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Procedural conundrum of Indian safeguard law

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Even though the mechanism set up by India in applying the provisions of Article XIX of GATT and Agreement on Safeguards (AOS) in India through its domestic safeguard provisions[1] satisfy the basic requirements required for its implementation, however, when compared to other countries, there remain a lot of procedural loop-holes still to be filled in to make the safeguard investigation process more transparent and clear. The present write-up compares and examines four problem areas concerning procedures currently adopted by India in conducting safeguard investigations vis-à-vis other Members of WTO, namely, European Union and United States, which may be suitably adopted by India to cover the existing loopholes.

Initiation of safeguard investigation

Though there is duty casts on Indian Safeguard Authority to prima-facie satisfy itself with contents of application filed by the Applicant/s.[2], but there is no provision for a time-period within which such an application is to be considered. The issue merits consideration since the Applicant/s may already be severely impacted at the time of making the application and hence anticipates early initiation of proceedings. However, with no time limit to consider the application, Applicant/s have no option but to constantly keep in touch or even lobby with the Authority to get the investigation initiated. Such a practice puts a big question mark on the transparency of the investigation.

Compared to the practice of 'open-ended' time frame in India, safeguard provisions in EU and USA provide definite time period to Authorities to consider the request for initiation of safeguard investigation. Article 6.1 of the EU Regulation[3] requires the Commission to initiate the investigation within one month of receipt of information from a Member state in EU and publish the notice in official journal apart from holding consultations with the concerned Member state making application on behalf of its domestic industry within an Advisory Committee to consider the request[4].

On the other hand, US Regulations[5] are quite different from EU regulations for there is no time limit provided, per-se, for initiating the investigation. Having said that, the entire safeguard investigation in US revolves around the date of filing of Application by representative domestic industry as the time line for making determinations hinge on this the date of filing of petition[6].

1 Section 8B of Customs Tariff Act, 1975 and Indian Safeguard Rules
2 Rule 5(3) of Safeguard Rules
3 Council Regulation (EC) No 260/2014 dated 26th February 2009
4 Article 4.3 of Council Regulation 260/2009
5 Section 201 to 204 of Trade Act, 1974
6 Section 202(b)(2A) of the Trade Act

India neither has a provision similar to EU to fix a time limit for making a decision to initiate the proceedings or like that of US, where date of filing of petition assumes criticality. To cause undue delay in initiating an investigation, as is more likely in cases, with no set time limits, would be like keeping the patient waiting for treatment, while the epidemic continues to kill it.

Provisional safeguard measure determination

One of the most noticeable part of AoS is the regulation relating to provisional safeguard measures. Article 6 of AoS, inter-alia, allows Member countries to impose provisional safeguard measures in critical circumstances where delay would cause damage, which would be difficult to repair. The terms 'critical circumstances' and 'delay would cause damage which it would be difficult to repair' indicate urgency in the proceedings. But how early remains early is a difficult question, which need to be decided on facts and circumstances of each case. Further, there is also no time limit prescribed for taking a decision on imposing provisional safeguard measure.

Much like AoS, Indian Safeguard Rules also does not prescribe any minimum time to make a preliminary determination nor a maximum time period to take a decision on provisional safeguard measure. Only deviation in Indian Safeguard Rules from AoS with respect to preliminary determination is that the Safeguard Authority is required to proceed expeditiously.

Result: Uncertainty in the market whether there will be a provisional safeguard measure to restrict fair imports or not, making the position of exporters from exporting nations, importers as well as end-users difficult to take short term as well as long term business decisions. This is apparent from past investigations conducted by India, wherein preliminary determinations have been made as early as fourth day[7] from the date of initiation of investigation to over 3 months[8] as well.

