

An Evaluative Study of Customs Law in the Post GST Era

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Abstract

This paper attempts to study how by virtue of **GST**, IGST (Integrated goods and service tax) is chargeable on goods imported resulting in **customs law** makeover. Under the GST regime, Article 269A constitutionally mandates that supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce. So import of goods or services will be treated as deemed inter-State supplies and would be subject to Integrated tax. While IGST on import of services would be leviable under the IGST Act, the levy of the IGST on import of goods would be levied under the *Customs Act, 1962 read with the Custom Tariff Act, 1975*. The importer of services will have to pay tax on reverse charge basis. However, in respect of import of online information and database access or retrieval services (OIDAR) by unregistered, non-taxable recipients, the supplier located outside India shall be responsible for payment of taxes (IGST). Either the supplier will have to take registration or will have to appoint a person in India for payment of taxes.

Supply of goods or services or both to a Special Economic Zone developer or a unit shall be treated as inter-State supply and shall be subject to levy of integrated tax. The basis of valuation is the "transaction value" of goods. The transaction value is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation or as the case may be or export from India for delivery at the time and place of exportation. The transaction value as declared is normally accepted, except in cases where the buyer and seller of the goods are related persons and the price is not the sole consideration for the sale of goods. Section 14 of the Customs Act provides that the transaction value shall include, in addition to the price, any amount that is paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges. The extent and the manner in which such charges are to be added are specified in the Rules framed under the Customs Act.

Key words: customs, duty, GST, Special Economic Zone, supply, import export

Introduction

Customs duty is a form of indirect tax which is imposed at the time of both import and export of goods and services. The tax which is imposed on the import of goods and services are known as Import duty and for export of goods and services are known as Export duty. The government levied these taxes on the export and import of goods and services for raising money and to protect the domestic establishment from competitors which are in other countries.

In the past few months, the Government of India brought a major change in the tax collection system of a nation. For this, a new concept came into existence is GST (Goods and Services Tax). It is a new tax collection system in which customer is required to pay when they are using any goods and services.

Previously tax system was quite complex as there are multiple taxes such as Central Excise, value-added tax or service tax, state tax, etc. which were imposed on goods and services. But now GST subsumed all taxes and there is now just one tax only.

Three categories of GST are:

- Central Goods and Services Tax
- State Goods and Services tax
- Integrated Goods and Services Tax

Both CGST and SGST apply to the intra-state transactions whereas the IGST applies to the inter-state transactions. Customs duty is being replaced by IGST, which means instead of Custom duty, Integrated Goods and services tax is applicable on every export and import of goods and services.

Customs Act, 1962 and Customs Tariff Act, 1975 are the two limbs of Customs Law in India which must be read with rules and regulations. The rule making power is delegated to the Central Government while the regulation making power delegated to the Central Board of Excise and Customs (CBEC). There are a number of rules and regulation prescribed from time to time to carry the objective of the Act. Some of the rules and regulations are enumerated here as follows:

- Baggage Rules , 2016
- Customs , Central Excise Duties and Service Tax Drawback Rules,1995
- Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995
- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Value of Export Goods) Rules, 2007
- Customs (Advance Rulings) Rules, 2002

- Customs (Appeals) Rules, 1982
- Customs(Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996
- Specified Goods (Prevention of Illegal Export) Rules, 1969
- Customs (Compounding of Offences) Rules, 2005
- Customs (Settlement of Cases) Rules, 2007
- Notified Goods (Prevention of Illegal Import) Rules, 1969
- Bill of Entry (Electronic Declaration) Regulations, 2011
- Customs (Provisional Duty Assessment) Regulations, 2011
- Customs House Agents Licensing Regulations, 2004

IGST Act 2017, defines the import of goods to bring merchandise to India from anywhere outside India. Imports of goods and services regarded as inter-state supplies and integrated tax that will be imposed on them with other applicable customs duties.

Before the implementation of IGST, Custom duty was levied on all importing and exporting of goods and services. Apart from custom duty, other taxes are also levied on the same as an anti-dumping duty, basic customs duty, safeguard custom duty or countervailing duty on every import of goods and services.

After introducing GST, a drastic change that came in the entire tax system. It holds all indirect taxes such as Central Excise Duty, State level tax, Service charges and convert it into a single tax which is known as GST. On the import of goods, only the integrated tax along with the basic customs duty will be chargeable.

While manufacturing activities are on rising, we are also witnessing expansion in foreign trade both imports and exports We have previously covered the impact of Goods and Services Tax on the various set of industries including [Logistics](#), [Food and Restaurants](#), [E-Commerce Marketplace Sellers](#) to mention a few.

