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High Court Quashes Moser Baer Anti-dumping Finding in Pen Drive Case

- DGAD Erred in Violating Natural Justice
- Revenue Holds Up Notification to Implement finding of DGAD on Court Order

(See also *World Trade Scanner* of 19-20 Jan 2015, Issue No. 43 - *Anti-dumping Duty of Rs. 200 per Piece on Pen Drives Recommended*)

WP(C) 744/2015 & CM Nos. 1319/2015, 2662/2015
SANDISKINTERNATIONALTDPetitioner
Versus
THE DESIGNATED AUTHORITY & ORS.Respondents

Case Highlights:

CORAM:- HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

Judgment

New Delhi, 18 March 2015



SanDisk, a Company established in Ireland has impugned the final findings dated 19.12.2014 issued by the Designated Authority (DA). The subject goods in respect of which the final findings have been rendered are "USB Flash Drives."

Following the decision of the Supreme Court in Automotive Tyre Manufacturers Association held that the Designated Authority functions as a quasi-judicial authority and decides a "lis" between persons supporting the levy of duty and those opposing the levy. Furthermore, the DA is bound to follow the principles of natural justice and to give an opportunity of hearing to all interested parties, in fact, "to all the parties, who have filed objections and adduced evidence".

In the present case, the Designated Authority has disregarded the transaction-by-transaction import statistics submitted by the domestic industry alongwith the application seeking initiation and introduced fresh data and relied on the transactions-by-transactions imports statistics obtained by him from the respondent No.4 (Moser Baer) at the very fag end of the investigation. The data was introduced after a period of seventeen months of initiation of investigation. Neither the copy of the said data relied upon by the Designated Authority nor the non confidential summary thereof was not supplied to the petitioners despite the same being

demanded on the ground of confidentiality.

The hearing required to be provided to an interested party cannot be an empty formality. It has to be an effective hearing. Since the investigation and determination is based on positive evidence and involves an objective examination of both the volume and the effect of the dumped imports on prices in the domestic market for like products and the material submitted by the parties has to be objectively examined, the DA is required to make available the evidence presented to it by one party to other interested parties, participating in the investigation and also the evidence or the material sourced by the DA from other sources to the parties. >>>

One Year after Due Date, Nirmala says Foreign Trade Policy 2014-19 will be Announced "Soon"



When next?

The government will soon unveil the much-delayed Foreign Trade Policy (FTP) which is expected to roll out steps to boost exports.

"Yes, I am conscious that the FTP (2014-19) was due even as of April 1, last year. Hopefully, we will come out (with FTP) soon," Commerce and Industry Minister Nirmala Sitharaman told reporters here.

The minister said that the delay in announcement of FTP is not the reason for declining exports.

"I differ from this view. Even when the FTP was explicit and was there in place between 2009 and 2014 exports suffered," she said.

However, Sitharaman added that a policy in place helps in giving direction.

"A policy in place does help because you are able to identify sectors," she added.

Talking about the delay in unveiling of the policy, she said that the new five year FTP requires comprehensive deliberations on various sectors and exporting destinations.

"The new policy needs to be out of the box and it has to support India's exports in terms of looking at sectors and their capability and new and traditional markets of the world..."

...so a comprehensive exercise of how to help exports, how better focus on areas which have great potential for India's exports have to be worked out in great details, she said.

The ministry has done an extensive job on it, she said.

Marginal Pick Up in Oil

Crude Oil (Indian Basket) from 18 to 24 March 2015

	18 Mar	19 Mar	20 Mar	23 Mar	24 Mar
(\$/bbl)	51.46	52.78	52.50	52.83	53.66
(Rs/bbl)	3225.00	3294.53	3280.73	3290.78	3337.65
(Rs/\$)	62.67	62.42	62.49	62.29	62.20

(Previous Trading Day Price)

Source: Ministry of Petroleum & Natural Gas

The Rules make it obligatory on the part of the Designated Authority to share all material with the interested parties subject to the confidentiality provisions. The Designated Authority has not only refused to supply the non confidential summary of the data sourced from respondent No. 4 but has also not disclosed the non injurious price of the subject goods as determined by him. Determination of the non-injurious price is a primary feature of the investigation conducted by the Designated Authority. Unless the data, being relied upon, is shared with the interested parties, there cannot be an effective opportunity of a hearing. Non-sharing of information mandatorily required to be shared under the Rules vitiates the findings. Failure to supply the data (subject to the rules of confidentiality) has curtailed the rights of and amounted to denial of an opportunity of effective participation to the petitioner and violates the principles of natural justice. The Final Findings dated 19.12.2014 rendered in violation of the principles of natural justice are thus liable to be quashed.

There is no merit in the contention of the respondent that since, the Final Finding are only recommendatory in nature, the petition is premature. It is no longer res-integra that this court in exercise of powers under Article 226 of the Constitution of India is empowered to entertain a petition challenging the Final Findings even prior to the same being accepted by the central government more so in a case where the principles of natural justice have not been complied with.

Further contention raised that the petitioner itself had supplied data by scoring out of confidential information and thus could not raise a grievance with regard to the non supply of data to the petitioner also does not have any merit. The Designated Authority has accepted the claim of confidentiality of the petitioner and the said upholding of claim has not been challenged by the respondent domestic industry. If the Designated Authority is not satisfied with the claim of confidentiality by one of the parties, the Designated

Authority is empowered by the Rules to disregard and refuse to take into consideration the data furnished by that party but the Designated Authority cannot refuse to supply data furnished by others to the said party. The fact that the Rules prescribe that 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 authorize its disclosure in a generalized or summary form, it may disregard such information, further emphasises the fact that for an investigation to comply with the principles of natural justice, it mandatorily entails sharing with the interested parties, the information/data being considered by the Designated Authority.

With regard to the alternative submission of the learned Senior Counsel for the respondent that the matter could be remanded to the Designated Authority for a post decisional hearing, we need to look at the various timelines prescribed by the Rules.

As noted hereinabove under Rule 17 it is mandatory on the Designated Authority to determine within one year from the date of initiation of an investigation, as to whether or not the article

under investigation is being dumped in India and submit its Final Findings to the Central Government. The Central Government in special circumstances has been empowered to extend the aforesaid period of one year by six months.

