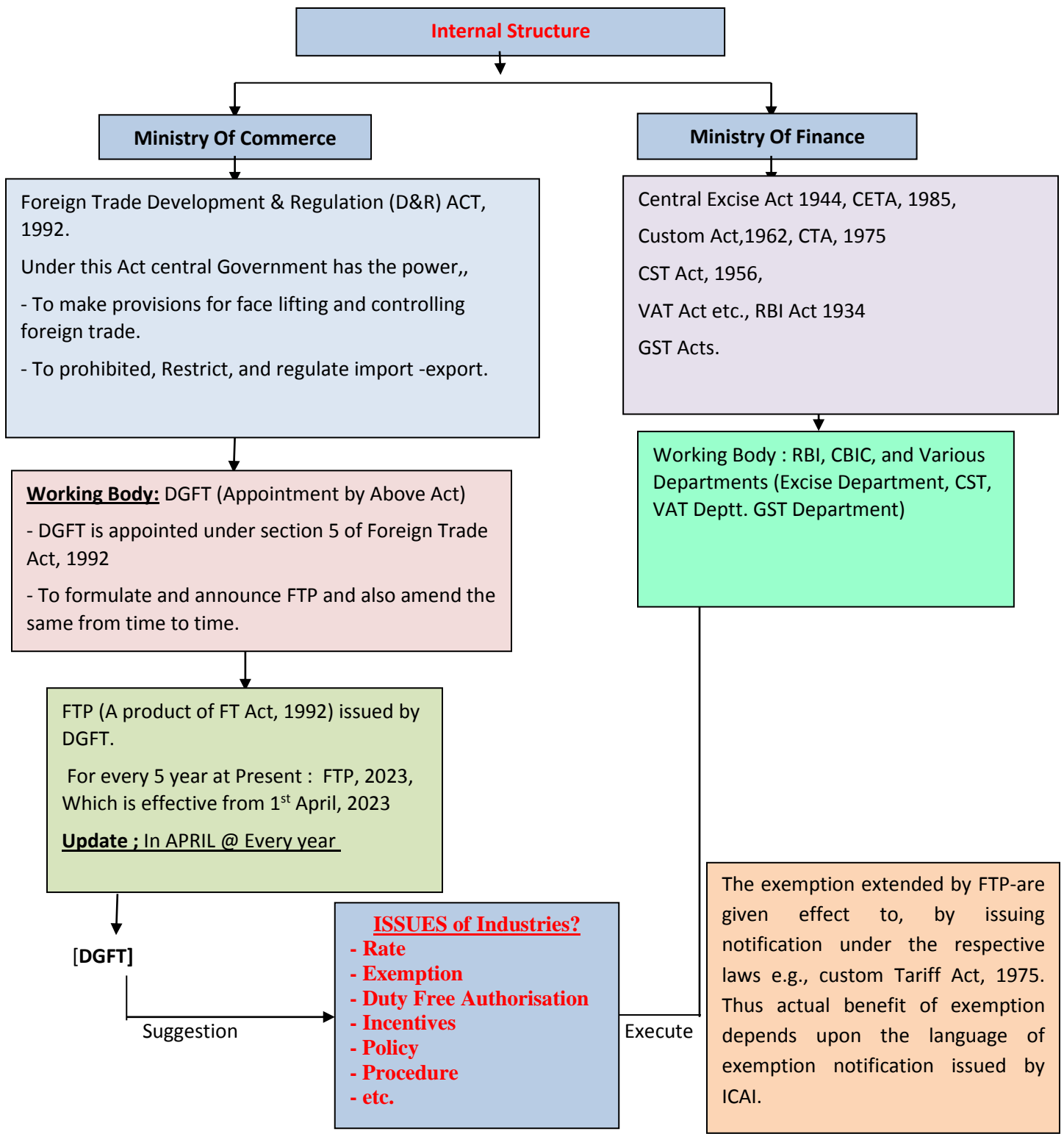


# 15

## Foreign Trade Policy 2023

[The Life line of economy]

### Overview of FTP



**Role of FTP/What is FTP:** Foreign Trade Policy is a set of Guidelines For International Trade

**“NIRMATA” “NIRDESHAK of FTP: Director General Foreign Trade (DGFT)**



- It is an attached office to Ministry of Commerce (MOC)
- HQ : DELHI (Maulana Azad Road, Udyog Bhawan, New Delhi.
- DGFT: Shri Alok Vardhan Chaturvedi
- Add. DGFT/Jt. DGFT/Dy. DGFT
- FTDO (Foreign Trade Development Officer)
- & 36 Regional Office of DGFT

**Role of DGFT:**

Ministry Of Commerce --- DGFT ----

DGFT- **Formulate, implement, supervise, and control:** FTP

DGFT- **Provide:** IEC, Various Authorization, Various Scheme etc.

DGFT- **Supervise and Control:** Export Promotion Council (EPC)

*(For particular Group of Product eg Handloom, Agriculture)*

DGFT- **Issue** Import Export Code

DGFT- Board of Trade (BOT) - Review: FTP

**Settlement Commission:** The settlement commission set up by Department of Revenue has been empowered to settle matters of Default in Export obligations also.

**Objectives Of FTP:**

<b>Object: #1</b>	Boost Export
<b>Object: #2</b>	Decrease Import
<b>Object: #3</b>	Regulate Import-Export
<b>Object: #4</b>	Other objects/Provision <b>#Deemed Export”</b> #100% EOU /EHTP /STP Etc. <i>(Electronic Hardware Technology Park, Software Tech Park)</i> #Developing Districts As Export Hubs #Scomet: Special Chemicals, Organisms, Materials, Equipment And Technologies #Quality Complaints And Trade Disputes

