

Dumping Margin Zeroing by US in Arbitration Proceeding

Zeroing was also at the heart of a separate disagreement being addressed at the WTO last week: an arbitration to determine the amount of retaliatory sanctions the EU can levy against the US for the latter's use of zeroing.

The arbitration, which started on 20 May, marked the first time in WTO history that an arbitration on retaliatory measures was open to the public. In the past, a number of dispute panel and Appellate Body hearings had been opened up, but never an arbitration.

The arbitration is the final stage of a long running dispute between the US and the EU over zeroing. The EU estimates its losses resulting from the practice at over \$300 million annually, and proposed to the arbitrator two potential sets of sanctions to make up for those losses. A US lawyer contested this, arguing that the amount "should not be greater than \$2.87 million" and that the EU's proposed retaliatory sanctions "grossly exceed the level of nullification or impairment in this case."

Pointing to past WTO rulings against zeroing, the EU stressed that the US was in the wrong. "The parties do not appear before you as equals today" an EU lawyer appealed to the arbitrator. "It is the United States... that has been found... to have adopted no fewer than 32 WTO inconsistent measures. It is the United States... that has publicly stated that it will not comply."

Reuters noted that the arbitration was embarrassing for the United States: having to admit that it had failed to comply with past WTO rulings and was still using zeroing did not sit easily with the Obama administration's vocal emphasis on the enforcement of international trade rules.

Several WTO members not involved in the EU-US dispute followed the proceeding with great interest. For countries such as Japan, South Korea and Vietnam, which have launched similar cases against the US, the arbitration proceeding will be significant, since the US is having to acknowledge that it is still using the illegal zeroing methodology.

'Zeroing' under fire, again

'Zeroing', a controversial method that the US has long used to calculate dumping margins and the resulting duties, was the subject of two other panels created at the 18 May meeting of the Dispute Settlement Body. The term refers to a practice under which US commerce officials, while calculating dumping margins, do not reflect ('zero out') instances where the price of an imported product is higher in the US than in its home market, instead of averaging these instances into an overall comparison. Critics argue that this unfairly inflates dumping margins and anti-dumping duties, or creates dumping margins where there would have been none. WTO dispute panels and the Appellate Body have repeatedly ruled that zeroing is inconsistent with multilateral trade rules.

While a significant irritant to many of the US's trading partners, anti-dumping is a deeply sensitive issue in the US Congress, where many lawmakers see US anti-dumping law as a valuable means of protection from unfair trade. Indeed, anti-dumping has emerged as a major sticking point in the Doha Round rules negotiations, as the US, with little support, has tried to negotiate clear rules permitting zeroing.

Vietnam's case (WT/DS404/1) challenges several aspects of the anti-dumping duties the US is levying on certain kinds of frozen Vietnamese shrimp, including Washington's use of zeroing. The case marks Vietnam's first use of the WTO dispute settlement system since it joined the global trade body in 2007. Vietnam, like China, had to agree to be designated a 'non-market economy' for several years when it acceded to the WTO; this makes both countries easier targets for anti-dumping measures.

The Korean case focuses exclusively on the US's use of zeroing while levying anti-dumping duties on some Korean steel products (WT/DS402/1).

In theory, WTO disputes should take up to a year and a half to be adjudicated, if a ruling is appealed. In practice, however, many cases are settled 'out of court', while others can take much longer.

Beijing Takes EU to WTO on footwear Anti-dumping Action

When their economies hit downturns, WTO members' use of anti-dumping measures tends to increase. So too, it seems, does the number of dispute settlement cases challenging the extra duties.

Three WTO dispute panels were established last week to scrutinise a range of anti-dumping measures: duties levied by the European Union on Chinese footwear, and by the United States on Korean steel and

Vietnamese shrimp.

Beijing argues that EU anti-dumping duties ranging as high as 16.5 percent on certain leather shoes violate WTO rules, by discriminating against China and Chinese companies.

The EU introduced the duties in 2006, claiming they were necessary to shield European shoemakers from being harmed by below-cost, or 'dumped' imports from China and

Vietnam. In December 2009, Brussels decided, after a review, to prolong the punitive measures by an additional 15 months. That decision prompted Beijing to **initiate** WTO dispute proceedings in February, by requesting consultations on the matter with the EU.

Vietnamese shoes on average face somewhat lower duties than Chinese ones (a point not lost on China); Hanoi criticised the extension but has thus far stopped short of launching its own WTO case.

China's case centres on allegations that the EU used inappropriate methods to calculate the 'dumping margin' and the consequent value of duties. China also argued that the EU failed to adequately account for the fact that domestic industry may have been hurt by factors other than the dumping of Chinese goods, such as changing consumption patterns, the removal of an import quota on Chinese footwear, shifts in demand, and exchange rate fluctuations.

As has been the case for anti-dumping duties on other Chinese products, such as clothing and energy-efficient light bulbs, EU members and the European footwear industry have been divided on support for the extra duties on Chinese and Vietnamese shoes. Support has come

primarily from Mediterranean countries, such as Italy, where producers have been hit by competition from imports. The European Footwear Alliance, which represents global brands such as Adidas, Ecco and Timberland, has argued that the extra duties - and consequently, higher prices - hurt European businesses and consumers.

In March, a branch of the European Court of Justice ruled against Chinese footwear companies seeking the removal of the anti-dumping duties, ordering the companies to pay their own and the EU's legal costs.

