

TYPES OF DUTY

3.1 BASIC CUSTOMS DUTY [SECTION 2 OF THE CUSTOMS TARIFF ACT]

This duty is levied under the provisions of section 12 of the Customs Act and section 2 of the Customs Tariff Act. Section 2 of the Customs Tariff Act provides that;

“The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules”. The first schedule enlists the goods liable to import duty and the second schedule enlists the goods liable to export duties. The following extract of the first schedule is reproduced for easy understanding of the structure of the Tariff Schedule:

Tariff Item	Description of goods	Units	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
0801	Coconuts, brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled			
	<i>Coconuts:</i>			
0801 11 00	Desiccated	Kg.	70%	60%
0801 19	<i>Other</i>			
0801 19 10	Fresh	Kg.	70%	60%
0801 19 20	Dried	Kg.	70%	60%
0801 19 90	Other	Kg.	70%	60%
	<i>Brazil nuts</i>			
0801 21 00	In shell	Kg.	30%	20%
0801 22 00	Shelled	Kg.	30%	20%
	<i>Cashew nuts</i>			

3.2 Customs

0801 31 00	In shell	Kg.	30%	Free
0801 32	<i>Shelled:</i>			
0801 32 10	Cashew kernel, broken	Kg.	30%	20%
0801 32 20	Cashew kernel, whole	Kg.	30%	20%
0801 32 90	Other	Kg.	30%	20%

Generally the rate of duty specified in column (4) is applicable but 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.

The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty.

- At the time of importation, he should make a specific claim for the preferential rate.
- He should also claim that the goods are produced or manufactured in such preferential area.
- The area should be notified under section 4(3) of the Customs Tariff Act to be a preferential area.
- 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.

3.2 ADDITIONAL DUTY OF CUSTOMS [SECTION 3 OF THE CUSTOMS TARIFF ACT]

This duty is popularly but wrongly referred to as **Countervailing duty (CVD)**. In *Hyderabad Industries Ltd .vs UOI 1999 (108) ELT 321*, the Supreme Court held that Section 3 of the Customs Tariff Act would be an independent charging section. The Supreme Court also held that additional duty could be levied only if the article is such that could be manufactured or produced in India. If the article cannot be subjected to excise levy because it is not produced or manufactured, then on the import of like articles, additional duty cannot be levied. To this extent, the earlier decision of the Supreme Court in *Khandelwal Metal & Engineering Works vs UOI 1985 (20) ELT 222* was overruled.

The levy of this duty is governed by section 3 of the Customs Tariff Act which provides that -

- (1) Any article which is imported into India shall, in addition, be 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 shall be called as additional duty. If such excise duty on a like article is leviable at

any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

However, in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a 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 shall be the applicable rate.

It has been clarified vide an explanation that the expression "excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under sub-sections (1) and (3), the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall be the aggregate of—

- (i) 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
- (ii) 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—
 - (a) the duty referred to in sub-sections (1), (3) and (5);
 - (b) the safeguard duty referred to in sections 8B and 8C;
 - (c) the countervailing duty referred to in section 9; and
 - (d) the anti-dumping duty referred to in section 9A:

In case of an article imported into India

- (a) in relation to which it is required to declare the retail sale price of such article on the package thereof under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made thereunder or under any other law for the time being in force, and
- (b) where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of

3.4 Customs

articles to which the imported article belongs, is the goods specified by notification in the Official Gazette under sub-section (1) of section 4A of the Central Excise Act, 1944,

the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article under sub-section (2) of section 4A of the Central Excise Act, 1944. Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

In case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value.

(3) 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 not] such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

(5) **Special CVD:** 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 four per cent. of the value of the imported article as specified in that notification.

In this sub-section, the expression "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" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if

Types of Duty 3.5

a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge.

(6) For the purpose of calculating under sub-section (5), the additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in sub-section (2), or section 14 of the Customs Act, 1962, be the aggregate of—

- (i) 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
- (ii) 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—
 - (a) the duty referred to in sub-section (5);
 - (b) the safeguard duty referred to in sections 8B and 8C;
 - (c) the countervailing duty referred to in section 9; and
 - (d) the anti-dumping duty referred to in section 9A.

(7) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(8) 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.

3.2.1 Computation of additional duty of customs [CVD leviable under section 3(1)]: If the additional duty is leviable as a percentage of the value of goods, then the following paragraph illustrates the method of computing the additional duty of customs.

	Rs.
Assessable value under section 14	: 1,000.00
Rate of basic customs duty	: 10%
Rate of additional custom duty	: 8%
Assessable value	: 1,000.00
Basic custom duty @ 10% of Rs. 1,000.00	: 100.00
Total value for computing additional customs duty	: 1,100.00
Additional custom duty [8.24% (including 2% education cess	

3.6 Customs

and 1% secondary and higher education cess) on Rs.1100]	:	91.00
Total [100+91]	:	191.00
Education cess @ 2%	:	4.00
Secondary and higher education cess @ 1%	:	2.00
Total duty payable	:	197.00

Note: Education cess and secondary and higher education cess have been discussed in point 3.11.

