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June 2021 marks a significant milestone for International Trade Amicus, as we celebrate our **10th Anniversary issue**. This monthly newsletter was introduced with a purpose; to deliver regular insight to our readers on the latest developments in Trade Law and Regulation; as well as address the various nuances of international agreements, compliance related concerns and allied topics. Through International Trade Amicus, we at Lakshmikumaran and Sridharan Attorneys have endeavoured to share our knowledge and experience in a broad array of laws ranging from Customs, WTO law, Foreign Trade Policy, laws governing Special Economic Zones and Free Trade Agreements. It brings me great pleasure to commemorate the 10 year journey of this knowledge base. I take this opportunity to thank our professionals whose regular contributions have made this achievement possible. Most importantly, I am grateful for the pleasure of serving our readers and thank you, for your support and patronage. With a decade gone by, I look to the one ahead, with even more zeal and enthusiasm, to continue this unwavering commitment to knowledge sharing.

V. Lakshmikumaran

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Article

Revision in requirements for applications by the domestic industry - A balancing act by DGTR

By **Neeraj Chhabra**

Introduction

The provisions relating to conduct of anti-dumping and anti-subsidy investigations in India are contained in the Customs Tariff Act, 1975, and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (**'AD Rules'**) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (**'CVD Rules'**) made therein under.

The Directorate General of Trade Remedies (**'DGTR'**) administers the AD and CVD Rules and also conducts anti-dumping / countervailing duty investigations. Though the AD and CVD Rules issued by the Central Government are intended to regulate the substance and the procedure of AD and CVD investigations, they are not exhaustive, and do not regulate every aspect of the investigation. In this regard, the DGTR from time to time, issues trade notices and office memorandums to streamline the AD/CVD investigation process.

The DGTR has recently issued a Trade Notice No. 04/2021 dated 16 June 2021 (**'Trade Notice'**) to further streamline the process for AD/CVD applications filed by the domestic industry after 16 June 2021. This article intends to discuss some of the new requirements applicable under the Trade Notice.

Salient changes introduced by the said Trade Notice

By introduction of the Trade Notice, the DGTR has modified its checklist for applications being made by the domestic industry for initiation of AD and CVD investigations. The Trade Notice supersedes the DGTR's previous Trade Notice No. 15/2018 dated 22 November 2018 (**'previous Trade Notice'**).

The following are some of the main changes in requirements from the past as made out in the Trade Notice:

- i. The intervening time-period between the proposed period of investigation and the date on which the application is filed has been reduced from 5 months to 4 months;
- ii. Where supporter's data is not provided in compliance with requirements in Trade Notice No. 13/2018 (all the injury parameters), provision of a letter of support containing basic information (installed capacity, production and sales) in lieu of the same should be provided;
- iii. For the normal value, a requirement to provide comparable representative price of the like article when exported from the exporting subject country or territory to the rest of the world including India as determined in accordance with the AD Rules, in case of absence of direct and other reasonably available evidence on domestic selling prices of the subject goods in the exporting

country; and only in absence of all the said evidences the evidence of constructed normal value is to be provided.

iv. The requirement to furnish the installed capacity claims and project reports or any other similar document submitted to any Government agency/Financial Institution.

Of the above changes brought about by the Trade Notice, this Article will focus on two changes:

Gap between proposed Period of Investigation and Filing of Application

Given the elaborate exercise involve in preparation of data for the petition, there is expectedly a gap between the proposed period of investigation ('POI')¹ and the date on which the application is filed by the domestic industry seeking protection in the form of duties. However, in the interest of fairness, this gap should not exceed a particular length. Till 6 April 2021, the previous Trade Notice prescribed a gap of five (5) months. However, this was subsequently modified by Trade Notice No. 02/2021 dated 6 April 2021 to four (4) months. The DGTR has again confirmed this in the present Trade Notice.

