

# BIANNUAL INDIA TRADE & CUSTOMS UPDATE

*January 2021 – October 2021*



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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](#)
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# Introduction of Anti-Absorption Investigations

## Accelerated Anti-Absorption investigations

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

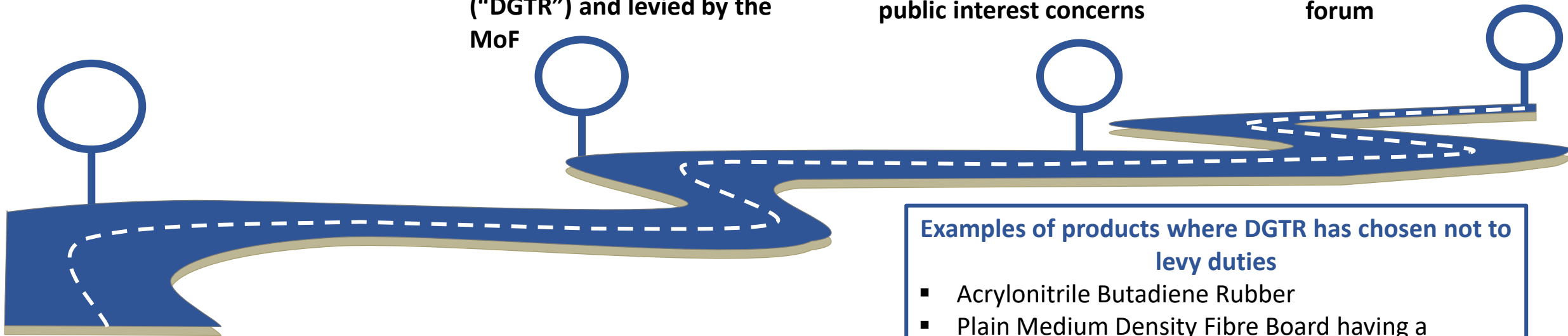
Before the DGTR issues its recommendation to the MoF, it takes into consideration submissions made by various interested parties, including users who often raise public interest concerns

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

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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



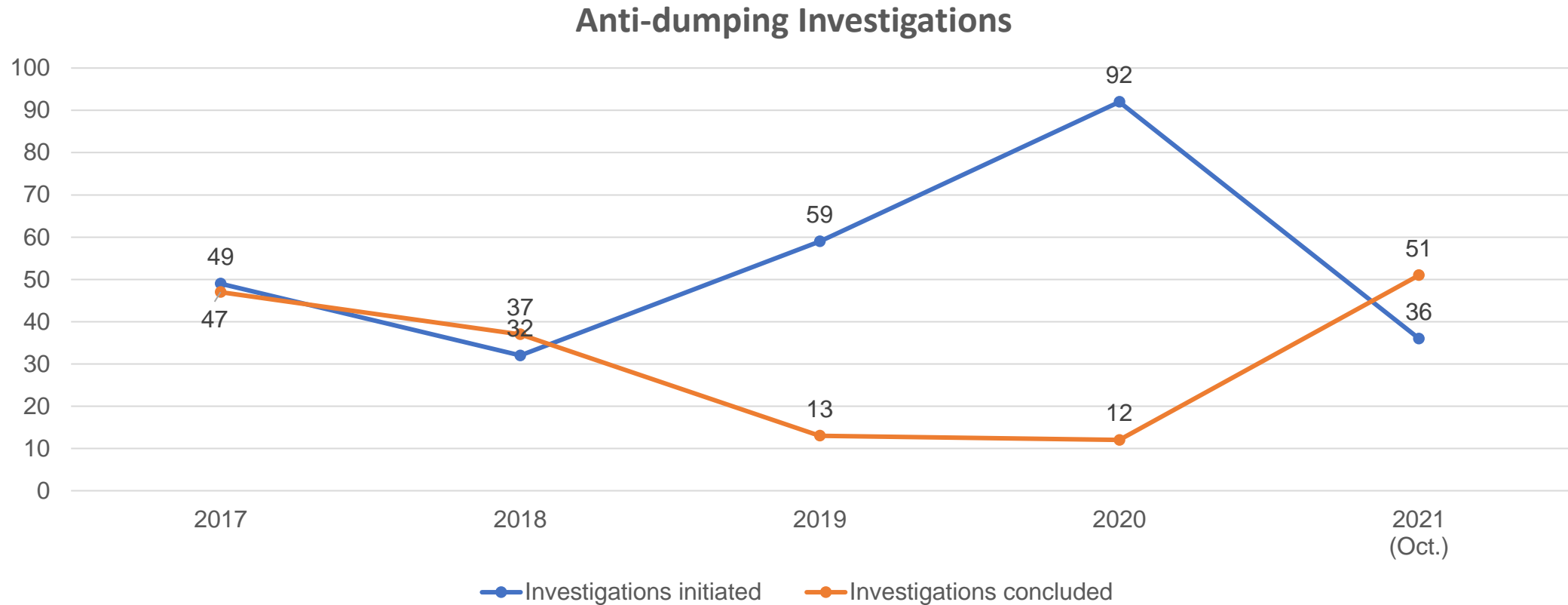
# Trend of Levy of Duties in the First Half of 2021

