TYPES OF DUTY

For the sake of brevity “Goods and Services Tax Compensation Cess” has been referred to as “GST compensation cess”.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend various types of duties leviable under Customs law.
- analyse and apply basic customs duty, integrated tax, goods and services tax compensation cess and social welfare surcharge on importation.
- analyse and apply protective duties, safeguard duty, countervailing duty on subsidized articles and anti-dumping duty.
- appreciate the emergency power of Central Government to impose or enhance import and export duties.
- identify the cases where countervailing duty on subsidized articles and anti-dumping duty will not be levied.
1. **BASIC CUSTOMS DUTY [SECTION 12 OF THE CUSTOMS ACT & SECTION 2 OF THE CUSTOMS TARIFF ACT]**

Basic Customs Duty is levied under the provisions of section 12 of the Customs Act and section 2 of the Customs Tariff Act.

**Charging section:** The duties of customs shall be levied
- at such rates* as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force
- on goods imported into or exported from India [Section 12 of the Customs Act, 1962]

**Rates of basic custom duty:** *The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules [Section 2 of the Customs Tariff Act, 1975]*

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**The Customs Tariff Act, 1975**

- **First Schedule**
  - enlists the goods liable to import duty

- **Second Schedule**
  - enlists the goods liable to export duty

**Standard rate of duty:** Generally, the rate of duty specified in column (4) is applicable.

** Preferential rate of duty:** If the goods are imported from the areas notified by the Central Government to be preferential areas, then the rate of duty under column (5) will be applicable.

The Government may by notification under section 25 of the Customs Act prescribe preferential rate of duty in respect of imports from certain preferential areas.
Conditions to be fulfilled for preferential rate of duty: The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

(a) At the time of importation, he should make a specific claim for the preferential rate.
(b) He should also claim that the goods are produced or manufactured in such preferential area.
(c) The area should be notified under section 4(3) of the Customs Tariff Act to be a preferential area.
(d) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act.

If the importer fails to discharge the above duties, the goods shall be liable to standard rate of duty.

2. INTEGRATED TAX [SECTION 3(7) OF THE CUSTOMS TARIFF ACT]

Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable under section 5 of Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A).

3. GOODS AND SERVICES TAX COMPENSATION CESS [SECTION 3(9) OF CUSTOMS TARIFF ACT]

GST compensation cess is a compensation cess levied under section 8 of the Goods and Services Tax (Compensation to State) Act, 2017. GST compensation cess is levied on intra-state supply of goods or services and inter-state supply of goods or services to provide compensation to the States for loss of revenue due to implementation of GST in India.

It may be noted that GST compensation cess would be applicable only on those supply of goods or services that have been notified by the Central Government. As of now, GST compensation cess is levied on luxury and sin goods like pan masala, tobacco etc.

Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of
the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A).

**Manner of computing assessable value for levying Integrated tax**

*Section 3(8) of Customs Tariff Act*

For the purposes of calculating the integrated tax on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the integrated tax referred to in section 3(7) of the Customs Tariff Act, 1975 or the goods and services tax compensation cess referred to in section 3(9) of the Customs Tariff Act, 1975.

**The assessable value for levying GST compensation cess is to be computed in the same manner as discussed above.** [Section 3(10) of Customs Tariff Act]

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act. [Section 3(12) of the Customs Tariff Act]

The duty or tax or cess chargeable under this section shall be in addition to any other duty or tax or cess, imposed under this Act or under any other law for the time being in force. [Section 3(11) of the Customs Tariff Act]

**Point which merit consideration:**

Following tax/cess would not be included while computing the assessable value for computation of Integrated tax and GST compensation cess:-

(a) Integrated tax [Section 3(7)]

(b) Goods and Services Tax compensation cess [Sections 3(9)]
4. MANNER OF COMPUTING VALUE IN CASE OF WAREHOUSED GOODS [SECTION 3(8A) OF THE CUSTOMS TARIFF ACT]

Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-section (7) shall be—

(a) where the whole of the goods are sold, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher.

However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b).

Further, in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

For the purposes of this sub-section, the expression “transaction value”, in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

The value for levying GST compensation cess in case of warehoused goods is to be computed in the same manner as discussed above. [Section 3(10A) of Customs Tariff Act]

**Tariff value: [Section 2(40)]**

“Tariff value”, in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14.

