CHAPTER 2

TYPES OF DUTY



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

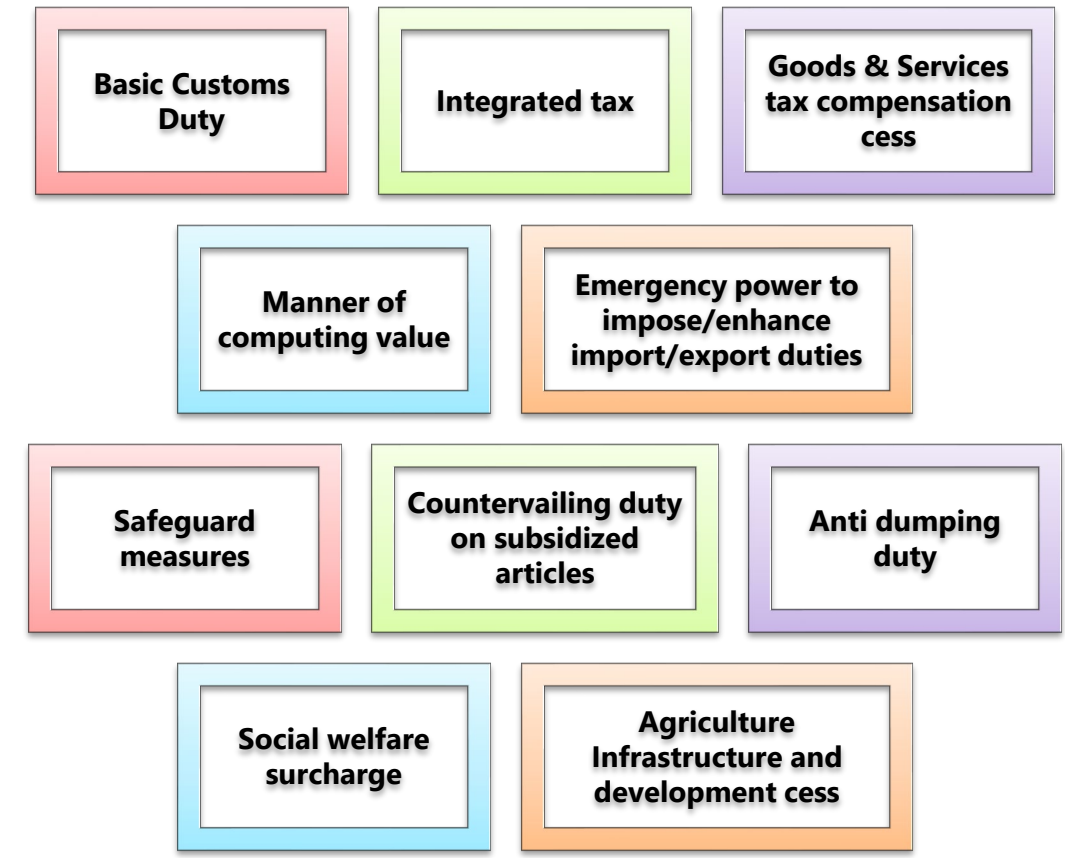
LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend various types of duties/taxes leviable under Customs law.
- analyse and apply basic customs duty, integrated tax, goods and services tax, GST compensation cess, social welfare surcharge and agriculture infrastructure and development cess on importation.
- analyse and apply 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.

© The Institute of Chartered Accountants of India

CHAPTER OVERVIEW



1. BASIC CUSTOMS DUTY (BCD) [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.

© The Institute of Chartered Accountants of India

Charging section [Section 12 of the Customs Act]: 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

***Rates of Basic Custom Duty [Section 2 of the Customs Tariff Act]:** The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules.

India being a member of WTO, the First Schedule of Customs Tariff Act specifying basic customs duty on import of goods, is aligned with Harmonised System of Nomenclature (HSN) at the 6 digit level. The Harmonized System is an international nomenclature for the classification of products. It allows participating countries to classify traded goods on a common basis for customs purposes. At the international level, the Harmonized System (HS) for classifying goods is a six-digit code system. In India, the First Schedule classifies goods at 8 digit level.

First schedule-Rate of duty on Import of goods

First Schedule has five columns, the first one being for HSN, second for description, third for the unit, and fourth and fifth for rate of duty. The fourth column provides standard rate of BCD and fifth column provides for preferential rate of BCD.

Standard rate of duty: Generally, the standard rate of BCD is applicable. Normal rate of customs duty on imports of non-agricultural goods is 10%, though there are wide variations.

Preferential rate of duty: If the goods are imported from the areas notified by the Central Government to be preferential areas, then lower preferential rate of BCD will be applicable. Preferential Rates of Duty are reduced tariff rates levied on the basis of trade agreements between two or more countries. These rates are usually substantially lower than the normal tariff rates.

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.

© The Institute of Chartered Accountants of India

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, the goods shall be liable to standard rate of duty.

Second schedule- Rate of duty on Export of goods

Second Schedule to the Customs Tariff Act provides for rate of export duty on goods exported out of India. As per Foreign Trade Policy adopted by India, goods are to be exported and not the taxes. Hence, generally there are no export duties on goods exported out of India. However, still there is a small list of goods on which export duty is leviable as a policy adopted by the Ministry on time to time basis.

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

In addition to BCD, import of goods is also leviable to GST (Integrated GST).

Maximum-40%

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), as the case may be.