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

***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

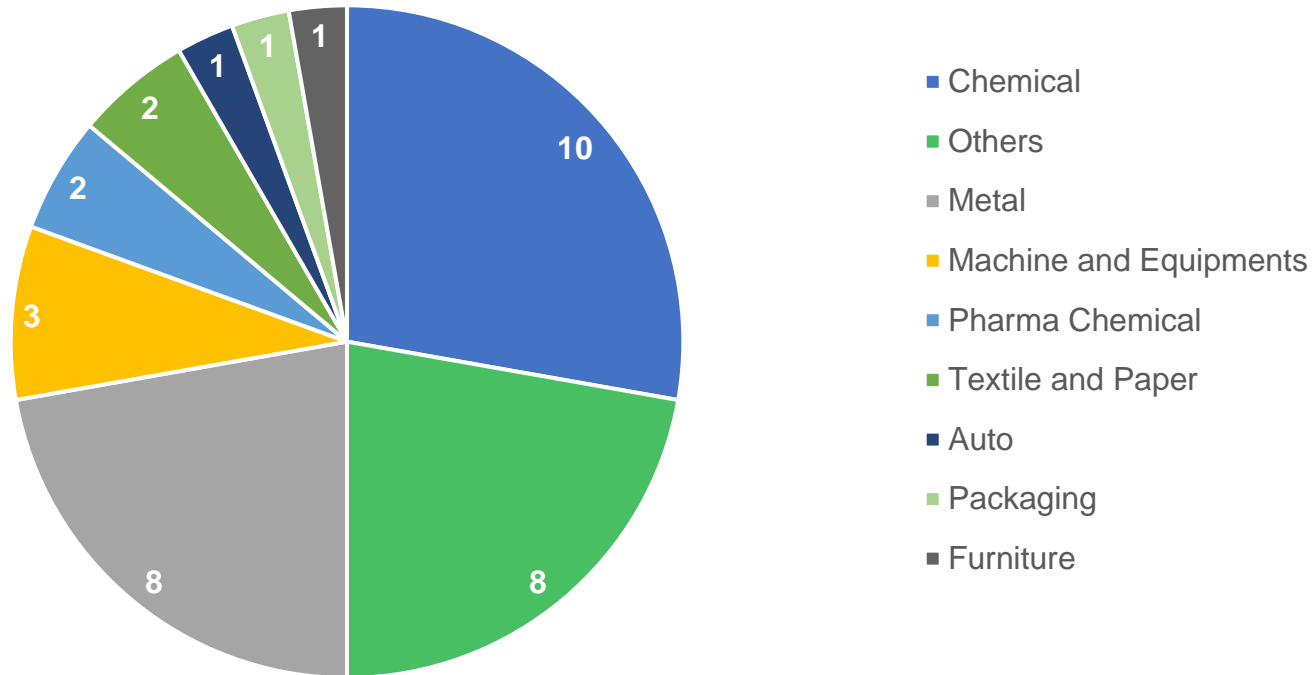
# Trade Remedy Investigations – Anti-dumping



