

amicus

An e-newsletter from
Lakshmikumaran & Sridharan, India

March 2018 / Issue – 81

Contents

Article

DGAD introduces new requirements for
user industry 2

Trade Remedy News

Trade remedy measures by India 4

Trade remedy measures against
India 6

WTO News 7

India Update 9

Ratio Decidendi 10

News Nuggets 10

March
2018



Article

DGAD introduces new requirements for user industry

By Ankur Sharma

Among many significant changes being introduced by the Directorate General of Anti-dumping & Allied Duties (DGAD) off late, there are some new requirements applicable to user industry in India going forward in investigations initiated from 1st of March 2018.

By Trade Notice No. 04/2018, dated 28th of February 2018, the DGAD has introduced a questionnaire format for user industry in India. This format is applicable if a user industry is not related to a producer/exporter of the product under consideration in the country under investigation. This format is also applicable to an unrelated importer that is using the product under consideration to manufacture value-added products in India.

The format has several questions in five parts and requires information on the following parameters among others:

1. General information such as name of the company, address, legal status, shareholding pattern, related companies, list of products sold, manufactured and the relative value of the product under consideration in the finished products.
2. Financial information such as profit-loss statements, balance sheets and other financial information.
3. Cost information such as detailed production process for products manufactured that incorporate the product under consideration, purchases and sales of the product under consideration, quantity and value of sales that incorporate the product under

consideration, discounts, raw material cost and information on any factors other than imports that may have caused injury to the Indian producers.

4. Information on product comparison and market that includes the type of products manufactured by Indian producers and how those are technically different from the product under consideration, names of major labs that could test such technical differences, products that could substitute the product under consideration and the possibility for users to switch to alternate sources of supply, whether or not anti-dumping duty should be imposed, and effects on interested parties if the duty comes into force.
5. Information on imports and resale of product under consideration which is to be provided in MS Excel formats appended with the questionnaire format.

The DGAD will be using such financial and statistical information of a user industry to understand and better appreciate the impact of levy of anti-dumping duty on the user industry. This effectively will take care of the public interest related concerns that interested parties so often express in anti-dumping investigations.

In anti-dumping investigations prior to this development, a user industry's participation was limited only to the extent of making legal submissions and representations in public hearings. Many times, user industry would come to know about an investigation when such investigation would be in the last stages.

Participation at such last stages were hardly effective. Many importers also faced similar situations.

Pursuant to this development, it would be the responsibility of a user industry to participate in an investigation at the early stages, i.e. registration within 15 days and filing of response to the questionnaire within 40 days of the initiation of an investigation. Going forward, this is the only manner a user industry can secure its right to be treated as an interested party in an anti-dumping investigation.

This means not only a user industry is required to file legal submissions but also a proper response to the questionnaire. If a user industry does not file a response to the questionnaire, any legal representation before the DGAD and at the appellate stages before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT) may get disregarded. This is because in 2015, CESTAT in *Merino Panel Products Ltd. v. Designated Authority*, 2016 (334) E.L.T. 552 (Tri. - Del.) has held that if a party does not file a questionnaire response, it cannot be treated as an interested party. Though this observation was with respect to an importer, it may squarely apply in the case of a user industry as well and especially a user industry that imports the product under consideration.

It is thus imperative that a user industry secures its right to be treated as an interested party by filing a response to the questionnaire.

User industry may feel that requirements under the new questionnaire format are onerous, and this may deter them from complying with the same. But as said before, without filing a response to the questionnaire, any legal representation may not be considered by the DGAD.

Some concerns may also arise because the questionnaire format requires sensitive information related to cost structure, extent of value-addition that product under consideration imparts to the finished product, purchase and sale prices and profitability related information. But a user industry has a right to claim confidentiality on any commercially sensitive information that if disclosed to any other party may give commercial advantage to a third party or be detrimental to a user industry.

The Indian anti-dumping Rules as well as the new questionnaire format allows a user industry to file the questionnaire response in two versions – confidential and non-confidential. All commercially sensitive information can be removed from the non-confidential version of the questionnaire response giving due reasons on why such information should be treated confidential.

Also, the non-confidential version of the questionnaire response should have a non-confidential summary of the confidential information. This would allow an opposing party to understand the information/data filed by a user industry and make effective representations to address any concerns expressed by a user industry.

