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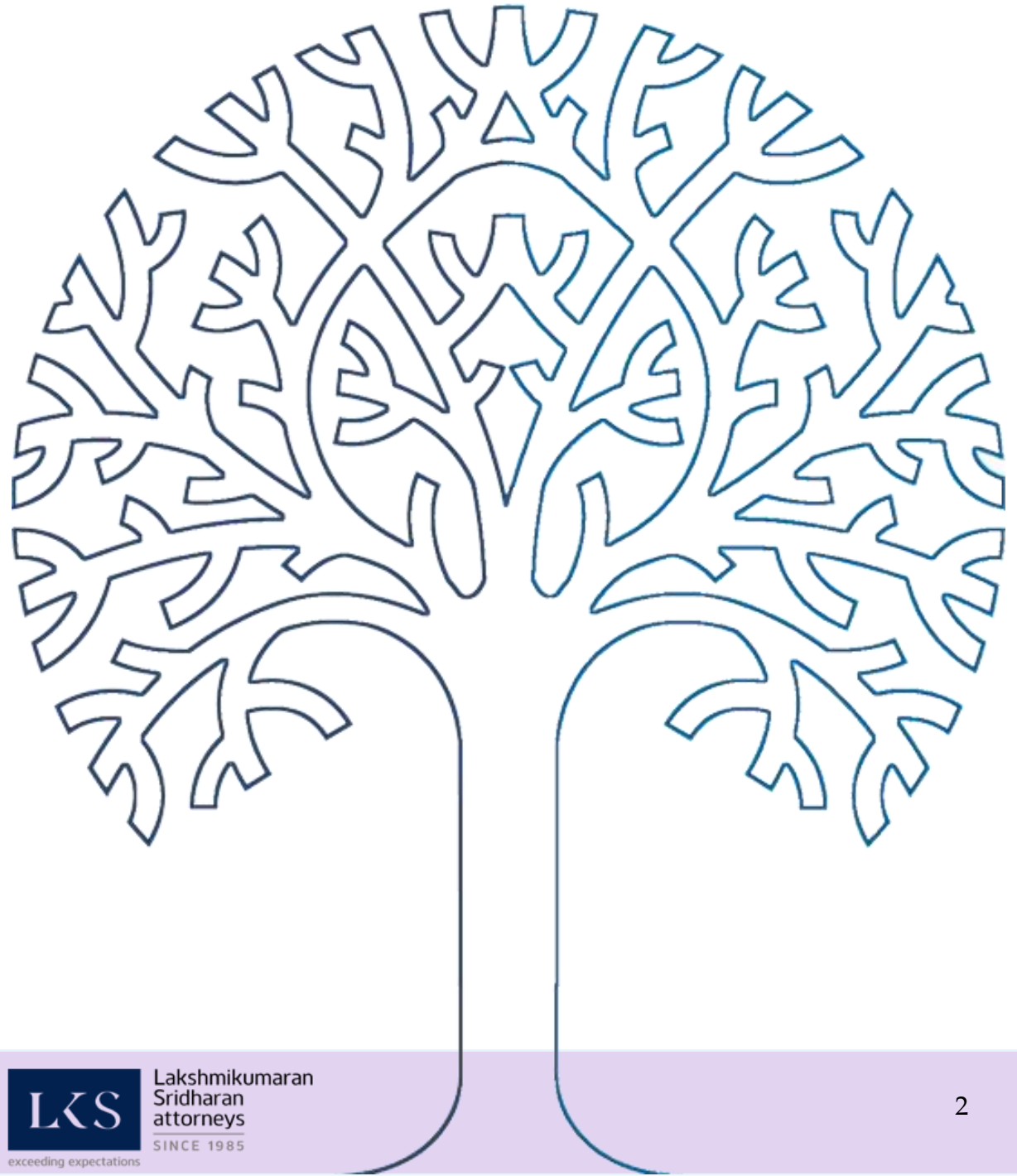
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Article

Navigating the European Union's Green Trade Frontier: Decoding EU-CBAM for Indian exporters

