

## EC Initiated Dumping Investigation on Fatty Alcohols from India, Indonesia and Malaysia



The European Commission (the Commission) has received a complaint pursuant to Article 5 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ( 1 ) (the basic Regulation), alleging that imports of certain fatty alcohols and their blends, originating in India, Indonesia and Malaysia, are being dumped and are thereby causing material injury to the Union industry.

The product subject to this investigation is saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8-C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18 (the product under investigation).

### 1. Complaint

The complaint was lodged on 30 June 2010 by two Union producers, Cognis GmbH and Sasol Olefins & Surfactants GmbH (the complainants), representing a major proportion, in this case more than 50 % of the total Union production of certain fatty alcohols and their blends.

### 2. Product under investigation

The product subject to this investigation is saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8-C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18 (the product under investigation).

### 3. Allegation of dumping ( 2 )

The product allegedly being dumped is the product under investigation, originating in India, Indonesia and Malaysia (the countries concerned), currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00. These CN codes are given for information only.

In the absence of reliable data on domestic prices for the countries concerned, the allegation of dumping is based on a comparison of a constructed normal value (manufacturing costs, selling, general and administrative costs (SG&A) and profit) with the export prices (at ex-works level) of the product under investigation when sold for export to the Union.

On this basis the dumping margins calculated are significant for all exporting countries concerned.

### 4. Allegation of injury

The complainants have provided evidence that the combined imports of the product under investigation from the countries concerned have increased overall in absolute terms and have increased in terms of market share.

The prima facie evidence provided by the complainants shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold and the market share held by the Union industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the Union industry.

### 5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Union industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 5 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the countries concerned is being dumped and whether this dumping has caused injury to the Union industry. If the conclusions are affirmative, the investigation will examine whether the imposition of measures would not be against Union interest.

#### 5.1. Procedure for the determination of dumping

Exporting producers ( 3 ) of the product under investigation from the countries concerned are invited to participate in the Commission investigation.

##### 5.1.1 Investigating exporting producers

In order to obtain the information it deems necessary for its investigation with regard to exporting producers in the countries concerned, the Commission will send questionnaires to the known exporting producers in the countries concerned, to any known association of exporting producers, and to the authorities of the countries concerned. All exporting producers and associations of exporting producers are invited to contact the Commission immediately, by fax or by e-mail, but no later than 15 days after the publication of this notice in the Official Journal of the European Union, unless otherwise specified, in order to make themselves known and to request a questionnaire.

The exporting producers and the associations of exporting producers must submit the completed questionnaire

within 37 days of the date of publication of this notice in the Official Journal of the European Union, unless otherwise specified.

The completed questionnaire will contain information on, inter alia, the structure of the exporting producer's company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production, the sales of the product under investigation on the domestic market of the country concerned and the sales of the product under investigation to the Union.

### 5.1.2. Investigating unrelated importers (4), (5)

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 17 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties should do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the following information on their company or companies:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the precise activities of the company with regard to the product under investigation,
- the volume in tonnes and value in EUR of imports into and resales made on the Union market during the period 1 July 2009 to 30 June 2010 of the imported product under investigation originating in the countries concerned,
- the names and the precise activities of all related companies (6) involved in the production and/or sales of the product under investigation, EN 13.8.2010 Official Journal of the European Union C 219/13
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of

the sample, this will imply completing a questionnaire and accepting a visit at its premises in order to verify its response (on-spot verification). If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission's findings for non-cooperating importers are based on the facts available and the result may be less favourable to that party than if it had cooperated.

In order to obtain the information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the importers may be selected based on the largest representative volume of sales in the Union which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the activities of their company(ies) in relation to the product under investigation and on their sales of the product under investigation.

### 5.2. Procedure for the determination of injury

Injury means material injury to the Union industry, or threat of material injury to the industry, or material retardation of the establishment of such an industry. A determination of injury is based on positive evidence and involves an objective determination of the volume of dumped imports, their effect on prices on the Union market and the consequent impact of those imports on the Union industry. In order to establish whether the Union industry is materially injured, Union producers of the product under investigation are invited to participate in the Commission investigation.

### 5.2.1. Investigating Union producers

In order to obtain the information it deems necessary for its investigation with regard to Union producers the Commission will send questionnaires to the known Union producers and to any known association of Union producers. All Union producers and associations of Union producers are invited to contact the Commission immediately by fax or by e-mail, but no later than 15 days after the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, in order to make themselves known and request a questionnaire.

The Union producers and the associations of Union producers must submit the completed questionnaire within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the financial situation of the company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production and the sales of the product under investigation.

### 5.3. Procedure for the assessment of Union interest

Should the existence of dumping and injury caused thereby be established, a decision will be reached as to whether the adoption of anti-dumping measures would be against the Union interest pursuant to Article 21 of the basic Regulation. Union producers, importers and their representative associations, users and their representative user organisations and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on whether the imposition of measures would not be against Union interest within 37 days of the date of publication of this notice in the Official Journal of the European Union, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission.

#### 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
16-Aug-10	46.9000	46.9725	46.8075	46.8800	46.8800	672139	2070768	971095.20	46.7800
13-Aug-10	46.8500	46.9000	46.6425	46.8675	46.8675	603452	2177570	1018150.44	46.5800
12-Aug-10	47.0000	47.1350	46.8550	46.8975	46.8975	612388	2771479	1302072.69	46.9400
11-Aug-10	46.5600	46.8275	46.5500	46.8075	46.8075	646440	1833186	855803.22	46.5400
10-Aug-10	46.3550	46.5500	46.3500	46.5350	46.5350	617526	1410937	655370.48	46.3000

[Source: NSE and RBI Website]

Cont'd..254

Subscription rate for the Weekly Index with World Trade Scanner

<input type="checkbox"/> Six months	Rs. 375	US\$45
<input type="checkbox"/> 1 Year	Rs. 750	US\$70
<input type="checkbox"/> 2 Years	Rs. 1400	US\$140
<input type="checkbox"/> 3 Years	Rs. 2100	US\$200

**Raw Silk Quota of 2500 MT at Zero Duty – Exemption upto 31 March 2011**

**Duty Exemption to Security Printing and Minting Corporation of India Ltd.**

Ntfn 80 In exercise of the powers number G.S.R. 118(E) dated the 1st March,2002, 10.08.2010 conferred by sub-section (1) of namely:- (DoR) section 25 of the Customs Act, 1962 (52 of 1962), the Central In the said notification, - Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. **21/2002-Customs, dated the 1st March, 2002**, which was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide

SNo.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
"164 A.	5002	Raw silk of grade 3A and above	Nil	-	5C.

(b) after **S. No. 270** and the entries relating thereto, the following shall be inserted, namely:-

(1)	(2)	(3)	(4)	(5)	(6)
"270A	84	The following goods, to be imported by or on behalf of Security Printing and Minting Corporation of India Limited (SPMCIL), namely:- (i) Fully automatic sachet Packaging machinery or equipment or plant, its spares; (ii) Plant or machinery or equipment, related spares and consumables for the manufacture of CWBN paper and other security paper; (iii) Plant or machinery or equipment, related spares and consumables for printing of banknotes; (iv) Photogravure printing machine with embossing or de-bossing facility; (v) Plant or machinery or equipment, its spares and consumables for manufacture of e-passport; (vi) Plant or machinery or equipment, its spares and consumables for inspection and processing of banknotes.		5%	Nil ."

(iii) in the Annexure, after condition **No. 5B** and the entries relating thereto, the following condition shall be inserted, namely :-

Condition No.	Condition
"5C.	If imported by National Handloom Development Corporation up to an aggregate quantity not exceeding 2500 metric tonnes in a financial year under cover of a certificate from an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Textiles."

