

International Trade

amicus

March 2024 / Issue –151



 Lakshmikumaran
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An e-newsletter from
Lakshmikumaran & Sridharan, India

Table of Contents

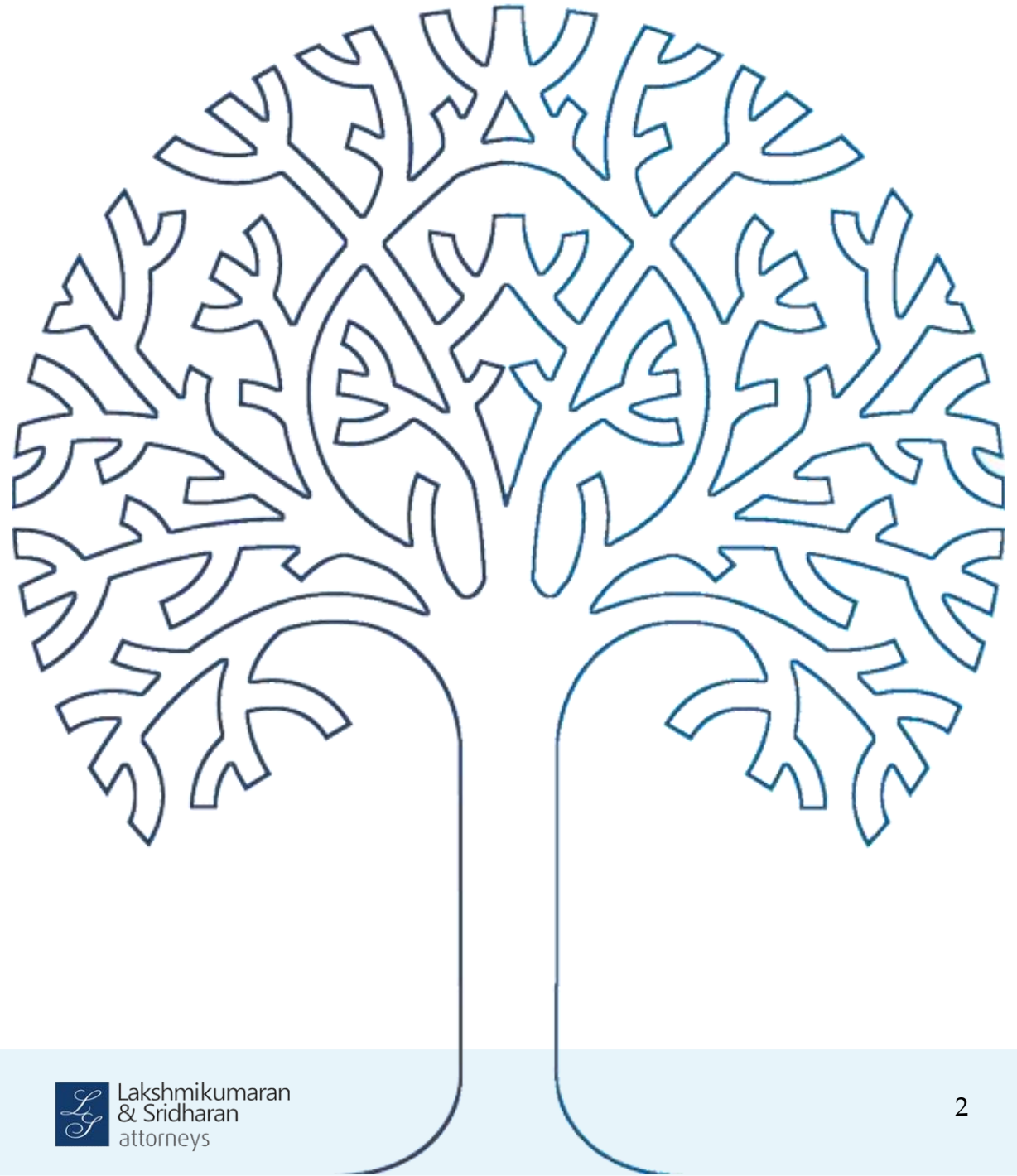
Article..... 3
 Anti-dumping duty – Overview of methodologies of calculating dumping margins4

Trade Remedy News 10
 Trade remedy measures by India12
 Trade remedy measures against India13

WTO News..... 15

India Customs & Trade Policy Update..... 18

Ratio Decidendi..... 23





Article

Anti-dumping duty – Overview of methodologies of calculating dumping margins

By Baratwaj Viswanathan

This article in this issue of International Trade Amicus intends to discuss different methodologies for comparing the export prices with the domestic selling prices in the chosen investigation period, as prescribed under the WTO's Anti-dumping Agreement and the practices followed in India, the United States of America and the European Union for this purpose. Elaborately discussing the three methodologies, with descriptive illustrations, etc., the author points out that the dumping margins under the three methodologies are not the same. Accordingly, he highlights that choosing the appropriate methodology is of utmost importance since a wrong choice of methodology may actually show dumping when it is in fact non-existent or *vice versa*. The author hence advises exporters / producers to make a proper analysis and make appropriate and timely comments on this aspect to bring it to the attention of the investigating authorities.

