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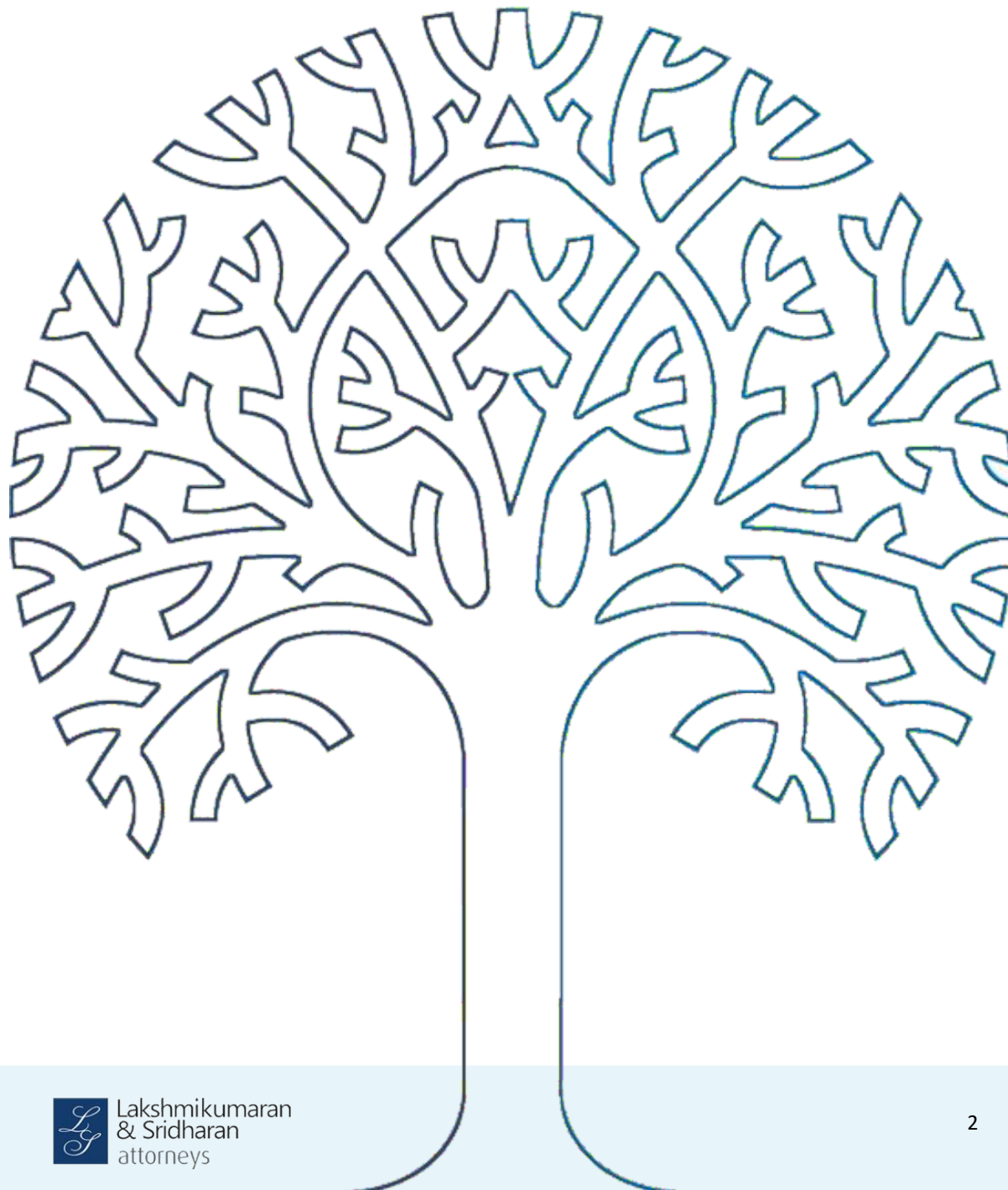


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An e-newsletter from
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Article

A question on 'standing' of the domestic producer in anti-dumping cases

By Rizwan Shah

The article in this issue of International Trade Amicus analyses a recent DGTR Final Finding in an anti-dumping investigation concerning imports of 'Metronidazole' originating in or exported from China PR and focusses on the question of eligibility of a company as a domestic industry to file the anti-dumping application for the product under the extant anti-dumping law. Stating that the twin exceptions, wherein the domestic producer(s) may be considered ineligible to file application for investigation despite fulfilling the prescribed threshold, use the word 'may' which provide a discretion to the DGTR to determine ineligibility on a case-to-case basis, the article highlights how the past practices have varied from one investigation to the other. Elaborately discussing the recent final finding, the author states that how the Authority has attempted to provide a detailed reasoning replete with relevant domestic and WTO jurisprudence to justify its stand on the issue. The author believes that hopefully the present findings can be used to provide some broad principles or guidelines to follow for other cases.

Introduction

On 29 September 2023, the Directorate General of Trade Remedies ('**DGTR**') issued the Final Findings ('**FF**') in Anti-dumping investigation concerning imports of 'Metronidazole' originating in or exported from China PR. The domestic industry ('**DI**') was represented by Aarti Drugs Ltd., ('**ADL**') who was one of the major domestic producers of Metronidazole ('Product under consideration' or '**PUC**') in India.

