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Vodafone International Holdings B.V. vs. UOI (Supreme Court) – Judgement Highlights

Cayman Island is a British Overseas Territory consisting of three islands in the Western Caribbean Sea. It is used as a tax haven for avoiding tax by many India and Foreign Companies - Editor

Transfer of shares of foreign company by non-resident to non-resident does not attract Indian tax even if object is to acquire Indian assets held by the foreign company

A Cayman Island company called CGP Investments held 52% of the share capital of Hutchison Essar Ltd, an Indian company engaged in the mobile telecom business in India. The shares of CGP Investments were in turn held by another Cayman Island company called Hutchison Telecommunications. The assessee, a Dutch company, acquired from the second Cayman Islands company, the shares in CGP Investments for a total consideration of US $ 11.08 billion. The AO issued a show-cause notice u/s 201 in which he took the view that as the ultimate asset acquired by the assessee were shares in an Indian company, the assessee ought to have deducted tax at source u/s 195 while making payment to the vendor. This notice was challenged by a Writ Petition but was dismissed by the Bombay High Court. In appeal, the Supreme Court remanded the matter to the AO to first pass a preliminary order of jurisdiction which the AO did. This order was challenged by the assessee by a Writ Petition which was dismissed by the High Court (329 ITR 126 (Bom). On appeal by the assessee, HELD allowing the appeal:

(By the Court)

"Tax Planning" is Permissible

(i) The department's argument that there is a conflict between *Azadi Bachao Andolan* 263 ITR 706 (SC) & *McDowell* 154 ITR 148 (SC) and that *Azadi Bachao* is not good law is not acceptable. *While tax evasion through the use of colourable devices and by resorting to dubious methods and subterfuges is not permissible, it cannot be said that all tax planning is impermissible*;

Transaction was not a Sham

(ii) *In the taxation of a Holding Structure the burden at the threshold is on the Revenue to establish abuse in the sense of tax avoidance in the creation and/or use of such structure(s).* The Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test *only after it is able to establish that the transaction is a sham or tax avoidant* (e.g. structures used for circular trading or round tripping or to pay bribes) or if the Holding Structure entity has no commercial or business substance and has been interposed only to avoid tax. *A strategic foreign direct investment coming to India should be seen in a holistic manner* and keeping in mind certain factors like the period of business operations in India etc. On facts, the Hutchison structure was in place since 1994 and could not be said to be created as a sham or tax avoidant. The holding companies were not a "fly by night" operator or short time investor;

No "look through"

(iii) The Revenue's argument that u/s 9(1)(i) it can "look through" the transfer of shares of a foreign company holding shares in an Indian company and treat the *transfer of shares of the foreign company as equivalent to the transfer of the shares of the Indian company* on the premise that s. 9(1)(i) covers direct and indirect transfers of capital assets is not acceptable. S. 9(1)(i) (unlike the DTC Bill, 2010) does not use the word "indirect transfer";

Shares are only at Registered Office

(iv) The argument that CGP, the intervened entity, had *no business or commercial purpose* and that its *situs* was not in the Cayman Islands but in India (where the assets were) is also not acceptable. The situs of the shares of a company is where the registered office is;

Capital Share fall is not Asset Sale

(v) The High Court's finding that, applying the "nature and character of the transaction" test, the transfer of the CGP share was not adequate in itself to achieve the object of consummating the transaction between HTIL and VIH and that there was a transfer of other "rights and entitlements" which were "capital assets" is not correct because the transaction was one of "share sale" and not an "asset sale". It had to be viewed from a commercial and realistic perspective. *As it was not a case of sale of assets on itemized basis, the entire structure, as it existed, ought to have been looked at holistically. A transfer of shares lock, stock and barrel cannot be broken up into separate individual components, assets or rights such as right to vote, right to participate in company meetings, management rights, controlling rights, control premium, brand licences and so on as shares constitute a bundle of rights.* The sum of US$ 11.08 bn was paid for the "entire package" and it was not permissible to split the payment and consider a part of it towards individual items (*Mugneeram Bangur* 57 ITR 299 (SC) followed);

10 LDCs on Fast Track to Join WTO

There are ten LDCs in the process of acceding to the WTO: Afghanistan, Bhutan, Ethiopia, Laos, Liberia, Comoros, Sao Tome & Principe, Sudan, Equatorial Guinea and Yemen.

Bangladesh, speaking on behalf of the LDC Group, that the LDC Group's proposal tabled last year, which included a number of specific suggestions, should be a reference point in the informal consultations that the Chair intends to launch next week.

Yemen, an acceding LDC, said that it looked forward to improvements soon in the accession process.

The next formal meeting of the Sub-Committee is scheduled for April 2012.

Argentina Starts Compulsory Licensing, Import Balancing for All Imports from 1 February

Beginning on 1 February, Argentine companies will have to file online affidavits and wait for government approval before they can import. Last week's announcement of the policy-part of Buenos Aires' efforts to stem the shrinking of its trade surplus - has drawn a cautious response from Argentina's trading partners, particularly Brazil, along with many Argentine importers themselves.

The policy was announced by AFIP, the Argentine tax agency. Under the new policy, importers would need to file sworn statements to the agency and then wait for AFIP to either approve or reject their request.

