



## A Critical Analysis of the Bangladesh Customs Duty Drawback Regulations

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### Abstract

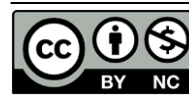
**Purpose of the study:** The objective of this paper is to explain the methods of customs drawback and identify the inadequacies and gaps in the regulatory regime of the duty drawback i.e. the Customs Act 1969 and the VAT Act 2012. Another objective of the study is to suggest measures to remedy the regulatory gaps and simplify the drawback payment system.

**Methodology:** A qualitative research design was followed in conducting the study. In-depth interviews and a focus group discussion were used to get primary data while secondary data were generated from published materials and web-sources.

**Findings:** The paper identified the inadequacies and gaps in the Customs Act 1969 and VAT Act 2012 regarding granting of duty drawbacks. In particular, there is a lack of express customs rules on the concept and determination of actual and flat rates to operationalise the duty drawback enshrined in The Customs Act, 1969. There is also a lack of guidance on the validity period of Input-Output Coefficient and a lack of recognition of duty drawback in the VAT and SD Act 2012

**Implications:** This study has the originality; it has identified the inadequacies and lacunas in the existing duty drawback regulations and suggested recommendations to overcome the limitations (inadequacies) of the existing regulatory regime for proper functioning of the Drawback.

**Limitations and Future Direction:** This study is largely based on literature review and a limited number of in-depth interviews and focus group discussion. The interviewees include public officials and few exporters only. Future studies on customs duty drawback may include more respondents from the private sector to have the full perspectives of the exporters/users of duty drawback facility.



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## 1. Introduction

In order to compete in highly competitive global markets, firms need free access to the imported raw materials and intermediate inputs needed to produce their export goods. Governments adopt different policies to promote exports (facilitate export expansion). These include exemptions from import duties on inputs used to produce export items; Customs bonded warehouse facility under which firms can import inputs duty free, customs duty drawback (refunds) of duties on inputs used in producing exported items and free trade zones (Wu, & Chuang, 1998). Duty Drawback is a refund of customs duties levied on inputs and components used for the production of exported products. In other words, duty drawbacks are paid in respect of specified materials used in the manufacture, processing, packing, etc. of goods that are subsequently exported (South African Revenue Service, 2021p.3). South Korea, India, Indonesia, Sri Lanka and other countries grant duty drawback to promote their exports (Jai, 2007; Hoda, 2020; Blalock, & Gertler, 2004; Athukorala, 2013). Among other incentives such as customs bonded warehouse system and cash incentives, Bangladesh offers customs duty drawback to promote exports of its products. Bangladesh also provides bonded warehouse facilities and cash incentives to promote its exports. This paper examines the gaps in the application of drawback regulations practiced by Bangladesh Customs than what is stipulated in the Customs law and Statutory Regulatory Orders (SROs). In Customs, Drawback is the refund, reduction or waiver in whole or in part of customs duties assessed or collected upon importation of an article or materials which are subsequently exported (US CBP, n.d.). Drawback is not an export subsidy and is, therefore, in compliance with World Trade Organization (WTO) rules (Corfmat and Goorman, 2003). According to the Drawback Rules 2021, import duties means Customs duty and Regulatory duty paid at import stage on inputs used in the manufacturing of exported goods (NBR, 2021) The Customs Act, 1969 and the VAT and SD Act 2012 govern the process.

The objective of this paper is to identify the gaps in the application of duty drawback regulations practiced by Bangladesh Customs than what is enshrined in the Customs Act, 1969 and Statutory Regulatory Orders on duty drawback.

This article is divided into eight sections: Section one contains Introduction followed by Literature Review in Section Two. Section 3 describes Methodology of Research and Data Analysis followed by a brief account of drawback provisions in the VAT Act & Rules (1991) and the reasons for absence of drawback provisions in the New VAT Act (2012) in Sec 4. Section 5 describes Rules/Orders that are in operation on Payment of Drawback Against Export. Section 6 presents the findings on the Adequacy of the Legal Regime concerning Duty Drawback. Section 7 provides discussion on the findings followed by Policy Implications and Conclusions in Section 8.

