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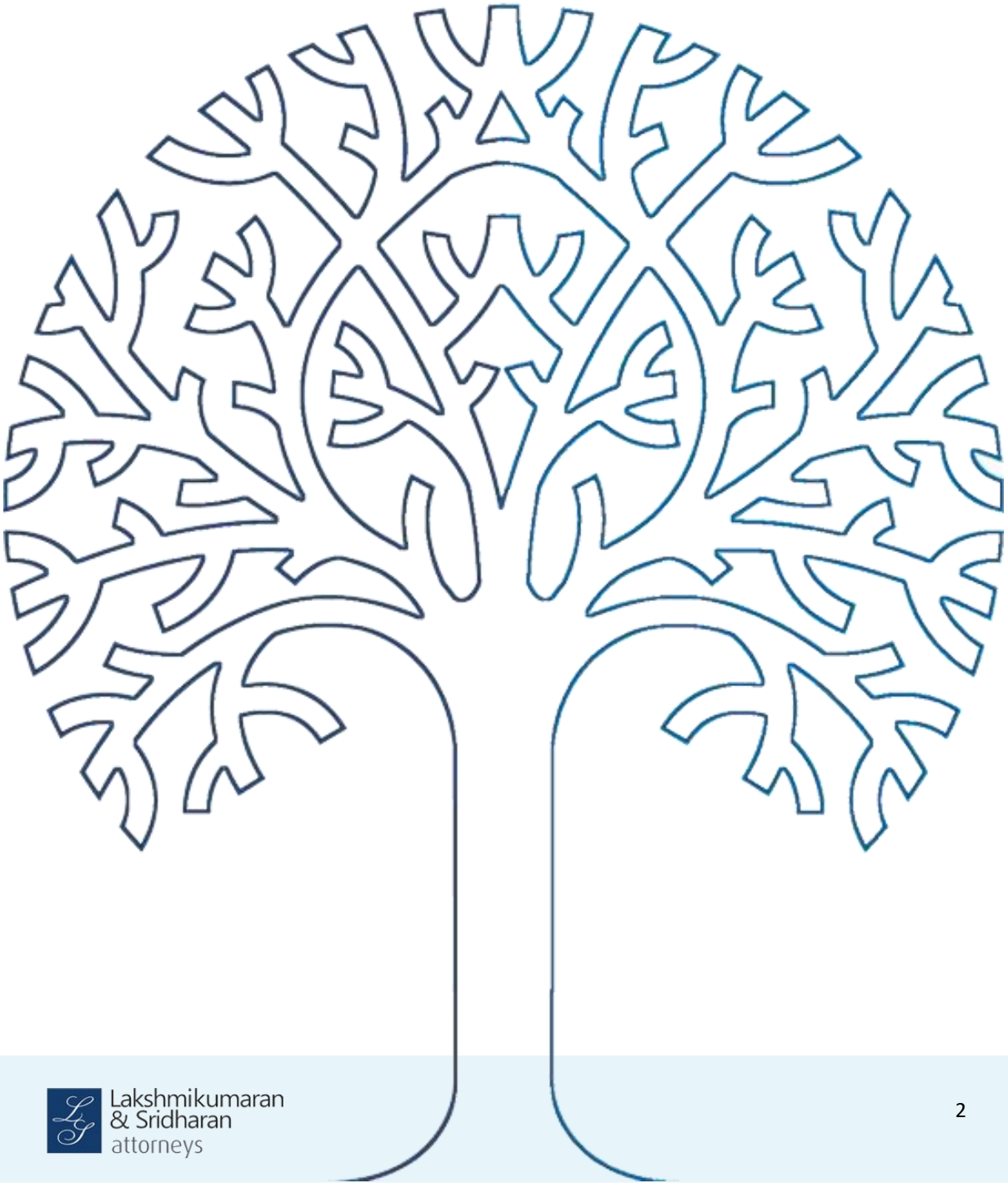

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Article

India loses the fight for electronic goods against EU at the WTO

By **Rizwan Shah**

The WTO panel recently ruled against India's import duty measures in relation to certain Information and Communication Technology ('**ICT**') goods, holding the measures as inconsistent with Articles II:1(a) and (b) of the GATT 1994. The article in this issue of International Trade Amicus analyses the critical arguments raised by India to defend its position and the panel's ruling thereon. Elaborately discussing what the parties to the dispute (European Union and few other countries on one side and India on the other) had to say, the article also analyses the WTO panel's findings on questions as to whether Information Technology Agreement ('**ITA**') sets forth India's legal obligation, whether ITA limits or modifies scope of tariff commitments under WTO Schedule, and whether there was an error of fact. According to the author, although India is making every effort to ensure a favourable ecosystem for electronics manufacturing in India, it is evident that its ITA commitments are going to create headwinds in the near future at least. The author however hopes that India is able to negotiate in its favour better terms with the complainants via bilateral agreements.