China it is not just an unhappy target of EU anti-dumping duties. The dissatisfaction goes both ways. The most recent example of this came earlier this month, when Brussels initiated WTO dispute proceedings against anti-dumping duties levied by China on EU 'steel fasteners' like screws, nuts, and bolts. The duties cover EU exports worth some 140 million euros per year. The EU's request for consultations cited flawed calculations and procedural inadequacies. Last year, China launched a WTO dispute against the EU's anti-dumping duties on Chinese steel fasteners; that case is now in the process of adjudication.

would take another decade to conclude the round. Picking apart one aspect of the draft texts — industrial goods, say — would open up others, such as farm subsidies, India said, according to sources.

On the second day of the meeting, officials recognised the impasse. They agreed that there should be a dialogue aimed at finding and defining what one participant described to Bridges as a "common area" in which a final Doha deal could then be negotiated.

Russian Accession Talks to Resume in June, Belarus and Kazakh not in Bloc for Now

After a year-long suspension of negotiations with WTO members, Maxim Medvedkov, lead negotiator in Russia's WTO accession process, announced this week that talks would resume on 17 June.

The announcement comes almost immediately following Russian Prime Minister Vladimir Putin's statement that Moscow's planned customs union with neighbouring Belarus and Kazakhstan would not take effect on July 1, as previously believed.

Taken together, the statements have caused speculation that Russia might attempt to join the WTO on its own, abandoning an earlier attempt to join the global trade body as a bloc along with its two neighbours.

The failure of the recent customs union talks between Russia and Belarus has largely been blamed on arguments over duties on oil.

Even if Russia does set aside the plan to join the WTO as part of a customs union, Moscow will still need to modify several of its policies before it can expect its application to be approved by existing WTO members.

One of the major policy areas causing contention is whether Russia will agree to the WTO's rules on agricultural subsidies. WTO rules prevent acceding countries from imposing subsidies higher than their average for the previous three years. However, Russia's recent bailout package for its agricultural sector, which had been on the verge of bankruptcy, included heavy increases in subsidies.

Other obstacles include Russia's high export duties on timber, and some WTO members' insistence that Russia, as part of its accession commitments, require state companies trading in services to abide by commercial criteria.

Russia's interest in joining the WTO stems largely from a desire to diversify its energy and commodity-focused economy towards trade in faster-growing markets, specifically in new technologies.

India EU Host Meet on Doha at Geneva

A meeting of senior officials from 19 WTO members last week was valuable primarily for helping participants reach "a common diagnosis" of the "seriousness and depth" of the problem governments face in trying to conclude the Doha Round trade talks, officials said.

Several of the exchanges during the gathering, which was jointly hosted by the European Union and India at the EU's mission to the WTO in Geneva on 19-20 May, served to underline the gaps separating central players such as the US and large developing countries like Brazil, China, and India.

Many were "dumbfounded" by the depth of the differences, said one official who attended the "very educational" meeting. "There is a huge gulf separating the sides, and for the time being it is insurmountable," the source told Bridges. Countries were divided not just on the substance, but on how to approach the negotiation. "They cannot negotiate yet - they need to agree on how," the source added.

The meeting was the latest attempt by WTO member governments to see how they might revive the Doha Round negotiations. In late April, officials from the US, the EU, China, Brazil, and India met in Paris to examine the

state of the talks. Those countries were represented at last week's meeting, along with officials from Argentina, Australia, Barbados, Burkina Faso, Canada, Egypt, Gabon, Indonesia, Japan, Mauritius, Mexico, Switzerland South Africa, and Zambia.

US Ambassador Michael Punke said that the terms for cutting subsidies and tariffs outlined in draft texts dating back to 2008 would not be politically saleable in Washington. He repeated the US's call for developing countries like Brazil, China and India to provide greater market access, particularly for industrial goods. Punke did suggest that the US would be prepared to offer additional concessions of its own, suggesting that Washington did not expect to get what it was seeking for free. He did not, however, provide details about what these concessions might look like.

Canada and Australia also called for greater 'ambition' - a euphemism trade negotiators often use for deeper tariff or subsidy cuts - albeit not as comprehensively, sources said.

Brazil, meanwhile, said that it was already at the outer limits of what it could agree to in terms of industrial market access. And India warned that if the package on the table unraveled, it

Dollar-Rupee rate at NSE Futures

Trade Date	Open Price	High Price	Low Price	Close Price	Daily Settlement Price	Open Interest	No. of Contracts	Value (Rs. lakhs)	RBI Reference rate
31-May-10	46.5575	46.7325	46.5050	46.5450	46.5450	604890	2393749	1115768.01	46.4500
28-May-10	46.7975	46.9175	46.4500	46.5400	46.5400	662250	3094349	1443236.01	46.5400
26-May-10	47.6175	47.7525	47.3825	47.4725	47.4725	767138	2872008	1366554.41	47.5700

[Source: NSE and RBI Website]

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Rubber Chemicals – Sunset Review Anti-dumping Investigation Initiated

[Ref: No.15/14/2009-DGAD dated 12th May 2010]

Subject: Sunset Review of anti-dumping duty imposed against Certain Rubber Chemicals (MOR, PX13 and TDQ) originating in or exported from China PR, Chinese Taipei, EU & USA.

Whereas having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (herein after referred to as the AD Rules), the definitive anti-dumping duty was originally imposed vide notification No. 94/2005-Customs dated 20th October, 2005 on import of Certain Rubber Chemicals (MOR, PX13 and TDQ) (hereinafter referred to as the subject goods) originating in or exported from China PR, Chinese Taipei, European Union & USA (hereinafter referred to as the subject countries/territory).