IGST shall be applicable at the same rate as is applicable on goods supplied in India. The rate notification for determining the IGST rate on import of goods would

© The Institute of Chartered Accountants of India

be general IGST rate notification and exemption notification, i.e. *01/2017 IT(R) and 02/2017 IT(R)* respectively.

General rate of IGST is 18%. IGST is payable on Social Welfare Cess (discussed subsequently). Importers who are registered under GST and are importing goods for manufacture or trading can avail input tax credit under GST law of IGST and GST compensation cess (discussed subsequently) paid on the goods at the time of import.

Taxability of goods imported by SEZ

Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide *Notification No. 64/2017 Cus dated 05.07.2017*.

Taxability of goods imported by EOU

Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU's are governed by *Notification No. 52/2003 Cus* as amended. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be subject to fulfilment of specified conditions.

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

A GST Compensation Cess at specified rate is imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Initially, it was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection was extended till 31st March, 2026.

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

© The Institute of Chartered Accountants of India

article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A)[1].

The GST Compensation Cess has been phased out and it no longer exists as a levy under the GST regime.

4. MANNER OF COMPUTING ASSESSABLE VALUE FOR LEVYING INTEGRATED TAX [SECTION 3(8) OF THE 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.

Exclude IGST and GST Compensation Cess

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]

[1] *It may be noted that all goods imported by a unit or a developer in the Special Economic Zone for authorised operations, are exempted from the whole of goods and service tax compensation cess leviable thereon under section 3(9) of Customs Tariff Act, 1975 read with section 8(2) of the Goods and Services Tax (Compensation to States) Act, 2017. This is only for the purpose of information and not relevant from examination point of view.*

© The Institute of Chartered Accountants of India

The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.[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)]

5. 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

Higher of the two

(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.

© The Institute of Chartered Accountants of India

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 (3) of section 14.

6. 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 as a percentage of the value of goods, the additional duty will also be calculated at that percentage of the value of the imported article.

   Note: After introduction of GST, excise duty has been restricted to few goods such as petroleum products (crude, diesel, petrol, ATF, natural gas) and tobacco products, the above said additional duty is also restricted to the

© The Institute of Chartered Accountants of India

above products

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 State 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. **Additional duty of customs 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).

   This provision is to empower the Central Government to levy duty of customs on goods which are otherwise not leviable to additional duty under sub-section (1) on account of there being no excise duty on said goods when manufactured in India. In order to ensure that domestic manufacturers are at par with foreign manufacturers this duty is levied, as domestic manufacturers would have incurred tax cost as excise duty on raw materials, components used to manufacture goods which are not liable to excise duty. For example, a manufacture of grease or a lubricating oil procures petroleum products as raw material which suffer excise duty on the raw material purchased.

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,

© The Institute of Chartered Accountants of India

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.*

7. EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES [SECTION 8 OF THE 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.

example **(1)** 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.

© The Institute of Chartered Accountants of India

8. EMERGENCY POWER TO IMPOSE OR ENHANCE IMPORT DUTIES [SECTION 8A OF THE 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. POWER OF CENTRAL GOVERNMENT TO APPLY SAFEGUARD MEASURES [SECTION 8B OF THE CUSTOMS TARIFF ACT]

Circumstances in which safeguard measures can be imposed: Central Government after conducting enquiry can impose the safeguard measures if it is satisfied that,

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

(b) Such increased importation is causing or threatening to cause serious injury to domestic industry.

The measures are imposed by issuing a notification in the Official Gazette.

© The Institute of Chartered Accountants of India

Meaning of important terms

(a) "Domestic industry" means the producers—

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India

(b) "Serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(c) "Threat of serious injury" means a clear and imminent danger of serious injury.

(d) "Developing country" means a country notified by the Central Government in the Official Gazette;

Objective of safeguard measures: Safeguard measures are intended to prevent or remedy serious injury to the domestic industry caused or threatened by increased imports.

Modes of safeguard measures: The Central Government may impose following safeguard measures to curb the increased quantity of imports of an article for preventing serious injury to domestic industry:

(a) imposition of safeguard duty; or

(b) application of tariff-rate quota; or

(c) other measures as the Central Government deems appropriate.

Points which merit consideration

1. The Central Government may allocate tariff-rate quota to supplying countries having a substantial interest in supplying the article in the prescribed manner.

2. The safeguard 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. The Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when

© The Institute of Chartered Accountants of India

imported from any country/territory into India, from payment of the whole/part of the safeguard duty leviable thereon.

Minimum level of tariff rate quota: Average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent/remedy serious injury.

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

Duration – 4 years
After extension-10 years

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 measures should continue to be imposed.

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

Applicability of all machinery provisions of the Customs Act, 1962: The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, 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 or all rules or regulations made thereunder, as the case may be.

Exemptions from safeguard measures

(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.

© The Institute of Chartered Accountants of India

(c) Imports by 100% EOU or units in a Special Economic Zone: Safeguard measures shall not apply to articles imported by a 100% EOU/SEZ unit 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 measures shall be applied 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 measures.

(b) This provisional safeguard measures 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 safeguard measures shall be in force for a maximum period of 200 days from the date of its imposition.

Duration - Maximum 200 days

(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 safeguard duty collected shall be refunded.

Modification of notification issued under section 8B: Every notification issued under this section shall be laid after issuance before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions.

In case before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification be effective only in such modified form or be of no effect, as the case may be.

However, any such modification/annulment shall not affect the validity of anything previously done under that notification.

