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INDIA'S FOREIGN TRADE POLICY 2023

AN ANALYSIS

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FOREWARD

Dear Reader,

The government in its firm desire to grow India's role in global trade, has been taking various measures in that direction. With a view to realize this goal, a five-year Foreign Trade Policy (FTP) for the period 2015-2020 was announced. This was in line with the erstwhile trend of issuing FTPs that had a tenure of five years before it was reviewed and replaced with a new policy for the next five years. However, during this tenure of 2015-2020, this policy faced certain resistance on account of a ruling of the WTO, which consequently called for a need to realign either the policies or the basis of the benefits that were provided under these policies. Due to the incompatibility with the multilateral trade rules under the WTO coupled with the Covid-19 pandemic, a new policy could not be framed and the government continued FTP 2015-20 by renewing it annually and incorporating tweaks or modifications as were considered necessary. In the aftermath of Covid-19, the current geo-political scenario and in the face of global economic slowdown, the Ministry of Commerce and Industry was tasked with the responsibility of announcing a foreign trade policy that would boost exports and assert India's role in global trade dynamics.

India's new FTP was announced on March 31, 2023. The difference this time around is that the new FTP has been structured as a perennial policy rather one which looks at a finite window of five years. This has also made it comparable to a consistent legislation, giving clarity, certainty and longevity to the schemes imbibed within the policy. Further, it is also the intent of the Government to incorporate continuous feedback from trade and industry to streamline processes and update the FTP, from time to time.

In a pragmatic move, the policy has been structured meticulously to keep it as close to the erstwhile policy in its overall flow and structure, so as not to distort the commercial planning of trade and industry. A few noteworthy factors of this policy in its new avatar are: (i) a revised target USD 2 trillion worth of goods and services exports by 2030 (USD 1 trillion each - with a focus on e-commerce exports that are estimated to hit USD 200-300 billion (ii) amnesty scheme and continuation for advance authorization and EPCG schemes (iii) promote district export hubs (iv) benefits for settlement of trade in Indian rupees (v) introducing merchant trade reforms (vi) streamlining policy for special chemicals organisms, materials, equipment and technologies (SCOMET) dual goods, technology-led enhanced trade facilitation and promoting THE MSME sector.

More importantly, one hopes that this policy is implemented in a cohesive manner with the concurrency of the Ministry of Finance, because history bears witness to the fact of a number of schemes announced in FTPs having not reached their highest potential, due to non-alignment on certain interpretative issues.

We at ELP, with this publication, are delighted to dissect the new FTP to highlight to our readers in a clear and easy to read format, the key impact points under the new FTP. As always, your feedback is welcome.

Regards
Team ELP

KEY HIGHLIGHTS

- Sunset Clause for expiry of Policy removed. Policy to be amended on a real-time basis.
- Special One-time amnesty scheme to be introduced for EO defaults under EPCG and Advance Authorisation Scheme
- Benefit of EPCG scheme not available for goods imported under Project imports.
- Benefit of Post Export EPCG Duty Scrips has been omitted.
- Block-wise extension now possible only on payment of composition fee. Extension not possible by enhancement in EO
- Composition fees under EPCG scheme reduced substantially. Also, timelines prescribed for making application for extension, including on payment of late fee.
- Conversion of DTA to an EOU/EHTP/STP/BTP would be permitted only if either the unit has fulfilled the stipulated EO and obtained EODC or has made payment of applicable duties and taxes and compensation cess on capital goods imported under the EPCG Scheme.
- A new chapter has been introduced to extend policy benefits to e-Commerce export of goods and services. E-Commerce Exports Hubs (ECEH) would be set up as a centre for favorable business infrastructure and facilities for cross-border e-Commerce activities.
- A status holder, being a manufacturer cum actual user and holds 2-Star or above status, who has already applied for grant of AEO certification, is eligible to apply under self-ratification scheme.
- A new model 'Districts as Export Hubs' has been introduced to promote exports of high potential goods and services at the district level.
- SCOMET related provisions are now summarized in Chapter 10 of the Policy as well as HBP. SCOMET regulations and procedural aspects contained in erstwhile FTP and HBP broadly remain the same with certain exceptions.
- Newly introduced voluntary self-disclosure scheme for SCOMET violations is a welcome move and is likely to be beneficial to the exporters. Compliance with the same will ensure that stricter actions under the FTDR Act are mitigated.

CHAPTER 1 – LEGAL FRAMEWORK AND TRADE FACILITATION

In exercise of the powers conferred under Section 5 of the FTDR Act, the Central Government has notified the FTP, 2023. The new policy shall come into force with effect from 01.04.2023 and shall continue to be in operation unless otherwise specified or amended.

The policy has formally incorporated several key provisions that are designed to promote trade facilitation and improve the ease of doing business in the country. Some of the significant provisions incorporated in the policy are:

- Constitution of National Committee on Trade Facilitation (NCTF) tasked with promoting transparency and efficiency in trade-related procedures and policies as an inter-ministerial body to achieve a paperless regulatory environment, transparent and predictable legal regime, reduction in cargo release time, and improved investment climate.
- Establishment of an online facility for the issuance of both preferential and non-preferential Certificate of Origin (e-CoO) by designated agencies. Further, a unique number and a QR code shall be endorsed on every e-CoO for validation and authentication purposes.
- Formation of a common digital platform for filing quality control & trade disputes and amicable resolution of trade disputes in an online environment.
- Creation of an online utility for the issuance, renewal, amendment and related process pertaining to Registration Cum Membership Certificate (RCMC)/Registration Certificate (RC).
- Setting up of a 24X7 helpdesk facility to assist the exporters in filing applications on the DGFT portal and other matters related to the policy.
- In addition to Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata, Department of Commerce & NIRYAT portals have been added as providers of Trade Data and Statistics to help policy makers, researchers, exporters and importers in formulating their trade strategy.
- Certain additional trade facilitation initiatives which have been undertaken by CBIC in the past years have been provided in the policy. These include (a) E-Sanchit – Enabling Paperless clearance environment, (b) Pan-India Implementation of Faceless e-Assessment in imports, (c) TURANT Customs, (d) Implementation of electronic messages from Document Clearance to Cargo Movement, (e) Paperless Customs initiatives –Preparation and issuance of electronic documents like e-LEO SB, e-Gatepass/e-OOC etc., (f) Contactless customs initiatives such as Turant Suvidha Kendras (TKSs), (g) Release of ICE-DASH–Indian Customs EoDB Monitoring Dashboard, (h) Direct Port Delivery (DPD) on imports and Direct Port Entry (DPE) on exports, (i) Compliance Information Portal (CIP), (j) End to End automated and simplified procedure for Import of certain specified Goods at Concessional Rate of Duty or for specified end use.
- At the time of issuance of the previous FTP 2015-20, Indian Customs was in the process of finalizing Mutual Recognition Agreements with countries viz. South Korea, Taiwan and USA for faster and smoother export clearance. In this regard, the agreements were signed during 2015 - 2021. The policy provides that these countries now recognize the AEO Programmes on India on a reciprocal basis. Further, MSMEs are also covered under the AEO Programme.
- Duty free entitlements (BCD exemptions) which were earlier provided to handloom, handicraft, leather & footwear, marine, sports goods and toys sector, are now only restricted to marine, sports goods and toys sector.