It is possible that the above change was introduced in light of the provisions introduced² in the AD Rules during the Union Budget 2021 (Customs Notification No. 10/2021-Customs (N.T.), dated 1 February 2021) with respect to the POI. However, practically, there may be certain challenges for filing an application by the domestic industry within a span of 4 months due to the below reasons.

One of the basic requirements for filing either an AD or CVD application is the collection of transaction-wise import data from the Directorate General of Commercial Intelligence and Statistics

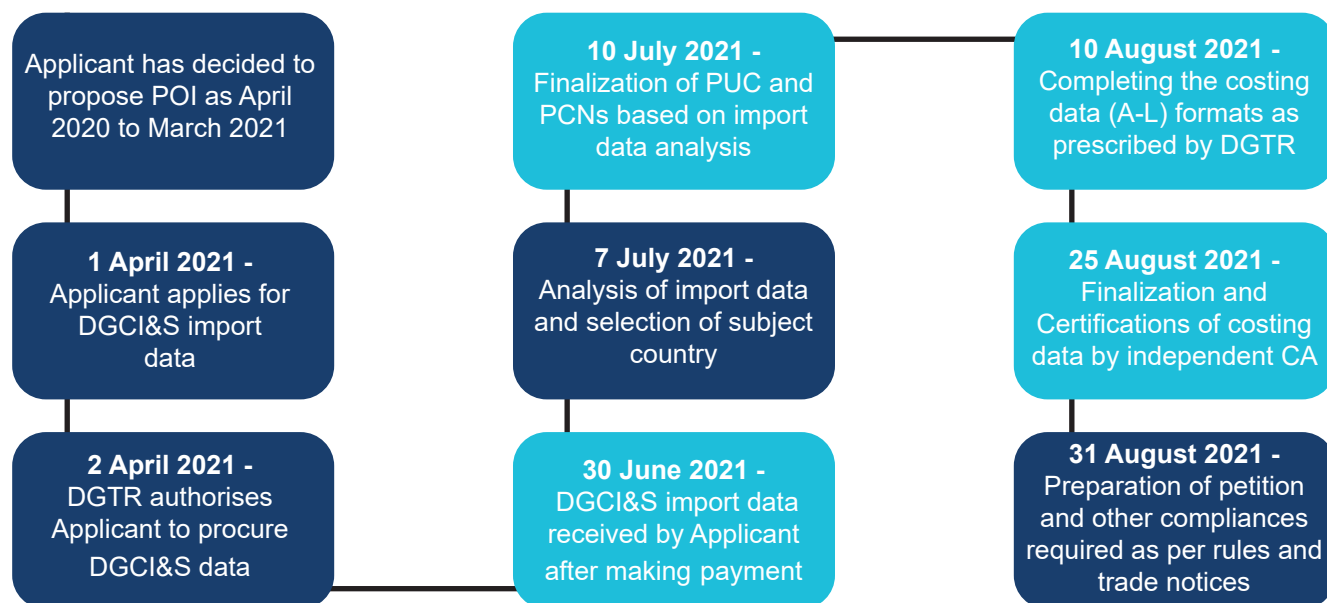
('DGCI&S'). However, sometimes obtaining this data from the DGCI&S can take time. To explain this better, let us take the example of an application where applicant proposes a POI of April 2020 to March 2021. In this regard, the applicant is required to submit an application latest by 31 July 2021.

After all compliances and procedures prescribed in Trade Notice No. 01/2017 dated 8 December 2017 and subsequent trade notices, the applicant may eventually obtain the DGCI&S import data for April 2020 to March 2021 by the middle or end of June 2021. This leaves the applicant only about one month to complete the application, which is a very short time period for completing critical aspects of the petition such as import data segregation, its analysis to calculate the dumping and injury margins and price undercutting etc.

¹The period for which data is examined by the Authority in any investigation, and for which period the dumping margin, injury margin, etc. is calculated.

²(3A) The period of investigation shall, - (i) not be more than six months old as on the date of initiation of investigation; (ii) be for a period of twelve months normally and for reasons to be recorded in writing, the designated authority may consider a minimum of six months or maximum of eighteen months.