Rule 18 also lays down a time limit for the central government to impose the anti dumping duty i.e. a period of three months of the date of the publication of the final findings by the Designated Authority.

In the present case the investigation commenced on 21.06.2013. Under Rule 17, the period would have expired on 20.06.2014. The Central Government had the power to extend the said period by another six months i.e. till 20.12.2014. The Final Findings have been issued on 19.12.2014. Even the extended period of investigation is long

Iran Nuclear Deal could Trigger Fresh Oil Price Crash

Two of the biggest news stories of 2015 have been the fall in global oil prices and the ongoing negotiations between Iran, the United States, and others around Iran's nuclear weapons research. And because Iran relies so heavily on oil exports to earn income, the two stories are deeply interlinked.

On the one hand, the decline in the world oil price has made life harder for Iran. On the other hand, relaxing the sanctions against Iran could drive down global oil prices even further - a boon to most of the world's economies, including those of most of the countries pressuring Iran to disarm.

Iran's oil production has been declining but could come back

Iran has almost 10 percent of the world's proven reserves. But in terms of actual oil production, the country does little. That reflects the multifaceted impact of international sanctions on the Iranian industry. Most of all, the financial sanctions have made it extremely difficult for Iran to attract the foreign investment needed to actually pump the oil out of the ground.

More recently, other sanctions on Iranian shipping and direct bans on the importation of Iranian crude oil have further squeezed the industry. In January, Iran's oil minister told a local newspaper that exports had fallen 60 percent since their peak in 2011 to about 1 million barrels per day.

If sanctions were lifted, this trend would turn around as new investment poured into the Iranian industry. Of course, it would take some time for investment to lead to production, and most likely any deal would only provide partial sanctions relief.

Iran has 37 million barrels of oil in storage ready for immediate export

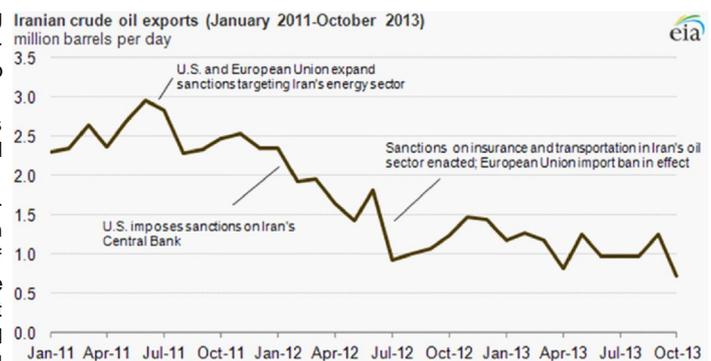
Beyond oil sitting untapped in Iranian soils, there is a surprisingly large quantity of oil that has been pumped and is simply sitting around in storage containers. "Ahead of Barack Obama's visit to New Delhi in January, the Indian government asked domestic refiners to slash purchases of

over. The Rules make a solitary exception and that also in the case of the investigation being suspended on the acceptance of a price undertaking by the exporter of the article in question. In view of the fact that the statutory period is over, the matter cannot be remanded to the Designated Authority for a fresh consideration.

In view of the above, we hold that the DA, in not providing the information/material considered by him, has violated the principles of natural justice and the same is fatal to the Final Findings rendered. Consequently, the Final Findings, having been rendered in violation of the principles of natural justice, stand vitiated and cannot be sustained. As a result, the impugned Final Findings are quashed. The writ petition is allowed to this extent. There shall be no order as to costs.

Iranian oil and keep imports in line with the previous fiscal year's levels." This means oil the Iranians have been pumping for the Indian market has been cooling its heels in storage instead.

Back in late 2014, India was importing 348,000 barrels of Iranian oil per day, which it is allowed to do under the current international sanctions regime. That has fallen to around 50,000 barrels per day as a favor to the anti-Iranian coalition - a favor that is likely tolerable for India because the global trend toward cheap oil makes Iranian imports less desirable.



This and other export curbs mean that for a while now, Iranian exports have actually dropped even more rapidly than Iranian production. The country has responded by investing massively in oil storage. Iran has about 37 million barrels in storage. Unlike oil that's sitting in the ground, oil stored in tankers really could explode onto world markets very quickly in the wake of any kind of diplomatic sentiment. Even if formal sanctions were released only gradually, for example, it is very unlikely that India and other countries would keep up informal deals to swear off Iranian crude.

And it would be even better news for the economies of other key participants in the negotiations - especially Germany and China - that lack America's domestic oil industry.

Conversely, Russia, which has traditionally been one of the countries that is friendliest to Iran, would suffer further economic harm from an influx of Iranian oil. And the Persian Gulf states - led by Saudi Arabia - have generally taken a strong anti-Iranian line in geopolitics and have a strong economic interest in keeping Iranian oil off the market.

WEEKLY INDEX OF CHANGES

Alloy Steel Bars and Rods Import Must follow BIS Standard

Subject: Import of Steel and Steel Products

08-CBEC Attention is invited to Steel
24.03.2015 and Steel Products (Quality
(DoR) Control) Order, 2012, Steel and
Steel Products (Quality control)
Second Order, 2012, Steel and Steel Products
(Quality Control) (Amendment) Order 2014, Steel
and Steel Products (Quality Control) Second (2nd
Amendment) Order, 2014 on the above subject .
Reference is also drawn to Board's instruction of
even number dated 09.07.2014 regarding imple-
mentation of Steel and Steel Products (Quality
Control) Order, 2012 and Steel and Steel Prod-
ucts (Quality Control) Second Order 2012.

2. The Steel and Steel Products (Quality Con-
trol) (Amendment) Order, 2014 and Steel and
Steel Products (Quality Control) Second (2nd
Amendment) Order, 2014 insert the following
explanation in Steel and Steel Products (Quality
Control) Order, 2012 and Steel and Steel Prod-
ucts (Quality Control) Second Order, 2012 re-
spectively:

"Explanation 1.- The provisions of this Order
shall apply to the products described under col-
umn (2) of the schedule covered under the relevant
Indian Standard number mentioned under column
(1).

