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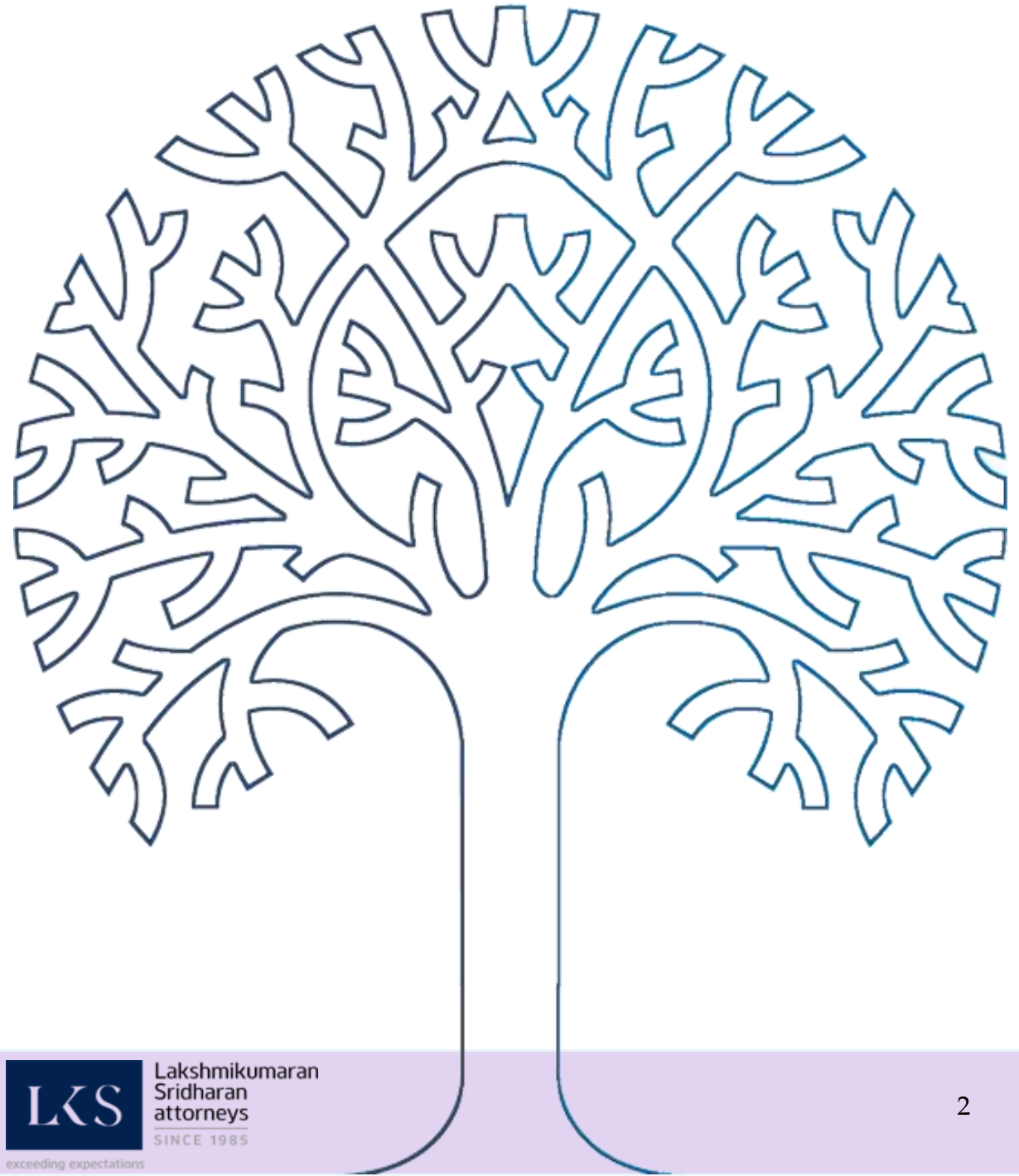
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Article

Anti-absorption measures: India's foray into strengthening its anti-dumping enforcement

By Pareesha Gupta

The article in this issue of International Trade Amicus briefly discusses the first anti-absorption investigation conducted by India on Polyethylene Terephthalate ('PET') imported from China PR. The article briefly touches upon the concept of anti-absorption with a lucid example for understanding of the reader. Next, the article discusses few issues which arose in this anti-absorption investigation by India. The article closes by summarizing the implications of enforcing anti-absorption measures by India generally and, in particular, on PET. According to the author, this decision is expected to restore the protective benefits of the original anti-dumping duties imposed on PET imports, ensuring a level playing field for Indian producers.

