

# Foreign Trade Policy 2004 - 2009

## Significant Highlights

### Announcements on 31st August, 2004



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## **FOREIGN TRADE POLICY 2004 - 2009 SIGNIFICANT HIGHLIGHTS ANNOUNCEMENTS ON 31ST AUGUST, 2004**

### **1.0 INTRODUCTION**

1.1 The new Foreign Trade Policy 2004 – 2009 was announced by the Commerce Minister Mr. Kamal Nath in Parliament on August 31<sup>st</sup> 2004. The main objectives of this Policy were -

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

This Policy has replaced the existing EXIM Policy 2002 – 2007 and has come into effect from 1<sup>st</sup> September 2004 and shall remain in force upto 31<sup>st</sup> March 2009. Most of the provisions of the EXIM Policy 2002- 2007 have been retained with certain additions / modifications.

There are many positive announcements made such as special packages for the agriculture, handlooms, handicrafts, gems and jewellery, leather sectors etc. In the present policy, two new entities namely Biotechnology Parks (BTP) and Free Trade Warehousing Zones (FTWZs) have been introduced. The Policy has sought to achieve procedural simplification, reducing transaction costs and introduce a system of focused incentives in selected thrust areas for speedy growth.

1.2 In this circular, we have discussed some of the significant proposals of general interest in the Foreign Trade Policy. The facts of each case have to be studied and the legal position analyzed properly before taking any action or decision in this matter. Further, this circular contains only the highlights of major points contained in the policy announced.

### **2.0 SIGNIFICANT HIGHLIGHTS**

#### **2.1 GEMS AND JEWELLERY**

- Import of gold of 18 carat and above shall be allowed under the replenishment scheme.
- Duty free import entitlement of consumables for metals other than gold, platinum shall be 2 % of FOB value of exports during the previous financial year.

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- Duty free import entitlements of commercial samples shall be Rs.100,000.
- Duty free re-import entitlement of rejected jewellery shall be 2 % of the FOB value of exports.
- Gem and Jewellery exporters with a track record of atleast three years and having an annual average turnover of Rs. 5 Crores and above during the preceding three licensing years or the authorised offices / agencies in India of Gemological Institute of America, The Robert Mouawad Campus, International Gemological Institute, European Gemological Laboratory in USA, World Diamond Centre of Diamonds High Council in Belgium, Central Gem Laboratory, Tokyo may be permitted to export cut and polished diamonds each weighing 0.25 of a carat and above to the said laboratories / agencies, for the purpose of certification / grading reports by them with a condition that the same should be re-imported with the certificate/grading reports issued by them without any import duty at the time of re-import within three months from the date of export for certification / grading.

## 2.2 AGRICULTURE

- A new scheme “Vishesh Krishi Upaj Yojana” (Special Agricultural Produce Scheme) for promoting the export of fruits, vegetables, flowers, minor forest produce and value added products has been introduced.
- Import of Capital goods under the EPCG scheme shall be permitted duty free.
- Units in Agricultural Export Zone (AEZ) shall be exempt from Bank guarantee under the EPCG scheme and shall be permitted to install the asset any where in the Zone.
- Inputs like pesticides etc shall be permitted to be imported under Advance License.

## 2.3 GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

- Import of second hand capital goods, including refurbished / reconditioned spares shall be allowed freely.
- Second hand goods excepting second hand capital goods shall be restricted for imports and may be imported only in accordance with the provisions of the Policy.
- Exporters who have an export turnover of atleast Rs.5 Crores in the current or preceding licensing year and have a good track record of three years of exports will be exempted from furnishing a bank guarantee for any of the schemes under this policy and may furnish a Letter of Undertaking (LUT) in lieu of bank guarantee.
- In the case of third party exports, it is now required that the bank realisation certificate, GR declaration, export order and invoice should be in the name of the third party exporter.
- In the case of export of imported goods, export of such goods imported against payment in freely convertible foreign currency would be permitted against export receipts in freely convertible currency only.
- Regularization of defaults of export obligations by firms and settlement of customs duty and interest shall be initiated by the Settlement Commission in the Central Board of Excise and Customs with effect from 1<sup>st</sup> April 2005.
- For all goods and services, which are exported from units in the domestic tariff area (DTA), remission of service tax levied shall be allowed.

