

Dear all,

As you may be aware, Anti-Absorption provisions in respect of Anti-Dumping and Countervailing Duty have been introduced in the statute through amendments to sections 9 and 9A of the Customs Tariff Act, 1975 through Finance Act 2021 dated 28.03.2021.

Accordingly, Directorate General of Trade Remedies proposes to introduce the enclosed Anti-Absorption Rules in respect of Anti-Dumping and Countervailing Duty. All stakeholders who may like to provide their comments may do so latest by 17.06.2021. The comments may be sent to the email ids: adg11-dgtr@gov.in and dd12-dgtr@gov.in

(Arti Bangia)

DD, DGTR

07.06.2021

AD Rules

29. Anti-absorption review –

(1) Anti-Dumping duty in force shall be considered to be absorbed where export prices of producers/exporters from the exporting country decrease post imposition of AD duty without any significant change in cost of production of subject goods or export prices of subject goods to countries other than India or resale price of subject goods in India imported from the exporting country/countries.

(2) Where an article subject to anti-dumping duty is imported into India at such price or under such condition which is considered as absorption of existing anti-dumping duty, which is thereby or may be rendered ineffective, the Designated Authority may, after conducting review, recommend modification in the form **or basis of the duty** and/or the quantum of anti-dumping duty after reassessing the Dumping Margin and Injury Margin. Appropriate changes or adjustments in previously determined Normal Value and Non-Injurious Price, if necessary, in accordance with the provisions of rule 10 and Annexure III to the Rules respectively.

(3) The domestic industry or any other interested party should file the application seeking initiation of Anti-Absorption investigation usually within 2 years from the date of imposition of definitive anti-dumping duty. However, in view of exceptional circumstances in a given case the Authority may accept an application after expiry of 2 years.

(4) No application shall, however, be accepted with less than twelve months remaining for Anti-Dumping Duty to expire.

30. Initiation of investigation to determine absorption –

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the anti-dumping duty levied under section 9A of the Act, upon receipt of a written application by or on behalf of the domestic industry or by any other interested party.

(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-absorption investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation *suo motu* if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to absorption of anti-dumping duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the antidumping duty in force where it is satisfied that imports of the article are absorbing the anti-dumping duty:

Provided that, the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be absorbing an anti- dumping duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 31 is taken by the Central Government.

(6) The provisions regarding evidence and procedures under rule 5 and 6 shall apply mutatis mutandis to any investigation carried out under this rule

(7) Any such investigation shall be concluded within six months of the date of initiation of the investigation. However, in special circumstances for reasons to be recorded in writing the Authority may extend this period by another three months. [A1]

31. Determination of Absorption

(1) The designated authority, upon determination that absorption of anti-dumping duty exists, may recommend modification of the form or basis of the duty and/or the quantum of anti-dumping duty to imports of articles found to be absorbing an existing anti-dumping duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 30.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, modify the form or basis of the duty and/or the quantum of anti-dumping duty applicable to the imports of such article from the date of initiation of the investigation under rule 30 or such date as may be recommended by the designated authority.

CVD Rules

25. Anti-absorption review –

(1) Countervailing Duty shall be considered to be absorbed where export prices of producers/exporters from the exporting country/countries decrease post imposition of Countervailing Duty without any significant change in resale price of subject goods in India imported from the exporting country/countries.

(2) Where an article subject to countervailing duty is imported into India at such price or under such condition which is considered as absorption of existing countervailing duty, which is thereby or may be rendered ineffective, the Designated Authority may, after conducting review, recommend modification in the form or basis of the duty and/or the quantum of countervailing duty after reassessing the Subsidy Margin and Injury Margin. Appropriate changes or adjustments in previously determined benefit from subsidy and Non-Injurious Price, if necessary, in accordance with the provisions of rule 12.

(3) The domestic industry or any other interested party should file the application seeking initiation of Anti-Absorption investigation usually within 2 years from the date of imposition of definitive countervailing duty. However, in view of exceptional circumstances in a given case the Authority may accept an application after expiry of 2 years.

(4) No application shall, however, be accepted with less than eighteen months remaining for Countervailing Duty to expire.

26. Initiation of investigation to determine absorption –

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the countervailing duty levied under section 9 of the Act, upon receipt of a written application by or on behalf of the domestic industry or by any other interested party.

(2) The application shall, *inter-alia*, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-absorption investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation *suo moto* if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to absorption of countervailing duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the countervailing duty in force.

Provided that the designated authority shall notify the Government of the exporting country before proceeding to initiate such an investigation.

(5) The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be absorbing the countervailing

duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 27 is taken by the Central Government.

(6) The provisions regarding evidence and procedures under rule 6 and 7 shall apply mutatis mutandis to any investigation carried out under this rule

(7) Any such investigation shall be concluded within six months of the date of initiation of the investigation. However, in special circumstances for reasons to be recorded in writing the Authority may extend this period by another three months. [A2]

27. Determination of Absorption

(1) The designated authority, upon determination that absorption of countervailing duty exists, may recommend modification of the form or basis of the duty and/or the quantum of countervailing duty to imports of articles found to be absorbing an existing countervailing duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, modify the form or basis of the duty and/or the quantum of countervailing duty applicable to imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

[A1]Same as 17(1) of AD rules

[A2]Same as 17(1) of AD rules