India loses the fight for electronic goods against EU at the WTO

By Rizwan Shah

Background

In a bid to promote electronics manufacturing in India, the Indian government had progressively imposed customs duties on import of certain Information and Communication Technology ('**ICT'**) goods over the past decade. The European Union ('**EU**') filed a complaint before the World Trade Organisation ('**WTO**') disputes panel on 2 April 2019 claiming that the said import duty measures were inconsistent with the India's obligations under the WTO Agreement, particularly Articles II:1(a) and II:1(b) of the GATT 1994[1].

Under Article II of the GATT, 1994, which is India's schedule of bound custom duty rates ('**Schedule of concessions**'), India had committed to maintain zero customs duty on certain ICT goods of Chapter 85 falling under the Customs Tariff Headings 8504, 8517, 8518, 8544 of the first schedule to the Customs Tariff Act, 1975. The EU's viewpoint was that India had breached the bound rates under the Schedule of concessions by imposing the disputed customs duties. However, India maintained that bound rates in the Schedule were not applicable to the products in question as those products were not in existence at the time of India's commitments and also because they got included in India's commitment by an inadvertent oversight. The WTO panel has ruled in favour of the EU (and other countries like Japan, Singapore, Canada etc., who had either filed similar complaints or requested to join the consultations). This article analyses the critical arguments raised by India to defend its position and the panel's ruling thereon.

Deep Dive: What the parties to the dispute had to say?

EU's Point of View

The EU claimed that the tariff treatment provided by India with respect to the products in question was inconsistent with India's commitment under the Schedule because:

(i) duties applied by India to such products are in excess of the duty-free rates that India is obliged to provide under the Schedule; and

[1] ***Article II - Schedules of Concessions***

1. (a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

(ii) by virtue of above treatment, the exports of goods from the EU to India are affected, and they nullify or impair the benefits accruing to the EU directly or indirectly under the covered WTO agreements.

(iii) therefore, the Indian measures are inconsistent with Articles II:1(a) and (b) of the GATT 1994 which requires the contracting party to accord a treatment which is no less favourable than what has been accorded to it under the Schedule of concessions.

India's WTO Schedule, ITA, and the transposition of Tariff Items

India's Schedule of concessions sets forth concessions and commitments undertaken by India at the WTO in relation to trade in goods. The tariff commitments therein are linked to the Harmonized System of Nomenclature ('**HSN'**) which is a multilaterally agreed system of classifying goods for customs purposes and is administered by the World Customs Organization ('**WCO**'). The HSN is regularly updated and consequently the WTO Members' Schedule of concessions are also updated to reflect the latest HSN through the process of transposition.

While updating the changes in HSN from HS 2002 to HS 2007, developed country Members were to prepare their own transpositions and the WTO Secretariat was requested to transpose the schedules of developing country Members, except for those who notified to do the exercise on their own. Since India did not indicate that it intended to undertake the transposition of its Schedule of concessions from the HS 2002 to the HS 2007, the WTO Secretariat had prepared a draft for India which was communicated to India on 8 November 2013. This draft was duly approved *(in a multilateral review session held by the Committee on Market Access on 23 April 2015)*, circulated and finally certified on 12 August 2015.

At the time of the review, due to an alleged oversight, India had not provided any comments nor sought any clarifications regarding the transposition of the disputed tariff items. However, on 25 September 2018, India requested that its Schedule be rectified due to certain errors contained in its HS 2007 schedule. It specifically sought that 15 tariff items be rectified to 'Unbound' which included the tariff items at issue in this dispute. The reason presented was that the tariff sub-headings for which India is seeking rectification *(from inadvertent 0% rate to Unbound rate)* were not part of the India's commitments under the Information Technology Agreement (ITA) but became part of its Schedule due to transposition from HS 2002 to HS 2007.