Domestic Trade Secretary Guillermo Moreno has promised that permission - or denial - of these requests will be provided to importers within 15 working days, according to Argentine newspaper Clarín.

The move is the latest in an attempt by Buenos Aires to combat a falling trade surplus-with Argentina's overall trade balance dropping by 13 percent to US$10 billion during the first 11 months of 2011 - and thus protect their international reserves.

Other import-related measures recently imposed by the Argentine government include a requirement for certain sectors to match imports with exports of equal value, along with expanding the number of products subject to non-automatic import licensing.

Argentine imports grew by 33 percent during the first 11 months of last year, in comparison with the same period in 2010, according to preliminary official data cited by the Financial Times.

Cars are manufactured with 70 percent of their materials being imported.

The Argentine automobile industry presents 20,000 license requests each month, out of the 50,000 per month average total.

Last week, automobile producer Fiat was forced to temporarily halt production at its plant in Córdoba due to a lack of imported parts. Production was resumed on Thursday 12 January.

The announced measure quickly drew the notice of Argentina's partners in the Mercosur customs union, particularly of its northern neighbour Brazil.

While the Brazilian government stopped short of criticising the measure, the trade ministry did note in a statement that it had "received notice of the measure with concern and established contact with the Argentine government to better evaluate the possible impact on Brazilian exporters."

The new policy is set to come up in the regular talks between trade officials of the two countries.

Obama Blocks Proposed Canada-Texas Oil Sands Pipeline

US President Barack Obama has rejected a plan for the building of a multi-billion dollar pipeline that would have carried crude oil from Canada to the US state of Texas. The 18 January announcement came after weeks of debate over the economic and environmental implications of the proposed Canada-US oil sands pipeline, with an array of interested groups weighing in on the pros and cons of the massive infrastructure project.

The pipeline - which aimed to provide a direct line of crude oil and bitumen from the Athabasca Oil Sands in Canada's western province of Alberta to a range of refineries in the US - has been a lightning rod for controversy since the idea was floated in 2005.

Environmental groups say the massive carbon footprint related to extracting and refining Canadian sand oil, plus the potential for a catastrophic breach of the pipeline in an environmentally sensitive area, made the project environmentally irresponsible. However, supporters say the pipeline offered safe and reliable access to oil with significant economic benefits for both countries.

According to official data, the US$7 billion project would transport 700,000 barrels of oil a day.

In early July 2010, House Energy and Commerce Committee chairman Henry Waxman urged the State Department to block the Keystone XL project.

Supporters of the Keystone XL project had said that successful construction of the pipeline would mean a reduction in the reliance on the Middle East for petroleum and the creation of 20,000 temporary construction and manufacturing jobs, with hundreds of thousands of indirect jobs to follow in the coming decades. However, environmental groups claim that these numbers are greatly exaggerated.

Sand oil problematic for pipelines?

Environmental groups, including the Washington-based Natural Resources Defense Council (NRDC) say that diluted bitumen, a substance within Canada's crude oil sands, is more corrosive than lighter grades of oil, fuelling concerns about potential pipeline breaches.

However, a study done last year for the provincial government of Alberta found that diluted bitumen was no more corrosive to pipelines than conventional oil, but noted that there was no definitive and extensive research on the subject. A US safety regulator will examine this exact issue in a new study to be completed in July 2013.

Dollar-Rupee Rate at NSE Futures

Trade Date	Open Price	High Price	Low Price	Close Price	Daily Settlement Price	Open Interest	No. of Contracts	Value (Rs. lakhs)	RBI Reference rate
20-Jan-12	50.3325	50.5950	50.2475	50.4425	50.4425	1198969	1621618	818366	50.3288
19-Jan-12	50.3500	50.5600	50.1525	50.3800	50.3800	1246693	2386998	1203105	50.2890
18-Jan-12	50.8350	50.9975	50.5400	50.5825	50.5825	1278075	2918331	1481180	50.6655
17-Jan-12	51.4550	51.4550	50.9050	50.9725	50.9725	1314843	2983527	1525407	51.0650

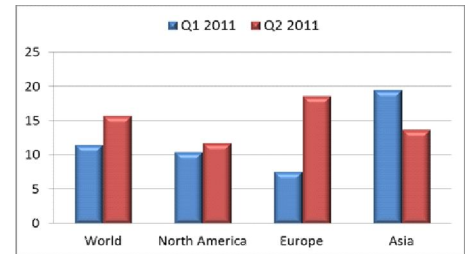
[Source: NSE and RBI Website]

World Commercial Services Trade Rises 12% in Q2, Brazil, Russia, Switzerland and India Lead

According to the latest WTO data, world exports in commercial services increased by 12% in the third quarter of 2011 compared to the same quarter of 2010 (balance-of-payments basis, current price, not seasonally adjusted). Overall, in the first nine months of 2011, exports of commercial services grew by 13% year-on-year.

1. World exports of commercial services by selected region, Q1-Q2 2011

(percentage change, year-on-year)



2. Quarterly trade in commercial services by selected region/economy

(percentage change, year-on-year)

Exports Q1 2011	Exports Q2 2011		Imports Q1 2011	Imports Q2 2011
11	16	World	10	15
10	12	North America	7	8
11	12	United States	6	6
9	12	Canada	9	13
8	19	Europe	6	15
9	17	European Union 27-extra	7	11
30	23	Switzerland	17	23
19	14	Asia	16	16
26	9	China	25	21
15	-1	Japan	10	2
27	16	India	14	18
17	14	Singapore	19	16
		Other economies		
17	29	Brazil	23	33
13	25	Russian Federation	22	33
9	1	South Africa	14	19

Note: World and regional aggregates are based on available reporters, covering around 95 per cent of trade in commercial services.

