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Article

Manual of Operating Practices for trade remedy investigations - A step towards transparency

By **Neeraj Chhabra**

In a significant step towards transparency, the Directorate General of Trade Remedies (“DGTR”) has recently issued Manual of Operating Practices (“manual”) for trade remedy investigations and Handbook of Operating Procedures (“handbook”) of Trade Defence Wing.

After an amendment to the Government of India (Allocation of Business) Rules, 1961 on May 7, 2018 substituting “Directorate General of Trade Remedies” in place of “Directorate General of Anti-Dumping and Allied Duties” in the Department of Commerce, DGTR has become the integrated single umbrella national authority for trade remedy investigations dealing with quantitative restrictions, anti-dumping, countervailing/anti-subsidy and safeguard measures. The creation of DGTR necessitated formulation of standard guidelines and procedures for trade remedy investigations.

The manual captures the standard practices/procedures with respect to the trade remedy investigations conducted by India which covers almost all the legal provisions and the procedures pertaining to trade remedy investigations in an elaborate manner. The manual consists of 24 Chapters wherein a major part is on the practices/procedures with respect to the anti-dumping investigations. As per WTO data, India has conducted 888 anti-dumping investigations, 42 safeguard investigations and 3 countervailing duty investigations between 1st January 1995 and 31st December, 2017. This data clearly shows that the Indian Authority has

pre-dominantly relied on anti-dumping investigations.

On the other hand, handbook is for the Trade Defence Wing which provides trade defence support to Indian domestic producers and exporters, dealing with the increasing instances of trade remedy investigations instituted against them by other countries. The handbook also captures the practices and procedures adopted by DGTR in responding to trade remedy investigations initiated by other countries against India.

The publications have been placed in their website to make them accessible to all the stakeholders. This will help the Indian industry which is not very familiar with the intricacies of law as well as the procedures in trade remedy investigations.

Since 2017, the Authority has become more active in easing the process of filing applications for initiation of investigations and accelerating the proceedings themselves as compared to the previous 22 years. In this regard, within a span of one year DGTR has issued 17 trade notices with regard to confidentiality, collection of import data, new application and questionnaire formats, request for change in name of producer(s) / exporter(s) in anti-dumping and countervailing duty investigations, etc.

The publications intend to bring standard procedures, clarity, consistency, fairness, awareness, equality amongst the parties, accountability and most importantly transparency

in conducting the trade remedy investigations. By issuing the manual and handbook, India has also become a part of the club of developed countries like United States and Australia having their own manuals/guidelines.

Therefore, in the interest of a fair investigation, the publications by DGTR are a

welcome step for the domestic industry as well as all the interested parties in the trade remedy investigations.

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Trade Remedy News

Trade Remedy measures by India

Product	Country	Notification No.	Date of Notification	Remarks
4, 4, Diamino Stilbene 2, 2 Disulphonic Acid (DASDA)	China	File No. 7/22/2018-DGTR	15-01-2019	Final Findings in sunset review issued recommending cessation of anti-dumping duties
Coated Paper	China, European Union, USA	F.No.6/42/2017-DGAD	26-12-2018	Final Findings issued terminating ADD investigation
Cold Rolled Flat Products of Stainless Steel	China, Korea RP, European Union, South Africa, Chinese Taipei, Thailand, USA.	No.F.15/04/2014-DGAD	31-12-2018	Amendment to Final Finding Notification no. 15/04/2014-DGAD dated 12-10-2015
Cold Rolled Flat Products of Stainless Steel	China, Korea RP, European Union, South Africa, Chinese Taipei, Thailand, USA.	F.No.14/1/2014-DGAD	31-12-2018	Amendment to Final Finding Notification No. 14/1/2014-DGAD dated 18-08-2017
Electrical Insulators	China	F.No.7/44/2018-DGTR	10-01-2019	Initiation of Sunset Review investigation
Epoxy Resins	China, European Union, Korea RP, Taiwan, Thailand	F.No.6/10/2018-DGAD	15-01-2019	Issuance of Termination Order due to withdrawal of petition by applicant