Continuing our agenda, we are now extending our discussion on Impact of GST on Import and Importer's Business. As per the Model GST Law, GST will subsume **Countervailing Duty (CVD) and Special Additional Duty (SAD)**, however, Basic Customs Duty will continue to do its round in the import bills. BCD has been kept outside the purview of GST and will be charged as per the current law only.

Objective:

This paper intends to explore and analyze **Customs law** which is the charging section that provides the duties of customs shall be levied at such rates as may be specified, inter alia, in the Tariff Act and **IGST** on goods based on origination

Import of Goods

The import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. All imports shall be deemed as inter-State supplies and accordingly Integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017. The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods. Accordingly, any goods which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST Act, 2017 on a like article on its supply in India. Further, the value of the goods for the purpose of levying Integrated tax shall be assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. The value of the imported article for the purpose of levying cess shall be assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on that goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. The integrated tax paid shall not be added to the value for the purpose of calculating cess.

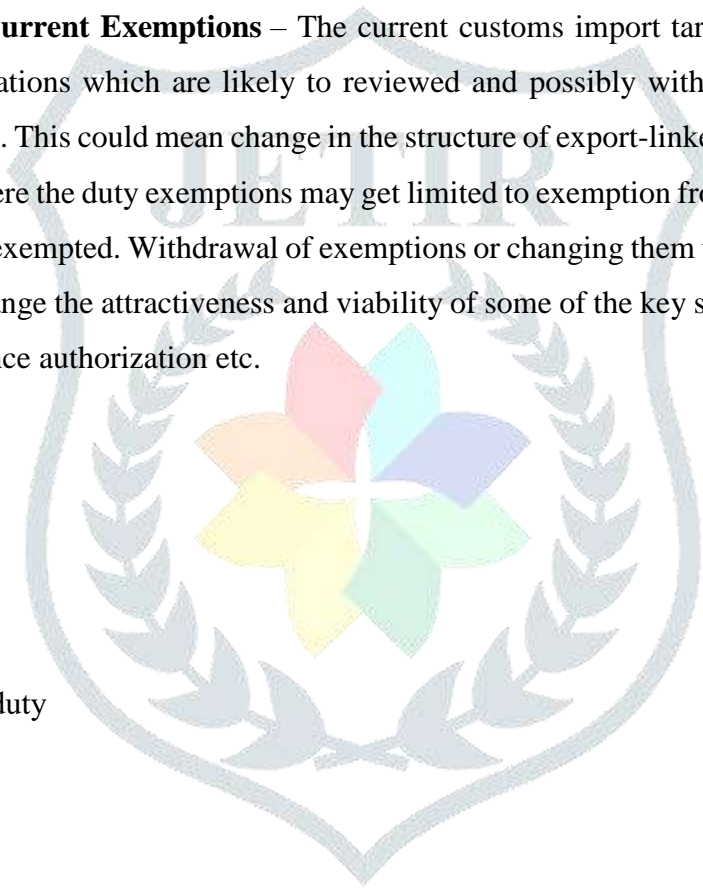
Below are some of the implications for imports and importers by virtue of GST implementation in India:

- **Import as Inter-State Supply** – Import into India will be considered as Inter-State supply under Model GST Law and accordingly will attract Integrated Goods and Services Tax (IGST) along with BCD and other surcharges.
- **Import of Services** – Model GST law accord liability of payment of tax on the service receiver, if such services are provided by a person residing outside India. This is similar to the current provision of reverse charge, wherein service receiver is required to pay tax and file return.

- **Transaction Value based Valuation Principal** – Model GST law has borrowed the concept of transaction value based valuation principal from current customs law for charging GST. This will have implication at the time of tax liability determination as currently CVD is charged on MRP valuation principle. Under the new regime IGST which subsumes CVD will be charged on transaction value. This may also require working capital restructuring. This may also reveal the margin of Service Provider which is currently not the case.
- **Refund of Duty** – Under the new law, tax paid during import will be available as a credit under “Import and Sale” model, whereas no such credit is available presently. Also refund of SAD which is available now, after doing specific compliance, no such restrictions are placed under GST.
- **Withdrawal of Current Exemptions** – The current customs import tariff is loaded with multiple exemption notifications which are likely to reviewed and possibly withdrawn or converted into a refund mechanism. This could mean change in the structure of export-linked duty exemption schemes under the FTP where the duty exemptions may get limited to exemption from payment of BCD, while IGST may not be exempted. Withdrawal of exemptions or changing them to refund mechanism could fundamentally change the attractiveness and viability of some of the key schemes under the FTP like EOU, STP, Advance authorization etc.

