

Pre - Budget Memorandum 2021 - 22

Indirect Taxes - Customs



American Chamber of Commerce in India

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**AMCHAM Pre-Budget Memorandum
Recommendations for Union Budget 2021-22**

Customs

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Classifications and duty rates

SL. No	Area of Challenge	Issue	Recommendation
1.	Basic Customs Duty on Telecom products	<ul style="list-style-type: none"> • India applies a 20 per cent duty on certain telecommunication products falling under tariff item nos. 8517 12 10 and 8517 12 90 of the First Schedule to the Customs Tariff Act, 1975 ("First Schedule") • It is important to note that India is at the cusp of a digital revolution, rolling out 4G services, auction of 5G spectrum and large-scale digitization of all sectors, most importantly, the finance sector and MSMEs. The duty has not only impacted OEMs, but also telecom operators and the end-consumers • India is a signatory to the Information Technology Agreement (ITA), whereby the authorities agree that there would be no application of ordinary customs duties at a level of 10 per cent or 20 per cent to any switching apparatus. 	<p>Authorities should consider revisiting the application of BCD on key telecommunication networking products, including Switches</p>
2.	Ambiguities in Customs Tariff Act on telecom products that can seek exemption	<ul style="list-style-type: none"> • Various notifications issued, granting and withdrawing exemptions under Customs Tariff Act have created ambiguities on appropriate rate of BCD for items falling under 8517 62 90 and HSN 8517 69 90. • Notification No 57, 2017 – Customs dated 30 June 2017 prescribes an effective rate 	<ul style="list-style-type: none"> • Amend the Notification 57/2017-Cus to exclude all the ITA products (including VoIP), which would attract a nil rate of BCD

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		<p>of 10 per cent (Serial #20) for items falling under 8517 62 90 and 8517 69 90. However, specific items have been excluded from the benefit of the concessional rate and therefore would attract rate of 20 per cent</p> <ul style="list-style-type: none"> • In addition to the confusion that the exclusion list has created, it is important to note that several of these items VoIP Phones, routers, modems etc. are ITA products, however, have been included in the exclusion part of notification 57/2017-Cus thus attracting a higher rate of BCD at 20 per cent. • For example, VoIP Phones which has been classified under 8517 69 90 by notification 57/2017-Cus, would merit a classification under HSN 8517 18 10 - Telephone sets, including telephones for cellular networks or for other wireless networks attracting NIL rate of BCD. 	
3.	Ambiguities in Customs Tariff Act on telecom products that can seek exemption	<ul style="list-style-type: none"> • Ambiguity in the technical classification of products under the Customs Tariff Act/CBIC Notification on exclusions, 2017 • Ethernet switches are different from Carrier Ethernet Switches (which are classified under 8517 62 90 and attract at 20 per cent). 	<ul style="list-style-type: none"> • Differentiate between Non-Carrier Ethernet Switches (Enterprise-grade Switches) and Carrier Ethernet Switches to avoid confusion in both duty rate and customs clearance process.

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		<ul style="list-style-type: none"> • Ethernet Switches are used within enterprise for their internal information and communication Technology. Further, these are used for establishing Local Area Network (LAN) connection to PC's Laptops, Printers and other IP enabled end points which are part of the single business entity. • On the contrary, Carrier Ethernet Switches are used by telecommunications network providers / internet service providers to provide Ethernet services to their customers. • Therefore, Ethernet switches (without carrier) are different from Carrier Ethernet Switches and hence should not be classified under the exclusion part Notification No 57, 2017 – Cus. Consequently, Ethernet Switch (without carrier) would merit a BCD rate of 10 per cent as per said Notification. • Indian customs authorities have been imposing 20 per cent duties even on non-carrier ethernet switches. 	
4.	Alignment of goods classification with global best practices	<ul style="list-style-type: none"> • Broad definitions of products have led to inclusion in the "Others category". There is a need to demystify these definitions for appropriate classifications 	<ul style="list-style-type: none"> • There is a need to categorize these equipments appropriately to ensure the right BCD is applicable and there is growing clarity during trade. A