Anti-absorption measures: India's foray into strengthening its anti-dumping enforcement

By Pareesha Gupta

Introduction:

Anti-dumping measures are implemented by countries to protect their domestic industries from the negative effects of unfair trade practices, such as dumping. Dumping occurs when foreign manufacturers/exporters export a product to another country at a price lower than its normal value, often below the cost of production or selling prices in the exporting country.

Generally, imposition of anti-dumping duty on a product result in increase in prices of that product in the country. This is because the imposition makes the product costly for importers giving the domestic producers room to increase their domestic selling prices to fair levels in the market. However, this may not always be true. There could be situations where the foreign exporters try and absorb the impact of anti-dumping duty in their cost or profit margins, either fully or to some extent, thereby preventing the expected price increases in the importing country. This situation is typically referred to as 'absorption of

duties' by foreign exporters which nullifies the fair playing field which the anti-dumping duties intend to create in the market. Importing countries generally counter this practice by imposing 'anti-absorption measures'.

This article will briefly discuss the first anti-absorption investigation conducted by India on Polyethylene Terephthalate ('PET') imported from China PR.¹ The article briefly touches upon the concept of anti-absorption with a lucid example for understanding of the reader. Next, the article discusses few issues which arose in the anti-absorption investigation by India on PET. Finally, the article closes by summarizing the implications of enforcing anti-absorption measures by India generally and, in particular, on PET.

Understanding the concept of anti-absorption:

Anti-absorption rules are designed to prevent foreign exporters and importers from negating the effects of anti-dumping duties. When an anti-dumping duty is imposed,

¹ Case No. – AD (AA) – 03/2023 initiated on 4 March 2024

exporters may try to maintain their competitive edge through lowering of their export prices by absorbing the cost of the duties in their price. This undermines the purpose of imposing anti-dumping duties, which is to level the playing field for domestic manufacturers in the importing country. Anti-absorption investigations are initiated to examine whether exporters are neutralizing the effects of the anti-dumping duties. The absorption of anti-dumping duty is explained in below example-

SN	Description	Amount (USD/MT)
1	CIF import price of Product 'XYZ' from an Exporter 'A' prior to imposition of anti-dumping duties	1,000
2	Anti-dumping duty awarded to Exporter A	100
3	Expected CIF import price of Product XYZ from Exporter A with antidumping duty (1+2)	1,100
4	Actual CIF import price of Product XYZ from Exporter A after imposing the anti-dumping duties, which can be broken into two components below:	1,050
4a	- CIF import price prior to levy of duty	950

SN	Description	Amount (USD/MT)
4b	- Amount of anti-dumping duty	100
5	Anti-dumping duty absorbed by Exporter A (3-4)	50

In the above example, Exporter A has reduced the prices of Product XYZ from USD 1,000 per MT to USD 950 per MT. There may be two reasons for Exporter A to reduce the prices of product XYZ, (1) The decline in prices due to decline in the cost of production, or (2) The decline in prices to remain competitive in Indian market without commensurate decline in the cost of production. The second scenario typically leads to anti-absorption measures.

In the above example, it is assumed that there is no decline in the cost of production of the Product XYZ and Exporter A has attempted to reduce the prices to India only to be competitive in Indian market by absorbing the cost of antidumping duty. This results in the import price (with anti-dumping duty) of USD 1,050 per MT as against the expected fair market price of USD 1,100 per MT. Because the Exporter A has reduced its export price by USD 50 per MT after imposition of duties with no explainable cause like reduction in cost, it may be concluded that

the Exporter A has absorbed 50% of the anti-dumping duty imposed by India to remain competitive in the Indian market.

Needless to say, this results in continuing of economic injury to the domestic producers in India because the prices in Indian market are not allowed to return to their fair levels.

Anti-absorption measures on PET by India

PET is a widely used polymer in packaging, especially for plastic bottles. It is a critical material in the packaging industry and has been subject to anti-dumping duties in multiple jurisdictions, including the European Union, the United States, and India. The surge in imports of PET at unfairly low prices has been a cause of concern for domestic manufacturers in these regions, leading to anti-dumping measures designed to protect the local industries.

The Government of India had imposed anti-dumping duties on PET imports from China PR² pursuant to an investigation by the Directorate General of Trade Remedies, Ministry of Commerce and Industry ('DGTR')³ to protect its domestic PET

manufacturing industry from the adverse effects of dumped imports.

Post imposition of above anti-dumping duties, some exporters from China sought ways to mitigate the impact of duties through absorption thereby neutralizing the protective effects of the anti-dumping duties.

Pursuant to an application filed by domestic producers of PET, the DGTR conducted its first anti-absorption investigation and issued its final finding⁴ recommending enhancement of duties on PET to the ministry of finance. This investigation marks a significant development in India's efforts to curb unfair trade practices.