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WEEKLY INDEX OF CHANGES

Dept. of Revenue Notifies Refund of Anti-dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012

- Refund within 90 Days of Application, Undue Enrichment Clause Applicable
- Covers Cases of New Shipper Reviews where DA Determines Import was at less than Dumping Margin
- Application to be Filed within Three Months after Refundability Event
- Deficiencies to be Pointed out within a Month from Application Date

05-Cus(NT) 19.01.2012 (DoR) In exercise of the powers conferred by sub-section (2) of section 9 AA of the Custom Tariff Act 1975 (51 of 1975), the Central Government hereby makes the following rules, namely:-

1. Short title, extent and commencement

(1) These rules may be called the Refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012.

(2) They extend to the whole of India.

(3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

In these rules, unless the context otherwise requires,-

(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975);

(b) "designated authority', in relation to these rules, means any person who is appointed as the designated authority by the Central Government by notification in the Official Gazette in accordance with rule 3 of the Customs Tariff (Identification, Assessment and Collection of Anti- dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995;

(c) "duty" means the anti-dumping duty imposed under sub-section (1) or sub-section (1A) of section 9A of the Act;

(d) "Fund" means the Consumer Welfare Fund established under section 12C of the Central Excise Act, 1944 (1of 1944);

(e) "importer" means any person who has filed bill of entry for clearance of goods and while discharging duty liability on such goods has paid anti dumping duty in excess of the actual margin of dumping.

(f) Words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. Procedure for claiming refund of excess payment of Anti-dumping duty

(1) Where an importer has paid any anti-dumping duty in excess of the actual margin of dumping in relation to any imported goods, he may submit an application as per format specified for refund of such excess duty to the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, at the port of importation.

(2) The application referred to in sub-rule (1) shall be accompanied by documents evidencing payment of anti dumping duty in respect of which refund has been claimed.

4. Time limit for filing refund

(1) Every application under these rules shall be filed within three months from the date of publication of notification, issued by the Central Government under sub-section (1) of section 9AA of the Act, in the Official Gazette.

(2) Where such duty becomes refundable as a consequence of judgment, decree, order or direction of the Court, Appellate Tribunal or Authority, the limitation of three months shall be computed from the date of such judgment, decree, order or direction.

5. Deficiency in application for refund

(1) On receipt of the application, it shall be scrutinized for its completeness by the Assistant Commissioner of Customs or Deputy Commissioner of Customs and where the application is found to be deficient in any material particulars, it shall be returned to the importer within one month pointing out the deficiencies.

(2) The importer may re-submit the application after making good the deficiencies to the Assistant Commissioner of Customs or Deputy Commissioner of Customs within one month of receipt thereof.

6. Disposal of refund claim

If, on receipt of any such refund application, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, is satisfied that the whole or part of the anti dumping duty, as notified by the Central Government, is refundable, he may make an order accordingly and the amount so determined shall be refunded to the importer within 90 days of the receipt of the application or application resubmitted after rectification of deficiency, as the case may be, under rule 5:

Provided that the amount of duty refundable under this rule shall, instead of being refunded to the importer be credited to the fund, if he had passed on the incidence of such duty to any other person.

[F.No.354/126/2010 –TRU]

Rules for Review of Cases of Refund of Anti-dumping duty for Imports at less than Dumping Margin Released

Anti Circumvention Rules Notified, DA to take Action based on Information from any Source

06-Cus(NT) 19.01.2012 (DoR) In exercise of the powers conferred by sub-section (6) of Section 9A and sub-section (2) of section 9AA of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules further to amend the Custom Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, namely :-

1. (1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995,-

(i) after **rule 21**, the following shall be **inserted**, namely:-

"21A Determination of amount paid in excess of actual margin of dumping

(1) Where an importer is of the opinion that he has paid any anti-dumping duty imposed under sub-sections (1) or sub-section (1A) of section 9A of the Act on any imported goods, in excess of the actual margin of dumping in relation to such goods, he may file an application for determination of the actual margin of dumping in relation to such goods before the designated authority in such form and accompanied by such documents as the said authority may specify in this behalf.

(2) Where the application referred to in sub-rule (1) is found to be deficient in any material particulars, the same shall be returned to the importer pointing out deficiencies within one month of the receipt thereof and the importer may, after making good the deficiencies, resubmit the application to the designated authority within one month thereafter.

(3) On receipt of the application with complete information, the designated authority shall initiate an investigation to determine the actual margin of dumping in relation to such goods.

(4) In determining the actual margin of dumping, when the export price is constructed in accordance with these rules, the designated authority shall take into account any change in normal value, costs incurred between importation and resale and any movement in the sale price which is duly reflected in the subsequent selling price.

(5) While calculating constructed export price, referred to in sub-rule (4), no deduction shall be made for the amount of anti-dumping duties paid when conclusive evidence of the same is provided.