Anti-dumping duty – Overview of methodologies of calculating dumping margins

By Baratwaj Viswanathan

Introduction

Dumping is the practice of exporting a product at a price lower than that sold in the domestic market of the exporting country. To counter the effects of dumping, importing countries are permitted to impose anti-dumping measures pursuant to investigations conducted in respect of such dumped imports.

The establishment of dumping involves comparison of two prices - export price of the dumped article and the domestic selling price of a like article in the exporting country (the normal value). Once it has been established that there is dumping, the investigating authority needs to determine the dumping margin, which is the basis for determination of rate of anti-dumping duty ('ADD').

The methodology for comparing the export prices with the domestic selling prices in the chosen investigation period is not as simple as it may seem. The cardinal and statutory principle which runs through the entire exercise is the principle of 'fair comparison'. Therefore, the difference in timing and quantity of

sales in the home market and the export market makes the exercise complex.

For example, if during the period for investigation of dumping ('POI'), there are 10 transactions of export sales to be compared with 100 transactions of domestic sales, a question may arise whether to compare the weighted average of both prices during the POI or a monthly / quarterly comparison is warranted in the facts of a particular case. Taking another example, if for some months in the POI there are export sales but no sales in the home market and market prices were different in different months. In such scenarios, what methodology should the investigating authority employ for determining the dumping margins?

This article intends to discuss different methodologies prescribed under the World Trade Organization's ('WTO's') Agreement on Implementation of Article VI of the GATT ('AD Agreement') and the practices followed in India, the United States of America and the European Union ('EU').

Methodologies under the AD Agreement

In the international trading system, Article VI of the General Agreement on Tariffs and Trade, 1994 ('GATT') and the WTO's AD Agreement govern the conduct of anti-dumping investigations. Article 2.4.2 of the AD Agreement provides three different methodologies for determining dumping margins:

- a. Comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions ('**W-W methodology**')
- b. Comparison of normal value and export prices on a transaction-to-transaction basis ('**T-T methodology**').
- c. Comparison of weighted average normal value to prices of individual export transactions ('**W-T methodology**')

While there are no specific conditions to be satisfied to apply W-W and T-T methodologies, Article 2.4.2 requires the following conditions to be satisfied for adopting W-T methodology:

- a. there is a pattern of export prices which differ significantly among different purchasers, regions or time periods.

- b. if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

It is relevant to note that since the comparison methodology is different under the three scenarios, mathematically, the resultant margins are generally not the same in different scenarios. The following illustration will help in appreciating this aspect. Let us take the example of product A (whose imports from USA to India are being investigated), with the following details:

Exports to India from the USA			Domestic Sales in the USA		
Date	Quantity (MT)	Export price per MT (USD)	Date	Quantity (MT)	Domestic selling price per MT (USD)
1 April 2023	10	2000	1 April 2023	25	2500
10 July 2023	20	1800	9 July 2023	15	1700
12 July 2023	5	1600			

Scenario-1- Comparison under W-W methodology

Particulars	Calculation	Amount
Total quantity of exports (A)	10+20+5	35 MT
Total export value (B)	10*2000+20*1800+5*1600	USD 64,000
Weighted Average Export Price (C)	B/A	USD 1829/MT
Total quantity of domestic sales (D)	25+15	40 MT
Total domestic sale value (E)	25*2500+15*1700	USD 88,000
Weighted Average domestic selling price or Normal Value (F)	E/D	USD 2,200/MT
Dumping Margin (G)	F-C	USD 371/MT
Dumping Margin (H)	G/C	20.28%

¹ The USDOC generally applies the rule of 'zeroing' where the negative margins are ignored and are considered as zero for the purpose of calculating the weighted average margin. This results in a higher dumping margin than would otherwise result if there was no zeroing.