EU's regulations also do not lend much light on this aspect. However, unlike India, EU has used safeguard measure as trade remedy measure very rarely and provisional measures even more sparingly since conducting the first investigation in 1982. From 1982 till 2005, EU has conducted 15 safeguard investigations – general as well as China specific, of which provisional determination was made in only 4 investigations[9]. Further, since 2005, EU has so far not conducted any safeguard investigation. Thus, provisional safeguard measure is an uncommon affair in EU, unlike India.

On the other hand, US divide application of provisional relief in 2 parts: one for perishable products and citrus fruits and other for other products. Regulations require adherence

[7] Coated Paper and Paper Board (Initiation: 20th April 2009)

[8] Certain Fatty Alcohols (Initiation 13th February 2014); Carbon Black from China PR (Initiation: 2nd December 2011)

[9] Farmed Salmon (2004), Certain prepared or preserved citrus fruits (2003), Certain Steel Products(2002) and Urea (1986)

to following time-line for preliminary determinations, which may be summed up as follows:

Perishable products:

- Determination whether product is a perishable product and indicates serious injury or threat thereof due to increased imports: Within 21 days from date of request[10].
  - If affirmative: Trade Representative to request the Commission to make a preliminary determination: Within 21 days from the date of filing of request[11].
  - The President to proclaim such provisional relief: Within 7 days from the date of receiving of report from the Commission[12].

Other products:

- Where critical circumstances alleged, determination by Commission of increased imports causing or threatening to cause serious injury and delay in taking action would cause damage that would be difficult to repair: Within 60 days from the date of filing petition[13].
  - If affirmative: the President, within 30 days from receiving of the report, shall proclaim such a provisional relief[14].

Thus, there is a clear-cut time limit provided under US law to keep the investigation time-bound and transparent.

Comparison with US and EU provisions indicate the necessity of a set deadline for taking provisional safeguard measures or in its absence, desist from taking any such action unless there are compelling circumstances – a practice adopted by EU. If a detailed time period for making preliminary determination is prescribed in the Indian law, like that made by US, it will increase transparency and bring certainty in international trade.

Time limit for taking decision on duty imposition

The task of putting a time limit for completion of safeguard investigation has been left with Member countries to decide for them as AoS does not provide any such time limit. However, being an emergency measure, it is expected that the Member countries would fix a definite time period for completion of investigation, including a buffer time limit to meet any exigencies.

India, in its wisdom, considered 8 months as sufficient time period for completion of investigation from the date of initiation of investigation.[15] This is irrespective of the fact whether any preliminary determination, examining the existence of critical circumstances, have been made or not. On the other hand, US has kept separate deadlines – (a) case where no allegation of existence of critical

[10] Section 202(d)(1)(A) of Trade Act 1974
[11] Section 202(d)(1)(C)
[12] Section 202(d)(1)(G)
[13] Section 202(d)(2)(A)
[14] Section 202(d)(2)(D)
[15] Rule 11 of Indian Safeguard Rules

circumstances is made and (b) where existence of critical circumstances has been alleged in the petition. The logic behind keeping two separate deadlines is to provide for additional time to Commission to consider the existence of additional facts pertaining to existence of critical circumstances. In addition to keeping a deadline for making a determination, there is a time-limit prescribed for the President to take a decision on imposition of safeguard measures within 60 days (50 days if provisional relief proclaimed) from making of the affirmative report[16]. EU, on its part, provides for 9 months for conclusion of investigation, which is inclusive of time-period to examine critical circumstances.

However, EU Regulations do provide for an additional period of 2 months, in exceptional circumstances[17], which is required to be intimated vide public notice of extension in its Official Journal setting forth the reasons for such extension. India, on its part also, provides for extension of time for completion of investigation. However, the provision is couched in such a manner that the empowered authority has a free hand to extend the investigation for as much time as it desires[18]. Such an unrestricted power nullifies the real intent behind safeguard investigations, which require speedier and time bound determinations. As a result, there is no ultimate time limit for completion of safeguard investigations in India. This results in uncertainty in proceedings. In *Hot Rolled Flat Products of Stainless Steel*, the Indian Authority could not finish its investigation within stipulated 8 months ending on 25th February 2013. It was only on subsequent day after expiry of stipulated 8 months that time was again extended by 3 months until 25th May 2013 to complete the investigation. Further, the time limit of 8 months under Safeguards Rules is only for making a determination and does not include time taken for imposition of safeguard measures. Thus, once the Safeguard Authority in India recommends imposition of safeguard measures, there is no prescribed time period within which the Ministry of Finance or Standing Board of Safeguards has to consider the recommendation of Safeguard Authority.

