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# MAJOR INTERNATIONAL TRADE LAW UPDATES

(December 15, 2017 to January 31, 2018)



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# India raises customs duty on imported mobile phones and certain parts and accessories

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*Union budget permits for further increase in customs duty on smart phones*

The Government of India, in its latest Union Budget 2018-19, has increased the customs duty on mobile phones from 15% to 20% and 15% for certain parts and accessories of mobile phones. The stated objective is to achieve more local value addition and increase employment opportunities within India. Notably, this increase comes within months of India having increased customs duty from 10% to 15% (in December 2017). Earlier in June 2017, India had, for the first time, imposed 10% customs duty on mobile phones which had been hitherto attracting nil customs duty. The increase in customs duty from nil to 15% had not gone down well with many WTO member countries. Some of the Member States, including Japan, EU, USA and Chinese Taipei, has raised concerns stating that the tariff increase is inconsistent with India's obligations pursuant to the Ministerial Declaration on Trade in IT Products 1996 (also known as Information Technology Agreement). The recent increase in customs duty to 20% is likely to raise eyebrows in Geneva, particularly at the Committee on Market Access. It remains to be seen how India explains its position to the WTO members.

## New Sanctions on North Korea

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*UNSC Sanctions on North Korea*

The UN Security Council, on 22 December 2017, unanimously adopted [Resolution 2397](#) which imposed new sanctions on North Korea. This was a result of North Korea's intercontinental ballistic missile test which violated previous Security Council resolutions. As per this Resolution, existing sanctions on the country were further tightened, severely restricting fuel imports and other trade, as well as the ability of North Korean citizens to work abroad.

## New EU Trade Remedy Rules

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*EU introduces new trade remedy rules to address "significant market distortions."*

The EU implemented a new anti-dumping regulation on 19th December 2017. This regulation updates the rules for the establishment of normal value in case of "significant distortions" in the market of exporting countries.

Article 2, paragraph 6(a), of the updated [Basic Anti-Dumping Regulation](#), sets out the new methodology for determining normal value of a product in cases where "significant distortions" exist in the market of the exporting country. Notably, where significant distortions exist, the EU does not have to accept the domestic prices and costs of the producers in that country.

The concept of "significant market distortions" seek to replace the existing concept of Non-Market Economy. Crucially, the regulation does not contain any references the status of a country as a "market economy". Recital 2 of the regulation explicitly states that the provisions are "without prejudice to establishing whether or not any WTO Member is a market economy". Despite this country-neutral approach, it seems evident that the rules were made keeping in mind China's legal challenge of EU's price comparison methodology at the WTO panel stage, resulting from the purported expiry of key provisions in China's Accession Protocol.

Separately, on 5 December 2017, the European Commission, the European Council as well as the European Parliament had provisionally agreed on a plan to update the trade defence instruments. The text of the proposal, which was made available on 23 January 2018, covers various issues relating to trade remedial investigations, such as a partial waiver of the lesser duty rule, shortening of investigation durations, incorporation of social and environmental standards in anti-dumping investigations and better support to smaller producers in the EU.

## Major Free Trade Agreement Negotiation Updates

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### (a.) Comprehensive and Progressive Trans-Pacific Partnership

The 11 remaining countries of the Trans-Pacific Partnership (TPP) took a significant step towards formalizing the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). The agreement is expected to be signed in [March 2018](#) in Santiago, Chile.

With US withdrawing from the CPTPP, the nature of the agreement has, itself, been altered. For instance, most US-endorsed provisions such as chapters on trade facilitation, investment, services, public procurement, intellectual property rights, environment and transparency have been suspended. Nevertheless, commitments to liberalize in areas such as technical barriers to trade, sanitary and phytosanitary measures, State-Owned Enterprise, competition, dispute settlement and small and medium-sized enterprises remain intact.