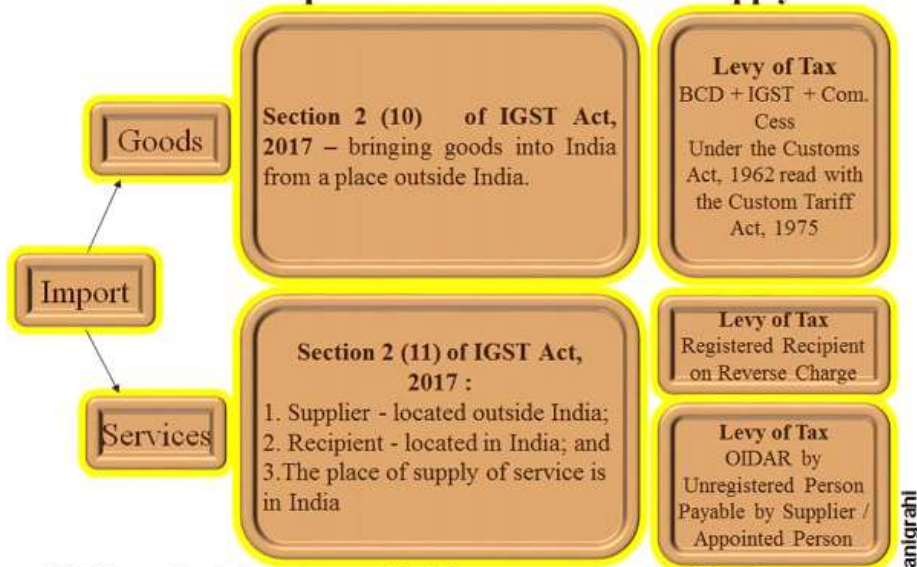
Types of Custom Duties

- Basic Custom duty
- Additional Custom duty
- Special Countervailing duty
- Safe Guard duty
- Anti Dumping Duty
- Protective Duties
- Integrated Goods and Service Tax
- Goods and Services Tax Compensation Cess
- Social Welfare Charge



Import

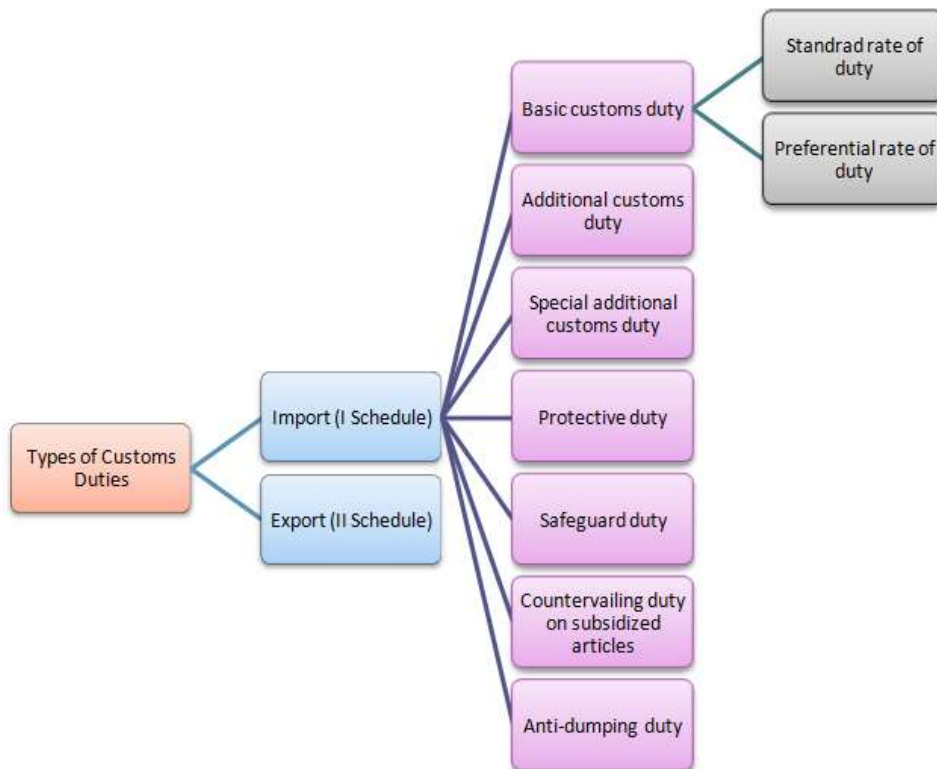
Article 269 A : Import Treated as Inter-State Supply