## OBJECTIVE OF FOREIGN TRADE POLICY

### Object 1: Boost Export

#### (i) Ease of doing Business: [ie clear the way to export]

<b>E-Governance</b>	<p>Online filing of Doc, online application for IEC/Various Authorization from DGFT, Message. Exchange, All the documents at one place in E-form.</p> <p>DGFT has undertaken a number of IT Initiatives to enable a paperless, contact less and transparent environment for availing benefits under the export promotion schemes.</p>
<b>Minimum : 3 Documents to reduce cost and time</b>	<ul style="list-style-type: none"> <li>- Bill of Entry/Shipping Bill/Bill of Export/Postal Bill of Export</li> <li>- Bill of lading/Airway Bill/Lorry Receipts, railway Receipts, Poatal Receipts</li> <li>- Commercial Invoice and packing list</li> </ul> <p>However in doubtful situation or for import export of specific goods or in specific cases additional Documents may be notified /Demanded.</p>
<b>Single Window Facility:</b>	As in case of DBK U/s 75(1)
<b>Quick Clearance:</b>	Even Export Goods can not be taken on hold (Seizure) until serious irregularities.
<b>Round 'O' Clock</b>	<p>Round 'O' Clock Working 24 x 365 @ [18 Sea Ports]</p> <p>A dedicated 24 X 7 Help-desk facility has been put in place to assist the exporters in filing online applications on the DGFT portal and other matters pertaining to FTP.</p>
<b>Niryat Bandhu</b>	DGFT is implementing Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programme including the 'Districts as Export Hubs <sup>2</sup> '.
<b>Trade Facilitation</b>	A large number of Trade Facilitation measures have been taken by Customs Department <sup>3</sup> .
<b>DGFT online customer portal</b>	<b>DGFT online customer portal (<a href="https://dgft.gov.in">https://dgft.gov.in</a>)</b> provides information relating to export and import including Acts, rules, policy and procedures. Online facilities for e-RCMC/RC related processes, e-Certificate of Origin (e- CoO) and Quality Control and Trade Disputes (QCTD) are also available on said common digital platform.

**(ii) Pre-Export Incentives:**

<b>Duty Exemption Scheme</b>	<p><b>AAS</b> (Advance Authorisation Scheme <i>i.e.</i> Duty free – procurement of Inputs)</p> <p><b>DFIA</b> Duty Free Import Authorization (<i>For Inputs – procure – Duty Free</i>)</p> <p><b>EPCG</b> Export promotion <b>Capital Goods</b></p>
<b>Others</b>	<p>Finding new markets</p> <p>Finding new products to export</p> <p>R&amp;D: For Quality Improvement.</p>

**(iii) Post Export Incentives:**

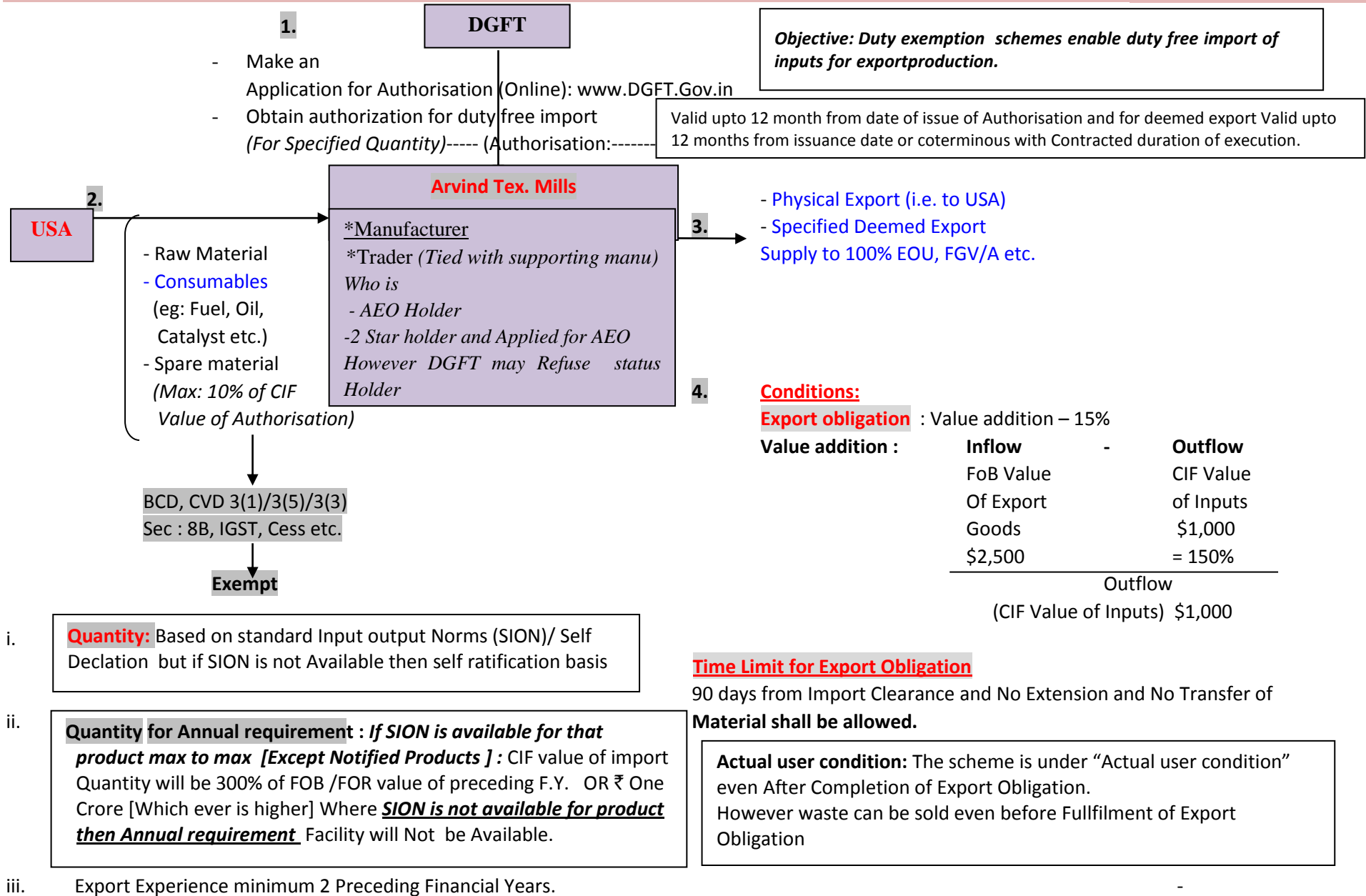
Issuance of Scrips	<b>Scrips are Like food coupon</b> Say 5% to 3% or 10% Of FOB Value which is used for payment of duties and Taxes. Eg RODTEP
Status Holder	<b>Status</b> Recognition to Big Exporters by giving Rank (Star Ranking) and Various Facilities are Provided to such Persons eg. Self Certification eg. Can establish Bonded etc.
Duty Remission Scheme	Remission from Duty shall be allowed eg Duty Drawback