**Value: [Section 2(41)]**

“Value”, in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.
5. ADDITIONAL DUTY OF CUSTOMS UNDER SECTION 3 OF CUSTOMS TARIFF ACT

1. **Additional duty under section 3(1):** Any article which is imported into India is also liable to a duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. This duty is called as additional duty. If the excise duty is leviable at a percentage of the value of the goods, the additional duty will also be calculated at that percentage of the value of the imported article.

   **Rate of additional duty in case of alcoholic liquor:** In case of any alcoholic liquor for human consumption imported into India, the Central Government may notify the rate of additional duty having regard to the excise duty for the time being leviable on like alcoholic liquor produced or manufactured in different States. In case if the like alcoholic liquor is not produced or manufactured in any State, then, the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs would be the applicable rate.

2. **Countervailing duty under section 3(3):** Special additional duty under sub-section (3) is levied to counter balance the excise duty leviable on raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of the imported article. The Central Government can levy such duty if it is satisfied that it is necessary in the public interest to do so even if such article is liable to additional duty leviable under sub-section (1).

3. **Levy of special additional duty under section 3(5):** If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding 4% of the value of the imported article as specified in that notification.
Note: Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and/or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

6. PROTECTIVE DUTIES [SECTION 6 & 7 OF THE CUSTOMS TARIFF ACT]

Types of duties

- **Revenue duties**: are those which are levied for the purpose of raising customs revenue.

- **Protective duties**: are intended to give protection to indigenous industries. If resort to protective duties is not made there could be a glut of cheap imported articles in the market making the indigenous goods unattractive.

Factors to be considered while giving protection through protective duties:
The protection through protective duties is given considering the following factors.

(a) The protective duties should not be very stiff so as to discourage imports.

(b) It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

Levied by Central Government: The protective duties are levied by the Central Government upon the recommendation made to it by the Tariff Commission and
upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any industry established in India [Section 6].

**Duration of protective duties:** The protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule [Section 7(1)].

**Power of Central Government to alter such duties:** The Central Government may reduce or increase the duty by notification in the Official Gazette.

However, such duty shall be altered only if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India [Section 7(2)].

**In case of increase in duty, approval of Parliament required:** If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval.

Every notification in so far as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes. However, anything done pursuant to the notification before the recommendation by the Parliament shall be valid [Section 7(3)].

7. **EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES [SECTION 8 OF CUSTOMS TARIFF ACT]**

**Central Government empowered to impose/enhance the export duties:** The Central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the Official Gazette.

**Conditions to be satisfied**

a. The goods may or may not be specified in the Second Schedule.
b. The Central Government is satisfied that circumstances exist, which render it necessary for the imposition or enhancement of export duties. If the above conditions are satisfied, the Central Government may impose or enhance export duties.

Generally in summer season, the production of milk becomes low as compared with other seasons. If the available milk is not able to meet the requirements of the people, the Government may impose or enhance the duty on exports of milk powder or stop the exports of milk powder.

8. EMERGENCY POWER TO IMPOSE OR ENHANCE IMPORT DUTIES [SECTION 8A OF CUSTOMS TARIFF ACT]

Central Government empowered to impose/enhance the import duties: The Central Government may impose or enhance import duties by making amendment to the First Schedule by issue of a notification in the Official Gazette.

Conditions to be satisfied: If the following conditions are satisfied, the Central Government may provide for the enhancement of the import duty.

a. The goods should be specified in the First Schedule.

b. The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties.

Proviso to sub-section (1) provides that the Central Government shall not issue any notification under this section unless the earlier notification amending the rate of duty has been placed before the Parliament and the same has been passed with or without modifications.

9. SAFEGUARD DUTY [SECTION 8B OF THE CUSTOMS TARIFF ACT]

Circumstances in which safeguard duty can be imposed: Central Government can impose the safeguard duty if it is satisfied that,

(a) Any article is imported into India in increased quantities;

(b) Such increased importation is causing or threatening to cause serious injury to domestic industry.
The duty is imposed by issuing a notification in the Official Gazette.