The investigation concluded that the DI was not facing any injury due to any alleged dumped imports from the subject country, the injury if any was due to other reasons. Regardless of the final determination, one of the moot points during the investigation, which is the focus in this article, relates to standing or eligibility of ADL as a DI to file the anti-dumping application for the PUC under the extant anti-dumping law.

DI's standing and the two exceptions

This eligibility threshold stems primarily from the Article 4.1 of the Anti-Dumping Agreement ('**ADA**') and the corresponding domestic law contained in Rule 2(b) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. It provides that '*domestic producers as a whole*' engaged in the manufacture of like article or those whose collective output of the said article constitutes '*a major proportion*' of the total domestic production of that article in India are eligible to file the application¹, subject to twin exceptions wherein the domestic producer(s) may be considered ineligible despite fulfilling the prescribed threshold. It is these twin exceptions which are subject matter of present article.

The following are the two exceptions:

1. *The Producer(s) in India are related to exporters or importers of the alleged dumped article. (The related party has been explained in the explanation to Rule 2(b) for domestic producers)*
2. *The domestic producers are themselves importing PUC into India thereby self-benefiting from the dumping which is being complained against.*

However, the exceptions are couched in the language 'may' which provide a discretion to the DGTR to determine ineligibility on a

¹ There are certain additional eligibility tests in Article 5 of ADA / Rule 5(3) of AD Rules which are not subject matter of present discussion.

case-to-case basis depending upon the facts of each case. The past practices have varied from one investigation to the other. The yardsticks used to determine this aspect include quantum of imports (whether significant or insignificant); reasons for import (such as for testing the market, fulfilling the shortfall in production due to shutdown etc.). In some AD investigations, the DGTR has disqualified several domestic producers from constituting the domestic industry since their volumes of imports of the dumped PUC were found to be significant². In other cases, the DGTR has used its discretion in considering a DI as eligible for the reason that the volume of such imports was insignificant³ or that the imports were made under duty exemption scheme for manufacture of export goods⁴. In other instances, the Authority has examined the purpose of imports by a domestic producer to determine whether it should be disqualified.

Keys facts from the subject case

The applicant ADL had been importing the PUC from China, and more particularly from the exporter-producer from China who participated in the investigation before the DGTR. ADL claimed that these imports were made under advance authorization and were intended for fulfilling its export obligations in manufacturing finished goods for exports since none of it was cleared for domestic sales. Interestingly, ADL had been determined to be an ineligible domestic producer by DGTR in the 2nd sunset review anti-dumping investigation pertaining to the same product from China for the same reason.

Moreover, it was alleged that ADL continued to hold investments in a Chinese entity and was previously involved in a joint venture with the Chinese entity i.e., Huanggang Yinhe Aarti Pharmaceutical Co. Ltd., (**HYAP**). Hence, DGTR had to rule on the twin exceptions under Rule 2(b) to decide on eligibility of ADL to file the application.

(A) Import of the PUC from China PR

Interpreting Rule 2(b) of the AD Rules, the DGTR clarified that the use of word 'may' therein provides the Authority a **discretion** to

² Anti-dumping investigation on the imports of 'Glazed/Unglazed Porcelain/Vitrified tiles' from China PR (Final Findings dated 8 April 2017)

³ AD investigation concerning imports of 'Natural Mica based Pearl Industrial Pigments' from China PR (Final Findings dated 8 June 2021) or in AD investigation concerning imports of 'Caprolactam' from European Union, Korea RP, Russia and Thailand

⁴ Sunset review investigation on imports of '2 Methyl (5) Nitro Imidazole' from China PR (Final Findings dated 29 June 2007) or in the AD investigation on imports of Purified Terephthalic Acid from China PR, Iran, Indonesia, Malaysia & Taiwan (Final Findings dated 9 June 2016)

include the domestic producers who are importers of the subject goods into India or that are related to exporters or importers of the subject goods within the scope of the 'domestic industry'. To supplement its interpretation, the DGTR referred to the Guwahati High Court decision in *Century Plyboards*⁵, and relied on the WTO Panel decision of EC – Fasteners (China)⁶, to hold that the Authority has some discretion '*to include the producers related to the exporters or importers of the dumped article or the importers themselves in the concept of 'domestic industry'.*'

The DGTR also placed reliance on *Hon'ble Calcutta High Court's reasoning in the case of Gujarat Fertilizers & Chemicals Ltd*⁷, where it was held that the determination of the scope of DI under Rule 2(b) of the AD Rules must be examined based on the nature of activities carried out by the domestic producer *vis-à-vis* the imports of PUC made by it. It was held that the producer therein, which had imported 15% of its total production of the subject goods when its production was disrupted, qualifies as the domestic industry since such imports were made merely to meet its customers' demands. The High Court observed that the domestic producer was not exclusively carrying on the business of import for trading purposes, and therefore there was no reason to exclude it from the scope of 'domestic industry' under Rule 2(b) of the AD Rules.

