

# amicus

An e-newsletter from  
Lakshmikumaran & Sridharan, New Delhi, India

January 2015 / Issue 44

Lakshmikumaran & Sridharan wishes you a very happy and prosperous New Year 2015

## Contents

### Article

Information Technology Agreement-II – Should India join?.....	2
--	---

### Trade Remedy News

Trade remedy measures by India.....	4
Trade remedy actions against India.....	5

WTO News.....	6
---------------	---

News Nuggets.....	7
-------------------	---

Ratio Decidendi.....	8
----------------------	---



January  
2015

## Article

### Information Technology Agreement-II – Should India join?

By **Manoj Gupta**

Recently we saw how two bilateral agreements made the existence of WTO seem more relevant, by infusing more energy in the apex trade body. While agreement between India and USA on India's food security programme and subsidies relating thereto allowed the WTO to move forward on the Trade Facilitation Agreement (TFA), an agreement between USA and China on the other hand brought the Information Technology Agreement (ITA) back to the negotiating table and under the media glare once again. Though the expanded part of the latter agreement could not see the light of the day due to some last minute issues raised by South Korea, it is nevertheless important for discussion because according to the WTO sources, this liberalization would be three times bigger than present world trade in clothing.

Information Technology Agreement is one of the earliest plurilateral agreements which started with just 29 countries in 1997 after drafting of IT Agreement during the WTO Ministerial meeting in December 1996 in Singapore and conclusion of the negotiations in March 1997. Unlike other Agreements, the coverage of the products is fixed in the IT Agreement. Every Member country signing this Agreement is required to eliminate tariffs on the IT products listed in Annex A and Annex B to the IT Agreement. Pursuant to this agreement, India eliminated customs duties on 217 tariff lines over a period and

the last tranche of reduction/elimination was completed by 2005. The number of participant countries has grown to 80 today.

ITA-I or the original agreement which was concluded in 1997 covered computers, semiconductors and their manufacturing equipments, data storage media, telecommunication equipment and parts and accessories. This agreement is now proposed to be expanded to cover around 200 additional products. ITA-II, seen as the first major tariff cutting deal at the WTO since its inception, would now include next generation semiconductors, medical devices covering equipments like MRI machines and CT scanners, GPS technology devices, printed matter/cards to download software and games, printer ink cartridges, software media such as solid state drives, video game consoles and certain consumer electronic goods. Here, it may be noted that issue of inclusion of electronic consumer goods was raised initially by Hong Kong, Malaysia and Singapore way back in 1998 but was opposed by India along with EU and others.

Once a country binds itself and eliminates or reduces its customs duties on the products covered under this agreement, the commitments have to be implemented on Most Favored Nation (MFN) basis and hence the benefit of reduced tariff and market access would be available to all the countries. This is so, because the tariff reductions are bound in the WTO

schedules of the participants. Further, since the commitments are part of the schedules annexed in GATT, individual ITA concessions of each participant are enforceable under WTO DSU also.

Should India welcome the ITA-II also with open hands as ITA-I or is there something which it should be cautious of? There are views, both in favour of as well as against this proposed expansion.

In the 1990s, India accorded priority to growth of IT sector and there was a need for access to economical world class technology to low income sectors, etc. The reduced Customs duties on goods like computers as implemented gradually through the years can be said to be one of the reasons which played its role in India becoming a major software export hub. Here, it would not be out of context to mention that gains in productivity certainly reduces prices, reduced prices raise income saved which in turn stimulates demand leading eventually to overall growth.

Since largest exporters are also the largest importers placing their reliance on the global supply chains, according to one school of thought, it helps any country to allow access to its markets in order to promote its exports. There are of course other options available in India, like taking the route of various export promotion schemes as promulgated under Foreign Trade Policy, but out-right exemption is better than claiming any conditional exemption which involves unnecessary locking up of money in various guarantees and securities/sureties. Such complicated

procedures also increase compliance and transaction costs. Unconditional exemption on the other hand gives a clear picture to the foreign company planning to invest in India. Mere opening up of more sectors for Foreign Direct Investment (FDI), would not automatically bring investment unless backed by policy concessions and tax breaks.

However, according to another school of thought, India's domestic information technology industry also needs to be encouraged and protected till they are competitive enough to withstand any challenge from the developed world, multi-national corporates or from our Asian neighbors. In case, there is a need to reduce the Customs duties, in order to promote exports, the same can very well be done without binding India before the WTO. Further, it should also be noted that foreign markets will not automatically become accessible, for additional products, as soon as the ITA-II is signed. There are number of other hindrances and non-tariff barriers (NTBs) like patents, national/local standards and certifications, which block India's exports and hence such issues have to be taken up with the concerned countries. Loss of revenue due to elimination of Customs duties is also a point of concern for the developing world.

