

CHAPTER IV  
PROBLEMS OF ASSESSMENT IN CUSTOMS DUTIES

I. Valuation

Customs duties are of two types *viz.*, *ad valorem* and specific. In respect of articles subject to *ad valorem* duties, the values put on them determine the amounts of duty payable. The adoption of suitable valuation methods is, therefore, of importance from the points of view of both the revenue and the trade if evasion is to be prevented and unfairness among different classes of traders avoided. The dutiable value is fundamentally a legal concept, but it has economic and administrative consequences. As such, there are a number of component factors which are taken into account in framing the official definition of value. These may be classified as follows:—

- (i) items of cost included in dutiable value;
- (ii) places or markets to be considered in determining value;
- (iii) date for basing valuation;
- (iv) basis for currency conversion;
- (v) criteria for selection of representative markets and prices; and
- (vi) requirements of documentation and proof.

The contents of the official definition are thus likely to vary from country to country depending on the emphasis given to one or the other of the factors listed above. This renders the task of valuation difficult and complicated.

2. Attempts have been made for many years to secure international agreement on the principles of valuation. The latest of such attempts is the definition of 'actual value' in Article 35 of the Charter for the International Trade Organisation. This definition has also been incorporated in the General Agreement on Tariffs and Trade. It runs as follows:—

“(a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

(b) 'Actual value' should be the price at which at a time and place determined by the legislation of the country of importation, and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii)

quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

(c) When the actual value is not ascertainable in accordance with sub-paragraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value”.

3. The law regarding valuation of goods for duty purposes in Indian practice: sec- India is stated in section 30 of the Sea Customs Act, which reads as follows:—

“For the purposes of this Act, the real value shall be deemed to be—

- (a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever except (in the case of goods imported) of the amount of the duties payable on the importation thereof; or
- (b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid”.

Thus in India, valuation is on the basis of competitive wholesale price at the place of import or export where ascertainable, and in other cases on competitive landed cost of the commodities concerned. The Indian law is in essential respects in conformity with the provisions in the General Agreement on Tariffs and Trade; both recognise that competitive prices should form the basis of valuation.

4. It is mandatory under the Indian law to apply the market value criterion as contained in section 30(a) of the Sea Customs Act unless circumstances render it difficult to do so; in the latter event, section 30(b), i.e., valuation based on invoices, comes into operation. One of the criticisms made is that in prescribing this order for assessment, the wholesale profits earned in India are in a majority of cases included in the assessable value. This is considered to be unfair. It has, therefore, been represented that section 30 of the Sea Customs Act should be so amended as to reverse the order of the application of clauses (a) and (b) respectively.

5. Reversal of the order of clauses (a) and (b), in the manner suggested would not, however, ensure the valuation of dutiable articles on the basis of invoices. Clause (b) provides for ascertainment of a competitive price where no competitive market exists. When this clause is applied, invoice values have to be adjusted so that no special elements are included or excluded. Where importers buy at varying prices because of different degrees of bargaining power or of other factors, an attempt has to be made to arrive at a single c.i.f. price as close as possible to the price which would prevail under free competitive conditions. Even where genuine invoices are produced, a valuation under clause (b) would involve

adjustment of the invoice values in order to arrive, at what may be regarded as a normal competitive price.

6. Valuation in accordance with clause (a) of section 30 is thus more logical and, therefore, preferable to clause (b), and no useful purpose would be served by reversing the order of the clauses. A valuation under clause (a) ensures fairness as between different importers, and we think that this method should be employed wherever practicable. It is true that this entails a portion of the wholesale profits made in India being charged to duty. This criticism has, however, practically no validity as the exclusion of wholesale profits from assessable value would involve an upward readjustment of the rates of customs duties if the same amount of revenue is aimed at.

7. The task of valuation has been complicated in recent years by the greatly growing import of articles for which no competitive wholesale prices are available in India. An analysis of the records of the Bombay Custom House for the year 1952-53 indicates that 94 per cent. of the imports subject to *ad valorem* duties were valued under section 30(b) and only 6 per cent. under section 30(a). It is clear that practically no competitive wholesale prices exist for a substantial part of imports into India.