- The provisions relating to Status Holder Certification have been repositioned from Chapter 3 (Exports from India Scheme) to Chapter 1 (Legal Framework and Trade Facilitation) in the policy. Most of the provisions have been retained as is, with the following key amendments:
 - For granting status, export performance was necessary earlier in at least two out of four years. As per the policy, export performance would be necessary in all the three preceding financial years and in all the two preceding financial years for Gems & Jewelry Sector.
 - The threshold of export performance for the status holders has been lowered for Two Star to Five Star export houses as follows:

(USD Million)

Status Category	Threshold of Export Performance in FTP 2015-20	Threshold of Export Performance in the new Policy (FTP 2023)
One Star Export House	3	3
Two Star Export House	25	15
Three Star Export House	100	50
Four Star Export House	500	200
Five Star Export House	2000	800

- Exports by Medium Enterprises (as defined in MSMED Act) and Units located in Agri Export Zones shall not be granted double weightage for calculation of export performance for grant of status. Export of fruits and vegetables falling under Chapters 7 and 8 however shall be granted double weightage for calculation of export performance for grant of status.
- The privilege previously provided to Three Star and above Export House to get the benefit of Accredited Clients Programme (ACP) has been removed.
- Annual limits for Status holders to export freely exportable items revised as follows:
 - For exporters excluding gems and jewelry, articles of gold and precious metal) – INR 1 Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower.
 - For export of pharma products by pharmaceutical companies - 2% of the average annual export realization during preceding three licensing years.
 - The annual limit previously provided for export of Gems and Jewelry, Articles of Gold and precious metal has been removed.
- Status Holders are made 'partners' in providing mentoring, skill upgradation and training in international trade to specified number of trainees in a year for a minimum duration of 6 weeks.
- An inter-ministerial committee to be set up to examine MSME trade related grievances which have policy ramifications.

ELP COMMENTS:

FTP 2023 is a codified effort towards addressing trade related issues and promoting a more predictable and streamlined trade environment by ensuring paperless and online filing. Overall, though the various provisions related to trade facilitation which are incorporated in the new Policy were already put in place by the DGFT, incorporation of such provisions formally is a positive step towards improving transparency, promoting efficiency, and reducing the barriers to trade in the country. By working to address various trade-related issues, these new measures can help to support growth and development of the country's foreign trade. Also, it is essential that stakeholders work together to support the implementation of these provisions and ensure their success in achieving the desired outcomes.

CHAPTER 2 – GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

CHANGES IN POLICY

- Export of 'technology' separately recognized under the Policy in addition to export of goods or services.
- For export of services or technology, IEC shall be necessary on the date of rendering services for availing benefits under the Policy. Earlier, the provisions stipulated that IEC shall be necessary for Chapter 3 only when the service provider is taking benefits under the Policy.

ELP COMMENTS:

The Bombay High Court in *M/s Smarte Solutions Pvt. Ltd v. Union of India* [Writ Petition no. 503/2021 dated July 27, 2022] has held that the service provider need not have IEC while rendering services. It is only when the service provider intends to claim benefit under Chapter 3, that an IEC is mandatory. This decision of the Bombay High Court will no longer be applicable with the aforesaid amendment which specifically provides that IEC shall be necessary on the date of rendering services for availing benefits under the Policy.

- Export of SCOMET Items now specifically covered under a separate Chapter 10 of the Policy. Consequentially the said provisions as contained in Para 2.09 of FTP 2015-20 have been removed.
- Application fees once paid for processing of an application shall not be refunded except in specified circumstances and manner laid down in Appendix 2K.
- Powers of DGFT widened to specifically permit clearance of Restricted items or items traded through STEs from Customs against authorization [Para 2.12]
- No authorization shall be required for import of bonafide technical and trade samples of items "restricted" in ITC(HS) except defence /security items, seeds, bees and new drugs
- Import through Passenger Baggage shall be subject to Baggage Rules as notified by Customs from time to time – specific reference of the Baggage Rules introduced under the Policy.
- Any item(s) including Samples or Prototypes of items whose import policy is "restricted" or "prohibited" or is canalised through STEs are not permitted as part of passenger baggage except with a valid authorization/ permission issued by DGFT.
- Reference of (i) Imports through a registered courier service or post being permitted as per Notification(s) issued under the Customs Act, 1962, and (ii) export through a registered courier office or foreign post office being permitted as per Notification issued by DoR, has been removed from the general provisions under Chapter 2. This shall now be permitted only if specifically allowed under other Chapters of the Policy.

ELP COMMENTS:

Each Chapter has specific provisions relating to import and export of goods through courier or post, which also specify the threshold value limit for such exports (where applicable).

- Import of refurbished/re-conditioned (second hand) spares of Capital Goods now freely permitted subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
- New provision relating to “Merchanting Trade” involving shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary introduced and allowed subject to compliance with RBI guidelines, except for goods/items in the CITES and SCOMET list.
- Exports of bonafide trade and technical samples of freely exportable item now specifically allowed under the Policy without any limit
- Para 2.51 of the Policy provides for Private bonded warehouses exclusively for exports may be set up in DTA as per terms and conditions of notifications issued by DoR. Such warehouses can procure goods for manufacturing and other operations in accordance with Section 65 of the Customs Act. In the FTP 2015-20, reference to the purpose of procurement and Section 65 were missing. Further, such supplies to private bonded warehouses will now not be treated as physical exports.
- Regularization of EO default and settlement of Customs duty and interest is permissible through Settlement commission in the DoR. However, in cases where the matter is under the purview of the NCLT, regularization of EO default and settlement of Customs duty and interest will be as per Para 2.15 of the Policy and not through the Settlement Commission.
- Restrictions relating to direct or indirect import or export of items to/from Democratic People’s Republic of Korea moved to a separate Appendix I [Para 2.18]

CHANGES IN HBP

- IEC can be surrendered only if all authorizations/ obligations have been closed for the IEC or are transferred to the IEC of the new entity (amalgamated or merged entity).
- Validity period for EPCG Authorization has been increased from 18 months to 24 months.
- Provisions relating to issuance of scrips against loss of documents such as EP copy of Shipping Bill, original Bank Realization Certificate, Shipping Bill etc. have been removed from the HBP.
- Power to permit transfer of imported goods which are subject to Actual User condition and have become surplus to needs of Actual User moved from RA concerned to the issuing authority.
- Applications for recognition in respect of Pre-Shipment Inspection Agency have to be made online on DGFT Website. Further, Pre-Shipment Inspection Agency may generate and upload Pre-Shipment Inspection Certificate online through the DGFT website. The Pre-Shipment Inspection Certificate shall be generated by the PSIA after the required inspection has been carried out.
- EU’s self-certification scheme under GSP for self-certifying the Statement of Origin of goods exported to EU by exporters having a REX number, and post verification process by the competent authority, has been adopted.

CHAPTER 3 – DEVELOPING DISTRICTS AS EXPORT HUBS

- Chapter 3 of the erstwhile FTP 2015-2020 contained MEIS and SEIS scheme to provide rewards to exporters to offset infrastructural inefficiencies and associated costs for export of goods and services respectively in the form of duty credit scrips. However, the said Chapter has now been entirely revamped with a focused objective to promote exports at the district level as well as accelerate the development of trade ecosystem at a grassroot level. By constituting committees at state and district level (as elaborated in the ensuing paragraphs) and outlining district specific Export Action Plans, the policy aims to identify the products and services with export potential and support local exporters/manufacturers to scale and find potential buyers outside India.

FORMATION OF DEPC AND SEPC

- A DEPC shall be constituted, which would be chaired by Collector/District Magistrate/Development Commissioner of the district and co-chaired by designated DGFT RA with various other stakeholders as its members.
- The primary function of the DEPC will be to prepare and implement district specific Export Action Plans in collaboration with all the relevant stakeholders.
- To synergize the efforts of the DGFT and the State/UT Governments/The State /UT shall constitute a SEPC headed by Chief Secretary of the State to promote exports from the State/UT.