(6) Where the designated authority finds that there is change in,-

(a) costs incurred between importation and resale, and

(b) movement in the sale price which is duly reflected in the subsequent selling price, the actual margin of dumping may be determined in accordance with the provisions of sub-rules (4) and (5).

(7) The designated authority shall, after investigation under sub-rule (3), determine the actual margin of dumping for the goods and if the anti-dumping paid on the goods is in excess of the margin of dumping so determined, the authority shall make recommendation to the Central Government within nine months and in no case more than 12 months, from the date of receipt of the application, complete in all respects, to refund the difference between the two to the importer.

(ii) after **rule 24**, the following shall be **inserted**, namely:-

“25. Circumvention of anti dumping duty

(1) Where an article subject to anti dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti dumping duty in force if,-

(a) the operation started or increased after, or just prior to, the anti dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and

(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

Explanation I. – ‘Value’ means the cost of assembled, complete or finished article less value of imported parts or components

Explanation II. - For the purposes of calculating the ‘value’, expenses on account of payments relating to intellectual property rights, royalty, technical know- how fees and consultancy charges, shall not be taken into account.

(2) Where an article subject to anti dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti dumping duty in force if the alteration of the description or name or composition of the article subject to anti dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any.

(3) Where an article subject to anti dumping duty is imported into India through exporters or producers or country not subject to anti dumping duty, such exports shall be considered to circumvent the anti dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or producers or country not subject to anti dumping duty.

Explanation.- For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely:-

(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;

(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.

26. Initiation of investigation to determine circumvention

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti dumping duty levied under section 9A of the Act , upon receipt of a written application by or on behalf of the domestic industry.

(2) The application shall, *inter-alia*, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation *suo-motu* if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti dumping duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty in force where it is satisfied that imports of the article circumventing an anti dumping duty in force are found to be dumped:

Provided that, the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule.

(6) Any such investigation shall be concluded within 12 months and in no case more than 18 months of the date of initiation of investigation

Govt. Fixes Tariff Value for Gold at $526 per 10 gms and Silver at $953 per kg

The standard price for gold and silver valuation for the tariff value calculation for the purpose of levy of customs duty is lower than the current market rate by a factor of 11.6% in the case of gold and 13.7% in the case of silver. Thus the duty paid in gold and silver will be lower when compared to the duty on current market value.

Currently gold is being quoted at $1664 per ounce and silver is at $30.778 per ounce. (1 ounce = 28.3495 gms).

We now have a variable duty on gold and silver in which both the rate of duty as well as tariff value are factors. The tariff value measure may be used to justify ease of duty assessment but is contrary to the WTO agreement which requires the Members to fix duties on the basis of actual transaction value and not on artificial tariff value.

The measure may well complicate the customs clearance since the quantity or purity can always vary to evade customs duty. It may also be lead to “official” under valuation and over valuation for transfer of money in the course of trade.

04-Cus(NT) 17.01.2012 (DoR)

In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise & Customs, being satisfied that it is necessary and expedient so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.) dated, the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification,-

(i) the “TABLE” shall be renumbered as “TABLE-1” and after “TABLE-1” as so renumbered, the following TABLE shall be **inserted**, namely:-

“Table-2

SNo.	Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1.	71	Gold, in any form in respect of which the benefit of Notification No. 3/2012-Customs dated 16.01.2012 is availed	526 per 10 grams
2.	71	Silver, in any form in respect of which the benefit of Notification No. 3/2012-Customs dated 16.01.2012 is availed	953 per kilogram”

(ii) in the “TABLE-1” as so renumbered, S. No. 10 and 11 and the entries relating thereto shall be omitted.

[F. No. 467/2/2012-Cus.V]

for reasons to be recorded in writing by the designated authority.

27. Determination of circumvention

(1) The designated authority, upon determination that circumvention of anti dumping duty exists, may recommend imposition of anti dumping duty to imports of articles found to be circumventing an existing anti dumping duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the antidumping duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, extend the anti dumping duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

28. Review of circumvention

(1) The designated authority may review the need for the continued imposition of the duty, where warranted, on its own initiative or provided that a reasonable period of time has elapsed since the imposition of the measures, upon request by any interested party which submits positive information substantiating the need for the review.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of review.

[F.No.354/126/2010 –TRU]

JNCH Organises Trade Facilitation Fortnight to Improve Service Standards – Promises Liquidation of All Old SAD Refund Cases

The following Facility Notice was issued by the Commissioner of Customs (Import) Jawaharlal Nehru Custom House on 11th January 2012.

