

BUDGET 2021-2022

Amendment in the provisions relating to Anti-Dumping Duty (ADD)

A. Synopsis

The Government of India, in clause 94 of the Finance Bill 2021, seeks to amend sub-section (1A) of section 9A of the Customs Tariff Act to provide for retrospective levy of anti-dumping duty to counter circumvention. It further seeks to insert a new sub-section (1B) in the said section to provide for anti-absorption measures in anti-dumping duty. It also seeks to substitute sub-section (2A) in that section to align it with the provisions contained in sub-section (6) of section 8B of the said Act relating to safeguard measures. It also seeks to amend sub-section (5) thereof to provide for further imposition of anti-dumping duty after review, for a period upto five years. It also seeks to insert a third proviso therein so as to provide that if anti-dumping duty is revoked temporarily, the period of such revocation shall not be more than one year at a time.

Therefore, in the Budget-2021 Section 9A of the Customs Tariff Act is proposed to be amended to include provisions for anti-absorption, retrospective levy in anti-circumvention cases, aligning anti-dumping duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area, stipulating that when anti-dumping duty is revoked temporarily, such revocation shall be for a period not exceeding one year at a time and to provide for imposing ADD on review for period not exceeding 5 years at a time, instead of the 5 years at present. [Clause 94]

Thus, concisely put, the Budget 2021 proposed to make the following amendments in the provision relating to ADD, CVD [section 9, 9A of the Customs Tariff Act and respective Rules] to provide for:

- i. imposition of duty from the date of initiation of anticircumvention investigation;
- ii. anti-absorption provisions;
- iii. imposition of these duties on review for period upto 5 years at a time;
- iv. uniform provisions for imposition ADD/CVD on account of inputs (attracting ADD or CVD) used by EoUs and SEZs for manufacture of goods that are cleared to Domestic Tariff Area;
- v. whenever any particular ADD or CVD is temporarily revoked, such temporary revocation shall not exceed one year at a time;
- vi. final findings are to be issued in ADD/CVD, in investigation in review proceedings, by the designated authority, at least three months prior to expiry of the ADD under review (with effect from the 1st Jul, 2021);

B. Other Miscellaneous changes pertaining to Anti-Dumping Duty (ADD)

1. **Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995** provide for manner and procedure for investigation into dumping of goods that cause injury to domestic industry. Changes are being made in the Rules, to provide that **with effect from 01.07.2021**, to provide that final findings are to be issued by the designated authority, in review cases, at least three months prior to expiry of the ADD under review. The ADD Rules are also being amended to provide for provisional assessment in cases of anti-circumvention investigation. Certain other changes are being made for bringing clarity in the scope of these rules.
2. Anti-Dumping duty is being **temporarily revoked** for the period commencing **from 2.2.2021 till 30.09.2021**, on imports of the following:
 - a. Straight Length Bars and Rods of alloy-steel, originating in or exported from People's Republic of China, imposed vide notification No. 54/2018-Cus (ADD) dated 18.10.2018;
 - b. High Speed Steel of Non-Cobalt Grade, originating in or exported from Brazil, People's Republic of China and Germany, imposed vide notification No. 38/2019-Cus (ADD) dated 25.09.2019;
 - c. Flat rolled product of steel, plated or coated with alloy of Aluminum or Zinc, originating in or exported from People's Republic of China, Vietnam and Korea RP, imposed vide notification No. 16/2020-Cus (ADD) dated 23.06.2020.
 - d. In Sunset Review, anti-dumping duty on Cold-Rolled Flat Products of Stainless Steel of width 600 mm to 1250 mm and above 1250 mm of non bona fide usage originating in or exported from People's Republic of China, Korea RP, European Union, South Africa, Taiwan, Thailand and United States of America has been discontinued upon expiry of the anti-dumping duty hitherto leviable vide notifications no. 61/2015-Customs (ADD) dated 11th December, 2015 and 52/2017-Customs (ADD) dated 24th October, 2017.

C. Analysis of changes in Anti-Dumping Duty (ADD)

Section – 9A (Anti-dumping duty on dumped articles)		
Current provisions	Proposed provisions	Effect of the changes made
(1A) Where the Central Government, on such inquiry	(1A) Where the Central Government, on such inquiry	Section 9A of the Customs Tariff Act and

<p>as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.</p> <p>.....</p>	<p>as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.</p>	<p>respective Rules are being amended to make following amendments in the provision relating to ADD:</p>
	<p>(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may,</p>	<p>imposition of duty from the date of initiation of anti-circumvention investigation;</p> <p>anti-absorption provisions to counter situation where, by reduction of export prices or otherwise, the ADD levied is sought to be absorbed, diluting the intended impact of such ADD.</p>