Effectiveness of this agreement also comes under question when we see that, according to some sources, USA's trade deficit in computers and parts has only increased after provision of tariff-free access to other countries, particularly China. Further, India's share in the world's export of IT products was 0.3% in 2010 while

that of Mexico, who is a not a participant in Information Technology Agreement, is 2.7%. Likewise, during the same year, in case of imports of IT products, India's share was 1.1% while Mexico accounted for 3.5% of the world's import of such products<sup>1</sup>. It clearly shows that being a part of the agreement has not helped India on the expected lines. It may be noted that tariffs are already very low in some jurisdictions and some of the bigger consumer economies like Brazil have not joined this agreement and LDCs have always evaded the question of such integration.

So how important is this expansion of ITA for a country like India? Question relevant for India is how the agreement will help its industry and allow more market access. ITA-I did not

significantly increase hardware manufacturing capabilities of India though it became a software major. India is a growing market and in case of consumer electronics, it is a major player as far as consumption is concerned. India needs technology and import of critical parts and not fully deliverable consumer goods should be its priority to take forward the campaign of 'Make in India'. It is another matter that India's certain preferences to domestically manufactured telecommunication products have been questioned number of times by EU and others – latest being on 16-9-2014 at WTO. It would be better for India to wait and watch how things take shape in 2015.

**[The author is an Assistant Manager, Knowledge Management Team, Lakshmikumaran & Sridharan, New Delhi]**

## Trade Remedy News

### Trade remedy measures by India

Product	Country	Notification No.	Date of Notification	Remarks
2-Ethyl Hexanol	EU, Indonesia, Korea RP, Malaysia, Saudi Arabia, Chinese Taipei and USA	F.No. 14/24/2014-DGAD	9-12-2014	Time for filing questionnaire responses extended up to 15-1-2015
Acetone	Korea RP	F.No.15/13/2013-DGAD	4-12-2014	ADD sunset review recommends extension of duty
Cable Ties	China, Chinese Taipei	47/2014-Cus. (ADD)	9-12-2014	Add re-imposed for 5 years
Clear Float Glass	Pakistan, Saudi Arabia, UAE	48/2014-Cus. (ADD)	11-12-2014	Definitive anti-dumping duty imposed
Cold Rolled Flat Products of Stainless Steel of 400 series	All countries	F.No.D-22011/17/2014/Part-2	15-Dec-2014	Safeguard investigation - Public hearing re-scheduled for 14-1-2015

<sup>1</sup> WTO Secretariat. Based on UN Comtrade.

<b>Product</b>	<b>Country</b>	<b>Notification No.</b>	<b>Date of Notification</b>	<b>Remarks</b>
Melamine	China	2/2015-Cus. (ADD) and F.No.15/17/2014-DGAD	7-1-2015 and 9-12-2014	ADD extended till 18-2-2016 subsequent to initiation of sunset review
Normal Butanol or "N-BUTYL ALCOHOL"	EU, Malaysia, Singapore, South Africa and USA	F.No.14/4/2013-DGAD	30-12-2014	Time for filing questionnaire responses extended up to 28-1-2015
Pentaerythritol	Russia	F.No.14/26/2012-DGAD	11-12-2014	Definitive anti-dumping duty recommended to be imposed
Pentaerythritol	Chinese Taipei	49/2014-Cus. (ADD)	31-12-2014	ADD re-imposed for 5 years
Sheet Glass	China	F.No.14/22/2013-DGAD	19-12-2014	Definitive anti-dumping duty recommended to be imposed
Sodium Citrate	All countries except developing countries other than China	4/2014-Cus. (SG)	31-12-2014	Safeguard duty imposed for three years
Sodium Nitrite	China	46/2014-Cus. (ADD)	8-12-2014	ADD rates modified
Synchronous Digital Hierarchy Transmission Equipment (SDH Equipment)	China, Israel	1 /2015-Cus. (ADD) and No.15/20/2014-DGAD	5-1-2015 and 6-12-2014	ADD extended till 7-12-2015 subsequent to initiation of sunset review
USB Flash Drives	China, Taiwan, Korea RP	F.No.14/22/2012-DGAD	19-12-2014	Definitive anti-dumping duty recommended to be imposed

### **Trade remedy actions against India**

<b>Product</b>	<b>Country</b>	<b>Notification No.</b>	<b>Date of Notification</b>	<b>Remarks</b>
Frozen Warmwater Shrimp	USA	[A-533-840] 79 FR 71384	2-12-2014	Final results of anti-dumping duty changed circumstances review issued. Premier Marine Products Private Limited (PPL) determined as successor-in-interest to Premier Marine Products (PMP)
Silico-manganese	EU	2014/C 461/16	20-12-2014	Anti-dumping investigation initiated. Questionnaire replies to be submitted by 2-2-2015.

