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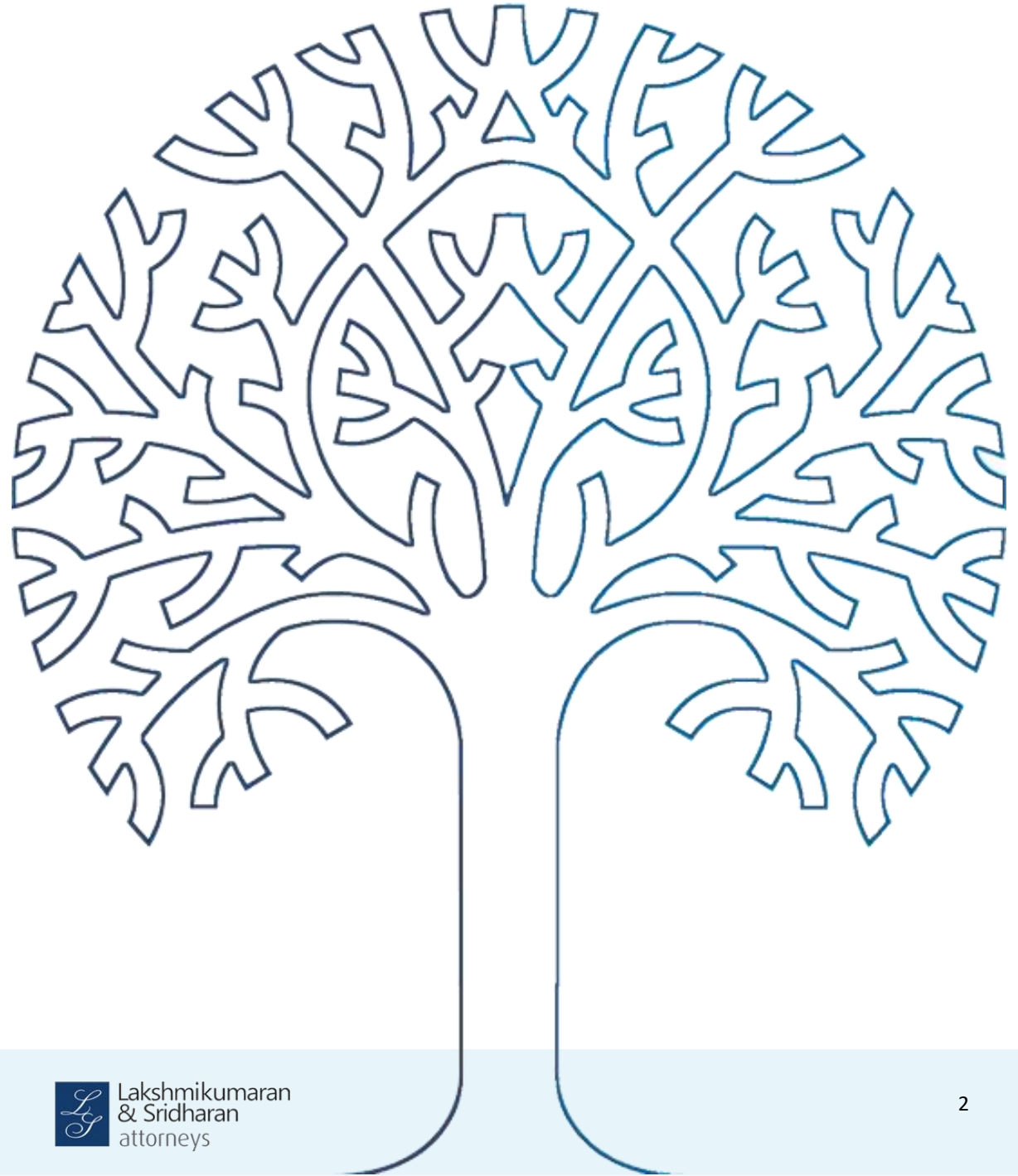


