

Handbook on Foreign Trade Policy and Guide to Export & Import



Celebrating the 60th Year of Excellence



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

**HANDBOOK ON FOREIGN TRADE POLICY
AND
GUIDE TO EXPORT & IMPORT**



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FOREWORD

In the era of globalization Foreign Trade has become the lifeline of any economy. Its primary purpose is not merely to earn of foreign exchange, but to stimulate greater economic activity. The Export Import policy of a nation must be of a competitive and facilitative nature that helps in nurturing local enterprises as national champions and enables them to compete globally and become world champions.

The better understanding of the Export Import policy is essential for a Chartered Accountant because being a service provider for the business communities, they can ensure better compliance of law and provide valuable suggestions for improvement and strengthening the policy as well.

It is a matter of great pleasure that the Committee on Trade Laws and WTO is issuing publication '**Handbook on Foreign Trade Policy and Guide to Export & Import**'. I am sure members will be immensely benefited by this publication.

I congratulate the Chairman of the Committee on Trade Laws & WTO CA. Anuj Goyal and all the dedicated members of the Committee in bringing out the publication '**Handbook on Foreign Trade Policy and Guide to Export & Import**', which is quite relevant to the members of the CA fraternity. I would also like to put on record the efforts made by Mr. Lakshmi Venkataraaman in developing basic draft of the publication. I would also thank Mr. A. Bipin Menon, Joint Director General of Foreign Trade, Department of Commerce, Government of India for his contribution in the publication. I also appreciate the efforts taken by Shri Rakesh Sehgal, Additional Secretary, CA. Mohit Bajjal, Sr. Assistant Director & Secretary, Committee on Trade Laws & WTO, CA. Kuldeep Vashist, Executive Officer and other officers and staff in the Committee Secretariat in the finalisation of this publication.

CA. Ved Jain
President

New Delhi
Date: October 16, 2008

PREFACE

Service sector has become the largest and the most rapidly expanding sector in most economies, accounting for well over 60% of world GDP. Services account for a large share of production and employment in most economies and are coming to dominate the economic activities of countries at virtually every stage of development, making services trade liberalization a necessity for the integration of the world economy. In the year 2004 when the Government of India announced its Foreign trade Policy 2004-09, India's exports stood at little over US \$ 63 billion. In 2007-08, India's exports have reached US \$ 155 billion with an average cumulative annual growth rate of 23% year on year, way ahead of the average growth rate of international trade. The Annual Supplement 2008, last in series supplementing the main Foreign Trade Policy 2004-09, though it does not alter the broad contours of the main policy, recognises the dynamic nature of international trade and the consequent need for periodic realignment and an integrated approach to the developmental requirements of India's foreign trade.

The present publication is an attempt to provide guidance to Chartered Accountants in practice and in service and others concerned to have an insight in this field of foreign trade policy and exports and imports. The publication tries to develop a lucid understanding of the relevant provisions by giving the history of foreign trade policy & procedures, legal framework, general provisions regarding imports & exports, promotional measures, export promotion schemes, duty exemption/remission schemes, EOUs, EHTPs, STPs, BTPs & SEZs etc. The publication apart from having a separate chapter on Role of CAs in Foreign Trade Policy also gives in the form of Annexures the Foreign Trade Policy, Handbook of Procedures and a host of Appendices for information of members and others concerned. I sincerely hope readers would find it useful.

I would like to place on record my sincere thanks to all the members of the Committee on Trade Laws & WTO for the Year 2008-09 namely, CA. Ved Kumar Jain, President, CA. Uttam Prakash Agarwal, Vice-President, CA. Shanti Lal Daga, Vice-Chairman, CA. Amarjit Chopra, CA. Sunil Talati, CA. S. Santhanakrishnan, CA. Vinod Jain, CA. Pankaj Inderchand Jain, CA. Mahesh P. Sarada, CA. Vijay Kumar Gupta, Shri Jitesh Khosla, Shri O.P. Vaish, Shri Manoj K. Sarkar, Dr. Pritam Singh, CA. Mukund Hari Singhal, CA. M P Tony, CA. Ram Manohar, CA. Sushil Kumar, CA. Subhash Chandra Verma and CA. G. Parthiban for rendering their support in bringing out this publication. I wish to place on record my thanks and gratitude to Mr. Lakshmi Venkatarraaman for his efforts in drafting the publication. I would also thank Mr. A. Bipin Menon, Joint Director General of Foreign Trade, Department of Commerce, Government of India for his contribution in the publication. I would also like to express my appreciation for the efforts put by Shri Rakesh Sehgal, Additional Secretary, CA. Mohit Baijal, Sr. Assistant Director & Secretary, Committee on Trade Laws & WTO, CA. Kuldeep Vashist, Executive Officer and other officers & staff in the Committee Secretariat in finalisation of this publication.

I am sure our members will find the publication '**Handbook on Foreign Trade Policy and Guide to Export & Import**' immensely informative and useful.

CA. Anuj Goyal

Chairman, Committee on Trade Laws & WTO

New Delhi

October 16, 2008.

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Chapter 1

HISTORY OF FOREIGN TRADE

1.1 Why Exports?

India's economic structure today presents a distinctly different picture from what it was in 1991 when economic reforms started. In 1991 our foreign exchange reserves had depleted substantially. We then had just enough reserves to tide over the import requirements of three weeks. It was in this context that India gradually started dismantling its quantitative restrictions, partially liberalised its exchange rate and reduced the peak rate of customs duties. The average duty on all products stands reduced from over 70% in 1991-92 to 12% in 2008-09.

However, at the same time the whole world was rushing towards globalisation and integration. Had India not joined the race, the economic scenario could have worsened. The only recourse left to India was to increase its exports to tide over the ever-increasing imports. We were aiming to gain a considerable proportion of international business and make our presence felt on the international front. The Government announced various export promotion measures and incentives. Laws were framed to streamline the process of export and import. These laws ensured that our commitment to expansion of India's trade remained firm.

The laws and facilitations announced by the Government were not only related to export and import of goods and services, but were also directed to upgradation of technology and integration of all the departments by using latest technologies available. As we can see, e-commerce plays a very significant role in today's trade.

The Export and Import Policy or the Exim Policy, 1992-97 was a significant landmark in India's economic history. For the first time, conscious effort was made to dismantle various protectionist and regulatory policies and accelerate the country's transition towards a globally oriented economy. This Policy coincided with the 8th Five Year Plan and has yielded impressive growth in exports. While India's total exports during 1991-92 were US\$ 17.86 billion,

they increased to US\$ 155 billion in 2007-08, almost 2½ times of the figure four years ago. India's share in the global trade has gone up and the share of exports as percentage of GDP has also increased substantially. Keeping these factors in view, the Exim Policies announced thereafter have sought to consolidate the gains of the previous Policy. They aim to further carry forward the process of liberalization with the result that we have achieved nearly 1.5% share of world merchandise trade in 2007-08 totalling up to US\$ 525 billion. In the current Foreign Trade Policy, two major objectives have been outlined:

- (i) To double our percentage share of global merchandise trade within the next five years; and
- (ii) To act as an effective instrument of economic growth by giving a thrust to employment.

Out of the above two, we have already achieved the first one and are on track to achieving the second objective i.e. we have already created 136 lakhs new jobs in the past four years. In the era of globalisation and WTO regime many Asian countries have achieved such remarkable export-led growth that South Korea and Taiwan are likely to be considered as developed countries by WTO. WTO is the largest body of world trade consisting of 153 member countries as on date and responsible for 96% of the world trade. It is necessary for any developing country to expand exports continuously because export growth ultimately results in creation of jobs, building up of infrastructure, economies of scale and added foreign exchange earnings. Today's world is economic in nature and increased exports give credibility to the standing of the country in overseas market. Exports, therefore, are of importance and are considered a national priority by the Government of India.

1.2 Why Imports?

Because of tough competition, you can sell only if the quality of your product is better than that of your competitors, the price most competitive and the buyers get delivery on time. In order to achieve all this, one needs to have access to international standard quality materials and capital goods. We also need to have better technology at our command as there is a sea change in the markets worldwide.

We have moved from letters to e-mails, telefaxes to video conferencing and manually operated phones to cellular phones via satellite. Today it is not possible to compete in the world without a better technological product. We cannot match the standards of quality and services that others offer if we happen to be out-dated – and that means out of market as well.

By accepting membership of the World Trade Organisation (WTO), India has become a part of the global village. New trade blocks are emerging and new world order is getting established. Even regional trading arrangements (RTAs) are mushrooming and it is estimated by the WTO that by 2010 there would be close to 400 RTAs. Even India is negotiating bilateral agreements with various countries and regional groupings. A number of joint ventures are being signed for export promotion as well as better quality production for domestic market. The FDI inflows into the country from 1991 to June, 2008 stand at more than \$ 89 billion. We have witnessed a major change in this area between the years 1992-2007 and if one scans through the newspapers, one will find that economic news has taken priority over political news.

The area in which the imports are almost essential are defence requirements, crude oil, fertilizers, capital goods, industrial inputs like raw materials, components, consumables, spares, etc., import of samples, import of technology, import of drawing and designs, import of services etc. There are many vital areas where there is a need to import capital goods - new as well as second hand - in order to upgrade our products and services.

Further, there is an increase in factor mobility. The various factors of production like raw materials, labour, capital goods, spares, consumables, etc. have become mobile. It is easy to relocate any of these factors from one country to another depending on where they are needed. This gives rise to opportunities where various components of a value chain are completed in different countries. For example, a company in USA may buy fabric from China, source design from Italy, labour from Bangladesh and Sri Lanka and arrange to make a garment to be sold in Europe.

Likewise, in the case of contract manufacture, a firm makes a contract with another firm abroad whereby the contracted party manufactures or assembles a product on behalf of the contractor. The contractor retains full control over marketing and distribution

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whilst the manufacturing is done by the local company. The advantages of such outsourcing are :

- there is no need to invest in plant overseas
- the risks of asset expropriation are minimized
- risks associated with currency fluctuations are better managed
- control of marketing is retained by the contractor
- a product manufactured in the overseas market may be easier to sell, especially to government customers
- lower transport costs and
- Some times lower production costs can be obtained.

To sum up, it is not possible to survive without imports when the world is moving so rapidly towards globalization and liberalization. The phenomena of global sourcing at the most competitive costs and the need to increase productivity of the domestic industry through the imports of hi-technology products has resulted in import liberalisation being an imperative tool for economic growth.

Chapter 2

HISTORY OF FOREIGN TRADE POLICY

2.01 Historically, India ran a trade surplus for centuries together through export of spices, handicrafts, textiles etc. No restrictions on imports or exports were officially maintained. But, the situation changed after the British took over power. Before India got Independence, import of goods from Great Britain received official encouragement through Imperial preferences. There was a corresponding disincentive for import of goods from other countries.

2.02 Most of the importers were British. Most of the European powers were at loggerheads. The British traders naturally preferred to import from Britain or whenever convenient, from the British colonies. The bias for imports from Britain was inherent in the given situation.

2.03 Statutorily, it was the Sea Customs Act, 1878 that provided the basis for implementing the official bias in favour of imports from Britain. Goods originating from other countries could be simply charged higher import duties than the goods originating from Britain or territories favoured by Britain.

2.04 There was, however, no separate statutory mechanism or enactment to prohibit or restrict import of goods, except under the Sea Customs Act, 1878. In other words, goods could be freely imported provided the import duties were paid. Under the Sea Customs Act, 1878, only a few goods were subjected to import duties and the duty rates were also not too high. The Imperial government preferred Land Revenue as the principal means to raise revenues. Import duties did not constitute a significant share of the revenues.

2.05 The Government of India Act, 1935 granted the Central government the exclusive legislative powers to regulate import of goods into India and export of goods from India. However, this power was never used till 1947, when the Imports and Exports

(Control) Act, 1947 was enacted. The need for the Act arose out of the consequences of the Second World War.

2.06 During the Inter-War years, quite a few Indian businessmen had taken to manufacturing as well as trading. The initial monopoly of British importers and exporters was being challenged. It was getting increasingly difficult to rely on only the loyalty of the British traders to ensure that most goods were imported only from Britain or British colonies.

2.07 The Second World War diverted significant resources to the War effort. A great deal of shipping space in the Indian Ports had to be surrendered for War purposes. The War caused severe shortages and the available foreign exchange had to be conserved for the War effort. Initially, the Govt. used the Defence of India Rules, 1939 to control imports of 68 commodities. Soon more and more commodities were brought under control through notifications. The end of Second World War meant the lapse of Defence of India Rules, 1939 but through the Emergency Provisions (Continuance) Ordinance, 1946, the Govt. continued the emergency provisions, including restrictions under Import Trade Control.

2.08 In 1947, the need was felt to replace the emergency provisions through a permanent enactment and that is how a specific statute, the Imports & Exports (Control) Act, 1947 came into effect on 25th March 1947.

2.09 The Imports & Exports (Control) Act, 1947 was enacted “to continue for a limited period, the powers to prohibit and/or control imports and exports”. The initial life of the Act was three years but it was extended from time to time till 1971. Thereafter, the Act ceased to be a temporary measure and became a permanent statute.

2.10 In the early fifties, the Indian Govt. took several measures to build an industrial base in the country. It allocated substantial resources for infrastructure building such as steel plants and developing the core sector. The private sector was also encouraged to set up industries in the non-core sector. These infant industries needed protection from influx of imported goods. So, the Govt. issued the Imports (Control) Order 1955 allowing most of the imports only against an import licence.

2.11 In 1976, far-reaching changes were made to the Imports & Exports (Control) Act, 1947. The amended Act gave the Central Government wider powers to prohibit, restrict and control the Imports and Exports Trade. The Act covered practically all articles of trade and manufacture except those permitted to be imported under a licence or customs clearance permit or an Open General Licence. The Exports (Control) Order 1988 held sway before liberalization process was launched in 1991.

2.12 In the meantime, the Sea Customs Act, 1878 was replaced by the Customs Act, 1962. Section 11 of the Customs Act, 1962 controlled the import and export of certain goods. The import and export of Gold, Silver, Currency Notes, Coins and securities were controlled under the provisions of Foreign Exchange Regulations Act, 1973.

2.13 In 1991, the Central Govt. ushered in economic reforms in the country. One of the basic aims of the reforms process was to progressively integrate the Indian economy with the rest of the world. The process called for progressive liberalization of controls and elimination of discretionary licensing for imports and exports. The legal framework had also to be amended so as to reflect the new realities.

2.14 The Government introduced in Parliament, the Foreign Trade (Development & Regulation) Bill, 1992 to provide for the development and regulation of foreign trade by facilitating imports into India and augmenting exports from India. As the Parliament was not in session, the President, promulgated the Foreign Trade (Development & Regulation) Ordinance no. 11 of 1992, on 19th June 1992.

2.15 The Foreign Trade (Development & Regulation) Act, 1992 replaced the Ordinance on 7th August 1992. The provisions of the Act were deemed to have come into force from 19th June 1992, except sections 11 to 14, which came into effect from 7th August 1992.

2.16 The Central Govt. used to notify the Import and Export Policy every year. The Policy book was known as the 'Red Book'. In 1985, the Government started the practice of notifying three year Policy. The 1988-91 Policy, however, was prematurely terminated and replaced by the 1990-93 Policy. This Policy, in

turn, died a premature death and gave way to a five year 1992-97 Policy and in 1997, the next five year Policy for the period 1997-2002 was notified. The tenure of the policy was 5 years in order to provide stability and thereby minimize the uncertainties for exporters and importers. The Five year Policy for the period 2002-07 was modified in 2004 with the change in government and was incorporated into the new five year Foreign Trade Policy for the period 2004-09.

2.17 The Import Policies prior to 1992 contained an Open General Licence or OGL under which specific goods could be imported by specific categories of importers subject to fulfillment of certain conditions. Similar Open General Licence was needed for exports. In 1992, the Policy was amended to do away with Open General Licence and allow imports and exports of all goods without a licence, except those specifically mentioned in a small negative list.

2.18 In 1995, the World Trade Organisation was established and India became one of the founder members of the WTO. As per the commitments under the Agreements of the WTO, India could maintain quantitative restrictions i.e import licensing only under certain exceptions namely on grounds of public health, safety, security etc. India, however, continued to maintain quantitative restrictions on grounds of Balance of Payments (BOP) difficulties. The quantitative restrictions were dismantled in April 2001 when the Balance of Payments difficulties had eased. The restrictions now in place are compatible with the commitments undertaken by India under the Agreements of the WTO.

2.19 To recapitulate, the objectives of the new Foreign Trade Policy are as below :

- (i) To double India's percentage share of global merchandise trade within the next five years; and
- (ii) To act as an effective instrument of economic growth by giving a thrust to employment generation.

The new Foreign Trade Policy came into force from 1st September 2004 and will continue till 31st March 2009.

The annual supplement to the new Foreign Trade Policy announced on 11th April 2008 fine-tunes some of the provisions in response to the changing global trading environment and representations from the exporters and importers.

2.20 Some of these provisions include the liberalization of the EPCG Scheme by reduction in duty from 5% to 3%; additional duty credit under the Focus Product Scheme for export of sports goods and toys; additional credit under the VKGUY for exports of fresh fruits, vegetables and flowers; interest relief for exports affected by the appreciation of the rupee etc.

Chapter 3

LEGAL FRAMEWORK OF FOREIGN TRADE POLICY

India's exports and imports are governed by:

- (1) Foreign Trade (Development & Regulation) Act, 1992
- (2) Foreign Trade (Regulation) Rules 1993
- (3) Foreign Trade (Exemption) Order 1993
- (4) Export and Import Policy - now called Foreign Trade Policy
- (5) Handbook of Procedures – Vol. I
- (6) Handbook of Procedures – Vol. II incorporating the Standard Input Output Norms (SION)
- (7) ITC (HS) Classification of Import and Export Policy

Foreign Trade (Development & Regulation) Act, 1992

3.01 The Salient features of the Act are as follows:

- (1) Objective: Development and regulation of foreign trade by facilitating imports and augmenting exports. (The objective of the repealed Act was to 'prohibit and control imports and exports')
- (2) Section 3 : Enables the Central Govt. to make development and regulation of foreign trade and prohibit, restrict or otherwise regulate import and export of goods
- (3) Section 5 : Enables the Central Govt. to formulate and announce the Export and Import Policy and also amend the Policy
- (4) Section 6: Provides for appointment of Director General of Foreign Trade to advise the Central Govt.

in the formulation of the Export and Import Policy and be responsible for implementation of the same.

- (5) Section 7 : Provides that any import/export can be made only by a person holding an Importer Exporter Code Number
- (6) Sections 8 and 9 : Provide for issue, renewal, refusal or cancellation of Importer Exporter Code Number or licence to export or import
- (7) Sections 10 to 14 : Provide for search and seizure, fiscal penalty/confiscation in the event of contravention, and adjudication and reasonable opportunity to the owner of goods
- (8) Section 15 to 17 : Provide for Appeal, Revision and powers of adjudicating and other authorities
- (9) Section 18 to 20: Protects action taken in good faith, Central Govt.'s powers to make Rules, Repeal and Savings.

Foreign Trade (Regulation) Rules, 1993

3.02 These Rules are made under the Rule making powers vested with Central Govt. under Section 19 of the Foreign Trade (Development and Regulation) Act, 1992. The salient features are:

- (1) Rule 3: Enables the Director General of Foreign Trade to issue Special Licences to persons whose Importer Exporter Code Numbers have been suspended or cancelled.
- (2) Rule 5 : Specifies the scale of fees to be paid towards applications for licences and categories which are exempt from payment of fees
- (3) Rule 6 : Details the general conditions applicable to licences and Import Certificates issued under the Indo-US Memorandum of Understanding
- (4) Rule 7 : Specifies the circumstances under which a licence can be refused

- (5) Rule 8 : Enables the licensing authority to amend a licence
- (6) Rule 9 : Deals with suspension of licences
- (7) Rule 10 : Deals with cancellation of licences
- (8) Rule 13 : Indicates the manner of utilization of goods allotted by STC etc. and of the goods imported against a licence
- (9) Rule 15: Provides for search, seizure etc.
- (10) Rule 16 : Provides for settlement
- (11) Rule 17 & 18 : Provide for confiscation and redemption of goods and conveyances

Foreign Trade (Exemption from application of Rules) Order, 1993

3.03 The main feature of this Order is that it details the categories of imports and exports, which are exempt from the application of Rules. Important exemptions are as under:

A. Imports

- (1) Imports for defence purposes
- (2) Import by Central/State Government or Public Sector Undertaking through the India Supply Mission at Washington and London
- (3) Imports for transit to other countries
- (4) Imports under Baggage Rules
- (5) Personal Imports
- (6) Imports by Diplomatic Personnel
- (7) UN officials
- (8) Temporary Imports for fairs, Exhibitions etc.

B. Exports

- (1) By or under the authority of Central Govt.
- (2) Ship Stores

- (3) Baggage
- (4) Trans-shipment
- (5) Goods imported without a valid licence and ordered to be re-exported
- (6) Goods manufactured by 100% Export Oriented Units or Units in Export Processing Zones.

Foreign Trade Policy (Export and Import Policy)

3.04 The Exim Policy 1992-97 was notified under the repealed Imports & Exports (Control) Act, 1947. The Policy was saved through Section 20 of the Foreign Trade (Development & Regulation) Act, 1992.

3.05 Subsequent amendments to the 1992-97 Policy and the 1997-2002 Policy were notified under powers vested through Section 5 of the Foreign Trade (Development and Regulation) Act, 1992.