Product	Country	Notification No.	Date of Notification	Remarks
Stainless steel wires	EU	2014/C 433/05	3-12-2014	Absorption investigation initiated. Questionnaire replies to be submitted by 3rd February 2015.
Sulphanilic acid	EU	Regulation (EU) No. 1347/2014	17-12-2014	Countervailing duty repealed after expiry review
Tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron)	EU	2014/C 461/17	20-12-2014	Anti-dumping investigation initiated. Questionnaire replies to be submitted by 29th January 2015.

## WTO News

### China-US dispute over countervailing duty measures – Appellate Body issues report

The WTO Appellate Body, on 18th December 2014, issued its report in the dispute “*United States – Countervailing Duty Measures on Certain Products from China*” (DS437). The Appellate Body issued the following findings:

- Panel’s finding upholding the USDOC’s rejection of private prices as potential benchmarks in the investigations on the grounds that such prices were distorted, was reversed by the Appellate Body. DSU’s appellate body also reversed the Panel’s finding that China failed to establish that the USDOC had acted inconsistently with US’ obligations under Articles 14(d) and 1.1(b) of the SCM Agreement, and found that the USDOC had acted inconsistently with US’ obligations under Articles 14(d) and 1.1(b) of the SCM Agreement by rejecting prices in China as benchmarks in its benefit analyses;
- The Appellate Body also reversed the Panel’s

finding that China had not established that the USDOC acted inconsistently with US’ obligations under Article 2.1 by failing to identify a “granting authority” in each of the specificity determinations at issue;

- It was also held that the Panel had acted inconsistently with its obligations under Article 11 of the DSU in assessing China’s claims under Article 12.7 of the SCM Agreement. The Appellate Body reversed the Panel’s finding that China had not established that the USDOC acted inconsistently with the US’ obligations under Article 12.7 of the SCM Agreement by not relying on facts on the record in 42 “adverse” facts available determinations across the 13 investigations challenged by China.

In another dispute involving USA’s countervailing duty, the Dispute Settlement Body has on 19-12-2014 adopted the Appellate Body report in the dispute “*US – Countervailing measures on certain hot-rolled steel flat products from India*” (DS436).

## Tax incentives at centre stage at WTO

Disputes relating to tax incentives to domestic producers were at the centre of some disputes initiated by EU at the WTO. While DSB Panel was established in EU-Brazil dispute on domestic tax advantages to certain sectors, EU has filed dispute against US over tax incentives by the latter to large civil aircraft produced in USA.

A panel was established on 17-12-2014 to examine a complaint by the European Union alleging that Brazilian programmes in automobile, information and communication technologies and automation sectors conferred tax advantages to its domestic products (DS472). According to EU, the measures violate various provisions of SCM agreement, GATT, 1994 and TRIMS Agreement. In another dispute relating to certain conditional tax incentives by the USA to commercial airplane manufacturers, the EU has notified the WTO Secretariat on 19-12-2014 of a request for consultations with the USA. The dispute relates to development, manufacture, and sale of large civil aircraft, with a requirement of local content. According to EU, such incentives are prohibited subsidies and are in violation of the WTO Agreement on Subsidies and Countervailing Measures. Here, it may be noted that there are 4 disputes (DS347, DS353, DS317, DS316) at various stages of dispute settlement presently in WTO between

the two Members (USA and EU) relating to incentives for manufacture of aircrafts with both alleging that incentives by the other being in violation of WTO provisions.

## Turkey initiates safeguard investigations on wallpaper and cellular phones

Turkey has, on 12-12-2014, initiated a safeguard investigation on wallpaper and similar wall coverings. The same was notified to the WTO's Committee on Safeguards on the same day. The "Online Questionnaire for the Interested Party" has to be submitted within 30 days from the date of initiation of the investigation. Earlier, on 5-12-2014, Turkey had initiated safeguard investigation on transmission apparatus incorporating reception apparatus (cellular) portable telephone. Here also, the same was notified to the WTO Committee on the same day.