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		<ul style="list-style-type: none"> The HSN Code 8517 has a broad line of products - Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line system or for digital line systems; videophones telephone sets; videophones: This category holds multiple products such as Routers, Switches, Base Stations, Access Points, videoconferencing equipment, Phones, etc. 	<p>recommended list has been provided in Annexure A.</p> <ul style="list-style-type: none"> In the absence of such an exercise, there should be no unforeseen increases in BCD value for these products.
5.	Basic Customs Duty on Preform of Silica	<ul style="list-style-type: none"> Corning imports Preform of Silica, which is a raw material, used for manufacturing of telecommunication grade optical fibre. The BCD on preform of silica was levied at the rate of 10 per cent in 2016 budget, but after the optical fibre industry raised concerns with regards to this, the BCD was reduced to 5 per cent in May 2016 and subsequently eliminated in July 2017. However, in the Union Budget 2018, the custom duty on Preform was raised to 5 per cent again. The preform of Silica is used to produce optical fibre, which is currently being manufactured in India and is extremely 	<ul style="list-style-type: none"> Removal of Customs Duty on Preform of Silica, which is a raw material used in manufacture of Optical Fibre and not a component or product in itself.

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		<p>important for the successful implementation of Digital India, BharatNet and Smart Cities plans of the government. It should be emphasized that Preform of Silica is not a product or component, it is a raw material crucial for the manufacture of optical fibre. The increase in duty on preform of silica not only affects the ease of doing business prospects and threatens the economic viability for telecommunication network expansion but also impacts many of the Government's other flagship projects such as Digital India & Smart Cities.</p>	

Safeguard measures

SL. No	Area of Challenge	Issue	Recommendation
1.	Imposition of safeguard duty on optic fibre recommended by DGTR	<p>Single-mode optical fiber is imported from various countries including China, Japan, the U.S. and Korea. The major quantity is imported from China. The Directorate General of Trade Remedies (DGTR) in its investigation noted a significant surge in imports of optical fiber from China over the past two years. This increased volume from China forced the domestic market to respond which resulted in a price declines of ~20 per cent in 2019 and another 35 per cent decline in 2020. DGTR, in its investigation, concluded that the product is being imported into India in increased quantities can cause or threaten to cause serious injury to the domestic manufacturers. Hence, the DGTR has recommended imposing a 10 per cent safeguarding duty on single mode optic fiber.</p>	Expedite the process of imposition of 10 per cent safeguarding duty on single mode optic fibre to support the industry.

Special Valuation Branch

SL. No	Area of Challenge	Issue	Recommendation
1.	SVB not applicable for clearance to FTWZ	<ul style="list-style-type: none"> • There is lack of clarity whether SVB would only be applicable on clearance made from FTWZ to related parties • FTWZ is a flagship initiative for creating trade-related infrastructure and to facilitate the import and export of goods and services with the freedom to carry out trade. • As per Section 53 of the SEZ Act, 2005, FTWZ is deemed to be a port outside the customs territory of India for the purposes of undertaking authorized operations. “Customs frontier” as defined under Section 2(4) of IGST Act, include a “customs port”. Therefore, as long as the goods are in a “port”, i.e., FTWZ, the same would be deemed to have not crossed the customs frontiers of India • Section 26 of the SEZ Act, 2005 provides for exemption from customs duty under the Customs Act, 1962 or the Custom Tariff Act, 1975 on import of goods into FTWZ (SEZ). As per Section 51 of the SEZ Act, 2005, SEZ laws have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. 	Clarify the non-applicability of provisions related to SVB for clearances into FTWZ.