[F. No.354/48/2007-TRU]

**Special CVD of 4% Exemption for Goods Imported by Security Printing and Minting Corporation of India Ltd**

Ntfn 81 In exercise of the powers Finance (Department of Revenue), No. 20/2006- 10.08.2010 conferred by sub-section (1) of Customs, dated the 1st March, 2006 ,published (DoR) section 25 of the Customs Act, 1962 (52 of 1962), the Central in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.92 (E), dated the 1st March, 2006, namely:- Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of

(1)	(2)	(3)	(4)
"70A.	84	Goods specified against S. No. 270 A of the Table annexed to notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 [G.S.R. 118 (E), dated the 1st March, 2002] Provided that the exemption available under this notification shall be subject to the conditions, specified in respect of such goods under notification No. 21/2002-Customs, dated the 1st March, 2002 [G.S.R. 118(E), dated the 1st March, 2002]	Nil";

[F.No. 354/48/2007-TRU]

**Manual Filing of BE for Refund of 4% Spl CVD Extended upto 31 Dec 2010**

*Subject: Refund of 4% CVD (SAD) in terms of Notification No.102/2007-Customs dated 14.9.2007 by re-crediting the DEPB scrip/reward scheme scrips.*

27-CBEC Your kind attention is invited 13.08.2010 to the Notification No.102/ (DoR) 2007-Customs dated 14.9.2007, Notification No.93 2008-Customs dated 1.8.2008 and Board's Circulars No. 6/2008-Customs dated 28.4.2008, No.16/2008-Customs dated 13.10.2008, No.6/2009-Customs dated 9.2.2009, No.18/2010-Customs dated 8.7.2010 and No.23/2010-Customs dated 29.7.2010 regarding procedure to be followed by the Customs field formations in case of 4% CVD refund claims.

2. Circular No.6/2008–Customs dated 28.4.2008 provides that the refund of 4% CVD paid at the time of import through DEPB scrips shall be disbursed by re-credit of the sanctioned refund amount to the relevant DEPB Licence. Further, Circular No.6/2009–Customs dated 9.2.2009 extends the facility of similar re-credit to the relevant scrip for disbursing SAD refund in respect of other scrips like Vishesh Krishi and Gram Udyog Yojana (VKGUY), Focus Market Scheme (FMS) and Focus Product Scheme (FPS) also. However, it has been represented by the trade and industry that existing EDI facility does not allow re-credit of the amount of 4% CVD refund sanctioned in respect of these schemes in the relevant scrips and as a result of that, a large number of refund claims are held up in different customs houses. The matter was referred to DGFT for resolving the same.

3. DGFT have subsequently issued a Public Notice No.38/2009-2014 dated 3.2.2010 and also a Policy Circular No.22/2009-14 dated 3.2.2010 for extending the validity of Duty Credit Scrips. Accordingly, concerned Commissionerates of Customs are required to issue a consolidated certificate indicating total amount sanctioned as refund (4% CVD). As per Public Notice, concerned DGFT / Regional Licensing Authorities (RLA) are required to issue necessary re-credit on the scrip on the basis of consolidated certificate issued by Commissionerate. Policy Circular No.22/2009-14 dated 3.2.2010 issued by DGFT also provides for sending a copy of such duty scrips where re-credit was allowed along with the details of original duty scrips so that the Customs authorities can compare the details before allowing clearance of import consignment against the scrips.

4. It has come to the notice of the Board that even after issue of the Public Notice and Policy Circular by DGFT on the issue of re-crediting DEPB scrips on account of 4% CVD refund, difficulties are still being faced by trade and industry as EDI, at present, does not have facility to register such re-credited scrips issued by DGFT in the system.

5. The matter has been examined in the Board. Board has considered the difficulties associated

with change in EDI System to allow re-credit of scrips in case of 4% CVD refund and also the view of DGFT that modification in software at the end of DGFT for the purpose of re-credit of 4% CVD through Electronic Message System and its transmission to the Customs is not feasible at present.

6. Considering the large scale pendency of such refund claims and in order to address the difficulties in getting 4% CVD refund by re-crediting scrips, it has been decided by the Board that registration of re-credited duty scrips issued by DGFT on the basis of consolidated certificate furnished by Customs should be allowed on manual basis. The facility of manual filing of Bill of Entry for utilizing the amount of re-credited CVD refund for payment of duty is also allowed. This facility has been extended up to 30.12.2010 as a one-time measure with a view to liquidate all such pendencies by that time.

7. The Commissioners concerned are requested to exercise due diligence in order to check that the facility of manual filing of B/E in case of re-credited DEPB scrips / reward scheme

scrips on account of refund of 4% CVD is not misused. In this regard, it is also clarified that only those B/E's will be allowed manual processing wherein the duty involved is equal to or less than the balance amount in the re-credited scrip.

8. It has also been decided that importers should be suitably advised that re-credit amount of CVD refund should be used for payment of BCD and CVD only and not for 4% CVD so as to avoid cascading of subsequent re-credit of 4% CVD in the relevant scrips. Further, the Board is of the view that in the interest of ensuring expeditious grant of refund of 4% CVD in cash, the importers may be advised to make the initial payment of 4% CVD in cash.

9. A suitable Public Notice and Standing Order may be issued for the guidance of the trade and staff.

10. Difficulties faced if any in implementation of this Circular may be brought to the notice of the Board.

*F.No.401/46/2008-Cus.III*

## Courier Imports and Exports Regulations Amended

- Courier Agent too Must Pass the CHA Examination
- Security Hiked to Five and Ten Lakhs Rupees from One and Two Lakhs Rupees

75-Cus(NT) 12.08.2010 (DoR) In exercise of the powers conferred by section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of

Excise and Customs hereby makes the following regulations further to amend the Courier Imports and Exports (Clearance) Regulations, 1998, namely :-

1. (1) These regulations may be called the Courier Imports and Exports(Clearance) Amendment Regulations, 2010.

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

2. In the Courier Imports and Exports (Clearance) Regulations, 1998, (herein after referred to as the said regulations) in **regulation 5** in sub-**regulation (3)**, -

(i) after the words "the Authorized Courier", the words "or his agent who has passed the examination referred to in regulation 8 or regulation 19 of the Customs House Agents Licensing Regulations, 2004" shall be inserted;

(ii) in the first proviso, for the words " or with the concurrence of the Authorised Courier", the words "or his agent who has passed the examination referred to in regulation 8 or regulation 19 of the Customs House Agents Licensing Regulations, 2004 or " shall be substituted;

(iii) in the second proviso, after clause (v) the following shall be inserted, namely:-

"(vi) goods having a declared value of more than one lakh rupees."

3. In **regulation 6** of said regulations, in **sub-regulation (3)**, after the words "Authorized Cou-

rier", the words "or his agent who has passed the examination referred to in regulation 8 or regulation 19 of the Customs House Agents Licensing Regulations, 2004" shall be inserted;

4. **Regulation 8** of the said regulations shall be numbered as sub-regulation (1) thereof and in sub-regulation (1) so numbered,-

(i) for words "five lakh" the words "twenty-five lakh" the following shall be substituted;

(ii) after sub-regulation (1) so numbered, the following sub-regulation shall be inserted, namely:-

"(2) The declarations for clearance of imported or export goods shall be made by the persons who has passed the examination referred to in regulation 8 or regulation 19 of the Custom House Agents Licensing Regulations, 2004:

Provided that a transition period of six months from the date of publication of these regulations shall be allowed for fulfillment of the condition mentioned in sub-regulation (2) by an Authorised Courier."

5. In **regulation 11** of the said regulations, for the words "two lakh" the words "ten lakh", and for the words "one lakh" the words "five lakh" shall be substituted.

6. In **regulation 13** of said regulations, -

(i) in clause (a), the following proviso shall be inserted, namely:-

"provided that for import consignments having a declared value of ten thousand rupees or less, the authorization may be obtained at the time of delivery of the consignments to con-

## Customs Orders No Carriage of IC above Rs. 100 to Nepal

**[Corrigendum to Circular No.19/2010-Customs dated 6<sup>th</sup> August 2010]**

*Subject: Display at Airports / LCS about prohibition of import / export of Indian currency notes of denomination of above Rs.100 in India and in Nepal.*

Your kind attention is invited to the Circular No.19/2010-Customs dated 13.7.2010 on the above subject.