The application for anti-absorption investigation was filed by IVL Dhunseri Petrochem Industries Pvt. Ltd. and Reliance Industries Ltd. ('**applicants**') under Rule 30 of Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ('**Anti-dumping Rules**') before the DGTR. The application was filed against an exporter from China, named Wankai New Materials Co. Ltd. or Zhejiang Wankai New

² Notification No. 18/2021-Customs (ADD) dated 27 March 2021

³ Case No. (O.I.) 17/2019 (DGTR's Final Findings dated 28 December 2020)

⁴ DGTR's Final Findings dated 28 August 2024 issued in File No. 7/27/2023-DGTR

Materials Co. Ltd. ('Wankai'). The applicants alleged that the export price from Wankai has decreased post imposition of anti-dumping duty, without there being a commensurate change in the cost of production.

Key findings and issues dealt by the DGTR in the PET case

The investigation involved a detailed analysis of the pricing behavior of Wankai post the imposition of original duties in March 2021. The final findings of this investigation reveal the following key aspects:

- **Anti-absorption application is permissible after 2 years from the imposition of anti-dumping duty:**

Rule 29(3) of the Anti-Dumping Rules provides that an application seeking initiation of anti-absorption investigation normally within two years from the date of imposition of definitive anti-dumping duty. The proviso further states that such an application can be accepted after such expiry of 2 years in special circumstances in a given case, for reasons to be recorded in writing. In the present case, the application was filed by the applicants after expiry of 2 years from the imposition of anti-dumping duty which was opposed by parties under Rule

29(3). The DGTR noted that the applicants gave a justification for filing the application after two years and their justification was accepted by the DGTR. It was observed that Wankai group had undertaken recent capacity additions and its exports to India increased in recent year by around 315%. This was held to be a proper justification under proviso to Rule 29(3).

- **Absorption of duties detected:**

The DGTR found evidence that Wankai had engaged in practices that effectively absorbed the anti-dumping duties. To ascertain the absorption, the DGTR compared the raw material prices prevailing in the original period of investigation ('POI') and the POI of anti-absorption investigation. The DGTR concluded that although the raw material prices had declined leading to decline in the cost of production of PET but the decline in the export prices of Wankai was much higher than decline in cost.

- **Quantification of absorption in USD:**

The DGTR determined that the absorption should be quantified in USD and using INR was not appropriate as exports were made by Wankai in USD and Wankai had realized payments from customers in USD.

- **Anti-absorption investigation need not be against the subject country as a whole:**

An argument was raised that investigation must proceed against China as a whole and not just Wankai. The DGTR concluded that the law does not require that an investigation for absorption of duties must necessarily proceed against the whole country as against an alleged individual exporter who is shown to have engaged in absorption. It was determined that an anti-absorption investigation can be initiated either against one or limited number of exporters or the whole exporting country. The DGTR noted that there was no reason for initiating investigation against entire China.

- **Adjustments made in the dumping and injury margins:**

For the assessment of new antidumping rate to Wankai, the DGTR made the adjustments in normal value and the non-injurious price determined in the original investigation. The DGTR made the necessary adjustments in the raw material cost to re-quantify the duty amount for Wankai. Accordingly, the dumping and injury margins for Wankai were recomputed considering the current export price of Wankai to India vis-à-vis the

reassessed normal value and non-injurious price after taking into account the changes in costs of raw materials.

- **Recommendations for enhanced duties:**

Based on the above findings, the DGTR has recommended an increase in the anti-dumping duties on PET imports from Wankai because the exporter was found to be absorbing the duties. This ensures that the protective measure regains its intended effectiveness by offsetting the unfair pricing strategies of Wankai.

Implications of the Final Finding:

The DGTR's final finding in this anti-absorption investigation will likely have significant implications generally in anti-dumping investigations by India and, in particular, for the Indian PET market:

- **Strengthened Anti-Dumping Enforcement:**

The final finding demonstrates the Indian government's commitment to safeguarding its domestic industries from unfair trade practices. By increasing the duties and reinforcing the measures, the government has ensured that foreign exporters cannot simply negate the effects of anti-dumping duties by absorbing them in their export prices.

- **Impact on PET import prices:**

While the import prices of PET may see an increase in the domestic market for downstream industries, including the packaging and beverage industries, this increase is likely to level the playing field for domestic and foreign players.

- **Long-term benefits for Domestic Producers:**

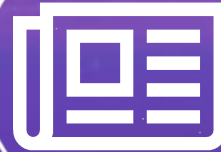
For Indian PET manufacturers, the increased duties offer some respite from the competitive pressure posed by unfairly priced imports. With better price control in the domestic market, local producers may experience improved profitability, market share, and better utilization of production capacities.

