

International Trade

amicus

February 2024 / Issue –150



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An e-newsletter from
Lakshmikumaran & Sridharan, India

Table of Contents

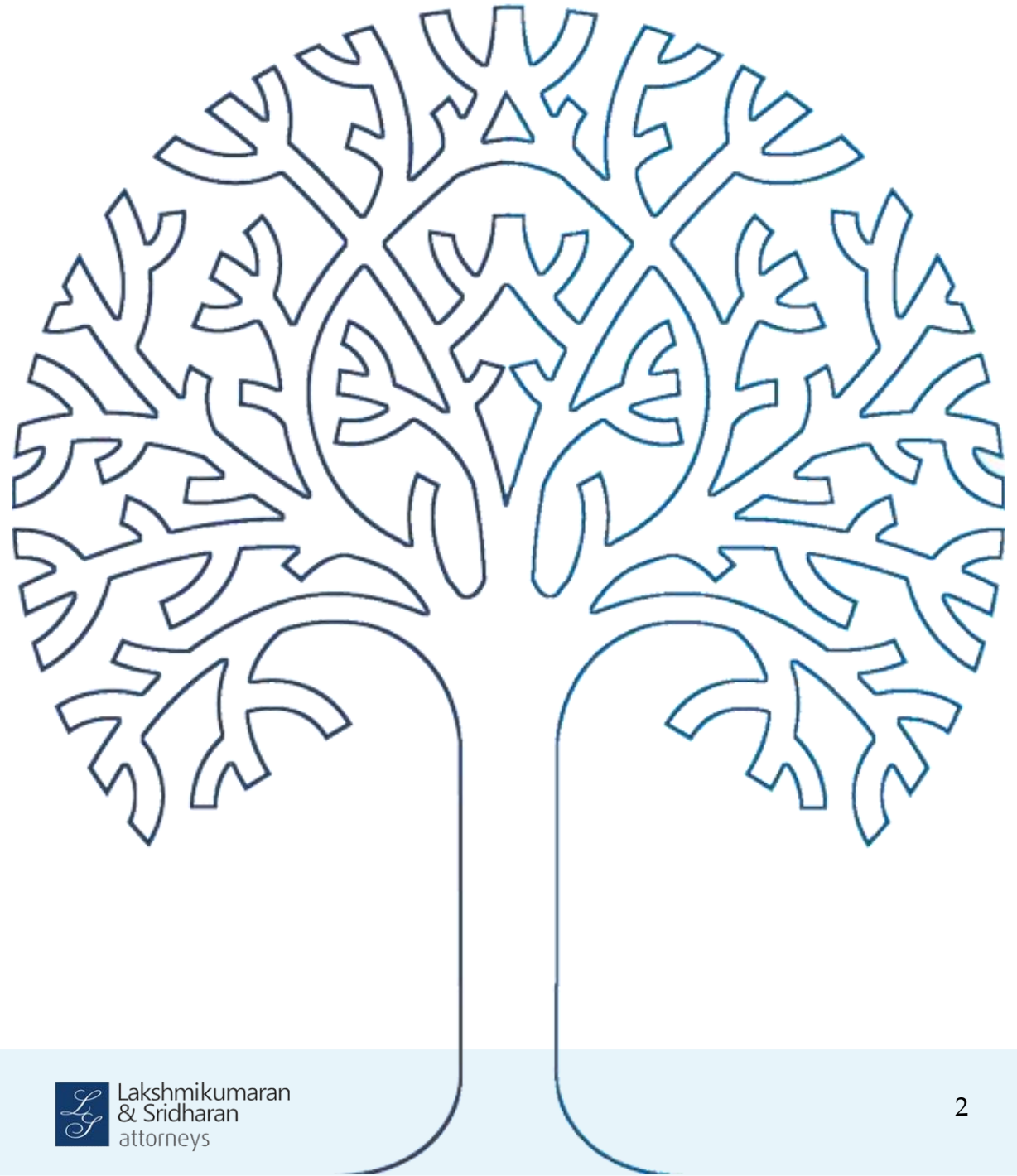
Article..... 3
The WTO’s 13th Ministerial Conference – Finding Order in times of chaos?4

Trade Remedy News 8
Trade remedy measures by India9
Trade remedy measures against India.....9

WTO News..... 11

India Customs & Trade Policy Update..... 15

Ratio Decidendi..... 18





Article

The WTO's 13th Ministerial Conference – Finding Order in times of chaos?

