

Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on dumped Articles 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 Anti-dumping Duty on dumped Articles for Determination of Injury) Rules, 1995 Published vide Notification Gazette of India, Extraordinary, Part 2, Section 3(i), dated 1st January, 1995 (w.e.f. 1st January 1995) Last Updated 18th December, 2021 G.S.R. 1(E), dated 1st January, 1995. - In exercise of the powers conferred by sub-section (6) of Section 9A 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 Dumped Articles and for Determination of Injury) Rules, 1985, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :-

1. Short title and commencement.

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

2. Definitions.

- In these rules, unless the context otherwise requires, -(a)"Act" means 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 and any activity connected therewith 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 dumped article or are themselves importers thereof in which case [such producers may be deemed] [Substituted by Notification No. G.S.R. 521(E), dated 15.7.1999 (w.e.f. 1.1.1995)] not to form part of domestic industry :Provided that in exceptional circumstances referred to in sub-rule (3) of rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry, if -(i)the producers within such a market sell all or almost all of their production of the article in question in that market, and(ii)the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;[Explanation. [Substituted by Notification No. G.S.R. No. 73(E), dated 02.02.2020 (w.e.f. 1.1.1995).] - 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 a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trade or business association a majority of the members of which are producers, exporters or(ii)the government of the exporting country; and(iii)a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;(d)"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;(da)["period of investigation" means the period during which the existence of dumping is examined;] [Inserted by Notification No. G.S.R. No. 73(E), dated 02.02.2020 (w.e.f. 1.1.1995).](e)"provisional duty" means an anti-dumping duty imposed under sub-section (2) of Section 9A of the Act;(f)"specified country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;(g)all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. Appointment of designated authority.

(1)The Central Government may, by notification in the Official Gazette, appointed 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.

(1) It shall be the duty of the designated authority in accordance with these rules - (a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article; (b) to identify the article liable for anti-dumping duty; (c) to submit its findings, provisional or otherwise to Central Government as to (i) normal value, export price and the margin of dumping in relation to the article under investigation; and (ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries. (d) [to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied would remove the injury to the domestic industry and the date of commencement of such duty; and] [Substituted by Notification No. G.S.R. 521(E), dated 15.7.1999 (w.e.f. 1.1.1995)] (e) to review the need for continuance of anti-dumping duty.

5. Initiation of investigation.

(1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry. (2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority and the application shall be supported by evidence of - (a) dumping, (b) injury, where applicable, and (c) where applicable, a causal link between such dumped articles and alleged injury. (3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless - (a) it determines, on the basis of an examination of the degree of support for, or opposition, to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry; Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and (b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding (i) dumping, (ii) injury, where applicable, and (iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation. Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application. (3A) [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 normally and for reasons to be recorded in writing, the designated authority may consider a minimum of six months or maximum of eighteen months.] (4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the [Principal Commissioner of Customs or Commissioner of Customs, as the case may be,] [Substituted 'Collector of Customs' by Notification No. G.S.R. No. 75(E), dated 01.2.2021 (w.e.f. 1.1.1995).]

appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3).(5). The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

6. Principles governing investigations.

(1)The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following : (i)the name of the exporting country or countries and the article involved ; (ii)the date of initiation of the investigation; (iii)the basis on which dumping is alleged in the application; (iv)a summary of the factors on which the allegation of injury is based; (v)the address to which representations by interested parties should be directed; and (vi)the time-limits allowed to interested parties for making their views known. (2)A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the governments of the exporting countries concerned and other interested parties. (3)The designated authority shall also provide a copy of the application referred to in sub-rule (1) of rule 5 to - (i)the known exporters or to the concerned trade association where the number of exporters is large, and (ii)the governments of the exporting countries ; Provided that the designated authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing. (4)The designated authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown. Explanation - For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country. (5)The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping injury where applicable, and casualty. (6)The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing. (7)The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation. (8)In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

7. Confidential information's.

(1)Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.(2)The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.(3)Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information.

8. Accuracy of the information.

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

9. Investigation in the territory of other specified countries.

- The designated authority may carry out investigation in the territories of other countries, if the circumstances of a case so warrant :Provided that the designated authority obtains the consent of the person concerned and notifies the representatives of the concerned government and the concerned government does not object to such investigation.

