



# UNLOCKING CUSTOMS POTENTIAL

## COUNCIL FOR LEATHER EXPORTS, CHENNAI

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INDIRECT TAX

BDO IN INDIA  
FEBRUARY 2022

# AGENDA

Topic	Page No.
Budget - 2022	03
Current Business Scenario	19
Ease of Doing Business Initiatives	23
Key Challenges faced by Industry	26
Authorized Economic Operator (AEO)	28
Remission of Duties & Taxes on Export Products (RODTEP)	46
Harmonized System of Nomenclature (HSN) Classification	60
Customs Valuation	69
Free Trade Agreements (FTA)	71
Post Clearance Audit (PCA)	85
Q & A	100





# BUDGET - 2022

OVERVIEW OF RECENT CHANGES ETC.

# PROPER OFFICER

## KEY PROPOSALS (EFFECTIVE FROM THE ENACTMENT OF THE FINANCE BILL 2022)

The power conferred upon the Central Board Of Indirect Tax and Customs (CBIC) and Principal Commissioner/Commissioner of Customs to appoint officers of DRI, Preventive and Audit as Proper Officer



In the case of Canon India v. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.), the SC had held that the DRI was not a “proper officer” to issue show-cause notices under Section 28 of the Customs Act



Definition of term ‘proper officer’ under the customs law proposed to be widened, retrospectively, to include DRI and other officials appointed by the CBIC



To avoid any future disputes regarding jurisdiction, it is also proposed to empower the CBIC to assign any functions to any officer of customs and to act as a ‘proper officer’



Clause 96 of the Bill seeks to retrospectively validate action taken or functions performed by Customs officer before the enactment of the Bill where the action was in pursuance of their appointment and assigning of functions by the Central Government or the CBIC

# PROPER OFFICER

## KEY PROPOSALS (EFFECTIVE FROM THE ENACTMENT OF THE FINANCE BILL 2022)

Two or more officers of customs can concurrently exercise powers and functions



Sub-section (5) to Section 5 is being proposed to be inserted to permit two or more officers of customs to concurrently exercise powers and functions, in case of faceless assessments.

Jurisdictional Customs Authority will have the sole authority to exercise jurisdiction even in case of a subsequent inquiry, investigation, audit



Section 110AA the Customs Act has been proposed to be inserted to provide that in case where original functions viz. (a) assessment w.r.t. duty/interest short-levied, not levied, short-paid or not paid and (b) grant of erroneous refund or duty drawback have been exercised by a jurisdictional Customs officer, then any other Customs officer causing further inquiry, investigation etc., shall submit a report to the jurisdictional Customs officer ( who would be having sole jurisdiction on the matter) and in case of multiple jurisdictions, the officer to whom such matter is assigned by the CBIC.

# OTHER AMENDMENTS

## KEY PROPOSALS (EFFECTIVE FROM THE ENACTMENT OF THE FINANCE BILL 2022)

### Amendments in Advance Rulings provisions



The Advance Ruling application can be withdrawn at any time before an Advance Ruling is pronounced, as against the current time limit of 30 days from the date of filing of application



Validity of advance ruling has been proposed as three years or till there is a change in law or facts based on which the advance ruling has been pronounced, whichever is earlier

### Publication of any import and export related information has been made punishable



In order to protect the import and export data, it has been proposed that the publication of any information relating to the value, classification or quantity of imported and exported goods would a punishable offence with imprisonment for a term which may extend to six months, or with a fine which may extend to fifty thousand rupees, or with both

# IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY

## NON-TARIFF NOTIFICATION (EFFECTIVE FROM 01 MARCH 2022)

- ▶ Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 has been amended vide Notification No:07/2022-Customs (NT) to introduce end-to-end automation and provide submission of all the necessary details electronically through a common portal with the following specific amendments
  - A new and standardized forms have been prescribed for submission of required details on the Common Portal
  - Modalities for maintenance of records by importer, job worker, etc.
  - Procedure for transfer of importer goods to other units, re-export of unutilised/defective goods and depreciation applicable on imported capital goods (if it is cleared for other purposes).
  - Monthly Statement to be submitted on the Common Portal for effective monitoring of the use of goods for the intended purposes
  - Option for voluntary payment of the applicable duties and interest through the Common Portal



