportunity to comment on the facts and the investigating authority's legal views before the imposition of provisional ADD.

It would appear to be that the philosophy behind these aspects is that since the measures are only provisional in nature and the views of all the interested parties can be factored before the

issuance of the final determination, there is no need for affording a hearing or disclosing the essential facts before issuance of the preliminary findings (leading to the issuance of the provisional ADD).

Further, given that the domestic industry is facing serious injury, a view may be taken that scheduling a hearing and issuing the disclosure statement before imposing the provisional ADD would defeat the objective of affording protection to the domestic industry at the earliest instance, thereby delaying the proceedings. A view may also be taken that if a hearing is to be held and disclosure statement to be issued before the issuance of the preliminary findings, then such exercises would become repetitive before the issuance of the final findings. Thus, the mechanism of provisional ADD seems suited for the protection of the domestic industry.

However, one drawback is that during the time the provisional ADD is in force, the importers and exporters are burdened with ADD till the time the definitive ADD measures are imposed. In such a scenario, to balance importer/user interests with that of the domestic industry, it may be preferable for the government to instead collect provisional bonds rather than collect the ADD in the form of payment from the user/importer.

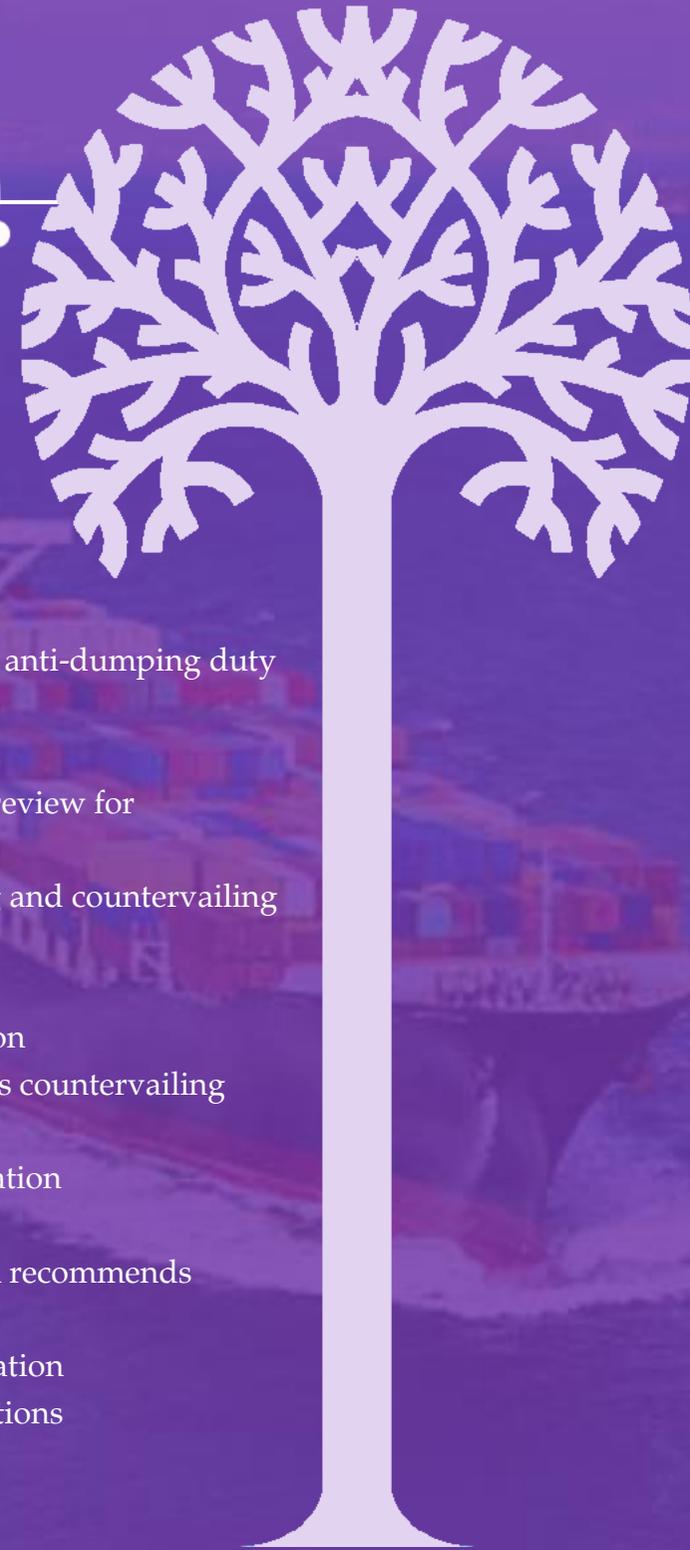
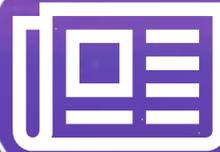
Conclusion