An applicant may require at least two months after receiving the DGCI&S import data to comply with all the requirements prescribed by the DGTR for filing an AD/CVD application. For ease of reference and better understanding, the hypothetical timelines in this regard can be seen below.



It can be seen from the above timelines that at least 5 months may be required to complete an application after complying with all the requirements stipulated by the DGTR. It is only when the complete written application is presented to the DGTR in the prescribed format, it is accepted and considered for initiation of the case.

It is also experienced that there can generally be a gap of 2 to 3 months for DGCI&S to compile the import data from all ports and provide it in the format required for AD / CVD cases. To assist the applicant in resolving such issues, the DGTR may consider requesting the DGCI&S to expedite its process of compiling transaction wise import data. The DGCI&S may also consider the time-sensitive nature of the investigation process and be requested to expedite providing the import data to the applicant.

Information from supporters:

The DGTR has prescribed a questionnaire for information to be provided by supporters vide Trade Notice No. 13/2018 dated 27 September 2018. This questionnaire seeks detailed information from the supporter on all the injury parameters. However, most often, the supporters are hesitant to provide the detailed information required for all the injury parameters since calculation of cost of production requires elaborate efforts. Instead, it is generally seen that the supporters merely provide one-page letter of their support or provide only limited information.

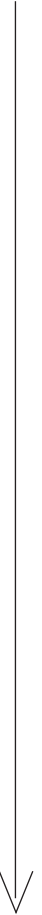
In order to streamline the participation of supporters in investigations, the Authority has now clarified in the Trade Notice that where the Trade Notice No. 13/2018 is not complied with, a letter of support containing some basic information such as installed capacity, product quantity, sales quantity and sales value for the injury period should be provided by the supporter.

Conclusion

The DGTR continues to play an active role in streamlining the trade remedy investigation process. Since 2017, the Authority has become more active in easing the process of filing AD/CVD applications and accelerating the proceedings as compared to the previous years. Within a span of almost three-years, the DGTR has issued 30 Trade Notices with regard to confidentiality, collection of import data, new application and questionnaire formats, request for change in name of producer(s) / exporter(s) in AD / CVD investigations, introduction of online platform 'Artis' for filing the applications, methodology regarding various forms of duty, timelines for sunset review investigations etc.

Apart from this, the DGTR has issued Manual of Operating Practices for trade remedy investigations capturing the standard practices/procedures with respect to the trade remedy investigations conducted by India. Therefore, in the interest of a fair, transparent, smooth and effective investigation, the trade notices and manual by DGTR are a welcome step for the domestic industry as well as all the interested parties in the trade remedy investigations.

[The author is Senior Associate in WTO and International Trade practice team at Lakshmikumaran & Sridharan Attorneys, New Delhi]



Trade Remedy News

Trade remedy measures by India

Product	Country.	Notification No.	Date of notification.	Remarks
Aluminium foil 80 microns and below	China PR, Malaysia, Thailand and Indonesia	F.No.6/21/2020- DGTR	18 June 2021	Definitive anti-dumping duty recommended
Aluminium Wire / Wire Rods above 7mm dia	Malaysia	F.No.6/23/2020 -DGTR	28 June 2021	Definitive countervailing duty recommended
Ammonium Nitrate	Russia, Georgia and Iran	F.No.7/11/2021 - DGTR	11 June 2021	Sunset review of anti-dumping duty initiated
Clear Float Glass	Iran	F. No. 7/15/2021 - DGTR	29 June 2021	Sunset review of anti-dumping duty initiated
Cold-Rolled flat products of alloy or non-alloy steel	China PR, Japan, Korea RP and Ukraine	37/2021-Cus. (ADD)	29 June 2021	Anti-dumping duty extended till 15 December 2021
Electrogalvani- zied Steel	Korea RP, Japan and Singapore	F.No.6/7/2021 - DGTR	28 June 2021	Anti-dumping investigation initiated
Glazed / Unglazed Porcelain / Vitrified tiles in polished or unpolished finish with less than 3% water absorption	China PR	34/2021-Cus. (ADD)	28 June 2021	Anti-dumping duty extended till 31 December 2021
Hot-rolled flat products of alloy or non-alloy steel	China PR, Japan, Korea RP, Russia, Brazil and Indonesia	36/2021-Cus. (ADD)	29 June 2021	Anti-dumping duty extended till 15 December 2021