**Objective of safeguard duty:** The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

**Points which merit consideration**

1. Safeguard duty is product specific i.e. the safeguard duty is applicable only for certain articles in respect of which it is imposed.
2. This duty is in addition to any other duty in respect of such goods levied under this Act or any other law for the time being in force.
3. Education cess and secondary and higher education cess is not payable on safeguard duty.

**Duration of safeguard duty:** The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition.

**Extension of period:** The Central Government may extend the period of such imposition from the date of first imposition provided it is of the opinion that:

(a) Domestic industry has taken measures to adjust to such injury or as the case may be to such threat and

(b) It is necessary that the safeguard duty should continue to be imposed.

However, the total period of levy of safeguard duty is restricted to 10 years.

**Applicability of all machinery provisions of the Customs Act, 1962:** The provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

**Exemptions from safeguard duty**

(a) **Articles from developing country:** Articles originating from developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India.

(b) **Articles originating from more than one developing country:** Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.
(c) **Imports by 100% EOU or units in a Special Economic Zone:** Safeguard duty shall not apply to articles imported by a 100% EOU/unit in a SEZ unless -

(i) specifically made applicable; or

(ii) the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

**Provisional Assessment**

(a) The Central Government is also empowered to impose provisional safeguard duty pending determination of the final duty.

(b) This provisional duty may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.

(c) The provisional duty shall be in force for a maximum period of 200 days from the date of its imposition.

(d) If upon final determination, the Central Government is of the opinion that the increased imports have not caused or threatened to cause serious injury to a domestic industry, the duty collected shall be refunded.

**Illustration 1**

*Write a short note on the applicability of safeguard duty under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA).*

**Answer**

Section 8B(2A) of Customs Tariff Act, 1975, provides for levy of safeguard duty on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared as was leviable when it was imported into India.
(a) Any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article.

(b) Such articles are imported into India.

(c) The importation may/may not directly be from the country of manufacture/production.

(d) The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

**Subsidy shall be deemed to exist if**-

(a) There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.

(b) There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.

(c) A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments.

**Anti-circumvention measure in respect of countervailing duty:** Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty has taken place, by either of the following ways:-

(i) **by altering the description or name or composition of the article on which such duty has been imposed**

(ii) **by import of such article in an unassembled or disassembled form**

(iii) **by changing the country of its origin or export or**

(iv) **in any other manner, whereby the countervailing duty so imposed is rendered ineffective**

*it may extend the countervailing duty to such other article also.*
**Amount of countervailing duty on subsidized articles:** The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.

**Points which merit consideration**

(a) This duty is in addition to any other duty chargeable under this Act or any other law for the time being in force.

(b) Countervailing duty shall not be levied unless it is determined that -

   (i) The subsidy relates to export performance;

   (ii) The subsidy relates to the use of domestic goods over imported goods in the export article; or

   (iii) The subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

**Duration of countervailing duty on subsidized articles:** Unless revoked earlier, the duty imposed under this section shall be in force for a period of 5 years from the date of its imposition.

**Extension of period:** Central Government may extend the period of such imposition from the date of such extension provided it, in a review, is of the opinion that such cessation is likely to lead to continuation or recurrence of such subsidization and injury.

However, the extension can be for a maximum period of 5 years.

If the review is not completed before the expiry of the period of imposition (5 years) then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.

**Provisional countervailing duty on subsidized articles**

(a) When the determination of the amount of subsidy is pending, the Central Government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it.

(b) If the final subsidy determined is less than the subsidy provisionally determined, then the Central Government shall reduce such duty and also refund the excess duty collected.

**Retrospective imposition of countervailing duty**

**Conditions to be satisfied:** The following conditions should be satisfied for imposition of countervailing duty with retrospective effect.
(a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies.

(b) In order to preclude recurrence of such injury, it is necessary to levy countervailing duty retrospectively.

**Note:** The retrospective date from which the duty is payable shall not be beyond 90 days from the date of notification.

**Applicability of all machinery provisions of Customs Act, 1962:** The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

### 11. ANTI-DUMPING DUTY [SECTION 9A OF THE CUSTOMS TARIFF ACT]

When the export price of a product imported into India is less than the Normal Value of ‘like articles’ sold in the domestic market of the exporter, it is known as dumping. Although there is nothing inherently illegal or immoral in exporter charging a price less than the price prevailing in its domestic market, Designated Authority can initiate necessary action for investigations and subsequent imposition of anti-dumping duties, if such dumping causes or threatens to cause material injury to the domestic industry of India.

