

Dear all,

The Directorate General of Trade Remedies is undertaking the exercise of introducing certain changes/modifications/corrections in the Trade Remedy Rules to bring in greater transparency and uniformity in trade remedy investigations.

All stakeholders are advised to offer their comments/ suggestions, if any, on these proposed changes latest by 14th April, 2023. Comments / suggestions should be mailed at policy-dgtr@gov.in, adg13-dgtr@gov.in, dd12-dgtr@gov.in

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(Arti Bangia)
Deputy Director, DGTR
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Proposed insertion of provisions in the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995

1. Provision of Sampling

- i) There is no provision in the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (“Countervailing duty Rules”) for Sampling. Therefore, it is suggested that Rule 19(3) may be added to the Countervailing Duty Rules.
- ii) This proposed Rule 19(3) is analogous to Rule 17(3) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (“Anti-dumping Duty Rules”). Thus, this amendment will align the Countervailing Duty Rules with Anti-dumping Duty Rules.

***Rule 19(3)** The designated authority shall determine an individual margin of subsidy for each known exporter or producer concerned of the article under investigation:*

Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned :

Provided further that the designated authority shall, determine an individual margin of subsidy for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

- iii) The existing Rule 19(3) will be numbered as Rule 19(4).
- iv) The corresponding provision in Rule 20 of the Countervailing Duty Rules should also be modified. Rule 20(4) should be added, which will be analogous to Rule 18(2) of the Anti-dumping Duty Rules:

*“**Rule 20(4):** In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to sub-rule (3) of rule 19, any countervailing duty applied to imports from exporters or producers not included in the examination shall not exceed the weighted average margin of subsidy established with respect to the selected exporters or producers:*

Provided that the Central Government shall disregard for the purpose of this sub-rule any zero margin, margins which are less than 1 per cent ad valorem or in the case of a product originating from a developing country the margin less than 2 per cent and margins established in the circumstances detailed in sub-rule (8) of rule 7. The Central Government shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation as referred to in the second proviso to sub-rule (3) of rule 19.

2. Provision of New Shipper Review

- i) There is no provision in the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (“Countervailing duty Rules”) for carrying out new shipper review. Therefore, it is suggested that Rule 23A may be added to the Countervailing Duty Rules.
- ii) This proposed Rule 23A is analogous to Rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (“Anti-dumping Duty Rules”). Thus, this amendment will align the Countervailing Duty Rules with Anti-dumping Duty Rules.
- iii) This amendment will also be in conformity with India’s obligation under Article 19.3 of the WTO Agreement on Subsidies and Countervailing Measures (“WTO SCM Agreement) which provides that “...Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.”

RULE 23A. Subsidy margin for exporters not originally investigated - (1) *If a product is subject to countervailing duties, the designated authority shall carry out a periodical review for the purpose of determining individual subsidy margins for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the countervailing duties on the product.*

(2) *The Central Government shall not levy countervailing duties under sub-section (1) of section 9 of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:*

Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends, and if such a review results in a determination of subsidy in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.

(3) *The countervailing duty already imposed for co-operative un-sampled exporters or producers may also be extended to such exporters or producers who were not originally investigated.*

Proposed amendment to Explanation of Section 9A(1B) of the Customs Tariff Act, 1975 and Rule 29 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (“Anti-dumping Duty Rules”)

The proposed amendment is intended to overcome the ambiguity in Section 9A(1B) of the Customs Tariff Act, 1975 and sub-rule (1) of Rule 29 of Anti-dumping Rules regarding the meaning of absorption of anti-dumping duty.

“Section 9A (1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation – For the purposes of this sub-section, “absorption of anti-dumping duty” is said to have taken place, –

(a) if ~~without any commensurate change in cost of production or export price of such article to countries other than India, export price of an article to India from the exporting country or countries decrease post imposition of the anti-dumping duty or that there has been no movement, or insufficient movement, in the resale price or subsequent selling price of the imported product in India post imposition of the anti-dumping duty is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory;~~

(b) under such other circumstances as may be provided by rules.”

“29. Anti-absorption review. – (1) An anti-dumping duty imposed under section 9A of the Act may be considered to be absorbed when *without any commensurate change in cost of production or export price of such article to countries other than India, export price of an article to India from the exporting country or countries decrease post imposition of the anti-dumping duty or that there has been no movement, or insufficient movement, in the resale price or subsequent selling price of the imported product in India* ~~without any commensurate change in cost of production of such article or export prices of such article to countries other than India. or resale price of such article in India imported from the exporting country or 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 the existing anti-dumping duty as per sub rule (1), and such duty is thereby rendered or may be rendered ineffective, the designated authority may, after conducting a review, recommend modification in the form or basis of the anti-dumping duty, or the quantum of anti-dumping duty, or both, after reassessing the dumping margin in relation to normal value previously established for the like product, if necessary with appropriate changes or adjustments or in accordance with the provisions of rule 10, and the injury margin in relation to non-injurious price previously established for the like product produced

by the domestic industry, if necessary with appropriate changes or adjustments or in accordance with the provisions of Annexure III.

(3) The domestic industry or any other interested party shall file the application seeking initiation of anti-absorption investigation normally within two years from the date of imposition of definitive antidumping duty:

Provided that in view of special circumstances in a given case, for reasons to be recorded in writing, the designated authority may accept an application for such initiation after expiry of the said period of two years:

Provided further that no such application shall be accepted in cases with less than twelve months' period remaining for the anti-dumping duty to expire."