Product	Country.	Notification No.	Date of notification.	Remarks
Jute products	Nepal and Bangladesh	F.No.7/9/2021 -DGTR	28 June 2021	Sunset review of anti-dumping duty initiated
Methyl Acetoacetate	China PR	31/2021-Cus. (ADD)	29 May 2021	Anti-dumping duty continued after sunset review
Mono Ethylene Glycols or MEG	Kuwait, Saudi Arabia and USA	F.No.6/8/2021 -DGTR	28 June 2021	Anti-dumping investigation initiated
Natural Mica based Pearl Industrial Pigments excluding cosmetic grades	China PR	F. No. 6/8/2020 -DGTR	8 June 2021	Definitive anti-dumping duty recommended
Phenol	European Union and Singapore	33/2021-Cus. (ADD)	3 June 2021	Anti-dumping duty further extended till 31 October 2021
Plain density fibreboard of thickness 6mm and above	Vietnam	F. No. 7/2/2021 -DGTR	7 June 2021	Sunset review of anti-dumping duty initiated
Polytetrafluoro-ethylene	Russia	32/2021-Cus. (ADD)	3 June 2021	Anti-dumping duty extended till 31 October 2021
Resin bonded thin wheels	China PR	F. No. 6/09/2021 -DGTR	7 June 2021	Anti-dumping investigation initiated
Textured tempered coated and uncoated glass	China PR	F. No. 7/10/2021 -DGTR	7 June 2021	Sunset review of anti-dumping duty initiated
Tyre curing presses also known as tyre vulcanisers or rubber processing machineries for tyres, excluding	China PR	35/2021-Cus. (ADD)	29 June 2021	Anti-dumping duty extended till 30 November 2021

Product	Country.	Notification No.	Date of notification.	Remarks
six day light curing press for curing bi-cycle tyres				

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Carbazole Violet Pigment 23	USA	86 FR 31699	15 June 2021	Anti-dumping and countervailing duties continued after sunset reviews
Cold rolled steel flat products	USA	86 FR 29239	1 June 2021	Sunset review of anti-dumping and countervailing duties initiated
Cold-drawn mechanical tubing of carbon and alloy steel	USA	86 FR 30595	9 June 2021	Countervailing duty Orders corrected
Corrosion resistant steel products	USA	86 FR 29239	1 June 2021	Sunset review of anti-dumping and countervailing duties initiated
Granular Polytetrafluoroethylene Resin	USA	86 FR 31276	11 June 2021	Preliminary determinations in the less-than-fair-value investigations postponed
Oil country tubular goods	Canada	OCTG2 2021 UP1	14 June 2021	Normal value review initiated to update all normal values and export prices in respect of exports by Jindal Saw Ltd.
Stainless steel cold-rolled flat products	European Union	Commission Implementing Regulation (EU) 2021/854	27 May 2021	Provisional anti-dumping duty imposed
Steel products	European Union	Commission Implementing Regulation (EU) 2021/1029	24 June 2021	Safeguard measures prolonged till 30 June 2024

WTO News

Australia-China disputes on the rise – Australia challenges Chinese duties on Australian wine while China complains of Australian duties on wind towers, deep drawn stainless steel sinks and railway wheels from China

Disputes between China and Australia are on the rise. In what seems to be a tit for tat response, both countries have requested consultations with each other challenging certain trade remedy measures of the other. While Australia has requested for consultations with China with respect to Chinese anti-dumping and countervailing measures on bottled wine in containers of 2 litres or less imported from Australia, China's request concerns the anti-dumping and countervailing measures imposed by Australia on imports of certain products originating in China, *inter alia*, wind towers, deep drawn stainless steel sinks and railway wheels.