3.3 PROTECTIVE DUTIES [SECTION 7 OF THE CUSTOMS TARIFF ACT]

The two types of custom duties are revenue duties and protective duties. Revenue duties are those which are levied for the purpose of raising customs revenue, whereas 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. 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.

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 7 of the Customs Tariff Act provides as follows;

- (a) The protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule.
- (b) The Central Government may reduce or increase the duty by notification in the Official Gazette.
- (c) 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. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes. However, any thing done pursuant to the notification before the recommendation by the Parliament shall be valid.

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

The Central Government may impose or enhance export duties under the following circumstances.

- 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 by notification in the Official Gazette make amendment to the Second Schedule so as to provide for increase or levy of the export duty.

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

If the following conditions are satisfied, the Central Government may by notification in the Official Gazette carry out amendments to the First Schedule providing for the imposition or 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 imposition or 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.

3.6 SAFEGUARD DUTY [SECTION 8B OF CUSTOMS TARIFF ACT]

The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India. It is product specific i.e. the safeguard duty is applicable only for certain articles in respect of which it is imposed. The duty imposed under this section 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. The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition. But if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or as the case may be to such threat and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition subject to a maximum of 10 years from the date of first imposition.

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.

For the imposition of safeguard duty the Central Government should be 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

3.8 Customs

domestic industry.

The duty is imposed by issuing a notification in the Official Gazette.

3.6.1 Exemptions from safeguard duty.: (a) 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 countries, 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) Unless specifically made applicable in the notification the articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone shall not be liable to safeguard duty.

3.6.2 Provisional Assessment : The Central Government is also empowered to impose provisional safeguard duty pending determination of the final duty. 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. The provisional duty shall be in force for a maximum period of 200 days from the date of its imposition. 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.

3.7 POWER OF CENTRAL GOVERNMENT TO IMPOSE TRANSITIONAL PRODUCT SPECIFIC SAFEGUARD DUTY ON IMPORTS FROM CHINA [SECTION 8C OF THE CUSTOMS TARIFF ACT]

The transitional product specific safeguard duty under section 8C is imposable only if the Central Government is satisfied that any article is imported into India, from the People's Republic of China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry. It is product specific i.e. the safeguard duty is applicable only for certain articles in respect of which it is imposed. The duty imposed under this section 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. The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition. But if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or as the case may be to such threat and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition subject to a maximum of 10 years from the date of first imposition.

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.

For the imposition of safeguard duty the Central Government should be satisfied that,

- a. Any article is imported into India in increased quantities;
- b. Such increased importation is causing or threatening to cause market disruption to domestic industry.

The duty is imposed by issuing a notification in the Official Gazette. Under sub-rule (7) (b) the term 'market disruption' shall be caused whenever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

Provisional Assessment under section 8C : Similar to Section 8B the Central Government is also empowered to impose provisional transitional product specific safeguard duty pending determination of the final duty under sub-section (2). This provisional duty may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause market disruption to a domestic industry. The provisional duty shall be in force for a maximum period of 200 days from the date of its imposition. 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.

The Central Government has issued **Customs Tariff (Transitional Product specific Safeguard Duty) Rules, 2002** vide *Notification No.34/2002-cus (N.T) dated 11.6.2002* under Section 8C of the Act for the purpose of regulation of the product specific safeguard duty.

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

The countervailing duty 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 or may not directly be from the country of manufacture or production.
- (d) The article, if not imported from the country of manufacture or production, 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.

The amount of countervailing duty shall not exceed the amount of subsidy paid or

3.10 Customs

bestowed as aforesaid. This duty is in addition to any other duty chargeable under this Act or any other law for the time being in force. Unless revoked earlier, the duty imposed under this section shall cease to have effect on the expiry of 5 years from the date of such imposition. But if the Central Government, in a review is of the opinion such cessation is likely to lead to continuation or recurrence of such subsidization 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 such extension. 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.

Explanation to sub-section (1) provides that 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.

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

- (a) The subsidy relates to export performance;
- (b) The subsidy relates to the use of domestic goods over imported goods in the export article; or
- (c) The subsidy has been conferred on a limited number of persons engaged in manufacturing producing or exporting the article unless such a subsidy is for-
 - (1) Research activities conducted by or on behalf of such persons
 - (2) Assistance to disadvantaged regions within the territory of the exporting country; or
 - (3) Assistance to promote adaptation of existing facilities to new environmental requirements.

3.8.1 Provisional Countervailing Duty: 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. 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.

