

WTO

- [DG Azevêdo announces he will step down on 31 August 2020.](#)
The resignation of the DG at this critical juncture in terms of international trade and the WTO may have certain consequences. The new DG will have to pave the path for the next Ministerial Conference in 2021.
- [WTO DG welcomed G20 ministers' endorsement of collective action measures to mitigate the impact of the COVID-19 pandemic on trade and investment and help foster global economic recovery.](#)
- Certain SPS and TBT measures notified by Members:
 - [SPS Committee - Notification - Japan - Plant and plant products](#)
 - [SPS Committee - Notification - European Union - Pesticides - Residues - Benfluralin](#)
 - [TBT Committee - Notification - European Union - Hazardous mixtures bespoke paints](#)
 - [TBT Committee - Notification - European Union - Hazardous mixtures](#)

United States & European Union

- [European Commission \(EC\) introduces new monitoring system for steel and aluminium imports](#)
Unlike EC's prior monitoring system, the new monitoring system is an ex-post system based on actual import data transmitted by the Member States customs authorities and does not allow obtaining information on intentions to import.
- [USTR Lighthizer opinion in New York Times on The Era of Offshoring U.S. Jobs Is Over](#)
Lighthizer writes that the path to certainty and prosperity is the same for US companies and workers that is to shift the emphasis on efficiency and bring the jobs back to America.
- [USDOC announced Rescission of Countervailing Duty Administrative Review of Welded Stainless Pressure Pipe from India](#)
US has rescinded administrative review in this case because Sunrise Group made timely submission requesting to withdraw its request for administrative review and no other parties requested an administrative review of the order.

India

- [Initiation of Anti-dumping investigation concerning imports of Plain Medium Density Fibre Board having thickness 6 mm and above produced by M/s Kim Tin MDF Joint Stock Company](#)
- [Sunset Review Investigation initiated for Phthalic Anhydride originating in or exported from Russia and Japan](#)
- [DGTR recommends provisional safeguard duties on "Phthalic Anhydride" from Korea under India-Korea Comprehensive Economic Partnership Agreement \(Bilateral Safeguard Measures\) Rules, 2017 for a period of 200 days.](#)

DGTR initiates an anti-dumping investigation against a specific exporter

Background

On May 11, 2020, the Directorate General of Trade Remedies (**Designated Authority**) initiated an anti-dumping investigation (**Initiation Notification**) concerning imports of Plain Medium Density Fiber Board produced by M/s Kim Tin MDF Joint Stock Company, Vietnam (**KTC**).^[1]

Interestingly, the Initiation Notification specifies that in the original anti-dumping investigation concerning the import of the subject goods from Indonesia and Vietnam (**original investigation**)^[2], the Designated Authority has recommended application of definitive anti-dumping duty, which is effective till July 13, 2021.^[3] KTC had participated in the original investigation as an exporter from Vietnam and the Initiation Notification notes that no definitive anti-dumping duty was applied on KTC in the original investigation since its

^[1]Initiation of anti-dumping investigation concerning imports of Plain Medium Density Fiber Board having thickness 6mm and above produced by produced by M/s Kim Tin MDF Joint Stock Company F. No.6/9/2020 – DGTR (hereinafter referred to as "**Initiation Notification**")

^[2] Initiation of investigation concerning the import of the subject goods from Indonesia and Vietnam File No 14/23/2014-DGAD dated 7 May 2015

^[3] Final Finding in anti-dumping investigation concerning the import of the subject goods from Indonesia and Vietnam File No F. NO. 14/23/2014-DGAD dated 5 May 2016

dumping margin was below *de minimis*. Accordingly, the Initiation Notification states that the original investigation against KTC was *terminated* and that no review can be initiated against KTC.^[4]

This is the first time the Designated Authority has initiated, in a manner of speaking, an original investigation against a specific exporter. The Initiation Notification described above is quite an anomaly and raises many questions. This article examines some of these questions from the perspective of the World Trade Organization (**WTO**) agreements and domestic Indian law, which includes provisions of the Customs Tariff Act, 1975 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (**AD Rules**) including the practices followed thereto for conducting the analysis as mandated under the law.