3.06 The Exim Policy 2002-07 consisted of 9 Chapters as under:

- Chapter 1 – Introduction
- Chapter 2 – General Provisions Relating to Imports and Exports
- Chapter 3 – Promotional Measures
- Chapter 4 – Duty Exemption/Remission Scheme
- Chapter 5 – Export Promotion Capital Goods (EPCG) Scheme
- Chapter 6 – Export Oriented Units (EOUs), Electronic Software Technology Parks (EHTPs) and Software Technology Parks (STP)
- Chapter 7 – Special Economic Zones (SEZ)
- Chapter 8 – Deemed Exports
- Chapter 9 – Definitions

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The new Foreign Trade Policy adds a Preamble, renames one chapter and 3 new chapters as under:

Chapter 1A – Earlier Chapter 1 renamed as ‘Legal Framework’

Chapter 1B – Special Focus Initiatives

Chapter 1C – Board of Trade

Chapter 7A – Free Trade & Warehousing Scheme

3.07 Four important points to be noted about the Exim Policy are:

- (1) In 1996, the Central Govt. introduced the Indian Trade Classification (Harmonised System) of Classification of Imports and Exports. The Exports and Imports are regulated in accordance with the Exim Policy read with the ITC (HS).
- (2) Second Hand Goods are not allowed to be imported, unless specifically permitted through a specific provision or through a Public Notice or through a specific Import Licence. However, second hand capital goods are allowed with out any age restriction as per present Policy.
- (3) The Director General of Foreign Trade is empowered to issue Public Notices specifying the Procedures for implementation of the Policy. The Handbook of Procedures is a Public Notice issued by the DGFT under powers vested in him through Para 2.4 of the Exim Policy.
- (4) The DGFT is empowered (Para 2.5 of Exim Policy 2004-09) to grant relaxations from Policy/Procedures in specific cases. He is also empowered (Para 2.3 of Exim Policy 2004-09) to give any binding clarifications

Handbook of Procedures – Vol. 1 (HB-1)

- (1) The HB-1 consists of 9 Chapters and these are organized in the same manner as the Exim Policy, except Chapter 9 which deals with Miscellaneous Matters

- (2) The HB –1 includes Appendices that specify various forms to be used, instructions for applying for licenses, information regarding licensing authorities, export promotion councils etc.
- (3) Last year Application was made more user-friendly by introduction of “Aayaat-Niryaat Form” and creating of window for applications to be made under Electronic Data Interchange (EDI) mode. EDI applications are granted a 25% reduction in fees with a further 25% reduction permitted for application fee paid through Electronic Fund Transfer (EFT) facility of banks.
- (4) Filing applications digitally and payment of fees under EFT mode under Duty exemption /remission scheme and EPCG scheme has been made compulsory in the current revision to FTP 2004-09. Application fee for duty free scrips and EPCG authorisations have also been reduced from Rs 5 per thousand to Rs 2 per thousand.

Handbook of Procedures – Vol. 2 (HB-2)

- (1) The HB-2 consists of Standard Input –Output Norms (SION) notified by the DGFT for the purpose of issue of licences under Duty Exemption Scheme. These have been periodically updated. At present, the SION cover the following product categories:
 - (a) Chemical and Allied Products
 - (b) Engineering Products
 - (c) Plastic Products
 - (d) Food Products
 - (e) Marine Products
 - (f) Textile Products
 - (g) Leather Products
 - (h) Sports goods
 - (i) Miscellaneous Products

- (2) It is important to note that the Exim Policy for Duty Exemption Scheme has to be read with the General Notes to the Standard Input Output Norms (SION) and Specific Notes against each product Group.

Indian Trade Classification (HS) of Imports and Exports

- (1) Indian Trade Classification (Harmonised System) or ITC (HS) is a notification issued by the Central Govt. It gives the policy for imports or exports against each entry and also any condition applicable for imports or exports.
- (2) The ITC (HS) has two parts. Schedule 1 for Imports and Schedule 2 for Exports.
- (3) Schedule 1 is based on the International Harmonised System (HS) of Classification of goods as formulated by the World Customs Organisation (WCO). All goods are classified in 21 Sections and 99 Chapters. Goods are further classified under each Chapter into Headings, sub-headings and sub-sub-headings. Each item can be classified as an eight-digit entry.
- (4) The Section Notes and Chapter Notes are to be used to classify the items. Each Chapter has an Import Licensing Note that has to be read carefully.
- (5) Schedule 2 has two Parts. Part 'A' lists items that are restricted for exports, and falling under different Chapters of ITC (HS). Part 'B' lists items restricted for exports but falling within specific entries of ITC (HS).
- (6) Changes in the ITC(HS) system are carried out through a joint meeting of the DGFT, Department of Revenue and the DGCIS.

Chapter 4

SPECIAL FOCUS INITIATIVES

4.01 With a view to doubling our percentage of share in global trade the following special Sectoral initiative was announced.

Apart from the sector specific initiatives with focus on promoting our Agricultural and Village industry, following special schemes to incentivise product-specific and another country-specific schemes were introduced in order to promote exports of products and export to least developed and developing countries. These are;

- Focus Product Scheme (FPS)
- Focus Market Scheme (FMS)
- Market Linked Focus Product
- High Tech Products Export Promotions Scheme (HTPEPS)
- Vishesh Krishi and Gram Udyog Yojna (VKGUY) (Special Agriculture and Village Industry Scheme)

For more details, readers are advised to refer to chapter VIII and FTP provisions and Hand book of Procedures.

Chapter 5

BOARD OF TRADE

5.01 In the annual revision of FTP during 2006 commerce minister constituted a Board of Trade (BOT) to advise Government on relevant issues connected with Foreign Trade.

BOT has the following terms of reference :

- I. To advise Government on Policy measures for preparation and implementation of both short and long term plans for increasing exports in the light of emerging national and international economic scenarios;
- II. To review export performance of various sectors, identify constraints and suggest industry specific measures to optimize export earnings;
- III. To examine existing institutional framework for imports and exports and suggest practical measures for further streamlining to achieve desired objectives;
- IV. To review policy instruments and procedures for imports and exports and suggest steps to rationalize and channelise such schemes for optimum use;
- V. To examine issues which are considered relevant for promotion of India's foreign trade, and to strengthen international competitiveness of Indian goods and services; and
- VI. To commission studies for furtherance of above objectives.

Chapter 6

GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

6.1. Import Policy– ITC (HS)

6.1.01 The liberalization of Indian economy started with the external sector. The Rupee was devalued in two stages in July 1991. This was immediately followed by abolition of direct export subsidies. Import licensing was abolished for many items, including capital goods. A new type of import licence called Exim Scrip was introduced. Exim Scrip was available against export of goods and it was freely transferable in the market. The licence was valid for import of a broad range of goods. So, importers wanted Exim Scrips but only exporters could earn them. The premium on sale of the Exim Scrip was an incentive for the exporters.

6.1.02 In February 1992, the Union Budget introduced a dual exchange rate mechanism. Under the Liberalised Exchange Rate Mechanism (LERMS), Reserve Bank of India sold foreign exchange for essential purposes at official exchange rates. Other importers had to buy foreign exchange at market determined rates, whereas the exporters could sell foreign exchange at a composite rate i.e. 60% at market rates and 40% at official exchange rates. Exim Scrips were abolished after dual exchange rate mechanism was introduced.

6.1.03 The liberalization process called for abolition of controls. The 1992-97 Export and Import Policy (Exim Policy) heralded historic changes. It was the first five-year Policy. It was co-terminus with the Eighth Five Year Plan. The Policy recognized that trade can flourish only in a regime of substantial freedom. It reinforced the direction set by the trade policy reforms initiated in July 1991. The Policy complemented the changes in industrial and fiscal policies.

6.1.04 The fundamental feature of the new Policy was to substantially eliminate licensing, quantitative restrictions and other regulatory and discretionary controls. **Earlier, all goods were restricted for imports unless specifically permitted for imports. The new Policy ordained that all goods could be freely imported unless specifically restricted, through a Negative List of Imports.**

6.1.05 The Negative List was kept as small as possible and the Policy of the Govt. was to prune the list from time to time as the economy gained in strength. The restrictions were on the grounds of public policy. The restrictions were considered necessary for economic reasons as well as on grounds of safety, security, environment, employment and the like.

6.1.06 In the 1992-97 Policy, the List of Restricted Items consisted of 11 categories as under:

- (a) Consumer Goods (11 entries)
- (b) Precious, Semi-precious and other stones (5 entries)
- (c) Safety, Security and related items (6 entries)
- (d) Seeds, Plants and Animals (4 entries)
- (e) Insecticides and Pesticides (2 entries)
- (f) Electronic Items (9 entries)
- (g) Drugs and Pharmaceuticals (9 entries)
- (h) Chemicals and Allied Items (2 entries)
- (i) Items Relating to Small Scale Sector (16 entries)
- (j) Miscellaneous Items (15 entries)
- (k) Special Categories (2 entries)

6.1.07 Also, eight categories of items like Fertilizers, Petroleum Products, Edible Oils etc. imported only by Designated Canalising Agencies like STC, MMTC, IOC etc. but for which the Govt. could grant licences to others to import.

6.1.08 The Policy, however, did not allow import of second hand goods, except machinery for select sectors. The machinery had to be not more than 7 years old and have a residual life of at least

General Provisions Regarding Imports and Exports

five years. Some other sundry restrictions and relaxations of no significant impact were also maintained.

6.1.09 The Policy announced that certain categories of exports and exporters would be eligible to receive Special Import Licences (SIL). These included deemed exports, Export Houses, Star Trading Houses and manufacturers who acquire ISO 9000 (series) or BIS 14000 (series) certification of quality.

6.1.10 The Special Import Licences were valid for import of specified items in the Negative List of Imports i.e. items that could not be imported freely. These licences were freely transferable. So, the exporters who earned these licences could earn a premium by selling the licences to those who wanted to import the items that could not be otherwise imported without a licence.

6.1.11 The 1992-97 Exim Policy aimed at simplicity and transparency. It was supplemented by a Handbook of Procedures that was notified a month later i.e. on 30th April 1992. In line with the liberalized approach, the Handbook attempted to prescribe simple and transparent procedures that were easy to comply with and administer. It sought to rationalize various forms and make them computer compatible.

6.1.12 The Exim Policy abolished Actual User condition for freely importable goods. Such a condition was applicable only for goods imported under a licence or when notified so through a Public Notice. Imports by travellers were governed by Baggage Rules, notified by the Customs.

6.1.13. Although the Policy was intended to remain stable for a period of five years, changes were required in the direction of liberalization and in response to any adverse situation. So, the Govt. used to amend the Policy as and when necessary through Public Notices and the Policy was also reviewed every year. Such reviews sometimes brought about significant changes. Clarifications were also issued from time to time regarding the correct interpretation of the Policy through IPC Circulars and instructions to the operating staff at the licensing offices and the Customs.

6.1.14 The Handbook of Procedures 1992-97 specified that the import licenses would indicate the value in Rupees as well as foreign currency terms and that in case of depreciation of the

Rupee, the value need not be got enhanced so long as the foreign currency value of the licence covered the value of imports in foreign currency. This position continues even today.

6.1.15 The Policy for imports has remained rather steady through the years. The idea has been to move items from the restricted list to the free list through the Special Import Licence route. Over a period, the Policy became quite pronounced in that the restricted items would progressively move to SIL list and items from the SIL list would move to the free list. This Policy remained unchanged till the Special Import Licences were abolished, in April 2001, when all the items, except a few, were moved to the Free List.

6.1.16 In 1996, the Govt. introduced the Indian Trade Classification (Harmonised System) or ITC (HS). Under the system all the goods were classified in eight or ten digits. This system continues till today at the 8 digit level, which has also been adopted by Customs and Excise.

6.1.17 The document ITC (HS) covers 21 Sections 99 Chapters (2-digit level). Each Chapter has Headings, Sub-headings and Sub-sub-headings. The first two digits indicate the Chapter, the next two the tariff Heading, the next two tariff sub-heading and the last two tariff sub-sub-heading. These entries total to 10700. There are about 1575 entries at the ten-digit level.

6.1.18 The ITC (HS) is based on international system of classification of goods. Each Section has Section Notes and each Chapter has Chapter Notes, and Import Licensing Notes. The Interpretative Notes also are applicable, in case of any doubt. The ITC (HS) was jointly developed by the DGCIS (Director General of Commercial Intelligence and Statistics), DGFT and the Department of Revenue.

6.1.19 The Import Policy is assigned at the eight-digit level, the operative part of ITC (HS). Six digit subheadings which are not split further are converted into eight digits by adding two zeros at the end. In the case of textiles (Chapters 50-63), the ITC sub-headings have been used.

6.1.20 Under ITC (HS), against each entry, it is indicated as to whether the item is freely importable, permitted for imports only through State Trading Enterprises (STEs), restricted through an import licence or prohibited. Any conditions for import are also

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indicated against the particular entry. Under this system, the importer has to locate his item in the ITC (HS) and find out whether an item is freely importable or subject to licensing or some conditions. This system continues even today.

6.1.21 The book ITC (HS) Classification of Export and Import Items' contains the detailed item wise Policy in the following format:

Exim Code (1)	Item Description (2)	Policy (3)	Conditions relating to the Policy (4)
050710.10	Ivory	Prohibited	Not permitted for Import
100190.20	Wheat (not seed) for human consumption	State Trading	Import allowed through Food Corporation of India subject to Para 2.11 of Exim Policy
152110.01	Edible wax for waxing Fresh fruits and vegetables	Free	
251511.00	Marble and travertine Crude or roughly trimmed	Restricted	
261210.00	Uranium ores and Concentrates	Free	Import subject to Section 14 (1)(ii) of Atomic Energy Act, 1962 and Rules made thereunder
380810.13	Calcium Cyanide	Free	If registered and not prohibited for import under Insecticides Act,

Exim Code (1)	Item Description (2)	Policy (3)	Conditions relating to the Policy (4)
			1968
85291009.20	Antenna for communication jamming equipment static / mobile /non portable	Restricted	Department of Central government may be permitted to import without a licence. However, import by any other category of importers is prohibited

6.1.22 Items which do not require any licence under the Policy have been denoted as 'Free', subject to licensing notes contained in each Chapter/Heading/Sub-heading or as may have been indicated under Col. 4 mentioning conditions relating to the Policy and is also subject to any other law for the time being.

6.1.23 Each Chapter has a licensing note at the end. For example in Chapter 74 Note no. 2 says 'Import of following types of copper scrap is permitted without a licence to units registered with Ministry of Environment and Forests, Government of India.'

6.1.24 DGFT's Policy circulars also clarify the scope of certain entries in ITC (HS). For example, in Chapter 75 'Inconel Plates (of Nickel Alloys) when containing Nickel as a predominant part, it is classifiable under Exim Code No. 75062000 of ITC (HS) – Policy Circular no. 49/(Re-99)/99-02 dated 20.01.2000'.

6.1.25 When the Policy is given as 'State Trading Enterprise', only the nominated enterprise can import the item unless any other importer has been specifically licensed to import the item.

6.1.26 The ITC (HS) has certain General Notes at the beginning. These Notes cover, imports that do not involve any foreign exchange, import of free gifts and imports of beef, edible oils and processed food products, packaged products, goods subject to quality standards, meat and poultry products, primary agricultural

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products, textile and textile articles etc. Imports of these items are subject to certain additional conditions.

6.1.26 It is very important to understand the General Notes fully. These are the non-tariff measures (NTMs) for imports. Here are some examples of the non-tariff measures.

- a. 155 items (dairy products, steel, electrical goods etc.) listed in App. III to ITC (HS) can be imported only if they comply with the BIS standards and the exporter is registered with Bureau of Indian Standards.
- b. Packaged goods ready for retail sale should bear maximum retail price, expiry date, contents etc.
- c. Import of primary agriculture products will be available only against import permits issued by Ministry of Agriculture
- d. All food products must comply with the provisions of Prevention of Food Adulteration Act, 1954

6.1.27. As a matter of Policy, all imported goods shall also be subject to domestic laws, rules, orders, regulations, technical specifications, environmental and safety norms as applicable to domestically produced goods.

6.1.28 The ITC (HS) – Schedule 1 has three Appendices as under, for imports:

Appendix I	Hazardous Chemicals and Hazardous Waste
Appendix II	Imports of Chemicals included in Schedule 2 to the Chemicals Weapons Convention of the United Nations
Appendix III	List of items that can be imported only from exporters registered with Bureau of Indian Standards and subject to meeting Indian Standards – Ref. General Note no.6

6.1.29 India gives preference to imports from neighbouring countries and certain developing and least developed countries. The preference is by way of reduced import duties. For example, imports of a large number of items from Sri Lanka are exempt from customs duty under the Indo-Sri Lanka Free Trade Agreement

(ISLFTA). Imports from Bhutan and Nepal are also exempt from duty under the FTAs with the two countries.

6.1.30 Whenever an item is restricted for imports, any person who wants to import that item has to apply for an import licence to the DGFT in the form given in Aayaat Niryaat Form of HB-1.

6.1.31 Every application for import licence carries a fee. The schedule of fees is given in Appendix 21B of HB-1. The usual fee is Rs.2 per thousand (i.e.0.2% of the licence value), subject to a minimum of Rs.200 and maximum of Rs.1.50 lacs. In April 2006, it was made mandatory to submit application under Advance Authorisation, DEPB and EPCG through EDI. To facilitate this, 25% of reduction in application fees was allowed. If the application is filed under EDI under digital signature mode and fees paid via EFT, only half the normal fee has to be paid, subject to a minimum of Rs.200 and maximum of Rs.75,000.

6.1.32 The licence fee can be paid by way of a Demand Draft favouring the concerned licensing authority or by way of a treasury challan to be paid at specified branches of Central Bank of India, specified in Appendix – 21B of HB-1. . The format of the challan is given in Appendix 21A of HB-1. There is also a provision to maintain a running deposit account with the licensing authorities. Procedure of electronic fund transfer is as per Appendix 21C of HB-1

6.1.33 Fees once paid can not be refunded once an application is filed. There are specific situations detailed in Appendix 21B, when the fee can be refunded. The procedure for claiming refund is detailed also as per Appendix 21B of HB-1.

6.1.34. Sometimes, the original import authorisations are lost and a duplicate is required to be obtained. In such cases, the licensee should file an FIR with the nearest police station and an affidavit as give in Appendix 24 of HB-1. The licensing authority may issue a duplicate based on FIR, affidavit and a fee of Rs.200./-.

6.1.35 Normally, the authorisations are subject to Actual User condition i.e. the goods imported under the license can not be transferred, loaned or sold. But, some licenses are transferable. Such licenses or the goods imported under such licenses can be transferred. Usually, duplicates for such licenses cannot be

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issued, except for two categories known as DEPB and DFRC. For getting duplicates of such transferable DFRC (now DFIA) or DEPB licenses, the licensee, besides FIR and affidavit has to get a certificate of utilisation from the Customs and an indemnity to the Government along with fee for 10% of the duplicate licence value.

6.1.36 Usually, used (second hand) goods cannot be imported without an authorisation. However, the following used (second hand) goods are allowed to be imported:

- a. Second hand capital goods including refurbished/reconditioned spares but excluding second hand personal computers, laptops, photocopier machines, air conditioners and diesel generating sets.
- b. Capital goods, moulds, fixtures, dies to be re-exported after use in India for a limited period.
- c. Goods used by Indian exporters abroad for execution of a project
- d. Metallic scrap, waste, seconds or defectives
- e. Computers donated to educational institutions
- f. Woollen/Synthetic rags
- g. PET bottle/waste
- h. Ships for breaking

6.1.37 High seas sales refer to transfer of ownership when the goods are on high seas i.e. after the goods have been shipped but have not arrived on Indian shores. This is done to avoid sales tax. The high seas buyer has to file the bill of entry, pay the duties and clear the goods. The Policy allows such transactions.

6.1.38 During the year 2006, word licence was replaced by Authorisation. This was done with a view to eliminating licence raj as per Commerce Minister's Speech. Both words Licence and Authorisation are being freely used to denote the permissions for export and import by the trade. The validity of various types of import licences from the date of issue of licence will be as follows:

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1	Advance Authorisation, DFRC, DFIA (including Advance Authorisation for annual requirement and replenishment licence for Gem & Jewellery as per Chapter 4 of the Policy	24 months
2	EPCG Authorisation (other than spares)	36 months
3	EPCG Authorisation for spares, refractories, catalysts and consumables	Co-terminus with the EO period of the EPCG Authorisation
4	Others including CCP, and DEPB unless other specified	24 months
5	Advance authorisation(licence) / DFIA for deemed exports(including Advance authorisation for annual requirement	24 months or coterminous with the contracted duration of execution of the project whichever is later
6	Export Authorisation	12 months

6.1.39 However, in case of import of spares, the validity of the EPCG Authorisation is coterminous with the validity of the export obligation period.

6.1.40 Irrespective of the date of expiry of a licence in a given month, it is deemed to be valid until the last day of the month, e.g. a licence expiring on 2nd Dec. is automatically valid till 31st Dec. This proviso is applicable even to a revalidated licence/certificate /permission.

6.1.41 The validity of an import licence is decided with reference to the date of shipment / despatch of goods from the supplying country and not from the date of arrival of goods at an Indian Port. The provisions to decide date of shipment/dispatch for the purposes of import through different mode of transportation are given in Chapter 9 of Handbook.

6.1.42 As for DEPB, it must be valid on the date of clearance of goods as it is in the nature of duty credit entitlement. Relaxation as to validity at time of shipment/despatch of goods from supplying country is not applicable in this case.

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6.1.43 But again, where the date of expiry of either original or extended export obligation period falls before the last day of the month, such export obligation period will be deemed to be valid until the last day of the month.