2. In partial modification, the Para 1 of the above-mentioned Circular should now be read as under:

"As you may be aware, the export and import of currency notes of Government of India and Reserve Bank of India of denominations of above Rs.100 is not allowed to and from Nepal and Bhutan in terms of Notification No. FEMA 6 / RB-2000 dated 3.5.2000 issued under Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 by the Reserve Bank of India. Similarly, the Indian currency notes of the denomination of Rs.1000 and Rs.500 are not permissible for exchange for banking transaction in Nepal in terms of guidelines issued by Ministry of Finance, Government of Nepal and Nepal Rashtra Bank. In fact, the current legal provisions in Nepal provide that notes of these denominations are liable for seizure and the persons carrying them are to be fined or imprisoned for upto three years."

3. The other contents of the Circular would remain the same.

*F.No.520/23/2010-Cus.VI*

signee"

(ii) after clause (g), the following clauses shall be inserted, namely :-

"(h)file declarations, for clearance of imported or export goods, through a person who has passed the examination referred to in regulation 8 or regulation 19 of the Customs House Agents Licensing Regulations, 2004 and who are duly authorised under section 146 of the Act:

Provided that a transition period of six months from the date of publication of these regulations shall be allowed to the Authorised Courier for fulfillment of the obligation.

(i) verify the antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information;

(j) not sub-contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs."

*[F. No. 450/77/2010-Cus.IV]*

## Licensing Requirements for Commonwealth Games Import

Subject: Import of goods under Notification No.13/2010-Customs dated 19.2.2010 for Commonwealth Games, 2010.

26-CBEC  
09.08.2010  
(DoR)

Attention is invited to Notification No.13/2010-Customs dated 19.2.2010 granting exemption from

customs duty on specified goods imported into India for the purpose of organizing the Commonwealth Games to be held in October, 2010 in New Delhi. In this regard, references have been received from field formations as well as the Organizing Committee Commonwealth Games, 2010 Delhi (OC, CWG) regarding difficulties faced in interpretation of notification and clearance of goods imported for the Games and requesting that a suitable clarification may be issued by the Board in this regard.

2. The matter has been examined in the Board. There has been some confusion as to who is an eligible importer as per Notification No.13/2010-Customs dated 19.2.2010. A doubt has been raised as to whether suppliers/contractors/vendors are eligible for the benefit under the said notification. In this connection, it is clarified that suppliers/contractors/vendors appointed by the OC, CWG would not be eligible for the benefit under the said notification. Further, the specimen signature of the Joint Director General (Coordination), OC, CWG and Director (Coordination), OC, CWG as furnished by OC are annexed as Annexure 'A' to this Circular.

3. The requirement of Foreign Trade Policy or any other Acts or exemption, if any, in this regard, unless exempted, will apply as per the instructions/circular issued by DGFT and concerned Departments from time to time. The OC, CWG have been advised to take up these matters with DGFT and concerned Departments and sort out the issues well in advance before arrival of consignments.

4. The Board desires that all concerned Commissioners of Customs should sensitize field formation under their charge to ensure speedy clearance of consignments subject to observance of due procedure. Further, in order to ensure smooth conduct of the Commonwealth Games, the clearances of import consignments connected with the Games shall be allowed on holidays also on payment of applicable MOT charges. Board desires that all concerned Commissioners of Customs should take suitable advance action in this regard and provide adequate manpower for this purpose.

5. All concerned Commissioners of Customs are also advised to appoint a nodal officer to monitor clearance of consignment imported for the purpose of the Commonwealth Games. The Board desires that the names and contact details of the Nodal Officers (appointed by the Commissioner of Customs in your jurisdiction) may be intimated to the Board as well as to the OC, CWG.

6. Board also desires that concerned Chief Commissioners may ensure that imports for the Commonwealth Games are cleared without delay and for the purpose of monitoring a consolidated weekly report as per format at Annexure 'B' may be sent by E-mail to Director (Customs), CBEC at dircus@nic.in. The first such report may be sent immediately and thereafter on the first working day of each week.

7. Suitable Public Notice / Standing Order may be issued for wide publicity and to guide trade and field officials.

8. Difficulty faced, if any, may be brought to notice of the Board.

F.No.528/16/2008-Cus (TU)



## No Service Tax on Underwriting Commission Received by Primary Dealers of Govt Securities

Subject: Service tax on commission received by Primary Dealers dealing in Government Securities.

126-ST  
10.08.2010  
(DoR)

A representation has been received seeking clarification whether service tax is leviable on the underwriting

commission received by the Primary Dealers for the auction of Government Securities.

2. The matter has been examined. Underwriting service is taxable by virtue of section 65 (105) (z) of the Finance Act, 1994. In the definition of taxable service, two technical terms are mentioned, namely 'underwriting' and 'underwriter'. The term 'underwriting' [section 65 (117) of the Finance Act, 1994] has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

"underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing share-

holders of such body corporate or the public do not subscribe to the securities offered to them."

3. The term "underwriter" as in section 65(116) of the Finance Act, 1994, has been borrowed from rule 2 (f) of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

"underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate."

It is thus clear that under the above definitions 'underwriter' or 'underwriting' is about dealing in securities of a body corporate.

4. The related issue requiring resolution is whether dealing in government securities amounts to dealing in securities of a body corporate, particularly since government securities are issued by the Reserve bank of India, which

is a 'body corporate' in terms of section 3 (2) of the RBI Act, 1934.

5. Government securities are sovereign securities having zero default risk. Reserve Bank of India only manages the issue and also auction of Government Securities on behalf of the Government of India. In effect, Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the central Government's market borrowing program. The general practice is that the RBI invites bids from the Primary Dealers, who in their bids indicate the amount to be underwritten and the underwriting fee expected by them. RBI examines these bids and decides the amount to be underwritten and underwriting fee to be paid to a Primary Dealer. Underwriting Fee is also known as Underwriting Commission in common parlance. Thus the conclusion drawn is that government securities are not securities of a body corporate.

6. As the service tax law stands today, service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

7. Trade Notice/Public Notice may be issued to the field formations accordingly.

F.No.332/13/2010-TRU

## Procedure for Removal of Goods to Bonded Warehouse in SEZ under 46(13) of SEZ Rules

[Instruction No. 63 – No. C.3/21/2009-SEZ dated 10<sup>th</sup> August 2010]

Sub: Procedure regarding removal of goods to bonded warehouse under Rule 46(13) of SEZ Rules, 2006.

63-SEZ Cir. I am directed to say that  
10.08.2010 representations have been received in the Department

seeking clarification on procedure for removal of goods to Bonded Warehouse under Rule 46(13) of SEZ Rules, 2006. The matter has been examined in consultation with Directorate General of Export Promotion, Department of Revenue and the following procedure is prescribed for removal of goods to bonded warehouse:

i) The Unit shall file yellow Bill of Entry (YBE) to SEZ Customs with copy of invoice, packing list etc. besides Space Utilisation/Availability Certificate from the Customs Officer - in -charge of the bonded warehouse.

ii) The goods will move from SEZ to the bonded warehouse on the strength of fifth copy of YBE containing the SEZ Customs report regarding verification marks, numbers etc.

iii) The Customs officer in charge of the bonded warehouse will retain the fifth copy of the YBE for his record and issue re-warehousing certificate for the goods received.

iv) The SEZ unit shall submit the said re-warehousing certificate immediately to SEZ Customs.

v) If the SEZ unit fails to submit the re-warehousing certificate within 45 days from the date of clearance of the goods from the Zone, the SEZ Customs shall initiate appropriate action to realize duty and interest on the goods in question.

## No Hand Written Markings and Paper Stickers on Packages for Export

The following Public Notice was issued by the Commissioner of Customs (Export) Jawaharlal Nehru Custom House on 28<sup>th</sup> July 2010.

Sub: Procedure regarding Carting of Export goods - marking of packages.

75-PN Attention of all the exporters,  
28.07.2010 trade and industry, Custom House Agents and all

concerned is invited in respect of the procedure for Carting of Export goods at various Container Freight Stations of Jawaharlal Nehru Port. It has been brought to our notice that some of the exporters are not affixing any marks and numbers on the packages. This has resulted into difficulties in selection of packages for examination.