This uncertainty in addition to the fact that there exists no mechanism to find out whether safeguard duty will ultimately be imposed or not, places everyone concerned with the investigation in a vulnerable position as on the one side, domestic industry is deprived of the safeguard duty to protect itself while on the other hand, exporters become wary of exporting their goods into India, which may at any time be subjected to safeguard duties. Thus, both sides remain on an uncertain wicket as they are not able to strategize their future business. Resultantly, there needs to

[16] Section 203(a)(4)(A) of Trade Act of 1974
[17] Article 7.3 of Council Regulation
[18] Rule 11(1) of Indian Safeguard Rules

be a certain time limit for interested parties to know, whether safeguard duty will be imposed or not.

Oral Hearings

Unlike EU and US, Indian Safeguard provisions with respect to oral hearings is not explicit and does not clearly spell out the procedure for requesting a hearing or rights of parties during a hearing. Rule 6(6) of the Indian Safeguard Rules requires the Safeguard Authority to provide an opportunity to interested party to present information orally. But the said provision also states that such oral submission will only be considered, when subsequently provided in writing. There is no provision under Indian law as to when oral hearing will be held or at whose behest oral hearing may be held. EU in contrast provides that Commission may hear interested parties where they have made a written application within the period prescribed in the notice of initiation. There is also a requirement to show special reasons, why an interested parties requires an oral hearing[19]. However, India cannot have such a provision since India follows natural justice principles in quasi-judicial proceedings as well. Thus, Authority has to give a hearing, irrespective of whether it has been requested by interested parties or not. However, when such hearing will be granted, whether before or after preliminary determination, is not clear. US, in this regard, provides that Commission within a reasonable period after commencement of proceeding, hold public hearings, wherein interested parties and consumers shall be afforded an opportunity to be present, present evidence, comment on adjustment plan, if any, respond to presentation of other parties and otherwise be heard. India on the other hand, provides an opportunity of rejoinder to only domestic industry, while it allows one time opportunity to present their views orally, without giving them an opportunity to comment on submission of domestic industry.

Conclusion

While safeguard mechanism remains an effective mechanism for domestic industry, which is structurally unable to meet import competition, however, in the interest of justice, there is a need to give weight to certainty of proceedings and keep interested parties aware, whether there will be safeguard duty imposition or not. After all it is their legitimate business interest. Indian safeguard law has its own set of problems with many procedures still not codified properly. A look at other jurisdictions can help overcome these problems to a large extent and provide certainty to the proceedings.

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[19] Article 6.5 of Council Regulation No 260/2009

IN FOCUS

US provisions violate WTO's SCM agreement – DSB Panel

The Panel composed by Dispute Settlement Body of the World Trade Organization (Panel) in *United States – Countervailing Measures on certain Hot-rolled carbon steel flat products from India* released its report on 14-7-2014. The dispute was filed by India in 2012 and it relates to WTO compatibility of the United States' law pertaining to countervailing duty investigation as well as CVD measures imposed by the United States on hot-rolled carbon steel produced and exported from India. Before the panel, India presented four "as such" and multiple "as applied" claims. "As such" claims relate to those claims where India challenged certain provisions of the US law itself to be inconsistent with its WTO obligations. "As applied" claims relate to the application of the law to the facts of the case at hand.