Scenario-2- Comparison under T-T methodology

Particulars	Export on 1 April 2023	Export on 10 July 2023	Export on 12 July 2023	Total
Quantity of exports (MT) (A)	10	20	5	35
Export price-USD/MT (B)	2000	1800	1600	--
Domestic selling price for sales made at as nearly as possible the same time-USD/MT (C)	2500	1700	1700	--
Dumping Margin-USD/MT (D=C-B)	500	(100)	100	--
Export value-(USD) (E=B*A)	20000	36000	8000	64000
Dumping Value (USD) (F=D*A)	5000	(2000) ¹	500	3500
Dumping margin (F total/E total)				5.47%

However, numerous WTO decisions (like *US – Softwood Lumber V* (DS264), *US – Softwood Lumber* (DS534) have held that zeroing is prohibited under the W-W and T-T methodologies.

Scenario-3- Comparison under W-T methodology²

Particulars	Export on 1 April 2023	Export on 10 July 2023	Export on 12 July 2023	Total
Quantity of exports (MT) (A)	10	20	5	35
Export price- USD/MT (B)	2000	1800	1600	--
Weighted average domestic selling price- USD/MT (C)	2200	2200	2200	--
Dumping Margin-USD/MT (D=C-B)	200	400	100	--
Export value- (USD) (E=B*A)	20000	36000	8000	64000
Dumping Value (USD) (F=D*A)	2000	8000	500	10500
Dumping margin (F total/E total)				16.41%

² Under the W-T methodology also, the USDOC applies the rule of zeroing. The WTO Panel in *US – Softwood Lumber* (DS534) has found that zeroing is allowed in the W-T methodology, after considering the contrary rulings of the panel and the Appellate Body in

From the above tables, it can be seen that the dumping margins under the three methodologies are not the same. The question then arises as to which is the appropriate methodology that should be considered by the investigating authority.

In *US – Softwood Lumber V* (WT/DS/264), the WTO Appellate Body ('AB') held that, as between W-W and T-T methodology, there is no hierarchy; the investigating authority has the discretion to choose between the two depending on which is most suitable in particular investigation.

In *US – Washing machines* (WT/DS/464), the AB held that both the methodologies are two symmetrical comparison methodologies which 'fulfil the same function'. The AB also held that W-T comparison methodology is asymmetrical whereby a weighted average normal value is compared to prices of individual export transactions and the said methodology allows investigating authorities to address pricing behaviour that is focused on, or 'targeted' to, purchasers, regions, or time periods.

In the same case, the AB observed that the choice between W-W and T-T methodologies is generally made by considering the factors such as the number of domestic and export

US – Washing Machines (DS464) as well as the panel in *US – Anti-Dumping Methodologies (China)* (DS471)

transactions involved, differences between the domestic and export sale models, and other factors concerning the complexity of the comparison. The AB recognized that the investigating authority may opt for the W-W methodology to avoid an overly burdensome comparison process. The AB however stated that if there are significant price fluctuations, resort can be made to the T-T comparison methodology.

The AB also held that if the use of either the W-W or T-T methodology results in targeted dumping being hidden, it is appropriate for an authority to use the W-T methodology. However, this does not mean that the W-T comparison methodology may be applied simply because of the existence of a pattern of export prices which differ significantly among different purchasers, regions or time periods. The W-W and T-T methodologies must be exhausted first before applying the W-T methodology.

Application of the comparison methodologies in different jurisdictions

India

In India, the Directorate General of Trade Remedies ('DGTR'), which is the trade remedy authority under the

Ministry of Commerce, generally applies the W-W methodology for calculating the dumping margins. The DGTR does not generally apply T-T methodology or W-T methodology for determining dumping margin.

To deal with the situation of fluctuations in prices, in some cases, DGTR has calculated the margins on quarterly basis/monthly basis and a weighted average of the same was considered (*See*, recent anti-dumping investigations on imports of Pentaerythritol from China PR, Saudi Arabia and Taiwan). It may be noted that it still needs to be tested whether the same is in accordance with the three methods statutorily prescribed in the AD Agreement as given above.

It is suggested that DGTR may consider conducting an analysis to decide which method would be appropriate in each situation. For this purpose, the interested parties may be requested to provide relevant information to enable the DGTR to decide on the appropriate methodology. This will ensure that the dumping margins calculated in all investigations are accurate and shows the true extent of dumping.

United States of America

The United States Department of Commerce ('USDOC') selects a methodology depending upon its suitability to a

particular situation. To determine whether there exists a pattern of export prices which differ significantly among different purchasers, regions, or time periods, the USDOC applies what is called as the 'Nails' test, which consists of certain statistical methods like a 'standard deviation test' and a 'price gap test' in deciding whether to apply the W-T methodology in a particular fact situation.