2. The goods brought for the purpose of examination and subsequent "Let Export" will be allowed entry to the Export Shed only on the strength of the carting permission given by the CFS and production of the checklist and declaration duly signed by the exporter / authorized representative. The Custodian will endorse the quantity actually carted on the reverse of checklist.

3. It is also reiterated that in order to have proper checks and reducing the possibilities of manipulation, fraud, misrepresentation and substitution of goods etc. the following requirements for the marking of the packages should be fulfilled.

a) All the packages brought for export should be stencil marked. Hand written markings and paper stickers etc. on packages shall not be accepted. In case of packing in bales where stencil marking is not possible, markings can be made on the cloth which is then properly stitched on to the bales. However, goods like tyres, tubes, etc. which cannot be stencil marked or with cloth stitched marked shall be exempt from the marking requirements mentioned above. Numbers should be given in a way to show total number of pack-

ages covered by the shipping bill i.e. if there are 50 packages, than package no.1 should be marked as 1/50, No. 2 should be marked as 2/50 and so on.

b) Total Consignment relating to one shipping bill should be stacked distinctly.

c) The stencil or printing marking on all the packages should be distinct, bold and clear so that the packages can be easily identified and co-related with the respective shipping bills.

4. The custodian shall necessarily check and verify the package numbers and number of packages along with the existing work of verifying the weight and confirming arrival of cargo.

5. The Customs will register the shipping bill only after the full export goods are received in the Export Shed with proper marking and numbering on the packages.

6. No examination of cargo shall be undertaken unless goods are properly marked in the manner as specified above.

7. If any packages are found to be attempted to be exported without affixing marks and numbers as detailed above, appropriate action will be taken against the exporters under the law. The CHA / CFS found to be not adhering to the requirements of law will be proceeded against appropriately.

8. The contents of this Public Notice may be communicated to all the members of trade through the respective associations.

9. Any difficulty faced in implementation of this Public Notice may be brought to the notice of the undersigned immediately.

F.No.S/12-Gen- 42 /08 AM(X) JNCH

## Procedure for Import of Gas Cylinders

The following Public Notice was issued by the Commissioner of Customs (General) New Custom House, Mumbai on 6<sup>th</sup> August 2010.

Subject: Procedure for import of filled or intended to be filled cylinders with any compressed gas.

47-PN The Importers, Exporters,  
06.08.2010 Steamer Agents, Custom House Agents and all other

concerned are hereby informed that hereinafter permission for landing of the imported filled or intended to be filled cylinders with any compressed gas shall be allowed only in accordance with the Gas Cylinder Rules, 2004 (enacted by the Central Government, in exercise of powers conferred under Section 5 & 7 of the Explosives Act, 1884 (4 of 1884). The relevant rules of the said enactment are reproduced below :

### Rule 29: Licence for import of gas cylinders

No person shall import any cylinder filled or

intended to be filled with any compressed gas except under and in accordance with the conditions of a licence granted under these rules and the relevant provisions of Foreign Trade (Development and Regulation) Act, 1992.

### Rule 30: Declaration by the Master of Ship or Ship's agent

(1) The master of every ship carrying cylinders filled with compressed gas for importation into India, or the agent for such ship, shall give, the Conservator of the Port not less than 48 hours' notice of its intended arrival at the port.

(2) The master of every ship carrying such cylinders shall deliver to the pilot before entering

any port, a written declaration under his signature in Form 'A' as annexed.

Provided that if the agent for such ship delivers to the Conservator of the Port a written declaration referred to in sub-rule (1) under his signature, no such declaration shall be made by the master of the ship.

(3) Every declaration delivered to a pilot under sub-rule (2) shall be made over by him without delay to the Conservator of the Port and all declarations received by the Conservator of the Port shall be forwarded by him, with all convenient dispatch to the Commissioner of Customs of the Port.

### Rule 31: Production of licence for import

Every person desiring to import cylinders filled with any compressed gas or intended to be so filled shall produce personally or through his agent, before the Commissioner of Customs his licence for the import of such gas cylinders.

### Rule 32: Permission of the Commissioner of Customs

(1) No imported cylinders shall be landed except with the permission of the Commissioner of Customs.

(2) If the Commissioner of Customs is satisfied that the gas cylinders can lawfully be imported, he shall permit it to be landed.

(3) Nothing in this rule shall affect the power of Commissioner of Customs to detain the gas cylinders under any other law for the time being in force.

In order to ensure strict compliance of the above provisions, following procedure is being laid down:

(i) The master of every ship carrying cylinders filled with compressed gas for importation into India, or the agent for such ship, shall give, the Deputy/Assistant Commissioner of Customs, Preventive (General) not less than 48 hours' notice of its intended arrival at the port (notified place of landing).

(ii) The master of every ship or his agent carrying such cylinders shall deliver to the pilot, a written declaration under his signature in Form 'A' as annexed.

(iii) The pilot shall deliver the said declaration without any delay to the Deputy/Assistant Commissioner of Customs, Preventive (General) in addition to a copy meant for the Conservator of Port. The Conservator of Port shall forward all the declaration received by him with all convenient dispatch to the Commissioner of Customs.

(iv) The importer or his agent of the said cylinders shall have to file a prior bill of entry along with the valid licence and other relevant documents for assessment of the said goods. The concerned Assessing Officer/Assistant/Deputy Commissioner of the Assessing Group (of Import or Export Commissionerate as the case may be) will complete the assessment within 24 hours, provided the valid licence and other relevant permissions and documents have been submitted. The importer may make pay-

ment of duty and other charges thereafter.

(v) The assessed bill of entry showing the details of licence, other relevant permissions and evidence of payment of duty (if paid) are required to be produced before the Deputy/Assistant Commissioner of Customs, Preventive (General) and the concerned officers posted with him, without any loss of time.

(vi) The Deputy/Assistant Commissioner of Customs, Preventive (General) will satisfy himself with regard to the evidence of assessment made and licence/other permissions produced and will thereafter allow landing of these imported cylinders in the port area/authorized landing place.

(vii) In no case, landing of these imported cylinders shall be permitted except as per the

procedure described hereinabove.

(viii) The Importers/Trade representatives/CHAs are also advised to take delivery of the goods as soon as they are allowed landing in the port area. If the concerned importers do not take delivery of the said goods within 48 hours after landing, action will be taken against the concerned Importers/CHAs under the Customs Act, 1962 and/or CHA Licensing Regulations, 2004.

(ix) The standard procedures regarding loading/unloading of goods shall be applicable in these cases.

(x) Difficulty, if any, faced in this regard shall be brought to the notice of the undersigned immediately.

F.NO.S/43-452/2010 P

for medical use' would only relate to substances which would otherwise fall under the definition of the term 'drug' under section 3(b) of the Act, but are being imported not for medicinal use or for some other purposes or are of commercial quality and are being labeled indicating that they are not for medicinal use.

Accordingly, they had clarified that this exemption does not extend to other categories of products defined under the Act including cosmetics. For the purpose of import of cosmetics, provision of Rule 133 therefore remains applicable.

5. Accordingly, import of cosmetics at points of entry / places other than those specified under Rule 43A may not be permitted as per the provisions of the Drugs and Cosmetics Rules, 1945. The points of entry have been specifically mentioned in Rule 43A such as Chennai, Kolkata, Mumbai, Nhava Sheva, Cochin, Kandla, Delhi, Ahmedabad, Hyderabad and Ferozpur Cantonment, Amritsar, Ranaghat, Bongaon and Mohiassan Railways Stations. If the imports are noticed through Customs stations, other than the one notified as mentioned above, then necessary action may be taken for non-compliance of the Drugs and Cosmetics Rules in respect of such imports.

6. Board's Instructions vide F.No.450/08/2007-Cus.IV dated 22.1.2007 shall apply for import of drugs. In case of import of drugs noticed at places other than those that have been notified under the above Rules, the instruction communicated by Drugs Controller General of India, Directorate General of Health Services vide No.16/6-DC dated 15.6.2007 be followed.

Difficulties, if any, in implementation of this Standing Order may be brought immediately to the notice of the undersigned

F.NO. S/22-GEN-153/2010 AM (IMP) JNCH

### Form A

Declaration to be made by the Master of the ship carrying filled or intended to be filled cylinders with any compressed gas before entering a port or by the ship's agent.