The Panel held one of the legal provisions of the United States' law, i.e. pertaining to cumulation of volumes in the injury investigation "as such" in violation WTO's Agreement on Subsidies and Countervailing Measures (SCM). Additionally, India's claims in respect of, factual inadequacy of the initiating investigation for certain programmes, incorrect subsidy determination, incorrect benefit determination, incorrect "as applied" injury determination and unwarranted use of adverse facts in cases of non-cooperation by exporters, were also upheld by the Panel. In this case, India was represented before WTO by the International Trade & WTO Team of Lakshmikumaran & Sridharan. This write-up provides a brief overview of major findings contained in the panel report.

Injury assessments in investigations

The Panel found the legal provision contained in 19 USC § 1677(7)(G), which provides for cumulative assessment of imports for the purposes of determining material injury during the original investigation, to be inconsistent with Article 15.3 of the SCM (both "as such" and "as applied"). The said provision requires cumulative assessment of the effects of subsidized imports with the effects of imports not subject to simultaneous countervailing duty investigations. Further, the said provision (again both "as such" and "as applied") was also found to be in violation of Articles 15.1, 15.2, 15.4 and 15.5 of the SCM agreement because it required the assessment of injury based on volume, effects and impact of non-subsidized or merely dumped imports. The Panel agreed with India's view that the term "simultaneously" in Article 15.3 of SCM suggests that imports under consideration must all be subject to CVD investigations at the same time. It also observed that Article 15 refers only to "subsidized imports" and hence object of the analysis to be made under said Article is injury caused by "subsidized imports", and not injury caused by any "unfairly traded imports" or dumped imports. The Panel also accepted India's interpretation of Article VI:6(a) of the GATT, 1994 that cross-cumulation is not

permissible i.e. non-subsidized, dumped imports cannot be cumulated with subsidized imports in a CVD investigation.

Provision of iron ore by NMDC

The US measures ("as applied") were found also found to be inconsistent with Article 2.1(c) of the SCM Agreement inasmuch as they failed to take into account all mandatory factors prescribed in the Article while determining *de facto* specificity (subsidies that are specific) for the provision of high grade iron ore by NMDC. The Panel relying on the findings of the Appellate Body in *US – Anti-Dumping and Countervailing Duties (China),* held that Article 2.1(c) does contain legal obligations that a Member may be found not to have complied with. Though India's contention that a subsidy can only be specific if it discriminates between similarly-situated entities, was rejected by the panel, it held that USDOC did not take into account mandatory factors such as extent of diversification of the Indian economy and the length of time that the relevant programme has been in operation, while determining *de facto* specificity under Article 2.1(c) of the SCM.

USDOC's actions were also found inconsistent with Article 14(d) of the SCM inasmuch as US authorities failed to apply, without giving any reason, in-country benchmarks to assess sales by NMDC to certain entities. Washington's arguments giving new rationale for the investigating authority's determination was rejected as *ex post* rationalization (although later ruled upon) by the panel which noted that there was no reference to the domestic price data in the preliminary or final determinations, or in any other contemporaneous USDOC document. The Panel observed that the data submitted by Government of India did relate to domestic prices of iron ore in India and hence should have been considered as a price benchmarks. Further, Article 22.5 of the SCM was also found to have been violated as the United States failed to provide adequate notice of USDOC's consideration of such in-country benchmarks while assessing benefit conferred for goods supplied by NMDC.

Captive mining of iron ore and coal

The Panel found that the USDOC did not properly establish the existence of any Captive Mining of Iron Ore Programme on the basis of accurate information, as required by Article 12.5 of the SCM. The panel in this regard noted that while both Dang report and the Hoda report, as relied upon by USDOC, confirmed the existence of captive mines, neither of them identified any Captive Mining of Iron Ore Programme, or any Government of India policy in favour of such mines. It was also noted that there was no suggestion that mining leases were provided to steel producers on terms different from those provided to other miners. Further, judicial economy was exercised by the panel in respect of the claims of specificity of such alleged captive mining programmes.