The DGTR in the present case took cognizance of the fact that the applicant had imported low volumes of PUC (in absolute and relative terms) as well as of the fact that all of its imports of PUC were made under the advance authorisation to meet its manufacturing requirement for export obligations. In view of the above, the Authority concluded that the nature of the operations of the applicant was that of a producer of the PUC and not that of a trader making it an eligible domestic producer under the rules.

(B) Relation with the Producer (HYAP) in China PR

The DGTR tested the relationship in light of the explanation under Rule 2(b)⁸ which provides the circumstances in which the

⁵ *Century Plyboards (I) Ltd. v. Union of India and Ors.*, 2022 SCCOnLine Gau 643

⁶ *WTO Panel Report, European Commission - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (DS 397)*, adopted on 28 July 2011, WT/DS397/R

⁷ *State of Gujarat Fertilizers & Chemicals Ltd. v. Designated Authority and Ors.*, 2012 SCCOnLine Cal 8071

⁸ *Explanation. - For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if, -*

(a) one of them directly or indirectly controls the other; or

(b) both of them are directly or indirectly controlled by a third person; or

domestic producers shall be deemed to be related to exporters or importers. The DGTR relied on following key aspects of the alleged relationship:

1. *The alleged Chinese producer had not been reported as a 'related party' in the annual reports of ADL.*
2. *A continuous reduction of investments in the producer had occurred over the years vis-à-vis previous investigations.*
3. *There is no consolidation of books of accounts of the Chinese entity & ADL.*
4. *There has been no direct export of PUC by the Chinese producer to India.*
5. *None of the two entities hold any positions in the Board of Directors ('BOD') of the other entity.*
6. *ADL has no right / power to exercise any control on the Chinese producer's management.*
7. *There are no common directors, senior management personnel or key managerial persons between the two entities.*
8. *Neither of the two have any right to appoint any member in the BOD of the other entity.*

In accordance with the prescribed circumstances under the rule and the discretion allowed to DGTR by use of the word 'may', it was concluded that the applicant's relation to a producer of the PUC in China did not disqualify it from being considered as a 'domestic industry' in terms of Rule 2(b) of the AD Rules.

Conclusion

It is well settled that DGTR is a quasi-judicial authority. The judicial discretion given to DGTR under the rules to decide on the standing or eligibility of a domestic producer, particularly the two exceptions, and its practical application on facts of each case has been a vexed issue often subject to litigation in courts. In the present case, the Authority has attempted to provide a detailed reasoning replete with relevant domestic and WTO jurisprudence to justify its stand on the issue. Although the determination on this aspect is based on facts of each case, hopefully the present findings can be used to provide some broad principles or guidelines to follow for other cases. Given the

(c) together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

Note: For the purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.

vagaries of business exigencies, it can also provide relief to the domestic producers who are suffering injury from dumped imports but are apprehensive of the fact that their imports of the PUC can make them ineligible to seek protection under the law.

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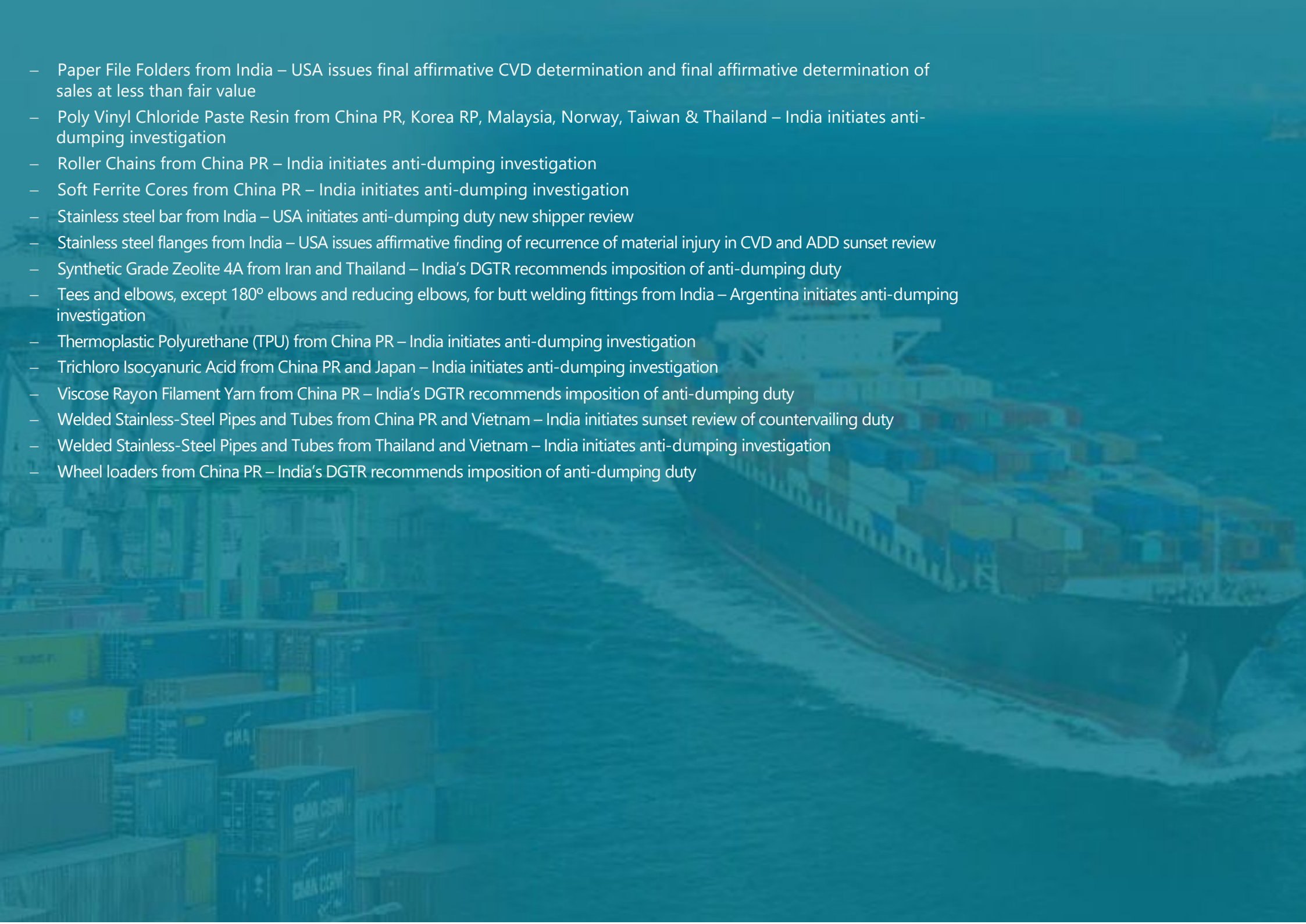
Trade Remedy News