The mechanism of provisional ADD is quite different from that of definitive ADD. It can be helpful for protecting the domestic industry in critical circumstances where its existence is under threat. However, given the burden such measures can have on the importer/user industry, a balance must be struck between the competing interests by collecting a bond in lieu of payment of the provisional ADD. This would help the importer/user industry with its working capital requirements.

In fact, Article 7.2 of the AD Agreement itself foresees this possibility. Therefore, it would be helpful to the importer/user industry if the investigating/customs authorities considered collecting bonds rather than insisting on full payment of the provisional ADD.

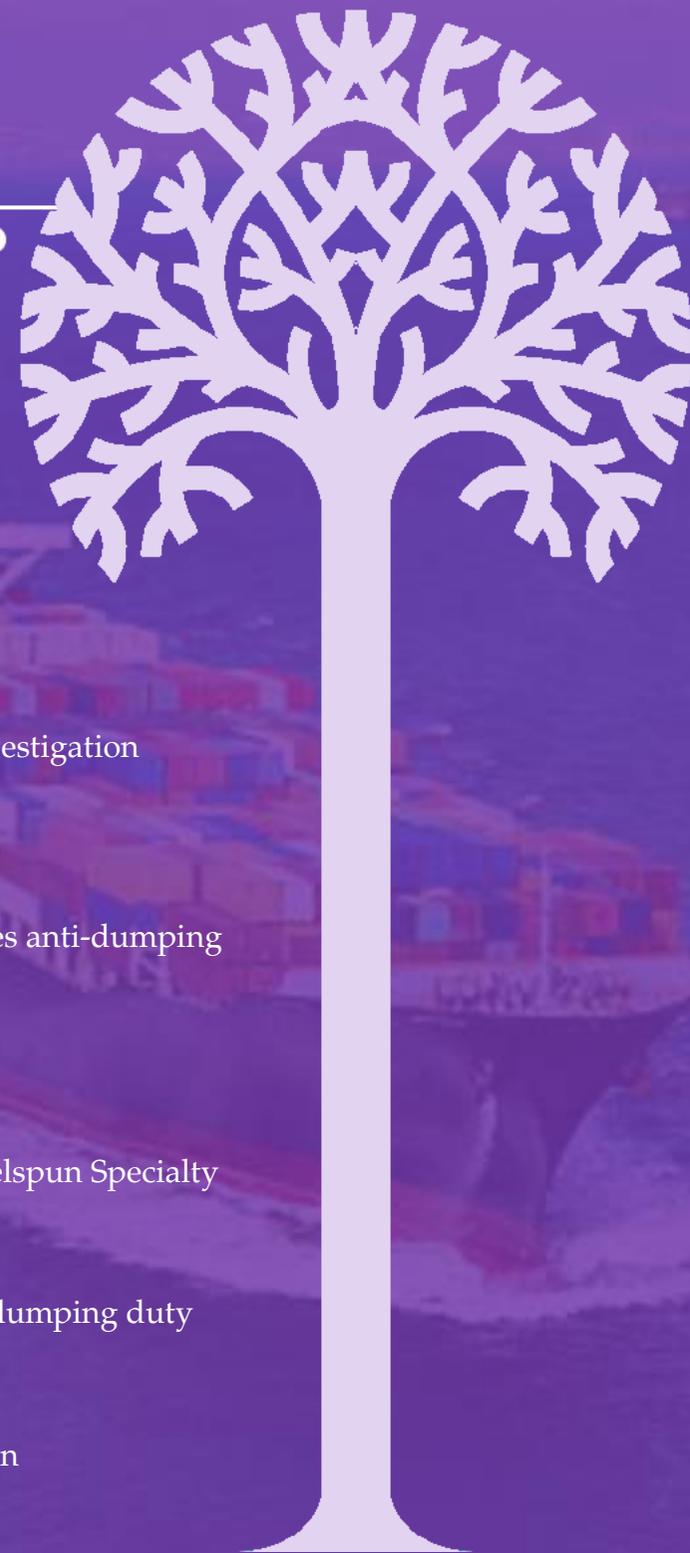
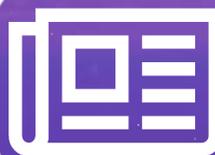
[The author is an Associate in the International Trade & WTO practice at Lakshmikumar & Sridharan Attorneys]