## 2. Literature Review

Duty Drawback i.e., the repayment of duties and taxes paid on the imported goods enables domestic industries to offer the goods at competitive prices on international markets. Countries wishing to encourage trade through free zones/EPZ in their territory may also apply the drawback procedure to goods that are re-exported into these zones. Export of products are encouraged by duty drawback (Wu, & Chuang, 1998). Duty Drawback is also popular as an indirect tax incentive to attract foreign direct investment and an instrument to reduce the anti-export bias of highly protected economies (Ianchovichina, 2013). In Bangladesh, import duty and regulatory duty paid on imported goods are paid (payable) as Drawback on subsequent export of goods. Supplementary duty is given as decreasing adjustment through VAT return. VAT and Supplementary Duty (SD), if any, paid on purchase of goods/services by Embassies and High Commissions are also given drawback in the form of refunds.

## 2.1 Beneficiaries of Duty Drawback

Two groups of people are given duty drawback. This is reflected in Table-1.

**Table 1: Who are entitled to Duty Drawback**

	Who are entitled to Duty Drawback	Rationale/why?
1	Exporters (do not enjoy duty free bonded warehouse facilities)	Incentive to exporters to export and help them gain competitive advantage in export markets.
2	Exporters (Bonded warehouse licensee holders but they pay duty on imports)	Imported raw materials are cleared by paying duty (in excess of their entitlements on payment of duties); in this case, the bonded warehouse licensee must obtain permission from the Bond Commissionerate to import in excess of entitlement). They are entitled to claim drawback for duty paid on imports of inputs they used in manufacturing export items.
3	High Commissions, Diplomats, and Other Organisations of diplomatic status on their local purchases of locally produced goods and services	To honour diplomatic privileges and international treaties.

(Source: National Board of Revenue, 2021)

## 2.2 Methods of Calculation of Duty Drawback

Duty drawback rates are calculated by using two methods, namely:

- Drawback on the basis of *Flat Rate* [fixed percentage duty (ad valorem) duty refund criteria]; and
- Drawback on the basis of *Actual* (NBR, 2021)

**Drawback On the Basis of Flat Rate:** Flat rate drawback is given for products having similar characteristics. A singular coefficient is used for the same/identical item produced and exported by different exporters. Flat rates vary based on HS codes of the items. For example, flat rates of 5%, 5.5% and 6.0% are applied for the same goods having different Harmonised System of Codes (HS) codes. Drawback for jute items, tannery items, cable and ceramics are given<sup>1</sup> at flat rates. Flat rates are determined based on input-output coefficient (e.g., how much raw materials are used to produce one unit of jute sacks) (Respondents 1.4 & 1.5 2023).

**Drawback On the Basis of Actual:** Under Drawback based on Actual, the amount of drawback/refundable duty is the duty that has been paid on the imported raw materials used for the production of the exported product. Drawback on the basis of actual is given for items for which raw materials vary for items or items which vary in its capacity or size/characteristics. For example, transformer is exported by different transformer manufacturing firms having different kilowatt/power. Input-output coefficient is needed for each transformer of different power/Kilowatt; If XYZ company produces and exports 3 transformers having three different capacities of 50,100 and 150 KWs, three different co-efficient will be needed for all the three transformers. On

<sup>1</sup> Drawback is allowable for import duty, supplementary duty and Regulatory duty paid on inputs used to produce exported goods. There are provisions for giving drawback of RD although DEDO is yet to grant it.

the contrary, if a transformer having 100 KW is exported by XYZ company and another transformer having 100 Kw is exported by ABC company, a single coefficient will suffice for drawback purpose (as the capacity is the same for the two transformers).

**How to calculate Duty Drawback at Actual:** Duty drawback at Actual is the result of “Total weight (quantity) of raw materials used per unit of export \* import duty or taxes paid per unit of raw material”. For example, a transformer was manufactured using imported raw materials (stated in the following table) and then the transformer was exported. The raw materials used are RM-1, RM-2 and RM-3

**Table 2: Calculation of Drawback under Actual**

Product code	HS	Product Name	Unit	Name and specification of Raw Materials Used to Mfr 1 Unit Transformer	RM quantity used	Import duty (per kg)	Total duty/tax paid (Tk.)
8504		Transformer	1 unit/no	RM-1	1 kg	Tk. 30	30
				RM-2	5 kg	Tk. 20	100
				RM-3	10 kg	Tk. 40	400
Total							530

(Source: calculated by the authors based on Interview with Respondents 1.6 & 1.7 (2023)).

