

# Foreign Trade Policy-2023: A Ready Reckoner



# Overview

- The Foreign Trade Policy (**FTP**) is announced under S.5 of the Foreign Trade (Development & Regulation) Act, 1992 (**FTDRA**).
- Its purpose is to implement the FTDRA. Each FTP is announced together with a “Handbook of Procedures” (**HBP**).
- Typically, each FTP so far has had a five year duration, leading to some uncertainty as regards continuity of incentive schemes for exports.
- FTP 2015-2020 was extended on account of Covid related exigencies.
- [FTP 2023](#) and the accompanying [HBP](#) does not come with any expiry date; and is hence expected to forge a higher sense of certainty as regards its various schemes.

**FTP 2023: What sets it apart from earlier FTPs is:**  
**Focus on Trade Facilitation &**  
**Decentralized implementation**

# FTP 2023: Key Features

1. Trade facilitation: Key mantra
2. MEIS replaced by RoDTEP: Shift from direct export linked incentives to remission of duties embedded in exported goods
3. Decentralized path for export development: Districts as “Export Hubs” initiative: Each District to have District Export Action Plan and identify products for the Market Access Initiative (MAI), or the Niryat Bandhu scheme
4. Rupee payment acceptance: FTP benefits extended to rupee realizations; step towards internationalization of rupee.
5. E-Commerce Export Hubs: E-commerce facilitation; designated hubs with warehousing facility to be notified for stocking, customs clearance, etc.

# FTP 2023: What has changed? (Contd.)

6. Promoting Cross-border Trade in Digital Economy through various measures.
7. Expansion of list of “Green Technology” products: Green Hydrogen, Battery operated Vehicles, Vertical Farming equipment, Wastewater Treatment & Recycling, Rainwater harvesting system: new additions
8. Streamlining SCOMET Licensing Procedure: Consolidation of requirements applicable for Special Chemicals, Organisms, Materials, Equipment and Technologies (**SCOMET**)
9. One-time Amnesty scheme for default in Export obligations: Applicable till 30 September, 2023.

# Trade Facilitation

- Process simplification for online permissions for advance authorization, EPCG issuance, revalidation of authorizations and time extensions w.r.t. export obligations;
- Enhancement of MSME benefits;
- Revamping of e-Certificate of Origin (**CoO**), and self-certification of CoOs;
- Online filing for Export Obligation discharge applications.

# Trade Facilitation & other benefits for MSMEs

- Reduction of user charges under Advance Authorization and Export Promotion Capital Guarantee (**EPCG**) schemes, starting at Rs. 100/- and not exceeding Rs. 5,000/-.
- Preferential customs treatment in terms of reduced examination, faster clearances and other benefits for MSMEs under the [Authorized Economic Operator \(AEO\) programme](#).
- Exemption for EOU/EHTP/STP/BTP units from industrial licensing for [manufacture of items reserved for micro and small enterprises](#).

## MSME related benefits (Contd.)

- [Dak Ghar Niryat Kendras](#) will enable MSMEs to reach international markets, by facilitating cross-border e-commerce.
- MSME trade related grievances to be referred to an inter-ministerial committee for early resolution.
- Awareness programmes on export regulations with focus on MSMEs and Startups, through a separate institutional mechanism. These will be conducted on a sector-specific/ region-specific basis through the DGFT.



# MEIS replaced by RoDTEP

- The [Scheme for Remission of Duties and Taxes on Exported Products \(RoDTEP\)](#) replaced the Merchandise Exports from India Scheme (**MEIS**) in 2021 itself; this is now recorded under the FTP.
- MEIS was devised as a direct export subsidy; a [WTO panel in 2019](#) had held this to be inconsistent with WTO disciplines. Though the Govt. has appealed the panel decision at the WTO, it had replaced the MEIS with the WTO-consistent RoDTEP scheme.
- **RoDTEP** is a remission of taxes/duties: exporters will be compensated for the non-creditable duty/tax costs (such as Electricity Tax, Stamp duty, Mandi Fee, Tax on fuel, etc.) that are embedded in the exported goods.
- **RoDTEP** scheme initially excluded pharmaceuticals, chemicals and steel sectors; but these were also brought into the RoDTEP fold in Dec. 2022.

