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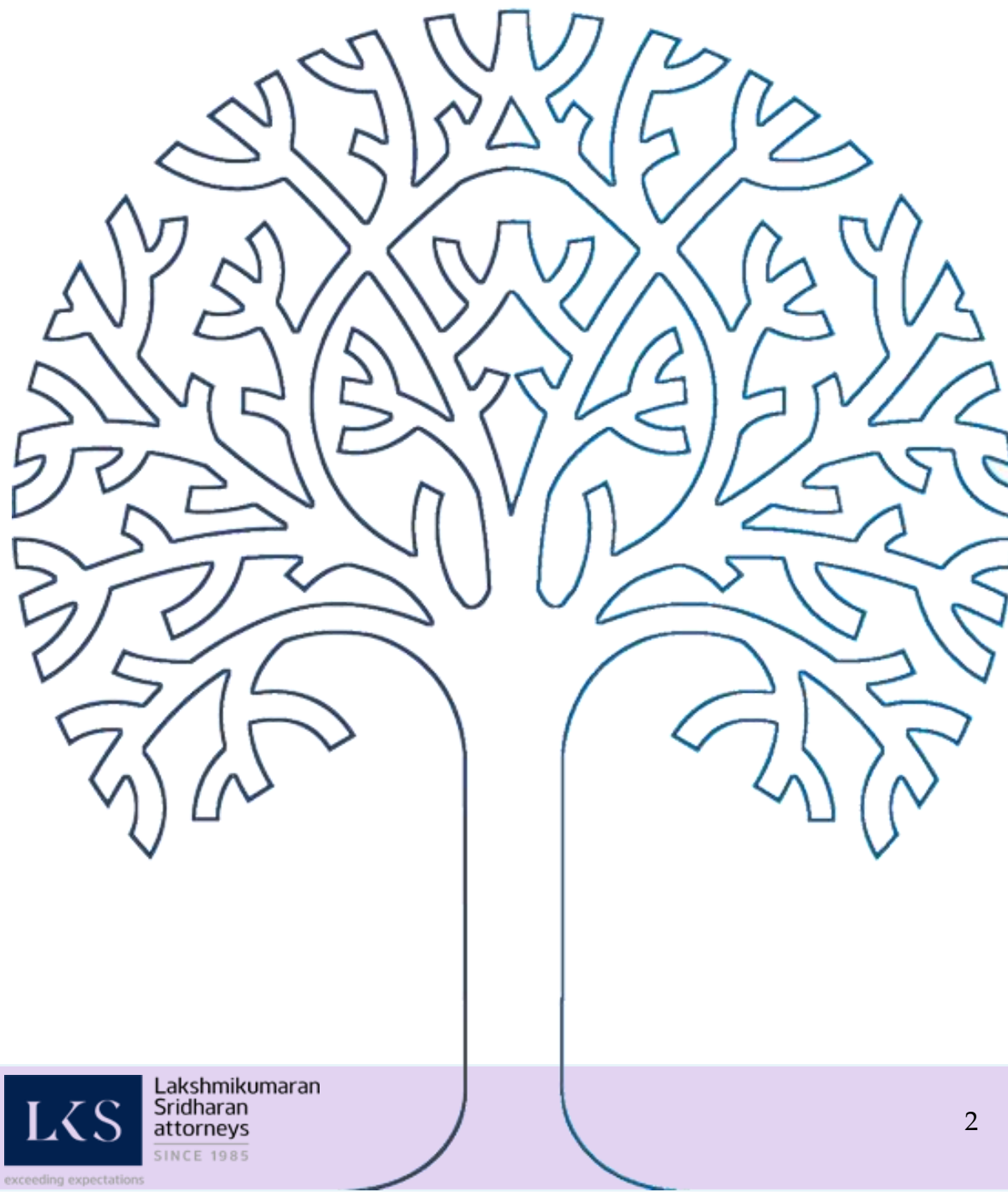
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Article

The UK CBAM: Carbon conundrum at the crossroads of trade and sustainability

By Ankur Sharma, Aayush Rastogi, and Nikita Chauhan

Recently the UK Government released its much-anticipated response to the policy consultation on introducing the UK Carbon Border Adjustment Mechanism ('UK CBAM') which is similar to the objective of the EU under its CBAM. Discussing various features of the UK CBAM, the authors highlight that Indian businesses need to become proactive in understanding the legal obligations, compliance requirements, and commercial implications of the UK CBAM, and must assess the same in advance so that they can give a clear picture to their customers in UK on the potential CBAM exposure. They also for this purpose enlist various key aspects on which Indian businesses must carry out due diligence. Also, according to them, this should be seen as an opportunity to begin carbon footprint monitoring and reporting and marching ahead by demonstrating strong commitment to sustainability and climate change mitigation.

The UK CBAM: Carbon conundrum at the crossroads of trade and sustainability

By Ankur Sharma, Aayush Rastogi, and Nikita Chauhan

On 30 October 2024, the UK Government released its much-anticipated response to the policy consultation on introducing the UK Carbon Border Adjustment Mechanism ('UK CBAM'). The UK CBAM is aimed at bolstering the UK's commitment to industrial decarbonization, achieving net zero emissions by 2050 and delivering clean energy by 2030. This is similar to the objective of the EU under their CBAM. However, beyond its green ambitions, the UK CBAM is a significant trade regulation that is likely to affect global trade. Businesses must gear up for emissions monitoring, complex reporting, verification of emissions, and assessments of carbon price on their goods.