**(iv) Others Schemes**

Authorized Economic Operator Programme
Town of Export Excellence

PRE EXPORT INCENTIVE:

ADVANCE AUTHORISATION SCHE



**Free of Cost Supply by Foreign Buyer:** Advance Authorisation is also available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input is added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

**Export Obligation Period and its Extension** “Export Obligation” means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

**The Export Obligation Period (EOP) of Advance Authorisations issued for such items shall be 90 days from the date of clearance of import consignment and no extension in EOP shall be allowed. Such import shall be subject to actual user condition and no transfer of imported raw material, for any purpose, including job work, shall be permitted.**

**Admissibility of Drawback:** Duty drawback as per rate determined and fixed by Customs authority is available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation.

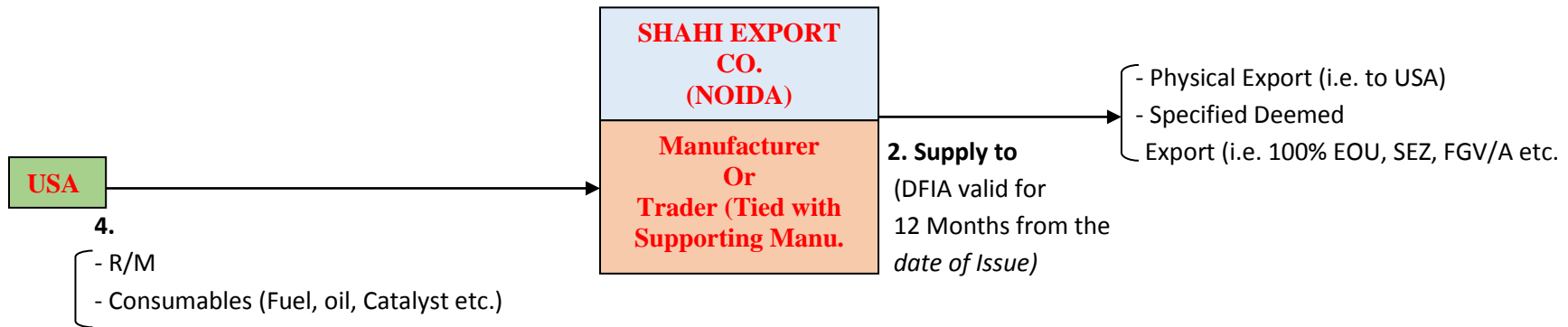
**Audit/Special audit:** Concerned Norms Committee may conduct audit of the manufacturer. Concerned Norms Committee may also initiate special audit, considering the nature and complexity of the case and revenue of government, if he is of the opinion at any stage of scrutiny/enquiry/investigation that the norms have not been claimed correctly or the excess benefit has been availed. Special audit can be conducted even if the manufacturer has already been audited before.

# DUTY FREE IMPORT AUTHORISATION

## DGFT

3. Authorisation      1. File online application: www.DGFT.Gov.in-- for Authorisation

- Request for issuance of Transferable DFIA
- Valid For 12 Months from the date of Issue



**BCD (only) : Exempt**

[CVD 3(1), 3(5) – Credit Available]

**Note:** Domestic inputs – can also be procured-Duty free

**Quantity:** Based on SION

**Note:** The scheme is Not Available, where SION of any product is not available.

<u>BASIS</u>	<u>AAS</u>	<u>DFIA</u>
Nature of Scheme	Pre-Export Benefit	Post Export Benefit
Value Addition	15%	20%
Duty Exemption	All duties	BCD
Availability	SION/Non-SION	SION
Transferable	NO	YES



Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. However, these Authorizations shall be issued **only for products for which Standard Input and Output Norms (SION) have been notified.**

- (a) Duty Free Import Authorisation is issued to allow duty free import of inputs as well as of oil and catalyst which is consumed/ utilised in the process of production of export product.
- (b) Import of Tyre under DFIA scheme is not allowed.

☐ **Duties Exempted**

- Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).
- Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

☐ **Eligibility**

- Duty Free Import Authorisation shall be issued on **post export basis** for products for which SION have been notified.
- Application is to be filed with concerned Regional Authority **before starting export** under DFIA.
- Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules.

☐ **No DFIA for inputs with 'Actual User' condition**

No DFIA shall be issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.

☐ **Minimum Value Addition**

Minimum value addition of **20%** shall be required to be achieved.

☐ **Transferability of DFIA**

Regional Authority shall issue **transferable DFIA.**

☐ **Validity of DFIA**

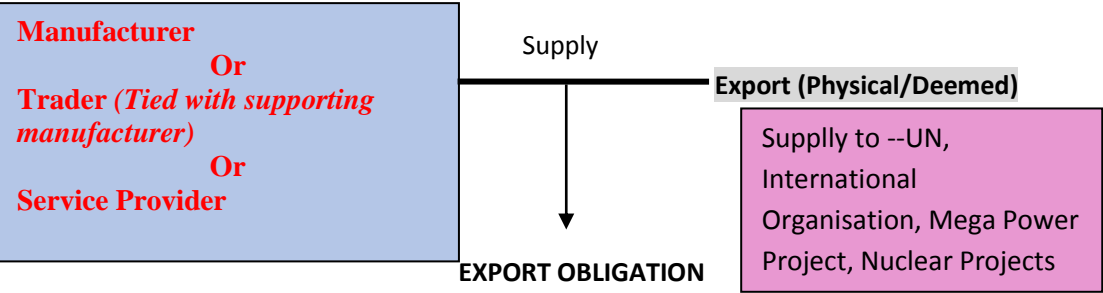
- Export shall be completed within 12 months from the date of online filing of application and generation of file number.
- DFIA is valid for 12 months from the date of issue.
- No further re-validation shall be granted by Regional Authority.
- Separate DFIA shall be issued for each SION.

# EPCG: EXPORT PROMOTION CAPITAL GOODS SCHEME

DGFT

Authorisation issued and remain valid for 24 months from the date of issue of Authorisation.