Product	Country	Notification No.	Date of Notification	Remarks
Fluoroelastomers (FKM)	China	F.No. 6/25/2017/DGAD	27-12-2018	Final Findings issued recommending imposition of anti-dumping duties
High Tenacity Polyester Yarn	China	F.No.6/12/2017-DGAD (Pt.1)	07-01-2019	Amendment to the final finding notification no. 6/12/2017-DGAD dated 24-05-2018
Jute Products	Bangladesh, Nepal	3/2019-Cus. (ADD)	15-01-2019	Grant of individual anti-dumping duty pursuant to New Shipper Reviews
Jute Products	Bangladesh, Nepal	2/2019-Cus. (ADD)	15-01-2019	Rescinds previous notification imposing provisionally assessed anti-dumping duty pursuant to New Shipper Reviews
Methylene Chloride	European Union, United States	1/2019-Cus. (ADD)	04-01-2019	Anti-dumping duty continued after sunset review
Non-Plasticized Industrial Grade Nitrocellulose excluding Nitrocellulose Damped in Ethanol and Waterwet	Brazil, Indonesia, Thailand	F.No.6/12/2018-DGAD	03-01-2019	Issue of Corrigendum correcting Duty Table
Non-Plasticized Industrial Grade Nitrocellulose excluding Nitrocellulose Damped in Ethanol and Waterwet	Brazil, Indonesia, Thailand	F.No.6/12/2018-DGAD	31-12-2018	Final Findings issued recommending imposition of anti-dumping duties
Nonyl Phenol	Taiwan	File No. 7/20/2018-DGAD	11-01-2019	Final Findings issued in Sunset review recommending cessation of anti-dumping duties
Saturated Fatty Alcohol	Indonesia, Malaysia, Thailand, Saudi Arabia	No.7/38/2018-DGTR	15-01-2019	Initiation of New Shipper Review w.r.t. an Indonesian producer
Textured Tempered Coated and Uncoated Glass	Malaysia	F.No.6/45/2017-DGAD	17-01-2019	Final Findings issued recommending imposition of anti-dumping duties



WTO News

Appellate Body issues report on revised US “dolphin-safe” tuna labelling measure

On December 14, the Appellate Body issued its report in the cases brought by Mexico and the United States in “*United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products — Second Recourse to Article 21.5 of the DSU by Mexico*” (DS381). Mexico had challenged the Compliance Panels’ Report of October 2017, asserting that the reports upholding the 2016 Tuna Measure relied on a legal standard that failed to take into account whether the regulatory distinctions of the 2016 Tuna Measure are rationally related to its objectives, and consequently the Panels erred in their calibration analysis because they failed to consider the risks of inaccurate labelling under the 2016 Tuna Measure as well as errors in assessment of Article 2.1 of the Technical Barriers to Trade (TBT) Agreement. The Appellate Body found that the Panels did not err in their assessment of the 2016 Tuna Measure and upheld the Panel Reports.

Venezuela initiates WTO disputes against USA and Colombia

On January 8, the WTO circulated a request for consultation with the United States filed by Venezuela. The request pertains to certain US measures affecting goods and services of Venezuelan origin. Venezuela claims that certain US laws and regulations relating to goods of Venezuelan origin, the liquidity of Venezuelan public debt, transactions in Venezuelan digital currency, and the Specially Designated Nationals and Blocked Persons List are inconsistent with the WTO’s General Agreement on Tariffs and

Trade (GATT) 1994 and the General Agreement on Trade in Services (GATS). Further, the WTO on January 14, circulated to its members a request for consultation with Colombia filed by Venezuela. The request pertains to certain Colombian measures affecting the distribution of liquid fuels.

Thailand appeals compliance panel report regarding Thai measures on imported cigarettes

Thailand has, on 9-1-2019, filed a notice of appeal in the case brought by Philippines in “*Thailand – Customs and Fiscal Measures on Cigarettes from Philippines* (Article 21.5-Philippines)” (DS371). Broadly, Thailand challenges the following:

- The Panel’s Findings regarding the scope and application of the Customs Valuation Agreement (CVA) in so far as it found that the scope of the CVA covered criminal enforcement matters as well as the consequent findings pertaining to the same;
- The Panel’s Findings that measures challenged by the Philippines regarding the WTO consistency of the criminal charges alleged by Thai authorities were “ripe” for resolution by the Panel owing to their resolution in the Appellate Body’s findings as well as the consequent findings pertaining to the same;
- The Panel’s Findings regarding the application of the exceptions under Article XX of the GATT 1994 to the CVA as well as the consequent findings pertaining to the same;

- The Panel's Findings that the CVA requires a "consultative process" with the importer, as part of the procedural requirements regarding the manner in which customs value is determined under CVA as well as the consequent findings pertaining to the same;
- The Panel's Findings regarding the requirements of Thailand's VAT system.

The compliance panel report was circulated to WTO members on 12 November 2018.

Panels established to review claims against trade measures of Costa Rica, Russia, Saudi Arabia

On December 18, at a meeting of the WTO's Dispute Settlement Body (DSB), WTO members agreed to the establishment of a panel to review Mexico's complaint against import restrictions imposed by Costa Rica on fresh avocados from Mexico. The DSB also agreed to a request from the United States for a panel to review its complaint regarding Russia's tariffs on imports of certain US goods and from Qatar for a panel to rule on measures of Saudi Arabia on protection of intellectual property rights.

Safeguard investigations by Turkey, Madagascar and Philippines

Turkey launches safeguard investigation on yarn of nylon or other polyamides: On 3

January, Turkey notified the WTO's Committee on Safeguards that it has initiated, on 30 December 2018, a safeguard investigation on yarn of nylon or other polyamides.