6.1.44 The authorisations, except those which are freely transferable, may be revalidated for a period of six months at a time but not beyond a period of 24 months reckoned from the date of expiry of validity period.

6.1.45 An application for revalidation of authorisation is to be made to licensing authority concerned in the prescribed form along with a fee of Rs. 200/-. However, in cases where revalidation of licence is to be considered by DGFT, the original application alongwith Treasury Receipt (TR) / Demand Draft is to be submitted to the regional licensing authority concerned and the self attested copy of the document is to be submitted to DGFT.

6.2. Export Policy

6.2.01 1992-97 Exim Policy brought in significant changes in the Policy for imports. Changes in the Export Policy were similar, on paper, but in terms of substance the changes were not too drastic. The Policy changes since then have also not been too drastic.

6.2.02 The Govt. Policy, essentially, has been to allow the export of manufactured products quite freely but restrict export of goods of plant origin, animal origin and mineral origin. The restrictions are essential in public interest. For example, free exports of agricultural produce might create scarcity within the country – something no Govt. wants.

6.2.03 There are other restrictions too which, because of international commitments under multilateral and bilateral treaties, are to be respected. For example, export of textiles to developed countries was restricted through quotas under the erstwhile Multi Fibre Agreement (MFA) which no longer exists. Export of ozone depleting substances is restricted under the Montreal Protocol. Exports of hazardous substances are subject to restrictions under the Basel Convention.

6.2.04 Just like the Policy for imports, the 1992-97 Exim Policy, freely permitted exports of all goods, except those covered by

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Negative List of Exports. The Negative List of Exports covered by Chapter XVI of the Policy consisted of six Parts as under :

Para No.	Part No.	Title	Types of Goods – Illustrative	No. of Entries
158	I	Prohibited Goods	Wild life, exotic birds, wild flora, beef, human skeletons, tallow, fat, oils of animal origin etc., wood and wood products etc.,	6
159	II	Exports Permitted subject to licensing	Cattle, Camel, Coconut and copra, chloroquin phosphate, fur of domestic animals, hides and skins, industrial leathers, uranium, plutonium etc., radium ores etc., milk, pulses, rice bran, raw silk, military stores etc., seeds, vegetable oils, sea weeds, silk worms etc.	51
160	III	Exports permitted subject to quantitative ceilings	Natural rubber, handicrafts made of peacock tail feathers, iodised salt, wheat straw, brown sea weeds, sunflower seeds etc.	11
161	IV	Exports permitted through Canalising Agencies	Petroleum Products, Mineral ores and concentrates, mica waste, niger seeds, onions, powder milk etc.	10

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Para No.	Part No.	Title	Types of Goods – Illustrative	No. of Entries
162	V	Items which may be exported without a license but subject to terms and conditions specified in the Handbook of Procedures	Arms and ammunition, Basmati rice, De-oiled groundnut cake, grains and flour of wheat, rice etc., handicrafts made of sandalwood, raw cotton, sesame seeds, textiles subject to quotas, acetic anhydride, cotton waste, silk goods etc.	46

6.2.05 The Policy has generally been to respond to the domestic requirements. For example, sugar was restricted for export when there was a shortage in the country but freely allowed for export when there was a surplus. Similarly, ceilings are removed in times of surplus but imposed in times of shortage.

6.2.06 In 1996, the Export Policy was also covered under Schedule II to ITC (HS) classification of Import and Export Items, but it works for exports in quite a different way than for imports.

6.2.07 Schedule II has two Parts – Table A and Table B. Essentially, Part A lists the items covered by more than one Chapter of ITC (HS) – e.g. samples - and Part 'B' covers specific entries in the ITC (HS). Each entry consists of description of the item, nature of restriction and conditions, if any. Items not mentioned in Table A or Table B can be freely exported i.e. without a license.

6.2.08 Here is how Table A (goods falling in more than one Chapters of ITC (HS) classification) specifies the restrictions (illustrative):

Code	Item Description	Policy	Nature of Restriction
0001	All forms of wild animals including their parts and products	Prohibited	Not permitted to be

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			exported
0002	Exports of certain textile products of cotton, wool and man-made fibres and blends, which are subject to MOUs /Agreement between India or Canada or EEC or Norway or USA as the case may be	Free	Subject to conditions notified by the Government from time to time
0005	Special Chemicals, Organisms, Materials, Equipments and Technologies as specified in Schedule-2 to Appendix – 3 of this book	Prohibited/ Restricted /Free	Exports governed as per the conditions indicated in Appendix - 3
0008	Any other item whose exports are regulated by a Public Notice issued by the DGFT	Restricted	Exports permitted under a license

6.2.09 Here is how Table B (Goods falling within specific Chapters of ITC (HS) Classification) specifies the restrictions:

Code	Item Description	Policy	Nature of Restriction
0102	Camel	Restricted	Exports permitted under a licence
0301	Marine Products	Free	Subject to pre-shipment quality inspection as may be specified by the Government through a notification
27091	Crude Oil	State Trading Enterprises	Exports through MMTC Ltd.

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2302	Rice Bran, raw and boiled	Restricted	Exports permitted under licence
9904	Condoms	Free	No Objection Certificate from Ministry of Health and Family Welfare

6.2.10 Schedule II has five Appendices as under :

Appendix No.	Title	List of items – list
1	Exports permitted against the terms and conditions mentioned	Military Stores – specified items
2	Wild plants/herbs in the prohibited list but permitted on fulfilment of certain conditions	Plants and plant portions, derivatives and their extracts, herbal formulations etc.
3	Special Chemicals, Organisms, Equipment and Technologies (SCOMET) permitted only against a license	Chemicals included in Schedule 1 to the Chemical Weapons Convention, Nuclear materials etc.
4	Export of Chemicals covered by Montreal Protocol - ozone depleting substances	CFC13 (CFC-11), CF3Cl (CFC-13), CCl4, CHCl3 etc.
5	List of SSP and DAP manufacturers who can export fertilizers subject to fulfilment of certain conditions	DAP/SSP

6.2.11 The Exim Policy specified that all exports contracts shall be denominated in foreign currency. Contracts for which payments are received through Asian Clearing Union may be denominated in the currency of the exporter, importer or in any freely convertible currency and all such payments shall be deemed to have been received in convertible currency.

6.2.12 In respect of exports to Rupee Payment Area (RPA) countries/former RPA countries, payments could be made under the terms of the Trade Agreement/Protocol signed with such countries. The Director General of Foreign Trade was also empowered to notify such procedures as he deemed fit in respect of payments to be received through escrow accounts.

6.3. IEC Code Number, EPC Registration and ID Card

6.3.01 Importer Exporter Code (IEC) Number is essential for any exporter or importer. Certain categories like imports for personal use, border imports upto a specific threshold level and those by Central/ State Government departments are exempted from obtaining IEC Number.

6.3.02 IEC number is allotted by the licensing authority who has jurisdiction over the importer or exporter, depending on where his Head Office or Registered Office is located. The importer has to give in his application, details of all the branches/divisions/factories in India or abroad and also the details of all the directors/partners/proprietor. Only one IEC number is allotted to one legal entity.

6.3.03 Since 1999, the IEC number is based on Permanent Account Number allotted by the Income Tax Department. The IEC number is computerised and the Customs verify the number through computer before allowing imports or exports. Invariably, the importer or exporter has to mention his IEC number in his application.

6.3.04 Every year, the IEC holder has to furnish returns of imports/exports made by him in the previous year before 31st October.

6.3.05 The Export Promotion Councils are non-profit organizations registered under the Companies Act, 1956 or the Societies Registration Act, 1870. They are supported by financial assistance from the Central Govt. They are autonomous and regulate their own affairs.

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6.3.06 The main role of the EPCs is:

- (1) To project India's image abroad as a reliable supplier of quality goods and services.
- (2) Encourage and monitor the observance of international standards and specifications by the exporters.
- (3) To keep abreast of the trends and opportunities in the international markets for goods and services and assist their members in taking advantage of such opportunities in order to expand and diversify exports.

6.3.07 The major functions of the EPCs are:

- (1) To provide commercially useful information and assistance to their members in developing and increasing their exports
- (2) To offer professional advice to their members in areas such as technology upgradation, quality and design improvement, standards and specifications, product development, innovation etc.
- (3) To organize visits of delegations of its members abroad to explore overseas market opportunities
- (4) To organize participation in various trade fairs, exhibitions and buyer seller meets in India and abroad.
- (5) To promote interaction between exporters and Govt. officials both at the Centre and at the State levels.
- (6) To build a statistical base and provide data on exports and imports of the country, exports and imports of their members, as well as other relevant international trade data.

There are now 34 EPCs and Commodity Boards including one for services sector.

6.3.08 Any exporter who wants any benefits under the Exim Policy has to be registered with an EPC. He may register with the EPC that deals with his main line of business. If he exports a number of products, he need not separately register with all the EPCs

concerned with his products. Software exporters have to register with Electronics and Software Export Promotion Council. Other service providers have to register with Federation of Indian Exporters Organisation. Pharmaceutical products exporters can export with the newly constituted EPC for Pharmaceutical products. There is a separate EPC for Export Oriented Units and units in Special Economic Zones.

6.3.09 If the export product is not covered by any EPC, the exporter may register with Federation of Indian Exporters' Organisation (FIEO).

6.3.10 Each EPC has its own procedure and fee structure for registration. An exporter may register as a manufacturer or as a merchant.

6.3.11 A Registration Cum Membership Certificate (RCMC/ issued to an exporter shall be valid from the 1st April of the year in which it is issued. It shall be valid for 5 years. Its validity shall be deemed to be from the 1st April of the year in which it is issued and the 31st March of the year in which it expires.

6.3.12 EPCs also carry out several functions like administration of quotas, ceilings, issuing certificates of origin, taking up grievances, looking into the complaints from foreign buyers etc.

6.3.13 Whenever there is a change in the constitution, name or address of an exporter, he should intimate the EPC and get the amendments made in his EPC.

6.3.14 An exporter's registration may be cancelled, if he violates any conditions of registration, but only after he is given due hearing. An exporter can appeal against an order for de-registration.

6.3.15 Any exporter wishing to collect his documents/licences in person from the licensing authorities can obtain an identity card. Each exporter can obtain three ID cards for his employees. Limited companies can get more. Multiple ID Cards can be issued to employees of companies that have many group companies. Application has to be made in Appendix 20A of HB-1 and ID card will be issued in Appendix 20B of HB-1. ID card is valid for 3 years.

Chapter 7

PROMOTIONAL MEASURES

There are various promotional measures under Foreign Trade Policy and other schemes operated under Ministry of Commerce through various Export Promotion Councils. These are summarized as follows:

Under Foreign Trade Policy there are some special facilities like fast track clearance, exemption from BGs etc granted to Status Holders. Status holders are categorized based on their export performance as Export House, Star Export House, Trading House, Star Trading House and Premier Trading House.

Some of the promotional schemes announced under the Foreign Trade Policy and administered either by the office of the DGFT or the Department of Commerce are:

- ◆ Assistance to States for Infrastructure Development of Exports (ASIDE)
- ◆ Market Access Initiative (MAI)
- ◆ Marketing Development Assistance (MDA)
- ◆ Meeting Legal Expenses for Trade related matters
- ◆ Towns of Export Excellence (TEE)
- ◆ Brand Promotion and Quality
- ◆ Modernisation and Upgradation of Test Houses/ Laboratories
- ◆ Resolution of Quality complaints / Disputes
- ◆ Remedial action on trade disputes affecting trade relations
- ◆ Status Holder Scheme
- ◆ Served from India Scheme (SFIS)
- ◆ Vishesh Krishi and Gram Udyog Yojana (VKGUY)

- ◆ Focus Market Scheme (FMS)
- ◆ Focus Product Scheme (FPS)
- ◆ Market Linked Focus Product Scheme
- ◆ High-Tech Products Export Promotion Scheme

7.1. Status Holders

7.1.01 With a view to encouraging exporters by recognizing their achievement and helping them build marketing infrastructure and expertise required for export promotion, the Govt. has created 5 categories of Status Holders depending on their export turnover in current plus three preceding years. These are the Export House(EH), Star Export House (SEH), Trading House (TH), Star Trading House (STH) and Premier Trading House (PTH).

7.1.02 Status holders are granted certain benefits like:

- a. Licence /certificate /permission and custom clearances for both imports and exports on self-declaration basis;
- b. Fixation of Input Output Norms on priority i.e. within 60 days;
- c. Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels;
- d. 100% retention of foreign exchange in EEFC Account;
- e. Enhancement in normal repatriation period from 180 days to 360 days;
- f. Exemption from furnishing of BG in schemes under FTP and
- g. SEHS and above shall be permitted to establish export warehouses as per DOR guidelines
- h. Relaxation in computation of average under the EPCG Scheme for PTHs.

7.1.03 Export performance criterion for Status Holders is:

Category	Export performance FOB/FOR value (Rs.) in the current plus last three years
Export House (EH)	20 crores (in at least 2 out of the 4 year period)
Star Export House (SHE)	100 crores
Trading House (TH)	500 crores
Star Trading House (STH)	2500 crores
Premier Trading House (PTH)	10000 crores

7.1.04 The exports made by subsidiary of a limited company will be counted toward export performance of the limited company for the purpose of recognition. For this purpose, the company is required to have the majority share holding in the subsidiary company. However, export made on re-export basis will not be counted for the purpose of recognition.

7.1.05 The following category of exporters will be given double weightage for recognition of Export House. (The benefit of lower export performance is available for the status of Export House only. For acquiring the status of Trading House etc. one has to achieve the export performance as applicable to others):

- (a) Service Exporters and Agri Exporters
- (b) Units in the small scale industry (SSI) /Tiny Sector /Cottage Sector, Units registered with KVICs or / KVIBs;
- (c) Units exporting handloom, handicrafts, hand knotted carpets and silk carpets;
- (d) Units located in North Eastern States, Sikkim and J&K;
- (e) Exporters exporting to countries in Latin America, CIS and Sub-Saharan Africa as listed in Appendix 9;
- (f) Units having ISO 9000 (series) or WHOGMP or HACCP or SEICMM level 2 and above certification granted by agencies listed in Appendix 6

7.1.06 In the year 2003, i.e. on 31st March 2003, the Government notified Duty Free Credit Entitlement Certificate (DFCEC) scheme for status holders. Under this scheme the status holders are entitled to 10% of their incremental export growth as duty credit provided they achieve a minimum of 25% in export growth, subject to a minimum of Rs. 25 crores.

7.1.07 The Government brought in certain restrictions under the DFCEC scheme which, after being in operation for three years under various names, like Duty Free entitlement scheme, Target plus Scheme I & II were finally withdrawn in 2006.

7.1.08 The Government notified the application forms for claiming benefits under DFCEC scheme (for incremental growth achieved during 2003-04 over the year 2002-03) and under the Target Plus scheme (for incremental growth achieved during 2004-05 over the year 2003-04) on the 7th April 2005. However, within two weeks thereafter the government asked the licensing authorities not to accept the applications till revised forms were notified. After a lot of drama and a great deal of difficulty the exporters finally realised this benefit much later.

7.1.09. The Government later announced Target Plus Scheme for the next two years; the Scheme was withdrawn w.e.f. 2006-07. This scheme was also on the basis of DFCEC only except for some modification and relief.

7.2 Promotional Schemes

7.2.01. As highlighted earlier, in order to promote exports, the Government operates several other promotional schemes. Here is a brief summary of such schemes

- a. Agri Export Zones – Exporters can import capital goods at 3% duty under EPCG scheme with reduced export obligation. They can also import inputs like seeds, fertilizers etc. duty free under Advance License/DFIA schemes
- b. Services exporters can earn duty free entitlement up to 10% [10% for standalone restaurants & 5 % for Hotels of one-star and above (including managed hotels and heritage hotels) approved by the Department of Tourism, and other Service providers in the tourism sector registered

Promotional Measures

with the Department of Tourism] of their income for the preceding or current year.

- c. States that show good export growth can get financial assistance to promote export related infrastructure (ASIDE)
- d. Towns that export more through industrial clusters can get funds to upgrade export related infrastructure
- e. Financial assistance will be available for exporters under Market Access Initiative scheme for the following purposes:-
 - a. Marketing studies on country product focus approach basis.
 - b. Setting up of common showrooms under one roof and warehousing facility in the identified centres on the basis of marketing studies in important cities abroad.
 - c. Participation in sales promotion campaigns through international departmental stores.
 - d. Publicity campaign for launching identified products in selected markets.
 - e. Participation in international trade fairs, seminars, buyers sellers meet.
 - f. Promotion of select brands.
 - g. Transport subsidies for select agriculture products.
 - h. Registration charges for product registration abroad for pharmaceuticals, bio-technology and agro chemicals and testing charges for engineering products.
 - i. Inland freight subsidies for units located in North East, Sikkim and Jammu and Kashmir.
 - j. Setting up of “business centre” in Indian missions abroad for visiting Indian exporters / businessmen.

Besides, there are Special Focus Initiatives for select sectors such as agriculture, handlooms and handicrafts, gem and jewellery, marine products and leather & footwear sectors. Duty free entitlements are also available for R& D purposes in the Pharma and Agro-chemical sectors. Services exporters can also get duty credit certificates under 'Served from India' scheme.

After discontinuing the Target plus scheme in the year 2006, the Government introduced the following schemes with less percentage of incentives compared to earlier schemes:-

7.3. Vishesh Krishi And Gram Udyog Yojana (VKGUY)

(Special Agriculture And Village Industry Scheme)

7.3.01 The objective of VKGUY is to promote exports of

- (i) Agricultural Produce and their value added products;
- (ii) Minor Forest Produce and their value added variants; for exports w.e.f 1.4.2004;
- (iii) Gram Udyog Products, for exports w.e.f 01.04.2006;
- (iv) Forest Based Products, for exports w.e.f 01.04.2007; and
- (v) Other products, as notified from time to time.

The eligible products under this scheme are listed in Appendix 37A of HBP v1 where various products are being regularly added and removed depending on the trend.

7.3.02 Duty Credit scrip benefits are granted with an aim to compensate high transport costs. Exporters, of products notified in Appendix 37A of HBP v1, shall be entitled for Duty Credit scrip equivalent to 5% of FOB value of exports realized in free foreign exchange. That means, deemed exports are not covered under this scheme.

7.3.03 However, Duty Credit scrip benefits shall be granted only at a reduced rate of 3.5% of FOB value of exports realized in free foreign exchange where exporter has availed benefits under Duty exemption schemes under Chapter 4 of FTP for import of

Agriculture Inputs (other than catalysts, consumables and packing materials) relating to export item under this scheme.

7.3.04 For exports made w.e.f. 1.4.2008, Flowers, Fruits and Vegetables, as listed in Table 13 of Appendix 37A, shall be entitled to an additional duty credit scrip equivalent to 2.5% of FOB value of exports, over and above the 5% / 3.5% VKGUY entitlement.

7.3.05 Period of exports for which entitlement is granted is given in Appendix 37A of HBP v1. However, new additional products notified / clarified in Appendix 37A of HBP v1 shall be entitled for Duty Credit Scrip on exports, w.e.f 1.4.2008, unless otherwise specified.

7.3.06 Exports made by EOUs / BTPs that do not avail direct tax benefits/ exemption shall be eligible, provided the same is not covered under Paragraph exclusion clause as per 3.8.2.2.

7.3.07 Under Para 3.8.2.2, following exports shall not be taken into account for Duty Credit scrip entitlement.

- (a) (i) Export of imported goods covered under Para 2.35 of FTP;
(ii) Exports through transshipment, meaning thereby that exports originating in third country but transshipped through India;
- (b) Deemed Exports;
- (c) Exports made by SEZ units; and
- (d) Items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS).

7.3.08 In terms of revision to FTP announced in April 2008, for exports during 2008-09, all Status Holders (having status recognition w.e.f 1.4.2008) exporting products covered under ITC HS Chapters 1 to 24, (mainly vegetable products, Animal products) shall be eligible for duty credit scrip equal to 10% of FOB value of agricultural exports (including benefits entitled under VKGUY) provided that the total benefits for all status holders put together do not exceed Rs 100 Cr (i.e. Rs 50 Cr for each half year) and the conditions specified in Para 3.19.10 of HBP v1 (RE2008) are satisfied. Zonal Office CLA, New Delhi shall be the licensing office for grant of the benefit to all status holders.

The following capital goods / equipments shall be permitted for import:-

- (i) Cold storage units including Controlled Atmosphere (CA) and Modified Atmosphere (MA) Stores, pre-cooling Units and mother storage for onions etc.;
- (ii) Pack Houses (including facilities for handling, grading, sorting and packaging etc.);
- (iii) Reefer Van / Containers; and
- (iv) Other Capital Goods / Equipments as may be notified in Appendix 37F.

Imported capital goods/equipment shall be utilized for storage, packing etc. (as in (ii) above) and transportation of agricultural products (including agro-processed perishable products).

7.3.09 This additional benefit shall be subject to actual user condition and hence non-transferable.

7.4 Focus Market Scheme (FMS)

7.4.01 The main objective of this scheme is to offset high freight cost and other externalities to select international markets with a view to enhancing our export competitiveness in these countries.

7.4.02 Under this scheme exporters of all products to notified countries (as in Appendix 37C of HBP v1) are entitled to Duty Credit scrip equivalent to 2.5% of FOB value of exports for each licensing year commencing from 1st April, 2006.

7.4.03 New additional Markets notified in Appendix 37C of HBP v1 under current year's revision shall be entitled for Duty Credit scrip on exports w.e.f 1.4.2008.

7.4.04 Exports made by EOUs / EHTPs / BTPs which do not avail direct tax benefits / exemption shall be eligible, provided the same is not covered exclusion clause below.