8. The absence of competitive wholesale prices is the result of the considerable diversification of the composition of imports and the increased volume of goods imported largely or exclusively by firms having special connections with foreign suppliers. The importing firm may be a branch of a foreign supplier, or may be a company registered under the Indian Companies Act, but owned by the foreign supplier. Again, the importer may be an Indian manufacturer having an agreement with a foreign manufacturer for supply of raw materials, designs, technical advice, etc. Independent importers may find it virtually impossible to import goods which are covered by such special arrangements.

9. In these circumstances, the invoice prices lack significance and cannot obviously be accepted at their face value. It is the duty of the Customs authorities to arrive at an approximation to competitive prices in terms of clause (b) of section 30 of the Sea Customs Act, i.e., the prices at which "goods of the like kind and quality could be delivered". The necessity of this provision will be appreciated from the fact that, unless a uniform criterion could be employed, there is a possibility of the same type of goods being valued differently, thus upsetting trade equilibrium. The only reliable guide in such circumstances is the local selling price of the goods which can be ascertained easily. It could be used as a starting point, by reasonable adjustments of post-importation charges, to arrive at the fair and true cost of importing goods. The 'deduced value' method, in our opinion, is fully in accord with the present provisions of clause (b) of section 30 of the Sea Customs Act. We would suggest that the Central Board of Revenue should issue detailed instructions, which should be made public, as regards the manner in which the various post-importation charges should be regulated so that there is uniformity in the practice followed at all Custom Houses.

10. It is but fair that the methods of valuation adopted by the Customs authorities should be given adequate publicity so that importers are aware of their commitments at the time of ordering goods. We understand that it is the practice in the Customs Department to notify for public information periodically the goods that are valued under section 30(a) of the Sea Customs Act. The interpretations regarding section 30 given by the Government of India and the Central Board of Revenue are, we understand, not published for general information. We would suggest that the latter should also be made accessible to the trade; and as far as the former is concerned, the Central Board of Revenue may review its present arrangements in this matter to see if greater facilities than at present could not be afforded to the public.

**Need for publicity for methods of valuation**

## II. Tariff values

11. 'Tariff value' is the value determined by the Government of India in respect of certain articles for the purposes of assessment of customs duties on an *ad valorem* basis under section 22 of the Sea Customs Act. The fixation of a tariff value is intended to facilitate speedy valuation of articles whose market prices are difficult to determine for one reason or another. It could be applied with advantage to staple goods of uniform quality imported in sufficiently large quantities, which have a reasonably steady and continuous market. The fixation of a tariff value in practice amounts to the adjustment, at a fixed figure, of a duty payable *ad valorem* for a limited period, generally a year.

**Definition and objects**

12. The present procedure for the fixation of tariff values is for the Director-General of Commercial Intelligence and Statistics to compute these values on the basis of ex-duty average wholesale market monthly prices at the main importing centres in India during a year, weighted by the relative importance of the trade in each particular article in each of the principal importing centres, and modified, where necessary, in consideration of the probable future trend in prices. It has been suggested that this method is not objective enough, and that tariff values should be fixed purely on the basis of prices prevailing in the past two or three years and that no element of judgment of future price trends should enter into their determination. It is argued that the present practice of taking into account likely price trends in the future brings into the picture too many subjective elements and, therefore, somewhat vitiates the process of value determination. We are not convinced that there is a case for modifying the present practice in the manner suggested. Tariff values are drawn up for application in the year following the one in which they are fixed, and it is, in our opinion, necessary that these values should not be completely divorced from an appraisal of future market conditions in so far as these can be foreseen with reasonable certainty.

**Method of fixation**

## III. Types of Duties

13. There are in the Indian Customs Tariff, 405 *ad valorem* duty items, 34 specific duty items, 79 specific or *ad valorem* items, and 35

specific and *ad valorem* items. Of the 405 *ad valorem* items, 123 are in effect specific, because of fixation of tariff values. Of the duty collected in 1951-52, 53 per cent. was from *ad valorem* duties, 34 per cent. from specific duties, 8 per cent. from alternative duties, and 1.6 per cent. from composite duties. The importance of specific duties is much less than the above figures would indicate. Receipts amounting to Rs. 35 crores out of the total amount of Rs. 48 crores raised from specific duties were from three items—motor spirit, kerosene and betelnuts. For the rest, the specific duty items are unimportant. Tariff value articles are also not significant from a revenue standpoint, the total yield in 1951-52 being only Rs. 7.8 crores. The following table shows the relative importance of each type of duty; the figures are for the year 1951-52.