In this case, Tk. 530 is the drawback amount for export of 1 unit of Transformer (as per Drawback under Actual).

Duty drawback on an actual rate is given on a case-to-case basis. Actual rate is determined on the basis of total inputs used for producing a unit of export item. For actual rate, separate input-output coefficient is necessary for each item having different nature/capacity or features. For example, Palm oil and Soyabean oil both fall under oil. In this case, two coefficients will be necessary one for Palm oil and the other for Soyabean oil. In the case of Actual Rates, Exporters are required to produce Bill of Entry in support of import value and duty payment on raw materials. The concept of Actual rate is to refund the amount the exporter paid as duty on inputs at import stage (R-1)

It is to be noted that drawback of import duties is paid from Duty Exemption and Drawback Office (DEDO). Exporters are eligible to get drawback of Supplementary duty (SD) paid on inputs used in the manufacture of goods exported through VAT return (Rule 45, VAT & SD Rules 2016). They are granted decreasing adjustment for the amount of SD paid on inputs used in producing export items. This ‘decreasing adjustment’ serves the purpose of ‘drawback’; but the jargon is not enshrined in the VAT & SD Act, 2012 and VAT and SD Rules 2016.

### 2.3 Drawback On the Basis of Flat Rate

Under flat rate method, the exporter is given a specified amount of import duty as drawback against each unit of produced export item. It is not necessary to submit import documents of inputs or documents of local purchase with the application of drawback under Flat rate system (usually flat rate is used in the case of jute products as they cannot submit Bill of Entry).

## 2.4 How is Flat Rate Calculated

Duty drawback at Flat rate is given to the exporters where more than one firm produce and export similar goods using the identical raw materials. This flat rate is used to simplify payment of drawback in cases where all necessary documents and co-efficient are not available. In determining the flat rate for import duty, three things are considered:

- Input-output coefficient
- The rate of import duty of the specific (i.e. current FY) year
- Average representative import value of imported raw materials (extracted from customs ASYCUDA World System) of the 12 months of the last financial year used in manufacture of a unit of export item (e.g. cables)  
[National Board of Revenue, 2021 in Rule4(4) Duty Drawback Rules, 2021].

For example, *copper wire, pvc resin and other raw materials* are used as inputs in producing PVC Cable. To determine the flat rate drawback, customs authority determines the weighted average assessable value [of the raw materials<sup>2</sup> of the previous financial year] and calculate the duty/taxes paid at import stage for the raw materials used (as per I-O coefficient<sup>3</sup>) for export item applying import duty rate of the specified (current) year. Unlike Actual rate drawback, Flat rate is based on average assessable value of the previous fiscal year instead of actual import value of the inputs used to produce the exported item (Respondents 1.5, 1.6 & 1.7) This is shown in Tables 3 and 4.

Export HS Code: 8544.59.00

Name of export item: PVC Cable: BYA/BYA FR Skin Coated

**Table 3: Flat Rate Calculation for Duty Drawback against export of PVC cable (Raw Material: Copper Cathodes)**

Name of the final/intermediate inputs	HS code	Unit of measure	Gross material	Value/unit Assessable	Assess Value	CD (%)	RD (%)	Customs duty	RD	Total
Copper Cathodes (secondary RM)	7403.11.00	Kg.	11.829855	631.62	7471.973	5.00	0.0000	373.5987	0.00	373.5987
PVC Resin	3904.10	Kg.	3.9849	86.58000	345.0126	5.00	0.0000	17.2506	0.00	17.2506
Calcium carbonate	2836.50.00	Kg.	2.0858	9.80000	20.4408	10.00	0.0000	2.0441	0.00	2.0441
Stabilizer	3812.39.90	Kg.	0.1269	93.2700	11.8360	10.00	0.0000	1.1836	0.00	1.1836
Parafin wax	2712.20.90	Kg.	0.0396	84.4500	3.34420	15.00	0.0000	0.5016	0.00	0.5016

<sup>2</sup> i.e. the quantity of imported raw materials incorporated (including accepted % of wastage) into the quantity of exported goods quoted on the drawback claim.

<sup>3</sup> To get drawback under flat rate method, the applicant is required to obtain "Input-output coefficient" by submitting an application in 'form Kha' with necessary documents.