7.4.05 Following exports shall not be taken into account for computation of entitlement:

- (a) (i) Export of imported goods;

- (ii) Exports through transshipment, that is exports originating in third country but transshipped through India;
- b. Export turnover of SEZ units or supplies made to such units or SEZ products exported through DTA units;
- c. Deemed Exports;
- d. Service Exports;
- e. Diamonds and other precious, semi precious stones;
- f. Gold, silver, platinum and other precious metals in any form, including plain and studded Jewellery;
- g. Ores and Concentrates, of all types and in all forms;
- h. Cereals, of all types;
- i. Sugar, of all types and in all forms;
- j. Crude / Petroleum Oil & Crude / Petroleum based Products covered under ITC HS codes 2709 to 2715, of all types and in all forms;
- k. Items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS);
- l. Cement, all types and in all forms; and
- m. Primary Steel Products as listed in Public Notice No. 130 (RE2007)/2004-09 dated 27.03.2008, as amended from time to time.
- n. For exports w.e.f 17.4.2008, Export of Milk and Milk Products, covered under ITC HS Codes 0401 to 0406, 19011001, 19011010, 2105, & 3501.

7.5 Focus Product Scheme (FPS)

7.5.01 This scheme is to incentivise export of such products, as have high employment intensity in rural and semi-urban areas, so as to offset infrastructure inefficiencies and other associated costs involved in marketing of these products.

7.5.02 Under this scheme, exports of notified products (as in Appendix 37D of HBP v1) to all countries (including SEZ units)

shall be entitled to Duty Credit scrip equivalent to 1.25% of FOB value of exports for each licensing year commencing from 1st April, 2006.

7.5.03 For exports made w.e.f. 1.4.2008, Toys and Sports Goods as detailed in Table 2 of Appendix 37D shall be entitled to duty credit scrip equivalent to 6.25% of FOB value of exports. Further, for exports made w.e.f. 1.4.2008, High Value Added Manufactured goods, as notified in Table 9 of Appendix 37D, shall be entitled to duty credit scrip equivalent to 2.5% of FOB value of exports. However, new additional products notified / clarified in Appendix 37D of HBP v1 shall be entitled to Duty Credit scrip on exports w.e.f 1.4.2008.

7.5.04 Exports made by EOUs / EHTPs / BTPs which do not avail direct tax benefits / exemption shall be eligible, provided the same is not covered under exclusion clause as below

7.5.05 Following exports shall not be taken into account for computation of entitlement.

- (a) (i) Export of imported goods covered under Para 2.35 of FTP;
- (ii) Exports through transshipment, that is exports originating in third country but transshipped through India;
- b. Export turnover of SEZ units or SEZ products exported through DTA units; and
- c. Deemed Exports.

7.5.06 For exports w.e.f 1.4.2008, products of high export intensity (which are not covered under present FPS List) but which have a low penetration in countries (which are also not covered under present FMS list) would be incentivised and entitled to a duty credit scrip equivalent to 1.25% of FOB value of exports, provided that the product / sector are destined for specified linked markets for that particular product / sector. Such products / sectors, along with their linked markets, shall be notified in Table 10 of Appendix 37D of HBP v1.

7.6 High-Tech Products Export Promotion Scheme (HTPEPS)

7.6.01 This scheme is meant to give thrust to export of High Technology products that are notified in Appendix 37E of HBP v1 in free foreign exchange to all countries, which will be entitled for Duty Credit Scrip equivalent to:

- a) 1.25 % of FOB value of exports; or
- b) 5% of incremental growth in FOB value (realized as per BRC/ FIRC) of exports of notified products for current year (i.e., 2008-09) over previous year (i.e., 2007-08) (all taken together) and for each subsequent licensing year.

7.6.02 Exporter may opt for either (a) or (b) above. However, applicants with 'nil' exports in previous year (base year) shall not be eligible.

7.6.03 Exports made by EOUs / EHTPs / BTPs which do not avail direct tax benefits / exemption shall be eligible, provided the same is not covered by exclusions as mentioned below.

7.6.04 Following shall not be counted for entitlement

- (i) Export of imported goods (re-imports);
- (ii) Exports originating in third country but transshipped through India;
- (iii) Exports of SEZ units or SEZ products exported through DTA units; and
- (iv) Deemed Exports.

7.6.07 Duty Credit Scrip shall not exceed Rs 15 Cr for an exporter for all shipments done in a licensing year put together, for which benefit is being claimed under this scheme.

7.7 Common provisions for all the export incentive schemes

- Additional Customs duty/excise duty paid in cash or through debit of the scrip can be adjusted as Cenvat Credit or duty draw back as per department of revenue rules.

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- Government reserves the right to list/de-list the products, reduce the incentive and ceiling etc
- Only one benefit should be availed of on export covered under these schemes.
- TRA facility is available like other imports and exports
- Imports under lease financing are allowed and duty can be paid through these Scrips.
- Transfer of export performance from one to another is not permitted.
- Goods except those that are imported under Served- from-India scheme are freely transferable.

The Government is hoping that through various export promotion schemes, the exports will get a boost.

Chapter 8

DUTY EXEMPTION / REMISSION SCHEMES (DES)

8.01 The DES is the most important scheme in the Foreign Trade Policy, because it is most widely utilized and remains largely compatible with the provisions of the Agreement on Subsidies and Countervailing Measures (ASCM) of the WTO. A brief historical background is necessary to understand this scheme fully.

8.02 In the early sixties and seventies, there were import restrictions on most items, and import duties were also heavy. The domestically manufactured goods also had to bear excise duties at each stage i.e. there was the cascading effect of the taxes. Under the circumstances, Indian manufactures were not competitive and schemes had to be evolved to disburden the duties on the export product and the duties on the inputs used in the manufacture of export product. The availability of essential imported raw materials was also very necessary.

8.03 Initially, the Govt. introduced the Replenishment (REP) Licenses that enabled the manufacturer replenish his imported inputs used in the manufacture of the export product. A system of duty drawback co-existed with the REP scheme to enable the exporter get back the duties of excise and customs on the raw materials used in the manufacture of export product. In due course, a system of Imprest Licenses was also put in place to enable the exporter import raw materials against an obligation to use them in the manufacture of the export product and discharge the export obligation.

8.04 In the late seventies, the system of Advance Licence was introduced. Under this system, the manufacturer had to obtain an advance licence to import his raw materials duty free against an obligation to use the duty free imported raw materials in the manufacture of export product and export the manufactured product. Over time, many variants of the Advance Licence have

been introduced, including the facility to source the inputs from domestic suppliers and the facility to fulfill the obligation by effecting 'deemed exports'. All these schemes and variants are broadly known as 'Advance Authorisation Scheme' or 'Duty Exemption Scheme'.

8.05 Primarily, we need to understand that a manufacturer can source his inputs required for export production from domestic manufacturers or through imports. He has the following options to disburden himself of the duty incidence on the inputs.

1. Duty Drawback Scheme
2. Advance Authorisation Scheme or Duty Free Import Authorisation Scheme (DFIA)
3. Obtaining domestically manufactured goods without payment of Central Excise Duty [Rule 19 (1) Notification no. 43 C.E.-NT dt. 21.06.2001)
4. Claiming rebate of Central Excise Duty paid on the domestically procured inputs [Rule 18 Notification 41-CE (NT) dated 21.6.2001 – now superseded by 21/2004-C.E.(N.T.) dated 10.09.2004)
5. Using Modvat/Cenvat Rules

These options can work in different combinations. So, usually, use of one option means a restriction on the use of another option.

Duty Exemption Schemes

A. Advance Authorisation Scheme

8.06 The Advance Authorisation scheme has been in vogue since 1976. The variant that has survived all these years and could be used as an effective tool for exemption/ remission of duty on inputs used in export product is the erstwhile Quantity Based Advance License (QBAL) now known as the Advance Authorisation Scheme (AAS). Once this scheme is understood in entirety, it is easier to understand the other variants of the Duty Exemption Scheme. So, let us grasp QBAL in entirety.

8.07 Essentially QBAL was an authorisation that permitted exporters to import the inputs used in their export production duty free and subsequently effect exports out of those products. The

Duty Exemption/Remission Schemes (DES)

licence enables duty free import of inputs before exports are effected. That is why it was called Advance Licence.

8.08 The items allowed for import must be required for use in the manufacture of the export product. Naturally, only that much quantity of each input is allowed against the licence as required for manufacture of a certain quantity of the export product. That explains the name QBAL.

8.09 Who determines, how much of what input is required for manufacture of a unit of the export product? Initially, the Advance Licensing Committee (ALC), now known as the Norms Committee (NC), at the office of DGFT fixes the ratio of inputs to output called input-output ratio or the norms. This committee consists of technical experts from various ministries besides officials from Department of Revenue and the DGFT. It is based on the approval of ALC that QBAL could be issued. In due course, based on the feedback from the industry and the stability of these adhoc input-output norms, they were notified as Standard Input Output Norms (SION). The RLAs could issue QBAL as per the SION.

8.10 The functions of ALC continued to be to fix norms in those cases where authorisation applications were filed for items where no norms were notified. For a brief period, these functions were delegated to Regional Advance Licensing Committees (RALC) and Zonal Advance Licensing Committees (ZALC). Later, RALC/ZALC was abolished and RLAs were allowed to grant authorisations even for items for which no norms had been notified. All such cases, where norms had to be fixed, were referred to Advance Licensing Committee (ALC) at the DGFT's office to appraise the application and notify the Standard Norms. If the ALC did not fix the norms in such cases within four months, the norms as applied became final. Wherever possible, the ALC notified SION even when the exporter had only applied for advance licence on ad-hoc basis (i.e. where SION did not exist). However, there were situations when the ALC notified ad-hoc norms applicable only for a particular application. In such cases, the exporter could ask for further licences under the category 'Ad-hoc Norms Fixed' for a further period of six months.

8.11 In 1992, the notified norms were made subject to a caveat that in respect of certain sensitive items, the value or quantity or both restrictions could be specified. Initially, the value available

against a sensitive item could not be used for import of a non-sensitive item but later, in 1996 the restriction was withdrawn. The concept of sensitive items was later abolished and any specific restrictions were incorporated in the standard norms. Since, 1997, the Standard Norms were notified through Handbook of Procedures- Vol. 2. In this book, there were general notes regarding issue of all types of duty free licences and specific notes for each type of product group.

8.12 There were certain problems with QBAL. Firstly, the quantity of items that could be imported was restricted depending on how much quantity of export product is to be exported. Sometimes the quantity allowed could not be imported because the minimum order quantity for imports was higher. Sometimes, the imports could not be made because of technical feasibility problems or logistical difficulties. Sometimes, the fluctuating prices made the imports unviable. So, there was always a search for alternatives. So, several alternative schemes were evolved. These were detailed later but two variations can be mentioned here. One was the decision to grant advance licences on the basis of production programme and the other to allow domestic sourcing of inputs under duty exemption scheme

8.13 Earlier, advance licences were issued only against specific export orders. To enable the exporters import their requirements of inputs in reasonable quantities and plan their export production, the Govt. decided to grant advance licences on the basis of a production programme. Exporters with a specific past export performance could get these licences, and their entitlements were based on their past export performance.

8.14 Along with the Advance Licences against production programme, the Govt. also decided to introduce a self-declared Advance Licence Scheme in 1992. Under this scheme, the exporter was allowed the flexibility to import as much quantity of an input as he required and declare the quantity and description of the end product that he would export. The scheme did not take off as expected and was withdrawn later on. But, in 1999, the concept made a comeback, when the Govt. introduced the Annual Advance Licence Scheme and abolished advance licence under production programme.

B Annual Advance Licence

8.15 Under the Annual Advance Licence (AAL) Scheme, the exporter got a licence mentioning only the product group e.g. chemicals and allied products. He was allowed to import any item within 12 months from the date of issue of the AAL. He could export any item within 18 months from the date of issue of the licence. After 18 months, he had to account for all his imported duty free inputs, in terms of use in the manufacture of export product, as per input-output norms. This scheme did not succeed because of the limited period validity of the licence.

8.16 At present the annual advance licence, now known as the annual advance authorisation, is considered at par with Advance authorisation and has the same validity of 24 months to retain the principle of accounting of inputs as per SION.

8.17 The Govt. also evolved schemes to enable the exporters to source their requirements under DES from indigenous producers. However, as the advance authorisation holders could import their inputs duty-free, the local suppliers were burdened with the duty incidence on their inputs as well as the end product. Accordingly, two alternatives were evolved. One was the supply against Advance Release Order (ARO) and the other Advance Intermediate Licence (AIL), now known as the Advance Intermediate Authorisation.

Advance Release Order (ARO)

8.18 Under the ARO method, the advance licence holder could ask to invalidate his licence for import of any item and ask for an ARO favouring any indigenous supplier. Whatever supply a local manufacturer made against the ARO was granted 'deemed export' benefits i.e. refund of terminal excise duty and drawback of duty paid on the inputs. The Rules governing Duty Drawback (explained in the Section relating to Customs) were adopted for supplies against ARO also. In due course, some improvements were made under the scheme to allow issue of ARO without mentioning the name of the supplier i.e. giving the ultimate exporter the choice of sourcing the inputs from any local supplier.

Back- to- Back Letter of Credit

The second innovation was to allow the license holder to approach a Bank, instead of the licensing authority, and ask for opening a Back-to-Back Letter of Credit favouring the local supplier, after invalidating the license for direct imports. The supplies against the Back- to- Back LC were also eligible for the same benefits as supplies against ARO.

Advance Intermediate Licence

8.19 Under the AIL method, the advance licence holder had to enter into a tie-up agreement with a local producer for supply of a particular input (called intermediate) and then approach the licensing authority with a request to invalidate his licence. Based on the invalidation endorsement, the local producer could go to his licensing authority and ask for a AIL that would enable him to import the inputs required to manufacture the intermediate. Such an AIL was valid for duty free import of inputs required for manufacture of the intermediate and the export obligation had to be fulfilled by supplying the intermediate to the Advance License holder i.e. the ultimate exporter. The AIL were, otherwise, generally subject to the same conditions as the Advance Licence.

8.20 The scheme of domestic sourcing of inputs under the duty exemption is very much in vogue even today and all the three routes of ARO, Back- to- Back LC and AIL are being used by the domestic manufacturers to disburden the duty incidence on the inputs as well as the end product. Under the present scheme, Advance Authorisation, Advance Authorisation for annual requirement and Advance Intermediate Authorisation are considered at par. In the same way authorisations for Deemed exports are also considered at par with authorisations for Physical exports.

Evolution of Duty Remission Schemes

8.21 Simultaneously, the Govt. tried to address the problems of deemed exporters, who had to supply goods to EOU/EPZ unit, notified projects or specified purposes. In most such cases, the local suppliers had to win the orders against international competition or under international competitive bidding procedures. They had no chance of winning such orders unless their duty burden was also taken off. So, the Govt. gave them deemed

Duty Exemption/Remission Schemes (DES)

export status and allowed duty-free import of inputs to manufacture goods to be supplied to specific projects/purposes. The duty-free licences granted for such deemed exports were known as Special Imprest Licenses and they are now known as Advance Authorisation for Deemed Exports.

8.22 The second problem was that the exporters had no time to obtain licences, import the duty free items, manufacture the export product and then export the same. Usually the exporters had to quickly respond to the needs in the markets. So, a facility was required whereby the exporters could use the available inputs – duty paid or domestically procured – and fulfill the export obligation. Thereafter, the duty free imports could be made to replenish the stock of inputs used to manufacture the export product. The Govt. allowed this facility by stipulating that the exports made from the date of receipt of an application by the licensing authority can be accepted towards discharge of export obligation against the licence issued subsequently. This decision called for two consequential changes.

8.23 Firstly, the exporters had to furnish Legal Undertaking (LUT) or Bank Guarantee (BG) to the licensing authorities regarding fulfilment of export obligation before effecting duty-free imports. Such a LUT or BG would not be required if the exports are already effected. Also, if part export obligation is fulfilled before the first import, the value of LUT/BG could be proportionately reduced. The Govt granted these dispensations.

8.24 Secondly, the exporter did not necessarily require the replenished inputs, once the export obligation was fulfilled. So, there was a demand that once the export obligation is fulfilled, the inputs imported under the advance licence or the licence itself could be sold off in part or in full.

8.25 The transferability of licences or the imported inputs, however, had certain implications under the Central Excise Law. So, the exporters were not allowed to use transferability provision if they discharged their export obligation by availing the Modvat Credit on inputs used in the manufacture of export product. The rationale behind the restriction and the way it was implemented came under a severe assault. As a consequence, it was decided to allow transferability of all advance licenses issued after 1 April 1995, subject to the condition that Additional Duty of Customs

would be levied on the inputs imported under the advance licences. This was fine for exporters who could take Modvat Credit of the duty paid but other exporters protested against the move as getting duty drawback of the duty paid was a tedious affair and it blocked huge amount of funds. So, the Govt, in December '95, allowed completely duty-free imports against non-transferable QBAL. Thus, two QBAL windows were open for exporters – transferable QBAL where Additional Duty of Customs had to be paid, and non-transferable QBAL, where the imports were completely duty free.

Duty Free Replenishment Certificate – DFRC

8.26 As a measure of further simplification, the Govt. introduced the Duty Free Replenishment Certificate (DFRC) Scheme in April 1999 and abolished the transferable QUBAL. The DFRC was a post export QBAL that was transferable and against which the goods imported suffered the incidence of Additional Duty of Customs as well as anti-dumping duties. DFRC scheme was abolished during May 2006 and an alternative scheme which is called Duty Free Import Authorisation Scheme (DFIA) was introduced.

8.27 Under the so called DFRC scheme, an exporter could straightaway export the goods for which SION exists and claim a DFRC later. The DFRC issued by the RLA had to be verified by the Customs who allowed the exports. The port of registration will be the port from where exports were allowed. The DFRC had to be utilised only at that port. If the DFRC was utilised at some other port, the Customs at the port of registration can allow that by issuing a telegraphic release advice.

Duty Free Import Authorisation Scheme – DFIA

The new DFIA scheme is a combination of Advance authorisation and DFRC. Under the new DFIA scheme all the duties are exempted. This can be either post export scheme or the inputs can be imported and utilised for production. Like DFRC the inputs and finished products are freely transferable with the condition that such transfers should be effected on payment of additional duties. The minimum value addition to be achieved under the new DFIA scheme is 20% as compared to 25% under the erstwhile DFRC scheme.

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8.28 This facility of DFIA is available only for the products which have SION. Under this scheme, an exporter who wishes to export under DFIA scheme should apply before he effects such exports and provide the application reference in export documents. He can use his duty paid inputs and later replenish after subsequently importing the same. He need not pay any duty on such imports unlike DFRC where he was required to pay Additional duty of customs.

8.29 If the exporter wishes to use the same for further production, he can do so, or he can transfer either input as such or finished product on payment of applicable duties. As with DFRC, nexus condition –but broader in nature – is kept for some export products also.

Nexus

8.30 One major problem with QBAL was the issue of 'nexus'. The Advance authorisation holders are allowed to import only those items that are 'required for use' in the manufacture of export product. This means that in terms of quality, grade and technical specifications also, the imported items must be only those that are 'required for use' in the manufacture of the export product of a particular quality, grade and technical specification. At the practical level, this has meant testing the inputs, the export product, establishing a nexus and all the related problems associated with documentation. This particular problem has held up the customs endorsement of export entries in the DEEC in countless cases and consequently, admission of discharge of export obligation and closure of the files. So, the DGFT in the year 1998, ordered that wherever the exporter has submitted the Export Promotion Copy of Shipping Bill as evidence of having exported the goods and the Bank Certificate as evidence of having realized full export proceeds, he should not be declared as a defaulter and no adverse action should be taken against him. These instructions are still in force. Last year, there was an attempt to do away with the 'nexus' condition, except in the case of some sensitive items. The Revenue Department has not reacted favourably to the idea. So, the problems of the AA holders continue.

Value- based Advance Licence – VABAL Scheme (old)

8.31 Considering the practical problem that quantity limitation against each item of input under the QBAL scheme posed to the exporters, the Govt. introduced Value Based Advance License (VABAL) scheme, in 1992. Under this scheme, the exporter had to apply for a licence as per notified input-output and value addition norms. The quantity limits against each item of input was not mentioned. The exporter had the flexibility to import any item duty free, within the aggregate value of the licence. He had to only achieve the prescribed value addition.

8.32 The VABAL scheme ran into early trouble because some exporters used to overvalue their export goods with a view to earn higher value licenses. The 'nexus' criterion was also not being rigidly enforced in 1992-93. So, they took full advantage of the loopholes. So, the Govt. decided to prescribe the export obligation in value as well as quantity terms. The Customs also started applying the 'nexus' criterion rigidly.

8.33 The major problem, however, was that the export obligation against VABAL had to be discharged by using inputs on which no Modvat Credit had been availed. The rationale and the method of ensuring compliance with the condition were very weak. When the problems were discovered, the VABAL scheme virtually came to a halt. The decision to levy Additional Duty of Customs on imports under VABAL and allow Modvat Credit saved the scheme. But, the scheme became much too controversial to survive and it was withdrawn in 1997.

Passbook Scheme (old)

8.34 In 1995, the Govt. introduced the Passbook Scheme. Under this scheme, the exporters were issued a Passbook by the licensing authorities. After export of an item covered by standard norms, the exporter had to make an application stating the description and quantity of inputs as per the norms, their international prices and the duty rate applicable on the item, if imported. The Customs used to verify the details and indicate the duty amount based on the input item, quantity, international price and the duty rate. The licensing authorities used to grant credit in the passbook. The credit could be used to pay duty on any other imported item, not under the negative list.

