

Price Undertaking & All Others Rate

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Price Undertakings

- Legal Provisions
- Indian Practice
 - Statistics
 - Determination of Undertaking Price
 - Criteria for Acceptance/Rejection
 - Tribunal decisions
 - Tips for exporters

Legal Provisions

Offer

- After PF but before FF
- Satisfactory, Voluntary Undertakings
 - Cease to export at dumped prices
 - Lesser Duty Rule applicable

8.1-2

Acceptance

- May not be accepted
 - Impractical
 - Any other reasons incl. general policy
- Upon acceptance
 - Terminate or suspend invg. or
 - Complete invg.
- If rejected, give reasons and opportunity to the exporter to comment

8.3

Implementation

- If no definitive measures imposed
 - lapses automatically
 - Except if it was primarily due to PUT
- Periodical Reports to be filed

8.4

Revocation

- Violation of undertakings
- Suspended cases
 - Provisional duty will be levied
 - Investigation to resume
- Completed cases
 - Final duty shall be applied

8.6

Indian Practice – Statistics upto July 2010

- PUT Offered 26
- Accepted 12
- Rejected 14
- Of the accepted cases
 - Lapsed as no Final measures imposed 2
 - Set aside by Tribunal 1
 - Terminated due to violations 3
 - Effective cases of PUT 6

S. No.	Year	Product	Country	Remarks
1	2009	Plain Medium Density Fibre Board	Sri Lanka	
2	2001, 2008	White Cement	UAE	
3	2006	Fully Drawn or Fully Oriented Yarn Spin Draw Yarn Flat Yarn of Polyester	Korea	terminated for violation
4	2005	Nylon Tyre Cord Fabric NTCF	China	
5	2004	Potassium Carbonate	Taiwan	terminated for violation
6	2003	Hexamine	Iran	-do-
7	2002	Biaxially Oriented Poly Propylene Film (BOPP)	Oman	Set aside by Tribunal
8	2001	Lead Acid Batteries	KOrea	
9	2000	Black & White Photographic Paper	UK	
10	2000	Black & White Photographic Paper	Hungary	
11	1998	Newsprint	Russia	lapsed as no final measure
12	1998	Newsprint	Russia	-do-



Determination of Undertaking Price

- Lower of -
 - Undumped Price
 - NIP
- How to arrive at Undumped Price
 - Normal Value
 - Plus additions to bring it to the level of CIF (Indian Port)
- NIP is determined by DGAD for the Domestic industry

Types of Undertaking Prices

- Landed Value level
 - CIF + 1% towards landing charges + applicable Basic Customs Duty + Customs Cess
- CIF level
 - CIF at the Indian Port
- FOB Level
- CIF level with a variation clause
- Prices can be single UP for the Product concerned or separate UP for every grade

PUT – at Landed Value level

- 2000 : Black & White Photographic paper from UK and Hungary (2 cases)
 - Single UP at Landed Value level
 - Specific exemption against application of ‘All others rate’
- 2009 : Plain Medium Density Fibre Board from Sri Lanka
 - Single UP at Landed value level
- 2001 : Lead Acid Batteries from Korea
 - Model Specific UPs at Landed value level or CIF level (not clear)

UP - at CIF level

- 2002 : BOPP Film from Oman
 - All grades of BOPP, a single CIF price of USD 1.63 per kg accepted
 - If CIF Price is lower than UP, duty @ USD0.56 per kg to be levied
- 2004 : Potassium Carbonate from Taiwan
 - Normal Value reworked to CIF level
 - In case price lower than UP, provisional duty shall be levied
- 2001 and 2008 : White Cement from UAE
 - UP at CIF Level + payment terms LC not exceeding 30 days
 - Importation through specified ports only

UP - at FOB level

- 2006 : FDY from Korea
 - UP at FOB level
 - Different rates for different models

UP – at CIF level with variation clause

- 2003 : Hexamine from Iran
 - UP at CIF Level
 - For each USD change in price of Methanol, Hexamine should change by USD 1.65 per MT
 - EQR was grossly deficient, yet PUT accepted
- 2005 : Nylon Tyre Chord Fabric from China
 - UP at CIF level
 - UP to change proportionally for every change in USD 0.010 per kg of raw material price as per ICSI LOR on a quarterly basis;
 - Quarterly report to be given

PUT Rejections - Survey of reasons

- Did not offer different UP for different grades
- Absence of requisite details on COP
- Impractical
- Inadequate documentary evidence
- Only showed willingness but did not offer a proper PUT
- Exporter did not cooperate in the investigation

PUT - Rejections

- Did not offer different UPs for different grades
 - 2005 – NTCF from China
- Difficult to monitor Raw material price variations
 - 2008 – Phosphoric Acid (Technical and food grade) from China
- Absence of requisite details on COP
 - 2000 – Thermal sensitive Paper from China

PUT Rejections :

Impractical

- Implementation difficult
 - complex product
 - Constant technological developments leading to new product types
 - 2009 – Cathode Ray Colour Television Picture Tubes from China
- Impractical to verify COP of the exporter frequently
 - 2005 – Thermal Sensitive paper from Indonesia
- Impractical to implement several of the conditions linked to PUT
 - 2002 – Acrylic Yarn from Nepal

