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Article

Final Findings in anti-circumvention investigation concerning Cold Rolled Flat Products of Stainless Steel – An analysis

By **Garima Prakash**

Background

Final anti-dumping duty was imposed on cold rolled flat products of stainless steel of width between 600mm to 1250mm with certain exclusions (Product Under Consideration, hereinafter 'PUC') exported from China, Korea, EU, South Africa, Taiwan, Thailand and USA (hereinafter 'subject countries') in 2010,¹ and continued after the sunset review final findings in 2015.²

The Domestic Industry noticed a trend of shifting imports of PUC to imports of cold rolled flat products of stainless steel of width above 1250mm (Product Under Investigation, hereinafter 'PUI'). Circumvention was alleged to be occurring in terms of the PUC being imported in altered, unfinished or incomplete form into India. Cold rolled flat products of stainless steel of width above 1250mm were being imported into India and thereafter were slit into flat sheets of width up to 1250mm. It was suspected that imports of PUI were undermining the remedial effects of the anti-dumping duty imposed on PUC.

The designated authority found substance in the allegations made by the petitioners and initiated an anti-circumvention investigation in 2016³, to examine the existence and effect of the

alleged circumvention of the anti-dumping duty levied and to consider recommendation of extension of anti-dumping duty on imports of PUC to imports of PUI. Final findings of the abovementioned investigation were issued on 19th August 2017.⁴

Applicable Provisions

Section 9A of the Customs Tariff Act, 1975 and Rules 25-28 of Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter the ADD rules) govern circumvention of anti-dumping duty in India.

The relevant parts of the Customs Tariff Act and the ADD Rules are reproduced below:

S.9A (1A), Customs Tariff Act, 1975

“Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article

¹ Vide Notification No. 14/2010-Customs, dated 20th February 2010.

² Vide Notification No. 61/2015-Customs, dated 11th December 2015.

³ Vide Initiation Notification No. 14/1/2014-DGAD, dated 19th February 2016.

⁴ Vide Notification No. 14/1/2014-DGAD, dated 18th August 2017. Available at: <http://www.dgtr.gov.in/sites/default/files/AC%20NCV%20English%20FF.pdf>.

originating in or exported from such country, as the case may be.”

ADD Rules:

“Rule 25 Circumvention of anti dumping duty.

- (1) Where an article subject to anti dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti dumping duty in force if,-

(a) the operation started or increased after, or just prior to, the anti dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and

(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

...

(3) Where an article subject to anti dumping duty is imported into India through exporters or producers or country not subject to anti dumping duty, such exports shall be considered to circumvent the anti dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or producers or country not subject to anti dumping duty.

Explanation.- For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely:-

(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;

(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.”

“Rule 26 Initiation of investigation to determine circumvention.-

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti dumping duty levied under section 9A of the Act , upon receipt of a written application by or on behalf of the domestic industry.”

Analysis

The designated authority examined the evidence of circumvention by referring to the trade pattern shift of PUC to PUI for the subject countries since 2008-2009 until the Period of Investigation (hereinafter ‘POI’). The POI was considered from 1st July 2014 to 30th September 2015 (15 months). More particularly, the authority examined whether there has been a change in pattern of trade and whether this change has stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of anti-dumping duty. The following observations were made:

- A change in the product mix of PUC and PUI from 2008-09 through POI: Volume of imports of PUC from subject countries declined since the imposition of anti-dumping duty, with a simultaneous rise in the volume of imports in significant amounts of PUI from subject countries.
- A closer examination of the pattern of imports within the PUI revealed that majority of the imports were just above the threshold limit (1250mm) and only a small

portion of imports were well above 1250mm.

- Such change in pattern of trade was not seen in imports from countries other than subject countries. The volume of imports of PUC remained more or less the same in POI, implying no change in consumption pattern so as to justify the change in import pattern from subject countries.
- The change in pattern of trade from PUC to PUI was not noticed in sales of exporters to countries other than India and in their domestic market.
- The quantum of value added after slitting PUI into PUC was not more than 5%, which is well within the threshold of 35% [as per Rule 25 (1)].

Based on the above observations, the designated authority found that there was change in pattern of trade which stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of anti-dumping duty.

After establishing the existence of circumvention, the designated authority moved on to examine its effect. The following observations were made in this regard:

- The landed value of imported PUC (with anti-dumping duty) was higher than that of the PUI (with no measure) from subject countries during POI.
- There was a price depressing effect on the net sales realisation of PUC of domestic industry, which undermined the remedial effect of the levied anti-dumping duty.