By Aayush Rastogi and Nikita Chauhan

The article in this issue of International Trade Amicus discusses the European Union's Carbon Border Adjustment Mechanism (CBAM), which, as per EU's claims, has been designed to put a fair price on the carbon emitted while manufacturing the goods being imported into the EU. Covering CBAM's genesis, scope and coverage, timelines and phases, the article elaborately covers compliances required by the exporters to the EU and accordingly various checkpoints for companies. According to the authors, it is important that Indian manufacturers exporting CBAM goods to the EU efficiently produce the required data if they want to maintain access to the EU market. They also highlight that EU policymakers are expected to add new products, such as plastics and chemicals, and include all products covered under the EU Emissions Trading System by 2030. However, they believe that this can be a business opportunity for companies to align their carbon footprint monitoring with international practices, get ahead of industry peers and attract customers by demonstrating their strong commitment to sustainability and climate change related legal compliances.

Navigating the European Union's Green Trade Frontier: Decoding EU-CBAM for Indian exporters

By Aayush Rastogi and Nikita Chauhan

Introduction

The European Parliament enacted Regulation (EU) 2023/956 for establishing a Carbon Border Adjustment Mechanism ('CBAM') on 10 May 2023. CBAM was formulated as part of the European Union's ('EU') 'Fit for 55' package, which aims at reducing greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels¹. The EU claims that CBAM has been designed to put a fair price on the carbon emitted while manufacturing the goods being imported into the EU, and thereby preventing carbon leakage.

According to the EU, carbon leakage occurs when businesses start relocating industries to or products are imported from countries, with less stringent environment policies, apparently to circumvent the cost-intensive climate policies in the European Union.

Before getting into the fundamentals of the CBAM, it is essential to shed light upon EU's climate-related policies that have contributed towards the occurrence of carbon leakage in the first place.

The genesis of the CBAM

The EU has consistently attempted to be at the forefront of reduction of greenhouse gas emissions. This ambitious goal became the foundational aspect of not only the CBAM, but also the European Union Emissions Trading System ('EU ETS'), which led to the establishment of one of the world's first major carbon trading market. The EU ETS is a system within the European Union that penalizes carbon-intensive manufacturing of products and incentivises low-carbon emissions.

The EU ETS follows a 'cap and trade' system under which a cap is placed upon the maximum volume of permitted emissions by manufacturing installations. Companies are given some free allowances, and each allowance gives the manufacturer the right

¹ Fit for 55, COUNCIL OF THE EUROPEAN UNION, Fit for 55 - The EU's plan for a green transition - Consilium (europa.eu) (last visited 28 May 2024).

to emit one tonne of Carbon Dioxide or an equivalent greenhouse gas. The maximum cap of allowable emissions is reduced annually. In case the companies exhaust their free allowances, they must buy extra allowances from other traders or the EU market. This system, referred to as the 'cap and trade' system, encourages the manufacturers to alter their production processes and reduce greenhouse gas emissions. However, because of the high costs associated with the EU ETS, companies are being encouraged to relocate their production facilities to countries having laxer environment related policies, thereby causing 'carbon leakage'.

Therefore, to apparently level the playing field, the EU came up with the CBAM to place accountability on the imported goods in certain carbon-intensive industry sectors.

CBAM: Scope and Coverage

CBAM currently covers six sectors: **iron and steel, aluminum, cement, fertilizers, hydrogen, and electricity**. For the goods covered under these sectors ('CBAM goods'), importers are required to declare the direct emissions (such as those related to raw materials and manufacturing) and indirect emissions (such as those related to electricity) embedded in the CBAM goods being imported into the EU. These emissions are specific to each product and manufacturing facility, making

importers dependent on their exporters/producers for all CBAM-related details. Consequently, the responsibility indirectly falls on the exporters/producers of CBAM goods to provide this information.

Timelines and Phases of CBAM

The CBAM is being implemented in two phases: transitional and definitive.

Transitional Phase (October 2023-December 2025): The transitional phase, that came into effect in October 2023, is the initial phase that was specifically designed to give EU importers a breathing period to understand the nuances of CBAM and prepare for its complete implementation. During this period, importers of CBAM goods are required to report the embedded carbon emissions in the imported goods without any financial implication.

The primary objective of this period is to collect accurate data, and allow companies to adapt to the reporting requirements, identify potential issues, and make necessary changes and adjustments before the Regulation is completely enforced during the definitive phase.