PUT Rejections – inadequate documentary evidence

- 2002 – Partially Oriented yarn from Indonesia
- 2002 – Acrylic Fiber from UK

PUT Rejections :

showed willingness but did not offer

- 2000 – Acrylic Fiber from Turkey
- 1998 – Graphite Electrodes from China

PUT Rejections : Non-cooperation

- 2003 – Citric Acid from Indonesia
 - Exporter did not file complete EQR; treated non-cooperative
- 2002 – Ferro Silicon from Ukraine
- 2002 – Compact Fluorescent Lamp from China

PUT termination due to violation

- 2006 – FDY from Korea
 - PUT Given after PF before FF
 - Investigation was suspended
 - Exporter failed to file periodical reports
 - PUT was withdrawn and investigation resumed
 - Exporter did not cooperate in the resumed investigation
 - All others rate fixed in the original investigation applied

Tribunal decisions –1

- BOPP from Oman
 - DGAD accepted single UP for all grades
 - DI appealed before Tribunal
 - Tribunal set aside the PUT
 - BOPP films are various grades and different qualities. Records show that there is considerable (25-30%) price difference between metalised and non-metalised films. PUT based on single price for all the grades and quality of BOPP is not appropriate and cannot be accepted
 - » Association of BOPP Manufacturers Vs DA [2004 (167) ELT 185]

Tribunal decisions ...2

- 2002 : POY from Indonesia
 - Exporter offered price undertaking
 - DGAD rejected it without assigning any reasons
 - Exporter challenged it before Tribunal
 - Tribunal held:
 - Exporter is entitled to challenge rejection of PUT
 - DGAD had simply noted in the file that PUT may be considered in the next review
 - No reasoning was given to exporter
 - Arbitrary refusal was held to be unconstitutional and void
 - DGAD was directed to consider PUT on merits
 - » PT Polysindo Eka Perkasa [2000 (185) ELT 358]

PUT tips

- DGAD
 - to notify Domestic industry
 - will obtain comments from DI
 - If DI objects to the proposal
 - DGAD may also reject the proposal
 - If DI gives no-objection
 - DGAD may accept

