

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 18.5 OF THE AGREEMENT**

INDIA

The following communication, dated 14 October 2011, is being circulated at the request of the Delegation of India.

Notification of Laws and Regulations under Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, India notifies the amendment to the Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for Determination of Injury) Rules, 1995. The Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for Determination of Injury) Amendment Rules 2011 were notified vide Ministry of Finance, Department of Revenue Notification No. 15/2011 – Customs (N.T) dated 1 March 2011. The amendments made in the aforesaid Amendment Rules relate, *inter-alia*, to the following:

- (i) Rule 4 (d) (i) – In so far as these relate to the duties of the Designated Authority while recommending the amount of anti-dumping duty, a reference to the Annexure III containing 'Principles for determination of non-injurious price' has been added.
- (ii) Rule 17 (1) (b) – In the Rule relating to issue of final findings by the Designated Authority a reference to the Annexure III containing 'Principles for determination of non-injurious price' has been added.
- (iii) Rule 23 (1) relating to Review of anti-dumping duty has been amended.
- (iv) India follows lesser duty rule. After the Annexure II a new Annexure III containing 'Principles for determination of non-injurious price' has been added.

A copy of the notification containing the Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for Determination of Injury) Amendment Rules 2011 is annexed herewith.

Annex

The Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules 2011

Notification No. 15/2011-Customs (N.T) dated 1st March, 2011

G.S.R. (E) -In exercise of the powers conferred by sub-section (6) of section 9A and sub-section (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules further to amend the Custom Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, namely:-

1. (1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of injury) Amendment Rules, 2011.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (herein after referred to as the said rules), for rule 4, the following shall be substituted, namely:-

"4. **Duties of the designated authority.** -It shall be the duty of the designated authority, in accordance with these rules,-

(a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;

(b) to identify the article liable for anti-dumping duty;

(c) to submit its findings, provisional or otherwise to the Central Government as to-

(i) normal value, export price and the margin of dumping in relation to the article under investigation; and

(ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries;

(d) to recommend to the Central Government-

(i) the amount of anti-dumping duty equal to the margin of dumping or less, which levied, would remove the injury to the domestic industry, after considering the principles laid down in the Annexure III to these rules; and

(ii) the date of commencement of such duty;

(e) to review the need for continuance of anti-dumping duty."

3. In the said rules, in rule 17, in sub-rule (1), in clause (b), after the words "domestic industry", the words and figures "after considering the principles laid down in the Annexure III to these rules." shall be inserted.

(4) In the said rules, in rule 23, for sub-rule (1), following shall be substituted, namely:-

"(1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1 A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of .time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry."

5. In the said rules, after the Annexure II, the following shall be added, namely:-

"Annexure III

[See rule 17(1)]

Principles for determination of non-injurious price

(1) The designated authority is required under sub-rule (1) of rule 17 to recommend the amount of anti-dumping duty which, if levied, would remove the injury where applicable to the domestic industry.

(2) For the purpose of making recommendation under clause (1), the designated authority shall determine the fair selling (notional) price or non-injurious price of the like domestic product taking into account the principles specified herein under.

(3) The non-injurious price is required to be determined by considering the information or data relating to cost of production for the period of investigation in respect of the producers constituting domestic industry. Detailed analysis or examination and reconciliation of the financial and cost records maintained by the constituents of the domestic industry are to be carried out for this purpose.

(4) The following elements of cost of production are required to be examined for working out the non-injurious price, namely:-

(i) The best utilization of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of raw materials.

(ii) The best utilization of utilities by the constituents of domestic industry, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of utilities.

(iii) The best utilization of production capacities, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities.

(iv) The Propriety of all expenses, grouped and charged to the cost of production may be examined and any extra-ordinary or non-recurring expenses shall not be charged to the cost of production and salary and wages paid per employee and per month may also be reviewed and reconciled with the financial and cost records of the company.

(v) To ensure the reasonableness of amount of depreciation charged to cost of production, it may be examined that no charge has been made for facilities not deployed on the production of the subject goods, particularly in respect of multi-product companies and the depreciation of re-valued assets, if any, may be identified and excluded while arriving at reasonable cost of production.

(vi) The expenses to the extent identified to the product are to be directly allocated and common expenses or overheads classified under factory, administrative and selling overheads may be apportioned on reasonable and scientific basis such as machine hours, vessel occupancy hours, direct labour hours, production quantity, sales value, etc., as applied consistently by domestic producers and the reasonableness and justification of various expenses claimed for the period of investigation may be examined and scrutinized by comparing with the corresponding amounts in the immediate preceding year.

(vii) The expenses, which shall not to be considered while assessing non-injurious price include,-

- a) research and development Provisions (unless claimed and substantiated as related to the product specific research);
- b) since non-injurious price is determined at ex-factory level, the post manufacturing expenses such as commission, discount, freight-outward etc. at ex-factory level;
- c) excise duty, sales tax and other tax levies on sales;
- d) expenses on job work done for other units;
- e) royalty, unless it is related to technical know-how for the product;
- f) trading activity of product under consideration; or
- g) other non-cost items like bad debts, donations, loss on sale of assets, loss due to fire, flood, etc.

(viii) A reasonable return (pre-tax) on average capital employed for the product may be allowed for recovery of interest, corporate tax and profit. The average capital employed is the sum of "net fixed assets and net working capital" which shall be taken on the basis of average of the same as on the beginning and at the end of period of investigation. For assessment of reasonable level of working capital requirement, all the elements of net working capital shall be scrutinized in detail. The impact of revaluation of fixed assets shall not be considered in the calculation of capital employed. Interest is allowed as an item of cost of sales and after deducting the interest, the balance amount of return is to be allowed as pre-tax profit to arrive at the non-injurious price.

(ix) Reasonableness of interest cost may be examined to ensure that no abnormal expenditure on account of interest has been incurred. Details of term loans, cash credit limits, short term loans, deposits and other borrowings taken by the company and interest paid thereon may be examined in detail along with the details of assets deployed.

(x) In case there is more than one domestic producer, the weighted averages of non-injurious price of individual domestic producers are to be considered. The respective share of domestic production of the subject goods may be taken as basis for computation of weighted average non-injurious price for the domestic industry as a whole."
