

Customs Tariff (Identification, Assessment and collection of countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995

UNION OF INDIA

India

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Rule

CUSTOMS-TARIFF-IDENTIFICATION-ASSESSMENT-AND-COLLECTION of 1995

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Customs Tariff (Identification, Assessment and collection of countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995Published vide Notification No. M.F.D.R./95. Custom (N.T), dated 1st January, 1995Last Updated 18th December, 2021Notification No. M.F.D.R./95. Custom (N.T), dated 1st January, 1995. - In exercise of the powers conferred by sub-section (7) of Section 9 and Sub-section (2) of Section 9B of the Customs Tariff Act 1975 (51 of 1975) and in supersession of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Bounty-fed Articles and for Determination of Injury) Rules, 1985, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely : -

1. Short title and commencement.

(1)These rules may be called the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995.(2)They shall come into force on the 1st day of January, 1995.

2. Definitions.

- In these rules, unless the context otherwise requires, -(a)"Act" Means the Customs Tariff Act, 1975 (51 of 1975),(b)"domestic Industry" [means the domestic producers as a whole engaged in the manufacture of the like article or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidised article, or like article from other countries or are themselves importers thereof] [Substituted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).] ["domestic industry" may be interpreted as referring to the rest of the producers] [Inserted by Notification No. G.S.R. No. 76(E), dated 01.2.2021 (w.e.f. 1.1.1995).]:Provided that in exceptional circumstances referred to in sub-rule (3) of rule 13, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market be deemed as a separate industry, if(i)the producers within such market sell all or almost all of their production of the article in question in that market, an(ii)the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;[Explanation. - For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if, -(a)one of them directly or indirectly controls the other; or(b)both of them are directly or indirectly controlled by a third person; or(c)together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.Note: For the purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.](c)"Interested party" includes -(i)an exporter or foreign producer or the importer of an article subject to investigation for being subsidized or a trade or business association a majority of the members of which are producers, exporters or importers of such an article; and(ii)a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;(ca)["like article" means an article which is identical or alike in all respects to the article under investigation or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the article under investigation; [Inserted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).](cb)"period of investigation" means the period during which the existence of subsidisation is examined.](d)"Provisional duty" means a countervailing duty imposed under sub-section (2) of [section 9] [Substituted 'Section 9A' by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).] of the Act;(e)"specified country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;(f)all words and expressions used in these rules, but not defined, shall have the meaning respectively assigned to them in the Act.

3. Appointment of designated authority.

(1)The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government

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

4. Duties of the designated authority.

- It shall be the duty of the designated authority in accordance with these rules -(a)to investigate the existence, degree and effect of any subsidy in relation to the import of an article;(b)to identify the article liable for countervailing duty.(c)to submit its findings, provisional or otherwise to the Central Government as to(i)the nature and amount of subsidy in relation to an article under investigation.(ii)the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such articles from the specified countries.(d)to recommend the amount of countervailing duty, which if levied would be adequate to remove the injury to the domestic industry and the date of commencement of such duty;(e)to review the need for continuance of countervailing duty.

5. Decision as to country of origin.

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

6. Initiation of investigation.

(1)Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of alleged subsidy only upon receipt of a written application by or on behalf of the domestic industry.(2)An application under sub-rule (1) shall be in the form as may be specified by the designated authority in this behalf and the application shall be supported by evidence of -(a)subsidy and, if possible, its amount(b)injury, where applicable, and(c)where applicable, a causal link between such subsidized imports and alleged injury.(3)The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1), unless -(a)it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like article, that the application has been made by or on behalf of the domestic industry;Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like product by the domestic industry, and(b)it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding(i)subsidy,(ii)injury, where applicable, and(iii)where applicable, a causal link between such subsidized imports and the alleged injury, to justify the notification of an investigation.Explanation. - For the purpose of this rule the application shall be considered to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the

case may be, to the application.(4)Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo motu if it is satisfied from the information received from [Principal Commissioner of Customs or Commissioner of Customs, as the case may be,] [Substituted 'Collector of Customs' by Notification No. G.S.R. No. 76(E), dated 01.2.2021 (w.e.f. 1.1.1995).] the appointed under the Customs Act, 1962 (51 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances referred to in sub clause (b) of sub-rule (3).(5)The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.(6)[The designated authority shall avoid any publicising of the application for the initiation of an investigation, unless a decision has been made to initiate an investigation.Explanation. - For the purposes of these rules, the period of investigation shall, -(i)not be more than six months old as on the date of initiation of investigation;(ii)be for a period of twelve months and for the reasons to be recorded in writing the designated authority may consider a minimum of six months or maximum of eighteen months.]