The combined economies of CPTPP members account for US Dollars 10 trillion, or over 13% of global GDP. This is significantly smaller than the collective GDP when US was part of the agreement (together, TPP countries would have accounted for nearly 40% of global GDP). Nevertheless, CPTPP parties are confident that they will benefit from the new agreement.

### (b.) NAFTA 2.0

On 29 January 2018, North American Free Trade Agreement (NAFTA) countries successfully negotiated a chapter on anti-corruption. This is one of the few chapters that where negotiations have concluded. However, deep divisions still exist on several contentious topics and completing the process of modernizing the agreement is expected to take some time. The recently concluded 6th round of negotiations brings forth some negotiating challenges to the fore. For instance, during the rules of origin negotiations, Canada proposed a new methodology to count a car as “American”, which included a break-down of the car's high-technology components. This proposal has, till now, not been accepted by the US.

The NAFTA re-negotiations commenced had started in 2017 after President Donald Trump signed an executive order on 23 January 2017 which sought to modernize the agreement and reduce US' trade deficit with Canada and Mexico. In May 2017, USTR Robert Lighthizer notified US' intention to renegotiate NAFTA. Negotiations of NAFTA 2.0 began earlier this week (16-20 August 2017) in Washington, D.C. The Officer of USTR has also released a document summarizing its negotiation [objectives](#).

*Signing of Comprehensive and Progressive Trans-Pacific Partnership Agreement in March 2018*

*Rules of Origin discussion result in impasse*

### (c.) 'Brexit' Update

'Brexit' discussions continue to take place in the British Parliament. Discussions still largely revolve around "hard exit" versus "soft exit". However, it is clear that the United Kingdom would leave the Customs Union and operate an independent trade policy.

*Brexit discussions at the UK Parliament*

Earlier, on 15 August 2017, the United Kingdom released a 16-page document detailing the "arrangement that facilitates the freest and most frictionless trade possible in goods between the UK and the EU". In the paper, United Kingdom detailed two possible ways forward. This includes, firstly, the introduction of a "highly streamlined customs arrangement" or, secondly, a "new customs partnership". The document, however, does not include any strategy to deal with services.

#### ELP Comment

Brexit negotiations are turning out to be more difficult for the UK government than earlier anticipated. Prime Minister Modi had, in 2017, expressed his desire to begin negotiations on an India-UK Free Trade Agreement soon. According to a paper commissioned by the [Commonwealth Secretariat](#), Indian goods do not face high tariffs when imported to the UK. Tariffs on UK exports to India are estimated to be around 14.8% on average, while Indian exports into the UK face tariffs of around 8.4% on an average. Presently, the highest tariffs faced by the UK's exports into India are in beverages and spirits (around 113%) followed by coffee and tea (around 82.5%) and vehicles (31%). On the other hand, the highest tariff on India's goods exported into the UK is for dairy products (36.6%) followed by tobacco and tobacco products (around 36%). In services, India exports less than 2% of UK's trade in services.

*Commonwealth Study on India – UK FTA*

It is recommended that the Government of India begin consultations with Indian stakeholders. This will help flag issues of potential concern and identify areas for cooperation. India should also consider negotiating deep commitments when the two countries meet to negotiate the text of the agreement.

### (d.) Regional Comprehensive Economic Partnership Negotiations

From 5-10 February 2018, the Intellectual Property (IP) chapter of Regional Comprehensive Economic Partnership (RCEP) Agreement is set to be negotiated amongst 10 ASEAN economies, Australia, China, India, Japan, Korea, and New Zealand. The combined GDP of all RCEP Members is 17 trillion US dollars. This accounts for nearly 40% of global trade and effectively makes RCEP the biggest mega-regional trade agreement currently under negotiation. The IP negotiations are critical for India which has been an active user of "generic" medicines.