This is a good reform brought out by the DGAD and user industry should use this avenue to make effective representations in all anti-dumping investigations. Effective participation by user industry will give the DGAD and other stakeholders involved a holistic view on the requirement of protection to the Indian industry.

[The author is Principal Associate, International Trade Practice, Lakshmikumaran & Sridharan, New Delhi]



Trade Remedy News

Trade Remedy measures by India

Product	Country	Notification No.	Date of Notification	Remarks
Castings for Wind Operated Electricity Generated / Windmills	China	F. No. 14/28/2013-DGAD	26-3-2018	ADD - Oral Hearing on 9-4-2018 pursuant to Final Order No. 50938-50942/2018 of CESTAT, dated 13-3-2018 for partial remand
Ceramic Rollers	China	F. No. 14/47/2016-DGAD	26-3-2018	Definitive ADD recommended
Coated Paper	China, European Union, USA	F. No. 6/42/2017-DGAD	26-3-2018	ADD - Extension of time for submission of questionnaire response till April 7, 2018
Di Methyl Formamide (DMF)	China, Germany, Saudi Arabia	F. No. 6/37/2017-DGAD	5-3-2018	ADD - Extension of time for submission of questionnaire response till April 5, 2018
Dimethyl acetamide	China, Turkey	12/2018-Cus. (ADD)	20-3-2018	Definitive ADD imposed for 5 years
Fishing Nets	Bangladesh, China	F. No. 14/44/2016-DGAD	19-3-2018	Corrigendum issued to revise Duty Table
Flat Base Steel Wheels	China	15/2018-Cus. (ADD)	22-3-2018	ADD extended till 25-3-2019 consequent to initiation of sunset review
Flax Yarn	China	F. No. 6/3/2018-DGAD	20-3-2018	ADD - Extension of time for submission of questionnaire response till April 17, 2018
Glass Fibre-Chopped Strand Mat	China	F. No. 7/25/2017-DGAD	13-3-2018	ADD anti-circumvention - Extension of time for submission of questionnaire response till April 9, 2018
Glassware	China PR, Indonesia	F. No. 14/45/2016-DGAD	5-3-2018	Definitive ADD recommended
Jute Products	Bangladesh	16/2018-Cus. (ADD)	23-3-2018	ADD - Provisional assessment in respect of imports from two producer, exporter

Jute Sacking Bags	Bangladesh	F. No. 7/3/ 2018-DGAD	20-3-2018	ADD - Initiation of Anti-Circumvention Investigation
Melamine	China	11/2018-Cus. (ADD)	20-3-2018	Provisional assessment for one producer-exporter consequent to initiation of new shipper review
Melamine	European Union, Iran, Indonesia, Japan	9/2018-Cus. (ADD)	19-3-2018	ADD notification rescinded after termination of Sunset Review
Metaphenylene Diamine	China	10/2018-Cus. (ADD)	20-3-2018	ADD extended till 21-3-2019 consequent to initiation of sunset review
Mono isopropylamine	China	14/2018-Cus. (ADD)	21-3-2018	Definitive ADD imposed for 5 years
O-Acid	China	6/2018-Cus. (ADD)	12-3-2018	Definitive ADD imposed for 3 years
Ofloxacin	China	8/2018-Cus. (ADD)	15-3-2018	Definitive ADD imposed for 3 years
Peroxosulphates (Persulphate)	China, USA	F. No. 7/5/ 2018-DGAD	20-3-2018	ADD - Initiation of Sunset review investigation
Phosphorus Pentoxide	China	F. No. 14/47/ 2016-DGAD	5-3-2018	Definitive ADD recommended
Playing Cards	China	F. No. 14/43/ 2016-DGAD	7-3-2018	ADD investigation terminated
Resorcinol	China, Japan	13/2018-Cus. (ADD)	21-3-2018	Definitive ADD imposed for 3 years
Sodium Nitrite	Russia	F. No. 06/29/ 2017-DGAD	20-3-2018	Oral Hearing scheduled for April 10, 2018
Sodium Nitrite	European Union	F. No. 7/12/ 2017-DGAD	20-3-2018	Oral Hearing in Mid-term Review scheduled for April 10, 2018
Solar Cells whether or not assembled partially or fully in modules or panels or on glass or some other suitable substrates	China, Malaysia, Taiwan	F. No. 6/30/ 2017-DGAD	23-3-2018	ADD - Termination Order issued due to withdrawal of the Petition
Straight Length Bars & Rods of Alloy Steel	China	F. No. 6/10/ 2017-DGAD	12-3-2018	April 2, 2018 notified as deadline for submission of PCN Wise data

