

International Trade

amicus

August 2023 / Issue -145

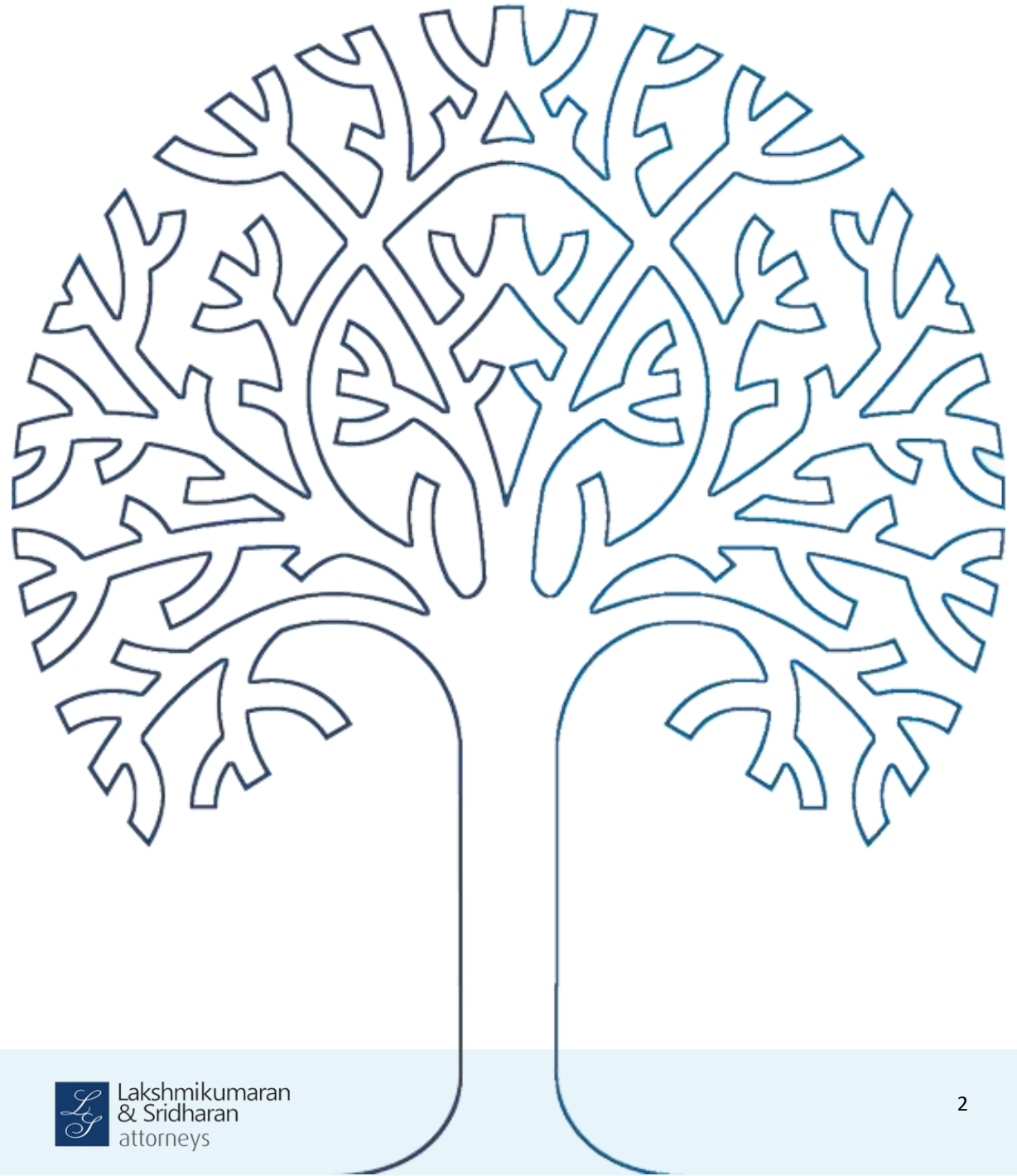


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Article

EU's Non-Preferential Rules of Origin: A tool for determining origin of goods and promote fair trade

By Arpit Mehra

The article in this issue of International Trade Amicus discusses elaborately the European Union's Non-Preferential Rules of Origin, specifically focusing on Rules in the context of their assistance in effective implementation of trade remedial measures imposed by the EU. Deliberating on the legal provisions, including the key components of the Rules, the article highlights an illustration depicting changes made in preferential rules of origin for preventing circumvention of trade remedial measures, and the fact that applying Rules can be a complex exercise for the exporters due to the intricacies of the modern supply chains. According to the author, it is extremely important for the exporters to the EU to maintain strong documentation supporting the integrity of the supply chains. Further, the exporters must educate themselves of the product specific non-preferential rules of origin to stay true to the originating status of a product. This is important for an exporter to prevent any investigations by EU Authorities like the EC or the European Anti-Fraud Office.