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Article

Becoming trade remedies-ready – A practical guide for producers and exporters

By Devinder Bagia and Jayant Raghu Ram

The article in this issue of International Trade Amicus intends to bridge the awareness gap with respect to trade remedial investigations, and sensitize producers/exporters on certain aspects which will help prepare them for any potential trade remedial investigation. Deliberating on the importance of Enterprise Resource Planning (ERP), as the key raw material in any trade remedial investigation is the data of the participating producer and exporter, the article also notes that ERP becomes important not just for preparation of questionnaire response but also for its verification by the investigating authority. The article, in this regard, also notes the importance of regular cost and price monitoring for the goods sold in the export and domestic markets. Further, the article also observes that it is important for a producer to ensure that its traders/exporters are willing to support it and participate in a trade remedial investigation. According to the authors, producers/exporters must aim to secure their position in the market by participating in the investigation and getting the best results/best rate of ADD/CVD for themselves.

Becoming trade remedies-ready – A practical guide for producers and exporters

By Devinder Bagia and Jayant Raghu Ram

Introduction

When producers or exporters export goods to other countries, they most likely would have come across a trade barrier of some form or the other. While tariff walls have as such declined and non-tariff barriers have increased, importing countries continue to use trade remedial measures as a defense against imports.¹ In fact, India and the United States are the leading users of trade remedial measures while imports from China are the major target of these trade remedial measures.

While some producers and exporters would be familiar with trade remedial investigations, a majority remain unaware, and hence, are unprepared to deal with the same when investigations are initiated. This article is intended to bridge this awareness gap and sensitize producers/exporters on certain aspects which will help prepare them for any potential trade remedial investigation.

Enterprise Resource Planning

The key raw material in any trade remedial investigation is the data of the participating producer and exporter. If the data is

presented to the investigating authority properly and diligently, the data can be beneficial to the participants. However, if there is any carelessness in extracting and reporting the data, the same data can be fatal and the investigating authority may reject the response of the participating producer/exporter.

For the above reasons, participation in a trade-remedial investigation requires the participating entity to have a robust Enterprise Resource Planning ('ERP') by which it records costing and sales data in their systems. Ideally, the records of cost and sales can be maintained at the product level from which the data for a given time-period, and country of destination can be readily extracted. In cases where such product level data is absent, this challenge is resolved by allocating costs from a broader segment or division which involves the product concerned. In the experience of the authors, the absence of a strong ERP with a participating entity can be a nightmare in preparing the questionnaire response and subsequent verification. This makes it important for producers/exporters to invest in a robust ERP such as SAP (System Analysis Program Development), Kingdi, etc.

¹ The two main forms of trade remedial actions are anti-dumping investigations and anti-subsidy (also known as countervailing duty) investigations, of which the former is heavily used in comparison to the latter.

Since the dumping margin (and injury margin, where applicable) is determined for the period of investigation ('**POI**') (which may be defined to range anywhere from six months to eighteen months), the data regarding export price and cost of production is required to be presented for the POI. In most cases, particularly in India, the POI is generally defined as a period of 12 months that corresponds to the conventional financial year of April to March.

However, where the producer/exporter is based outside India, it most often happens that the accounting period followed by such entity is different from that of the POI. In such a scenario, it is important that the ERP be capable of generating the required data on a monthly / quarterly / biannual basis so that the data can be extracted and reported for a given POI.

ERP becomes important not just for preparation of questionnaire response but also for its verification by the investigating authority. In order to verify the accuracy of the data reported in the questionnaire response, the investigating authority may wish to examine the sales and cost accounting records of the respondent. Further, as part of the verification process, the investigating authority may also wish to ascertain the method by which the data is recorded by the company from source and extracted by the company personnel at the time of preparation of the questionnaire response.

Successful verification is key to ensuring the participating producer/exporter is treated as cooperative in the investigation. This further emphasizes the importance of investing in a robust ERP that maintains records of all transactions and is capable of ready verification.

