

International Trade

# amicus

January 2024 / Issue –149



 Lakshmikumaran  
& Sridharan  
attorneys  
An ISO 27001:2013 certified law firm

An e-newsletter from  
**Lakshmikumaran & Sridharan, India**

# Table of Contents

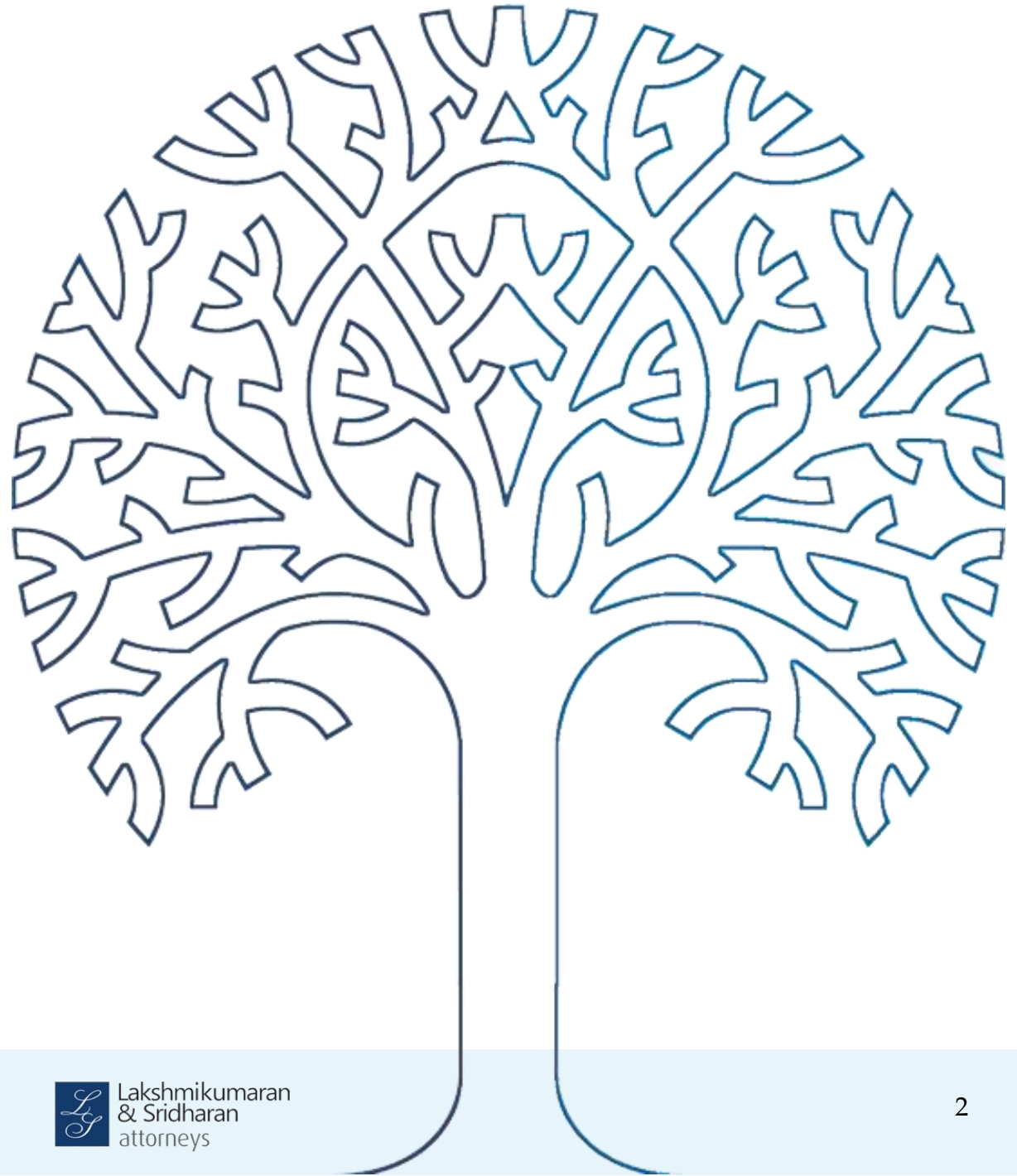
**Article..... 3**  
Trade remedial measures in India – 2023 year-end review .....4