2. Product under consideration

The products under consideration in the original case were three specific rubber chemicals used in manufacture of rubber products, namely: i) Anti-Degradants: PX 13 ii) Accelerators: MOR iii) Antioxidant: TDQ

Detailed chemical names of the products are as follows:-

MOR: N-oxydiethylene-2-benzothiazole-sulphenamide (2-morpholiniothiobenothiazole) (MBS). MOR Mercapto benzothiazole disulphide is reacted with morpholine and sodium hypochlorite. The reaction is carried out in presence of isopropyl alcohol. The product is filtered, washed and extruded to form pellets, which are dried and packed. The isopropyl alcohol is recovered and recycled.

PX 13: N-1, 3-dimethyl butyl-N'Phenyl paraphenylenediamine (6 PPD). PX-13 Px- 13 is produced by hydrogenation of a mixture of 4-nitrodiphenylamine and methyl isobutyl ketone in an autoclave at moderately high pressure in presence of a noble metal catalyst. The resulting reaction mass, which contains unreacted ketone, by-products, etc., is filtered to remove the catalyst, which is then recycled. The filtrate is distilled to remove low boilers and is then flaked to give the finished product. The low boilers are redistilled to recover the unreacted ketone. Catalyst is recycled until the activity is reduced. It is then removed from the system.

TDQ: Polymerized 2,2, 4-Trimethyl-1, 2 dihydroquinoline. TDQ Acetone and aniline are condensed at high temperature in presence of an acid catalyst. The resultant mass is then polymerised to the required degree; the excess acid is neutralized with caustic solution and washed with water. The material is then stripped at high temperature under vacuum to recover low boilers. The product is then pastilized and bagged.

These rubber chemicals are extensively used

in treating natural rubber, synthetic rubber (SBR, Butadiene Rubber, Nitrile Rubber, Carboxylated Rubber) and other synthetic rubber based compounds used for manufacture of various rubber products

The Authority notes that there is no dedicated ITC HS Classification for the subject goods and products under consideration are classified under various subheadings of Customs classification heads 38.12.10, 38.12.20 and 38.12.30 as well as under 29.34.20 and 29.25.20 (at six digit levels) of the Customs Tariff Act and ITC HS classification. However, the Authority notes that the products are known by their respective trade names and the chemical descriptions as indicated above. Therefore, the Customs and ITC HS classifications shown above are indicative only and are in no way binding on the scope of the present investigation.

3. Initiation

In view of the order of the Hon'ble Delhi High court in the matter of *Indian Metal and Ferro Alloys Ltd V/s Designated Authority*, Writ Petition (Civil) No. 16893 of 2006 and in accordance with Section 9 A (5) of the Act, read with Rule 23 of the AD Rules, the Authority hereby initiates a sunset review investigation to review the need for continued imposition of the duties in force in respect of the subject goods and to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.

4. Countries/territory involved

The countries/territory involved in this investigation are as follows:

- PX-13 - Chinese Taipei, European Union.
- MOR – China PR, European Union, USA
- TDQ - European Union, Chinese Taipei

5. Period of Investigation

The Period of Investigation (POI) for the purpose of the present review is 1st April 2009 to 31st March 2010 (12 months). However, injury analysis shall cover the years 2006-07, 2007-08, 2008-09 & POI. The data beyond POI may also be examined to determine likelihood of dumping and injury.

6. Procedure

Having decided to review the final findings issued vide Notification No. No.14/13/2004 DGAD dated 16th August 2005 and final duty imposed vide Customs Notification No. 94/2005-Customs dated 20th October, 2005, the Authority hereby initiates investigations to review the need for continued imposition of the duties in force and to examine whether cessation of Anti

Dumping duty is likely to lead to continuation or recurrence of Dumping and injury on imports of the subject goods originating in or exported from subject countries/territory in accordance with the Act and the AD Rules. The review covers all aspects of Notification No. 14/13/2004 DGAD dated 16th August 2005 (final findings of the original investigation).

7. Submission of Information

The exporters in subject countries/territory, the governments of subject country/territory through its embassies / Representative office in India, the importers and users in India known to be concerned with the product and the domestic industry, are being addressed separately to submit relevant information in the form and manner prescribed and to make their views known to the Authority at the following address:

Government of India, Ministry of Commerce and Industry, Directorate General of Anti-Dumping and Allied Duties, Department of Commerce, Room No.243, Udyog Bhawan, New Delhi-110107.

Any other interested party may also make its submissions relevant to the investigation in the prescribed form and manner within the time limit set out below.

8. Time Limit

Any information relating to the present review and any request for hearing should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days (40 Days) from the date of publication of this Notification. If no information is received within the prescribed time limit or the information received is incomplete, the Designated Authority may record its findings on the basis of the facts available on record in accordance with the AD Rules.

The domestic producers of the subject goods are being issued a questionnaire to respond within 40 days substantiating the need for continued imposition of the AD measures.

All the interested parties are hereby advised to intimate their interest (including the nature of interest) in the instant matter within 40 days from the date of initiation of this investigation. All such interested parties, that intimate so, would be requested to offer their comments to the domestic producers' response(s) within 40 days from the date of issuance of the letter to them regarding the need to continue or otherwise the AD measures.