Name of the ship \_\_\_\_\_

Description of filled or intended to be filled cylinders:

True chemical name and nature of the gas i.e. whether flammable corrosive or toxic:

Total quantity carried in the ship

No. of Kg. Or Cylinders M3 of gas:

Quantity to be landed at port

No. of Kg. Or Cylinders M3 of gas:

Remarks:

Dated this \_\_\_\_ day of \_\_\_\_\_

Signature of Master/  
Agent of ship

## Cosmetics Imports Allowed only through 14 Specified Ports

The following Standing Order was issued by the Commissioner of Customs (Import) Jawaharlal Nehru Custom House on 14<sup>th</sup> July 2010.

Subject: Import of Cosmetics under the Drugs and Cosmetics Act, 1940 and Rules made thereunder.

39-SO Attention of all the officials  
14.07.2010 is invited to Board's Circular  
No. 8/2010 Customs dated  
26.03.2010 issued vide F.NO. 450/182/2009-  
Cus-IV on the above cited subject.

1. In this regard attention is also invited to Board's earlier Instructions vide F.NO. 450/08/2007-CUS-IV dated 22.01.2007 regarding import of drugs under chemical or generic name and permitting its clearance. As per rule 43A of the Drugs and Cosmetics Rules, 1945, drugs can be imported into India through one of the following places, namely: -

I. Ferozpur Cantonment and Amritsar Railway Stations (in respect of drugs imported by rail across the frontier with Pakistan).

II. Ranaghat, Bongaon and Mohiassan Railways Stations (in respect of drugs imported by rail across the frontier with Bangladesh).

III. Raxaul (in respect of drugs imported by road and railway lines connecting Raxaul in India and Birganj in Nepal).

IV. Chennai, Kolkata, Mumbai, Cochin, Nhava Sheva and Kandla (in respect of drugs imported by sea into India).

V. Chennai, Kolkata, Mumbai, Delhi, Ahmedabad and Hyderabad (in respect of drugs imported by airports into India).

2. Accordingly, import of drugs at the other ports, than those mentioned above, may not be

permitted as per the provisions of the Drugs and Cosmetics Rules, 1945.

3. In terms of Rule 133 of the Drugs and Cosmetics Rules, 1945, no cosmetics shall be imported into India except through the points of entry specified in Rule 43A of the said Rules. Further, under Schedule "D" to the said Rules read with Rule 43, an exemption has been provided to certain categories of substances from the restrictions under Chapter III of the Drugs and Cosmetics Act, 1940 relating to import of Drugs and Cosmetics. Therefore, a doubt has arisen as to whether import of cosmetics could be permitted through any port in the country under the Drugs and Cosmetics Rules, 1945. The matter was taken up with the Drugs Controller General of India (DCGI) for obtaining necessary clarification.

4. The DCGI has clarified the aforesaid issue. It is stated by them that Rule 133 of the Drugs and Cosmetics Rules limits the import of cosmetics through the points of entry specified under Rule 43A. However, under Schedule "D" to the said Rules, an exemption has been provided for substances not intended for medical use from the provisions of Chapter III of the Drugs and Cosmetics Act and Rules made thereunder. The Act provides for separate definition for 'cosmetic' and 'drug' under Sub-Section 3(aaa) and 3(b), respectively. Hence, they have stated that the phrase 'substances not intended

## Rectification of 'L' Error of Export of Bulk Liquid Cargo

The following Facility Notice was issued by the Commissioner of Customs (Export) Jawaharlal Nehru Custom House on 21<sup>st</sup> July 2010.

Sub: Rectification of 'L' error in case of export of bulk liquid cargo.

74-FN Attention of all the Shipping  
21.07.2010 Lines, members of the trade &  
CHAs is invited to the issue

regarding the rectification of 'L' error in case of export of bulk liquid cargo. This issue has been raised in PTFC meeting also. Reference is also invited to minutes of PTFC meeting held on 30.09.2009, where this issue was raised.

2. It has been observed that the liquid bulk cargo is loaded in the vessel directly through the pipe line from onshore. The exporter does not know the exact quantity of the liquid cargo that is to be loaded in the vessel, therefore, the shipping bill filed states the tentative amount of cargo. The captain of the ship issues the Ullage Report after receiving the cargo in his vessel wherein the exact quantity of liquid bulk cargo that has been loaded in the vessel is mentioned.

The loading of the liquid bulk cargo in the vessel takes place under the supervision of the Boarding officer who also countersigns the Ullage Report. The final documentation (Shipping bills) mentioning the exact quantity of the liquid bulk cargo is, therefore, done after the receipt of the Ullage Report. It is important to note that the vessel sails immediately after the loading is completed, and since the final documentation takes place after the sailing of the vessel, invariably in such cases the 'L' error occurs.

3. In order to simplify the procedure and facilitate the trade, the Asst./Dy. Commissioner of the EGM Co-ordination Unit has been authorized to correct the above mentioned type of 'L'

## Examination Report Must be Entered into the EDI Systems on the Same Day

*The following Standing Order was issued by the Commissioner of Customs (Import) Jawaharlal Nehru Custom House on 28<sup>th</sup> July 2010.*

*Sub: Feeding of Examination report in EDI at the Import Docks.*

40-SO Attention of all the Officers/  
28.07.2010 Staff posted in the Import  
Docks (Container Freight  
Stations in the jurisdiction of the Jawaharlal  
Nehru Custom House) is invited to the above  
subject.

2. It has been observed that in many cases, after the examination is over, the examination report has not been entered into the EDI system on the same day. This leads to unnecessary delay as unless the examination report is entered in the system, further action regarding delivery of goods or re-assessment etc., cannot be taken.

3. Henceforth, all examining staff is directed that where examination has been conducted in the first shift, the examination report should be

error. The AC / DC, while correcting such errors, shall examine the percentage of difference between both the quantities. If the difference is more than normal, the file may be submitted to JC / ADC alongwith the reasons for higher variation.

4. The above mentioned trade facilitation measure may be brought to the notice of the concerned. Difficulties, if any, in this regard may be brought to the notice of the Commissioner of Customs (Export), JNCH.

5. This Facility Notice shall come into force with effect from its date of issue.

*F. No. S/6-ERR-1384/10 ECU D'Node*

entered in the system before start of round for the second shift and for the examination conducted in the second shift, the same should be entered after the completion of round. In all cases, the examination report must be entered into the EDI Systems on the same day on which examination has been carried out. In exceptional circumstances, where it is not possible to enter the report in EDI system on the same day, the matter should be brought to the notice of supervising DC/AC (Import Docks) who shall examine the facts and circumstances of the matter and take necessary corrective action.

4. All concerned are directed to follow these instructions without fail.

*F.NO. S/6-GEN-32/2010 DOCKS (IMP)*

## Draft Circular on Point of Taxation Rules on Services Import

*Draft Point of Taxation (for Services Provided or Received in India) Rules*

The Government of India proposes to issue Point of Taxation (for Services Provided or Received in India) Rules, 2010 in exercise of the powers conferred on it under Sec. 94 (2) (hhh) of the Finance Act, 1994.

The purpose of these rules is to introduce clarity and certainty in the matter of levy and collection of Service Tax particularly in situations of change of rate of service tax or imposition of service tax on new services. At present there is lack of clarity as to the date from which the changed rate or a new levy of service tax become payable and tax payers as well as tax officials face uncertainty in this regard as the provisions are not explicit. Similar uncertainty prevails in regard to cases of continuous supply of services. So far these issues have been addressed by CBEC through clarificatory circulars that accompany such changes. A need has been felt to put the regulatory frame work on a transparent, clear and durable basis and hence these rules.

The other major change proposed to be brought about through these rules is to link the

payment of tax to provision of service, raising of the invoice or payment for service provided or to be provided, whichever is the earliest. Currently the payment of service tax is linked to receipt of payment for the service, which is at odds with regime in force in Central Excise and VAT laws implemented by the states. In both Central Excise and VAT, tax payment is required on accrual basis – upon manufacture and clearance of goods in the former and issue of invoice in the latter. In neither case is the tax payment linked actual receipt of payment for the goods. The GST regime is likely to follow this practice and it is necessary to align the service tax regime with it so that transition to GST will be smooth. The change in the point of payment of tax will also simplify accounting for the taxpayers.