EU's Non-Preferential Rules of Origin: A tool for determining origin of goods and promote fair trade

By Arpit Mehra

Introduction

In the realm of global trade, the determination of a product's origin holds immense significance. Origin not only affects tariffs but also impacts compliance with regulations, trade agreements, trade measures and market access. The European Union ('EU') Non-Preferential Rules of Origin provide a comprehensive framework to ascertain the origin of goods exported to the EU and play a pivotal role in shaping trade dynamics within the EU and its trade partners.

In the complex landscape of international trade, maintaining the integrity of origin of the goods and preventing unfair practices of its misdeclaration is of paramount importance to the countries. The effective implementation of trade remedial measures (such as Anti-dumping or Countervailing duties) by the importing country also depends upon the proper declaration of origin of the goods.

To counter this, the EU has a specific circumvention provision in place under the Trade remedial laws¹. Triggering the said provisions to extend the trade remeasures to circumventing goods requires a detailed investigation to be carried out in the manner prescribed under the anti-circumvention rules. Our last article focused on the said anti-circumvention provisions in place under the EU².

Recently it is seen that the EU has been focusing on strengthening its non-preferential rules of origin by prescribing tighter norms for determination of origin of goods. These rules are enforced by the customs authorities at the border thereby ensuring origin is properly declared in the entry documents filed before customs authorities for all regulatory purposes and duties including trade remedial duties are appropriately paid by the importers. The present article specifically focuses on the non -preferential rules of origin in the context of its assistance in effective implementation of trade remedial measures imposed by the EU.

Understanding Rules of Origin

Rules of Origin are guidelines that establish the economic nationality of a product. These rules are essential for ascertaining the true origin of the goods that are being imported into a country. Their primary purpose is to ensure the correct enforcement of trade policies, agreements and imposition of appropriate tariff vis-à-vis the country of origin of the goods.

Types of Rules

1. **Preferential Rules of Origin:** These rules determine whether goods are eligible for preferential treatment under trade

¹ Article 13, Council Regulation (EC) No. 1225/2009 of 30 November 2009.

² [Circumvention of Trade Remedy measures – A critical analysis of Indian provision | Lakshmikumaran & Sridharan Attorneys \(lakshmisri.com\)](#)

agreements, such as reduced tariffs or duty-free access. Preferential rules encourage trade between partner countries by offering advantages to goods originating from them.

2. **Non-Preferential Rules of Origin:** These rules determine the origin of goods from country not part of any trade agreements. These rules are used for statistical analysis, labeling requirements, and compliance with regulations including trade remedial measures.

Legal Provisions – Non-Preferential Rules of Origin

To determine the non-preferential origin of a product, two situations may arise. These two situations, which must be distinguished, are the following:

1. **wholly obtained products:** If only one country is involved in producing a good, the wholly obtained concept will be applied. In practice this is mostly restricted to the products obtained in their natural state and the products that are derived from wholly obtained products.
2. **products having undergone a last substantial transformation:** If there are two or more countries that are involved in the production of the product and its components / raw materials, the concept of *last, substantial transformation* would determine the origin of the goods.

Product specific rules have been laid down by the EU to determine the criteria to be fulfilled and/or the operations to be carried out on the specified products in the country of last production to confer origin on the said product.

For the goods where product specific rules have not been laid down by the EU, the origin is determined on a case-by-case basis by

evaluating the processes or operations carried out for components / raw materials and on the final product under the last substantial processing or working test.

The key component of the non-preferential rules of origin include:

1. **Substantial Transformation Criterion:** This rule is fundamental to the concept of determining the origin of the product. This criterion assesses whether the processing or manufacturing conducted in the exporting country has significantly altered the product. If a substantial transformation has occurred, the product is deemed to originate from that country.
2. **Accurate Documentation:** Exporters are required to provide comprehensive documentation detailing the production process, materials used, and the country of origin. This documentation enables authorities to verify the authenticity of the claimed origin and detect any attempts to mis-declare the origin.
3. **Traceability in Supply Chains:** The non-preferential rules emphasize the importance of traceability in complex supply chains. Every stage of production and processing must be accounted for, ensuring that the origin is accurately determined based on the prescribed criteria under the rules.