By Jayant Raghu Ram

The article in this issue of International Trade Amicus intends to provide an overview of some of the key issues for negotiation at WTO's 13th Ministerial Conference and the importance of these issues for WTO Members. It discusses in this regard various issues concerning the Agreement on Investment Facilitation and Development, the Agreement on Fisheries Subsidies, Permanent Solution for Public Stockholding for Food Security Purposes, WTO Dispute Settlement Reform, and the moratorium on electronic transmissions. According to the author, while negotiations at the WTO have become diverse and tougher, with the challenges at each subsequent Ministerial Conference getting bigger and more complex, nonetheless, it is important to achieve a positive outcome to break the cacophony created due to the geopolitical turmoil in different parts of the world.

The WTO's 13th Ministerial Conference – Finding Order in times of chaos?

By Jayant Raghu Ram

Introduction

At the time of writing this article, representatives of 164 Members of the World Trade Organization ('WTO') have gathered for the 13th Ministerial Conference ('MC 13') in Abu Dhabi, the capital of the United Arab Emirates, to hammer out a deal on international trade issues relevant to the future of the multilateral trading system. Coincidentally, the talks in the Middle East are taking place at a time when the geopolitical climate of this very region is in a turmoil due to the Israel-Hamas war and the attacks on international cargo ships traversing the Red Sea.

For developing countries like India for whom the issue of food security is very important, the talks at MC 13 assume significance given that the legacy issue of a permanent solution for public stockholding is on the table. MC 13 will also be important as other important topics such as the Agreement on Investment Facilitation and the Agreement on Fisheries Subsidies will also be on the table.

This article intends to provide an overview of some of the key issues for negotiation at MC 13 and the importance of these issues for WTO Members.

Agreement on Investment Facilitation and Development

One of the keenly anticipated topics of negotiation will be the Agreement on Investment Facilitation and Development, which contains provisions intended to support facilitation of cross-border investments. The agreement, the text of which was finalized in November last year, is intended by some WTO Members to be included as a plurilateral agreement, which means that the provisions of this agreement will be binding only on those WTO Members who sign this agreement.

While the agreement is seen by some Members as promoted by China to further its belt-and-road initiative, major economies like India and South Africa have firmly opposed the inclusion of such agreements at the WTO citing the absence of an express mandate from the Ministerial Conference.

This difference in viewpoint has reopened the debate on whether the WTO, as a platform for negotiating trade issues, is appropriate for negotiating investment issues. It remains to be seen how negotiations on including this agreement at the WTO will take shape.

Agreement on Fisheries Subsidies

One of the key outcomes of the last Ministerial Conference, MC 12, was the conclusion of the Agreement on Fisheries Subsidies, which was under negotiation for over 15 years till it finally saw the light of the day. Though this agreement is yet to come into force, as two-thirds of the Membership are yet to adopt the agreement, Members have already embarked on the difficult task of negotiating additional provisions such as subsidies for overcapacity and overfishing, special and differential treatment for developing countries, etc.

Given the importance of fishery subsidies for the livelihoods of millions of fishermen, developing country Members need to be guarded in ensuring that the developed countries do not shortchange them in any manner in negotiating additional disciplines under this agreement. Indeed, it is a challenge to press developed countries to commit to disciplining their subsidies for overcapacity and overfishing and allow consensus

for developing countries to grant subsidies necessary for the subsistence of small-scale fishermen.

In any case, developing country negotiators should remember the mistakes made concerning the Uruguay Round when negotiating the Agreement on Agriculture that cost them till date, and avoid any such pitfalls when negotiating the agreement on fisheries subsidies.

Permanent Solution for Public Stockholding for Food Security Purposes

A legacy issue from the Doha Development Round that is at the heart of India's concerns is the permanent solution for public stockholding for food security purposes. Further, this is an issue that is important not just for India but also similarly situated developing countries. Though this issue has been on the negotiating table since 2000, the Membership has unfortunately not been able to achieve any solution to this issue.

However, going by past experience, it is likely that some of the rich developed countries who heavily subsidize their agricultural sector, will continue to remain skeptical of agreeing to any consensus on this issue due to putative concerns on the alleged trade-distorting effect of subsidies for public stockholding.