# Districts as Export Hubs Initiative

- **Decentralized vision for export development.**
- Each district to identify products or services for export.
- **Each District to establish a District Export Promotion Committee (DEPC)** which is mandated to prepare & implement a **District Export Action Plan.**
- Access funds for infrastructure development, skill/ capacity building initiatives, under the [Market Access Initiative \(MAI\)](#), or the Niryat Bandhu scheme, or other schemes that can facilitate export of specific products from the district.
- **State Export Promotion Committees** headed by the Chief Secretary, are required to synergize efforts of districts within a state, with the nodal DGFT regional authority.

# E-commerce Export Hubs

- **Establishment of designated E-Commerce Exports Hubs (ECEH)**: The purpose would be to provide for common facilities such as storage, packaging, labeling, certification and testing; and dedicated logistics infrastructure.
- DGFT to constitute a notified committee for approval of ECEH, which may be set up on a PPP mode as well.
- ECEH may avail financial assistance under [Market Access Initiative \(MAI\)](#) scheme.

# Promoting Cross Border Trade in Digital Economy

- Objective of chapter 9 on Digital Economy is to provide a framework for:
  1. Cross-border trade of goods and services;
  2. Promotion of e-commerce; and
  3. Promotion of other emerging channels of export from India.
- **E-commerce export of goods or services**: Sale through the internet on an e-commerce platform, the payment for which shall be done through international credit or debit cards, or other authorized electronic payment channels specified by RBI.
- **E-commerce Platform**: Any electronic platform, including a web-portal, that enables the commercial process of buying and selling through the internet.
- **E-Commerce Export Logistics Provider**: Any service provider who provides logistics services towards exports of goods or services for e-commerce exports.

# Cross Border Trade in Digital Economy (Contd.)

- Other than establishment of E-commerce Export Hubs, FTP 2023 also provides for the following ways to promote cross-border trade in digital economy:
- **Promotion of e-commerce exports through the Niryat Bandhu Scheme** : DGFT to organize outreach activities/workshops, for creation of electronic content as well as capacity building and skill development, for promotion of e-commerce exports.
- **Promotion of e-commerce exports through postal route**: [Dak Ghar Niryat Kendras](#) shall be operationalized to work with Foreign Post Offices (FPOs) to enable artisans, weavers, craftsmen, MSMEs in the hinterland and land-locked regions to reach international markets.

# Green Technology Products

- The list of Green Technology Products under the HBP 2023 is as follows:

<ul style="list-style-type: none"><li>(i) Solar Energy Generating Systems and parts/Equipments thereof,</li><li>(ii) Wind Energy Generating Systems and parts/equipment thereof,</li><li>(iii) LED lights of various kind,</li><li>(iv) Vapour Absorption Chillers,</li><li>(v) Waste Heat Boiler,</li><li>(vi) Waste Heat Recovery Units,</li><li>(vii) Unfired Heat Recovery Steam Generators,</li></ul>	<ul style="list-style-type: none"><li>(viii) Water Treatment Plants,</li><li>(ix) Battery Electric Vehicles (BEV) [other than Hybrid Electric Vehicles (HEVs) and Plug-in Hybrid Electric Vehicle (PHEV)] of all types,</li><li>(x) Vertical Farming equipment,</li><li>(xi) Wastewater Treatment and Recycling,</li><li>(xii) Rainwater harvesting system and rainwater filters, and</li><li>(xiii) Green Hydrogen.</li></ul>
--	--

# Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET List)

- [SCOMET List](#) refers to dual-use items including software and technology, which has potential civilian/industrial applications, or as use in weapons of mass destruction.
  - The SCOMET List is aligned with India's international obligations under the Biological Weapons Convention, 1972 and Chemical Weapons Convention, 1992, the Missile Technology Control Regime, the Australia Group, and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies.
- SCOMET items have so far been regulated under the FTP read with public notices. The new Chapter 10 under FTP 2023 is a consolidated chapter applicable to SCOMET.