Though the US authority's findings that India provided goods through grant of mining rights for iron ore or coal, were not found to be in violation of Article 1.1(a)(1)(iii) [provision of financial contribution when a government or public body "provides" goods for less

than adequate remuneration] relying on previous report in the dispute *US – Softwood Lumber IV,* the panel found that there was no reference to any lease having been provided by the Indian Government under the Coal Mining Nationalization Act to Tata for mining of coal. It was noted that United States has not established that Tata's obligation to pay royalties under the Mines and Minerals (Development & Regulation) Act, 1957 depends on a lease granted under the Coal Mining Nationalization Act, and had failed to identify any provision to support a conclusion that, notwithstanding the initial exemption of Tata's coking coal mining operations from the scope of the (non-coking) Coal Mining Nationalization Act, the 1976 Amendment reversed that exemption and brought those coking coal operations within the scope of that Act. Finally, USDOC's rejection of certain domestic price information when assessing benefit under the mining rights of iron ore, was also held as being in violation of Article 14(d) of the SCM.

Facts available – Use of adverse facts

Although the Panel rejected India's "as such" claims regarding consistency of Sections 1677e(b) and 351.308(a), (b) and (c) (providing for use of adverse facts available in case of non-cooperation by the exporters) with Article 12.7 of the SCM agreement, it found violation of the said WTO provisions in application of the said law to the facts of the case. The Panel, in 73 out of 85 instances, found the application to be devoid of any factual foundation.

Trade Remedy News

Trade remedy measures by India

Product	Country	Notification No.	Date of Notification	Remarks
Carbon Black	China, Russia and Thailand	15/8/2014-DGAD	15-7-2014	ADD sunset review investigation initiated
		31/3014-Cus. (ADD)	23-7-2014	ADD extended till 29-7-2015 pending sunset review investigation
Front axle beams & steering knuckles for heavy and medium commercial vehicles	China	30/2014-Cus. (ADD)	23-7-2014	ADD extended till 14-6-2015 pending sunset review investigation
Phosphoric Acid of all grades and all concentrations excluding agriculture fertilizer grade	Korea RP	32/2014-Cus. (ADD)	23-7-2014	ADD extended till 21-6-2015 pending sunset review investigation

Product	Country	Notification No.	Date of Notification	Remarks
Potassium Carbonate	European Union, China, Korea RP and Taiwan	34/2014-Cus. (ADD)	23-7-2014	ADD extended till 9-6-2015 pending sunset review investigation
Purified Terephthalic Acid	China, European Union, Korea RP and Thailand	36/2014-Cus. (ADD)	25-7-2014	Provisional ADD imposed for six months
Rubber Chemicals, namely, MBT, CBS, TDQ, PVI, TMT and PX-13(6PPD)	Korea RP and China	35/2014-Cus. (ADD)	24-7-2014	ADD re-imposed for five years
Steel and Fibre Glass Tapes and their parts and components	China	29/2014-Cus. (ADD)	4-7-2014	ADD extended till 14-5-2015 pending sunset review investigation
Sulphur Black	China	15/18/2012-DGAD	3-7-2014	Continuation of ADD recommended for five years
Vitamin C	China	33/2014-Cus. (ADD)	23-7-2014	ADD extended till 15-6-2015 pending sunset review investigation

Trade remedy actions against India

Product	Country	Notification No.	Date of Notification	Remarks
Oil Country Tubular Goods	Canada	Canada Border Services Agency Notice	21-7-2014	ADD and CVD investigations initiated
Oil Country Tubular Goods	USA	79 FR 41967 [C-533-858] and 79 FR 41981 [A-533-857]	18-7-2014	CVD - Final affirmative CVD determination ADD - Final determination of sales at less than fair value and final negative determination of critical circumstances
Steel Nails	USA	US ITC News Release 14-071	11-7-2014	ADD and CVD investigations to be terminated due to negligible imports
Steel Threaded Rod	USA	79 FR 40712 [C-533-856] and 79 FR 40714 [A-533-855]	14-7-2014	CVD - Final affirmative CVD determination ADD – Final determination of sales at less than fair value