- Aluminium Alloy Road Wheel from China PR – India initiates sunset review of anti-dumping duty
- Aluminium Extrusions from India – USA initiates anti-dumping and countervailing duties investigations
- Carbon steel welded pipe from India – Canada concludes re-investigation of normal values and export prices
- Cellophane Transparent Film from China PR – India initiates anti-dumping investigation
- Copper Tubes & Pipes from Vietnam – India's DGTR terminates new shipper review for countervailing duty
- Digital Offset Printing Plates from China PR and Taiwan – India initiates countervailing duty investigation
- Digital Offset Printing Plates from China PR, Japan, Korea RP, Vietnam, and Taiwan – India initiates sunset review of anti-dumping duty
- Epichlorohydrin from Korea RP, Thailand, China PR – India initiates anti-dumping duty investigation
- Epichlorohydrin from Thailand – India initiates countervailing duty investigation
- Flax Yarn of below 70 Lea Count from China PR – India continues with anti-dumping duty after sunset review
- Granular Polytetrafluoroethylene Resin from India – USA amends CVD order for countervailable subsidy rate assigned to Gujarat Fluorochemicals Limited
- Gypsum board / tiles with lamination at least on one side from China PR and Oman – India's DGTR recommends imposition of anti-dumping duty
- Halobutyl-Rubber (HIIR) from Japan, Russia, Singapore, UK, USA – India initiates anti-dumping investigation
- Industrial laser machines used for cutting, marking and welding from China PR – India's DGTR recommends imposition of anti-dumping duty
- Isopropyl alcohol from China PR – India initiates anti-dumping investigation
- Lined Paper Products from India – USA issues preliminary determination of sales at less than normal value from 1 September 2021 to 31 August 2022
- Metronidazole from China PR – India's DGTR recommends non-imposition of anti-dumping duty
- Natural mica-based pearl industrial pigments excluding cosmetic grade from China PR – India's DGTR recommends anti-dumping duty to be modified consequent to mid-term review
- New Pneumatic Off-the-Road Tires from India – USA issues determination of sales at less than normal value during 1 March 2021 to 28 February 2022 and determination that countervailing subsidies were provided during 1 January 2021 to 31 December 2021



- Paper File Folders from India – USA issues final affirmative CVD determination and final affirmative determination of sales at less than fair value
- Poly Vinyl Chloride Paste Resin from China PR, Korea RP, Malaysia, Norway, Taiwan & Thailand – India initiates anti-dumping investigation
- Roller Chains from China PR – India initiates anti-dumping investigation
- Soft Ferrite Cores from China PR – India initiates anti-dumping investigation
- Stainless steel bar from India – USA initiates anti-dumping duty new shipper review
- Stainless steel flanges from India – USA issues affirmative finding of recurrence of material injury in CVD and ADD sunset review
- Synthetic Grade Zeolite 4A from Iran and Thailand – India's DGTR recommends imposition of anti-dumping duty
- Tees and elbows, except 180° elbows and reducing elbows, for butt welding fittings from India – Argentina initiates anti-dumping investigation
- Thermoplastic Polyurethane (TPU) from China PR – India initiates anti-dumping investigation
- Trichloro Isocyanuric Acid from China PR and Japan – India initiates anti-dumping investigation
- Viscose Rayon Filament Yarn from China PR – India's DGTR recommends imposition of anti-dumping duty
- Welded Stainless-Steel Pipes and Tubes from China PR and Vietnam – India initiates sunset review of countervailing duty
- Welded Stainless-Steel Pipes and Tubes from Thailand and Vietnam – India initiates anti-dumping investigation
- Wheel loaders from China PR – India's DGTR recommends imposition of anti-dumping duty