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8.35 This scheme also failed because of constant disputes between the customs and the exporters. The coverage of the scheme was limited only to certain ports. There were other restrictions on the utilisation of the credit. For example, the credit was not transferable. So, the scheme failed and was withdrawn in 1997. All the same, the Passbook Scheme was an important forerunner to the Duty Entitlement Passbook (DEPB) Scheme that was introduced in 1997.

Duty Entitlement Passbook Scheme

8.36 The DEPB scheme aimed to give duty credit to exporters at notified rates expressed as a percentage of the FOB value of exports. The duty credit accounts for the incidence of the basic customs duty on inputs used in the export product. This was computed on the basis of SION and the international prices of inputs and the duty on these inputs. The duty amount so arrived at was expressed as a percentage of FOB value of exports. Any exporter could effect exports and claim the duty credit i.e. the DEPB at the notified rate. The credit could be utilised to pay duty on any imported goods (other than negative list items and capital goods). Conceptually, it was not very different from the Passbook Scheme but it eliminated the discretion of the Customs to determine the quantum of credit. More importantly, it was a very flexible scheme, in the sense that DEPB was a scrip issued by the licensing authorities that could be transferred freely. It was valid for exports and imports from most of the ports, airports, ICDs/CFSSs. The scheme has proved to be quite a success and since 1997, most exporters have been using the DEPB scheme very well.

8.37 The DEPB issued after exports is known as Post Export DEPB. In 1997, pre-export DEPB scheme was introduced. Under this scheme, certain categories of exporters could get 5% of their previous exports as pre-export DEPB and later earn enough DEPB credit to offset the credit obtained earlier. This scheme was not very successful even after enhancing the pre-export DEPB credit entitlement to 10%. So, it was withdrawn in April 2000. The Post- Export DEPB scheme continues.

8.38 No exports can be made under DEPB scheme, unless the DEPB rates are notified. So, there is a procedure to ask for fixation of DEPB rates, where the exporter has to indicate the import and

export prices along with suitable evidences and route the application through the Export Promotion Council.

8.39 The DEPB is issued showing the port of export as the port of registration. The DEPB has to be got verified by the Customs authorities at the port of registration. And it has to be utilised at *that* port. If the DEPB has to be utilised elsewhere, the Customs authorities at the port of registration can allow that through a Telegraphic Release Advise.

Value Cap

8.40 As the DEPB is issued as a percentage of the export value, exporters do try to inflate the export value and get a higher DEPB entitlement. So, the Government has notified 'value caps' against various DEPB entries. Once a value cap is notified, the exporters get DEPB at the notified percentage of value cap, irrespective of the value at which the exporters have shipped the goods.

Present Market Value (PMV)

8.41 The Government has also put a restriction that the DEPB earned against exports should not exceed 50% of the Present Market Value (PMV) of the export goods. Again, this is a measure to counter the menace of overvaluation of exports.

8.42. The validity of this most popular scheme is being extended every year and at present is extended till May 2009. With the pressure against such export promotion measures mounting from WTO, this scheme will be available only for a short duration now before an alternative scheme is put in place under which all the duties including service tax and local taxes are factored in the new rate. This may be possible with the advent of Goods and Services Tax (GST) which is likely to come into force in 2010.

Import for Jobbing

8.43 Many exporters could get orders for jobbing i.e. the foreign buyer supplies all or most of the inputs or even moulds, jigs, fixtures etc., required for making the end product on job-work basis and pays only the job-work charges to the manufacturer. Such imports had to be made duty free against an export obligation but as no payments were involved for the value of inputs

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or for the value of the export products, the QBAL scheme was not quite appropriate. So, the Govt. maintained a scheme of Advance Customs Clearance Permits (ACCP) under which the requisite inputs, moulds etc. could be imported duty free against obligation to export the resultant products and achieve the 10% value addition. ACCP was abolished in 1995 and the scheme is being administered under a Customs Exemption Notification 32/97.

8.44 Under the Customs Exemption Notification no. 32/97, jobbing has become much simpler. There is no need for a licence. The manufacturer has to approach his jurisdictional Central Excise authorities, take a special registration and execute a bond and make an application to allow the duty exemption on materials that the foreign supplier sends free of charge. On the basis of the bond and application, the C.Ex. authorities issue an Import Procurement Certificate (IPC). On the basis of the IPC, the Customs allow the duty exemption. The manufacturer jobber has to export the manufactured goods and give necessary proof to the C.Ex. authorities.

Value Addition

8.45 Advance Licences were subject to minimum value addition norms of 33%. For value based licences the value addition norms used to be much higher. For quantity-based licences, the ALC was empowered to consider a lower value addition. In respect of licences where the export obligation was to be discharged by exporting to erstwhile Rupee Payment Area countries i.e. Republics of the former Soviet Union, the DGFT used to issue specific guidelines and specify higher value addition. Since, 1999, the stipulated value addition for physical exports and realization of export proceeds in freely convertible currency has been positive,

Ad-hoc Norms

8.46 The exporters used to repeatedly complain that the ALC takes a very long time to fix the SION. So, the DGFT introduced a simplified procedure whereby the RLA grant an advance licence based on the input- output norms that the exporter asks. The exporter can immediately start importing the goods that he needs duty-free. The application is later sent to the ALC for fixation of norms. If the ALC fixed the norms as per the application, there

was no problem. But, if the ALC did not approve the norms or approved the norms that are different from what the exporter has asked for, then the licence has to be surrendered or amended and the exporter has to pay duty with 15% interest on whatever he has already imported in excess of what the ALC grants. The ALC was required to fix the norms within six months, failing which the norms applied for became final.

8.47 The rigidities in the quantity- based advance licences and peculiarities of certain types of businesses gave rise to several special schemes. The essence of these schemes was to give greater flexibility or easier access to inputs at international prices. All these schemes had limited life, except that in case of Gem and Jewellery sector, the Policy has separate provisions, considering the wastage norms and special requirements of that sector.

For more details, readers are requested to refer to relevant policy provisions and Hand book of Procedures Vol. -1.

To sum up,

Duty exemption schemes aim to relieve the duty incidences on inputs. Wherever imports are made prior to export, there is an actual-user condition and exporter is required to submit LUT/BG before effecting imports. Imports under Advance authorisation are covered under strict nexus and wastage and consumption norms. Material imported under advance licence is not transferable even after completion of exports. But the same can be used in production and can either be exported or sold to DTA. As per current provisions, the inputs imported under Advance authorisation and remaining un-utilised cannot be transferred even after the fulfilment of export obligation.

Under Duty remission schemes, there is a minimum value addition apart from free transferability of imports made under these schemes. However, except for DEPB which is very popular among the export community, such schemes have failed to elicit much response.

One should carefully look into the customs notification issued against these export duty exemption and remission schemes. In the past there had been some differences between the FTP and Revenue Notifications. There was also a delay in issuing notification from Department of Revenue (DoR) which prevented

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implementation of various changes effected in FTP. This is because the office and DGFT and DoR did not resolve their differences on some aspects of the new provisions of the FTP prior to its announcement. Therefore, until the notification from the Department of Revenue is brought out, the FTP scheme does not get implemented.

Chapter 9

EXPORT PROMOTION CAPITAL GOODS SCHEME

Back ground

9.01 Export promotion capital goods scheme (EPCG) was introduced in the year 1990 to enable the Indian exporters obtain capital goods at concessional rates of customs duty against an obligation to export the goods manufactured using the imported capital goods. Initially, the scheme was restricted to manufacturers with past export performance. Subsequently, the scheme has been liberalized and extended to manufacturers, merchant exporters who name a supporting manufacturer, service providers, software exporters and so on.

9.02 The Scheme launched in 1990, allowed imports at 25% duty against an obligation to export three times the CIF value of the imported goods to be fulfilled in four years. Subsequently, an alternative window was opened in 1992 in terms of which, the imports could be made at 15% duty, subject to export obligation of four times of CIF value of imports to be fulfilled in five years. The 15% window was abolished in 1993. But, a new zero duty window was opened for Greenfield projects envisaging imports of Rs. 20 crores or more in 1995. Under this scheme, the export obligation was six times the CIF value of capital goods imported, to be fulfilled in eight years. As the duty rates on capital goods came down, the 15% scheme was replaced by a 10% EPCG scheme. To give a level playing field for the domestic industry, the imports under zero duty schemes were subject to 10% Additional Duty of Customs, that could be taken as Modvat/Cenvat Credit. In April 2000, both the EPCG schemes merged into a single 5% EPCG scheme. In the annual supplement to the FTP during April, 2008, the duty was reduced from 5% to 3%.

9.03 Initially, the export obligation was stipulated in terms of FOB value of exports only. Later, this stipulation was modified for specific sectors like software, where reduced export obligation

Export Promotion Capital Goods Scheme

(say 5 times instead of 6 times the value of capital goods) was stipulated in Net Foreign Exchange Earning (NFE) terms. Later, all sectors were given an option to fulfil the export obligation in higher FOB terms or reduced NFE terms. Later the export obligation under the 5% EPCG scheme was stipulated as 5 times the CIF value of capital goods imported on FOB terms or 4 times the CIF value of capital goods on NFE terms to be fulfilled over a period of eight years. At present the export obligation is fixed on the basis of duty saved. The export obligation now is eight times the amount of duty saved.

9.04 Initially, the exporters were asked to furnish half-yearly returns of export performance but subsequently, the terms were amended to be provided for graded fulfilment of export obligation. For example, under the 15% EPCG scheme, the minimum export obligation to be fulfilled was zero in the first year, 10% in the second year, 20% in the third year, 30% in the fourth year and 50% in the fifth year. Similarly, the minimum export obligation under the zero duty scheme was to be fulfilled at zero per cent in the first block of two years, 15% in the second block of two years, 35% in the third block of third year and 50% in the last block of fourth year. Right now, there is only the 5% scheme, where the export obligation has to be fulfilled in four 2-year blocks at 0%, 15%, 35% and 50%.

9.05 Initially, the condition was that the exporters would maintain their past three years' export obligation. In other words, what was exported in excess of the previous three years' average exports could only be adjusted towards export obligation against EPCG licence. This condition continues, with exceptions for certain sectors.

Export Obligation

9.06 Initially, only the exports made in freely convertible currency were being accepted for discharge of export obligation. Later, the condition has been modified to accept deemed exports also for discharge of export obligation.

9.07 The documents required to show fulfilment of export obligation include a statement of exports that show the shipments made to maintain annual average exports and shipments made in discharge of export obligation separately. The statement has to be

certified by a Chartered Accountant and the Bankers of the EPCG licence holder.

Indigenous sourcing of CG

9.08 The EPCG scheme envisages procurement of capital goods from indigenous sources. The EPCG licence holder has to enter into a tie-up agreement with the domestic supplier and approach his licensing authority for invalidation of his EPCG license. The procedure in 1992 envisaged issue of an Indigenous Release Advice favouring the domestic supplier by the licensing authority against invalidation of the original EPCG licence. Based on the Indigenous Release Advice, the indigenous supplier could ask for an EPCG licence on the basis of which he could import his components at concessional rate of duty. Subsequently, the scheme has been amended to allow a Special Imprest Licence/Advance Licence for Deemed Exports to the domestic supplier on the basis of which, he can source his components, raw materials etc. duty free. The domestic supplier has to discharge his export obligation by supplying the capital goods to the original EPCG licence holder. As proof of the supply, he is required to produce a certificate from the Central excise officials of the EPCG licence holder about receipt of the goods at his factory and evidence of payment for the goods through normal banking channels.

Regularisation of default

9.09 Many exporters who had obtained EPCG licences in the past failed to fulfil their export obligation. So, the DGFT extended the export obligation period upto 31st March 2002 in all cases, where the exporter gave 100% Bank Guarantee covering the duty saved plus 15% p.a. interest from the date of import of the capital goods.

9.10 One of the conditions under EPCG schemes was that the export obligation must be discharged through export of only those goods that require the use of the capital goods imported under the scheme. That condition was later diluted to say that export obligation must be fulfilled by export of such products that are capable of production through use of the capital goods imported under the scheme. Now, 50% the export obligation can be fulfilled

Export Promotion Capital Goods Scheme

by export of any product manufactured by the same exporter. Moreover, EPCG licence can be obtained for any pre-production or post-production activity also. This means that even items like packaging machinery can be imported under the scheme.

Second hand Capital Goods

9.11 Earlier, the scheme allowed import of only new machinery under the EPCG scheme. The condition was modified to allow second hand goods in 1993. However, in 1999 a decision was made not to allow second hand capital goods under EPCG scheme. Now, from 2003, second hand capital goods are again allowed to be imported under EPCG scheme.

Import of Spares

9.12 Earlier, there was a limit of 10% on import of spares. Now that limit has been withdrawn. Spares can be imported upto any value within the EPCG licence value. Moreover, even spares for existing machinery can be imported under EPCG scheme. Spares can be imported anytime within the validity of the licence. The capital goods have to be imported within 24 months from the date of issue of licence. The usual relaxations for validity of licences will be available for EPCG licences also.

9.13 EPCG licence scheme has been liberalized so much that the Government expects to bring down the cost of setting up a project substantially. This is expected to enable even small entrepreneurs get second hand capital goods at 3% duty. The Government expects substantial boost to industrial and economic activity through the EPCG scheme.

9.14 In January 2004, the Government has further liberalised the EPCG scheme by allowing exports by group companies to discharge the export obligation. The EPCG committees at various licensing offices have been abolished. Regional Licensing Authorities can grant licences up to Rs. 50 Crore against a Chartered Engineer's certificate. The EPCG committee at the DGFT's office will consider applications for licenses for higher value.

Latest Changes

9.15 The present FTP also allows clubbing of two or more EPCG licenses for the purpose of regularisation. But there are strict conditions regarding clubbing in the sense that only licenses issued by the same licensing authority, issued during the same licensing year, issued under the same notification, issued for the same export product and with the same port of registration can be clubbed. Once clubbing is allowed, all the licenses together will be considered as one license for the purpose of regularisation.

9.16 Under the present EPCG scheme, even spares for existing machinery, spare refractories, catalyst and consumables can be imported. The recent changes have made the scheme quite attractive as businesses can set up new capacities or modernise their facilities at lower costs.

9.17 The recent changes announced in April 2007 and in 2008 in the new Foreign Trade Policy include:

- Removal of block wise fulfilment of EO
- Relaxation of average export obligations which will be built not on the actual performance but on the average plus EO undertaken subsequently
- No more insistence of nexus that EO be fulfilled by the use of imported machinery. Export of any product exported by the company in fulfilment of EO allowed
- Flexibility to pay CVD in cash and take up lower export obligation
- Flexibility to upgrade with new capital goods with lower export obligation
- Flexibility to take up lesser export obligation by qualifying for Project Imports under ITC HS 98.01
- Lower EO of six times the duty saved for tiny, cottage, SSI and agri exporters
- A 12 year export obligation period for EPCG authorisation with > Rs 100 cr duty saved

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- LUT /Bond or 15% BG facility for EPCG authorisations granted to units in Agri Export Zones taken for export of products as specified in App. 8 for their value added items
- Waiver of further obligation if 75% of EO is fulfilled within half the original EO period.
- Extension of EO period by taking up extra EO or by paying composition fees and furnishing 100% BG
- Clubbing of EPCG licences issued under the same customs notification, without restriction regarding same export product or same licensing year.
- Fulfilment of exports made under any other export promotion scheme like Advance licence, DFIA, Drawback etc.
- Option to calculate the average export obligation based on the average export of last 5 years instead of 3 years in case of Premium Trading Houses.

9.18 Readers may be aware, that basic customs duty on most of the capital goods has been brought down to 7.5%. Even under Project Imports under ITC HS Chapter 98.01 the basic customs duty is 5% at present. Under the Project Imports scheme the export obligation is lowered since the duty saved is computed on the lower customs duty on project imports.

9.19 The Government during the current revision reduced the duty under EPCG from 5% to 3%. This lowers the initial incidence of duty and marginally increases the export obligation.

For more details please refer to Chapter 5 of FTP and Hand book of Procedures Vol. -1

Chapter 10

EXPORT ORIENTED UNITS (EOUS), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPS), SOFTWARE TECHNOLOGY PARKS (STPS) AND BIOTECHNOLOGY PARKS (BTPS)

Background

10.01 All the above schemes, essentially, refer to duty-free enclaves. In the Customs parlance, they are bonded warehouses. An EOU can be set up anywhere in the country, whereas STP/EHTP refer to specially delineated geographical areas within which units can be set up. Under the new Foreign Trade Policy, units can be set up in Biotechnology Parks where they undertake activities relating to export of products produced in their unit. It is easier to understand them as foreign territories for tariff purposes. The rest of the country (other than SEZ) is known as 'Domestic Tariff Area' (DTA).

Net Foreign Exchange (NFE)

10.02 Anyone wishing to set up an EOU (the word EOU is used in the subsequent portion of this section refers to EOU/STP/EHTP/BTP units, unless specifically otherwise mentioned) will have to export his entire production for a certain number of years. (Earlier this was 10 years. Now, this is 5 years). The unit has to achieve positive value addition i.e. it has to be a Net Foreign Exchange Earner.

Export Oriented Units (EOUs)... Biotechnology Parks (BTPS)

Imports allowed

10.03 An EOU can import capital goods, raw materials etc. without import duty payment. The goods manufactured by an EOU are subject to excise duty. The excise duty is exempted, if the goods are exported. However, if the goods are sold in DTA, excise duty is leviable. To avail duty exemption, it is essential that the final product be not exempted. Otherwise, there will be no duty exemption available under EOU Scheme.

Clearance to DTA

10.04 Goods cleared from EOU to DTA are treated on par with imports. For example, if the goods cleared by EOU into DTA are such that their imports would warrant a licence, the clearance from EOU can take place only against a licence. The excise duty rate chargeable on the goods would be the same as the duty rate chargeable if the same item were to be imported. The goods would also be valued as if the goods were imported.

Clearance by DTA to EOU

10.05 Similarly, if the EOU buys goods from DTA, the supplies would be treated as exports i.e. deemed exports. The local supplier would be entitled to the benefits of deemed exports. He can clear the goods without payment of excise duty, he can get drawback of duties on his inputs or he can even import his requirements of raw materials etc. duty free.

DTA sales

10.06 EOU/STP/EHTP/BTP units other than gems and jewellery EOUs are allowed to sell 50% of their FOB value of exports in the DTA provided they have achieved the Net Foreign Exchange Earning prescribed. The gems and jewellery EOUs are allowed to sell only 10% of the FOB value of previous year's exports in the DTA. This is known as DTA sale entitlement. If the goods sold within the DTA sale entitlement are manufactured solely from the indigenous inputs, they attract excise duty equal to the excise duty leviable on the same goods if manufactured by a DTA unit. However, if the goods sold within the DTA sale entitlement are manufactured from imported inputs or imported and indigenous inputs, the excise duty rate would be equal to 50% of the Customs

duty leviable on like-product if imported. These are special dispensations governed by specific exemption notifications under the Excise law. Goods cleared in DTA by an EOU in excess of the DTA sale entitlement will be subject to full customs duty and if these are supplied to an Advance Licence holder, with or without ARO procedure, then all duties would be fully exempt under the relevant Excise notification. Presently, as per current FTP, supplies can be made to advance licence holder without ARO procedure by debiting the advance licence by the bond officer of EOU.

10.07 As a rule, an EOU is expected to achieve export performance by exporting the goods. However, certain categories of supplies within the country can also be considered as export performance of the EOU. For example, supplies that are categorized as Deemed Exports under the Exim Policy, supplies to duty free authorisation holders, supplies made against payment in foreign exchange, supplies to other EOUs, supplies made to private bonded warehouses for exports etc.

Letter of permission (LOP & LUT)

10.08 Units have to apply in required format to their jurisdictional Development Commissioner (DC) by furnishing details about their export products, Capital goods, inputs required and projected statement showing Foreign Exchange inflow and outflow. If the projections show net foreign exchange earning, the same is approved by DC at the unit approval committee meeting. On approval, the unit needs to sign LUT with DC, and based on the information furnished, DC will certify the capital goods and inputs which can be imported/locally sourced without payment of duty with unit capacity etc.

Execution of Bond with Revenue authorities

10.09 After execution of LUT with Development Commissioner, the unit is required to obtain Warehouse permission and permission to manufacture under warehouse as per Customs Act, 1962. The Unit will be required to furnish a Bond supported by security and surety covering the following:-

- 25% of duty saved on Capital goods imported/locally procured

Export Oriented Units (EOUs)... Biotechnology Parks (BTPS)

- 100% duty on inputs required for three months' stock

Bank Guarantee will be 5% of bond amount as calculated above. It is meant to reflect duty liability on all the goods that are procured without payment of duties inside the bonded premises. For this purpose, the unit is required to maintain an important register called B-17 bond register.

B-17 Bond

10.10 EOU after obtaining warehousing licence, are required to execute bond supported by Surety/security. Security amount will be in the form of BG for an amount of 5% of Bond amount. The basic purpose of the B-17 bond is to safeguard Government revenue and to ensure that action is taken against the unit to recover the same in case of non-fulfilment of the conditions of the exemption notification.

10.11 The value of the bond amount shall be worked out on the basis of projected requirement i.e. equivalent to 25% of duty leviable on sanctioned requirement of imported and indigenous capital goods plus the duty on raw materials to be held in stock for three months, projected, calculated and certified by the unit. Since this is on the basis of sanctioned requirement of capital goods and raw materials, initially the Bond amount would be on the basis of the projected value of the goods. However, if later, the bond amount falls short of the actual import or local procurement made by the unit, the actual amount of bond may be worked out and the unit may be asked to submit revised bond.