India's Point of view

India requested the WTO panel to give its findings on several issues including below:

1. When ITA was entered into, it was aligned with HSN 1996. The WTO's Schedule of concessions has been regularly aligned with the changing HS issued by the WCO. India's original Schedule of concessions was transposed with HS 2002 changes, and then with HS 2007 changes. The regular changes in the HS does not mean that India's scope of commitments in its Schedule increase with every HS alignment.

2. India's commitments under the ITA were static, and therefore, when the ITA commitments get reflected in the WTO Schedule, such commitments in the updated Schedule are also static. This means, if new ICT goods have come into existence after entering into the ITA, such goods neither form part of India's ITA commitments nor India's WTO Schedule.

3. The WTO Secretariat undertook the exercise of transposing HS 2007 changes into India's WTO Schedule. The Secretariat had failed to flag to India that the HS 2007 changes could result in changing India's commitments on the disputed tariff lines, even though India had not made any commitment to bind the tariffs on such goods in its original Schedule.
4. India considers the changes to tariff bindings as an 'error of fact', which invalidates its consent to the treaty (Schedule of concessions) in terms of Article 48 of the Vienna Convention on the Law of Treaties[2].

WTO panel's findings

Legal Standard under the Article II:1(a) & (b) of GATT 1994

The panel in its findings first clarified the legal standard under Articles II:1(a) and (b) of the GATT 1994 in terms of following elements:

1. Treatment as per the WTO Schedule for the product.
2. Treatment accorded as per the existing measures.
3. Whether existing measures result in either of the below:
   a. Imposition of custom duties more than the rate provided for in the Schedule, or
   b. Measures lead to a less favourable treatment of products under issue.

Whether ITA sets forth India's legal obligation?

The panel found that EU has not claimed any inconsistency *vis-à-vis* the ITA but its claim was based on India acting inconsistently with its obligations under the Schedule of concessions (Articles II:1(a) and (b) of the GATT 1994). The panel found that it was India's Schedule of concessions which was the key covered agreement in question and not the ITA. Consequently, the panel held that India's legal obligations, for purposes of assessing its compliance with Articles II:1(a) and (b), are the tariff commitments set forth in India's WTO Schedule.

Whether ITA limits or modifies scope of tariff commitments under WTO Schedule?

India's view was that its commitments under the ITA are static and when the ITA commitments get reflected in the WTO Schedule such commitments in the updated Schedule are also static. Therefore, any subsequent new products emerging from technological innovations must not be part of the Schedule. The panel fundamentally was of the view that since the obligations do not stem from the ITA, it was irrelevant whether ITA was 'static' or not. However, the panel, from the point of legal interpretation, decided to examine whether the ITA limits or modifies the scope of India's commitments under the Schedule as follows:

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[2] ***Vienna Convention of the Law of Treaties***
Article 48 - Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

- WTO Schedule is integral to GATT & WTO, and the schedule is to be interpreted in line with the customary rules of interpretation of public international law.
- Anything that satisfies terms of concession is eligible for concession including new products due to technological innovation.
- Parties agree that at any point in time any product should fall under the product scope of some tariff line in the HSN including products coming into existence post HSN conclusions.

Panel was of the view that India's WTO Schedule is based on HSN and any product *(including the new ones)* that falls under an HS code will also come under the Member's obligation unless specifically excluded by the Schedule. The product scope of Members' tariff concessions evolves over time to cope up with technological advancements. The panel was of the opinion that if India's interpretation were to be followed then the general rule described above would continue to apply to WTO Members not signatories to the ITA while the WTO Members who are participants in the ITA would be subject to a different rule i.e., a same tariff concession will have different product scope depending upon whether a member is part of the ITA or not. This according to the panel would seriously undermine the multilateral principles of reciprocity, security, and predictability of Members' commitments.

Whether there was an error of fact?

The panel was of the opinion that the WTO Secretariat had already informed India and circulated the transposed Schedule with HS 2007 changes for India's comments. India was also on notice that issues concerning customs classification have been raised by other members due to the transposition exercise and the members were discussing how to address such issues. On no occasion India raised any concern that its revised Schedule was expanding its scope of commitments on its tariff bindings. Even though India made observations in committee meetings that the ITA commitments have reduced India's output in ICT goods, and has not helped India advance its ICT manufacturing, however, such statements do not demonstrate that India raised any concerns regarding enhancement of the scope of its commitments under its WTO Schedule of concessions.

