

## CHAPTER 1

### LEGAL FRAMEWORK AND TRADE FACILITATION

#### A. LEGAL FRAMEWORK

##### **1.00 Legal Basis of Foreign Trade Policy(FTP)**

The Foreign Trade Policy, 2015-20, (as updated) w.e.f. 05.12.2017 is notified by Central Government, in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992) [FT (D&R) Act], as amended.

##### **1.01 Duration of FTP**

The Foreign Trade Policy (FTP), 2015-2020,(as updated) w.e.f. 05.12.2017 incorporating provisions relating to export and import of goods and services, shall come into force with effect from the date of notification and shall remain in force up to 31st March, 2020, unless otherwise specified. All exports and imports made up to the date of notification shall, accordingly, be governed by the relevant FTP, unless otherwise specified.

##### **1.02 Amendment to FTP**

Central Government, in exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

##### **1.03 Hand Book of Procedures (HBP) and Appendices & Aayat Niryat Forms (AANF)**

Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and provisions of FTP.

##### **1.04 Specific provision to prevail over the general**

Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision.

## 1.05 Transitional Arrangements

- (a) Any License/ Authorisation/ Certificate/ Scrip/ instrument bestowing financial or fiscal benefit issued before commencement of FTP,2015-20 (as updated) w.e.f. 05.12.2017 shall continue to be valid for the purpose and duration for which it was issued, such License/Authorisation/ Certificate / Scrip / any instrument bestowing financial or fiscal benefit Authorisation was issued, unless otherwise stipulated.
- (b) Item wise Import/Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/ exportability of a particular item is governed by the policy as on the date of import/export. The date of import/ export is defined in para 2.17 of HBP, 2015-20. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. However the import through High Sea sales will not be covered under this facility. Further, the import/export on or after the date of such regulation/restriction will be allowed for importer/exporter has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operational listing such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/regulation. Whenever, Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for.<sup>i</sup>

## B. TRADE FACILITATION & EASE OF DOING BUSINESS

### 1.06 Objective

Trade facilitation is a priority of the Government for cutting down the transaction cost and time, thereby rendering Indian exports more competitive. The various provisions of FTP and measures taken by the Government in the direction of trade facilitation are consolidated under this chapter for the benefit of stakeholders of import and export trade.

### 1.07 DGFT as a facilitator of exports/imports

DGFT has a commitment to function as a facilitator of exports and imports. Focus is on good governance, which depends on efficient, transparent and accountable

delivery systems. In order to facilitate international trade, DGFT consults various Export Promotion Councils as well as Trade and Industry bodies from time to time.

### **1.08 Niryat Bandhu - Hand Holding Scheme for new export/ import entrepreneurs.**

- (a) DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes.
- (b) Considering the strategic significance of small and medium scale enterprises in the manufacturing sector and in employment generation, 'MSME clusters' have been identified, based on the export potential of the product and the density of industries in the cluster, for focused interventions to boost exports.
- (c) Outreach activities shall be organized in a structured way with the help of Export Promotion Councils as 'industry partners' and other willing 'knowledge partners' in academia and research community to achieve the objective of Niryat Bandhu Scheme. Further, in order to ensure optimum utilization of resources, efforts would be made to associate all the stakeholders, including Customs, ECGC, Banks and concerned Ministries.

### **1.09 Citizen's Charter**

DGFT has in place a Citizen's Charter, giving time schedules for providing various services to clients. Time line for disposal of an Application is given in Para 9.10 of HBP.

### **1.10 Online Complaint Registration and Monitoring System**

An EDI Help Desk is available to assist the exporters in filing online applications on the DGFT portal and resolving other EDI related issues. For assistance an email may be sent at [dgftedi@nic.in](mailto:dgftedi@nic.in) or Toll Free number 1800111550 can be used. Help Desk facility is also operational at the 4 DGFT Zonal Offices (details at <http://dgft.gov.in>). An Online Complaint registration and monitoring system allows users to register complaint and receive status/ reply online (details are at <http://dgft.gov.in>).