10.12 The B-17 bond is a running bond and would be debited, whenever there is fresh import or local procurement of the raw material/capital goods. However, the value debited from the bond amount in respect of raw materials, will be credited again when the raw material is used in the manufacture of finished product and the same is either exported or cleared into DTA as per provision of the EXIM Policy. However, the bond in respect of capital goods shall not stand discharged on arrival of the capital goods within the unit/warehouse and the security/surety shall not be discharged so long as the capital goods are in the unit. The duty for debiting the bond amount in respect of capital goods/raw materials will be as per duty forgone amount given in the Bill of Entry/AR-3. This

monitoring will be done by Assistant Commissioner in charge of the unit and on broad basis rather than going into intricate details of input-output norms etc.

10.13 The B-17 bond is required to be executed before the jurisdictional Assistant Commissioner of Customs/Central Excise in charge of unit and the jurisdictional Assistant Commissioner will issue certificate which will indicate only description and classification of goods and on the strength of such certificate, clearance under exemption notification will be allowed to the EOU/EPZ/STP/EHTP units at the port of import.

10.14 The value and quantity of goods to be imported and the bond amount shall be monitored by jurisdictional Assistant Commissioner of Customs or Central Excise. No other certificate other than the certificate annexed to Circular No.14/98, dated 10-3-1998, is required to be produced at port of import by EOU/EPZ/STP/EHTP units. The monitoring at the port of import shall be limited to the extent of ensuring that the goods imported by the units are warehoused in the units within the prescribed time limit and re-warehousing certificate is submitted to the Assistant Commissioner of Customs at the port of import within the prescribed time limit. For this purpose as well no separate bond along with surety or security is to be furnished by the EOU/EPZ/STP/EHTP units at the port of import.

10.15 B-17 bond is an all-purpose bond. The supply/transfer of samples is as provided under FTP and Central Excise Notification 6/98 (NT). Exports and Imports include re-export and re-imports, and therefore, the later category is also covered under the said Bond. For replacement of indigenous goods procured duty free and found to be defective/ damaged or otherwise unfit for use, no separate bonds other than B-17 bond would be required.

10.16 The units will have to submit only re-warehousing certificate to the Assistant Commissioner in charge of the port of import within 90 days of issue of certificate by jurisdictional Assistant Commissioner. In case such re-warehousing certificate is not furnished within the specified period, the Assistant Commissioner in charge of the port of import shall intimate the Assistant Commissioner of Customs or Central Excise in charge of the units for issuing a demand notice to recover the duty/penalty etc.

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As stated above, B-17 bond is an all-purpose bond, and therefore also a transit bond. Hence, no Customs escort shall be insisted upon for movement of duty-free goods from the Airport/ICD etc. to the unit or from unit to Airport/ICD or to any other place, say, job worker's premises, provided the same is permitted by jurisdictional Assistant Commissioner.

10.17 The B-17 bond does not cover advance DTA sale and for this purpose separate bond as prescribed in the Handbook of Procedure shall have to be executed.

Administrative Control

10.18 The administrative control of the EOUs is with the jurisdictional Development Commissioner (DC). The DC grants EOU recognition to the units within his discretionary powers. Otherwise, he obtains the approval from the Board of Approvals at the Secretariat of Industrial Assistance. He monitors the performance of the units and grants DTA sale entitlements. For STP/EHTP units, the authority is the Director of the respective STP/EHTP who discharges similar functions.

Benefits available to local supplier

10.19 A DTA supplier to EOU has to claim deemed exports benefits like refund of Terminal excise Duty, Deemed Export Duty Drawback etc. from the concerned DC. However, against his disclaimer certificate, the concerned EOU can also claim the benefits from the DC. A DTA supplier to STP/EHTP unit, however, has to claim his deemed export benefits from the jurisdictional licensing authority.

De-bonding

10.20 An EOU can ask for pre-mature de-bonding subject to payment of duties on the unutilized raw materials etc. and capital goods. An option has been given to allow the capital goods to be cleared against an EPCG licence in which case, the concessional rate of duties will be charged on the capital goods against export obligation applicable under the EPCG scheme. Currently, such conversion to EPCG is allowed only if the unit has achieved +ve NFE and also fulfils eligibility criteria laid out as per Hand book of Procedures Vol. I.

10.21 The jurisdictional excise/customs authorities monitor the EOUs to make sure that the conditions of the exemption notifications are strictly adhered to. They grant the licence for private bonded warehouse under Section 59 of the Customs Act, 1962 and licence to manufacture under bond, under Section 65 of the Customs Act, 1962.

10.22 Of late, a system of joint monitoring of the performance of the EOUs by the DC and excise/customs authorities has been institutionalised.

10.23 Fast Track Clearance procedures

In 2006, Government mooted a fast track clearance procedure to remove delays in getting permission from multiple authorities— Development Commissioner, Jurisdictional Central Excise— and made most of the procedures under self- certification procedures.

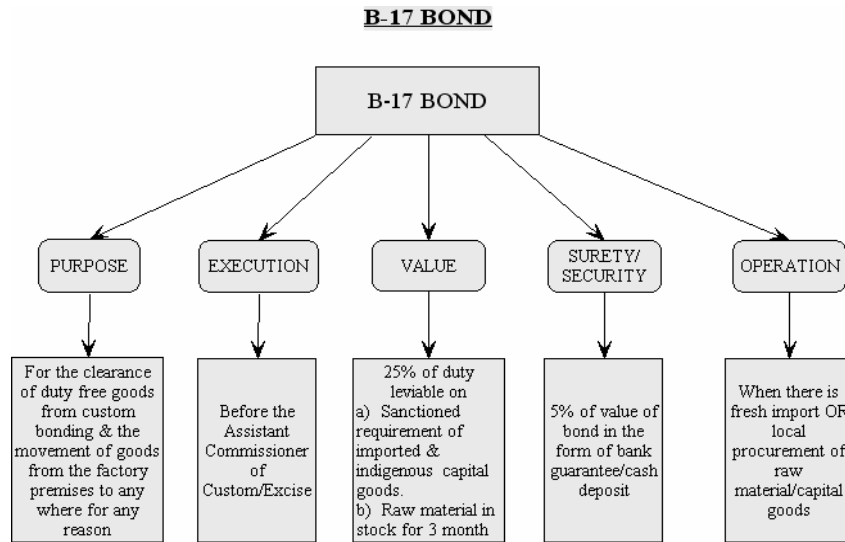
10.24 Most of the approval process had been removed thereby EOUs were required to give just an intimation on various issues including re-warehousing certificate etc. Most of the procedures have been simplified to create user friendly interface between the units versus various Government Departments.

10.25 During 2008 revision, Government announced the extension of benefits under Income tax act by another year to 2010. Otherwise, the benefit was to be available till 2009 only. Exporters were, however, demanding that the benefits be made available at par with SEZ units, where the tax exemption is available for 10 years. Government should moot the idea of virtual SEZs and should treat EOUs at par with SEZ units if at all it wants to give freedom to select the location of such units. Apart from the above announcement EOUs are now allowed to pay excise duty on a monthly basis as done by other DTA units.

10.26 EOU operations are such that all the legal provisions are interlinked between Foreign Trade Policy, Customs, Excise /service tax provisions, Exchange control etc. It thus requires one to be thoroughly conversant with all of them so as to be able to look at any issue in the proper perspective and ensure effective functioning of the unit. Given below is the ready reckoner which will help you to find out various provisions that are looked at in various circumstances.

Export Oriented Units (EOUs)... Biotechnology Parks (BTPS)

Flow chart of B-17 Bond



EOU Ready Reckoner

Sl. No.	Topics	Foreign Trade Policy	Customs	Central Excise
1.	Setting up of a unit	Para 6.1 FTP Para 6.6 (d) FTP Para 6.7 FTP Para 6.3.1 HBP	-	-
2.	Letter of Permission/Letter of Intent	Para 6.6 FTP Para 6.3.6 to 6.3.9 HBP	-	-
3.	Legal Agreement/Under taking	Para 6.6(c) FTP Para 6.4.1 to 6.4.2 HBP Appendix 14-I-F	-	-

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4.	Sector specific conditions for approval	Appendix - 14-I-C	-	-
5.	B - 17 Bond	Para 6.39.2 HBP	<p>Circular No. 14/98 Dated 10/3/98</p> <p>Circular No. 42/98 Dated 19/6//98</p> <p>Circular No. 66/98 Dated 15/9/98</p> <p>Circular No. 76/99 Dated 17/11/99</p> <p>Circular No. 50/2000 Dated 24/5/2000</p> <p>Circular No. 54/2004 Dated 13/0/2004</p>	Notification No. 6/98-CE (NT) Dated 2/3/98
6.	Bank Guarantee	Appendix 25A	Circular No. 54/2004 Dated 13/10/2004	-
7.	Bonding	-	Circular No. 11/96 Dated 16/2/96	-
8.	Conversion from DTA to EOU/EHTP/STP/ BTP	Para 6.19 FTP Para 6.37.1 HBP	-	-
9.	Cost Recovery changes/Cost Sharing	-	Circular No. 31/2003 Dated 7/4/2003	-

Export Oriented Units (EOUs)... Biotechnology Parks (BTPS)

10.	Duty free import of Goods	-	Notification No. 52/2003 Dated 31/3/2003	-
11.	Duty free Procurement of Indigenous goods	-	-	Notification No. 22/2003 Dated 31/3/2003
12.	DTA sales	Para 6.8 FTP Para 6.9 FTP Para 6.14 HBP Para 6.32 HBP Appendix 14-I-H	Circular No. 54/2004 Dated 13/10/2004 Circular No. 38/95 Dated 17/5/95 Circular No. 88/2002 Dated 17/12/2002 Circular No. 31/2001 Dated 24/5/2001 Circular No. 7/200 6 Dated 13/1/2006	Notification No. 23/2003 Dated 31/3/2003
13.	Net Foreign Exchange Earnings	Para 6.5 FTP Para 6.20 FTP Para 6.10.1 to 6.10.4 HBP Para 6.12.1 to 6.12.2 HBP	Circular No. 29/2003 Dated 3/4/2003	-
14.	Registration	-	-	Circular No. 662/53/2002 Dated 17/9/2002
15.	Samples	Para 6.24 HBP Para 6.39.8 HBP	Para 30 and 31 of Chapter 22, Customs	-

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			Manual 2001 Circular No. 22/98 Dated 27/3/98 Circular No. 65/98 Dated 3/9/98 Circular No. 52/99 Dated 20/8/99 Circular No. 48/2004 Dated 24/8/2004	
16.	Self Certification	-	Circular No. 90/98 Dated 8/12/98 Circular No. 35/99 Dated 22/6/99	-
17.	Self Removal Procedure	-	Para 30 and 31 of Chapter 22, Customs Manual 2001 Circular No. 88/98 Dated 2/12/98	-
18.	Self sealing	Para 6.39 HBP	-	Circular No. 426/59/98 Dated 12/10/98 Circular No. 445/11/99 Dated

Export Oriented Units (EOUs)... Biotechnology Parks (BTPS)

				17/3/99 Circular No. 736/52/2003 Dated 11/8/2003 Circular No. 741/57/2003 Dated 2/9/2003
19.	Sub contracting/Job Work	Para 6.14 FTP Para 6.21.1 to 6.21.5 HBP	Circular No. 67/98 Dated 14/9/98 Circular No. 74/99 Dated 5/11/99 Circular No. 65/2002 Dated 7/10/2002 Circular No. 93/2002 Dated 20/12/002 Circular No. 26/2003 Dated 1/4/2003	-
20.	Exports	Para 6.5.1 to 6.5.4 HBP Para 6.10 FTP Para 6.19 HBP	Circular No. 30/2003 Dated 4/4/2003 Circular No. 109/2003 Dated	-

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			19/12/2003	
21.	Third Party Exports	Para 6.10 FTP Para 6.19 HBP	-	-
22.	Monitoring of EOU	-	-	-
23.	Warehousing	-	Circular No. 84/2001 Dated 21/12/2001 F.No. 475/82/92 LC dated 10/2/94 Circular No. 31/96 Dated 7/6/96 Circular No. 62/99 Dated 17/9/99 Circular No. 12/98 Dated 5/3/98	-
24.	Unutilised/Surplus material	Para 6.15 FTP	Circular No. 91/2002 Dated 20/12/2002	-
25.	Inter-unit transfer/Stock transfer	Para 6.13 FTP	Circular No. 54/2004 Dated 13/10/2004 Circular No. 7/2006 Dated 13/1/2006	-

Export Oriented Units (EOUs)... Biotechnology Parks (BTPS)

26.	Rejects & By-Products	Para 6.8 (a) to 6.8 (d) FTP Para 6.39.7 HBP	-	Circular No. 25/25/94 Dated 22/2/94
27.	Waste & Scrap	6.8 (e) and (f) FTP	Circular No. 29/2003 Dated 3/4/2003 Circular No. 19/99 Dated 29/4/99 Circular No. 18/99 Dated 16/3/98 Circular No. 62/2001 Dated 12/11/2001	Circular No. 330/46/97 Dated 20/8/97
28.	Deemed Export Benefits	Circular No. 10/2005-09 Dated 24/6/2005 Circular No. 15/2005-09 Dated 4/7/2005	-	Circular No. 799/32/2004 Dated 23/9/2004
29.	Entitlements to EOU	-	-	-
30.	Records, registers and returns	Para 6.11.1 to 6.11.2 HBP Para 2.54 HBP	-	-
31.	Fast Trade clearance	Para 6.39.1 HBP	-	-
32.	Examination Norms	-	Circular No. 6/2002 Dated 23/1/2002 Circular No. 31/2002 Dated 7/6/2002 Circular No. 13/2003 Dated 3/3/2003	-

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33.	Courier/Post/Personal/Baggage	-	Circular No. 85/98 Dated 13/11/98 Circular No. 63/99 Dated 24/9/99 Circular No. 78/99 Dated 19/11/99	-
34.	De-Bonding	Para 6.18 FTP Appendix 14-I-L	Circular No. 55/2004 Dated 14/10/2004 Circular No. 7/2006 Dated 13/1/2006 Para 30 and 31 of Chapter 22, Customs Manual 2001	-

Chapter 11

SPECIAL ECONOMIC ZONES

Introduction

11.01 India was one of the first in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. The Special Economic Zones (SEZs) Policy was announced in April 2000 with a view to overcoming the shortcomings experienced on account of the multiplicity of controls and clearances, absence of world-class infrastructure, and an unstable fiscal regime. It also aimed at attracting larger foreign investments in India. SEZs are envisaged a one-stop shop for state-of-the-art infrastructural facilities with a view to stimulating exports, ensuring growth in manufacturing and providing employment.

11.02 This policy intended to make SEZs an engine for economic growth supported by quality infrastructure and by an attractive fiscal package, both at the Centre and the State level with the minimum possible regulations. SEZs in India functioned from 1.11.2000 to 09.02.2006 under the provisions of the Foreign Trade Policy and fiscal incentives were made effective through the provisions of relevant statutes.

11.03 To instil confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to imparting stability to the SEZ regime thereby generating greater economic activity and employment through the establishment of SEZs, a comprehensive draft SEZ Bill was prepared after extensive discussions with the stakeholders. A number of meetings were held in various parts of the country both by the Minister for Commerce and Industry as well as senior officials for this purpose. The Special Economic Zones Act, 2005, was passed by Parliament in May, 2005, and it received Presidential assent on the 23rd of June, 2005.

11.04 The draft SEZ Rules were widely discussed and put on the website of the Department of Commerce offering suggestions/comments. Around 800 suggestions were received on the draft rules. After extensive consultations, the SEZ Act, 2005, supported by SEZ Rules, came into effect on 10th February, 2006, providing for drastic simplification of procedures and for single window clearance on matters relating to central as well as state governments. The main objectives of the SEZ Act are:

- (a) generation of additional economic activity
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities;

It is expected that this will trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic activity and creation of employment opportunities.

11.05 The SEZ Act 2005 envisages key role for the State Governments in Export Promotion and creation of related infrastructure. A Single Window SEZ approval mechanism has been provided through a 19 member inter-ministerial SEZ Board of Approval (BoA). The applications duly recommended by the respective State Governments/UT Administration are considered by this Board of Approvals (BoA) periodically. All decisions of the BoA are with consensus.

11.06 The SEZ Rules provide for different minimum land requirements for different classes of SEZs. Every SEZ is divided into a processing area where alone the SEZ units would come up and the non-processing area where the supporting infrastructure is to be created.

The SEZ Rules provide for :

- Simplified procedures for development, operation, and maintenance of the Special Economic Zones and for setting up units and conducting business in SEZs;

Special Economic Zones

- Single window clearance for setting up of an SEZ;
- Single window clearance for setting up a unit in a Special Economic Zone;
- Single Window clearance on matters relating to Central as well as State Governments;

Simplified compliance procedures and documentation with an emphasis on self certification

Approval mechanism and Administrative setup of SEZs

11.07 Approval mechanism

The developer submits the proposal for establishment of SEZ to the concerned State Government. The State Government has to forward the proposal with its recommendation within 45 days from the date of receipt of such proposal to the Board of Approval. The applicant also has the option to submit the proposal directly to the Board of Approval.

The Board of Approval has been constituted by the Central Government in exercise of the powers conferred under the SEZ Act. All the decisions are taken in the Board of Approval by consensus. The Board of Approval has 19 Members. Its constitution is as follows:

- | | | |
|-----|---|----------|
| (1) | Secretary, Department of Commerce | Chairman |
| (2) | Member, CBEC | Member |
| (3) | Member, IT, CBDT | Member |
| (4) | Joint Secretary (Banking Division), Department of Economic Affairs, Ministry of Finance | |
| (5) | Joint Secretary (SEZ), Department of Commerce | Member |
| (6) | Joint Secretary, DIPP | Member |

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- | | | |
|------|--|------------------|
| (7) | Joint Secretary, Ministry of Science and Technology | Member |
| (8) | Joint Secretary, Ministry of Small Scale Industries and Agro and Rural Industries | Member |
| (9) | Joint Secretary, Ministry of Home Affairs | Member |
| (10) | Joint Secretary, Ministry of Defence | Member |
| (11) | Joint Secretary, Ministry of Environment and Forests | Member |
| (12) | Joint Secretary, Ministry of Law and Justice | Member |
| (13) | Joint Secretary, Ministry of Overseas Indian Affairs | Member |
| (14) | Joint Secretary, Ministry of Urban Development | Member |
| (15) | A nominee of the State Government concerned | Member |
| (16) | Director General of Foreign Trade or his nominee | Member |
| (17) | Development Commissioner concerned | Member |
| (18) | A professor in the Indian Institute of Management or the Indian Institute of Foreign Trade | Member |
| (19) | Director or Deputy Secretary, Ministry of Commerce and Industry, Department of Commerce | Member Secretary |

11.08 Administrative set up

Special Economic Zones

The functioning of the SEZs is governed by a three-tier administrative set up. The Board of Approval is the apex body and is headed by the Secretary, Department of Commerce. The Approval Committee at the Zone level deals with approval of units in the SEZs and other related issues. Each Zone is headed by a Development Commissioner, who is ex-officio chairperson of the Approval Committee.

Once an SEZ has been approved by the Board of Approval and Central Government has notified the area of the SEZ, units are allowed to be set up in the SEZ. All the proposals for setting up of units in the SEZ are approved at the Zone level by the Approval Committee consisting of Development Commissioner, Customs Authorities and representatives of State Government. All post approval clearances including grant of importer-exporter code number, change in the name of the company or implementing agency, broad banding diversification, etc. are given at the Zone level by the Development Commissioner. The performance of the SEZ units is periodically monitored by the Approval Committee and units are liable for penal action under the provision of Foreign Trade (Development and Regulation) Act, in case of violation of the conditions of the approval.

11.09 Incentives and facilities offered to the SEZs

The incentives and facilities offered to **the units** in SEZs for attracting investments into the SEZs, including foreign investment are:-

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
- 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- Exemption from minimum alternate tax under section 115JB of the Income Tax Act.

- External commercial borrowing by SEZ units upto US \$ 500 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State sales tax and other levies as extended by the respective State Governments.

11.10 The major incentives and facilities available to SEZ developers include:-

- Exemption from customs/excise duties for development of SEZs for authorized operations approved by the BOA.
- Income Tax exemption on export income for a block of 10 years in 15 years under Section 80-IAB of the Income Tax Act.
- Exemption from minimum alternate tax under Section 115 JB of the Income Tax Act.
- Exemption from dividend distribution tax under Section 115O of the Income Tax Act.
- Exemption from Central Sales Tax (CST).
- Exemption from Service Tax (Section 7, 26 and Second Schedule of the SEZ Act).

11.11 SEZ Approval Status

Consequent upon the SEZ Rules coming into effect w.e.f. 10th February, 2006, Twenty one meetings of the Board of Approvals have since been held. During these meetings, formal approval has been granted to 439 SEZ proposals. There are 138 valid in-principle approvals. Out of the 439 formal approvals, 195 SEZs have been notified.

11.12 Land requirements for approved Special Economic Zones:

The total land requirement for the formal approvals granted till date is approximately 59685 hectares out of which about 97 approvals are for State Industrial Development Corporations/State Government Ventures and they account for over 20000 hectares. In these cases, the land already available with the State Governments or SIDCs or with private companies has been utilized for setting up SEZ. The land for the 195 notified SEZs where operations have since commenced is around 26072 hectares only.

Out of the total land area of 29,73,190 sq km in India, total agricultural land is of the order of 16,20,388 sq km (54.5%). It is interesting to note that out of this total land area, the land in possession of the 195 SEZs notified amounts to approximately over 260 sq km only. The formal approvals granted also works out to only around 596 sq km.