The proposed changes are broadly on lines of best international practices.

Consistent with the CBEC's practice of wide consultation with all stakeholders, the draft of these rules is being published on the web site for public scrutiny, comments and suggestions. The draft is also accompanied by explanatory notes for each of the clauses. The Central Board of

Excise and Customs welcomes responses from all who wish to comment on the proposals and will give careful consideration to all suggestions and comments while finalizing the rule. Kindly send your response at roopam Kapoor@gmail.com

For being considered, the responses must reach us latest by 01.09.2010.

## Draft Point of Taxation (for Services Provided or Received in India) Rules, 2010

1) These Rules shall be called the Point of Taxation (for services provided or received in India) Rules, 2010. They shall come into force on the date of their publication in the official gazette. (Explanatory Notes)

2) In these Rules, unless the context otherwise requires,-

a) "Act" means the Finance Act, 1994 (32 of 1994);

b) "associated enterprises" shall have the meaning assigned to it in section 92 A of the Income Tax Act, 1961 (43 of 1961) ;

c) "continuous supply of service" means any service which is provided, or to be provided, under a contract, for a period exceeding six months ,or where the Central Government, by a notification, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;

d) "Invoice" shall have the meaning assigned to it in Rule 4A of the Service Tax Rules, 1994 and shall include any bill or challan as prescribed therein;

e) "Point of taxation" means the point of time when the tax becomes payable to the Government;

f) "taxable service" means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government vide powers conferred under Section 93 of the Act;

g) "taxable event" means an event which causes the tax liability to arise, namely, the provision of service, issuance of invoice or the receipt of payment. (Explanatory Notes)

3) For the purposes of these rules, -

a) A provision of service shall be treated as having taken place at the time when service is provided, or is to be provided.

b) If, before the time prescribed in sub-rule (a), the person providing the service issues an invoice or receives a payment in respect of service to be provided, the supply shall be, to the extent covered by the invoice or the payment made thereof, deemed to be have taken place at the time the invoice was issued or the payment is received, as the case may be, whichever is earlier. (Explanatory Notes)

4) Treatment of advances: Wherever any advance, by whatever name it is known, is received by the service provider towards the provision of taxable service, the tax becomes payable on the date of receipt of each such advance.

Provided that no tax shall be payable on an interest free refundable deposit. (Explanatory

Notes)

5) For the purposes of these Rules, if there is a difference in date and time between the raising of invoice, date of payment and providing of taxable service, and the tax rate changes during such period, the point of taxation shall be determined in the following manner

a) Where a taxable service has been provided before the change of rate\*, but the invoice for the same has been raised and the payment received after the change of rate, the point of taxation shall be the date of payment or issuance of invoice, whichever is earlier.

b) Where the invoice has been raised and service provided prior to a change in tax rate\*, the point of taxation shall be the date of raising of invoice, provided the payment for the invoice is made within 30 days of raising of invoice. In other cases, it would be the date of payment.

c) Where the invoice has been raised prior to the change of tax rate\*, but the service has been provided and the payment for the invoice made after the change in tax rate, the point of taxation shall be the date of payment.

d) Where the invoice has been raised and the payment for the invoice received before the change of tax rate\*, but the service provided after the change of rate, point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier.

\*(Note:- change in tax rate includes withdrawal of exemption) (Explanatory Notes)

6) Where a service, not being a service covered by rule 7 of these rules, is taxed for the first time -

a) no tax shall be payable to the extent the invoice has been issued and payment received before such service becomes taxable, even if the service is provided at a time when it is taxable;

b) no tax shall be payable if the payment has been received and invoice has been issued within the period prescribed under rule 4A of the Service Tax Rules, 1994.

Provided that no tax shall be payable on any service which has been provided before the service becomes taxable. (Explanatory Notes)

**7) Continuous Supply of service**

a) Continuous supply of service, the whole or part of which is determined or payable periodically or from time to time, shall be treated as separately supplied at the following times;

i) If the date of payment is prescribed in the contract, the date on which the payment is liable to be made by the service receiver, irrespective of whether or not any invoice has been raised or any payment received by the service provider;

ii) If the payment is linked to the completion of an event, the time of completion of that event;

If the date of payment is not prescribed in the contract, each time when the service provider receives the payment, or issues an invoice, whichever is earlier.

Provided that, for the provision of services covered by this Rule, no tax shall be payable on the payment received before any service be-

comes taxable, provided that such payment is covered by clause (i) or (iii) above.

Provide further that the clauses (i) to (iii) shall be read sequentially for the purposes of this rule. (Explanatory Notes)

8) The point of taxation in respect of associated enterprises shall be the date on which the payment has been made, or the date of debit or credit in books of accounts, or issuance of debit or credit notes, whichever is earlier. (Explanatory Notes)

9) In respect of royalties and similar payments, where the whole amount of the consideration for the provision of service was not ascertainable at the time when the service was performed, and subsequently the use or the benefit of these service by a person other than the supplier gives rise to any payment of consideration, the service shall be treated as having been provided each time that a payment in respect of such use or the benefit is received by the provider, or an invoice is issued by the provider, whichever is earlier. (Explanatory Notes)

**Explanatory Notes to Draft Point of Taxation Rules**

**Rule 1:** Preliminary

**Rule 2:** Contains the definitions for the Rules.

**Rule 3:** Provides that the taxable event shall be the provision of service, including future provision. This would mean that the service, even though promised to be provided at a future date, shall be taxable. The rule also lays down that, if the service provider issues an invoice or receives any payment before providing service, the service, to the extent of the amount mentioned in the invoice, or the amount of payment, shall be deemed to have been provided. It means that the service provider shall be liable to pay the tax to the extent of amount mentioned in invoice, or the payment received, even if the service has not been provided at that point of time.

**Rule 4:** Prescribes that rate of tax applicable in the case of advances received shall be the rate applicable when the advance is received. This essentially clarifies the treatment of advances, and is in line with the provisions in these Rules that the tax payment shall be linked to the

issuance of invoice, or the payment received, whichever is earlier. This would bring in certainty that once tax is charged on payment / invoiced amount, such determination of tax would be final & there would be no need to re-open the same. However, interest free deposits shall not be covered within the ambit of this rule.

**Rule 5:** Determines the point of taxation where there is a change in rate of tax. In other words, it prescribes the applicable rate of tax in the cases where the tax rate changes between the occurrence of different events, viz., provision of service, issuance of invoice, and receipt of payment. **This Rule only covers the change in rate of tax, including any service which was exempt and becomes taxable, and does not cover the services which become taxable for the first time.** The provisions of this rule can be summarized in tabular form as shown below (Please note that the words 'Before' and 'After' mean "before the change in tax rates" or "after the change in tax rates", as the case may be).

Provision of Service	Issue of Invoice	Payment	Point of Taxation	Remarks
Before	After	After	Date of invoice or payment, whichever is earlier	As service was already taxable, and the tax point is invoice/ payment, tax charged on revised rate.
Before	Before	Within 30 days of invoice	Date of invoice	If payment not received within 30 Days, invoice is invalid and date of payment shall be the effective date for determining the rate of tax.
After	Before	After	Date of payment	A supplementary /additional invoice will need to be issued for recovery of tax.
After	Before	Before	Date of payment or invoice, whichever is earlier.	Takes care of services like public performance, airline ticketing etc.

The principle followed in the above rule is that wherever two points of taxation have occurred, whether before the change in tax rate or after the change in tax rate, the earlier event of the two would be the point of taxation, with the exception of clause (ii), where a deviation has been made. For this clause too, although the point of taxation would be the date of invoice, the same would be invalid if the payment has not been received within 30 days.

**Rule 6:** Rule 6 is specifically provided for conditions where a service (which is not a continuous supply of service) is charged to tax for the first time i.e. becomes taxable for the first time. The rule provides that:-

(a) If an invoice has been issued and pay-

ment received before a service becomes taxable, no tax would be charged even if the service is provided after the same has become taxable. This provision is consistent with the other similar provisions in these rules, and ensures that a financial transaction which has achieved finality before a service was taxable shall not be reopened for collection of tax.