Role of Non-Preferential Rules of Origin in preventing non-payment of trade remedial duties

Traditionally, Anti-circumvention provisions under the EU are meant to deal with misdeclaration of origin to avoid payment of trade remedial duties. However, the EU recognizes that conducting an Anti-circumvention investigation is a cumbersome process

leading to duty evasions for goods imported into the EU. Hence, the EU is now increasingly using the Non-Preferential Rules of Origin to serve as a crucial border mechanism to prevent non-payment of trade remedial duties in place in the EU and ensuring the integrity of the declared origin of the product. In cases where a product from a specific country is subject to either anti-dumping measures or countervailing measures, the non-preferential rules of origin are used as a tool to identify the true origin of goods entering the EU market and to enforce these measures.

Illustration depicting changes made in preferential rules of origin for preventing circumvention of trade remedial measures

There have been anti-dumping duties which are imposed by the EU on imports of bicycles into EU from China since 1993. There have been multiple reviews of the above duties as well as multiple Anti-circumvention investigations against various countries that were conducted to stop evasion of anti-dumping duties imposed.

However, to put an end to such anti-circumvention practices, the EC laid out product specific non-preferential rules of origin for bicycles imported in the EU. The specific non-preferential rule of origin is reproduced below:

<i>HS 2022 Code</i>	<i>Description of Goods</i>	<i>Primary Rules</i>
8712	<i>Bicycles and other cycles (including delivery tricycles), not motorised.</i>	<i>CTH, except from heading 8714; or 45% value added rule</i>

The above product specific rule prescribes the following two primary tests to decide the origin of Bicycles exported to European Union –

- *CTH except from heading 8714 – which means that there should be a change of tariff heading where the tariff classification of the final product is different from the tariff classification of the non-originating components / materials that were used in the production in the exporting country. However, such components falling under 8714 cannot be non-originating in the production process, in other words, such components / parts need to be originated in the exporting country.*
- *45% value added rule means the manufacture activity in exporting country where the increase in value was acquired as a result of working and processing, and if applicable, the incorporation of parts originating in the country of manufacture represents a minimum of 45% of the ex-factory value.*

Similarly, there is an existing Anti-dumping duty and Countervailing duty applicable on exports of e-bikes from China to EU. The Anti-dumping duty and Countervailing duty are applicable till 19th January 2024. On 02/10/2020³, the EC came out with product specific non-preferential rule for e-bikes (HS Code 871160) imported in the EU as reproduced below:

<i>HS 2022 Code</i>	<i>Description of Goods</i>	<i>Primary Rules</i>
ex 871160	<i>Cycles, with pedal assistance, with an auxiliary electric motor</i>	<i>CTH, except from heading 8501, 8507 and 8714; or 45% value added rule</i>

³ [Determination of the non-preferential origin of e-bikes \(europa.eu\)](https://europa.eu)

- *In the above rule, components / parts falling under 8501, 8507, and 8714 (which constitute major components of e-bike for e.g. 8501 covers motor, 8507 covers battery and 8714 covers parts of e-bike) cannot be non-originating in the production process. In other words, such components need to originate from the exporting country in order to confer origin status to the e-bike.*
- *45% value added rule means the manufacture activity in exporting country where the increase in value was acquired as a result of working and processing, and if applicable, the incorporation of parts originating in the country of manufacture represents a minimum of 45% of the ex-factory value.*

By introducing above the rules, the EU ensures that the substantial transformation has occurred in the exporting country either by procuring the components within the country or by carrying out considerable manufacturing operations in the exporting country thereby mitigating the risk of circumvention of trade remedial measures already in place against imports from China.

Challenges for exporters

Determining the origin of some products can be complex, particularly in cases where raw materials are sourced from different countries and undergo various stages of processing before being assembled into a final product in the exporting country.

While the concept of substantial transformation serves as a foundation, applying EU's Non-preferential Rules of Origin can be

complex due to the intricacies of modern supply chains. Products often comprise components from various countries, requiring careful examination of each processing stage to ascertain the true origin thorough documentation.

Conclusion

As trade dynamics evolve, the EU's initiative for robust non-preferential rules can be instrumental in true origin declaration of goods before customs authorities in the EU member countries and deter any exporter / importer from mis-declaring the origin to evade trade remedial duties in place. By prescribing origin determination criteria through substantial transformation test and enforcing it through stringent documentation may protect the EU's domestic producers and provide them a level playing field in the global trade.