## Egypt launches safeguard investigation on automotive batteries

Egypt has initiated, on 15-12-2014, a safeguard investigation on automotive batteries. According to the information submitted to the WTO's Committee on Safeguards on 17-12-2014, any information, which interested parties may wish to submit to the Investigating Authority, should be submitted in writing; and any request for a hearing should be submitted within 30 days following the initiation of the investigation.

## News Nuggets

### EU terminates anti-subsidy investigation on imports of PSF from India

European Union has, on 16-12-2014, terminated anti-subsidy proceeding

concerning imports of Polyester Staple Fibres (PSF) originating in India, China and Vietnam. The authorities though found that various Indian export promotion

schemes and electricity duty exemption & industrial promotion subsidy by the State of Maharashtra, provided countervailable subsidies to the exporting firms, and that EU's industry suffered material injury, in terms of causation, it was held that prices of Indian imports had not resulted in price depression. It was observed that the financial situation of the Union industry, though still injurious in the investigation

period, had improved significantly over the period considered. The authorities in this regard also found that imports from some other countries had in fact contributed to the injury suffered by EU's domestic industry. In respect of imports from China and Vietnam, the subsidies were found to be de minimis. *Lakshmikumaran & Sridharan represented Indian exporters before the EU authorities in this investigation.*

## Ratio Decidendi

### ADD circumvention – Exclusion of product from original investigation – Minor alteration in form or appearance

The United States Court of International Trade has upheld US Department of Commerce's revised negative circumvention determination in respect of wire rods of 4.75 mm in a case involving anti-dumping duty on hot-rolled products of carbon steel and alloy steel, in coils, of diameter 5.00 mm to 19.00 mm. The court in this regard held that Commerce cannot constructively rewrite an order to cover items outside the order's literal scope, and that provisions providing for inclusion, for levy of anti-dumping duty, products differing from subject goods in a insignificant way even though it lies outside the order's literal bounds, has its limitations. Findings of the court earlier that "minor alterations" provision does not apply to goods that according to knowledge of the authorities existed commercially when writing an anti-dumping order but were excluded any way, were also relied in this regard by the court.

Further, noting that by defining subject wire rod between 5.00 mm and 19.00 mm in diameter, USDoC unambiguously omitted, on purpose, rod of lesser width from the levy, the court held that rods of smaller diameter were intentionally excluded. It was however held that the provision might apply if authorities found that a product was commercially available, but did not unambiguously exclude that product from an order. Department's argument that commercial availability is irrelevant for the 'minor alterations' analysis, was also rejected by the court. [*Deacero S.A.P.I. DE C.V. v. United States* – Slip Opinion 14-151, dated 22-12-2014, US CIT]

### ADD investigation – Extension of investigation after its expiry and non-grant of hearing

Madras High Court has held that after expiry of the investigation period for the purpose of anti-dumping, the authorities are entitled to extend the period by a notification issued after the expiry of the period. Noting that no right vested in the importer is taken away by the extension of the period for conclusion of investigation, the court

held that an extension of the ADD investigation period cannot be assailed, on the sole ground that it was not granted during the life of the investigation period itself. Drawing parallel from the meaning of word 'extension' in Section 9A(5) of the Customs Tariff Act, 1975, it was held that the extension granted under the first proviso to Rule 17(1) of the Anti-dumping Rules, after the expiry of the original period, was valid.

The court further rejected the plea that the action of the Designated Authority in rejecting request for adjournment and proceeding to pass

orders on the basis of written arguments, thereby denying the petitioner a chance of hearing, was in violation of the principles of natural justice. Supreme Court Judgment in the case of *Automotive Tyre Manufacturers Association*, was distinguished by the court while it noted that petitioner was part of a large group and opportunity of hearing was granted to several persons. [*Hyundai Motors India Ltd. v. Union of India* – Judgment dated 12-12-2014 in W.P. Nos. 11683, 11684, 14567 and 14568 of 2014, Madras High Court]

---

**Disclaimer:** *International Trade Amicus* is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. Lakshmikumaran & Sridharan does not intend to advertise its services or solicit work through this newsletter. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. The views expressed in the article(s) in this newsletter are personal views of the author(s). Unsolicited mails or information sent to Lakshmikumaran & Sridharan will not be treated as confidential and do not create attorney-client relationship with Lakshmikumaran & Sridharan. This issue covers news and developments till 7th January, 2015. To unsubscribe e-mail Knowledge Management Team at [newsletteritrade@lakshmisri.com](mailto:newsletteritrade@lakshmisri.com)

[www.lakshmisri.com](http://www.lakshmisri.com)

<http://cn.lakshmisri.com>

<http://addb.lakshmisri.com>