Sulphonated Naphthalene Formaldehyde	China	7/2018-Cus. (ADD)	13-3-2018	Definitive ADD imposed for 5 years
Sun/Dust control film	China, Chinese Taipei, Hong Kong, Korea RP	F. No. 6 / 44 / 2017 - DGAD	12-03-2018	Corrigendum amending the Initiation Notification in respect of product under consideration
Textured Tempered Glass	Malaysia	F. No. 6/45/ 2017-DGAD	20-3-2018	Extension of time for submission of questionnaire response till April 10, 2018
Toluene di-isocyanate (TDI)	China, Japan, Korea RP	5/2018-Cus. (ADD)	23-3-2018	Definitive ADD notification corrected in respect of date of entry into force of duty
Veneered Engineered Wooden Flooring	China PR, Malaysia, Indonesia and EU	17/2018-Cus. (ADD)	27-3-2018	Definitive ADD imposed for 5 years

Trade Remedy measures against India

Product	Country	Notification No.	Date of Notification	Remarks
Cut-To-Length Carbon-Quality Steel Plate	USA	83 FR 10672 [A-533-817, C-533-818]	12-3-2018	Anti-dumping and CVD Orders continued
Fine Denier Polyester Staple Fiber	USA	83 FR 11681 [C-533-876]	16-3-2018	Final affirmative CVD determination – Subsidy rates notified
Frozen Warmwater Shrimp	USA	83 FR 10665 [A-533-840]	12-3-2018	Preliminary Results of Antidumping Duty Administrative Review; 2016-2017
Lined Paper Products	USA	83 FR 9479 [A-533-843 and C-533-844]	6-3-2018	Anti-dumping and CVD Orders continued
Polyethylene Terephthalate Resin	Canada	Canada Border Services Agency Notice	1-3-2018	Final determination of dumping and subsidisation
Polytetrafluoroethylene Resin	USA	83 FR 9842 [C-533-880]	8-3-2018	Preliminary Affirmative Countervailing Duty Determination
Steel Products	European Union	2018/C 111/10	26-3-2018	Safeguard investigation initiated for steel products



WTO News

United States disputes India's export subsidy programmes

On March 19, the WTO circulated the United States' request for consultations with India concerning alleged export subsidies provided by India through five of its programmes, namely, The Export Oriented Units (EOU) Scheme including Electronics Hardware Technology Parks Scheme, the Merchandise Exports from India Scheme (MEIS), the Export Promotion Capital Goods (EPCG) Scheme, Special Economic Zones (SEZ), and a duty-free import for exporters program. US claims that India provides subsidies contingent upon export performance, and that these programs are inconsistent with Article 3.1(a) of the WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement), and that India appears to have acted inconsistently with Article 3.2 of the SCM Agreement.

Meanwhile on 28-2-2018, the Dispute Settlement Body agreed to establish a panel to determine India's compliance with the DS456 (solar cells and modules) ruling regarding its domestic content requirements for solar cells and solar modules. It may be noted that USA, in this dispute, has stated that it wants authorization to take countermeasures against India under Article 22.6 of the DSU.

US-China disputes

It seems USA's recent tariff on steel and aluminium is not the only point of contention between the two major economies. Recently USA has filed complaints against China' alleged to be discriminatory regulations with respect to intellectual property rights. However in another dispute the DSB Compliance panel has held that

certain US provisions were still inconsistent with the WTO Regulations. Meanwhile in respect of another dispute between two countries, a compliance panel ruling regarding Chinese anti-dumping and countervailing duties on broiler products from the United States, was adopted by the DSB.

China's protection of intellectual property rights

On March 26, the WTO circulated the United States' consultation request with China concerning Chinese measures with respect to intellectual property. Specifically, US has alleged that China denies foreign patent holders the ability to enforce their patent rights against a Chinese joint-venture party after a technology transfer contract ends and further through its mandatory and adverse contract terms, discriminates against imported foreign technology. USA states that the measures are inconsistent with the Articles 3 and 28.2 of the TRIPS Agreement.