DISTRICT EXPORT ACTION PLANS AND ONLINE MONITORING THEREOF

- A DEAP will be prepared to outline the action plan to promote high potential products and services at the district level for their export growth.
- The DEAP may include identification of the support required by the local industry to boost their manufacturing and exports and such support may be provided from the production stage to the exporting stage.
- Further, it may also *inter alia* include the required regulatory and operational reforms, infrastructure/utilities/logistics interventions required across the entire chain, informative material on various incentives provided by the Central and State Government, aspects of tie up of producers with exporters, import export regulatory formalities, fulfilment of destination countries standards etc.
- Each DEAP may be deliberated by the DEPC and various stakeholders before it is formally adopted and post its adoption, the same will be published in the public domain.
- DGFT would develop an online monitoring portal that may be accessed on the DGFT website to enable:
 - The States/ DGFT RAs to upload all information related to the products/services with export potential of every district.
 - The portal may facilitate monitoring the progress of DEAP and DEPC meetings in the districts.

EXPORT PROMOTION ACTIVITIES

- The nodal RA shall be responsible for all activities related to '*Districts as Export Hubs initiative*' in respect of the districts under their jurisdiction.
- Training and development, dissemination of information through outreach activities including buyer seller meets, trade fairs, workshops etc. may be provided in the districts for export promotion. DGFT RAs through DEPCs may facilitate such initiatives to encourage the industries to showcase their products/services.

IMPLEMENTATION OF DISTRICT EXPORT ACTION PLANS

- The DEAP may be implemented by the DEPC by identifying the activities required to be done to promote export growth from the districts. Convergence of various schemes would be done to build synergy and access the Central Government and State Government scheme funds available for infrastructure development and skill/capacity building activities.

ELP COMMENTS:

MEIS and SEIS schemes were effectively discontinued w.e.f. 01.01.2021 and 01.04.2020 respectively. While MEIS scheme was replaced by RoDTEP scheme to provide incentives to export of goods, the incentives granted to export of services were entirely discontinued.

With the onset of the new Policy, the government has now overhauled its policy to promote exports activity at a district level i.e. by making the districts as export hubs. Therefore, '*Districts as Export Hubs*' is being essentially formulated with the intent to give an impetus to India's foreign trade by decentralizing export promotion. The intention of such a decentralized approach appears to primarily shift the focus on district led export growth, which may be in line with the goal of AtmaNirbhar Bharat, Vocal for local and Make in India.

However, constitution of committees, detailed formulation of action plans, identification of goods and services having export potential, assessing the infrastructure facility/landscape at district levels, may entail considerable time and efforts and the efficacy of the said policy will depend on all such factors. Also, clarity is awaited in respect of the availability or quantum of incentives, if any to be provided as well as the manner of implementation and scale of the policy.

CHAPTER 4 – DUTY EXEMPTION / REMISSION SCHEMES

AMENDMENTS TO ADVANCE AUTHORIZATION SCHEME

- RoSL scheme, which was notified to mitigate incidence of State VAT and other State taxes on export of garments and made ups, has now been removed from the policy. The RoSL Scheme was no longer applicable after it was replaced by RoSCTL scheme with effect from March 7, 2019.
- The authorization under the ‘Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing accessories’ can be issued on self-declaration basis. In such cases, adhoc-norms shall be fixed within 90 days.
- Minimum value addition criteria of 25% have been stipulated in the case of spices.
- All items with a Basic Customs Duty of more than 30% will be covered under the ineligible categories of import on self-declaration basis.
- Criteria of pre-import condition has been removed in case of import of drugs from unregistered sources.
- In case where CENVAT/ input tax credit facility on input has been availed for the exported goods, facility of submitting a self-declaration has been provided to AEO certification holder to the effect that the goods imported against Advance Authorization are utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer), even after completion of EO. The said self-declaration is required at the time of filing application for EODC to RA.
- The requirement to file following return / declaration has been removed in respect of imports effected against ‘No Objection Certificate’ issued by State Trading Enterprise (STE):
 - Quarterly return by the Advance Authorization holder to the concerned STE;
 - Half yearly declaration of imports by STE to the concerned administrative department
- Reasonable fee subject to a maximum of INR 5000 is prescribed for issuing ‘No Objection Certificate’ by STE for import by Advance Authorization/ Duty Free Import Authorization holder.
- Advance Authorization holder under DTA can procure inputs from SEZ units against a ‘Certificate of supply’ till EDI message system between SEZ and Customs is enabled.

Amendments in the Self-Ratification Scheme

- Where an exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorization on self-declaration and self-ratification basis. In this regard, it has been clarified that “additional inputs” does not refer to additionality in terms of quantity/ value of input specified in a norm, however, the said expression refers to another additional input (say, if the inputs specified in the norm are X1 and X2 only, then input Y would represent an additional input).
- A status holder, being a manufacturer cum actual user and holds 2-Star or above status, who has already applied for grant of AEO certification, is eligible to apply under self-ratification scheme, subject to the following conditions:
 - Status holder submits copy of numbered and dated acknowledgement of the application for grant of AEO;
 - Status holder undertakes to the DGFT that –

1. Application for grant of AEO certification has not yet been rejected;
 2. There is no case of infringement of Customs and allied laws against the status holder in the current year and last three financial years;
 3. Status holder has not been issued Show Cause Notice by Customs or GST authorities in the current year and last three financial years;
 4. Status holder has positive net current assets;
 5. There are no insolvency, bankruptcy or liquidation proceedings taken against the status holder in the current year and last three financial years.
- If status holder is unable to obtain the AEO certification within 120 days from date of application, the facility of self-certification regarding norms shall stand withdrawn and the status holder will be bound to approach the concerned Norms Committee of DGFT for fixation of norms.
 - The DGFT may deny authorization to 2 Star and above status holder based on its risk management principles;
 - Status holder shall be audited by the DGFT as laid down in the Handbook of Procedures.
- Concerned Norms Committee (earlier, DGFT or any authorised/ nominated agency) will conduct audit and/ or special audit of the manufacturer under the self-ratification scheme.

Important amendments in HBP

- The option of submission of documents in the physical form for fixation of ad hoc norms/ standardization of norms will not be available. Similarly, the option for submission of physical documents for fixation of fuel entitlement for new sectors and modification of the existing entitlement as per General Note for Fuel in HBP will not be available (documents will now be only uploaded electronically on the online portal).
- Items covered under Chapter 7 and Chapter 15 of ITC (HS) Schedule 2, which are prohibited for export, may be allowed to be exported under the Advance Authorization scheme, unless specifically disallowed.
- It has been stipulated that the wheat imported under Advance Authorization for manufacture and export of 'Wheat Flour (Atta)' shall not be allowed to be transferred for any purpose, including for job work.
- The records for consumption and utilization of duty free imported/ domestically procured inputs against each Advance Authorization shall be preserved by the Advance Authorization holder/ supporting manufacturer for a period of three years from the date of Export Obligation Discharge Certificate.
- In the case of Advance Authorization for free of cost and paid material, a specific endorsement by RA shall be made in the condition sheet (earlier it was to be made on the exchange control copy) of Advance Authorization, disallowing remittances for material being supplied free of cost.
- It has been stipulated that all Norms Committees would endeavor for earliest fixation of norms.
- No representation against the decision of Norms Committee will be entertained after a period of 12 months from the date of uploading of the decision on DGFT website.
- In respect of pharmaceutical products manufactured through Non-Infringing (NI) process, it has been stipulated that the RA can also reply on the specific details verified and certified by the Chartered Engineer (Chemical) along with cross attestation by the Chartered Accountant who shall both independently verify the inputs consumed in the process, with that of the inputs made/ allowed in the Authorization, before allowing redemption or Bond waiver against individual Advance Authorization.