Price monitoring

In simplistic terms, dumping is a situation where the price at which a particular good is exported by a producer is less than the normal value at which the like article is sold in the domestic market of the country of export². Dumping margin is thus calculated as the difference between the export price and the normal value of the good at the ex-factory level. To protect the domestic industry from the dumped imports, the investigating authority imposes anti-dumping duty ('**ADD**') on imports from the exporting/originating country.

Countervailing investigations examine whether there is any subsidy being provided by the government or public body in the exporting country in respect of goods exported to another country. To countervail the same, the investigating authority imposes countervailing duty ('**CVD**') on imports from the exporting/originating country.

When ADD or CVD is imposed, it is usually imposed for a period of five years. In case of the United States, the Department of Commerce reviews the ADD/CVD rates on an annual basis based upon requests from interested parties. In such a scenario, it becomes important for the producer/exporter to ensure that its export prices are such that they would attract the least rates of ADD/CVD.

On the anti-dumping front, this can be ensured by regular cost and price monitoring for the goods sold in the export and domestic markets. Since the calculations are undertaken on ex-factory basis for all comparable products sold in export and domestic market, it is imperative to identify such products which can be compared and

² We assume that country of production is same as country of export

monitor their prices monthly after adjusting for expenses (like freight and other direct selling expenses) which affect their comparison.

Further, participating producers/exporters also need to meet the sufficiency test and ordinary course of trade test, which does not make things any easier. While the sufficiency test requires that the domestic sales volumes must be at least 5% of the export volumes to be considered sufficient for analysis. The ordinary course of trade test requires that substantial domestic sales are made above the cost of sales. All these require diligent effort on the part of the producers / exporters on a regular basis to ensure the export markets are not only captured but maintained in the long run.

Ensuring support from dependable traders/exporters

Modern supply chains are structured in such a way that some producers prefer to export their goods through a trader/exporter. This trader/exporter may be a party related or unrelated to the producer. Further, this trader/exporter may not necessarily be located in the country under investigation.

Another aspect is that each producer may adopt a different model for the export of the goods. One model may be where the producer raises the invoice on the exporter but ships the goods directly to the customer in the importing country. This is called the bill-to-ship-to model. Another model is where the producer ships the goods to the exporter's destination and the exporter ships the goods onward to the country of destination/import.

In either case, since the exports are routed through another trader/exporter, anti-dumping and countervailing duty investigations require the participation of the exporter to ensure that

the data arising out of the whole supply chain of the producer is complete and before the investigating authority for determining the landed value, export price and the subsidies. This is particularly so when substantial volumes are sold through the exporter and / or the trader is a related group entity.

However, a major challenge which some producers come across is the refusal of their traders to participate in and support them in an investigation. While it may be easy for the producer to get a related trader to participate along-with it in a given investigation, as they would be part of the same management and ownership, it can be a challenge sometimes to convince unrelated traders to cooperate in the investigation. Issues such as the complexity of the investigation procedures, etc. or a sheer lack of interest have been known to discourage unrelated traders from lending support to the producer in a trade remedial investigation.

As a result of such refusal, the participating producer's questionnaire response can be rejected by the investigating authority and such refusal can prove costly to the participating producer in the event of the investigating authority imposing high rates of residual ADD or CVD.

For the above reasons, it is important for a producer to ensure that its traders are willing to support it and participate in a trade remedial investigation.

Conclusion

This article has examined certain practical aspects that concern a producer/exporter's participation in a trade remedy investigation. While imposition of ADD/CVD may cause uncertainty in a given market, producers/exporters must aim to secure their position in the market by participating in the investigation and getting the best

results/best rate of ADD/CVD for themselves. Further, as exports continue to remain an important source of revenue, it becomes important for the producers and exporters to keep themselves ready for participating in any potential trade remedial investigation to secure their interests.