## 2.4 PROMOTIONAL MEASURES

- Financial assistance under the Market Access Initiative can be received by eligible entities ranging from 25 % to 100 % of the total cost depending upon the activity and the implementing agency as per the guidelines. The recognised associations of units will be able to access the funds under this scheme for creating focused technological services.
- Under the revised, “Marketing Development Assistance” guidelines with effect from 1<sup>st</sup> April 2004, assistance is available for exporters with annual export turnover upto Rs.5 Crores. These include participation in Trade Fairs and Buyer seller meets abroad or in India, exports promotion seminars etc.
- Financial assistance would be provided to deserving exporters on the recommendation of the Export Promotion Councils for meeting the cost of legal expenses related to trade related matters.
- The threshold limit for selection as “Towns of Excellence” in the handloom, handicraft, agriculture and fisheries sector has been reduced from Rs.1000 Crores to Rs.250 Crores. Common service providers in these areas shall be entitled for the facility of the EPCG scheme.
- A Web based interface for trade and industry to reply to queries will be started by the DGFT which would be held from 3.00 pm to 5.00 pm on the second Wednesday of every month.

### 2.4.1 Status holder – Star Export House

Status holder under the Policy means an exporter recognized as one to five star export house by the DGFT / Development Commissioner. The export performance level criteria has been revised for the status holder as under -

#### Existing Limits

<b>Total FOB/FOR value of exports during the current licensing year or during the preceding 1/2/3 licensing years in Rs.</b>	
Export House	<b>45 crores</b>
Trading House	<b>300 crores</b>
Star Trading House	<b>1500 crores</b>
Super Star Trading House	<b>6000 crores</b>

#### Revised Limits

<b>Total FOB/FOR value of exports during the current plus year plus during the preceding previous three years in Rs.</b>	
One star export house	<b>15 Crores</b>
Two star export house	<b>100 Crores</b>
Three star export house	<b>500 Crores</b>
Four star export house	<b>1500 Crores</b>
Five star export house	<b>5000 Crores</b>

Further, under the revised guidelines, units having ISO 9000 (series)/ISO 14000 (series)/SEI CMM Level – II and above status granted by authorised agencies, shall be entitled for double weightage of exports made for grant of star export house status. The entitlement certificates, which would be issued, would be valid upto 31<sup>st</sup> March 2009 unless otherwise specified.

An existing status holder shall be automatically treated to be an equivalent star export house as per the table given herein under –

<b>Erstwhile status under Exim Policy 2002-2007</b>	<b>Converted status as per the Foreign Trade Policy 2004 – 2009</b>
Export House	One Star Export House
Trading House	Three Star Export House
Star Trading House	Four Star Export House
Super Star Trading House	Five Star Export House

However, any exporter irrespective of whether he is a status holder or not can apply afresh for grant of status or upgradation of his existing status.

Apart from the existing benefits enjoyed by the Status holders presently, the star export house holders (status holders) under the revised scheme would be additionally entitled to –

- Inclusion under the Target Plus Scheme (which has been launched)
- Exemption from furnishing of Bank guarantee in schemes under this Policy.

## **2.4.2 Served from India scheme**

- All service providers who have a total foreign exchange earning of Rs.10 Lakh in the preceding or current financial year shall be eligible to qualify for a duty credit entitlement. For individual service providers, the foreign exchange earned criteria would be Rs.5 Lakh in the preceding financial year.
- All service providers (other than hotels and restaurants) shall be entitled to a duty credit equivalent to 10 % of the foreign exchange earned by them in the preceding financial year.
- Hotels of One star and above approved by the Department of Tourism (DOT) and other service providers in the tourism sector registered with the DOT shall be entitled to duty credit equivalent of 5 % of the foreign exchange earned by them in the preceding financial year. Stand-alone restaurants will be entitled to duty credit equivalent to 20 % of the foreign exchange earned by them in the preceding financial year.
- Health care and Educational institutions shall be entitled to duty credit equivalent to 10 % of the foreign exchange earned by them in the previous financial year.
- Duty credit entitlement may be used for import of any capital goods including spares, office equipment and professional equipment, office furniture and consumables, provided it is part of their main line of business. In the case of hotels and stand-alone restaurants, the duty credit entitlement may also be used for the import of food items and alcoholic beverages. The entitlement and the goods imported shall be non-transferable.