<p>(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless,-</p> <p>(i) specifically made applicable in such</p>	<p>by notification in the Official Gazette, specify.</p> <p>Explanation.--For the purposes of this sub-section,</p> <p>“absorption of anti-dumping duty” is said to have taken place,--</p> <p>(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or</p> <p>(b) under such other circumstances as may be provided by rules.’;</p> <p>.....</p> <p>(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under subsection (1) or any anti-dumping duty imposed under subsection (2) shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless,—</p> <p>(i) it is specifically made applicable in such notification</p>	<p>uniform provisions for imposition ADD on account of inputs (attracting ADD) used by EOUs and SEZs for manufacture of goods that are cleared to Domestic Tariff Area;</p>
---	---	---

<p>notifications or such impositions, as the case may be; or</p> <p>(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India</p> <p>Explanation. -For the purposes of this sub-section, the expression “hundred per cent export-oriented undertaking” shall have the meaning assigned to it in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944; (1 of 1944)]</p> <p>.....</p> <p>(5) The anti-dumping duty imposed under this section</p>	<p>or to such undertaking or unit; or</p> <p>(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, antidumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.</p> <p>Explanation- For the purposes of this section,--</p> <p>(a) the expression “hundred per cent. export-oriented undertaking” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;</p> <p>(b) the expression “special economic zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.’;</p> <p>.....</p> <p>(5) The anti-dumping duty imposed under this section</p>	
---	--	--

<p>shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:</p> <p>Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:</p> <p>Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.</p> <p><u>AD Rules:</u></p> <p>5. Initiation of investigation (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and</p>	<p>shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:</p> <p>Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period upto five years and such further period shall commence from the date of order of such extension:</p> <p>Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.</p> <p>Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.”</p> <p>5. Initiation of investigation (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only</p>	<p>Imposition/extension of these duties on review for period upto 5 years at a time;</p> <p>whenever any particular ADD is temporarily revoked, such temporary revocation shall not exceed one year at a time.</p>
---	--	---

<p>effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.</p> <p>(2).....</p> <p>(3).....</p> <p>(4).....</p>	<p>upon receipt of a written application by or on behalf of the domestic industry.</p> <p>(2).....</p> <p>(3).....</p> <p>(3A) The period of investigation shall, -</p> <p>(i) not be more than six months old as on the date of initiation of investigation;</p> <p>(ii) be for a period of twelve months normally and for reasons to be recorded in writing, the designated authority may consider a minimum of six months or maximum of</p> <p>eighteen months.</p> <p>(4).....</p>	<p>Anti-dumping investigation shall be initiated within a period of six months from the POI and POI shall normally be 12 months or 6-18 months for a reason to be recorded in writing by the DA.</p>
<p>23. Review.-</p> <p>(1) The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.</p> <p>(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve</p>	<p>23. Review.-</p> <p>(1) The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.</p> <p>(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from</p>	

<p>months from the date of initiation of such review.</p> <p>(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.</p>	<p>the date of initiation of such review.</p> <p>*Provided that notwithstanding anything contained in rule 17, such review shall be completed at least three months prior to expiry of the anti-dumping duty under review.</p> <p>*(3) Subject to sub-rule (2), the provisions of rules 6,7, 8, 9, 10, 11, 16, 17, 18, 19 and 20 shall apply mutatis mutandis in the case of review.</p>	<p>final findings are to be issued in ADD, in investigation in review proceedings, by the designated authority, at least three months prior to expiry of the ADD under review (with effect from the 1st Jul, 2021);</p>
<p>26. Initiation of investigation to determine circumvention.</p> <p>(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.</p> <p>(2).....</p> <p>(3).....</p> <p>(4).....</p>	<p>26. Initiation of investigation to determine circumvention.</p> <p>(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.</p> <p>(2).....</p> <p>(3).....</p> <p>(4).....</p> <p>*(4A) The Central Government may, on recommendation of the designated authority, resort to provisional</p>	<p>provisional assessment in anti-circumvention investigation and made some other technical changes in ADD Rules;</p>

<p>28. Review of circumvention (1)..... (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.</p>	<p>assessment of the imports of the article alleged to be circumventing an antidumping duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 27 is taken by the Central Government.</p> <p>28. Review of circumvention (1)..... (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.</p> <p>*Provided that such review shall be completed at least three months prior to expiry of the duty under review.</p>	<p>final findings are to be issued in circumvention, in investigation in review proceedings, by the designated authority, at least three months prior to expiry of the duty under review (with effect from the 1st Jul, 2021);</p>
--	--	--

*with effect from 1st day of July, 2021