TABLE 1.—Revenue from import duties by types of duties

Serial No.	Type of duty	Value of imports (Rs. '000)	Percentage of total value	Total amount of duty (Rs. '000)	Percentage of total amount of duty
1.	<i>Ad valorem</i>	2,59,55.94	30.2	74,86,71	53.0
2.	Specific	1,91,22.04	22.2	48,20,55	34.1
3.	Composite	3,38.31	0.4	2,29,24	1.6
4.	Alternative	14,93.00	1.7	11,28,42	8.0
5.	Free or exempt	2,28,03.19	26.5	..	..
6.	Unsegregated	Not available			
	Total	8,60,14.08		1,41,27.97	

NOTE.—The figure given as 'Total' under column 3 represents the total value of imports as distinct from the total of amounts mentioned in column 3 which comes to Rs. 6,97,12,48 (000). The difference is explained by the fact that the value mentioned in column 3 in respect of serial numbers 2 to 5 excludes the value of a number of items which is not ascertainable. The value mentioned against serial No. 1 is, however, fairly accurate.

The duties under the Indian Import Tariff are thus seen to be primarily *ad valorem*.

14. There has been much discussion as to the relative advantages of specific, *ad valorem* and composite duties, but practically no suggestions have been received regarding the changes, if any, necessary in the present system. The Fiscal Commission of 1921-22 suggested a cautious extension of the field of specific duties and tariff values, while the Fiscal Commission of 1949-50 was inclined to the view that such an extension would be undesirable. The general considerations for and against specific duties, *ad valorem* duties and composite rates are well-known. Specific duties give the trader certainty as to the amount of duty he will have to pay and simplify administration when the product is clearly identifiable. They also make for greater certainty in budgeting for customs revenue. Tariff values give the same advantages and can also be adjusted more frequently than specific duties. *Ad valorem* duties keep the burden of tax steady, give the Exchequer a share

in the long-term increase in prices and incomes and express the burden of duty in a form that is readily comprehensible. From the point of view of protection, specific duties would be preferable as the quantum of protection increases when prices fall and diminishes when prices rise.

15. There is little scope for reducing the number of specific items in the existing Customs Tariff. The main items, *viz.*, betelnuts, motor spirit and kerosene will have to remain specific, because of the difficulty of obtaining correct price data. Possibly in the case of beer and wines, a change to an *ad valorem* basis is practicable, but at a time of falling prices this will react adversely on revenue and may defeat one object of specific duties, *viz.*, to discourage the import of cheap but harmful varieties.

16. A shift from *ad valorem* to specific duties will be difficult because of the change in the character of India's imports. Items like machinery, electrical goods, etc., cannot be assessed on a specific basis because of the great variety of products falling within even a narrow definition. If it is considered necessary to protect revenue against temporary price falls, the solution must lie in variation of rates from time to time rather than resort to specific duties.

17. Alternative and composite rates play only a small part in the Indian tariff. On certain goods they have been imposed on the recommendation of the Tariff Board, e.g., silk yarn, silk fabrics, lead pencils. On other goods they were imposed during the inter-war period to safeguard industries against Japanese dumping or to safeguard revenue, as in respect of certain chemicals, paints, cigarettes and silk goods. It is desirable to eliminate such rates except where specifically recommended by the Tariff Commission.

18. Various instances of constituent parts being charged to duty at a higher rate than the finished articles of which they form part have been reported to the Commission. Apart from tariff anomalies, situations of this type arise owing to:

**Assessment of constituent parts at higher rates than those applicable to finished products**

- (i) grant of protection; or
- (ii) obligations imposed by GATT.