OIDAR : online information and database access or retrieval services

Leviability of Integrated Tax on High Seas Sales Transactions

‘High Sea Sales’ is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who buys the goods from the original importer during the said sale. IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. Import of goods by 100% EOU’s and SEZs: Import of goods by 100% EOU’s would be governed by Notification no. 52/2003-Customs as amended by Notification no. 78/2017-Customs dated 13.10.2017. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & Compensation Cess) under the said notifications. However, exemption from IGST is only available till 31.03.2018. Goods imported by a unit or a developer in the Special Economic Zone for authorised operations are exempted from the whole of integrated tax under section 3 (7) of the Customs Tariff Act, 1975 vide Notification No. 64/2017-Customs dated 05.07.2017. Input tax credit of integrated tax: The definition of “input tax” in relation to a registered person also includes the integrated tax and compensation cess charged on import of goods.



Thus, input tax credit of the integrated tax and the compensation cess, if any, paid at the time of import shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies. The integrated tax and compensation cess paid at the time of import shall in essence be a pass through to that extent. The input tax credit of compensation cess, however, can only be used for payment of compensation cess. Furthermore, the Basic Customs Duty (BCD) and education cess, shall, not be available as input tax credit. HSN (Harmonised System of Nomenclature) code would be used for the purpose of classification of goods under the GST regime. As per section 11 of the IGST Act, 2017 the place of supply of goods, imported into India shall be the location of the importer. Thus, if an importer say is located in Rajasthan, the state tax component of the integrated tax shall accrue to the State of Rajasthan. Import of services Import of services has specifically been defined under IGST Act, 2017 and refers to supply of any service where the supplier is located outside India, the recipient is located in India and the place of supply of service is in India. As per the provisions contained in Section 7(1) (b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business shall be considered as a supply. Taxable Event in case of Export Export is completed when goods cross territorial waters of India. Even if export duty is collected before ship leaves the port , it does not mean that taxable event has taken place. Example: If goods are exported and the ship sinks within territorial waters, it does not amount to export and export duty is not applicable

Thus, in general, import of services without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply. Furthermore, in view of the provisions contained in Schedule I of the CGST Act, 2017, the import of services by a taxable person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in

the course or furtherance of business shall be treated as supply even if it is made without any consideration. In view of the provisions contained in Section 14 of the IGST Act, 2017, import of free services from Google and Facebook by individuals without any consideration are not considered as supply. Import (Downloading) of a song for consideration for personal use would be a service, even though the same are not in the course or furtherance of business. Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration will be a supply.

As per the provisions contained in Section 21 of the IGST Act, 2017, all import of services made on or after the appointed day i.e 1st July, 2017 will be liable to integrated tax regardless of whether the transactions for such import of services had been initiated before the appointed day. However, if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under the IGST Act. In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act, 2017. For instance, suppose a supply of service for Rs. One crore was initiated prior to the introduction of GST, a payment of Rs. 20 lacs has already been made to the supplier and service tax has also been paid on the same, the integrated tax shall have to be paid on the balance Rs. 80 lacs.

Import of services under GST

The import services as per GST Act 2017 are the supply of service by a service provider who belongs outside India but receiving services from India. The place where services are being given is also within India. As per the provision mentioned under Section 7(1), (b) of Central state goods and services Act, 2017, only those importing services are being considered if those services are given in the course or continuance of business.

In short, those services which are without consideration will not be considered as supply. However, the business test is not obligatory for the imported services to be deemed as a supply. As per the provision mentioned in the Schedule, I of the CGST Act, 2017, services imported by registered taxable person from the relatives or distinct person in continuance of course of a business will be considered as supply regardless of whether it has been made without consideration as mentioned in Section 25 of CGST Act, 2017.

Under GST, import of goods and services will be considered as inter-state supplies and falls under the category of integrated tax. A person who is doing importing of goods and services will be liable to pay tax on reverse charge basis.

However, in case of doing importing of all online information and database access or retrieval services (OIDAR) by unregistered, non-taxable recipients or supplier based out of India will be liable to make payment of taxes. The supplier either will have to take registration or assign a person in India for making payment of taxes. In addition to that, the supply of goods and services to a Special Economic Zone (SEZ) developer or unit will be considered as inter-state supply. Such goods and services will also bear the integrated tax.

GST for exporters

Before GST came into implementation, duties were also imposed on the export of goods and services. As per the new tax system, the export of goods and services takes place from India to any other place outside India is considered as 'Zero Rated Supplies'. It means that no GST will be applicable for the exporters. The registered taxable individuals that are exporting goods or services to places outside the country can claim a refund.

Conclusion

Basic Custom Duty is the standard rate at which the Basic Custom Duty is applicable. There are two sub-types of Basic Custom Duty. One is standard custom duty which is levied at the standard rates prescribed in the schedule. There is another rate which is called the Preferential Rate.