© The Institute of Chartered Accountants of India

Illustration 1

Write a short note on the applicability of safeguard measures 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 of Customs Tariff Act, 1975, provides for levy of safeguard measures on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard measures shall be applied on that portion of the article so cleared as was leviable when it was imported into India.

10. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES [SECTION 9 OF THE CUSTOMS TARIFF ACT]

Conditions to be satisfied: The countervailing duty on subsidized articles is imposed if the following conditions are satisfied.

(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.

© The Institute of Chartered Accountants of India

(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 on subsidized articles: 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 from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Absorption of countervailing duty:

Absorption of countervailing duty is said to have taken place,—

(a) if there is a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.

Where the Central Government, on such inquiry as it considers necessary, is of the opinion that absorption of countervailing duty has taken place whereby the countervailing duty so imposed is rendered ineffective, it may modify such duty to

© The Institute of Chartered Accountants of India

counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as may be specified by the Central Government by way of notification in the Official Gazette.

Non-applicability of countervailing duty: Countervailing duty shall not apply to article imported by a 100% EOU or a unit in SEZ , unless,-

(i) it is specifically made applicable in such notification or to such undertaking or unit; or

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

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.

Duration – 5 years
Extension – up to 5 years

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

© The Institute of Chartered Accountants of India

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

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

However, if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.

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.

Rules relating to countervailing duty: The amount of any such subsidy shall, from time to time, be ascertained by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

Applicability of all machinery provisions of Customs Act, 1962: The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty,

© The Institute of Chartered Accountants of India

assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, 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 or all rules or regulations made thereunder, as the case maybe.

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. Anti-dumping duty is generally country-specific and may also vary according to the specified exporter/producer, as provided in the relevant notification.



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.

© The Institute of Chartered Accountants of India

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)]. The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, 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 or all rules or regulations made thereunder, as the case may be. [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 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.

© The Institute of Chartered Accountants of India

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 affected 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.

© The Institute of Chartered Accountants of India

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 from such date, not earlier than the date of initiation of the inquiry, as may be specified by the Central Government by notification in the Official Gazette. [Sub-section (1A)].

Absorption of Anti-dumping duty:

Absorption of anti-dumping duty is said to have taken place,—

(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.

Where the Central Government, on such inquiry as it considers necessary, is of the opinion that absorption of anti-dumping duty has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as may be specified by the Central Government by way of notification in the Official Gazette.

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

© The Institute of Chartered Accountants of India

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)].

Non-applicability of anti-dumping duty: Anti-dumping duty shall not apply to articles imported by a 100% EOU or a unit in SEZ , unless,-

(i) it is specifically made applicable in such notification or to such undertaking or unit; or

(ii) such article is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

For the purposes of this sub-section, the expression "100% EOU" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944. The expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

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.

© The Institute of Chartered Accountants of India

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

Duration – 5 years
Extension – up to 5 years

However, if the Central Government, ***on consideration of 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 upto 5 years and such further period shall commence from the date of order of such extension.

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.

However, if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.

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.

© The Institute of Chartered Accountants of India

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.

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.

© The Institute of Chartered Accountants of India

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.

© The Institute of Chartered Accountants of India

(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 Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The procedure, time limit and other related matters of filing an appeal are addressed to in this section.



© The Institute of Chartered Accountants of India

An appeal against the determination or review thereof shall lie to the 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 CESTAT,—

(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.

Duration – 90 days

Every appeal under this section shall be filed within 90 days of the date ***determination or review*** 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 ***determination or review*** appealed against.

Every appeal under this section shall be heard by a Special Bench constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than 2 members and shall include 1 judicial member and 1 technical member.

For the purposes of this section, "determination" or "review" means the determination or review done in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B.

© The Institute of Chartered Accountants of India

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:

10% of BCD

(a) Safeguard measures 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.

In simpler terms, SWS is capped at 10% of the BCD levied and collected on goods imported into India.

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*.

© The Institute of Chartered Accountants of India

15. AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS ON IMPORT OF CERTAIN ITEMS

An Agriculture Infrastructure and Development Cess (AIDC) has been levied on import of specified goods at the notified rate. For instance, some of the notified goods[2] are apples, kabuli chana, various types of coal, urea, silver (including imports by eligible passengers), Silver Dore, Gold (including imports by eligible passengers), Gold Dore etc. This cess is used to finance the improvement of agriculture infrastructure and other development expenditure.

Levied on specified goods

Where the duty is leviable on the goods at any percentage of its value, then, for the purposes of calculating the AIDC, the value of such goods is calculated in the same manner as the value of goods is calculated for the purpose of customs duty under section 14 of the Customs Act, 1962.