WTO Dispute Settlement Reform

The WTO's dispute settlement system has rightly been identified as its 'crown jewel'. However, since the Appellate Body became dysfunctional in 2019, this crown jewel has lost some of its shine. Since then, several attempts have been made under different umbrellas at the WTO to revive the Appellate Body and also take steps for reforming the WTO dispute settlement.

Given the primacy of dispute settlement for a well-functioning WTO, Members rightly placed reform of WTO dispute settlement (including revival of the appellate mechanism) on the negotiating agenda of MC 12 and also MC 13.

However, given the lack of political commitment in reviving the Appellate Body, particularly by the United States, one must remain cautious in not expecting too much from MC 13 on the issue of the revival of the appellate body. If no outcome is achieved in this regard, it will not bode well for the Membership as a fully functional dispute settlement mechanism is important for the functioning of a rules-based multilateral system at the WTO.

Electronic Commerce

We live in a world where Netflix, Uber, Google Pay, Amazon, and other forms of electronic commerce have become ubiquitous

in our lives and significantly transformed our way of living. The Membership seems to have the hindsight on issues concerning e-commerce and international trade when it issued a Declaration on Global Electronic Commerce in 1998. Under this declaration, the Membership agreed to launch a work programme to examine all trade-related issues relating to global electronic commerce.

Under this declaration, the Membership also agreed to continue the practice of not imposing customs duties on electronic transmissions. Commonly referred to as the 'moratorium' on electronic transmissions, this particular aspect of the decision was welcomed by certain members of trade and industry. However, since the last two-three ministerial conferences, calls by developing WTO Members to discontinue the moratorium have become very loud.

In fact, at the last Ministerial Conference, it was decided that should MC13 be delayed beyond 31 March 2024, the moratorium would expire on that date unless the Ministers or the General Council take a decision to extend the same. This seems to have set the tone for MC 13 for increased focus to decide on discontinuing the moratorium.

If the moratorium is discontinued, the buck would not stop there. Members will have to develop their internal legal system

to be able to levy and collect duties on electronic transmissions. To ensure that there is coherence and uniformity, Members may have to continue to discuss these issues on a collective platform.

Conclusion

Negotiations at the WTO have become diverse and tougher. The challenges at each subsequent Ministerial Conference seem to be getting bigger and more complex than the previous Ministerial Conference. Nonetheless, it would seem important to achieve a positive outcome to break the cacophony created due to the geopolitical turmoil in different parts of the world.

However, given the wide differences between Members on most issues, particularly on critical issues like WTO dispute

settlement, permanent solution for public stockholding, etc. that prevailed even before the commencement of MC 13, the Membership needs to be prepared to accept limited or no success on these issues.

Nonetheless, given the importance of other issues like trade and investment, e-commerce, trade and sustainability, etc., the Membership should strive to achieve the maximum possible outcome on these issues so that the WTO continues to remain relevant in the global trade architecture.

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Trade Remedy News



- Aluminum extrusions from India – USA postpones preliminary determinations in the Less-Than-Fair-Value investigation
- Brass rod from India – USA issues countervailing duty order
- Carbon steel welded pipe from India – Canada issues affirmative expiry review for anti-dumping duty and countervailing duty
- Cold-drawn mechanical tubing of carbon and alloy steel from India – USA continues anti-dumping duty and countervailing duty orders
- Finished carbon steel flanges from India – USA determines that Norma (India) Ltd. and R.N. Gupta & Co. Ltd. received countervailable subsidies during 1 January 2021 to 31 December 2021
- Forged steel fluid end blocks from India – USA issues preliminary determination that countervailable subsidies were provided to Bharat Forge Limited during 2022
- Large diameter welded pipe from India – USA initiates sunset review of anti-dumping and countervailing duties
- Melamine from India – USA initiates investigations and commencement of preliminary phase anti-dumping and countervailing duty investigations
- O-chloro-p-nitroaniline from India – China issues affirmative sunset review of anti-dumping duty
- Pentaerythritol from China PR, Saudi Arabia and Taiwan – India’s DGTR recommends imposition of anti-dumping duty
- Stainless steel bar from India – USA issues affirmative sunset review of anti-dumping duty
- Steel products – European Union initiates review for possible extension of safeguard measures
- Textured tempered coated and uncoated glass from Vietnam – India initiates countervailing duty and anti-dumping duty investigations
- Vitamin- A Palmitate from China PR, EU and Switzerland – India terminates anti-dumping investigation

Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Pentaerythritol	China PR, Saudi Arabia and Taiwan	F. No. 06/04/2023-DGTR	20 February 2024	Anti-dumping duty recommended to be imposed
Textured Tempered Coated and Uncoated Glass	Vietnam	F. No. 6/32/2023-DGTR	13 February 2024	Countervailing duty investigation initiated
Textured Tempered Coated and Uncoated Glass	Vietnam	F. No. 6/29/2023-DGTR	13 February 2024	Anti-dumping duty investigation initiated
Vitamin- A Palmitate	China PR, EU and Switzerland	F. No. 6/15/2022-DGTR	9 February 2024	Anti-dumping investigation terminated

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Aluminum Extrusions	USA	FR Doc No: 2024-03145	15 February 2024	Preliminary determinations in the Less-Than-Fair-Value Investigations postponed
Brass Rod	USA	FR Doc No: 2024-03073	13 February 2024	Countervailing duty order issued
Carbon steel welded pipe	Canada	CSWP2 2023 ER	2 February 2024	ADD and CVD – Affirmative expiry review issued

Product	Investigating Country	Document No.	Date of Document	Remarks
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel	USA	FR Doc No: 2024-03684	23 February 2024	Anti-dumping duty Orders and Countervailing duty Orders continued
Finished Carbon Steel Flanges	USA	FR Doc No: 2024-03402	20 February 2024	Norma (India) Ltd. and R.N. Gupta & Co. Ltd. received countervailable subsidies during 1 January 2021 to 31 December 2021
Forged Steel Fluid End Blocks	USA	FR Doc No: 2024-02139	2 February 2024	CVD – Preliminary determination that countervailable subsidies were provided to Bharat Forge Limited during 2022
Large Diameter Welded Pipe	USA	FR Doc No: 2024-02001	1 February 2024	ADD and CVD – Sunset reviews initiated
Melamine	USA	FR Doc No: 2024-03497	21 February 2024	Institution of investigations and commencement of preliminary phase anti-dumping and countervailing duty investigations
O-chloro-p-nitroaniline	China	Announcement of Ministry of Commerce [2024] No. 5	5 February 2024	ADD – Affirmative sunset review issued
Stainless steel bar	USA	US ITC News Release 24-016	15 February 2024	ADD – Affirmative sunset review issued
Steel products	EU	C/2024/1460	9 February 2024	Review for possible extension of safeguard measures initiated



WTO News

- 13th Ministerial Conference at Abu Dhabi – Key highlights
- Indonesia initiates dispute against EU duties on imports of fatty acids
- USA held non-compliant with DSB ruling on US measures against Spanish ripe olives

13th Ministerial Conference at Abu Dhabi – Key highlights

The WTO's 13th Ministerial Conference (MC13) was recently held from 26th February to 1st March. The key takeaways from the Abu Dhabi Ministerial Declaration and other Ministerial Decisions are as follows.

- ***E-Commerce*** – Members agreed to maintain the current practice of not imposing customs duties on electronic transmissions until the 14th Session of the Ministerial Conference or 31st March 2026, whichever is earlier. The moratorium and the Work Programme will expire on that date.
- ***TRIPS Non-Violation and Situation Complaints*** – Moratorium on non-violation and situation complaints regarding the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) was also extended until MC14.
- ***Dispute Settlement Reform*** – Officials were instructed to accelerate discussions in an inclusive and transparent manner, build on the progress already made, and work on unresolved issues, including issues regarding

appeal/review and accessibility. Plan is to achieve to have a full and well-functioning dispute settlement system accessible to all Members by 2024.

- ***Transition support to countries graduating from LDC category*** – Member graduating from LDC category shall continue to benefit from special procedures available in Dispute Settlement Understanding, for three years after the date when the UN General Assembly decides to graduate that Member from the LDC category. The Member will also be eligible for LDC-specific technical assistance and capacity building provided under WTO's Technical Assistance and Training Plan for this period.
- ***Agriculture*** – Divergences remained on public stockholding (PSH) for food security purposes and in respect of timelines, expected outcomes and the scope of the flexibility to be provided to food imports by the most vulnerable countries from export restrictions.
- ***Special and differential treatment for Agreement on Application of Sanitary and Phytosanitary Measures and Agreement on Technical Barriers to Trade*** – Officials instructed to continue work in the WTO Committee on Trade and Development in Special Session, the SPS

Committee and the TBT Committee, towards enhancing the implementation of S&DT for developing Members, including LDCs, in the SPS and TBT Agreements and report on any progress by December 2024.

