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Analysing developments impacting business

STREAMLINING OF ANTI-DUMPING DUTY AND COUNTERVAILING DUTY PROCEDURES BY THE DIRECTORATE GENERAL OF TRADE REMEDIES

1 October 2021

Introduction

The Directorate General of Trade Remedies (DGTR) has issued a series of Trade Notices to implement major steps to streamline and simplify the existing procedures for participation by all stakeholders in Anti-Dumping (AD) /Countervailing Duty (CVD) proceedings. The new procedures provide for revised application formats and questionnaires for domestic industry, exporters, importers and end-users.

Salient details of the procedures

Applications by Domestic Industry

The DGTR vide Trade Notice No [05/2021](#) dated 29 July 2021 has notified a new application format in response to representations from domestic producers and associations for simplification of the existing application formats. To meet their demands and to fulfil the objective of reduction of compliance burden for business, the existing application formats have been revised.

The requirement of non-essential information has been dispensed with in the sections relating to product and Indian industry and overall repetitive information requirements have been removed. Some formats have been deleted altogether such as the earlier Format H whereas some others such as Proforma IV-A have been merged. Overall, the cost related formats have also been simplified and been made more specific to the current practices of the DGTR for assessment of Cost of Production and Non-injurious Price.

Application for AD / CVD investigation by fragmented industries

The DGTR vide Trade Notice No [09/2021](#) dated 29 July 2021 has issued a new questionnaire for filing of an application for AD / CVD investigation by 'fragmented industries'. The DGTR noted that it keeps receiving requests for the imposition of trade remedy measures from domestic producers forming part of 'fragmented industries'. It acknowledged the difficulties encountered by such domestic producers in complying with the existing procedures which often led to them being deprived of the relief from trade remedy measures.

Therefore, to overcome difficulties faced by fragmented industries in India in complying with the existing procedures and norms, a simplification exercise has been attempted by prescribing a new questionnaire and application process for such industries.

The Trade Notice provides that where the industry is fragmented and consists of an excessively large number of domestic producers, the application for AD / CVD investigation can be filed by an association on behalf of domestic industry and such domestic producers must have at least 50% share in total eligible domestic production of 'like article' as per Rule 5(3)(a) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (AD Rules) and Rule 6(3)(a) of Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (CVD Rules);

If an application has been filed by an association on behalf of domestic producers, the association should meet the requirements prescribed under Annexure II, as under:

- (i) Is the association a registered body? If so a copy of the Registration Certificate;
- (ii) A copy of the Bylaws & Memorandum of Association (MOA);
- (iii) A list of the members;
- (iv) Details of the Executive body or Managing structure of the Association;
- (v) A copy of the minutes of the meeting in which it was resolved by the Association to file an AD application on behalf of some of / all its members;
- (vi) A list of the members, who either supported, opposed or remained neutral with regard to the application;

The association shall provide all relevant information to demonstrate that the association has acted on behalf of domestic producers and the members of the association have expressly supported the request for imposition of AD duty within the meaning of Rule 5(3) read with Rule 2(b) of AD Rules or imposition of CVD duty within the meaning of Rule 6(3) read with Rule 2(b) of CVD Rules, as the case may be.

An application filed by or on behalf of fragmented domestic industry for AD/CVD investigation shall contain a list of all domestic producers on whose behalf the application is being filed and who constitute a domestic industry. Pertinently, all the domestic producers constituting domestic industry in such cases shall not be required to file Costing Formats VI-1 to VI-5 at the time of filing of the Application. Instead, all such domestic producers will be required to file basic injury information only as per Annexure 1 of the Trade Notice.

To determine injury margin, the DGTR may limit detailed examination of applicant domestic producers to a limited number of domestic producers applying the following provisions:

- a. The Authority shall select a sample set of producers based on statistically valid sampling techniques.
- b. The sampled domestic producers shall provide complete information in Costing Formats VI-1 to VI-5.

It may be noted that the Trade Notice specifies that the relaxation in procedure shall be applied only where the number of domestic producers in fragmented industry is

excessively large and the DGTR reserves the right to deny this relaxation even for fragmented industry depending on facts and circumstances of a particular case.

Exporter Questionnaires to be filed in AD investigations

The DGTR vide Trade Notice No [06/2021](#) dated 29 July 2021 has sought to bring about a revised exporter's questionnaire to be filed by the foreign producer(s) / exporter(s) in the AD investigation. The Questionnaire now comprises 4 parts and 16 Appendices for data submission.

A producer and exporter of product under-consideration which is being exported to India directly or indirectly is now required to submit responses to Part I, Part II and Part III of the revised questionnaire.

In the case of non-market economy countries, where the participating producers / exporters have not claimed market economy treatment, only those related producers involved in the production of PUC whose product has been exported to India are required to furnish information in Part I, II and III of the Questionnaire.

In the case of market economy countries, all related producers involved in the production of PUC, irrespective of whether their product has been exported to India or not, are required to furnish information in Parts I, II and III of the Questionnaire.

Any other non-producer related entities involved in the export of the PUC are required to submit a response in part I and part II along with Appendix-5 (Profitability Statement) of the Questionnaire.

Any related importers in India are required to file a response in Part-IV. However, if a related importer is also a user of the product under consideration, such related user shall be required to also fill the User Questionnaire.