(Domestic/imported)  
Capital Goods



- Type of Capital Goods:** Including

  - Computer, Software System (a part of computer)
  - Spare, moulds, Dies
  - Jigs, Fixtures
  - Refractories
  - Refractories Material (Fuel)

But – not including

- Second hand capital goods
- Genset etc.

**2. For/Form/From:**

**For:** Pre-production Activity (eg.: Testing M/c)  
During the production, After production use.

**Form:** Build up unit (Assembled form)  
CKD/SKD pack (Dismantled form)  
[Complete: Semi knock down]

**From:** India/USA (Domestic/imported)

**Duty:** ID, IGST, Cess /Excise duty : Exempt

**3. Condition for Exemption:**

- Actual user condition till Export Obligation fulfilled
- either General or Specific
- and export obligation discharge certificate is granted.

**General**  
Average of Export  
of 3 P.Fy.

**Specific**  
EO= (Duty Saved x 6 times)  
within 6 years  
From the date of Authorisation

What about domestic Capital/Goods  
E.O. = (Notional ID , Taxes, Cess saved \* 4.5 times) within 6 years  
Note: While calculating E.O. only Export of The Goods or services (under EPCG) shall be taken.  
Note: Shipment under: AAS/DFIA shall also be included in calculation of E.O. under EPCG.

**Note: Fast moving enterprises:**

Average E.O. i.e. General E.O.  
+  
75% of specific E.O. within 3 year

## RODTEP Scheme [Remission of Duties and Taxes on Export Products for benefit of Hidden Taxes as Local Taxes, Mandi Tax, Electricity Duty, Coal Cess, Tax on Fuel used In transportaion]

RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters.

The Remission of duties & taxes on exported Product (RoDTEP) scheme aims to refund such duties and taxes on exported products, as are otherwise not being refunded under other provisions of law.

The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

### ❑ Objective of the Scheme:

The objective of the scheme is to refund, currently unrefunded:

- (i) Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in **production** of the exported product, and
- (ii) Such indirect duties/taxes/levies in respect of **distribution** of exported products.
- (iii) For Examples **Local Taxes, Mandi Tax, Electricity Duty, Coal Cess, Tax on Fuel used In transportaion.**

### ❑ Salient features of the scheme:

- Rebate amount is issued in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the CBIC.
- Such duty credit shall be **used only to pay basic customs duty** on imported goods.
- The duty credit scrips are **freely transferable**, i.e. credits can be transferred to other importers.
- The rebate under the scheme **shall not be available** in respect of **duties and taxes already exempted or remitted or credited.**

### ❑ Reward under the scheme

Rebate would be granted to eligible exporters at a notified rate as **a % of FOB value with a value cap per unit** of the eligible exported product, wherever required, on export of items. However, for certain export items, **a fixed quantum of rebate amount** per unit may also be notified.

### ❑ Sale proceeds

Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.

❑ **Ineligible supplies/ items/ categories under RoDTEP**

Following categories of exports/exporters shall not be eligible for rebate under the scheme:

Export of imported goods in same or substantially the same form	
Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India	
Export products which are subject to export duty	
Products which are restricted/prohibited for export under FTP	
Deemed Exports	
Supplies of products manufactured by DTA units to SEZ/FTWZ units.	
Products manufactured in EHTP and BTP	
Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act	
Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP	Inclusion of exports made under these categories in RoDTEP scheme will be decided later.
Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in Free Trade Zones (FTZ)/Export processing Zones (EPZ)/ Special Economic Zones (SEZ).	

## STATUS HOLDER

- Status holders are Business Leaders who have Excelled in International Trade & successfully contributed to countries Foreign Trade.
- It is provided on the basis of Export performance in – CFY + Preceding 3 FY

Type	FoB Value	Assume: RoE ₹ 80	
	USD (Million)	<u>Export performance</u>	
ONE Star holder	3	:	24 cr
TWO Star holder	15	:	120 cr
THREE Star holder	50	:	400 cr
FOUR Star holder	200	:	1600 cr
FIVE Star holder	800	:	6400 cr

**Note:** Export performance necessary in all the 3 years.

**Note:** Export performance – non transferable.

- Authorisation: on self declaration basis.
- Fixation of SION (where SION not available for any product) on priority basis-  
Maximum Within 60 days,
- Exemption from Bank Guarantee under FTP,
- Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial Entrepreneurs Memorandum (IEM)<sup>6</sup> / Industrial License (IL)<sup>7</sup>/Letter of Intent (LOI)<sup>8</sup>) as originating from India with a view to qualify for preferential treatment under specified agreements.
- Status holders shall be entitled to export freely exportable items<sup>9</sup> on free ofcost basis for export promotion subject to a specified annual limit.
- The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- Permission to establish private Bonded Warehouse (Soft Guidelines): (2 Star or above)

**Sample Export (Free of cost):**

Annual limit of free of cost export for export promotion for status holder.

**Other than Gems and jewellery sector: 2% of Average annual export realisation in 3 year.**

**Gems and jewellery sector: Not in syllabus**

**Point to be noted:** While computing Export performance following points – Should be considered:

- (i) For Granting “**ONE Star Status**” : Double weightage shall be taken for following-
  - MSME (Micro small medium Exporter)
  - Enterprises Located in North East Region including Sikkim, Jammu Kashmir, Laddakh.
  - Units Located in AEZ (Agriculture Export Zone)
  - Export of Fruits and Vegetables.
  - Enterprises having ISO / BIS status (International organization for standards).
- (ii) Made on Re export Basis shall not be counted
- (iii) Export of Items under Authorisation, SCOMET Items would not be included for calculation of export performance.
- (iii) For deemed export, FOR value of exports in Indian Rupees shall be converted in US\$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.

**Note: Export performance shall be counted on the basis of FoB of Export earnings in foreign currency or in INR as the case may be.**

## AUTHORIZED ECONOMIC OPERATOR (AEO)

Under AEO programme of Indian Customs, a business entity engaged in international trade is granted AEO status if it is approved by Customs as compliant with supply chain security standards. Such entities are considered as trusted trade partner of Indian customs.

