

# COMPETITIVENESS IN INTERNATIONAL TRADE THROUGH FOREIGN TRADE POLICY



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Foreign Trade Policy is announced by Ministry of Commerce and Industry which promotes, monitors and grow the trade in the international market, which also impact balance of payment. Foreign Trade Policy was notified for the year 2015-20 and it was further extended upto March'21 and thereafter, once again extended and it has been further extended till 30" Sept 2022. We are expecting new foreign trade policy to be announced on 1\* October 2022 at least. It is important to note, while drafting the Foreign Trade Policy and promoting the growth of Foreign Trade, Ministry of Commerce are abided by the terms of agreement of WTO.

## Important aspects of WTO Agreement needs to be studied on this background.

1. In terms of Agreement on Subsidies and Countervailing Measures (ASCM), no export subsidies are allowed. It means following benefits will never be allowed to the developed countries. India having completed 10 years from the date of agreement, criteria of the same is applicable to India.

2. In terms of the ASCM agreement followings are not allowed :

- Direct Transfer of funds
- Financial contribution by a government or any public body
- Subsidy upon Export Performance, whether solely or other conditions and
- Subsidy upon use of domestic over imported goods.

3. In terms of ASCM agreement, Government can grant exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued.

4. Footnote 1 read with Annex I to Article provides for nature subsidies, which shall not be prohibited and the same is summarized in the following chart:

#I	Footnote 1	Annex I (g)	Annex I (h)	Annex I (i)
1	Exemption or remission	Exemption or remission, including (footnote 58) refund or rebate	Exemption, remission, or deferral, including (footnote 58) refund or rebate	Remission or drawback, including (footnote 58) full or partial exemption or deferral



#1	Footnote 1	Annex I (g)	Annex I (h)	Annex I (i)
2	of duties or taxes	of indirect taxes (defined in footnote 58)	of prior-stage cumulative indirect taxes (defined in footnote 58)	of import charges (defined in footnote 58)
3	on an exported product	in respect of the production and distribution of exported products	on inputs that are consumed in the production of the exported product (defined in footnote 61; see also Annex II)	on imported inputs that are consumed in the production of the exported product (defined in footnote 61; see also Annex II)
4	not in excess of the duties and taxes which have accrued	not in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption	(not in excess of those) levied on those inputs <sup>301</sup>	not in excess of those levied on those inputs (or on substitute inputs in case of substitution drawback, on which see Annex III)

5. Illustrative list of prohibited subsidies under Article 3.1 read with Article 1 is given below:

- Provision by governments of direct subsidies to a firm or an industry contingent upon export performance
- The full or partial exemption remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises.
- The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes/ import charges in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

Already, United State of America have filed the case against India challenging EOU Scheme, Advance Authorization Scheme, EPCG Scheme, SEZ Scheme, MEIS Scheme and Appellate Authority have accepted their grounds and of course, India has filed the appeal against the said order WT/DS541/R dtd 31<sup>st</sup> October 2019. Government has already initiated the steps of not allowing MEIS and introducing RoDTEP.

However, India still struggling against competitive

disadvantage on account of following factors:

- High transaction costs
- High cost of finance
- Infrastructural bottlenecks
- Inadequate infrastructure
- Sub optimal connectivity with global transport networks
- low transport capabilities and complicated administrative requirements that causes delays at ports & customs
- Over reliance on USA as export destination (more than 15% of exports are to US)
- High Interest Rate
- Taxes on Indirect Material & Services

Ministry of Commerce & Industry have to balance between WTO agreement and parameters as stated above as well as resolve the issues, so that competitive disadvantages to the Indian Exporters will be eliminated, which is really tough task. Simultaneously, Indian exporters have to really work extra time and convert their infrastructure and



resources more productive and cost efficient and create the demand through competitive export pricing using costing techniques like marginal costing techniques, cost reduction techniques, activity-based costing, budgetary control and focusing on value added products & services.