Therefore, it cannot be said that the Secretariat had failed to flag these issues to India. Rather, India contributed to this alleged error by its own conduct. Thus, India's claims under Article 48(1) on invalidation of consent to the treaty was unacceptable.

Decision of the WTO panel

The panel ruled that India acted inconsistently with Articles II:1(a) and (b) of the GATT by applying tariffs in excess of its tariff bindings in its WTO Schedule of concessions thereby nullifying or impairing the benefits accruing to the EU under the GATT.

The panel noted that as of 1 February 2022, India's tariff treatment of products classified under tariff lines 8518.30 and 8544.42.00 were compliant. However, the Panel has recommended that India bring its tariff treatment of products classified under other tariff lines 8504.40, 8517.12, 8517.61, 8517.62 and 8517.70 consistent with its WTO Schedule of concessions.

Conclusion

Although India is making every effort to ensure a favourable ecosystem for electronics manufacturing in India, it is evident from the judgement that its ITA commitments are going to create

considerable headwinds in the near future at least. While India is being looked at as the next growth story of the global economy, and a strong contender against China, it will have to play on its other strengths to make its domestic electronics industry more competitive against international competitors. Hope still is not lost completely, and it is possible that India may be able to negotiate in her favour better terms with the complainants *via* bilateral agreements. The recent decision to end six trade disputes at the WTO with US is a glaring example of the same.

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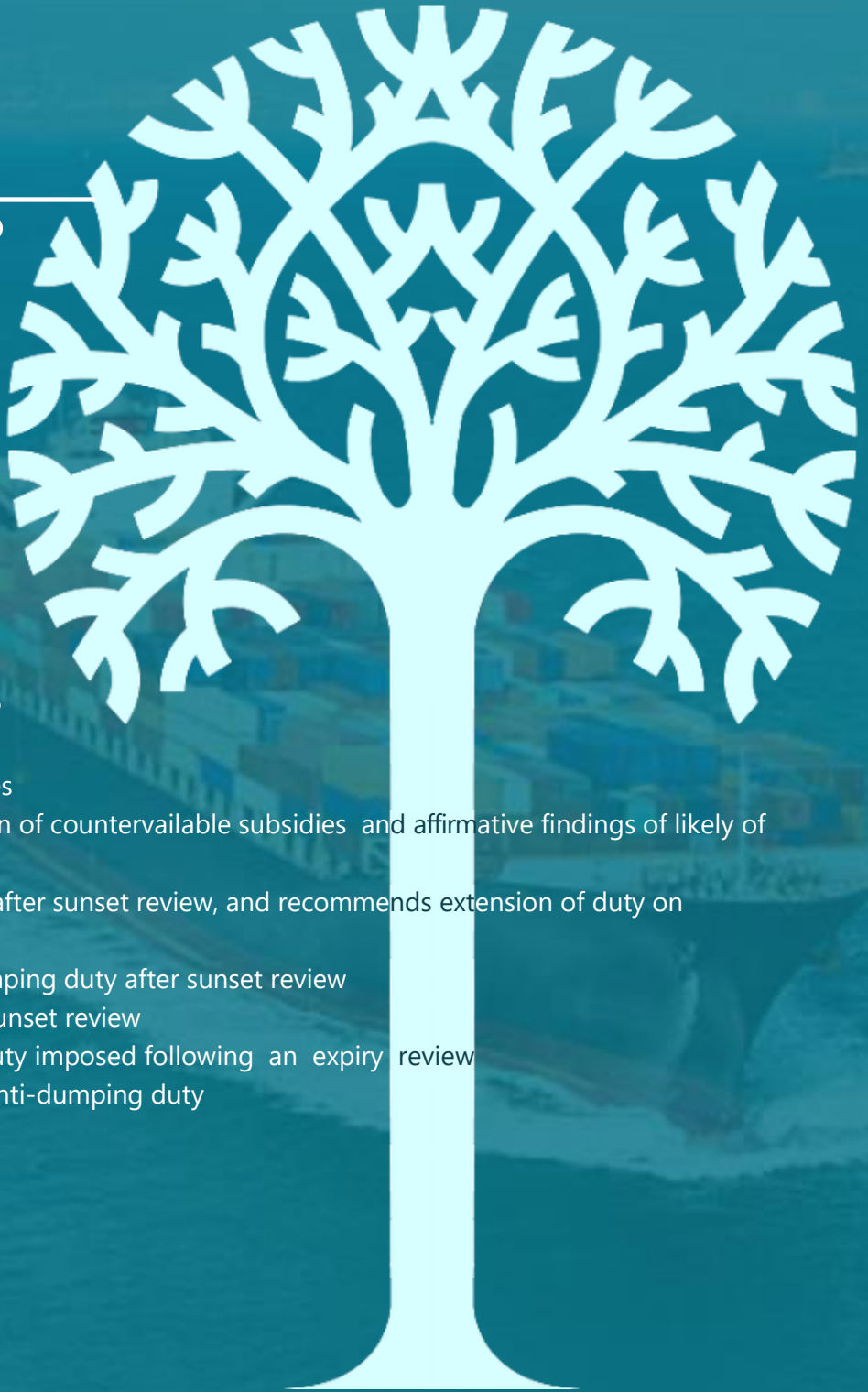
Trade Remedy News