- ***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)***

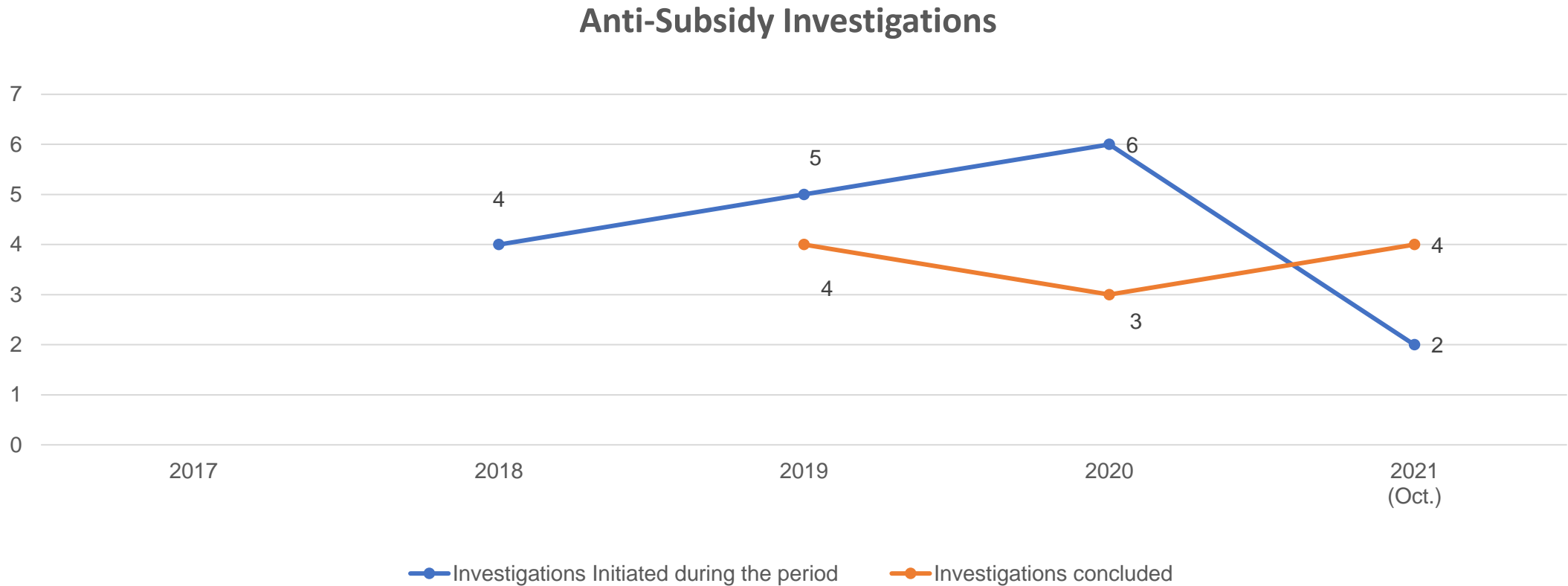
# Trade Remedy Initiations (Jan – Oct. 2021):Sectoral Distribution