Trade Remedy News



- 1,1,1,2- Tetrafluoroethane or R-134a from China PR – India initiates anti-dumping investigation
- Acrylonitrile Butadiene Rubber (NBR) from China PR, EU, Korea RP and Russia – India initiates anti-dumping investigation
- Aluminum Extrusions from India – USA issues final affirmative determination of sales at less than fair value
- Antioxidants from China PR and Singapore – India initiates anti-dumping investigation
- Black Toner in powder form from China PR, Malaysia and Taiwan – India initiates sunset review of anti-dumping duty
- Black Toner Powder Cartridge from China PR – India initiates anti-dumping investigation
- Calcium Carbonate Filler Masterbatch from Vietnam – India initiates anti-dumping investigation
- Carbazole Violet Pigment 23 from India – USA issues final affirmative results of CVD new shipper review for Sudarshan Chemical Industries Limited
- Carbon and Alloy Steel Threaded Rod from India – USA initiates five-year reviews of anti-dumping and countervailing duties
- Cellophane Transparent Film from China PR – India imposes anti-dumping duty
- Cold-Rolled Non-Oriented Electrical Steel from China PR – India initiates anti-dumping investigation
- Continuous Cast Copper Wire Rod from Indonesia, Malaysia, Thailand and Vietnam – India extends countervailing duty till 7 July 2025
- Copolymer Polyol of hydroxyl value ≥ 23.5 from China PR – India initiates anti-dumping investigation
- Cranes from China PR – India initiates anti-dumping investigation
- Digital Offset Printing Plates from China PR, Japan, Korea RP, Taiwan and Vietnam – India's DGTR recommends continuation of anti-dumping after sunset review
- Frozen Warmwater Shrimp from India – USA issues final affirmative countervailing duty determination
- Hard Empty Capsules from India – USA institutes anti-dumping and countervailing duty investigations