Conclusion:

The DGTR's first anti-absorption investigation in the PET case is a pivotal step in addressing the persistent challenge of anti-dumping duty absorption by foreign exporters. This decision is expected to restore the protective benefits of the original anti-dumping duties imposed on PET imports, ensuring a level playing field for Indian producers. Going forward, the enhanced duties and stricter enforcement will likely contribute to a more balanced and fair-trade environment for India's PET industry, fostering growth and stability for domestic manufacturers.

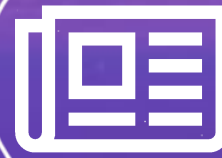
[The author is an Associate Partner in the International Trade & WTO practice at Lakshmikumar & Sridharan Attorneys]

Trade Remedy News.



- 2,4-Dichlorophenoxyacetic Acid from India – USA issues preliminary affirmative countervailing duty determination
- Aniline from China PR – India initiates sunset review of anti-dumping duty
- Anodized Aluminium Frames for Solar Panels/Modules from China PR – India imposes anti-dumping duty
- Atrazine Technical from China PR – India imposes countervailing duty
- Barium Chloride from India – USA issues intent to revoke countervailing duty in a preliminary review
- Carbazole Violet Pigment 23 from India – USA’s DOC finds no sale below normal value during 1 December 2022 till 30 November 2023
- Cellophane Transparent Film from China PR – India’s DGTR recommends imposition of anti-dumping duty
- Ceramic tiles from India – USA postpones preliminary determination in the less-than-fair-value investigation and issues preliminary affirmative countervailing duty determination
- Epichlorohydrin from Thailand – India terminates countervailing duty investigation
- Epoxy Resins from India – USA issues preliminary determination that countervailing subsidies were provided between 1 January 2023 till 31 December 2023
- Finished Carbon Steel Flanges from India – USA issues preliminary determination that countervailing subsidies were provided between 1 January 2022 till 31 December 2022 and preliminary affirmative determination of sale at less than normal value during 1 August 2022 till 31 July 2023
- Glycine from India – USA issues affirmative sunset review of anti-dumping duty

Trade Remedy News



- Granular Polytetrafluoroethylene Resin from India – USA issues affirmative finding that countervailing subsidies were provided to Gujarat Fluorochemicals Limited during 6 July 2021 to 31 December 2022
- Halogenated butyl rubber from India – China PR initiates anti-dumping investigation
- High Chrome Cast Iron Grinding Media from India – USA postpones preliminary determination in the less-than-fair-value investigation
- Isobutylene-Isoprene Rubber ('IIR') from China PR, Russia, Saudi Arabia, Singapore and USA – India imposes anti-dumping duty
- Mattresses from India – USA issues anti-dumping duty order
- Melamine from India – USA issues preliminary affirmative determination of sales at less than fair value
- Polyethylene Terephthalate Resin from China PR – India's DGTR recommends modification of quantum of anti-dumping duty after anti-absorption investigation
- Silicomanganese from India – USA schedules expedited sunset review
- Stainless steel bar from India – USA's DOC finds no sales below normal value during 1 February 2022 till 31 January 2023
- Welded Stainless-Steel Pipes and Tubes from China PR and Vietnam – India imposes countervailing duty

Trade remedy measures by India

Product	Country	Notification No.	Date of notification	Remarks
Aniline	China PR	F. No. 7/10/2024 - DGTR	24 September 2024	Sunset review of anti-dumping duty initiated
Anodized Aluminium Frames for Solar Panels/Modules	China PR	16/2024-Cus.	27 September 2024	Anti-dumping duty imposed
Atrazine Technical	China PR	5/2024-Cus. (CVD)	11 September 2024	Countervailing duty imposed
Cellophane Transparent Film	China PR	F. No. 06/18/2023 - DGTR	6 August 2024	Anti-dumping duty recommended to be imposed
Epichlorohydrin	Thailand	F. No. 6/24/2023- DGTR	28 August 2024	Countervailing duty investigation terminated
Isobutylene-Isoprene Rubber ('IIR')	China PR, Russia, Saudi Arabia, Singapore and USA	17/2024-Cus. (ADD)	27 September 2024	Anti-dumping duty imposed
Polyethylene Terephthalate Resin	China PR	F. No. 7/27/2023- DGTR	28 August 2024	Modification of quantum of anti-dumping duty recommended after anti-absorption investigation
Welded Stainless-Steel Pipes and Tubes	China PR and Vietnam	4/2024-Cus. (CVD)	10 September 2024	Countervailing duty imposed