6A. [Consultation. [Inserted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).]

(1)As soon as an application under rule 6 is accepted, and in any event before the initiation of any investigation, the Government of the exporting country, the products of which may be subject to investigation, shall be invited for consultations to clarify the situation for the matters referred to in rule 6 so as to arrive at a mutually agreed solution.(2)The Government of the exporting country, shall be afforded a reasonable opportunity to continue consultations, to clarify the factual situation so as to arrive at a mutually agreed solution, throughout the period of investigation.] [Inserted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).]

7. Principles governing investigations.

(1)The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged subsidization of any article, issue a public notice notifying its decision. Public notice regarding initiation of investigation shall, inter-alia, contain adequate information on the following : -(i)the name of the exporting country or countries and the article involved;(ii)the date of initiation of the investigation;(iii)a description of the subsidy practice or practices to be investigated;(iv)a summary of the factors on which the allegation of injury is based;(v)the address to which representations by interested countries and interested parties should be directed; and(vi)the time-limits allowed to interested countries and interested parties for making their views known.(2)A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been subsidized, the governments of the exporting countries concerned and other interested parties.(3)The designated authority shall also provide a copy of the application referred to in sub-rule (1) of rule 6 to -(i)the known exporters or to the concerned trade association where the number of exporters is large, and(ii)the governments of the exporting countries :Provided that the designated authority shall also make available a copy of the application upon request in writing, to any other interested party.(4)The designated authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and governments of interested countries and such information shall be furnished

by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown. Explanation. - For the purpose of this sub-rule the public notice and other documents shall be deemed to have been received one week from the date on which these documents were sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country. (5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding subsidization and were applicable injury and causality. (6) The designated authority may allow an interested country or an interested party or its representative to present the information relevant to the investigation orally also, but such oral information shall be taken into consideration only when it is subsequently reproduced in writing. (7) The designated authority shall make available the evidence presented by one party to other interested parties participating in the investigation. (8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its finding on the basis of facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

8. Confidential informations.

(1) Notwithstanding anything contained in such-rules (1), (2), (3) and (7) of rule 7, sub-rule (2) of rule 14, sub-rule (4) of rule 17 and sub-rule (3) of rule 19, the copies of applications received under sub-rule (1) of rule 6, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information. (2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information, and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible. (3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information.

9. Accuracy of the information.

- Except in cases referred to in sub-rule (8) of rule 7, the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.

10. Investigation in the territory of other countries.

(1)The designated authority may carry out investigation in the territory of other countries, in order to verify the information provided or to obtain further details :Provided that the designated authority notifies to such country in advance and such country does not object to such investigation.(2)The designated authority may also carry out investigations at the premises of any commercial organisation and may examine its records if such organisation agrees and if the country in whose territory the said commercial organisation is situated, is notified and has not raised any objection for the conduct of such investigation.