At the same time, it is extremely important for the exporters to the EU to maintain strong documentation supporting the integrity of the supply chains. The exporters are advised to stay cautious of their procurement chains for components / raw material from other countries especially for those products which are subject to trade measures in the EU.

The exporters must educate themselves of the product specific non-preferential rules of origin to stay true to the originating status of a product. This is important for an exporter to prevent any investigations by EU Authorities like the EC or the European Anti-Fraud Office.

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Trade Remedy

News



- Carbazole Violet Pigment 23 from India – USA initiates Countervailing Duty New Shipper Review
- Ceramic tiles from India – European Union amends Implementing Regulation (EU) 2023/265 imposing anti-dumping duty
- Cut-to-Length Carbon-Quality Steel Plate from India – USA issues affirmative finding of recurrence of material injury in case of revocation of anti-dumping and countervailing duties
- Dispersion Unshifted Single-Mode Optical Fiber from China PR, Indonesia and Korea RP – India imposes definitive anti-dumping duty
- Fine Denier Polyester Staple Fiber (PSF) from India – USA issues notice for five-year review of anti-dumping and countervailing duties
- Finished Carbon Steel Flanges from India – USA issues preliminary finding that countervailable subsidies were received by 2 entities during 1 January 2021 till 31 December 2021
- Fishing net from China PR and Malaysia – India continues anti-dumping duty after review
- Lined Paper School Supplies from India – USA continues anti-dumping and countervailing duties orders after affirmative finding of recurrence of material injury in case of revocation of duties
- Mattresses from India – USA initiates less than fair value investigation
- Polyethylene Terephthalate Film, Sheet, and Strip from India – USA issues notice for five-year review in case of anti-dumping and countervailing duties, and issues preliminary determination that countervailable subsidies were provided during 1 January 2021 till 31 December 2021
- Stainless Steel Bar from India – USA initiates five-year review of anti-dumping duty
- Toughened glass for home appliances from China PR – Indian DGTR recommends imposition of definitive 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	7/2023-Cus. (ADD)	3 August 2023	Definitive anti-dumping duty imposed
Fishing net	China PR and Malaysia	8/2023-Cus. (ADD)	29 August 2023	Anti-dumping duty continued after review
Toughened glass for home appliances	China PR	F.No.6/10/2022-DGTR	28 August 2023	Definitive anti-dumping duty recommended

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Ceramic tiles	EU	Commission Implementing Regulation (EU) 2023/1597	3 August 2023	ADD – Implementing Regulation (EU) 2023/265 amended
Carbazole Violet Pigment 23	USA	88 FR 50839	2 August 2023	Initiation of Countervailing Duty New Shipper Review
Cut-to-Length Carbon-Quality Steel Plate	USA	88 FR 58619	23 August 2023	ADD and CVD – Affirmative finding of recurrence of material injury in case of revocation of duties

Product	Investigating Country	Document No.	Date of Document	Remarks
Fine Denier Polyester Staple Fiber (PSF)	USA	88 FR 59940	30 August 2023	ADD and CVD – Notice issued for five-year review
Finished Carbon Steel Flanges	USA	88 FR 56000	17 August 2023	Preliminary finding that countervailable subsidies were received by 2 entities during 1 January 2021 till 31 December 2021
Lined Paper School Supplies	USA	88 FR 56591	18 August 2023	ADD and CVD duty orders continued after affirmative finding of recurrence of material injury in case of revocation of duties
Mattresses	USA	88 FR 57433	23 August 2023	ADD – Less than fair value investigation initiated
Polyethylene Terephthalate Film, Sheet, and Strip	USA	Investigation Nos. 701-TA-579-580 and 731-TA-1369-1372	24 August 2023	ADD and CVD – Notice issued for five-year review
Polyethylene Terephthalate Film, Sheet, and Strip	USA	88 FR 50834	2 August 2023	Preliminary determination that countervailable subsidies were provided during 1 January 2021 till 31 December 2021
Stainless Steel Bar	USA	Investigation No. 731-TA-679	25 August 2023	ADD – Initiation of five-year review



WTO News

- Chinese additional duties on certain US products violate WTO provisions
- Indonesia challenges EU's countervailing duties on biodiesel imports from Indonesia

Chinese additional duties on certain US products violate WTO provisions

The WTO Panel has on 16 August 2023 ruled that China's additional duties measure on certain US products is contrary to Article I:1 of the GATT 1994 as it does not grant an advantage available to products originating outside the US to products originating from USA. Further, the measures were held as violating Article II:1(b) of the GATT 1994 as they imposed ordinary customs duties on 123 tariff lines in excess of the China's Schedule's bound rates, and contradicts Article II:1(a) as it imposed excessive customs duties on US-origin imports, resulting in less favorable treatment for these imports. The Panel in the dispute *China – Additional Duties on Certain Products from The United States* [DS558] concluded that China's additional duties measures thus nullified or impaired benefits accruing to the United States under the GATT.