10. Determination of normal value. export price and margin of dumping.

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

11. Determination of injury.

(1)In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.(2)The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped

imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure-II to these rules.(3)The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if - (i) there is a concentration of dumped imports into an isolated market, and (ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

12. Preliminary findings.

(1)The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary Finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain - (i) the names of the suppliers, or when this is impracticable, the supplying countries involved; (ii) a description of the article which is sufficient for customs purposes; (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value ; (iv) considerations relevant to the injury determination; and (v) the main reasons leading to the determination. (2)The designated authority shall issue a public notice recording its preliminary findings.

13. Levy of provisional duty.

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

14. Termination of investigation.

- The designated authority shall, by issue of a public notice, terminate an investigation immediately if - (a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated. (b) it is satisfied in the course of an investigation that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation; (c) it determines that the margin of dumping is less than two per cent of the export price; (d) it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three per cent of the imports of the like product, unless, the countries which individually account for less than three per cent of the imports of the like product, collectively account for more than seven per cent of the import of the like product; or (e) it

15. Suspension or termination of investigation on price undertaking.

(1)The designated authority may suspend or terminate an investigation if the exporter of the article in question, -(i)furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices; or(ii)in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated :Provided further that the designated authority shall complete the investigation and record its finding, if the exporter so desires, or it so decides.(2)No undertaking as regards price increase under clause (ii) of the sub-rule (1) shall be accepted from any exporter unless the designated authority had made preliminary determination of dumping and the injury.(3)The designated authority may, also not accept undertakings offered by any exporter, if it considers that acceptance of such undertaking is impractical or is unacceptable for any other reason.(4)The designated authority shall intimate the acceptance of an undertaking and suspension or termination or investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain inter alia, the non-confidential part of the undertaking.(5)In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of Section 9A of the Act for such period the undertaking acceptable to the designated authority remains valid.(6)Where the designated authority has accepted any undertaking under sub-rule (1), it may require the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data :[Provided that in case of any violation of an undertaking, the designated authority shall, as soon as may be possible, inform the Central Government of the violation of the undertaking and recommend imposition of provisional duty from the date of such violation in accordance with the provisions of these rules.] [Substituted by Notification No. G.S.R. 521(E), dated 15.7.1999 (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 party, review from time to time the need for the continuation of any undertaking given earlier.

16. Disclosure of information.

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

17. Final findings.

(1)The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding -(a)as to, -(i)the export price, normal value and the margin of dumping of the said article;(ii)whether import of the said article into India, in the case of imports from specified countries, causes or threatens materially injury to any industry established in India, or materially retards the establishment of any industry in India;(iii)a casual link, where

applicable, between the jumped imports and injury;(iv)whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy;Provided that the Central Government may, [in its discretion in special circumstances] [Substituted by Notification No. G.S.R. 521(E), dated 15.7.1999 (w.e.f. 1.1.1995)], extend further the aforesaid period of one year by six months;Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year.(b)[recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry.] [Substituted by Notification No. G.S.R. 521(E), dated 15.7.1999 (w.e.f. 1.1.1995)](2)The final finding if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding -(i)the names of the suppliers, or when this is impracticable, the supplying countries involved;(ii)a description of the product which is sufficient for customs purposes;(iii)the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;(iv)considerations relevant to the injury determination; and(v)the main reasons leading to the determination.(3)The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation.Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the value of the exports from the country in question which can reasonably be investigated, and any selection of exporters producers or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned.Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.(4)The designated authority shall issue a public notice recording its final findings.

18. Levy of duty.

(1)The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17. impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule (17).[* * *] [Omitted "Provided that in case of imports from the specified countries the amount of duty shall not exceed the amount which has been found adequate to remove the injury to domestic industry." by Notification No. G.S.R. 521(E), dated 15.7.1999 (w.e.f. 1.1.1995)](2)In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to sub-rule (3) of rule 17, any dumping duty applied to imports from exporters or producers not included in the examination shall not exceed -(i)the weighted average margin of dumping established with respect to the selected

exporters or producers or, (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers, not individually examined; Provided that the Central Government shall disregard for the purpose of this sub-rule only zero margin, margins which are less than 2 per cent expressed as the percentage of export price and margins established in the circumstances detailed in sub-rule (8) of rule 6. The Central Government shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation as referred to in the second proviso to sub-rule (3) of rule 7. (3) Notwithstanding anything contained in sub-rule (1), where a domestic industry has been interpreted according to the proviso to sub-clause (b) of rule 2, a duty shall be levied only after the exporters have been given opportunity to cease exporting at dumped prices to the area concerned or otherwise give an undertaking pursuant to rule 15 and such undertaking has not been promptly given and in such cases duty shall not be levied only on the articles of specific producers which supply the area in question. (4) If the final finding of the designated authority is negative that is contrary to the evidence on whose basis the investigation was initiated, the Central Government shall, within forty five days of the publication of final findings by the designated authority under rule 17, withdraw the provisional duty imposed, if any.