**Sectorial Distribution - Anti-dumping Initiations**



- ***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***

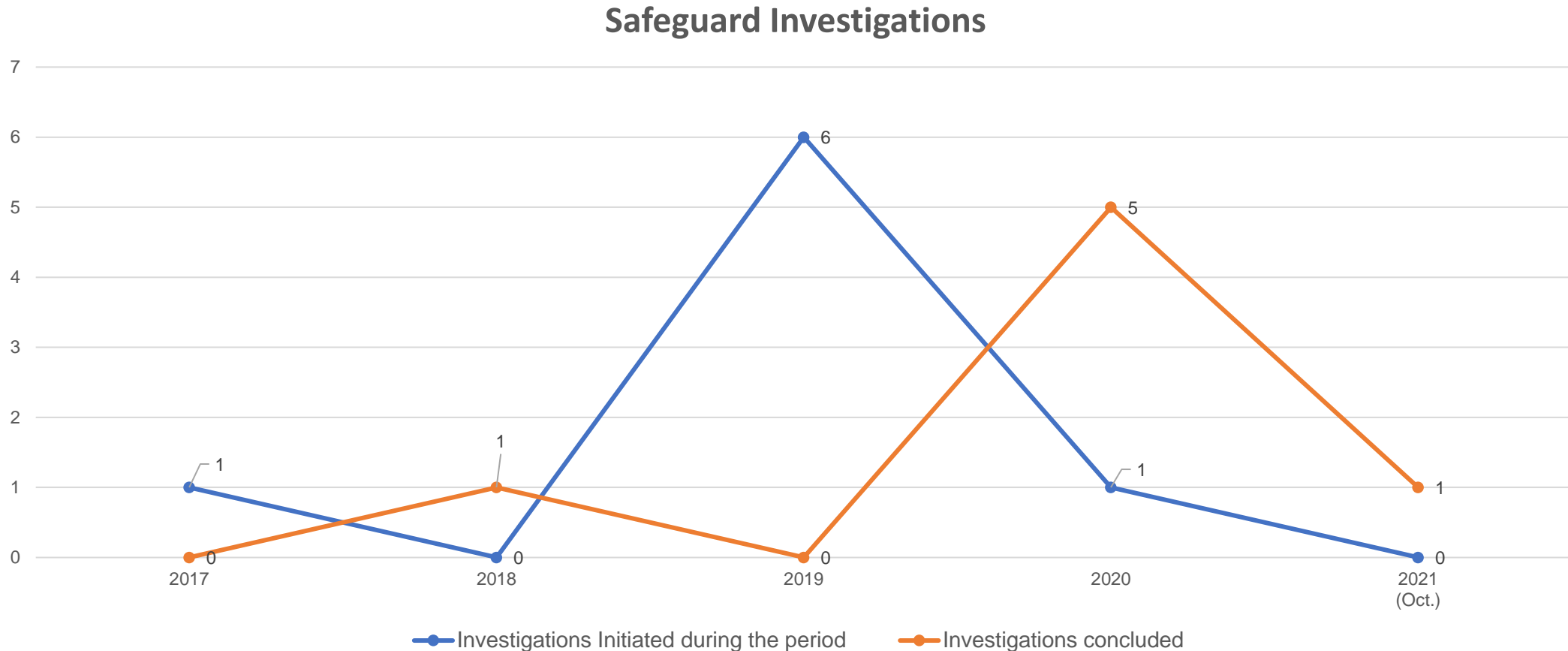
# Trade Remedy Investigations – Anti-subsidy



- **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) & dqtr.gov.in (Jan – Oct. 2021)*

# Trade Remedy Investigations - Safeguard



- **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.**

*Source: eqazette.nic.in (Upto 2017) & dqtr.gov.in (2018 to Oct. 2021)*



# NON-TARIFF BARRIERS



# Implementation of Bureau of Indian Standards Certification

1

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.

2

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.

3

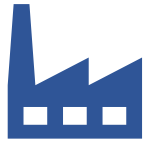
These orders provide manufacturers with a period of 6 months within which they are to obtain certification in accordance with the BIS’s foreign manufacturer’s certification scheme in order to continue export of these products to India.

