Dear All,

You are aware that India has been a key WTO member in championing the cause of Trade Remedial Measures for ensuring fair trade practice by removal of trade distortions.

It has been more than two decades since Indian Anti-Dumping and Anti-Subsidy Rules were formulated. In a dynamic global economic environment laws/statues/ regulations need constant updation in order to keep pace with the changing times. Though some minor amendments were made in the past, yet the need to have a comprehensive look at the existing rules was long overdue.

Against this background the Directorate of Trade Remedies proposes to introduce certain changes in the Indian Anti-Dumping and Anti-Subsidy rules as indicated below. Certain terminologies have also been defined for the purpose of removal of ambiguity.

All stakeholders are advised to offer their comments/ suggestions on these proposed changes.

In addition to this, a concept note on "Adjustments for Freight for Determination of Injury Margin" is also circulated highlighting industry's demand and arguments in favour of and against this demand. Stakeholders are advised to offer comment on this as well.

Comments / suggestions should be mailed at policy-dgtr@gov.in latest by 25th June, 2018.

Regards,

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CHANGES PROPOSED IN ANTI-DUMPING RULES

Termination of Investigation Pursuant to the Withdrawal of Application

Existing Rule 14 (a) of the Indian Anti-Dumping Rules	**Proposed Rule 14 (a) of the Indian Anti-Dumping Rules**
"*The designated authority shall, by issue of a public notice, terminate an investigation immediately if* *a) It receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated***"**	**"***The designated authority* ***may****, by issue of a public notice, terminate an investigation* ***subject to terms and conditions as deemed fit*** *if* *a) It receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated.*

Public Interest Requirement in Anti-Dumping Investigation

Existing Rule 17 (b)	**Proposed Rule 17 (b)**
Recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry [after considering the principles laid down in the Annexure III to these rules.	*Recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry [after considering the principles laid down in the Annexure III to these rules,* ***provided the imposition of the said duty is found to be in the public interest****.*

Amendment/ correction in Anti-Circumvention Rule 25 of AD Rules.

Existing Rule 25(3) of Indian Anti- Dumping Rules	**Proposed Rule 25(3) of Indian Anti- Dumping Rules**
For the purpose of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied namely:- *(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;* *(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price* ***and or*** *the* ***quality*** *of like products.*	For the purpose of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied namely:- *(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;* *(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price* ***and/or*** *the* ***quantity*** *of like products.*

Concept Note on "Adjustments for Freight for Determination of Injury Margin"

Background

Representations have been received in this Directorate from time to time *for inclusion of freight elements in the NIP as well as landed value of imported goods for determination of injury margin.*

Such representations have been made particularly from a certain section of industry which deals with bulk products and wherein inland freight component is claimed to be constituting a significant proportion of its cost of sales. The fact of manufacturing locations of these industries being far away from their consumers' locations is claimed to be putting them at comparative disadvantage vis-à-vis other industries.

This segment of industry therefore contends that by not including the inland freight on transportation of the subject goods from the factory of the domestic industry/ port of importation, as the case may be, to the consumer while making comparison between the landed value of the imported goods and the NIP, the actual injury margin is not getting captured resulting in inadequate protection to industry like theirs in anti-dumping investigations.

Current position:

As per the Annexure III of the Indian Anti-dumping Rules, NIP is determined at ex-factory level. Para (vii) (b) of Annexure III of the Indian Anti-Dumping Rules, as it exists today, clearly disallows post-manufacturing expenses like outward freight to be included in the assessment of the Non-Injurious Price (NIP).

The present practice of ensuring fair comparison between landed value and NIP for determination of injury margin is thus based on comparison at the ex-factory level only and not at the point of consumption. Thus the freight charges incurred by the domestic industry for supplying the goods from the factory of the domestic industry to the premises of the buyer is not being added while determining the Non-Injurious Price (NIP) of the domestic industry. Similarly, the freight incurred from the port of importation to the premises of the importer or the buyer is also not added to the landed value of imported goods.

Recently, in the anti-dumping investigation on import of "glazed/ unglazed/porcelain/vitrified tiles in polished or unpolished finish with less than 3% water absorption, originating in or exported from China, a proposal was made by the concerned investigation team on the file to include inland freight element for the purpose of determination of injury margin but the proposal was not accepted by the then Designated Authority. Subsequently, an affidavit was also filed in the Gujarat High court by the DGAD reiterating the justification for non-inclusion of inland freight for determination of injury margin in response to Special Civil Application filed by the domestic industry.

Demand of the Industry:

The inland freight element should be added to both NIP and the landed value of imports for determining the injury margin for industries wherein inland freight component constitutes very high proportion of its cost of sales and the manufacturing locations are situated far away from the point of consumption

This is completely in keeping with the spirit of the principals of the fair comparison and in line with India's submission at the WTO, particularly about the desirability of comparison close to the point of consumption,

Arguments in favour of Industry's demand

India had made a proposal to the negotiating group on rules in WTO on mandatory application of lesser duty rule on 9th February, 2005. In its proposal it had suggested creation of Annexure III to the ADA (Anti-Dumping Agreement).