### **1.11 Issue of e-IEC (Electronic-Importer Exporter Code)**

- (a) Importer Exporter Code (IEC) is mandatory for export/import from/to India as detailed in paragraph 2.05 of this Policy. DGFT issues Importer Exporter Code in electronic form (e-IEC). For issuance of e-IEC an application can be made on DGFT (<http://dgft.gov.in>). Applicant can upload the documents and pay the requisite fee through Net banking. Applicant shall, however, submit the application duly signed digitally.
- (b) Processing of such applications by Regional Authority (RAs) of DGFT would

be done online and a digitally signed e- IEC would normally be issued/ e-mailed to the applicant within 2 working days.

- (c) In case the application is incomplete or otherwise ineligible, the same shall be rejected and a Rejection letter/email (with reasons for rejection) would be sent to the applicant.
- (d) Application for issue of e-IEC can also be made from eBiz platform (<https://www.ebiz.gov.in>).

### **1.12 e-BRC**

- (a) One prominent initiative in recent times has been the e-BRC (Electronic Bank Realisation Certificate) project and its successful implementation by DGFT. It has enabled DGFT to capture details of realisation of export proceeds directly from the Banks through secured electronic mode. This has facilitated the implementation of various export promotion schemes without any physical interface with the stake holders.
- (b) RBI has also developed a comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform.

### **1.13 MoU with State Governments for sharing of e-BRC data**

MOU has been signed with 14 state governments for sharing of e-BRC data to facilitate refund of VAT/GST by the state government to exporters. MOU has also been signed with Enforcement Directorate, Agricultural Directorate, Agricultural Processed Food Products Export Development Authority and Goods & Services Tax Network (GSTN).

### **1.14 Exporter Importer Profile**

An electronic procedure has been created to upload various documents in exporter importer profile. Once uploaded, there will be no need to submit these documents/ copies of these documents to Regional Authority repeatedly with each application. It intends to reduce the transaction cost and time and is a step towards paperless processing of different applications in DGFT.

### **1.15 Reduction in mandatory documents required for Export and Import**

The number of mandatory documents required for exports and imports of goods from/into India have been reduced to three each, as prescribed under paragraph 2.06 of FTP.

## **1.16 Facility of online filing of applications**

All the Regional Authorities (RA) of DGFT and extension counters have been networked with high speed internet. The applications are received and processed electronically. DGFT under the EDI initiatives has provided the facility of on line filing of applications to obtain Importer Exporter Code and various Authorisations /scrip's. DGFT is one of the first digital signature enabled organisation of the Government of India (GOI), which has introduced a higher level of Encrypted 2048bit digital signature. There is a web interface for online filing of application after accessing DGFT website (<http://dgft.gov.in>). The application can be filed by exporter/CHA sitting at home or office in 24X7 environments. Application fee can also be paid online from linked banks or by using debit/credit card. The applications are signed with a digital signature and submitted electronically to the concerned Regional Authority of DGFT, which are then processed on computer by the Regional Authority and Authorisations / scrip's are issued. Online filing of Application has minimized the physical interface with RA.

## **1.17 Online Inter-ministerial consultation**

Presently, the exporters are required to file applications online on the website of DGFT under the Icon E-COM and are required to submit the duly signed and stamped printout of the online application along with all the necessary documents viz. technical specifications, literature etc. Now, a facility is being provided to upload copies of all the required documents including technical specifications, literature etc in PDF/JPG/JPEG/GIF format in the online filing system in respect of (a) Fixation of norms under Advance Authorisation by Norms Committees (b) Export of Restricted Items (c) Import of Restricted Items (d) SCOMET Items. The exporters would not be required to submit the hard copy of application except architectural drawings, machine drawings etc which may be difficult to scan and upload. The processing of the applications will also be done online.

## **1.18 Facility to upload documents by CA/ CS/ Cost Accountant**

In order to move towards paperless processing, an electronic procedure is being developed to upload digitally signed documents by Chartered Accountant / Company Secretary / Cost Accountant. To start with, this facility would be created for Export from India Schemes under Chapter 3. Such documents like Annexure Attached to ANF 3B, ANF 3C and ANF 3D, which are at present signed by these signatories, can be facilitated by this procedure. Exporter shall link digitally uploaded annexure with his online applications after creation of such facility. These facilities may be extended in phased manner to upload documents pertaining to other schemes like Advance Authorisation, DFIA and EPCG.