AEO status holders get extensive benefits including preferential customs treatment in terms of reduced examination and faster processing and clearance of cargo, deferred payment of duty, direct port delivery/entry, enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries, greater facilitation and self-certification. AEO programme is based on WCO's SAFE Framework of Standards (FoS).

## TOWNS OF EXPORT EXCELLENCE (TEE)

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE. They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

## DUTY DRAWBACK (DBK)

- ❑ “Drawback” in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST and Compensation Cess, chargeable on any imported materials or excusable materials used in the manufacture of such goods.
- ❑ Under the duty drawback scheme, customs duty paid on inputs is given back to the exporter of finished product by way of ‘duty drawback’. Section 75 of Customs Act, 1962 provide for drawback on materials used in manufacture or processing of export product.
- ❑ It may be noted that duty drawback under section 75 of the Customs Act, 1962 is granted when imported materials are used in the manufacture of goods which are then exported, while duty drawback under section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable.
- ❑ It is important to note that the duty drawback is only of customs duty<sup>20</sup>. There is no duty drawback in respect of GST.

## **Objective 2: Decrease Import:**

- Make in India – of those goods – which are currently imported into India.
- R&D – For Quality Improvement
- Cost cutting techniques
- Technology improvement in India



## Objective 3: Regulate – Import/Export (International Trade)

### General Provisions:

#### 1. Import-Export Code:

- Given by DGFT on the basis of E- Application with DSC and required to upload:  
Digital photograph of Applicant, PAN Card, Cancelled Cheque.
- Mandatory for import-export (International Trade)  
Except : where Relax by DGFT eg.: Baggage
- Form No. : ANF 2A (Aayat Niryat Form) : for application & fee. ₹ 500/-
- IEC : PAN Based 10 Digit

2. **ITC(HS) [Indian Trade Classification (Harmonised System)]**: The information regarding status of the goods being free/restricted/prohibited/traded through STE, for import / export is available in the ITC(HS), i.e. import/export policies for all goods are indicated against each item as per its ITC(HS). In addition to this status under the FTP, import or export may be subject to restrictions or conditions under any other law.

International Harmonised System goods nomenclature was adopted in India for import-export operations. Indian custom uses eight-digit ITC-HS codes to suit the national trade requirements. The same system is used for classifying goods in the Customs Tariff. The classification schedule under ITC (HS) is referred for import or export status and restrictions, while the classification schedule under the Customs Tariff, read with relevant exemption notifications, is referred for rate(s) of customs duty on the goods.

3. **State Trading Enterprises**: ITC(HS) specifies against certain goods that they can be imported/exported only through 'State Trading Enterprises' notified by DGFT. State Trading Enterprises (STEs) are governmental/non- governmental enterprises, including marketing boards, which deal with goods for export and /or import. However, DGFT has the discretion to issue authorisation to other entities to import or export goods that are notified for exclusive trading through STEs.

Some of the STEs are Food Corporation of India, Oil and Natural Gas Corporation Ltd, National Fertilizers Limited, Indian Rare Earth Ltd., National Dairy Development Board, National Agricultural Cooperative Marketing Federation of India (NAFED), State Cooperative Marketing Federation, etc.

## A. Provisions relating to Import of Goods

1. **'Actual user' condition:** Goods which are importable freely without any 'restriction' may be imported by any person. However, if such imports require an authorisation, actual user alone may import such good(s) unless said condition is specifically dispensed with by DGFT.

2. **Import of specific categories of goods**

(a) **Samples:** Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto ₹ 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification<sup>11</sup> as amended.

(b) **Gifts:** Import of gifts (including those purchased from e-commerce portals) through post / courier, where customs clearance is sought as gifts, is prohibited. Exceptions are 'rakhi' and life-saving medicines. Gifts, however, can be imported upon payment of applicable customs duties. If duty leviable on rakhi is upto ₹ 100, no duty will be collected on the same.

(c) **Passenger baggage:** Following are allowed to be imported as part of passenger baggage without an authorisation subject to the Baggage Rules, 2016:

- Bona-fide household goods and personal effects
- Samples of items freely importable under FTP\*
- Drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, imported as part of the passenger baggage of exporters coming from abroad, upto prescribed value limit.

*\*Any item(s) including Samples/Prototypes of items whose import policy is "restricted" or "prohibited" or is channelised through STEs are not permitted as part of passenger baggage except with a valid authorization.*

(d) **Re-import of repaired goods:** Capital goods, equipment, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

(e) **Goods used in projects abroad:** Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

(f) **Prototypes:** New/second hand prototypes/second hand samples may be imported without an Authorisation on the following conditions:

- The importer is an Actual User (industrial)

- He is engaged in production of, or having industrial license / letter of intent for research in an item for which prototype is sought for product development or research, as the case maybe,
- The importer files a self-declaration to that effect, to the satisfaction of Customs authorities.

(g) **Metallic waste & scrap:** Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

(h) **Second hand goods:** Import policy for second hand goods is as follows:

3. **Miscellaneous provisions regarding import:** Some of the provisions to be noted are –

- (a) Goods for import into India can be sold on the high seas, subject to FTP/other laws in force.
- (b) Merchanting trade means shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This is allowed, subject to RBI guidelines, except for goods in the CITES<sup>12</sup> and SCOMET lists.
- (c) Import of capital goods under lease financing does not require any specific permission from the DGFT.
- (d) For imported goods, **Bank Guarantee / Letter of Undertaking/ Bond (BG/ LUT /Bond)** is to be executed with customs in case of duty-free import or otherwise required, before clearance of goods. For indigenously sourced goods, an authorisation-holder has to execute LUT/BG/Bond with the RA concerned, before sourcing such material.

## B. PROVISIONS RELATING TO EXPORT OF GOODS

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC(HS) or any other provision of FTP or any other law for the time being in force.

1. **Benefits for supporting manufacturers:** Supporting manufacturer is one who manufactures goods/products or any part/ accessories/ components of a good/ product for a merchant exporter/manufacturer exporter under a specific Authorisation. For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in tax invoice / shipping bill / bill of export/ airway bill.
2. **Third Party Exports:** Third party exports is allowed under FTP. Third-party exports means exports made by an exporter/manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate names of both manufacturer exporter/manufacturer and third- party exporter(s). Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third-party exporter.