Trade Remedy News



- Hexamine (Hexamethylenetetramine) from India – USA initiates anti-dumping and countervailing duty investigations
- High Chrome Cast Iron Grinding Media from India – USA issues preliminary affirmative countervailing duty determination
- Hot-Rolled Steel Products from India – USA issues notice for sunset reviews of anti-dumping and countervailing duties
- Isopropyl Alcohol from China PR – India imposes anti-dumping duty
- Melamine from India – USA postpones final determination of sales at less than fair value
- Mono ethylene Glycol from Kuwait, Saudi Arabia and Singapore – India initiates anti-dumping investigation
- Para Nitrotoluene (PNT) from EU – India initiates anti-dumping investigation
- Polytetrafluoroethylene from China PR and Russia – India initiates anti-dumping investigation
- Resorcinol from China PR and Japan – India initiates anti-dumping investigation
- Siloxane Polyoxyalkylene Copolymers having viscosity up to 2500cst from China PR – India initiates anti-dumping investigation
- Soda Ash from Turkey, Russia, USA and Iran – India initiates anti-dumping investigation
- Sodium Citrate from China PR – India initiates sunset review of anti-dumping duty
- Solar Cells from China PR – India initiates anti-dumping investigation
- Stainless Steel Bar from India – USA issues anti-dumping duty new shipper review finding that Welspun Specialty Solutions Limited made bona fide sale transactions which were not below normal value
- Sulphur Black from China PR – India imposes anti-dumping duty
- Telescopic Channel Drawer Slider from China PR – India's DGTR recommends imposition of anti-dumping duty
- Thermoplastic Polyurethane (TPU) from China PR – India imposes anti-dumping duty
- Unframed Glass Mirror from China PR – India imposes anti-dumping duty
- Virgin Multi-layer Paperboard from Chile and China PR – India initiates anti-dumping investigation

Trade remedy measures by India

Product	Country	Notification No.	Date of notification	Remarks
1,1,1,2- Tetrafluoroethane or R-134a	China PR	F. No. 6/30/2024-DGTR	27 September 2024	Anti-dumping investigation initiated
Acrylonitrile Butadiene Rubber (NBR)	China PR, EU, Korea RP and Russia	F. No. 6/29/2024-DGTR	26 September 2024	Anti-dumping investigation initiated
Antioxidants	China PR, Singapore	F. No. 6/23/2024-DGTR	26 September 2024	Anti-dumping investigation initiated
Black Toner in powder form	China PR, Malaysia, Taiwan	F. No. 7/12/2024-DGTR	30 September 2024	Sunset review of anti-dumping duty initiated
Black Toner Powder Cartridge	China PR	F. No. 6/41/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Calcium Carbonate Filler Masterbatch	Vietnam	F. No. 06/38/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Cellophane Transparent Film	China PR	20/2024-Cus. (ADD)	22 October 2024	Anti-dumping duty imposed
Cold-Rolled Non-Oriented Electrical Steel	China PR	F. No. 6/32/2024-DGTR	27 September 2024	Anti-dumping investigation initiated
Continuous Cast Copper Wire Rod	Indonesia, Malaysia, Thailand and Vietnam	6/2024-Cus. (CVD)	4 October 2024	Countervailing duty extended till 7 July 2025
Copolymer Polyol of hydroxyl value ≥ 23.5	China PR	F. No. 6/40/2024-DGTR	30 September 2024	Anti-dumping investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
Cranes	China PR	F. No. 06/24/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Digital Offset Printing Plates	China PR, Japan, Korea RP, Taiwan and Vietnam	F. No. 7/20/2023-DGTR	28 September 2024	Anti-dumping recommended to continue after sunset review
Isopropyl Alcohol	China PR	22/2024-Cus. (ADD)	22 October 2024	Anti-dumping duty imposed
Mono ethylene Glycol	Kuwait, Saudi Arabia, Singapore	F. No. 6/34/2024 - DGTR	27 September 2024	Anti-dumping investigation initiated
Para Nitrotoluene (PNT)	EU	F. No. 6/35/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Polytetrafluoroethylene	China PR and Russia	F. No. 6/21/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Resorcinol	China PR and Japan	F. No. 6/27/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Siloxane Polyoxyalkylene Copolymers having viscosity up to 2500cst	China PR	F. No. 6/13/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Soda Ash	Turkey, Russia, USA and Iran	F. No. 6/31/2024-DGTR	30 September 2024	Anti-dumping investigation initiated
Sodium Citrate	China PR	F. No. 7/08/2024-DGTR	30 September 2024	Anti-dumping duty sunset review initiated
Solar Cells	China PR	F. No. 6/26/2024-DGTR	30 September 2024	Anti-dumping investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
Sulphur Black	China PR	21/2024-Cus. (ADD)	22 October 2024	Anti-dumping duty imposed
Telescopic Channel Drawer Slider	China PR	F. No. 6/13/2023-DGTR	19 October 2024	Anti-dumping duty recommended to be imposed
Thermoplastic Polyurethane (TPU)	China PR	19/2024-Cus. (ADD)	22 October 2024	Anti-dumping duty imposed
Unframed Glass Mirror	China PR	18/2024-Cus. (ADD)	21 October 2024	Anti-dumping duty imposed
Virgin Multi-layer Paperboard	Chile and China PR	F. No. 6/28/2024-DGTR	30 September 2024	Anti-dumping investigation initiated