9. Submission of information on Non-confidential basis

All interested parties shall provide a confidential and non-confidential summary in terms of Rule 7 (2), for the confidential information provided as per Rule 7 (1) of the AD Rules. The non-confidential version or non-confidential summary of the confidential information should be in sufficient detail to provide a meaningful understanding of the information to the other interested parties. If in the opinion of the party providing such information, such information is not susceptible to summary; a statement of reasons thereof is required to be provided.

Notwithstanding anything contained in para above, if the 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.

10. Inspection of public file

In terms of rule 6(7) any interested party may inspect the public file containing non-confiden-

tial versions of the evidence submitted by other interested parties.

11. Non-cooperation

In case any interested party refuses access to and otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Governments as deemed fit.

Cap Value on Dried Fish Exports Changed to Rupee Term – Dollar Exchange Rate of Rs. 45.97 Applied to Arrive at Rs. 131 per kg.

69-PN(RE) In exercise of powers conferred under Paragraph 2.4
28.05.2010 of the Foreign Trade Policy, 2009-2014 and Paragraph 1.1
(DGFT) of the Handbook of Procedures (Vol. I), the Director General
of Foreign Trade hereby makes the following amendments in the "Schedule of
DEPB Rates" (as modified vide PN No. 56 dated 20.4.2010) with immediate effect.

1. Product Group: Fish and Fish products Product Group: 66

SNo.	Description	DEPB Value Cap Rate
1	Fish, Crustaceans, Molluscs, Aquatic, Invertebrates and any Aquatic Animal product of marine or fresh water origin in live or chilled or dried form, including Ornamental Fish and any Aquatic Animal product of marine or fresh water origin not covered under S.No. 2 below.	4 Rs. 131 per Kg. (when in dried form)

This issues in the public interest.

Transitional Arrangements not Applicable to Cotton Exports – Complete Ban from 21 May

46-Ntfn(RE) In exercise of the powers
24.05.2010 conferred by Section 5 of the
(DGFT) Foreign Trade (Development &
Regulation) Act, 1992 (No.22
of 1992) read with Para 1.3 and 2.1 of the
Foreign Trade Policy, 2009-14, and also read
with Notification No. 26 (RE 2008)/2004-09 dated
22.7.2008, the Central Government hereby
makes the following amendments in Notifica-
tion No. 44 /2009-14 dated 21.5.2010.

2. With immediate effect, Para 2.1 is inserted at the end of Para 2 of the Notification No. 44 / 2009-14 dated 21.5.2010, as follows:

"2.1 Transitional arrangements allowed under Para 1.5 of the Foreign Trade Policy, 2009-2014, shall, in public interest, not be applicable to the restrictions imposed as above vide this notification."

3. This issues in public interest.

Project Authority Certificate Amended to Facilitate Deemed Export Benefit for Tariff Based Competitive Bidding Power Projects

Subject: Amendment in Appendix 13, Appendix 22 C and Appendix 27.

67-PN(RE) In exercise of powers
25.05.2010 conferred under paragraph 2.4
(DGFT) of the Foreign Trade Policy,
2009-14, the Director General
of Foreign Trade hereby makes the following
amendments in the Handbook of Procedures
(Volume 1).

2.1 The entries in Appendix 13 shall be substituted by the following:

"Agencies/Funds notified by the Government of India, Ministry of Finance, Deptt. of Economic Affairs vide their Public Notice No.1(FT)/DEA/2010 dated 5th May, 2010 for the purpose of Deemed Export benefits:-

1. International Bank of Reconstruction and Development (IBRD) and International Development Association (IDA)
2. International Fund for Agricultural Development (IFAD)

3. Asian Development Bank (ADB)
4. Organization of Petroleum Exporting Countries (OPEC) Fund
5. Yen credit channelised through Japan International Cooperation Agency (JICA). [Development component only].
6. Swedish International Development Agency (SIDA)

2.2.1 Paragraph (e) of Form 1-A and Para 2 (e) of Form I-B of Appendix 22C, as amended vide Public Notice 39 dated 8th February 2010, shall be substituted as under :

"(e) (i) The supply of goods under the contract made to power project in India is under the procedure of international competitive bidding in accordance with the provisions of Paragraph 8.2(g) and 8.4.4 (iv) of the Policy, and the import content of the order is Rs.(Figures and words.....)

Radial Tyres of Buses and Lorries Shifted to Free from Restricted List

Subject: Import policy of radial tyres.

47-Ntfn(RE) In exercise of powers
26.05.2010 conferred under section 5 of
(DGFT) the Foreign Trade (Develop-
ment and Regulation) Act,
1992 read with paragraph 2.1 of the Foreign
Trade Policy, 2009-2014, the Central Gov-
ernment hereby makes the following amend-
ments in Schedule -1 of the ITC(HS) Classi-
fications of Export and Import Items.

2. After amendment the following entry would read as under:-

Exim Code	Item description	Policy
4011 20 10	Radials	Free

3. This issues in public interest.

One Year Automatic Renewal of Old Licences under Previous Policies

68-PN(RE) In exercise of powers
26.05.2010 conferred under paragraph
(DGFT) 2.4 of Export and Import
Policy, 2002-07(RE2003)

and Foreign Trade Policy, 2004-09, Director General of Foreign Trade hereby makes the following amendments in the Handbook of Procedures (Vol. I) (RE2003); Handbook of Procedures (Vol. I) (RE2004) and Handbook of Procedures (Vol. I) (RE2005):

1. In the Para 3.2.6A (VI) of Handbook of Procedures (Vol. I) (RE2003) and Para 3.2.5 – VII of Handbooks of Procedures (Vol. I) (RE2004 & RE2005), the following is added at the end.