Indonesia challenges EU's countervailing duties on biodiesel imports from Indonesia

The Indonesia has sought consultation with the European Union regarding latter's countervailing duties on imports of biodiesel from Indonesia [WT/DS618/1]. According to Indonesia, the measures are inconsistent with number of provisions of the WTO's Agreement on Subsidies and Countervailing Measures and the General Agreement on Tariffs and Trade 1994. Indonesia has challenged the European Union's certain determinations concerning the Indonesian Oil Palm Plantation Fund, determinations concerning the alleged government support for the provision of crude palm oil, and the determinations concerning the existence of a threat of material injury and a causal link. Similarly, EU's rejection of the Indonesian price undertaking offer has also been challenged.

India Customs & Trade Policy Update



- Laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers – Import clearances to require licence for restricted imports from 1 November 2023
- Rice, parboiled – Export duty @ 20% imposed till 15 October 2023
- Rice – Export policy of non-basmati white rice clarified
- Onions – Export duty @ 40% imposed



Laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers – Import clearances to require licence for restricted imports from 1 November 2023

Vide Notification No. 23/2023 dated 3 August 2023, the import policy was amended from 'free' to 'restricted' for laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers falling under ITC(HS) Code 8471 with immediate effect. However, *vide* Notification No. 26/2023 dated 4 August 2023, the earlier notification has been amended such that the import consignments can be cleared till 31 October 2023 without a license for restricted imports. For clearance of import consignments with effect from 1 November 2023, a valid license for restricted imports will be required.

Rice, parboiled – Export duty @ 20% imposed till 15 October 2023

After imposing prohibition on export of non-basmati white rice, falling under ITC(HS) Code 1006 30 90, last month, the Central Government has now amended the Second Schedule to the Customs Tariff Act, 1975 to bring-in an entry for rice, parboiled, classifiable under Tariff Item 1006 30 10, with the customs duty of 20%. Further, as per another notification, earlier Notification No. 55/2022-Cus. has been amended to notify the effective rate of 'Nil' with effect from 16 October 2023. It may be noted that the rate of duty is also 'nil' if goods meant for export

have entered the customs station for the purpose of exportation before 25 August 2023, and are backed by irrevocable Letters of Credit, wherein the said letters of credit have been opened before 25 August 2023. Notifications Nos. 49/2023-Cus. and 50/2023-Cus., both dated 25 August 2023 have been issued for this purpose.

Rice – Export policy of non-basmati white rice clarified

The DGFT has clarified that conditions (i), (ii) & (iii) of Para- 2 of Notification No. 20/2023 dated 20 July 2023 regarding change in export policy of "*Non-Basmati white Rice (Semi-milled or wholly milled rice, whether or not polished or glazed: Other*" under ITC(HS) 1006 30 90 from 'free' to 'restricted', are independent of each other. Accordingly, export is allowed in case of completion of any one of the conditions of Para-2 of Notification dated 20 July 2023, by the exporter. Trade Notice No. 23/2023 dated 18 August 2023 has been issued for this purpose.

Onions – Export duty @ 40% imposed

Export of onions is liable to export duty of 40% with effect from 19 August 2023. The Central Government has for this purpose made amendments in the Second Schedule to the Customs Tariff Act, 1975 to bring in an entry for onions classifiable under sub-heading 0703 10, and the export duty of 50%. However, simultaneously, another notification has been issued to bring down the effective rate of customs duty to 40%. This exemption of 10% is however available only till 31 December 2023. Notifications Nos. 47/2023-Cus. and 48/2023-Cus., both dated 19 August 2023 have been issued for the purpose.