Trade remedy measures by India

Product	Country	Notification No.	Date of notification	Remarks
Aluminium Alloy Road Wheel	China PR	F. No. 07/13/2023-DGTR	30 September 2023	Sunset review of anti-dumping duty initiated
Cellophane Transparent Film	China PR	F. No. 06/18/2023-DGTR	30 September 2023	Anti-dumping investigation initiated
Copper Tubes & Pipes	Vietnam	F.No. 07/16/2022-DGTR	27 September 2023	New shipper review for countervailing duty terminated
Digital Offset Printing Plates	China PR, Japan, Korea RP, Vietnam, and Taiwan	F. No. 7/20/2023-DGTR	30 September 2023	Sunset review of anti-dumping duty initiated
Digital Offset Printing Plates	China PR and Taiwan	F. No. 6/25/2023-DGTR	29 September 2023	Countervailing duty investigation initiated
Epichlorohydrin	Thailand	F.No. 6/24/2023-DGTR	29 September 2023	Countervailing duty investigation initiated
Epichlorohydrin	Korea RP, Thailand, China	F.No. 06/15/2023-DGTR	26 September 2023	Anti-dumping duty investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
	PR			
Flax Yarn of below 70 Lea Count	China PR	10/2023-Cus.	12 October 2023	Anti-dumping duty continued after sunset review
Gypsum board / tiles with lamination at least on one side	China PR and Oman	F.No. 6/11/2022-DGTR	29 September 2023	Anti-dumping duty recommended to be imposed
Halobutyl-Rubber (HIIR)	Japan, Russia, Singapore, UK, USA	F.No. 6/19/2023-DGTR	30 September 2023	Anti-dumping investigation initiated
Industrial laser machines used for cutting, marking and welding	China PR	F.No. 06/07/2022-DGTR	27 September 2023	Anti-dumping duty recommended to be imposed
Isopropyl alcohol	China PR	F. No. 6/09/2023-DGTR	29 September 2023	Anti-dumping investigation initiated
Metronidazole	China PR	F. No. 6/3/2022-DGTR	29 September 2023	Anti-dumping duty not recommended to be imposed, as material injury absent

Product	Country	Notification No.	Date of notification	Remarks
Natural mica-based pearl industrial pigments excluding cosmetic grade	China PR	F.No. 7/17/2022-DGTR	27 September 2023	Anti-dumping duty recommended to be modified consequent to mid-term review
Poly Vinyl Chloride Paste Resin	China PR, Korea RP, Malaysia, Norway, Taiwan & Thailand	F. No. 6/17/2023-DGTR	30 September 2023	Anti-dumping investigation initiated
Roller Chains	China PR	F. No. 06/26/2023-DGTR	30 September 2023	Anti-dumping investigation initiated
Soft Ferrite Cores	China PR	F. No. 6/22/2023-DGTR	30 September 2023	Anti-dumping investigation initiated
Synthetic Grade Zeolite 4A	Iran and Thailand	F. No. 6/5/2022-DGTR	29 September 2023	Anti-dumping duty recommended to be imposed
Thermoplastic Polyurethane (TPU)	China PR	F.No. 6/23/2023-DGTR	29 September 2023	Anti-dumping duty investigation initiated
Trichloro Isocyanuric Acid	China PR and Japan	F. No. 6/20/2023-DGTR	30 September 2023	Anti-dumping duty investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
Viscose Rayon Filament Yarn	China PR	F. No. 6/06/2022-DGTR	29 September 2023	Anti-dumping duty recommended to be imposed
Welded Stainless-Steel Pipes and Tubes	Thailand Vietnam	F. No. 6/28/2023-DGTR	30 September 2023	Anti-dumping investigation initiated
Welded Stainless-Steel Pipes and Tubes	China PR and Vietnam	F. No. 7/23/2023-DGTR	30 September 2023	Sunset review of countervailing duty initiated
Wheel Loaders	China PR	F. No. 6/4/2022-DGTR	29 September 2023	Anti-dumping duty recommended to be imposed

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Aluminium Extrusions	USA	88 FR 71020	13 October 2023	Anti-dumping and countervailing duties investigations initiated
Carbon steel welded pipe	Canada	CSWP2 2023 RI	6 October 2023	Re-investigation of normal values and export prices concluded
Granular Polytetrafluoroethylene Resin	USA	88 FR 74153	30 October 2023	CVD order amended for countervailable subsidy rate assigned to Gujarat Fluorochemicals Limited (GFL)
Lined Paper Products	USA	88 FR 69125	5 October 2023	Preliminary determination of sales at less than normal value from 1 September 2021 to 31