Statutory Update

Safeguard duty – India amends Customs Tariff Act

Safeguard duty forgone on import of goods by an Export Oriented Unit (EOU) or a unit in Special Economic Zone (SEZ) is now payable if the goods are removed as such in Domestic Tariff Area (DTA) or after their utilization in the manufacture of final products removed in DTA. The Budget for the year 2014-15 presented in the Indian Parliament on 10 July, 2014 has made changes in this regard in sub-section 2(A) of Section 8B of the Customs Tariff Act, 1975 dealing with safeguard duty. The amendment has been brought into force from 11-7-2014.

WTO News

EU and Russia at loggerheads – Two panels established

Dispute Settlement Body of the WTO has established two panels on 22-7-2014 in the disputes (DS474 and DS475) involving European Union and the Russian Federation. The first dispute filed by Russia involves EU's cost adjustment methodologies and certain anti-dumping measures on imports from Russia. The other dispute (DS475) filed by EU against Russia pertains to the latter's certain measures/restrictions on importation of live pigs, pork and other pig products from the European Union. According to Russia, the EU provisions are inconsistent with various clauses of Articles 2, 3, 5, 6, 9, 11 and 18 of the Anti-Dumping Agreement; Articles 10 and 32.1 of the SCM Agreement and Articles I and VI of the GATT 1994. On the other hand, EU says Russian measures are in violation of Articles 2, 3, 5, 6, 7 and 8 of the SPS Agreement; and Articles I:1, III:4 and XI:1 of the GATT 1994. *[For details, please refer International Trade Amicus – January and May 2014 issues]*

While Argentina, Australia, Canada, China, Indonesia, Norway, Turkey, Ukraine and the United States have reserved their third-party rights to participate in the panel's proceedings of the first dispute, Australia, China, India, Japan, Korea, Norway, Chinese Taipei and the United States have reserved their third-party rights in the dispute filed by EU.

US-China CVD dispute – Panel holds US provisions as violating SCM agreement

Dispute Settlement Body of the WTO gave another blow to the USA, on the same day (14-7-2014) when it upheld number of claims by India against the US, in another dispute relating to the Subsidies and Countervailing Measures Agreement of the WTO - this one initiated by China. USDOC's "rebuttable presumption" that majority of the State-owned enterprises are 'public bodies' and thus capable of conferring a financial contribution, was found to be inconsistent within the meaning of Article 1.1(a)(1) of the SCM Agreement. USA's provisions were found "as such" violative of the WTO agreement by the panel noting the same to be a 'measure' which can be challenged. Reliance in this regard was also placed on the Appellate Body report in the dispute *US – Anti-Dumping and Countervailing Duties*

(China). USDOC was also found to have acted inconsistently within the last sentence of Article 2.1(c) of SCM Agreement, in 12 of the CVD investigations, inasmuch as it failed to take into account the factors listed in the said Article. Further China's claim in respect the US authority's findings that certain alleged subsidies were regionally specific and that there was financial contributions because of the export restraints maintained by China, were also upheld by the DSB panel.

Indian fisheries subsidies and export support programs questioned at WTO

Subsidies and Countervailing Measures (SCM) seem to be the most discussed Agreement in WTO last month. While the DSB (both panel and Appellate Body) on the one hand delivered three rulings in disputes initiated by India and China against the United States of America, Committee on Subsidies and Countervailing Measures also saw much discussion when some of the fisheries subsidies or export support programs by India were questioned by New Zealand, Australia, Japan and Canada. While New Zealand, Australia and Canada sought clarifications on India's programmes affecting fisheries, Japan and Australia raised questions on India's Sea Freight Assistance for export of specified value added products.