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
2,4-Dichlorophenoxyacetic Acid	USA	FR Doc No: 2024-20861	13 September 2024	Preliminary Affirmative Countervailing Duty Determination issued
Barium Chloride	USA	FR Doc No: 2024-21224	18 September 2024	Preliminary review – Intent to revoke countervailing duty
Carbazole Violet Pigment 23	USA	FR Doc No: 2024-20860	13 September 2024	No sale below normal value during 1 December 2022 till 30 November 2023
Ceramic Tiles	USA	FR Doc No: 2024-21317	19 September 2024	Preliminary Determination in the Less-Than-Fair-Value Investigation postponed
Ceramic Tiles	USA	FR Doc No: 2024-22228	27 September 2024	Preliminary Affirmative Countervailing Duty Determination issued
Epoxy Resins	USA	FR Doc No: 2024-20887	13 September 2024	Preliminary determination that countervailing subsidies were provided between 1 January 2023 till 31 December 2023

Product	Investigating Country	Document No.	Date of Document	Remarks
Finished Carbon Steel Flanges	USA	FR Doc No: 2024-20753	13 September 2024	Preliminary determination that countervailing subsidies were provided between 1 January 2022 till 31 December 2022
Finished Carbon Steel Flanges	USA	FR Doc No: 2024-20751	13 September 2024	Preliminary affirmative determination of sale at less than normal value during 1 August 2022 till 31 July 2023
Glycine	USA	FR Doc No: 2024-20671	12 September 2024	Affirmative sunset review of anti-dumping duty issued
Granular Polytetrafluoroethylene Resin	USA	FR Doc No: 2024-20267	9 September 2024	Affirmative finding of countervailing subsidies provided to Gujarat Fluorochemicals Limited during 6 July 2021 to 31 December 2022
Halogenated butyl rubber	China PR	News report in Economic Times	14 September 2024	Anti-dumping investigation initiated
High Chrome Cast Iron Grinding Media	USA	FR Doc No: 2024-20347	10 September 2024	Preliminary Determination in the Less-Than-Fair-Value Investigation postponed
Mattresses	USA	FR Doc No: 2024-20346	10 September 2024	Anti-dumping duty orders issued

Product	Investigating Country	Document No.	Date of Document	Remarks
Melamine	USA	FR Doc No: 2024-21824	24 September 2024	Preliminary Affirmative Determination of Sales at Less Than Fair Value
Silicomanganese	USA	FR Doc No: 2024-21618	23 September 2024	Expedited sunset review scheduled
Stainless steel bar	USA	FR Doc No: 2024-20399	10 September 2024	No sales below normal value during 1 February 2022 till 31 January 2023



WTO News

- European Union initiates WTO dispute against Chinese countervailing duty investigation on dairy from EU
- China initiates dispute against Canadian surtax measures
- Tarpaulins made from plastics and synthetic fibers – Indonesia launches safeguard investigation
- Polyethylene – Indonesia launches safeguard investigation

European Union initiates WTO dispute against Chinese countervailing duty investigation on dairy from EU

The European Union has sought consultations with China on the latter's initiation of an anti-subsidy investigation against imports of certain dairy products from the European Union by Notice No.34 (2024) of 21 August 2024¹ of the Ministry of Commerce of China (MOFCOM). As per the consultation request circulated in the WTO on 25 September, the initiation is unfounded and retaliatory in nature. According to the European Union, the initiation of anti-subsidy investigation was enacted right after the EU had disclosed its definitive findings in the battery electric vehicle investigation, and that the link between this action and EU's investigation on battery electric vehicles appeared evident. The EU states that the Chinese measures are inconsistent with various provisions of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

China seeks consultations against Canadian surtax measures

China has sought consultations with Canada on latter's surtax measures on certain products of Chinese origin, *inter alia*, Chinese-made Electric Vehicles ('EVs') and steel and aluminum

products from China. The federal government of Canada has announced a series of surtax measures with respect to certain Chinese products, including a 100 percent surtax on all Chinese-made EVs, effective on 1 October 2024, and a 25 percent surtax on imports of steel and aluminum products from China, effective on 15 October 2024. According to China, the measures disregard WTO rules and are discriminatory and protectionist measures, as they apply only to Chinese products. The document circulated on 11 September in the WTO also states that the surtaxes imposed on Chinese-made EVs and steel and aluminum products are in excess of Canada's bound rates in its Schedule of Concessions and Commitments annexed to the GATT 1994.