11. Nature of subsidy.

(1)The designated authority while determining the subsidy shall ascertain as to whether the subsidy under investigation -(a)relates to export performance, or(b)relates to the use of domestic goods over imported goods in the export article, for(c)[has been conferred on a limited number of persons or enterprises or industries or designated geographical regions, engaged in manufacturing, producing and exporting the article.] [Substituted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).]Provided that for the purposes of sub-clauses (a) and (b), subsidies of a kind mentioned in the Agreement on Agriculture, contained in the Final Act of the Uruguay Round of Multilateral Trade Negotiations, shall not be taken into consideration.Explanation. - (1) For the purposes of sub clause N of Clause (c) the term "subsidy for research activity" means assistance for research activities conducted by commercial organisations or by higher education or research establishments on a contract basis with the commercial organisations if the assistance covers not more than seventy five per cent of the costs of industrial research or fifty per cent of the costs of pre-competitive development activity and provided that such assistance is limited exclusively to(i)costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);(ii)costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;(iii)costs of consultancy and equivalent services used exclusively for the research activity, including bought in research, technical knowledge, patents, etc;(iv)additional overhead costs incurred directly as a result of the research activity; and(v)other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.(2)For the purposes of sub-clause (ii) of Clause (c), the term "subsidy for assistance to disadvantaged regions" means assistance to disadvantage regions within the territory of the exporting country given pursuant to a general framework of regional development and such subsidy has not been conferred on limited number of enterprises within the eligible region;Provided that -(a)each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;(b)the region is considered as disadvantaged on the basis of natural and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;(c)the criteria shall include a measurement of economic development which shall be based on at least one of the following factors(i)one of either income per capita or household income per capita, or Gross Domestic product per capita, which must not be above eighty five per cent of the average for the territory concerned;(ii)unemployment rate, which must not be at least one hundred and ten per cent

of the average for the territory concerned, as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.(3)For the purposes of sub-clause (iii) of Clause (c) "subsidy for assistance to promote adaptation of existing facilities to new environmental requirements" means assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on commercial organisations:Provided that the assistance -(i)is a one-time non-recurring measure; and(ii)is limited to twenty per cent of the cost of adaptation; and(iii)does not cover the cost of replacing and operating the assisted investment, which must be fully borne by commercial organisations; and(iv)is directly linked to and proportionate to a commercial organisation's planned reduction of nuisances and pollution, and does not cover any manufacturing cost saving which may be achieved; and(v)is available to all firms which can adopt the new equipment and/or production processes.(3)The designated authority while determining the subsidy of a kind as referred to in sub-clause (c) to sub-rule (1) shall take into account, inter-alia the principles laid down in Annexure II to these rules.

12. Conferment of benefit.

- The designated authority while determining the conferment of benefit to the recipient , pursuant to a subsidy, shall take into account the following guidelines -(a)government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital of private investors in the territory of the granting country.(b)a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the commercial organisation receiving the loan pays on the government loan and the amount it would pay on a comparable commercial loan which it could actually obtain on the market. In this case the benefit shall be the difference between these two amounts;(c)a loan guarantee by a government shall not be considered as conferring a benefit unless there is a difference between the amount that the commercial organisation receiving the guarantee pays on a loan guaranteed by the government and the amount that it would pay on a comparable commercial loan in the absence of the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;(d)the provision of goods or services or purchase of goods by government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

13. Determination of injury.

(1)In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India or materially retards the establishment of an industry in India.(2)Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury threat of injury material retardation to the establishment of an industry and the causal link between

the subsidised import and the injury, taking into account inter-alia, the principle laid down in Annexure 1 to the rule.(3)The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if - (i)there is a concentration of subsidised imports into an isolated market, and, (ii)the subsidised imports are causing injury to the producers of almost all of the production within such market.

14. Preliminary findings.

(1)The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding existence of a subsidy and its nature and in respect of imports from specified countries, it shall also record its preliminary finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed explanation for the preliminary determination on the existence of a subsidy and injury and shall refer to the matter of fact and law which have led to arguments being accepted or rejected. Such finding shall contain (i)the names of the suppliers, or when this is impracticable, the supplying countries involved; (ii)a description of the product which is sufficient for customs purposes; (iii)the amount of subsidy established and the basis on which the existence of a subsidy has been determined; (iv)considerations relevant to the injury determination; and (v)the main reasons leading to the determination.(2)The designated authority shall issue a public notice recording its preliminary findings.

15. Levy of provisional duty.

- The Central Government may, in accordance with the provisions of sub-section (2) of Section 9 of the Act, impose a provisional duty on the basis of the preliminary findings recorded by the designated authority. Provided that no such duty shall be imposed before the expiry of sixty days from the date of issue of the public notice by the designated authority regarding its decision to initiate investigations : Provided further that such duty shall remain in force for a period not exceeding four months.