What is CBAM?

CBAM places a price on the embedded emissions in goods. The underlying logic is that by putting a price on emissions, it would encourage businesses to adopt cleaner production processes and procure their inputs from sustainable supply chain partners. Otherwise, high emissions would result in a higher carbon price that would be paid by the buyer of the goods, who would be compelled to recover the same from the supplier of the goods. This aligns with the polluter pays principle, although there is

much ongoing debate on whether developed countries should bear more of the carbon price burden because of their historical emissions.

For the EU and the UK, CBAM serves a dual purpose – avoiding 'carbon leakage' and promoting global decarbonisation.

What is Carbon Leakage?

Carbon leakage occurs when businesses relocate their production to countries with less stringent environmental norms. As a result, for example, the source of emissions shifts outside the UK. While this may decrease emissions in the UK, but these gains are offset by emissions happening elsewhere. This becomes even more problematic for the UK when such goods produced elsewhere find their way back to the UK. This undermines the UK's commitments under the Paris Agreement to achieve net zero by 2050, as the UK's internal market continues to have imported goods with a carbon footprint. At the same time, goods produced by local manufacturers in the UK face an unequal internal market due to their high production and compliance costs. Enter CBAM, that aims to level the playing field by obligating foreign manufacturers to decarbonise and

demonstrate it or their goods would face a carbon price when they enter the UK.

Products covered under the UK CBAM

Initially, the UK CBAM will target five sectors:

1. Iron and Steel
2. Aluminium
3. Fertilizers
4. Hydrogen
5. Cement

For ease of reference, goods falling under the above sectors are called 'CBAM goods'.

Although, the UK had initially planned on covering Glass and Ceramics sectors also, but these have been excluded for now due to their relatively low emission intensity and reduced risk of carbon leakage. Importantly, the sectoral coverage would be monitored regularly, and new sectors shall be added based on carbon leakage risks and emission patterns. The EU CBAM follows a similar approach to enhancing sectoral coverage.

The UK has also noted the need for international alignment on the scope of products covered within the CBAM and has,

therefore, aligned the coverage with that of the EU CBAM by limiting to the above five sectors for now.

Key exceptions under the UK CBAM

Certain key exemptions proposed under the UK CBAM are as follows:

1. **Certain Fertilizers** - Mineral or chemical fertilizers containing phosphorus and potassium are excluded.
2. **Ferro Alloys**– Ferro alloys such as ferro-silicon, ferro-molybdenum, ferro-titanium are excluded.
3. **Scrap Materials** – Aluminium and iron or steel scrap either have a net positive, or no impact on emissions, and are, therefore, excluded.
4. **Minimum registration and reporting threshold** – As small and medium enterprises may import limited quantities of CBAM goods, to reduce the compliance burden on them, import of CBAM goods by such enterprises that are worth less than £50,000 over a rolling 12-month period are exempt.

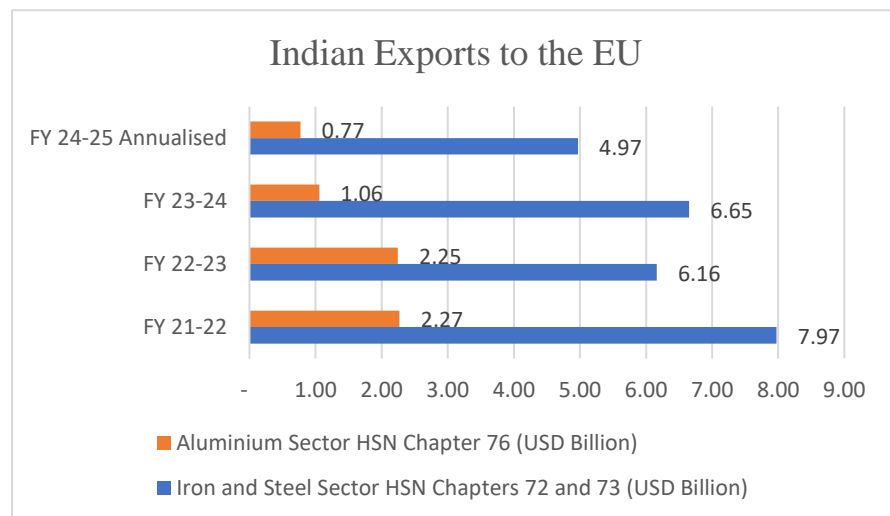
Timelines

The UK CBAM is set to **take effect from 1 January 2027**, allowing businesses time to adjust to the compliance requirements.

An analysis of the trade patterns since the implementation of the EU CBAM from October 2023

During the transitional phase under the EU CBAM from October 2023 until December 2025, when no carbon price is being charged, the EU importers are required to declare the direct emissions, indirect emissions, and emissions related to raw materials (precursors) every quarter.

Till date, the reporting cycle has spanned four quarters. During this period, the exports of CBAM goods, such as steel and aluminium, from India to the EU have also witnessed a decline. Further, in the past four years, India's exports to the EU in iron and steel sector have decreased by 40% and in the aluminium sector by more than 60% (refer graph below).