This phase is crucial for exporters of CBAM goods to the EU because the EU importers will use this phase to identify

suppliers who can support them in providing all CBAM related information and are committed to reducing their carbon footprint. The importers will also check whether their exporters are able to accurately capture and calculate their direct and indirect emissions. This will help importers identify long-term suppliers who will aid them in reducing their CBAM-related liabilities when the definitive phase of the regulation begins.

Definitive Phase (Starting 1st January 2026): Post the transitional phase, CBAM will enter its definitive phase. During this phase, EU importers will not only be required to report embedded carbon emissions, but also to buy and surrender Carbon Certificates that correspond to the embedded carbon emissions of the imported goods. The cost of the Carbon Certificates will be aligned with the prices of allowances provided under the EU ETS.

It is abundantly clear that to match the obligations and additional responsibilities placed on EU manufacturers by the EU ETS, the EU is now extending obligations upon the importers in the European Union.

Do the exporters need to worry?

Since the coming into force of the transitional phase of CBAM from October 2023, exporters of CBAM goods who are

keen on retaining their access to the EU market have been taking steps towards compliance with the CBAM.

The reporting of carbon emissions in the past two quarters has shown us that the exporters of CBAM goods to the EU have to take a lot of effort to comply with the CBAM. This is primarily because all the information that must be reported under the CBAM is production centric. Hence, even though the direct implication of the CBAM is on the importers in the EU, the main onus of compliance is on the exporters of the covered goods to the EU.

Compliances required by exporters to the EU

- *Data collection and recording:* To continue exports to the EU, every manufacturer outside the EU is now required to share their emissions data with their importers in the EU. This information is calculated by monitoring and recording all details related to production, consumption of raw materials, identifying suppliers of raw materials consumed, tracking consumption of fuels and gases, dividing consumption details between different products and between CBAM and non-CBAM goods being produced in the same manufacturing facility.

- *Rigorous record keeping:* From the manufacturers' perspective, it is an additional responsibility to now rigorously record the consumption of raw materials, fuels, electricity at different steps of the production process, specifically for CBAM goods on a quarterly basis.
- *Emissions data of Precursors:* Another cumbersome process is obtaining the emissions data of the precursors, i.e., the raw materials of covered goods that are themselves CBAM goods, from their suppliers, in the absence of which the manufacturers will have to use the default values provided by the European Commission. These default values are considerably higher than the actual emission values and are bound to increase the emission factor significantly.

Checkpoints for companies

In light of the compliances required by exporters, there are a few checkpoints that will have to be kept in mind going forward:

- *Rigorous monitoring is the key:* It is imperative that companies start monitoring the consumption of raw materials, fuels and other consumables on a monthly basis. The companies must accurately record

consumption and production details on actual basis. However, sometimes, the companies count a product as produced even when the product is in semi-finished state and has to still undergo another cycle of production process. This leads to double counting of production, and such mistakes must be avoided.

- *Process-wise Monitoring of Electricity Consumption:* Tracking the monthly consumption of electricity through the electricity bills will not be enough. This is simply because the electricity bills capture the entire usage of electricity, including electricity usage for administrative blocks of the manufacturing facility and for manufacturing of non-CBAM goods. Hence, to avoid an increase in indirect emissions due to imprecise electricity consumption for the manufacturing of CBAM goods, it is advisable that companies start tracking electricity usage separately for each production process. This will leave no room for error.
- *Limiting usage of Default Values:* CBAM requires the reporting of not only the direct and indirect emissions during the production processes, but also emissions embedded in the precursors, i.e., the raw materials

covered under CBAM. In the initial compliance period, manufacturers have used the default values provided by the EU due to difficulty in obtaining CBAM reports from their vendors. This approach needs to change, as the usage of default values without any limitation is permitted only for the first three reporting quarters. From the fourth reporting quarter, i.e., July 2024-September 2024, the usage of default values shall be limited to 20% only.