**Question:** CD Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached AB Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of CD Corporation. Bank Realization Certificate, export order and invoice are also in the name of CD Corporation. Comment whether AB Corporation would be deemed as the exporter under FTP.

**Answer:** The given scenario is a case of third-party exports.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

- (i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/ manufacturer and third party exporter(s).
- (ii) BRC, export order and invoice should be in the name of third party exporter.

In the above case, though BRC, export order and invoice are in the name of CD Corporation (third party exporter), the shipping bill does not have the name of AB Corporation (manufacturer). Therefore, AB Corporation will not be treated as the exporter in this case.

3. **Samples:** Exports of trade and technical samples of goods of freely importable items are allowed without any limit.
4. **Gifts:** Goods including edible items, of value not exceeding ₹ 5,00,000 in a licensing year (1<sup>st</sup> April-31<sup>st</sup> March), may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an authorisation.

5. **Passenger baggage:** Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within 1 year before or after passenger's departure from India. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation. Samples that freely exportable can be exported as part of passenger baggage. Authorisation will be required for restricted items.

Samples of freely exportable items may be exported as part of passenger baggage without an authorisation.

### 6. Import for export

- Goods that are freely importable as well as freely exportable can be imported and then exported in same or substantially the same form, without any authorisation.
- Goods including capital goods (both new and second hand) can be imported under customs bond and then cleared for export against freely convertible foreign currency provided they are freely exportable. This includes goods that are 'restricted' for import.
- Capital goods that are freely importable and freely exportable can be imported for export upon execution of LUT/BG with the customs authorities.
- Notwithstanding the above, goods of other than Indian origin that are 'restricted' for export (other than 'prohibited' or SCOMET items) but 'free' for import can be imported for exports in same or substantially the same form. Such goods shall be kept in bonded warehouse and re-exported from there subject to provisions of section 69 of the Customs Act, 1962.
- Goods that are imported against payment in freely convertible foreign currency can be exported only against payment in freely convertible foreign currency, unless otherwise notified.

### 7. Payments and Receipts on Imports / Exports:

- (a) **Denomination of Export Contracts:** Export contracts may be denominated either in Indian rupees or freely convertible currency, but export proceeds should be realised in freely convertible foreign currency<sup>13</sup>. However, in specified cases, exports proceeds may be realized in rupees subject to fulfilment of specified conditions.
- (b) **Non-realisation of export proceeds:** If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits/ incentives availed against such exports and shall be liable to penal action under FT (D&R) Act and the FTP. However, if such non-realization is for reasons beyond his control, he may approach RBI for writing off the unrealized amount.
- (c) **Export Credit Agencies (ECAs):** ECAs provide financial support to exporters. They support exports by insurance, guarantee and also direct lending. For instance, Export Credit Guarantee Corporation of India Ltd. (ECGC), Exim Bank, etc.

8. **Export Promotion Councils:** Export Promotion Councils (EPCs) are organizations of exporters, set up to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/ projects/services. EPCs are also eligible to function as Registering Authorities

to issue **Registration-cum-Membership Certificate (RCMC)**. RCMC is required to be furnished by any person, applying for an Authorisation to import/ export under the FTP (except 'Restricted' items) or applying for any other benefit or concession under FTP.

9. **Self-certification of origin of goods:** Till now, certificate of origin of goods for export was issued by the designated agencies. Now, **self-certification** has been enabled for **"approved exporters"**. Manufacturers who are also status holders will be eligible for the 'approved exporter' scheme.

Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different Preferential Trade Agreements [PTAs], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the IEM/IL/LOI issued to manufacturers

## Penal action and placing of an entity in Denied Entity List (DEL)

### (a) Penal action

In following situations, a person shall be liable to penal action under FT (D&R) Act and rules and orders made thereunder, FTP and any other law for time being in force:

- (i) authorisation holder:
  - violates any condition of such Authorisation
  - fails to fulfill export obligation
  - fails to deposit the requisite amount within the period specified in demand notice
- (ii) any information/particulars furnished by applicant subsequently found untrue/incorrect<sup>10</sup>

### (b) Denied Entity List (DEL)

A firm may be placed under DEL, by the concerned Regional Authority (RA) of the DGFT. In such a case:

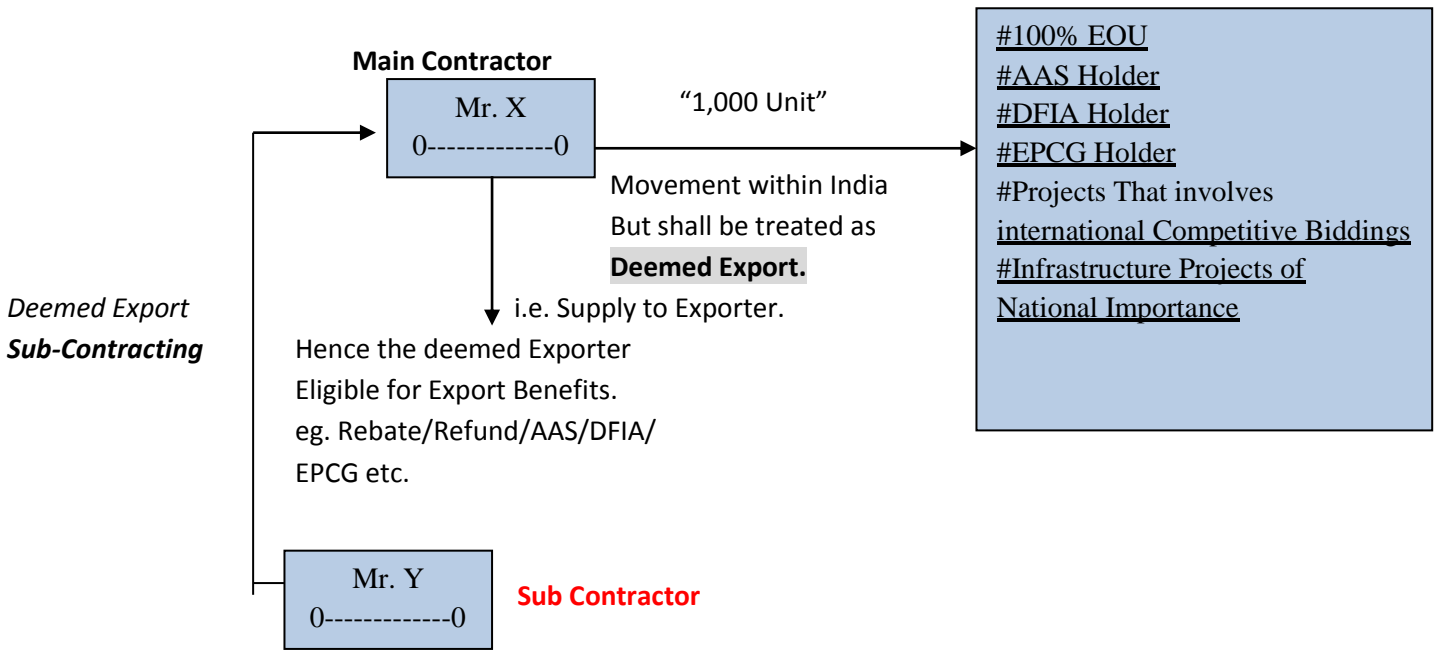
- (i) firm may be refused grant or renewal of a licence/authorization/certificate/scrip/any instrument bestowing financial/fiscal benefits, and
- (ii) all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/ issue/renewal.