Pigment	3204.17.00	Kg.	0.0274	797.21000	21.8436	5.00	0.0000	1.0922	0.00	1.0922
Chlorinated Parafin wax	3824.99.20	Kg.	0.9551	0.0000	0.0000	25.00	3.0000	0.0000	0.00	0.0000
2-Ethyl Hexanol	2905.16.10	Kg.	0.8404	114.80000	96.4779	10.00	0.0000	9.6478	0.00	9.6478
Phthalic Anhydride	2917.35.00	Kg.	0.4578	93.0700	42.6074	5.00	0.0000	2.1304	0.00	2.1304
Catalist	2917.19.00	Kg.	0.0010	0.00000	0.0000	10.00	0.0000	0.0000	0.0000	0.0000
Chemicals (ATO/ATH /Stearic acid, etc.)	-	Kg.	0.0010		0.0000	15.00	0.0000	0.0000	0.00	0.0000
Total								407.4489	0.00	407.4489

CD Amount (Tk.)	407.4489	Export Unit of Measure : Kilometer
RD Amount (Tk.)	0.0000	
Total Amount (Tk.)	407.4489	
<b>(Source: Respondents 1.5, 1.6, 1.7)</b>		

Flat Rate Calculation

Date: 01.07.2021

EXPORT H.S. CODE : 8544.59.00

Name of Export Item : PVC Cable: BYA/BYA FR Skin Coated/BYA FRLS Skin Coated- 1x1.3rm (3w)

Unit : 1 Kilometer

**Table 4: Flat Rate Calculation for Duty Drawback against export of PVC cable (Raw Material: Copper wire)**

Name of the Final/Intermediate Inputs	H.S. Code	Unit of Measure	Gross Material	Value/Unit Assessable Value (Tk.)	Assessable Value (Tk.)	CD (%)	RD (%)	Custom Duty (Tk.)	RD (Tk.)	Total Tk.
Copper Wire	7408.11.00	Kg.	11.7710	672.11000	7911.4068	15.00	0.0000	1186.7110	0.0000	1186.7110
PVC Resin	3904.10.00	Kg.	3.9849	86.58000	345.0126	5.00	0.0000	17.2506	0.0000	17.2506
Calcium Carbonate	2836.50.00	Kg.	2.0858	9.80000	20.4408	10.00	0.0000	2.0441	0.0000	1.9607
Stabilizer	3812.39.90	Kg.	0.1269	93.27000	11.8360	10.00	0.0000	1.1836	0.0000	1.1836
Parafin Wax	2712.20.90	Kg.	0.0396	84.45000	3.3442	15.00	0.0000	0.5016	0.0000	0.5016

Pigment	3204.17.00	Kg.	0.0274	797.21000	21.8436	5.00	0.0000	1.0922	0.0000	1.0922
Chlorinated Parafin Wax	3824.99.20	Kg.	0.9551	0.00000	0.0000	25.00	3.0000	0.0000	0.0000	0.0000
2-Ethyl Hexanol	2905.16.10	Kg.	0.8404	114.80000	96.4779	10.00	0.0000	9.6478	0.0000	9.6478
Phthalic Anhydride	2917.35.00	Kg.	0.4578	93.07000	42.6074	5.00	0.0000	2.1304	0.0000	2.1304
Catalist	2917.19.00	Kg.	0.0010	0.00000	0.0000	10.00	0.0000	0.0000	0.0000	0.0000
Chemicals (ATO/ATH/ Stearic Acid, etc.)		Kg.	0.0010	0.00000	0.0000	15.00	0.0000	0.0000	0.0000	0.0000
								1220.2463	0.0000	1220.2463

CD Amount (Tk.)...	1220.2463	Export Unit of Measure : Kilometer
RD Amount (Tk.) ...	0.0000	
Total Amount (Tk.)	1220.2463	
<b>(Source: Respondents 1.5, 1.6, 1.7 and 1.8)</b>		

It is to be noted that the amount of duty drawback under flat rate varies for the same quantity of export goods due to changes in the HS codes of the raw materials. For instance, if a (1 km) km of PVC Cable is produced using primary raw material namely Copper cathode (7403.11.00) and then exported, the duty drawback amount stands at Tk. 407.4489 @5% duty rate. But if the same amount (1 km) of PVC Cable is exported by using secondary raw material namely, Copper wire (7408.11.00), the amount of duty amount changes due to changes in duty rates (15% instead of 5%). Changes in import duty rates due to changes in HS codes of raw materials thus result in higher duty drawback. i.e. Tk. 1220.2462 instead of Tk. 407.4489. In other words, duty drawback amount changes with the change in HS codes of raw materials.

