



Bangalore Chamber of Industry and Commerce

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Taxation (Customs)

Circular No.15

19.01.2010

All Members

Dear Sirs,

We enclose herewith the following Notifications issued from Government of India, Ministry of Finance and Department of Revenue – for your reference and record.

1. Notification No. 01/2010-Customs, dated 8th January, 2010 - [F. No: 354/80/2009- TRU] - Import of tyre curing presses or rubber processing machineries from China
2. Notification No. 189/2009-Customs (N.T.), Dated 31st December, 2009 - [F. No. 467/68/2004-Cus.V/ICD] - Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.

Thanking you,

Yours faithfully

T.S. Sampath Kumar
Secretary General

Notification No. 01/2010-Customs, dated 8th January, 2010 - [F. No: 354/80/2009- TRU]

Import of tyre curing presses or rubber processing machineries from China

G.S.R. (E).- Whereas, in the matter of import of tyre curing presses also known as tyre vulcanisers or rubber processing machineries for tyres (hereinafter referred to as the subject goods), falling under tariff item 8477 51 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in or exported from, People's Republic of China (China PR) (hereinafter referred to as the subject country), the designated authority, in its preliminary findings vide notification No. 14/22/2007-DGAD, dated the 5th March, 2009, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 9th March, 2009, has come to the conclusion that—

the subject goods have entered the Indian market from the subject country at prices less than their normal values in the domestic market of the exporting country;

- (i) the dumping margins of the subject goods imported from the subject country are substantial and above de minimis; and
- (ii) the domestic industry has suffered material injury and the injury has been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject country;

And whereas, the designated authority, in its final findings vide notification No. 14/22/2007-DGAD, dated the 15th October, 2009, published in the Gazette of India, Extraordinary, Part I, Section I, dated the 15th October, 2009, has come to the conclusion that –

- (i) the subject goods have entered the Indian market from the subject country at prices less than their normal values in the domestic market of the exporting country;
- (ii) the dumping margins of the subject goods imported from the subject country are substantial and above de minimis; and
- (iii) the domestic industry has suffered material injury and the injury has been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject country;

and has recommended to impose definitive anti-dumping duties on all imports of the subject goods, originating in or exported from the subject country.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the said Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid final findings of the designated authority, hereby imposes on the goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), the specification of which is specified in column (4), originating in the country as specified in the corresponding entry in column (5) and produced by the producer as specified in the corresponding entry in column (7), when exported from the country as specified in the corresponding entry in column (6), by the exporter as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at the rate to be worked out as percentage of the CIF value of imports of the subject goods as specified in the corresponding entry in column (9) of the said Table.

Table

Sl. No	Tariff item	Description of goods	Specification	Country of origin	Country of export	Producer	Exporter	% of CIF Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	8477 51 00	Tyre Curing Presses	All sizes upto 130 inches	China PR	China PR	Any	Any	10
2	8477 51 00	Tyre Curing Presses	All sizes upto 130 inches	China PR	Any	Any	Any	10
3	8477 51 00	Tyre Curing Presses	All sizes upto 130 inches	Any	China PR	Any	Any	10

2. The anti-dumping duty imposed under this notification shall be levied with effect from the date of issuance of this notification.

Note.- For the purposes of this notification, "CIF value" means assessable value as determined under section 14 of the Customs Act, 1962 (52 of 1962).

**Sd/-
(Prashant Kumar)
Under Secretary to the Government of India**

Notification No. 189/2009-Customs (N.T.), Dated 31st December, 2009 - [F. No. 467/68/2004-Cus.V/ICD]

Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.

G.S.R. ... (E) – In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-

(1) These rules may be called the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.

(2) They shall come into force on the 1st day of January, 2010.

2. Definitions.-

In these rules, unless the context otherwise requires,-

“**Agreement**” means the Agreement on Trade in Goods under the Framework Agreement on the Comprehensive Economic Co-operation between the Republic of India and the Association of Southeast Asian Nations (ASEAN) signed on the 13th day of August, 2009.