Analysis

First, the Initiation Notification specifies that the original investigation with respect to KTC has been terminated because KTC had a *de minimis* dumping margin. If **termination** refers to termination of an investigation with respect to a specific exporter, the DGTR's statement may be incorrect. In fact, the previous final finding in the original investigation does not terminate the investigation with respect to KTC. This is also evident from the customs notification issued by the Department of Revenue which refers to KTC and accords nil duty to exports from KTC.^[5] Further, there was no official communication from the DGTR terminating the investigation with respect to KTC as required under Rule 14(c) of the AD Rules. Since, there was no **termination** of investigation, the DGTR could have simply initiated a sunset review investigation and covered all exporters from Vietnam including KTC. This is consistent with the previous decisional practice of the DGTR.^[6]

Second, the DGTR's change in approach appears to stem from interpretation of Article 5.8 of the WTO Anti-dumping Agreement (**ADA**). Article 5.8 of the ADA mandates the "*immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible*". Similarly, Rule 14 (c) of the AD Rules specifies that the Designated Authority shall, by issue of a public notice, terminate an investigation immediately if it determines that the margin of dumping is less than two per cent of the export price.

The Appellate Body in *Mexico – Anti-Dumping Measures on Rice* has sought to clarify the meaning of the term **margin of dumping** in Article 5.8 of ADA and found that it refer to the individual margin of dumping of an exporter or producer rather than to a country-wide margin of dumping.^[7] An extrapolation of the meaning of **margin of dumping** in terms of Article 5.8 of the ADA as interpreted by the Appellate Body with respect to Rule 14 (c) of the AD Rules would thus, require the termination of investigation *with respect to* each exporter with a margin of dumping below *de minimis*. The Appellate Body clarified that while there is a **single investigation**, Article 5.8 requires the **immediate termination** of this investigation in respect of the individual exporter or producer for which a zero or *de minimis* margin is established. The Appellate Body's interpretation raises several questions that are unanswered. For example, the Appellate does not adequately address the meaning of the phrase **the margin of dumping established in relation to the imports from each country** appearing under Article 3.3 while interpreting the term **margin of dumping** under Article 5.8 of the ADA. It simply stipulates two possible meanings and chooses to adopt one meaning over the other without offering adequate reasoning.^[8]

However, the above interpretation appears to be fraught with several procedural and administrative concerns.

- For instance, if an investigating authority determines *de minimis* dumping margin for an exporter in an original investigation and thus, terminates the investigation with respect to such exporter, it is unlikely to be able to include such an exporter in a future review investigation if the pricing practices of such exporter changes. It may need to initiate a fresh investigation against the particular exporter. In a given case, this may require the investigating authority to initiate a number of original cases concerning imports of same products from the same country giving rise to multitude of investigations when the same objective could have been achieved through a single review investigation. This may also lead to multiplicity of subsequent

^[4] Initiation Notification, para. 3

^[5] Notification No. 34/2016-Customs (ADD), dated 14 July 2016, available at <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-add2016/csadd34-2016.pdf>

^[6] See, e.g., Final Findings in Sunset Review of Anti-Dumping Duty imposed on imports of Digital Offset Printing Plates originating in or exported from China PR dated 23 April 2018 (The DGTR in this review investigation included all exporters from China despite on exporter having been accorded nil duty in the original investigation).

^[7] Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, para. 216.

^[8] *Ibid.* para. 220

review proceedings arising out of such fresh investigations. This will add to the administrative costs of an investigating authority.

- *Second*, under Indian laws, the DGTR may initiate an original investigation only upon receiving a well substantiated written application by a domestic industry. The application must be supported by adequate evidence on dumping, injury and causation. If the investigation is initiated against a particular exporter and not against a subject country, it is unclear how the evidence on dumping and injury *qua* a specific producers would be collected so as meet the requirement of Rule 5 of the AD Rules. It is nearly impossible to collate producer/exporter specific data on imports into India unless an applicant receives special authorization from the DGTR to access such data from the Directorate General of Commercial Intelligence and Statistics (**DGCIS**) – India’s official agency that acts as a repository of trade data. Even if such an authorization is granted, it will have questions with respect to confidentiality of the export price of the specific producer which would now be accessible to an applicant.
- *Third*, Indian rules do not stipulate injury from a specific exporter from a country. Rule 11(1) of the AD Rules states that “in the case of *imports from specified countries*, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.” Therefore, the concept of injury is anchored to the imports from *specified countries* and not to specified exporters. In such case, it remains unclear how the DGTR would assess injury and causal link issues from exports made by a specific producer/exporter.

Finally, one could argue that Rule 11(1) does not allow the DGTR to initiate an original investigation restricting it to specified exporters from a particular country. Such an argument could be supported by Rule 6 of the AD Rules which requires the DGTR to identify the **name of the exporting country or countries** as opposed to name of specific exporters in an initiation notice.

Conclusion

It is evident from above discussion that this Initiation Notification appears to be a departure from the general practice of the Designated Authority. It remains to be seen how the DGTR addresses some of the issues discussed above.

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