01-FN 11.01.2012

Central Board of Excise and Customs is celebrating the Golden jubilee of the enactment of the Customs Act, 1962. Further, International Customs Day is being observed on 26.01.2012. As you all are aware, JNCH has been taking various steps to facilitate the trade with the active participation and support of all the stake holders. Jawaharlal Nehru Customs House, Nhava Sheva is organizing a Trade Facilitation fortnight from 19th January to 2nd February, 2012 with an objective to improve standards of service delivery in the following areas of work:

(i) Export

Drawback disbursal- After filing of EGM, when the SB is transmitted to the queue of Supdt, DBK	Within 24 hrs. The status of drawback sanctioned will also be displayed in our website http://www.jawaharcustoms.gov.in/ after the scroll is generated
Let Export Order in respect of SB registered	Same day
Cancellation of EPCG/DEEC Licence- After submission of all the relevant documents	Within a week
Licence registration of various E.P. schemes	Same day
Finalization of provisional assessment- After submission of all the relevant documents	Within a week
Generation of DBK scroll	Shall be done twice a week
Re-export of goods imported under Bond	Within 24 hrs of filing of application
Factory Stuffing permission	Same day
EP copy generation	Within 24 hrs

(ii) Imports

Verification of self-assessed BE	Same day
Clearance order in Docks for home consumption	Same day of registration
Special Additional Duty Refund subject to production of documents	All cases pending more than 6 months would be liquidated
Cancellation of PD Bonds- After submission of all the relevant documents	Shall be attended to within a week
IGM amendments (Minor)	Same day
IGM amendments (Major)	Within 24 hrs (O-in-O would be issued within 24 hrs of the P.H. and submission of all the required documents)
Pending IGM amendments (as on 19.01.2012)	Shall be attended to by 02.02.2012

3. In addition to the above and other facilities already made available to the Trade, the following facilities are being streamlined:

(i) Help Desk: An additional help desk to assist/guide trade has been installed. The Telephone No. is 27242747 and email ID is jnchhelpdesk@gmail.com.

(ii) Complaint Management: Complaints/Suggestion boxes have been kept in III, IV and Vth floor of the Customs House and in the following CFSs

(a) CWC Dronagiri (b) All Cargo Logistics (Trans India) (c) Navkar Logistics (d) Gateway Distripark Ltd (GDL) (e) CWC Logistics Park (Hind Terminal).

In addition to the above, member of trade can send complaints/suggestions/grievances by e-mail to the following Nodal Officers' e-mail ID

(i) In respect of imports: Shri P. N. Balachandran, DC (Appraising Main-Imports) (nodalimpjnch@gmail.com)

(ii) In respect of exports: Shri K. V. Singh, DC (Appraising Main-Exports) (nodalexp@gmail.com)

Complaints/suggestions/grievances can also be placed on JNCH website jawaharcustoms.gov.in

All the complaints/suggestions/grievances received will be monitored regularly at the level of Commissioners and action taken shall be informed to all concerned.

4. All the members of the trade and stakeholders are requested to cooperate to enable the Custom House to improve the standard of service delivery.

This issues with the approval of the Chief Commissioner of Customs.

F. NO. S/V-30-Misc-284/2012 CCO-MII

Safeguard Duty of 10% Imposed on Phthalic Anhydride for 180 Days under Provisional Findings

Ntfn 01-SG 17.01.2012 (DoR)

Whereas, in the matter of import of Phthalic anhydride, falling under tariff item 29173500 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the said Act), the Director General (Safeguard), in preliminary findings published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 719 (E), dated the 23rd September, 2011, had come to the conclusion that increased imports of Phthalic anhydride into India had caused and threatened to cause further serious injury to the domestic producers of Phthalic anhydride and it necessitates to impose provisional safeguard duty on imports of Phthalic anhydride into India;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 8B of the said Act, read with rules 10 and 14 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, the Central Government after considering the said findings of the Director General (Safeguards), hereby imposes on Phthalic anhydride, falling under tariff item 2917 35 00 of the First Schedule to the said Act, when imported into India, a safeguard duty at the **rate of 10% *ad valorem*.**

2. The safeguard duty imposed under this notification shall be effective for a period of 180 days (unless revoked, superseded or amended earlier) from the publication of this notification in the Official Gazette.

[F.No.354/1/2012-TRU]

Guidelines for undertaking Commodity Hedging Transactions in International Commodity Exchange

Sub: Risk Management and Inter-Bank Dealings- Commodity Hedging

AP(DIR Srs) Cir.68 17.01.2012 (RBI)

Attention of Authorised Dealers Category – I (AD Category – I) banks is invited to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 [Notification No. FEMA 25/RB-2000 dated May 3, 2000], as amended from time to time and A.P. (DIR Series) Circular No. 32 dated December 28, 2010. Currently, resident entities in India, engaged in import and export trade or as otherwise approved by the Reserve Bank from time to time, are permitted to hedge the price risk of permitted commodities in the international commodity exchanges / markets. Further, AD Category – I banks satisfying certain minimum norms are **specifically authorised** by the Reserve Bank (please refer to Section E para I of the above mentioned Circular) to grant permission to

a. companies listed on a recognized stock exchange to hedge price risk on import/ export in respect of any commodity (except gold, silver, platinum) in the international commodity exchanges/ markets;

b. domestic companies engaged in refining crude oil to hedge the price risk on crude oil imports on the basis of past performance;

c. (i) domestic producers/ users of aluminium, copper, lead, nickel and zinc listed on a recognized stock exchange;

(ii) actual domestic users of Aviation Turbine Fuel (ATF) to hedge economic exposures in respect of ATF based on domestic purchases;

(iii) domestic crude oil refining companies to hedge commodity price risk on domestic purchases of crude oil and domestic sales of petroleum products, which are linked to international prices; and

d. domestic oil marketing and refining companies to hedge commodity price risk on Inventory subject to guidelines as prescribed by the Reserve Bank.

2. It has now been decided to permit **all AD Category-I banks** to grant permission to companies to hedge the price risk in respect of any commodity (except gold, silver, platinum) in the international commodity exchanges/ markets as specified under the delegated route.