A firm's name can be removed from DEL, by the concerned RA for reasons if the firm completes Export Obligation/pays penalty/fulfils requirement of demand notice(s) issued by the RA/submits documents required by the RA.

**Objective 4: Other Provisions:**

- a) Deemed Export”
- b) 100% EOU /EHTP /STP Etc.(Electronic Hardware Technology Park, Software Tech Park)
- c) Developing Districts As Export Hubs
- d) Scomet: Special Chemicals, Organisms, Materials, Equipment And Technologies
- e) Quality Complaints And Trade Disputes

**(a) DEEMED EXPORT**





## (b) 100% Export Oriented Unit

### Back Ground:

EOU, EHTP, STP and BTP stands for Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP). Units **undertaking to export their entire production** of goods and services (**except permissible sales in DTA**), may be set up under these schemes.

For manufacture of goods, including repair, re- making, reconditioning, re- engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. **Trading units are not covered** under these schemes.

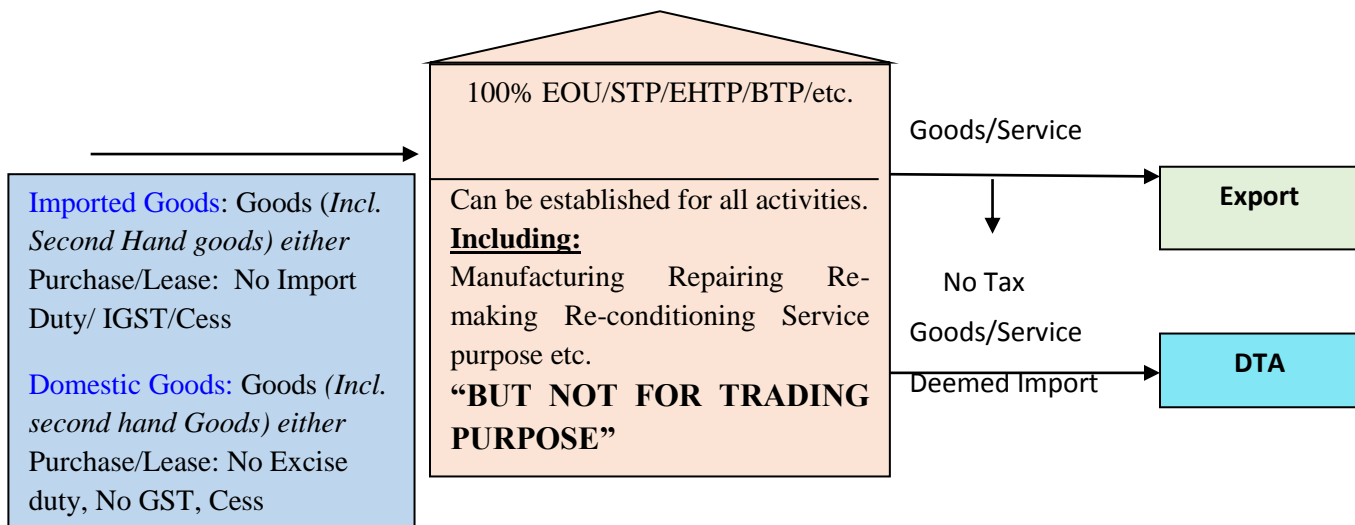
### Objective:

- To promote Export
- Enhance Foreign Exchange
- Attract investment for foreign Export production
- Employment – Generation

### Procedure:

- Person having investment In "Plant & M/c" of ₹ 1 Crore or more → **Apply to Unit Approval committee or Board of Approval** → Decision of UAC within 15 days (Accept/Reject)
- Get permission (Letter of Permission) from Board of Approval (BOA) → **Start Business Or Production within Within 2+2 years**

### Benefits:



**NOTE:** Goods supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be liable to GST/CESS.

**Forex :** To be calculated : in a block of 5 year starting from commencement of Business.

(Positive/Weighed Positive)

If Genuine hardship : then the period of 5 year : Extend upto 6 years.

EOU/EHTP/STP/BTP units may **export all kinds of goods and services except items that are prohibited** in ITC (HS)<sup>23</sup>. An EOU / EHTP/ STP/ BTP unit **may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India**, all types of goods<sup>24</sup>, required for its activities, without payment of basic customs duty, additional duty (leviable u/s 3 of the Customs Tariff Act), IGST and compensation cess. However, procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. Units can also **import goods including capital goods** required for approved activity on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.

Supplies **from DTA to EOU/EHTP/STP/BTP units** for use in their manufacture for exports will be eligible for **“benefits under deemed exports”**. DTA supplier shall be eligible for relevant entitlements under deemed exports provisions of FTP, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to specified conditions and documentations.