- *Inculcating 'permanent' solutions:* Monitoring data on an actual basis, and rigorously collecting the actual emissions of the precursors used in the manufacturing are crucial steps. However, these should not overshadow the ultimate goal of reducing carbon emissions. The EU is nudging companies to adopt greener practices to avoid financial consequences of carbon-intensive manufacturing. To remain competitive and profitable while exporting goods to the EU, companies must immediately start working towards reducing their carbon footprint by adopting green technology, using renewable energy, and monitoring their consumptions of raw materials and fuels.

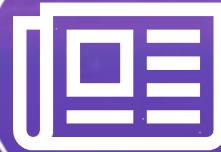
Conclusion

It is important that Indian manufacturers exporting CBAM goods to the EU efficiently produce the required data if they want to maintain access to the EU market. Moving forward, it is expected that EU policymakers will continue to refine the CBAM and increase the pressure on exporters to provide accurate data. Other countries are likely to follow suit and implement similar programs and regulations. Further, EU policymakers are expected to add new products, such as plastics and chemicals, and include within the scope of CBAM, all products covered under the EU ETS by 2030.

This, however, can be seen as a business opportunity by companies to align their carbon footprint monitoring with international practices, get ahead of industry peers and attract customers by demonstrating their strong commitment to sustainability and climate change related legal compliances.

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Trade Remedy News.



- 2,4-Dichlorophenoxyacetic Acid from India – USA issues affirmative determination of material injury due to sale at less than fare value and subsidization
- Aluminum Extrusions from India – USA issues preliminary affirmative determination of sale at less than fare value between 1 October 2022 to 30 September 2023
- Barium Chloride from India – USA initiates administrative review of countervailing duty order for period 17 June 2022 till 31 December 2023
- Brass Rod from India – USA schedules final phase of the anti-dumping and countervailing duty investigations
- Carbon and Alloy Steel Threaded Rod from India – USA issues preliminary finding of sale at prices below normal value from 1 April 2022 till 31 March 2023
- Ceramic Tile from India – USA initiates countervailing duty and less-than-fare-value investigations
- Chlorinated Polyvinyl Chloride from China PR and Korea RP – India's DGTR recommends continuation of anti-dumping duty after sunset review
- Common Alloy Aluminum Sheet from India – USA issues preliminary determination that countervailable subsidies were provided during 1 January 2022 and 31 December 2022
- Epoxy Resins from India – USA issues affirmative determination of material injury due to sale at less than fare value and subsidization
- Glycine from India – USA initiates sunset reviews of anti-dumping and countervailing duties
- Granular Polytetrafluoroethylene Resin from India – USA initiates administrative reviews of anti-dumping duty order for period 1 March 2023 till 29 February 2024 and for CVD order for period 1 January 2023 till 31 December 2023

Trade Remedy News



- High Chrome Cast Iron Grinding Media from India – USA initiates anti-dumping and countervailing duties investigations
- Large Diameter Welded Pipe from India – USA issues affirmative sunset review of countervailing duty order
- Low Ash Metallurgical Coke – India’s DGTR recommends Safeguard Quantitative restriction
- New Pneumatic Off-The-Road Tyres from India – USA initiates administrative reviews of anti-dumping duty order for period 1 March 2023 till 29 February 2024 and for CVD order for period 1 January 2023 till 31 December 2023
- Optical fibre cables from India – EU initiates anti-subsidy investigation
- Organic Soybean Meal from India – USA issues preliminary determination of provision of countervailable subsidies from 3 September 2021 till 31 December 2022
- Paper Shopping Bags from India – USA issues affirmative determination of provision of countervailing subsidies between 1 January 2022 till 31 December 2022 and affirmative determination of sale at less than fair value between 1 April 2022 till 31 March 2023
- Pentaerythritol from China PR, Saudi Arabia and Taiwan – India imposes anti-dumping duty
- Saccharin in all its forms from China PR – India extends countervailing duty till 28 February 2025
- Silicomanganese from India – USA initiates sunset review of anti-dumping duty
- Stainless Steel Flanges from India – USA partially revokes anti-dumping duty and countervailing duty orders after changed-circumstances review
- Trichloro Isocyanuric Acid from China PR and Japan – India’s DGTR recommends provisional anti-dumping duty

Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Chlorinated Polyvinyl Chloride	China PR, Korea RP	F. No. 7/28/2023-DGTR	25 May 2024	Anti-dumping duty sunset review recommends continuation of duty
Low Ash Metallurgical Coke	All countries	F. No. 22/4/2023 - DGTR	29 April 2024	Safeguard Quantitative restriction recommended
Pentaerythritol	China PR, Saudi Arabia and Taiwan	8/2024-Cus. (ADD)	16 May 2024	Anti-dumping duty imposed
Saccharin in all its forms	China PR	2/2024-Cus. (CVD)	28 May 2024	Countervailing duty extended till 28 February 2025
Trichloro Isocyanuric Acid	China PR and Japan	F. No. 6/20/2023 - DGTR	1 May 2024	Provisional anti-dumping duty recommended

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
2,4-Dichlorophenoxyacetic Acid	USA	FR Doc No: 2024-11409	24 May 2024	Affirmative determination of material injury due to sale at less than fare value and subsidization

Product	Investigating Country	Document No.	Date of Document	Remarks
Aluminum Extrusions	USA	FR Doc No: 2024-09926	7 May 2024	Preliminary affirmative determination of sale at less than fare value between 1 October 2022 to 30 September 2023
Barium Chloride	USA	FR Doc No: 2024-09970	8 May 2024	Administrative review of countervailing duty order initiated for period 17 June 2022 till 31 December 2023
Brass Rod	USA	FR Doc No: 2024-09383	1 May 2024	Final phase of the anti-dumping and countervailing duty investigations scheduled
Carbon and Alloy Steel Threaded Rod	USA	FR Doc No: 2024-09780	6 May 2024	Preliminary finding of sale at prices below normal value from 1 April 2022 till 31 March 2023
Ceramic Tile	USA	FR Doc No: 2024-10753	16 May 2024	Countervailing duty investigation initiated
Ceramic Tile	USA	FR Doc No: 2024-10749	16 May 2024	Less-Than-Fair-Value Investigation initiated
Common Alloy Aluminum Sheet	USA	FR Doc No: 2024-09590	2 May 2024	Preliminary determination that countervailable subsidies were provided during 1 January 2022 and 31 December 2022
Epoxy Resins	USA	FR Doc No: 2024-11401	24 May 2024	Affirmative determination of material injury due to sale at less than fare value and subsidization
Glycine	USA	FR Doc No: 2024-09424	1 May 2024	Sunset reviews of anti-dumping and countervailing duties initiated

Product	Investigating Country	Document No.	Date of Document	Remarks
Granular Polytetrafluoroethylene Resin	USA	FR Doc No: 2024-09970	8 May 2024	Administrative reviews of anti-dumping duty order initiated for period 1 March 2023 till 29 February 2024 and for CVD order for period 1 January 2023 till 31 December 2023
High Chrome Cast Iron Grinding Media	USA	FR Doc No: 2024-09509	2 May 2024	Anti-dumping and countervailing duties investigations initiated
Large Diameter Welded Pipe	USA	FR Doc No: 2024-11207	22 May 2024	Affirmative sunset review of countervailing duty order
New Pneumatic Off-The-Road Tires	USA	FR Doc No: 2024-09970	8 May 2024	Administrative reviews of anti-dumping duty order initiated for period 1 March 2023 till 29 February 2024 and for CVD order for period 1 January 2023 till 31 December 2023
Optical fibre cables	EU	C/2024/3206	17 May 2024	Anti-subsidy investigation initiated
Organic Soybean Meal	USA	FR Doc No: 2024-11909	30 May 2024	Preliminary determination of provision of countervailable subsidies from 3 September 2021 till 31 December 2022
Paper Shopping Bags	USA	FR Doc No: 2024-11481	24 May 2024	Affirmative determination of provision of countervailing subsidies between 1 January 2022 till 31 December 2022
Paper Shopping Bags	USA	FR Doc No: 2024-11480	24 May 2024	Affirmative determination of sale at less than fare value between 1 April 2022 till 31 March 2023

Product	Investigating Country	Document No.	Date of Document	Remarks
Silicomanganese	USA	FR Doc No: 2024-09424	1 May 2024	Sunset review of anti-dumping duty initiated
Stainless Steel Flanges	USA	FR Doc No: 2024-10789	17 May 2024	Anti-dumping duty and countervailing duty orders partially revoked after changed-circumstances review