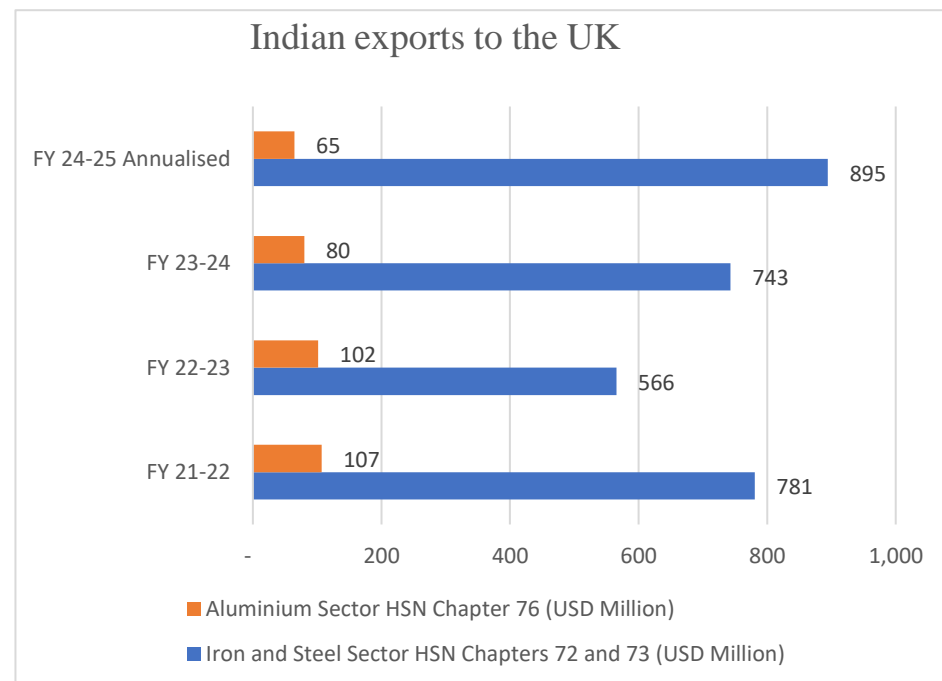


Source: India Ministry of Commerce, Export-Import Databank

The EU CBAM along with certain other factors could have contributed to the decline of India's exports to the EU in these sectors, as the EU buyers continue to assess whether to source from sustainable suppliers or others. Quarterly CBAM reports are informing their sourcing decisions.

India's exports to the UK

The UK has been an important market for Indian iron and steel and aluminium exporters. India's exports to the UK have been increasing since FY 2022-23 (refer graph below).



Source: India Ministry of Commerce, Export-Import Databank

It will be interesting to see whether the UK CBAM would dampen India's exports to the UK in the coming years. Considering India's growth aspirations, conceding the EU and the UK markets are not an option for Indian businesses.

What can Indian manufacturers do?

Indian businesses need to become proactive in understanding the legal obligations, compliance requirements, and commercial implications of CBAM. Ultimately, a carbon price or levy shall be assessed by the UK authority on the CBAM goods, and the Indian businesses must be able to assess the same in advance so that they can give a clear picture to their customers in the UK on the potential CBAM exposure. CBAM, thus, should not just be seen as an environmental compliance but also as a tax compliance. Thus, any errors in assessments by Indian businesses would have huge implications for their customers in the UK, which could also impact business relations.

To begin with, Indian businesses must carry out due diligence on a few key aspects:

- i. Understand your production processes and identify carbon intensive processes.
- ii. Implement an internal recording and monitoring program to capture the carbon footprint of your production processes.

- iii. Talk to your relevant raw material suppliers to understand their interest in recording and monitoring carbon footprint of their production processes. This is important because the carbon footprint of their raw material shall be added to your finished product's carbon footprint for CBAM reporting.
- iv. Assess the source of your electricity supply and create a plan to increase the sourcing of renewable energy.
- v. Communicate to your customers in the UK regarding the steps you are taking regarding sustainable manufacturing. Confidence building is important, and you need your customer's support to learn, adapt and implement best practices. In the face of increased compliance burden, your customers would help you remain in the important UK market.
- vi. Accuracy of the data is the key and taking shortcuts is not an option. It is a heavy learning curve, but it can be learned. Errors shall have financial repercussions for your customers, which would also impact your business.

Moving forward, many other countries are expected to introduce their own CBAMs, thereby increasing the pressure on Indian businesses.

As stated earlier, this should be seen as an opportunity to begin carbon footprint monitoring and reporting and marching ahead

by demonstrating strong commitment to sustainability and climate change mitigation.

