

**CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND
COLLECTION OF COUNTERVAILING DUTY ON SUBSIDIZED
ARTICLES AND FOR DETERMINATION OF INJURY) RULES,
1995**

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**CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND
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Notification No. M.F.D.R./95. Cus. (N.T), dated 1st January, 1995. In exercise of the powers conferred by sub-section (7) of Sec. 9 and Sub-section (2) of Sec. 9B of the Customs Tariff Act 1975 (51 of 1975) and in supersession of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional

Duty on Bounty-fed 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 Countervailing Duty on Subsidized 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 the Customs Tariff Act, 1975 (51 of 1975),

(b) "domestic industry" means the domestic producers as a whole of the like article, or domestic producers 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 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 13, 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 be deemed as a separate industry, if

(i) the producers within such 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 foreign producer or the importer of an article subject to investigation for being subsidized or a trade or business association a majority of the members of which are producers, exporters or importers of such an article; and

(ii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like

article in India;

(d) "Provisional duty" means a countervailing duty imposed under sub-section (2) of Sec. 9A of the Act;

(e) "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;

(f) all words and expressions used in these rules, but not defined, shall have the meaning 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 the existence, degree and effect of any subsidy in relation to the import of an article;

(b) to identify the article liable for countervailing duty.

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

(i) the nature and amount of subsidy in relation to an article under investigation.

(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 articles from the specified countries.

(d) to recommend the amount of countervailing duty, which if levied would be adequate to remove the injury to the domestic industry and the date of commencement of such duty;

(e) to review the need for continuance of countervailing duty.

5. Decision as to country of origin :-

In cases where articles are not imported directly from the country of origin but are imported from an intermediate country, the provisions of these rules shall be fully applicable and any such transaction shall, for the purpose of these rules be regarded as having taken place between the country of origin and the country of importation.

6. 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 alleged subsidy 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 in this behalf and the application shall be supported by evidence of

(a) subsidy and, if possible, its amount

(b) injury, where applicable, and

(c) where applicable, a casual link between such subsidized 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 article, 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 product 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) subsidy,

(ii) injury, where applicable, and

(iii) where applicable, a causal link between such subsidized imports and the alleged injury, to justify the notification of an investigation.

(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 ¹ [Commissioner of Customs] the appointed under the Customs Act, 1962 (51 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances referred to in sub 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. Subs. by the Finance Act, 1995 (22 of 1995), Sec 50, for the words "Collector of Customs"

7. 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 subsidization of any article, issue a public notice notifying its decision. Public notice regarding initiation of investigation 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) a description of the subsidy practice or practices to be investigated;

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

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

(vi) the time-limits allowed to interested countries and 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 subsidized, 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 6 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 upon request in writing, to any other interested party.

(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 governments of interested countries 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 public notice and other documents shall be deemed to have been received one week from the date on which these documents were 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 subsidization and were applicable injury and causality.

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

(7) The designated authority shall make available the evidence presented by one party to 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 finding on the basis of facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

8. Confidential informations :-

(1) Notwithstanding anything contained in such- rules (1), (2), (3) and (7) of rule 7, sub-rule (2) of rule 14, sub-rule (4) of rule 17 and sub- rule (3) of rule 19, the copies of applications received under sub-rule (1) of rule 6, 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 in sufficient details to permit a reasonable understanding of the substance of the confidential information, 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.

9. Accuracy of the information :-

Except in cases referred to in sub-rule (8) of rule 7, 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.

10. Investigation in the territory of other countries :-

(1) The designated authority may carry out investigation in the territory of other countries, in order to verify the information provided or to obtain further details :

Provided that the designated authority notifies to such country in

advance and such country does not object to such investigation.

(2) The designated authority may also carry out investigations at the premises of any commercial organisation and may examine its records if such organisation agrees and if the country in whose territory the said commercial organisation is situated, is notified and has not raised any objection for the conduct of such investigation.

11. Nature of subsidy :-

(1) The designated authority while determining the subsidy shall ascertain as to whether the subsidy under investigation

(a) relates to export performance, or

(b) relates to the use of domestic goods over imported goods in the export article, for

(c) it has been conferred on a limited number of persons, engaged in manufacturing, producing or exporting the article unless such a subsidy is for

(i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or

(ii) assistance to disadvantaged regions within the territory of the exporting country; or

(iii) assistance to promote adaptation of existing facilities to new environmental requirements;

Provided that for the purposes of sub-clauses (a) and (b), subsidies of a kind mentioned in the Agreement on Agriculture, contained in the Final Act of the Uruguay Round of Multilateral Trade Negotiations, shall not be taken into consideration.