Explanation 2.- ITC (HS) Codes mentioned un-
der column (3) are generic and indicative in

nature."

3. In this regard, Board has received representa-
tions that imports of steel products are being
allowed without compliance of mandatory Indian
Standards stipulated i.e. IS:2062, IS:2002, IS:
2041, IS: 277 and IS: 1786 in the Steel and Steel
Products (Quality Control) Second Order, 2012.
Reportedly this is being done even after the
notification of the Steel and Steel Products (Qual-
ity Control) Second (2nd Amendment) Order, 2014
with effect from 04.12.2014.

4. The Board desires that the import of Steel and
Steel Products in contravention of the Steel and
Steel Products (Quality Control) Order, 2012 and
Steel and Steel Products (Quality Control) Sec-
ond Order, 2012 as amended should not be
allowed. Chief Commissioners of Customs / Cus-
toms and Central Excise are advised to suitably
instruct officers and staff in their jurisdiction that
provisions of the Steel and Steel Products (Qual-
ity Control) Order 2012 and Steel and Steel
Products (Quality control) Second Order 2012 as
amended are strictly complied with and import of
sub standard and steel products in contravention
of aforementioned Orders are not permitted.

5. Difficulty faced, if any, may be brought to the
notice of the Board.

F. No. 450/71/2014-Cus IV

Siddhartha Testing, Nepal Delisted as Preshipment Inspection Agency

Subject: Removal of M/s. Siddhartha Testing and Consulting Services, Nepal from the list of Inspection and Certification Agencies (Appendix 5).

88-PN(RE) M/s. Siddhartha Testing &
20.03.2015 Consulting Services, Nepal was
(DGFT) notified as Pre Shipment
Inspection Agency vide Public

Notice No. 52 dated 28.3.2013 for Nepal. A Show
Cause Notice (SCN) No. 01/53/162/1032/PSIA/
AM13/S-81/IC was issued to M/s. Siddhartha
Testing & Consulting Services, Nepal on 19.3.2014

for mis-declaration and concealment of informa-
tion in the application form submitted by them
while applying for recognition as PSIA. Thereaf-
ter, an adjudication order No. 01/53/162/1032/
PSIA/AM13/S-81/IC was issued on 8.8.2014 for
cancellation of their recognition as Pre Shipment
Inspection Agency.

2. Therefore, in exercise of powers conferred

40 More New Items Included in SCOMET List

Subject: Updation of SCOMET list [Appendix 3 to Schedule 2 of ITC (HS) Classification of Export & Import Items].

116-Ntfn(RE) In exercise of powers conferred
13.03.2015 by Section 5 and Section 14 A
(DGFT) of the Foreign Trade
(Development & Regulation)

Act, 1992 {FT(D&R) Act,1992} as amended, the
Central Government hereby makes the following
amendments to the list of specified goods, ser-
vices and technologies, i.e. Special Chemicals,
Organisms, Materials, Equipment and Technolo-
gies (SCOMET) that was notified vide Notification
No.37 (RE-2012) /2009-2014 dated 14th March,
2013 and amended vide Notification No.26 (RE-
2013) /2009-2014 dated 3rd July, 2013:

2. Amendments in the SCOMET categories will
be as follows:

A) After SCOMET 2A028, the following shall be
added:-

"2A029 Enterohaemorrhagic Escherichia coli,

serotype O157 and other verotoxin pro-
ducing serotypes

2A030 Mycoplasma capricolum subspecies
capripneumoniae ('strain F38')

2A031 Salmonella typhi"
B) After SCOMET 2B005, the following shall be
added:-

"2B006 Coccidioides posadasii"

C) After SCOMET 2D053, the following shall be
added:-

"2D054 Andes virus

2D055 Chapare virus

2D056 Choclo virus

2D057 Dobrava-Belgrade virus

2D058 Herpes virus (Aujeszky's disease)

2D059 Hendra virus (Equine morbillivirus)

2D060 Laguna Negra virus

Agri-Infrastructure Incentive Scrip Half Yearly from October'2013 to March' 2014 – Deficiencies in Applications should be Rectified by 27 March

Subject: Submission of applications in terms of Para 3.13.4 of Foreign Trade Policy (Agri-Infrastructure Incentive Scrip) Half Yearly period from October'2013 to March' 2014.

02-TN In Pursuance of Para 3.13:4
02.03.2015 of Foreign Trade Policy,
exporters had filed their
applications for Agri Infrastructure Incentive
Scrip, in respect of exports made by them
during half yearly period October'2013 to March'
2014. In cases of efficient applications, defi-
ciencies had already been pointed out, how-
ever, replies in some of the cases has not yet
been received.

Trade is hereby informed that deficiencies in
respect of such applications should be recti-
fied by 27.03.2015, failing which applications
would be summarily rejected and no further
correspondence in such cases would be en-
tertained.

under paragraph 2.4 of the Foreign Trade Policy,
2009-2014, the Director General of Foreign Trade
hereby makes the following amendment in Ap-
pendix-5 (List of Inspection and Certification Agen-
cies) of Handbook of Procedures Vol. I (Appendi-
ces and Aayaat Niryaat Forms) 2009-2014 with
immediate effect.

SNo.	Name of the Inspection Agency	
28	Siddhartha Testing & Consulting Services Siddharthnagar – 1, Rupandehi, Nepal Phone: +977-9806994689, +91-9453389495 E-Mail: siddhartha.t@consultant.com	Deleted

Effect of Public Notice

4. The above mentioned PSIA has been de-listed
from Appendix 5 and made ineligible to issue Pre-
Shipment Inspection Certificate.