At para 2.1 of the proposed annexure it was stated that

> "*A **fair comparison shall be made** between the prices of the domestically produced like products, or the designated target price, as the case may be, and the price of the dumped imports. This comparison shall be made at the same level of trade, and in respect of sales made at as nearly as possible the same time. Due adjustments shall be made in each case, on its merits, for differences which affects price comparability, including differences in conditions and terms of sales , taxation , **level of trade** , quantities, physical characteristics **, and any other differences which are also demonstrated to affect price comparability.***"

At para 2.5 of the proposed annexure, it was stated that:

> ***"It is desirable to make comparison for the purpose of this annexe as close to the point of consumption as is reasonably possible"***

Another paper circulated by Brazil, Hong Kong, China , India and Japan dated 3rd March, 2006 on the proposal on the mandatory application of the lesser duty rule etc. dealt with the issue regarding Fair comparison in the calculation of the injury margin as under :

> ***"**A fair comparison must be made between the NIP and the import price**. However, we do not mean to imply that "a fair comparison" between the NIP and the import price is exactly the same as "a fair comparison between the export price and the normal value" under article 2.4 . The elements of a "fair" comparison in determining the injury margin may differ from the element of a fair comparison in determining dumping. This is because the objectives of the two comparisons are different.** The NIP is not derived from the exporter/producer's prices or cost. Rather, the NIP will be calculated*

using the data (price and /or cost) of other parties. ***In addition, the comparison will not be made at the exporter/producer's ex-factory level. Rather, the level of the comparison will depend on the method the authorities choose for calculating the NIP. A strict comparison between the import price and the NIP may often be difficult, especially when it is difficult for the authorities to obtain sufficient data and evidence to conduct such comparison at the same level of strictness as in a determination of dumping. The authorities therefore have to have some flexibility regarding the method that they use to ensure fair comparison is made***. "

Among countries following Lesser Duty Rule, Canada is understood to be already following this practice of accounting for outward inland freight in determination of Injury Margin.

This demand has greater significance for countries like India because it has large geographical area and more importantly, the inland transportation cost in India is one of the highest in the world.

Arguments against Industry's demand:

Inland freight cost for most of the industries is very nominal and therefore addition of freight to NIP and landed value may not have any substantiate effect.

Inland freight cost issue is significant only for few industries like caustic soda, soda ash, tiles, cements etc. wherein freight cost is claimed to be constituting a significant proportion of the cost of production and the production centres are claimed to be located far away from the point of consumption. There is no need to change the existing practice or amend the anti-dumping rules just to accommodate the specific requirement of a particular segment of industry.

Para 6 of Annexure I of the Anti-Dumping Rules specifically provides that "fair comparison should be made between export price and the normal value for determining margin of injury. It also provides that the comparison should be made at the same level of trade. The principle of fair comparison should similarly be applied for determination of injury margin. Therefore, if freight cost incurred by the domestic industry is added to the NIP then freight incurred by the importer to bring the goods from the port of importation to the premises of buyer should also be added to the landed value of imports to enable fair comparison between NIP and landed value of imports. However, information regarding freight cost incurred subsequent to the importation of the goods is not usually known to the investigating authority because such information is not submitted in the exporter's questionnaire response.

The implementation of the proposal for inclusion of inland freight for injury margin comparison may be difficult to administer on account of following reasons:

(a) The data with regard to the inland freight incurred by the importer from the port of importation to the point of sale/consumption may be extremely difficult to get in case of non-participation of the importer in the investigation. In such an eventuality, the authority may have to depend on reputed logistics companies like CONCOR etc for a standard average freight rate from one location to the other.

(b) There may be various locations of sale and comparison of freight incurred at every location by the importer as well as the domestic industry will be a humongous task.

It would also be required to be examined whether for such comparison, freight needs to be taken on actual incidence or some benchmarking based on international freight norms will be a better alternative

Inland freight is not the only factor to be considered for fair comparison between the prices of the domestically produced like products and the price of the dumped imports at the same level of trade. In that case, other factors like differential exchange rates, differential credit cost on account of varied interest rates etc. should also be considered for proper and fair comparison

It is understood that Brazil is the only country which includes inland freight in the determination of injury margin. Among other countries following mandatory lesser duty rule, Brazil is the only one with a larger territory. Other geographies like Israel, Turkey, Ukraine and countries within EU on account of smaller geographical area may not be faced with the problem of high inland transport cost. However, countries following optional lesser duty rule namely Australia, Canada, Mexico and South Africa have large geographical areas and it needs to be ascertained whether or not inland freight is being included for injury margin determination for domestic industries placed in similar situation in those countries.