## SCOMET List (Contd.)

- The power to issue export authorizations is vested with the DGFT, Department of Atomic Energy (DAE), or Department of Defence Production (DDP)/ Ministry of Defence, depending on the item or technology required to be exported.
- The FTP 2023 has introduced an option for voluntary self-disclosures of failure to comply with the export control provisions. Such exporters who self-disclose their non-compliance would benefit from lenient penalties under FTDRA for violation of SCOMET policy.
- The FTP 2023 has clarified additional catch-all controls on non-SCOMET items which need to obtain SCOMET authorization if they have “*a potential risk of use in or diversion to WMD or in missile system or military use (including by terrorists and non-state actors)*”.



# SCOMET List (Contd.)

- The SCOMET List is divided into nine categories of items from Category 0 to Category 8. Category 7 is presently 'Reserved' and has not been populated.

Category	Description of the Category
Category 0	Nuclear materials, nuclear-related other materials, equipment and technology
Category 1	Toxic chemical agents and other chemicals
Category 2	Micro-organisms, toxins
Category 3	Materials, Materials Processing Equipment and related technologies
Category 4	Nuclear-related other equipment and technology, not controlled under Category 0 (such as cryogenic tanks)
Category 5	Aerospace systems, equipment, including production and test equipment, related technology and specially designed components and accessories therefore (such as Drones)
Category 6	Munitions List
Category 7	[Reserved]
Category 8	Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion

# One-time Amnesty Scheme

- An [Amnesty Scheme](#) has been introduced for one time settlement of default in export obligation by (1) Advance authorization holders, and (2) EPCG authorization holders.
- All pending cases of default in meeting the export obligation for the authorizations mentioned above, can be regularized by:
  - 1) Payment of all customs duties that were exempted in proportion to unfulfilled export obligation
  - 2) Interest payable is capped at the rate of 100% of such exempted duties under these schemes.
  - 3) No interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty.

# FTP 2023: Other Features

# Export Promotion Capital Goods (EPCG) Scheme

- **EPCG scheme** has been part of India's foreign trade policy since the 1990s. Like MEIS, the EPCG scheme has also been [held by a WTO panel](#) to be inconsistent with India's WTO obligations. Since that decision has been appealed by the Govt., and therefore not enforceable, the FTP has continued with the EPCG scheme.
- **Scope**: Import of capital goods (other than those in the negative list), used for production of goods and services, subject to fulfillment of specified export obligations.
  - Also applies to common service providers (CSP) as certified by the DGFT.
- **Capital Goods**: Broad definition including plants, machinery, equipment, or accessories required for manufacture/ production/ mining/ agriculture/ aquaculture/ animal husbandry/ floriculture/ horticulture/ pisciculture/ poultry / sericulture/ viticulture, as well as use in services sector.
- **Term**: EPCG Authorization for imports shall be valid for 24 months.

## EPCG Scheme (Contd.)

- There are two types of export obligations which an EPCG authorization holder must achieve:
  - **Average Export Obligation (AEO)**
  - **Specific Export Obligation (SEO)**
- For fulfilling the SEO, exports under Advance Authorization, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible.
- Export proceeds realized in Indian Rupees are also counted towards fulfillment of SEO.