US countervailing duties on Chinese imports

WTO compliance panel has on 21-3-2018 issued its compliance report in the dispute "*United States — Countervailing Duty Measures on Certain Products from China — Recourse to Article 21.5 of the DSU by China*" (DS437). With respect to the challenged CVD re-determinations issued by the USDOC, the Panel rejected China's claims pertaining to the public body analysis. However, the Panel found that China had demonstrated that the USDOC's recourse to third country prices for assessing the benefit granted to Chinese exporters was inconsistent with Article 14(d) of the SCM Agreement and that

the USDOC's revised specificity determinations were inconsistent with Article 2.1(c) of the SCM Agreement.

Russian duties on vehicle imports from Germany, Italy – Appellate body issues report

On March 22, the WTO Appellate Body issued its report in the case “*Russia — Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy*” (DS479). The Appellate Body upheld the Panel findings and found that the Russian investigating authority was misguided in exclusion of certain domestic producers owing to deficient information supplied by them. It was held that the Russian investigating authority failed to consider the impact of the 2009 financial crisis despite its acknowledgment of the fact that performance of the domestic industry was affected by the financial crisis.

The Appellate Body considered that an investigating authority cannot disregard evidence regarding any particular element that calls into question the explanatory force of dumped imports for significant price suppression. Further, with respect to the European Union's claims under Article 11 and 13 of the DSU, the AB found that the Panel had failed to coherently record findings.

Thailand cigarettes dispute - Philippines files revised request for additional compliance review

On February 26, the WTO circulated the revised consultation request of the Philippines with Thailand to address Thailand's compliance with an earlier WTO ruling concerning measures imposed by Thailand on imported cigarettes from the Philippines. The revision was done to expand the scope of consultations.

This revised request is the second compliance proceeding initiated by the Philippines in the

dispute. The first request, initiated by the Philippines in 2016, is already under the review of a WTO panel. At its meeting on 27 March, the Dispute Settlement Body (DSB) agreed to establish a second panel.

The DSB also considered requests for panels from Canada regarding US anti-dumping and countervailing duties on Canadian softwood lumber and from Indonesia regarding Australia's anti-dumping duties on Indonesian A4 paper.

Korean restrictions on Japanese food imports - Panel report issued

On 22 February, the WTO circulated the panel report in the case brought by Japan in “*Korea — Import Bans, and Testing and Certification Requirements for Radionuclides*” (DS495). In the dispute, Japan challenged certain import bans and additional testing / certification requirements with respect to fishery products imposed by Korea for detecting radionuclide content following Japan's Fukushima Dai-ichi Nuclear Power Plant accident in March, 2011. Japan's challenge was based on the provisions of the SPS Agreement relative to: discrimination (Article 2.3), more trade restrictive than required (Article 5.6), transparency (Article 7 and Annex B), and SPS approval procedures (Article 8 and Annex C). The Panel determined that Korea's 2011 additional testing requirements and 2012 product-specific import bans were not more trade-restrictive than required when adopted. However, the measures adopted at the time of the Panel's establishment in 2015, including the 2013 amendments were maintained in a manner inconsistent with Articles 2.3 and 5.6 of the SPS Agreement. Additionally, the Panel also upheld the Japanese claims pertaining to Article 7 and Annex B regarding publication of the measures. However, Japan failed to establish any claims pertaining to the SPS approval procedures.

Steel disputes – Safeguard investigations initiated by EU and Costa Rica

Steel or its overproduction is the ignition point of many trade disputes around the globe at present. While many WTO members, on 23-3-2018, raised their concerns against USA's steep tariff

on import of steel, EU on 26-3-2018 launched Safeguard investigation on certain steel products. Costa Rica has also notified the WTO's Committee on Safeguards that it has on 19th of March initiated a safeguard investigation with respect to bars of steel used for reinforcement of concrete.



India Update

Customs duty reduced on specified imports from Japan

Customs duty is being reduced on import of specified goods from Japan, in case they are imported in compliance with the Country of Origin Rules. Notification No. 34/2018-Cus., dated 27-3-2018 issued for this purpose substitutes the table containing some 806 entries in Notification No. 69/2011-Cus. The reduction/amendment will come into effect from 1st of April, 2018. It may be noted that India has a Comprehensive Economic Partnership Agreement with Japan, and the Rules issued for the purpose provide for a method to determine country of origin.

Exemption from IGST and Compensation Cess under different export promotion schemes extended till 1-10-2018

Both CBEC and DGFT have on 23-3-2018 extended the exemption available to EOUs from IGST and Compensation Cess payable on imports, till 1-10-2018. The extension is in line with the recommendations of the GST Council meeting held earlier this month. While on the Customs side, Notification No. 52/2003-Cus. has been amended, DGFT has issued notification to revise Para 6.01(d)(ii) of the Foreign Trade Policy 2015-20, for this purpose. The exemption is also available on procurements from bonded warehouses in DTA or from international exhibition held in India.