Madagascar launches safeguard investigation on detergent powder: On 7 January, Madagascar notified the WTO's Committee on Safeguards that it had decided to initiate, on 31 December 2018, a safeguard investigation on detergent powder.

Philippines launches safeguard investigation on ceramic floor and wall tiles: On 11 January, the Philippines notified the WTO's Committee on Safeguards that it had decided to initiate, on 20 December 2018, a safeguard investigation on ceramic floor and wall tiles.

EU's Safeguard measures against import of steel products – India, Russia and Moldova seek consultations

The European Union has, on 2-1-2019, notified the WTO Committee on Safeguards under Article 12.1(b) of the Agreement on Safeguards on finding a serious injury or threat caused by increased imports of certain steel products and on taking a decision to apply a safeguard measure on imports of certain steel products. India, Russia and Moldova have suggested holding the consultations under Article 12.3 of the Agreement on Safeguards.



India Customs & Trade Policy Update

Advance authorisation - Removal of pre-import condition for IGST exemption: Pre-import condition to avail exemption from Integrated GST and Compensation Cess for imports under Advance

Authorisation has been removed. CBIC Notification 01/2019-Cus., dated 10-01-2019 in this regard amends Notifications Nos. 18/2015-Cus. and 20/2015-Cus., where an additional condition has, however, been inserted in respect

of imports made after discharge of export obligation in case IGST exemption is availed. As per the new additional conditions, in case of imports after discharge of Export Obligation in full, if IGST exemption is claimed and if the facility of Input Tax Credit (ITC) has been availed in respect of inputs used for manufacture and supply of goods exported, then the importer needs to furnish a bond, binding himself to use the imported material in his factory or in the factory of his supporting manufacturer. Additionally, the importer is now required to submit a certificate from a chartered accountant certifying that the inputs have been so used.

Further, export obligation in such cases (case of IGST and Cess exemption) can now also be fulfilled by certain specified domestic supplies in addition to physical exports. According to the amendments, domestic supplies mentioned at Sl. No. 1, 2 and 3 of Notification No. 48/2017-Central Tax (relating to deemed exports) would also be eligible for fulfilling export obligation in such cases. Suitable amendments have also been made in Para 4.14 of the Foreign Trade Policy 2015-20 for this purpose.

Advance authorisation available to other exporters based on ratified norms: All applicants of Advance Authorization are now eligible to apply and get their authorizations based on ratified norms which are available on Directorate General of Foreign Trade (DGFT) website in the form of minutes. This benefit can also be claimed on repeat basis. Earlier, other exporters [exporter other than the applicant who has obtained *ad hoc* norms] were not eligible for grant of authorization based on such *ad hoc* norms. Para 4.12(vi) of FTP-HBP 2015-20 has been amended for this purpose by DGFT Public Notice No. 64/2015-20, dated 27-12-2018.

EPCG Scheme - List of products importable revised: Export Promotion Capital Goods (EPCG) scheme now allows import of furniture and fixtures, flooring materials and furnishing materials for hospitals. DGFT, through its latest amendments in Handbook of Procedures, has also allowed import of pre-fabricated polyurethane foam (PUF) panels/doors for chilled rooms and cold storages for storage of marine products meant for export under the scheme. Sl. Nos. 13 and 14 have been inserted in Appendix 5F of the Handbook of Procedures Vol.1 for this purpose by Public Notice No. 61/2015-20, dated 18-12-2018.

Capital goods for distribution of power not importable under EPCG: Import of capital goods required for distribution of electrical energy (power) is not permitted under EPCG scheme. DGFT Circular No. 15/2015-20, dated 4-1-2019 observes that transmission of electricity and distribution of electricity are nothing but the same process of supplying of electricity from one point to another. It is clarified that Sl. No. 12 in Appendix 5F of FTP does not permit import of capital goods for generation, transmission and distribution of power. The clarification was sought since the word 'distribution' is missing in Sl. No. 12 in Appendix 5F and in Notification No. 35/2015-20, dated 29-1-2016.

Customs duty reduced on specified imports from Malaysia, ASEAN, South Korea and Japan: Customs duties on import of specified goods from Malaysia, South Korea and from ASEAN countries have been reduced once again. The goods must be imported in compliance with India-Malaysia Comprehensive Economic Cooperation Agreement, India-Korea Comprehensive Economic Partnership Agreement, and the India-ASEAN Free Trade

Agreement, respectively. Further, basic customs duty has been reduced on gear box and parts thereof, of specified motor vehicles [Tariff Item 8708 40 00], when imported from Japan under the India-Japan Comprehensive Economic

Partnership Agreement. This annual reduction, effective from 1-1-2019, is in line with India's commitments under the abovementioned bilateral agreements.

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