## **1.19 Electronic Data Interchange (EDI)**

DGFT has put in place a robust EDI system for the purpose of export facilitation and good governance. DGFT has set up a secured EDI message exchange system for various documentation related activities including import and export Authorisations established with other administrative departments, namely, Customs, Banks and EPCs. This has reduced the physical interface of exporters and importers with the Government Departments and is a significant measure in the direction of reduction of transaction cost. The Endeavour of DGFT has been to enlarge the scope of EDI to achieve higher level of integration with partner departments.

## **1.20 Message Exchange with Community partners**

Customs, Banks, Export Promotion Councils (EPCs) are major community partners of DGFT for message exchange. An effective message exchange system is in place with various community partners which is as follows:

- (a) Message Exchange with Customs
  - (i) Importer Exporter Code Number.
  - (ii) Authorisations/ Scrips for DFIA, AA, EPCG.
  - (iii) Shipping Bills for Duty Free Import Authorisation (DFIA), Advance Authorisation (AA), Export Promotion Capital Goods (EPCG), Reward Scrips.
- (b) Message Exchange with eBiz (<https://www.ebiz.gov.in>): Application for e-IEC.
- (c) Message Exchange with Banks
  - (i) Application Fee
  - (ii) electronic Bank Realisation Certificate (e-BRC) data
- (d) Message Exchange with EPCs
  - Registration cum Membership Certificate (RCMC) data.
- (e) Message exchange with GSTN and RBI.

## **1.21 Encouraging development of Third Party API**

DGFT will encourage development of third party software for integration with its system to offer users multiple options for interfacing with the DGFT.

## **1.22 Forthcoming e-Governance Initiatives**

DGFT is currently working on the following EDI initiatives:

- (i) Message exchange for transmission of Bills of Entry

(import details) from Customs to DGFT.

<ul style="list-style-type: none"> <li>(ii) Online issuance of Export Discharge Certificate (EODC).</li> <li>(iii) Message exchange with Ministry of Corporate Affairs for CIN &amp; DIN Information.</li> <li>(iv) Message exchange with CBDT for PAN.</li> <li>(v) Open API for submission of e-IEC Application.</li> <li>(vi) Mobile Applications for FTP.</li> </ul>	<p>Obligation</p>
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### **1.23 Free passage of Export consignment**

Consignments of items meant for exports shall not be withheld/ delayed for any reason by any agency of Central/ State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.

### **1.24 No seizure of export related Stock**

No seizure shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on the basis of *prima facie* evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.

### **1.25 24 X 7 Customs clearance**

CBEC introduced the facility of 24 X 7 customs clearance in the year 2012 for facilitated Bills of Entry and factory stuffed container and goods exported under free Shipping Bills. At present, this facility is available at 19 sea port and 17 air cargo complexes. The 24 X 7 Customs clearance facility has now been extended to all Bills of Entry (not only facilitated Bills of Entry) at 19 sea port and 17 Air Cargo Complexes. Further, no MOT charges are required to be collected in respect of the services provided by the Customs officers at 24 X 7 Customs Ports and Airports.

### **1.26 Single Window in Customs**

Indian Customs has introduced SWIFT (Single Window Interface for Facilitating trade) w.e.f. 01.04.2016 for ensuring ease of doing business. Under SWIFT, the Importers electronically lodge Integrated Declaration at a single point only with Customs. The required permission, if any, from other regulatory agencies (such as Animal quarantine, Plant quarantine, Drug Controller, Textile Committee etc.) is obtained online without the importer/exporter having to separately approach these agencies. Benefits of Single Window Scheme include:

- a. Reduced Cost of doing business;
- b. Enhanced transparency;

This document is only for information. The Foreign Trade Policy reading the relevant notification will have only legal authority.

- c. Reduced duplicity and cost of compliance;
- d. Optimal utilization of manpower.

## **1.27 Self-Assessment of Customs Duty**

- (a) Self-Assessment of Customs duty by importers or exporters was introduced vide Finance Act, 2011. The system is trust based. The objective is to expedite release of imported / export goods. The system operates on an electronic Risk Management System(RMS)
- (b) The Finance Act, 2017 has amended Section 47 of the Customs Act, 1962 to Authorize an importer to pay duty/ tax/ cess on the date of presentation of self-assessed Bill of Entry.

