

Explanation of relevant terms

1. **Basic Customs Duty ('BCD')** is applicable on import of goods into India and rate of which is based on classification of goods in terms of the Indian Customs Tariff Act. The BCD rates generally range from 5% to 15%. There are few exemption notifications which allows importer to pay lesser duty on the imported goods depending on end-use, country of origin, scheme of foreign trade policy, etc.
2. **Social Welfare Surcharge (SWS)** is a surcharge levied on import of goods u/s 110 of the Finance Act, 2018. It is calculated at the rate of 10% on the value of BCD.
3. **Agriculture Infrastructure and Development Cess (AIDC)** is a cess levied u/s 124 of the Finance Act, 2021 for the purpose of financing the agriculture infrastructure and other development expenditure. It is applicable on few goods such as goods under Chapter 52 (cotton), Chapter 71 (eg: platinum), and heading 8802 (aeroplane, other aircrafts).
4. **Antidumping duty (ADD)**- Dumping occurs when foreign manufacturers exports goods to India at a price lower than its normal value. The Indian government after detailed investigation of the injury to the domestic industry imposes an ADD under Section 9A of the Customs Tariff Act, to ensure fair trade. This duty ensures the price difference doesn't harm local industry and it cannot exceed the dumping margin. ADD is imposed on specific goods when originating in or exported from specified countries and imported into India. The duty rates vary for different producers and range from 22.54% to 147.20% of CIF value. For example: ADD is imposable on import of:
 - a. Industrial Laser Machinery originating in or exported from China PR
 - b. Welded-Stainless Steel Pipes and Tubes from Thailand and Vietnam
 - c. Aluminium Road Wheels imported from China PR
5. **Countervailing duty (CVD)**: CVD is imposed on imported goods where any country provides any subsidy on manufacture or transport or export of such goods to India, similar to ADD. CVD is imposed in terms of Section 9 of the Customs Tariff Act, on specific goods when originating in or exported from specified countries and imported into India. This duty does not exceed the amount of subsidy. For example:
 - a. Welded Stainless-Steel Pipes and Tubes originating in or exported from China PR and Vietnam
 - b. Copper Tubes and Pipes originating in or exported from Malaysia, Thailand and Vietnam
 - c. Textured Tempered Glass" originating in or exported from Malaysia
6. **Safeguard duty**: Where any goods are imported into India in increased quantity and under such conditions that may cause serious injury to domestic industry, a safeguard duty may be imposed in terms of Section 8B of the Customs Tariff Act . For example: safeguard duty is imposed on goods like Seamless Pipes and Tubes, Solar Cells whether or not assembled in modules or panels, etc
7. **Integrated Goods and Services Tax ('IGST')**: IGST is levied and collected on imported goods in terms of Section 3 of Customs Tariff Act. The IGST rate ranges from 0, 5, 12, 18, 28. Further, the IGST paid on importation is available as input tax credit subject to provisions under GST law. Hence, it is not a cost per-se in the supply chain. However, there are possibilities to save opportunity cost of working capital by availing schemes under foreign trade policy.

8. The duty of customs is generally payable on the transaction value i.e. the CIF value. However, in case of used capital goods the value is required to be determined basis the Chartered Engineer's certificate. Further, in case of related party transactions the importer is required to follow requisite compliance to substantiate that the price charged for the imported goods is an arm's length price.

9. Overview of compliance under related party transactions

- a. Background of Special Valuation Branch (SVB): SVB is a specialized wing of the Indian Customs and has branches at Delhi, Mumbai, Calcutta, Chennai and Bangalore. SVB deals cases pertaining to valuation of goods imported from related parties (as per Customs law), valuation of imports requiring additions on account of royalty and license fee payments; receipt of subsequent sale proceeds accrue to the foreign seller, etc.
- b. Customs import valuation is referred to SVB in the following manner- where the importer himself declares that import is from related parties and where relationship between the importer and foreign party is established on the basis of intelligence or any enquiry into the import transaction.
- c. SVB will not undertake inquiries in the following cases of related party transactions - Imports of samples and prototypes, import of goods are subject to nil customs duty or unconditionally exempt, transactions where the value of imported goods is less than INR1 lakh and the cumulative value does not exceed INR25 Lakh in a financial year