"The Certificates / Scrips, which are valid as on the date of issue of this Public Notice, shall have an extended validity for a further period of 12 months from the date of issue of this Public Notice, and there shall be no requirement of endorsement of this extended validity on the Certificate/Scrip from the concerned regional authority."

This issues in Public interest.

(ii) That supply of goods under the contract made to mega power project in India is under the procedure of ICB or requisite quantum of power has been tied up through tariff based competitive bidding or project has been awarded through tariff based competitive bidding in accordance with the provisions of paragraph 8.2 and 8.4.4(iv) of FTP, and the import content of the order is Rs.....(Figures and words)."

2.3 Paragraph (e) of Appendix 27, as amended vide Public Notice 39 dated 8th February 2010, shall be substituted by the following:

"(e) (i) That supply of the goods under the contract to be made to power project in India is under the procedure of international competitive bidding in accordance with the provisions of paragraph 8.2(g) and 8.4.4 (iv) of the Policy and

that the import content of the order is Rs. (figures and words.....).

(ii) That supply of goods under the contract made to mega power project in India is under the procedure of ICB or requisite quantum of power has been tied up through tariff based

competitive bidding or project has been awarded through tariff based competitive bidding in accordance with the provisions of paragraph 8.2 and 8.4.4(iv) of FTP, and the import content of the order is Rs.....(Figures and words).” This issues in public interest.

taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involved is leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously stated taxable services. Thus, even in the case of ‘works contract’ if the nature of the activities is such that they are excluded from aforesaid two services then they would generally remain excluded from this taxable service as well.

(iv) ‘site formation and clearance, excavation, earthmoving and demolition services’ are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road

3. The taxable status of various activities, on which disputes have arisen

Based on the foregoing, the following would be the tax status of some of the activities in respect of which disputes have arisen,-

Service Tax Applicable on Shifting or Laying of Cables on Roads

Subject: Applicability of service tax on laying of cables under or alongside roads and similar activities – clarification regarding.

123-ST Disputes have arisen in some
24.05.2010 parts of the country regarding
(DoR) applicability of service tax on
certain activities such as

shifting of overhead cables to underground on account of renovation/widening of roads; laying of electrical cables under or alongside roads/ railway tracks; between grids/sub-stations/transformers the distribution points of residential or commercial complexes and such activities as electrification of railways, installation of street-lights, traffic lights, flood-lights. This clarification takes into account the taxability of different activities taking into account the scope of all services (such as site formation/excavation/earth moving service, commercial or industrial construction services; erection, commissioning or installation services; or works-contract service) that are presently taxable as well as those which are covered under the Finance Act, 2010.

2. Scope of certain taxable services in brief;

(i) ‘Commercial or industrial construction services’, in brief, cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that are parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.

(ii) Under ‘Erection, commissioning or installation services’, the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of

electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

(iii) ‘Works Contract’ incorporates the inclusions and exclusions of the aforementioned two

SNo	Activity	Status
1.	Shifting of overhead cables/wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service, namely Erection, commissioning or installation services [section 65 (105) (zzd)].
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service, namely commercial or industrial construction’ or ‘construction of complex’ service [section 65(105) (zzq)/(zzzh)], as the case may be.
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service, namely Erection, commissioning or installation services [section 65 (105) (zzd)].
8.	Railway electrification, electrification along the railway track	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994

4. The conclusions drawn above are essentially general in nature and would have to be applied in an individual case depending upon its facts and circumstances. The pending disputes /cases may be decided based on the clarifications contained in this circular.

F.No.332/5/2010-TRU

E-Filing Procedure

Sub: Procedure for electronic filing of Central Excise returns.

926-CBEC Attention is invited to Circular
28.05.2010 No. 919/09/2010 – CX dated
(DoR) 23.03.2010 prescribing
detailed instructions and the
procedure for electronic filing of Central Excise and Service Tax returns. Attention is also invited to the Central Excise (Second Amendment) Rules, 2010 and CENVAT Credit (Amendment) Rules, 2010 issued vide Notification No. 20/2010-Central Excise (NT) and No. 21/2010-Central Excise (NT) respectively both dated 18.05.2010 providing for mandatory electronic filing of certain returns by assesseees including

dealers.

2. The said notifications have been made effective from 1.6.2010. Following amendments have been made in the Central Excise Rules, 2002 and CENVAT Credit Rules, 2004:

i. Manufacturers who have paid Central Excise duty of Rs. 10 Lakh or more (including payment by utilisation of Cenvat credit) in the previous financial year shall file their Annual Financial Information Statement (ER4) as prescribed under the proviso to clause (a) of sub rule (2) of Rule 12 of the Central Excise Rules,

2002,electronically.

ii. EOU manufacturers who have paid Central Excise duty of Rs. 10 Lakh or more (including payment by utilisation of Cenvat credit) in the previous financial year shall file ER 2 returns as prescribed under the proviso to sub-rule (3) Rule 17 of the Central Excise Rules 2002, electronically.

iii. All registered dealers would now be required to file quarterly returns as prescribed under the proviso to sub-rule (8) of rule 9 of the CENVAT Credit Rules 2004, electronically irrespective of the amount of CENVAT credit taken by them or passed on by them in a year.

iv. Manufacturers who have paid Central

Excise duty of Rs. 10 Lakh or more (including payment by utilisation of Cenvat credit) in the previous financial year shall file the Annual Declaration relating to principal inputs (ER5) under the second proviso to sub rule (1) of Rule 9A of the CENVAT Credit Rules, 2004; and

v. Manufacturers who have paid Central Excise duty of Rs. 10 Lakh or more (including payment by utilisation of Cenvat credit) in the previous financial year shall file the Monthly Return of information relating to principal inputs (ER6) under proviso to sub-rule (3) of rule 9A, electronically.