Govt of India has newly introduced RoDTEP Scheme for providing reimbursement towards Indirect Tax, which is not allowed to get the set off or credit like :

1. Central & state taxes on the fuel (Petrol, Diesel, CNG, PNG, and coal cess, etc.) used for transportation of export products.
2. The duty levied by the state on electricity used for manufacturing.
3. Mandi tax levied by APMCs.
4. Toll tax & stamp duty on the import-export documentation. Etc.
5. Ineligible ITC on GST
6. Tax involved on free samples and destruction

But substituted the same for MEIS & SEIS. However, rates of RODTEP are not sufficient enough and further it is not allowed to EOU and SEZ Scheme so far even though as on date above cost is incurred on the goods & services procured by EOU & SEZ for export products.

While doing the exports & imports, exporter has to be associated or interact online or offline with following Agencies:

- \* Ministry of Commerce
- \* DGFT
- \* Shipping Line / Air Lines
- \* Port
- \* Freight Forwarder
- \* Shipping Line Agent / Air Line Agent
- \* Insurance Agencies
- \* Internal Container Depo (ICD)
- \* CFS

- \* Bonded warehouse (Public / Private)
- \* Duty Free Shops
- \* Cold Storages
- \* Ministry of Finance, Department of Revenue
- \* CBIC
- \* Customs
- \* Custom House Brokers
- \* Chartered Engineers / Valuers
- \* Transporters
- \* Service Providers on Port
- \* Export Promotion Council
- \* Chamber of Commerce & Industries
- \* Indian Drug Authorities
- \* Food & Drug Authority (FDA)
- \* Representative of Parent Ministries like Fertilizers, Petroleum,
- \* Certificate Agencies for Quarantine
- \* Chartered Accountants / Cost Accountants
- \* Accountants

Hon. Prime Minister of India has already announced the dream to make Indian Economy to USD 5 trillion Economy and Government have initiated lot of actions to promote the exports and also protect Indian Industry and promoting “Make-In-India” Brand but, due to pandemics of COVID-19 and thereafter, threat of world war as aftermath of Ukrain VS Russia War have changed the scenario of International Trade and also given the rise in overall inflation in the world. India is going through such hassles and fighting for not only for survival but leading to achieving the dream of Hon Prime Minister Shri Narendrabhai Modi. Fortunately,



Indian industry is also striving the excellence and therefore, India achieves \$400 billion goods export target ahead of schedule.

However, India still struggling against competitive disadvantage on account of following factors:

T1 Certification	T2 Certification	T3 Certification
High facilitation at port Direct Port Delivery (DPD) Email on arrival / departure of container Expediated investigation & dispute resolution On request 24 X 7 help at all sea ports & airports ID Cards / Space in warehouse	High facilitation at port Direct Port Delivery (DPD) Email on arrival / departure of container Expediated investigation & dispute resolution On request 24 X 7 help at all sea ports & airports ID Cards / Space in warehouse	High facilitation at port Direct Port Delivery (DPD) Email on arrival / departure of container Expediated investigation & dispute resolution On request 24 X 7 help at all sea ports & airports ID Cards / Space in warehouse
50 % Bank Guarantee	25% Bank Guarantee Refund & Rebate in 45 days	No Bank Guarantee Refund in 30 days
	Deferred Custom Duty Payment Waiver of Seal Verification Priority in Scanning / assessment Client Relationship manager from Port Faster drawback	Deferred Custom Duty Payment Waiver of Seal Verification Priority in Scanning / assessment Client Relationship manager from Port Faster drawback
		Scanning only on Intelligence Reliance on self certified copies Risk based intervention by other department

Further, Ministry of Commerce has provided following schemes to ensure the WTO norms that no subsidies will be provided, and taxes will not be exported. In other words, Govt will not provide any subsidies and will not collect or will reimburse the taxes in input content of finished goods which are exported.