Product	Investigating Country	Document No.	Date of Document	Remarks
				August 2022
New Pneumatic Off-the-Road Tires	USA	88 FR 70640	12 October 2023	Determination of sales at less than normal value during 1 March 2021 to 28 February 2022
New pneumatic off-the-road tyres (OTR Tyres)	USA	88 FR 68101	3 October 2023	Determination that countervailing subsidies were provided during 1 January 2021 to 31 December 2021
Paper File Folders	USA	88 FR 69134	5 October 2023	Final Affirmative Countervailing Duty Determination issued
Paper File Folders	USA	88 FR 69138	5 October 2023	Final Affirmative Determination of Sales at Less Than Fair Value
Stainless steel bar	USA	88 FR 69121	5 October 2023	Anti-dumping duty new shipper review initiated
Stainless steel flanges	USA	News Release 23-088	11 October 2023	Affirmative determination in sunset review of anti-dumping and countervailing duties
Stainless steel flanges	USA	88 FR 73043	24 October 2023	CVD and ADD sunset review – Affirmative finding of recurrence of material injury
Tees and elbows, except 180° elbows and reducing elbows, for butt welding fittings	Argentina	EX-2022-55574808-APN-DGD#MDP/IND	26 October 2023	Anti-dumping investigation initiated



WTO News

- WTO members reach deal to support least-developed countries on path to graduation
- USA's anti-dumping measures on oil country tubular goods from Argentina – WTO panel established
- Madagascar initiates safeguard investigation on diapers and sanitary napkins

WTO members reach deal to support least-developed countries on path to graduation

The WTO's General Council has reached an important milestone on 23 October in the global efforts to assist least-developed countries (LDCs) on the path to graduation from LDC status, adopting a decision on the extension of support measures for graduating countries. The decision was taken as senior officials gathered at the WTO on 23 and 24 October for a meeting aimed at making preparations for the 13th WTO Ministerial Conference, scheduled for February 2024 in Abu Dhabi.

Background: LDC graduation refers to the point when an LDC meets certain United Nations (UN) development criteria and is no longer defined as an LDC. As the most vulnerable members of the international community, LDCs are accorded special treatment at the WTO, such as enhanced market access opportunities and flexibilities in adopting WTO rules.

The decision encourages WTO members that remove countries from their duty-free and quota-free preference programmes upon graduation from the UN LDC list to provide a smooth and sustainable transition period for the withdrawal of these preferences after graduation. It marks an important contribution to the implementation of the Doha Programme of Action for LDCs for the period 2022-2031.

USA's anti-dumping measures on oil country tubular goods from Argentina – WTO panel established

The Dispute Settlement Body (DSB) of the WTO has on 26 October 2023 agreed to a request from Argentina for establishment of a panel to review anti-dumping duties imposed by the United States on oil country tubular goods (OCTG) imported from Argentina. Argentina has requested for review of the final anti-dumping measure imposed by the United States as well as certain provisions of US legislation regarding cumulation of imports in assessing injury caused by imports in anti-dumping duty and countervailing duty investigations. Türkiye, Japan, the European Union, Republic of Korea, Brazil, Canada, China, Russia and Ukraine have reserved their third party rights to participate in the panel proceedings.

Madagascar initiates safeguard investigation on diapers and sanitary napkins

Madagascar has on 25 October 2023 initiated safeguard investigation on imports of diapers and sanitary napkins classifiable under HSN Code 9619 00 00. As per document shared with the Safeguard Committee, Egypt, Turkey, China and Belgium are the main countries exporting the said goods to Madagascar. The communication also states that responses to the questionnaire as well as other relevant information that the parties desire communicate must be sent to the ANMCC no later than 6 December.

India Customs & Trade Policy Update



- Laptops, tablets, personal computers, etc. – Exemption from import authorisation provided in specific cases
- New All Industry Rates (AIR) of Drawback effective from 30 October 2023
- Restricted import authorisation – Issuance of physical copy discontinued for EDI ports
- Rice, parboiled – Export duty extended till 31 March 2024
- Onion exports exempted from customs export duty but Minimum Export Price made effective from 29 October
- Coal Import Monitoring System (CIMS) – Importers allowed to register till date of arrival of consignment
- Ferro Molybdenum import under India-Korea CEPA – Bilateral safeguard measures imposed
- Jewellery reimports allowed without import licence



Laptops, tablets, personal computers, etc. – Exemption from import authorisation provided in specific cases

The Indian Ministry of Commerce has on 19 October 2023 relaxed the provisions regarding requirement of import authorisation for import of laptops, tablets, personal computers, etc. It may be noted that the regime requiring import authorisation for laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers, falling under HSN 8471 of the ITC(HS), as brought-in by Notification No. 23/2023 issued by the Ministry of Commerce, is effective from 1 November 2023.

IT hardware manufactured in SEZ and imported in DTA has been exempted from the requirement of import authorisation. Similarly, import of such goods by private entities on behalf of Central and State Government entities, for defence and security purposes will also be exempt from the requirement of import authorisation. Exemption is also available for import for repair and/or return and/or replacement of IT hardware sold earlier as well as reimport of such items repaired abroad on self-certification basis. Notification No. 38/2023, dated 19 October 2023 has been issued for the purpose.