4

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

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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



# Developments under SCOMET – 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 20 (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



# Issues under Litigation



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

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



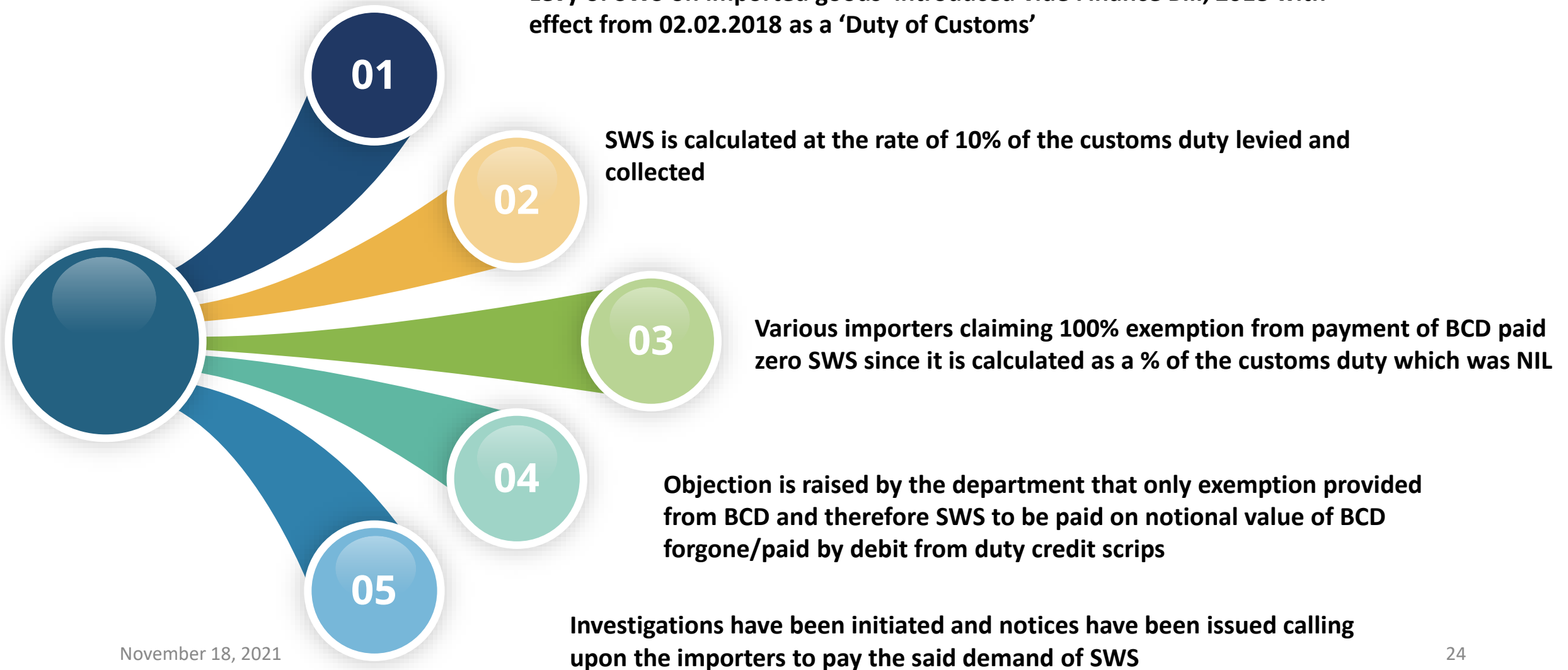
Eligibility of ab-initio exemption from payment of IGST on imports made against licences issued under EPCG, Advance Authorization scheme of FTP on the condition of fulfillment of export obligation when the exports are classified as deemed exports