“**AIFTA**” means the ASEAN-India Free Trade Area under the Framework Agreement on Comprehensive Economic Co-operation between the Republic of India and the Association of Southeast Asian Nations;

“**ASEAN**” means the Association of Southeast Asian Nations which comprises of the Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao PDR, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam and whose members are referred to in the Agreement collectively as the ASEAN Member States and individually as an ASEAN Member State;

“**CIF**” means the value of the goods imported, the cost of freight and insurance up to the port or place of entry into the country of importation;

“**FOB**” means the free-on-board value as determined in the manner as specified in paragraph 1 of the Annexure I;

“Framework Agreement” means the Framework Agreement on Comprehensive Economic Co-operation between the Republic of India and the Association of Southeast Asian Nations, signed in Bali, Indonesia on the 8th October 2003;

“identical and interchangeable materials” means the materials being of the same kind possessing similar technical and physical characteristics, and after being incorporated into the finished product, they cannot be distinguished from one another for origin purposes;

“material” means raw materials, ingredients, parts, components, sub-assembly or goods that are physically incorporated into another goods or are subject to a process in the production of another goods;

“originating products” means products that qualify as originating in accordance with the provisions of rule 3;

“party” means India or an ASEAN Member State and “parties” means India and ASEAN member States collectively;

“product” means product which is wholly obtained or produced or being manufactured, even if it is intended for later use in another manufacturing operation;

“production” means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling goods.

3. Origin criteria.-

The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-

- a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,
- b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.

4. Wholly produced or obtained products.-

For the purpose of clause (a) of rule 3, the following shall be considered as wholly produced or obtained in a party:-

- (a) plant and plant products grown and harvested in the party;

Explanation.- For the purpose of this clause, “plant” means all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants;

- (b) live animals born and raised in the party;
- (c) products obtained from live animals referred to in clause (b);

Explanation 1.- For the purpose of clauses (b) and (c), “animals” means all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.

Explanation 2.- For the purpose of this clause , “products” means those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;

- (d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the party;
- (e) minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the party’s soil, water, seabed or beneath the seabed;
- (f) products taken from the water, seabed or beneath the seabed outside the territorial water of the party, provided that that party has the right to exploit such water, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;
- (g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the party and entitled to fly the flag of that party;
- (h) products processed and/or made on board factory ships registered with the party and entitled to fly the flag of that party, exclusively from products referred to in clause (g);
- (i) articles collected in the party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes; and

Explanation.- For the purpose of this clause, “article” means all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for

disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations;

- (j) products obtained or produced in the party solely from products referred to in clauses (a) to (i).

5. Not wholly produced or obtained products.-

(1) For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if –

- (i) the AIFTA content is not less than 35 per cent. of the FOB value; and
(ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System:

Provided that the final process of the manufacture is performed within the territory of the exporting party.

(2) For the purpose of clause (i) of sub-rule (1), the formula for calculating the 35 per cent. AIFTA content is as follows:

(i) Direct Method

$$\frac{\text{AIFTA Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100 \% \geq 35\%$$

(ii) Indirect Method

$$\frac{\text{Value of Imported Non-AIFTA Materials, Parts or Produce} + \text{Value of Undetermined Origin Materials, Parts or Produce}}{\text{FOB Price}} \times 100 \% \leq 65\%$$

(3) The parties are free to adopt the method of calculating the AIFTA content, whether it is the direct or indirect method and any verification of the AIFTA content by the importing party shall be done on the basis of the method used by the exporting party.

(4) Each party shall adhere to one method of calculating AIFTA content to promote transparency, consistency and certainty:

Provided that any change in the method of calculation shall be notified to all the parties at least six months prior to the adoption of the new method.

- (5) The value of the non-originating materials shall be -
- (i) the CIF value at the time of importation of the materials, parts or produce; or
 - (ii) the earliest ascertained price paid for the materials, parts or produce of undetermined origin in the territory of the party where the working or processing takes place.
- (6) The method of calculating for AIFTA content is as set out in Annexure I annexed to these rules.