The designated authority considered the above effect to be undermining the previously levied anti-dumping duty.

Recommendations

On the basis of the abovementioned analysis and observations, the designated authority found that:

- the imports of PUI have increased post levy of anti-dumping duty;
- the value addition in converting PUI to PUC is less than the prescribed threshold in the Rules;
- the PUI has been exported at dumped prices during the POI; and
- the imports of PUI have undermined the existing AD measure on PUC.

Based on the above findings, it has been recommended that the existing anti-dumping duty imposed on PUC be extended to PUI from date of its notification by the Ministry of Finance. Such imposition would be co-terminus with the anti-dumping duty on PUC levied through Custom Notification No. 61/2015-Customs (ADD), dated 11th December 2015.

Balancing the interests of parties

It was also observed by the designated authority that not all PUI were converted into PUC products after importation into India. In this regard, the designated authority extended the imposition of anti-dumping duty to PUI in the following manner:

- The PUI which is imported by an importer for end use in the same form without slitting will not be liable for payment of the applicable anti-dumping duty.
- In case a PUI is slit into 2 or more PUI only i.e. sizes above 1250 mm, it will not be subjected to any anti-dumping duty (for example, a 2600mm piece slit into two 1300mm size pieces).
- If PUI is slit for a combination of PUI and PUC sizes, it will be liable for applicable AD Duty (for example a 1800 mm piece

being slit into a 1400 mm and a 400 mm piece or a 2200 mm piece is slit into 1400 mm and 800 mm or a 1400 mm piece being slit into 600, 500 & 300 mm sizes).

- The importer will give a legally enforceable undertaking to the concerned Custom Authorities that the PUI being imported will be used without any slitting of PUI into PUC.
- The Ministry of Finance may put in place an appropriate monitoring mechanism to monitor the genuineness of the usage of the PUI so imported for categories not leviable with anti-dumping duty, based on the aforesaid undertaking.

Conclusion:

Therefore, the designated authority adopted a balanced approach in extending the anti-dumping duty levied on PUC to PUI, by not imposing anti-dumping duty in an unfair manner. In the absence of such a balance, there was risk of creation of a back-door entry for the domestic industry to broaden the scope of the original investigation, to include products that were originally excluded from the scope of imposition of anti-dumping duty.

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Trade Remedy News

Trade Remedy measures by India

Product	Country	Notification No.	Date of Notification	Remarks
1-Phenyl-3-Methyl-5-Pyrazolone	China PR	F.No.15/3/2016-DGAD	9-8-2017	Final findings of SSR recommends termination of definitive anti-dumping duty
Ammonium Nitrate	Russia, Indonesia, Georgia and Iran	F.No.14/1/2016-DGAD	1-8-2017	Final Findings issued recommending imposition of anti-dumping duty
Castings for Wind Operated Electricity Generators	China PR	F.No.14/28/2013-DGAD	11-8-2017	Corrigendum to Final Finding recommendations
			28-7-2017	Final Findings recommending imposition of anti-dumping duty
Caustic Soda	Iran, Saudi Arabia and USA	39/2017-Cus. (ADD)	23-8-2017	ADD modified after mid-term reviews
Caustic Soda	Chinese Taipei	F.No. 15/10/2016-DGAD	31-7-2017	Final findings of SSR recommends termination of definitive anti-dumping duty

Cold Rolled Flat Product of Stainless Steel	China PR, Korea, European Union, South Africa, Taiwan, Thailand and USA	F.No. 14/1/2014-DGAD	18-8-2017	Final Findings issued recommending imposition of duty in Anti-Circumvention investigation
Hot Rolled and Cold Rolled Stainless Steel Flat Products	China PR	File.No.14/18/2015-DGAD	9-8-2017	Corrigendum to Final Finding (CVD) recommendations
			4-7-2017	Final Findings issued recommending imposition of countervailing duty
New/ unused pneumatic radial tyres	China PR	F.No.14/14/2015-DGAD	3-8-2017	Corrigendum to Final Finding recommendations
			1-8-2017	Final Findings issued recommending imposition of anti-dumping duty
Opal Glassware	China PR and UAE	37/2017-Cus. (ADD)	9-8-2017	Definitive anti-dumping duty imposed
Polytetraflouroethylene or PTFE	China	36/2017-Cus. (ADD)	28-7-2017	Definitive anti-dumping duty continued after sunset review
Rubber Chemicals, namely, TDQ & PX-13	China PR, European Union	File.No.15/5/2016-DGAD	7-7-2017	Extension of time for completion of AD investigation up to 7 October, 2017
Soda Ash	China PR, European Union, Kenya, Pakistan, Iran, Ukraine and USA	File No.15/28/2014-DGAD	22-7-2017	Final findings of MTR recommends termination of definitive anti-dumping duty as well as SSR
Soda Ash	China PR, European Union, Kenya, Pakistan, Iran, Ukraine and USA	F.No.7/5/2017-DGAD	22-7-2017	Order issued for annulment of SSR
Soda Ash	Turkey and Russia	File No.15/17/2015-DGAD	22-7-2017	Final findings of MTR recommends termination of definitive anti-dumping duty