- Boltless Steel Shelving Units from India – USA issues finding of reasonable indication of threat of material injury, in anti-dumping investigation
- Brass rod from India – USA issues finding of reasonable indication of material injury in anti-dumping investigation, while also initiates countervailing duty investigation
- Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India – USA issues affirmative finding of dumping
- Cut-to-Length Carbon-Quality Steel Plate from India – USA issues affirmative finding of continuation of countervailable subsidies and affirmative findings of likely of continuation of dumping, after respective sunset reviews
- Dispersion Unshifted Single-mode Optical Fiber (SMOF) from China PR, Indonesia, Korea RP – India's DGTR recommends imposition of anti-dumping duty
- Ferro Molybdenum from Korea RP – India's DGTR recommends Bilateral Safeguard measures
- Fine Denier Polyester Staple Fiber from India – USA issues affirmative finding of continuation of countervailable subsidies and affirmative findings of likely of continuation of dumping, after respective sunset reviews
- Fishing net from China PR – India's DGTR recommends continuation of anti-dumping duty after sunset review, and recommends extension of duty on imports from Malaysia after an anti-circumvention investigation
- Flat Base Steel Wheels from China PR – India's DGTR recommends continuation of anti-dumping duty after sunset review
- Frozen Warmwater Shrimp from India – USA issues affirmative finding after anti-dumping sunset review
- Graphite electrode systems from India – Definitive anti-dumping duty and countervailing duty imposed following an expiry review
- Welded carbon steel pipes and tubes from India – USA issues affirmative sunset review of anti-dumping duty

Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Dispersion Unshifted Single-mode Optical Fiber (SMOF)	China PR, Indonesia, Korea RP	F. No. 6/1/2022-DGTR	5 May 2023	Anti-dumping recommended to be imposed
Ferro Molybdenum	Korea RP	F. No. 22/3/2022-DGTR	29 May 2023	Bilateral Safeguard measures recommended
Fishing Net	China PR	F.No.7/22/2022-DGTR	08 June 2023	Sunset review recommends continuation of anti-dumping duty
Fishing Net	China PR	F.No.7/01/2032-DGTR	07June 2023	Anti-circumvention investigation – Anti-dumping duty recommended to be extended on imports from Malaysia
Flat Base Steel Wheels	China PR	F. No. 7/02/2023-DGTR	12 June 2023	Sunset review recommends continuation of anti-dumping duty

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Boltless Steel Shelving Units	USA	2023-12740	14 June 2023	ADD – Finding of reasonable indication of threat of material injury