# EPCG Scheme (Contd.)

- **Requirement to maintain an Average Export Obligation is NOT applicable in the following sectors:**
  - (i) Handicrafts, (ii) Handlooms, (iii) Industries covered under Khadi and Village Industries Commission (KVIC) (iv) Agriculture (v) Aquaculture (including Fisheries), Pisciculture, (vi) Animal husbandry and Dairying, (vii) Floriculture & Horticulture, (viii) Poultry, (ix) Viticulture, (x) Sericulture, (xi) Carpets, (xii) Coir, and (xiii) Jute.
- **Benefits relating to reduced Specific Export Obligation (EO)** apply under specified circumstances. One of the following benefits can be availed:
  1. Reduced SEO of 25% less for indigenous capital goods (i.e., sourced from domestic manufacturers);
  2. Remaining export obligation shall be condoned and authorization will be redeemed in case of fulfilment of 75% SEO, and 100% of AEO till date, in 3 years or less;
  3. Green Technology Products: only 75% of SEO applicable;
  4. Northeast Region, Jammu & Kashmir and Ladakh: only 25% of SEO applicable.

# Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs)

- Goods & Services meant for export alone can be set up in:
  1. Export Oriented Units (EOUs),
  2. Electronics Hardware Technology Parks (EHTPs),
  3. Software Technology Parks (STPs), and
  4. Bio-Technology Parks (BTPs).
- Such schemes have been part of FTP for several years. Like MEIS & EPCG scheme, EOU/EHTP/STP schemes have also been [held to be inconsistent with India's WTO obligations by a WTO panel](#). Since that decision has been appealed by the Govt., and therefore not enforceable, the FTP has continued with these schemes.
- EOU/EHTP/STP/BTP units shall be a positive net foreign exchange earner (NFE earnings are calculated in blocks of five years starting from commencement of production).
  - Exemptions form NFE are allowed under specified circumstances.

## EOUs/EHTPs/STPs/BTPs (Contd.)

- Sale from EOU/EHTP/STP/BTP to the Domestic Tariff Area (**DTA**) without payment of customs duty, is allowed up to specified limits.
- Imports and/or procurement from bonded warehouse in DTA or from international exhibition held in India shall be without payment of customs duty.
- Procurement of goods from DTA would entail payment of applicable GST and compensation cess.



## EOUs/EHTPs/STPs/BTPs (Contd.)

- Supply of goods and services can be made from DTA to EOU/EHTP/STP/ BTP units for use in their manufacture for exports. Such supplies are considered as “deemed exports”.
- If an EOU/EHTP/STP/BTP unit is unable to utilize such goods and services, it can do any of the following:
  - Transfer such goods/ services to another EOU/EHTP/STP/BTP unit, which would be treated as import for receiving unit;
  - Dispose such goods/ services in the DTA with intimation to Customs authorities and payment of duties/taxes, subject to compliance of applicable import conditions, including import authorization; or
  - Export such goods/ services.

# Deemed Exports

- **Deemed Exports**: Transactions involving goods manufactured in India; and supplied within India under specified circumstances, have been part of the FTP in earlier years, and this has continued in FTP 2023.
- **Deemed exports involve supply by:**
  - (a) By a manufacturer against Advance Authorisation /Advance Authorisation for annual requirement / DFIA; or to EOU/STP/EHTP/BTP; or against EPCG Authorisation;
  - (b) By a main or sub-contractor in situations involving International Competitive Bidding, such as supply of goods/equipment to projects financed by multilateral or bilateral Agencies / Funds as notified by the Department of Economic Affairs, etc.
- FTP-2023's chapter on deemed exports is largely consistent with the FTP 2015-20, except that deemed export benefit, is no longer available on supply of "Fuel" in respect of specified projects for petroleum operations.

# Quality Complaints and Trade Disputes

- The Committee on Quality Complaints and Trade Disputes (**CQCTD**) had been established under FTP 2015-20, and has been continued under FTP-2023.
- **FTP 2023 clarifies that this mechanism shall be available only for cross-border disputes (i.e. not for disputes between two or more Indian entities; two or more foreign entities)**
- In addition to complaints/disputes involving goods, FTP 2023 also extends the complaints/disputes mechanism to the supply of services and technology.

This brief outline of India's Foreign Trade Policy has been prepared by R.V. Anuradha, Partner, and Indumugi Chandravairavan, Associate at Clarus Law Associates.

For any further information, please reach out to [clarus@claruslaw.com](mailto:clarus@claruslaw.com).