3. Further, AD Category-I banks can also grant permission to **unlisted companies** to hedge price risk on import/ export in respect of any commodity (except gold, silver, platinum) in the international commodity exchanges/ markets subject to guidelines as specified in the Annex.

4. AD Category-I banks may submit an annual report to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Central Office, Forex Markets Division, Amar Building, 5th Floor, Mumbai – 400 001 as on March 31 every year, within one month (before April 30th), giving the names of the corporates to whom they have granted permission for commodity hedging and the name of the commodity hedged.

5. Applications from customers to undertake hedge transactions not covered under the delegated route may continue to be forwarded to the Reserve Bank by the Authorised Dealers for approval, as hitherto.

6. Necessary amendments to Notification No. FEMA.25/RB-2000 dated May 3, 2000 [Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000] are being notified separately.

7. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.

8. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

Annex

[Annex to A.P. (DIR Series) Circular No. 68 dated January 17, 2012]

Before permitting the corporates to undertake hedge transactions, Authorized Dealer would require them to submit a brief description of the hedging strategy proposed, namely:

- description of business activity and nature of risk,
- instruments proposed to be used for hedging,
- the names of the commodity exchanges and brokers through whom the risk is proposed to be hedged and the credit lines proposed to be availed. The name and address of the regulatory authority in the country concerned may also be given,
- size / average tenure of exposure and/or total turnover in a year, together with expected peak positions thereof and the basis of calculation.

along with a copy of the Board Risk Management Policy approved by its Management covering;

- risk identification
- risk measurements
- guidelines and procedures to be followed with respect to revaluation and/or monitoring of positions
- names and designations of officials authorised to undertake transactions and limits

Authorised Dealer may refuse to undertake any hedge transaction if it has a doubt about the bonafides of the transaction or the corporate is not exposed to price risk. The conditions subject to which ADs would grant permission to hedge and the guidelines for monitoring of the transactions are given below. It is clarified that hedging the price risk on domestic sale/purchase transactions in the international exchanges/markets, even if the domestic price is linked to the international price of the commodity, is not permitted, except certain specified transactions as approved/may be approved by the Reserve Bank. Necessary advice may be given to the customers before they start their hedging activity.

Corrigendum to Ntfn 08/16.01.2012 dated 17th January 2012

[Corrigendum dated 17th January 2012]

In the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 8/2012-Customs (ADD), dated the 16th January, 2012 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 21 (E), dated the 16th January, 2012,-

for the figures "390042210", read "39042210".

[F.No.354/88/2004-TRU (Pt-I)]

A. Conditions/ Guidelines for undertaking hedging transactions in the international commodity exchanges/ markets

1. The focus of the hedge transactions shall be on risk containment. Only off-set hedge is permitted.

2. All standard exchange traded futures and options (purchases only) are permitted. If the risk profile warrants, the corporate/firm may also use OTC contracts. It is also open to the corporate/firm to use combinations of option strategies involving a simultaneous purchase and sale of options as long as there is no net inflow of premium direct or implied, subject to the guidelines as detailed at **Para B** below. Corporates/firms are allowed to cancel an option position with an opposite transaction with the same broker.

3. The corporate/firm should open a Special Account with the AD Category-I bank. All payments/receipts incidental to hedging may be effected by the AD Category-I bank through this account without further reference to the Reserve Bank.

4. A copy of the Broker's Month-end Report(s), duly confirmed/countersigned by the corporate's Financial Controller should be verified by the bank to ensure that all off-shore positions are/were backed by physical exposures.

5. The periodic statements submitted by the brokers, particularly those furnishing details of transactions booked and contracts closed out and the amount due/payable in settlement should be checked by the corporate/firm. Un-reconciled items should be followed up with the broker and reconciliation completed within three months.

6. The corporate/firm should not undertake any arbitrage/speculative transactions. The responsibility of monitoring transactions in this regard will be that of the AD Category -I bank.

7. An annual certificate from Statutory Auditors should be submitted by the company/firm to the AD Category I bank. The certificate should confirm that the prescribed terms and conditions have been complied with and that the corporate/firm's internal controls are satisfactory. These certificates may be kept on record for internal audit/inspection.

B. Conditions for allowing users to enter into a combination of OTC option strategies involving a simultaneous purchase and sale of options for overseas Commodity hedging:

1. Users

Listed companies or unlisted companies with a

minimum networth of Rs. 100 crore, which comply with the following:

Adoption of Accounting Standards 30 and 32 (for companies not complying – those companies which follow the accounting treatment and disclosure standards on derivative contracts, as envisaged under AS 30/32.

Having a risk management policy and a specific clause in the policy that allows using the above mentioned combination of OTC option strategies.

2. Operational Guidelines, Terms and Conditions

a. Writing of options by the users, on a standalone basis is not permitted. Users can however, write options as part of cost reduction structures, provided, there is no net receipt of premium.

b. Leveraged structures, Digital options, Barrier options and any other exotic products are not permitted.

c. The delta of the options should be explicitly indicated in the term sheet.

d. The portion of the structure with the largest notional should be reckoned for the purpose of underlying.

e. AD Category -I banks may stipulate additional safeguards, such as, continuous profitability, etc. depending on the scale of operations and risk profile of the users.