*Intellectual Property to be negotiated in the next round of RCEP; India seeks to protect policy space*



Beside this, ASEAN-bloc, in previous rounds of negotiations, had demanded that India increase its product coverage up to 90% regarding quantity or quality of total goods and services. India had initially proposed 80% product coverage to ASEAN-bloc, but the product coverage has now expanded to cover to nearly 90% of India's tariff lines. While the covered sectors have not been disclosed yet, it has been noted that India has a list of sensitive items which it will seek to protect during the negotiations.

### ELP Comment

Not much information is publicly available regarding the on-going RCEP negotiations. However, RCEP is likely to affect both services and manufacturing sectors in India.

- Businesses: Businesses, SMEs and industry associations are advised to be proactive in making their positions known to the Ministry of Commerce. In particular, businesses that in competition with imports from China and South Korea should assess their attacking and defensive trade strategies should the RCEP enters into force. In our view, RCEP could potentially change – perhaps distort, but certainly, disrupt – major trading patterns given that most of the RCEP countries have a strong manufacturing base.
- The government of India: The Government of India should also account for its balance of trade considerations. India is currently running a trade deficit with China, Malaysia, Indonesia, Thailand, Brunei, Lao PDR, Japan, Australia and South Korea. While we understand that running trade deficits are not a sign of unfair trade practices nor does it signal undermining of the Indian economy, we believe that such deficits must be in a range that is containable.

## India, US impose Safeguard Duties

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### (a.) India imposes preliminary safeguard duties on solar cells

On 5 January 2018, the Directorate General of Safeguards (DG Safeguards) in India imposed a [provisional safeguard duty](#) of 70% on imports of solar cells based on an application by the Domestic Industry.

A writ petition was filed before the High Court of Madras on 19 January 2018. This writ challenged the preliminary findings of the DG Safeguards in the safeguard investigation on solar cells. The central issue, in this case, was premised on the fact that the DG Safeguard had provided a period of 30 days for interested parties to present their views. However, the DG Safeguards issued the preliminary findings before the 30-day time-period. The High Court of Madras was granted an interim relief by ordering that no further action be taken pursuant to the preliminary findings until 23 February 2018 when the matter is listed for hearing on merits.

*DG Safeguard recommends imposition of preliminary safeguard duties on solar cells; Temporary stay by Madras High Court as on the grounds of principles of natural justice*

## **(b.) The US imposes safeguard duties on Solar Cells and Modules, and Washing Machines**

*The US imposes safeguard duties on washers and solar cells and modules*

On 22 January 2018, the US government approved the imposition of safeguard tariffs on large washing machines for home-use as well as imported solar cells and modules. These tariffs will apply globally, except for a few countries. India is on the list of countries to which tariffs will apply.

Notably, in both cases, tariffs are being imposed under Section 201 of the US Trade Act of 1974. This section permits for import relief in cases of serious injury from import surge of a product. The tariffs for solar modules and cells will be 30% for the first year and decrease progressively to 15% until the fourth year. US solar cell manufacturers are already protected by anti-dumping duties on imported solar cells.

For large washing machines, [20% tariff](#) will apply on the first 1.2 million imported washers in the first year, and 50% tariff will apply to machines above that number. Interestingly, the [US International Trade Commission](#) had recommended excluding large washing machines from South Korea since prior anti-dumping duties from South Korea had been dropped. The effects of these tariffs have been immediate with LG and Samsung raising prices of their products in the US. South Korea has responded swiftly, having already requested for consultations with the US at the WTO on the matter. This is not the first time that US safeguard tariffs have been challenged at the WTO. In 2002, EU had successfully challenged safeguard tariffs on steel imports to the US.

*LG and Samsung hit by safeguard duties*

## WTO Dispute Settlement Update

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### **(a.) Canada Challenges US trade remedy practices**

Canada lodged a comprehensive and detailed [challenge](#) to existing US' trade remedy practice. The consultation request identifies six types of measures including US International Trade Commission's tie vote provision, treatment of export controls by relevant authorities in countervailing duty proceedings, and liquidation of final anti-dumping and countervailing duties in excess of WTO-consistent rates. According to Canada, the identified measures violate certain aspects of the Anti-Dumping Agreement, Subsidies and Countervailing Measures Agreement, and the General Agreement on Tariffs and Trade of 1994. Russian Federation and Argentina have requested to join as third parties to the dispute.