10. SVB process flow

- a. For determining the need of reference to the SVB, an importer is required to file Bill of Entry atleast fifteen days prior to import and furnish the required details in Annexure A for preliminary analysis of whether the case needs to be referred to SVB.
- b. The Customs officer at port of import will undertake preliminary analysis of the information and documents and submit findings to the Commissioner of Customs who will decide whether matter requires reference to SVB. In case a reference to the SVB is not needed, suitable communication will be issued in this regard by the Commissioner, Customs. In the event a reference being made to SVB, the Customs Officer will commence provisional assessment of the goods and will seek further information and documents as prescribed and transfer the matter to the SVB. The importer is required to submit information and details as required under Annexure B.
- c. The importer is required to submit information in Annexure B within sixty days of such requisition
- d. If the importer fails to provide information and documents as required under Annexure B within sixty days of such requisition a security deposit at the rate of 5% of the declared assessable value will be imposed for a period of three months. Importer can chose to provide the security deposit in the form of cash deposit or in the form of bank guarantee. Security deposit to be imposed for a maximum period of three months after which the same will be discontinued.
- e. The importer will also be granted an extension of another sixty days for furnishing the required information as per Annexure B. In the event of failure to do so, the proper Officer will proceed to collect the said information by resorting to provisions of the Customs Act.
- f. The importer is also required to initially furnish a bond as per Annexure D. However, if security deposit becomes mandatory importer is also required to provide bond as per Annexure E.

11. SVB procedure

- a. On receipt of documents, the SVB will make suitable communication to help ensure provisional assessment of such goods at all the ports. Further, it will go through the documents and information received and seek additional details if required. SVB will as far as possible, complete the investigations and issue its finding in two months from the date of receipt of initial information and documents.
- b. SVB will submit its findings to the Commissioner/Principal Commissioner, Customs. Upon approval, an investigation report with recommendations will be sent to the Customs Authorities at the ports as well as to the Director General of Valuation (DGOV). In cases where the investigation report accepts the declared value, the assessment will be finalised immediately without the requirement to issue a speaking order. In other cases, the Customs Officer will issue a Show Cause Notice (SCN). In case of imports at multiple ports, a common adjudicating authority will be appointed for passage of an order and finalisation of assessment. The principle of natural justice and appellate provision of the Customs Act will be applicable to these cases as well
- c. There could be few more transactions of import where the transaction value is not accepted and the Customs Valuation Rules are applicable.

12. Instances where transaction value shall not be accepted:

- a. The buyer is required to directly/indirectly pay royalties and licence fees related to the imported goods and as a condition of the sale of the goods being value and such royalties and fees are not included in the transaction value
- b. The value of certain goods and services provided by the buyer, either free or at a reduced cost, are not taken into account in the price of imported goods. These items are:
 - Materials, components, and parts that are part of the imported goods.
 - Tools, dies, moulds, and similar items used to make the imported goods.
 - Materials consumed during the production of the imported goods.
 - Engineering, development, artwork, design work, and plans or sketches created outside India and needed for producing the imported goods.
- c. there are restrictions with respect to disposal or use of the imported goods by the buyer other than restrictions which are required by law or by the public authorities in India or are regarding limiting the geographical area in which the goods may be resold or do not substantially affect the value of imported goods
- d. the sale or import price is subject to some condition or consideration for which value of imported goods cannot be determined
- e. A part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer accrue directly or indirectly to the seller, unless an appropriate adjustment is made in accordance with the provisions of relevant Customs Rules and Regulations
- f. Costs incurred by the buyer like commissions and brokerage, except buying commissions; the cost of containers with respect to the goods in question and the cost of packing whether for labour or materials are not included in the transaction value
- g. Any other payments that are made by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller and such payments are not included in the transaction value