16. Termination of investigation.

- The designated authority shall, by issue of a public notice, terminate an investigation immediately if - (a)it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated; (b)it is satisfied in the course of an investigation, that there is no sufficient evidence either for subsidisation or, where applicable, injury to justify continuation of the investigation; (c)it determines that the amount of subsidy is less than one per cent advalorem or in the case of a product originating from a developing country the amount of subsidy is less than two per cent. (d)it determines that the volume of the subsidized imports, actual or potential, or injury where applicable, is negligible or in the case of a product originating in a developing country the volume of the subsidized imports represents less than four per cent of the total imports of the like product into India, unless imports from developing countries whose individual shares of total imports represent less than four per cent collectively account for more than nine per cent of the total imports of the like product into India.

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

(1)The designated authority may suspend or terminate an investigation, if-(a)the government of the exporting country(i)furnishes an undertaking that it would withdraw the subsidy,(ii)in case of specified countries, undertakes to limit the quantum of subsidy within reasonable limit, or to take other suitable measures to neutralise the effect of such subsidy, provided that the designated authority is satisfied that the injurious effect of the subsidy is eliminated, or(b)in case of specified countries the exporters concerned agree to revise their prices so that injurious effect of subsidy is eliminated and the designated authority is satisfied that the injurious effect of the subsidy is eliminated :Provided that increase in price as a result of this clause is not higher than what is necessary to eliminate the amount of subsidy :Provided further that the designated authority shall complete the investigation and record its finding, if the Central Government so desires or the government of the exporting country so decides.(2)(i)No undertaking as regards price increase under sub-rule (1) shall be accepted unless the designated authority had made preliminary determination of subsidization and the injury :Provided that an undertaking from an exporter shall be accepted only when the designated authority has also obtained the consent of the exporting country.(3)The designated authority, may also not accept undertakings offered by any country or any exporter, if it considers the acceptance of such undertaking as impracticable or as unacceptable for any other reason.(4)The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain inter-alia, the non-confidential part of the undertaking.(5)In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of Section 9 of the Act for such a period the undertaking acceptable to the designated authority remains valid.(6)Where the designated authority has accepted any undertaking under sub-rule (1), it may require the government of the exporting country, or the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data :[Provided that the designated authority may obtain from the producer or importer information periodically to monitor the undertaking and take steps for onsite verification of the same, if required:Provided further that in case of any violation of an undertaking, the designated authority shall, as soon as possible, inform the Central Government of the violation of the undertaking and recommend immediate application of provisional measure using the best information available and in cases of violation, definitive duties may be levied in accordance with these rules on product entered for consumption not more than ninety days before the application of such provisional measures but no such retroactive assessment shall apply to imports entered before the violation of the undertaking.] [Substituted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).](7)The designated authority shall, suo motu or on the basis of any request received from exporters or importers of the article in question or any other interested person review from time to time the need for the continuance of any undertaking given earlier.

18. Disclosure of information.

- The designated authority shall, before giving its final findings, inform all interested parties and interested countries of the essential facts under consideration which form the basis of its decision, and permit the interested parties to defend their interest.

19. Final findings.

(1)The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being subsidized and submit to the Central government its final finding, as to, -(a)(i)the nature of subsidy being granted in respect of the article under investigation and the quantum of such subsidy;(ii)whether imports of such articles into India in the case of imports from specified countries, cause or threaten material injury to an industry established in India or materially retards the establishment of any industry in India and a causal link between the subsidized imports and such injury; and(iii)whether a retrospective levy is called for and if so, the reasons therefor and the date of commencement of such levy;(b)its recommendation as to the amount of duty which if levied, would be adequate to remove the injury to the domestic industry.Provided that the Central Government may, in circumstances of exceptional nature, extend further the aforesaid period of one year by six months;Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 17 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the said period of one year.(2)The final finding if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding(i)the names of the suppliers, or when this is impractical, the supplying countries involved;(ii)a description of the product which is sufficient for customs purposes;(iii)the amount of subsidy established and the basis on which the existence of a subsidy has been determined;(iv)considerations relevant to the injury determination; and(v)the main reasons leading to the determination.(3)The designated authority shall issue a public notice regarding its final findings.