- An Advance Authorization to also specify validity period of import and EO period.
- For Advance Authorization or DFIA in respect of intermediate supplies, it has been stipulated that a suitable documentary evidence indicating the available quantity under Advance Authorisation shall be submitted along with the application for invalidation/ ARO. The above stated evidence is not required if invalidation is applied along with the application of Advance Authorisation.
- The prescribed procedure of RA endorsing on the reverse of Advance Authorisation at the time of issue of Authorization about acceptance of Letter of Undertaking is done away with.
- For procurement from SEZs, where no TRA is issued by customs, RA may issue a "Certificate of supplies from SEZ", containing details as prescribed.
- The conditions applicable for enhancement in the value of Advance Authorization issued prior to August 27, 2009 have been removed.
- Conditions for subsequent revalidations on request from original Advance Authorization holder have been done away with.
- The timeline for filing an application for extension by the Advance Authorization holder is extended to 6 months (earlier 2 months) after the date of expiry of EO period. Also, it has been stipulated that on failure to file an application for extension within six months, RA may initiate action under FT (DR) Act by issuing Show Cause Notice.
- No periodicity applicable for linking all exports online on DGFT system in case of online EODC application. Earlier the same was required to be done on quarterly basis.
- In addition to e-BRC, export realizations from RBI's EDPMS wherever available in DGFT IT system are prescribed for linking with the Shipping Bills within 6 months from the date of expiry of Export Obligation.
- Procedure for endorsement of copy of the Bond Waiver Certificate and EODC by RA to the Customs at the Port of Registration by post is done away with. Now, the same can be transmitted through EDI mode under message exchange between DGFT and CBIC.
- The requirement of checking authenticity of Redemption Certificate by referring to DGFT website has been removed.
- Customs duty on unutilized value of imported/ indigenously procured material along with interest to be paid online through ICEGATE payment gateway for regularisation of *bona fide* default. Further, an amount equivalent to 10% (earlier 3%) of CIF value of unutilized imported material to be paid, if the item of import is restricted.
- If value addition falls below the minimum value addition prescribed, Authorization holder shall be required to deposit an amount equal to 3% (earlier 1%) of shortfall in FOB value in Indian Rupee, online through DGFT website.
- Online ICEGTE payment gateway has been prescribed as mode of payment of Customs Duty and interest in case of default in EO.
- Para 4.52 on consideration of cases against lost EP copy of the Shipping Bills and/ or Bank Realization Certificate has been omitted.

AMENDMENTS TO DUTY FREE AUTHORIZATION SCHEME (DFIA)

- Export of white sugar under DFIA is removed. Such DFIA's were valid for imports till September 30, 2021.
- Automatic extension of 6 months where validity of import was expiring between February 1, 2020 and July 31, 2020 in light of the COVID-19 pandemic, has now been removed.

Important amendments in HBP

- A fee of INR 1000 for each split of authorization has been dispensed with.

AMENDMENTS TO SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

- MMTC Limited, State Trading Corporation of India Limited, PEC limited and STCL limited have been removed from the list of Nominated Agencies.
- The following requirements have been done away with in respect of import of gold by the Four Star and Five Star Houses with Nominated Agency Certificate:
 - actual user condition; and
 - gold to be imported as input only for the purpose of manufacture and export by themselves during the remaining validity period of the Nominated Agency Certificate.
- The procedure for import of precious metals by the Gems & Jewellery units operating under EOU & SEZ schemes will be as per the applicable schemes.
- For carrying out business through designated Diamond Dollar Accounts (“DDA”), the track record of 3 years (earlier 2 years) to be considered in import or export of diamonds/ colored gemstones/ diamond and colored gemstones studded jewelry / plain gold jewelry.

CHAPTER 5 – EPCG SCHEME

A WTO dispute panel had in 2019 ruled that several export promotion schemes in India, including the the EPCG scheme which is inconsistent with the agreement on Subsidies and Countervailing Measures (SCM) and should be discontinued. The judgment was based on a complaint filed by the US. There was an apprehension around the continuation of the EPCG scheme in the new Policy, or for that matter, in the same form. However, the Government decided to continue the EPCG scheme under the new Policy.

CHANGES IN POLICY

- Para 5.01 provides for eligibility of capital goods to be imported under the EPCG scheme. In this context, clause (c) which earlier permitted import of capital goods for Project Imports notified by Central Board of Excise and Customs under the EPCG Scheme has been removed.

ELP COMMENTS:

The benefit of EPCG scheme was permissible earlier for imports under the Project Import Scheme. This had the impact of reducing the component of duty saved, with a consequential impact on the export obligation that was required to be fulfilled. With the amendment, benefits under the EPCG scheme will be available for the said Capital goods (depending upon eligibility), only if goods have not been imported under the Project Import Scheme.

- An EPCG license holder is required to fulfill Average EO as specified in the Policy. While this has always been the understanding on a reading of provisions of the Policy and provisions related to manner of computation, an enabling provision has also now specified which states that the Import/procurement under EPCG scheme shall be subject to AEO as given in Para 5.04(c).
- The period for validity of EPCG Authorization for imports has been increased from 18 months to 24 months.
- A Common Service Provider (CSP) is also eligible for benefit of the EPCG scheme. The following amendments have been made:
 - CSP can also be certified by DGFT – HQ (earlier DGFT) or Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA).
 - Common utility services like providing electricity, water, gas, sanitation, sewerage, telecommunication, transportation etc. shall not considered for benefit of CSP.
 - Capital goods shall be installed within a Town of Export Excellence or PM MITRA.

Para 5.03 of the Policy has been amended to provide that import of capital goods shall be subject to Actual User condition till export obligation is completed **and EODC is granted.**

ELP COMMENTS:

Earlier, the EODC condition was not specifically mentioned in the Policy, though practically, goods were usually disposed of only after EODC and after obtaining a No Objection Certificate from Customs, to avoid any litigation.

- Post removal of Chapter 3 relating to reward schemes and addition of RoSCTL and RoDTEP, consequential changes have been made to provide that export under the said schemes shall be counted towards fulfilment of EO.
- Para 5.04(k) has been added to provide that export proceeds realized in Indian Rupees as per para 2.52(d)(ii) are also counted towards fulfilment of EO. The amendment is consequential to permitting Invoicing, payment and settlement of exports and imports is in INR by the RBI whereby, Indian exporters can receive export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country. Consequential amendment has also been made to Para 5.11 of the HBP has been amended to provide that export proceeds shall be realized in freely convertible currency **or in Indian Rupees**.
- Para 5.04(l) has been added to provide that an EPCG license holder will be entitled to only either of the following benefits:
 - Reduced EO (25% less) for indigenous capital goods (Para 5.04(d))
 - Incentive for early EO fulfilment (75% EO in 3 years or less - Para 5.09)
 - Reduced EO for Green Technology Products (75% EO – Para 5.10)
 - Reduced EO for Northeast Region and UTs of Jammu & Kashmir and Ladakh (25% EO – Para 5.11)
- Para 5.12 which provided for Post Export EPCG Duty scrips has been omitted. Consequentially, Para 5.28 of the HBP specifying the procedure in respect of Post Export EPCG Duty Scrips has also been omitted.