Explanation.(1) For the purposes of sub clause (i) of Cl. (c) the term "subsidy for research activity" means assistance for research activities conducted by commercial organisations or by higher education or research establishments on a contract basis with the commercial organisations if the assistance covers not more than seventy five per cent of the costs of industrial research or fifty per cent of the costs of pre-competitive development activity and provided that such assistance is limited exclusively to

(i) costs of personnel (researchers, technicians and other

supporting staff employed exclusively in the research activity);

(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought in research, technical know/ledge, patents, etc;

(iv) additional overhead costs incurred directly as a result of the research activity; and

(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(2) For the purposes of sub-clause (ii) of Cl. (c), the term "subsidy for assistance to disadvantaged regions" means assistance to disadvantage regions within the territory of the exporting country given pursuant to a general framework of regional development and such subsidy has not been conferred on limited number of enterprises within the eligible region:

Provided that

(a) each disadvantaged region must be a clearly designated countiguous geographical area with a definable economic and administrative indentity;

(b) the region is considered as disadvantaged on the basis of natural and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

(c) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors

(i) one of either income per capita or household income per capita, or Gross Domestic product per capita, which must not be above eighty Five per cent of the average for the territory concerned;

(ii) unemployment rate, which must not be at least one hundred and ten per cent of the average for the territory concerned, as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(3) For the purposes of sub-clause (iii) of Cl. (c) "subsidy for assistance to promote adaptation of existing facilities to new environmental requirements" means assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on commercial organisations:

Provided that the assistance

(i) is a one-time non-recurring measure; and

(ii) is limited to twenty per cent of the cost of adaptation; and

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by commercial organisations; and

(iv) is directly linked to and proportionate to a commercial organisation's planned reduction of nuisances and pollution, and does not cover any manufacturing cost saving which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.

(3) The designated authority while determining the subsidy of a kind as referred to in sub-clause (c) to sub-rule (1) shall take into account, inter-alia the principles laid down in Annexure II to these rules.

12. Conferment of benefit :-

The designated authority while determining the conferment of benefit to the recipient, pursuant to a subsidy, shall take into account the following guidelines

(a) government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the granting country.

(b) a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the commercial organisation receiving the loan pays on the government loan and the amount it would pay on a comparable commercial loan which it could actually obtain on the market. In this case the

benefit shall be the difference between these two months;

(c) a loan guarantee by a government shall not be considered as conferring a benefit unless there is a difference between the amount that the commercial organisation receiving the guarantee pays on a loan guaranteed by the government and the amount that it would pay on a comparable commercial loan in the absence of the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;

(d) the provision of goods or services or purchase of goods by government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

13. Determination of injury :-

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

(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury threat of injury material retardation to the establishment of an industry' and the causal link between the subsidised import and the injury, taking into account inter-alia, the principle laid down in Annexure I to the rule.

(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 subsidised imports into an isolated market, and,

(ii) the subsidised imports are causing injury to the producers of almost all of the production within such market.

14. 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 existence of a subsidy and its nature and in respect of imports from specified countries, it shall also record its preliminary finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed explanation for the preliminary determination on the existence of a subsidy and injury and shall refer to the matter of fact and law which have led to arguments being accepted or rejected. Such finding shall contain-

(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 amount of subsidy established and the basis on which the existence of a subsidy has been determined;

(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.

15. Levy of provisional duty :-

The Central Government may, in accordance with the provisions of sub-section (2) of Sec. 9 of the Act, impose a provisional duty on the basis of the preliminary findings recorded by the designated authority.

Provided that no such duty shall be imposed before the expiry of sixty days from the date of issue of the public notice by the designated authority regarding its decision to initiate investigations:

Provided further that such duty shall remain in force for a period not exceeding four months.

16. 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 no sufficient evidence either for subsidisation or, where applicable, injury to justify continuation of the investigation;

(c) it determines that the amount of subsidy is less than one per cent advalorem or in the case of a product originating from a developing country the amount of subsidy is less than two per cent.

(d) it determines that the volume of the subsidized imports, actual or potential, or injury where applicable, is negligible or in the case of a product originating in a developing country the volume of the subsidized imports represents less than four per cent of the total imports of the like product into India, unless imports from developing countries whose individual shares of total imports represent less than four per cent collectively account for more than nine per cent of the total imports of the like product into India.