Further, as per Policy Circular No. 6/203-24 of the same date, SEZ units and EOUs/EHTP/STPI/BTP are not required to obtain a 'restricted import authorisation' for import of IT hardware restricted vide Notification 23/2023, if the goods are for captive consumption

of such units. The Policy Circular in this regard also states that there is no import restriction on spares, parts, assemblies, sub-assemblies, components, and other inputs necessary for the IT hardware devices, and that notified IT hardware items essential for capital goods are exempt from the import licensing requirements. Also, the importers are allowed to apply for multiple authorisations which shall be valid up to 30 September 2024.

New All Industry Rates (AIR) of Drawback effective from 30 October 2023

The Ministry of Finance has on 20 October 2023 notified new All Industry Rates of Drawback which are effective from 30 October 2023. Notification No. 77/2023-Cus. (N.T.) supersedes Notification No. 7/2020-Cus. (N.T.) for this purpose. According to CBIC Circular No. 26/2023-Cus., dated 26 October 2023, while drawback has been increased on certain items pertaining to chemicals, finished and lining leather, leather articles and footwear, textiles and articles thereof made of silk/wool/cotton/MMF other than of nylon, carpets, glass and glassware, and gold jewellery and silver jewellery/article, the rate of drawback has been rationalised on textiles and articles thereof made of nylon. Further, new tariff items have been introduced in the sectors of sugar confectionery, chemicals, pharma, plastic, leather articles and footwear, cotton and manmade fibres/fabrics, apparels, article of stone, arms and ammunition, and furniture.

Restricted import authorisation – Issuance of physical copy discontinued for EDI ports

The DGFT has discontinued the issuance of physical copy of Authorisation for Restricted Imports with effect from 19 October 2023 in respect of EDI ports. However, Authorisation for Restricted Imports issued for any non-EDI port shall continue to be issued on paper. It may be noted that as per DGFT Trade Notice No. 31/2023-24, dated 19 October 2023, amendment or revalidation of any Authorisation for Restricted Imports issued before 19 October 2023 will be processed in the existing manner wherein the paper copy of the amendment letter will be issued.

Rice, parboiled – Export duty extended till 31 March 2024

The export duty on parboiled rice has been extended till 31 March 2024. Notification No. 59/2023-Cus., dated 13 October 2023 for this purpose amends Notification No. 55/2022-Cus. and revises the date of effect of 'nil' rate of duty to 1 April 2024 instead of 16 October 2023. It may be noted that the export duty on this product was introduced on 25 August 2023 and was to expire on 15 October 2023.

Onion exports exempted from customs export duty but Minimum Export Price made effective from 29 October

The Indian Ministry of Finance has, with effect from 29 October 2023, removed export duty on export of onions covered under sub-heading 0703 10 of the Customs Tariff Act, 1975. It may be noted that export duty @ 40% was imposed on 19 August 2023, when the Second Schedule to the Customs Tariff was also amended to prescribe a Tariff rate of 50% on export of onions. Notifications Nos. 61 and 62/2023-Cus., both dated 28 October 2023, have been issued for this purpose. Further, it may be noted that export of Bangalore Rose Onion classified under Tariff Item 0703 10 11 of the Customs Tariff Act, 1975 was exempted from payment of export duty, with effect from 29 September 2023, if certificates from the Horticulture Commissioner, Government of Karnataka certifying the item and quantity are furnished. Notification No. 57/2023-Cus., dated 29 September 2023 amended Notification No. 55/2022-Cus. for this purpose.

However, a condition of Minimum Export Price of USD 800 FOB/MT has been imposed on export of onions (all varieties except Bangalore Rose onions and Krishnapuram onions) excluding onions cut, sliced or broken in powder form. As per DGFT Notification No. 42/2023, dated 28 October 2023, this condition will be applicable till 31 December 2023.

Coal Import Monitoring System (CIMS) – Importers allowed to register till date of arrival of consignment

Coal importers have been allowed to apply for registration under the Coal Import Monitoring System (CIMS) till the date of arrival of the consignment at gateway port. Earlier, the registration could be applied for only till 5 days before the expected date of arrival of import consignment. The changes for this purpose have been made by Notification No. 34/2023, dated 4 October 2023 in Policy Condition No. 7(ii) of Chapter 27 of Schedule-I of ITC(HS), 2022.

Ferro Molybdenum import under India-Korea CEPA – Bilateral safeguard measures imposed

To remove injury to the domestic industry, bilateral safeguard measures in terms of increase in rate of effective customs duty has been imposed on import of Ferro Molybdenum (CTH 7202) under the India-Korea Comprehensive Economic Partnership Agreement. It may be noted that the DGTR had in May 2023, after concluding that such imports had increased causing serious injury, recommended imposition of bilateral safeguard measure of increasing the rate of customs duty on subject goods originating in Korea RP and imported into India. Amendments in this regard have been made in Notification No. 152/2009-Cus., dated 31 December 2009 by Notification No. 58/2023-Cus., dated 9 October 2023.