ELP COMMENTS:

The Post Export EPCG Scheme entitled an exporter to obtain an EPCG license and import on payment of applicable duties. Post completion of exports, the exporter can obtain endorsement on the EPCG license towards completion of EO and obtain duty credit scrips which are freely transferable. The Post Export EPCG benefit was useful where an exporter was uncertain about his exports in the future and could have thereby avoided interest or penalty consequences arising out of non-fulfilment of EO. This is no longer permissible.

- The provision related to exemption from maintenance of AEO have been incorporated in the main Policy itself. Earlier, they were a part of the HBP. Cottage & Tiny sector has been excluded from the purview of the benefit.

CHANGES IN HBP

- Para 5.08 has been added to provide for specific procedure with respect to procurement of capital goods under the EPCG Scheme from an SEZ. The same is outlined below:
 - If the request is made along with the application for authorisation for procurement of new capital goods from SEZs, the RA may issue a "Certificate of supplies from SEZ", containing the details for the requested items after making the import item "Invalid for direct imports". The "Certificate of supplies from SEZ" shall contain name, address and GSTIN of SEZ unit, GSTIN & Address of recipient unit of EPCG authorization holder where capital goods would be installed, Name, description including specifications, where applicable, and quantity of items; and Individual value of items to be procured.

- The said "Certificate of supplies from SEZ" shall be marked in quadruplicate with a copy each to the authorisation holder, SEZ supplier unit, designated officer at SEZ and the relevant port customs authorities. The above certificate shall be issued as an online amendment to the authorisation and has to be transmitted.
- In cases where the request for issue of "Certificate of supplies from SEZ" is made in due course, it shall be accompanied with an authorisation utilization status issued by the relevant Customs authorities mentioned on the authorisation for the RA to verify the actual utilization of authorisation at the time of application. The certificate may be issued to the extent of quantity available as per utilization status. In case the request for "Certificate of supplies from SEZ" is made along with the application for authorisation, the same procedure shall apply.
- Para 5.09(f) has been added to provide that the validity period of invalidation letter/ARO shall be co-terminus with the validity period of EPCG authorisation.
- Para 5.10 stipulating conditions for fulfilment of EO has been amended to provide that the goods manufactured by the authorisation holder shall be exported as it is by the ultimate exporter (third party exporter) without further processing. Further changes have been made to the documentation requirements in case exports are made through a third party.
- Para 5.13 provides for Block-wise fulfilment of EO. Clause (c) has been amended to provide that:
 - Request for extension of EO period of first block shall be submitted within 6 months from the date of expiry of first block EO period along with composition fee of 2% on duty saved amount proportionate to unfulfilled portion of EO pertaining to the block.
 - RA may consider the request for extension of block wise EO period, received after 6 months, but within 6 years from date of issue of authorisation, with a late fee of INR 10,000/- per authorisation. Application made beyond 6 years, for extension of block-wise EO period for regularization purpose, shall also be considered by RA concerned, with an additional late fee of INR 5,000/- for each year per authorisation. This late fee is in addition to the composition fee that may be payable on account of shortfall in export obligation.
 - Where EO of the first block is not fulfilled as per above, except in cases where the same is extended by the RA, the Authorisation holder shall, within 6 months (earlier 3 months) from the expiry of the block, pay duties of customs (along with applicable interest as notified by DOR) proportionate to duty saved amount on total unfulfilled EO of the first block.

ELP COMMENTS:

Earlier, no timelines were prescribed as regards application for extension of EO period of the first block. The provisions now specifically provide for an application to be made within 6 months which can further be extended by payment of a late fee of INR 10,000/- up to 6 years and further late fees of INR 5,000/- beyond 6 years. If EO period is not extended as above, applicable duties with interest are required to be paid within 6 months of expiry of the first block.

- An annual report towards fulfilment of EO is now required to be submitted by 30th June of every year as opposed to 30th April. The statement is required to be submitted online. It has further been provided that such report shall contain a statement with details such as Shipping bill/GST invoice number, date of export/supply, description of product exported/supplied/service rendered and FOB/FOR value of export/supply for both specific as well as average EO. Any delay in filing such an annual report shall be regularized on payment of a late fee of INR 5,000/- per year for each authorization.

ELP COMMENTS:

Adhering to the timelines for filing the annual report becomes important considering the late fee of INR 5,000/- for each year for each authorization.

- Para 5.15 earlier provided for automatic enhancement of EO by 10% by payment of an additional fee to cover excess imports effected, in terms of duty saved amount. This has been amended to provide that the fee shall now be paid at the time of application for EODC. Consequently, the provision related to acceptance of additional fees beyond the permitted time limit of one month has been omitted.
- Para 5.16 provides for provisions related to extension in EO period. Earlier, for extension of EO beyond 6 years, two extensions of one year each were permissible on payment of composition fee equal to 5% and 10% respectively of proportionate duty saved amount on unfulfilled EO, or an enhancement in EO imposed to the extent of 10% /20% respectively of the total EO imposed at the choice of the exporter. The provision has been amended to provide that two extensions from date of expiry of one year each may be considered by RA concerned, on payment of composition fee equal to 2% of proportionate duty saved amount on unfulfilled export obligation for each year of extension.

ELP COMMENTS:

The reduction in the composition fee is a significant relief for the exporter community. However, the option relating to enhance of EO in lieu of payment of composition fee could be disadvantageous in situation where the exporter had the potential to fulfil additional EO in the future, and any enhancement would lead to immediate fee payment.

- The timelines for applying for EO extension has also been amended:

Application for extension	Late fee
Within 6 months (earlier 90 days)	Earlier extension upto 180 days was permissible with a late fee of INR 5,000)
After 6 months, but within the extendable validity of EO period	Late fee of INR 10,000
Request for extension for regularization purpose, from 6th to 8th year after expiry of EO period	Late fee of INR 15,000
EO extension, beyond 8 years from date of issue of authorisation	Not permissible by RA

- The amended provisions related to extension shall also be applicable to authorizations issued under FTP (2015-20).

ELP COMMENTS:

As per 5.16(a), licenses issued under the earlier policies are governed by the provisions stated thereunder. However, the amended extension provisions aforesaid have been made applicable to even licenses issued under [FTP 2015-20](#), considering that these are beneficial to the exporter, except to the extent that option of enhancement of EO in lieu of composition fee has been removed. This could become possibly an area of dispute.

- Para 5.21 relating to regularization of bonafide default has been amended to provide that Authorization holder shall have the option to surrender the unutilized authorisation at any point of time. In such cases no penalty or fees shall be levied. Further, it has been provided that the option of payment of duty through valid duty credit scrips, issued under Chapter 3 or Chapter 5 of the policy, for payment of the Customs duty component has been removed.

ELP COMMENTS:

While the option of surrender of unutilized license was practically always available, there was no provision in this regard in the [FTP 2015-20](#). As regards removal of option of using duty credit scrips, the same is a consequential change, however, legally such option should still be available for EPCG authorisations issued under FTP 2015-20.