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Aluminum Extrusions	USA	FR Doc No: 2024-22779	3 October 2024	Final Affirmative Determination of Sales at Less Than Fair Value issued
Carbazole Violet Pigment 23	USA	FR Doc No: 2024-25342	31 October 2024	Final affirmative results of CVD new shipper review for Sudarshan Chemical Industries Limited issued
Carbon and Alloy Steel Threaded Rod	USA	FR Doc No: 2024-25100	1 November 2024	ADD and CVD – Five-year reviews initiated

Product	Investigating Country	Document No.	Date of Document	Remarks
Frozen Warmwater Shrimp	USA	FR Doc No: 2024-24952	28 October 2024	Final affirmative Countervailing Duty determination issued
Hard Empty Capsules	USA	FR Doc No: 2024-25161	30 October 2024	Anti-dumping and Countervailing Duty investigations instituted
Hexamine (Hexamethylenetetramine)	USA	FR Doc No: 2024-22956	4 October 2024	Anti-dumping and Countervailing Duty Investigations initiated
High Chrome Cast Iron Grinding Media	USA	FR Doc No: 2024-22996	4 October 2024	Preliminary Affirmative Countervailing Duty Determination issued
Hot-Rolled Steel Products	USA	FR Doc No: 2024-24222	22 October 2024	ADD and CVD – Notice issued for sunset reviews
Melamine	USA	FR Doc No: 2024-24499	23 October 2024	Final determination of sales at less than fair value postponed
Stainless Steel Bar	USA	FR Doc No: 2024-24751	24 October 2024	ADD new shipper review - Welspun Specialty Solutions Limited made <i>bona fide</i> sale transactions which were not below normal value



WTO News

- Philippines initiates safeguard investigation on cement
- China complaints against certain measures on vehicle imports by Türkiye

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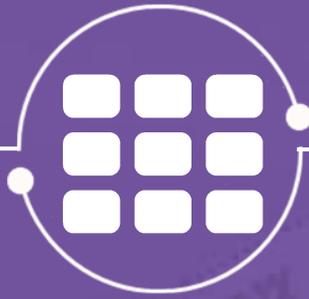
Philippines initiates safeguard investigation on cement

Philippines has on 31 October initiated safeguard investigation on import of cement. As per document circulated in the WTO on 4 November, increased imports of cement classifiable under ASEAN Harmonized Tariff Nomenclature (AHTN) 2523.2990 and 2523.9000, are a substantial cause of serious injury to the domestic industry in terms of declining market share, production sales, capacity utilization, profitability, price depression, suppression and undercutting.

China complaints against certain measures on vehicle imports by Türkiye

China has requested WTO dispute consultations with Türkiye concerning various measures imposed by the latter on imports

of electric vehicles and certain other types of vehicles from China. According to the document circulated in the WTO on 11 October, Türkiye imposes additional duties of 40% *ad valorem* on the importation of EVs from China that fall under certain tariff lines and requires an import permit certificate to import EVs and certain other types of vehicles from China. Further, Türkiye also imposes additional duties of 40% *ad valorem* or USD 7,000 per vehicle, whichever is higher, on the importation of other types of vehicles from China that fall under certain tariff lines. China alleges that measures appear to be inconsistent with various provisions of the GATT 1994 and the Agreement on Trade-Related Investment Measures ('TRIMS Agreement').