Third dimension:

There is a body of opinion that believes that there is no need for amendment in the NIP Rules outlined in the annexure III of AD Rules for inclusion of freight in injury margin determination since Annexure III prevents inclusion of outward freight only for the calculation of NIP and there is nothing in AD Rules that precludes or prevents inclusion of freight for IM determination and that a call regarding this could otherwise also be undertaken for fair comparison at the same level of trade.

All the stakeholders are requested to offer comments, if any, on the concept note above and suggest appropriate formulation.

CHANGES PROPOSED IN ANTI-SUBSIDY RULES

Amendment in Rule 2 b of Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules

Existing Rule 2 b of Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995	**Proposed Rule 2 b of Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995**
"Domestic industry" means the domestic producers as a whole of the like article or domestic producers whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidised article, or are themselves importers thereof, in which case such producers **shall be deemed** not to form part of domestic industry: Provided that in exceptional circumstances referred to in sub-rule (3) of rule 13, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market be deemed as a separate industry if - (i) the producers within such market sell all or almost all of their production of the article in question in that market, and (ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;	**"Domestic industry"** means the domestic producers as a whole of the like article or domestic producers whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidised article, or are themselves importers thereof, in which case such producers **may be construed** not to form part of domestic industry: Provided that in exceptional circumstances referred to in sub-rule (3) of rule 13, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market be deemed as a separate industry if - (i) the producers within such market sell all or almost all of their production of the article in question in that market, and (ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory; **Explanation. - For the purposes of this clause,-** **(i) producers shall be deemed to be related to exporters or importers only if,-** **(a) one of them directly or indirectly controls the other; or**

	(b) both of them are directly or indirectly controlled by a third person; or **(c) together they directly or indirectly control a third person, subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.** **(ii) a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.**

Introduction of Rule 6 A in regard to Pre-Initiation Consultation

Existing Rule 6 A	**Proposed Rule 6A**
None	6A **Pre-Initiation Consultation:** (1) The designated authority shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. (2) As soon as possible after an application under Rule 6 is accepted, and in any event before the initiation of any investigation, the government of the exporting country, which may be subject to investigation, shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in sub paragraph 2 of Rule 6 and arriving at a mutually agreed solution. (3) Furthermore, throughout the period of investigation, the government of the exporting country the products of which are the subject of an investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.

Amendment in Rule 11 of Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules

Existing Rule 11 of Anti-Subsidy Rules	**Proposed Rule 11 of Anti-Subsidy Rules**
(1) The designated authority while determining the subsidy shall ascertain as to whether the subsidy under investigation - (a) relates to export performance including those illustrated in Annexure III to these rules, or; (b) relates to the use of domestic goods over imported goods in the export article, or (c) it has been conferred on a limited number of persons, engaged in manufacturing, producing or exporting the article **unless such a subsidy is for - (i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or (ii) assistance to disadvantaged regions within the territory of the exporting country; or (iii) assistance to promote adaptation of existing facilities to new environmental requirements:**	(1) The designated authority while determining the subsidy shall ascertain as to whether the subsidy under investigation - (a) relates to export performance including those illustrated in Annexure III to these rules, or; (b) relates to the use of domestic goods over imported goods in the export article, or (c) it has been conferred on a limited number of persons, engaged in manufacturing, producing or exporting the article **Similarly, explanatory notes for clauses (c) (i),(ii) and (iii) will also have to be deleted**.

DEFINITIONS UNDER ANTI-DUMPING AND ANTI-SUBSIDY RULES

Exporter-

"Exporter" means an entity which exports or intends to export for earning foreign exchange in its name.

DEFINITIONS UNDER ANTI-SUBSIDY RULES

Countervailing Duty-

"Countervailing duty" means a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise as provided for in paragraph 3 of Article VI of GATT 1994

Justification: Currently there is no definition given for countervailing duty. Introduction of definition would lend clarity and provide context to the objective and purpose for CVD Rules. The language proposed is in line with the Footnote 36 of the ASCM.

Similar definition also exists in EU regulation (Article 1(1))

Like Article:

"like article" means a product which is identical i.e., alike in all respects to the article under anti-subsidy investigation or in the absence of such an article, another article which, although not alike in all respects, has characteristics closely resembling those of the article under investigation.

Justification : "Like Article" has been defined in Anti-dumping Rules. There is a need to define "like article" in the CVD Rules as well. This definition is in line with Footnote 46 of the ASCM. The proposed language of the definition is slightly different from the language of the definition in AD Rules

Amendment in definition of provisional duty in Anti-subsidy Rules:

Existing definition	Proposed definition
"provisional duty" means a countervailing duty imposed under sub-section (2) of section 9A of the Act;	"provisional duty" means a countervailing duty imposed under sub-section (2) of section 9 of the Act;

Justification : Section 9 of Customs Tariff Act, 1975 is the correct section which is relevant for Countervailing duty on subsidized articles and therefore Section 9 instead of 9A should be referred.