Tarpaulins made from plastics and synthetic fibers – Indonesia launches safeguard investigation

Indonesia has on 23 September 2024 notified the WTO's Committee on Safeguards that it has initiated a safeguard investigation on tarpaulins made from plastics and synthetic fibers. The investigation was initiated on 18 September and covers Tarpaulins made from plastics and synthetic fibers (polypropylene, Polyethylene, and low density Polyethylene) under Harmonized System (HS.) Code ex. 3921.90.90, ex. 3926.90.99, ex 6306.12.00 according to Indonesia Customs Tariff Book 2022.

Polyethylene – Indonesia launches safeguard investigation

Indonesia has notified in WTO that it has initiated on 9 September a safeguard investigation on polyethylene containing 5% or less alpha-olefin monomers in other than liquid/paste

form. The product under consideration covers Polyethylene containing 5% or less alpha-olefin monomers, in other than liquid/paste form (Low Linear Density Polyethylene in other than liquid/paste form) under Harmonized System (HS.) Code 3901.10.92 according to Indonesia Customs Tariff Book 2022.



FTA Update

- Korea RP – India and Korea discuss upgrading of trade pact, promoting investments
- ASEAN – India calls for review of ASEAN FTA to address local industry concerns
- Uzbekistan – India signs Bilateral Investment Treaty with Uzbekistan
- No duty concessions for Dairy sector under FTA

Korea RP – India and Korea discuss upgrading of trade pact, promoting investments

India and Korea recently held discussions on upgrading the existing free trade agreement, balancing two-way commerce and promoting investments between the two countries. As per news reports the two countries are holding review meetings to upgrade the CEPA, which was operationalised in January 2010. So far, over 10 rounds of review talks have been held.

[Source: Business Standard, dated 21 September 2024, as available [here](#)]

ASEAN – India calls for review of ASEAN FTA to address local industry concerns

India has urged the ten-member ASEAN bloc to address the concerns of its domestic industries impacted by the current free trade agreement (FTA) as both regions engage in negotiations for a review. As per reports, the Indian Commerce Minister has stressed the need for fairer tariff liberalisation during a stock-taking session of the ongoing review talks for the India-Asean FTA in goods.

[Source: Business World, dated 21 September 2024, as available [here](#)]

Uzbekistan – India signs Bilateral Investment Treaty with Uzbekistan

India and Uzbekistan have signed a Bilateral Investment Treaty (BIT) assuring appropriate protection to investors from both countries. As per news reports, the treaty aims to increase the comfort level and boost the confidence of investors by assuring a minimum standard of treatment and non-discrimination while providing for an independent forum for dispute settlement through arbitration.

[Source: Economic Times, dated 27 September 2024, as available [here](#)]

No duty concessions for Dairy sector under FTA

The Indian Commerce and Industry Minister has recently stated that dairy is a sensitive sector in India as it involves livelihood issues of small farmers and that there are no plans to give duty concessions under any Free Trade Agreement (FTA) in this area. As per news reports, the Hon'ble Minister stated that India has not given any duty concessions in the dairy sector even to Switzerland and Norway under the EFTA (European Free Trade Association) trade pact, which was signed in March, and with Australia also, the sector was discussed but India clearly conveyed the sensitivities involved in this area.

[Source: Business Standard, dated 25 September 2024, as available [here](#)]

India Customs & Trade Policy Update



- Rice – Prohibition for export of non-basmati white rice removed
- Yellow peas – BCD and AIDC exemption extended till 31 December 2024
- Palm oil, soyabean oil and sunflower oil – BCD rates increased, AIDC rates on crudes remain same
- Onions – Export policy relaxed, and export duty reduced
- ‘Laboratory chemicals’ redefined for Tariff Heading 9802
- Works of art and antiquities imported for public exhibition in museum or art gallery – Exemption from BCD and IGST rescinded
- Pet Coke (raw and calcined) – Import permitted to cater to domestic needs of not only aluminium but other industries

Rice – Prohibition for export of non-basmati white rice removed

The Ministry of Commerce has removed export prohibitions in respect of export of non-basmati white rice falling under ITC (HS) Code 1006 30 90 (semi-milled or wholly milled rice, whether or not polished or glazed: other). The export of said product is now 'free'. However, it may be noted that as per Notification No. 31/2024-25, dated 28 September 2024, export will be subject to Minimum Export Price of USD 490/tonne.

Further, export duty on this variety of rice (other than parboiled rice and basmati rice) has been prescribed as 'nil'. However, export duty @ 10% has been imposed on rice in the husk (paddy or rough) falling under TI 1006 10 90; husked (brown) rice covered under TI 1006 20 00; and rice parboiled falling under TI 1006 30 10 of the Customs Tariff Act, 1975. This is as per Notification No. 44/2025-Cus., dated 27 September 2024 amending Notification No. 27/2011-Cus.