However, in the case of a higher duty drawback claim against exported goods that are produced using intermediate raw material, the exporter must submit relevant import bill of entry. The Customs department require this to ensure the higher rate of duty drawback is proper.

### 3. Methods of Data Collection and Data Analysis

A qualitative research design was followed in this study. Data were collected from both the primary and secondary sources. Primary data about the inadequacies and complexities of duty drawback system derives from two sources: one is a series of informal visits to the Customs Duty Drawback Office and discussion with the rank and file of the office. The other was several interviews and a focus group discussion (FGD) conducted with relevant respondents. Seven participants from the Customs and VAT department working at National Board of Revenue (NBR), DEDO and VAT offices were interviewed using a semi-structured questionnaire during February-March 14, 2023. A focus group discussion consisting of five participants from the Duty Exemption and Drawback Office (DEDO) and one participant from the NBR was also conducted in Feb 2023. The respondents were selected through purposive sampling. Informed Consent of the respondents were obtained before conducting interviews. The participants were selected following purposive sampling methods to include the most relevant and experienced persons in handling customs duty drawback cases. In addition,

two business leaders involved with export/trade were also interviewed to understand the complexities and regulatory gaps. The individual interviews and focus group discussions were conducted to explore whether the existing legislative provisions are adequate to address the proper functioning of the duty drawback regime and what changes may be made in the rules/procedures to support proper functioning of drawback system. The interviews also aimed at knowing the reasons for granting drawback to customs bonded warehouse owners. Collection of data from both primary and secondary sources and from different levels of officials and also from the trade body helped authenticity i.e. *triangulation* in data collection.

**Data analysis:** Coding techniques have been used to organize large amounts of data (text) from interview transcripts. Coding is a method that enables one to organize and group similarly coded data into categories because they share some characteristic—the beginning of a pattern. First, each unit of data was assigned its own unique code (initial codes). *Initial codes* were identified from the texts. Then the initial codes were clustered together according to *similarity and regularity* called as *Pattern coding*. Then the pattern codes were organized as *Themes/Concepts* following The Coding Manual (Saldana, 2013)

#### **4. Drawback under VAT Act 1991 (repealed) and VAT and SD Act, 2012**

Under the VAT and SD Act, 2012 there is no explicit provision for giving drawback of VAT paid on inputs used in export. Under this law, VAT paid on inputs used in exports are granted as input tax credit. It is evident from Section 8<sup>b</sup> (b) that input tax (paid on inputs used in exports) is creditable against output tax. VAT Return also makes it clear. For instance, in Part-4 (Purchase-Input Tax) of the VAT Return (Mushak-9.1), input tax creditable is shown against Zero-Rated Goods/Service (in Note 10 and 11 (i.e., Against local purchase and Import). As input VAT is creditable against output VAT, this change in the new VAT is an intelligent move.

Since the enactment of the New VAT and SD Act 2012, VAT paid on inputs, both imported and local purchases, are to be allowed as *input tax credit* and not as Drawback. Instead of Drawback, Rule 45 of the VAT and SD Rules 2016 specify that *Supplementary Duty (SD)* paid on inputs used in the manufacture of exported goods may be provided as decreasing adjustment. This contrasts with the VAT Act, 1991. Under The VAT Act 1991, there were provisions for giving drawbacks in S. 68 and Rules 28, 29 and 30. Rule 29 of VAT Rules 1991 allowed VAT authority to grant drawback based on VAT return. In this case, the VAT return sent by the concerned VAT commissioner to the DEDO for drawback used to be deemed to be an application for drawback. And the DG, DEDO, then on completion of scrutiny of the drawback application, would deposit the drawback amount in the bank account of the exporter through check.

#### **5. Rules/Orders Regarding Payment of Drawback Against Export**

Customs Drawback Rules, 2021 (SRO no 266-Ain/2021/45/Customs dated 04 Aug, 2021) details provisions on application for drawback, examination of the application by customs and payment provisions of drawback. The main provisions of customs duty drawback are shown in Table 5.