11.13 SEZs- leading to the growth of labour intensive manufacturing industry:

Out of the 439 formal approvals given till date, 150 approvals are for sector specific and multi product SEZs for manufacture of Textiles & Apparels, Leather Footwear, Automobile components, Engineering etc. which would involve labour intensive manufacturing. SEZs are going to lead to creation of employment for a large number of unemployed rural youth. Nokia and Flextronics electronics hardware SEZs in Sriperumbudur are already providing employment to 9645 and 2069 persons respectively, majority of which are women.

Hyderabad Gems SEZ for Jewellery manufacturing in Hyderabad has already employed 2000 persons, out of whom 1200 are women, majority from landless families, after providing training to them. They have a projected direct employment for about 30,000 persons. Apache SEZ being set up in Andhra Pradesh will employ 20, 000 persons to manufacture 10,00,000 pairs of shoes every month. Current employment in Apache SEZ is 4500 persons. Brandix Apparels, a Sri Lankan FDI project would provide

employment to 60,000 workers over a period of 3 years. Even in the services sector, 12.5 million sq meters space is expected in the IT/ITES SEZs which as per the NASSCOM standards translates into 12.5 lakh jobs. It is, therefore, expected that establishment of SEZs would lead to fast growth of labour intensive manufacturing and services in the country.

11.14 Benefits derived from SEZs

Benefits derived from SEZs are evident from the investment, employment, exports and infrastructural developments additionally generated. The benefits derived from multiplier effect of the investments and additional economic activity in the SEZs and the employment generated thus will far outweigh the tax exemptions and the losses on account of land acquisition. Stability in fiscal concession is absolutely essential to ensure credibility of Government intentions.

11.15 Exports from the functioning SEZs during the last three years are as under:

Year	Value (Rs. Crore)	Growth Rate (over previous year)
2003-2004	13,854	39%
2004-2005	18,314	32%
2005-2006	22 840	25%
2006-07	34,615	52%

Projected exports from all SEZs for 2007-08: Rs. 67088 crores

11.16 Investment and employment in the SEZs set up prior to the SEZ Act, 2005:

At present, 1277 units are in operation in the SEZs. In the SEZs established prior to the Act coming into force, there are 998 units

providing direct employment to over 1.83 lakh persons; about 40% of whom are women. Private investment by entrepreneurs in these SEZs established prior to the SEZ Act is of the order of over Rs. 7104 crore.

11.17 Investment and employment in the SEZs notified under the SEZ Act 2005:

Current investment and employment:

- Investment: Rs. 67347 crore
- Employment: 61015 persons

Impact of the scheme

The overwhelming response to the SEZ scheme is evident from the flow of investment and creation of additional employment in the country. The SEZ scheme has generated tremendous response amongst the investors, both in India and abroad, which is evident from the list of Developers who have set up SEZs:

- Nokia SEZ in Tamil Nadu
- Quark City SEZ in Chandigarh
- Flextronics SEZ in Tamil Nadu
- Mahindra World City in Tamil Nadu
- Motorola, DELL and Foxconn
- Apache SEZ (Adidas Group) in Andhra Pradesh
- Divvy's Laboratories, Andhra Pradesh
- Rajiv Gandhi Technology Park, Chandigarh
- ETL Infrastructure IT SEZ, Chennai
- Hyderabad Gems Limited, Hyderabad

Summary

11.18 Still the benefits visualised by the Government in establishing the SEZs have not been realised. The reason is that our industry has been pampered by infrastructure provided and

funded by public till now. Till now the so-called Special Economic Zones which are fully functional have been developed by Government and maintained by Government e.g. Special Economic Zones in SEEPZ, Mumbai, MEPZ in Mumbai, Noida, Vizag etc.

11.19 All the above mentioned SEZs were Export processing zones which were renamed as Special Economic Zones to show that we too have SEZs. Now the Government welcomed Private Participations in development and maintaining of SEZs. Although as many as 439 formal approvals have been granted many or perhaps all of them are still on paper only. We should not forget that the international facilities which will be provided by these privately developed SEZs will have higher costs than what existing SEZs have been providing thus far.

11.20 No developer is going to do service to economy by setting up SEZs by investing huge funds. The cost and profit element will have to be ultimately borne by the SEZ units. Entrepreneurs who propose to set up units in SEZ are apprehensive about the cost of running units in proposed SEZs due to this factor.

11.21 The most important thing talked and debated currently is use agricultural land for developing of proposed SEZs. There is another apprehension that this scheme could indirectly attract real estate business instead of international trade. In many places, there was public outrage coupled with political drama wherein some of the SEZ proposals have been recommended for scrapping. One such example is Goa which proposes to scrap SEZ act passed by their Government.

11.22 If we have to develop these SEZs let us not forget that in China, whom we took as our role model, SEZs have been developed by Government and completely kept away from populated area and at the same time connected well with outside world. Government should rethink keeping off the political issues and concentrate on reality if it wants to succeed like China.

11.23 Ready reckoner of SEZ provisions under various statutes during different years to date.

SEZ

- ◆ Definition - Para 9.54 FTP, Section 2(za)

Special Economic Zones

- ◆ Establishment of Special Economic Zone
- ◆ Procedure for making proposal to establish Special Economic Zone - Section 3 SEZ Act, 2005
- ◆ Procedure for setting up of Special Economic Zone - Rule 3 SEZ Rules, 2006
- ◆ Forwarding of proposal to Board - Rule 4 SEZ Rules, 2006
- ◆ Requirements for establishment of a Special Economic Zone - Rule 5 SEZ Rules, 2006
- ◆ Infrastructure requirements relating to Information Technology - Rule 5A SEZ Rules, 2006
- ◆ Letter of Approval to the Developer - Rule 6 SEZ Rules, 2006
- ◆ Details to be furnished for issue of notification for declaration of an area as Special Economic Zone - Rule 7 SEZ Rules, 2006
- ◆ Notification of Special Economic Zone - Rule 8 SEZ Rules, 2006
- ◆ Approval and Authorisation to Developer to operate SEZ - Section 4 SEZ Act, 2005
- ◆ Grant of approval for Authorised Operations - Rule 9 SEZ Rules, 2006
- ◆ Permission for procurement of items - Rule 10 SEZ Rules, 2006
- ◆ Import and procurement of goods by the Developer - Rule 12 SEZ Rules, 2006
- ◆ Procedure applicable on import or procurement of goods and services, their admission, and clearance of goods - Rule 14 SEZ Rules, 2006
- ◆ Import and Procurement of goods and services - Rule 27 SEZ Rules, 2006
- ◆ Conditions for admission of goods into Zone - Rule 33 SEZ Rules, 2006
- ◆ Procedure for procurements from Domestic Tariff Area - Rule 30 SEZ Rules, 2006

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- ◆ Removal of surplus or obsolete capital goods and spares by Developer - Rule 13 SEZ Rules 2006
- ◆ Monitoring - Rule 15 SEZ Rules, 2006
- ◆ Guidelines for notifying Special Economic Zone - Section 5 SEZ Act, 2005
- ◆ Processing and Non-Processing Areas - Section 6 SEZ Act, 2005, Rule 11 SEZ Rules, 2006
- ◆ Exemption from Taxes, Duties or Cess - Section 7 SEZ Act, 2005
- ◆ Constitution of Board of Approval - Section 8 SEZ Act, 2005
- ◆ Duties, Powers and functions of Board - Section 9 SEZ Act, 2005
- ◆ Suspension of letter of Approval and transfer of Special Economic Zone in certain areas - Section 10 SEZ Act, 2005
- ◆ Transfer of letter of Approval of Developer - Rule 16 SEZ Rules, 2006
- ◆ Development Commissioner - Section 11 SEZ Act, 2005
- ◆ Functions of Development Commissioner - Section 12 SEZ Act, 2005
- ◆ Administrative Control of Special Economic Zone - Rule 20 SEZ Rules, 2006
- ◆ Constitution of Approval Committee - Section 13 SEZ Act, 2005
- ◆ Powers and functions of Approval Committee - Section 14 SEZ Act, 2005
- ◆ Setting up of unit - Section 15 SEZ Act, 2005
- ◆ Proposal for approval of unit - Rule 17 SEZ Rules, 2006
- ◆ Consideration of proposals for setting up of unit in a Special Economic Zone - Rule 18 SEZ Rules, 2006
- ◆ Letter of Approval to a unit - Rule 19 SEZ Rules, 2006
- ◆ General conditions of Import and Export - Rule 26 SEZ Rules, 2006

Special Economic Zones

- ◆ Cancellation of letter of approval to entrepreneur - Section 16 SEZ Act, 2005
- ◆ Setting up and operation of Offshore Banking unit - Section 17 SEZ Act, 2005
- ◆ Offshore Banking unit - Rule 21 SEZ Rules, 2006
- ◆ Setting up of International Financial Services Centre - Section 18 SEZ Act, 2005
- ◆ Single application form, return etc. - Section 19 SEZ Act, 2005
- ◆ Agency to inspect - Section 20 SEZ Act, 2005
- ◆ Single enforcement officer or agency for notified offences - Section 21 SEZ Act, 2005
- ◆ Investigation, inspection, search or seizure - Section 22 SEZ Act, 2005
- ◆ Designated courts to try suits and notified offences - Section 23 SEZ Act, 2005
- ◆ Appeal to High Court - Section 24 SEZ Act, 2005
- ◆ Offences by companies - Section 25 SEZ Act, 2005
- ◆ Exemptions, drawbacks and concessions to every Developer and entrepreneur - Section 26 SEZ Act, 2005
- ◆ Terms and conditions for availing exemptions, drawbacks and concessions to every Developer for authorised operations - Rule 22 SEZ Rules, 2006
- ◆ Procedure for grant of Drawback claims and Duty Entitlement Passbook credit to Developer or Unit - Rule 24 SEZ Rules, 2006
- ◆ Utilisation of goods - Rule 34 SEZ Rules, 2006
- ◆ Un-utilised/Un-accounted goods on which exemptions/ concessions have been taken - Rule 25 SEZ Rules, 2006
- ◆ Co-relation of import consignment with corresponding export consignment - Rule 35 SEZ Rules, 2006

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- ◆ Provisions of Income-Tax Act, 1961 to apply with certain modifications in relation to Developers and Entrepreneurs - Section 27 SEZ Act, 2005
- ◆ Duration of goods or services in Special Economic Zones - Section 28 SEZ Act, 2005, Rule 37 SEZ Rules, 2006
- ◆ Transfer of ownership and removal of goods - Section 29 SEZ Act, 2005, Rule 38 SEZ Rules, 2006
- ◆ Domestic clearance by units - Section 30 SEZ Act, 2005
- ◆ Benefits on Supplies from Domestic Tariff Area - Rule 23 SEZ Rules, 2006
- ◆ Service Tax Exemption - Rule 31 SEZ Rules, 2006
- ◆ Exemption under Central Sales Tax Act, 1956 (74 of 1956) - Rule 32 SEZ Rules, 2006
- ◆ Destruction of goods - Rule 39 SEZ Rules, 2006

Special Economic Zone Authority

- ◆ Constitution of Authority - Section 31 SEZ Act, 2005
- ◆ Officers of authority and other staff - Section 32 SEZ Act, 2005
- ◆ Special provision for transfer of officers or other employees to Authority - Section 33 SEZ Act, 2005
- ◆ Functions of Authority - Section 34 SEZ Act, 2005
- ◆ Grants and loans by Central Government - Section 35 SEZ Act, 2005
- ◆ Constitution of Fund and its application - Section 36 SEZ Act, 2005
- ◆ Accounts and Audit - Section 37 SEZ Act, 2005
- ◆ Directions by Central Government - Section 38 SEZ Act, 2005
- ◆ Returns and Reports - Section 39 SEZ Act, 2005
- ◆ Power to supersede Authority - Section 40 SEZ Act, 2005
- ◆ Members, officers and other employees of Authority to be public servants - Section 41 SEZ Act, 2005

Special Economic Zones

- ◆ Reference of dispute - Section 42 SEZ Act, 2005
- ◆ Limitation - Section 43 SEZ Act, 2005
- ◆ Applicability of provisions of this Act to existing Special Economic Zones - Section 44 SEZ Act, 2005
- ◆ Person to whom a communication may be sent under this Act - Section 45 SEZ Act, 2005
- ◆ Identity Card - Section 46 SEZ Act, 2005
- ◆ Authorities responsible for administration - Section 47 SEZ Act, 2005
- ◆ Protection of action taken in good faith - Section 48 SEZ Act, 2005
- ◆ Power to modify provisions of this Act or other enactments in relation to Special Economic Zones - Section 49 SEZ Act, 2005
- ◆ Power of State Government to grant exemption - Section 50 SEZ Act, 2005
- ◆ Act to have overriding effect - Section 51 SEZ Act, 2005
- ◆ Certain provisions not to apply - Section 52 SEZ Act, 2005
- ◆ Special Economic Zones to be ports, airports, inland container depots, land stations etc.in certain cases - Section 53 SEZ Act, 2005
- ◆ Amendment to First Schedule - Section 54 SEZ Act, 2005
- ◆ Power to make rules - Section 55 SEZ Act, 2005
- ◆ Power to remove difficulties - Section 56 SEZ Act, 2005
- ◆ Amendment of certain enactments - Section 57 SEZ Act, 2005
- ◆ Savings - Section 58 SEZ Act, 2005

Chapter 12

FREE TRADE & WAREHOUSING ZONES

12.1 Objective

The objective is to create trade-related infrastructure to facilitate the import and export of goods and services with freedom to carry out trade transactions in free currency. The scheme envisages creation of world-class infrastructure for warehousing of various products, state-of-the-art equipment, transportation and handling facilities, commercial office-space, water, power, communications and connectivity, with one-stop clearance of import and export formality, to support the integrated Zones as 'international trading hubs'. These Zones would be established in areas proximate to seaports, airports or dry ports so as to offer easy access by rail and road.

12.2 Status

The Free Trade & Warehousing Zones (FTWZ) shall be a special category of Special Economic Zones with a focus on trading and warehousing.

12.3 Establishment of Zone

(i) Proposals for setting up of FTWZs may be made by public sector undertakings or public limited companies or by joint ventures in technical collaboration with experienced infrastructure developers. The proposals shall be considered by the Board of Approval in the Department of Commerce. On approval, the developer will be issued a letter of permission for the development, operation and maintenance of such FTWZ.

(ii) Foreign Direct Investment would be permitted up to 100% in the development and establishment of the zones and their infrastructural facilities.

Free Trade & Warehousing Zones

(iii) The proposal must entail a minimum outlay of Rs.100 crores for the creation and development of the infrastructure facilities, with a minimum built up area of five lakh sq.mts.

(iv) The developer shall be permitted to import duty free such building materials and equipment as may be required for the development and infrastructure of the zone. Such equipment and materials as are sourced from the DTA shall be considered as physical exports for the DTA suppliers.

(v) Once it has developed the FTWZ, the developer shall also be permitted to sale/lease/rent out warehouses/workshops/office-space and other facilities in the FTWZ to traders/exporters.

12.4 Maintenance of Zone

The developer shall itself or through suitable special purpose arrangements, ensure a reliable mechanism for the proper maintenance of the common facilities and security of the FTWZ.

12.5 Functioning

(i) The scheme envisages duty free import of all goods (except prohibited items, arms and ammunitions, hazardous wastes and SCOMET items) for warehousing. As far as bond towards customs duty on import is concerned, the units would be subject to similar provisions as are applicable to units in SEZs.

(ii) Such goods shall be permitted to be re-sold/re-invoiced or re-exported. Re-export shall be permitted without any restrictions. However export of SCOMET items shall not be permitted except with the permission of Inter-Ministerial Committee.

(iii) These goods shall also be permitted to be sold in the DTA on payment of customs duties as applicable on the date of such sale. Payment of duty will become due only when goods are sold/delivered to DTA and no interest will be charged as in the case of bonded warehouses.

(iv) Packing or re-packing without processing and labelling as per customer or marketing requirements could be undertaken within the FTWZ.

(v) The maximum period for which goods shall be permitted to be warehoused within the FTWZ will be two years, after which they shall necessarily have to be re-exported or sold in the DTA. On expiry of the two year period, customs duties as applicable would automatically become due unless the goods are re-exported within such grace period, not exceeding three months, as may be permitted.

12.6 Entitlement of units

- (i) Income Tax exemption as per 80 IA of the Income Tax Act.
- (ii) Exemption from Service Tax.
- (iii) Free foreign exchange currency transactions would be permitted.
- (iv) Other benefits *mutatis mutandis* as applicable to units in SEZs.

12.7 NFE criteria

Units in FTWZs shall be net foreign exchange earners. Net foreign exchange earning shall be calculated cumulatively for every block of five years from the commencement of warehousing and/or trading operations as per formula applicable for SEZ units.

Chapter 13

DEEMED EXPORTS

13.01 Deemed Exports refer to specified transactions in which, goods manufactured in India are supplied to specified projects or to specific categories of consumers. In deemed exports, goods supplied do not leave the country and payment for such supplies are made in India either in Indian rupees or in free foreign exchange by the recipient of the goods.

13.02. The objective of deemed exports is to ensure that the domestic suppliers are not disadvantaged vis-à-vis foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers on par with foreign suppliers.

13.03. Deemed exports broadly cover three areas.

- a. Supplies to domestic entities who can import their requirements duty free or at reduced rate of duty.
- b. Supplies to projects/purposes that involve international competitive bidding.
- c. Supplies to infrastructure projects of national importance.

13.04 Specified categories of Supplies Eligible for Deemed Exports include :

- a. Supply of goods against Advance Authorization/Advance Authorization for Annual Requirement / DFRC/DFIA under Duty Exemption / Remission Scheme;
- b. Supply of goods to Export Oriented Units (EOUs) or units located in or Software Technology Parks (STPs) or to Electronic Hardware Technology Parks (EHTPs) or Bio Technology Parks (BTP);

- c. Supply of capital goods to holders of licences under the Export Promotion Capital Goods (EPCG) Scheme;
- d. Supply of goods to projects financed by multilateral or bilateral agencies/ Funds as notified by the Department of Economic Affairs, Ministry of Finance under International competitive bidding in accordance with the procedures of those agencies/Funds, where the legal agreements provide for tender evaluation without including the customs duty. List of agencies/ Funds notified for this purpose has been given in Appendix 13 of Hand Book.
- e. Supply of capital goods, including in unassembled/ disassembled condition as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till the stage of commercial production and spares to the extent of 10% of the FOR value of fertilizer plants;
- f. Supply of goods to any project or purpose in respect of which the Ministry of Finance, by a notification, permits the import of such goods at zero customs duty;
- g. Supply of goods to Power and refineries not covered in (f) above;
- h. Supply of marine freight containers by 100% EOU (Domestic freight containers- manufacturers) provided the said containers are exported out of India within 6 months or such period as permitted by the Customs;
- i. Supply to projects funded by UN Agencies;
- j. Supply of goods to nuclear projects through competitive bidding as opposed to international competitive bidding.

13.05 Subject to specific conditions as attached to different categories of Deemed Export supplies, the suppliers are eligible for any or all of the following benefits in respect of manufacture and supply of goods qualifying as deemed exports:

- a. Advance Authorisation/Advance Authorisation for Annual requirement /DFIA

Deemed Exports

- b. Deemed Export Drawback
- c. Refund of terminal excise duty

13.06 The deemed export benefits viz Duty Drawback, Refund of Terminal Excise duty etc are available to the Manufacturer Exporter only for supply of the goods manufactured in India, hence usually, merchant exporters are not entitled to these benefits.

13.07 Suppliers of goods against Advance Authorisation and DFIA are entitled to Advance Authorisation for Intermediate Supply. However, where suppliers have made the supplies against Advance Release Order (ARO) or Back to Back letter of credit, they will be entitled to following Deemed Export benefits depending upon the situation;

- i. Where ARO or Back to Back Letter of Credit has been issued against Advance Licence, supplier will be entitled to benefit of Deemed Export Drawback and Refund of terminal excise duty, whichever is applicable;
- ii. Where ARO or Back to Back to Letter of Credit has been issued against DFIA, supplier will be entitled to benefit of Deemed Export Drawback.

13.08 The supplier of goods to EOU/EHTP/STP/BTP Units are entitled to following benefits, whichever, is applicable:

- v Advance Authorisation/ Advance Authorisation for annual requirement /DFIA
- v Deemed Export Drawback
- v Refund of Terminal Excise Duty

13.09 A DTA unit can claim the Advance Authorisation for Deemed Exports or DFIA from the concerned licensing authority. But for refund of Terminal Excise Duty (TED)(?) or deemed export duty drawback, against supplies to EOU/SEZ units, the DTA unit can approach the concerned Development Commissioner(DC). As an option, the DTA unit can give a disclaimer and let the EOU/SEZ unit claim the benefits from the DC. The DEPB benefits can be claimed by a SEZ unit from the DC against a disclaimer from the DTA unit. But, in respect of supplies to STP/EHTP units, the benefits have to be claimed by the DTA supplier from the

concerned licensing authority only. Where All Industry Rates for Drawback are not available these units can get the Brand Rates fixed by the DGFT.

13.10 The domestic manufacturer supplying capital goods to the holders of licences under EPCG Scheme is eligible for the Advance Authorisation/Advance Authorisation for annual requirement /DFIA only. However, such clearances by the deemed export supplier are to be made on full payment of duty. Hence, CVD is to be borne by the buyer of CG under EPCG and he can either avail Cenvat or reduce export obligation to the extent of duty paid.