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Trade Remedy

News



- Brass Rod from India – USA initiates anti-dumping and countervailing duty investigations
- Carbon and alloy steel threaded rod from India – USA issues preliminary result of sale below normal value between 1 April 2021 to 31 March 2022
- Carbon steel welded pipe from India – Canada initiates re-investigation to update the normal values and export prices, and amounts of subsidy
- Common alloy Aluminum sheet from India – USA issues preliminary affirmative determination of countervailable subsidies during 14 August 2020 till 31 December 2021, and no sale at less than normal value between 15 October 2020 till 31 March 2022
- Corrosion-resistant steel sheet (COR) from India – Canada determines normal values for future shipments, at the rate 40.0%, expressed as a percentage of the export price
- Dispersion Unshifted Single-mode Optical Fiber ('SMOF') from China PR, Indonesia and Korea RP – India's DGTR recommends definitive anti-dumping duty
- Fine denier polyester staple fiber from India – USA issues notice of Commission determinations to conduct full five-year review of Countervailing duty
- Lined paper products from India – USA issues affirmative sunset review of anti-dumping duty
- New Pneumatic Off-the-Road Tires from India – USA continues anti-dumping and countervailing duty orders
- Non-refillable steel cylinders from India – USA initiates anti-dumping and countervailing duty investigations
- Paper file folders from India – USA issues preliminary affirmative determination of sales at less than fair value
- Pentaerythritol from China PR, Saudi Arabia and Taiwan – India initiates anti-dumping investigation
- Polyvinyl Chloride Suspension Resins with residual VCM above 2PPM from China PR, Taiwan, USA and Russia – India's DGTR recommends Safeguard Quantitative Restrictions
- Saturated Fatty Alcohol of Carbon chain length C10 to C18 and their blends from Indonesia, Malaysia and Thailand – India imposes countervailing duty
- 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 and Korea RP	F. No. 6/1/2022-DGTR	5 May 2023	Definitive anti-dumping duty recommended
Pentaerythritol	China PR, Saudi Arabia and Taiwan	F. No. 06/04/2023-DGTR	12 May 2023	Anti-dumping investigation initiated
Polyvinyl Chloride Suspension Resins with residual VCM above 2PPM	China PR, Taiwan, USA and Russia	F. No. 22/2/2022-DGTR	15 May 2023	Safeguard Quantitative Restrictions recommended
Saturated Fatty Alcohol of Carbon chain length C10 to C18 and their blends	Indonesia, Malaysia and Thailand	1/2023-Cus. (CVD)	4 May 2023	Countervailing duty imposed

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Brass Rod	USA	FR Doc No: 2023-09369	3 May 2023	Anti-dumping and Countervailing duty investigations initiated
Carbon and alloy steel threaded rod	USA	FR Doc No: 2023-09424	4 May 2023	ADD – Preliminary result of sale below normal value between 1 April 2021 to 31 March 2022

Product	Investigating Country	Document No.	Date of Document	Remarks
Carbon steel welded pipe	Canada	CSWP2 2023 RI	4 May 2023	Re-investigation initiated to update the normal values and export prices, and amounts of subsidy
Common alloy Aluminum sheet	USA	FR Doc No: 2023-09425	4 May 2023	Preliminary affirmative determination of countervailable subsidies during 14 August 2020 till 31 December 2021
Common alloy Aluminum sheet	USA	FR Doc No: 2023-09569	5 May 2023	ADD – No sale at less than normal value between 15 October 2020 till 31 March 2022
Corrosion-resistant steel sheet (COR)	Canada	COR1 2022 RI	26 April 2023	Normal values determined for future shipments, at the rate 40.0%, expressed as a percentage of the export price
Fine denier polyester staple fiber	USA	FR Doc No: 2023-10293	15 May 2023	CVD - Notice of Commission determinations to conduct full five-year reviews
Lined paper products	USA	FR Doc No: 2023-10707	19 May 2023	ADD – Affirmative sunset review issued
New Pneumatic Off-the-Road Tires	USA	FR Doc No: 2023-11143	25 May 2023	Anti-dumping and Countervailing duty orders continued
Non-refillable steel cylinders	USA	FR Doc No: 2023-09364	3 May 2023	Anti-dumping and Countervailing duty investigations initiated
Paper file folders	USA	FR Doc No: 2023-10482	17 May 2023	Preliminary affirmative determination of sales at less than fair value
Welded carbon steel pipes and tubes	USA	FR Doc No: 2023-09730	8 May 2023	Affirmative sunset review of anti-dumping duty