**Trade Remedy News ..... 11**  
Trade remedy measures by India .....13  
Trade remedy measures against India.....13

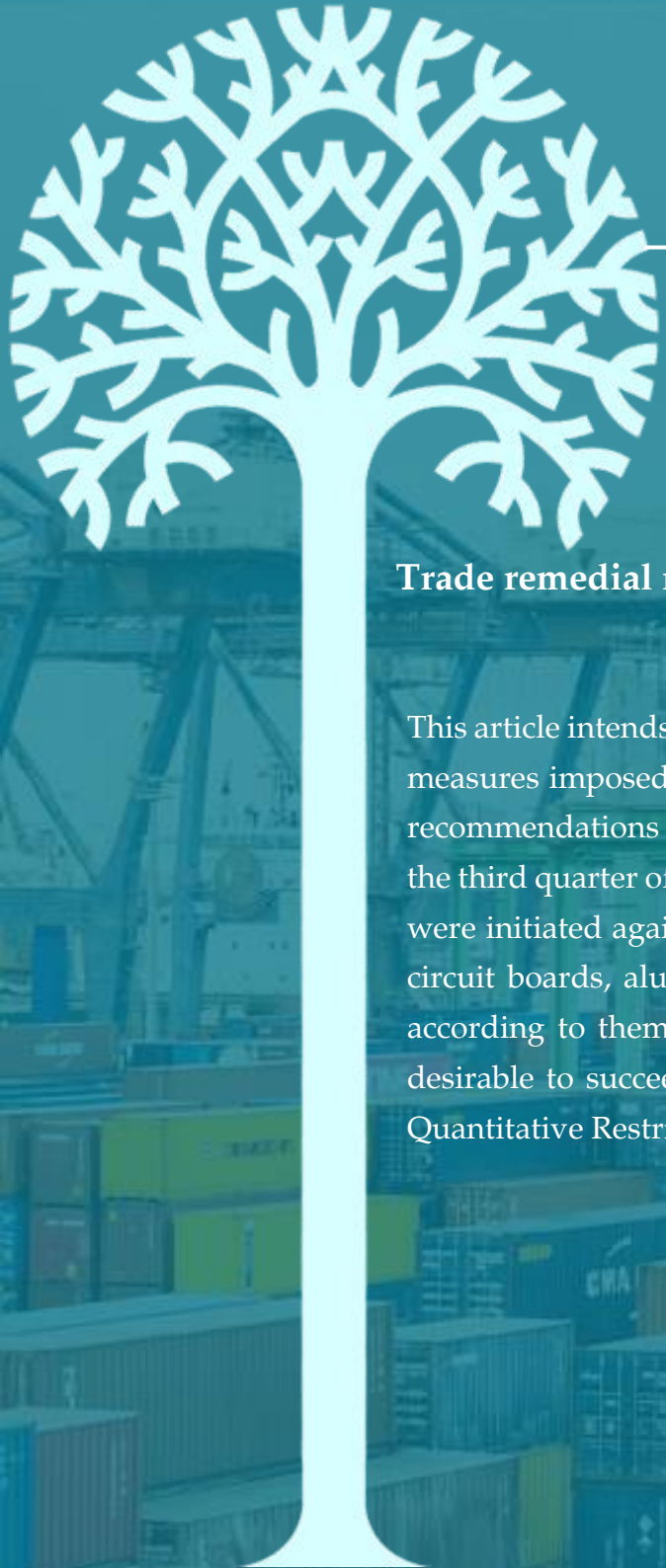
**WTO News..... 17**

**India Customs & Trade Policy Update..... 19**

**Ratio Decidendi..... 23**







# Article

## Trade remedial measures in India – 2023 year-end review

*By Ankur Sharma, Jayant Raghu Ram and Nikita Chauhan*

This article intends to provide a year-end round up of the trade remedy investigations related initiations, final findings, and measures imposed by the Government of India. Providing various statistics relating to initiations and countries targeted, recommendations of the DGTR, and finally the implementation of various trade remedy measures, the authors observe that the third quarter of the year was the busiest for DGTR. They also observe that while the maximum number of investigations were initiated against imports from China, the DGTR also initiated investigations on many new products such as printed circuit boards, aluminium frames for solar frames/modules, epichlorohydrin, easy open end of tin plates, etc. Further, according to them, for legacy products, a very strong case on injury with minimal impact on the user industry seems desirable to succeed. The authors also state that it will be interesting to see if the domestic industry prefers Safeguard Quantitative Restrictions as a more appropriate tool where protection is required for a shorter period.

# Trade remedial measures in India – 2023 year-end review

By Ankur Sharma, Jayant Raghu Ram and Nikita Chauhan

## Introduction

Trade remedy measures continue to remain a bulwark for the protection of the domestic industry from unfair imports. With the government's increasing emphasis on the 'Make in India' objective and the Indian economy booming, trade remedy measures retain their importance as an instrument to balance the interests of domestic producers with that of users and importers.

The year 2023 whizzed past as a busy and important year for trade remedy investigations in India. This article is intended to provide a year-end round up of the trade remedy investigations related initiations, final findings, and measures imposed by the government.

## Phase-1 – Initiations

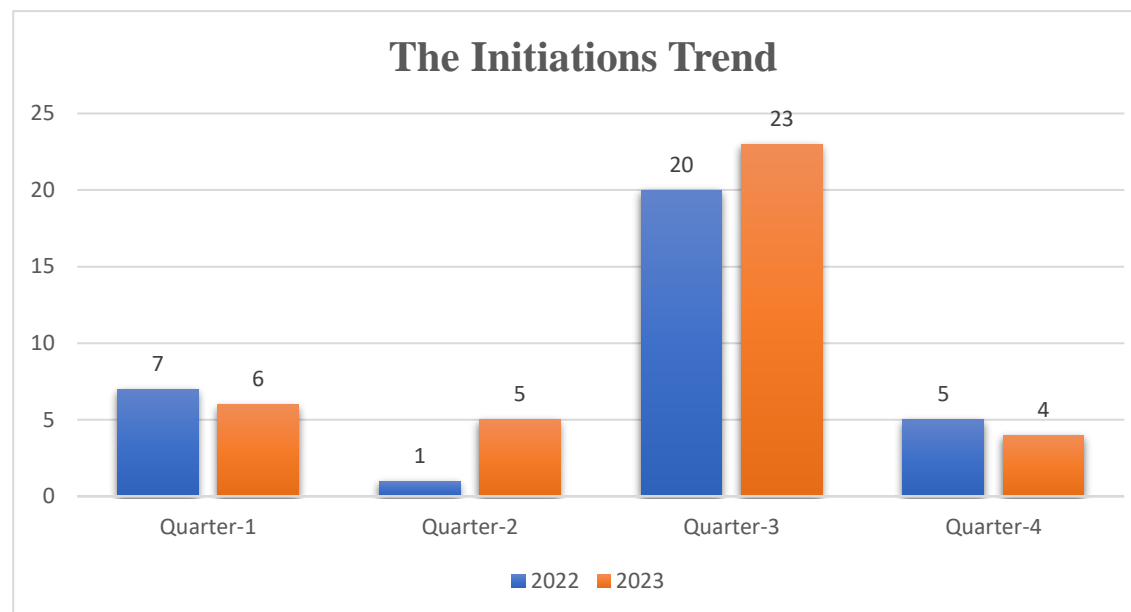
The nodal authority for trade remedy investigations in India is the Directorate General of Trade Remedies ('DGTR'), which is the authority for initiating investigations. With a total of 38 initiations in the year 2023, the end of the third quarter (September 2023) was the busiest with a record number of 23

investigations having been initiated. The third quarter generally witnesses the maximum number of initiations, since the period of investigation for such investigations is April to March, i.e., the same as the Indian financial year. The remaining quarters were relatively lighter – with the end of March 2023 seeing 6 initiations, the end of June 2023 seeing 5 initiations, and the end of December 2023 seeing four initiations.

Most of the investigations were anti-dumping investigations, and the following pattern was observed:

- There were 32 anti-dumping investigation initiations, out of which, 22 were original, 8 were sunset reviews, 1 was a mid-term review, and 1 was an anti-circumvention investigation.
- There were only 5 countervailing initiations, out of which 2 were original, and 3 were sunset reviews.
- There was also 1 safeguard (quantitative restrictions) investigation initiation.

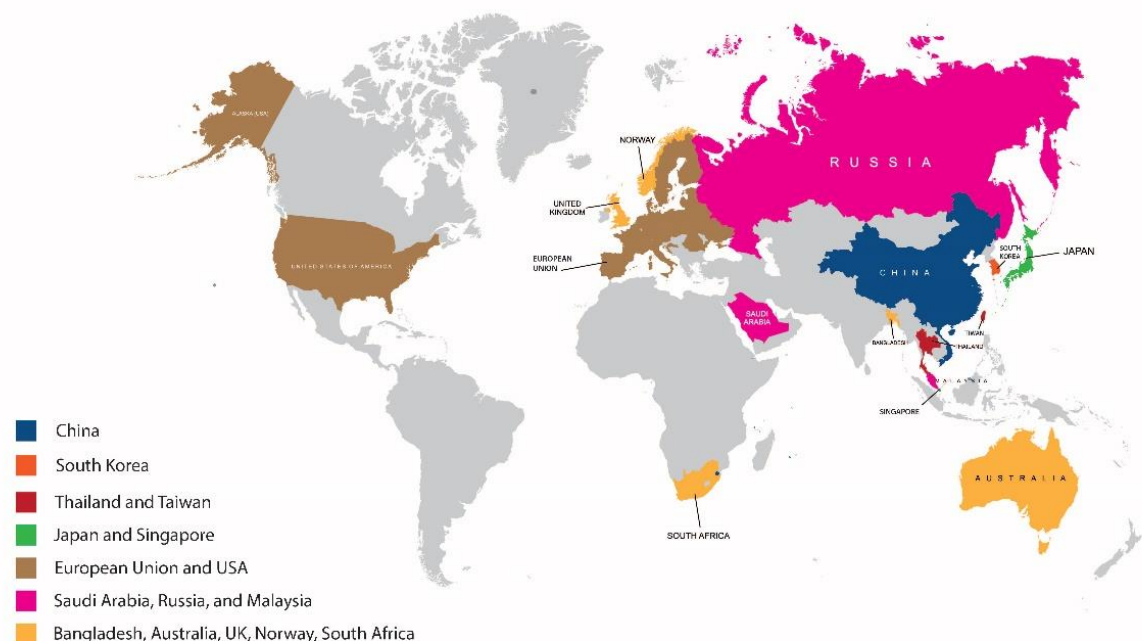
This trend is quite similar to the 2022 initiation trend, with five more investigations initiated in 2023.