3. The instructions contained in Circular No. 919/09/2010 – CX dated 23.03.2010 on the

procedure for electronic filing of excise returns and obtaining acknowledgement thereof shall mutadis mutandis apply for electronic filing of returns as envisaged under the said amended Rules. It is requested to sensitise concerned officers and the trade regarding the instructions.

4. As a large number of assesseees including dealers would be required to file Excise returns electronically, it is requested that they may be provided all assistance so as to help them in adopting the new procedure.

5. Field formations and trade may also please be informed suitably.

F.No. 201/20/2009-CX 6

Vietnam and Myanmar Included in Origin List in ASEAN FTA for Indirect Import through Thailand, Malaysia and Singapore

Ntfn 44 In exercise of the powers
31.05.2010 conferred by sub-section (1) of
(DoR) section 5 of the Customs Tariff
Act, 1975 (51 of 1975), the

Central Government hereby makes the following rules further to amend the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] **Rules, 2009**, namely:-

1. (1) These rules may be called the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Second Amendment Rules,

2010.

(2) These rules shall come into **effect on the 1st day of June 2010.**

2. In the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, in Annexure IV, after S.No. 3, the following S. No. and entries shall be inserted, namely:-

"S.No. Name of the Country

4. The Socialist Republic of Viet Nam

5. The Union of Myanmar"

[F. No. 467/68/2004-Cus.V/ICD]

Australia and Canada Oppose SSM in Agri

A new informal paper from Canada and Australia argues that an unconstrained agricultural safeguard mechanism for developing countries could "seriously impede" normal trade, if stripped of various proposed curbs on its use.

The paper has received a cool reception from the G-33 developing country group, which favours a simple, easy-to-invoke 'special safeguard mechanism' (SSM) to enable developing countries to raise duties beyond bound ceiling levels to protect farmers in the event of a surge in import volumes or a price depression.

"It's re-packaging", said one G-33 delegate, who suggested that the paper essentially restated ideas from an Australian paper circulated last December.

Soybean, palm oil, bananas

The Canadian-Australian paper simulates the possible effect of applying safeguard duties to soybeans, palm oil and bananas, and concludes that "the SSM could trigger every year and result in significant trade losses". The exporters examine how often import duties would be impossible if the safeguard were triggered by import volumes that are 10, 20 or 40 percent higher than average levels in the preceding years.

According to the paper, for India between 2003 and 2008, a 20 percent increase threshold could have triggered SSM duties covering 40.2 percent of tariff lines and some 57.9 percent of farm imports. Over that period, 85 percent of tariff lines could have been triggered at least once.

The latest draft WTO farm trade deal and an accompanying paper by the chair of the agriculture negotiations, both of which date back to December 2008, include a raft of proposed constraints aimed at curbing potential abuse by import-sensitive developing countries. These would condition the imposition of safeguards on the co-existence of a volume surge and price depression, for example, or limit the number of tariff lines on which safeguard duties can be imposed in any given year. The exporters' latest draft examines how the safeguard might affect trade in the absence of these constraints.

"These are highly-traded products - ones that exporters are most concerned about", reported an official from an exporting country. Rules to prevent abuse needed to be built into the planned safeguard, said the negotiator, who warned that exporters could not simply be expected to 'trust' that developing countries would only apply the extra duties in particular circumstances.

Growth in normal trade would be maintained, argue G-33 representatives: according to the group's proposal, safeguard duties would only be applied if import volumes exceed a threshold that is higher than the previous three-year rolling average. Furthermore, imports would continue to enter the developing country concerned in the period up until safeguard duties are actually applied.

Exporting countries nonetheless warned that, unless the calculation of average import volumes is 'pro-rated' so as to discount months in which safeguards had been imposed, the SSM could still affect growth in normal trade. The G-33 had previously argued against pro-rating import calculations in this way.

China News

WTO Says China Maintains Economic Opening Policy

China has maintained its long-term strategy of gradually opening up its economy to international trade and foreign direct investment (FDI) in the past two years, the World Trade Organization (WTO) said on Monday, 31 May.

In a biennial review of China's trade policy, the Geneva-based body said China "has continued the gradual liberalization of its international trade and investment regime."

It added China had continued to attach high importance to the multilateral trading system and had been participating actively in the Doha Round trade opening negotiations, which involve all the WTO's 153 members.

According to the report, China "resisted a protectionist response to the effects of the global economic recession."

"The Chinese government responded to the effects of the global economic recession by introducing expansionary fiscal and monetary policies to offset the sharp decline in external demand, putting more emphasis on domestic demand to drive GDP growth," the report said.

It noted that China's dependence on export-led growth left it vulnerable to the effects of the global recession that began in late 2008.

"In 2009, China's exports fell by 16 percent...Real GDP growth declined from 9.6 percent in 2008 to a year-on-year rate of 6.2 percent in the first quarter of 2009, the lowest rate in more than a decade," it said.