Table 5: Summary of Customs Drawback Rules 2021

	SRO	Duty/tax that are granted as Drawback
1	SRO no 266-Ain/2021/45/Customs dated 05 Aug, 2021	An exporter is required to apply for drawback of import duties in accordance with “ফরম ক” to the Director General, DEDO within 6 months of the date of export with documents in support of export. Drawback of Customs Duty and RD at Actual rate: Drawback of customs duty <sup>4</sup> is paid at actual rates (on exports of goods) for import duty and RD paid on import of inputs used (according to coefficient) in producing export items.
2	Do	<b>Drawback of Import duty at Flat Rate:</b> The Duty Exemption and Drawback Office sends proposed flat rates for Jute goods, leather, cable and ceramic items etc. to the NBR. On approval of the proposed rates by the NBR, DEDO grants drawback for these items on the basis of approved rates. Usually, the flat rates change every fiscal year due to change in import price value and duty rate.
3	Do	<b>Drawback by Bonded Warehouse Licensee:</b> Bonded warehouse licensees, who imported raw materials by paying duty are entitled to claim drawback) for duty paid on imports of inputs (in excess of their entitlements) they used in manufacturing export items. (Rule 7.2, Duty Exemption and Drawback Rules, 2021). Input-output coefficient is needed to get drawback. Prior permission of the Bond Commissionerate is needed to import in excess of entitlements.
4.	General Order No-11/Mushak/2020-11 June 2020	VAT and Supplementary Duty (SD), if any, paid by Embassies, High Commissions, Diplomats, and Other Organisations of diplomatic status notified by NBR on their local purchases of locally produced goods and services are given as ‘Refund’. In this case, the following conditions must be fulfilled: <ul style="list-style-type: none"> <li>• A refund shall be applicable to the people who enjoy Diplomatic Status under Vienna Convention on Diplomatic Relations. Official Purchases of the UN system organisations who enjoy privileges under Convention on Privileges and Immunities of the United Nations also qualify for the drawback.</li> <li>• The purchases are made in local currencies only from a VAT Registered Firm/Person.</li> <li>• Claims for refund are allowed to the extent of the tax paid and which is shown separately in the purchase invoice (VAT Challan in form "Mushak-6.3") issued by any registered person. Rule 55 of the Value Added Tax and Supplementary Duty Rules 2016 provides for such a refund.</li> </ul>

<sup>4</sup> Drawback of Regulatory Duty is also admissible; As there is no Economic Code yet in the system, RD is yet to be granted.

## 6. Findings on the Inadequacy (absence) of Legal Provision and Rules on Duty Drawback

The interview findings suggest that drawback facility is granted to bonded warehouse licensees in certain cases. A key respondent made it clear:

Usually, bonded warehouse licensees enjoy duty-free import of raw materials/inputs for export purposes. As such they are not entitled to Duty Drawback. But some bonded warehouse licensees import more than their entitlements on payment of duties and taxes (with prior permission from commissioner, Bond Commissionerate) to produce their export goods. Such bonded warehouse owners are granted Drawback for the duties and taxes they paid on their excess imports (Respondent-1.6)

On Why Embassies and High Commissions are given Drawback, A senior official of DEDO mentions:

Diplomats, UN Organisations and other organisations of diplomatic status enjoy some diplomatic privileges and immunities. As part of their privileges, Embassies, High Commissions, Diplomats, UN system Organisations and other organisations of diplomatic status are given a refund of VAT they paid on their local purchases. This refund is given as a signatory to Vienna Convention as part of diplomatic privileges. Other specialized agencies are also given VAT refund on local purchases such as USAID as part of bilateral agreements with the Government of Bangladesh (Respondents-1.3; 1.5)

As DEDO office is entrusted to deal with duty exemption and drawback matters, it has been a good move by the NBR to give authority to the DEDO office vide Customs Drawback Rules, 2021 to grant drawback of import duties and Regulatory duty paid on import of inputs used in producing export items.