## 2.4.3 Target Plus scheme

- With a view to encouraging high performing star export houses, duty credit will be granted to them based on incremental exports substantially higher than the general annual export target fixed.
- For the financial year 2004-05, the lower limit of performance growth for qualifying for rewards is pegged at 20 % of the exports made during the previous licencing year.
- All Star export houses, which have achieved a minimum export turnover in free foreign exchange of Rs.10 Crores in the previous licensing year, are eligible for consideration under the Target Plus Scheme.
- The entitlement under this scheme would be contingent on the percentage incremental growth in FOB value of exports in the current licencing year over the previous licencing year, as under –

<b>Percentage incremental growth</b>	<b>Duty Credit Entitlement (as a % of the incremental growth)</b>
20% and above but below 25%	5%
25% or above but below 100%	10%
100% and above	15% (of 100%)

- The incremental growth beyond 100% will not qualify for computation of duty credit entitlement. For the purpose of this scheme, the export performance shall not be transferred to or transferred from any other exporter. In the case of third party exports, the name of the supporting manufacturer / manufacturer exporter shall be declared.
- Exporters shall have the option to apply for benefit either under the Target Plus scheme or under the Vishesh Krishi Upaj Yojana, but not both in respect of the same exported product/s.
- For direct as well as third party exports, the Export documents viz. Export order, Invoice, GR Form, Bank realisation certificate should be in the name of the applicant only. However, for third party exports, where goods have been procured from a manufacturer, the shipping bill should contain the name of the exporter as well as the supporting manufacturer.
- Companies which are Star Export houses as well as part of a Group, shall have an option to either apply as an individual company or as a group based on the growth of the group's turnover as a whole.

Under the Policy, Group Company has been defined to mean two or more enterprises which, directly or indirectly, are in a position to (i) exercise twenty-six percent or more of the voting rights in the other enterprise; or (ii) appoint more than fifty percent, of the members of the board of directors in the other enterprise; or for the group companies to claim benefits or have their exports counted for benefits to be claimed by another member of the group, the group company should have been in existence atleast two years prior to the date of application under any of the export promotions schemes notified in the policy.

- The following exports shall not be taken into account for the calculation of export performance or for computation of entitlement under the scheme –

- Export of imported goods for which payment is not received in freely convertible foreign currency.
  - Exports of SEZ/EOU units through DTA units.
  - Deemed exports even if the payments are received in free foreign exchange or from EEFC account.
  - Service exports
  - Rough, uncut and semi polished diamonds and other precious stones.
  - Gold, Silver, Platinum and other precious metals in any form including plain jewellery thereof. However, exports of studded jewellery and any items as may be notified from time to time will be counted for the entitlement under the scheme.
  - Export performance made by one exporter on behalf of another exporter.
- The Duty credit may be used for import of any inputs, capital goods, spares, office equipment, professional equipment, office furniture provided the same is freely importable for their own or that of supporting manufacturers. Agricultural products listed in chapter 1 to 24 of the ITS (HS) shall not be permissible for import under the scheme unless otherwise specified.
  - Goods allowed to be imported under this scheme shall have a broad nexus with the products exported and a declaration in this regard shall be made by the applicant.
  - Additional customs duty / excise duty paid in cash or through debit under Target Plus scheme shall be adjusted as Cenvat credit or Duty drawback as per rules.
  - The licensing authority shall at the time of issuance of the duty credit entitlement certificate endorse the name of the associate manufacturer / supporting manufacturer / job worker on the certificate as declared by the applicant. Goods imported against such entitlement certificate shall be used by the applicant or his supporting manufacturer / job worker.
  - Such duty credit certificate shall be valid for a period of 24 months from the date of issue.