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

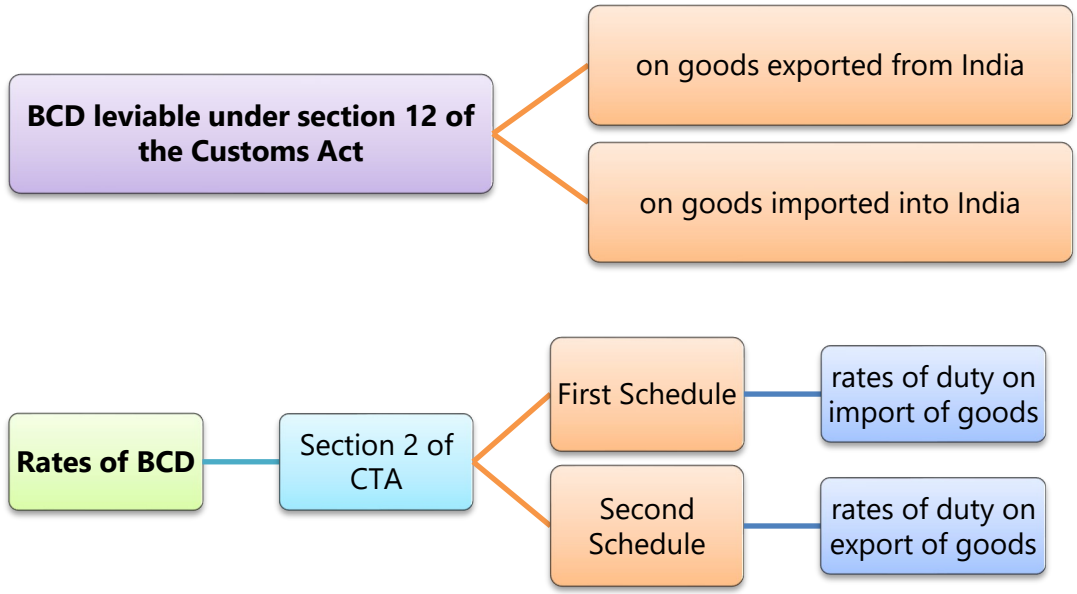
The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refund, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of the AIDC on imported goods as they apply in relation to the levy and collection of duties of customs on such goods under the said Act, or the rules or regulations, as the case may be.

[2] *Examples of goods on which AIDC has been imposed have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.*

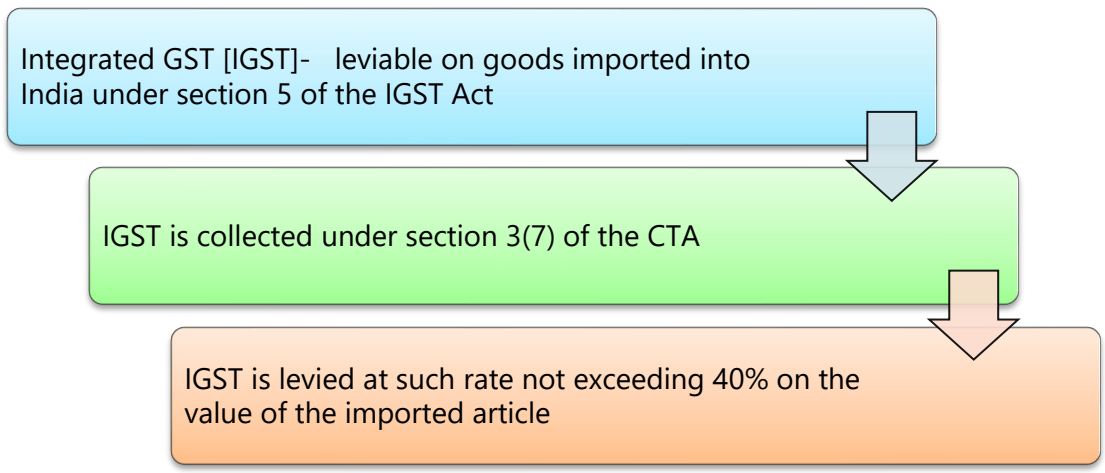
© The Institute of Chartered Accountants of India

LET US RECAPITULATE

Basic Customs duty (BCD) [Section 12 of the Customs Act & Section 2 of the Customs Tariff Act (CTA)]