- The list of Green energy technology products has been amended as under:
 - Solar Energy Generating Systems and parts/Equipments thereof, Wind Energy Generating Systems and parts/equipment thereof.
 - Vapour Absorption Chillers
 - Waste Heat Boiler
 - Waste Heat Recovery Units
 - Unfired Heat Recovery Steam Generators
 - Water Treatment Plants.
 - Battery Electric Vehicles (BEV) [other than Hybrid Electric Vehicles

New Additions to the list

- LED lights of various kind
- (HEVs) and Plug-in Hybrid Electric Vehicle (PHEV)] of all types
- Vertical Farming equipment
- Wastewater Treatment and Recycling
- Rainwater harvesting system and rainwater filters, and
- Green Hydrogen

SPECIAL ONE TIME AMNESTY SCHEME

- The Government has announced issuance of an amnesty scheme for EO defaults under EPCG and Advance Authorization Scheme. While the specific parameters of the scheme have not yet been issued, the details of the scheme as provided during the speech and presentation by the Director General is as under:
 - Regularization of EO by payment of all customs duty in proportionate to the unfulfilled EO.
 - Interest component capped to 100%
 - No interest will be payable on Additional Customs Duty and Special Additional Customs Duty.
 - Amnesty scheme shall be available for a limited period, up to 30.09.2023.
 - Cases under investigation for fraud and diversion are not eligible under this scheme.

ELP COMMENTS:

The announcement of an Amnesty scheme is a welcome move considering that the exporter community has been struggling with the fulfilment of EO because of the decline in exports on account of the Covid Pandemic. While the scheme is beneficial, it is not in line with other previous such schemes which have granted substantial waivers in respect of duty and interest. To this extent, the scheme may not find multiple takers.

CHAPTER 6 – EOU, EHTP, STP, AND BTP

CHANGES IN POLICY

- Para 6.01 provides for export and import of goods by EOU/EHTP/STP/BTP. In this context, Clause (b) which earlier required that export of SCOMET should comply with the conditions indicated in ITC(HS) has been modified. The export of SCOMET, shall now be subject to fulfillment of conditions specified under Chapter 10 of the Policy.
- Clause (b) of Para 6.01 further provides that export of prohibited goods by an EOU may be considered by BOA on a case-to-case basis, if the inputs used for export are imported and are not procured from DTA. Earlier the term 'raw materials' was used instead of 'inputs'. The term 'input' has much wider ambit and is defined to include "raw materials, intermediates, components, consumables, parts and packing material".
- Clause (k) of Para 6.01 provides for import/procurement of goods by an EOU from DTA subject to fulfillment of certain conditions. Further, the Development Commissioner/Designated Officer may specify any other conditions in this regard. Earlier the power to specify such other conditions was given to BOA.
- In terms of Para 6.09 of the Policy, EOU/EHTP/STP/BTP units may also be export through other BTP units. Earlier, the EOU/EHTP/STP / BTP units were allowed to export goods manufactured or software developed by it through another exporter or any other EOU/EHTP/STP/SEZ unit subject to the conditions in the HBP but not to a BTP unit.
- Para 6.11 prescribes other entitlements for EOU/EHTP/STP/BTP. The Para has been amended to extend the exemption from industrial licensing for manufacture of items reserved for micro and small enterprises. Earlier, such an exemption was available only for small scale industries.
- Further, as regards the conditions for claiming exemption from the requirement to furnish bank guarantee at the time of import or going for job work in DTA, the word "and" has been inserted so as to stipulate that all the below conditions would be required to be satisfied cumulatively:
 - That the unit has turnover of INR 5 crore or above; and
 - That the unit must be in existence for at least three years; and
 - That the unit has achieved positive NFE/ export obligations wherever applicable;

and has not been issued a show cause notice or a confirmed demand, during preceding three years, on grounds other than procedural violations, under the penal provision of the Customs Act, CGST/ SGST/UTGST/IGST Acts, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, 1992, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / willful mis- statement / suppression of facts or contravention of any of the provisions thereof
- In addition to the above, for Authorised Economic Operators (AEO), an exemption has been granted from the requirement to furnish bank guarantee at the time of import or going for job work in DTA, subject to the condition that it has not been issued a show cause notice or a confirmed demand, during the preceding three years, on grounds other than procedural violations, under the penal provision of the Foreign Trade (Development & Regulation) Act, 1992 and the Foreign Exchange Management Act.
- Para 6.12 has been amended to simplify the provision as regards, the supply of goods by one EOU/EHTP/STP/ BTP to another unit.

- Earlier, such supply of goods by EOU/EHTP/STP/BTP to another unit were made on payment of applicable GST and compensation cess after endorsing on usual commercial documents such as, tax invoice and delivery challan, the amount of duties of Customs leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption on such goods supplied to another EOU. Upon receipt of goods, the recipient EOU was required to submit such endorsed copies of tax invoice to their jurisdictional Customs authority as well as to the jurisdictional Customs authorities of the supplier EOU. Further, the recipient unit was required to pay such endorsed Customs duty and applicable GST and compensation cess before clearance of such goods or finished goods manufactured or produced from such goods in DTA.
- Now the provision simply provides that such supply of goods from one unit to another shall be treated as import of goods for the second unit for payment of duty, on DTA sale by such second unit.
- Para 6.14 has been amended to state that in case an EOU/EHTP/ STP/BTP unit is unable to utilize goods and services, imported or procured from DTA, and such unutilized goods and services are disposed in DTA with intimation to Customs authorities on payment of applicable duties and/or taxes and compensation cess, then such sale would also be subject to compliance of applicable import conditions, such as requirement for import authorization.
- Para 6.16 has been amended to provide that in case of goods or parts thereof, being imported / indigenously procured and are subsequently found defective or otherwise unfit for use or which have been damaged or become defective, may now be returned against refund of purchase value in addition to replacement or destruction.
- Para 6.17 has been modified to provide that in addition to EOU, the provisions for exit from EHTP/STP/BTP Scheme may now be done with the approval of Designated officer of such EHTP/STP/BTP.

CHANGES IN HBP

- Para 6.01 provides for application for approval or renewal of LoP / Lol and *inter-alia* includes extension of validity for a period upto 5 years at a time. The said provisions now provide that a DC may extend the LoP/Lol for a lesser period than 5 years as may be required to complete exit formalities.
- For the purposes of Para 6.01, clause (h) pertaining to cancellation or extension of LoP/Lol and Para 6.18 which deals with application for grant of entitlements, the relevant authority instead of DC will now be DC / DO.
- Para 6.04 deals with procurement of goods including captive power plants from DTA. Solar power and wind power plants are now covered under the ambit of captive power plant subject to the condition that no tax / duty benefits stipulated under EOU Scheme shall be available for setting up, as well as operations and maintenance of such wind and solar power plants.

ELP COMMENTS:

Similar guidelines are available for SEZ units intending to set-up captive solar or wind power plant in the SEZ or its premise.

- Para 6.10 which provides the formula for calculation of positive NFE has been aligned to include other supplies mentioned at Para 6.08 of the Policy (supplies made by person(s) or employee(s) authorized by a unit of IT related EOU/STP/BHTP to work from a place outside the unit) in the FOB value of exports.
- Para 6.21 of HBP has been amended to provide power to Customs Authorities to grant extension of time beyond 90 days in deserving cases, in case of goods (finished or semi-finished) including studded jewellery, are taken out of EOU for sub-contracting.

- Para 6.28 has increased the value limit for transfer goods for quality testing / R&D purpose to any recognized laboratory/institution without payment of duty from INR 5 lakhs per annum to INR 10 lakh per annum.
- Para 6.34 of HBP earlier granted the power to DC/Designated officer to allot “Importer - Exporter Code” number for EOUs, if same has already not been allotted to entity. The same has now been removed. Further, the DC/Designated officer has now been granted the power to provide exit from EOU/EHTP/STP/BTP Scheme (including grant of ‘in principle’ exit letter as per Appendix 6K).
- Para 6.38 of HBP has been amended to provide that in case DTA unit has taken EPCG authorisation, then conversion of such DTA to an EOU/EHTP/STP/BTP would be permitted only if either the unit has fulfilled the stipulated EO and obtained EODC or has made payment of applicable duties and taxes and compensation cess on capital goods imported under the EPCG Scheme.
- Para 6.39 of HBP providing provisions regarding revival of sick unit has been deleted.