European Union

The European Commission ('EC'), much like DGTR in India, generally applies the W-W methodology for calculating the dumping margins. The T-T methodology is rarely applied by the EC because of its practical difficulty in application because it involves comparing each export transaction with a comparable and closest domestic sales transaction. As provided in the WTO's AD Agreement, the W-T methodology is applied only when there is targeted dumping, and the differences cannot be appropriately taken into account by the W-W and T-T methodology.

Conclusion

The W-W methodology is the most preferred methodology across jurisdictions because of the lesser complications involved. The T-T methodology is applied in situations where there are price fluctuations. However, where there is high number of transactions, the T-T methodology becomes practically very complicated to apply.

On the other hand, the W-T methodology is applied when the issue of targeted dumping cannot be addressed by the W-W and T-T methodology. The goal is to ensure calculation of correct dumping margins. Choosing the appropriate methodology is of utmost importance since a wrong choice of methodology may actually show dumping when it is in fact non-existent or *vice versa*. Hence, it is always advisable for participating exporters / producers to make a proper analysis and make appropriate and timely comments on this aspect to bring it to the attention of the investigating authorities so that correct margins are determined in an investigation.

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Trade Remedy News



- 2,4-Dichlorophenoxyacetic Acid from India – USA initiates anti-dumping and countervailing duty investigations
- Acetonitrile from China PR, Russia, Taiwan – India initiates anti-dumping investigation
- Aluminium foil from China PR – India initiates anti-dumping investigation
- Carbazole Violet Pigment 23 from India – USA issues negative determination in anti-dumping new shipper review
- Cast Aluminium Alloy Wheels or Alloy Road Wheels (ARW) used in Motor Vehicles, of size in diameters from 12" to 24" from China PR – India continues anti-dumping duty after sunset review
- Ceramic tiles from India – European Union revises Regulation to hold that anti-dumping duty is not applicable on exports by Silk Ceramics and Luxgres Ceramica LLP from India
- Ethylene Vinyl Acetate (EVA) Sheet for Solar Module from China PR – India continues anti-dumping duty after sunset review
- Frozen Warmwater Shrimp from India – USA issues preliminary determination of sale at less than normal value during 1 February 2022 till 31 January 2023
- Mattresses from India – USA issues preliminary affirmative determination of sales at less than fair value during 1 July 2022 to 30 June 2023
- Melamine from India – Countervailing duty, and less-than-fair-value investigations initiated
- New/Unused pneumatic radial tyres (including tubeless tyres), having nominal rim dia above 16", used in buses and lorries/trucks from China PR – India extends countervailing duty till 23 July 2024

Trade Remedy News



- Para-Tertiary Butyl Phenol (PTBP) from Korea RP, Singapore and USA – India imposes anti-dumping duty
- Polyester fibers from India – Brazil initiates anti-dumping investigation
- Polyethylene Terephthalate Resin from China PR – India initiates anti-absorption investigation of anti-dumping duty
- Printed Circuit Boards (PCB) from China PR and Hong Kong – India imposes anti-dumping duty
- PVC Suspension Resins from China PR, Indonesia, Japan, Korea RP, Taiwan, Thailand, USA – India initiates anti-dumping investigation
- Saccharin from China PR – India initiates anti-dumping investigation and sunset review of countervailing duty
- Self-Adhesive Vinyl (SAV) from China PR – India imposes anti-dumping duty
- Stainless Steel Bar from India – USA issues preliminary determination of sale at less than normal value during 1 February 2022 till 31 January 2023, and continues anti-dumping duty after sunset review
- Stainless Steel Flanges from India – USA issues affirmative determination of countervailing subsidies during 1 January 2021 till 31 December 2021, while Negative determination of sale at less than normal value during 1 October 2021 to 30 September 2022

Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Acetonitrile	China PR, Russia, Taiwan	F. No. 6/04/2024-DGTR	26 March 2024	Anti-dumping investigation initiated
Aluminium foil	China PR	F. No. 06/35/2023-DGTR	21 March 2024	Anti-dumping investigation initiated
Cast Aluminium Alloy Wheels or Alloy Road Wheels (ARW) used in Motor Vehicles, of size in diameters from 12" to 24"	China PR	7/2024-Cus. (ADD)	15 March 2024	Anti-dumping duty continued after sunset review
Ethylene Vinyl Acetate (EVA) Sheet for Solar Module	China PR	5/2024-Cus. (ADD)	14 March 2024	Anti-dumping duty continued after sunset review
New/Unused pneumatic radial tyres (including tubeless tyres), having nominal rim dia above 16", used in buses and lorries/trucks	China PR	1/2024-Cus. (CVD)	11 March 2024	Countervailing duty extended till 23 July 2024
Para-Tertiary Butyl Phenol (PTBP)	Korea RP, Singapore and USA	4/2024-Cus. (ADD)	14 March 2024	Anti-dumping duty imposed
Polyethylene Terephthalate Resin	China PR	F. No. 7/27/2023-DGTR	4 March 2024	Anti-absorption investigation initiated of anti-dumping duty