India Customs & Trade Policy Update



- India-Korea CEPA – Electronic Certificate of Origin is now acceptable
- India-UAE CEPA – Additional security features issued by UAE in Certificate of Origin
- Bengal Gram (Desi Chana) and Yellow Peas – BCD exemption
- Onions exports allowed with USD 550/MT MEP and 40% export duty
- Ortho-phosphoric Acid imported for manufacture of fertilisers exempted from following BIS standard for 90 days

India-Korea CEPA – Electronic Certificate of Origin is now acceptable

Pursuant to the implementation of the India-Korea Electronic Origin Data Exchange System (EODES), the Central Board of Indirect Taxes and Customs (CBIC) has clarified that electronic certificates of origin are acceptable for claiming preferential benefits under the India-Korea Comprehensive Economic Partnership Agreement (CEPA). As per CBIC Instruction No.10/2024-Customs dated 1 May 2024, a system has been designed in ICES to verify such CoO against data received from customs department of exporting country and to automatically debits e-CoO quantity from the COO certificate ledger. It has been thus clarified that physical defacement of printed copy of e-COO is no longer required in respect of India-Korea CEPA.

India-UAE CEPA – Additional security features issued by UAE in Certificate of Origin

The Government of the United Arab Emirates (UAE) has announced the inclusion of a new security feature for Certificates of Origin (COO) to be issued by it under the India-UAE Comprehensive Economic Partnership Agreement (CEPA). As per CBIC Instruction No.11/2024-Customs, dated 1 May 2024,

this feature is a QR Code for the COO and has a specified password. Further, it is stated that all the COO shall also bear a unique, sequential serial number.

Bengal Gram (Desi Chana) and Yellow Peas – BCD exemption

Basic Customs duty (BCD) and Agriculture Infrastructure and Development Cess (AIDC) on the import of Bengal Gram (Desi Chana) falling under Tariff Item 0713 20 20 have been exempted up to 31 March 2025. Further, BCD exemption 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 October 2024. Notification No. 24/2024-Customs dated 3 May 2024 amends Notifications Nos. 48/2021-Cus., 49/2021-Cus., and 64/2023-Cus., with effect from 4 May 2024 for this purpose. 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 October 2024, instead of 30 June 2024. Compulsory registration under the online Import Monitoring System, however, remains intact. The Ministry of Commerce has issued Notification No. 12/2024-25, dated 8 May 2024 for this purpose.

Onions exports allowed with USD 550/MT MEP and 40% export duty

The DGFT has revised the export policy for onions falling under HS Code 0703 10 19, from 'prohibited' for export to 'free' for export. However, as per the revised policy, effective from 4 May 2024, onion exports are subject to a Minimum Export Price (MEP) of USD 550 per Metric Ton (MT). The Ministry of Commerce Notification No. 10/2024-25, dated 4 May 2024 has amended Chapter 07 of Schedule 2 of ITC(HS) Export Policy for this purpose.

Further, it may be noted that an export duty of 40% has been imposed on onions falling under sub-heading 0703 10 of the Customs Tariff Act, 1975, with effect from 4 May 2024. Customs Notification No. 27/2011-Cus. has been amended by

Notification No. 24/2024-Cus., dated 3 May 2024 for this purpose.

Ortho-phosphoric Acid imported for manufacture of fertilisers exempted from following BIS standard for 90 days

The Ministry of Chemicals and Fertilisers has exempted Ortho-phosphoric Acid used in fertiliser manufacturing from BIS standard IS 798:2020 implemented through Ortho Phosphoric Acid (Quality Control) Order, 2021. As per the proviso inserted by Ortho Phosphoric Acid (Quality Control) Amendment Order, 2024, this exemption is for ninety days from publication of Notification S.O. 1709(E), dated 13 April 2024. CBIC has now issued Instruction No. 09/2024-Customs dated 22 April 2024 to sensitize officers on this.