CHAPTER 7 – DEEMED EXPORTS

CHANGES IN POLICY

- Para 7.08(iii)(a) of the Policy has been deleted, implying that deemed export benefits on supply of fuel to specified projects listed for petroleum operations under Notification No. 50/2017-Customs dated June 30, 2017 at Sr. No. 404, shall no longer be available.

CHANGES IN HBP

- Para 7.02(a)(ii) of HBP has been amended to allow the Duty Drawback claimant to opt between All Industry Rate/ Brand Rate versus earlier allowance basis BCD.
- As per Para 7.03 of HBP, application for drawback and TED can no longer be filed from Branch office. Further, the Registered Office, Head Office or Manufacturing Unit can continue to file the same.

ELP COMMENTS:

Make in India has been specifically included in the objective of Chapter 7. In line with the expectations, this chapter remains largely aligned with the previous Policy and no major changes have been made. Further, the scope of categories of eligible supplies under the Policy continues to be wider than GST.

Separately, amendments corresponding to the position of curtailing deemed export benefits to supply of fuel to specified project seemingly may have not been fully carried out in the HBP. Para 7.02(d) of HBP of the Policy, thus, warrants a reconsideration qua its position relating to Policy Para 7.08(iii)(a) to avoid interpretational challenges.

CHAPTER 8 – QUALITY COMPLAINTS AND TRADE DISPUTES

- The Policy continues to include a mechanism to address quality complaints and trade disputes between Indian/Foreign Importers/Exporters in an amicable manner to create confidence in the business environment of the country and encourage the amicable settlement of disputes.
- The existing common digital platform for filing complaints online has been retained in the Policy whereby the Committee on Quality Complaints continues to handle such disputes along with the relevant Regional Authorities of DGFT, Foreign Trade Divisions of Department of Commerce and Indian Missions abroad.
- The Policy also extends the scope of such complaints/disputes to the supply of services and technology, in addition to goods.
- The Policy also clarifies that such a dispute settlement mechanism would not apply to disputes between two or more Indian entities or two or more foreign entities, cementing the “cross-border” nature of disputes intended to be covered.

ELP COMMENTS:

The existing provisions on quality complaints and trade disputes remain largely unchanged.

The explicit inclusion of disputes relating to the supply of services and technology considers the large share of services in India's trade basket and may encourage more importers/exporters to utilize this platform.

CHAPTER 9 – PROMOTING CROSS BORDER TRADE IN DIGITAL ECONOMY

PROMOTING CROSS BORDER TRADE IN DIGITAL ECONOMY

- A new chapter is introduced to provide a framework for cross-border trade in digital economy and promotion of e-Commerce and other emerging channels of exports from India.
- Para 9.01 and 9.02 contains provisions as regards E-Commerce exports of goods and services, which defines it to mean exports of goods and services where selling is through the internet on an e-Commerce platform, the payment for which shall be done through international credit or debit cards, or other authorized electronic payment channels and as specified by RBI from time to time. The definition of e-commerce under Chapter 11 however only provides for export of goods through internet.
- E-Commerce platform is defined under Para 9.03 as an electronic platform, including a web-portal, that enables the commercial process of buying and selling through the internet.
- Para 9.05 deals with export through Courier Service/Post and provides for an enhanced value limit of INR 10 lacs as against the earlier limit of INR 5 lacs per consignment in respect of exports through courier services. It also provides that the exportability of such items shall be regulated in accordance with the Policy and the ITC(HS) based Export Policy as notified.
- Para 9.06 deals with import through Courier Service/Post and provides that the importability of such items shall be regulated in accordance with Policy and the ITC(HS) based Import Policy as notified. It explicitly permits the re-import of export shipments of precious metal jewelry returned by the buyer which were earlier exported by courier mode through e-Commerce, in terms of the notification issued and procedures prescribed under the Customs Act.
- Suitable IT enablement shall be undertaken to ensure seamless delivery of Policy benefits to e-Commerce exporters.

PROMOTION OF E-COMMERCE EXPORTS

- Para 9.07 of the Policy prescribes that Niryat Bandhu Scheme (NBS) shall have a component for the promotion of e-Commerce and other emerging channels of exports by way of organizing outreach activities, workshops, creation of electronic content with specific focus, capacity building and skill development, etc. in partnership with Customs Authorities, Department of Post, Industry Partners and Knowledge Partners.

E-COMMERCE EXPORTS HUBS

- Para 9.08 provides for the establishment of E-Commerce Exports Hubs (ECEH) which would act as a centre for favorable business infrastructure and facilities for cross-border e-Commerce activities.
- Para 9.09 provides for the setup of ECEHs through either private initiative or Public-Private Partnership mode in partnership with the State governments / Central government. Application for creation of an ECEHs area shall be made to the DGFT. The authority for approval for an ECEH vests with the DGFT. DGFT shall constitute a committee for evaluation of ECEH applications.
- DGFT may specify export products or markets which shall not be eligible for ECEH operations. The negative list of items that cannot be dealt within the ECEHs shall be notified separately.
- Para 9.10 provides that the role of ECEHs may include the following activities:

- To achieve agglomeration benefits for e-commerce exporters;
 - To bring capital goods, on exclusive use basis and provide facility of storage (including cold storage facilities), packaging, labelling, certification, testing and other common facilities such as customs clearances, returns processing, etc. for the purposes of export;
 - To provide for dedicated logistics infrastructure for connecting to and leveraging the services of the nearest Logistics hub(s);
 - To build infrastructure for handling of all goods including SCOMET and restricted goods subject to the fulfillment of rules and conditions as may be applicable;
- Para 9.11 stipulates that ECEHs may be provided financial assistance under MAI scheme for e-Commerce export promotion projects for marketing, capacity building and technological services such as imaging, cataloguing, product video creation of e-Commerce goods.
 - DGFT shall notify procedures for supervision and inspection at ECEH. An independent evaluation and assessment mechanism may also be developed. ECEH developer shall provide an annual statement of accounts as per the instructions in this regard.

PROMOTION OF E-COMMERCE EXPORTS THROUGH POSTAL ROUTE

- Para 9.12 deals with the establishment of Dak Ghar Niryat Kendras throughout the country to work in a hub-and-spoke model with Foreign Post Offices (FPOs) to facilitate cross border e-Commerce and enable artisans, weavers, craftsman, MSMEs in the hinterland and land-locked regions to reach international markets.

ELP COMMENTS: A specific focus on e-commerce exports in the Policy is a welcome move. This will help promote e-Commerce export of goods and digitalized cross border trade. Various steps have been taken to educate the exporters and to develop certain skills required to implement the new mechanism efficiently and effectively throughout the country. Setting up ECEHs with dedicated focus could prove to be a game changer. This initiative will help Digital India focus to grow and compete at international platform.