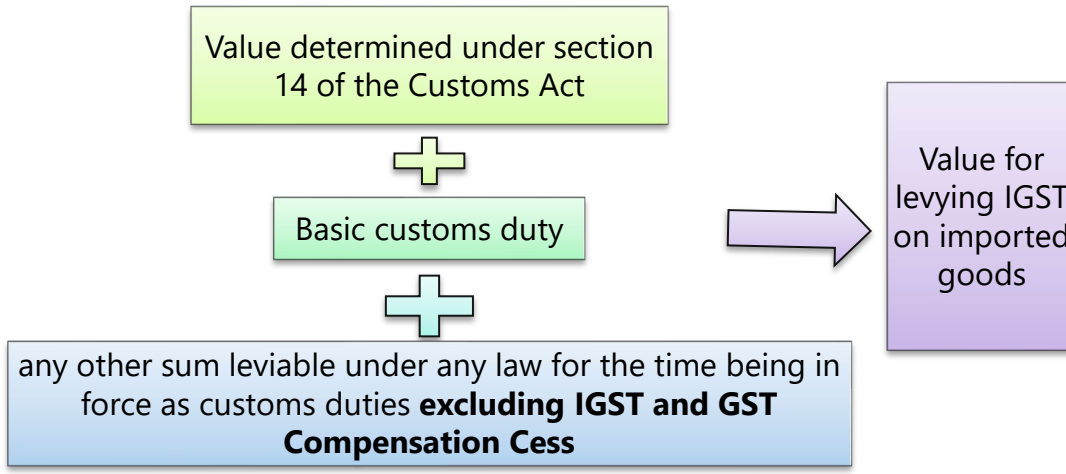


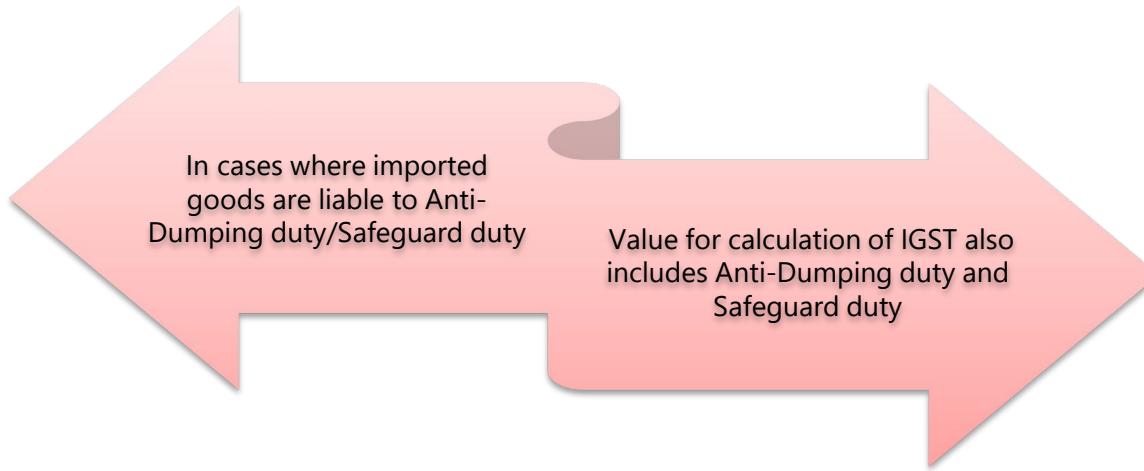
Integrated tax [Section 3(7) of the Customs Tariff Act]



© The Institute of Chartered Accountants of India

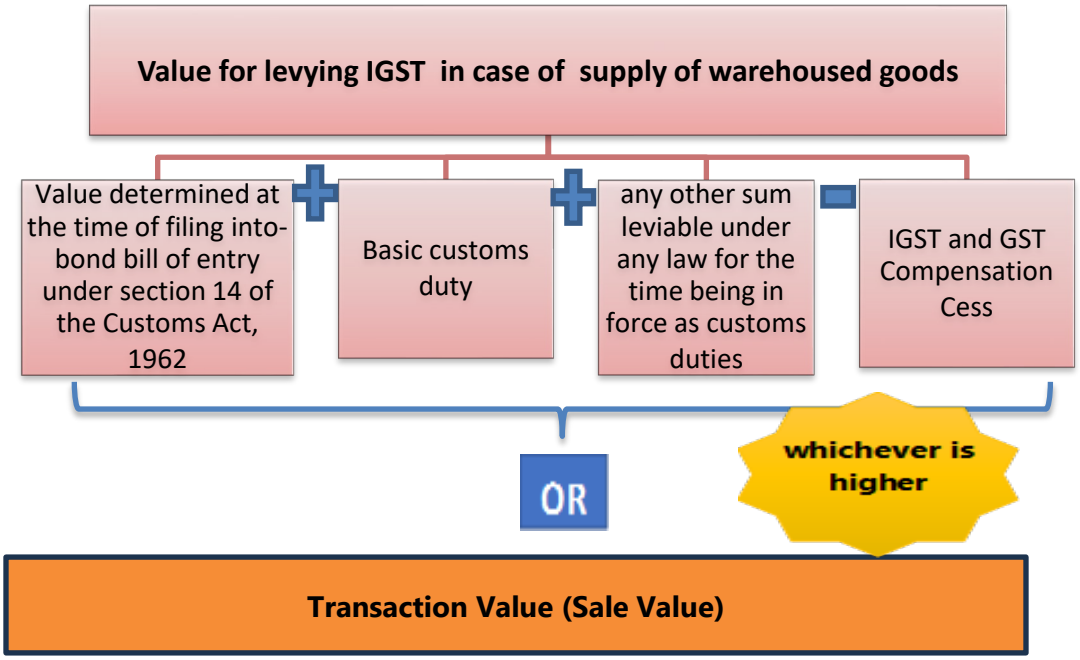
Manner of computing assessable value for levying Integrated tax





© The Institute of Chartered Accountants of India

Manner of computing value in case of warehoused goods



Social welfare surcharge (SWS) on imported goods

Rate	Duties Excluded	Exempted
•10% of BCD •levied & collected on goods imported into India	•Safeguard measures •Countervailing duty •Anti-dumping duty •SWS	•Integrated tax •GST compensation cess

© The Institute of Chartered Accountants of India

Emergency power to impose or enhance export duties [Section 8 of the Customs Tariff Act]

Central Government empowered by amendment to the second schedule by notification

Conditions

Goods may/may not be specified in second schedule

Necessary circumstances exist

Emergency power to impose or enhance import duties [Section 8A of the Customs Tariff Act]

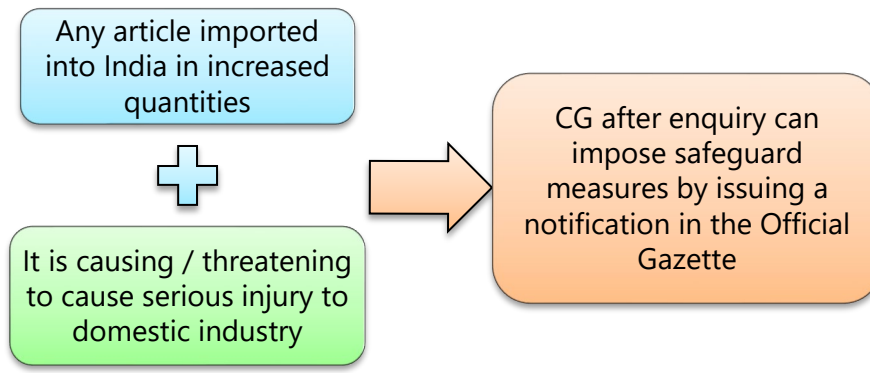
Central Government empowered by amendment to the first schedule by notification