Yellow peas – BCD and AIDC exemption extended till 31 December 2024

Exemption from Basic Customs Duty (BCD) and Agriculture Infrastructure and Development Cess (AIDC) on import of

Yellow Peas falling under TI 0713 10 10 will now be available in respect of Bills of Lading issued on or before 31 December 2024. Further, it may be noted that import of Yellow Peas will also be free from Minimum Import Price and port restrictions in case where Bills of Lading are issued on or before 31 December 2024, instead of 31 October 2024. Compulsory registration under the online Import Monitoring System, however, remains intact. The Ministry of Finance has issued Notification No. 43/2024-Cus., dated 13 September 2024 which amends Notification No. 64/2023-Cus. with effect from 14 September 2024. Ministry of Commerce has also issued Notification No. 29/2024-25, dated 13 September 2024 for this purpose.

Palm oil, soyabean oil and sunflower oil – BCD rates increased, AIDC rates on crudes remain same

Basic Customs Duty has been increased on import of soyabean oil (both crude and edible grades), palm oil (crude, RBD, RBD palmolein, RBD palm stearin), and on sunflower seed oil (both crude and edible grades). Amendments in this regard have been made in Notification Nos. 48/2021-Cus., which provided concessional rates of BCD for these goods and in Notification No. 50/2017-Cus. The new BCD rates for crudes of soyabean oil, palm oil and sunflower seed oil will be 20% as per Notification No. 43/2024-Cus., dated 13 September 2024 which is effective

from 14 September 2024. It may be noted that Notification No. 50/2017-Cus. already provides for effective rates of 32.5% BCD on edible/refined grades of these goods.

Further, AIDC rates on crude soyabean oil, crude palm oil and crude sunflower seed oil remain same though amendments have been made in Notification No. 49/2021-Cus. deleting the entries providing for 5% effective rate of AIDC. Notification No. 43/2024-Cus., for this purpose, also amends Sl. Nos. 7 and 8 of Notification No. 11/2021-Cus. to reduce the AIDC from 20% to 5% as earlier provided there.

Onions – Export policy relaxed, and export duty reduced

The Minimum Export Price (MEP) condition on export of onions falling under ITC (HS) Code 0703 10 19 has been removed with immediate effect by the Ministry of Commerce Notification No. 28/2024-25, dated 13 September 2024. The MEP was USD 550 per MT earlier.

Further, it may be noted that onions falling under sub-heading 0703 10 of the Customs Tariff Act, 1975 will now be liable to export duty of only 20% and not 40%. The change is effective from 14 September 2024. Ministry of Finance has issued

Notification No. 43/2024-Cus., dated 13 September 2024 which amends Notification No. 27/2011-Cus. for this purpose.

'Laboratory chemicals' redefined for Tariff Heading 9802

Parameters and conditions for falling within the scope of 'laboratory chemicals' under Heading 9802 of the Customs Tariff Act, 1975 have been revised. Note 3 to Chapter 98 of the First Schedule to the Customs Tariff Act has been substituted by Notification No. 62/2024-Cus. (N.T.), dated 19 September 2024 for this purpose. Broadly, the earlier Chapter Note used the words '*imported in packings not exceeding 500 gms or 500 millilitres*', while the new provisions state '*imported and intended only for own use (i.e. other than purposes like trading, further sale etc.) in packings not exceeding 500 gms or 500 millilitres*'.

Further, it may be noted that as per CBIC Circular No. 18/2024-Cus., dated 23 September 2024, for purpose of Heading 9802 the goods have to be imported and intended only for own use. Laboratory chemicals imported for trading, further sale, etc. are out of scope of Heading 9802. Chemicals will also be out of the purview of Heading 9802 in case of packings exceeding 500 gms or 500 millilitres.

Works of art and antiquities imported for public exhibition in museum or art gallery – Exemption from BCD and IGST rescinded

The Notification No. 26/2011-Cus., dated 6 September 2024 which exempted from BCD and IGST goods imported as 'works of art' including statuary, pictures, memorials, etc., subject to specified conditions, has now been rescinded. This shall not affect the things done or omitted to be done before such rescission. Notification No. 42/2024-Cus., dated 6 September 2024, which is effective from 7 September 2024, has been issued for the purpose.

Pet Coke (raw and calcined) – Import permitted to cater to domestic needs of not only aluminium but other industries

Import of Raw Pet Coke and Calcined Pet Coke has been permitted to cater entirely to the domestic needs of aluminium industry and other industries, for the processes as permitted under the relevant regulations or statutes. It may be noted that the import was earlier permitted only to fulfil the needs of the aluminium industry. Ministry of Commerce Notification No. 27/2024-25, dated 4 September 2024 amends Import Policy Condition No. 6(b)(ii) under Chapter 27 of Schedule I of ITC (HS), 2022.