Product	Investigating Country	Document No.	Date of Document	Remarks
Brass Rod	USA	2023-12886	16 June 2023	ADD – Finding of reasonable indication of material injury
Brass Rod	USA	2023-11005	24 May 2023	Countervailing duty investigations initiated
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel	USA	2023-13485	26 June 2023	ADD – Affirmative finding of dumping
Cut-to-Length Carbon-Quality Steel Plate	USA	2023-12320	9 June 2023	Countervailing duty sunset review – Affirmative finding of continuation of countervailable subsidies
Cut-to-Length Carbon-Quality Steel Plate	USA	2023-11841	5 June 2023	Anti-dumping duty sunset review – Affirmative findings of likely of continuation of dumping
Fine Denier Polyester Staple Fiber	USA	2023-12260	8 June 2023	Anti-dumping sunset review – Affirmative finding of continuation of dumping
Fine Denier Polyester Staple Fiber	USA	2023-12261	8 June 2023	Countervailing duty sunset review – Affirmative finding of continuation of countervailable subsidies
Frozen Warmwater Shrimp	USA	2023-13444	26 June 2023	Anti-dumping duty sunset review – Affirmative finding of continuation of dumping
Graphite electrode systems	EU	(EU) 2023/1102	6 June 2023	Definitive anti-dumping duty imposed following an expiry review
Graphite electrode systems	EU	2023/1103	6 June 2023	Definitive countervailing duty imposed following an expiry review
Lined Paper Products	USA	2023-11839	5 June 2023	Countervailing duty sunset review – Affirmative findings of continuation of countervailable subsidies

Product	Investigating Country	Document No.	Date of Document	Remarks
Non-Refillable Steel Cylinders	USA	2023–09364	12 June 2023	ADD – Finding of reasonable indication of material injury
Paper Shopping Bags	USA	2023–11994	06 June 2023	ADD and CVD investigations initiated
Silicomanganese	USA	2023-12048	6 June 2023	Preliminary determination of sale at less than normal value
Stainless steel bars and rods	United Kingdom	Trade Remedies Notice 2023/07	15 June 2023	Countervailing duty revoked from 29 June 2022
Sulfanilic Acid	USA	2023–13061	20 June 2023	Rescission of CVD Administrative Review 2022
Welded Stainless Pressure Pipe	USA	2023-12330	9 June 2023	Anti-dumping administrative review – Affirmative finding of sale at less than normal value during 1 November 2020 till 31 October 2021

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WTO News

- India and USA agree to terminate six WTO disputes
- WTO dispute panel issues report regarding Chinese duties on Japanese steel products
- Argentina initiates WTO dispute complaint regarding US measures on certain tubular goods

India and USA agree to terminate six WTO disputes

India and USA have agreed to terminate six trade disputes at the World Trade Organisation. It may be noted that as per reports, India will also remove retaliatory customs duties on 28 US products including chickpeas, lentils, almonds, walnuts, apples, boric acid, and diagnostic reagents. The six disputes include three initiated by India against USA and three by USA against India. The disputes which are part of this agreement and initiated by India against USA are as follows:

- *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436),
- *United States – Certain Measures Relating to the Renewable Energy Sector* (DS510), and
- *United States – Certain Measures on Steel and Aluminium Products* (DS547).

Disputes initiated by USA against India which are now set to be settled are as follows:

- *India – Certain Measures Relating to Solar Cells and Solar Modules* (DS456),
- *India – Export Related Measures* (DS541), and
- *India – Additional Duties on Certain Products from the United States* (DS585).

WTO dispute panel issues report regarding Chinese duties on Japanese steel products

The WTO has on 19th of June 2023 circulated the panel report in the case – '*China - Anti-Dumping Measures on Stainless Steel Products from Japan*' (DS601). The panel report found that the AD measure is inconsistent with the WTO Anti-dumping Agreement and recommended that China brings its measure into conformity with the WTO Agreement, based upon the following findings:

1. China's determination of the AD measure was inconsistent with Articles 3.1 & 3.2 of the Anti-dumping Agreement:
   i. China failed to confirm the competing/substituting relationship between the imported and domestic products as the basis of finding price effects.
   ii. Although subject imports have differences in their prices, physical characteristics, uses, customers, etc., China failed to properly analyze these differences.
   iii. China failed to properly analyze the series of grades of the subject imports.
   iv. Therefore, China's overall finding that 'the dumped imports depressed the prices of the domestic products' was not based on objective analyses.
2. China's analysis of the impact of dumping on the domestic industry lacked proper examination of crucial elements such as sales prices, market shares, capacity utilization, and

inventories which is inconsistent with Articles 3.1 & 3.4 of the Anti-dumping Agreement.

3. Contrary to Articles 3.1 & 3.5 of the Anti-Dumping Agreement, China failed to properly confirm the causation between the dumped imports and the injury to the domestic industry - e.g., it failed to consider the impacts of the price fluctuations of nickel, the raw material of some of the subject imports during the period of investigation.