2D061	Louping ill virus
2D062	Lujo virus
2D063	Lumpy skin disease virus
2D064	Lassa fever virus
2D065	Nipah virus
2D066	Oropouche virus
2D067	Porcine enterovirus type 9 (synonym: swine vesicular disease virus)
2D068	Rocio virus
2D069	Seoul virus"
D) After SCOMET 2F017, the following shall be added:-	
"2F018	Cholera toxin
2F019	Conotoxin
2F020	Diacetoxyscirpenol toxin
2F021	HT-2 toxin
2F022	Modeccin toxin
2F023	T-2 toxin
2F024	Verotoxin and shiga-like ribosome inac- tivating proteins
2F025	Viscum Albut Lectin 1 (Viscumin)

- 2F026 Volkensin toxin “
- E) After SCOMET 2G024, the following shall be added:-
- “2G025 *Clavibacter michiganensis* subsp. *sepedonicus*
- 2G026 *Cochliobolus miyabeanus*
- 2G027 Andean potato latent virus (Potato Andean latent tymovirus)
- 2G028 Potato spindle tuber viroid”
- F) For SCOMET 3A301, the following shall be substituted:
- “3A301 Fuel substances as follows:
- Hydrazine (CAS 302-01-2) with a concentration of more than 70%;
 - Hydrazine derivatives as follows:
 - Monomethylhydrazine (MMH) (CAS 60-34-4);
 - Unsymmetrical dimethylhydrazine (UDMH) (CAS 57-14-7);
 - Hydrazine mononitrate (CAS 13464-97-6);
 - Trimethylhydrazine (CAS 1741-01-1);
 - Tetramethylhydrazine (CAS 6415-12-9);
 - N, N diallylhydrazine (CAS 5164-11-4);
 - Allylhydrazine (CAS 7422-78-8);
 - Ethylene dihydrazine;
 - Monomethylhydrazine dinitrate;
 - Unsymmetrical dimethylhydrazine nitrate;
 - Hydrazinium azide (CAS 14546-44-2);
 - Dimethylhydrazinium azide;
 - Hydrazinium dinitrate (CAS 13464-98-7);
 - Diimido oxalic acid dihydrazine (CAS 3457-37-2);
 - 2-hydroxyethylhydrazine nitrate (HEHN);
 - Hydrazinium perchlorate (CAS 27978-54-7);
 - Hydrazinium diperchlorate (CAS 13812-39-0);
 - Methylhydrazine nitrate (MHN) (CAS 29674-96-2);
 - Diethylhydrazine nitrate (DEHN);
 - 3, 6-dihydrazino tetrazine nitrate (DHTN);
- Technical note: 3, 6-dihydrazino tetrazine nitrate is also referred to as 1, 4-dihydrazine nitrate
- Spherical or spheroidal aluminium powder (CAS 7429-90-5) in particle size of less than 200 x 10-6 m (200 µm) and an aluminium content of 97% by weight or more, if at least 10% of the total weight is made up of particles of less than 63 µm, according to ISO 2591-1:1988 or national equivalents;
- Technical Note: A particle size of 63 µm (ISO R-565) corresponds to 250 mesh (Tyler) or 230 mesh (ASTM standard E-11).
- Hydrazine replacement fuels as follows:
 - 1,2-Dimethylaminoethylazide (DMAZ) (CAS 86147-04-8);
- G) For SCOMET 3A303, the following shall be substituted:
- “3A303 Polymeric substances, as follows:
- Carboxy-terminated polybutadiene (including carboxyl – terminated polybutadiene) (CTPB);
 - Hydroxy-terminated polybutadiene (including hydroxyl – terminated polybutadiene) (HTPB);
 - Glycidyl azide polymer (GAP);
 - Polybutadiene - Acrylic Acid (PBAA);
 - Polybutadiene - Acrylic Acid - Acrylonitrile (PBAN);
 - olytetrahydrofuran polyethylene glycol (TPEG).
 - Polyglycidyl nitrate (PGN or poly-GLYN) (CAS 27814-48-8).

China Rises to Third Largest Arms Exporter in the World

China has become the world's third largest exporter of arms after the US and Russia, according to a new report.

China overtook Germany, France and the UK in exporting weapons between 2010 and 2014, said the Stockholm International Peace Research Institute (SIPRI).

China now accounts for about 5% of the world's exports of arms.

Three Asian countries, Pakistan, Bangladesh and Myanmar, accounted for more than two-thirds of those exports.

The world's second largest economy also had 18 African nations as clients during the five year period, according to the study, which said the data reflected the volume of arms deliveries and not the financial value of the deals.

China exports jump

China's exports of major arms rose by 143% in the five years to 2014 from the previous five years.

Meanwhile, Germany's arms exports fell by 43%, while France's dropped 27% in the same time frame.

Overall, that compares to a 16% increase in the volume of arms transferred around the world.

However, despite China's big jump in the global rankings, there is still a sizeable gap between the volume of its exports and those of the top two exporters the US and Russia.

The US accounted for 31% of the world's weapons exports, while Russia sold 27%. Exports from those two countries rose 23% and 37% respectively in the time period.

SIPRI compares arms sales over five year periods because of large fluctuations in the volumes of arms traded year on year.

The 10 largest exporters of major weapons

Country	Share of global exports 2010-14
US	31%
Russia	27%
China	5%
Germany	5%
France	5%
UK	4%
Spain	3%
Italy	3%
Ukraine	3%
Israel	2%

Technical Note:

Polytetrahydrofuran polyethylene glycol (TPEG) is a block co-polymer of poly 1, 4-Butanediol (CAS 110-63-4) and polyethylene glycol (PEG) (CAS 25322-68-3)."

H) For SCOMET 3B016, the following shall be substituted:

“3B016 Metal powder production equipment usable for the production, in a controlled environment, of spherical, spheroidal or atomised materials specified in 3A301.c or 3A302.

Note: This entry includes:

- Plasma generators (high frequency arc-jet) usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;
 - Electroburst equipment usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;
 - Equipment usable for the production of spherical aluminium powders by powdering a melt in an inert medium (e.g. nitrogen). “
- I) In SCOMET 5A102 -

(i) for clause c and the entry relating thereto, the following shall be substituted:

“c. Liquid, slurry and gel propellant (including oxidisers) control systems, and specially designed components therefor, usable in missiles and rockets, designed or modified to operate in vibration environments greater than 10 grms between 20 Hz and 2 kHz.