20. Levy of duty.

(1)The Central Government may, within three months of the date of publication of the final findings by the designated authority under rule 19, impose, by notification in the Official Gazette, upon importation into India of the article covered under the final finding, a countervailing duty not exceeding the amount of subsidy as determined by the designated authority under rule 19.Provided that in case of imports from the specified countries the amount of duty shall not exceed the amount which has been found adequate to remove the injury to the domestic industry.(2)Notwithstanding anything contained in sub-rule (1) where a domestic industry has been interpreted according to the proviso to clause (b) of rule 2. a countervailing duty shall be levied only after the exporters have been given opportunity to cease exporting at subsidized prices to the area concerned or otherwise give an undertaking pursuant to rule 17 and such undertaking has not been promptly given and in such cases duty cannot be levied only on the product of specified producers which supply the area in

question.(3)If the final finding of the designated authority is negative, that is contrary to the prima facie evidence on whose basis the investigation was initiated, the Central Government shall within forty five days of the publication of final findings by the designated authority under rule 19, withdraw the provisional duty, imposed if any.

21. Imposition of duty on non-discriminatory basis.

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

22. Date of Commencement of duty.

(1)The countervailing duty levied under rule 15 and 20 shall take effect from the date of publication of the notification in the Official Gazette.(2)Notwithstanding anything contained in sub-rule (1)(a)where a provisional duty has been levied and where the designated authority has recorded a finding of injury or where the designated authority recorded a finding of threat of injury and a further finding that the subsidised imports, in the absence of provisional duty would have led to injury, the countervailing duty may be imposed from the date of imposition of provisional duty;(b)in the circumstances referred to in sub-section (4) of Section 9 of the Act, the countervailing duty may be levied retrospectively from the date commencing ninety days prior to the imposition of provisional duty :Provided that in case of violation of an undertaking referred to in sub-rule (6) of rule 17, no duty shall be levied retrospectively on imports which have entered for home consumption before the violation of such terms of the undertaking.[Provided further that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied from the date of violation of the undertaking or such date as the Central Government may specify in each case.] [Inserted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).]

23. Refund of duty.

(1)If the countervailing duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than provisional duty already imposed and collected, the differential shall not be collected from the importer.(2)If, the countervailing duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.(3)If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (3) of rule 20, the provisional' duty already imposed and collected, if any, shall be refunded to the importer.

24. [Review. [Substituted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).]

(1)Any countervailing duty imposed under section 9 of the Act shall remain in force so long as and to the extent necessary, to counteract subsidisation, which is causing injury.(2)The designated authority shall review the need for the continued imposition of countervailing duty, where warranted, on its own initiative or upon request by any interested party who submits necessary information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive countervailing duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, when it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said countervailing duty is removed or varied and is therefore no longer warranted.(3)Any definitive countervailing duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition. The designated authority may upon coming to a conclusion, on a review initiated before that period either on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said countervailing duty is likely to lead to continuation or recurrence of subsidisation and injury to the domestic industry, make recommendation for extending the period of such imposition in accordance with provisions of section 9 of the Act.(4)Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.[Provided that notwithstanding anything contained in rule 19, such review shall be completed at least three months prior to expiry of the countervailing duty under review.] [Inserted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).](5)[Subject to sub-rule (4), the provisions of rules 7,8,9,10,11,12,13,18,19,20,21 and 22 shall apply mutatis mutandis in case of review.] [Substituted by Notification No. G.S.R. No. 76(E), dated 01.2.2021 (with effect from the 1st day of July, 2021).]]

25. [Anti-absorption review. [Inserted by Notification No. G.S.R. 760(E), dated 27.10.2021 (w.e.f. 01.01.1995).]

(1)A countervailing duty imposed under section 9 of the Act may be considered to be absorbed where export prices of an article from the exporting country or countries decrease post imposition of the countervailing duty without any significant change in resale price of such article in India imported from the exporting country or countries.(2)Where an article subject to countervailing duty is imported into India at such price or under such condition which is considered as absorption of the existing countervailing duty, and such duty is thereby rendered or maybe rendered ineffective, the designated authority may, after conducting review, recommend modification in the form or basis of the countervailing duty, or the quantum of countervailing duty, or both, after reassessing the subsidy margin and injury margin and appropriate changes or adjustments in previously determined benefit from subsidy and injury, if necessary, in accordance with the provisions of rule 12 may be done.(3)The domestic industry or any other interested party shall file the application seeking initiation of antiabsorption investigation normally within two years from the date of imposition of definitive countervailing duty:Provided that in view of special circumstances in a given

case, for reasons to be recorded in writing, the authority may accept an application for such initiation after expiry of the said period of two years. Provided further that no such application shall be accepted in cases with less than twelve months' period remaining for the countervailing duty to expire.