[The authors are Partner, Principal Associate and Associate, respectively, in International Trade & WTO practice at Lakshmikumaran & Sridharan Attorneys]

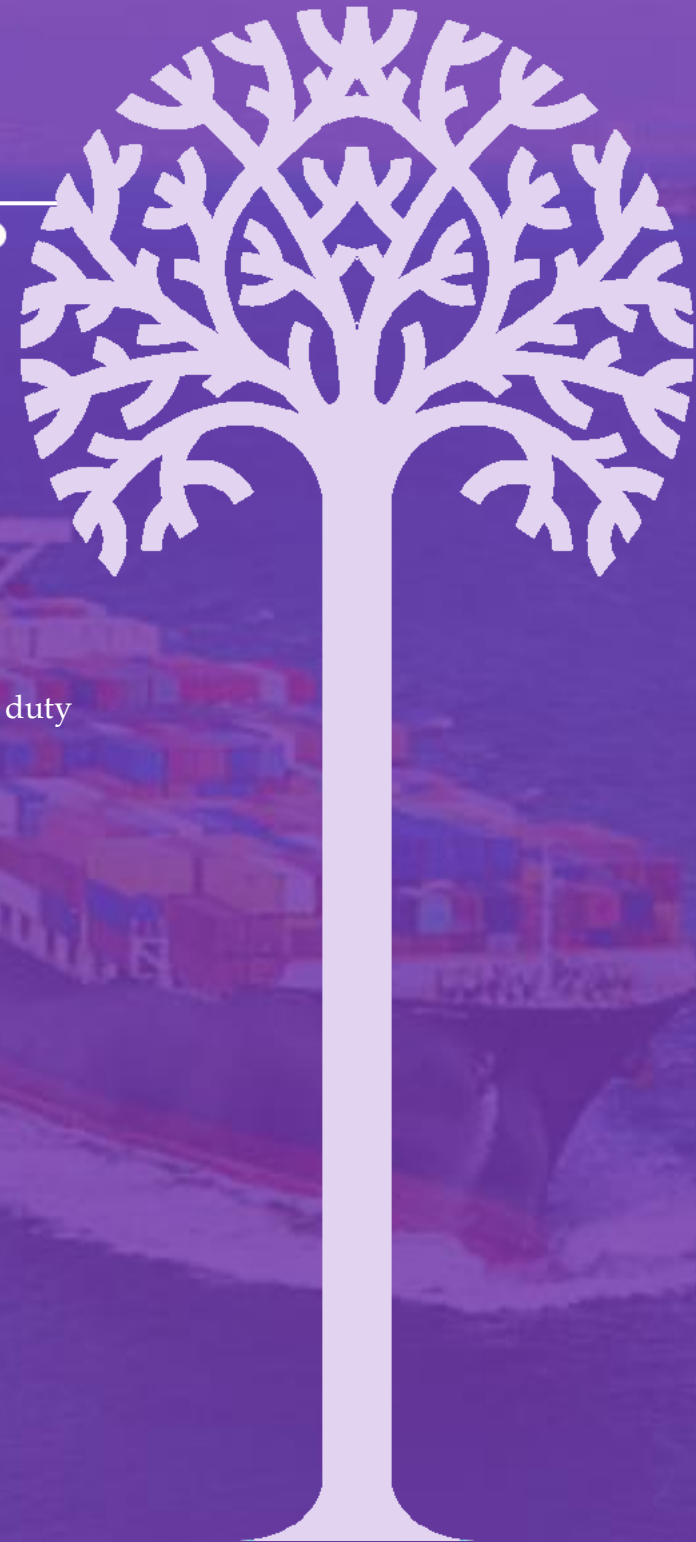
Trade Remedy News.



- 2,4-Dichlorophenoxyacetic Acid from India – USA issues preliminary affirmative determination of sales at less than fair value
- Aluminum Extrusions from India – USA issues finding of absence of material injury in anti-dumping investigation
- Barium Chloride from India – USA revokes countervailing duty order
- Carbon and Alloy Steel Threaded Rod from India – USA initiates 5-year reviews for anti-dumping duty and countervailing duty
- Common Alloy Aluminum Sheet from India – USA issues determination that Hindalco Industries Limited and Manaksia Aluminium Company Limited received countervailable subsidies 1 January 2022 till 31 December 2022
- Epichlorohydrin from China PR, Korea RP and Thailand – India imposes anti-dumping duty
- Epoxy Resins from India – USA issues preliminary affirmative determination of sales at less than fair value
- Glycine from India – USA issues affirmative finding in 5-year review of anti-dumping and countervailing duty
- Hard Empty Capsules from India – USA initiates countervailing duty investigation and less-than-fair-value investigations
- Hexamethylenetetramine from India – USA initiates countervailing duty investigation and less-than-fair-value investigations; Affirmative finding also issued of material injury
- Hot-Rolled Carbon Steel Flat Products from India – USA issues affirmative results of sunset review for anti-dumping and countervailing duty
- Mono Ethylene Glycol (MEG) from Kuwait, Saudi Arabia and USA – India terminates anti-dumping investigation
- Overhead Door Counterbalance Torsion Springs from India – USA issues notice of institution of investigations for anti-dumping duty and countervailing duty



Trade Remedy News.