Notes:

- The only servo valves, pumps and gas turbines specified in 3.A.5. are the following:
 - Servo valves designed for flow rates equal to or greater than 24 litres per minute, at an absolute pressure equal to or greater than 7 MPa, that have an actuator response time of less than 100 ms.
 - Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 rpm at the maximum operating mode or with discharge pres-

sures equal to or greater than 7 MPa

1.3. Gas turbines, for liquid propellant turbopumps, with shaft speeds equal to or greater than 8,000 rpm at the maximum operating mode.

2. Systems and components specified in this clause may be exported as part of a satellite”;

(ii) after clause i and the entry therein, the following shall be inserted:

“j. Combustion chambers and nozzles for liquid propellant rocket engines”;

J) In SCOMET 5C009, for the words “and Accelerometer test station” the figure and words”, Accelerometer test station and Fiber Optic Gyro Coil Winding Machines” shall be substituted

K) After SCOMET 7A009 and the entry relating thereto, the following shall be inserted:

“7A010 Analogue-to-digital converters, usable in the systems specified in 5A, having any of the following characteristics:

- Designed to meet military specifications for ruggedised equipment; or
- Designed or modified for military use and being any of the following types:

1. Analogue-to-digital converter microcircuits, which are radiation-hardened or have all of the following characteristics:

- Rated for operation in the temperature range from below -54°C to above+125°C; and
- Hermetically sealed;

or

2. Electrical input type analogue-to-digital converter printed circuit boards or modules, having all of the following characteristics:

- Rated for operation in the temperature range from below -45°C to above+80°C; and
- Incorporating microcircuits specified in 7A010.b.1.”

3. Purpose of this notification:

Amendments/additions to Categories 2, 3, 5 & 7 of SCOMET list [Appendix 3 to Schedule 2 of ITC(HS) Classification of Export & Import Items] have been notified.

Passing Off and Trademark Law

A cause of action for passing off is a form of intellectual property enforcement against the unauthorised use of a mark which is considered to be similar to another party's registered or unregistered trademarks, particularly where an action for trademark infringement based on a registered trade mark is unlikely to be successful (due to the differences between the registered trademark and the unregistered mark). Passing off is a form of common law, whereas statutory law as such provides for enforcement of registered trademarks through infringement proceedings.

Passing off and the law of registered trademarks deal with overlapping factual situations, but deal with them in different ways. Passing off does not confer monopoly rights to any names, marks, get-up or other indicia. It does not recognize them as property in its own right.

Instead, the law of passing off is designed to prevent misrepresentation in the course of trade to the public, for example, that there is some sort of association between the businesses of two traders.

One early example of its application by the United Kingdom Intellectual Property Office can be found in a Trade Mark Opposition Decision in 2001. It was held that two brands of confectionery both named "Refreshers", one made by Swizzels Matlow and one by Trebor Bassett, which had coexisted since the 1930s, would deceive a consumer as to their source for some items but not for others. Both coexist in the marketplace.

Required elements

When coming to Court, there are three ele-

ments, often referred to as the Classic Trinity, in the tort which must be fulfilled.

1. Goodwill owned by a trader
2. Misrepresentation
3. Damage to goodwill

The plaintiff has the burden of proving goodwill in its goods or services, get-up of goods, brand, mark or the thing standing for itself.

The plaintiff also has the burden of proof to show false representation (intentional or otherwise) to the public to have them believe that goods/services of the defendant are that of the Plaintiff. There must be some connection between the plaintiff's and defendant's goods, services or trade. They must show likelihood or actual deception or confusion by the public. Deception or confusion, however, does not consider a "moron in a hurry".

It is the Court's duty to decide similarity or identity of the marks, goods or services. The criteria are often: aural, visual and conceptual similarity (often applied in trademarks infringement cases).

For the element of damage to goodwill, there may be a loss or diversion of trade or dilution of goodwill. The plaintiff need not prove actual or special damage; real and tangible probability of damage is sufficient. This damage should however be reasonably foreseeable. It is not enough just to show likelihood or actual deception or confusion.

Ultimately, the Court must use common sense in determining the case, based on evidence and judicial discretion, and not witnesses.

Disclaimers may not be enough to avoid passing off or cause of action

investigations.

Under WTO rules, the finding of injury to a domestic industry and the causal link are preconditions for imposing anti-dumping and countervailing duties.

China dispute in the background

The coated paper industry across various Asian countries has been the subject of several anti-dumping (AD) and countervailing duty (CVD) investigations by US authorities in recent years.

The first investigation was launched upon the request of one US company against imports from Indonesia, Korea, and China during the 2004-2006 period, with the investigation leading to a finding of no injury to domestic industry in late 2007. Notably, this marked the very first combined AD/CVD investigation against China; previously, non-market economy countries were not the subject of US countervailing investigations.

Beijing had challenged US countervailing duties against various Chinese products in 2012 (DS437). The WTO Appellate Body granted a mixed victory in China's favour last year.

Unlike Indonesia, China had challenged only the imposition of the countervailing duty measures under 17 investigations conducted by the US Commerce Department between 2007-2012. These involved a range of products, including coated paper during 2009-2010, and therefore reflected different litigation strategies.

For instance, China referred to the coated paper investigations as evidence that the US Commerce Department deemed, as a general rule, that majority government-owned entities are public bodies within the meaning of Article 1.1(a)(1) of the SCM Agreement.

Indonesia Challenges US 20% Anti-dumping Duty on Art Paper at WTO

Indonesia has formally challenged a series of US anti-dumping and countervailing measures on imports of coated paper used for high-quality print graphics, with the Asian archipelago filing a request for consultations at the WTO last Friday.

Under WTO rules, countries are allowed to apply retaliatory measures against imports that are sold within their borders at below normal value— a practice known as "dumping" in trade parlance — while countervailing duties are meant to target instances of allegedly unfair subsidies being provided by governments to domestic producers.

The measures currently challenged by Indonesia stem from a September 2009 investigation by the US Commerce Department. The probe was launched following a request by four petitioners and covered imports of coated paper products from Indonesia and China during 2007-2009.

The probe ultimately led to US authorities imposing anti-dumping duties of 20.13 percent and countervailing duties of 17.94 percent on these goods in November 2010.