## **1.28 Authorised Economic Operator (AEO) Programme**

- (a) Based upon WCO's SAFE Framework of Standards (FoS), 'Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the international trade to reap the following benefits:
  - (i) Secure supply chain from point of export to import;
  - (ii) Ability to demonstrate compliance with security standards when contracting to supply overseas importers /exporters;
  - (iii) Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries;
  - (iv) Minimal disruption to flow of cargo after a security related disruption;
  - (v) Reduction in dwell time and related costs; and
  - (vi) Customs advice / assistance if trade faces unexpected issues with Customs of countries with which India have MRA.
- (b) The AEO programmes have been implemented by other Customs administrations that give AEO status holders preferential Customs treatment in terms of reduced examination, faster clearances and other benefits. Thus, the AEO programme is expected to result in Mutual Recognition Agreements (MRA) with these Customs administrations. MRAs would ensure export goods get due Customs facilitation at the point of entry in the foreign country. Apart from securing supply chain, the benefits include reduction in dwell time and consequent cost of doing business. Indian Customs has signed MRA with Hong Kong Customs to recognise respective AEO Programmes to enable trade to get benefits on reciprocal basis. Indian Customs is also engaged in finalising MRA with other countries such as South Korea, Taiwan, USA etc.
- (c) As a step further towards trust based compliance, Indian Customs has introduced the new/revamped Authorised Economic Operator (AEO)

Programme wherein extensive benefits, including greater facilitation and self-certification, have been provided to those entities who have demonstrated internal strong control system and compliance with CBEC.

### **1.29 Prior filing facility for Shipping Bills**

To facilitate processing of shipping bills before actual shipment, prior online filing facility for shipping bills has been provided by the Customs - 7 days for air shipments & ICDs and 14 days for shipments by sea.

### **1.30 Cutting down delay in filing of Export General Manifest (EGM) for duty drawback**

To facilitate quicker filing of EGMs and quicker rectification of EGM errors, there is a mechanism of monthly monitoring of EGMs by Chief Commissioners of Customs to ensure that facilitation does not lag on this account (Instruction No. 603/01/2011-DBK dated 31.07.2013).

### **1.31 Facility of Common Bond / LUT against Authorisations issued under different EPSChemes**

CBEC Circular 11(A)/2011-Cus dated 25.02.2011 has provided the financial year-wise facility of executing common Bond/LUT against Advance Authorisation (AA)/Export Promotion Capital Goods (EPCG) Authorisation which is usable across all EDI ports/ locations.

### **1.32 Exemption from Service Tax on Services received abroad**

(Deleted)

### **1.33 Export of perishable agricultural Products**

To reduce transaction and handling costs, a single window system to facilitate export of perishable agricultural produce has been introduced. The system will involve creation of multi- functional nodal agencies to be accredited by Agricultural and Processed Food Products Export Development Authority (APEDA), New Delhi. The detailed procedure has been notified at Appendix 1C to Appendices &ANFs.

### **1.34 Time Release Study (TRS)**

Customs Authority has decided to undertake 'Time Release Study' (TRS) as per WCO guidelines at major Customs locations on six monthly basis. WCO Time Release Study (TRS) is a unique tool and method for measuring the actual performance of Customs. The underlying objectives of Time Release Study are:

- (i) Identifying bottlenecks in the international supply chain / or constraints

affecting Customs release.

(ii) Establishing baseline trade facilitation performance measurement.

### **1.35 Towns of Export Excellence (TEE)**

(a) **Objective:** Development and growth of export production centres. A number of towns have emerged as dynamic industrial clusters contributing handsomely to India's exports. It is necessary to grant recognition to these industrial clusters with a view to maximize their potential and enable them to move up the value chain and also to tap new markets.

(b) Selected towns producing goods of Rs. 750 Crore or more may be notified as TEE based on potential for growth in exports. However, for TEE in Handloom, Handicraft, Agriculture and Fisheries sector, threshold limit would be Rs.150 Crore. The following facilities will be provided to such TEE's:

- (i) Recognized associations of units will be provided financial assistance under MAI scheme, on priority basis, for export promotion projects for marketing, capacity building and technological services.
- (ii) Common Service Providers in these areas shall be entitled for Authorisation under EPCG scheme.

(c) Notified Towns (TEEs) are listed in Appendix 1 B of Appendices & ANFs.