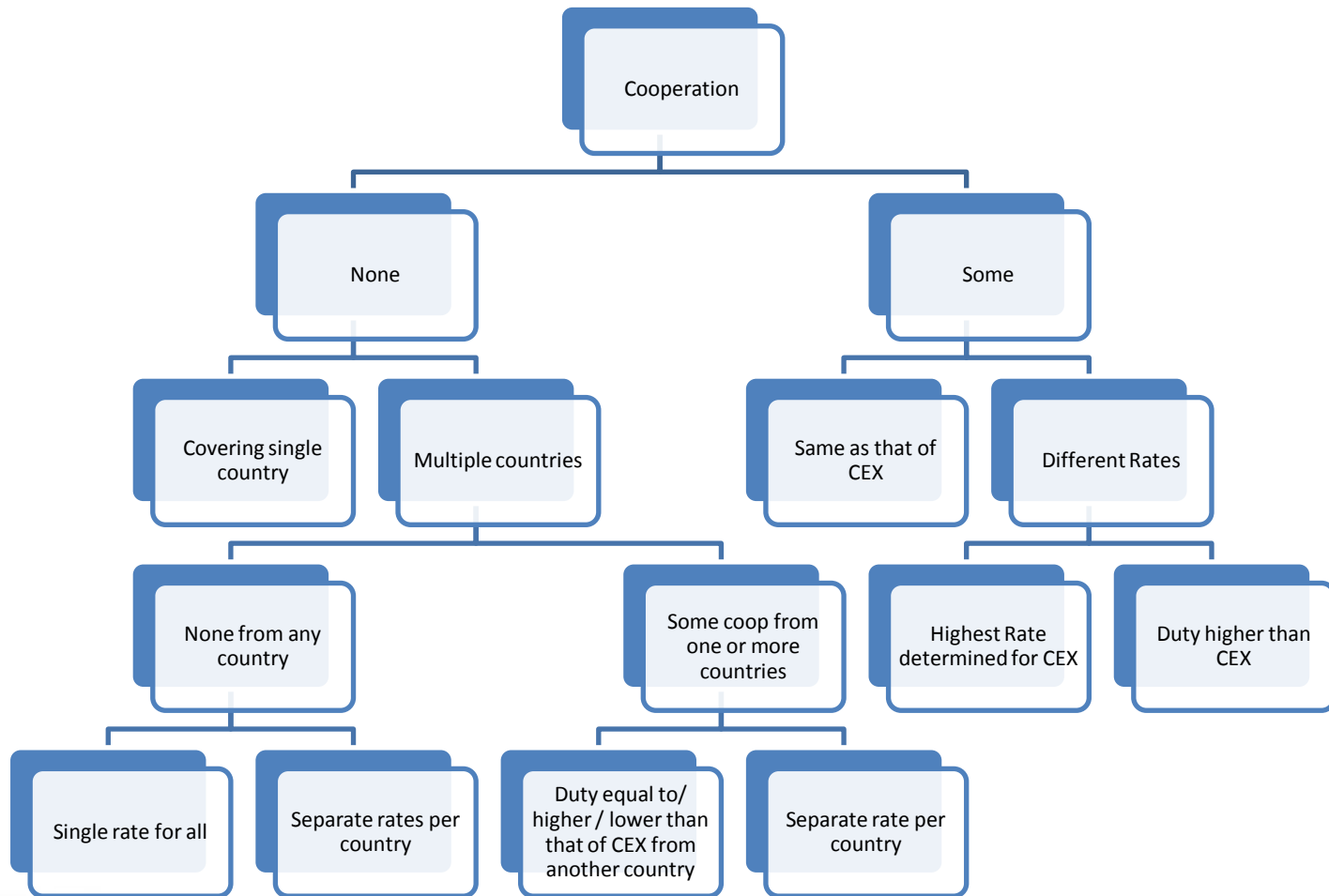
All others Rate

- Legal Basis [Rule 6 (8) / Art.6.8]
 - Interested party
 - refuses access to,
 - Does not provide necessary information
 - Significantly impedes the investigation
 - May record findings based on ‘facts available’
- Need for all others rate
 - Non-cooperating producer/exporters cannot be left out

Meaning of 'facts available'

- Allied concepts used
 - All facts available
 - Best information available
 - Facts otherwise available / From among the facts available
- AB Repot in *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice from US (DS295)*
 - The use of the term "*best information*" means that information has to be not simply correct or useful *per se*, but the most fitting or "most appropriate" information available in the case at hand. Determining that something is "best" inevitably requires, in our view, an evaluative, comparative assessment as the term "best" can only be properly applied where an unambiguously superlative status obtains. It means that, for the conditions of Article 6.8 of the AD Agreement and Annex II to be complied with, there can be no better information available to be used in the particular circumstances. Clearly, an investigating authority can only be in a position to make that judgement correctly if it has made an inherently comparative evaluation of the "evidence available".

All Others Rate



Determination of Normal Value

- Same as that of a cooperating exporter
- Different from that cooperating exporters

Normal Value – same as that of CEX

- Vitamin AD₃ from European Union
 - BASF cooperated and got NIL duty
 - Addisseo France SAS did not fully cooperate
 - provided only domestic sales and export to India; no COP given; no verification; treated non-cooperative
 - Addisseo France SAS appealed to CESTAT
 - CESTAT held that NV should be the same as that of CEX -BASF

Addisseo France SAS Vs DA

[2003(155) ELT 181] ...1

8. While “facts available” rule is a rule of adverse inference, it is also a rule of prudence that the Designated Authority should seek corroboration for the secondary information made available to it while seeking to determine normal value under “facts available” rule. In the present case, the information about normal value in the European Union had sufficient corroboration from the BASF. The constructed cost based information furnished by the domestic industry with regard to normal value for AD₃ in European Union also has been shown to be quite unreliable by the normal value determined for BASF. Viewed in that light also the Designated Authority should have accepted the normal value determined for BASF for the present appellant’s AD₃ export also, rather than the constructed cost put forth by the domestic industry petitioner.

Addisseo France SAS Vs DA

[2003(155) ELT 181] ...2

Designated Authority has determined that the sale price of BASF for AD₃ in Germany satisfies the requirement of normal value . This 'comparable price' has to be treated as normal price "of similar articles sold under similar circumstances irrespective of the manufacturer". AD₃ manufactured by BASF Germany and M/s. Addisseo France SAS are admittedly similar articles. They are also sold under similar circumstances, inasmuch as both are sold in competitive conditions in the European Union. So a "comparable price" for the AD₃ of one rightly constitutes the "comparable price" for the other, in other words normal value. It is not in dispute that the export price to India of M/s. Addisseo France SAS for AD₃ is well above the normal value determined for BASF i.e. for European Union. In such a situation, it has to be held that there was no dumping of AD₃ by M/s. Addisseo France SAS.

Normal Value – different from that of CEX

- Why Different Rate?
 - To impose a higher rate on non-cooperating exporters
 - to incentivise cooperation?
 - to penalise non-cooperation?
- How to calculate the different rate
 - Highest NV from amongst CEXs
 - Constructed NV
 - Based on international RM prices; Indian DI's consumption norms; DI's conversion costs + SGA Expenses; profit of 5%
 - Petitioners' data
 - Highest domestic selling price
 - Domestic selling prices without any adjustment
 - COP in India (with necessary adjustments?)

Determination of Export price

- Lowest export price reported by CEXs
- Lowest export price in published Import Statistics
 - DGCIS, IBIS, IMPEX, INFODRIVE, etc
- Average price from DGCIS with adjustments based on CEX
- Wt.Avg.export prices of all CEXs
- Petitioners data modified based on CEX data
- Lowest export price of CEX or Import Statistics filed by Petitioners