Indonesia has now challenged these measures on both substantive and procedural grounds, citing provisions of the WTO's Antidumping Agreement (AD) and Subsidies and Countervailing (SCM) Agreement in its consultations request.

Under the SCM Agreement, one of the factors involved in determining the presence of a subsidy is that the alleged subsidy must confer a benefit and be specific to certain enterprises within the granting authority.

Indonesia claims that the US Commerce Department, which is tasked with Washington's trade remedy investigations, erred in its determinations of "benefit" and "specificity."

For instance, the US agency allegedly failed to determine properly whether Jakarta provided standing timber for adequate remuneration. Indonesia also claims that the US Commerce Department failed to examine whether there was a "subsidy programme," along with failing to identify the entity providing the alleged government support, and therefore was wrong to determine that it was specific to an enterprise.

In Indonesia's view, the US authorities also wrongly applied adverse facts available without assessing information provided by Jakarta in examining the allegedly forgiven debt — one form of financial contribution, which is another element for determining a "subsidy."

Indonesia has also challenged the determination of threat of injury to US domestic industry and the existence of a causal relationship between the imports and the injury in both Washington

Japan's Exports Rise More Than Forecast, Supporting Recovery

Japanese exports rose more than forecast in February, supporting the nation's emergence from a recession last year.

The value of overseas shipments rose 2.4 percent from a year earlier, the government said. Imports fell 3.6 percent, leaving a 424.6 billion yen (\$3.5 billion) trade deficit.

Sales abroad are a growing bright spot in a country that's still struggling with weak spending by consumers and businesses at home. Falling oil prices are helping shrink the deficit, which swelled after Japan increased fossil-fuel purchases from abroad after the Fukushima disaster in 2011.

"Exports will probably continue to be the main driver for Japan's economy in the first half of this year," said Minoru Nogimori, an economist at Nomura Holdings Inc. in Tokyo. "With a recovery in wages, consumption may gain momentum and become the key driver for the economy in the latter half of the year."

Exports fell by volume from a year ago, with the figures affected in part by the timing of Lunar New Year holidays, which were in February this year but in 2014 also included part of January.

Overseas shipments by value increased 9.4 percent in the first two months of this year from the same period in 2014, while volume increased by an average 4.1 percent, according to calcula-

tions based on data from the finance ministry. Imports by value fell 6.6 percent and by volume slipped an average 1.4 percent over the two months.

Yen Impact

The yen has little changed at 121.34 per dollar in Tokyo. It's weakened 30 percent since Prime Minister Shinzo Abe came to power, boosting exporters and while increasing import costs.

Shipments of motor vehicles, electrical parts such as semiconductors and metal-working ma-

chines contributed to gains in February. Exports to the U.S. rose 14 percent from a year ago while sales to China dropped 17 percent.

"The value of imports will likely decrease in the months ahead due to declines in oil prices," Nogimori said.

Brent crude has dropped about 53 percent since a peak in June last year.

Gross domestic product expanded an annualized 1.5 percent in the three months through December from the previous quarter, after shrinking for two quarters.

India-EU April Summit Cancelled – FTA in Limbo Once Again Modi not Welcome in Brussels with Italy-India Stand Off on Fishermen Killing in Kochi

A planned April summit between the EU and India has been cancelled, officials confirmed.

An EU parliamentary delegation is visiting India this week, having planned to lay the groundwork for the upcoming summit between Indian Prime Minister Narendra Modi and his EU counterparts. Officials on both sides have told news media that they are interested in reviewing past areas of trade disagreements to see if they can inject momentum into the long-running talks.

Some officials have indicated that the postponement could be to the discussions' benefit. Indian foreign secretary Kanwal Sibal told the LiveMint news agency that the cancellation of Modi's visit to Brussels could allow negotiators "time to work on narrowing differences."

Eight years of talks

Negotiations for a bilateral pact began in June 2007, but after several rounds of talks the momen-

tum dropped off in mid-2013, with no rounds being held since.

Among the broad range of subjects slated for treatment by the India-EU FTA are market access in goods, services, and government procurement; their investment framework; and labour and environmental issues.

The talks have long struggled to push past differences on areas such as geographical indications, insurance, investment laws, intellectual property rights, services, and automobile and wine tariffs.

Trade between Asia's third biggest economy and the 28-member EU has boomed in recent years, adding to the urgency of concluding the talks. Between 2003 and 2013, bilateral trade nearly tripled from €28.6 billion to €72.7 billion, according to EU statistics.

Tough Black Money Bill Imposes 120% Burden on Money Outside India

- It's Better to be a Non-Indian these Days!

Highlights of the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 Introduced in Lok Sabha on 20 March

The Finance Minister, in his budget speech, while acknowledging the limitations under the existing law, had conveyed the considered decision of the Government to enact a comprehensive new law on black money to specifically deal with black money stashed away abroad. He also promised to introduce the new Bill in the current Session of the Parliament.

The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 was introduced in the Parliament on 20.03.2015. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act but under the stringent provisions of the proposed new legislation.

The **salient features** of the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 are as under:-

- Scope – The Act will apply to all persons resident in India. Provisions of the Act will apply to both undisclosed foreign income and assets (including financial interest in any entity).
- Rate of tax – Undisclosed foreign income or assets shall be taxed at the flat rate of 30

percent. No exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income-tax Act, 1961, shall be allowed.

Penalty plus tax to be more than the Undisclosed income

- The penalty for non-disclosure of income or an asset located outside India will be equal to three times the amount of tax payable thereon, i.e., 90 percent of the undisclosed income or the value of the undisclosed asset. This is in addition to tax payable at 30%.
- Failure to furnish return in respect of foreign income or assets shall attract a penalty of Rs.10 lakh. The same amount of penalty is prescribed for cases where although the assessee has filed a return of income, but he has not disclosed the foreign income and asset or has furnished inaccurate particulars of the same.

Prosecutions – Rigorous Imprisonment for 3-10 years Plus Fine

The punishment for willful attempt to evade tax in relation to a foreign income or an asset located outside India will be rigorous imprisonment from

three years to ten years. In addition, it will also entail a fine.