Ratio Decidendi

- Anti-dumping duty – Central Government cannot revoke anti-dumping duty without following prescribed procedure which is not directory – Gujarat High Court
- Safeguard duty on solar cells and modules – Notification dated 30 July 2018 is valid though effective from 10 September 2018 – Madras High Court
- India-Malaysia FTA – Certificate of Origin by Malaysian Government cannot be disputed without complying with Rule 9 – CESTAT Ahmedabad
- Classification under Chapter 39 – Sub-heading Note is relevant for choosing sub-heading within a Heading and not for change of classification from one Heading to another – CESTAT Ahmedabad
- Plastic insulated boxes for carrying vaccines and blood are classifiable under Customs Heading 9018 – CESTAT Ahmedabad
- Coconut powder having 46.8% oil content is classifiable under Customs Heading 2306 – CESTAT Bengaluru
- Sweet Pearl P200/Maltitol crystals being polyol compound are classifiable under Customs Heading 2905 – CESTAT Chennai

Anti-dumping duty – Central Government cannot revoke anti-dumping duty without following prescribed procedure which is not directory

The Gujarat High Court has set aside Notification No. 3/2020-Cus. (ADD), dated 2 February 2020 which had rescinded Notifications Nos. 28/2016-Cus. (ADD) and 28/2019-Cus. (ADD), which in turn had imposed anti-dumping duty on Purified Terephthalic Acid originating in or exported from China PR, Iran, Malaysia, Taiwan, Korea RP and Thailand.

Allowing the petition against revocation of anti-dumping duty without initiating sunset review, the High Court noted that the issue was no longer *res integra*, as was dealt with by the High Court earlier in the case of *Realstrips Ltd.*, wherein the Court had held that rescinding a notification imposing countervailing duty was bad as same was to be done pursuant to commencement of process of sunset review. The High Court in the present dispute noted that levy of countervailing duty has provisions *pari materia* to levy of anti-dumping duty. It also observed that while in the earlier decision the sunset review of countervailing duty had not been completed, the sunset review was never initiated in the present dispute.

The High Court hence held that the Central Government could not have issued the notification rescinding the anti-dumping duty in absence of any recommendatory exercise conducted by the Designated Authority and without waiting for such recommendation of the DA in accordance with the prescribed procedure in the Rules. It was also of the view that the procedure prescribed under the Customs Tariff Act, 1975 and the Anti-dumping Rules could not be considered as directory as the same would reduce the entire scheme of levy of ADD as futile exercise to be carried out by treating such procedure as optional. [*Reliance Industries Ltd. v. Union of India* – 2024 VIL 446 GUJ CU]

Safeguard duty on solar cells and modules – Notification dated 30 July 2018 is valid though effective from 10 September 2018

The Madras High Court has set aside the challenge to the Ministry of Finance Notification No.1/2018 (SG), dated 30 July 2018, imposing safeguard duty on import of solar cells and modules into India. The notification was however held to be effective only from 10 September 2018 and not from its date of issuance, i.e., 30 July 2018.

The High Court in this regard noted that though the interim order of injunction passed by the Odisha High Court, prohibiting Union of India from issuing any notification under Rule 12 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, was in force when the notification was issued, the said HC order was stayed by the Supreme Court on 10 September 2018. According to the Court, hence on and from 10 September 2018, the notification would become operative, as the prohibitory order did not exist. The Court thus rejected the contention that as the notification was issued during the subsistence of the prohibitory order, even after the prohibitory order was stayed by the superior court, still the notification would be inoperative.

Further, the Court held that the notification in question could not be faulted on the grounds of being violative of the Constitution of India, violative of the enabling Act, or contrary to the other statutory provisions. It was also of the view that said notification was not so arbitrary that it could be said to be not in conformity with the statute or Article 14 of the Constitution. [*Shapoorji Pallonji Infrastructure Capital Co. Private Ltd. v. Union of India* – 2024 VIL 462 MAD CU]

India-Malaysia FTA – Certificate of Origin by Malaysian Government cannot be disputed without complying with Rule 9

The CESTAT Ahmedabad has reiterated that without complying with Rule 9 of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Republic of India and Malaysia) Rules, 2011, the certificate of origin (CoO) issued by the Malaysian Government cannot be disputed. The Revenue department had in this case imposed anti-dumping duty on PVC Flex banner imported from Malaysia, alleging that the goods were from China PR. The Department had for this purpose relied upon Bill of Lading and statement of various persons.