A key respondent from the NBR states:

There is no mention of drawbacks in the VAT and SD Act, 2012. Section 62 of the VAT and SD Act, 2012 contains provisions to grant decreasing adjustment (DA) of the supplementary duty paid by any person on the import, if the goods are in compliance with the conditions of a drawback of duties under the Customs Act. Similarly, Rule 45 VAT and SD Rules enshrines provision for granting decreasing adjustment of SD paid on inputs used in making exported goods. (Respondent 1.2)

Regarding the clarity of rules and procedures of Drawback, another key respondent notes:

Similarly, Section-36 of the Customs Act 1969 clearly provides for rules on repayment of duty as drawback in respect of goods which have been taken into use between their importation and subsequent exportation: "*the repayment of duty as drawback... shall be made in accordance with the provisions of the rules made in that behalf*". But there is no Rules on repayment of duty as drawback in respect of goods which have been taken into use between their importation and subsequent exportation (stated in S.36). (Respondent 1.1)

Furthermore, there is a lack of understanding in which situations what will be rate of duty drawback under section 35. Drawback under this section is admissible if the goods are identified to the satisfaction of an officer of customs not below the rank of Assistant Commissioner of Customs at the customs-station, to be the same

as had been imported. Furthermore, the goods have to be exported within two years of the date of their importation, or within the extended period subject to a maximum of three years.

With regard to a question as to why Customs take figures of two different years i.e. the import duty rate of the specified FY and the representative average value (of the imported raw materials) of previous Financial year in granting duty drawback under flat rate, the respondent expressed his view:

This is the rule as per NBR letter. Unfortunately, I have no idea about the reasons. I think there should be a clarification of *Specified FY in the Drawback Rules (Respondent 1.6)*

An exporter, who is also a leading business leader mention:

Customs/DEDO office does not take our view sincerely in fixing the coefficient. They set the coefficient on their own way, which is often away from reality. As a result, if there is any gap or deficiency in fixing the coefficient, it remains as usual without being corrected. (Respondent- 1.9)

With regard to the observation of the business leader, a participant from the NBR explains-

We have simplified drawback system a lot. Previously, input-output coefficient was required to be obtained every six months. We have simplified the system and it is no longer required. But there are situations, when new coefficient is needed to be obtained; For example, if the design of the garments or any other export item is changed, new coefficient is needed due to changes in wastage in use of raw materials. (Respondent- 1.1)

## 7. Discussion

From the content analysis of data/findings, the following regulatory gap/inadequacy as well as insights about complications of granting drawback have been found:

- There is a lack of rules on repayment of duty as drawback in respect of goods which have been taken into use between their importation and subsequent exportation.
- There is no explanation as to why customs take figures of two different years, i.e.: i. the import duty rate of the *specified Fiscal Year*, and ii. the representative average value (of the imported raw materials) of the 12 months of the previous FY in granting duty drawback under flat rate. DEDO office takes year of drawback claim to be the specified fiscal year in processing drawback claim. In this case, there is no interpretation of "*specified fiscal year*". It seems logical to take the rate of duty and value that are in force on the day of the respective Bill of Entry(ies) to refund the duty that was paid on the raw materials used (i.e.at the rate of import duty that the exporters were charged for the imported raw materials used in producing the concerned export item) in producing the exported goods. This is also in concurrence of S. 30 of the Customs Act, 1969
- The term "*drawback*" has not been used in the VAT and SD Act 2012 and Rules 2016; Instead, the words "*decreasing adjustment*" has been used in S. 62 and Rule 45 although it is evident from the readings of A.62 and R.45 that the amount given as DA is indeed duty drawback as it is given against export of goods manufactured in Bangladesh. This is because exporters are given either bonded warehouse facilities or duty drawback (or cash incentives as alternative to the bonded warehouse facilities and duty drawback). Shikder (2021) considers it as a duty drawback and

mentions that according to the current rules (VAT & SD Rules 2016), VAT and SD has to be taken as drawback through VAT Return (Shikder, 2022 p.329-330).

- There are provisions in section 62 of the VAT and SD Act 2012 to grant Supplementary Duty (SD) paid on inputs as decreasing adjustment if the good conforms to the conditions of drawback stated in Section 35 of the Customs Act. This seems to be a drawback as the decreasing adjustment is for export good that conforms to the conditions of drawback. Although the word “Drawback” is not stated in S. 62, the *decreasing adjustment* mentioned in this section may plausibly be considered as “Drawback”.
- Embassies, High Commissions, Diplomats, UN system Organisations and other Organisations of diplomatic status notified by the NBR are given refund of VAT paid on their local purchases of locally produced goods and services. The refund of VAT is granted as part of their diplomatic privileges as mentioned in the NBR General Order No 11/Mushak/2020 dt. 11 June 2020. This is not a drawback but a step by the NBR to uphold diplomatic privileges.
- There remains an information gap about the necessity of obtaining new coefficients for the same item of export goods between the customs department and the exporters. At times, taking new coefficients becomes imperative such as in the case of change of design of export items or change in composition of raw materials. But the Drawback Rules 2021 lack provisions for necessity of taking new coefficient and under what circumstances new coefficient(s) will be needed.

