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Committee on Subsidies and Countervailing Measures

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**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 32.6 OF THE AGREEMENT**

INDIA

Supplement

The following communication, dated 4 January 2021, is being circulated at the request of the delegation of India.

India hereby notifies the amendments to its Countervailing Duty Rules, "Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Amendment Rules, 2020". The amendment Rules were notified by Government of India vide Notification No. 10/2020-Customs (N.T.) dated 2 February 2020. Copy of same is attached.

The amendment is available in the public domain and can be seen at <http://www.cbic.gov.in> at following weblink:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt_10.pdf

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No.10/2020-Customs (N.T.)

New Delhi, the 2nd February, 2020

G.S. R (E).- In exercise of the powers conferred by sub-section (7) of section 9 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 Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995, namely:-

1. Short title and commencement. — (1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Amendment Rules, 2020.

(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 Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995,-

(a) in rule 2,-

(i) in clause (b),-

(A) for the portion beginning with the words "means the domestic producers" and ending with the words "not to form part of domestic industry", the following shall be substituted, namely:-

"means the domestic producers as a whole engaged in the manufacture of the like article or those 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 like article from other countries or are themselves importers thereof;"

(B) after the proviso, the following *Explanation* shall be inserted, namely: -

"Explanation. - For the purposes of this clause, 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.

Note: For the purpose of this *Explanation*, 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."

(ii) after clause (c), the following clauses shall be inserted, namely: -

'(ca) "like article" means an article which is identical or alike in all respects to the article under 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;

(cb) "period of investigation" means the period during which the existence of subsidisation is examined.";

(iii) in clause (d), for the word, figure and letter "section 9A", the word and figure "section 9" shall be substituted";

(b) in rule 6, after sub-rule (5), the following sub-rule and *Explanation* shall be inserted, namely:-

"(6) The designated authority shall avoid any publicising of the application for the initiation of an investigation, unless a decision has been made to initiate an investigation.

Explanation.- For the purposes of these rules, the period of investigation shall,-

- (i) not be more than six months old as on the date of initiation of investigation;
- (ii) be for a period of twelve months and for the reasons to be recorded in writing the designated authority may consider a minimum of six months or maximum of eighteen months.";

(c) after rule 6, the following rule shall be inserted, namely:-

"6A. Consultation.- (1) As soon as an application under rule 6 is accepted, and in any event before the initiation of any investigation, the Government of the exporting country, the products of which may be subject to investigation, shall be invited for consultations to clarify the situation for the matters referred to in rule 6 so as to arrive at a mutually agreed solution.

(2) The Government of the exporting country, shall be afforded a reasonable opportunity to continue consultations, to clarify the factual situation so as to arrive at a mutually agreed solution, throughout the period of investigation.";

(d) in rule 11, in sub-rule (1), for clause (c), the following clause shall be substituted, namely: -

"(c) has been conferred on a limited number of persons or enterprises or industries or designated geographical regions, engaged in manufacturing, producing and exporting the article.";

(e) in rule 17, in sub-rule (6) for the proviso, the following provisos shall be substituted, namely:-

"Provided that the designated authority may obtain from the producer or importer information periodically to monitor the undertaking and take steps for onsite verification of the same, if required:

Provided further that in case of any violation of an undertaking, the designated authority shall, as soon as possible, inform the Central Government of the violation of the undertaking and recommend immediate application of provisional measure using the best information available and in cases of violation, definitive duties may be levied in accordance with these rules on product entered for consumption not more than ninety days before the application of such provisional measures but no such retroactive assessment shall apply to imports entered before the violation of the undertaking.";

(f) in rule 22, in sub-rule (2), after the proviso the following proviso shall be inserted, namely:-

"Provided further that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied from the date of violation of the undertaking or such date as the Central Government may specify in each case.";

(g) for rule 24, the following rules shall be substituted, namely: -

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

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

(3) Any definitive countervailing duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition. The designated authority may upon coming to a conclusion, on a review initiated before that period either 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 countervailing duty is likely to lead to continuation or recurrence of subsidisation and injury to the domestic industry, make recommendation for extending the period of such imposition in accordance with provisions of section 9 of the Act.

(4) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(5) The provisions of rules 6,7,8,9,10,11,12,13,16,17,18,19,20,22 and 23 shall apply *mutatis mutandis* in case of review.

25. Circumvention of countervailing duties. - (1) Circumvention shall be considered as a change in the pattern of trade between any country and India or between individual companies in any other country, subject to measures and India, as a result of a practice, process or work for which there is insufficient cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities or both of the like product, and that the imported like product or parts thereof or both still benefit from the subsidy as determined in original or previous determination.

(2) The practice, process or work referred to in the sub-rule (1) includes, *inter alia*,-

(a) where an article subject to countervailing duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of countervailing duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in any other country, such assembly, finishing or completion shall be considered to circumvent the countervailing in force if,-

(i) the operation started or increased after, or just prior to, the countervailing investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of countervailing duty; and

(ii) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

Explanation I. - 'Value' means the cost of assembled, complete or finished article less value of imported parts or components.

Explanation II. - For the purposes of calculating the 'value', expenses on account of payments relating to intellectual property rights, royalty, technical know-how fees and consultancy charges, shall not be taken into account.

(b) where an article subject to countervailing duty is imported into India from country of origin or country of export notified for the levy of countervailing duty after being subjected to

any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the countervailing duty in force if the alteration of the description or name or composition of the article subject to countervailing duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any;

(c) where an article subject to countervailing duty is imported into India through any exporter or producer or country not subject to countervailing duty, such exports shall be considered to circumvent the countervailing duty in force if the exporters or producers notified for the levy of countervailing duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through any exporter or producer or country not subject to countervailing duty;

(d) any other manner where the countervailing duty so imposed is rendered ineffective.

26. Initiation of investigation to determine circumvention.- (1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention 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.

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

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation on its own initiative 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 circumvention of countervailing duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention 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 provisions regarding evidence and procedure provided under rule 7 shall apply *mutatis mutandis* to any investigation carried out under this rule.

(6) Any such investigation shall be concluded within twelve months and in no case more than eighteen months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.

27. Determination of circumvention.- (1) The designated authority, upon determination that circumvention of countervailing duty exists, may recommend imposition of existing countervailing duty to imports of articles found to be circumventing an existing countervailing duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the 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, extend the countervailing duty to imports of article including 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.

28. Review of circumvention. - (1) The designated authority may, where warranted, review the need for the continued imposition of the countervailing duty on circumventing product or against the circumventing country as applicable, either on its own initiative or, upon request by any interested party which submits necessary information substantiating the need for the

review provided that a reasonable period of time has elapsed since the imposition of the measures, and upon such review make recommendations to the Central Government.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review."

[F. No.334/2/2020-TRU]

(Gaurav Singh)

Deputy Secretary to the Government of India

Note.- The principal rules were notified *vide* Notification No.1/1995-Customs (N.T), dated the 1st January, 1995, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 2(E), dated the 1st January,1995 and was last amended by Notification No.24/2006-Customs (N.T), dated the 1st March, 2006 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 123(E), dated the 1st March, 2006.
