BIANNUAL INDIA TRADE & CUSTOMS UPDATE
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SUSPENSION OF TRADE RELATED MEASURES
Suspension Mechanism - Introduced vide Finance Act 2021

Suspension of Anti-subsidy/ Anti-dumping Measures - Proviso to Section 9/9A of the Customs Tariff Act 1975 (CTA) incorporated vide the Finance Act, 2021, No. 13 OF 2021

“Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.”

India seems to be taking cue from European Union’s Anti-dumping Regulation, Article 14 (4), that allows temporary suspension of measures in Union’s interest.
Examples of Suspension of Trade Remedial Measures

**Anti-subsidy Measures**
- **February 2021** - The Ministry of Finance (MoF) suspended definitive anti-subsidy measures for 8 months
  - Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products from China PR
- **September 2021** - The MoF extended the above suspension by 4 months
  - Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products from China PR

**Anti-dumping Measures**
- **February 2021** - The MoF suspended definitive anti-dumping measures for 8 months
  - Straight Length Bars and Rods of Alloy Steel from China PR
  - High-Speed Steel of Non-Cobalt Grade from China PR and Germany
  - Flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc from China PR, Vietnam and Korea RP
- **September 2021** - The MoF extended the above suspension by 4 months
  - Straight Length Bars and Rods of Alloy Steel from China PR
  - High-Speed Steel of Non-Cobalt Grade from China PR and Germany
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World Trade Organization (WTO) member countries like EU permit anti-absorptions investigation to address absorption of duty

India introduced Section 9 (1B) and Section 9A (1B) to CTA vide Finance Act 2021

The Ministry of Finance has recently issued anti-absorption rules pursuant to the above amendment

While the investigation if found positive, will make it more burdensome for the importers/users, however the interpretation and applicability of the law to the facts will lay out to see the use of this instrument.
RECENT TRADE
DEFENSE ACTIVITIES
Recent Approach of MoF – Non-Levy of Duties

Before the DGTR issues its recommendation to the MoF, it takes into consideration submissions made by various interested parties, including users who often raise public interests concerns.

The Indian trade remedies law confers discretion on MoF to levy or not to levy duties recommended by the DGTR:

- Rule 18 of AD Rules and Rule 20 of Anti-subsidy Rules
- Duties are recommended by the investigating body (“DGTR”) and levied by the MoF

Recently, there have been multiple instances where the MoF has chosen not to levy duties recommended by the DGTR, seemingly on account of public interest concerns.

The Indian domestic industry has challenged the aggrieved parties in the relevant appellate forum.

Examples of products where DGTR has chosen not to levy duties:

- Acrylonitrile Butadiene Rubber
- Plain Medium Density Fibre Board having a thickness less than 6mm
- Flat-Rolled Products of Stainless Steel
- Melamine Nonyl Phenol
Streamlining of Processes

New questionnaire formats issued as a result of stakeholder consultations to simplify the process of filling the questionnaire formats/application proformas. This also helps to reduce the burden of procedural compliance placed on the cooperating parties.

Trade Notice No. 05/2021 revises the questionnaire format/application proforma applicable to domestic producers seeking the initiation of an anti-dumping investigation.

Trade Notice No’s. 06/2021, 07/2021 and 08/2021 revise the questionnaire formats applicable to foreign producers/exporters, related/unrelated importers and users.

Trade Notice No. 09/2021 has been issued whereby a detailed procedure for filing of application by an Association on behalf of fragmented domestic producers in anti-dumping and anti-subsidy investigations has been provided.
Recommendation of Safeguard (Quantitative Restrictions): Key highlights from a recent investigation

The DGTR has recently concluded the first ever investigation conducted under India’s Safeguard Measures (Quantitative Restrictions) Rules 2012. Usually until now the DGTR has been recommending tariff related duties.

The investigation was conducted on imports of Isopropyl Alcohol (IPA).

The DGTR found that imports of IPA were being made in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the domestic industry manufacturing like or directly competitive products.

- The DGTR found that this surge in imports was caused by unforeseen developments.

The DGTR has recommended that import quotas be issued on a country-wise basis for a period of two years. These quotas are subject to progressive relaxation on a quarterly basis.

The final decision to give effect to this recommendation will be taken by the Directorate General of Foreign Trade.
Prominent Judgments/Final Findings in Trade Remedy

Low volume of imports has no bearing in a sunset review; Non-injurious price calculation is confidential and cannot be provided to an exporter; No causal link required to be established in sunset reviews; The criteria under Section 9A(1) of the Customs Tariff Act, 1975 has no practical application for continuation of duty under Section 9A(5)

- M/s. Magotteaux Co. Ltd., Thailand & Anr. v. The Directorate General of Trade Remedies through the Designated Authority & Ors., CESTAT

If no significant variation between the cost and prices among any grade/types or any other technical ground, a product-to-product comparison methodology cannot be adopted

- “Silicone Sealants” from China PR

Exclusion of certain products from product scope limited strictly to actual users to avoid circumvention

