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Navigating the winds of Change: An Exploration of Foreign Trade Policy 2023 and its Impact on the Indian Steel Industry

Presentation for Indian Steel Association

We, at BT Associates, a consultancy firm specializing in indirect taxation, have prepared a concise presentation on how the Foreign Trade Policy (FTP) 2023 plays a significant role in regulating the import of iron and steel in India. The presentation aims to cover the major changes and amendments brought in by the Indian government in the FTP 2023 to promote Atma-Nirbhar Bharat (self-reliant India) and increase India's share in the global supply chain and manifold exports.

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- ❑ India takes pride in being the second-largest producer of steel, with a production of 118.2 MMT of crude steel in 2021. However, despite this achievement, India has become a net importer of steel due to the need for better-quality demand and reduced exports, caused by the imposition of safeguard duties by importers. In the fiscal year 2022, India imported over 1.29 trillion Indian rupees worth of iron and steel, which is a significant increase from the previous year.
- ❑ Steel is one of the most crucial materials in the construction industry due to its tensile strength, long-term durability, and structural integrity. It is used to build structures such as high-rise buildings, bridges, dams, airports, railways, and much more. The automotive industry also relies heavily on steel for the production of vehicles, including cars, trucks, and buses.
- ❑ The new FTP, 2023 includes changes and amendments to ease business and provide better opportunities for the steel industry. It is a positive step towards promoting the growth of the steel sector in India. The measures introduced in the policy will not only help in increasing the production and exports of steel but also make India more self-reliant and reduce its dependence on imported steel.

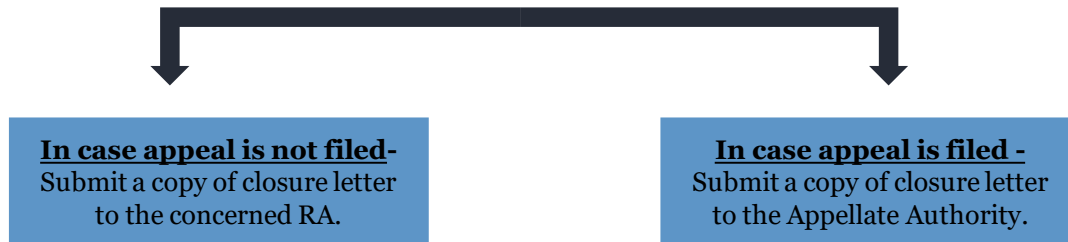
So, let's dive in and explore the key changes in the new FTP, to discuss potential impact of changes on the steel industry and provide recommendations on how to adapt.

❑ **Amnesty Scheme for one time settlement of default in EO by Advance and EPCG Authoriations holders.**

Amnesty scheme has been introduced vide **Public Notice No. 02/2023** dated **01 April, 2023**.

- Under this scheme, any default in fulfilling EO can be regularized on payment of **all Customs duties** saved in proportion to unfulfilled EO & interest thereon. The interest shall be capped @100% of such duty. No interest is payable on any Additional or Special Additional Customs Duty.
- This scheme covers all licenses issued under EPCG and AA scheme:
 - i. Under FTP 2009-14 till 31.03.2015, and
 - ii. Under FTP 2004-09 and before, and whose EOP (original or extended) was valid beyond 12.08.2013.
- If the entire authorization is under default, the license holder can pay the duty plus interest as per the provisions applicable.
- In case of partial default, the RA shall intimate the license holder, on the basis of EODC application filed by the applicant, the amount of duty and interest payable.

- Even cases which are adjudicated either originally or in appeal can also be regularised. The procedure would be as under:



- To avail this scheme the license holder shall register on DGFT portal before **30.06.2023**, and payment of Customs duty plus interest shall be completed by **30.09.2023**.
- Application can be filed online by navigating to Closure application tab and select the checkbox of ***“Amnesty Scheme for one-time settlement of default in export obligation”***.
- The applicant as per their calculations shall indicate the duty plus interest in **Redemption Matrix** tab. Thereby, the RA shall examine the application and communicate the shortfall through an online letter and subsequently grant EODC.

- ❑ **DGFT has undertaken a number of IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes with a view to improve the ease of doing business.**

Some of these initiatives are listed down below :

- **Online application of RCMC-** DGFT has created a common digital platform (DGFT e-RCMC module) for application of issuance, renewal, amendment and related processes pertaining to (RCMC)/ Registration Certificate (RC). Earlier, exporters desiring to obtain RCMC had to file an application with the concerned Export Promotional Council (EPC), now the same can be applied through DGFT portal by navigating to E-RCMC under Services Tab.
- **Online application of NP CoO-** Issuance of Preferential and Non-Preferential Certificate of Origin via DGFT common digital platform www.coo-dgft@gov.in. However, online registration for Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform shall be optional till 31.12.2023. If the applicant wants, they can also apply for e-CoO vide Manual or Paper Mode till 31.12.2023.
- A comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform. RBI EDPMS data available in DGFT IT System can also be used by exporters on DGFT portal.