Product	Country	Notification No.	Date of notification	Remarks
Printed Circuit Boards (PCB)	China PR and Hong Kong	3/2024-Cus. (ADD)	14 March 2024	Anti-dumping duty imposed
PVC Suspension Resins	China PR, Indonesia, Japan, Korea RP, Taiwan, Thailand, USA	F. No. 6/33/2023-DGTR	26 March 2024	Anti-dumping investigation initiated
Saccharin	China PR	F. No. 7/34/2023-DGTR	26 March 2024	Sunset review of countervailing duty initiated
Saccharin	China PR	F. No. 6/02/2024-DGTR	26 March 2024	Anti-dumping investigation initiated
Self-Adhesive Vinyl (SAV)	China PR	6/2024-Cus. (ADD)	14 March 2024	Anti-dumping duty imposed

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
2,4-Dichlorophenoxyacetic Acid	USA	FR Doc No: 2024-05917	20 March 2024	Anti-dumping and countervailing duty investigations initiated
Carbazole Violet Pigment 23	USA	FR Doc No: 2024-06523	27 March 2024	ADD new shipper review – Negative determination
Ceramic tiles	EU	Commission Implementing Regulation (EU) 2024/804	8 March 2024	ADD not applicable on exports by Silk Ceramics and Luxgres Ceramica LLP from India

Product	Investigating Country	Document No.	Date of Document	Remarks
Frozen Warmwater Shrimp	USA	FR Doc No: 2024-04620	5 March 2024	Preliminary determination of sale at less than normal value during 1 February 2022 till 31 January 2023
Mattresses	USA	FR Doc No: 2024-04328	1 March 2024	Preliminary affirmative determination of sales at less than fair value during 1 July 2022 to 30 June 2023
Melamine	USA	FR Doc No: 2024-05126	11 March 2024	Countervailing duty investigations initiated
Melamine	USA	FR Doc No: 2024-05127	11 March 2024	Less-Than-Fair-Value investigations initiated
Polyester fibers	Brazil	Circular No. 11	20 March 2024	Anti-dumping investigation initiated
Stainless Steel Bar	USA	FR Doc No: 2024-04619	5 March 2024	Preliminary determination of sale at less than normal value during 1 February 2022 till 31 January 2023
Stainless Steel Bar	USA	FR Doc No: 2024-05172	12 March 2024	Anti-dumping continued after sunset review
Stainless Steel Flanges	USA	FR Doc No: 2024-04821	7 March 2024	Affirmative determination of countervailing subsidies during 1 January 2021 till 31 December 2021
Stainless Steel Flanges	USA	FR Doc No: 2024-05065	11 March 2024	Negative determination of sale at less than normal value during 1 October 2021 to 30 September 2022



WTO News

- India and USA agree on solution in dispute over agricultural import measures
- Australia's anti-dumping measures against certain imports from China held to be inconsistent with WTO's Anti-dumping Agreement
- European Union's certain measures on Palm Oil and Oil Palm Crop-based Biofuels from Malaysia violate WTO Agreements
- Fine denier polyester staple fiber – USA initiates safeguard investigation
- Flat-rolled products of iron, non-alloy steel, or other alloy steel – South Africa initiates safeguard investigation

India and USA agree on solution in dispute over agricultural import measures

India and USA have on 15 March 2024 announced a mutually agreed solution in the dispute *India – Measures Concerning the Importation of Certain Agricultural Products* (DS430). As per document WT/DS430/60 circulated in the WTO on 21 March 2024, the United States has consequently withdrawn its request to suspend the application to India of tariff concessions or other obligations under the General Agreement on Tariffs and Trade 1994. Similarly, India has withdrawn its request objecting to the level of suspension of concessions or other obligations under the GATT, 1994, proposed by the United States of America. It may be noted that India and USA had in July 2023 also notified of mutually agreed solutions to 6 other disputes between the two countries.