RBI Notifies 100 percent FDI in Single Brand Retail

Sub: Foreign investment in Single – Brand Retail Trading Amendment to the Foreign Direct Investment (FDI) Scheme

AP(DIR Srs) Cir.67 13.01.2012 (RBI) Attention of Authorised Dealers Category – I (AD Category - I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. In terms of Schedule 1 of the Notification, FDI up to 51 per cent is permitted in Single Brand product trading under Government route of FDI Scheme.

2. The extant FDI policy has since been reviewed and it has now been decided that FDI up to 100 per cent would be permitted in Single Brand product trading under the Government route subject to the terms and conditions as stipulated in Press Note No. 1 (2012 Series) dated January 10, 2012 issued by Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

3. A copy of Press Note No. 1 (2012 Series) dated January 10, 2012 issued in this regard is enclosed.

4. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.

5. Necessary amendments to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated May 3, 2000) are being notified separately.

6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Customs Valuation Exchange Rates

January 2012		Imports	Exports	
Schedule I				
1	Australian Dollar	54.30	53.10	Rate of exchange of one unit of foreign currency equipment to Indian Rupees
2	Canadian Dollar	52.35	51.15	
3	Danish Kroner	9.40	9.15	
4	EURO	69.90	68.30	
5	Hong Kong Dollar	6.85	6.75	
6	Norwegian Kroner	9.00	8.70	
7	Pound Sterling	83.45	81.65	
8	Swedish Kroner	7.80	7.55	
9	Swiss Franc	57.10	55.80	
10	Singapore Dollar	41.30	40.35	
11	U.S. Dollar	53.25	52.45	
Schedule II				
1	Japanese Yen	68.65	66.90	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees

(Source: Customs Notification 88(NT)/28.12.2011]

Commodity Spot Prices in India – 19-21 January 2012

These commodity prices are taken from Multi Commodity Exchange of India (Mumbai) at 6 pm every day.

(Rs.)

Commodity	Unit	Market	19-Jan	20-Jan	21-Jan
CER (Carbon Trading)	1 MT	Mumbai	NA	NA	NA
Chana	100 KGS	Delhi	3211	3257	3250
Masur	100 KGS	Indore	3050	3056	3045
Potato	100 KGS	Agra	NA	NA	NA
Potato TKR	100 KGS	Tarkeshwar	NA	NA	NA
Arecanut	100 KGS	Mangalore	NA	NA	NA
Cashewkern	1 KGS	Quilon	NA	NA	NA
Cardamom	1 KGS	Vandanmedu	572.1	571.9	570.3
Coffee ROB	100 KGS	Kushalnagar	NA	NA	NA
Jeera	100 KGS	Unjha	NA	NA	NA
Pepper	100 KGS	Kochi	NA	NA	NA
Red Chili	100 KGS	Guntur	NA	NA	NA
Turmeric	100 KGS	Nzmbad	5075	4963	4963
Guar Gum	100 KGS	Jodhpur	NA	NA	NA
Maize	100 KGS	Nzmbad	1191.5	1185.5	1188.5
Wheat	100 KGS	Delhi	1268.1	1269.8	1268.5
Mentha Oil	1 KGS	Chandausi	1626.1	1624.2	1624.9
Cotton Seed	100 KGS	Akola	NA	NA	NA
Castorsd RJK	100 KGS	Rajkot	3487	3544	3545.5
Guar Seed	100 KGS	Bikaner	11453	11855	12006
Soya Bean	100 KGS	Indore	2438	2460.5	2453
Mustrdsd JPR	20 KGS	Jaipur	680	686.65	695
Sesame Seed	100 KGS	Rajkot	6275	6213	6213
Coconut Oil Cake	100 KGS	Kochi	NA	NA	NA
RCBR Oil Cake	1 MT	Raipur	NA	NA	NA
Kapaskhali	50 KGS	Akola	1290.8	1285	1287.9
Coconut Oil	100 KGS	Kochi	7696	7592	7592
Refsoy Oil	10 KGS	Indore	698.75	703.5	702.1
CPO	10 KGS	Kandla	523	524	523.8
Mustard Oil	10 KGS	Jaipur	748.8	754	757.6
Gnutoilexp	10 KGS	Rajkot	1020	1020	1020
Castor Oil	10 KGS	Kandla	NA	NA	NA
Crude Oil	1 BBL	Mumbai	5096	5049	4949
Furnace Oil	1000 KGS	Mumbai	NA	NA	NA
Sourcrd Oil	1 BBL	Mumbai	NA	NA	NA
Brent Crude	1 BBL	Mumbai	5607	5610	5529
Gur	40 KGS	Muzngr	NA	NA	NA
Sugars	100 KGS	Kolhapur	NA	NA	NA
Sugarm	100 KGS	Delhi	3053	3050	3044
Natural Gas	1 mmBtu	Hazirabad	125.2	116.8	117.9
Rubber	100 KGS	Kochi	19247	19411	19243
Cotton Long	1 Candy	Kadi	NA	NA	NA
Cotton Med	1 Maund	Sriganganagar	NA	NA	NA
Jute	100 KGS	Kolkata	2257.5	2258	2249
Gold	10 GRMS	Ahmd	27450	27195	27448
Gold Guinea	8 GRMS	Ahmd	22048	21844	22047
Silver	1 KGS	Ahmd	52877	52545	54500
Sponge Iron	1 MT	Raipur	NA	NA	NA
Steel Flat	1000 KGS	Mumbai	NA	NA	NA
Steel Long	1 MT	Gobindgarh	NA	NA	NA
Copper	1 KGS	Mumbai	419.15	421.35	415.55
Nickel	1 KGS	Mumbai	989.4	1017.8	1014.3
Aluminium	1 KGS	Mumbai	109.65	110.35	109.9
Lead	1 KGS	Mumbai	107.2	108.3	107.2
Zinc	1 KGS	Mumbai	101.15	101.35	100.4
Tin	1 KGS	Mumbai	1105.75	1100	1098.5