- *Fisheries Subsidies Agreement* has been formally accepted by some 71 WTO Members till now.
- *Services Domestic Regulation - Good regulatory practice for services markets* – The disciplines on services domestic regulation entered into force for a group of some 72 WTO members.
- *Investment Facilitation for Development Agreement* – Joint Ministerial Declaration issued by some 125 WTO members on finalisation of Investment Facilitation for Development (IFD) Agreement. According to the text of the Agreement made public, it seeks to improve transparency of measures, streamline administrative procedures, adopt other investment facilitation measures and promote international cooperation, as a means of facilitating the flow of foreign direct investment between the Parties, particularly to developing and least-developed country Parties, with the aim of fostering sustainable development.

- *Plastics pollution, environmental sustainability, and fossil fuel subsidy reform* – Members called for increased transparency and continued work on the subjects. Concrete action outlined to tackle plastic pollution.
- *Women in international trade* - WTO and the International Trade Centre (ITC) launched a USD 50 million global fund to help women tap into opportunities in international trade and the digital economy.

Indonesia initiates dispute against EU duties on imports of fatty acids

Indonesia has initiated a WTO dispute against European Union's definitive anti-dumping measures on imports of fatty acids from Indonesia. Indonesia considers that the definitive anti-dumping measures imposed by the European Union on imports of fatty acid originating in Indonesia and the investigation leading to the imposition of the measures appear to be inconsistent with various provisions of the Anti-dumping Agreement and the GATT 1994.

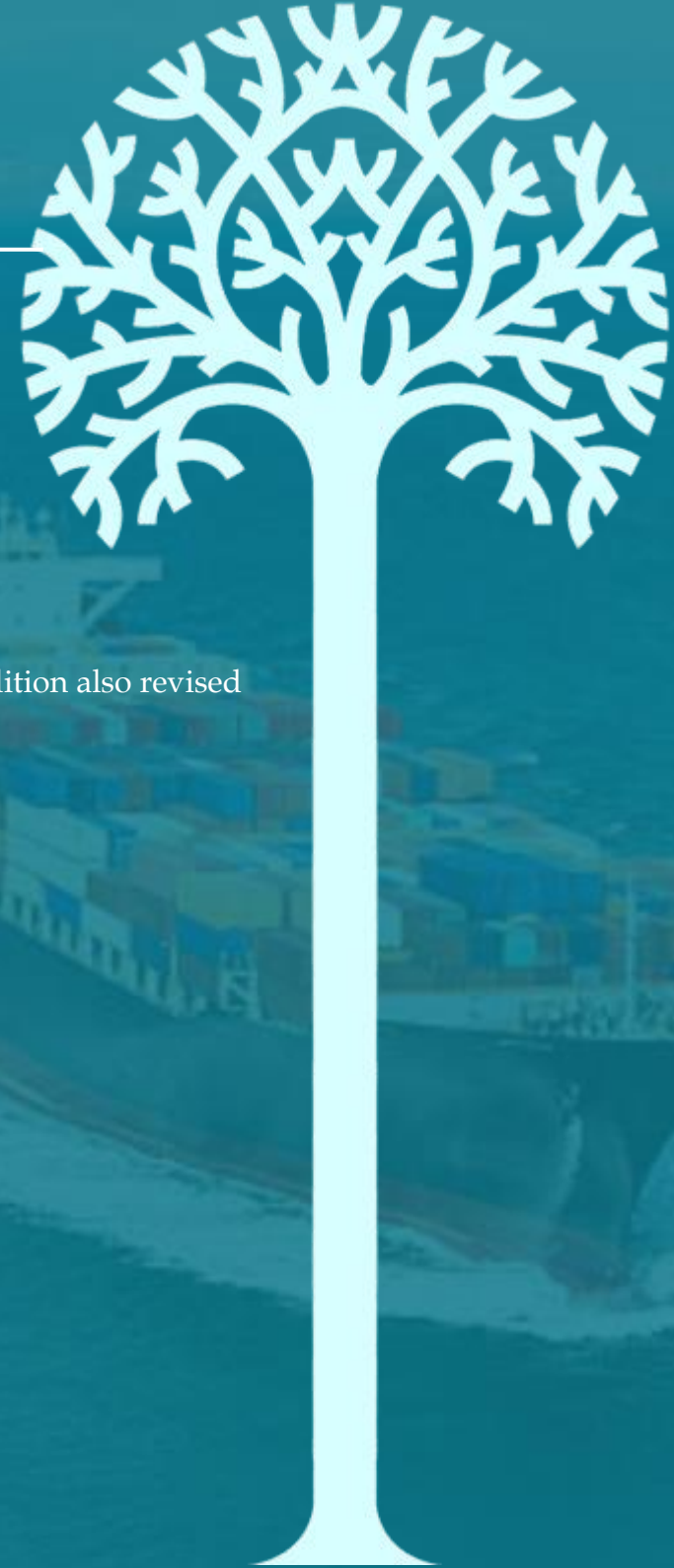
USA held non-compliant with DSB ruling on US measures against Spanish ripe olives