FTA Update

- India recalibrates FTA strategy – SOP to be ready soon
- India, Australia speed up FTA negotiations
- EU and India pushing for an early and ambitious deal though progress slower than expected
- Maldives and India to discuss Free Trade Agreement

India recalibrates FTA strategy – SOP to be ready soon

India is recalibrating its strategy to ensure it is able to maximise trade and investment gains from various Free Trade Agreements (FTAs). As per *Business Standard* news available [here](#), the Department of Commerce plans to seek the Union Cabinet's approval to implement fresh guidelines for negotiating FTAs. As per a news report on *Economic Times*, as available [here](#), the standard operating procedure (SOP) document for negotiating FTAs is expected to be ready by the end of this year.

India, Australia speed up FTA negotiations

According to a news report in *Financial Express*, as available [here](#), trade negotiators from India and Australia will intensify their engagement on the proposed Comprehensive Economic Cooperation over the next two months to achieve a closure before Australia enters the election phase. It is stated that the CECA builds on the Economic Cooperation and Trade Agreement which was in the nature of an early harvest deal, and to the five subjects or policy areas that ECTA covered, 14 more have been added to the CECA.

EU and India pushing for an early and ambitious deal though progress slower than expected

The Indian Ministry of External Affairs has reiterated that negotiations for a Free Trade Agreement (FTA) between India and the European Union remain a priority, with both sides pushing for an 'early and ambitious' deal. As per a news report by *Business Standard*, as available [here](#), the two sides are negotiating a free trade agreement, an investment protection agreement and an agreement on geographical indications (GIs). However, it may be noted that according to another news item on *Business Standard*, as available [here](#), top government officials from India and the European Union have acknowledged slower than expected progress in the proposed trade agreement and called for mutual cooperation and understanding to take the negotiations forward.

Further, meanwhile, the Indian Commerce Department has asked industry to point out required flexibility in rules of origin [See *Business Line* news report [here](#)].

Maldives and India to discuss Free Trade Agreement

Maldives and India have decided to commence discussions to establish a Free Trade Agreement (FTA) between both countries

in order to expand economic relations. As per new report available [here](#), the Indian Prime Minister made the announcement during a joint statement with Maldives President during the latter's trip to India in early October.

India Customs & Trade Policy Update



- Rice exports – Export duty removed on certain categories while MEP removed for non-basmati white rice
- Parts of cigarette lighters – Import restricted
- Cough syrup exports – Mandatory testing waived off, subject to conditions
- FTAs imports with third party invoices clarified
- India-UAE CEPA – Retrospective issuance of certificates of origin clarified
- Import/re-import of exhibits and samples – No requirement of authorization or registration under Import Monitoring Systems
- SCOMET – Appendix 10M amended to include more items under GAICT of SCOMET items

Rice exports – Export duty removed on certain categories while MEP removed for non-basmati white rice

The Ministry of Finance has removed export duty on rice in the husk (paddy or rough) falling under TI 1006 10 90; husked (brown) rice covered under TI 1006 20 00; and rice parboiled falling under TI 1006 30 10 of the Customs Tariff Act, 1975. The Nil rate has come into effect from 22 October 2024. Notification No. 46/2024-Cus., dated 22 October 2024 for this purpose amends Notification No. 27/2011-Cus. It may be noted that the export duty was earlier reduced from 20% to 10% for these products with effect from 27 September 2024.

Further, the requirement of Minimum Export Price (MEP) for export of non-basmati white rice (semi-milled or wholly milled rice, whether or not polished; Other), falling under ITC (HS) Code 1006 30 90, has been removed with effect from 23 October 2024. Ministry of Commerce has issued Notification No. 37/2024-25, dated 23 October 2024 to amend the entry in Chapter 10 of the Schedule II of ITC(HS) 2022.