According to the Australia's request for consultations, as circulated in the WTO on 28 June 2021, China's measures appear to be inconsistent with China's obligations including under the provisions of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement. Australia alleges that China incorrectly defined the 'product under consideration' and the 'like product', including *inter alia*, by failing to account for the different qualities of wine and product differentiation within the wine market. Australia has raised many questions in respect of initiation and conduct of investigations, use of facts available, imposition of provisional measures, dumping and countervailing determination and transparency.

China's request claims that Australian Commission has applied unlawful standards and methodologies in determining financial contribution, specificity, and benefit in respect of the alleged provision of inputs for less than adequate remuneration in the countervailing proceedings in issue. Violation of GATT 1994, Anti-dumping Agreement and the SCM Agreement has been alleged in this consultation request circulated in the WTO on 29 June 2021.

It may be noted that a panel was also established on 28 May to find answer to the question as to whether China's decision to impose anti-dumping and countervailing duties on imports of barley from Australia is consistent with the WTO rules. India along with Canada, EU, USA, Russia, Singapore, Norway, UK, Japan, New Zealand, Brazil and Ukraine have reserved their rights to participate as third parties in the proceedings.

Chinese duties on Japanese stainless steel – Japan initiates dispute

Japan has on 15 June 2021 requested for consultations with China with respect to latter's measures imposing anti-dumping duties on stainless steel billets, hot-rolled coils, and hot-rolled plates from Japan. Japan alleges that the Chinese measures appear to be inconsistent with China's obligations under the GATT 1994 and the Anti-Dumping Agreement. According to Japan, China's injury determination was not based on positive evidence and did not involve an objective examination of the effect of the imports under investigation on prices in the domestic market for like products. It also holds that China's cumulative assessment of the

Safeguard investigations notified to WTO

Sodium hypochlorite – Ukraine has on 27 May 2021 launched a safeguard investigation with respect of import of Sodium hypochlorite. The initiation was notified to the WTO on 11 June.

Ceramic tiles – Ukraine has on 1 June 2021 launched a safeguard investigation with respect of import of ceramic tiles. The initiation was notified to the WTO on 7 June.



India Customs & Trade Policy Update

Plastic and used/worn clothes recycling units in SEZs/EOUs – Revised policy guidelines issued

The SEZ division in the Ministry of Commerce & Industry, Department of Commerce, has issued revised policy guidelines with respect to plastic and used/worn clothes recycling units in SEZs/EOUs. As per the new guidelines, setting up of new units in SEZ/EOUs for worn and used clothing is not allowed and the extension/renewal of LoA of existing units will be considered for a period of five years by the Board of Approval. For existing plastic recycling units, extension/renewal of LoA will be considered by Board of Approval for a period of 18 months only. The Instruction dated 27 May 2021 also notes that Department of Commerce will propose suitable amendment in the SEZ Rules to provide for setting up of new units engaged in recycling of plastic as SEZ units, amendments in the Foreign Trade Policy will be proposed by the DGFT. The Instruction also talks about export obligations other than the NFE obligation.

Potato imports from Bhutan allowed without licence till 30 June 2022

Import of potatoes under EXIM Code 07019000 has been allowed from Bhutan without a licence up to 30 June 2022. It may be noted that otherwise imports of said product is restricted as per the instant Import Policy. Notification No. 9/2015-20, dated 28 June 2021 issued for this purpose, amends the policy conditions in Chapter07 of ITC (HS) 2017.

Remdesivir injection and Remdesivir API's exports relaxed

The Ministry of Commerce has relaxed the export of Remdesivir injection and Remdesivir API with effect from 14 June 2021 by putting them under the restricted category. Notification No. 8/2015-20, dated 14 June 2021 issued for this purpose also states that export of Remdesivir injection/API against advance authorisation shall not require a separate export authorisation or permission. It may be noted that such exports were earlier put under the prohibited category on 11 April 2021.