#### **2.4.4 Vishesh Krishi Upaj Yojana (Special Agricultural Produce scheme)**

- Exporters of fruits, vegetables, flowers, minor forest produce and their value added products are entitled under this scheme.
- Such exporters would be entitled to “Duty credit scrip” equivalent to 5 % of FOB value of exports for each licencing year commencing from 1<sup>st</sup> April 2004.
- The duty credit may be used for import of inputs or goods including capital goods as may be notified provided the same is freely importable.
- The scrip and items imported against this scheme shall be freely transferable.
- Additional customs duty / excise duty paid in cash or through debit under Vishesh Krishi Upaj Yojana shall be adjusted as Cenvat credit or Duty drawback as per rules.

#### **2.5 DUTY EXEMPTION AND REMISSION SCHEMES**

- Supplies by DTA units to SEZ units would be counted for fulfillment of export obligation under the Advance License for physical exports.
- Validity period, for the DEPB licenses to be issued has been extended to 24 months from the existing limit of 12 months from the date of issue.

## 2.6 EXPORT PROMOTION CAPITAL GOODS SCHEME (EPCG)

- The scheme allows import of capital goods for pre-production, production and post production (including CKD/SKD thereof as well as computer software systems) at 5 % customs duty subject to an export obligation equivalent to 8 times of duty saved on capital goods imported under the scheme to be fulfilled over a period of 8 years from the date of issuance of license.
- Capital Goods would be allowed at zero percent duty for exports of agricultural products and their value added variants.
- In respect of EPCG licenses with a duty saved of Rs.100 Crore or more, the export obligation shall be required to be fulfilled over a period of 12 years.
- In case of CVD paid in cash on imports under EPCG, the incidence of CVD would not be taken for computation of net duty saved provided the same is not Cenvated.
- Second hand capital goods without any restriction on age may be imported under EPCG scheme.
- Spares (including refurbished/ reconditioned spares). Tools, refractories, catalyst and consumables for the existing and new plant and machinery may be imported under the scheme.
- An EPCG licence can also be issued for import of capital goods for supply to projects notified by the Central Board of Excise and Customs.
- Royalty payments and payments for R & D services received in freely convertible foreign currency shall henceforth be counted for discharge of export obligation under the EPCG scheme.
- Payment received in rupee terms for the port handling services, in certain cases, shall be counted for export obligation discharge under the Scheme.
- Every EPCG licence holder would have to maintain the average level of exports equivalent to the average of the exports in the preceding three licencing years for the same and similar products except for exempted categories during the entire period of export obligation.
- Notwithstanding the above, the licence holder shall maintain at least 75% of the average exports in any particular year (s) provided the same is offset by excess exports to fulfill the average in other year (s).
- **Technological up gradation of existing EPCG machinery**

The conditions governing the Technological Upgradation of the existing capital goods are as under:

- The minimum time period for applying for Technological Upgradation of the existing capital goods imported under EPCG is 5 years from the date of issuance of the licence.
- The minimum exports made must be 40% of the total export obligation imposed on the first EPCG licence.
- The export obligation would be refixed such that the total export obligation mandated for both the capital goods would be the sum total of six times the duty saved on both the capital goods.

## **2.7 EXPORT ORIENTED UNITS (EOUs), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPs), SOFTWARE TECHNOLOGY PARKS (STPs) AND BIOTECHNOLOGY PARKS (BTPs)**