### **1.36 DGCI&S, Kolkata as the provider of trade data**

Director General of Commercial Intelligence and Statistics (DGCI&S) is an ISO certified organization under the administrative control of DGFT. It is the provider of trade data which is a source of guidance and direction for export & import trade and which help the exporters and importers formulate their trade strategy. Foreign trade data is disseminated by DGCI&S through (i) Monthly & Quarterly publications in CD form and (ii) Generation of data from the Foreign Trade database as per user's request. The DGCI&S has a Priced Information System (PIS) for disseminating data except for purely Central and State Governments and United Nations bodies. DGCI&S has put in place a Data Suppression Policy. The aim of this policy is to maintain confidentiality of importer's and exporter's commercially sensitive business data. Transaction level data would not be made publicly available to protect privacy. DGCI&S trade data shall be made available at aggregate level with a minimum possible time lag on commercial criteria. DGCI&S can be visited at <http://dgciskol.nic.in>.

### **1.37 Reducing/eliminating printout in Customs Clearance**

With the aim of ease of doing business and promoting paperless clearance, CBEC

has done away with routine print-outs of several documents including GAR 7 Forms/TR6 Challans, TP copy, Exchange Control copy of Bill of Entry and Shipping Bills and Export Promotion copy of Shipping Bill.

However, hard copy of EP copy of shipping Bill/ Bill of Entry may be provided on request only.

### **1.38 National Committee on Trade Facilitation (NCTF)**

Consequent to India's ratification of the WTO Agreement on Trade Facilitation (TFA) in April 2016, the National Committee on Trade Facilitation (NCTF) has been constituted. The establishment of the Committee is part of mandatory, institutional arrangement of the TFA. This inter-ministerial body on trade facilitation will be chaired by the Cabinet Secretary. Its Secretariat will be housed within the Central Board of Excise and Customs (CBEC), in the Directorate General of Export Promotion, New Delhi. The defined objective behind setting up the NCTF is to have national level body that will facilitate domestic co-ordination and implementation of TFA provisions. It will play the lead role in developing the Pan-India road map for trade facilitation. It will be instrumental in synergizing the various trade facilitation perspectives across the country and will also focus on an outreach programmes for sensitization of all stakeholders about TFA.

### **1.39 E-mail initiatives**

CBEC has initiated e-mail notification service to importers for information related to all important stages of import clearances.

### **1.40 Facility of deferred payment**

As a trade facilitation measure, CBEC has introduced facility of deferred payment of customs duty. Further, Deferred Payment of Import Duty Rules, 2016 have been notified and the same have come into effect from 16.11.2016. The importers certified under AEO Programme (Tier-two) and (Tier-Three) have been notified for availing the benefit of these Rules

**1.41** With a view to expand employment opportunities, certain special focus initiatives for Handlooms, Handicraft, Leather, Marine, Sports Goods and Toys sectors are required. These sectors are being provided the following duty free (only basic customs duty free with effect from 01.07.2017) entitlements:<sup>ii</sup>

- i. Handlooms
  - a. Duty free import entitlement of specified trimmings and embellishments up to 5% of FOB value of exports during previous financial year. Handloom and made ups are included for the entitlement.

b. Duty free import entitlement of hand knotted carpet samples up to 1% of FOB value of exports during previous financial year.

ii. Handicrafts

a. Duty free import entitlement of tools, trimmings and embellishments up to 5% of FOB value of exports during previous financial year. Entitlement shall extend to merchant exporters tied up with supporting manufacturers.

b. Handicraft EPC is authorized to import trimmings, embellishments and consumables on behalf of those exporters for whom directly importing may not be viable

iii. Leather and Footwear

a. Duty free import entitlement of specified items up to 3% of FOB value of exports of leather garments during preceding financial year.

b. Duty free entitlement for import of trimmings, embellishments and footwear components for footwear (leather as well as synthetic), and other leather products upto 5% of FOB value of export of previous financial year<sup>iii</sup>

iv. Marine Sector

Duty free import of specified specialised inputs/chemicals and flavoring oils is allowed to the extent of 1% of FOB value of preceding financial year's export.

v. Sports Goods and Toys

Duty free import of specified specialised inputs allowed to the extent of 3% of FOB value of preceding financial year's export. However, the term "Duty" specified above shall mean "Basic Customs Duty" w.e.f. 01.07.2017.

<sup>i</sup>Para (b) Amended Vide Notification no. 05 dated 25.04.2018 <sup>ii</sup>Para 1.41 inserted vide Notification no. 09 dated 29.05.2018 <sup>iii</sup> Amended vide Corrigendum to Notification no, 09 dated