CHAPTER 10 – SCOMET

SEPARATE CHAPTER FOR SCOMET RELATED PROVISIONS

- SCOMET is the nomenclature for dual use items (i.e., having military as well as civilian use) of special chemicals, organisms, materials, equipment and technologies. India has regulated the exports of SCOMET items in consonance with various international conventions and obligations as well as multilateral export control regimes to which India is a party.
- Export of SCOMET items was earlier governed by (i) para 2.09 of the erstwhile FTP 2015-20, (ii) para. 2.73 to 2.82 of the erstwhile HBP and (iii) SCOMET List under ITC(HS). In addition to the above, Chapter IV A of the FTDR Act read with WMD Act also provides for prohibitions and restrictions qua SCOMET items as well as non-SCOMET items having potential risk of being used or diverted towards weapons of mass destruction.
- As per the above provisions, export of SCOMET items is either prohibited or permitted under an authorization to be obtained by the exporter.
- Chapter 10 of the Policy now gives an overarching framework by summarizing SCOMET related provisions contained in erstwhile FTP 2015-20, HBP and SCOMET List under ITC(HS). Further, Chapter 10 of the HBP covers the procedure governing SCOMET authorizations.

SCOMET Categories and Licensing Jurisdiction

- The SCOMET List under ITC(HS) is divided into nine categories of items from Category 0 to Category 8. Procedure for grant of export authorization for SCOMET items in respect of Categories 1 to 5 and 8, is specified under Chapter 10 of the HBP and DGFT shall be the licensing authority who shall issue, amend or revalidate the authorization. IMWG in DGFT comprising of representatives from other Ministries/Departments/Organisations of the Government of India will consider the applications for export of SCOMET items.
- The licensing authority for export of SCOMET items under Category 0 and Note 2 of the Commodity Identification Note of SCOMET List under ITC (HS) shall be Department of Atomic Energy. The licensing authority for export of SCOMET items under Category 6 (subject to certain exclusions) shall be the Department of Defence Production.

Export of imported SCOMET items

- Imported goods covered under the SCOMET list under ITC (HS) are not permitted for export, even from the Customs bonded warehouse, without an export authorization, unless specifically exempted.

Different types of export authorizations for SCOMET items

- Different types of export authorizations for SCOMET items earlier provided under the erstwhile HBP have been included under the Policy as follows:

(i) Direct export to ultimate end user	(ii) Export for repeat orders of same SCOMET items
(iii) Export for Stock and Sale purpose	(iv) Export of spare parts under SCOMET under Stock and Sale

(v) Export for/after repair/replacement of defective SCOMET items	(vi) Temporary export of SCOMET items
(vii) Export of imported items to the same foreign entity or to its OEM	(viii) Global Authorization for Intra-Company Transfers of SCOMET Items including Software/ Technology
(ix) General Authorization for export of Chemicals and related equipment	(x) General Authorization for export after repair in India

- Detailed procedure governing different types of export authorizations as above are retained in Chapter 10 of the HBP. However, there are certain modifications such as changes in application forms, relaxed procedure of granting authorization available in certain situations such as repeat orders are now not available in the case of export of software and technology and certain other products.

Voluntary Self Disclosure of export of SCOMET items

- In case, any exporter fails to comply with the export control provisions of the FTDR Act, WMD Act, Customs Act, or any regulation related to SCOMET authorization, a voluntary self-disclosure option has been provided.
- A voluntary self-disclosure request along with the supporting documents shall be sent to DGFT upon discovery of the violation. Detailed procedure/guidelines in this regard will be notified by the DGFT separately. IMWG may consider each case on merits and may make recommendations on further action to be taken by DGFT.
- Exporter will be liable for stricter action for any violation of SCOMET policy where it comes to the notice of DGFT other than under the voluntary self-disclosure option.

ELP COMMENTS:

- The Policy gives an overarching framework by summarizing SCOMET related provisions contained in erstwhile FTP 2015-20, HBP and SCOMET List under ITC (HS) under a separate chapter, viz. Chapter 10. SCOMET regulations and procedural aspects contained in erstwhile FTP and HBP broadly remain the same with certain exceptions.
- Voluntary self-disclosure scheme has been newly introduced. The introduction of the scheme is a welcome move which will be beneficial to exporters considering that SCOMET compliance is highly technical in nature. It was observed that since the introduction of SCOMET regulations, SCOMET compliance has remained a herculean challenge for the industry. Therefore, it is now advisable and imperative that the exporters analyze the export transactions qua compliance with SCOMET provisions and avail the opportunity to voluntarily disclose so that stricter actions under the FTDR Act can be mitigated.
- Specific provision regarding requirement of export authorization in case of export of SCOMET items from SEZ/EOU was already provided under the erstwhile HBP and SCOMET List under ITC(HS) and the same has been retained in the Policy and HBP. In addition to the same, the Policy now further clarifies the requirement of export authorization in the case of re-export of imported goods even from the Customs bonded warehouse.

GLOSSARY

Abbreviation	Meaning
AEO	Authorized Economic Operator
ARO	Advance Release Order
BCD	Basic Customs Duty
BG	Bank Guarantee
BOA	Board of Approval
BTP	Bio-Technology Parks
CBIC	Central Board of Indirect Taxes and Customs
CENVAT	Central Value Added Tax
CGST	Central Goods and Services Tax
CIF	Cost, Insurance and Freight
CITES	The Convention on International Trade in Endangered Species of Wild Fauna and Flora
Customs Act	The Customs Act, 1962
DEAP	District Export Action Plans
DEPC	District Export Promotion Committees
DGFT	Directorate General of Foreign Trade
DO	Designated Officer
DoR	Department of Revenue
DTA	Domestic Tariff Area
e-BRC	Electronic Bank Realisation Certificate
ECEH	E-Commerce Exports Hubs
EDI	Electronic Data Interchange
EDPMS	Export Data Processing and Monitoring System
EHTP	Electronics Hardware Technology Parks
EO	Export Obligation
EODC	Export Obligation Discharge Certificate
EOU	Export Oriented Unit
EPCG	Export Promotion Capital Goods Scheme
FOB	Free on board
FPO	Foreign Post Offices
FT (DR) Act	Foreign Trade (Development and Regulation Act), 1992
FTDR Act	Foreign Trade (Development & Regulation) Act, 1992
FTP	Foreign Trade Policy
FTP 2015-20	Foreign Trade Policy 2015-20
GSP	Generalised System of Preferences
HBP	Hand Book of Procedures 2023
HBP	Handbook of Procedures
ICEGATE	Indian Customs Electronic Data Interchange Gateway

IEC	Importer Exporter Code
IGST	Integrated Goods and Services Tax
IMWG	Inter-Ministerial Working Group
ITC(HS)	Indian Trade Clarification based on Harmonized System
LoI	Letter of Intent
LoP	Letter of Permission
LUT	Letter of Undertaking
MMTC	Metals and Minerals Trading Corporation Limited
MSME	Micro, Small & Medium Enterprises
MSMED Act	Micro, Small and Medium Enterprises Development Act, 2006
NBS	Niryat Bandhu Scheme
NCLT	National Company Law Tribunal
OEM	Original Equipment Manufacturer
PEC	Project and Equipment Corporation of India limited
Policy	Foreign Trade Policy
Policy	Foreign Trade Policy 2023
PSUs	Public Sector Undertakings
RA	Regional Authority
RBI	Reserve Bank of India
REX	Registered Exporter System
RoSCTL	Rebate on State and Central Taxes and Levies
RoSL	Rebate of State Levies
SCOMET	Special Chemicals, Organisms, Materials, Equipment and Technologies
SCOMET List under ITC(HS)	Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items
SEPC	State Export Promotion Committee
SEZ	Special Economic Zone
SGST	State Goods and Services Tax
STEs	State Trading Enterprises
STP	Software Technology Parks
TED	Terminal Excise Duty
TRA	Telegraphic Release Advice
UTGST	Union Territory Goods and Services Tax
VAT	Value Added Tax
WMD Act	The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005



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