Ministry of Commerce have notified various schemes to meet the said objectives like Advance Authorisation Scheme, EPCG Scheme, Duty Free Import Authorisation

Scheme (DFIA), EOU Scheme, SEZ Scheme. Further, Govt also provided the scheme for the input which is procured from domestic and used for export products and therefore introduced deemed export benefits. Each importer and exporter need so that competitive disadvantages to the Indian Exporters will be eliminated, which is really tough task. Simultaneously, Indian exporters to study each scheme and compare which scheme is suited and benefited based on their import and export requirements. The comparison of the schemes are given below:

S no	CRITERIA	SEZ	EOU / STP / EHTP / BTP	Licensing Under Special Warehousing Provision (MOOWR)
1	Eligibility	Any person - For manufacture / services / trading of imported goods and services	Any person - For manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro processing, aquaculture, animal husbandry, pisciculture, — viticulture, poultry and sericulture. No trading units shall be permitted.	Any person can set up the unit for manufacturing in warehouse and start operations. Existing unit also can convert into manufacture in private bonded warehouse
2	Approving Authority	Development Commissioner, SEZ	Development Commissioner, SEZ. However, for other than specified services, Board of Approval	Chief Commissioner of Customs
3	Location	Notified Special Economic Zone by Ministry of Commerce	Any location	Any location

S no	CRITERIA	SEZ	EOU / STP / EHTP / BTP	Licensing Under Special Warehousing Provision (MOOWR)
4	Investment Criteria	No limit	Investment minimum of Rs.1 crore in plant and machinery, however no criteria for conversion of existing units.	No criteria
5	Conversion to any Scheme	Allowed subject to physical shifting of plant		Allowed
6	Export Obligation / Export Performance	No export obligation, export performance should earn positive Net Foreign Exchange in 5 years		No Export Obligation
7	Net Foreign Exchange	Yes - Positive		Not Required
8	Import / Procurement of Construction Material on original work	Duty Free	No duty benefit including no ITC available	Not Allowed. However, any material obtained for maintenance, no custom duty to be paid.
9	Import of CG			
	Duty free entitlement	Yes	Exemption of Basic Customs Duty and customs cess, IGST upto 31st March 2021. Exemption of Basic Customs Duty and customs cess. IGST needs to be paid after 31st March 2021but ITC is available	Exemption of Basic Customs Duty and customs cess, IGST Exemption of Basic Customs Duty and customs cess.
	List for Approval	Not required	Required - LUT with Exemption material list to be given including capital goods. Further list needs to be submitted to the specified Jurisdictional Authority of Customs who will attest it and send one copy to the port of import	Any goods received in the warehouse subject to permission of Commissioner of Customs
	Nexus	Not required	Compulsory	Compulsory
10	Justification for import	Not required	Required	Required
11	Import of Office Equipment / EPBX	Yes	Yes	Yes
12	Import of Spares	Yes	Yes	Yes
13	Import of Spares			
	Duty free entitlement	Yes	Exemption of Basic Customs Duty and customs cess, IGST upto 31st March 2021. Exemption of Basic Customs Duty and customs cess. IGST needs to be paid after 31st March 2021but ITC is available	Exemption of Basic Customs Duty and customs cess, IGST Exemption of Basic Customs Duty and customs cess.
	List for Approval	Not required	Required - LUT with Exemption material list to be given including capital goods. Further list needs to be submitted to the specified Jurisdictional Authority of Customs who will attest it and send one copy to the port of import	List to be submitted to Principal Commissioner
14	Nexus	Not required	Required - LUT with Exemption material list to be given including inputs	Required
15	Time Limit for Consumption of Inputs	Within the period of validity of LOP	Within the period of validity of LOP, i.e. 5 Years	Not specified
16	Other Benefits	RoDTEP is available.	RoDTEP is not available.	RoDTEP is available.
17	Input / Output Norms	Not Required. Norms required only for sub-contracting	SION required for having reconciliation of Duty free input received, consumed, in stock. SION is also required for payment of Custom Duty and Cess thereon, when Finished Goods are sold in DTA and proportionate duty saved on Inputs will have to be paid before effecting DTA Sale	To be fixed by Principal Commissioner
18	Rejections	No Norms	Rejections upto 5%	No Limit
19	Clearance of Imported Capital goods			
	Permission	Not required	Required - Permission from Jurisdictional Deputy Commissioner required	Required permission from Bond Officer