(Source: MCX Spot Prices)

Authorised Banks for e-Payment through ICEGATE for All Customs Locations w.e.f. 16.01.2012

[Ref: CBEC Website]

Users can now avail facility of e-Payment through ICEGATE for all Custom Locations from any of the following authorized Banks w.e.f. 16th January, 2012.

List of Banks

SNo.	Name of Banks
1.	State Bank of India
2.	State Bank of Hyderabad
3.	State Bank of Bikaner & Jaipur
4.	State Bank of Travancore
5.	Punjab National Bank
6.	Bank of India
7.	Indian Bank
8.	UCO Bank
9.	United Bank of India
10.	Union Bank of India
11.	Bank of Maharashtra
12.	Corporation Bank
13.	IDBI Bank
14.	Bank of Baroda
15.	Canara Bank
16.	Indian Overseas Bank
17.	Central Bank of India

Nominated Banks for Customs Commissionerates
(For payment of duty)

	Customs Commissionerates	Nominated Banks
1.	Ahmedabad I	Bank of Baroda
2.	Amritsar	Punjab National Bank
3.	Bangalore	State Bank of India
4.	Calcutta (Port) *	United Bank of India
5.	Calcutta (Airport & Air Cargo)*	State Bank of India
6.	Calcutta (Prev)	State Bank of India
7.	Chennai (Port)*	Indian Bank
8.	Chennai (Airport & Air Cargo)*	State Bank of India
9.	Cochin *	State Bank of India
10	Delhi (Gen)	Punjab National Bank
11.	Delhi (Air Cargo)	Punjab National Bank
12.	Delhi I C D	Punjab National Bank
13.	Goa*	State Bank of India
14.	Jodhpur (at Jaipur)	State Bank of Bikaner & Jaipur
15.	Lucknow	State Bank of India
16.	Mangalore	Canara Bank
17.	Mumbai (Gen)*	Bank of India
18.	Mumbai (Import)*	Bank of India
19.	Mumbai (Exports)*	Bank of India
20.	Mumbai (Prev.)	Bank of India
21.	Mumbai Int. Airport*	Bank of India
22.	Mumbai Air Cargo Complex*	State Bank of India
23.	Kandla*	State Bank of India
24.	Nhava Sheva*	State Bank of India
25.	Patna	Punjab National Bank
26.	Pune	Punjab National Bank
27.	Shillong	State Bank of India
28.	Trichy	Indian Overseas Bank
29.	Visakhapatnam*	State Bank of India

Note: *These Places also have departmental treasuries.

Brazil Advances $2.2bn for Ethanol Production

The Brazilian Development Bank announced last week a programme to finance low cost loans for farmers of sugarcane and producers of ethanol. The tropical country is seeking to boost biofuel production in the wake of ethanol tariffs and subsidies expiring in the US, another leading producer.

The Prorenova programme of the Development Bank - better known by its initials, BNDES- is intended to boost total ethanol production in Brazil by making loans available across the ethanol production chain. The R$4 billion (US$2.2 billion) in financing would be executed indirectly through intermediaries, with a low overhead added by the bank.

The BNDES expects to increase total ethanol production by 2 to 4 billion litres in 2013/14, a gain of at least 10 percent.

A Brazilian official told that any support provided for ethanol would be in "accordance with WTO rules." However, a Geneva-based official of a trading partner worried that support for ethanol adds to questions about the country's "total rate of subsidisation," especially those administered through generous credit policies.

The industry provides more than a million jobs and nearly US$50 billion in economic activity, according to de Sousa. The industry has gained yet more clout and prominence since the government began seeing it as energy and not agribusiness.

Production key to regaining exporter status

Traditionally the largest and most efficient producer of ethanol, Brazil was until recently a major exporter. However, high sugar prices, a lack of sufficient reinvestment in old sugarcane fields, and the failure to bring new land into cultivation have led total ethanol production in Brazil to stall, stemming a long pattern of growth.

Data from UNICA indicates that total output of the biofuel in 2011 - at close to 20 billion litres- was at levels similar to those in 2008. Meanwhile, surging incomes in the country have added millions of ethanol-hungry cars to the roads in the interim, increasing demand.

Although US output has ramped up, the recently expired blending credit of 45 cents per gallon had allowed companies to add a small amount of gasoline to ethanol and still receive up to 90 percent of the subsidy on every gallon exported. This made US ethanol cheaper on international markets.

Now that this tax credit is no longer in place, observers expect US exports of the good to fall, potentially leaving room for their Brazilian counterparts to make a comeback in the long term.

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