26. Initiation of investigation to determine absorption.

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the countervailing duty levied under section 9 of the Act, upon receipt of a written application by or on behalf of the domestic industry or by any other interested party. (2) The application shall, inter-alia, contain sufficient evidence as regards the existence of circumstances referred in sub-rule (1) of rule 25 to justify initiation of an anti-absorption investigation. (3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Principal Commissioner of Customs or the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source, that sufficient evidence exists as to the existence of the circumstances pointing to absorption of countervailing duty in force. (4) The designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the countervailing duty in force: Provided that the designated authority shall notify the Government of the exporting country before proceeding to initiate such an investigation. (5) The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be absorbing the countervailing duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 27 is taken by the Central Government. (6) The provisions regarding evidence and procedures under rule 7 shall apply mutatis mutandis to any investigation carried out under this rule and the review shall be limited only to re-computation of subsidy and injury margin due to the reason that existence of injury and causality has already been determined in the original investigation. (7) Any such investigation shall be concluded within six months from the date of initiation of the investigation: Provided that in special circumstances, for reasons to be recorded in writing, the Central Government may extend the said period for another three months.

27. Determination of Absorption.

(1) The designated authority, upon determination that absorption of countervailing duty exists, may recommend modification of the form or basis of the duty, or the quantum of countervailing duty, or both, to imports of articles found to be absorbing an existing countervailing duty and such modification may apply retrospectively from the date of initiation of the investigation under rule 26. (2) The designated authority shall issue a public notice recording its findings. (3) The Central Government may, pursuant to the recommendations made by the designated authority, modify the form or basis of the countervailing duty, or the quantum of countervailing duty, or both, applicable to imports of such article, from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.]

25. Circumvention of countervailing duties. (1) Circumvention shall be considered as a change in the pattern of trade between any country and India or between individual companies in any other country, subject to measures and India, as a result of a practice, process or work for which there is insufficient cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities or both of the like product, and that the imported like product or parts thereof or both still benefit from the subsidy as determined in original or previous determination.(2) The practice, process or work referred to in the sub-rule (1) includes, inter alia, -(a) where an article subject to countervailing duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of countervailing duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in any other country, such assembly, finishing or completion shall be considered to circumvent the countervailing in force if, -(i) the operation started or increased after, or just prior to, the countervailing investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of countervailing duty; and(ii) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.Explanation I. 'Value' means the cost of assembled, complete or finished article less value of imported parts or components.Explanation II.- For the purposes of calculating the ?value , expenses on account of payments relating to intellectual property rights, royalty, technical know- how fees and consultancy charges, shall not be taken into account.(b) where an article subject to countervailing duty is imported into India from country of origin or country of export notified for the levy of countervailing duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the countervailing duty in force if the alteration of the description or name or composition of the article subject to countervailing duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any;(c) where an article subject to countervailing duty is imported into India through any exporter or producer or country not subject to countervailing duty, such exports shall be considered to circumvent the countervailing duty in force if the exporters or producers notified for the levy of countervailing duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through any exporter or producer or country not subject to countervailing duty;(d) any other manner where the countervailing duty so imposed is rendered ineffective.26. Initiation of investigation to determine circumvention.- (1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the countervailing duty levied under section 9 of the Act, upon receipt of a written application by or on behalf of the domestic industry.(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation on its own initiative if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of countervailing duty in force.(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the countervailing duty in force:Provided that the designated