- Polyvinyl Chloride Suspension Resins from China PR, Indonesia, Japan, Korea RP, Taiwan, Thailand and USA – India's DGTR recommends provisional anti-dumping duty
- Stainless Steel Flanges from India – USA issues preliminary finding that countervailable subsidies provided to Pradeep Metals Limited from 1 January 2022 till 31 December 2022
- Textured Tempered Glass from China PR and Vietnam – India's DGTR recommends provisional anti-dumping duty
- Welded Stainless-Steel Pipes and Tubes from Thailand and Vietnam – India imposes anti-dumping duty

Trade remedy measures by India

Product	Country	Notification No.	Date of notification	Remarks
Epichlorohydrin	China PR, Korea RP and Thailand	24/2024-Cus. (ADD)	11 November 2024	Anti-dumping duty imposed
Mono Ethylene Glycol (MEG)	Kuwait, Saudi Arabia and USA	F. No. 6/8/2021-DGTR	27 November 2024	Anti-dumping investigation termination
Polyvinyl Chloride Suspension Resins	China PR, Indonesia, Japan, Korea RP, Taiwan, Thailand and USA	F. No. 6/33/2023-DGTR	30 October 2024	Provisional anti-dumping duty recommended
Textured Tempered Glass	China PR and Vietnam	F. No. 6/29/2023-DGTR	5 November 2024	Provisional anti-dumping duty recommended
Welded Stainless-Steel Pipes and Tubes	Thailand and Vietnam	23/2024-Cus. (ADD)	4 November 2024	Anti-dumping duty imposed

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
2,4-Dichlorophenoxyacetic Acid	USA	FR Doc No: 2024-26457	14 November 2024	Preliminary affirmative determination of sales at less than fair value

Product	Investigating Country	Document No.	Date of Document	Remarks
Aluminum Extrusions	USA	FR Doc No: 2024-27376	22 November 2024	ADD – Finding of absence of material injury
Barium Chloride	USA	FR Doc No: 2024-25613	5 November 2024	Countervailing duty order revoked
Carbon and Alloy Steel Threaded Rod	USA	FR Doc No: 2024-25100	1 November 2024	ADD and CVD – 5-year reviews initiated
Common Alloy Aluminum Sheet	USA	FR Doc No: 2024-26220	13 November 2024	CVD – Determination that Hindalco Industries Limited and Manaksia Aluminium Company Limited received countervailable subsidies 1 January 2022 till 31 December 2022
Epoxy Resins	USA	FR Doc No: 2024-26256	13 November 2024	Preliminary affirmative determination of sales at less than fair value
Glycine	USA	FR Doc No: 2024-28018	29 November 2024	ADD and CVD – Affirmative finding in 5-year review
Hard Empty Capsules	USA	FR Doc No: 2024-27008	20 November 2024	Countervailing duty investigation initiated
Hard Empty Capsules	USA	FR Doc No: 2024-27009	20 November 2024	ADD - Initiation of Less-Than-Fair-Value Investigations

Product	Investigating Country	Document No.	Date of Document	Remarks
Hexamethylenetetramine	USA	FR Doc No: 2024-25524	4 November 2024	Countervailing duty investigation initiated
Hexamethylenetetramine	USA	FR Doc No: 2024-25525	4 November 2024	ADD – Less-Than-Fair-Value Investigations initiated
Hexamine (Hexamethylenetetramine)	USA	FR Doc No: 2024-26998	20 November 2024	ADD and CVD – Affirmative finding of material injury
Hot-Rolled Carbon Steel Flat Products	USA	FR Doc No: 2024-26120	12 November 2024	CVD – Affirmative results of sunset review
Hot-Rolled Carbon Steel Flat Products	USA	FR Doc No: 2024-26142	12 November 2024	ADD – Affirmative results of sunset review
Overhead Door Counterbalance Torsion Springs	USA	FR Doc No: 2024-25551	4 November 2024	ADD and CVD – Notice of institution of investigations issued
Stainless Steel Flanges	USA	FR Doc No: 2024-26216	13 November 2024	Preliminary finding that countervailable subsidies provided to Pradeep Metals Limited from 1 January 2022 till 31 December 2022



WTO News

- Colombian anti-dumping duties on frozen fries from Belgium, Germany and Netherlands – Compliance panel established
- EU's countervailing duty on battery electric vehicles from China – China requests for consultations under DSU
- Philippines initiates safeguard duty investigation on cement imports

Colombian anti-dumping duties on frozen fries from Belgium, Germany and Netherlands – Compliance panel established

On request of the European Union, the WTO's DSB has on 25 November 2024 established a compliance panel to review Colombia's compliance with the panel report and the appeal arbitration award under Article 25 of the Dispute Settlement Understanding in the dispute – *Colombia — Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands* (DS591). It is stated that EU considers that Colombia recalculated the dumping margin using flawed methodologies resulting in an artificially inflated dumping margin for the EU exporting producers. A panel has also been composed on 28 November 2024.

EU's countervailing duty on battery electric vehicles from China – China requests for consultations under DSU

China has on 4 November requested consultations with the European Union regarding the latter's imposition of countervailing duties on new battery electric vehicles (BEVs) from China. China alleges both substantive and procedural inconsistencies in respect of Definitive Countervailing Regulation, the Provisional Countervailing Regulation, the Notice of initiation

and the investigation leading to the imposition of these measures. Violation of various provisions of the Agreement on Subsidies and Countervailing Measures ('**SCM Agreement**'), and the General Agreement on Tariffs and Trade 1994 ('**GATT 1994**') has been alleged here.

It may be noted that China had earlier on 9 August 2024 requested consultations with the European Union with respect to the anti-subsidy investigation and the provisional countervailing duty measures imposed by the latter on new battery electric vehicles originating in China.