3.8.2 Prior imposition of duty : 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.

Types of Duty 3.11

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

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

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.

3.9 ANTI-DUMPING DUTY [SECTION 9A OF THE CUSTOMS TARIFF ACT]

The term 'dumping' is defined as an act of selling in quantity at a very low price or practically regardless of the price. Further it also includes selling goods abroad at less than the market price at home.

The anti-dumping duty is country specific i.e. it is imposed on imports from a particular country. Section 9A provides that where any article is exported *by an exporter or producer* from any 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 anti-dumping duty shall not be leviable on articles imported by a 100% EOU or a unit in a Free Trade Zone or Special Economic zone, unless the notification specifically makes it applicable for such units. This duty is in addition to any other duty chargeable under this Act or any other law for the time being in force.

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.

Unless revoked earlier, the duty imposed under this section shall cease to have effect on the expiry of 5 years from the date of such imposition. But if the Central Government, in a review is of the opinion that such cessation is likely to lead to continuation or recurrence of such 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 such extension. 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.

3.9.1 Meaning of certain terms

- (a) **Margin of dumping:** in relation to an article means the difference between its export

3.12 Customs

price and normal value.

(b) Export price: in relation to an article means the price of the article exported from the exporting country or territory.

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 construed 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 construed on such reasonable basis as may be determined in accordance with the rules made.

(c) Normal value: in relation to an article means-

The 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-

a. 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

b. 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:

c. 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.

3.9.2 Provisional anti-dumping duty: When the normal value and margin of dumping in relation to any article is still in the process of determination in accordance with this section and rules made there under, 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.

3.9.3 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-

Types of Duty 3.13

dumping duty retrospectively from a date prior to the date of imposition of anti dumping duty. The retrospective date from which the duty is payable shall not be beyond 90 days from the date of notification.

(a) There is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises 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.

Rules relating to anti dumping duty: The Central Government will determine the margin of dumping from time to time after carrying out necessary inquiry. Further, the Government will make rules to provide the manner

- (i) in which articles liable for anti-dumping duty may be identified, and
- (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)].

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 an importer proves to the satisfaction of the Central Government that he has paid any 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, he 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.

3.10 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

3.14 Customs

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 favoured 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.

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 filed under this section shall be accompanied by a fee of fifteen thousand rupees. 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 five hundred rupees.

3.11 EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS

With effect from 10.09.2004, an education cess has been levied on items imported into India. It is leviable @ 2% on the aggregate of duties of customs leviable on such goods. However, following duties shall be excluded for computing this cess:

- (a) Additional duty leviable under section 3(5) of the Customs Tariff Act, 1975;
- (b) Safeguard duty under section 8B and 8C of the Customs Tariff Act, 1975
- (c) Countervailing duty under section 9 of the Customs Tariff Act, 1975
- (d) Anti dumping duty under section 9A of the Customs Tariff Act, 1975
- (e) Secondary and higher education cess

Types of Duty 3.15

(f) Education cess itself on imported goods

Items attracting customs duty at bound rates under International Commitments are exempt from this cess. The education cess so collected is utilized for providing and financing universalised quality basic education.

Further, a secondary and higher education cess @ 1% has also been imposed on imported goods with effect from 01.03.2007. The proceeds from this cess will be utilized to finance secondary and higher education. It shall be chargeable on the aggregate duties of customs.

However, following duties shall be excluded for computing this cess:–

- (a) Additional duty leviable under section 3(5) of the Customs Tariff Act, 1975;
- (b) Safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975;
- (c) Countervailing duty leviable under section 9 of the Customs Tariff Act, 1975;
- (d) Anti-dumping duty leviable under section 9A of the Customs Tariff Act, 1975; and
- (e) Education cess and
- (f) Secondary and higher education cess itself on imported goods.

The education cess and secondary and higher education cess on imported goods are 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 refunds and exemptions from duties and imposition of penalty shall apply in relation to the levy and collection of education cess and secondary and higher education cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods.

Self-examination questions

1. Differentiate between protective duty and safeguard duty.
2. Briefly examine the nature and significance of the levy of anti dumping duty under the Customs Tariff Act, 1975.
3. Write a brief note on education cess on customs duty.
4. Discuss the provisions governing the levy of additional duty of customs chargeable under section 3(5) of the Customs Act, 1962.
5. What will be the dates of commencement of 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;

3.16 Customs

- (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

5. 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. The dates of commencement of anti-dumping duty are:
- (i) When no provisional duty is imposed under section 9A(2), the date of publication of notification in the Official Gazette imposing anti-dumping duty under section 9A(1).
 - (ii) Where provisional duty is imposed, the date of imposition of provisional duty, i.e. the date of notification issued in the Official Gazette imposing it under section 9A(2).
 - (iii) Where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, 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.

