

Domestic Industry, Product Under Investigation and Like Article

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Domestic Industry : basic concepts

- Domestic producers as a whole
- Major Proportion test
- Producers who are importers or related to importers
- Captive consumption
- Producers of like articles

Domestic Producers as a whole

- Reliance Industries Ltd Vs DA [2006 (202) ELT 23 (SC)]
 - DA to carry out injury determination
 - for the domestic industry as a whole and
 - not to any particular company or enterprise
 - However, it did not over-rule 'major proportion' rule

Major Proportion Test

- Lubrizol India Pvt Ltd Vs DA [2005(187)ELT 402]
 - *Poly Iso Butylene from Korea, Brazil, Japan and Singapore*
 - Applicants' accounted for 31% of total domestic production
 - Another producer accounting for 40% did not cooperate
 - CESTAT held
 - term 'major proportion' is capable of being construed as to mean a significant proportion or important part of the total production which may not necessarily exceed 50%.
 - Also in line with WTO Panel Report in Poultry from Brazil.

Producers who are importers or related to importers

- Birla Ericsson Ltd v DA [2001 (127) ELT 363 (Tri)]
 - Imports from non-subject countries is no bar
- NTCF from Korea, Taiwan, Indonesia and Thailand
 - Imports from Dubai – a non-subject country is no bar
- HR Coils/Sheets from Russia, Ukraine and Kazakhstan
 - Of the 4 producers, two had imported through their related companies
 - One held 7.17% in the importer; Held: “did not exercise control”
 - Other held 45% in the importer; he was excluded

Producers for Captive consumption

- 2000(116) ELT 67 (Tri) – Pig Iron Manufacturers Assn Vs DA
 - Producers for captive consumption constitute a different competitive market
 - Not to be included within DI
 - DA held the above view
 - Importers challenged it before CESTAT
 - Showed WTO Opinion that captive producers form part of domestic industry
 - Still, CESTAT upheld DA's views

Producers of Like Articles

- Fused Magnesia (“FM”) from China
 - No producer of FM in India
 - Application by a producer of Sintered Sea Water Magnesia (“SWM”) was treated as DI
- Purified Terephthalic Acid (PTA) from Thailand, Korea and Indonesia
 - Application filed by producer of DMT and not PTA
 - PTA producer had imported and was disqualified
 - DMT was like article and hence DMT manufacturer was held to be DI

Product Under Consideration

- Initiation Notice is required to identify 'article involved'
- Statutory scheme envisages
 - Importation of an identified article
 - Determination of margin of dumping for that article
 - The expression 'Article' in Section 9A(1) refers to such article
 - ADD may be imposed only on the article which is the subject matter of investigation and not on any other article that may be a like article.
 - Andhra Petrochemicals ltd Vs DA [2006 (201) ELT 481]

PUC may contain multiple products

- Styrene Butadiene Rubber (SBR) from Japan, Korea, Turkey, Taiwan and USA
 - Different series of SBR were treated as different product and separate dumping margins were determined for
 - SBR 1500 series, 1700 series and 1900 series
 - technical characteristics and end-uses of each series was distinct from the other
 - they were not substitutable with one another
 - CESTAT also did not interfere
- Rubber Chemicals from China/Korea
- PEN G and 6 APA from China and Mexico

New Trends in defining PUC

- Inclusion of
 - Parts and components
 - [SDH, Tyre Curing Machine, CFL]
 - Sizes or grades for which domestic industry is capable of manufacturing them
- Exclusion of
 - sizes that are not being manufactured
 - [Cold Rolled Stainless Steel Flat Products .. Width exceeding 1250 mm excluded]

Like Article

- *Acrylo Nitryl Butadiene Rubber (NBR) from Japan*
 - Imported & domestically produced NBR were held like products
 - All grades of NBRs were co-polymers of Acrylo Nitryl and Butadiene
 - All grades served the same general purpose of providing resistance to petro-chemical
 - any variation in Acrylo Nitryl content merely enhanced some properties
 - manufacturing process, equipment and other facilities required for producing different grades of NBR were common
 - users of NBR used both Japan NBR and domestically produced NBR interchangeably.
 - The views of the Department of Chemicals and Petrochemicals of Government of India were also used in support of the finding.
 - This finding was upheld by CESTAT on appeal.