The WTO's Dispute Settlement Body's Compliance Panel has ruled that the United States has failed to bring its measures into

conformity with the adopted recommendations and rulings of the DSB in the dispute *United States — Anti-dumping and countervailing duties on ripe olives from Spain* (DS577). As per the ruling, the United States failed to implement the relevant aspects of the adopted DSB recommendations and rulings that Section 771B of the Tariff Act of 1930 is ‘as such’ inconsistent with Article

VI:3 of the GATT 1994 and Article 10 of the SCM Agreement. It may be noted that the Panel however declined to recommend to the United States to revoke its determination and to cease to impose countervailing duties. The report states that the Panel does not have the ability to make specific recommendations in this way.

India Customs & Trade Policy Update



- Merchanted trade within one specific foreign country, involving an Indian intermediary is allowed
- Rice, parboiled – Export duty extended beyond 31 March 2024
- Yellow peas – Exemption from BCD and AIDC extended beyond 31 March 2024 – Import Policy condition also revised
- Cotton, not carded or combed, of staple length exceeding 32.0 mm, exempted from BCD and AIDC
- Turkey meat, cranberries and blueberries – BCD reduced

Merchanting trade within one specific foreign country, involving an Indian intermediary is allowed

The Ministry of Commerce and Industry has on 29 February 2024 permitted merchanting trade carried out within one specific foreign country when involving an Indian intermediary, subject to compliance with RBI guidelines. The said benefit is however not available to goods listed in the CITES Appendices or under SCOMET. Notification No. 62/2024, dated 29 February 2024 has amended para 2.39 of the Foreign Trade Policy for this purpose. The said para earlier allowed merchanting trade only in cases which involved shipment of goods from one foreign country to another foreign country without touching Indian port.

Rice, parboiled – Export duty extended beyond 31 March 2024

The export duty on parboiled rice has been extended beyond 31 March 2024. Notification No. 12/2024-Cus., dated 21 February 2024 (effective from 22 February 2024) for this purpose amends Notification No. 55/2022-Cus., by omitting S. No. 2A in the table and Condition No. 5 in the Annexure. It may be noted that earlier Notification No. 59/2023-Cus., dated 13 October 2023 had amended Notification No. 55/2022-Cus. and revised the date of

effect of 'nil' rate of duty to 1 April 2024 instead of 16 October 2023. Export duty on this product was introduced on 25 August 2023 and was to expire on 15 October 2023 initially.

Yellow peas – Exemption from BCD and AIDC extended beyond 31 March 2024 – Import Policy condition also revised

The Ministry of Finance has extended the exemption from Basic Customs Duty (BCD) and Agriculture Infrastructure and Development Cess (AIDC) on imports of yellow peas (TI 0713 10 10) beyond 31 March 2024. The exemption would not be available on goods for which the Bill of Lading is issued on or before 30 April 2024. Amendments in this regard have been made in Notification No. 64/2023-Cus. by Notification No. 12/2014-Cus., dated 21 February 2024 which is effective from 22 February 2024.

It may be noted that Import Policy Condition for the said product has also been revised by Notification No. 61/2023, dated 23 February 2024. Consequently, import of yellow peas is free without the MIP condition and without port restrictions, subject to compulsory registration under the Import Monitoring System, for all imports consignments where bill of lading is issued on or before 30 April 2024.

Cotton, not carded or combed, of staple length exceeding 32.0 mm, exempted from BCD and AIDC

Import of cotton, not carded or combed, of staple length exceeding 32.0 mm, falling under Tariff Item 5201 00 25 of the Customs Tariff Act, 1975 has been exempted from Agriculture Infrastructure and Development Cess (AIDC), with effect from 20 February 2024. The specified goods were till 19 February liable to 5% AIDC under Sl. No. 14 of Notification No. 11/2021-Cus. which has now been amended by Notification No. 11/2024-Cus., dated 19 February 2024.