## Countries targeted

Out of 38 initiations, China topped the list as a target country, followed by South Korea which was the target country in 6 initiations. The chart below highlights all the countries subjected to trade remedy investigations in 2023. The list is as follows:

- i. China - 31
- ii. South Korea – 6
- iii. Thailand and Taiwan – 5 each
- iv. Japan and Singapore – 4 each
- v. European Union and USA – 3 each
- vi. Saudi Arabia, Russia, and Malaysia – 2 each
- vii. Bangladesh, Australia, UK, Norway, South Africa, Chinese Taipei – 1 each



Another interesting aspect is that the DGTR initiated some investigations *suo moto*. These included the initiations against imports of *Fasteners, Unframed Glass Mirror, Vacuum Insulated Flask, Telescopic Channel Drawer, and Roller Chains*. The target country in all these *suo moto* initiations was China. This probably reflects the intention of the DGTR to assist fragmented industries in making use of the trade remedies framework.

## Phase II – Recommendations

In 2023, the DGTR issued 32 final findings as against 40 final findings in 2022. It is worth noting that the DGTR recommended the imposition/continuation of duty in 30 final findings.

The two investigations (both anti-dumping) in which duty was not recommended by the Authority were on *Metronidazole*



from China and sunset review concerning *Textured Tempered Coated and Uncoated Glass* from Malaysia.

*Metronidazole* is a rare instance where the investigation was terminated upon concluding that there was no injury and causal link. The DGTR reasoned that the domestic industry's profitability parameters were positive throughout the injury period, except for the second half of the period of investigation. In a detailed causal link and non-attribution analysis, the DGTR concluded that the injury being faced by the domestic industry in the second half of the period of investigation was due to an increase in the prices of the raw material namely 2 Methyl 5-Nitro Imidazole. It was observed that this increase in the raw material prices coincided with the decline in the domestic industry's profitability parameters. Hence, injury, if any, in the second half of the period of investigation was caused due to the increase in the raw material prices, and not as a result of dumped imports. The DGTR accordingly terminated the investigation due to lack of injury and causal link.

In *Textured Tempered Glass*, only one producer from Malaysia, Xinyi Solar, had exported the product to India during the period of investigation. The said producer was treated cooperative, and the subject imports were not considered to be dumped. Xinyi Solar had been treated cooperative in the original investigation

as well and was awarded zero duty. The dumping margin for Xinyi in the sunset review was also negative.

The DGTR concluded that since Xinyi Solar was the sole producer in Malaysia, and the dumping margin was negative, it *inter alia* implied that the dumping margin for Malaysia as a whole was negative. Hence, continuation of duty was not recommended, and the investigation terminated.

While a major chunk of the investigations initiated in the year 2022, were concluded, two investigations initiated in 2022 on *alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition* from China and South Korea and *Vitamin-A Palmitate* from China, the EU, and Switzerland are still pending. While in *Vitamin-A*, the time for completion of the investigation has been extended until 28 March 2024, in *Rock Breaker*, no such extension notice is available on the DGTR website, which is unusual.

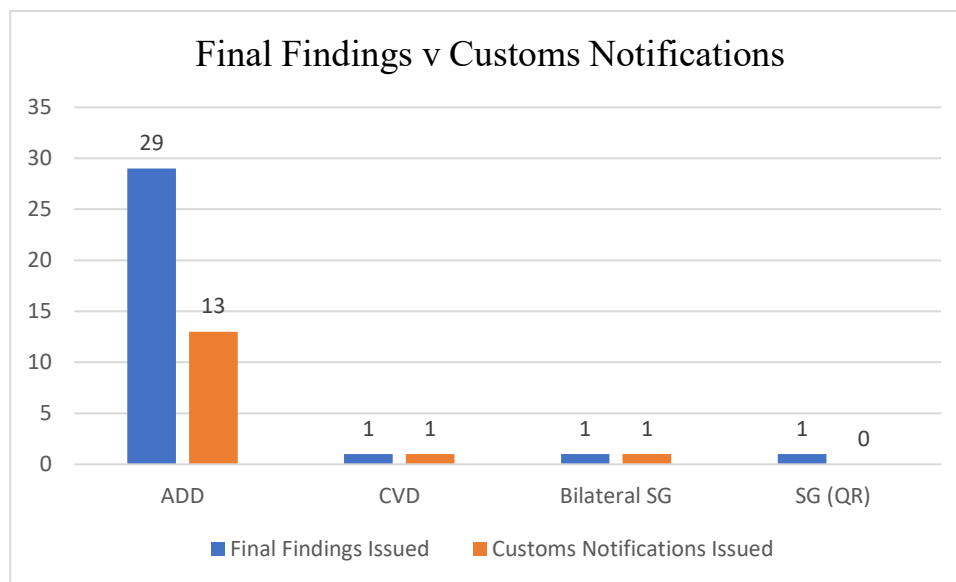
### Phase-III – Implementation

In this section, we analyze the instances of acceptance of the DGTR's positive recommendations in its final findings by the Ministry of Finance ('MoF'). Readers may be aware that the MOF's refusal to accept the DGTR's recommendations in a number of cases has led to major legal and policy controversy.

In 2023, the DGTR’s recommendations to impose/continue duties were accepted by the MoF in over 15 instances. While 13 of these instances concerned original anti-dumping investigations, anti-dumping duty was continued pursuant to one sunset review. In the sole safeguard determination in the bilateral safeguard investigation concerning *Ferro Molybdenum* from South Korea under the India-Korea free trade agreement, the MOF accepted the DGTR’s positive recommendations. The ratio of acceptance of the final findings is as follows:

As compared to the previous year, the MoF issued more notifications in the year 2023. In the year 2022, there were 13 acceptances by the MoF, which were majorly dominated by imposition of anti-dumping duty. However, unlike 2023, the number of instances of continuation of duty pursuant to sunset reviews was quite high in 2022. The MoF imposed duty in 7 original cases and continued duty pursuant to 6 sunset reviews in 2022.

The Customs Notifications for the final findings issued in the last three months of 2023 are still awaited.