- ❑ **Other Entitlements:** Export proceeds will be realized within 9 months. Units will be allowed to retain 100% of its export earnings in the EEFC (Exchange Earners' Foreign Currency) account. Unit will not be required to furnish bank guarantee at the time of import.
- ❑ **Net Foreign Exchange Earnings:**  
EOU/EHTP/STP/BTP unit shall be a **positive net foreign exchange earner**. Moreover, certain sector specific provisions have also been laid down where a higher value addition and other conditions are given. NFE Earnings shall be calculated cumulatively in blocks of 5 years (extendible in specified cases), starting from commencement of production.
- ❑ **Applications & Approvals/Letter of Permission/ Letter of Intent and Legal Undertaking**  
Application for setting up an EOU shall be considered by **Unit Approval Committee (UAC)/ Board of Approval (BoA)** as the case may be.
- ❑ **Investment Criteria**  
Only projects having a **minimum investment of ₹1 crore in plant & machinery** shall be considered for establishment as EOUs.
- ❑ **Inter Unit Transfer**  
Transfer of manufactured goods/capital goods from one EOU/ EHTP/STP/BTP unit to another EOU/EHTP/ STP/BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as concerned Customs authorities as per the specified procedure. Goods supplied by one unit to

another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

❑ **Exit from the Scheme**

With approval of DC/Designated officer of EHTP/ STP/BTP, an EOU/EHTP/STP/BTP unit may opt out of scheme. Such exit shall be subject to payment of applicable excise and customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

❑ **Conversion**

Existing DTA units may also apply for conversion into an EOU / EHTP / STP/BTP unit. Existing EHTP / STP units may also apply for conversion / merge to EOU unit and vice-versa. In such cases, units will avail exemptions in duties and taxes as applicable.

### **(c) DEVELOPING DISTRICTS AS EXPORT HUBS**

Every district has products and services which are being exported, and can be further promoted, along with new products/ services, to increase production, grow exports, generate economic activity and achieve the goal of Atma Nirbhar Bharat, Vocal for local and Make in India. Products/services (GI products, agricultural clusters, toy clusters etc.) with export potential in each District have to be identified and institutional mechanism in the form of District Export Promotion Committees (DEPCs) at the district level is to be created to provide support for export promotion and address the bottlenecks for export growth in the districts. A District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared and implemented. DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

### **(d) SCOMET: SPECIAL CHEMICALS, ORGANISMS, MATERIALS, EQUIPMENT AND TECHNOLOGIES**

India is a signatory to international conventions on disarmament and non-proliferation and is a member of major multilateral export control regimes. Resultantly, export of dual-use items, including software and technologies, having potential civilian/ industrial applications as well as use in weapons of mass destruction is regulated under FTP. It is either prohibited or is permitted under an Authorization unless specifically exempted. SCOMET list is our National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions.

## **(e) QUALITY COMPLAINTS AND TRADE DISPUTES**

In case of import/export, owner is liable to state the value, quality and description of the goods/services/technology to the best of his knowledge and belief, in the Bill of Entry or the Shipping Bill or any other prescribed document. In case of export, certification regarding quality and specification of the goods/ services/technology being in accordance with the terms of export contract is also required.

Necessary action is prescribed against the erring exporters/importers under the FT(D&R) Act, as amended and under Foreign Trade (Regulation) Rules, 1993.

Further, a mechanism has been laid down to resolve complaints/ trade disputes between foreign buyer/supplier and Indian exporter/importer in respect of quality of goods/services/technology supplied or unethical commercial dealings including non-supply/ partial supply/ wrong supply/ non-payment; non-adherence to delivery schedules, etc.

Committee on Quality complaints and Trade Disputes (CQCTD) will be responsible for enquiring and investigating into all quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs. It will take prompt and effective steps to redress and resolve the grievances of the importers/ exporters and overseas buyers/ suppliers.

## Illustrations (ICAI STUDY MATERIAL)

**Q.1 Answer the following questions with reference to the provisions of Foreign Trade Policy:**

- (i) Flintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Flintex Manufacturers seek Advance Authorization for the supplies made by it?
- (ii) XYZ Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ₹ 10,00,000. The inputs are processed and the final product is exported. The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by XYZ Ltd. in the processing. What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?
- (iii) 'A' has used some duty paid inputs in its export products. However, for the rest of the inputs, he wants to apply for the Advance Authorization. Can he do so? Explain.

**Answer**

- (i) Supply to goods to UN or international organisations for their official use or supplied to projects financed by them are 'deemed exports'. Advance Authorization can be issued for supplies made to such 'deemed exports'. Therefore, Flintex Manufacturers can seek an Advance Authorization for the supplies made by it.
- (ii) Advance Authorization necessitates exports with a minimum of 15% value addition (VA).  

$$VA = [(A - B)/B \times 100]$$

A = FOB value of export realized, B = CIF value of inputs covered by authorization.

Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be Rs 11,50,000.
- (iii) Yes, 'A' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.

**Q 2: Discuss the similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes.**

**Answer:** In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty.

The differences between DFIA and Advance Authorisation schemes are as follows -

- (i) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.

- (iii) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].
- (iv) Advance Authorisation can be issued even if SION for that product is not fixed. DIFA can be issued only if SION has been fixed for that product to be exported.

**Q 3: XP Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under notified Project Imports. The capital goods will be used for pre-production processes. The final products of XP Pvt. Ltd. would be supplied in SEZ. XP Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.**

**XP Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.**

**Note** – Base your opinion on the facts given above assuming that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.

**Answer:** Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods at zero customs duty or procure them indigenously without paying duty in prescribed manner. In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The authorisation holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports notified by CBIC. Export obligation for such EPCG Authorizations would be 6 times of duty saved.

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

Therefore, based on the above discussion, XP Pvt. Ltd. can import the capital goods under EPCG Scheme. However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

**Q 4: Two exporters namely, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. have achieved the status of Status Holders (One Star Export House) in the current financial year. Both the exporters have been regularly exporting goods every year. What would have been the minimum export performance of the two exporters to achieve such status?**

**Both the exporters want to establish export warehouses in accordance with the applicable guidelines. What should be their export turnover to enable them to establish export warehouses?**

**Answer:** Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance\*\*.

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US \$ million [FOB/FOR (as converted)] during current and previous three financial years. Thus, export performance of Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. would have been at least 3 million US \$ million [FOB/FOR (as converted)] during current and previous three financial years.

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below:

Type	FoB Value USD (Million)
TWO Star holder	15
THREE Star holder	50
FOUR Star holder	200
FIVE Star holder	800