17. Suspension or termination of investigation on acceptance of price undertaking :-

(1) The designated authority may suspend or terminate an investigation, if

(a) the government of the exporting country

(i) furnishes an undertaking that it would withdraw the subsidy,

(ii) in case of specified countries, undertakes to limit the quantum of subsidy within reasonable limit, or to take other suitable measures to neutralise the effect of such subsidy, provided that the designated authority is satisfied that the injurious effect of the subsidy is eliminated, or

(b) in case of specified countries the exporters concerned agree to revise their prices so that injurious effect of subsidy is eliminated and the designated authority is satisfied that the injurious effect of the subsidy is eliminated :

Provided that increase in price as a result of this clause is not higher than what is necessary to eliminate the amount of subsidy :

Provided further that the designated authority shall complete the investigation and record its finding, if the Central Government so

desires or the government of the exporting country so decides.

(2)(i) No undertaking as regards price increase under sub-rule (1) shall be accepted unless the designated authority had made preliminary determination of subsidization and the injury:

Provided that an undertaking from an exporter shall be accepted only when the designated authority has also obtained the consent of the exporting country,

(3) The designated authority, may also not accept undertakings offered by any country or any exporter, if it considers the acceptance of such undertaking as impracticable or as 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 Sec. 9 of the Act for such a 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 government of the exporting country, or 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 any undertaking, the designated authority will intimate the Central Government and complete the investigation expeditiously.

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

18. Disclosure of information :-

The designated authority shall, before giving its final Findings, inform all interested parties and interested countries of the

essential facts under consideration which form the basis of its decision, and permit the interested parties to defend their interest.

19. 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 subsidized and submit to the Central government its final finding, as to,

(a)(i) the nature of subsidy being granted in respect of the article under investigation and the quantum of such subsidy;

(ii) whether imports of such articles into India in the case of imports from specified countries, cause or threaten material injury to an industry established in India or materially retards the establishment of any industry in India and a causal link between the subsidized imports and such injury; and

(iii) whether a retrospective levy is called for and if so, the reasons therefor and the date of commencement of such levy;

(b) its recommendation as to the amount of duty which if levied, would be adequate to remove the injury to the domestic industry.

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 17 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 said period of one year.

(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 impractical, the supplying countries involved;

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

(iii) the amount of subsidy established and the basis on which the

existence of a subsidy has been determined;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall issue a public notice regarding its final findings.

20. Levy of duty :-

(1) The Central Government may, within three months of the date of publication of the final findings by the designated authority under rule 19, impose, by notification in the Official Gazette, upon importation into India of the article covered under the final finding, a countervailing duty not exceeding the amount of subsidy as determined by the designated authority under rule 19.

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 the domestic industry.

(2) Notwithstanding anything contained in sub-rule (1) where a domestic industry has been interpreted according to the proviso to clause (b) of rule 2. a countervailing duty shall be levied only after the exporters have been given opportunity to cease exporting at subsidized prices to the area concerned or otherwise give an undertaking pursuant to rule 17 and such undertaking has not been promptly given and in such cases duty cannot be levied only on the product of specified producers which supply the area in question.

(3) If the final finding of the designated authority is negative, that is contrary to the prima facie 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 19, withdraw the provisional duty, imposed if any.

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

Any countervailing duty imposed under rule 15 or 20 shall be on a non-discriminatory basis and applicable to all imports of such article, if found to be subsidised and where applicable, causing injury except in the case of imports from those sources from which undertakings in terms of rule 17 have been accepted.

22. Date of Commencement of duty :-

(1) The countervailing duty levied under rule 15 and 20 shall take effect from the date of publication of the notification 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 Finding of injury or where the designated authority recorded a finding of threat of injury and a further finding that the subsidised imports, in the absence of provisional duty would have led to injury, the countervailing duty may be imposed from the date of imposition of provisional duty;

(b) in the circumstances referred to in sub-section (4) of Sec. 9 of the Act, the countervailing duty may be levied retrospectively from the date commencing ninety days prior to the imposition of provisional duty : Provided that in case of violation of an undertaking referred to in sub-rule (6) of rule 17, no duty shall be levied retrospectively on imports which have entered for home consumption before the violation of such terms of the undertaking.

23. Refund of duty :-

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

(2) If, the countervailing 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 (3) of rule 20, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

24. Review :-

(1) The designated authority shall, from time to time, review the need for continued imposition of the countervailing 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 or additional 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 12 months from the date of initiation of such review.

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