Philippines initiates safeguard duty investigation on cement imports

Philippines has on 31 October 2024 initiated a safeguard duty investigation on imports of cement covered under ASEAN Harmonized Tariff Nomenclature (AHTN) 2523.2990 and 2523.9000. As per communication circulated in the WTO on 4 November, the investigation was initiated on the basis of import data obtained from official sources and information submitted by members of the Cement Manufacturers Association of the Philippines that increased imports of cement are a substantial cause of serious injury to the domestic industry in terms of declining market share, production sales, capacity utilization, profitability, price depression, suppression and undercutting.

India Customs & Trade Policy Update



- Electronic integrated circuits – Requirement of registration under Chip Import Monitoring System discontinued
- QCOs notified by Ministry of Heavy Industries need not be complied for imports by Advance Authorization holders, EOUs and SEZs
- Clear float glass having only a tin layer on one side is classifiable under Customs TI 7005 29 90
- Coking and non-coking coal – Mandatory additional qualifiers notified in import declarations
- Synthetic or Reconstructed Diamonds – Mandatory additional qualifiers notified for export/import declarations

Electronic integrated circuits – Requirement of registration under Chip Import Monitoring System discontinued

The Ministry of Commerce & Industry has discontinued the requirement of registration of imports of electronic integrated circuits under Chip Import Monitoring System (CHIMS). Amendments have been made for this purpose in Chapter 85 of Schedule I (Import Policy) of the ITC(HS), 2022. The revised policy condition is applicable for Codes 8542 31 00, 8542 32 00, 8542 33 00, 8542 39 00 and 8542 90 00 from the date of Notification No. 41/2024-25, dated 29 November 2024 issued for the purpose.

QCOs notified by Ministry of Heavy Industries need not be complied for imports by Advance Authorization holders, EOUs and SEZs

The DGFT has amended Appendix-2Y of the Handbook of Procedures to add Ministry of Heavy Industries in the list of Ministries/Departments whose notifications on mandatory QCOs are exempted by the DGFT for goods to be utilised/consumed in manufacture of export goods, i.e., imports by Advance Authorisation holders, EOUs and SEZ units. Public Notice 31/2024-25, dated 5 November 2024 has been issued for this purpose.

Clear float glass having only a tin layer on one side is classifiable under Customs TI 7005 29 90

The CBIC has clarified that clear float glass which is not wired, not coloured, not reflective and not tinted and has only a tin layer on one side while there is no other metal oxide layer on it, cannot be said to have any absorbent layer; and therefore, will be correctly classified under Tariff Item 7005 29 90 of the Customs Tariff Act, 1975. According to the Circular, getting a 'tin layer' on one side of the glass by default does not mean that it satisfies the condition under Note 2(C) of Chapter 70.

Coking and non-coking coal – Mandatory additional qualifiers notified in import declarations

The CBIC has notified mandatory additional qualifiers in import declarations in respect of import of coking and non-coking coal. The additional qualifiers covering different grades based on ash percentage in case of coking coal and based on gross calorific value (GCV) in case of non-coking coal are required to be declared with effect from 15 December 2024. According to CBIC Circular No. 24/2024-Cus., dated 20 November 2024, issued for the purpose, declaration of additional qualifiers would improve quality of assessment and intervention and increase facilitation.

Synthetic or Reconstructed Diamonds – Mandatory additional qualifiers notified for export/import declarations

The CBIC has notified mandatory additional qualifiers for export/import declarations in respect of synthetic or

reconstructed diamonds. The additional qualifiers pertain to certain specified lab grown diamonds – chemical vapour deposition, high pressure high temperature, and other and will apply from 1 December 2024. Circular No. 21/2024-Cus., dated 30 October 2024 has been issued for the purpose.



Ratio Decidendi

- Anti-dumping duty on DTA clearance by SEZ unit – Development Commissioner of SEZ had jurisdiction to issue SCN prior to 5 August 2016 – *Madras High Court*
- Social Welfare Surcharge is not payable when BCD paid using MEIS scrips – Duty liability is not discharged when exemption obtained – *Orissa High Court*
- Exemption – Effect of non-use of terms ‘only’, ‘exclusively’, ‘wholly’ or ‘entirely’ before the words ‘for medical use’ – *CESTAT Mumbai*
- Speaking order is required under Customs Section 17(5) in respect of each Bill of Entry – *CESTAT Mumbai*
- Pulses waste is classifiable under Heading 0713 and not under TI 2302 50 00 – *CESTAT Ahmedabad*
- Integrated Circuit Micro Electro-Mechanical System Microphones is classifiable as microphone and not as electronic integrated circuit – *Delhi High Court*
- Innopet Plasmax System used for coating PET bottles for aerated beverages is classifiable under TI 8422 30 00 – *CESTAT Mumbai*

Anti-dumping duty on DTA clearance by SEZ unit – Development Commissioner of SEZ had jurisdiction to issue SCN prior to 5 August 2016

The Madras High Court has rejected the contention that clearance from the Special Economic Zone ('SEZ') to the Domestic Tariff Area ('DTA') does not qualify as an import either under Section 2(o) of the SEZ Act, 2005 or Section 2(e) of the Foreign Trade (Development and Regulation) Act, 1992, and, therefore, anti-dumping duty should not have been imposed on goods cleared from the SEZ into the DTA. The High Court was of the view that Section 2(o) of the SEZ Act should be considered in the light of Section 30 of the said Act which provides for the imposition of duties of customs, including ADD, on goods that are removed from a SEZ to a DTA in the same manner as leviable on such goods when imported. The Court's Division Bench decision in the case of *Flextronics Technologies (India) Pvt. Ltd. v State of Tamil Nadu* was distinguished by the Single Bench here.