- ❑ **Para 3.24 (f)** has been deleted wherein Three Star and above Export House was entitled to get benefit of Accredited Clients Programme (ACP).
- ACP is a major element of risk management strategy, wherein the eligible importers can apply for the benefits under ACP, separately for each port or airport which is valid for 1 year.
- Under ACP, only a nominal percentage of total consignments are randomly checked and the declared classification, valuation and duty is accepted on the basis of importer`s self-declaration.
- ❑ **Under para 1.26 of the FTP 2023**, the export performance limit (EPL) for status holders has been reduced as per the table attached below.

Status Category	Earlier threshold for Export Performance in USD million	Export Performance in USD million
One Star Export House	3	3
Two Star Export House	25	15
Three Star Export House	100	50
Four Star Export House	500	200
Five Star Export House	2000	800

- The lower EPL will make it easier for exporters to achieve the required level of exports and to retain their status. This will also reduce the transaction costs for exports, as exporters will not need to file as many documents with the government.

□ **Privileges of Status Holders (No Amendments under the New FTP)**

- Para 2.35 of the FTP, 2023 makes it mandate to execute a BG before clearance of goods for any duty-free import under AA. However, Star Export Holders are exempted from furnishing BG.
- Under Trade Notice 04/2015 dated 08.06.2015, Status holders are extended preferential treatment in disposal of applications made in e-mode for AA (wherein norms have been ratified), its Revalidation & Invalidation. Where the time of disposal for 4 star and above is 1 day and for 3 star and below the same is 2 days.
- Two star or above export houses shall be permitted to establish Export Warehouses to consolidate their shipments, which can help to reduce transportation costs and improve logistics efficiency.
- Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis.
- Input-Output norms may be fixed on priority within 60 days by the Norms Committee.
- Exemption from compulsory negotiation of documents through banks. However, it is important to remittances and receipts must still be processed through banking channels.
- The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- Manufacturers who are also status holders (Three Star/Four Star/Five Star) in India may be allowed to self-certify that their manufactured goods originate from India in order to qualify for preferential treatment under different preferential schemes.

❑ Self-Ratification Scheme

- Under this scheme, exporters can self-certify their export documents, including shipping bills, bills of export, and other related documents, instead of getting them verified by an authorized agency or officer. This can help to simplify the export process and reduce the time and cost involved in obtaining certifications. Exporters must have good track record of compliance with export regulations & maintain proper documentation related to their exports to be eligible for this scheme.
- **Para 4.06(v)** have been newly inserted wherein Status holder certificate holding 2 star or above status, who has already submitted its application for grant of AEO certificate (*Authorised Economic Operator)- is also eligible to apply for self- ratification scheme subject to following conditions:
 - ✓ Status holder submits copy of numbered and dated acknowledgement of its application for grant of AEO.
 - ✓ Submits an undertaking that their application for AEO certificate has not been rejected, no infringement of laws and SCN has been issued to them in CY and last 3 FYs, that it has positive noncurrent assets & no insolvency or bankruptcy proceedings taken against them in the current and preceding 3 FYs.
 - If they are unable to obtain AEO certificate within 120 days from date of application then they have to abide by the decision of the concerned Norms Committee, and in such situation no further authorization shall be granted under this scheme.
 - DGFT may deny to grant authorization under this scheme to two star and above status holder based on its risk management principle

❑ Self-Ratification Scheme

Under **Para 4.06(i)**, if there are no SION/ valid norms for an export product or where SION has been notified but exporter wants to use additional inputs in the manufacturing process, the exporter can apply for AA license under self-declaration or self-ratification basis.

- The word “**Additional inputs**” have been clarified under the new FTP. It refers to additionality not only in terms of quantity/value of an input specified in a norm but also another additional input.
- For Example, if the inputs specified in a norm are A1 & A2 only, then input B would represent an additional input
- This clarification provides more flexibility to the exporters to use additional inputs in the manufacturing process, which can help them to improve the quality of the product or reduce the cost of production

❑ **Para 4.11** provides that import of all items with a basic custom duty of more than 30% shall not be permissible on self-declaration basis. Earlier, import of only spices and all types of fruits and vegetables having BCD more than 30% were not permissible on self declaration basis.

❑ **Notification No. 50/2017**, prescribes effective rates of customs duty and IGST for goods imported into India. A new serial no 555A has been inserted under Chapter 89- Ships, Boats and floating structures attracting **NIL** standard rate. The effect of this entry shall be effective from **24.02.2023-31.03.2025**.