## 2023 – The Key Trends:

- **The third quarter is the busiest:** In terms of both initiations and issuance of final findings, the third quarter of the year remains the most productive and the busiest quarter for the DGTR.
- **China on the Radar:** The maximum number of investigations were initiated against imports from China, and this is a continuing trend. Investigations against China surpass investigations against other countries by a significant number. Other targets included Asian countries like South Korea, Thailand, Vietnam, and Taiwan.
- **Safeguard Quantitative Restrictions-The Emerging Trade Remedy:** An interesting trend seen in 2023 is the initiation of safeguard investigations, which are considered to be 'emergency actions' against the surge of imports of a product and the measures are put in place for a period of 2 to 3 years. While the DGTR has undertaken many safeguard duty investigations in the past, it has also started considering applications to impose safeguard measures in the form of quantitative restrictions. Unlike other trade remedy measures that impose duties on the import of specific products, these

measures impose a limitation on the import quantity, by way of quotas. There have been only three such investigations till date. The first safeguard quantitative restrictions investigation was initiated by the DGTR in 2019, on imports of *Isopropyl Alcohol*. The second investigation was on imports of *PVC suspension resins with residual VCM above 2PPM* in 2022. The third instance is an ongoing investigation concerning imports of *Low Ash Metallurgical Coke*, which was initiated in June 2023. Another interesting feature is that unlike anti-dumping and countervailing final findings, safeguard quantitative restrictions do not require approval of the MoF. The Ministry of Commerce is the approving authority for DGTR's recommendations in such cases. It will be interesting to see if the domestic industry prefers these investigations as a more appropriate tool where protection is required for a shorter period of up to 3 years or lesser.

- **New Explorations: Novel versus Legacy Products:** While investigations were initiated against legacy products like sulphur black, acetone, flax yarn etc., the DGTR also initiated investigations on new products such as printed circuit boards, aluminium frames for

solar frames/modules, epichlorohydrin, easy open end of tin plates, telescopic channel drawers etc. Further, the DGTR also investigated imports of capital goods such as rock breakers, laser machines and wheel loaders, which marks an interesting trend.

- Out of the total 38 initiations, 22 initiations concerned new products that have not been investigated before.

The above analysis showcases some patterns that might not be ordinarily visible. Such patterns can be pertinent in understanding the DGTR's mindset. It seems that while the DGTR is keen on investigating newer products, the MoF also seems keen on selectively protecting mostly the newer products.

The overall trend of the MoF rejecting majority of the DGTR's positive recommendations continued in 2023 as well. While this is not encouraging for the domestic industry, the above analysis aids in appreciating that bringing trade remedy applications on newer products may be the way to go. While for legacy products, a very strong case on injury with minimal impact on the user industry seems desirable to succeed. Such trends are expected to set the tone for the year 2024 and beyond.

**[The authors are Partner, Associate Partner and Associate, respectively, in WTO and International Trade Division in Lakshmikumaran & Sridharan Attorneys, New Delhi]**

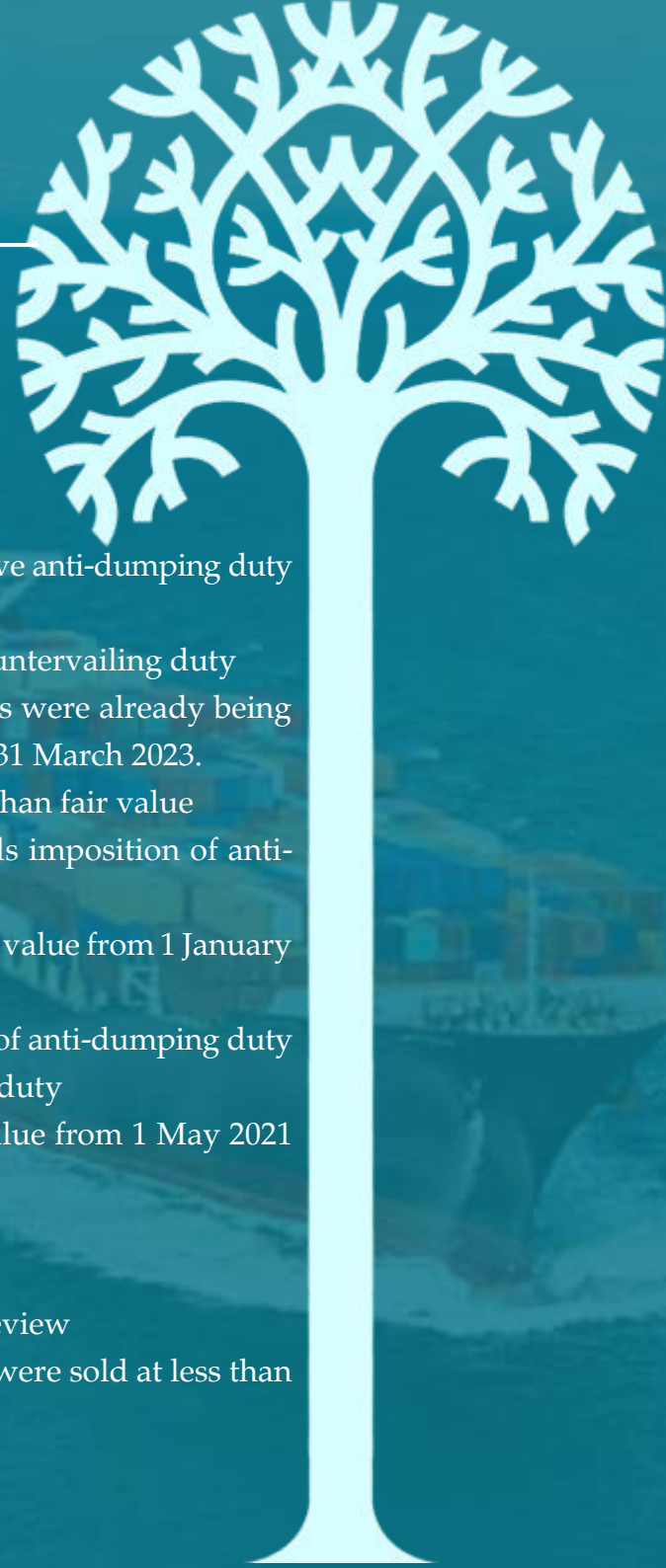
# Trade Remedy News



- Acetone from EU, Singapore, South Africa, USA – India’s DGTR recommends change of name of one producer/exporter from Singapore, in anti-dumping duty
- Acrylic Solid Surfaces from China PR – India initiates anti-dumping duty investigation
- Aluminium Alloy Road Wheel from China PR – India’s DGTR recommends revised anti-dumping duty after sunset review
- Aniline from China PR – India’s DGTR recommends continuation of anti-dumping duty after mid-term review
- Atrazine Technical from China PR – India initiates sunset review of countervailing duty
- Brass Rod from India – USA issues final affirmative determination of provision of countervailable subsidies from 1 April 2022 to 31 March 2023
- Brass Rod from India – USA issues preliminary determination that subject goods were already being or were likely to be sold at less than fair value. The period of investigation was from 1 April 2022 to 31 March 2023.
- Carbon steel welded pipe from India – Canada issues affirmative finding of resumption of dumping and subsidisation, after ADD and CVD expiry review
- Chlorinated Polyvinyl Chloride (CPVC) from China PR and Korea RP – India initiates sunset review of anti-dumping duty
- Circular Welded Pipe and Tube from India – USA issues affirmative finding in anti-dumping duty expiry review
- Corrosion-resistant steel sheet from India – Canada initiates anti-dumping duty expiry review
- Ethylene Vinyl Acetate (EVA) Sheet for Solar Module from China PR – India’s DGTR recommends continuation of anti-dumping duty after sunset review
- Finished Carbon Steel Flanges from India – USA issues determination that goods were sold at less than normal value from 1 August 2021 to 31 July 2022
- Glycine from India – USA issues determination that Kumar Industries received countervailable subsidies from 1 January 2021 to 31 December 2021