S no	CRITERIA	SEZ	EOU / STP / EHTP / BTP	Licensing Under Special Warehousing Provision (MOOWR)
	Value for clearance	Depreciated value as on the date of clearance	<p>&gt; For capital goods procured prior to appointed date, depreciated value to be calculated as specified under Notification 52/2003 dt.31.0.3.2003 as amended and pay Basic Customs duty and cess along with IGST / CGST + SGST on the same</p> <p>&gt; For goods procured on or after appointed date, reverse the input tax credit availed after considering 5% reduction per quarter from the date of invoice or pay IGST / CGST + SGST on transaction value, whichever is higher</p>	duty needs to be paid on Depreciated value
	Duty rate	Applicable at the time of clearance	Duty forgone to be calculated on depreciated value and rate at the time of importation.	Duty Forgone at the time of clearance
20	Clearance of Imported Inputs As such			
	Permission	Not required	Required - Permission from Jurisdictional Deputy Commissioner required	Permission from Bond Officer located in the premises
	Value for clearance	Import Value	Import Value	Import Value
	Duty rate	Applicable at the time of clearance - Basic customs duty, Cess, IGST is payable	Duty forgone to be calculated on depreciated value and rate at the time of importation and to be paid	Duty applicable at the time of clearance
21	Procurement of Indigenous Capital Goods			
	Duty impact	Free	On payment of IGST / CGST + SGST and subsequent availment of input tax credit Refund of GST paid will be entitled either to the supplier or EOU Unit.	On payment of IGST / CGST + SGST and subsequent availment of input tax credit
	Benefit to supplier	Physical Exports	Deemed Exports	Nil
22	Procurement of Indigenous Inputs			
	Duty impact	Free	On payment of IGST / CGST + SGST and subsequent availment of input tax credit Refund of GST paid will be entitled either to the supplier or EOU Unit.	On payment of IGST / CGST + SGST and subsequent availment of input tax credit
	Benefit to supplier	Physical Exports - DFIAS / AAS / Duty Drawback are allowed	Deemed Exports - DFIAS / AAS are allowed	Nil
23	Clearance of Indigenous Capital Goods			
	Value for clearance	Depreciated value as on the date of clearance	<p>&gt; For goods procured prior to appointed date, depreciated value to be calculated as specified under Notification 22/2003 dt.31.0.3.2003 as amended and pay IGST / CGST + SGST on the same</p> <p>&gt; For goods procured on or after appointed date, reverse the input tax credit availed after considering 5% reduction per quarter from the date of invoice or pay IGST / CGST + SGST on transaction value, whichever is higher</p>	<p>&gt; For goods procured prior to appointed date, depreciated value to be calculated as specified under Notification 22/2003 dt.31.0.3.2003 as amended and pay IGST / CGST + SGST on the same</p> <p>&gt; For goods procured on or after appointed date, reverse the input tax credit availed after considering 5% reduction per quarter from the date of invoice or pay IGST / CGST + SGST on transaction value, whichever is higher</p>
	Duty Rate	Applicable at the time of clearance	Applicable at the time of clearance	Applicable at the time of clearance
24	Sale of Indigenous Inputs			
	Value for clearance	Purchase Value	Purchase Value	Purchase Value
	Duty Rate	Pay Customs Duty applicable at the time of clearance and reversal of benefit availed.	Applicable at the time of clearance	Applicable at the time of clearance
25	Indigenous Office Equipment	Duty Free. Physical Export for Suppliers	Duty Free, With approval of BOA. Deemed Export for Suppliers	GST to be paid and credit to be availed
26	GST on Services		GST to be paid and credit to be availed	GST to be paid and credit to be availed