- BTP means Biotechnology Park as notified by the Director General of Foreign Trade on the recommendation of the Department of Biotechnology.
- An EOU/EHTP/STP/BTP unit may import and/or procure from DTA or bonded warehouses in DTA/international exhibition held in India without payment of duty all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS). Such assets can also be imported on loan / lease basis from overseas parties.
- The import of capital goods will now be on a self-certification basis.
- Units in EOU/EHTP/STP/BTP/SEZ shall be exempted from service tax.
- State trading regime shall not be apply to EOU manufacturing units
- Gems and Jewellery EOUs may source as material loan, gold/silver/platinum through the nominated agencies. However, such units will have to fulfill the export obligation within 60 days from the date of such sourcing. However, if such units were making outright purchase, no time limit would be applicable.
- Procurement and supply of spares and consumables required for the goods manufactured by the units may be allowed to be exported along with goods upto 1.5 % of FOB value of exports. This shall, however, not to be counted towards NFE calculation for concessional rate of DTA sales / IT exemption.
- Henceforth, only projects having a minimum investment of Rs. 1 Crore and above in plant and machinery shall be considered for establishment as EOUs. However, this limit would not be applicable to units in EHTP/STP/BTP, Handicrafts, Agricultural / Floricultural / Acquaculture / Animal Husbandry, information technology, services, brass hardware, hand made jewellery and such other sectors as may be decided by Board of Approval.
- In case of DTA sale of goods manufactured by EOU/EHTP/STP/BTP where the basic duty and CVD is nil such goods may be considered as non-excisable for the purpose of payment of duty.
- It has been provided that EOU/EHTP/STP/BTP units would be eligible for credit facilities from offshore banking unit as are being extended to SEZ units.
- Further, such units would not be required to furnish bank guarantee at the time of import or going for job work in DTA where the unit has (i) a turnover of Rs.1 Crore or above, (ii) the unit is in existence for atleast three years and (iii) Unit is having an unblemished track record.
- Duty free import of goods for execution of export order placed on EOU by foreign supplier on job work basis would be allowed subject to the condition that no DTA clearance would be allowed.
- In the case of Textile EOU units, disposal of left over material, fabrics upto 2 % of the CIF value or quantity of import which ever is lower on payment of duty on transaction value may be allowed, subject to certification of central excise / customs officers certify that these are left over.
- Disposal of used packing material will be allowed on payment of duty on transaction value.

## 2.8 FREE TRADE & WAREHOUSING ZONES (FTWZ)

- FTWZ shall be a special category of SEZ with focus on trading and warehousing. These zones would be established in areas with proximity to seaports, airports or dry ports to offer easy access by rail and road.
- Proposals for setting up of FTWZs can be made by public sector undertakings or public limited companies or by joint ventures in technical collaboration with experienced infrastructure developers.
- Foreign direct investment would be permitted upto 100 % in the development and establishment of the zones and their infrastructure facilities.
- The proposal must entail a minimum outlay of Rs. 100 Crores for the creation and development of infrastructure facilities with a minimum built up area of five lakh square meters.
- The developer shall be permitted to import duty free such building materials and equipments as may be required or source such duty free goods from the DTA. Supplies from DTA would be considered as physical exports.
- Once developed, the developer would be allowed to sale/lease/rent out the warehouse/workshops/office space and other facilities to traders/exporters.
- The scheme envisages duty free import of all permitted goods for warehousing. Such goods shall be permitted to be re-sold/re-invoiced or re-exported. Re-export shall be permitted without any restrictions. These goods shall be permitted to be sold in the DTA on payment of customs duties.
- Packing or re-packing without processing, and labeling as per customer or marketing requirements could be undertaken within the FTWZ.
- The maximum period that goods shall be permitted to be warehoused within the FTWZ will be two years, after which they shall necessarily have to be re-exported or sold in the DTA. On expiry of the two year period, customs duties would automatically become due unless the goods are re-exported within such grace period, not exceeding three months, as may be permitted.
- All units in FTWZ would be entitled to –
  - Income tax exemption as per 80IA of the Income Tax Act.
  - Exemption from service tax.
  - Free foreign exchange currency transactions would be permitted
  - Other benefits as applicable to units in SEZs.
- Units in FTWZs shall be net foreign exchange earners. Net foreign exchange earning shall be calculated cumulatively for every block of five years from the commencement of warehousing and/or trading operations as per formula as applicable to SEZ units.

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