# Trade Remedy News



- Gypsum Board / Tiles with lamination at least on one side from China PR and Oman – India imposes definitive anti-dumping duty
- Industrial Laser Machines, used for cutting, marking, or welding from China PR – India imposes definitive anti-dumping duty
- Meta Phenylene Diamine from China PR – India continues anti-dumping duty after sunset review
- New pneumatic radial tyres for buses and lorries from China PR – India initiates sunset review of countervailing duty
- Non-Refillable Steel Cylinders from India – USA issues preliminary determination that subject goods were already being or were likely to be sold at less than fair value. The period of investigation was from 1 April 2022 to 31 March 2023.
- Paper Shopping Bags from India – USA issues preliminary affirmative determination of sales at less than fair value
- Para-Tertiary Butyl Phenol (PTBP) from Korea RP, USA and Singapore – India's DGTR recommends imposition of anti-dumping duty
- Polyester Textured Yarn from India – USA issues preliminary determination of sale at less than normal value from 1 January 2022 till 31 December 2022
- Printed Circuit Boards (PCB) from China PR and Hong Kong – India's DGTR recommends imposition of anti-dumping duty
- Self-Adhesive Vinyl (SAV) from China PR – India's DGTR recommends imposition of anti-dumping duty
- Silicomanganese from India – USA issues determination that goods were sold at less than normal value from 1 May 2021 to 30 April 2022
- Stainless Steel Bar from India – USA issues affirmative final results of expiry review
- Synthetic Grade Zeolite 4A from Iran and Thailand – India imposes definitive anti-dumping duty
- Welded Carbon Steel Pipes and Tubes from India – USA continues anti-dumping duty after sunset review
- Welded Stainless Pressure Pipe from India – USA issues preliminary results determining that goods were sold at less than normal value from 1 November 2021 to 31 October 2022
- Wheel Loaders from China PR – India imposes definitive anti-dumping duty



## Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Acetone	EU, Singapore, South Africa, USA	F. No. 7/09/2023-DGTR	22 December 2023	ADD – Change of name of one producer/exporter from Singapore recommended
Acrylic Solid Surfaces	China PR	F.No. 6/6/2023-DGTR	29 December 2023	Anti-dumping duty investigation initiated
Aluminium Alloy Road Wheel	China PR	F. No. 7/13/2023-DGTR	6 January 2024	Revised anti-dumping duty recommended after sunset review
Aniline	China PR	F. No. 7/25/2022 - DGTR	11 December 2023	Anti-dumping duty recommended to be continued after mid-term review
Atrazine Technical	China PR	F.No. 7/26/2023-DGTR	29 December 2023	Sunset review of countervailing duty initiated
Chlorinated Polyvinyl Chloride (CPVC)	China PR and Korea RP	F.No. 7/28/2023 - DGTR	29 December 2023	Sunset review of anti-dumping duty initiated
Ethylene Vinyl Acetate (EVA) Sheet for Solar Module	China PR	F. No. 7/12/2023-DGTR	28 December 2023	Sunset review recommends continuation of anti-dumping duty
Gypsum Board / Tiles with lamination at least on one side	China PR and Oman	16/2023-Cus. (ADD)	26 December 2023	Definitive anti-dumping duty imposed
Industrial Laser Machines, used for cutting, marking, or welding	China PR	15/2023-Cus. (ADD)	22 December 2023	Definitive anti-dumping duty imposed

Product	Country	Notification No.	Date of notification	Remarks
Meta Phenylene Diamine	China PR	1/2024-Cus. (ADD)	15 January 2024	Anti-dumping duty continued after sunset review
New pneumatic radial tyres for buses and lorries	China PR	F. No. 7/30/2023-DGTR	29 December 2023	Sunset review of countervailing duty initiated
Para-Tertiary Butyl Phenol (PTBP)	Korea RP, USA and Singapore	F. No. 6/14/2022-DGTR	20 December 2023	Anti-dumping duty recommended to be imposed
Printed Circuit Boards (PCB)	China PR and Hong Kong	F. No. 06/16/2022-DGTR	29 December 2023	Anti-dumping duty recommended to be imposed
Self-Adhesive Vinyl (SAV)	China PR	F. No. 6/13/2022-DGTR	28 December 2023	Anti-dumping duty recommended to be imposed
Synthetic Grade Zeolite 4A	Iran and Thailand	14/2023-Cus. (ADD)	11 December 2023	Definitive anti-dumping duty imposed
Wheel Loaders	China PR	17/2023-Cus. (ADD)	27 December 2023	Definitive anti-dumping duty imposed

### Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Brass Rod	USA	2023-26414	1 December 2023	ADD – Preliminary determination that subject goods were already being or were likely to be sold at less than fair value. The period of investigation was from 1 April 2022 to 31 March 2023

Product	Investigating Country	Document No.	Date of Document	Remarks
Brass Rod	USA	2023-27698	18 December 2023	CVD – Final affirmative determination of provision of countervailable subsidies from 1 <sup>st</sup> April 2022 to 31 <sup>st</sup> March 2023
Carbon steel welded pipe	Canada	Expiry Review No. RR-2017-005	18 January 2024	ADD and CVD Expiry review – Affirmative finding of resumption of dumping and subsidisation
Circular Welded Pipe and Tube	USA	2023-28961	4 January 2024	ADD – Affirmative finding in expiry review
Corrosion-resistant steel sheet	Canada	COR1 2024 ER	15 January 2024	ADD – Expiry review initiated
Finished Carbon Steel Flanges	USA	2023-28265	22 December 2023	ADD Administrative Review – Determination that goods were sold at less than normal value from 1st August 2021 to 31st July 2022.
Glycine	USA	2023-28842	2 January 2024	CVD Administrative Review – Determination that Kumar Industries received countervailable subsidies from 1 <sup>st</sup> January 2021 to 31 <sup>st</sup> December 2021
Non-Refillable Steel Cylinders	USA	2023-26409	1 December 2023	ADD – Preliminary determination that subject goods were already being or were likely to be sold at less than fair value. The period of investigation was from 1 <sup>st</sup> April 2022 to 31 <sup>st</sup> March 2023.
Paper Shopping Bags	USA	2023-28940	3 January 2024	ADD - Preliminary affirmative determination of sales at less than fair value

Product	Investigating Country	Document No.	Date of Document	Remarks
Polyester Textured Yarn	USA	2024-01466	25 January 2024	ADD – Preliminary determination of sale at less than normal value from 1 January 2022 till 31 December 2022
Silicomanganese	USA	2023-26938	8 December 2023	ADD Administrative review – Determination that goods were sold at less than normal value from 1 May 2021 to 30 April 2022.
Stainless Steel Bar	USA	2023-28931	3 January 2024	ADD – Affirmative final results of expiry review issued
Welded Carbon Steel Pipes and Tubes	USA	2024-00397	11 January 2024	Anti-dumping duty continued after sunset review
Welded Stainless Pressure Pipe	USA	2023-26878	8 December 2023	Preliminary results and partial recession of ADD Administrative Review – Determination that goods were sold at less than normal value from 1 November 2021 to 31 October 2022.





