

# Presentation on Product Under Consideration (PUC)

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# Defining :Product under Consideration (PUC)

- Article 2.1 of the WTO Anti-dumping Agreement provides the following:

“For the purpose of this Agreement, **a product is to be considered as being dumped**, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country” (emphasis supplied)

# Scope of PUC-WTO Jurisprudence

- The Panel in *EC — Salmon (Norway)* considered Norway's claim that the "product under consideration" must consist of a single, internally homogeneous product or, alternatively, categories that are each individually "like" each other so as to constitute a single homogenous product. The Panel found that "[t]here is simply nothing in the text of [Article 2.1](#) that provides any guidance whatsoever as to what the parameters of that product should be. The mere fact that a dumping determination is ultimately made with respect to 'a product' says nothing about the scope of the relevant product. There is certainly nothing in the text of [Article 2.1](#) that can be understood to require the type of internal consistency posited by Norway."

# Scope of PUC & WTO Jurisprudence

- The Panel in *EC — Salmon (Norway)* concluded that [Articles 2.1](#) and [2.6](#) did not have to be interpreted to require an investigating authority to have defined the product under consideration to include only products that are “like”.
- In *EC — Fasteners (China)*, the Panel also concluded that [Articles 2.1](#) and [2.6](#) did not require the investigating authority to define the product under consideration to include only products that are “like”. The Panel remarked that “The mere fact that a dumping determination is ultimately made with respect to ‘a product’ says nothing about the scope of that product

# Relevance of PUC in AD investigations.

- Standing of Application and Applicant.
- Comparison of PUC with domestic like article
- Determination of Non-injurious Price
- Determination of Normal Value and Export Price
- Determination of Dumping Margin and Injury Margin

# Factors considered while determining scope of PUC

- ❖ Physical & Chemical Characteristics of the PUC
- ❖ Raw materials, consumables and other utilities used
- ❖ Manufacturing process & technology
- ❖ Product specifications
- ❖ Functions & uses
- ❖ Technical and Commercial substitutability
- ❖ Pricing
- ❖ Distribution & marketing
- ❖ Consumer preferences
- ❖ Cross-price elasticity
- ❖ Tariff classification of the goods etc

# How should the investigating authority determine the scope of PUC

- Even though, WTO panels tried to interpret the scope of PUC, the guidelines can not be exclusively used in Anti-dumping investigations.
- In EC-Asbestos, the Appellate Body stated that:  
“In each of the provisions where the term ‘like product’ is used, the term must be interpreted in the light of the object and purpose, and of the object and purpose of the covered agreement in which the provision appears.”

Thus the scope of PUC is like accordion





# Issue: 1: Who determines the scope of PUC: DI / Investigating Authority

- Anti-dumping investigations are generally initiated on the basis of application filed by domestic industry motivated by its own need and benefit.
- Applicant domestic industry may try to cover as many products within the scope of PUC.
- Applicant domestic industry may also try to narrow down the scope of PUC to enable it to import the like article from the subject country and trade.
- Thus, the investigating authority is required to examine the scope of PUC with a 'hawk eye' and apply its mind for defining PUC in its right perspective.

# Relevant Factors for Defining PUC

- What is the end usage.
- What are the like articles and whether DI is manufacturing all like articles.
- Whether DI is importing any type, grade, model, or category of the PUC defined by the DI from subject country - if yes, then it is required to examine the price, quantum and the country of export.
- Whether components serve the purpose of PUC with minimal value addition/mere assembling.

# Other factors:

- Whether DI has widened the scope of PUC to avoid de minimis requirement.
- Whether DI is importing PUC or any like article either in complete form or semi finished form from the subject country.
- Whether any related exporter/importer of DI is engaged in exporting/importing the PUC or any like article or preassembled like article.
- Whether DI has narrowed down scope of PUC to exclude products where it is not facing injury.
- Whether DI has narrowed down scope of PUC to enable it to import and trade.

# Issues involved in determination of PUC:

- How much specific or how much broad the PUC should be defined.
- Too broad a PUC may encompass product types/varieties which the domestic industry may not be producing or may not be capable of producing.
- Too narrow a PUC may not cover many types or varieties which may be functionally of similar usage.
- Whether it is essential for the domestic industry to manufacture all the varieties/grades of the PUC.

# Other issues:

- How to determine technical and commercial substitutability of different types/varieties of PUC.
- Whether different technologies make the PUC different – Exp: Solar cells of crystalline and thin film technologies.
- Whether a component which can perform the functions of PUC with a little or no value addition can be termed as PUC. – Exp: Solar Cells and Modules, Double Twisted/Embroidery Yarn
- Whether efficiency level makes products different. Exp 2.0 port and 3.0 port USB
- Whether quality parameters make the product types different. Exp: Prime Quality Battery and Economy Grade Battery.

# Meaning and scope of PUC and circumvention

- ADD can be circumvented by changing form, size, design, colour, classification etc of the PUC.
- Therefore, in order to make the anti-dumping measures effective and meaningful, it is critical to define the scope of PUC by taking all these issues in to account.

# Conclusion:

- No definite & fixed approach to define the meaning and scope of PUC.
- Case to case basis approach required with application of mind.

**Thank You**