Further, assessee's contention that the Development Commissioner could not issue the show cause notice was also rejected by the Court. The petitioner had contended that the Development Commissioner did not have the jurisdiction to issue the show cause notices because Rule 47(5) of the Special

Economic Zones Rules, 2006 was only notified on 5 August 2016, thereby conferring jurisdiction on customs officers.

The High Court in this regard noted that as the administrative head of the SEZ, who is empowered to take all steps to discharge his functions under the SEZ Act under Section 12(1) of the SEZ Act, the Development Commissioner issued the show cause notices. According to the Court, if the contention of the petitioner on jurisdiction were to be accepted, neither the Development Commissioner nor customs officers could have issued the show cause notices prior to 5 August 2016. [*Huawei Telecommunications (India) Company Pvt. Ltd. v. Principal Commissioner* – 2024 VIL 1198 MAD CU]

Social Welfare Surcharge is not payable when BCD paid using MEIS scrips – Duty liability is not discharged when exemption obtained

Disagreeing with the view taken by the Madras High Court Division Bench in *Gemini Edibles and Fats India Pvt. Ltd. v. Union of India*, the Orissa High Court has held that the assessee-petitioner was not required to pay Social Welfare Surcharge ('SWS') calculated on customs duty which was exempted under the MEIS scrip used by it. Noting that the charging provision by

sub-section (3) in Section 110 of the Finance Act, 2018 for SWS is a percentage of customs duty paid, as collected by the Central Government, the Court held that the duty paid being zero, collection is zero and percentage of it must also be zero. The High Court in this regard was of the view that upon a person obtaining exemption, he cannot be said to be discharging liability to pay duty, and that there is no fact of collection following the levy. According to the Court, debits in the scrip was for purpose of measure of quantum of exemption utilized under it. *The assessee here was represented by Mr. V. Sridharan, Co-founder of Lakshmikumaran & Sridharan Attorneys.* [*Dalmia Cement (Bharat) Ltd. v. Union of India – 2024 VIL 1255 ORI CU*]

- 1) **Exemption – Effect of non-use of terms ‘only’, ‘exclusively’, ‘wholly’ or ‘entirely’ before the words ‘for medical use’**
- 2) **Speaking order is required under Customs Section 17(5) in respect of each Bill of Entry**

The CESTAT Mumbai has allowed assessee’s appeal in a case involving exemption under Sl. No. 563 of Notification No. 50/2017-Cus. on imports of massagers. Rejecting the Department’s contention that the goods were not meant for medical use and hence exemption was not available, the

Tribunal noted that description of goods in column no. 3 of the notification did not use the terms ‘only’, ‘exclusively’, ‘wholly’ or ‘entirely’ before the words ‘for medical use’. Further, regarding use of the word ‘only’ in the Explanation to said Sl. No., the Tribunal was of the view that it was to emphasise that the word ‘goods’ refers to the instruments, or appliance and not to their parts. It was noted that the word ‘only’ cannot be read before the words ‘for medical use’.

Further, the Tribunal also held that a speaking order is required to be passed under Section 17(5) of the Customs Act, 1962 in respect of each Bill of Entry. The Adjudicating Authority had passed a speaking order only in respect of one Bill of Entry while not doing the same for seventy-six remaining B/Es. According to the Tribunal, it was necessary for the Additional Commissioner of Customs to pass speaking orders in respect of all the seventy-six Bills of Entry and the Commissioner (Appeals) could not have dismissed the appeal only for the reason that in respect of one Bill of Entry a speaking order had already been passed and so the view of the department was known. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [*Lifelong Online Retail Pvt. Ltd. v. Commissioner – 2024 VIL 1472 CESTAT MUM CU*]

Pulses waste is classifiable under Heading 0713 and not under TI 2302 50 00

The CESTAT Ahmedabad has held that waste of pulses namely offspecs pulses, tukdi of pulses- broken pulses, bhushi/ bhuki of pulses mixed with impurities/ pulses waste is classifiable under Heading 0713 of the Customs Tariff Act, 1975 and not under Tariff Item 2302 50 00. The Tribunal in this regard noted that the later TI covered Bran, Sharps and others residues whether or not in the form of palates derived from the sifting, milling or other working cereal or of leguminous plants, and hence applies to the goods namely, cereals of leguminous plant, while in the present case the waste arose from the pulses and pulses are not covered either as cereals or leguminous plant.