Australia's anti-dumping measures against certain imports from China held to be inconsistent with WTO's Anti-dumping Agreement

The WTO Panel has in its report dated 26 March 2024 ruled that Australia's anti-dumping measures against imports of wind towers, deep drawn stainless steel sinks and railway wheels

from China, are inconsistent with various provisions of WTO's Anti-dumping Agreement. It may be noted that the Dispute Settlement Board's Panel found it unnecessary to examine China's claim of violation of WTO's Agreement of Subsidies and Countervailing Measures (SCM Agreement) by Australia's countervailing duty measures on imports of deep drawn stainless-steel sinks from China, as the challenged aspects of the countervailing duty order had expired before establishment of the Panel. Similarly, Australia's challenge under Article 6.2 of the Dispute Settlement Understanding, was also not examined.

European Union's certain measures on Palm Oil and Oil Palm Crop-based Biofuels from Malaysia violate WTO Agreements

The WTO's Panel has ruled that European Union's certain measures on palm oil and oil palm crop-based biofuels from Malaysia are inconsistent with various provisions of the WTO's Agreement on Technical Barriers to Trade (TBT Agreement) and the GATT, 1994. One of the important findings of the Panel was that the EU's measures are inconsistent with Article III:4 of the GATT 1994 because they accorded less favourable treatment to palm oil-based biofuel from Malaysia than that accorded to like products of EU origin. It may be noted that the Panel also found

that Malaysia failed to establish a *prima facie* case of violation under the TBT Agreement or the GATT 1994 with respect to any Lithuanian measure.

Fine denier polyester staple fiber – USA initiates safeguard investigation

The USA has initiated safeguard investigations against imports of fine denier polyester staple fiber on 28 February 2024. The product covered by this investigation is fine denier polyester staple fiber (PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter, and covers all fine denier PSF, whether coated or uncoated. The investigation has been initiated pursuant to a petition filed by Fiber Industries LLC d/b/a Darling Fibers, Nan Ya Plastics Corp, America, and Sun Fiber LLC, producers of fine denier PSF in USA. The initiation was notified in the WTO on 11 March 2024.

Flat-rolled products of iron, non-alloy steel, or other alloy steel – South Africa initiates safeguard investigation

South Africa has on 23 February 2024 initiated safeguard investigation against imports of flat-rolled products of iron, non-alloy steel, or other alloy steel. The subject product is described as certain flat-rolled products of iron, non-alloy steel or other alloy steel (not including stainless steel), whether or not in coils (including products cut-to-length and 'narrow strip'), not further worked than hot-rolled (hot-rolled flat), not clad, plated or coated, excluding grain-oriented silicon electrical steel. The application was lodged by South African Iron & Steel Institute ('SAISI') an industry body, on behalf of ArcelorMittal South Africa ('AMSA'), the major producer of the subject products. The communication was circulated in WTO on 1 March 2024.

India Customs & Trade Policy Update



- Free Trade Agreements – Fourth tranche of India-Mauritius CECPA and third tranche of India-UAE CEPA to be effective from 1 April 2024
- RoDTEP benefit extended to exports by Advance Authorisation holders and by EOU and SEZ units
- Imports under Advance Authorisations, and by EOUs and SEZ units – Compliance with certain QCOs relaxed
- Electric vehicles of minimum CIF value USD 35000 – 15% BCD and nil SWS if imported under Scheme to promote manufacturing of electric passenger cars in India
- Natural honey – Minimum Export Price of USD 2000/MT imposed till 31 December 2024
- Onions – Export prohibition extended beyond 31 March 2024
- Knitted or crocheted fabrics of synthetic fibres – Minimum Import Price of USD 3.5/kg imposed till 15 September 2024
- De-oiled rice bran – Export prohibition extended till 31 July 2024
- Duck meat and edible offal, frozen – BCD reduced if imported by or for 3-Star and above operational hotel
- Dogs – Import prohibition of certain breeds of dogs identified as ferocious

Free Trade Agreements – Fourth tranche of India-Mauritius CECPA and third tranche of India-UAE CEPA to be effective from 1 April 2024

The Ministry of Finance has further reduced basic customs duty on import of goods under the India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA) and those imported under India-UAE Comprehensive Economic Partnership Agreement (CEPA). Tables in Notifications Nos. 25/2021-Cus. (relating to India-Mauritius Agreement) and 22/2022-Cus. (relating to India-UAE Agreement) have been accordingly revised by Notifications Nos. 18/2024-Cus., dated 14 March 2024 and 21/2024-Cus., dated 15 March 2024, respectively. The changes will come into effect from 1 April 2024.