However, China's growth rebounded in subsequent quarters so that in 2009 overall, the country achieved real GDP growth of 8.7 percent.

The report also noted that China had continued to improve its legislative framework and intensify the enforcement of intellectual property rights (IPR) protection.

Exchange Rates for Customs Valuation

IMPORTS and EXPORTS

The current notification No. 42-Customs(NT) dated 26th May 2010 supersedes notification 32-Customs(NT) dated 28th April 2010.

42-Cus(NT) In exercise of the powers conferred by section 14 of the 26.05.2010 Customs Act, 1962 (52 of 1962), and in supersession of (DoR) the notification of the Government of India in the Ministry of Finance (Department of Revenue) **No.32/**

2010-CUSTOMS (N.T.), dated the 28th April, 2010 vide number S.O. 984(E), dated the 28th April, 2010, except as respects things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby determines that the rate of exchange of conversion of each of the foreign currency specified in column (2) of each of Schedule I and Schedule II annexed hereto into Indian currency or *vice versa* shall, **with effect from 1st June, 2010** be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SNo	Currency	Imported Goods		Exported Goods	
		Current	Previous	Current	Previous

Schedule I – Rate of exchange of one unit of foreign currency equivalent to Indian rupees

1	Australian Dollar	39.60	41.80	38.50	40.60
2	Canadian Dollar	44.80	45.05	43.65	43.80
3	Danish Kroner	7.95	8.15	7.70	7.85
4	EURO	59.10	60.30	57.50	58.65
5	Hong Kong Dollar	6.15	5.80	6.00	5.65
6	Norwegian Kroner	7.30	7.70	7.10	7.45
7	Pound Sterling	69.15	69.65	67.25	67.80
8	Swedish Kroner	6.05	6.30	5.90	6.10
9	Swiss Franc	41.35	42.10	40.30	40.85
10	Singapore Dollar	34.00	32.95	33.15	32.05
11	US Dollar	47.85	44.90	46.95	44.00

Schedule II – Rate of exchange of 100 units of foreign currency equivalent to Indian rupees

1	Japanese Yen	53.25	48.05	51.80	46.70
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[F.No.468/7/2010-Cus.V]

Tariff Value on Brass Scrap Down by US\$ 84/MT

Poppy Seeds Tariff Value Falls by US\$ 184/MT

43-Cus(NT) In exercise of the powers conferred by sub-section (2) 31.05.2010 of section 14 of the Customs Act, 1962 (52 of 1962), (DoR) the Board, being satisfied that it is necessary and expedient so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), **No. 36/2001-Cus (N. T.), dated, the 3rd August 2001**, namely: -

In the said notification, for the Table, the following Table shall be substituted namely:-

Table

SNo.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value US \$ (Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	447 (i.e. no change)
2	1511 90 10	RBD Palm Oil	476 (i.e. no change)
3	1511 90 90	Others – Palm Oil	462 (i.e. no change)
4	1511 10 00	Crude Palmolein	481 (i.e. no change)
5	1511 90 20	RBD Palmolein	484 (i.e. no change)
6	1511 90 90	Others – Palmolein	483 (i.e. no change)
7	1507 10 00	Crude Soyabean Oil	580 (i.e. no change)
8	7404 00 22	Brass Scrap (all grades)	3895
9	1207 91 00	Poppy seeds	3228"

[F. No. 467/4/2010-Cus.V]

BIG's Weekly Index of Changes No 10/02-08 June 2010

Commodity Spot Prices in India – 29 May–01 June 2010

These commodity prices are taken from Multi Commodity Exchange of India (Mumbai) at 6 pm every day. The weekly prices of commodities from different cities of India will be given in the order of Harmonized System classification.

Commodity Spot Prices covers price movements of 55 commodities (agricultural products and metals) provided on Multi Commodity Exchange of India on a daily basis. This Commodity Spot Prices Table focuses on price movements from 29 May–01 June.