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



# 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'**





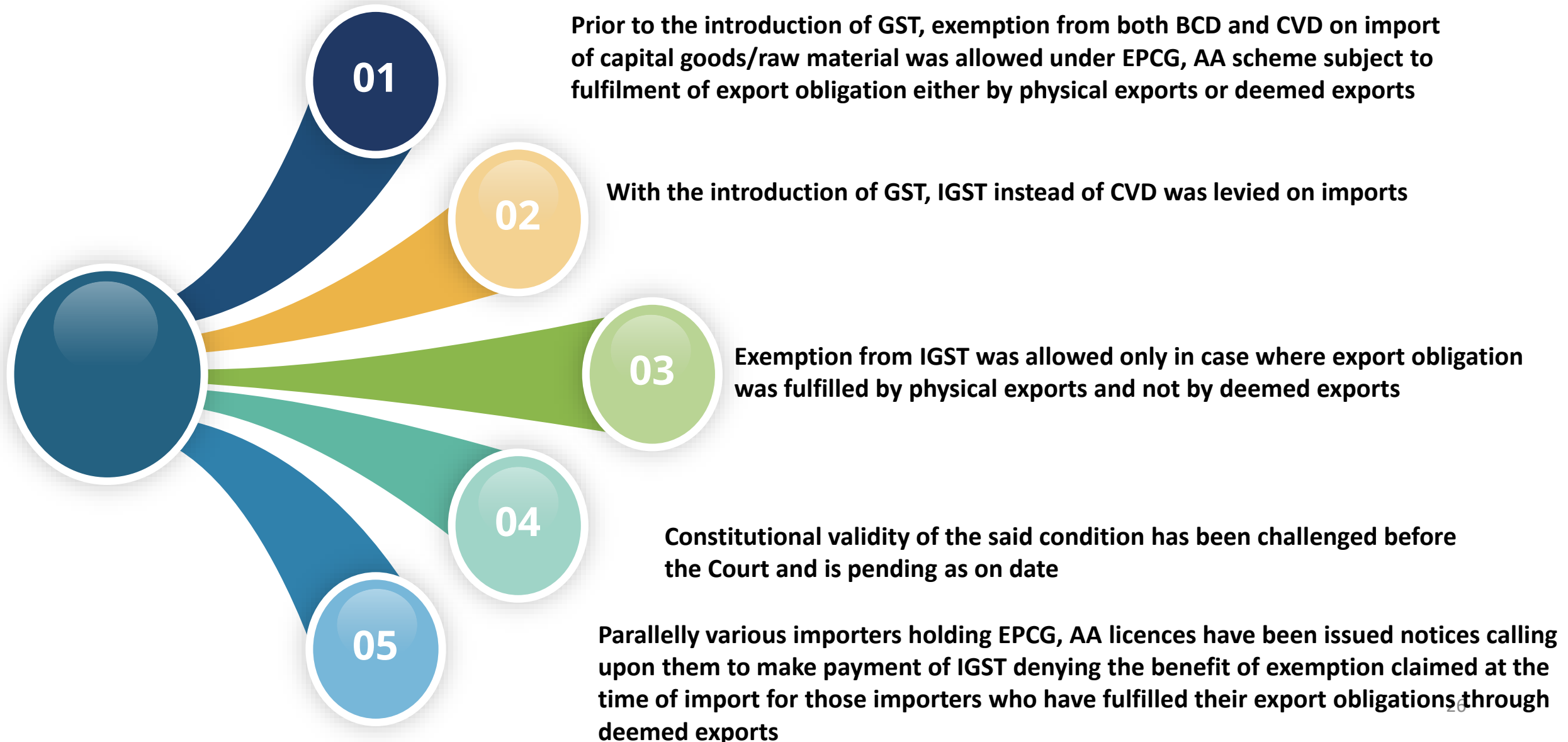
# Denial of Preferential Tariff benefit under FTAs