Ratio

Decidendi

- Anti-dumping duty – Non-application of Section 15 of Customs Act on imports made prior to 19 August 2009 – SC decision in Sneh Enterprise case applicable – CESTAT Chennai
- Silicon wafer / blue wafer is not a 'solar cell' for imposition of safeguard duty – CESTAT Chennai
- Snow goggles are not classifiable as sunglasses – No confiscation for classifying goods under a Heading different from what opined by Department – CESTAT New Delhi
- Lawn mower is classifiable under Heading 8433 and not under Heading 8467 – CESTAT Chennai

Anti-dumping duty – Non-application of Section 15 of Customs Act on imports made prior to 19 August 2009 – SC decision in Sneh Enterprise case applicable

Relying upon Supreme Court decision in the case of *Sneh Enterprises v. Commissioner* [2006 (202) ELT 7 (S.C)], the CESTAT Chennai bench has upheld the contention that since the unamended sub-section (8) of Section 9A of the Customs Tariff Act, 1975, prior to 19 August 2009, did not adopt provision of Section 15 of the Customs Act, 1962, which relates to determination of the date on which the rate of duty applies, the said provisions will not be applicable in case of imports made prior to such amendment. The Tribunal hence held that anti-dumping duty would not be payable in case of imports made prior to the notification imposing ADD, even when the said duty was imposed before the goods were cleared from the warehouse on filing of ex-bond bill of entry. [Commissioner v. Hyderabad Chemicals Ltd. – 2023 (8) TMI 752]

Silicon wafer / blue wafer is not a 'solar cell' for imposition of safeguard duty

In a case involving import of diffused silicon wafer / blue wafer which was claimed by the assessee to be a semi-finished / intermediate processed product and not a finished product, the CESTAT Chennai has rejected the contention of the Revenue department that the goods were solar cells which could be sold in the market as solar cells. The Tribunal in this regard noted that the process of screen printing and sintering carried out in India assume significance in the manufacturing

process, thereafter transforming the semi-finished / intermediate product into a finished functional product capable of performing essential functions as a solar cell which could be sold in the market as solar cell. It also in this regard noted that had not discharged its initial burden to establish that the goods could be sold as such in the open market and could be used as such by the end user.

Considering the definition of Product Under Consideration (for the purpose of imposition of safeguard duty) in the present case 'solar cells whether or not assembled in modules or panels', the Tribunal observed that the PUC was finished solar cell in all respects and known and recognised in the market parlance as such. The Tribunal noted that the product should not just be exhibiting photovoltaic effect, but should be capable of carrying into electrical connections with transmitting the electricity so produced in order to achieve the desired object. Further, the Tribunal also considered various exemption notifications and observed that it was the understanding of the Government that items like diffused silicon wafer / blue wafer are only parts which are used in the manufacture of products like semiconductor devices or solar cells. [*CETC Renewable Energy Technology (India) Private Limited v. Commissioner* – 2023 VIL 770 CESTAT CHE CU]

Snow goggles are not classifiable as sunglasses – No confiscation for classifying goods under a Heading different from what opined by Department

The CESTAT New Delhi has rejected the finding in the order impugned before it that Snow Goggles are also sunglasses. The Tribunal in this regard observed that goods are meant for protection of eyes in snowy

region and not protection of eyes from sunlight which is the purpose of sunglasses as is common knowledge. It also noted that the user instruction which accompanied the goods (snow goggles) clearly showed that they were designed to provide protection against snow, sun, wind and cold conditions, and were not recommended for use while driving, which also distinguished them from the sunglasses. Further, observing that goods should be classified and assessed to duty as they are imported and not based on what they will become if some changes are made, the Tribunal held that the Department erred in classifying the imported goods on the basis of what they can become if some changes are made. The goggles were held to be classifiable under the residual Tariff Item 9004 90 90 of the Customs Tariff Act, 1975 as 'others'.

It may be noted that the Tribunal also held that the imported goods do not become liable to confiscation under Section 111(m) of the Customs Act, 1962 on the ground that the importer classified the goods under a Heading different from the opinion of the officer.

[*Aureole Inspects India Pvt. Ltd. v. Principal Commissioner* – 2023 VIL 759 CESTAT DEL CU]

Lawn mower is classifiable under Heading 8433 and not under Heading 8467

The CESTAT Chennai has held that lawn mowers are correctly classifiable under Heading 8433 covering harvesting or thrashing machinery, including grass or hay mowers, and not under Heading 8467 of the Customs Tariff Act, 1975 which refers to tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor. The Tribunal in this regard observed that Heading 8467 *prima facie* gives an indication that the tools referred to in the Heading are invariably portable, designed to be held in hand during use, which can be lifted and moved by the user during work. [*Honda Siel Power Products Ltd. v. Commissioner* – 2023 (8) TMI 623 – CESTAT Chennai]

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