(b) If any payment has been received prior to a service being chargeable to tax, no tax shall be chargeable if an invoice has been issued within 14 days of receipt of payment. The period of 14 days is the period also prescribed in Rule 4A of Service Tax Rules, 1994 and ensures that a payment is not shown as having been made earlier than it was actually made.

(c) The rule also clearly lays down that any service, which is a not a continuous supply of service, if provided before the service becomes chargeable to tax, shall not be subjected to tax.

**Rule 7:** Rule 7 deals with the continuous supply of services (eg., construction services, maintenance and repair services etc.). According to the proposed definition in rule 2 of these rules, 'continuous supply of service' refers to services that are supplied continuously for a period exceeding six months or services that are specified by the Govt. as continuous supply of services, subject to prescribed conditions, if any.

The proposed rule essentially prescribes that the rate of tax will be the rate applicable on the date the payment becomes due as per the contract, or, if the payment is linked to completion of certain events (milestones), when those milestones are completed. If none of the above two conditions is specified in a long term contract, then the service provider is required to pay the service tax at the time of raising of invoice, or receipt of payment, whichever is earlier.

This rule also provides that if any payment has been received in respect of non-taxable service, before it becomes taxable, the same would not be charged to tax, even if the service is provided subsequently

The only exception in this case pertains to the services in continuous supply of service a part of which is being provided before the service becomes taxable, (i.e the service becomes taxable during the currency of provision of service but payment for which is received after the service becomes taxable). Certain examples of this are

(a) The payment for construction services is made before the tax becomes applicable but the construction is started after the service becomes taxable.

(b) Part of the construction is done before the service becomes taxable but payment for the same is received after the service becomes taxable

(c) Water supply has been made in the month of March & April, the bill is raised in month of May, but the service has become taxable in the month of April

Similar situations can be interpolated in other services which are supplied continuously.

In such cases, tax is liable to be paid on the basis of raising of invoice or the date provided for payment in the contract or the actual payment, as the case may be.. This Rule is drafted keeping in view the fact that the extent of service provided during a particular period of time in continuous supply of the service is difficult to determine.

Further, alternatively, payment received in respect of payments received prior to service becoming taxable, but where the service may be provided subsequently, will also not be taxable.

It has been prescribed that the clauses of the rule shall be read sequentially. Thus, if there is a date of payment prescribed in the contract, the tax becomes due on that day irrespective of the fact if the payment has been received or not. In case, the date of payment is not prescribed in the contract, but payment is linked to achievement of milestones, then the tax becomes payable even if no payment has been received by

the service provider. However, if no date of payment is prescribed in the contract, or if the payment is not linked to achievement of any milestones, then the tax would be payable whenever the service provider issues an invoice, or receives a payment (whichever is earlier).

**Rule 8 and 9:** Provides for points of taxation for "associated enterprises" and the treatment of royalties and similar payments.

## Tariff Value on Brass Scrap Hiked by US \$133/MT

76-Cus(NT) In exercise of the powers conferred by sub-section (2) of section 14 of the  
13.08.2010 Customs Act, 1962 (52 of 1962), the Board, being satisfied that it is necessary  
(DoR) and expedient so to do, hereby makes the following further amendment  
in the notification of the Government of India in the Ministry of Finance  
(Department of Revenue), No. 36/2001-Cus (N. T.), dated, the 3<sup>rd</sup> August 2001, namely: -

In the said notification, for the Table, the following Table shall be substituted namely:-

Table			
SNo.	Chapter/ heading/sub-heading/tariff item	Description of goods	Tariff value US \$ (Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	447 (i.e. no change)
2	1511 90 10	RBD Palm Oil	476 (i.e. no change)
3	1511 90 90	Others – Palm Oil	462 (i.e. no change)
4	1511 10 00	Crude Palmolein	481 (i.e. no change)
5	1511 90 20	RBD Palmolein	484 (i.e. no change)
6	1511 90 90	Others – Palmolein	483 (i.e. no change)
7	1507 10 00	Crude Soyabean Oil	580 (i.e. no change)
8	7404 00 22	Brass Scrap (all grades)	3818
9	1207 91 00	Poppy seeds	2750

[F. No. 467/4/2010-Cus.V]

### Cont'd..246

#### 5.4. Other written submissions

Subject to the provisions of this notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence should reach the Commission within 37 days of the date of publication of this notice in the Official Journal of the European Union. EN C 219/14 Official Journal of the European Union 13.8.2010

#### 5.5. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the Official Journal of the European Union. Thereafter, a request to be heard should be submitted within the specific deadlines set by the Commission in its communication with the parties.

#### 5.6. Procedure for making written submissions and sending completed questionnaires and correspondence

All submissions, including information submitted for the selection of the sample, completed questionnaires and updates thereof, made by interested parties must be made in writing in both paper and electronic format, and must indicate the name, address, e-mail address, telephone and fax numbers of the interested

party. If an interested party cannot provide its submissions and requests in electronic format for technical reasons, it must immediately inform the Commission.

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' ( 7 ).

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such confidential information may be disregarded.

Commission address for correspondence:  
European Commission  
Directorate-General for Trade  
Directorate H  
Office: N-105 04/092  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË  
Fax +32 22956505

#### 6. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final

findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

## 7. Hearing Officer

Interested parties may request the intervention of the Hearing Officer of the Directorate-General for Trade. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes on the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the Official Journal of the European Union. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among others, to dumping, injury, causal link and Union interest. Such a hearing would, as a rule, take place at the latest at the end of the fourth week following the disclosure of provisional findings.

For further information and contact details interested parties may consult the Hearing Officer's web pages on the Directorate-General for Trade's website ([http://ec.europa.eu/trade/issues/respectrules/ho/index\\_en.htm](http://ec.europa.eu/trade/issues/respectrules/ho/index_en.htm)). EN 13.8.2010 Official Journal of the European Union C 219/15

## 8. Schedule of the investigation

The investigation will be concluded, according to Article 6(9) of the basic Regulation within 15 months of the date of the publication of this notice in the Official Journal of the European Union. According to Article 7(1) of the basic Regulation, provisional measures may be imposed no later than nine months from the publication of this notice in the Official Journal of the European Union.