Conditions

Goods should be specified in first schedule

Necessary circumstances exist

Power of Central Government (CG) to apply Safeguard measures [Section 8B of the Customs Tariff Act]



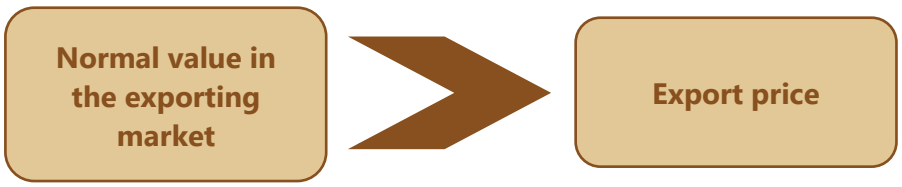
© The Institute of Chartered Accountants of India

Safeguard measures

Modes of safeguard measures	Duration	Exemption from safeguard measures
•imposition of safeguard duty or •application of tariff-rate quota or •other measures as the CG deems appropriate.	•4 years •May be extended by CG- total period of levy of safeguard measures-10 years •Provisional safeguard measures-maximum period of 200 days	•**Articles from developing country**- share of imports does not exceed 3% of total imports •**Articles originating from more than one developing country**- aggregate of imports from developing countries each with less than 3 % import share taken together does not exceed 9% of total imports. •**Imports by 100% EOU or units in a SEZ except in specified cases**

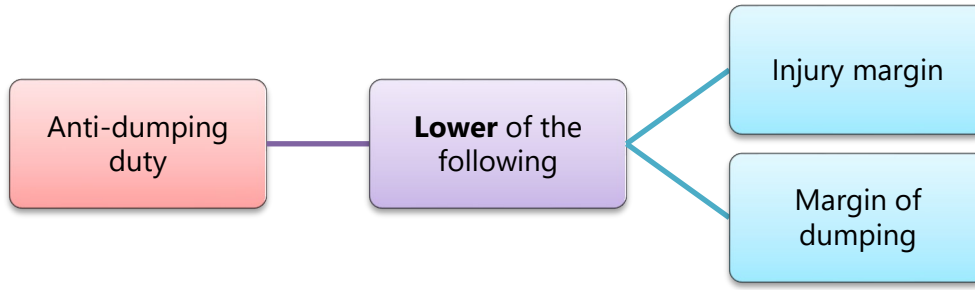
Anti-dumping duty [Section 9A of the Customs Tariff Act]

Dumping is

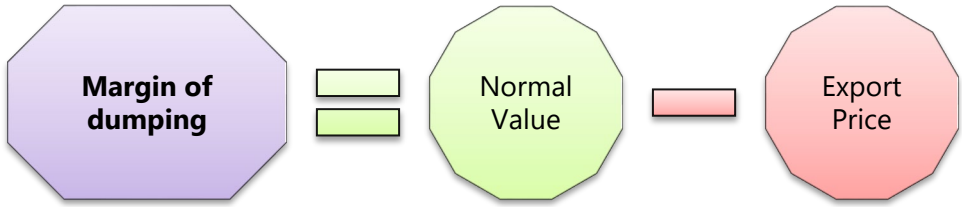


© The Institute of Chartered Accountants of India

Computation of anti-dumping duty



Margin of Dumping



Normal Value

- Comparable price at which the goods under complaint are sold in the domestic market of the exporting country or territory in the ordinary course of trade.

If the normal value cannot be determined as per the sales in the domestic market of exporting country, normal value shall be

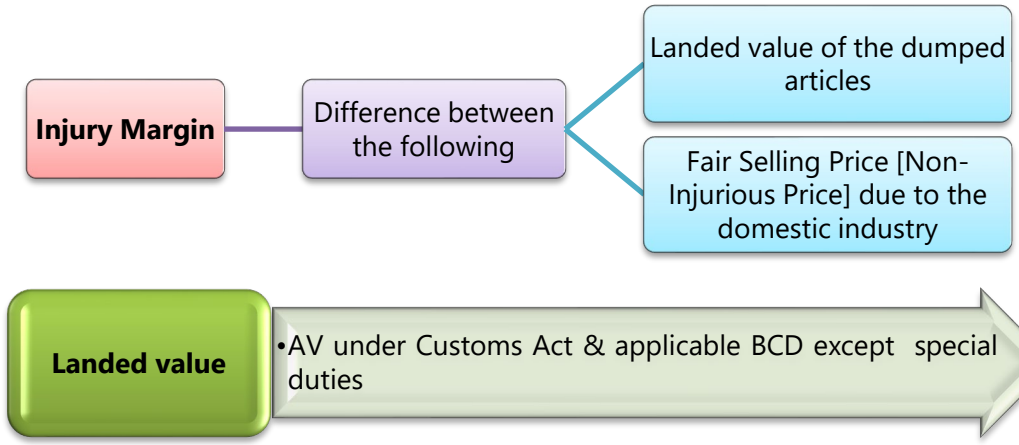
- Comparable representative export price to an appropriate third country, or
- Cost of production in the country of origin + Administrative, selling and general costs, profits.