13.11 Deemed Exports benefits have been extended to supply of goods under international competitive bidding to projects financed by following multilateral or bilateral agencies /funds, in accordance with the procedures, where the legal agreement provides for tender evaluation without including the customs duty. The basic idea is that the multilateral agencies require international competitive trading and zero duty status to imports under the project as a condition for lending the funds. The deemed export provision gives the domestic supplier a chance to compete. The notified funds/agencies are,

1. World bank including International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA);
2. International Fund for Agricultural Development (IFAD);
3. Organisation of Petroleum Exporting Countries (OPEC) Fund;
4. Yen Credit channelised through Japan Bank for International Cooperation (JBIC);
5. Swedish International Development Agency (SIDA);

Following benefits, whichever of them is applicable, are available for the above:

- i. Advance Authorisation/ Adv. Authorisation for annual requirement /DFIA

Deemed Exports

- ii. Deemed Export Draw back
- iii. Refund of Terminal Excise Duty

13.12 Deemed exports benefits are available for supply to the following

- 1. Supplies to Fertilizer plants
- 2. Supply to projects permitted to import at Zero Customs Duty
- 3. Supply to Power Projects and Refineries
- 4. Supplies to projects funded by UN Agencies
- 5. Supplies to Nuclear Power Projects

13.13 The supplies i.e. capital goods and spares to the extent of 10%, to specified Fertilizer Projects (set up, expanded, revamped, retrofitted or modernized during the 8th or 9th Five-Year Plan period and spilled over to the 10th Plan period viz. Kakinda, Babrala, Gadepan, Shahjahanpur) are not eligible for refund of Terminal Excise Duty. Even supplies for power projects, other than mega power projects, and supplies to refineries and supplies to projects funded by UN agencies are not eligible for Terminal Excise Duty refund.

13.14. Supplies made by Indian Sub-contractor of an Indian or foreign main contractor, are also eligible for deemed export benefits provided the name of the sub-contractor is indicated either originally or subsequently in the contract, and payment certificate is issued by the Project Authority in the name of the sub-contractor in the form in Appendix 22 C.

13.15. In respect of supply by sub-contractor to main contractor against following projects, the sub-contractor can make the claim for deemed export benefit against payment certificate in the form given (Appendix 22C) as Form 1C issued by main contractor:

- 1. Supplies to Projects financed by certain Agencies /Fund;
- 2. Supply to Fertilizers Plants;
- 3. Supply to Projects permitted to import at Zero customs duty;
- 4. Supply to Power and Refineries;

5. Supply to projects funded by UN Agencies;
6. Supply to Nuclear Power Projects.

13.16 In all cases of deemed exports, supplies should be made directly to the designated project /agencies /units/ Advance Authorisation/EPCG Authorisation holder. The sub-contractor, wherever permitted, can make the supplies to the main contractor instead of designated projects/ agencies.

13.17. The realisation of proceeds for sale is one of the requirements for the purpose of claiming Deemed Export Benefit and following are the requirements in different cases:

- ◆ Supplier of goods to Advance Authorisation/DFIA, EOU/EHTP/STP and EPCG Scheme will be required to submit documentary evidence from the bank substantiating the realisation of proceeds through the normal banking channel in the form in Appendix 22B;
- ◆ For supplies of goods to projects by certain multilateral and bilateral agencies/funds, supplies to Projects financed by certain Agencies/ Fund, Fertilizer Plants, permitted to import at zero customs duty, Power and Refineries, funded by UN Agencies and Nuclear Power Projects, the Payment Certificate as issued by Project Authority concerned in the form given in Appendix 22C will be required.

13.18 The provisions of issue of Advance Licence against Deemed Export supplies were introduced w.e.f. 1.4.2000. Earlier such duty-free licences were known as Special Import Licences.

13.19 As per customs notification, raw materials, components, intermediates, consumables, computer software and parts and also packing materials required for the manufacture of final goods for supply to categories of persons listed therein, when imported will be exempted from whole of the basic and additional duty of customs.

13.20 Advance Authorisation for Deemed Export and / or material imported there under will not be transferable ever after completion of export obligation. However, in exceptional cases, the material may be allowed to be transferred on merits by ALC

Deemed Exports

13.21 Application for Advance Authorisation for Deemed Export is to be made alongwith Project Authority certificate or invalidation letter with the fees prescribed.

13.22 Deemed Export Drawback / Refund of Terminal Excise Duty

Drawback in relation to any goods manufactured in India and exported means the rebate of duty chargeable on any imported material or excisable material used in the manufacture of such goods in India. The goods include imported spares, if supplied with capital goods manufactured in India.

13.23 An application for claim of Deemed Export Drawback/ Refund of Terminal Excise Duty is to be submitted along with documents prescribed to Regional Licensing Authority. In case of supplies to EOU, the DTA unit can claim the benefits from the Development Commissioner of concerned EOU. In case of supplies to EHTP/STP/BTP, the DTA unit has to file claim for benefits with the licensing authority concerned.

13.24 In the annual supplement to the Foreign Trade Policy notified on 8th April 2005, the various categories have been merged into a single advance licence scheme. The Department of Revenue issues the corresponding notifications.

Chapter 14

DEFINITIONS

Export

14.01 Some of the commonly used terms are defined here and for more definitions please refer to chapter 9 of FTP given later in this book.

14.02 It is very interesting to note that Foreign Trade Policy does not provide any definition of the word 'export'. Under Section 2(e) of the FT(D&R) Act, 1992, 'export' has been defined as taking out of India, any goods, by land, sea or air. 'Export' is defined in Customs Act 1962 as "export, with its grammatical variations and cognate expressions, means taking out of India to a place outside India".

14.03 The words 'to a place outside India' are used with a view to distinguishing exports from coastal trade, where the goods are taken outside the territorial waters of India but are brought back to India at another port. Exports need to be distinguished from deemed exports where the goods do not leave the geographical territory of India but are granted the fiscal treatment in terms of remission or exemption of duties on inputs as available for exports.

14.04 For our common understanding, export will be treated as complete when the goods leave the country and foreign exchange towards consideration of goods is received except where such consideration is not expected e.g. samples, free replacement, etc. This understanding ought to serve us well especially while dealing with export promotion schemes.

14.05 In respect of services, receipt of foreign exchange in payment of the services rendered is the key as services are intangibles. It is to be noted that what constitutes export of services is not yet a very settled issue. For instance, services rendered by professionals travelling abroad or by branches of say Indian entities like Bank or foreign exchange earned against

Definitions

services rendered in India may not be considered as 'export of services' in every situation.

The definitions of 'service' and 'service provider' given in Chapter 9 of Foreign Trade Policy read as under:

Services under Para 9.52 of Foreign Trade Policy

"Services" include all the tradable services covered under General Agreement on Trade in Services and earning free foreign exchange.

Service Provider under Para 9.53 of Foreign Trade Policy

"Service Provider" means a person providing

- i. Supply of a 'service' from India to any other country;
- ii. Supply of a 'service' from India to the service consumer of any other country in India; and
- iii. Supply of a 'service' from India through commercial or physical presence in the territory of any other country.
- iv. Supply of a 'service' in India relating to exports paid in free foreign exchange or in Indian Rupees, which are otherwise considered as having being paid for in free foreign exchange by RBI.

Service Modes defined in the GATS

In Article 1(2) of the General Agreement on Trade in Services (GATS), the export of services has been categorised into 4 modes namely:

- i. Mode 1 or the cross-border supply of service to another Member
- ii. Mode 2 or the supply of service in the territory of the supplier to a service consumer of another Member
- iii. Mode 3 or the supply through commercial presence in another Member
- iv. Mode 4 or supply of service by the presence of natural persons in another Member

Import

14.06 Import has not been defined under the Foreign Trade Policy. However, under Section 2(e) of the FT(D&R) Act, 1992, import has been defined as 'bringing into India, any goods by land, sea or air'. According to the Customs Act, 1962, import is defined as "import, with its grammatical variations and cognate expressions means bringing into India from a place outside India".

Here again, the words 'from a place outside India' are used to distinguish imports from coastal trade, where goods may arrive at one port from another port in India, after crossing the territorial waters of India during voyage.

14.07 For our common understanding, imports commence when the goods cross the territorial waters of India and continue to remain imported goods till they cross the customs barriers i.e. they are cleared for home consumption. Imported goods can be kept in bonded warehouses without duty payment and then cleared for home consumption or for exports. Manufacturing may also be allowed in bonded warehouses.

Chapter 15

ROLE OF CHARTERED ACCOUNTANTS IN THE AREA OF FOREIGN TRADE POLICY

In the Preamble to the Foreign Trade Policy, 2004-09, Shri Kamal Nath, Commerce Minister had set two major objectives; one of doubling our merchandise trade (both exports and imports) in the next five years, and, second, using trade as an effective instrument of economic growth and employment generation. To every body's surprise, during the announcement of final Annual supplement to the Foreign Trade Policy 2004-09 in April 2008, our commerce minister mentioned that merchandise trade had more than doubled within four years instead of five years. It is also heartening to note that we had achieved our second objective of fashioning trade into an instrument of economic growth and employment generation. This was vindicated by the fact that total trade in goods and services formed nearly half our GDP and around 136 lakh new jobs are estimated to have been created in this period. Our minister appreciated the contribution of the services sector which accounted for more than 20% of our total trade.

The Special Economic Zones (SEZs) are an important policy tool in this effort to increase our exports, generate employment and provide momentum to economic growth. These zones are intended to be magnets for attracting foreign investment and acting as a one stop shop for the state-of-the-art infrastructural facilities.

With the multitude of activities governing international trade and their increasing complexity, the era of single tasking or specialisation is no longer in vogue. Increasingly, companies are on the lookout for professionals who can multi-task i.e. handle both commercial and technical functions. The role of the CAs has therefore to be re-defined in this new era.

As for customs tariff, India has taken bindings (or upper ceiling on our applied customs duties) at the WTO on both agricultural and industrial goods. In tune with the negotiations at the Doha round, as and when an agreement is reached, we would need to cut these binding levels. However, in tune with our economic reforms initiated in 1991, we have unilaterally and progressively cut our applied customs duties on industrial products from 50% to less than 10%. Most of our industrial goods have basic customs duty of 10%. Under the WTO agreements, we are also committed to providing most favoured nation (MFN) status to all WTO Members by ensuring that we do not discriminate in the treatment being provided to any WTO Member over what is provided to others. Secondly, under the national treatment principle we cannot put in place a policy that provides a higher level of protection to the domestic industry than the importer.

The WTO regime has opened up global trade in goods and services along with competitive economic environment. This is also a breeding ground for disputes on areas concerning the application of the WTO Agreements. The dispute settlement mechanism of the WTO is a rule-based and effective system for dealing with such disputes. Some of the areas of interest for CAs on WTO disputes could be those concerning application of indirect taxes; non tariff barriers; intellectual property rights such as patents, copyrights, trademarks, GIs , GATT principles etc.

The traditional functions of a CA such as accounting, bookkeeping and finance related functions, would, therefore, need to be looked at again. International trade would require CAs to look at other areas such as indirect taxation, foreign exchange risk management, project management, and international marketing and finance, trade defence measures such as anti-dumping, countervailing and safeguards, SPS and TBT measures etc.

Advisory Services Related to Foreign Trade Policies & Instruments

- ◆ Advisory Services to National Governments in framing WTO Compliant Foreign Trade Policies & modifying the existing schemes.

Role of Chartered Accountants in the Area of Foreign Trade Policy

- ◆ Analysis of business operations and facilitation services
- ◆ Formation of a company/subsidiary of a foreign company
- ◆ Setting up 100% EOU/STP/EHTP/BTP/SEZ units
- ◆ Assistance in fulfilling the regulatory and licensing requirements
- ◆ Obtaining government clearances
- ◆ Liaisoning across related government agencies
- ◆ Development of strategies and implementation plans according to the specific needs of the clients.
- ◆ Consulting, documentation and facilitation for
 - Exports and imports for Export-Import Policy
 - Licences
 - Incentives
 - Logistics
 - Exim Finance
 - Exim legal matters
- ◆ Getting Foreign Investment and related matters like Setting up of Business Operations in India including Liaison Office, Branch Office, Subsidiary Company, Joint Ventures.
- ◆ Approval of Investments from RBI/FIPB/Ministries.
- ◆ Quality certification for Foreign Companies exporting to India (as required under BIS regulations).
- ◆ Domestic operations & Incorporations like Formation of companies in India & related issues with ROC, RBI & other Government departments, Registrations with DGFT (IEC), EPC (RCMC), Industry Ministry (IEM), Income tax (PAN), Sales tax, Excise, Representation of Cases Before Central Excise Appellate Authorities, Customs Authorities, Fixation of /Brand Rates for Drawback, Rebate / Refund of Central Excise Duties, Customs Duties etc.
- ◆ Application and Issuance of DEPB, Advance License, EPCG License, Duty Drawback, Deemed Export Benefits.

- ◆ Representation and Liaison:
 - With DGFT, RBI and Ministries for import-export licences & other matters,
 - For Foreign companies/NRIs/OCBs in India, Indian Investments Abroad, OCBs etc
 - Planning, Strategizing and implementation for clearances of Project Imports, Plant Relocations, Restricted Items Imports.

Advisory Services Related to Special Economic Zones/ 100 % Export Oriented Units (EOU) / Software Technology Parks (STP) / Electronic Hardware Technology Parks (EHTP)

- ◆ Assistance in preparation of project report
- ◆ A project report outlining the economic and commercial viability of the project needs to be attached along with Form A i.e., application for setting up a unit in Special Economic Zone.
- ◆ Assistance in necessary applications, compliances etc. with the Board of Approval, State Government, Development Commissioner, Approval Committee, etc.
- ◆ Consultancy services for developing Special Economic Zones.
- ◆ Consultancy services for setting up units in Special Economic Zones.
- ◆ Representation before Board of Approval on behalf of any person aggrieved by the order passed by the Approval Committee.

Rule 55 of Special Economic Zones Rules, 2006 states that any person aggrieved by an order passed by the Approval Committee under section 15 of the Special Economic Zones Act, 2005 or against cancellation of Letter of Permission under section 16, may prefer an appeal to the Board in Form J.

Rule 61 of the Special Economic Zones Rules, 2006 states that every appellant may appear before the Board in person or authorize one or more chartered accountants or company

Role of Chartered Accountants in the Area of Foreign Trade Policy

secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Board.

- a. Certification of reports – Form I (Annual performance reports for Units)
- b. There is a requirement under Rule 22 of the Special Economic Zones Rules, 2006 that the grant of exemptions, drawbacks and concession to the entrepreneur or developer of a Special economic zone will be subject to the condition that the Unit submits an Annual Performance Report in Form I to the Development Commissioner who in turn will submit it to the Approval committee for his consideration. The information given in the form should be authenticated by the authorized signatory of the unit and certified by a Chartered Accountant.
- c. Audit report under section 80-I(7)/80-IA(7)/80-IB/80-IC of the Income-tax Act, 1961 in Form 10CCB
- d. Report under section 10A (5) and Section 10 B (5) of the Income-tax Act, 1961 in FORM NO. 56F and Form No. 56 G respectively certifying that the deduction has been made in accordance with the corresponding section.
- e. Report under section 80LA(3) of the Income-tax Act, 1961 in Form No. 10CCF
- f. Report on Annual performance of units -The information given in the formats for APRs should be authenticated by the authorized signatory of the unit and should be certified for its correctness by a Chartered Accountant with reference to the account records and registers maintained by the unit (Appendix 14 –I-F Handbook of procedures of Foreign Trade Policy)
- g. Certificate on production and exports- DTA sale of Gem & Jewellery items will be permitted on annual basis by the Development Commissioners up to 10% of FOB value of exports during the preceding year subject to certain conditions. One such condition is that the application by an EOU has be submitted to DC concerned on yearly basis (licensing-year) giving the details of production and exports made during the preceding licensing year duly certified by a Chartered Accountant and endorsed by the jurisdictional

- Custom Authority.(Appendix 14- I-H Handbook of procedures of Foreign Trade Policy)
- h. Certificate for CST reimbursements certifying receipt of the goods (Appendix 14- I-I Handbook of procedures of Foreign Trade Policy)- The Export Oriented Units (EOUs) and units in Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) will be entitled to full reimbursement of Central Sales Tax (CST) paid by them on purchases made from the Domestic Tariff Area (DTA), for production of goods and services as per EOU Scheme subject to certain conditions.
 - i. The unit has to present its claim for reimbursement of CST in the prescribed form (Annexure - I) to the Development Commissioner of the SEZ concerned or the designated officer of the EHTP/STP.
 - j. Certification of Statement of Exports made in the preceding licensing year in the format given in Appendix 26 for Annual Advance License purposes (Handbook of Procedures Vol.1-2004-09)
 - k. Advance licence can be applied for annual requirement for a particular product group by status holders and by the other exporters with at least two years of past export performance. For the completion of the export obligation as stipulated in the condition of the licence, the exporters are required to submit proof of export obligation fulfilment.

To specialise in this area, one has to have a deep understanding of our Foreign Trade Policy administered by the office of the DGFT as also the trade related measures being applied by other government agencies such as Customs, Excise, Service Tax, Income Tax, Ports, RBI etc. He is also required to keep himself updated with the international trade laws and WTO's state of negotiations to compete with other professionals in other countries.

With this mindset, the Institute of Chartered Accounts has included indirect taxes in its curriculum. Given the expectations from recruiting companies, we should expect that Foreign Trade Policy would also be a significant thrust area in the courses.

Role of Chartered Accountants in the Area of Foreign Trade Policy

Some of the subjects that are important from the perspective of a CA for venturing into the area of foreign trade are:

- ◆ Legal provisions that are critical in the area of Foreign Trade, namely, Acts, Rules, Orders, Notifications, Public Notices, Circulars under the Foreign Trade Policy. The various statutes administered by the departments such as the Customs, Excise, Service tax, Income Tax, RBI, Ports, Standard Setting Bodies etc are also important from the perspective of international trade.
- ◆ Import and Export Policy in terms of prohibitions, restrictions and other related measures on imports and exports. This information would give an idea of the viability of a company venturing into the business related to any of these products.
- ◆ Macro picture of the trend in import and export of goods and services, regulations governing the realisation/payments and accounting procedures thereof.
- ◆ Foreign exchange risk management strategies, product pricing and international marketing.
- ◆ Information of duty exemption/ remission schemes, end use duty exemption scheme, export promotion scheme and market development initiatives. These would help in the reduction of export costs.
- ◆ The ways and means of reducing transaction costs in international transactions.
- ◆ Risk management tools and mitigation of risks arising out of international transaction ranging from Marine risks, Exchange risks etc. to losses due to fire, accident etc.
- ◆ Knowledge of the best documentation practices for export and import documentation including knowledge on the UCPDC 500.
- ◆ Methods that are available to trade in resolving disputes between various countries/ industries and products/services and measures like anti-dumping, non-tariff barriers, and countervailing measures adopted by various countries and the ways of addressing such issues.

List of useful Websites

S. No	Organisation	Website
1	Directorate General of foreign Trade- Ministry of Commerce	http://dgft.delhi.nic.in/
2	Ministry of Commerce	http://commerce.nic.in/
3	Govt. of India Directory	http://goidirectory.nic.in/
4	Ministry of Finance	http://finmin.nic.in/
5	Central Board of Excise & Customs	http://www.cbec.gov.in/
6	Federation Of Indian Export Organisations (FIEO)	www.fieo.org
7	Reserve Bank of India (RBI)	http://www.rbi.org.in/
8	Inland Container Depot (ICD) Delhi Customs	http://www.geocities.com/icddelhi/
9	Indian Mission & Posts, Ministry of External Affairs Government of India	http://meaindia.nic.in/onmouse/mission.htm
10	Directorate General of Anti-Dumping	http://commerce.nic.in/ad_guide.htm
11	Director General of Safeguards	http://dgsafeguards.gov.in/default.asp
12	Ministry of External Affairs Government of India	http://meaindia.nic.in/
13	Office of Development Commissioner (MSME)	http://www.smallindustryindia.com/
14	Ministry of Textiles, Govt. of India - Office of the Textile Commissioner, Mumbai	http://www.txcindia.com/

Role of Chartered Accountants in the Area of Foreign Trade Policy

15	World Trade Organisation	http://www.wto.org/
16	Safeguard Measures – World Trade Organisation	http://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm
17	Centre for Trade Development	http://www.centad.org/gwa_2.asp
18	The Cotton Textiles Export Promotion Council Of India [TEXPROCIL]	http://www.texprocil.com/
19	World Customs Organisation	http://www.wcoomd.org/ie/index.html
20	World Bank, Washington, US	http://www.worldbank.org/
21	Special Economic Zones in India	http://www.sezindia.nic.in
22	Software Technology Park of India/ Electronic Hardware Technology Park	http://www.stpi.in/
23	Free Trade Warehousing Private Limited (FTWPL)	http://www.ftwpl.com/
24	Department of Biotechnology (DBT) under the Ministry of Science and Technology	http://dbtindia.nic.in/
	Special Economic zones in India	
25	Santa Cruz Electronics Export Processing Zone	http://www.seepz.com/
26	Kandla Special Economic Zone	http://www.kasez.com
27	Cochin Special Economic Zone	http://www.csez.com/
28	Madras Special Economic Zone	http://www.mepz.gov.in/

Hand Book on Foreign Trade Policy and Guide to Export & Import

29	Visakhapatnam Economic Zone	Special		http://www.vsez.gov.in/
30	Falga Zone	Special	Economic	http://www.fepz.com/
31	Noida Zone	Special	Economic	http://www.nsez.gov.in/
32	Indore Zone	Special	Economic	http://www.sezindore.com/