

## Cess on imported natural rubber: legality and dilemmas in revenue appropriation

**T. Siju and Joby Joseph**

Rubber Research Institute of India  
Kottayam 686 009, Kerala, India

### Genesis of rubber cess

Cesses unlike taxes are levied by the government for specific purposes as mentioned in the respective Acts under which it is collected. For example, Education cess is levied and collected for the specific purpose of providing universal quality basic education in the country. The Supreme Court of India in 2011 while upholding the imposition of labour welfare cess in the construction sector defined cess as a "fee" for the welfare of workers as unlike "tax", the money collected as cess is not merged in public revenues for the benefit of the general public i.e. cess collected under any Act shall be utilised only for the purposes as mentioned in the respective Acts (Supreme Court of India, 2011).

Section 12 (1) of the Rubber Act (1947) imposes a cess to be levied and collected on all natural

rubber produced in the country to be utilized for the purposes of the Act<sup>1</sup>. Section 12(2) of the Act empowers the Rubber Board to collect the cess and remit the proceeds [Section 12(7)] to the Consolidated Fund of India (CFI) after deducting the costs of collection.



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At this juncture, it is important to note two points: (i) the Act imposes cess only for rubber produced in the country and is silent on natural rubber imported into the country; and (ii) the cess is levied at the same rate pan India. Till April, 1961 the rubber cess was collected by the Rubber Board directly from the producers and thereafter from the manufacturers based on the quantity purchased, for administrative convenience<sup>2</sup>. A non-*ad valorem* cess of Rs. 2 per kg of natural

<sup>1</sup> According to Section 12(1) of the Rubber Act "With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied as a cess for the purposes of this Act, a duty of excise on all rubber produced in India at such rate, not exceeding two rupees per kilogram of rubber so produced, as the Central Government may fix."

<sup>2</sup> Hence, functionally the collection point of the cess has been shifted to the rubber purchased by the manufacturers.

\*Corresponding author: e mail: hellosiju@gmail.com, Phone: 91 481 2353311, Fax: 91 481 2571380

rubber was imposed w.e.f. 01 September 2011. Trends in the rate of cess is presented in Table 1.

Though rate of the cess collected under the Act has been revised eight times since its inception in 1947, real value of the cess has declined significantly during the past 33 year period. In real terms, it has declined significantly from Rs. 0.40/kg in 1980-81 to Rs.0.24 kg in 2012-13 at 1980-81 base rate (Siju and George, 2014). The rate of cess in relation to natural rubber price has also declined significantly at the rate of 2.7 percent in the past four decades (*ibid*). However, the revenue from the cess has registered significant growth over the years. The nominal value of the total cess collected grew at the rate of 5.04 per cent from 1996-97 to 2013-14 (Table 2).

According to the Rubber Act, the cess collected should be utilized only for the purposes of the Act. In this context, it is important to note that 61.14 per cent of the total expenditure of the Rubber Board was covered by the cess during the year 2012-13 (Siju and George, 2014). However, non-

**Table 1 – Trends in the rate of rubber cess**

Period	Rate of cess (Rs. /kg)
1/10/1947 to 31/7/1955	0.01 (50p/100 lbs)
1/8/1955 to 31/3/1958	0.14 (6.25p/100 lbs)
1/4/1958 to 31/3/1961	0.14 (Rs. 13.80/100 kg)
1/4/1961 to 29/9/1975	0.30
30/7/1975 to 23/8/1984	0.40
24/8/1984 to 31/8/1994	0.50
1/9/1994 to 31/8/1998	1.00
1/9/1998 to 31/8/2011	1.50
1/9/2011 till date	2.00

Source: Siju and George, 2014.

plan funds received by the Rubber Board during the two previous plan periods were only 14.93 per cent of the total cess collected in spite of a steady increase in the non-plan expenditure (*ibid*). This point deserves attention in the backdrop of



**Table 2 – Trends in total rubber cess collected**

Year	Rate of cess (Rs./kg)	Cess collected by the Rubber Board (Rs. crore)
1996-97	1.00	47.00
1997-98	1.00	48.20
1998-99	1.50	50.05
1999-00	1.50	75.56
2000-01	1.50	82.19
2001-02	1.50	81.14
2002-03	1.50	82.05
2003-04	1.50	85.01
2004-05	1.50	95.75
2005-06	1.50	96.26
2006-07	1.50	101.22
2007-08	1.50	97.55
2008-09	1.50	103.91
2009-10	1.50	100.18
2010-11	1.50	103.25
2011-12	2.00	101.01
2012-13	2.00	128.28
2013-14	2.00	116.87
Growth (%)		5.04

Source: Indian Rubber Statistics, 2013.

the strains in the Rubber Board's finances and a substantially higher share of Tea cess to the tune of 89.41 per cent in the Tea Board's non-plan expenditure compared to 24.75 per cent in the case of Rubber Board during the two previous plan periods (*ibid*).

### Cess on imported natural rubber

The post liberalization era was characterized by market integration and growing imports of rubber and rubber products into the country through various channels. As part of its WTO commitments, India started removing quantitative restrictions (QRs) from the early 1990s and removed QRs on imports of 715 items from 1st April 2001 including all forms of NR (Joseph and George, 2002). Since then imports of NR into the country have registered a growth rate of 21.33 per cent (2001-02 to 2013-14).

The Customs Department imposes a cess on imported rubber on the prevailing rates as rubber cess countervailing duty (CVD). But, serious reservations were raised on collecting rubber cess as CVD on imported NR by various segments of the industry. The All India Rubber Industries Association (AIRIA) has demanded immediate discontinuation of cess collection on imported rubber since the Rubber Act stipulates cess only on rubber produced in the country (The New Indian Express, 2014).

