

ANTI DUMPING DUTY

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Anti dumping duty! A levy which started as a mild tremor earlier has transformed today into an earth quake! Before reading the Richter scale, let us first know what is ANTI DUMPING DUTY (ADD)?

ADD, by its letter and spirit, is a levy imposed against the dumping of goods. It is a levy intended to provide a protective relief to the domestic manufacturers against the threat of imports. ADD is levied under Section 9-A of the Customs Tariff Act and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. "Dumping" means export of an article from any country or territory to India at a lesser value than its normal value of a like article, if produced in India.

The Central Government can impose an anti-dumping duty, only if the imports of dumped article into India cause and threaten to cause a material injury to any established industry in India. If the domestic industry has ample evidence to show that the dumping has caused substantial material injury to it by the dumped imports, it may make an application to the Director-General (Anti-dumping and Allied Duties) in the Ministry of Commerce for an investigation in the matter.

Material retardation to the establishment of an industry is also regarded as injury. The material injury or threat thereof cannot be based on mere allegation, statement or conjecture. Sufficient evidence must be provided to support the contention of material injury. Thus, the basis requirements to justify the initiation of an investigation are:

- a) There must be a "Dumping".
- b) Such "Dumping" must cause or threaten to cause an injury to the Domestic Industry.
- c) There must be a casual link between such dumped imports and the alleged injury.
- d) The **margin of dumping** should be more than 2 per cent of the **export price**.

Like Article means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such identical article, any other article which although not alike in all respects, has the characteristics closely resembling those of the articles under investigations.

Domestic industry means the domestic producers, as a whole, engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry.

Normal value means the comparable price at which like products are sold, in the ordinary course of trade, in the domestic market of the exporting country or territory.

Export Price means price of goods imported into India and is the price paid or payable for the goods by the first independent buyer.

Margin of dumping refers to the difference between the Normal value of the like article and the Export Price of the product under consideration. The margin of dumping is generally expressed as a percentage of the export price.

Now let us see why this levy is causing ripples in the import Industry.

Under Rule 13 of the Anti dumping Rules referred above, a provisional duty not exceeding the margin of dumping may be imposed by the Central Government on the basis of the preliminary finding recorded by the Designated Authority. The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation. The provisional duty will remain in force only for a period not exceeding 6 months, extendable to 9 months under certain circumstances.

As per Section 9A(5) of Customs Tariff Act, 1975. the anti-dumping duty imposed under the Act unless revoked earlier remains in force for 5 years from the date of imposition.

Having understood as to what ADD is all about let us see few practical problems:

SITUATION 1: Goods are shipped from the country of exporter to the importer's country i.e. India on a date when there is no anti-dumping duty imposed on the said goods from that country of export and the sailing period is around 3 to 4 months. Now when the goods have reached half way or even touched the Indian waters and the Indian Government has imposed anti dumping duty for all imports of the said goods from the exporting country, the importer is put to severe hardship for no fault of his. He will be in a fix whether to import paying the heavy anti dumping duty apart from the normal duty or send back the goods for lack of funds. Where does he go from there and that too for no fault of his, as there is no such levy when the goods were shipped from exporting country?

SITUATION 2: There is a provisional anti-dumping duty levied on say 2.3.03 and the importer being well versed with the Rules and Acts is very well aware that as per Rule 13 of the above Anti-dumping Rules, the provisional duty will remain in force only for a period not exceeding 6 months, extendable to 9 months under certain circumstances. So here the provisional duty as per Rule 13 normally expires on 2.9.03 and may be extended to another 3 months i.e 2.12.03 under certain circumstances. The importer after verifying that there was no notification issued imposing anti dumping duty on that date i.e 2.12.03 decides to import and completes the imports within 3 months and cleared the goods without payment anti-dumping duty. But if a Notification is issued on say 1.6.03 levying definitive anti dumping duty retrospectively with effect from the date of imposing provisional duty and if the importer is asked to pay anti dumping duty as the definitive anti dumping duty is levied retrospectively with effect from the date of imposing provisional duty, what is the fate of the poor importer? Either the Government should issue notification imposing definitive anti dumping duty before the expiry of 6 months period or 9 months (if extended) of the provisionally imposed duty or if the Government still imposes definitive anti dumping duty after more than a year and that too with retrospective effect then” **why proviso 2 to Rule 13** at all” which says

that the provisional duty will remain in force only for a period not exceeding 6 months, extendable to 9 months under certain circumstances.

SITUATION 3: After burning his fingers under situation 1 & 2, the importer decides to import under a Free Trade Agreement / Preferential Agreements to free himself from the draconian clutches of Anti dumping duty. Does the problem end here? The answer is no as the importer faces a different crisis altogether, in spite fulfilling all the conditions stipulated in the Rules of Origin of the said Agreements.

The main objective of framing the Rules of Origin under Preferential Agreements/Free Trade Agreements is to foster trade and development between the participating countries by way of granting tariff concessions etc. But the Customs Department's objective is totally different and are applying the Rules of origin under the following Agreements for imposing anti-dumping duty in spite of clarifications from the Board that **Preferential Rules of Origin with regard to a particular Agreement is for the determination of the origin of a product to grant tariff concessions within that particular Agreement and not to determine a third country's origin for the purpose of imposing anti-dumping duty."**