RoDTEP benefit extended to exports by Advance Authorisation holders and by EOU and SEZ units

The Ministry of Commerce and Industry has extended the benefit of Scheme for Remission of Duties and Taxes on Exported Products ('RoDTEP') on exports by Advance Authorisation holders, and by Export Oriented Units and units in Special Economic Zones. It may be noted that the RoDTEP scheme itself has also been extended beyond 30 June 2024 and will now be valid till 30 September 2024. Key highlights of the

changes as notified by Notification No. 70/2023, dated 8 March 2024 and Notification No. 74/2023, dated 11 March 2024, are available [here](#).

It may be noted that consequential changes have also been made in the customs Notification No. 24/2023-Cus. (N.T.) by Notification No. 20/2024-Cus. (N.T.), dated 11 March 2024.

Imports under Advance Authorisations, and by EOUs and SEZ units – Compliance with certain QCOs relaxed

The Ministry of Commerce and Industry has relaxed the compliance requirements under Quality Control Orders ('QCOs') issued by the Ministry of Steel, the Department for Promotion of Industry and Internal Trade (DPIIT) and the Ministry of Textiles in case of imports by holders of Advance Authorisations ('AA'), Export Oriented Units ('EOUs') and units in Special Economic Zones ('SEZs') for utilization/consumption in manufacture of export products. Key highlights of this recent relaxation as notified by Notification No. 71/2023, dated 11 March 2024 inserting a new paragraph 2.03(A) in the Foreign Trade Policy 2023, and Public Notice No. 50/2023 also of the same date revising new Appendix 2Y of the Handbook of Procedures, are available [here](#).

Electric vehicles of minimum CIF value USD 35000 – 15% BCD and nil SWS if imported under Scheme to promote manufacturing of electric passenger cars in India

The Ministry of Finance has reduced basic customs duty on import of electric vehicles of minimum CIF value USD 35,000 to 15% if the same are imported under the 'Scheme to promote manufacturing of electric passenger cars in India' as notified by the Ministry of Heavy Industries (MHI) on 15 March 2024. Amendments in this regard have been made in Sl. No. 526A of Notification No. 50/2017-Cus. by Notification No. 19/2024-Cus., dated 15 March 2024. This reduced BCD is available till 31 March 2031. Similarly, amendments have been made in Sl. No. 57 of Notification No. 11/2018-Cus. related to exemption from Social Welfare Surcharge (SWS), by Notification No. 20/2024-Cus., dated 15 March 2024 to provide for total exemption from SWS on such imports.

As per the Scheme, EV passenger cars (e-4W) can initially be imported with a minimum CIF value of USD 35,000, at a duty rate of 15% for a period of 5 years from the date of issuance of approval letter by MHI. The maximum number of e-4W allowed to be imported at the aforesaid reduced duty rate shall be capped at 8,000 nos. per year and carryover of unutilized annual import

limits would be permitted. The approved applicants will be required to setup manufacturing facilities in India with a minimum investment of INR 4,150 crore (USD 500 million), for manufacturing of e-4W, which shall be made operational within a period of 3 years from the date of issuance of approval letter and achieve minimum domestic value addition of 25% within the same period.

Natural honey – Minimum Export Price of USD 2000/MT imposed till 31 December 2024

Natural honey can only be exported from India if it complies with the Minimum Export Price of USD 2000/MT. The export restriction for such goods covered under ITC(HS) Code 0409 00 00 is applicable from 14 March 2024 till 31 December 2024. Ministry of Commerce has issued Notification No. 75/2023, dated 14 March 2024 for this purpose. It may be noted that according to the notification, transitional arrangements under para 1.05 of the Foreign Trade Policy 2023 will be applicable.

Onions – Export prohibition extended beyond 31 March 2024

Prohibition to export onions falling under HS Code 0703 10 19 has been extended till further orders. The prohibition was supposed to expire on 31 March 2024. Ministry of Commerce has

issued Notification No. 81/2023, dated 22 March 2024 for this purpose.

Knitted or crocheted fabrics of synthetic fibres – Minimum Import Price of USD 3.5/kg imposed till 15 September 2024

Import of knitted or crocheted fabrics of synthetic fibres, falling under Codes 6006 31 00, 6006 32 00, 6006 33 00, 6006 34 00 and 6006 90 00 of ITC(HS) has been put under prohibited category if the Minimum Import Price is less than USD 3.5/kg on CIF. These goods are freely importable if CIF value is more than this price. It may be noted that this restriction will be applicable till 15 September 2024 as per Notification No. 77/2024, dated 16 March 2024 issued by the Ministry of Commerce.