# WTO News

- India appeals second panel report in dispute regarding Indian tech tariffs
- Türkiye initiates safeguard investigations on 'knitted or crocheted fabrics' and 'other paper and cardboard'
- Madagascar initiates safeguard investigation on polypropylene woven sheaths and bags

## India appeals second panel report in dispute regarding Indian tech tariffs

India has notified its decision to appeal the panel report in the case brought by the European Union in *'India-Tariff Treatment on Certain Goods'* (DS582). The panel report was circulated to WTO members on 17 April 2023. The appeal was circulated to WTO members on 14 December. However, given the ongoing lack of agreement among WTO members regarding the filling of Appellate Body vacancies, there is no Appellate Body Division available at the current time to deal with the appeals.

## Türkiye initiates safeguard investigations on 'knitted or crocheted fabrics' and 'other paper and cardboard'

Türkiye has on 12 January 2024 initiated two safeguard investigations against imports of 'knitted or crocheted fabrics' and against imports of 'other paper and cardboard'. As per documents circulated in WTO on 17 January 2024 by Türkiye, the information currently available shows that there has been a deterioration in the situation of the domestic industry.

Knitted or crocheted fabrics are currently classified in the Chapter 60 of the Turkish Customs Tariff Schedule and include all the products in this chapter. Papers are currently classified in the Turkish Customs Tariff Schedule under 12-digit customs tariff codes 4805.11.00.00.00, 4805.12.00.00.00, 4805.19.10.00.00, 4805.19.90.00.00, 4805.24.00.00.00 and 4805.25.00.00.00.

## Madagascar initiates safeguard investigation on polypropylene woven sheaths and bags

Madagascar has on 27 December 2023 initiated safeguard investigation against import of polypropylene woven sheaths and bags. According to document G/SG/N/6/MDG/12 circulated in WTO on 4 January 2024, India, China and Thailand are the main exporting countries. The document also states that petition by domestic industry contains sufficient evidence of serious injury caused by increased imports of said product in Madagascar.

Woven sacks and sheaths of polypropylene are covered under Madagascar Customs tariff codes: 39202000, 39206910, 39209300, 39209900, 39232100, 39232910, 39232990, 39269090, 63051011, 63051012, 63051021, 63053210, 63053220, 63053310, 63053320, 63053321, 63053329, 63053330, 63053910, 63053920 and 63061900.

# India Customs & Trade Policy Update



- Computers – Import restrictions inapplicable to Desktop Computers, etc. falling under HS Code 8471
- Molasses resulting from the extraction or refining of sugar – Export duty of 50% imposed
- Soya-bean, sunflower and palm oils – BCD and AIDC reduction extended till 31 March 2025
- Urad and Tur – Imports 'Free' till 31 March 2025
- Yellow peas exempted from BCD and AIDC, while import policy also relaxed
- Lentil (Mosur) – Exemption from AIDC extended till 31 March 2025
- De-oiled rice bran – Export prohibition extended till 31 March 2024
- Onion exports prohibited till 31 March 2024
- Screws – Imports prohibited if CIF value is less than INR 129/kg
- Silver imports – Policy Condition introduced to Chapter 71

## Computers – Import restrictions inapplicable to Desktop Computers, etc. falling under HS Code 8471

Vide Policy Circular No. 09/2023-24 dated 12 January 2024, the DGFT has clarified that the import restrictions for laptops, tablets, all-in-one personal computers, ultra small form factor computers and servers, are only for aforesaid five items. It has been clarified that requirement of valid import authorisation does not apply to any other goods such as desktop computers, and others falling under HS Code 8471.

## Molasses resulting from the extraction or refining of sugar – Export duty of 50% imposed

By way of amendment to the Second Schedule to the Customs Tariff Act, 1975, export duty has been imposed on 'molasses resulting from the extraction or refining of sugar', and falling under CTH 1703. Accordingly, with effect from 18 January 2024, export duty of 50% of the value is to be imposed. Notification No. 01/2024-Cus., dated 15 January 2024 has been issued for the purpose.

## Soya-bean, sunflower and palm oils – BCD and AIDC reduction extended till 31 March 2025

The exemption to goods specified under Table to Notification No. 48/2021-Cus. for crude soya-bean oil, edible soya-bean oil,

palm oil, and crude or edible grade sunflower oil, has been extended up to 31 March 2025. Further, effective rate of Agriculture Infrastructure and Development Cess (AIDC) on crude soya-bean, palm and sunflower oils has also been extended up to 31 March 2025. Notification No. 2/2024-Cus., dated 15 January 2024 amends Notifications Nos. 48/2021-Cus. and 49/2021-Cus., for this purpose.

## Urad and Tur – Imports 'Free' till 31 March 2025

Urad (Beans of the SPP Vigna Mungo (L.) Hepper) falling under ITC (HS) 0713 31 10 and Tur/Pigeon Beans (Cajanus Cajan) falling under ITC (HS) 0713 60 00 of Schedule- I (Import Policy), have been made freely importable up to 31 March 2025. Notification No. 54/2023, dated 28 December 2023 has been issued for the purpose.

## Yellow peas exempted from BCD and AIDC, while import policy also relaxed

The import of yellow peas falling under Tariff Item 0713 10 10 of the Customs Tariff Act, 1975 has been exempted from the payment of customs duty leviable under the First Schedule to the Customs Tariff Act (i.e. BCD) and from Agriculture Infrastructure and Development Cess leviable under Finance Act, 2021. This exemption has been introduced with effect from 8 December 2023 and will remain in force up to and inclusive of



31 March 2024. Notification No. 64/2023-Cus., dated 7 December 2023 has been issued for the purpose.

Further, the import policy of said product, i.e., yellow peas, has been amended from restricted to free. The import of yellow peas is free, subject to registration under the Import Monitoring system with immediate effect for the period up to 31 March 2024. It may be noted that from 1 April 2024 onwards, the import of said product will be subjected to restricted import policy and associated policy condition as existing prior to the instant notification. It may be noted that import of yellow peas was subject to Minimum Import Price and port restrictions till 7 December 2023. DGFT has issued Notification No. 50/2023, dated 8 December 2023 for the purpose. Also, Public Notice No. 35/2023, dated 13 December 2023 has been issued to notify the procedure for registration of imports of the product under Yellow Peas Import Monitoring System.

### Lentil (Mosur) – Exemption from AIDC extended till 31 March 2025

The Finance Ministry has extended the exemption from AIDC on import of Lentil (Mosur) falling under TI 0713 40 00 of the Customs Tariff Act, 1975 till 31 March 2025. The exemption was earlier available only till 31 March 2024. It may be noted that

reduced rate of AIDC on other goods namely, crude soyabean oil, crude palm oil and crude sunflower seed oil, as covered by the Notification No. 49/2021-Cus., will however expire from 1 April 2024. Notification No. 65/2023-Cus., dated 21 December 2023 has been issued for the purpose.

### De-oiled rice bran – Export prohibition extended till 31 March 2024

The export policy of '*Oil cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable or microbial fats or oils, other than those of heading 2304 or 2305*' is free. However, the export of de-oiled rice bran falling under ITC (HS) Code 2306 and under any other HS code was amended from free to prohibited till 30 November 2023 *vide* Notification No. 21/2023, dated 28 July 2023. The said prohibition has now been extended till 31 March 2024. Notification No. 51/2023, dated 8 December 2023 has been issued for the purpose.