Further, Notification No. 50/2017-Cus. has been amended to insert Sl. No. 304B to provide for exemption from Basic Customs Duty to the specified product. Notification No. 10/2024-Cus. has been issued on 19 February 2024 and made effective from 20 February 2024.

Turkey meat, cranberries and blueberries – BCD reduced

The Basic Customs Duty (BCD) has been reduced to 5% on meat and edible offal, of turkeys, frozen, with effect from 20 February 2024. Similarly, BCD has been reduced to 10% on cranberries and blueberries, fresh, frozen or dried. Further, while cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, are liable to BCD @ 5%, blueberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, are liable to BCD @ 10%. Amendments in this regard have been made in Notification No. 50/2017-Cus. by Notification No. 10/2024-Cus., dated 19 February 2024, effective from 20 February 2024.



Ratio Decidendi

- ASEAN-India FTA – Absence of cost data from Malaysian exporter when not fatal for claiming benefit
- Swim seats, arm bands, etc., used by kids to remain afloat are classifiable under TI 9506 29 00 – Goods even used for fun and not competition are covered as sport equipment
- Scrap-veg-refuse is classifiable under Heading 2308 – Mere presence of starch content does not make the product potato starch

ASEAN-India FTA – Absence of cost data from Malaysian exporter when not fatal for claiming benefit

The CESTAT Ahmedabad has held that failure of Indian authorities to get more detailed verification or underlying cost data from the Malaysian Government authorities cannot be held against the assessee-importer who had discharged its burden to claim benefit of ASEAN-India FTA by producing relevant prescribed documents under the agreement and under Customs notification. The Tribunal in this regard noted that the certificate of origin was duly got verified through the Government to Government process and Malaysian authorities had not doubted the issuance of genuine certificate of origin nor its contents. Allowing the appeal filed by the importer, the Tribunal also noted that no one will part its cost data with any buyer as same is generally considered confidential. [*Kiara Ingredients Inc. v. Commissioner* – 2024 (2) TMI 740-CESTAT Ahmedabad]

Swim seats, arm bands, etc., used by kids to remain afloat are classifiable under TI 9506 29 00 – Goods even used for fun and not competition are covered as sport equipment

Sea squad swim seats, arm bands, and bio fuse fitness fin are classifiable under Tariff Item 9506 29 00 of the Customs Tariff

Act, 1975 and not under 9506 99 90 *ibid*. According to CESTAT Chennai, once the items are accepted as used for swimming, be it for recreation or otherwise in the swimming pool, classification under TI 9506 99 90 as meant for outdoor games is not correct. The Tribunal was of the view that once it was accepted that the items were meant for kids and used for swimming, the finding that since they were not used for competition but used for fun, they are not classifiable as water sport equipment, is not a logical finding. It may be noted that the Tribunal also stated that it cannot be said that swimming is only an outdoor game. It also was of the view that generally, swimming is considered as a sport rather than a game. [*Page Industries Ltd. v. Commissioner* – 2024 VIL 110 CESTAT CHE CU]

Scrap-veg-refuse is classifiable under Heading 2308 – Mere presence of starch content does not make the product potato starch

The CESTAT Chandigarh has held that scrap-veg-refuse is classifiable under Heading 2308 as vegetable waste and not under Heading 1108 as potato starch. Noting that just because the product has some starch content does not qualify it as potato starch, the Tribunal reiterated the finding of earlier decisions that mere presence of certain elements of starch in the residue or

scrap does not take it out of the purview of a waste or residue. The Tribunal also noted that the process of manufacturing starch from potato is entirely different from the process involved in present case, which was actually recycling of wastewater during which vegetable residue was separated from water. Setting aside the demand of central excise duty, the Tribunal further observed that as per HSN Explanatory notes, potato starch should be in

white powdered form while scrap-veg-refuse was in the form of wet paste; the goods did not come into existence after a manufacturing process; test report of Central Revenue Control Laboratory was not conclusive; and that such scrap/residue was exempted under various notifications. [*Pepsico India Holdings Pvt. Ltd. v. Commissioner* – 2024 VIL 150 CESTAT CHD CE]

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