

International Conference on Trade  
Remedy Measures 9-10 April 2015  
New Delhi

**LESSER DUTY RULE**

# WTO Regulation on LDR

## Article 9

### Imposition and Collection of Anti Dumping Duties

- 9.1 The decision whether or not to impose an Anti Dumping duty in case where all requirements for the imposition have been fulfilled, and the **decision whether the amount of the Anti dumping duty to be imposed shall be full margin of dumping or less**, are decisions to be made by the authorities of the importing Member.

Continued.....

# Article 9- Cont

- 9.1 It is **desirable** that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty be **adequate to remove the injury** to the domestic industry.
- 9.3 The amount of the Anti dumping duty **shall not exceed the margin of dumping** as established under Article 2.

# Provisions for LDR in Indian ADD Rules.

**Rule 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 –

[(b) recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry **after considering the principles laid down in the Annexure III to these rules.**] {added through notification dated **1.03.2011**}

# Provisions for LDR in Indian ADD Rules.

## **Rule 4. Duties of the designated authority. - (1)**

It shall be the duty of the designated authority in accordance with these rules -.....

**[(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, after considering the principles laid down in Annexure III to these rule..... {added through notification dated 1.03.2011}**

**Principles for determination of  
non-injurious price  
(NIP)**

**Annexure III**

# Principles for determination of NIP

1. Designated Authority to recommend the amount of anti-dumping duty which, if levied, **would remove the injury** where applicable to the domestic industry under sub-rule (1) of rule 17 .
2. For the purpose of making recommendation Designated Authority to **determine the fair selling (notional) price** or non-injurious price of the like domestic product taking into account the principles specified herein under.
3. The non-injurious price is to be determined by considering the information or data relating to cost of production for the **period of investigation** in respect of the **producers constituting domestic industry.** #

# Principles of NIP – relevant to COP

- (i) The best utilisation of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation, and at **period of investigation rates** may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilisation of raw materials.
- ii) **The best utilisation of utilities** by the constituents of domestic industry, over the past three years period and period of investigation, and at **period of investigation rates** may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of utilities.



# Principles of NIP – relevant to COP

- iii) **The best utilisation of production capacities, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities.**
- iv) **The Propriety of all expenses, grouped and charged to the cost of production may be examined and any extra-ordinary or non-recurring expenses shall not be charged to the cost of production and salary and wages paid per employee and per month may also be reviewed and reconciled with the financial and cost records of the company.**

# Principles of NIP – relevant to COP

- v) To ensure the reasonableness of amount of **depreciation** charged to cost of production, it may be examined that no charge has been made for facilities not deployed on the production of the subject goods, particularly in respect of multi-product companies and **the depreciation of re-valued assets**, if any, may be identified and excluded while arriving at reasonable cost of production.
- vi) The expenses to the extent identified to the product are to be directly allocated and **common expenses** or overheads classified under factory, administrative and selling overheads **may be apportioned on reasonable and scientific basis** such as machine hours, vessel occupancy hours, direct labour hours, production quantity, sales value, etc., as applied consistently by domestic producers and the reasonableness and justification of various expenses claimed for the period of investigation may be examined and scrutinised by comparing with the corresponding amounts in the immediate preceding year.

# Principles of NIP – relevant to COP

(vii) The expenses, which **shall not to be considered** while assessing non-injurious price include,—

- a) **research and development** Provisions (unless claimed and substantiated as related to the product specific research);
- b) since non-injurious price is determined at ex-factory level, the **post manufacturing expenses** such as commission, discount, freight- outward etc.at ex-factory level;
- c) excise duty, sales tax and other tax levies on sales;
- d) expenses on job work done for other units;
- e) royalty, unless it is related to technical know-how for the product;
- f) **trading** activity of product under consideration; or
- g) other **non-cost items** like bad debts, donations, loss on sale of assets, loss due to fire, flood, etc.

# Principles of NIP – relevant to COP

viii) **A reasonable return (pre-tax) on average capital employed** for the product may be allowed for recovery of interest, corporate tax and profit. The average capital employed is the sum of "net fixed assets and net working capital, which shall be taken on the basis of average of the same as on the beginning and at the end of period of investigation. For assessment of reasonable level of working capital requirement, all the elements of net working capital shall be scrutinised in detail. The impact of revaluation of fixed assets shall not be considered in the calculation of capital employed. Interest is allowed as an item of cost of sales and after deducting the interest, the balance amount of return is to be allowed as pre-tax profit to arrive at the non- injurious price.