WTO News

- India appeals panel report regarding Indian tech tariffs
- Subsidy notifications – Platform launched to promote access to subsidy information though concerns loom large over lack of transparency
- WTO members review ways to facilitate digital trade and electronic transactions

India appeals panel report regarding Indian tech tariffs

India has on 25 May notified its decision to appeal the Panel Report in the case brought by Japan in "*India — Tariff Treatment on Certain Goods*" (DS584). The panel reports were circulated to the WTO members on 17 April. The European Union, Japan and Chinese Taipei had challenged India's tariff treatment for certain ICT products falling under specific tariff items, claiming that it violated Articles II:1(a) and (b) of the GATT 1994. India had argued that its binding tariff commitments were set forth in the ITA and that the errors in its WTO Schedule were of a formal nature and can be rectified. However, the Panel rejected these assertions and found that India's WTO tariff commitments are not static and must be set forth in its WTO Schedule for purposes of applying Articles II:1(a) and (b) of the GATT 1994. The Panel also found that India's tariff treatment of certain products was inconsistent with these articles.

It may be noted that given the ongoing lack of agreement among WTO members regarding the filling of Appellate Body vacancies, there is no Appellate Body Division available at the current time to deal with the appeals.

Subsidy notifications – Platform launched to promote access to subsidy information though concerns loom large over lack of transparency

Missing notifications regarding members' subsidies continue to be a major matter of concern at a meeting of the WTO's Committee on

Subsidies and Countervailing Measures on 2 May. Both the Committee Chair and the delegations highlighted the chronic low compliance with members' WTO notification obligations.

The Chair noted that despite reminders to members to submit their subsidy notifications on time, 88 members — more than half of the WTO membership — have still not submitted their 2021 notifications, which were due by mid-2021. In addition, 75 members have not submitted their 2019 subsidy notifications, while 64 have failed to submit their 2017 notifications. The Chair strongly urged all WTO members to submit their notifications as soon as possible, and to use the technical assistance available through the WTO Secretariat if help is needed in filing the notifications. She also reminded members of the 2023 notification cycle, noting that the deadline to submit new and full subsidy notifications is 30 June 2023.

Meanwhile, the heads of the IMF, OECD, World Bank and the WTO on 25 May announced the launch of a Joint Subsidy Platform (JSP) at www.subsidydata.org to enhance transparency on the use of subsidies. The JSP is intended to facilitate access to information on the nature, size and economic impact of subsidies, with a view to facilitating dialogue on their appropriate use and design.

WTO members review ways to facilitate digital trade and electronic transactions

WTO members on 16 May shared experiences on facilitating digital trade and electronic transactions and discussed what the WTO can do to address this topic. The discussions took place in a dedicated session under the Work Programme on Electronic Commerce.

Singapore, the United Kingdom, and Brazil shared their experiences with trade digitalisation, which aims to improve trade processes and reduce costs and barriers associated with paper-based trade across borders. Singapore presented its experience with the TradeTrust framework, an initiative connecting governments and businesses to a

public blockchain to enable safe exchange of electronic trade documents across digital platforms. This framework relies on digitalisation to avoid difficulties in undertaking transactions and to cut costs associated with paper-based trade across borders, and is compatible with existing standards and legislation.