- “Silicone Sealants” from China PR

When PCN-wise comparison methodology is prescribed, both dumping and injury margin to be calculated PCN-wise

- Hot-Rolled flat products of alloy or non-alloy steel from China PR, Japan, Korea RP, Russia, Brazil and Indonesia
- Cold Rolled/cold reduced flat steel products of iron or Non-Alloy Steel' or other Alloy Steel of all width and thickness - not clad, plated or coated from China PR, Japan, Korea RP and Ukraine
TRENDS
Trend of Levy of Duties in the First Half of 2021

<table>
<thead>
<tr>
<th>Type of Investigation</th>
<th>Not Levied</th>
<th>Levied</th>
<th>Pending with MoF/MoC</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Dumping Duty (ADD)</td>
<td>14</td>
<td>26</td>
<td>15</td>
<td>55</td>
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<tr>
<td>Anti-Circumvention</td>
<td></td>
<td>2</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Anti-Subsidy (CVD)</td>
<td>2</td>
<td></td>
<td></td>
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<tr>
<td>Safeguard Duty</td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Grand Total</td>
<td>16</td>
<td>28</td>
<td>16</td>
<td>60</td>
</tr>
</tbody>
</table>

*Between Jan – Oct. 2021, MoF did not levy duties in 16 investigations where the DGTR recommended duties. 16 recommendations are pending with MoF for imposition of duties*

Source: dgtr.gov.in
- Anti-dumping measures are the most frequently used trade remedial tool in India
- Anti-dumping investigations saw an exponential rise in the year 2020, which has declined recently (2021)

Trade Remedy Initiations (Jan – Oct. 2021): Sectoral Distribution

- **New Anti-Dumping Original Investigations** - 15 cases
- **New Reviews (including mid term reviews)** - 21 cases
- **Largest no. of investigations initiated targeting the chemical sector including Soda Ash, MEG, Toluene Di-isocyanate etc followed by Metal and other diversified sectors**

Source: dgtr.gov.in (Jan – Oct. 2021)
Trade Remedy Investigations – Anti-subsidy

Anti-Subsidy Investigations

- **Anti-subsidy investigations saw a rise until the year 2020, which declined in the more recent period i.e., upto Oct. 2021.**

- **Largest no. of investigations initiated targeting the metal sector including HR and CR flat products, Copper Tubes and Pipes, Aluminum Primary Foundry Alloy Ingot etc, followed by chemicals, and glass etc.**

*Source: wto.org (Upto 2020) & dgtr.gov.in (Jan – Oct. 2021)*
Safeguard investigations saw a rise until the year 2019, which declined in the more recent period i.e., up to Oct. 2021.

- Largest no. of investigations initiated targeting the chemical sector including PVC Suspension Grade Resin, Polybutadiene Rubber, Phenol etc, followed by oils, Machine and Equipment's etc.

NON-TARIFF BARRIERS
The Government of India has, in the past year, imposed mandatory BIS certification for a range of new products across sectors including, steel, chemicals and petrochemicals.

These orders provide manufacturers with a period of 6 months within which they are to obtain certification in accordance with the BIS’s foreign manufacturer’s certification scheme in order to continue export of these products to India.

This is imposed by way of issuance of “Quality Control Orders” that specify the concerned product as well as relevant Indian Standard against which certification is to be obtained by the Indian and Foreign Producer.

Presently 380 products have been notified for mandatory certification, with new products being announced routinely. The list of products can be accessed here.
BIS Certification: Recent Trends

Presently, factory audits have been delayed due to the COVID-19 pandemic and associated travel restrictions. However, as inspections are carried out in the order in which applications are made, it is recommended that producers file their applications at the earliest to ensure that their audits are carried out in a timely fashion once travel resumes.

In this regard, several exporters and importers have made representations to the Ministry of Chemicals seeking extension of the date of enforcement of Quality Control Orders. As a result, the Government of India has been issuing periodic extensions to existing Quality Control Orders to enable manufacturers to obtain their certifications. It is recommended that exporters and importers seek such extensions in a timely manner to ensure business continuity.

With certain strategic products, however, extensions have not been granted in order to prevent imports (for example, Toys).
EXPORT CONTROL
SCOMET item is an acronym for Special Chemicals, Organisms, Materials, Equipment, and Technologies and these are dual-use items that can be used for both civilian and military applications. India’s Foreign Trade Policy regulates the export of items in the SCOMET list. The exporter needs to obtain a license from the Directorate General of Foreign Trade, Ministry of Commerce to export SCOMET covered items.

DGFT vide Trade Notice No. 11/2021-22 introduced a new online module for filing of paperless and electronic applications for export authorization of SCOMET items.

DGFT vide Public Notice No. 17/2015-20 notified Aayat Niryat Form 2O (d) for filing application for revalidation of SCOMET export authorization.

