

**CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND
COLLECTION OF ANTI-DUMPING DUTY ON DUMPED
ARTICLES AND FOR DETERMINATION OF INJURY) RULES,
1995**

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**CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND
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Notification No. 2/95-Cus. (N.T.), dated 1st January, 1995 In exercise of the powers conferred by sub-section (6) of section 9A and sub-section (2) of S.9B of the Customs Tariff Act, 1975 and in supersession of the Customs Tariff (Identification, Assessment and Collection on Duty or Additional Duty on Dumped Articles and for

Determination of Injury Rules, 1985, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely

1. Short title and commencement :-

(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) Rules, 1995.

(2) They shall come into force on the 1st day of January, 1995.

2. Definitions :-

In these rules, unless the context otherwise requires, -

(a) "Act" means Customs Tariff Act, 1975 ,

(b) "domestic industry" means the domestic producers as a whole engage in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic product of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry : Provided that in exceptional circumstances referred to in sub-rule (3) of Rule II, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry, if -

(i) the producers within such a market sell all or almost all of their production of the article in question in that market; and

(ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;

(c) "interested party" includes -

(i) an exporter or a foreign producer or the importer of an article subject investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;

(ii) the government of the exporting country; and

(iii) a producer of a like article in India or a trade and business

association a majority of the members of which produce the like article in India

(d) "like article" means an article which is identical or alike in all respects the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;

(e) "provisional duty" means an anti dumping duty imposed under sub-section (2) of section 9A of the Act;

(f) "specified country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

(g) all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. Appointment of designated authority :-

(1) The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government may think fit as the designated authority for purposes of these rules.

(2) The Central Government may provide to the designated authority the . services of such other persons and such other facilities as it deems fit.

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 unport of any article;

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

(c) to submit its findings, provisional or otherwise to 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 the amount of anti-dumping duty, which if levied would be adequate to remove the injury to the domestic industry and the date of commencement of such duty; and

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

5. Initiation of investigation :-

(1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority and the application shall be supported by evidence of -

(a) dumping,

(b) injury, where applicable, and

(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry: Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding-

(i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a casual link between such dumped imports and the alleged injury, to justify the initiation of an investigation. Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

(4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the ¹ [Commissioner of Customs] appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3).

(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

1. Designation changed vide s. 50 of the Finance Act, 1995 (22 of 1995).

6. Principles governing investigations :-

(1) The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following :-

(i) the name of the exporting country or countries and the article involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed; and

(vi) the time-limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to -

(i) the known exporters or to the concerned trade association where the number of exporters is large, and

(ii) the governments of the exporting countries: Provided that the designated authority, shall also make available a copy of the application to any other interested party who makes a request therefor in writing.

(4) The designated authority may issue a notice calling for any information; in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown. Explanation- For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.

(6) The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation.

(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

7. Confidential information :-

(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information.

8. Accuracy of the information :-

Except in cases referred to in sub-rule (8) of rule 6, the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.

9. Investigation in the territory of other specified countries

:-

The designated authority may carry out investigation in the territories of other countries, if the circumstances of a case so warrant: Provided that the designated authority obtains the consent of the person concerned and notifies the representatives of

the concerned government and the concerned government does not object to such investigation.

10. Determination of normal, value, export price and margin of dumping :-

An article shall be considered as being dumped if it is exported from a country or territory to India at a price less than its normal value and in such circumstances the designated authority shall determine the normal value, export price and the margin of dumping taking into account, inter alia, the principles laid down in Annexure I to these rules.

11. Determination of injury :-

(1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if -

(i) there is a concentration of dumped imports into an isolated market, and

(ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

12. Preliminary findings :-

(1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to

the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain :-

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the article which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

2. The designated authority shall issue a public notice recording its preliminary findings.

13. Levy of provisional duty :-

The Central Government may, on the basis of the preliminary findings recorded by the designated authority, impose a provisional duty not exceeding the margin of dumping: Provided that no such duty shall be imposed before the expiry of sixty days from the date of the public notice issued by the designated authority regarding its decision to initiate investigations : Provided further that such duty shall remain in force only for a period not exceeding six months which may upon request of the exporters representing a significant percentage of the trade involved be extended by the Central Government to nine months.

14. Termination of investigation :-

The designated authority shall, by issue of a public notice, terminate an investigation immediately if -

(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;

(b) it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;

(c) it determines that the margin of dumping is less than two per

cent of the export price;

(d) it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three per cent of the imports of the like product, unless, the countries which individually account for less than three per cent of the imports of the like product, collectively account for more than seven per cent of the import of the like product; or

(e) it determines that the injury where applicable, is negligible.