The imposition of cess on imported rubber as CVD is justified in accordance with Section 3 of the Customs Tariff Act 1975 and article II of



**Table 3 – Estimated revenue receipts as cess CVD on imported NR**

Year	Total NR imported (tonnes)	Estimated rubber cess as cess CVD (Rs. crore)	Rubber cess collected by the Rubber Board (Rs. crore)	Total rubber cess realised by Govt. of India (Rs. crore)
1996-97	19770	1.98	47.00	48.97
1997-98	32070	3.21	48.20	51.41
1998-99	29154	4.37	50.05	54.42
1999-00	20213	3.03	75.56	78.59
2000-01	8970	1.35	82.19	83.54
2001-02	49769	7.47	81.14	88.61
2002-03	26217	3.93	82.05	85.98
2003-04	44198	6.63	85.01	91.64
2004-05	72837	10.93	95.75	106.68
2005-06	45288	6.79	96.26	103.05
2006-07	89799	13.47	101.22	114.69
2007-08	86393	12.96	97.55	110.51
2008-09	77762	11.66	103.91	115.57
2009-10	177130	26.57	100.18	126.75
2010-11	190674	28.60	103.25	131.85
2011-12	214432	42.89	101.01	143.90
2012-13	262753	52.55	128.28	180.83
2013-14	360284	72.06	116.87	188.93
Growth (%)	19.07	22.29	5.04	7.23

Source: MoC & I and Indian Rubber Statistics, 2013

GATT 1994. According to the Customs Tariff Act, 1975 any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article (CST, 2012-13). The Madras

High Court in its order dated 23/12/2011 (in M/s. MRF Ltd. v/s Union of India) upheld levy of customs duty under the Customs Tariff Act 1975 on imported rubber at rates equivalent to the rubber cess prescribed under the Rubber Act 1947 (Madras High Court, 2011).

Any duty imposed on imported natural rubber shall be consistent with the provisions of WTO and bilateral agreements. According to paragraph 2 of Article II of GATT 1994 Nothing in this Article shall prevent any contracting party from imposing



**Table 4 – Production and consumption of NR in India**

Year	Production of NR (tonnes)	Consumption of NR (tonnes)	Share of imported rubber to total consumption (%)
2004-05	749665	755405	9.64
2005-06	802625	801110	5.65
2006-07	852895	820305	10.95
2007-08	825345	861455	10.03
2008-09	864500	871720	8.92
2009-10	831400	930565	19.03
2010-11	861950	947715	20.12
2011-12	903700	964415	22.23
2012-13	913700	972705	27.01
2013-14	844000	981520	36.71
Growth (%)	1.43	2.99	

Source: Indian Rubber Statistics, 2013.

at any time on the importation of any product; i) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part, ii) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI, iii) fees or other charges commensurate with the cost of services rendered (GATT, 1994).

Thus, the excise duty collected as rubber cess for natural rubber produced in India can also be imposed on rubber imported as rubber cess CVD. If cess CVD is not imposed on imported rubber, it becomes disadvantageous for the domestically produced rubber, as domestically produced rubber becomes costlier to that extent than imported rubber. For example, rubber produced in Kerala attracts a VAT of 5 per cent in addition to the

rubber cess. Hence, other things remaining the same, for a given price of rubber, rubber produced in Kerala becomes costlier than imported rubber. And as the domestic price increases this disadvantageous position of domestically produced rubber worsens with important policy implications.

#### **Anomalies in collection of cess CVD**

The Customs Department collects a cess CVD at rates equivalent to the rubber cess as prescribed in the Rubber Act (Rs 2/kg) on all natural rubber imported into the country. But examination of bill of entries of importers in the past a few years show inconsistency in imposition and collection of the cess CVD on NR imported through different ports causing revenue loss to the Government. The estimated cess CVD on imported NR at the current rates is Rs. 72.06 Cr in 2013-14. The estimated revenue receipts of the Government through collection of cess CVD on imported

NR has registered a growth of 22.29 per cent in contrast to the 5.04 per cent growth rate observed in the cess collected by the Rubber Board during 1996-97 to 2013-14 (Table 3). The higher growth in cess CVD was mainly due to increased import of NR into the country in the recent past. Import of NR has registered a growth of over 19 per cent in the past two decades. In the context of increasing imports, fixing the irregularities in collection of cess CVD is significant to curb the revenue losses to the Government.

Import of NR into the country is expected to increase in future due to increasing consumption and a stagnating domestic production. During the last one decade, the domestic production of NR has increased only at 1.43 per cent while the consumption has increased at a higher rate of 2.99 per cent (2004-05 to 2013-14). It is also important to note that the share of imported NR to total NR consumption in the country has increased from 9.64 per cent in 2004-05 to 36.71 per cent in 2013-14 (Table 4).

### Conclusion

The emerging trends clearly underline the pivotal role of the rubber cess collected as cess CVD in future given the tempo of growth in imports of NR. At present, the rubber cess collected on rubber purchased from domestic and external sources are accounted by different departments. However, as long as the cess collected either on domestic or external source is on account of NR produced / consumed in the country, it shall be utilized only for the purposes of the Act. This proposition gains additional weight in the light of a recent proposal submitted to the government by the industry on use of research and development cess collected on all imported technologies under section 3 of the Research and Development Cess Act 1986. The plea of the industry was to direct the Technology

Development Board to use the accumulated cess fund exclusively for the research and development of indigenous technologies (Business Line, 2014). Hence, cess CVD collected by the Customs Department may be included under the head of rubber cess and shall be linked with the non-plan expenditure of the Rubber Board in addressing the financial strains of the organization. Moreover, co-ordinated efforts by the Rubber Board and Customs Department are necessary to resolve the observed anomalies in the collection of cess CVD.

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