#### **ELP Comment**

Indian exporters are often targets of these trade remedy practices adopted by the United States. It remains to be seen whether India joins as a third party in this dispute.

## (b.) WTO panel sides with Indonesia in the biodiesel case

On 25 January 2018, a WTO panel issued a [report](#) on anti-dumping measures on biodiesel from Indonesia. This was following Indonesia's request for consultations with the European Union in June 2014. The ruling follows Argentina's challenge on a similar issue on anti-dumping duties on biodiesel imports from Argentina and Indonesia. Among the primary issues was a method of calculating constructed normal value and assessment of methodology to arrive at normal profit margins. Notably, the panel failed to recommend clearly how EU is expected to adapt its measures.

*Do you anticipate your business getting affected by these global happenings? We constantly monitor international trade updates. Here is a [link](#) to our previous newsletter*

## Outbound Levy

Sr. No	Product	Jurisdiction	Stage	Remarks
<b>CVD Investigations</b>				
1	Stainless Steel Flanges	USA	Preliminary Affirmative Countervailing Duty Determination	The United States Department of Commerce ("USDOC") will communicate its decision to the United States International Trade Commission ("USITC") which is responsible for determining injury. In the event that USITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled.
2	Fine Denier Polyester Staple Fiber	USA	Final Affirmative Determination	The United States Department of Commerce ("USDOC") will communicate its decision to the United States International Trade Commission ("USITC") which is responsible for determining injury. In the event USITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled.
3	Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel	USA	Final Affirmative Determination	The USDOC found programs such as Duty Drawback (DDB) countervail able owing to the fact that the Government of India (GOI) failed to provide evidence with respect to - which inputs are consumed in the production of the exported products, and in what amounts.



Sr. No	Product	Jurisdiction	Stage	Remarks
<b>Anti-Dumping Investigations</b>				
1	Ortho Dichlorobenzene	China	Initiation	
2	Corrosion-Resistant Steel Products	USA	Partial Rescission of Antidumping Duty Administrative Review	US Secretary for Antidumping and Countervailing Duty Operations rescinded the administration review initiated against on all Indian producers that had participated in the original investigation except JSW Coated Products Limited and JSW Steel Ltd
3	Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel	USA	Amended Preliminary Determination	The USDOC amended its preliminary determination on account of a "significant ministerial error" due to the incorrect reclassification of certain grades of steel reported by the Indian producer, i.e. Goodluck India Limited.
4	Fine Denier Polyester Staple Fiber	USA	Preliminary Determination	
5	Carbazole Violet Pigment 23	USA	Preliminary Results of Antidumping Duty Administrative Review	After levying AD/CVD duties, the USDOC/USITC also conducts subsequent proceedings known as administrative reviews in which importers' actual duty liability is assessed.
6	Certain cast iron articles	EU	Termination of Investigation	The European Commission terminated the case against India as no dumping had been established

## Inbound Levy

Sr. No	Product	Source	Stage	Date of Initiation	Remarks
<b>Anti-Dumping Investigations</b>					
1	Meta-Phenylene Diamene-4-Sulphonic Acid (MPDSA)	China PR	Initiation	24th January 2018	
2	Coated Paper	China PR, European Union and USA	Initiation	23rd January 2018	