Parts of cigarette lighters – Import restricted

Import of parts of pocket lighters, gas fuelled, non-refillable or refillable lighters (Cigarette lighters) under HS Code 9613 90 00,

has been placed under 'Restricted' category with effect from 13 October 2024. Ministry of Commerce has issued Notification No. 36/2024-25, dated 13 October 2024 to amend Chapter 96 of the ITC(HS) Schedule-I for this purpose.

Cough syrup exports – Mandatory testing waived off, subject to conditions

The mandatory testing of the export sample of cough syrup falling under HSN 3004 has been exempted in case the manufacturers are exporting the cough syrup to USA, UK, Canada, EU, Japan, Australia, Singapore, Republic of Korea, and Switzerland. The exemption is available if an approval is granted by these countries' regulatory agencies for plants/section engaged in manufacturing and export of cough syrup. Further, as per Ministry of Commerce Notification No. 35/2024-25, dated 1 October 2024, if the cough syrup is manufactured in a plant/section approved by the regulatory agencies for the mentioned countries for any product, the cough syrup is permitted to be exported to any country without the mandatory testing.

FTAs imports with third party invoices clarified

The Central Board of Indirect Taxes & Customs ('CBIC') has issued Instruction No. 23/2024-Customs on 21 October 2024 to

clarify certain issues on difficulties being faced in import clearances where third party invoicing, allowed under provisions of Free Trade Agreement ('FTA'), has been used. It has been stated that both, the information being sought in relation to originating status of the product and the process of verification in terms of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR'), must be consistent with the trade agreement. The Instruction in this regard notes that the CAROTAR does not necessitate the importer to provide any commercially confidential information pertaining to the third-party, nor does it require the seller or issuing authority to use a specific currency for declaration of value in the invoice or Certificate of Origin.

Further, it is stated that even if Rule 5(5) of the CAROTAR permits proper officer to deny a preferential duty claim without sending the Certificate of Origin for verification, the same shall not prevail over conflicting provisions of the FTA, if any. It is also clarified that the benefit under the FTA should not be rejected unless it is demonstrated that the value addition does not meet the threshold prescribed, and that merely pointing that the value addition is artificially inflated is not enough to reject the claim.

India-UAE CEPA – Retrospective issuance of certificates of origin clarified

The CBIC has issued the Instruction No. 21/2024-Cus., dated 16 October 2024 clarifying that where preferential treatment has not been claimed or the claim has not been extended at the time of import, the importer does not lose the right to claim such benefit at a future date. The importer can, upon submission of a retrospectively issued valid Certificate of Origin ('COO') within the stipulated time, claim the benefit, as long as the authenticity of the COO and origin of goods are not disputed. Further, the Instruction clarifies that the requirement to upload the COO on e-Sanchit will not apply where COOs have been issued retrospectively, post importation of the goods. This Instruction also clarifies that minor procedural discrepancies should not be seen as countering the intent of extending substantive benefits under the FTA.

Import/re-import of exhibits and samples – No requirement of authorization or registration under Import Monitoring Systems

The DGFT has clarified that import authorization or registration under Import Monitoring Systems is not required in respect of import/re-import of exhibits and samples for demo, display,

exhibition and participation in fairs in India and abroad. As per DGFT Trade Notice No. 20/2024-25, dated 7 October 2024, such imports will be regulated under provisions of Para 2.60 of the FTP Handbook of Procedures.

SCOMET – Appendix 10M amended to include more items under GAICT of SCOMET items

The DGFT has amended Appendix 10 M to the HBP, 2023, to increase the number of SCOMET items covered under the list (wherein intra-company transfer is permissible without a

SCOMET license by GAICT authorization holders). With this amendment by DGFT Public Notice No. 26/2024-2025 dated 7 October 2024, the coverage of items under GAICT Policy for export/re-export of items, including software and technology under SCOMET Category 8 has been expanded and new items have been brought under the liberalized policy to facilitate the Intra Company Transfer of SCOMET items to only the countries listed in Table 1 of Para 10.15 of HBP 2023. GAICT stands for 'Global Authorisation for Intra-Company Transfer'.