15. Suspension or termination of investigation on price undertaking :-

(1) The designated authority may suspend or terminate an investigation if the exporter of the article in question, -

(i) furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or

(ii) in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated: Provided further that the designated authority shall complete the investigation and record its finding, if the exporter so desires, or it so decides.

(2) No undertaking as regards price increase under clause (ii) of the sub-rule (1) shall be accepted from any exporter unless the designated authority had made preliminary determination of dumping and the injury.

(3) The designated authority may, also not accept undertakings offered by any exporter, if it considers that acceptance of such undertaking is impractical or is unacceptable for any other reason.

(4) The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain inter alia, the non-confidential part of the undertaking.

(5) In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of section 9A of the Act for such period

the undertaking acceptable to the designated authority remains valid.

(6) Where the designated authority has accepted any undertaking under sub-rule (1), it may require the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data : Provided that in case of any violation of an undertaking, the designated authority shall intimate to the Central Government regarding such violation and complete the investigation expeditiously.

(7) The designated authority shall, suo motu or on the basis of any request received from exporters or importers of the article in question or any other interested party, review from time to time the need for the continuance of any undertaking given earlier.

16. Disclosure of information :-

The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.

17. Final findings :-

(1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding -

(a) as to, -

(i) the export price, normal value and the margin of dumping of the said article;

(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;

(iii) a casual link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy: Provided that the Central Government may, in circumstances of exceptional nature, extend further the aforesaid period of one year

by six months : Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year,

(b) recommending the amount of duty which, if levied, would be adequate to remove the injury where applicable, to the domestic industry.

(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding -

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall determine an individual margin of dumping 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 unpracticable, 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 dumping 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.

(4) The designated authority shall issue a public notice recording its final findings.

18. Levy of duty :-

(1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17: Provided that in case of imports from the specified countries the amount of duty shall not exceed the amount which has been found adequate to remove the injury to domestic industry

.

(2) 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 17, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed -

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined Provided that the Central Government shall disregard for the purpose of this sub-rule any zero margin, margins which are less than 2 per cent expressed as the percentage of export price and margins established in the circumstances detailed in sub-rule (8) of rule 6. 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 17.

(3) Notwithstanding anything contained in sub-rule (1), where a domestic industry has been interpreted according to the proviso to sub-clause (b) of rule 2, a duty shall be levied only after the exporters have been given opportunity to cease exporting at dumped prices to the area concerned or otherwise give an undertaking pursuant to rule 15 and such undertaking has not been promptly given and in such cases duty shall not be levied only on the articles of specific producers which supply the area in question.

(4) If the final finding of the designated authority is negative that is contrary to the evidence on whose basis the investigation was initiated, the Central Government shall, within forty-five days of the publication of final findings by the designated authority under rule 17, withdraw the provisional duty imposed, if any.

19. Imposition of duty on non-discriminatory basis :-

Any provisional duty imposed under rule 13 or an anti-dumping duty imposed under rule 18 shall be on a non-discriminatory basis and applicable to all imports of such articles, from whatever sources found dumped and, where applicable, causing injury to domestic industry except in the case of imports from those sources from which undertaking in terms of rule 15 has been accepted.

20. Commencement of duty :-

(1) "The anti-dumping duty levied under rule 13 and rule 19 shall take effect from the date of its publication in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1) -

(a) where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty;

(b) in the circumstances referred to in sub-section (3) of section 9A of the Act, the anti-dumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty: Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation: Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15,

no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking.

21. Refund of duty :-

(1) If the anti-dumping duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.

(2) If, the anti-dumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

(3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

22. Margin of dumping, for exporters not originally investigated :-

(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping 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 anti-dumping duties on the product.

(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A 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 dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.

23. Review :-

(1) The designated authority shall, from time to time, review the

need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.

(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.

(3) The provisions of rule 6, rule 7, rule 8, rule 9, rule 10, rule 11, rule 16, rule 17, rule 18, rule 19, and rule 20 shall be mutatis mutandis applicable in the case of review.

24. Dumping causing injury to a third country :-

(1) The designated authority may initiate investigation into any dumping alleged to be taking place into India and causing injury to the domestic industry of any third country which is a member of the World Trade Organisation.

(2) The designated authority in such cases shall follow the procedures laid down in Article 14 of the Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade, 1994, as contained in the Final Act of Uruguay Round Multilateral Trade Negotiations.