4. In its assessment of the production proportion of the domestic industry, China adopted an irregular calculation method without sufficient examinations, leading to the improper definition of the domestic industry, inconsistent with Article 4.1 of the Anti-dumping Agreement.

5. The AD measure was inconsistent with Article 6.9 of the Anti-dumping Agreement due to its flaws regarding information disclosure.

6. The following claims of Japan were not adopted or were not determined since they were 'unnecessary for the resolution of the dispute.'

   i. China's cumulative assessment of the effects of the subject imports from the several jurisdictions was inconsistent with Article 3.1 & 3.3 of the Anti-dumping Agreement.

   ii. China's treatment of some confidential information was improper and inconsistent with Articles 6.5 & 6.5.1 of the Anti-dumping Agreement.

   iii. China's public notice of the final determination was insufficient and inconsistent with Articles 12.2 & 12.2.2 of the Anti-dumping Agreement.

Argentina initiates WTO dispute complaint regarding US measures on certain tubular goods

Argentina has requested WTO dispute consultations with the United States regarding certain US anti-dumping measures on oil country tubular goods (OCTG) from Argentina as well as Section 771 (7) (G) of the US Tariff Act of 1930. The request was circulated to WTO members on 25 May.

Argentina claims that the challenged measures are inconsistent with a number of provisions of the WTO's Anti-Dumping Agreement and the General Agreement on Tariffs and Trade 1994. This is the third WTO dispute brought by Argentina relating to US anti-dumping measures on OCTG.

India Customs & Trade Policy Update

- Pre-import condition under Advance Authorisation – Procedure notified for payment of IGST and Compensation Cess for the period 13 October 2017 till 9 January 2019
- Import/export declarations – Additional qualifiers introduced with effect from 1 July 2023 for certain products
- Soya-bean oil and Sunflower oil, both edible grade – Basic Customs Duty reduced
- Chromium ores and concentrates export made 'restricted'
- Copra imports made 'restricted'

Pre-import condition under Advance Authorisation – Procedure notified for payment of IGST and Compensation Cess for the period 13 October 2017 till 9 January 2019

On the directions of the Supreme Court, the Central Board of Indirect Taxes and Customs (CBIC) has issued a Circular laying down the procedure for payment of IGST and Compensation Cess in cases involving violation of pre-import condition under Advance Authorisation scheme of the Foreign Trade Policy. The Circular also prescribes elaborate procedure for refund and Input Tax Credit. It may be noted that the Supreme Court has recently stated that the pre-import condition was not *ultra vires* the Foreign Trade Policy. According to the Circular No. 16/2023-Cus. dated 7 June 2023, the importer (not limited to the respondents before the Supreme Court) may approach the concerned assessment group at the port of import with relevant details for purposes of payment. It may be noted that DGFT has issued Trade Notice No. 07/2023-24, dated 8 June 2023 to state that all the imports made under Advance Authorization Scheme on or after 13 October 2017 and up to and including 9 January 2019, which could not meet the pre-import condition, may be regularized by making payments as prescribed in the Customs Circular.

Import/export declarations – Additional qualifiers introduced with effect from 1 July 2023 for certain products

The CBIC has issued a Circular No. 15/2023-Cus. dated 7 June 2023 on mandatory additional qualifiers in import/export declarations in respect of certain products with effect from 1 July 2023. Now, the declaration of IUPAC name and CAS number of the constituent chemicals, for imports under the Chapters 28, 29, 32, 38 and 39 of the Customs Tariff Act, 1975 would be mandatory from 1 July. In case of exports, according to the Circular, the declaration of the name of the medicinal plant, for exports of parts of plants under Chapter 12; declaration of the name of the formulation, for exports of formulations of different streams of medicine under Chapter 30; and declaration of the surface material that comes into contact with the chemical, for exports of various products under Chapter 84, would be mandatory.

Soya-bean oil and Sunflower oil, both edible grade – Basic Customs Duty reduced

Basic customs duty (BCD) has been reduced on edible grade soya-bean oil and edible grade sunflower oil with effect from 15 June 2023. BCD for both the products is now 12.5% instead of 17.5%. Notification No. 39/2023-Cus., dated 14 June 2023 for this purpose amends Notification No. 48/2021-Cus.