According to documents circulated on 28th and 30th of July (G/SCM/Q2/IND/31, 32, 33 and 34), New Zealand has asked India to identify the fisheries and species affected by specific Indian programmes. India's comment on the extent to which these programmes provide support for the reduction of over-capacity and overfishing was also sought as also the current status and time period of the programme, and how the budget will change over the life of the programme. Further meaning of phrases "to offset the adverse weight volume ratio of the value added products in containers" and "to offset the freight difference" was sought by Japan in respect of Indian programme - Sea Freight Assistance for export of specified value added products to EU/USA/Japan and other countries.

News Nuggets

WTO Members fail to adopt the TFA protocol

India's food security programme has been in focus in WTO since the Bali Session and thereafter till 31-7-2014. Much of the recent debate revolved around why India should not link the Trade Facilitation Agreement (TFA) with the Ministerial Declaration on public stockholding for food security purpose. Earlier India and other developing nations had put forth a proposal to amend the Agreement on Agriculture (AoA) to exclude public stockholding from the calculations towards Aggregate Measurement of Support (AMS). Another point of concern was that the calculations continue to be based on prices in 1985-86 without taking into account inflation and the

current day realities. The AoA, the minimum leeway developing nations had even while entering into agreement and the argument that food can hardly be bound by trade rules, have surfaced time and again.

In Bali last year, the WTO members seemed to have agreed to break the deadlock by agreeing to a peace clause as an interim mechanism, until a permanent solution was found, to prevent dispute settlement proceedings for any breach of the AoA by stocking of certain staple foods. The members achieved consensus on implementing the TFA. However, the members failed to convene a meeting of the General Council before 31-7-2014 to adopt the protocol, even as some members have started working towards facilitation by way of reform in customs procedure, infrastructure, etc. In his closing remarks the WTO Director General called the Members to reflect and take efforts to resolve the differences so that all members can reap the benefits of TFA.

WTO's Customs Valuation Agreement to be rectified

English and Spanish texts of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Agreement on Customs Valuation) are set to be amended. According to the document (Reference: WLI/100) dated 28-7-2014 circulated in WTO, the proposal is to remove a conjunction "and" between the words "work" and "plans" and add a comma between the words "sketches" and "undertaken" as they appear in Article 8.1(b)(iv) (relating to additions to the price actually paid or payable) of the Agreement. Corrections will be made to the authentic text if objection is not notified within 30 days by any Member. Similar corrections/ rectifications would also be required in the Indian Customs Valuation Rules i.e. in Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Ratio Decidendi

Anti-dumping duty – Extension after expiry of original notification, not valid

Anti-dumping duty cannot be extended by amending notification issued after expiry of original notification imposing definitive ADD. Delhi High Court in its judgement dated 11-7-2014 has set aside the notification extending the levy, owing to non-completion of sunset review, after the original notification had expired. The challenge to the initiation of sunset review, on grounds of non-communication through the official gazette before the expiry of the levy, was however not upheld by the court in a case involving imports of Acrylonitrile Butadiene Rubber from Korea RP.

The government's contention that continuation of anti-dumping duty during pendency of the sunset review is more or less automatic was hence rejected by the

court relying on Articles 11 of the WTO's Anti-dumping Agreement. It was found that power to continue with the ADD under Section 9A(5) of the Customs Tariff Act, 1975 is not available after expiry of the original notification. Section 6 of the General Clauses Act, providing for continuation of notifications issued under repealed Act, was also found to be not applicable in the present case. However, in respect of communication of initiation of sunset review, the court held that that as long as the initiation is shown to have been before the expiry and Public Notice is made available within a 'proximate period' from that date, the inquiry is valid. [*Kumho Petrochemicals Co. Ltd.* v. *Union of India* - W.P.(C) Nos. 1851/2014 and 1866/2014, decided on 11-7-2014, Delhi High Court]