Observing that the Certificate of Origin from Malaysian Government had declared that the goods were produced in Malaysia, the Tribunal held that to establish whether the certificate of origin is genuine, retroactive check needs to be done by the Customs Authority with the issuing authority. The Tribunal was of the view that merely on the basis of any other material such as various statements and Bill of Lading, the CoO issued by the Malaysian Government cannot be doubted. [*Jai Goverdhan Enterprise v. Commissioner* – 2024 VIL 514 CESTAT AHM CU]

Classification under Chapter 39 – Sub-heading Note is relevant for choosing sub-heading within a Heading and not for change of classification from one Heading to another

In a case involving classification of 'PVC resin impact modifier Kane ACE B 22', the CESTAT Ahmedabad has held that for choosing the Heading within Chapter 39 of the Customs Tariff Act, 1975, the Chapter Note 4 is relevant while choosing the sub-heading within the Heading has to be done in terms of sub-heading notes. Observing that the goods had almost 50% Butadiene content, the Tribunal, relying upon Chapter Note 4, classified the goods under Heading 3902. It was also held that once the classification is decided under Heading 3902, the sub-heading notes become relevant for classification within the said Heading. According to the Tribunal, the question of change of classification from 3902 to 3906, as contended by the Department, on the strength of sub-heading note, does not arise. [*Uniworth Enterprises LLP v. Commissioner* – 2024 (5) TMI-CESTAT Ahmedabad]

Plastic insulated boxes for carrying vaccines and blood are classifiable under Customs Heading 9018

The CESTAT Ahmedabad has held that insulated boxes made plastic, for carrying vaccines and blood, are classifiable under Heading 9018 of the Customs Tariff Act, 1975 and not under Tariff Item 3923 10 30. The Tribunal in this regard noted that Courts and Tribunals have been consistently holding that if goods are specifically designed for medical use, classification under Heading 9018 should be preferred over any other classification given to similar products not used for medicinal purposes. It observed that the goods in the present case were specifically designed for medical use and supplied to actual users. Revenue's reliance on Chapter Note 1(L), which excluded special blood storage bottles from Heading 9018, was rejected by the Tribunal, while it observed that there was no specific exclusion of boxes. [*Commissioner v. Deputy Director, Animal Husbandry* – 2024 (5) TMI 903-CESTAT Ahmedabad]

Coconut powder having 46.8% oil content is classifiable under Customs Heading 2306

The CESTAT Bengaluru has held that coconut in powder form having 46.8% oil content and thus confirming to the FSSAI (Food Products Standards and Food Additives) standard of defatted

coconut is classifiable under Heading 2306 of the Customs Tariff Act, 1975 and not under Tariff Item 0801 11 10. The Tribunal found unsustainable the findings of the adjudicating authority that to bring the goods under Heading 2306, oil should have been removed from the goods and the same were to be in the nature of residue material suitable for any subsequent use after their primary use in food industry. The CESTAT in this regard noted that such finding was only based on the standard of Codex, without considering the standard prescribed by the FSSAI. Dismissing the Department's appeal, the Tribunal held that such a method for classification of food articles was *prima facie* unsustainable. [*Commissioner v. Pavan Enterprises – (2024) 18 Centax 39 (Tri.-Bang)*]

Sweet Pearl P200/Maltitol crystals being polyol compound are classifiable under Customs Heading 2905

The CESTAT Chennai has held that Sweet Pearl P200/Maltitol crystals being a polyol compound, are specifically classifiable under Heading 2905 of the Customs Tariff Act, 1975. The Tribunal in this regard observed that even the HSN explanatory notes to Heading 2905 provided examples of other polyhydric alcohols. Revenue department's contention that the goods in question being artificial sweetener and a food ingredient used in the manufacture of chewing gum, merit classification as a food flavouring material under Heading 2106, was thus rejected by the Tribunal while it observed that impugned order did not discuss the properties of a flavour enhancer and how the goods in question fit into the said description. *Assessee in this case was represented by Lakshmikumar & Sridharan Attorneys.* [*Wrigley India Pvt. Ltd. v. Commissioner – (2024) 18 Centax 72 (Tri.-Mad)*]

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