India Customs & Trade Policy Update



- Crude soyabean oil and crude sunflower seed oil – Exemption from BCD and AIDC when imported under Tariff Rate Quota authorisation
- India-Sri Lanka FTA – Electronic Certificate of Origin acceptable
- Apples import prohibited if CIF import price is less than INR 50 per kg
- Broken rice export prohibited
- Rice exports to certain European countries relaxed – Certificate of Inspection not mandatory for six months
- Cough syrup export permitted only after testing
- Battery imports – Requirement of online registration according to Battery Waste Management Rules, 2022



Crude soyabean oil and crude sunflower seed oil – Exemption from BCD and AIDC when imported under Tariff Rate Quota authorisation

Crude soyabean oil, whether or not degummed, and crude sunflower seed oil, have been exempted from basic customs duty (BCD) and agriculture infrastructure and development cess (AIDC), when imported under a valid Tariff Rate Quota (TRQ) authorization for the Financial Year 2022-23. The Notification No. 37/2023-Cus., dated 10 May 2023, issued for the purpose, is effective from 11 May 2023 till 30 June 2023.

India-Sri Lanka FTA – Electronic Certificate of Origin acceptable

The CBIC has clarified that an electronic certificate of origin issued by the issuing authority of Sri Lanka is a valid document for the purpose of claiming preferential benefit under the India-Sri Lanka FTA. The e-CoO will be valid subject to it having been issued in the prescribed format, bearing seal and signatures of the authorised signatory of the issuing authority and fulfilling all other requirements stated in Notification No. 19/2000-Cus. (N.T.). Instruction No. 15/2023-Cus., dated 3 May 2023, issued for the purpose, also states that Trade should also ensure that the e-CoO is mandatorily uploaded on e-Sanchit by the importer/customs broker for claiming preferential benefit. According to the Instruction, it also needs to be ensured that the e-CoO particulars, such as unique reference number and date,

originating criteria, etc., are carefully entered while filing the bill of entry.

Apples import prohibited if CIF import price is less than INR 50 per kg

The Ministry of Commerce has prohibited import of apples if the CIF import price of the fruit is less than or equal to INR 50 per kilogram. Notification No. 5/2023, dated 8 May 2023, issued in this regard, however further states that the minimum import price conditions shall not be applicable in case of imports from Bhutan. Chapter 08 under Schedule-I of the ITC(HS) 2022 has been amended for this purpose.

Broken rice export prohibited

Export of broken rice falling under ITC (HS) Code 1006 40 00 has been prohibited with effect from 24 May 2023. It may however be noted that exports will be allowed on the basis of permission granted by the Government of India to other countries to meet their food security needs and based on request of their Government. Notification No. 7/2023, dated 24 May 2023 amends Chapter 10 of Schedule 2 of the ITC(HS) for this purpose.

Rice exports to certain European countries relaxed – Certificate of Inspection not mandatory for six months

The Ministry of Commerce has revised the Policy condition in case of export of rice (both basmati and non-basmati) to certain European countries. According to Notification No. 09/2023, dated 29 May 2023,

in case of export of non-basmati rice falling under ITC(HS) Codes 1006 20 00, 1006 30, 1006 30 10, 1006 30 90 and 1006 40 00, and basmati rice covered under Code 1006 30 20, export to European Union member states and other European Countries namely Iceland, Liechtenstein, Norway, Switzerland, and United Kingdom **only** will require Certificate of Inspection from Export Inspection Council or Export Inspection Agency. The notification also states that export of abovementioned rice to remaining European countries will not require such certificate with effect from 29 May 2023 for a period of six months. It may be noted that the certificate was earlier mandated in respect of remaining European countries also with effect from 1 January 2023 by the earlier Notification No. 27/2015-20, dated 17 August 2022 which is now being amended.