Where the goods produced by the Foreign Producer are exported to India through an unrelated exporter then such unrelated exporter is required to submit a reply in Part-I and II along with Appendix-5 of the questionnaire. The Trade Notice categorically states that in case any unrelated exporter does not cooperate and does not provide the relevant information, the Designated Authority may disregard the information provided by the concerned participating producer or exporters. However, the Designated Authority is required to consider the facts and circumstances of each case on merit, before taking such a decision.

In case the participant company is only an exporter but not a producer of the product under consideration being exported to India, then it is required to fill information in Part-I and II along with Appendix-5 of the Questionnaire. However, simultaneously, the un-related producer of the product under consideration identified in the response has to file Part I, II and III of the Questionnaire for acceptance of such an exporter's response for consideration of specific individual duty. In such cases, Part-IV shall also be filled, if applicable.

Where domestic sales of the product under investigation in the originating country are made through a related party, then details regarding the domestic sales to independent customers by such related party in the originating country needs to be provided and along with information in Appendix-5 of the Questionnaire.

Full information relating to sales of the company for exports to India as per the formats set out in Appendix-3A (To unrelated / related customers in India) and Appendix-3B (To related / unrelated exporters who have eventually sold to Indian customers) is to be provided. In case of exports of the product under investigation are made to a related party in India, then Part-IV of the questionnaire should be submitted for each such related company concerned. But in case exports to India are made through a related or

unrelated exporter / trader then such related/unrelated exporter is required to submit the Part-I and II of the Questionnaire as well as Appendix-5 of the Questionnaire.

Full information relating to sales of the company in the home market per the formats set out in Appendix-4A (To unrelated customers) and Appendix-4B (Resale by related customers to independent customers) is to be submitted and it should be ensured that the information furnished by all the related companies is fully reconcilable. Appendix-5 is required to be furnished by such related companies.

Statement of purchase and consumption for all materials and utilities used as per format set out at Appendix-6, the allocation and apportionment of expenses into the product concerned and other products, as per format set out at Appendix-7, and the information for company as a whole should reconcile to the published financial accounts. The unit costs to make and sell and profit in domestic and export markets as set out in formats in Appendix-8 is to be provided by the producer-exporter. In case, there is a difference in factory cost for exports to India as compared to that of the domestic market and other countries, the company is required to explain the difference. Appendix 9 is provided for gathering PCN wise information of the PUC if required.

In case any raw material or utility is purchased from a related supplier or captively produced, the details of such supplies and the basis of pricing of the material considered is to be provided by the Company, explaining how the pricing considered is reflective and representative of a fair market price. Purchase prices from independent parties for an identical or comparable raw material/ utility are also to be provided and all the information must be as per the format set out in Appendix-10, where applicable.

Part-IV of the Questionnaire relates to information to be provided by related importers in India. Additionally, such a related importer is also required to fill the following appendices (as applicable) -

- (a) Appendix-11: Details of imports of PUC from subject countries from related /unrelated parties
- (b) Appendix-12: Details of purchase from domestic suppliers
- (c) Appendix-13: Summary Statement of imports
- (d) Appendix-14: Details of Resale of subject goods.
- (e) Appendix-15: Utilization of product under consideration (Previous Years to be removed).
- (f) Appendix-16: Profitability Statement.

Applications to be submitted by Importers and User Industry

The DGTR vide Trade Notice No [07/2021](#) dated 29 July 2021 provides for simplification of importer's questionnaire to be filed by unrelated importers and Trade Notice No [08/2021](#) dated 29 July 2021 provides for streamlining of the AD Questionnaire Format for User Industry.

Unrelated Importers are required to fill information in the following Appendix (as applicable) -

- a. Appendix-1: Details of imports of PUC from subject countries from unrelated parties
- b. Appendix-2: Details of purchase from domestic suppliers

c. Appendix-3: Summary Statement of imports

d. Appendix-4: Details of Resale of subject goods.

e. Appendix-5: Profitability Statement

In addition to the above information, the User Industry is required to provide Costing related information such as the detailed production process for each product manufactured using the product under consideration and the details of the purchases / sales made by the company of the product under consideration under Appendix-1. Information relating to the cost of raw material and other conversion costs for each product that incorporates the product under consideration is to be provided in Appendix-2.

Other Aspects

The procedures are elective until [31 October 2021](#) as till then the stakeholders have the option to continue submission under the earlier formats.

Concluding thoughts

The revised procedures and streamlined questionnaires stipulated by the DGTR should simplify the procedural requirements and obligations of some of the stakeholders. Domestic Industry Applicants and specifically fragmented domestic industry players may gain optimum benefit from the revisions. The provision of limiting the costing related information to be supplied in cases of the fragmented industry at the time of filing and adoption of sampling for determination of domestic industry may lead to providing the benefit of AD / CVD procedures to such fragmented industries affected by dumping or unfair subsidization. A revised Checklist has also been provided by the DGTR. The revision in Foreign Producer Questionnaires abundantly clarifies the requirement of participation of unrelated exporters through questionnaire responses. Overall, in the case of foreign exporters as well, specific requirements have been provided with clear and specific filing requirements. In the case of User Industry, the requirement of providing cost information has been continued which may be burdensome considering the level of participation and the resources available to such user industry. Overall, there are clear steps being implemented towards encouraging meaningful and effective participation by affected interested parties.

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