❑ Advance Authorisation for Annual Requirement and Eligibility Condition

- **Para 4.07 (iii)** has been added in the latest Foreign Trade Policy to provide an Annual Authorisation (AA) for exporters with past export performance. As per this provision, exporters who have a past export performance in at least the preceding two financial years shall be entitled to an Annual Authorisation.
- An Annual Authorisation is a type of authorization issued by the Director General of Foreign Trade (DGFT) that allows the holder to import goods required for their export production on an annual basis. The AA is typically valid for one year and can be used for multiple import transactions during that period.
- The purpose of introducing this provision is to encourage and incentivize exporters with a good track record of exports to continue their exports and expand their business. By providing an AA, such exporters can ensure a reliable and timely supply of inputs for their export production, which can help them meet their export obligations and improve their competitiveness in the global market.
- The CIF value of imports that may be allowed is up to 300% of the FOB value of physical exports and/or the FOR value of deemed exports in the preceding financial year, or Rs. 1 crore, **whichever is higher.**

❑ **Amendment In Validity Of Norms Ratified w.r.t. Self-declared Advance Authorisations**

- Norms ratified by any NC on or after 01.04.2023 in respect of any self declared AA will be valid for 3 years from the date of ratification. Further, in this amendment even those AA whose norms have been ratified on or after 01.04.2015 shall be valid upto 3 1.03.2026.

❑ **4.37 Enhancement/Reduction in the value of Advance Authorisation**

- Under the Foreign Trade Policy (FTP) 2004-09, there was a provision for enhancement or reduction in the value of Advance Authorization (AA) in case of AA issued prior to August 27, 2009. However, this provision has been removed from the FTP 2023.
- This means that exporters who have AA issued prior to August 27, 2009 will no longer be able to enhance or reduce the value of the AA

❑ **4.39 Validity period for import and Revalidation of Authorisation**

- Under the previous Foreign Trade Policy, an Annual Authorisation holder was allowed to apply for up to two revalidations of six months each. However, under the new FTP, an AA holder can now file only one revalidation of 12 months. After the first revalidation, no further revalidation shall be allowed. By allowing only one revalidation of a longer period, the authorities aim to reduce the administrative burden on themselves and the AA holders while also ensuring that the exports are in line with the current policies and regulations.

❑ **Amendment in composition fees to be levied on extension on EO period under Advance authorization**

1. The composition fees on request of EO extension in relation to ;
 - items specified in Apendix-4J, &
 - for extension of EO period for up to 6 months and further extension of 6 months of former 6 months from the date of expiry of EO period, shall be as under:

CIF VALUE OF ADVANCE AUTHORISATION (AA) LICENSES ISSUED	COMPOSITION FEE TO BE LEVIED (In Rupees)
Up to ₹2 Crores	5000
More than ₹2 Crores to ₹10 Crores	10000
Above ₹10 Crores	15000

- No extension shall be allowed beyond 12 months from the date of expiry of EO period.
- The above amendments shall be applicable for all applications made on or after 01.01.2023
- The AA holder shall have to submit a self-declaration that unutilized goods are with the applicant for EO extension.

❑ **Amendment in levy of Composition Fee against the extension of Export Obligation (EO) Period for Advance Authorisation Scheme by virtue of decision made by PRC**

- The effect of the said amendment will be applicable against the implementation of all PRC decisions including previous decisions

CIF VALUE OF ADVANCE AUTHORISATION (AA) LICENSES ISSUED	COMPOSITION FEE TO BE LEVIED (In Rupees)
Up to ₹2 Crores	25000
More than ₹2 Crores to ₹10 Crores	50000
Above ₹10 Crores	100000

- An automatic extension of the export obligation period for all Advance Authorisations where the Export Obligation Period is expiring between **01.02.2020 and 31.07.2020**. This extension is for a period of six months from the date of expiry. No separate application with composition fee, amendment/endorsement is required for this purpose.
- For Advance Authorisations, where original or extended Export Obligation (EO) period is expiring during the period between **01.08.2020 and 31.07.2021**, the Export Obligation period would be extended till **31.12.2021** without any composition fees. However this extension is subject to 5% additional export obligation in value terms (in free Foreign Exchange) on the balance Export Obligation on the date of expiry of the original/extended export obligation period.

❑ **5.13 Block-wise Fulfillment of EO**

Earlier, where EO of the first block is not fulfilled in terms of the above proportions the Authorization holder shall, within 3 months from the expiry of the block, pay duties of customs proportionate to duty saved amount on total unfulfilled EO of the first block.