Commodity	Unit	Market	29-May	31-May	01-Jun
CER (Carbon Trading)	1 MT	Mumbai	715	715	715
Chana	100 KGS	Delhi	2127	2132	2148
Masur	100 KGS	Indore	3498	3501	3475
Potato	100 KGS	Agra	463.8	464.2	466.6
Potato TKR	100 KGS	Tarkeshwar	NA	NA	NA
Areca nut	100 KGS	Mangalore	7774	7888	7926
Cashewkern	1 KGS	Quilon	303	305	305
Cardamom	1 KGS	Vandanmedu	1434.2	1484.5	1522.8
Coffee ROB	100 KGS	Kushalnagar	62.3	62.1	62.3
Jeera	100 KGS	Unjha	12599	12500	12450
Pepper	100 KGS	Kochi	16630	16399	16393
Red Chili	100 KGS	Guntur	4759	4759	4759
Turmeric	100 KGS	Nzmbad	14989	14888	14800
Guar Gum	100 KGS	Jodhpur	5150	5200	5050
Maize	100 KGS	Nzmbad	935.5	947.5	955
Wheat	100 KGS	Delhi	1245	1253.8	1252.5
Mentha Oil	1 KGS	Chandausi	767.6	768.9	782.8
Cotton Seed	100 KGS	Akola	1258	1289	1324
Castorsd RJK	100 KGS	Rajkot	3198	3208.5	3211
Guar Seed	100 KGS	Jodhpur	2286	2301	2255
Soya Bean	100 KGS	Indore	1983.5	1984	1981
Mustardsd JPR	20 KGS	Jaipur	517.2	518.3	517.2
Sesame Seed	100 KGS	Rajkot	5338	5275	5275
Coconut Oil Cake	100 KGS	Kochi	1170	1144	1154
RCBR Oil Cake	1 MT	Raipur	6000	6040	6160
Kapaskhali	50 KGS	Akola	1067	1069.8	1081.5
Coconut Oil	100 KGS	Kochi	5252	5304	5314
Refsoy Oil	10 KGS	Indore	450.75	450.8	449.6
CPO	10 KGS	Kandla	377.8	377	376.7
Mustard Oil	10 KGS	Jaipur	485.1	490	494.2
Gnutoilexp	10 KGS	Rajkot	94.3	94.3	94.3
Castor Oil	10 KGS	Kandla	692.5	687.5	685
Crude Oil	1 BBL	Mumbai	3443	3443	3443
Furnace Oil	1000 KGS	Mumbai	29293	30612	29725
Sourcrd Oil	1 BBL	Mumbai	3608	3585	3485
Brent Crude	1 BBL	Mumbai	3410	3410	3410
Gur	40 KGS	Muzngr	1108.3	1000.4	1005.9
Sugars	100 KGS	Kolhapur	2669	2646	2645
Sugarm	100 KGS	Delhi	2946	2946	2940
Natural Gas	1 mmBtu	Hazirabad	202	202	202
Rubber	100 KGS	Kochi	17065	16965	16875
Cotton Long	1 Candy	Kadi	29300	29510	29730
Cotton Med	1 Maund	Abohar	3044.5	3000	2980
Jute	100 KGS	Kolkata	3407.5	3411	3504
Gold	10 GRMS	Ahmd	18477	18377	18683
Gold Guinea	8 GRMS	Ahmd	14782	14702	14946
Silver	1 KGS	Ahmd	29322	29263	29485
Sponge Iron	1 MT	Raipur	17705	17870	17830
Steel Flat	1000 KGS	Mumbai	34620	34530	33880
Steel Long	1 MT	Bhavnagar	26940	26160	26480
Copper	1 KGS	Mumbai	318.55	318.55	318.55
Nickel	1 KGS	Mumbai	1003.1	1003.1	957.3
Aluminium	1 KGS	Mumbai	94.8	94.8	91.15
Lead	1 KGS	Mumbai	84.75	84.75	81.75
Zinc	1 KGS	Mumbai	88.2	88.2	85
Tin	1 KGS	Mumbai	842.5	842.5	813.75

(Source: MCX Spot Prices)

Trade Deficit Rises in April as Exports Growth 36.2%

India's exports during April, 2010 were valued at US \$ 16887 million (Rs.75147 crore) which was 36.2 per cent higher in dollar terms (21.1 per cent in Rupee terms) than the level of US \$ 12397 million (Rs.62064 crore) during April, 2009.

Imports during April, 2010 were valued at US \$ 27307 million (Rs.121517 crore) representing a growth of 43.3 per cent in dollar terms (27.4 per cent in Rupee terms) over the level of imports valued at US \$ 19052 million (Rs.95377 crore) in April, 2009.

Oil imports during April, 2010 were valued at US \$ 8079 million which was 70.5 per cent higher than oil imports valued at US \$ 4739 million in the corresponding period last year. Non-oil imports during April, 2010 were estimated at US \$ 19229 million which was 34.3 per cent higher than non-oil imports of US \$ 14312

million in April, 2009.

The trade deficit for April 2010- April, 2011 was estimated at US \$ 10420 million which was higher than the deficit of US \$ 6654 million during April 2009 -April, 2010.

EXPORTS & IMPORTS : (US \$ Million)

	<i>(Provisional)</i>	
	APRIL	APRIL-APRIL
EXPORTS (including re-exports)		
2009-10	12397	12397
2010-11	16887	16887
%Growth2010-11/ 2009-2010	36.2	36.2
IMPORTS		
2009-10	19052	19052
2010-11	27307	27307
%Growth2010-11/ 2009-2010	43.3	43.3
TRADE BALANCE		
2009-2010	-6654	-6654
2010-11	-10420	-10420

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China Cuts Gasoline, Diesel Prices

China's gasoline prices will be cut by 230 yuan (33.7 U.S. dollars) per tonne and diesel prices by 220 yuan per tonne from Tuesday, 1 June the National Development and Reform Commission (NDRC) announced Monday, 31 May.

The price cuts came after a record high in price hikes in April. The previous price cut was in September 2009.

Before the adjustment, the benchmark price of gasoline was 7,420 yuan per tonne and diesel 6,680 yuan per tonne.

Cao Changqing, head of price department of the NDRC, said the adjustment was "timely and in a proper amount" in response to recent changes in the international crude oil prices.

International crude oil prices had been rising before May, when they began to decline, the NDRC statement said. The recent drops had amounted to 4 percent, meeting price adjustment conditions, it added.

Cao said the move was also based on the global and domestic economic situations and oil supply and demand as well as the country's pricing mechanism.

In 2009, China adopted an oil pricing mechanism that allows the NDRC to adjust retail fuel prices when the international crude oil price changes by more than 4 percent over 22 straight working days

The government would raise benchmark prices for domestically-produced onshore natural gas by 230 yuan per thousand cubic meters, or 24.9 percent, to 1,155 yuan per thousand cubic meters because of relatively low prices and strong demand, he said.