## 8. Conclusions and Policy Implications

As there is a lack of Rules on repayment of duty as drawback in respect of goods which have been taken into use between their importation and subsequent exportation (stated in S.36), new Rules are needed for proper functioning of the drawback regime. Such Rules have been framed (SRO-266/2021) for Drawback (in accordance with the provisions of S. 37) on goods used in the manufacture of goods exported.

It has been found that there is a lack of clear indication in which situations, what will be rate or percentage of customs duty drawback under section 35. To remedy this uncertain situation, it is inevitable to enact rules stating the rate or percentages of duty drawback to be granted on the basis of extent of use of the item, depreciation in value etc. For example, a guidance is needed that will indicate in which case an exporter is entitled to a maximum of 7/8<sup>th</sup> of the duties as drawback and in what cases and on what grounds, exporters will be entitled less than 7/8<sup>th</sup> or a certain % of the duties paid at import stage. Duty Drawback should be granted on the basis of the extent of use of the goods where the goods have been put into use after import. In this respect, the provision of *Indian Customs* is noteworthy. Indian Customs Manual 2018 (Chapter 22: Notification No. 19-Cus., Dated 6-2-1965) specifies that 98% of Duty Drawback is admissible where the goods are not put into use after import. In other cases, drawback is granted on the basis of duration of use of goods, depreciation in value and other relevant circumstances fixed by official gazette (S. 74, Indian Customs Act 1962). For example, Indian legislation specifies different percentages of import duty to be paid as Duty Drawback for different usage periods (e.g., 75% for more than six months but not more than nine months’ use; 65% for more than 12 months but not more than fifteen months, 60% for more than fifteen months but not more than eighteen months, and Nil-for more than eighteen months). Used goods are not entitled to get Drawback in India if exported 18 months after import.

The NBR may issue detailed rules on S. 35 stating the rates of drawback to be entitled based on the length of period between the date of clearance for home consumption and the date when the goods are placed under customs control for export. This will simplify the drawback system and make it just. In a similar vein, it would be easy for exporters, importers, and other stakeholders to understand if S.62 and R.45 makes it clear that the amount of *decreasing adjustment* mentioned in the aforesaid sections/rules are on account of *duty drawbacks* against exports.

It seems also necessary to have an interpretation of “*specified fiscal year*” enshrined in rule 4(4) of the Duty Drawback Rules 2021. Furthermore, an explanation with examples of Rule 7(2) of the Duty Exemption and Drawback Rules, 2021 is needed about the bonded firms who pay duties and taxes on imports of raw materials for produce goods for export purpose. Usually, bonded licensees do not need to pay duty on imported goods for export. To conclude constructive dialogue between exporters (who claim duty drawback) and the customs authority to dispel the gaps of understanding about the drawback process and the need for updating of coefficient. This would ensure mutual cooperation and confidence in the existing system of customs duty drawback.

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**Annex A:** List of Respondents/ Participants in the Focus Group Discussion

	Name of respondents	Designation	Sources of participants	Codes for Respondents
	Withheld	Member VAT Policy	<i>NBR</i>	1.1
	Do	Director General	<i>DEDO</i>	1.2
	Do	Commissioner of Customs and VAT	<i>Dhaka Bond Commissionerate</i>	1.3
	Do	Joint Commissioner	<i>Rangpur VAT Commissionerate</i>	1.4
	Do	Deputy Director	<i>DEDO</i>	1.5
	Do	Sector Specialist (Electrical and Electronics)	<i>DEDO</i>	1.6
	Do	Sector Specialist (Chemical)	<i>DEDO</i>	1.7
	Do	Owner of an export-oriented Limited Company	V. Group	1.8
	Do	Vice President, BKMEA	Managing Director, MB Knit Fashion and Energy Spinning, Planners' Tower, Banglamotor	1.9
	Do	Second Secretary (Customs)	National Board of Revenue	FGD
	Do	DEDO official	Duty Exemption and Drawback Office (DEDO)	Participant in FGD
	Do	DEDO official	Do	Do
	Do	DEDO official	Do	Do
	Do	DEDO official	Do	Do