13. Intended period of use of capital goods: This piece of information is required particularly for the MOOWR, EOU, SEZ scheme as the duties not paid at the time of import may become payable at the time of DTA sale of

such capital goods. In case of MOOWR and SEZ units the duty rate applicable at the time of DTA sale is the rate prevailing on the date of such DTA sale. (Please note that the duty rates getting increased in future is quite unlikely considering the trends over last two decades). Further, in case of SEZ units the duty becomes payable on the depreciated value of such capital goods (the depreciation is allowed subject to fulfilment of NFE condition). We for the purpose of calculation of net benefit have considered the same rate which is applicable at the time of import. In case of EOUs, the duty is payable on such capital goods at the time of DTA sale at the rates applicable when such capital goods are imported on the depreciated value of such capital goods. The depreciation is allowed subject to fulfilment of NFE condition

14. **Net Foreign Exchange in case of EOU and SEZ:** NFE is broadly the amount of foreign exchange inflow (less) foreign exchange outflow
15. **Project life:** It is required to determine the amount of duties saved on raw materials, the opportunity cost of working capital, export and sale of finished goods and the corresponding duty saved and for the purpose of calculating the Net benefit of given option
16. **Expected annual growth** in percentage terms is required to determine the value of imported, domestic procurement and the revenue over the number of years of the project life
17. **Expected rate of interest on working capital** represents the rate of opportunity cost of working capital. The same will be considered to determine the net present value of some of the benefits in the form of duties saved, RoDTEP, AIR drawback, etc. Further, it is used to determine net present value of certain future inflows and outflows. User should input the interest rate considering their opportunity cost of the working capital
18. **Time gap (in no. of days)** for utilisation of input tax credit of GST This time gap is required to determine the benefit in terms of savings in the cost of interest of the working capital. Please note that we have assumed that the imports are spread over a month then the IGST payable in cash at the time of import as well is spread over a month. Accordingly, the average date of payment of IGST can be assumed to be 15th of the respective month. Such IGST paid in cash can be utilised by the respective importers towards their GST output liability latest on 20th of the following month. (the period could be more in case such importers have accumulated input tax credit). Accordingly, the default time gap is 35 days and it could be more if there is accumulated input tax credit
19. **RoDTEP** is in the nature of refund in the form of export incentive in lieu of the indirect tax costs incurred by the exporter in the form of VAT, Excise duty primarily on fuels electricity duty, etc. The refund is granted to neutralize such costs at the notified rates to adhere to the principle that taxes should not be exported. Generally, the RoDTEP rate ranges between 0.3 percent to 0.8 percent.

Please refer to DGFT website for RoDTEP rates <https://www.dgft.gov.in/CP/?opt=RoDTEP>

The rates and eligibility criteria are updated by DGFT from time to time.

20. **All Industry duty drawback rate** is in the nature of refund in the form of export incentive in lieu of the duties of customs suffered in any goods manufactured in India. The duties are the non-cenvatable customs duties like BCD, SBC, etc. Generally, the AIR ranges between 1 percent to 1.5 percent. CBIC website address where such rate schedule can be accessed as under <https://www.cbic.gov.in/entities/cbic-content-mst/NzA%3D>

The rates are generally updated annually by Customs Authorities.

21. **Time taken for conversion of raw material (in no. of days):** The time taken for the conversion of the raw material and then DTA sale/ export of such goods help in understanding the time upto which the duty payable on the imported raw material gets deferred. The deferment in days is considered to determine the savings in terms of opportunity cost of working capital
22. **Deemed export:** Following categories of supplies made within India are considered as deemed export and such deemed exports are entitled to avail customs duty exemption as well as in some cases GST exemption by way of refund on inward supplies.
23. **Free on board (FOB):** Value of physical export of finished goods is required to calculate the net benefit
24. The duty saving evaluator is a comparative analysis of the scheme under FTP and Customs, however, before taking a decision to invest, one should also evaluate incentive scheme like Central Incentive Scheme like Product Linked Incentive Scheme or the State Incentive scheme
25. **NPV:** Future cash outflow/inflow is discounted cumulatively at the rate of working capital cost.

Eg.: Duties of customs payable after 10 years is Rs. 1000/- suppose.

Rate of working capital cost is 9%. Accordingly, the discounting factor $(1.10)^{10}=2.37$

therefore the NPV is $1000/2.37=\text{Rs.}422/-$