19. Imposition of duty on non-discriminatory basis.

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

20. Commencement of duty.

(1) The anti-dumping duty levied under rule 13 and rule 19 shall take effect from the date of its publication in the Official Gazette. (2) Notwithstanding anything contained in sub-rule (1) :- (a) Where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty; (b) in the circumstances referred to in sub-section (3) of Section 9-A of the Act, the anti-dumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty : Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation : Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking. [Provided also 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. G.S.R. 521(E), dated 15.7.1999 (w.e.f. 1.1.1995)]

21. Refund of duty.

(1) If the anti-dumping duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer. (2) If, the anti-dumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer. (3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

21A. [Determination of amount paid in excess of actual margin of dumping. [Inserted by Notification No. 6 /2012-Customs (N.T.), dated 19.01.2012 (w.e.f. 1.1.1995).]

(1) Where an importer is of the opinion that he has paid any anti-dumping duty imposed under sub-sections (1) or sub-section (1A) of section 9A of the Act on any imported goods, in excess of the actual margin of dumping in relation to such goods, he may file an application for determination of the actual margin of dumping in relation to such goods before the designated authority in such form and accompanied by such documents as the said authority may specify in this behalf. (2) Where the application referred to in sub-rule (1) is found to be deficient in any material particulars, the same shall be returned to the importer pointing out deficiencies within one month of the receipt thereof and the importer may, after making good the deficiencies, resubmit the application to the designated authority within one month thereafter. (3) On receipt of the application with complete information, the designated authority shall initiate an investigation to determine the actual margin of dumping in relation to such goods. (4) In determining the actual margin of dumping, when the export price is constructed in accordance with these rules, the designated authority shall take into account any change in normal value, costs incurred between importation and resale and any movement in the sale price which is duly reflected in the subsequent selling price. (5) While calculating constructed export price, referred to in sub-rule (4), no deduction shall be made for the amount of anti-dumping duties paid when conclusive evidence of the same is provided. (6) Where the designated authority finds that there is change in, - (a) costs incurred between importation and resale, and (b) movement in the sale price which is duly reflected in the subsequent selling price, the actual margin of dumping may be determined in accordance with the provisions of sub-rules (4) and (5). (7) The designated authority shall, after investigation under sub-rule (3), determine the actual margin of dumping for the goods and if the anti-dumping paid on the goods is in excess of the margin of dumping so determined, the authority shall make recommendation to the Central Government within nine months and in no case more than 12 months, from the date of receipt of the application, complete in all respects, to refund the difference between the two to the importer.] [Inserted by Notification No. G.S.R. No. 75(E), dated 01.2.2021 (w.e.f. 1.1.1995).]

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

- If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product of India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.(2)The Central Government shall not levy anti-dumping duties under sub-section (1) of Section 9A of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule :Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.(3)[The anti-dumping duty already imposed for co-operative un-sampled exporters or producers may also be extended to such exporters or producers who were not originally investigated.] [Inserted by Notification No. G.S.R. No. 73(E), dated 02.02.2020 (w.e.f. 1.1.1995).][***] [Omitted 'Explanation.' by Notification No. G.S.R. No. 75(E), dated 01.2.2021 (w.e.f. 1.1.1995).]

23. Review.

(1)The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.(2)Any review initiated under [sub-rule (1A) or (1B)] [Substituted for 'sub-rule (1)' by Notification No. G.S.R. 761(E), dated 27.10.2021 (w.e.f. 01.01.1995).] 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 17, such review shall be completed at least three months prior to expiry of the anti-dumping duty under review.] [Inserted by Notification No. G.S.R. No. 75(E), dated 01.2.2021 (with effect from the 1st day of July, 2021).](3)[Subject to sub-rule (2), the provisions of rules 6,7, 8, 9, 10, 11, 16, 17, 18, 19 and 20 shall apply mutatis mutandis in the case of review.] [Substituted by Notification No. G.S.R. No. 75(E), dated 01.2.2021 (w.e.f. 1.1.1995).]