Cough syrup export permitted only after testing

Export of cough syrup falling under Heading 3004 of ITC(HS) will now be permitted, with effect from 1 June 2023, only subject to export sample being tested and on production of certificate of analysis (CoA)

issued by specified laboratories. Ministry of Commerce Notification No. 6/2023, dated 22 May 2023 amends Chapter 30 of the Schedule 2 of the ITC(HS) for this purpose. Amongst various laboratories, the notification also specifies any NABL accredited State Drugs Testing Laboratory for purpose of issuance of CoA.

Battery imports – Requirement of online registration according to Battery Waste Management Rules, 2022

The Central Board of Indirect Taxes and Customs (CBIC) has asked its field formations to ensure verification of the registration certificate issued by Central Pollution Control Board (CPCB) at the time of clearing the consignment of importers of batteries. Instruction No. 17/2023, dated 18 May 2023 issued for this purpose notes that CPCB has requested to verify the online-generated EPR registration certificate at the time of clearing the consignment of importers of batteries as well as equipment containing batteries.



Ratio

Decidendi

- ‘Pre-import condition’ under advance authorisation scheme was not ultra vires Foreign Trade Policy – Supreme Court
- Stainless steel tube or pipe fittings when are not ‘sleeves’ – Court of Justice of the European Union

'Pre-import condition' under advance authorisation scheme was not ultra vires Foreign Trade Policy

The Supreme Court has reversed the decision of Gujarat High Court and held that the 'pre-import condition' stipulated in grant of exemption from payment of IGST and Compensation Cess, in respect of imports under Advance Authorisations, was not *ultra vires* the Foreign Trade Policy. The Gujarat High Court had earlier held that grant of IGST exemption with 'pre-import condition' as contemplated in Notification No. 79/2017-Cus., dated 13 October 2017 was arbitrary and that such condition was *ultra vires* the scheme of the Foreign Trade Policy. The Apex Court observed that the concept of 'pre-import condition' was not alien to the Foreign Trade Policy 2015-20 (FTP), and that inconvenience caused to exporters by paying IGST and claiming refund thereafter could not be a ground to hold the 'pre-import' condition as arbitrary.

The Supreme Court was also of the view that the exclusion of benefit for imports made in anticipation of Advance Authorisation, and requiring payment of duties, under Sections 3(7) and (9) of the Customs Tariff Act, 1975, with the 'pre-import condition', cannot be characterized as arbitrary or unreasonable. Assessee's argument that there is no rationale for different treatment of BCD and IGST under Advance Authorisation was also held as without merits. With respect to retrospective effect of Notification No. 01/2019-Cus., dated 10 January 2019 *vide* which pre-import condition was removed, the Apex Court held that Central Government has no power under Foreign

Trade (Development and Regulation) Act, 1992 to issue retrospective notification / regulations. [*Union of India v. Cosmo Films Ltd.* – Judgement dated 28 April 2023 in Civil Appeal No. 290 of 2023 and others, Supreme Court]

Stainless steel tube or pipe fittings when are not 'sleeves'

The Court of Justice of the European Union has held that stainless steel tube or pipe fittings, other than cast fittings, which have an external thread and do not constitute short tube sections with an internal thread, used to join two tubes by screwing them into that fitting or by simply pushing them into that fitting, must be regarded as coming under sub-heading 7307 29 10 of the Combined Nomenclature. According to the Court, the abovementioned product cannot be regarded as being 'sleeves' coming under that sub-heading 7307 22 10.

The Court in this regard noted that according to the dictionaries relied upon by Danish Tax Authorities, a sleeve, if it is not smooth, can only have an internal thread, since it could not otherwise surround the ends of the pipes which it connects. It also noted that according to an analytical institute Force Technology, the products at issue could not be regarded as 'sleeves', because they were not short tube sections, with an internal thread or without a thread, used to join two tubes by screwing them into the tube section or by simply pushing them into the tube section. [*Skatteministeriet v. Danish Fluid System Technologies A/S* – Judgement dated 25 May 2023 in Case C-368/22, Court of Justice of the European Union]

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