Anti-dumping action can be taken only when there is an Indian industry which produces “like articles” when compared to the allegedly dumped imported goods. Further, this duty is country specific i.e. it is imposed on imports from a particular country.

**Dumping is**

- Normal value in the exporting market
- Export price
Under the General Agreement on Tariffs and Trade (GATT) provisions, anti-dumping duties higher than the margin of dumping cannot be imposed. However, a lesser duty which is adequate to remove the injury to the domestic industry, is permissible. In India, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e., dumping margin and the injury margin.

Section 9A(1) of the Customs Tariff Act, 1975 provides that where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Every notification issued under this section shall as soon as may be after it is issued, be laid before each House of Parliament [Sub-section (7)]. Further, the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act [Sub-section (8)].

**Computation of anti-dumping duty:** Anti-dumping duty is:

(i) Margin of dumping

or

(ii) Injury margin

whichever is lower.

The anti-dumping duty chargeable under this section is in addition to any other duty imposed under this Act or any other law for the time being in force.

(a) **Margin of dumping:** In relation to an article, it means the difference between its export price and normal value. It is generally expressed as a percentage of the export price.
(b) **Export price:** in relation to an article, means of goods imported into India is the price of an article exported from the exporting country or territory.

**Constructed export price:** In cases where there is no export price or the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed at the price at which the imported articles are first resold to an independent buyer.

In case where the article is not resold to an independent buyer or not resold in the condition as imported, the export price shall be constructed on such reasonable basis as may be determined in accordance with the rules made.

(c) **Normal value:** in relation to an article, means comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules.

When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(i) Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made; or

(ii) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made.

However, in case the article is imported from a country other than the country of origin or where the article has merely been transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.
(d) **Injury margin**: Injury margin is the margin adequate to remove the injury to the domestic industry. It is the difference between the Fair Selling Price [Non-Injurious Price (NIP)] due to the Domestic Industry and the Landed Value of the dumped imports.

(e) **Fair Selling Price (FSP) [Non-Injurious Price]**: is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian market during the period defined. This price would have enabled reasonable recovery of cost of production and profit after nullifying adverse impact of those factors of production which could have adversely effected the company and for which dumped imports can’t be held responsible. In other words, it is the fair selling price of a product for the domestic industry.

There would be a single Non-Injurious Price for a product and not several Non-Injurious Price for the same product [Reliance Industries Ltd. v. Designated Authority 2006 (202) E.L.T. 23 (S.C.)].

(f) **Landed Value**: is taken as the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties.

In case of circumvention of anti-dumping duty imposed on an article, Central Government may extend the anti-dumping duty to such article or an article originating in/exported from such country: Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that
circumvention of anti-dumping duty has taken place, by either of the following ways:-

(i) by altering the description or name or composition of the article subject to such anti-dumping duty
(ii) by import of such article in an unassembled or disassembled form
(iii) by changing the country of its origin or export or
(iv) in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective

it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be [Sub-section (1A)].

Provisional anti-dumping duty: When determination of the normal value and margin of dumping in relation to any article in accordance with this section and rules made there under is pending, the Central Government may impose anti-dumping duty on the basis of provisional estimate of such value and margin. If the provisional duty is higher than the margin finally determined, then the Central Government shall reduce the anti-dumping duty and shall also refund the excess duty collected [Sub-section (2)].

No anti-dumping duty to articles imported by a 100% EOU: Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless, —

(i) specifically made applicable in such notifications or such impositions, as the case may be; or
(ii) the article imported is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

For the purposes of this sub-section, the expression “100% EOU” shall have the meaning assigned to it in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944.

Imposition of duty with retrospective effect: If the following conditions are satisfied, then the Central Government may by notification in the Official Gazette levy anti-dumping duty retrospectively from a date prior to the date of imposition
of anti dumping duty. Notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification. The retrospective date from which the duty is payable shall not be beyond 90 days from the date of such notification.

(a) There is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(b) The injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

**Duty ceases to have effect on expiry of 5 years:** The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition.

However, if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of 5 years and such further period shall commence from the date of order of such extension.