Ratio Decidendi

- Compressors used in car air-conditioners are classifiable under TI 8414 80 11 and not under TI 8415 90 00 – SC decision in Westinghouse Saxby distinguished – *CESTAT Chennai*
- Fork/Yoke 5th and reverse gear shift are classifiable under Heading 8708 and not under Heading 8483 of the Customs Tariff – *CESTAT New Delhi*
- Vitamin AD3 is classifiable under Heading 2936 and not under Heading 2309 of the Customs Tariff – *CESTAT New Delhi*

Compressors used in car air-conditioners are classifiable under TI 8414 80 11 and not under TI 8415 90 00 – SC decision in *Westinghouse Saxby* distinguished

The CESTAT Bench at Chennai has held that air compressors for use in car air-conditioners are classifiable under Tariff Item 8414 80 11 of the Customs Tariff Act, 1975 wherein Heading 8414 covers 'Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters'. Revenue Department contention of classification under TI 8415 90 00 *ibid.*, having a specific entry for 'parts of air-conditioning machines for use in motor vehicles', was thus rejected. The Tribunal in this regard noted that the Department was not able to show that Heading 8414 was limited to goods of industrial use. It was also of the view that a specific part of an air conditioner can always be classified separately (hence out of Heading 8415) as provided in the Section / Chapter Notes. HSN Explanatory Notes to Section XVI of the Customs Tariff Act was relied by the Tribunal for the purpose.

Further, it may be noted that the Tribunal also held that the 'predominant use' or 'sole or principal' use test stated in *Westinghouse Saxby Farmers* decision of the Supreme Court was

not applicable to the present case. Assessee's argument that the Apex Court dealt with the interpretation of Section Notes to Section XVII of the Central Excise Tariff Act, whereas the present case was with respect to the interpretation of Section Notes to Section XVI of the Customs Tariff Act, wherein the Notes are not *pari materia*, was agreed by the Tribunal. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [Ford India Pvt. Ltd. v. Commissioner – 2024 (9) TMI 944 - CESTAT CHENNAI]*

Fork/Yoke 5th and reverse gear shift are classifiable under Heading 8708 and not under Heading 8483 of the Customs Tariff

The CESTAT New Delhi has held that Fork/Yoke 5th and reverse gear shift (for ultimate use in motor vehicles) are classifiable under Heading 8708 and not under Heading 8483 of the Customs Tariff Act, 1975. The Tribunal in this regard noted that the goods were neither the transmission shaft nor the gear box but were the assembly components located inside the gear box assembly, thus forming parts of gear box precisely covered under heading 8708. It also observed that only those parts which constitute integral parts of engines or motors of Heading 8483 are excluded from Section XVII as per Note 2(e). The Tribunal in

this regard also held that for any good to be gear or gear box classified under Heading 8483, it is not to be used as part of motor vehicle, as Heading 8483 does not talk about parts of 'gears and gearing' in motor vehicles. It was noted that the assessee himself had accepted that the impugned goods were transmission shafts which were further used in automobiles. [Best Koki Automotive Pvt. Ltd. v. Principal Commissioner – 2024 (9) TMI 1181 - CESTAT NEW DELHI]

Vitamin AD3 is classifiable under Heading 2936 and not under Heading 2309 of the Customs Tariff

The CESTAT New Delhi has held that Vitamin AD3, a product containing Vitamin A and Vitamin D3 which are coated by gelatin, starch, and sugar and stabilised with an antioxidant, is classifiable under Heading 2936 of the Customs Tariff Act, 1975 and not under Heading 2309 *ibid*. The Tribunal in this regard

noted that HSN explanatory notes to the Heading 2309 excludes vitamins while that of Heading 2936 includes intermixtures of vitamins, of pro-vitamins or of concentrates, such as, for instance natural concentrates of vitamin A and D in various proportions, to which an additional quantity of vitamin A or D has been added subsequently. It also noted that the goods were not obtained by processing vegetable or animal materials, for it to be classified in Chapter 23. Distinguishing the Tribunal decision in *Tetragon Chemie*, as upheld by the Supreme Court, the Tribunal here observed that the goods were not a pre-mix containing mineral substances/vitamins or pro vitamins but is an admixture of Vitamin A & D3. The Tribunal was also of the view that classification under specific entry under Chapter 29 is to be preferred over residuary classification under Chapter 23. [Avitech Nutrition Private Limited v. Principal Commissioner – 2024 VIL 1095 CESTAT DEL CU]

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