### Onion exports prohibited till 31 March 2024

Export policy of onions falling under ITC (HS) Code 0703 10 19 has been amended from 'free' to 'prohibited' for the period from 8 December 2023 till 31 March 2024. It may be noted that exports of onions were subject to Minimum Export Price of USD 800/MT

FOB till 7 December 2023. Notification No. 49/2023, dated 7 December 2023 issued for the purpose also states that the provisions of Para 1.05 of the Foreign Trade Policy relating to transitional arrangement shall not be applicable.

## Screws – Imports prohibited if CIF value is less than INR 129/kg

Import policy has been changed from 'Free' to 'Prohibited' for certain screws falling under HS Codes 7318 11 10, 7318 11 90, 7318 12 00, 7318 13 00, 7318 14 00, 7318 15 00 and 7318 19 00 of the ITC(HS) Classification. However, the import of such goods is 'Free' if the CIF value of such goods is INR 129/- or above per kilogram and subject to Policy Conditions Nos. 2 and 3 of Chapter 73 of ITC (HS). Notification No. 55/2023 dated 3 January 2023 has been issued for the purpose.

## Silver imports – Policy Condition introduced to Chapter 71

Semi-manufactured silver paste, sheets, plates, strips, tubes, electrodes, wires, silver brazing alloys falling under HS Codes 7106 92 10 and 7106 92 90 when imported by Electrical, Electronics and Engineering industries including Glass and Solar industries for their manufacturing process (actual user), or when imported by Government or recognized research institutions for R&D Purposes, are 'free'. For other purposes, permission from Nominated Agencies as notified by RBI and DGFT shall be required. Notification No. 57/2023 dated 15 January 2024 has been issued for the purpose.



# Ratio Decidendi

- No anti-dumping duty when goods imported by EOU destroyed in accident – CESTAT Chennai
- Third-party invoicing under ASEAN-India FTA – ‘Third country’ includes any number of countries – Customs AAR
- Echo family devices, having ability to recognize voice commands and interact with AVS, are classifiable under Heading 8517 and not under Heading 8518 or 8528 – Exemption notification is not relevant for classification – Delhi High Court
- Front, middle and back covers of cellular phones are classifiable under TI 8517 70 90 – Classification cannot be decided by MeITY or Customs exemption notification – CESTAT New Delhi
- Data Collection Device, a card reader working in conjunction with server, is classifiable under Heading 8543 – CESTAT Bengaluru
- Data Projectors are classifiable under TI 8528 62 00 – Presence of additional ports such as HDMI, etc., is immaterial – Customs AAR

## No anti-dumping duty when goods imported by EOU destroyed in accident

In a case involving imports by an EOU which were subsequently destroyed in a fire accident, the CESTAT Chennai has rejected the contention of the Department that benefit of Notification No. 5/1994-Cus., relating to exemption from anti-dumping duty on imports by EOU, is not available. The Revenue Department had contended that since the goods were destroyed, the conditions stipulated under Notification No. 52/2003-Cus., relating to imports by EOU, were not fulfilled, and hence benefit of Notification No. 5/1994-Cus. was also not available as the goods were not wholly exempted from payment of customs duty.

Considering Section 9A(2) of the Customs Tariff Act, 1975, relating to exemption to EOU from anti-dumping duty, the Tribunal observed that the goods having been destroyed in fire, there was no occasion of the goods being cleared as such into DTA or used in manufacture of goods cleared in DTA. Refund of anti-dumping duty paid by the EOU was thus allowed. [*Piramal Healthcare Ltd. v. Commissioner* – 2023 VIL 1329 CESTAT CHE CE]

## Third-party invoicing under ASEAN-India FTA – ‘Third country’ includes any number of countries

The Customs AAR has held that the concept of third country invoicing envisaged within the phrase ‘third country’ includes any number of countries so long as the imported goods meet the origin criteria under the Rules of Origin. The issue before the Authority was the eligibility to exemption to imports from ASEAN countries under the ASEAN-India FTA in Third-party invoicing transaction when the transaction involved four parties in four countries. According to the Authority, third country invoicing does not limit to one country but is without numerical limits. The AAR in this regard also observed that the concept of third-party invoicing does not envisages a tripartite system with involvement of three countries only. *Assessee was represented by Lakshmikumar & Sridharan.* [In RE: *Boston Scientific India Pvt. Ltd.* – 2024 VIL 01 AAR CU]

## Echo family devices, having ability to recognize voice commands and interact with AVS, are classifiable under Heading 8517 and not under Heading 8518 or 8528 – Exemption notification is not relevant for classification

The Delhi High Court has that specified ‘Echo Family Devices’ are classifiable under Heading 8517 of the Customs Tariff Act,



1975 and not under Heading 8518 or 8528 *ibid*. The Court set aside the decision of the AAR which had classified Echo 4th Generation, Echo Dot 4th generation, Echo Dot 4th generation with Clock and Echo Studio Device under Heading 8518 as speakers, and Echo Show 5, Echo Show 8 and Echo Show 10 devices under Heading 8528 as monitors/displays. It was noted that the devices were designed to act as communication devices, were voice enabled and had various functionalities including the capability of controlling compatible smart home appliances, browsing the internet, assisting in online shopping, setting reminders and tasks as well as acting as a calling and messaging platform. The Echo Show range devices could additionally be used for video calling or for streaming video content.

Setting aside the AAR decision, the Court observed that the AAR erred in classifying the goods based on how the products were described or advertised by the assessee, which was against the settled principle that nomenclature alone would not constitute a defining basis for the purposes of answering a question of classification. Further, considering Note 3 to Section XVI of the Customs Tariff, relating to principal function, the Court noted that the soul of the devices was their ability to act as means for transmission and reception of data, when working in a wi-fi environment enabling the user to perform a multitude of tasks,

recognition of voice commands and interacting with the AVS in real time. According to the Court, the subject devices were embodiments of 'technological convergence', enabling the holder to replace multiple devices with one gadget for the purposes of communication, information and entertainment, and were not simply speakers or monitors.

The Delhi High Court in this case also held that Ministry's decision to extend exemption to a particular category of products cannot be accepted as being relevant for the purposes of classification. *Assessee was represented by Lakshmikumaran & Sridharan*. [*Amazon Wholesales India Private Limited v. Customs AAR – TS-634-HC-2023(DEL)-CUST*]

**Front, middle and back covers of cellular phones are classifiable under TI 8517 70 90 – Classification cannot be decided by MeITY or Customs exemption notification**

The CESTAT New Delhi has held that front cover, middle cover and back covers of cellular phones which house various components of the phone and also provide for dissipation of the heat, are classifiable under Tariff Item 8517 70 90 of the Customs Tariff Act, 1975 and not under TI 3920 99 99. Considering the process of manufacture of the goods in question, the Tribunal

was of the view that process of vapour deposition, being lamination, take the goods out of purview of Heading 3920. The Tribunal in this regard also observed that the processes of thermoforming and CNC milling being processes beyond cutting and surface working, take the goods out of the scope of Chapter Note 2(s) to Chapter 39.

Allowing assessee's appeal, the Tribunal also held that classification cannot be decided by the Ministry of Electronics and Information Technology, firstly because MeITY does not have power to assess under Section 17 of the Customs Act, 1962 or to modify assessment, and secondly because their orders, letters, notifications, etc., are executive actions and not quasi-judicial or appealable orders. The Tribunal thus held that any HSN Code indicated against any goods in the policy of MeITY or any other Ministry cannot determine classification of goods under the Customs Tariff. Similarly, the Tribunal also held that exemption notifications issued under Section 25 of the Customs Act are not meant to determine classification of goods.