No Return, Abetment to Offence means RI for 6 months

Failure to furnish a return in respect of foreign assets and bank accounts or income will be punishable with rigorous imprisonment for a term of six months to seven years. The same term of punishment is prescribed for cases where although the assessee has filed a return of income, but has not disclosed the foreign asset or has furnished inaccurate particulars of the same.

The above provisions will also apply to beneficial owners or beneficiaries of such illegal foreign assets.

Abetment or inducement of another person to make a false return or a false account or statement or declaration under the Act will be punishable with rigorous imprisonment from six months to seven years. This provision will also apply to banks and financial institutions aiding in concealment of foreign income or assets of resident Indians or falsification of documents.

Provision for Natural Justice, Appeal to ITAT

Safeguards – The principles of natural justice and due process of law have been embedded in the Act by laying down the requirement of mandatory issue of notices to the person against whom proceedings are being initiated, grant of opportunity of being heard, necessity of taking the evidence produced by him into account, recording of reasons, passing of orders in writing, limitation of time for various actions of the tax authority, etc. Further, the right of appeal has been protected by providing for appeals to the Income-tax Appellate Tribunal, and to the jurisdictional High Court and the Supreme Court on substantial questions of law.

Balances upto Rs. 5 lakhs Exempt from Fine and Penalty

To protect persons holding foreign accounts with minor balances which may not have been reported out of oversight or ignorance, it has been provided that failure to report bank accounts with a maximum balance of upto Rs.5 lakh at any time during the year will not entail penalty or prosecution.

Other safeguards and internal control mechanisms will be prescribed in the Rules.

Amnesty – Pay 30% Tax and 30% Penalty to Avoid Prosecution

One time compliance opportunity – The Bill also provides a one time compliance opportunity for a limited period to persons who have any undisclosed foreign assets which have hitherto not been disclosed for the purposes of Income-tax. Such persons may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30 percent and an equal amount by way of penalty. Such persons will not be prosecuted under the stringent provisions of the new Act. It is to be noted that this is not an amnesty scheme as no immunity from penalty is being offered. It is merely an opportunity for persons to come clean and become compliant before the stringent provi-

sions of the new Act come into force.

Amendment of PMLA – The Bill also proposes to amend Prevention of Money Laundering Act (PMLA), 2002 to include offence of tax evasion under the proposed legislation as a scheduled offence under PMLA.

Thus, in keeping with the commitment of the government for focussed action on black money front, an unprecedented and multi-pronged attack has been launched to root out the menace of black money. The Government is confident that this new law will act as a strong deterrent and curb the menace of black money stashed abroad by Indians.

Plain Cigarette Packaging in UK Soon



The UK's House of Lords approved regulations mandating plain packaging for cigarettes on Tuesday, just days after the House of Commons backed the measure. The move makes the United Kingdom the latest country to introduce such a policy, following Ireland, Australia, and Uruguay.

The UK regulations involve standardising the packaging in which cigarettes are sold, such as by limiting the packages to a uniform brown exterior and white interior. The same applies to hand rolling tobacco, according to a transcript of the House of Lords debate, though cigars and pipe tobacco would not be included.

Furthermore, the policy allows only "specified text" – such as the brand – in a standard font, and limits the packages to set shapes. The regulation does not change any of the existing labelling policies, including those regarding health warnings.

The measure passed in London this week will enter into effect in May 2016.

Growing trend

The UK decision came fast on the heels of Ireland's own approval of similar legislation, which is set to be fully implemented by 2017.

One of the countries at the forefront of the international plain packaging debate has been Australia, which was among the first to approve such legislation back in late 2011. The policy took effect a year later in order to give tobacco companies time to make the necessary changes in their production methods.

Opponents, however, have noted conflicting data from other sources regarding the use of tobacco products, while also suggesting that tax hikes could be a factor in any smoking decreases in Australia. Some have also warned of the possibility of illicit tobacco trade in white cigarettes, as well as the ease of copying the plain packs, which could make it easier for illegal versions to enter the supply chain.

Over in Geneva, the Australian measure is facing legal challenges at the WTO from five of its trading partners – Cuba, Dominican Republic, Honduras, Indonesia, and Ukraine – who have charged that the measure is unnecessarily trade-restrictive.

Australia's Plain Packaging Act, the complainants say, effectively undermines the protections provided to trademarks and geographical indications under WTO rules, making it difficult for their premium products to stand out in the marketplace and thus hindering fair competition.

The five countries have referred in their respective complaints to provisions in the WTO's rules on intellectual property and technical barriers to trade.

Other products to follow?

As the plain packaging debate continues over tobacco products, the possibility that this trend could spread to other industries – such as alcohol or unhealthy foods – has also been raised in public debate.

China Eyes December Outcome for Asia Trade Deal

Beijing aims to see the conclusion of a 16-country Asia-Pacific trade deal by the end of this year, Chinese Commerce Minister Gao Hucheng said this past weekend, while watching closely the development of a separate Pacific Rim trade deal – the Trans-Pacific Partnership (TPP), which does not include China.

The commerce chief was speaking at a press conference on the sidelines of the National People's Congress, the annual meeting of the Chinese parliamentary body and one of the most high-profile events on the Beijing political calendar.

The Regional Comprehensive Economic Partnership (RCEP), as the proposed 16-country deal is known, includes as members Australia, China,

Exchange Rates for Customs Valuation

Rupee Falls to Rs. 63 for Customs Valuation on Imports w.e.f. 20 March 2015

32-Cus(NT) In exercise of the powers conferred by section 14 of
19.03.2015 the Customs Act, 1962 (52 of 1962), and in super
(DoR) session of the notification of the Government of India in
the Ministry of Finance (Department of Revenue) No.