24. Dumping causing injury to a third country.

(1)The designated authority may initiate investigation into any dumping alleged to be taking place into India and causing injury to the domestic industry of any third country which is a member of the World Trade Organisation.(2)The designated authority in such cases shall follow the procedures laid down in Art. 14 of the Agreement on Implementation of Art VI of the General Agreement on Tariff and Trade, 1994, as contained in the Final Act or Uruguay Round Multilateral Trade Negotiations.

25. [Circumvention of anti-dumping duty. [Substituted by Notification No. G.S.R. No. 73(E), dated 02.02.2020 (w.e.f. 1.1.1995).]

(1) Circumvention shall be considered as a change in the pattern of trade between any country and India or between individual companies in any 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 where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary with appropriate changes or adjustments or in accordance with the provisions of rule 10. (2) The practice, process or work referred to in the sub-rule (1) includes, inter alia, - (a) where an article subject to anti-dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping 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 anti-dumping duty in force if, - (i) the operation started or increased after, or just prior to, the anti-dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and (ii) the value added to the inputs brought in, during the assembly or completion operation, is less than 35% of the manufacturing cost: Provided that for calculation of value addition, expenses on account of procurement of technology, such as patents, copyright, trademark, royalty, technical know-how, consultancy charges, etc., shall not be included in the value of the parts brought in. 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 anti-dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping 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 anti-dumping duty in force if the alteration of the description or name or composition of the article subject to anti-dumping 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 anti-dumping duty is imported into India through any exporter or producer or country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force if the exporters or producers notified for the levy of anti-dumping 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 anti-dumping duty;]

26. [Initiation of investigation to determine circumvention. [Substituted by Notification No. 6 /2012-Customs (N.T.), dated 19.01.2012 (w.e.f. 1.1.1995).]

(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 anti dumping duty levied

under section 9A 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 suo motu 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 anti dumping duty in force.(4)The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty in force where it is satisfied that imports of the article circumventing an anti dumping duty in force are found to be dumped: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 an anti-dumping 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.](5)The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule.(6)Any such investigation shall be concluded within 12 months and in no case more than 18 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 anti dumping duty exists, may recommend imposition of anti dumping duty to imports of articles found to be circumventing an existing anti dumping 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 anti-dumping 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 anti dumping 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.

(1)The designated authority may review the need for the continued imposition of the duty, where warranted, on its own initiative or provided that a reasonable period of time has elapsed since the imposition of the measures, upon request by any interested party which submits positive information substantiating the need for the review.(2)Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of 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. 75(E), dated 01.2.2021 (with effect from the 1st day of July, 2021).]

29. [Anti-absorption review. [Inserted by Notification No. G.S.R. 761(E), dated 27.10.2021 (w.e.f. 01.01.1995).]

(1)An anti-dumping duty imposed under section 9A of the Act may be considered to be absorbed when export prices of an article from the exporting country or countries decrease post imposition of the anti-dumping duty without any commensurate change in cost of production of such article or export prices of such article to countries other than India or resale price of such article in India imported from the exporting country or countries.(2)Where an article subject to anti-dumping duty is imported into India at such price or under such condition which is considered as absorption of the existing anti-dumping 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 anti-dumping duty, or the quantum of anti-dumping duty, or both, after reassessing the dumping margin and injury margin and appropriate changes or adjustments in previously determined normal value and injury, if necessary, in accordance with the provisions of rule 10 and Annexure III to these Rules, respectively, may be done.(3)The domestic industry or any other interested party shall file the application seeking initiation of anti-absorption investigation normally within two years from the date of imposition of definitive antidumping duty:Provided that in view of special circumstances in a given case, for reasons to be recorded in writing, the designated 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 anti-dumping duty to expire.

30. 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 anti-dumping duty levied under section 9A 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 29 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 the anti-dumping duty in force.(4)The designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the antidumping duty in force where it is satisfied that imports of the article are absorbing the anti-dumping duty: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 an anti-dumping duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 31 is taken by the Central Government.(6)The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule and the review shall be limited only to re-computation of dumping and injury margin due to the reason that existence of

injury and causal link 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.