The duty on steel bits is higher than on machine tools in the manufacture of which steel bits are used, because steel bits fall under the protective tariff head 'steel bars'. The duty of  $5\frac{1}{2}$  per cent. on machine tools cannot be raised to  $44\frac{1}{10}$  per cent. which is the protective rate for steel bars. As instances of the effect of GATT, it may be noted that the rates for vitamin preparations (20 per cent. standard and 14 per cent. preferential), refrigerators (30 per cent. standard and 24 per cent. preferential), fountain pens (30 per cent.) and alarm clocks (50 per cent.) are 'bound' under GATT. The rates on various raw materials used in the manufacture of these articles are higher; vitamins used for vitamin preparations are charged 30 per cent. standard and 24 per cent. preferential, gases used for fuelling refrigerators are charged  $37\frac{4}{5}$  per cent. standard and  $27\frac{8}{10}$  per cent. preferential, copper tubes used for refrigerators are charged  $37\frac{4}{5}$  per cent. standard and  $25\frac{1}{5}$  per cent. preferential,

gold or gold-plated pen nibs used to manufacture fountain pens are charged 62½ per cent., other types of nibs used for fountain pens are charged 39¾ per cent., and parts of alarm clocks are charged 78¾ per cent.

19. These anomalies have no serious effect at present because imports of practically all the finished articles mentioned are severely restricted through import control. Local manufacturers would, however, encounter severe unfair competition if import control was relaxed. In the case of industries affected by the grant of tariff protection to suppliers of constituent parts, the remedy available is by way of appeal to the Tariff Commission. The Tariff Commission can either grant protection to the industry producing the finished article also or prescribe that refund of duty on imports used by particular industries be granted. For industries affected by GATT or by other tariff anomalies, the remedy available at present is to ask Government for facilities for manufacture in bond and exemption from duty on raw materials under section 3, clause 4 of the Sea Customs (Amendment) Act, 1953. Where a higher duty on the raw materials cannot be avoided because of the grant of protection or by reason of international obligations, this procedure would be adequate. In other cases, if necessary, tariff rates may have to be revised appropriately.

20. With the growing importance of manufactured goods in India's export trade, it is necessary to ensure that the import duties on industrial requirements do not impede exports. There has always been a provision for the grant of drawback of import duty when re-exports take place. Till recently, however, drawback was granted only if goods were exported in the same condition in which they had been imported. This precluded the grant of drawbacks on imported material used in the manufacture of export goods. Under the Sea Customs (Amendment) Act, 1953, such drawbacks are, however, now permitted. Provision also exists for manufacture in bond with imported raw materials, import duty being waived in the case of goods shipped ex-bond. We understand that discussions are in progress with the trade with a view to implementing these provisions of the Sea Customs Act, and that in many cases rules have been issued. We attach importance to the provision of adequate facilities to the trade for duty-free re-export of imported goods after manufacture and wish to stress the need for prompt implementation of the new provisions of the Sea Customs Act regarding this matter.

**Facilities for processing and re-export of imports**

#### IV. Tariff Classification

21. The successful working of a tariff depends, to a large extent, on suitable classification. The classification in the Indian Customs tariff is practically identical with Standard International Trade Classification prepared by the European Customs Union Study Group. It has been represented to us that a revision and enlargement of the Indian Customs tariff is necessary. A few specific suggestions have also been made. It is obviously not possible for us to go into these detailed suggestions which involve technical examination. The Central Board of Revenue has admitted the need for

revising the tariff classifications and we have no doubt that the suggestions made to us will be taken into consideration when revision is undertaken. We need hardly emphasise the importance of periodical examination of the suitability of tariff classification having regard to the changing patterns of trade.

22. It has been represented that frequent classification disputes arise because of lack of uniformity between the Import Trade Control and Customs classifications. This lack of uniformity, it is alleged, leads to the Import Control classification being interpreted unreasonably by the officers of the Custom Houses who enforce the Import Trade Control regulations. Administrative action has, however, been taken recently to remove these difficulties. Customs Advisory Committees have been set up at the ports with a membership consisting of representatives of the Customs Department, the Chief Controller of Imports, the Port Trust, the Reserve Bank of India and the trade. These Committees meet every month and discuss difficulties of the trade not involving large questions of policy. We understand that difficulties regarding classification no longer cause serious inconvenience. It is, therefore, not necessary to undertake a major reclassification, which would lead to considerable dislocation for a transitional period.

**Correlation of Import Trade Control Schedule and Indian Customs Tariff Classification**