Amphotericin-B injections' exports restricted

The Ministry of Commerce has put export of Amphotericin-B injection under restricted category. As per Notification No. 7/2015-20, dated 1 June 2021, transitional arrangements under Para 1.05 of the Foreign Trade Policy 2015-20 is not applicable for this restriction.

Pulses imports – India signs MoUs with Myanmar and Malawi

India will provide an annual import quota of 50,000 MT of pigeon peas (*Tur*) from Malawi and 100,000 MT from Myanmar, over the next five financial years. Additionally, there will an annual quota of 250,000 MT in respect of import of *Urad* from Myanmar. As per Public Notices Nos. 8 and 9, both dated 24 June 2021, procedure and modalities for such imports will be notified separately.

Export authorisation for restricted items to be issued online

With effect from 17 May 2021, all applicants seeking export authorization for restricted items must apply online by navigating on the DGFT website. Going forward, all applications for issuance, amendment, and re-validation of

export authorization will be required to be submitted online. Pending applications will also be migrated to the online module. Trade Notice 03/2021-22, dated 10 May 2021 has been issued for the purpose.

Ratio Decidendi

Anti-dumping duty – Application of country-wide NME rate to cooperating exporters

The US Court of Appeals has held that the conclusion reached by it in the case of *Diamond Sawblades* that where a respondent in a Non-market Economy (NME) country cooperates with an investigation or review but fails to rebut the presumption of government control, the Department of Commerce (DoC) may apply the country-wide NME entity rate, applies whether or not other members of the NME-wide entity are identified by name and subject to the administrative review at issue.

The Court however was of the view that the resulting country-wide NME entity rate may be an ‘individually investigated’ rate within the meaning of 19 U.S.C. § 1673d(c)(1)(B)(i)(I), which the DoC may determine using its ordinary techniques of investigation. It also held that DoC may assign such a rate to the unitary group of exporters in an NME country that have failed to rebut the presumption of government control and that this rate may be based in whole or in part on FA or AFA, and Commerce may carry forward an initial NME entity rate, including adverse inferences built into that rate, in subsequent administrative reviews. [*Guizhou Tyre Co. Ltd. v. United States* – Decision dated 10 June 2021 in Case: 20-1159, US Court of Appeals].

Quantitative import restrictions – Goods Imported in excess of cap are prohibited goods

In a case where only the specific restricted quantity of the commodities covered by the notifications could have been imported and that too, under a licence, the 3-Judge Bench of the Supreme Court has held that any import within the cap (e.g. 1.5 lakh MTs) under a licence is the import of restricted goods but, every import of goods in excess of the cap is not that of restricted goods but is an import of prohibited goods.

Distinguishing the Court’s earlier decision in the case of *Atul Automation*, the Court observed that it, in that case, had neither laid down the law that in every case of import without authorisation, the goods are to be treated as restricted and not prohibited nor that the goods so imported without authorisation are always to be released on payment of redemption fine.

Further, in this case of quantitative restrictions on import of certain pulses, the Court observed that when personal business interests of importers clash with public interest, the former has to give way to the latter. It held that in such case discretion could only be for absolute confiscation with levy of penalty. [*Union of India v. Raj Grow Impex LLP* – 2021 TIOL 187 SC CUS LB]

Valuation – Subvention payments not to be included in transaction value

The CESTAT Delhi has held that subvention payments (True-Up payment) received by a subsidiary from the parent company in respect of losses and expenses incurred by the subsidiary have no relationship to the invoice price of imported goods. Considering that such payment had no influence on the transaction value, the Tribunal held that such payments are not includible in the transaction value of imported goods in terms of Rule 10(1) of Customs

Valuation (Determination of Value of Imported Goods) Rules, 2007. The Tribunal in this regard also noted that the True Up payments were flowing not from the assessee-importer to the foreign supplier but the other way round and if these were to be reckoned to arrive at the transaction value, the invoice value will have to be lowered. [*Volvo Auto India Pvt. Ltd. v. Commissioner* – 2021 (5) TMI 867 CESTAT ND].