28/2015-CUSTOMS (N.T.), dated the 5th March, 2015 vide number S.O. 566(E), dated the 5th March, 2015, except as respects things done or omitted to be done before such super session, 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 20th March, 2015** 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
(1)	(2)	(3)			
		(a)		(b)	

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

1.	Australian Dollar	49.00	49.45	47.75	48.05
2.	Bahrain Dinar	170.55	170.05	161.25	160.75
3.	Canadian Dollar	50.20	50.65	49.00	49.55
4.	Danish Kroner	9.15	9.40	8.90	9.10
5.	EURO	68.20	69.90	66.50	68.15
6.	Hong Kong Dollar	8.15	8.10	8.00	7.95
7.	Kuwait Dinar	215.05	215.95	203.05	203.65
8.	New Zealand Dollar	47.25	47.75	46.05	46.35
9.	Norwegian Kroner	7.65	8.10	7.45	7.90
10.	Pound Sterling	94.20	96.10	92.10	93.95
11.	Singapore Dollar	45.85	46.00	44.75	45.05
12.	South African Rand	5.30	5.45	5.05	5.15
13.	Saudi Arabian Riyal	17.15	17.10	16.20	16.15
14.	Swedish Kroner	7.30	7.55	7.10	7.40
15.	Swiss Franc	63.80	65.25	62.30	63.70
16.	UAE Dirham	17.50	17.45	16.55	16.50
17.	US Dollar	63.00	62.80	62.00	61.80

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

1.	Japanese Yen	52.55	52.60	51.35	51.40
2.	Kenya Shilling	69.95	70.40	66.00	66.25

[F.No.468/01/2015-Cus. V]

India, Japan, New Zealand, South Korea, and all ten members of the Association of Southeast Asian Nations (ASEAN).

The RCEP negotiation was formally launched in November 2012, with the goal of inking a "modern, comprehensive, high-quality, and mutually beneficial economic partnership," according to a statement leaders issued in 2012 when announcing the talks.

Since then, negotiators have held seven official rounds, with the latest being held in Thailand in February. The group's 16 members account for 28 percent of the global economy, and the deal – if completed – would be one of the largest existing trade pacts.

Regional trade deals

China plans to "continue to unswervingly push forward and quicken the pace of China's free trade agreement strategy," Gao told reporters this past weekend, according to comments reported by the Reuters news agency.

Along with working to conclude the RCEP, the Chinese official also said that Beijing hopes to ramp up separate trilateral trade talks with Seoul and Tokyo.

Those negotiations date back to May 2012, though these have since slowed in light of territorial disputes between China and Japan, among other political tensions.

South Korean Deputy Foreign Minister Lee Kyung Soo said this week that foreign ministers of the three Asian economic giants will be meeting this month in Seoul to discuss the possibility of a leaders' summit – the first in three years.

Separately, China and South Korea initialed a bilateral trade deal of their own last month, with the two sides now preparing the deal for signature.

Other regional trade initiatives involving Beijing have also progressed in recent months, with China clinching a bilateral trade deal with Australia last November. The two sides are now undergoing the necessary "legal scrubbing" in order to open the deal for signature.

Eyes on TPP

The Chinese commerce official has said that his government is watching the TPP deal, as well as the ongoing Transatlantic Trade and Investment Partnership (TTIP) talks between the US and EU, closely to understand the potential impacts these could have on trade.

TPP negotiators are said to be trying to close as many gaps as possible during this week's Hawaii meeting, ahead of a potential ministerial gathering that could follow shortly thereafter. Several members from TPP member countries, particularly the US, have said that they aim to reach a

deal this year.

With 2015 now the target date for concluding both the TPP and RCEP, trade analysts have repeatedly questioned how the two trade deals will relate to one another, once finalised.

The two groups have significant overlap in their membership, with Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam involved in both negotiations.

However, they also have notable omissions: the US is not an RCEP member, and China is not involved in the TPP talks.

Slower growth

Among the various other announcements at the high-level event was Chinese Premier Li Keqiang's assertion that Beijing is reducing its economic growth target for 2015 to around seven percent, while targeting total trade growth at six percent for this year.

This "new normal," analysts says, appears to acknowledge the recent slowing in growth seen in China, while trying to temper expectations. Last year, the country reached a level of 7.4 percent GDP growth, the lowest in decades, and just under the 7.5 percent target the government had aimed for.

This year's approximately seven percent target, Li said, "takes into consideration what is needed and what is possible," citing a range of difficulties that the Asian nation is facing, such as deflationary pressure and limited investment growth.

African Tripartite FTA in June

The launch of a 26-country African trade deal will now take place in June during the third Tripartite Summit between the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and Southern African Development Community (SADC), sources have confirmed.

This Tripartite Free Trade Area (TFTA), once enacted, would bring together these three regional economic communities, COMESA, SADC and the EAC, which are jointly hosting the June event. The dates of the meet were not yet confirmed at press time.

The countries covered under the TFTA would range from Egypt to South Africa, a group that has a combined population of 625 million people and an aggregate GDP of US\$1 trillion. These figures represent half of the African Union's membership and 58 percent of the continent's economic activity, according to COMESA.

Negotiations to launch the TFTA began in 2011, when heads of state from the Tripartite countries adopted a declaration aimed at establishing an FTA that emphasised market integration, infrastructure, and industrial development as the three main pillars. The negotiating principles and related roadmap were also adopted during this summit.

More progress expected

Last month, Malawi hosted the 11th Tripartite Trade Negotiations Forum (TTNF), with discussions geared toward finalising work in various areas such as tariff offers, rules of origin (RoO) regimes, trade remedies, dispute settlement, and movement of business people.

Rules of origin

The COMESA-EAC-SADC troika faces significant challenges in harmonising differential RoO, which have so far impeded inter-regional trade and the creation of regional value chains. One of the key challenges involves finding an acceptable framework for RoO, as the EAC and COMESA regimes in this area are significantly different from the one used by SADC.

Work on rules of origin is likely to continue after the launch of the TFTA as part of the "post signature activities," one trade observer said.

Discussions related to rules on specific products will be more "gradual," although "it is not expected that such work will be completed prior to the launch."

Industrial development

The Tripartite Technical Committee on Industrial Development (TTCID) has adopted draft modalities for cooperation and a draft programme of work on industrial development.

This committee will now develop the appropriate legal instrument for cooperation in industrial development, as outlined in the Programme of Work and Road Map.

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