The Tribunal also held that classification of goods by the importer and claim for the benefit of an exemption notification by the importer, even if it is not in conformity with the reassessment by the proper office or even if it is held to be not

correct in any appellate proceeding does not render the goods liable to confiscation and assessee-importer liable to penalty. *Assessee was represented by Lakshmikumaran & Sridharan.* [*Samsung India Electronics Pvt. Ltd. v. Principal Commissioner – 2023 VIL 1341 CESTAT DEL CU*]

### Data Collection Device, a card reader working in conjunction with server, is classifiable under Heading 8543

The CESTAT Bengaluru has held that Data Collection Device which captures the data from the employee's card or the data of the particular employee who key in the PIN into the device is classifiable under Heading 8543 of the Customs Tariff Act, 1975. The Tribunal in this regard noted that the device does not do anything except for collecting the data at the time of entry or exit and transmitted this data to a central server for further processing, like marking the attendance, preparation of payroll, etc. Rejecting classification under Heading 8473, the Tribunal noted that the device was a card reader working in conjunction with the server, and was excluded by Chapter Note 5(e) to Chapter 84. [*Commissioner v. Kronos Systems India Pvt. Ltd. – 2023 VIL 1085 CESTAT BLR CU*]

## Data Projectors are classifiable under TI 8528 62 00 – Presence of additional ports such as HDMI, etc., is immaterial

The Customs AAR has held that Data projectors also having certain additional ports such as HDMI, Audio Out, USB-A, RS-232, etc., which make them capable of being a video projector, are classifiable under Tariff Item 8528 62 00 of the Customs Tariff Act, 1975. The AAR in this regard drew Comparison between

data projectors under consideration and the video projectors. It also noted that principal use of subject goods, based on functions and features, was with automatic data processing machines. According to the AAR, the presence of additional features cannot dis-entitle the goods from classification under Tariff Item 8528 62 00. Further, exemption under Sr. No. 17 of Notification No.24/2005-Cus., was also allowed. *Assessee was represented by Lakshmikumaran & Sridharan.* [In RE: *Ingram Micro India Pvt. Ltd.* – 2024 VIL 03 AAR CU]

<b>NEW DELHI</b> 5 Link Road, Jangpura Extension, Opp. Jangpura Metro Station, New Delhi 110014 Phone : +91-11-4129 9811 ----- B-6/10, Safdarjung Enclave New Delhi -110 029 Phone : +91-11-4129 9900 E-mail : <a href="mailto:lsdel@lakshmisri.com">lsdel@lakshmisri.com</a>	<b>MUMBAI</b> 2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg, (Near Century Bazar)Prabhadevi, Mumbai - 400025 Phone : +91-22-24392500 E-mail : <a href="mailto:lsbom@lakshmisri.com">lsbom@lakshmisri.com</a>
<b>CHENNAI</b> 2, Wallace Garden, 2nd Street, Chennai - 600 006 Phone : +91-44-2833 4700 E-mail : <a href="mailto:lsmds@lakshmisri.com">lsmds@lakshmisri.com</a>	<b>BENGALURU</b> 4th floor, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajkumar Road, Malleswaram West, Bangalore-560 055. Phone : +91-80-49331800 Fax:+91-80-49331899 E-mail : <a href="mailto:lsblr@lakshmisri.com">lsblr@lakshmisri.com</a>
<b>HYDERABAD</b> 'Hastigiri', 5-9-163, Chapel Road, Opp. Methodist Church, Nampally Hyderabad - 500 001 Phone : +91-40-2323 4924 E-mail : <a href="mailto:lshyd@lakshmisri.com">lshyd@lakshmisri.com</a>	<b>AHMEDABAD</b> B-334, SAKAR-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad - 380 009 Phone : +91-79-4001 4500 E-mail : <a href="mailto:lsahd@lakshmisri.com">lsahd@lakshmisri.com</a>
<b>PUNE</b> 607-609, Nucleus, 1 Church Road, Camp, Pune-411 001. Phone : +91-20-6680 1900 E-mail : <a href="mailto:ls pune@lakshmisri.com">ls pune@lakshmisri.com</a>	<b>KOLKATA</b> 2nd Floor, Kanak Building 41, Chowringhee Road, Kolkatta-700071 Phone : +91-33-4005 5570 E-mail : <a href="mailto:lskolkata@lakshmisri.com">lskolkata@lakshmisri.com</a>
<b>CHANDIGARH</b> 1st Floor, SCO No. 59, Sector 26, Chandigarh -160026 Phone : +91-172-4921700 E-mail : <a href="mailto:lschd@lakshmisri.com">lschd@lakshmisri.com</a>	<b>GURGAON</b> OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A, Gurgaon-122001 phone: +91-0124 - 477 1300 Email: <a href="mailto:ls gurgaon@lakshmisri.com">ls gurgaon@lakshmisri.com</a>
<b>PRAYAGRAJ (ALLAHABAD)</b> 3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg), Allahabad -211001 (U.P.) Phone : +91-532-2421037, 2420359 E-mail : <a href="mailto:lsallahabad@lakshmisri.com">lsallahabad@lakshmisri.com</a>	<b>KOCHI</b> First floor, PDR Bhavan, Palliyil Lane, Foreshore Road, Ernakulam Kochi-682016 Phone : +91-484 4869018; 4867852 E-mail : <a href="mailto:lskochi@laskhmisri.com">lskochi@laskhmisri.com</a>
<b>JAIPUR</b> 2nd Floor (Front side), Unique Destination, Tonk Road, Near Laxmi Mandir Cinema Crossing, Jaipur - 302 015 Phone : +91-141-456 1200 E-mail : <a href="mailto:lsjaipur@lakshmisri.com">lsjaipur@lakshmisri.com</a>	<b>NAGPUR</b> First Floor, HRM Design Space, 90-A, Next to Ram Mandir, Ramnagar, Nagpur - 440033 Phone: +91-712-2959038/2959048 E-mail : <a href="mailto:lsnagpur@lakshmisri.com">lsnagpur@lakshmisri.com</a>

**Disclaimer:** *International Trade Amicus* is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. Lakshmikumaran & Sridharan does not intend to advertise its services or solicit work through this newsletter. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. The views expressed in the article(s) in this newsletter are personal views of the author(s). Unsolicited mails or information sent to Lakshmikumaran & Sridharan will not be treated as confidential and do not create attorney-client relationship with Lakshmikumaran & Sridharan. This issue covers news and developments till 29 January 2024. To unsubscribe, e-mail Knowledge Management Team at [newsletter.itrade@lakshmisri.com](mailto:newsletter.itrade@lakshmisri.com)

[www.lakshmisri.com](http://www.lakshmisri.com)

[www.gst.lakshmisri.com](http://www.gst.lakshmisri.com)

[www.addb.lakshmisri.com](http://www.addb.lakshmisri.com)

[www.cn.lakshmisri.com](http://www.cn.lakshmisri.com)





© 2024 Lakshmikumaran & Sridharan, India  
All rights reserved

 Lakshmikumaran  
& Sridharan  
attorneys  
An ISO 27001:2013 certified law firm