authority shall notify the Government of the exporting country before proceeding to initiate such an investigation.(4A) [The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be circumventing a countervailing duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 27 is taken by the Central Government.] [Inserted by Notification No. G.S.R. No. 76(E), dated 01.2.2021 (w.e.f. 1.1.1995).](5) The provisions regarding evidence and procedure provided under rule 7 shall apply mutatis mutandis to any investigation carried out under this rule.(6) Any such investigation shall be concluded within twelve months and in no case more than eighteen months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.27. Determination of circumvention.- (1) The designated authority, upon determination that circumvention of countervailing duty exists, may recommend imposition of existing countervailing duty to imports of articles found to be circumventing an existing countervailing duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the countervailing duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.(2) The designated authority shall issue a public notice recording its findings.(3) The Central Government may, pursuant to the recommendations made by the designated authority, extend the countervailing duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

28. [Review of circumvention. [Substituted by Notification No.10/2020-Customs (N.T.), dated 2.2.2020 (w.e.f. 1.1.1995).]

(1)The designated authority may, where warranted, review the need for the continued imposition of the countervailing duty on circumventing product or against the circumventing country as applicable, either on its own initiative or, upon request by any interested party which submits necessary information substantiating the need for the review provided that a reasonable period of time has elapsed since the imposition of the measures, and upon such review make recommendations to the Central Government.(2)Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.][Provided that such review shall be completed at least three months prior to expiry of the duty under review.] [Inserted by Notification No. G.S.R. No. 76(E), dated 01.2.2021 (with effect from the 1st day of July, 2021).]Annexure IPrinciples Governing the Determination of InjuryThe designated authority shall take into account inter-alia, the following principles while determining injury :

1.

(1)A determination of injury for purposes of rule 13 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.(2)With regard to the volume of the subsidized imports, the designated authority shall inter-alia consider whether there has been a

significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India.(3)With regard to the effect of the subsidized import on prices, the designated authority shall, consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree.(4)Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the designated authority may cumulatively assess the effect of such imports only if it determines that (a) the amount of subsidization established in relation to the imports from each country is more than one percent advalorem and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the like domestic product.(5)The designated authority while examining the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments and, in the case of agriculture, whether there has been an increased burden on government support programmes.

2.

(1)It must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, inter-alia, the volumes and prices on non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.(2)The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers sales and profits. If such separate identification of that production is not possible, the effect of the subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product for which the necessary information can be provided.

3. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a

determination regarding the existence of a threat of material injury, the designated authority shall consider, inter-alia, such factors as :

(i) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom; (ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation; (iii) sufficient freely disposable, or an imminent, substantial increase in, capacity or the exporter indicating the likelihood of substantially increased subsidized exports to Indian market, taking into account the availability of other export markets to absorb any additional exports; (iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and (v) inventories of the product being investigated. Annexure II Principles for Determination of Subsidy Which has been Conferred on a Limited Number of Persons as Referred to in Rule 11

1. The designated authority in order to determine as to whether a subsidy has been conferred on a limited number of persons engaged in the manufacture or production of an article, shall take the following principles into consideration :

(a) Whether the granting authority or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises. However, where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, such subsidy shall not be considered to have been conferred on a limited number of persons engaged in the manufacture or production of an article, provided that the eligibility is automatic and such criteria or conditions are strictly adhered to and such criteria and conditions have been clearly spelt out in the law, regulation or other official document of the granting country or territory and are capable of verification. Explanation: - For the purposes of the above para 'objective criteria or conditions' mean criteria or condition which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprises. (b) Notwithstanding the determination that a subsidy is not being granted to a limited number of enterprises in terms of the provisions contained in para (a) above, if the designated authority has reason to believe that the subsidy has in fact been conferred to a limited number of enterprises, it may consider other factors like (1) use of a subsidy program by a limited number of certain enterprises or predominant use by certain enterprises (2) granting of disproportionately large amounts of subsidy to certain enterprises and (3) manner in which discretion has been exercised by the granting authority in decision to grant a subsidy, for determination of subsidy. The designated authority, in applying this clause, shall take into account, the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as the length of the time during which the subsidy programme has been in operation. (c) A subsidy which is limited to certain persons engaged in the manufacture or production of an article located within a designated geographical region within the jurisdiction of the granting authority shall be considered to have been granted to a limited number of persons engaged in the manufacture or productions.