6. Cumulative rule of origin.-

Unless otherwise provided for, products which comply with origin requirements referred in rule 3 and which are used in a party as materials for a product which is eligible for preferential treatment under these rules shall be considered as products originating in that party where working or processing of the product has taken place.

7. Minimal operations and processes.-

- (1) Notwithstanding anything contained in these rules, a product shall not be considered originating in a party if the following operations are undertaken exclusively by itself or in combination in the territory of that party:-
- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
 - (b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting;
 - (c) changes of packing and breaking up and assembly of consignments;
 - (d) simple cutting, slicing and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, and all other simple packing operations;
 - (e) affixing of marks, labels or other like distinguishing signs on products or their packaging;
 - (f) simple mixing of products whether or not of different kinds, where one or more components of the mixture do not meet the conditions

- laid down in these rules to enable them to be considered as originating products;
- (g) simple assembly of parts of products to constitute a complete product;
 - (h) disassembly;
 - (i) slaughter which means the mere killing of animals; and
 - (j) mere dilution with water or another substance that does not materially alter the characteristics of the products.
- (2) For textiles and textile products listed in the Annexure II annexed to these rules, an article or material shall not be considered to be originating in a party by virtue of merely having undergone any of the following:-
- (a) simple combining operations, labelling, pressing, cleaning or dry cleaning or packaging operations, or any combination thereof;
 - (b) cutting to length or width and hemming, stitching or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;
 - (c) trimming and/or joining together by sewing, looping, linking, attaching of accessory articles such as straps, bands, beads, cords, rings and eyelets;
 - (d) one or more finishing operations on yarns, fabrics or other textile articles, such as bleaching, waterproofing, decating, shrinking, mercerizing, or similar operations; or
 - (e) dyeing or printing of fabrics or yarns.

8. Direct Consignment.-

The following shall be considered as consigned directly from the exporting party to the importing party, -

- (a) if the products are transported passing through the territory of any other AIFTA parties;
- (b) if the products are transported without passing through the territory of any non-AIFTA parties;
- (c) if the products whose transport involves transit through one or more intermediate non-parties with or without transshipment or temporary storage in such non-parties provided that -
 - (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
 - (ii) the products have not entered into trade or consumption there; and
 - (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

9. Treatment of packing.-

- (1) Packages and packing materials for retail sale, when classified together with the packaged product, shall not be taken into account in considering whether all non-originating materials used in the manufacture of a product fulfill the criterion corresponding to a change of tariff classification of the said product.
- (2) Where a product is subject to an *ad valorem* percentage criterion, the value of the packages and packing materials for retail sale shall be taken into account in its origin assessment, in case the packing is considered as forming a whole with products.
- (3) The containers and packing materials exclusively used for the transport of a product shall not be taken into account for determining the origin of the goods.

10. Accessories, spare parts, tools and instructional or other information material.-

The origin of accessories, spare parts, tools and instructional or other information materials presented with the products shall not be taken into account in determining the origin of the products, provided that such accessories, spare parts, tools and instructional or other information materials are –

- (a) in accordance with the standard trade practices in the domestic market of the exporting party; and,
- (b) classified with the products at the time of assessment of customs duties by the importing party:

Provided that, if the products are subject to a qualifying AIFTA content requirement under these rules, the value of such accessories, spare parts tools and instructional or other information material shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying AIFTA content.

11. Indirect Materials.-

For determining whether a product originates in a party, any indirect material such as power and fuel, plant and equipment, or machines and tools used to obtain such products shall be treated as originating whether such material originates in non-parties or not, and its value shall be the cost registered in the accounting records of the producer of the export goods.

12. Identical and interchangeable materials.-

For the purpose of determining origin of a product, when it is manufactured utilising both originating and non-originating materials, mixed or physically combined, the origin of such materials can be determined by generally accepted accounting principles of stock control applicable or inventory management practised in the exporting party.

13. Certificate of Origin.-

Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III annexed to these rules.

**Sd/-
(Vikas)
Under Secretary to the Government of India**

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