It may be noted that through a different set of notifications issued by CBEC and DGFT, such exemption to imports under Advance authorisations and EPCG scheme have also been extended till 1-10-2018.

Second-hand goods can be freely imported for repairs

Ministry of Commerce has revised import policy in respect of second-hand goods imported for the purpose of repairs, etc. According to the new Para 2.31(iii) inserted by Notification No. 58/2015-20, dated 28-3-2018, second-hand goods imported for repair, re-furbishing, re-conditioning or re-engineering can be imported freely subject to conditions. The benefit is however available only if the waste generated during such repair, etc. is treated as per the domestic laws and the imported item is re-exported according to the Customs notification.

Apple imports allowed without port restrictions

Port restrictions in case of import of apples (TI 0808 10 00) have been removed. Ministry of Commerce has issued Notification No. 56/2015-20, dated 27-3-2018 to revise the import policy condition specified in Chapter 08 of the ITC (HS). Hitherto, apples could be imported only through seaports and airports in Kolkata, Chennai, Mumbai and Cochin and land port and airport in Delhi, and through India's land borders.

Ratio Decidendi

Market economy treatment to Chinese exporters, in EU – Interpretation of ‘carried over from the former non-market economy system’

Court of Justice of the European Union has set aside EU General Court’s Order which had held that words ‘former non-market economy system’, in Article 2(7)(c) of the basic regulation, providing for market economy treatment to Chinese exporters/producers subject to certain conditions, refer to a ‘form of economic organisation based on collective or state ownership of enterprises subject to production objectives defined in a central plan’. The Court in this regards was of the view that the said words in Article 2(7)(c) refer to former economic system which had justified systematic use of analogue country method with regard to Chinese producers, but from which China has moved away.

It was held that connection of a measure - tax incentives to foreign investments in sectors deemed to be strategic, to different plans implemented in China was sufficient for assuming

that the measure constituted a distortion ‘carried over from the former non-market economy system’.

The General Court had annulled Commission Implementing Regulation (EU) No. 470/2014 of 13 May 2014 imposing a definitive anti-dumping, in so far as it was related to the Chinese company (respondent before CJEU). The Chinese company had claimed that the EU authorities erred, in the regulation at issue, in considering that its production costs and financial situation were subject to significant distortions. The issue involved tax incentives provided by the Chinese legislation which were considered as distortion ‘carried over from the former non-market economy system’, by the EU, while rejecting the market economy treatment to the Chinese company. The matter was remanded back to the General Court inasmuch as the General Court had not examined certain plea of the Chinese company. [*European Commission v. Xinyi PV Products (Anhui) Holdings Ltd.* – Order dated 28-2-2018 in Case C-301/16 P, CJEU]

News Nuggets

44 African countries agree to have African Continental Free Trade Area

44 African countries have on 21st of March, 2018 agreed to establish African Continental Free Trade Area (AfCFTA). However, as per reports, Nigeria which is one of the major economy in Africa, along with some 10 countries have sought more time for consultations.

The free trade area is stated to be the world’s largest FTA, and will come into force once it is ratified by at least 22 countries. The agreement will reduce tariffs from the current average of 6.1 per cent to effectively Nil and is likely to address issues relating to many non-tariff barriers.

NEW DELHI

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

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

2, Wallace Garden, 2nd Street
Chennai - 600 006

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.

Ph: +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

2nd Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071

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

GURGAON

OS2 & OS3, 5th floor,
Corporate Office Tower,
Ambience Island,

Sector 25-A,

Gurgaon-122001

phone: +91-0124 - 477 1300

Email: lsurgaon@lakshmisri.com

ALLAHABAD

3/1A/3, (opposite Auto Sales),
Colvin Road, (Lohia Marg),

Allahabad -211001 (U.R)

phone . +91-0532 - 2421037, 2420359

Email:lsallahabad@lakshmisri.com

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 29th March, 2018. To unsubscribe, e-mail Knowledge Management Team at newsletter.itrade@lakshmisri.com

www.lakshmisri.com

www.gst.lakshmisri.com

www.addb.lakshmisri.com

www.lakshmisri.cn