31. Determination of Absorption.

(1)The designated authority, upon determination that absorption of anti-dumping duty exists, may recommend modification of the form or basis of the anti-dumping duty, or the quantum of anti-dumping duty, or both, to imports of articles found to be absorbing an existing anti-dumping duty and such modification may apply retrospectively from the date of initiation of the investigation under rule 30.(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 anti-dumping duty, or the quantum of anti-dumping duty, or both, applicable to the imports of such article from the date of initiation of the investigation under rule 30 or such date as may be recommended by the designated authority.]Annexure I(See rule B)Principles governing the determination of Normal Value, Export Price and Margin of DumpingThe designated authority while determining the normal value, export price and margin of dumping shall take into account inter alia, the following principles : -

1. The elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or producer under investigation, provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records. reasonably reflect the cost associated with production and sale of the article under consideration.

2. Sales of the like product in the domestic market of the exporting country or sales of a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price. The designated authority may disregard these sales, in determining normal value, provided it has determined that : -

(i)such sales are made within a reasonable period of time (not less than six months) in substantial quantities, i.e., when the weighted average selling price of the article is below the weighted average per unit costs or when the volume of the sales below per unit costs represents not less than twenty per cent of the volume sold in transactions under consideration, and(ii)such sales are at prices which do not provide for the recovery of all costs within a reasonable period of time. The said prices will be considered to provide for recovery of costs within a reasonable period of time if they are above weighted average per unit costs for the period of investigation, even though they might have been below per unit costs at the time of sale.(i)the said authority in the course of investigation shall

consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer provided that such allocation has been historically utilised by the exporter or producer, in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditure and other development costs.(ii)unless already reflected in allocation of costs referred to in Clause (1) and sub-clause (i) above, the designated authority, will also make appropriate adjustments for those non-recurring items of cost which benefit further and/or current production, or for circumstances in which costs during the period of investigation are affected by start up operation.

4. The amounts for administrative, selling and general costs and for profits as referred to in sub-section (1) of Section 9-A of the Act, shall be based on actual data pertaining to production and sales in the ordinary course of trade, of the like article by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of :-

(i)the actual amounts incurred and realized by the exporter or producer in question, in respect of production and sales in the domestic market of the country of origin of the same general category of article;(ii)the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like article in the domestic market of the country of origin; or(iii)any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by the exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

5. The designated authority, while arriving at a constructed export price, shall give due allowance for costs including duties and taxes, incurred between importation and resale and for profits.

6. (i) While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other difference which are demonstrated to affect price comparability.

(ii)In the cases where export price is a constructed price, the comparison shall be made only after establishing the normal value at equivalent level of trade.(iii)When the comparison under this para

requires a conversion of currencies, such conversion should be made by using the rate of exchange on the date of sale, provided that when a sale or foreign currency on forward markets is directly linked to the export sale involved the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the exporters shall be given at least sixty days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation. (iv) Subject to the provisions governing comparison in this paragraph, the existence of margin of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if it is found that a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

7. [In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner and due account shall be taken of any reliable information made available at the time of the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.] [Inserted by Notification No. G.S.R. 521(E), dated 15.7.1999 (w.e.f. 1.1.1995)]

Annexure II[See rule 9(2)]Principles for Determination of InjuryThe designated authority while determining the injury or threat of material injury to domestic industry or material retardation of the establishment of such an industry, hereinafter referred to as "injury" and causal link between dumped imports and such injury, shall inier-alia, take following principles under consideration :
 -(i)A determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.(ii)While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on

prices as referred to in sub-rule (2) of rule 18 the designated authority shall consider whether there has been a significant price under cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree.(iii)[In cases where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when it determines that, - [Substituted by Notification No. G.S.R. No. 73(E), dated 02.02.2020 (w.e.f. 1.1.1995).](a)the margin of dumping established in relation to the imports from each country is more than two per cent. expressed as percentage of export price and the volume of the imports from each country is three per cent. of the import of like article or where the export of individual countries is less than three per cent., the imports collectively accounts for more than seven per cent. of the import of like article; 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 conditions of competition between the imported products and the like domestic products.](iv)The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.(v)It must be demonstrated that the dumped imports are, through the effects of dumping as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a casual relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, 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 the productivity of the domestic industry.(vi)The effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available date 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 effects of the dumped 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.(vii)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 dumping 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 :(a)a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;(b)sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export

markets to absorb any additional exports;(c)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(d)inventories of the article being investigated.[F. No. 525/2/96-Custom (TU)]