News Nuggets

Applications for initiation of ADD and CVD investigations – Revised checklist prescribed

The Directorate General of Trade Remedies (DGTR) has prescribed a revised checklist for submissions of anti-dumping duty and countervailing duty applications for initiation of investigations. As per Trade Notice No. 4/2021, dated 16 June 2021, the application should be complete in all respects with the documents as mentioned in the checklist and the domestic industry must rectify the deficiencies pointed out by DGTR within five working days of receipt of deficiency letter. The revised checklist also states whether, in case direct evidence is not available, a comparable representative price of the like article when exported from the exporting country or territory to the rest of the world including India as determined in accordance with the rules has been provided. Additionally, the checklist also states as to whether a non-confidential version of the application has been provided as per Trade Notice No 02/2012.

Anti-absorption provisions for anti-dumping and countervailing duties – DGTR proposes draft amendments in Rules

The DGTR has introduced the draft Anti-Absorption Rules in respect of anti-dumping duty and countervailing duty. As per the draft of the changes proposed in the ADD Rules, the domestic industry or any other interested party must file the application seeking initiation of Anti-Absorption investigation usually within 2 years from the date of imposition of definitive ADD/CVD and no application will be accepted with less than twelve months remaining for anti-dumping duty to expire (18 months in case of CVD). The designated authority can also initiate an investigation *suo motu*. It may be noted that as per the proposals, provisions of ADD Rules 5 and 6 (CVD Rules 6 and 7) shall apply *mutatis mutandis* to any anti-absorption investigation which must be concluded within six months of the date of initiation, except in special circumstances. The provisions also provide for provisional assessment till the final decision.

UK and Australia set to sign a Free Trade Agreement

In a first major trade deal by the United Kingdom since it left the European Union, the Prime Ministers of UK and Australia have agreed on the principle elements of the new deal. As per reports dated 14 June 2021, the new Free Trade Agreement means that British products like cars, scotch whisky, biscuits and ceramics will be cheaper to sell into Australia, while tariffs will be eliminated on Australian favourites like Jacob's Creek and Hardys wines, swimwear and confectionery when imported into UK. Further, British citizens under the age of 35 will be able to travel and work in Australia more freely. According to the UK's Secretary of State for International Trade, *"the agreement paves the way for UK to join the Trans-Pacific Partnership, a £9 trillion free trade area which is home to some of the biggest consumer markets of the present and future"*.

Airbus-Boeing dispute – USA and UK/EU agree to suspend retaliatory tariffs for 5 years

Ending the 17-year old dispute pertaining to the support provided to the manufacturers of large civil aircrafts, the United States of America and the United Kingdom have agreed to suspend retaliatory tariffs for 5 years. As per the UK Government Press Release dated 17 June 2021, the UK, which was involved as a member of the EU, took the decision to deescalate the dispute by unilaterally suspending retaliatory tariffs on the US at the start of this year, which encouraged the US to agree to a four-month suspension of tariffs while both sides negotiated a longer-term arrangement. The deal will ensure the financing to a large civil aircraft producer on market terms and will have provision for research & development funding through an open and transparent process. USA and UK will also collaborate on tackling non-market practices of third countries that may impact their large civil aircraft industries. It may be noted that USA has signed a similar agreement with the European Union also.

NEW DELHI

5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9811

B-6/10, Safdarjung Enclave
New Delhi -110 029

Phone : +91-11-4129 9900

E-mail : lsdel@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

2, Wallace Garden, 2nd Street
Chennai - 600 006

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

2nd Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071

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,

Gurgaon-122001

Phone : +91-124-477 1300

E-mail : 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@lakshmisri.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

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