



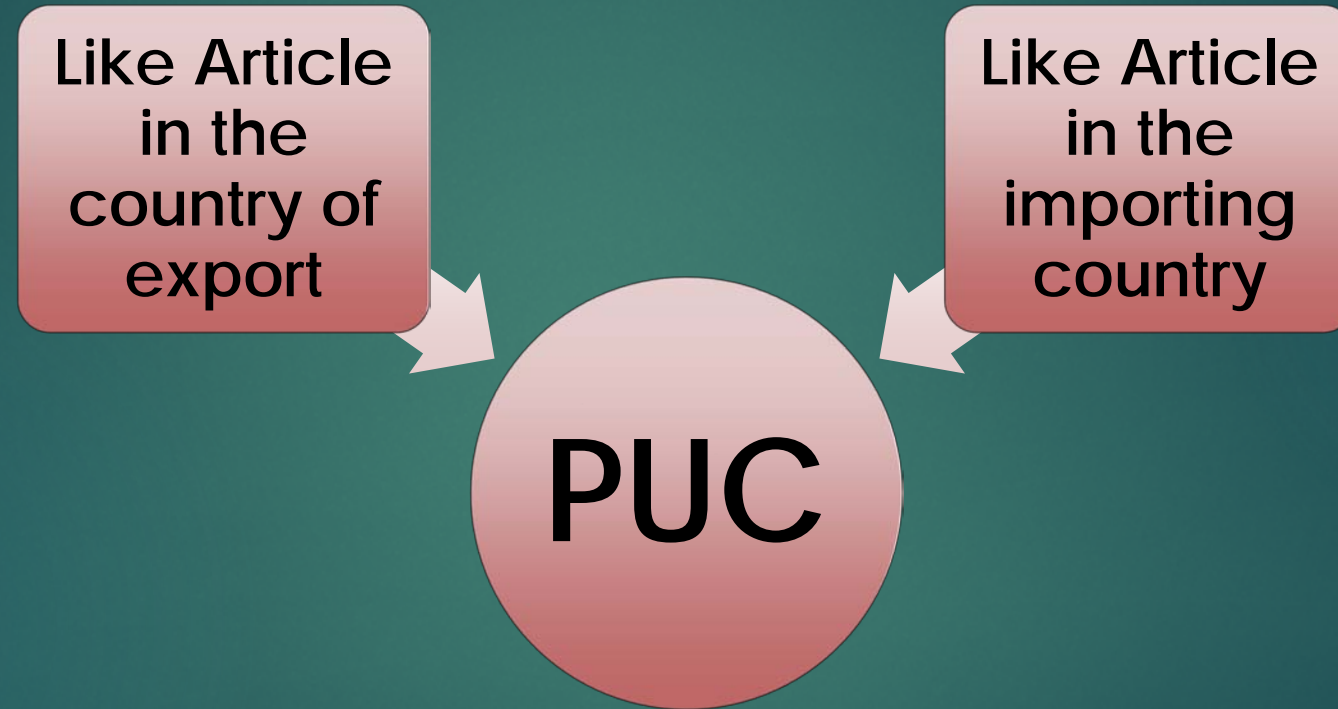
# DETERMINATION OF DOMESTIC INDUSTRY IN ANTI-DUMPING INVESTIGATION

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# PUC and 'like article'

- ▶ Defining PUC and Like Article – Key to Defining Domestic Industry
- ▶ WTO Panel in EC – Anti-Dumping Measure on Farmed Salmon from Norway at Footnote No. 228 has made following observation on the interpretation of 'like product' in terms of the ADA:
  - ▶ “In an anti-dumping investigation, the question of "like product" arises in two contexts – identifying domestically produced goods that are "like" the product under consideration, and identifying goods sold in the market of the investigated foreign producers/exporter that are "like" the product under consideration. The identification of "like product" in these two contexts is for different purposes in the investigation.”

# PUC and 'like article'



# Relationship between 'Like article' and 'Domestic Industry'

Like article in Importing country

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graph TD; A[Like article in Importing country] --> B[Identification of Total Domestic Production & Producers]; B --> C[Identification of Scope of Domestic Industry.];
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Identification of Total Domestic  
Production & Producers

Identification of Scope of Domestic  
Industry.

# Article 4 of AD Agreement:

## ▶ *Definition of Domestic Industry*

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

- ▶ (i) when producers are related to the exporters or importers or are themselves importer of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;
- ▶ (ii) xxxxxx

# Rule 2(b) of Indian AD Rules

- ▶ Rule 2(b) of AD Rules defines the term as “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 such case *the term ‘domestic industry’ may be construed as referring to the **rest of producers.**”*

# Standing of the Application: Rule 5 (3) of AD Rules

The designated authority shall not initiate an investigation 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

- ▶ 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.

# Different methods of interpreting DI:

- ▶ 1st Basis: "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products. OR
- ▶ 2nd Basis: Domestic producers whose collective output of the products constitutes a major proportion of the total domestic production of those products.
- ▶ Except when such producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;



# Issues In Identification Of A 'producer' In Terms Of AD Rules:

- ▶ What must be the level of engagement in production to constitute as a 'producer'?
- ▶ Whether a producer located in SEZ or EOU unit is eligible to constitute DI.
- ▶ Whether a producer of subject goods who is the captive consumer, eligible to be treated as DI.
- ▶ Whether the producer not engaged in production during POI eligible to be DI?

# “ a major proportion” - IInd Basis

- ▶ **A Major Proportion vs The Major Proportion**
- ▶ How to determine total domestic production? What must be the method to determine ‘a major proportion’ of total domestic production ?
- ▶ Whether the DI must be defined as defined by the applicants or should the scope of DI is identified independently?
- ▶ Whether the scope of DI is dependent on availability of data at the stage of initiation?
- Whether the DA has discretion to exclude an ‘applicant’ or ‘eligible domestic producer’ from the scope of DI?
- Whether supporters constitute part of ‘a major proportion’.

# 11rd Basis:

- ▶ When producers are *related* to the exporters or importers or are themselves *importers* of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;
- ▶ 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, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers

# Other aspects of definition of Domestic Industry:

- ▶ In Nirma Limited vs Saint Gobain Glass India Limited, the Hon'ble Court has upheld the discretion available to DA while considering the producers who are also the importers, for the scope of DI.
- ▶ What are the relevant factors to be considered while exercising the discretion?
- ▶ Whether the imports made during POI are only relevant for determination of eligibility of producer to be DI?

# Q&A : Law and Practice

- ▶ At what stage the term Domestic industry must be defined – Initiation stage or post initiation?
- ▶ Whether the scope of DI allowed to be modified during the course of investigation?
- ▶ Determination of DI on the basis of geographical area.

# Call for Conclusions:

- Nature of Domestic Industry differs from product to product, place to place, and time to time.
- How much law should be codified?
- How much discretion authorities should have?

Thank You