It was held in *Rishiroop Polymers Pvt. Ltd. v. Designated Authority and Additional Secretary* 2006 (196) ELT 385 (SC), that the entire purpose of the review enquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffer.

Further, where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding 1 year.

**Rules relating to anti dumping duty:** The Central Government will determine and ascertain the margin of dumping as referred to in sub-section (1) or sub-section (2) from time to time after carrying out necessary inquiry. Central Government, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner:

(i) in which articles liable for anti-dumping duty may be identified,
(ii) in which the export price, the normal value, the margin of dumping in relation to such articles may be determined and

(iii) for the assessment and collection of such anti-dumping duty [sub-section (6)].

**Records to be furnished for determination of margin of dumping:** The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer.

However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

**Refund of anti-dumping duty:** Section 9AA provides that where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty.

In *Designated Authority vs Haldor Topsoe 2000 (120) ELT 11*, the Supreme Court held that anti-dumping duty could be fixed with reference to prices in a territory and that European Union could also be a territory.

**Illustration 2**

*What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the rules made thereunder:*

(i) where no provisional duty is imposed;

(ii) where provisional duty is imposed;

(iii) where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.

**Answer**

The Central Government has power to levy anti-dumping duty on dumped
articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

(i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.

(ii) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.

(iii) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

12. NO LEVY UNDER SECTION 9 OR SECTION 9A IN CERTAIN CASES [SECTION 9B OF THE CUSTOMS TARIFF ACT]

This section provides that, notwithstanding anything contained in section 9 or section 9A,-

(a) No article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

(b) Countervailing and anti-dumping duties shall not be levied just because such articles are exempt from duties or taxes borne by like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.

(c) These duties shall not be levied on imports from member country of WTO or from a country with whom the GOI has a most favored nation agreement unless a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.
(d) The provisional countervailing and anti-dumping duties shall not be levied on any article imported from specified countries unless preliminary findings have been made of subsidy or dumping and consequent injury to domestic industry and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation.

The points (b), (c) and (d) mentioned above shall not be applicable in a case where countervailing or anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India.

**Illustration 3**

With reference to the Customs Tariff Act, 1975, discuss the validity of the imposition of customs duties in the following cases:-

(a) Both countervailing duty and anti-dumping duty have been imposed on an article to compensate for the same situation of dumping.

(b) Countervailing duty has been levied on an article for the reason that the same is exempt from duty borne by a like article when meant for consumption in the country of origin.

(c) Definitive anti-dumping duty has been levied on articles imported from a member country of World Trade Organization as a determination has been made in the prescribed manner that import of such article into India threatens material injury to the indigenous industry.

**Answer**

(a) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

(b) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, countervailing or anti-dumping duties shall not be levied by reasons of exemption of such articles from duties or taxes borne by the like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.

(c) **Valid.** As per section 9B of the Customs Tariff Act, 1975, no definitive countervailing duty or anti-dumping duty shall be levied on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favored nation agreement, unless a determination has been made in the
prescribed manner that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

13. **APPEAL [SECTION 9C OF THE CUSTOMS TARIFF ACT]**

The provisions of section 9C of the Customs Tariff Act enumerate the orders against which an appeal can be preferred to CESTAT. The procedure, time limit and other related matters of filing an appeal are addressed to in this section.

*An appeal against the order of determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) constituted under section 129 of the Customs Act, 1962 in respect of the existence, degree and effect of—*

(i) *any subsidy or dumping in relation to import of any article; or*

(ii) *import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.*

An appeal filed under this section shall be accompanied by a fee of `15,000. Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of `500.

Every appeal under this section shall be filed within 90 days of the date of order under appeal. However, the Appellate Tribunal may entertain any appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.
14. SOCIAL WELFARE SURCHARGE ON IMPORTED GOODS

Social welfare surcharge (SWS) @ 10% is levied in lieu of education cesses for providing and financing education, health and social security.

SWS is leviable on the aggregate of duties, taxes and cesses leviable on such goods under section 12 of the Customs Act, 1962 and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. However, following duties shall be excluded for computing this cess:

(a) Safeguard duty under section 8B of the Customs Tariff Act, 1975
(b) Countervailing duty under section 9 of the Customs Tariff Act, 1975
(c) Anti-dumping duty under section 9A of the Customs Tariff Act, 1975
(d) Social welfare surcharge itself on imported goods

The SWS on imported goods are in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of social welfare surcharge on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods.