Export Price

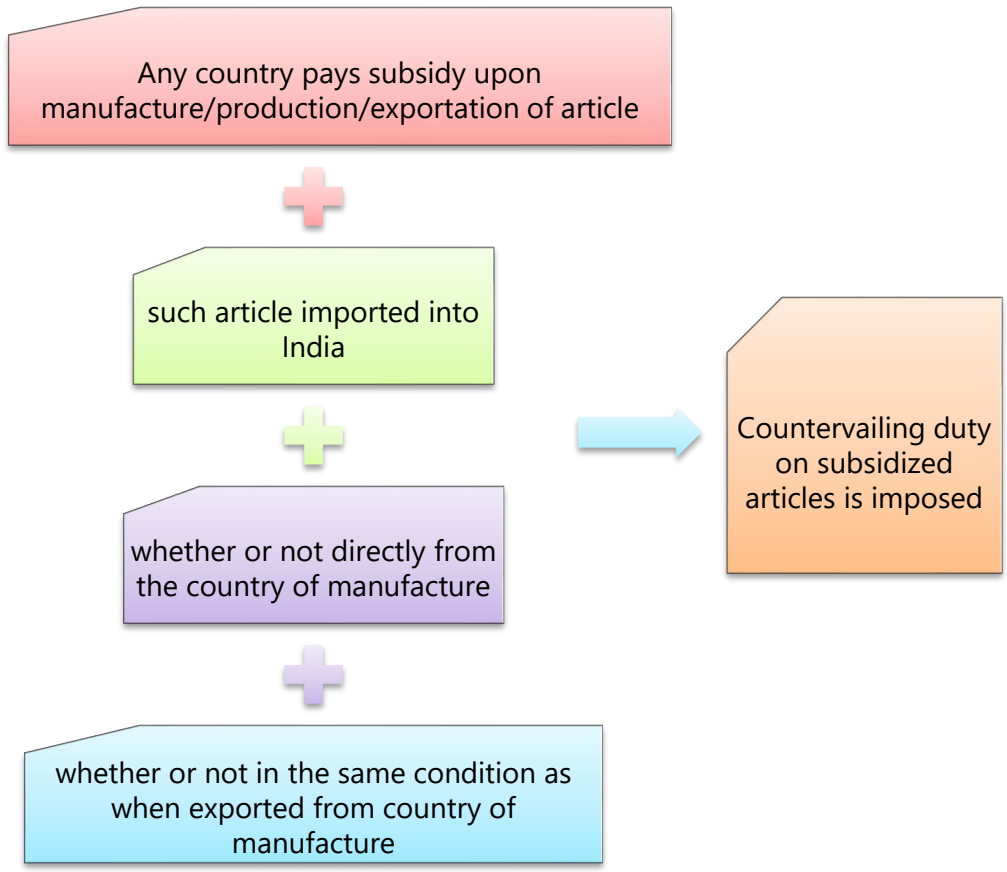
- Price of an article exported from the exporting country or territory

© The Institute of Chartered Accountants of India

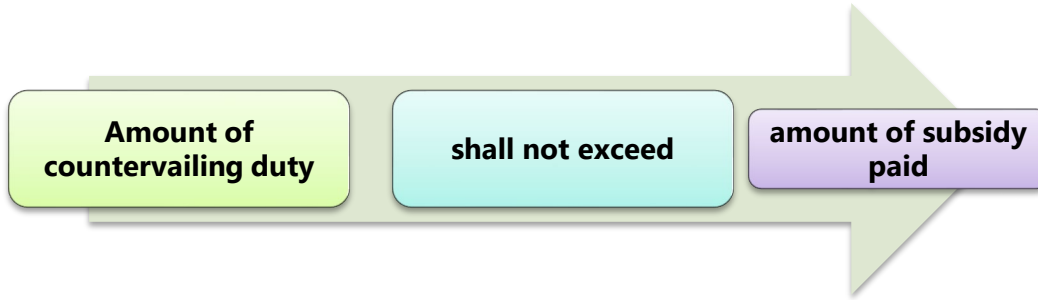
Computation of Injury Margin



Countervailing duty on subsidized articles [Section 9 of the Customs Tariff Act]



© The Institute of Chartered Accountants of India



Common provisions for Countervailing duty on subsidized articles & Anti dumping duty

Duration	• 5 years
Extension of period	• up to 5 years

Circumvention of duty	Absorption of duty	Non-applicability of duty
• by altering the description/ name/composition of the article • by import of such article in an unassembled/ disassembled form • by changing the country of its origin/export or • in any other manner, whereby the duty so imposed is rendered ineffective.	• if there is a decrease in the export price of an article without any commensurate change in the cost of production/export price/ resale price in India of such article as the case may be • other specified circumstances	• Duty shall not apply to article imported by a 100% EOU or a unit in SEZ , unless,- • (i) it is specifically made applicable in such notification/ to such undertaking/unit; or • (ii) such article is either cleared as such into the DTA/ or used in the manufacture of any goods that are cleared into the DTA on the portion of the article so cleared or used.

© The Institute of Chartered Accountants of India

In case of circumvention or absorption of duty

Duty may be extended/modified from such date, not earlier than the date of initiation of the inquiry.