Sodium Chlorate	Canada, China PR and EU	F.No.14/13/2015-DGAD	10-8-2017	Final Findings recommending imposition of anti-dumping duty
Sodium Dichromate	Russia, South Africa, Kazakhstan and Turkey	F.No.6/4/2017-DGAD	21-8-2017	Extension of time for filing questionnaire response up to 12 September, 2017
Sodium Nitrite	China	40/2017-Cus. (ADD)	25-8-2017	ADD continued after sunset review
Solar Cells	China PR, Taiwan and Malaysia	F.No.6/30/2017-DGAD	21-7-2017	Anti-Dumping Duty Investigation initiated
Styrene Butadiene Rubber (SBR) of 1500 series and 1700 series	European Union, Korea RP and Thailand	F.No.14/10/2015-DGAD	12-7-2017	Final Findings issued recommending imposition of anti-dumping duty
Textured Toughened (Tempered) Glass	China PR	38/2017-Cus. (ADD)	18-8-2017	Definitive anti-dumping duty imposed

Trade Remedy measures against India

Product	Country	Notification No.	Date of Notification	Remarks
Finished Carbon Steel Flanges	USA	C-533-872 [82 FR 40138]	24-8-2017	CVD Order issued
Finished Carbon Steel Flanges	USA	A-533-871 [82 FR 40136]	24-8-2017	Antidumping Duty Orders issued
Fine Denier Polyester Staple Fiber	USA	C-570-061 [82 FR 37048]	8-8-2017	Preliminary Determinations in CVD Investigations postponed
Oil Country Tubular Goods	USA	A-533-857 [82 FR 35182]	28-7-2017	Correction to Amended Final Determination and Amendment of Antidumping Duty Order
Zinc Coated (Galvanised) Steel	Australia	2017/99	16-8-2017	Findings in relation to a dumping and subsidy investigation
Zinc Coated (Galvanised) Steel	Australia	2017/98	17-7-2017	Termination of Part of anti-dumping Investigation



WTO News

Indonesian specific duty on imports of galvalume violates MFN provisions

The WTO Panel has on 18th of August, 2017 held that specific duty applied by Indonesia on imports of galvalume (flat-rolled iron or steel products) by means of Regulation No. 137.1/PMK.011/2014 does not constitute a safeguard measure within the meaning of Article 1 of the Agreement on Safeguards. The panel however held that the application of such duty on imports of galvalume originating in all but the 120 countries listed in said Regulation is inconsistent with Indonesia's obligation to afford MFN-treatment under Article I:1 of the GATT 1994.

Qatar files dispute against UAE, Bahrain and Saudi Arabia

Qatar has on 4th of August sought consultations with United Arab Emirates, Bahrain and Saudi Arabia concerning measures which, according to Qatar, were adopted in the context of coercive attempts at economic isolation imposed by UAE, Bahrain and Saudi Arabia against the State of Qatar. According to the requests for consultations, the respondent countries ban, prohibits or otherwise restricts the import, export, sale, purchase, license, transfer, receipt and shipment of goods originating in, transiting through, towards or from, or with the destination of Qatar. It is also stated that new provisions put in to effect by the respondent countries ban Qatari nationals from travelling to and remaining in the those countries in order to provide services, as well as bans provision of services by Qatari service suppliers established in the those countries. Violation of various provisions of GATT, GATS and TRIPS have been alleged in the disputes.

WTO members review practices for improving dispute proceedings

On 20th July 2017, the WTO's Dispute Settlement Body (DSB) met to review the WTO dispute settlement procedure. The following four documents were discussed:

- streamlining panel composition by inviting nominations and appointments of non-governmental third-party nationals and suitable candidates who had not previously served on a panel
- promoting electronic filing in disputes
- encouraging prompt responses to third-party requests to participate in consultations
- publishing disputes' procedural documents and preliminary rulings.

Proposal for selection process of Appellate Body members was also put forward by the EU.