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

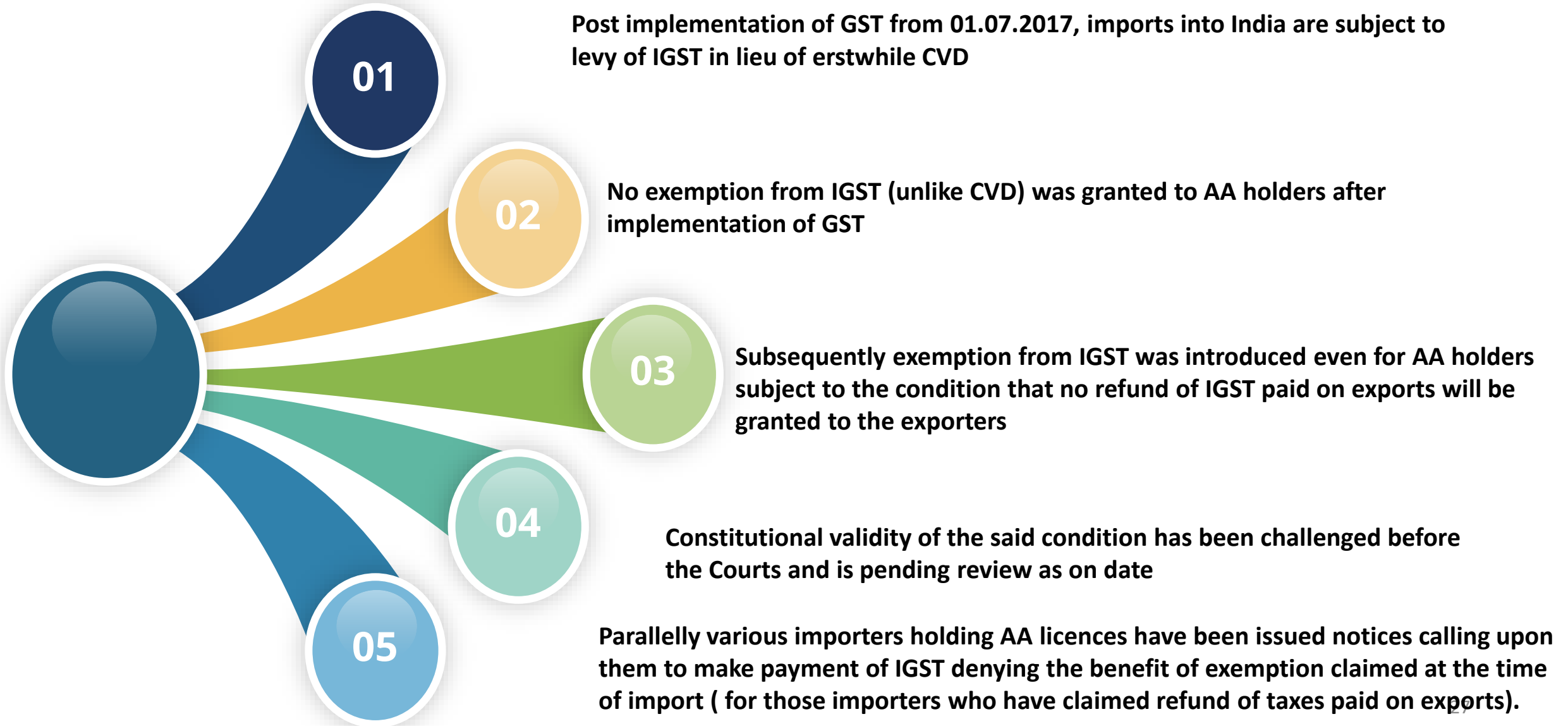
Wide powers have been given to the officers to suspend/deny the preferential rate of duty benefit to the importers in the event it fails to provide the documents substantiating the claim made in the COO issued by the exporting country that the origin criteria has been satisfied

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



# Refund of IGST paid on Export of Goods



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



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# Thank you

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Economic Laws Practice (ELP)

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