# Inbound Levy

Sr. No	Product	Source	Stage	Date of Initiation	Remarks
<b>Anti-Dumping Investigations</b>					
3	Di Methyl Formamide (DMF)	China PR, Germany and Saudi Arabia	Initiation	22nd January 2018	
4	Sun/Dust control film	China PR, Chinese Taipei, Hong Kong and Korea RP	Initiation	17th January 2018	
5	Fluoroelastomers (FKM)	China PR	Initiation	2nd January 2018	
6	Phthalic Anhydride	Korea RP, Chinese Taipei and Israel	SSR Initiation	21st December 2017	In a sunset review, if duties are about to expire before findings are issued, the Designated Authority ('DA') may recommend extension of duties for one additional year. This option has been exercised by the DA in the present case. For more information, <a href="#">click here</a> .
7	Polyester Staple Fibre	China PR, Indonesia, Malaysia and Thailand	Final Finding – No Duty Recommended	2nd February 2017	The DA recommended non-imposition of duty due to an absence of injury attributable to imports from the subject countries, after considering factors such as volume injury, price parameters etc. The DA also held that the non-participating producer from the domestic industry could play a major role in the determination of prevailing prices, which was found to be a major factor of non-attribution. For more information, <a href="#">click here</a> .
8	Methyl Ethyl Ketone (MEK)	China PR, Japan, South Africa and Taiwan	Final Finding	9th February 2017	The DA imposed anti-dumping duties in the form of reference price which was calculated on the basis of the lesser duty rule, i.e. the lesser of the dumping margin and injury margin. For more information, <a href="#">click here</a> .
9	Toluene Di-Isocyanate (TDI)	China PR, Japan and Korea RP	Definitive Duty Imposed	5th October 2016	

Sr. No	Product	Source	Stage	Date of Initiation	Remarks
<b>Anti-Dumping Investigations</b>					
10	Caustic Soda	Japan and Qatar	Final Finding – No Duty Recommended	14th October 2016	Over the last 13 years, anti-dumping duties have been imposed on at least 7 to 12 countries at any given point. Caustic Soda imports with respect to the captioned investigation have been in place since 2001. However, the DA in the last two anti-dumping investigations concerning caustic soda has recommended no duty on account of no material injury being suffered by the domestic industry. For more information, <a href="#">click here</a>
11	O-Acid	China PR	Final Finding	21st September 2016	The DA recommended a fixed anti-dumping duty for a period of three years whereas normally the duties are recommended and imposed for a period of five years. For more information, <a href="#">click here</a>
12	Nylon Filament Yarn	China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea RP	SSR II Final Finding - No Duty Recommended	9th January 2017	The DA recommended non-imposition of duty due to (1) the improvement of the overall health of the domestic industry and (2) the anti-dumping duty that was in force for approximately 11 years. For more information, <a href="#">click here</a>
<b>Safeguard Investigation</b>					
13	Solar Cells	N/A	Final Finding	19th December 2017	An anti-dumping investigation has also been initiated with respect to Solar Cells. In the event that a safeguard duty and an anti-dumping duty is in place, the lower of the two duties will be subsumed in the larger duty. The preliminary duty that was recommended by the Director General of (Safeguards) is currently under consideration before the Board of Safeguards. The order has also been challenged before the Madras High Court (writ jurisdiction) whereby a stay on the operation of the provisional findings has been ordered till 12th February 2018

## Court Cases

Sr. No	Case Name	Court	Order/ Judgement Dated	Original/ Appeal	Originating Investigation	Product Involved	Key Issues	Remarks
1	Outokumpu Oyj Vs Union of India & Ors.	Delhi High Court	20th December 2017	Writ Petition	Anti-Circumvention investigations concerning imports of Cold Rolled Flat Products of Stainless Steel originating in or Exported from China PR, Korea, European Union, South Africa, Taiwan, Thailand and USA	Cold Rolled Flat Products of Stainless Steel	If the petition should be entertained by the High Court when the correct remedy is an appeal to the CESTAT	The High Court held that there is no ground nor reason mentioned in the writ petition which would justify a challenge to the vires of Rule 25 of the Anti-Dumping Rules on the pretext that it violates and is ultra vires to Section 9A(1A) of the Tariff Act. In light of the above, the High Court did not entertain the writ petition and observed that the parties were free to approach the CESTAT (Appeal Tribunal).



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