It is leviable only for those countries which are specified in the schedule. In order to make it comparable with the goods produced in India, another duty called Additional Customs Duty is levied. It is also called as Countervailing Duty. It is levied at the same rate on which excise duty is applicable to similar products manufactured in India. Special Countervailing duty is levied to counter balance the effect of the sales Tax, local tax, value added tax or other charges. Due to GST, Additional custom duty and special Countervailing duty is levied on few cases.

References

1. Akrani, Gaurav. "Narasimham Committee Report 1991 1998 – Recommendations". Retrieved 12 September 2019.
2. "First Narasimham Committee – GKToday". Retrieved 12 September 2019.
3. "World bank report P-5678-IN – report of the IBRD and IDA on a proposed structural adjustment loan to India" (PDF). World Bank. Retrieved 30 October 2018.
4. Economic Crisis Forcing Once Self-Reliant India to Seek Aid, The New York Times, 29 June 1991
5. Wishful Thinking on Devaluation. (1991). Economic and Political Weekly, 26(29), 1724–1724. Retrieved 11 September 2019, from <http://www.jstor.org/stable/41498462>
6. Balachandran, Manu. "The real architect of India's economic reforms wasn't Manmohan Singh". Quartz India. Retrieved 6 September 2019.
7. V. Venkatesan (14 January 2005). "Obituary: A scholar and a politician". Frontline. 22 (1). Archived from the original on 30 January 2010. Retrieved 30 March 2010.
8. PV Narasimha Rao Passes Away. Retrieved 7 October 2007. Archived 1 November 2007 at the Wayback Machine

9. Local industrialists against multinationals. Ajay Singh and Arjuna Ranawana. Asiaweek. Retrieved 2 March 2007.
10. <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=IN-CN>
11. <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=IN>
12. <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2002&locations=IN&start=1975>
13. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2002&locations=IN&start=1971>
14. Task Force Report 2006, pp. 17–20.
15. Aghion, Philippe; Burgess, Robin; Redding, Stephen J.; Zilibotti, Fabrizio (2008). "The Unequal Effects of Liberalization: Evidence from Dismantling the License Raj in India". *The American Economic Review*. 98 (4): 1397–1412. doi:10.1257/aer.98.4.1397. ISSN 0002-8282. JSTOR 29730127. S2CID 966634.
16. "That old Gandhi magic". *The Economist*. 27 November 1997. Retrieved 17 January 2011.
17. Kumar 2005, p. 1037
18. "Economic survey of India 2007: Policy Brief" (PDF). OECD. Archived from the original (PDF) on 6 June 2011.
19. "The World Factbook". Cia.gov. Retrieved 10 July 2013.
20. "The India Report" (PDF). Astaire Research. Archived from the original (PDF) on 14 January 2009.
21. "India growth rate slows to 5.3% in first quarter". BBC. 31 May 2012. Retrieved 10 July 2013.
22. J. Bradford DeLong (2001). "India Since Independence: An Analytic Growth Narrative" (PDF). Archived from the original (PDF) on 7 October 2016. Retrieved 25 February 2009.
23. "End of policy paralysis: Govt approves 51% FDI in multi-brand retail". Zeenews.india.com. 14 September 2012. Retrieved 10 July 2013.
24. "Parliament boost to Modi's plans: Coal, mining bills passed by Rajya Sabha". indiatoday.intoday.in. Retrieved 29 March 2015.
25. "Bankruptcy code biggest economic reform after GST: Finance Ministry". Retrieved 11 May 2016.
26. "F. No. CBEC-20/05/01/2018-GST Government of India ..." (PDF). cbic.gov.in/. Ministry of Finance, Government of India. Archived from the original (PDF) on 26 August 2018.
27. "GST Launch Time Midnight Parliament Session". *Hindustan Times*. 30 June 2017. Retrieved 20 July 2017.
28. *Hindustan Times* India attracts \$ 25 billion FDI in 2007-08

29. Economic Times FDI inflows to exceed USD 35 billion target in 2008-09
30. Jayashankar M. Swaminathan (2008). Indian Economic Superpower: Fiction or Future?. World Scientific Publishing. ISBN 981-281-465-5.
31. "Govt opts for FDI in multi-brand retail". 18 September 2012.
32. "Coal sector gets nod for 100% FDI". The Economic Times. 29 August 2019. Retrieved 24 October 2019.
33. Gupta, Poonam (2005). Macroeconomic Determinants of Remittances: Evidence from India. International Monetary Fund. Retrieved 14 March 2009.