Fisheries subsidies proposals circulated to Members

On 28th July, 2017, a compilation matrix reflecting seven text proposals from WTO members was circulated by the Chair of the negotiating group on Rules to all the WTO Members. These texts were submitted by New Zealand, Iceland and Pakistan; the European Union; Indonesia; the African, Caribbean, Pacific (ACP) Group of States; a Latin American group composed of Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay; the Least-Developed Countries (LDC) Group; and Norway. This matrix will pave way for the Members to prepare for upcoming intensive negotiations.

First amendment to Trade Policy Review Mechanism approved

The General Council has on 26th of July, 2017 approved the first ever amendment to Trade Policy Review Mechanism, in that, the review cycles of members undergoing a TPR has been changed to every three, five or seven years, instead of every two, four or six years depending on the size of their economy. The proposal for such amendment was agreed to be submitted by the Trade Policy Review Body on 27 January 2017, as contained in Annex 3 to the Marrakesh Agreement Establishing the WTO. In view of the time constraint, members also agreed to revise the timeline for the question-and-answer process of the TPRs.

Ukraine launches Safeguard investigation on imports of Sulfuric acid

Ukraine has launched a Safeguard duty investigation on import of Sulfuric acid and Oleum, on 10th of August, 2017. The WTO's Committee on Safeguards was notified of this development on 18th of August. Ministry of Economic Development and Trade of Ukraine will consider registration of interested parties within 30 days and written comments within 45 days of notice.

Lowest monthly average of trade restrictions in past decade

On 24th July, 2017, the Director General presented the mid-year report on trade-related developments. It recorded the lowest monthly average in the past decade of new trade restrictions, since the financial crisis of 2008. An average of 15 new measures per month has now been reduced to 11. The period covered was between mid-October 2016 and mid-May 2017. The report also states that during the same period, WTO members applied 80 new measures

aimed at facilitating trade, including eliminating or reducing tariffs and simplifying customs procedures.

Ecuador removes import surcharges

On 21st July, 2017, Ecuador announced that it has finally removed all import surcharges imposed in 2015. Such surcharges were imposed in March 2015 as a response to sharp decrease in oil prices, to maintain the country's balance of payment. Previously, six rounds of consultations were held in the WTO Committee on Balance-of-Payments Restrictions, which saw the WTO members divided on such impositions. Humberto Jiménez Torres, Vice Minister of Negotiations, Integration and Trade Defence in Ecuador's Ministry of Foreign Trade, that Ecuador's government was not considering re-establishing, or establishing any new, safeguard measure for balance of payments purposes.

Members divided on transparency proposal in Goods Negotiations

On 21st July, 2017, the negotiating group on non-agricultural market access (NAMA) discussed a proposal to facilitate the participation of micro, small and medium-sized enterprises (MSMEs) in global trade by establishing rules to bring about greater transparency and access to information pertaining to government regulations on food and product safety. The proposal put forward by European Union, Hong Kong, China, Chinese, Taipei, and Singapore includes development of a common internet portal for sharing information, greater consultation with stakeholders and notification of final changes to domestic regulations covered in the WTO's agreements on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT). It received support from many Asian and Latin American countries.



Ratio Decidendi

Countervailing investigation – Adjustment to benchmark price – Inclusion of VAT

The US Court of International Trade has upheld Commerce department's inclusion of VAT in the benchmark calculations in a dispute involving Countervailing duty measures by USA on crystalline silicon photovoltaic cells from China. The Court in this regard held that department's interpretation of 19 C.F.R. § 351.511(a)(2)(iv) to permit inclusion of expenses other than delivery charges and import duties in benchmark calculations is not 'plainly erroneous or inconsistent with the regulation'. It was observed that to interpret the regulation as requiring the department to adjust benchmark prices only for delivery charges and import duties would render the mandate of the department meaningless. The argument of the department that possible later recoupment of VAT, in case of resale or export, does not prevent VAT from being an appropriate adjustment, was also upheld by the Court here.

In a case involving subsidy investigation the authorities see if such goods or services are provided for less than adequate remuneration. Adequacy of remuneration is determined by comparing the price paid by a respondent "to a market-determined price for the goods" resulting from actual transactions in the country in question, which is the benchmark price. The US Commerce department had increased the benchmark prices for polysilicon and solar glass to reflect the VAT that a hypothetical Chinese firm would pay upon importing these products. However, it chose not to exclude any amount for VAT from the electricity benchmark price. According to the department, VAT should be included in benchmark prices as long as VAT is reflective of what an importer would have paid. [*Changzhou Trina Solar Energy Co. Ltd. v. Solarworld Americas INC.* – Slip Opinion No. 17-106, dated 18-8-2017, US CIT]

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