		<ul style="list-style-type: none"> • It is also pertinent to note that Chapter XA of Customs Act, 1962 inserted on 15 August 2003 for SEZs, was specifically omitted effective 11 May 2007. Consequently, all customs aspects related to SEZ such as assessment, procedure, clearance etc. was omitted. • Therefore, on conjoint reading of the above provisions, it is our understanding that - <ul style="list-style-type: none"> (a) Goods imported into a FTWZ does not invoke any Custom assessment and valuation; (b) Goods cleared from a FTWZ is subject to Customs assessment and valuation. <p>On the clearance of goods from FTWZ, being the first inbound clearance into the Indian Customs territory, customs assessment and valuation applies. Therefore, we understand that SVB would only be applicable on clearance made from FTWZ to related parties (if any).</p>	
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AEO accreditation (MRP labelling)

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1	MRP Labelling	<ul style="list-style-type: none"> • Allowing MRP stickers pasting in applicant's premises under the AEO scheme • In terms of AEO Circular No. 33/2016- Customs, dated 22/07/2017 the holders of AEO-T2 and AEO-T3 certificate will be given the facility to paste MRP stickers in the premises of the importer. <p>The said benefit even though is specified for AEO-T2 & T3 status holders, however, at ground level the Custom authorities are not allowing to paste MRP stickers in the premises of the importer. The same is only allowed under Custom Bonded Warehouse.</p>	<p>It is recommended that a suitable instruction needs to be issued for allowing the holders to AEO-T2 and AEO-T3 certificate, to be able to avail the benefit of pasting MRP stickers in their premises.</p>

Demystify “Others” - Broad Definitions

Router -

Sends information between networks. Routers use an internal routing table or routing considerations to look at the address of the incoming packet and determine whether to send the packet out or keep it within the network.

Routers can forward packets between a Local Area Network (LAN) and Wide Area Network (WAN), as well as to the Internet.

Switch -

Newton’s Telecom Definition

Switches work at Layers 1 (Physical) and 2 (Data link) of the OSI Reference model, with emphasis on Layer 2. A switch looks at incoming data (voice data, or data) to determine the destination address. Based on that address, a transmission path is set up through the switching matrix between the incoming and outgoing physical communications ports and links.

Access Point -

Access points give a user’s endpoint access to a Local Area Network LAN using radio signals also know as Wi-Fi. Wireless LAN Controllers enable groups of access points to function in collaboration within a LAN.

Transceiver -

Newton’s Telecom Definition

1. Any device that transmits and receives. In sending and receiving information, it often provides data packet collision detection as well. 2. In IEEE 802.3 networks, the attachment hardware connecting the controller interface to the transmission cable. The transceiver contains the carrier-sense logic, the transmit/receive logic, and the collision-detect logic. 3. A device to connect workstations to standard thick Ethernet-style.

Videoconferencing System -

Video conferencing Systems are collaboration tools that enable real-time voice with video communications. The essential component for transmitting and receiving the voice and video simultaneously is the codec used for coding and decoding data.

Networking Card -

Networking cards and interface cards are used within a device to provide network connectivity.

Wireless Headset -

Wireless headsets use DECT or Bluetooth technology to send and receive voice data and convert analog signals to digital and vice versa.

Security Appliance -

PC Mag definition

A stand-alone device used to provide security for a network.

Recommended break-outs - Others

- 8517621X – Videoconferencing apparatus, codecs
- 8517622X – Access Points, Wireless LAN controllers
- 85176230 – Modems
- 8517624X – Network Switches
 - 85176241 – Service Provider WAN Switches (carrier ethernet)
 - 85176249 – Other Switches
- 8517625X – Wireless Headsets
- 8517626X – Routers
- 8517627X – Multiplexers, Networking cards, Transceivers
- 8517628X – Firewall/ Network Security Appliances
- 85176290 – Other (such as SDH)

SDH, PLCC, HDSL, DLC, and voice frequency telegraphy are outdated, general terms, and not specific to one type of product.

Set top boxes are for broadcasting most will be classified under 852871

Antennas will be 851770, WCO plans to create a new 6-digit code for these.

Base stations can be classified under 851761.

Multiplexers and Modems below remain with the same code as previously. For products classifiable currently under SDH, if they are not more appropriately described by the newly proposed descriptions then they could fall under other 85176290. In such a format this code would contain few products as opposed to the majority.

Majority of new technology would fall into one of the categories described above for the foreseeable future. We do find that some new products, when excluded from other subheading and having individual functions, are only classifiable under 854370.