DGFT vide Public Notice No. 17/2015-20 Issuance of Export Authorization for Restricted Items (Non-SCOMET) for new online Restricted Exports IT Module w.e.f 17.05.2021.
CUSTOMS & LITIGATION UPDATES
<table>
<thead>
<tr>
<th>Issues under Litigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levy of Social Welfare Surcharge (SWS) on imports made claiming 100% exemption from Basic Customs Duty (BCD) under various exemption notifications or against Duty Credit Scrips issued in terms of various schemes notified under FTP</td>
</tr>
<tr>
<td>Denial of benefit of preferential/concessional rate of duty on imports which claim benefit as per Free Trade Agreements pursuant to introduction of CAROTAR Rules</td>
</tr>
<tr>
<td>Eligibility of ab-initio exemption from payment of IGST on imports made against licences issued under EPCG, Advance Authorization scheme of FTP on the condition of fulfillment of export obligation when the exports are classified as deemed exports</td>
</tr>
<tr>
<td>Eligibility of refund of IGST paid on export of goods in the event the exporter procures the goods availing the benefit of exemption from payment of duty under the Advance Authorization scheme of FTP</td>
</tr>
</tbody>
</table>
Social Welfare Surcharge (SWS)

Levy of SWS on imported goods introduced vide Finance Bill, 2018 with effect from 02.02.2018 as a ‘Duty of Customs’

SWS is calculated at the rate of 10% of the customs duty levied and collected

Various importers claiming 100% exemption from payment of BCD paid zero SWS since it is calculated as a % of the customs duty which was NIL

Objection is raised by the department that only exemption provided from BCD and therefore SWS to be paid on notional value of BCD forgone/paid by debit from duty credit scrips

Investigations have been initiated and notices have been issued calling upon the importers to pay the said demand of SWS
Denial of Preferential Tariff benefit under FTAs

CAROTAR Rules notified from 21.09.2020 in India are to be complied with by importers in the event they claim benefit of preferential rate of duty under FTA.

Wide powers have been given to the officers to suspend/deny the preferential rate of duty benefit to the importers in the event it fails to provide the documents substantiating the claim made in the COO issued by the exporting country that the origin criteria has been satisfied.

Various importers claiming the said benefit are facing issues from the customs authorities while seeking clearance of the goods.
Ab-Initio exemption from Payment of IGST under EPCG, AA scheme of FTP

Prior to the introduction of GST, exemption from both BCD and CVD on import of capital goods/raw material was allowed under EPCG, AA scheme subject to fulfilment of export obligation either by physical exports or deemed exports

With the introduction of GST, IGST instead of CVD was levied on imports

Exemption from IGST was allowed only in case where export obligation was fulfilled by physical exports and not by deemed exports

Constitutional validity of the said condition has been challenged before the Court and is pending as on date

Parallelly various importers holding EPCG, AA licences have been issued notices calling upon them to make payment of IGST denying the benefit of exemption claimed at the time of import for those importers who have fulfilled their export obligations through deemed exports
Post implementation of GST from 01.07.2017, imports into India are subject to levy of IGST in lieu of erstwhile CVD.

No exemption from IGST (unlike CVD) was granted to AA holders after implementation of GST.

Subsequently exemption from IGST was introduced even for AA holders subject to the condition that no refund of IGST paid on exports will be granted to the exporters.

Constitutional validity of the said condition has been challenged before the Courts and is pending review as on date.

Parallelly various importers holding AA licences have been issued notices calling upon them to make payment of IGST denying the benefit of exemption claimed at the time of import ( for those importers who have claimed refund of taxes paid on exports).
## Annexure

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
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<tbody>
<tr>
<td>ADD</td>
<td>Anti-Dumping Duty</td>
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<tr>
<td>BCD</td>
<td>Basic Customs Duty</td>
</tr>
<tr>
<td>BIS</td>
<td>Bureau of Indian Standards</td>
</tr>
<tr>
<td>CAROTAR Rules</td>
<td>Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020</td>
</tr>
<tr>
<td>CTA</td>
<td>Customs Tariff Act 1975</td>
</tr>
<tr>
<td>CVD</td>
<td>Anti-Subsidy Duty / Countervailing Duty</td>
</tr>
<tr>
<td>DGFT</td>
<td>Directorate General of Foreign Trade</td>
</tr>
<tr>
<td>DGTR</td>
<td>Directorate General of Trade Remedies</td>
</tr>
<tr>
<td>EPCG</td>
<td>Export Promotion Capital Goods Scheme</td>
</tr>
<tr>
<td>FTP</td>
<td>Foreign Trade Policy</td>
</tr>
<tr>
<td>IGST</td>
<td>Integrated Goods and Service Tax</td>
</tr>
<tr>
<td>IPA</td>
<td>Isopropyl Alcohol</td>
</tr>
<tr>
<td>SCOMET</td>
<td>Export of Special Chemicals, Organisms, Materials, Equipment and Technologies</td>
</tr>
<tr>
<td>SWS</td>
<td>Social Welfare Surcharge</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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</table>
Thank you
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