Like Article...2

- *Bisphenol A (BPA) from Brazil and Russia*
 - importers argued that there were two different grades
 - Epoxy
 - Polycarbonate
 - DA found that BPA was
 - manufactured out of phenol and acetone;
 - Chemical name, molecular formula and other properties were same for both grades
 - Hence both were like products.

Like Article...3

- *3,4,5 Tri Methoxy Benzaldehyde (TMBA) from People's Republic of China*
- Produced from
 - Gallic Acid in India
 - Paracresol in China
- DA held:
 - TMBA manufactured through two different routes, i.e Gallic Acid and Paracresol routes is alike in all respects.

Like Article...4

- *Dead Burnt Magnesite (DBM) from China*
 - imported product was having MgO (Magnesium Oxide) content of 90-92% and less than 4% silica
 - this grade was not produced in India.
 - DA held they were like articles
 - like article need not necessarily be identical; they are closely resembling
 - Imported and domestically produced DBM were substituted by the users
 - CESTAT set aside the order of DA
 - import of DBM containing less than 4% silica from China could not have caused material injury to the domestic producers of DBM who did not produce this grade
 - Indian Refractory Makers Association Vs DA [2000 (119) ELT 319]

Like Article...5

- *Hard Ferrite Ring Magnets from China PR*
 - DI was manufacturing only hard ferrite ring magnets of energy product (BH max) 2.8 MGOe min and above.
 - All types of Hard ferrite ring magnets were included by DA for levy of antidumping duty.
 - On appeal, CESTAT found that
 - energy product (BH max) is a definitive and distinguishing characteristic of hard ferrite ring magnet and that characteristic offers a sound basis (techno commercial market) for the categorisation of the magnets in question
 - import of Hard Ferrite Ring Magnet of below energy product (BH max) 2.8 MGOe min could not cause any injury to Indian domestic industry and that those grades were not manufactured in India.
 - no justification for including grades of ring magnets which were not produced in India
 - Magnet Users Association Vs DA [2003 (157) ELT 150]

Like Article...6

- *PTA from Korea, Thailand and Indonesia*
- PTA and DMT were held to be like articles
 - PTA and DMT were chemically different, but they had characteristics closely resembling each other.
 - Price of DMT was always lower than that of PTA and price of DMT moved in consonance with that of PTA.
 - A fall in PTA prices had the effect of depressing the price of DMT
 - Thus, the dumping of PTA had caused injury to the producers of DMT.
 - It was also upheld by CESTAT

Like Article...7

- *Oxo Alcohols from Poland, South Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and European Union*
 - Covered 10 different alcohols
 - 2EHA, NBA, IBA, Iso-Octanol, Iso Decanol, Normal Hexanol, Iso and normal Heptanol, Iso and Normal Nonanol, Tri Decanol and Propyl Heptanol.
 - Only 4 alcohols had been imported into India.
 - 2EHA, IBA, NBA and Iso-Octanol
 - DI produced only five alcohols
 - 2 EHA, IBA, NBA, Iso Decanol and Iso Octanol
 - Duties levied on six alcohols –
 - five manufactured by the domestic industry and Normal Hexanol.
 - 2EHA was used to manufacture DOP and Normal Hexanol was used to manufacture DnHP. DI argued that DOP and DnHP can substitute each other though 2EHA and Normal Hexanol cannot substitute each other.
 - DA imposed duties
 - CESTAT held that
 - even if the products manufactured using these two types of alcohols were interchangeable, they could not be treated as like article in the absence of a finding that they themselves have characteristics closely resembling each other
 - Oxo Alcohol Industries Association [Vs DA 2001 (130) ELT 58]

Like Article...8

- ATMA Vs DA [2000 (122) ELT 412]
 - Not material in defining Like Article
 - Differences in the Process of manufacture
 - Differences in Quality
- DSM IDEMITSU Ltd Vs DA [2000(119) ELT 308]
 - Differences in quality will not make the article different
- Cold Rolled Flat Products of Stainless Steel from EU, Japan, Canada and USA
 - DI was not able to manufacture the product meeting the strict specifications laid down by automobile industry
 - Authority held them to be like articles

Like Article...9

- Videocon Narmada Glass Vs DA [2003 (151) ELT 80]
 - Imported - Strontium Carbonate Granular form
 - DI production – SC in powder form
 - Granular form is not in commercial competition with powder form
 - DI admitted that
 - they are not supplying granular form and
 - non levy of duty will not affect them
 - Granular and Powder forms were held to be not like articles



Thank you very much