Chromium ores and concentrates export made 'restricted'

Chromium ores and concentrates as covered under ITC (HS) Code 2610 have been brought under restricted for export category with effect from 22 June 2023. Export of these products would now be permitted only under authorisation. It may be noted that Chrome ore lumps containing 40% or more of Cr_2O_3 were freely exportable till 21 June 2023 while other products of this heading were exportable through MMTC Ltd. Notification No. 13/2023, dated 22 June 2023 has been issued by the DGFT for this purpose.

Copra imports made 'restricted'

The Import Policy of Copra classifiable under ITC(HS) Code 1203 00 00 has been revised from 'State Trading Enterprise' to 'Restricted', with effect from 14 June 2023. Earlier, the import of copra was allowed only through NAFED subject to Para 2.21 of the Foreign Trade Policy. DGFT Notification No. 11/2023, dated 14 June 2023 has been issued for the purpose.

Ratio Decidendi

- Valuation – Freight charge from third country which the vessel called en route to India, when not includible – CESTAT Mumbai
- LED Socket Plug Assembly is classifiable under Customs Heading 8512 – Customs AAR

Valuation – Freight charge from third country which the vessel called en route to India, when not includible

In a case involving an allegation that shipments were made from a third country and not from the country as mentioned in the Bills of Lading, and hence the cost of transport from such third country needs to be added for the purpose of computation of customs duty, the CESTAT Mumbai has allowed the appeal of the assessee-importer. The Tribunal in this regard observed that the sole evidence with the Department was the records of passage of the vessels, having called on a port in the third country *en route* to India, and that there was no evidence on record, elicited through official channels, of the facts relating to the movement of the vessels. It also noted that the importers had no commercial engagement with the vessels and that the invoices had been issued on either on 'cost insurance freight (CIF)' basis or 'cost and freight (CFR)' with freight cost separately mentioned therein. Holding that it must be assumed that the price in the invoices reflected the qualifications embodied in Section 14 of Customs Act, 1962 for acceptance as transaction value, the Tribunal observed that the facts do not warrant invoking of Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 except on finding that the freight was payable by the importer to the carrier or that the freight had been absorbed by the seller. Allowing the appeal, the Tribunal also noted that there was no finding that any additional payment was made by either importer or exporter to the carrier. [*Jupiter Dyechem Pvt. Ltd.* v. *Commissioner* – 2023 VIL 458 CESTAT MUM CU]

LED Socket Plug Assembly is classifiable under Customs Heading 8512

The Customs AAR has held that 'LED Socket Plug Assembly' is classifiable under Tariff Item 8512 90 00 of the Customs Tariff Act, 1975. The Authority in this regard noted that the product was a combination of assembly of LED with associated circuit with a fixture for anti-fog lamp for vehicle and is required to be assembled with other parts *viz.* lens, inner lens, holder, filter, adjusting screw assembly and body to produce a complete fog lamp for automobiles. Classification under Headings 8539 and 8541 was ruled out. The AAR further allowed the benefit of exemption under Serial No. 656 of the Notification No. 69/2011-Cus. relating to India-Japan Free Trade Agreement. [In RE: *India Japan Lighting Private Limited* – 2023 VIL 18 AAR CU]

News Nuggets

- United Kingdom notifies new Developing Countries Trading Scheme to replace Generalised Scheme of Preferences

United Kingdom notifies new Developing Countries Trading Scheme to replace Generalised Scheme of Preferences

The United Kingdom has notified new Developing Countries Trading Scheme ('**DCTS**') with effect from 19 June 2023 to replace UK's Generalised Scheme of Preferences ('**GSP**'). As per reports, the DCTS is a simpler and more generous preferential trading scheme designed to boost trade with developing countries in order to support their development.

It may be noted that India was placed under the general framework of the GSP and has now been placed under the Standard Preferential List in the DCTS, containing only 2 countries – India and Indonesia. Further, while 47 countries have been placed under the Comprehensive Preferences List for Least Developed Countries, the Enhanced Preferences List covers 16 Low Income Countries and Lower-Middle Income Countries, as classified by the World Bank.

According to the UK Government website (www.gov.uk), Standard Preferences would entitle exporters from India to 0% import tariffs on 65% of product lines, while a further 26% of product lines would have reduced tariffs. Further, countries eligible for Standard Preferences are also subject to goods graduation, which is the suspension of preferential tariff rates on highly competitive products in case of particular circumstances. It may also be noted that for the countries in Standard Preferential List, specific product graduation rules have also been specified.

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