S no	CRITERIA	SEZ	EOU / STP / EHTP / BTP	Licensing Under Special Warehousing Provision (MOOWR)
27	Refund of GST paid on Exports under Rule 96(10)			Allowed
28	Refund of Input Tax Credit on exported goods under Rule 89(4)			Allowed
29	Refund of GST under Inverted Duty Structure under Rule 89(5)			Allowed
30	Income Tax	Section 10AA: > 100% exemption for first 5 years on Export Earnings > 50% exemption for next 5 years > 50% exemption for next 5 years, provided that the 50% of the Profit earned is reinvested in next 3 years. These benefits will be available to only those units which commence commercial production on or before 30th Sept 2020. For the units who has obtained the LOA prior to 31.03.2020 for new units setup after 31.03.2020. No deduction available w.e.f. AY 2021-22 Trading profits are fully taxable even in respect of trading exports. MAT Applicable w.e.f. AY 2012-13	No exemption MAT Applicable	No exemption MAT Applicable
31	Stamp Duty	Exempted	Exempted only on Immovable Properties	Applicable
32	Electricity Duty	Exempted for 10 years.	Exempted only on Immovable Properties	Not exempted
33	DTA Sale	Allowed without any limit, but full import duties as if import	Allowed without any limit, but Basic Customs Duty saved on inputs will have to be paid back. In addition to the above DTA sale will be on payment of IGST / CGST + SGST, subject to achieving positive NFE. Advance DTA sale is also permitted for new unit.	DTA Sale is allowed without any limit and without anybody's permission. However, on removal of goods duty is required to be paid on import contents in the goods to be removed and it should be against bill of entry for home consumption and to be removed in the presence of bond officer.
34	Sub-contracting	Sub-contracting of part of production / production process is allowed. Maximum limit is value of goods produced by the unit within its own premises in the immediately preceding financial year	Part of production process is allowed to be sub-contracted in DTA on filing of intimation. Substantial production process to be done inside EOU. In addition to above, 50% of FOB Value of exports can be sub-contracted totally, if capacities are fully utilised. Sub-contracting may be carried out through another EOU without any limit. Sub-contracting can be done by EOU only for exports	Allowed with the specific permission of the bond officer
35	Labour Laws	Labour reforms are applicable, subject to State Government Policy	Labour reforms are not applicable	Labour reforms are not applicable
36	Procedures	Customs Clearance at Special Economic Zone	Customs Clearance at the port of import - superficial examination w.r.t. marks and numbers.	Customs Clearance at the port of import - superficial examination w.r.t. marks and numbers.
		Procedures at par with Physical Exports	Permissions required for sub-contracting, removal / inward movement of goods	No provision for sub-contracting, removal / inward movement of goods
		Hardly any permissions are required to be obtained	Digital Record based control	Record based control with intimation / permission

However, number of practical difficulties have been faced by exporters and importers and therefore, we have suggested number of changes in the forthcoming & most awaited new Foreign Trade Policy for 2022-2027. Such suggestions can be read in detail with the following link:

<https://www.bizsolindia.com/article-on-expectations-from-new-foreign-trade-policy-2021-26-by-cma-ashok>

[nawal-founder-bizsolindia-services-pvt-ltd/](https://www.bizsolindia.com/article-on-expectations-from-new-foreign-trade-policy-2021-26-by-cma-ashok)

If above suggestions are accepted which are within the framework of WTO policy exporters will be benefited and will be really more competitive in international market.

Govt has also modified and substantially scheme made liberal in the year 2019. MOOWR Scheme 2019 was modified with the object to



manufacture in the Custom Bonded Warehouse with record-based control rather than physical control and pay the duty whenever such manufactured goods are sold in domestic market to the extent of duty saved on import content in the finished goods. This is mainly to ease out the liquidity for manufacturer and promote Make-in-India to achieve the dream of building Indian Economy to USD 5 Trillion. However, there are operative difficulties which needs to be removed by the CBIC and ensure objective of ease of doing business and 100% reduction of interface then only this scheme will be popular and will be beneficial to make Indian industry competitive.

If Government removes the difficulties in MOOWR Scheme as well as introduce new & vibrant Foreign Trade

Policy at the earliest after incorporating suggestions given by the trade and industries, then Indian exporters will be more competitive in the International Trade. Further Indian exporters have to focused on introduction and monitoring of effective costing system, implement cost & management techniques including but not limiting to Activity Based Costing, Standard Costing, Target Costing, Cost Reduction, Value Addition Drives & Continuous Innovations in the process of manufacture, process of distribution, process of logistics, then there is no reason, why to be afraid of pricing of any country including China.

Let's hope Govt & industry with the help of experts & professionals will make Indian Industry more competitive and achieve the dream of making in India Superpower!! 