Under the New FTP, the AA holders are given an option to request for extension of Export Obligation period of first block:

- AA holder can make a request for extension of the EO period for the first block within 6 months from the date of expiry of the first block EO period. The request should be accompanied by a composition fee of 2% on the duty saved amount proportionate to the unfulfilled portion of the EO pertaining to the block.
- If an AA holder applies for extension beyond 6 years for regularization purpose, the RA may still consider the request but with an additional late fee of Rs. 5,000 for each year per authorization. This late fee is in addition to the composition fee that may be payable on account of the shortfall in export obligation.
- If the export obligation of the first block is not fulfilled, except in cases where the EO prescribed for the first block is extended by the RA, the AA holder is required to pay duties of customs (along with applicable interest as notified by DOR) proportionate to the duty saved amount on the total unfulfilled EO of the first block within 6 months from the expiry of the block.

❑ Extension in Export Obligation Period

- Earlier, for zero duty EPCG Authorizations, exporters were allowed to apply for two extensions of one year each for fulfilling their export obligations. To avail these extensions, the exporters had to pay a composition fee, which was 5% and 10% of the proportionate duty saved amount on unfulfilled export obligation for the first and second year of extension, respectively. Alternatively, they could choose to increase their export obligation by 10% or 20% for the first or second year of extension, respectively.
- Exporters can now apply for two extensions of one year each for fulfilling their export obligations on payment of a reduced composition fee of 2% of the proportionate duty saved amount on unfulfilled export obligation for each year of extension. This means that exporters can now apply for extensions at a lower cost than before.
- However, minimum composition fee will be Rs.10,000
- Previously, an AA holder was required to make a request for extension of the EO period within 90 days from the date of expiry of the original EO period. However, if the request was made between 91-180 days, the RA (Regional Authority) had the discretion to consider the request for extension on payment of an additional composition fee of Rs. 5,000.
- As per the new Foreign Trade Policy (FTP), an AA holder can now make a request for extension of the EO period within 6 months from the date of expiry of the original EO period. This means that the AA holder now has a longer period to apply for extension without any additional fees.

- In case the AA holder misses the 6-month deadline, they can still make the request for extension within the extendable validity of the EO period, but with a late fee of Rs. 10,000
- The request for extension for regularisation purpose, from 6th to 8th year, may also be considered after expiry of EO period on payment of late fee of Rs. 15,000/-. This fee is in addition to the composition fee that may be payable on account of shortfall in export obligation. However, EO extension, beyond 8 years from date of issue of authorisation, shall not be allowed by RA under this provision.

❑ Annual reporting of EO fulfilment

- The deadline for submission of the report on fulfilment of export obligation by AA holders has been extended from **30th April** of every year to **30th June** of every year. Any delay in filing such annual report shall be regularised on payment of a late fee of Rs. 5000/- per year for each authorization
- ❑ **As per Para 5.01(c)** of the FTP, the EPCG authorization shall be valid for a period of 24 months from the date of issue, which is an increase from the earlier validity period of 18 months.
- ❑ Import or procurement under the EPCG scheme will be subject to AEO, which must be fulfilled every financial year (FY) until the export obligation (EO) is completed. Any exports or supplies made over and above the AEO will only be considered for fulfillment of the export obligation. It aims at promoting timely exports and ensuring that exporters fulfill their export obligation on a regular basis. The provision will help to prevent delays in fulfilling the export obligation and reduce the instances of default, which is expected to improve the foreign trade scenario in India.

❑ Export Obligation fulfillment

Para 5.01(e)

Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme. Earlier exports under RoSCTL and RoDTEP was not eligible for fulfilment of EO under EPCG Scheme

Para 5.04(g)

Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO.

Para 5.04(k)

Export proceeds realized in Indian Rupees as per para 2.52(d)(ii) are also counted towards fulfillment of EO.

Para 5.04(b)

FTP allows EPCG authorization holders to export the goods either directly or through a third party or parties, providing them with flexibility in their export strategy

Para 5.04(f)

Export obligation may be fulfilled both by physical exports as well as deemed exports. Earlier, as per FTP 2015-20, EO was considered only through physical export. This will be particularly beneficial for EPCG authorization holders who are unable to physically export the goods due to various reasons such as a downturn in the market, logistical challenges, or other external factors.

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Twenty years of experience in Indirect Tax practice. Before moving to BT was heading eastern India Indirect Tax Practice of Ernst & Young from Kolkata office.

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- Contributed thought leadership on technical papers as member of Indirect Tax committee at various chambers of commerce.
- Prolific speaker at various institutes, chambers, public gatherings.
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- Assisting clients on the policies and procedures set down under the Foreign Trade Policy.
- Providing the right guidance to enable clients to make the most of duties & taxes by setting up of EOU/SEZ.

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