## 9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing

## Commodity Spot Prices in India – 13-16 August 2010

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

(Rs.)					
Commodity	Unit	Market	13-Aug	14-Aug	16-Aug
CER (Carbon Trading)	1 MT	Mumbai	749	746	746
Chana	100 KGS	Delhi	2275	2257	2256
Masur	100 KGS	Indore	3480	3497	3501
Potato	100 KGS	Agra	354.5	NA	354.6
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	1578.7	NA	1510
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	14853	14853	14763
Guar Gum	100 KGS	Jodhpur	NA	NA	NA
Maize	100 KGS	Nzmbad	1055.5	1057	1058.5
Wheat	100 KGS	Delhi	1251.7	1253.3	1250
Mentha Oil	1 KGS	Chandausi	830.8	845	839.6
Cotton Seed	100 KGS	Akola	NA	NA	NA
Castorsd RJK	100 KGS	Rajkot	3635	3638	3639.5
Guar Seed	100 KGS	Bikaner	2150	2139	2150
Soya Bean	100 KGS	Indore	2107.5	2134.5	2100.5
Mustrdsd JPR	20 KGS	Jaipur	565.1	569.8	560
Sesame Seed	100 KGS	Rajkot	6213	6225	6300
Coconut Oil Cake	100 KGS	Kochi	NA	NA	NA
RCBR Oil Cake	1 MT	Raipur	NA	NA	NA
Kapaskhali	50 KGS	Akola	1126	1122.5	1119.3
Coconut Oil	100 KGS	Kochi	6032	6032	6084
Refsoy Oil	10 KGS	Indore	509.3	NA	511.7
CPO	10 KGS	Kandla	423.8	425	428
Mustard Oil	10 KGS	Jaipur	561.6	566.4	558.3
Gnutoilexp	10 KGS	Rajkot	863.3	863.3	870
Castor Oil	10 KGS	Kandla	NA	NA	NA
Crude Oil	1 BBL	Mumbai	3555	3512	3512
Furnace Oil	1000 KGS	Mumbai	NA	NA	NA
Sourcnd Oil	1 BBL	Mumbai	NA	NA	NA
Brent Crude	1 BBL	Mumbai	3563	3518	3518
Gur	40 KGS	Muzngr	NA	NA	NA
Sugars	100 KGS	Kolhapur	2480	2533	2524
Sugarm	100 KGS	Delhi	2768	2765	2760
Natural Gas	1 mmBtu	Hazirabad	201.7	201.6	201.6
Rubber	100 KGS	Kochi	18414	NA	18458
Cotton Long	1 Candy	Kadi	NA	NA	NA
Cotton Med	1 Maund	Sriganganagar	NA	NA	NA
Jute	100 KGS	Kolkata	2715	2729.5	2678.5
Gold	10 GRMS	Ahmd	18515	18509	18650
Gold Guinea	8 GRMS	Ahmd	14871	14867	14980
Silver	1 KGS	Ahmd	28988	28993	29150
Sponge Iron	1 MT	Raipur	NA	NA	NA
Steel Flat	1000 KGS	Mumbai	NA	NA	NA
Steel Long	1 MT	Gobindgarh	24915	25005	25220
Copper	1 KGS	Mumbai	339.85	333.95	333.95
Nickel	1 KGS	Mumbai	1000.2	1000.2	1001
Aluminium	1 KGS	Mumbai	99.8	99.8	99.2
Lead	1 KGS	Mumbai	96.2	96.2	95.45
Zinc	1 KGS	Mumbai	94.65	94.65	95.45
Tin	1 KGS	Mumbai	966	966	971.75

(Source: MCX Spot Prices)

## Customs Valuation Exchange Rates

August 2010	Imports	Exports	
<b>Schedule I</b>			
1 Australian Dollar	42.85	41.65	
2 Canadian Dollar	46.05	44.85	
3 Danish Kroner	8.30	8.05	
4 EURO	61.80	60.15	
5 Hong Kong Dollar	6.10	5.95	
6 Norwegian Kroner	7.75	7.50	
7 Pound Sterling	73.60	71.75	
8 Swedish Kroner	6.55	6.35	
9 Swiss Franc	45.30	44.10	
10 Singapore Dollar	34.85	33.95	
11 U.S. Dollar	47.35	46.45	
<b>Schedule II</b>			
1 Japanese Yen	54.75	53.15	

Rate of exchange of one unit of foreign currency equipment to Indian Rupees

Rate of exchange of 100 units of foreign currency equivalent to Indian rupees

(Source: Customs Notification 67(NT)/28.07.2010)

of personal data by the Community institutions and bodies and on the free movement of such data (8).EN C 219/16 Official Journal of the European Union 13.8.2010

(1) OJ L 343, 22.12.2009, p. 51.

(2) Dumping is the practice of selling a product for export (the product concerned) at a price below its 'normal value'. The normal value is usually taken to be a comparable price for the 'like' product on the domestic market of the exporting country. The term 'like product' is interpreted to mean a product which is alike in all respects to the product concerned or, in the absence of such a product, a product which closely resembles the product.

(3) An exporting producer is any company in the countries concerned which produces and exports the product under investigation to the Union market, either directly or via third party, including any of its related companies involved in the production, domestic sales or exports of the product concerned. Non-producing exporters are normally not entitled to an individual duty rate.

(4) Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex 1 to the questionnaire for these exporting producers. For the definition of a related party, see footnote 6.

(5) The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of dumping.

(6) In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

(7) This document is a confidential document pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

(8) OJ L 8, 12.1.2001, p. 1.

## China Overtakes Japan as World's Second-Biggest Economy

China surpassed Japan as the world's second-largest economy last quarter, capping the nation's three-decade rise from Communist isolation to emerging superpower.

Japan's nominal gross domestic product for the second quarter totaled \$1.288 trillion, less than China's \$1.337 trillion, the Japanese Cabinet Office said on 16 August. Japan remained bigger in the first half of 2010, the government agency said. Japan's annual GDP is \$5.07 trillion, while China's is more than \$4.9 trillion.

China led the world out of last year's global recession with an economy that's more than 90-times bigger than when leader Deng Xiaoping ditched hard-line Communist policies in favor of free-market reforms in 1978. The country of 1.3 billion people will overtake the U.S., where annual GDP is about \$14 trillion, as the world's largest economy by 2027, according to Goldman Sachs Group Inc. chief economist Jim O'Neill.

### Tricky Comparison

China overtook the U.S. last year as the biggest automobile market and Germany as the largest exporter. The nation is the world's No. 1 buyer of iron ore and copper and the second-biggest importer of crude oil, and has underpinned demand for exports by its Asian neighbors.

While China's output was also larger in the fourth quarter of 2009, Japan's GDP rebounded to exceed China's in the first quarter. According to IMF data using purchasing-power-parity calculations to adjust for exchange-rate differences, China overtook Japan in 2001.

Quarterly comparisons between China and Japan are "a little tricky because they do not take account of different seasonal patterns between the two countries," said David Cohen, head of Asian forecasting at Action Economics in Singapore.

China's economy is cooling as the government trims credit growth from last year's record \$1.4 trillion and discourages multiple-home purchases to cool surging property prices. July industrial output rose the least in 11 months, retail sales growth eased and new loans climbed less than estimated. China Petroleum & Chemical Corp. said last month that its crude-oil processing increased at a slower pace in the second quarter as fuel demand faltered.

### Agricultural Bank

Agricultural Bank of China Ltd. boosted the size of its initial public offering to \$22.1 billion this month after selling more stock in Shanghai, making it the world's largest first-time share sale. The IPO made the nation home to four of the world's 10 biggest banks by market value, half a decade after the country's first major state-owned lender went public.

China may be the biggest IPO market in 2010 as companies are likely to raise 500 billion yuan (\$74 billion) in Shanghai and Shenzhen, PricewaterhouseCoopers forecast last month.

## WORLD TRADE SCANNER

EC Initiated Dumping Investigation on Fatty Alcohols from India, Indonesia and Malaysia	245
Commodity Spot Prices in India – 13-16 August 2010	255
China Overtakes Japan as World's Second-Biggest Economy	256

## BIG's WEEKLY INDEX OF CHANGES

### Foreign Trade Policy

63-SEZ Cir./10.08.2010 Procedure for Removal of Goods to Bonded Warehouse in SEZ under 46(13) of SEZ Rules	249
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### Customs

Ntfn 80/10.08.2010 Raw Silk Quota of 2500 MT at Zero Duty – Exemption upto 31 March 2011	247
Ntfn 81/10.08.2010 Special CVD of 4% Exemption for Goods Imported by SPMCIL	247
75-Cus(NT)/12.08.2010 Courier Imports and Exports Regulations Amended	248
76-Cus(NT)/13.08.2010 Tariff Value on Brass Scrap Hiked by US \$133/MT	254
47-PN/06.08.2010 Procedure for Import of Gas Cylinders	250
74-FN/21.07.2010 Rectification of 'L' Error of Export of Bulk Liquid Cargo	251
75-PN/28.07.2010 No Hand Written Markings and Paper Stickers on Packages for Export	250
39-SO/14.07.2010 Cosmetics Imports Allowed only through 14 Specified Ports	251
40-SO/28.07.2010 Examination Report Must be Entered into the EDI Systems on the Same Day	252

### CBEC Circulars

26-CBEC/09.08.2010 Licensing Requirements for Commonwealth Games Import	249
27-CBEC/13.08.2010 Manual Filing of BE for Refund of 4% Spl CVD Extended upto 31 Dec 2010	247
Corrigendum/06.08.10 Customs Orders No Carriage of IC Above Rs. 100 to Nepal	248
Draft Circular Draft Circular on Point of Taxation Rules on Services Import	252

### Service Tax

126-ST/10.08.2010 No Service Tax on Underwriting Commission Received by Primary Dealers of Govt Securities	249
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