No levy under Section 9 or Section 9A in certain cases [Section 9B of the Customs Tariff Act]

Both countervailing and anti-dumping duties not leviable for **same situation**

Both duties not leviable if articles are **exempt** [sole reason]

Both duties not leviable on **imports from member country of WTO**/country with whom GOI has a most favored nation agreement

Provisional countervailing and anti-dumping duties not to be levied on article imported from **specified countries**

Appeal [Section 9C of the Customs Tariff Act]

Authority	Time limit
CESTAT	within 90 days of the date of order under appeal

© The Institute of Chartered Accountants of India

Computation of Customs duty and integrated tax payable thereon

Particulars	Amount (₹)
Assessable value (AV)	xxx
Add: Basic custom duty @ X% (AV x X%) [A]	xxx
Add: Social welfare surcharge @ 10% x BCD [B]	xxx
Value for computing integrated tax- (1)	xxx
Add: Integrated tax (1 × Y%) [C]	xxx
Total customs duty and IGST payable [(A) + (B) +(C)]	xxx

Goods and Services tax Compensation cess [Section 3(9) of the Customs Tariff Act]

GST compensation cess levied on inter/intra State supply of goods and/or services - to provide compensation to States for loss of revenue due to GST implementation

applicable only on goods and/or services notified by Central Government

currently levied on luxury and sin goods like pan masala, tobacco etc

Agriculture Infrastructure and Development Cess (AIDC) on import of certain items

Levied on import of specified goods at notified rate

example-apples, kabuli chana, urea etc

© The Institute of Chartered Accountants of India

TEST YOUR KNOWLEDGE

1. *With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty.*

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 measures 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:*

Assessable value of Sodium Nitrite imported from a developing country from 26th August, 2025 to 25th August, 2026 (both days inclusive)	*₹30,00,000*
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	*4%*
Basic custom duty	*10%*
Integrated tax	*18%*
Social welfare surcharge	*10%*

Note: Ignore GST compensation cess and Agriculture infrastructure and development cess.

© The Institute of Chartered Accountants of India

7. *Briefly examine the nature and significance of the levy of anti-dumping duty under the Customs Tariff Act, 1975.*

8. *Chaintop Industries has challenged the imposition of anti-dumping duty retrospectively on the grounds that it is unconstitutional. Explain whether it would succeed in its contention.*

9. *Determine the total duties payable under Customs Act if Mr. Rao imported rubber from Malaysia at landed price (exclusive of duties) of ₹ 25 lakh. It has been notified by the Central Government that share of imports of rubber from the developing country against total imports to India exceeds 5%. Safeguard duty notified on this product is 30%, IGST u/s 3(7) is 18% and BCD is 10%. Ignore agriculture infrastructure and development cess.*

10. *During the year 2026, the customs authorities have noticed that there is an increased quantity of Product XYZ being imported into the country. Determine whether the Central Government should consider levying safeguard duty or anti-dumping duty with appropriate reasons. Also enumerate any exemptions/reliefs available from such 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.

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,

© The Institute of Chartered Accountants of India

(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 measures 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 unless it 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 measures shall be applied 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.

© The Institute of Chartered Accountants of India

(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.

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

Particular	Amount(₹)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)	3,00,000
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(2) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x ₹3,00,000	30,000
Total	42,30,000
Integrated tax (₹42,30,000 × 18%) [Note]	7,61,400
Total customs duty and IGST payable (₹ 3,00,000 +₹ 9,00,000+ ₹ 30,000+ ₹ 7,61,400)	**19,91,400**

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 11]

8. Section 9A(3) of the Customs Tariff Act, 1975 provides that the anti-dumping duty can be imposed with retrospective effect provided the Government is of the opinion that:-

© The Institute of Chartered Accountants of India

(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 timing and 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.

The duty can be levied retrospectively by issuing a notification but not beyond 90 days from the date of notification.

Thus, Chaintop Industries would succeed in its contention only if all of the above conditions are not satisfied.

9. Computation of total duties payable under the Customs Act

S. No.	Particulars	(₹)
1	Landed price	25,00,000
2	Add: Basic customs duty @ 10%	2,50,000
3	Add: Safeguard duty @ 30% on ₹ 25,00,000	7,50,000
4	Add: Social welfare surcharge (SWS) @ 10 % on ₹ 2,50,000 [While calculating SWS, safeguard duty is excluded]	25,000
5	*Add*: Integrated tax 18% of ₹ 35,25,000 (₹ 25,00,000 + ₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000) [Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	6,34,500
6	Total customs duties and IGST payable [₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 6,34,500]	**16,59,500**

10. In the given case, since Product XYZ is being imported into the country in increased quantity, Central Government should consider levying safeguard Duty and not anti-dumping duty.

© The Institute of Chartered Accountants of India

Anti-dumping duty is imposed when any article is exported from any country to India at less than its normal value, which is not the case here.

However, safeguard duty can be imposed only when Central Government is satisfied that such increased importation is causing/threatening to cause serious injury to the domestic industry.

Exemptions/reliefs:

(a) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country ≤ 3% of the total imports of that article into India.

(b) Safeguard duty shall not be imposed on articles originating from more than one developing country if the aggregate of imports from developing countries each with less than 3% import share taken together ≤ 9% of the total imports of that article into India.

(c) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless specifically made applicable;

(d) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless the article imported is either cleared as such/ used in the manufacture of any goods that are cleared, into DTA.

(e) Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/part of the safeguard duty.

© The Institute of Chartered Accountants of India