Social welfare surcharge leviable on integrated tax and goods and services tax compensation cess has been exempted vide Notification No. 13/2018-Cus dated 02.02.2018.

**Relevant case law**

_UoI Vs M/s Adani Power Ltd 2016 (331) ELT A129 (SC) dated 20.11.2015_

When no customs duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act.
**TEST YOUR KNOWLEDGE**


2. With reference to section 9A(1A) of the Customs Tariff Act, 1975, mention the ways that constitute circumvention of antidumping duty imposed on an article which may warrant action by the Central Government.

3. When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

4. What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?

5. Write a note on "Emergency power to impose or enhance import duties under section 8A of the Customs Tariff Act, 1975".

6. Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value of Sodium Nitrite imported from a developing country from 26th February, 2018 to 25th February, 2019 (both days inclusive)</td>
<td>₹30,00,000</td>
</tr>
<tr>
<td>Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India</td>
<td>4%</td>
</tr>
<tr>
<td>Basic custom duty</td>
<td>10%</td>
</tr>
<tr>
<td>Integrated tax</td>
<td>12%</td>
</tr>
<tr>
<td>Social welfare surcharge</td>
<td>10%</td>
</tr>
</tbody>
</table>

Note: Ignore GST compensation cess.

7. Differentiate between protective duty and safeguard duty.

ANSWERS/HINTS

1. According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as the same is refundable under section 9A(2) of the said Act. Refund of excess anti-dumping duty paid is subject to provisions of unjust enrichment – *Automotive Tyre Manufacturers Association v. Designated Authority* 2011 (263) ELT 481 (SC).

2. As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:

   (i) altering the description or name or composition of the article subject to such anti-dumping duty,
   (ii) import of such article in an unassembled or disassembled form,
   (iii) changing the country of its origin or export, or
   (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

In such cases, investigation can be carried out by Central Government and then anti dumping can be imposed on such articles.

3. The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

   (i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
   (ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
   (iii) Articles imported by a 100% EOU or units in a Special Economic Zone

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unless the duty is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

4. The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:
   (i) At the time of importation, he should make a specific claim for the preferential rate.
   (ii) He should also claim that the goods are produced or manufactured in such preferential area.
   (iii) The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.
   (iv) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975. Determination of Origin is important to allow concessional rate of customs duty. Generally, as per the rules (a) if the goods are un-manufactured, it should be grown or produced in that area (b) If it is fully manufactured in that country, it should be manufactured from material produced or with un-manufactured materials from that country. (c) if it is partially manufactured in that country, final process should be completed in that country and at least specified percentage of expenditure on material or labour should be in that country.

5. Section 8A of Customs Tariff Act, 1975 provides that the where the Central Government is satisfied that the basic customs duty leviable on any article should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification amend the First Schedule of the Customs Tariff to increase the import duty leviable on such article to such extent as it thinks necessary.
6. **Computation of customs duty and integrated tax payable thereon**

<table>
<thead>
<tr>
<th>Particular</th>
<th>Amount (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value of sodium nitrite imported</td>
<td>30,00,000</td>
</tr>
<tr>
<td>Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)</td>
<td>3,00,000</td>
</tr>
<tr>
<td>Safeguard duty @ 30% on ₹ 30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(1) of the Customs Tariff Act, 1975)]</td>
<td>9,00,000</td>
</tr>
<tr>
<td>Social welfare surcharge @ 10% x ₹ 3,00,000</td>
<td>30,000</td>
</tr>
<tr>
<td>Total</td>
<td>42,30,000</td>
</tr>
<tr>
<td>Integrated tax (₹ 42,30,000 × 12%) [Note]</td>
<td>5,07,600</td>
</tr>
<tr>
<td>Total customs duty payable (₹ 3,00,000 + ₹ 9,00,000+ ₹ 30,000+ ₹ 5,07,600)</td>
<td>17,37,600</td>
</tr>
</tbody>
</table>

Note: It has been clarified by DGFT vide Guidance note that value for calculation of integrated tax shall also include safeguard duty amount.

7. [Refer para 6 and 9]

8. [Refer para 11]