De-oiled rice bran – Export prohibition extended till 31 July 2024

The Ministry of Commerce has extended the prohibition to export de-oiled rice bran till 31 July 2024. The export prohibition was to expire on 31 March 2024. It may be noted that the prohibition covers such goods covered under ITC(HS) Code 2306 or any other HS Code. Notification No. 76/2024, dated 15 March 2024 has been issued for this purpose by Ministry of Commerce.

Duck meat and edible offal, frozen – BCD reduced if imported by or for 3-Star and above operational hotel

The Ministry of Finance has reduced basic customs duty to 5% on duck meat and edible offal, frozen, falling under Tariff Items 0207 42 00 and 0207 45 00 of the Customs Tariff Act, 1975, if the same is imported by 3-Star and above operational hotel, or against a valid import authorisation for import of premium duck meat for supply to such hotels. The exemption is available from 7 March 2024. Sl. No. 3AB has been inserted along with Condition No. 116 in Notification No. 50/2017-Cus. (Jumbo notification) by Notification No. 13/2024-Cus., dated 6 March 2014, for this purpose. Suitable amendments have also been made in this regard in Import Policy by Notification No. 78/2024, dated 16 March 2024 by the Ministry of Commerce.

Dogs – Import prohibition of certain breeds of dogs identified as ferocious

The Ministry of Fisheries, Animal Husbandry and Dairying has issued an Office Memorandum prohibiting import of certain breeds (including mixed and cross breeds) of dogs identified as ferocious and dangerous for human life. The Memorandum has been shared by CBIC through its Instruction No. 5/2024-

Customs, dated 14 March 2024 and specifies in this regard breeds like Pitbull Terrier, Toda Inu, American Staffordshire Terrier, Fila Brasileiro, Dogo Argentino, American Bulldog, Boerboel, Kangal, Central Asian Shepherd Dog (ovcharka), Caucasian Shepherd Dog (ovcharka), South Russian Shepherd

Dog (ovcharka), Tornjak, Sarplaninac, Japanese Tosa and Akita, Mastiffs (Boerbulls), Rottweiler, Terriers, Rhodesian Ridgeback, Wolf dogs, Canario, Akbash dog, Moscow Guard dog, Cane Corso, and every dog of the type commonly known as a Ban dog or Bandog.



Ratio Decidendi

- Classification of goods imported in SKD condition – No authority to separate different parts and components – Supreme Court
- Pumps for lotion dispenser are classifiable under TI 8424 89 90 and not under Headings 8413 and 9616 – CESTAT New Delhi

Classification of goods imported in SKD condition – No authority to separate different parts and components

The Supreme Court has affirmed the CESTAT Chennai decision which had held that if the goods are presented in SKD condition, Department does not have authority of law to separate different parts and components and classify them differently in view of Rule 2(a) of General Rules for Interpretation of the Customs Tariff. The Tribunal had further observed that if the Department wishes to remove certain parts from the SKD package and classify differently, then it must establish that remaining parts, if assembled together have essential character of final product. It was noted that no such evidence was brought forward by the Department. The assessee had imported various parts and accessories in SKD condition for further use in the assembly and manufacture of Colour Doppler-SSD 4000 Ultrasound Scanner and classified them under Tariff Item 9018 19 90 of the Customs Tariff Act, 1975. The Department was of the view that the consignment had various components and some of them if separately classified would fall under Chapters 84 and 85, thus not eligible for exemption from additional duty of customs.

Assessee here was represented by Lakshmikumaran & Sridharan Attorneys. [Commissioner v. Aloka Trivitron Medical Technologies Pvt. Ltd. – (2024) 16 Centax 383 (S.C.)]

Pumps for lotion dispenser are classifiable under TI 8424 89 90 and not under Headings 8413 and 9616

The CESTAT New Delhi has held that plastic pump for lotion dispenser is correctly classifiable under Tariff Item 8424 89 90 of the Customs Tariff Act, 1975 and not under Headings 8413 and 9616 *ibid*. It was observed that the product in question was a pump not merely for displacing the liquid, as covered under Heading 8413, but also for dispersing the same. The Tribunal was of the view that pumps which simply displace the liquid are different from pumps which disperse liquid, and hence cannot be classified together under general entry of pumps if there is a category more specific. Coverage under Heading 9616 was rejected by the Tribunal while it observed that Chapter Note (d) of Chapter 84 excluded scent sprays and similar toilet sprays of Heading 9616 out of Heading 8424 and dispersing or spraying appliances of Heading 8424 are excluded from Heading 9616. [Principal Commissioner v. Aptar Pharma India Pvt. Ltd. – 2024 (3) TMI 139-CESTAT New Delhi]

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