Ratio Decidendi



- FTA benefit is not deniable only for unapproved correction in Country-of-Origin certificate – Doctrine of substantial compliance to be followed – *CESTAT Chennai*
- Catalyst 3850 series Ethernet Switches are eligible for concessional BCD under Notification No. 57/2017-Cus. – *CESTAT Mumbai*
- Router Line Cards for network routers are not classifiable under CTI 8517 62 90 – *CESTAT New Delhi*

FTA benefit is not deniable only for unapproved correction in Country-of-Origin certificate – Doctrine of substantial compliance to be followed

Relying upon the doctrine of substantial compliance, the CESTAT Chennai has allowed the benefit of ASEAN FTA in a case involving an alteration / correction in the Country of Origin certificate which did not satisfy the provisions of procedure 9 of operational certification procedures for the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement Between the Government of Member States of the Association of South East Asian Nations (ASEAN) and the Republic of India) Rules, 2009.

The importer had earlier produced the COO without an endorsement stamp / seal 'issued Retroactively', but later produced COO with an endorsement stamp / seal 'issued Retroactively'. As per the provisions, the correction / alteration made on the certificates should have been approved and certified by an official of the Issuing Authority authorized to sign the certificate, whereas there was no such authentication in the present case. Allowing the importer's appeal, the Tribunal also noted that there was no other taint on the validity of the certificate. [*Devendran Coal International Pvt. Ltd. v. Commissioner – 2024 VIL 1360 CESTAT CHE CU*]

Catalyst 3850 series Ethernet Switches are eligible for concessional BCD under Notification No. 57/2017-Cus.

The CESTAT Mumbai has held that 'Catalyst 3850 series Ethernet Switches', classifiable under Tariff Item 8517 62 90 of the Customs Tariff Act, 1975, are eligible to concessional Basic Customs Duty (BCD) in terms of Sl. No. 13 of Notification No. 11/2014-Cus. and Sl. No. 20 Notification No. 57/2017-Cus. The Tribunal was of the view that there were sufficient grounds provided by the assessee-appellants to demonstrate that the imported Catalyst 3850 series switches were of 'enterprise switch' and are not a 'carrier grade switch', as they did not meet the various criteria as provided under the 'Essential requirements' laid down by the government authorities like Technical Engineering Centre and as elaborated in the arguments made by the assessee. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [*Cisco Commerce India Pvt. Ltd. v. Commissioner – Final Order No. A/86011-86081/2024, CESTAT Mumbai*]

Router Line Cards for network routers are not classifiable under CTI 8517 62 90

The CESTAT New Delhi has set aside the order of the Principal Commissioner classifying the Router Line Cards [MPC7E MRATE IRB 10G/40G 100 QSFP28-MPC-L3 Line Cards] under Tariff Item 8517 62 90 of the Customs Tariff Act, 1975. The Tribunal in this regard relied on the decision of *Vodafone India Limited v. Principal Commissioner* [Appeal No. 52287 of 2019 decided on 20 September 2022]. The classification of the said goods under TI 8517 69 30 by the importer-assessee was thus

held to be maintainable. The goods were imported for the main equipment Juniper Routers MC960 and MX480 and were considered by the assessee to be parts and components essential for the functioning of the main equipment. The assessee-importer had therefore classified them under TI 8517 69 30 and availed the benefit of exemption from payment of Basic Customs Duty under Notification dated 1 March 2005 at Serial No. 13N. *The importer was represented by Lakshmikumaran and Sridharan Attorneys here. [Vodafone Idea Limited v. Principal Commissioner – 2024 (10) TMI 636 - CESTAT New Delhi]*

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