It was also noted that if the classification proposed by the department fails than the entire proceeding is vitiated, irrespective of the position whether the assessee's claim of classification is right or wrong. [*Kitchen Xpress Overseas Ltd. v. Commissioner* – 2024 (11) TMI 1239 - CESTAT Ahmedabad]

Integrated Circuit Micro Electro-Mechanical System Microphones is classifiable as microphone and not as electronic integrated circuit

The Delhi High Court has upheld the findings of the Customs Authority for Advance Rulings that the product Integrated Circuit Micro Electro-Mechanical System Microphones is classifiable as a microphone under Tariff Item 8518 10 00 of the Customs Tariff Act, 1975 and not under TI 8542 39 00 *ibid*. The Court in this regard referred to the technical literature, relied upon by the assessee itself which described the product as a 'microphone' or 'MEMS microphone' and did not use the term 'Integrated Circuit MEMS Microphone' anywhere. It was also noted that the device converts sound signals into electrical signals, which aligns with the function of a microphone, and that though the product may be ultimately put to use in a variety of gadgets and equipment, yet in all such equipment, it would perform the function of a microphone only. Dismissing the appeal, the Court also noted that the product was with integrated components like the ASIC chip (an EIC) and MEMS sensor, pre-packaged and mounted on a PCB, and thus was a complete and tradable unit, a microphone. [*Vivo Mobile India Private Limited v. CAAR* – 2024 (11) TMI 1056 - Delhi High Court]

Innopet Plasmax System used for coating PET bottles for aerated beverages is classifiable under TI 8422 30 00

The CESTAT Mumbai has held that 'Innopet Plasmax System 20Q' used for coating of PET bottles for aerated beverages/waters are appropriately classifiable under Tariff Item 8422 30 00 and its parts under TI 8422 90 90 of the Customs Tariff Act, 1975. Rejecting the Revenue department's contention of classification under TI 8479 89 99, the Tribunal was of the view that the coating machine formed an integral part of the complete aerated water

bottling plant and contributed to the principal function of aerating beverages, and hence, cannot be classified as a machine having independent function under the residuary Heading 8479. It was noted that the machinery was used for coating of PET bottles with improved technology, i.e., Plasma Impulse Chemical Vapour Deposition (PICVD) coating, which creates a barrier against the passage of gas i.e., oxygen can no longer get in, and released carbon dioxide cannot get out, thereby, the aerated water/beverages have a longer shelf life with no effect on their taste. [*SLMG Beverages Private Limited v. Commissioner – 2024 VIL 1477 CESTAT MUM CU*]

NEW DELHI 7th Floor, Tower E, World Trade Centre, Nauroji Nagar, Delhi – 110029 Phone : +91-11-41299800, +91-11-46063300 ----- 5 Link Road, Jangpura Extension, Opp. Jangpura Metro Station, New Delhi 110014 Phone : +91-11-4129 9811 ----- B-6/10, Safdarjung Enclave New Delhi -110 029 Phone : +91-11-4129 9900 E-mail : Lsdel@lakshmisri.com , lprdel@lakshmisri.com	MUMBAI 2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg, (Near Century Bazar)Prabhadevi, Mumbai - 400025 Phone : +91-22-24392500 E-mail : lsbom@lakshmisri.com
CHENNAI Door No.27, Tank Bund Road, Nungambakkam, Chennai 600034. Phone : +91-44-2833 4700 E-mail : lsmds@lakshmisri.com	BENGALURU 4th floor, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajkumar Road, Malleswaram West, Bangalore-560 055. Phone : +91-80-49331800 Fax:+91-80-49331899 E-mail : lsblr@lakshmisri.com
HYDERABAD 'Hastigiri', 5-9-163, Chapel Road, Opp. Methodist Church, Nampally, Hyderabad - 500 001 Phone : +91-40-2323 4924 E-mail : lshyd@lakshmisri.com	AHMEDABAD B-334, SAKAR-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad - 380 009 Phone : +91-79-4001 4500 E-mail : lsahd@lakshmisri.com
PUNE 607-609, Nucleus, 1 Church Road, Camp, Pune-411 001. Phone : +91-20-6680 1900 E-mail : ls pune@lakshmisri.com	KOLKATA 6A, Middleton Street, Chhabildas Towers, 7th Floor, Kolkata – 700 071 Phone : +91 (33) 4005 5570 E-mail : lskolkata@lakshmisri.com
CHANDIGARH 1st Floor, SCO No. 59, Sector 26, Chandigarh -160026 Phone : +91-172-4921700 E-mail : lschd@lakshmisri.com	GURUGRAM OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A, Gurugram-122001 phone: +91-0124 - 477 1300 Email: ls gurgaon@lakshmisri.com
PRAYAGRAJ (ALLAHABAD) 3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg), Allahabad -211001 (U.P.) Phone : +91-532-2421037, 2420359 E-mail : lsallahabad@lakshmisri.com	KOCHI First floor, PDR Bhavan, Palliyil Lane, Foreshore Road, Ernakulam Kochi-682016 Phone : +91-484 4869018; 4867852 E-mail : lskochi@laskhmisri.com
JAIPUR 2nd Floor (Front side), Unique Destination, Tonk Road, Near Laxmi Mandir Cinema Crossing, Jaipur - 302 015 Phone : +91-141-456 1200 E-mail : lsjaipur@lakshmisri.com	NAGPUR First Floor, HRM Design Space, 90-A, Next to Ram Mandir, Ramnagar, Nagpur - 440033 Phone: +91-712-2959038/2959048 E-mail : lsnagpur@lakshmisri.com

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exceeding expectations