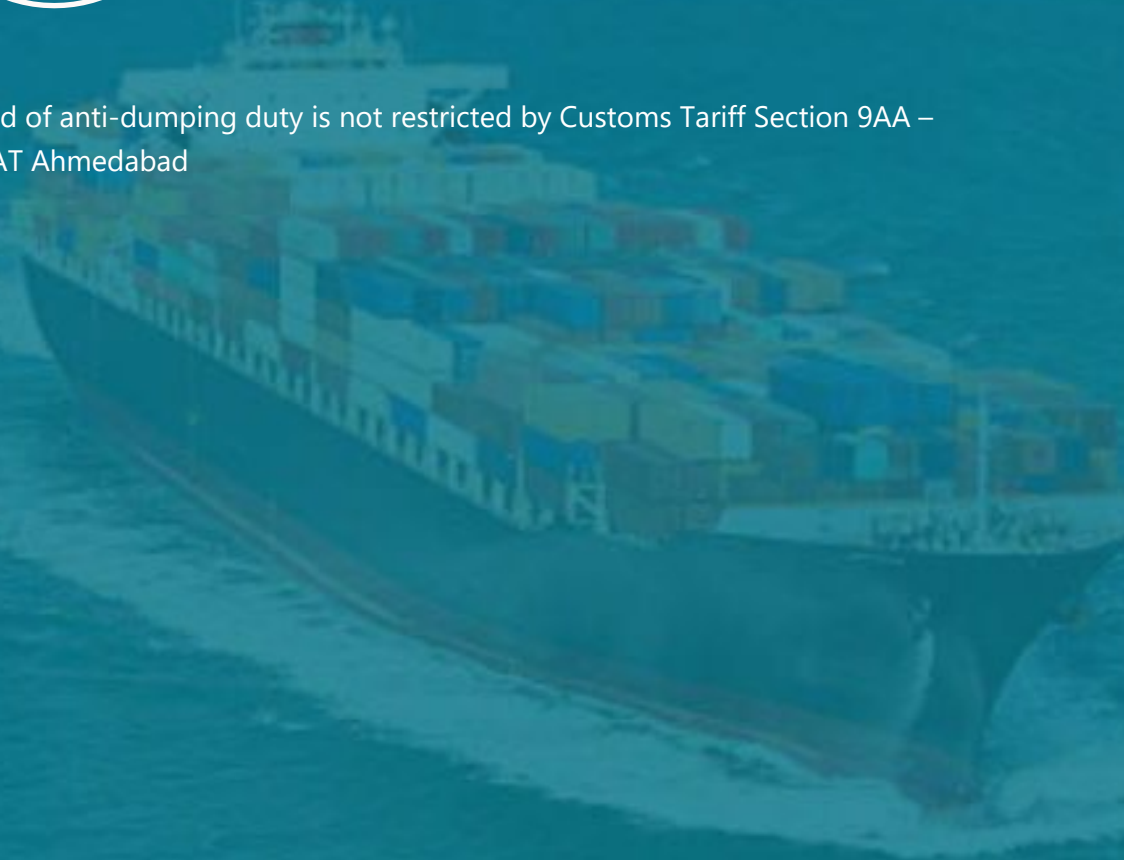
Jewellery reimports allowed without import licence

Re-import of unsold jewellery falling under ITC (HS) codes 7113 19 11 and 7113 19 19, exported for the purposes of the exhibition under para 4.79 and 4.92 of the Handbook of Procedures, is allowed clearance without an import license. DGFT Policy Circular No. 05/2023-24, dated 16 October 2023 has been issued for the purpose. It may be noted that import policy for items under ITC(HS) codes 7113 19 11 and 7113 19 19 among other codes, was amended from 'free' to 'restricted' by Notification dated 12 July 2023.



Ratio Decidendi

- Refund of anti-dumping duty is not restricted by Customs Tariff Section 9AA – CESTAT Ahmedabad



Refund of anti-dumping duty is not restricted by Customs Tariff Section 9AA

In a case where the refund of anti-dumping duty arose due to pronouncement by the Court of law that anti-dumping duty was not payable by the party, the CESTAT Ahmedabad has held that the situation is very much governed by Section 27 of the Customs Act, 1962 due to the same having been borrowed in the Customs Tariff Act, 1975, by Section 9A(8). Allowing assessee's appeal, the Tribunal was of the view that the Notification No. 5/2012-Cus. (N.T.), as relied upon by the Department, remains confined to enlisted refund cases as are mentioned in Section 9AA of the Customs Act, 1975, which are typically in the nature of refund cases, which arise due to differential duty being imposed at preliminary and final stages. According to the Tribunal there is no bar on the refund arising otherwise in distinct situations to be allowed. Relying upon Section 9A(8) of the Customs Tariff Act, 1975, the Tribunal observed that even Custom Tariff Act envisages situations where refund could arise even in anti-dumping otherwise than in listed situations. [*Posco India Processing Centre Pvt. Ltd. v. Commissioner* - (2023) 11 Centax 5 (Tri.-Ahmd)]

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