# Principles of NIP – relevant to COP

- (ix) **Reasonableness of interest cost** may be examined to ensure that no abnormal expenditure on account of interest has been incurred. Details of term loans, cash credit limits, short term loans , deposits and other borrowings taken by the company and interest paid thereon are examined

# Principles of NIP – relevant to COP

- Weighted average NIP of the producers in DI.
- Weights as per domestic production of the producer

# Key features of LDR in India

- Detail data collection and analysis of domestic industry producers
- On site verification of DI
- Transaction to transaction analysis- Compare NIP with LV to evaluate IM
- PCN / ,model wise computation
- No zeroing
- Weighted NIP of all producers of DI
- Mostly ADD restricted to IM (largely in cases of non cooperation / incomplete response / constructed NV for exporters)

# Comparison methodology, issues and concerns being faced by India at present

- Whether principles of fair comparison enshrined for dumping margin should also be applied for injury margin
  - Should comparison be invariably at ex-factory level
  - Treatment of freight cost
    - Factory to warehouses/depots
    - factory/depot to customers
  - Treatment of credit cost
  - Treatment of taxes & duties



# Facilitators for LDR

- Protection restricted to eliminate injury due to dumping. No over protection to DI
- Checks value chain ripples i.e impact on user industry. Preserves competition
- Accommodates exporters expectations.
- Strengthens non attribution analysis.
- Preserves ceiling of ADD i.e. DM & ensures compatible with WTO Provisions.
- Check Threat of circumvention

# Challenges /Drawbacks

- An onerous data burden on investigation.
- No uniform globally accepted practice for IM. Multiple approaches/ methods to determine NIP. which one to adopt?
- Considered major departure from WTO's mandate to levy ADD up to full DM
- Apprehension that if ADD restricted to IM, exporter with high DM may be in a beneficial position
- Lack of transparency.
- Threat of material injury may not get addressed by IM
- IM can not be a surrogate to all injury parameters.

# Some related interfaces

- **Public interest clause.**
- **Price undertaking .Article 8.1- WTO Provisions;** Proceeding may be suspended without the imposition of provisional measures or AD duties upon receipt of satisfactory voluntary undertaking from any exporters to revise it prices or to cease exports to the area in question at dumped prices so that the authority are satisfied that the **injurious effect of dumping is eliminated.**

# Some related interfaces

- **Indian Rules provisions: Rule 15 suspension or termination of investigation by price undertaking**
- The DA may suspend or terminate an investigation if the exporter of the article in question
  - i) furnishes an undertaking in writing to the DA to revise the prices so that no export of the said article are made to India at dumped prices or
  - li) in the case of imports from specified countries undertake to revise the price so that the injurious effect of dumping is eliminated and the DA is satisfied that the **injurious effect of dumping is eliminated**

# Information sought for NIP “Statement of cost of production”

FORMAT “CI”

<b>Name of the Company</b>		
Installed capacity		
Production in Installed Capacity Utilizations (%)		
Production in Investigation Period		
Capacity Utilization in Investigation period		
Sales (quantity)		
Particulars	Previous Accounting Year	Investigation Period
	Qty. Rate Value Cost per unit	Qty. Rate Value Cost per unit
Raw materials (specify the major raw materials)		
Utilities		
Depreciation		
Others (please specify the Nature of expenditure)		
Administrative Expenses		
- Variable		
- Fixed		Continued...

# Statement of cost of production

	Qty. Rate Value Cost per unit	Qty. Rate Value Cost per unit
Selling & Distribution Expenses		
- Variable		
- Fixed		
Financial Expenses		
- Variable		
- Fixed		
Less: Misc. Income (from		
Product concerned)		
Total Cost to make and Sell		
Selling price		
Profit / Loss		

# ALLOCATION AND APPORTIONMENT OF EXPENDITURE

Please provide the basis along with the amount allocated to the subject product and to other products out of the total expenses of the company as per following format

Sl.	Particulars Expenses	applicable to product under investigation	Applicable to product under investigation	Share not allocation / Apportionment	Basis of
1	Raw Material (item wise)				
2	Consumable stores and spares/other inputs				
3	Utilities (power, fuel, steam, etc.)				
4	Direct labour				
5	Manufacturing Overheads Specify under major heads)				
6	Research & Development				

Continued ...

## ALLOCATION AND APPORTIONMENT OF EXPENDITURE

Sl.	Particulars Expenses	Total applicable to product under investigation	Share Applicable to product under investigation	Share not allocation / Apportionment	Basis of
7	Administrative Overheads				
8	Selling & Distribution cost				
9	Depreciation				
10	Financial expenses				
11	Other misc. expenses				
12	Total expenditure				
13	Sales				
14	Other income				
15	Total income				
16	Profits / Loss				



## STATEMENT OF CONSUMPTION OF UTILITIES

Particulars	Consumption Norms (Per unit of Production)	Actual Consumption (Per Unit of Production)	Investigation Period
	Y1 Y2 Y3 POI	Year1 Year2 Year3	Unit Rate
a) Power			
b) Water			
c) Other (Please specify )			
Total Cost considering investigation period rates			

Note : The details should be in terms of items of utilities purchased and paid by the company. The rates should be the average cost for the investigation period.

# STATEMENT OF SALES RELATIONS

<b>Year Sold</b>	<b>Quantity Sales (Rs.)</b>	<b>Gross Commission</b>	<b>Discounts /Duty</b>	<b>Excise Realization</b>	<b>Net Sales Realisation on Per unit (Rs)</b>	<b>Net Sales</b>
<b>Year 1</b>						
<b>Year 2</b>						
<b>Year 3</b>						
<b>POI</b>						

Investigation Period (monthwise) and total for the investigation period

Note : Please indicate applicable units

Thank you