# SOCIAL WELFARE SURCHARGE

## CLARIFICATION POST ANNOUNCEMENT OF BUDGET

### SOCIAL WELFARE SURCHARGE (SWS) WOULD NOT BE PAYABLE ON IMPORTS WHERE BASIC CUSTOMS DUTY ITSELF IS EXEMPT

In the case of Unicorn Industries [2019 (370) ELT 3 (SC)] and subsequent clarification by the Central Board of Indirect Tax and Customs (CBIC) vide Circular No. 02/2020-Customs dated 10 January 2020, has created a dilemma for the importers claiming exemption from Social Welfare Surcharge (SWS) on imports where BCD itself is exempt

The CBIC has issued another clarification regarding the applicability of SWS on goods exempted from basic and other customs duties/cesses vide *Circular No. 3/2022-Customs dated 01 February 2022* to clarify that SWS is levied and collected, as a duty of customs, vide Section 110 of the Finance Act, 2018 (13 of 2018) and SWS applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods

If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil'. Law does not require computation of SWS on a notional customs duty calculated at a tariff rate where the applicable aggregate of duties of customs is zero

Accordingly, the amount of SWS payable would be 'Nil' in cases where the aggregate of customs duties is zero even though SWS has not been exempted

# SPECIAL ECONOMIC ZONE (SEZ)

## INTRODUCTION OF NEW LEGISLATION FOR SEZ IN PLACE OF THE EXISTING SEZ ACT

It was announced that the Special Economic Zones Act, 2005 will be replaced with a new legislation that will enable the states to become partners in 'Development of Enterprise and Service Hubs'

This move is intended to enable all large existing and new industrial enclaves to optimally utilize available infrastructure and enhance competitiveness of exports

This announcement follows the recommendations of the SEZ Policy Review Committee which was chaired by Baba Kalyani. The committee submitted its report in December 2018 and recommended the setting up of Employment and Economic Growth Enclaves in place of SEZs

These reforms are expected to be implemented by 30 September 2022

# INDIRECT TAX PROPOSALS

## CUSTOMS



### MISC. PROPOSALS

- Customs duty exemptions are being reviewed further
- Anti-Dumping duty is being revoked on certain metals
- Duties on drugs used for rare diseases is being exempted.

# OTHER CHANGES

## PROJECT IMPORTS, EXEMPTION NOTIFICATIONS ETC.

- ▶ To promote the growth of the domestic capital goods sector, import duty exemptions granted to capital goods for various sectors (like power, fertilizer, textiles, leather, footwear, food processing and fertilizers) to be phased out gradually and to be eventually taxed at 7.5 percent till 30th September 2023
- ▶ Exemptions on inputs, like specialised castings, ball screw and linear motion guide, to encourage domestic manufacturing of capital goods
- ▶ More than 350 exemption entries are proposed to be gradually phased out including exemption on certain agricultural products, chemicals, fabrics, medical devices and drugs and medicines for which sufficient domestic capacity exists.
- ▶ Two objectives of rate rationalization:
  - Removal of exemption on items that are or can be manufactured in India
  - Providing concessional duties on raw material



# DUTY RATES

## TO PROMOTE DOMESTIC MANUFACTURING

- ▶ Increase in rates for Project Imports, Umbrellas, Imitation Jewellery, Solar Cells and module, X-Ray machines
- ▶ Decrease in rates for Ferrous waste and scrap, Specified fabrics and garments, Stainless steel, Methyl alcohol, Acetic Acid
- ▶ Customs duty exemptions are being reviewed further
- ▶ Anti-Dumping duty is being revoked on certain metals
- ▶ Duties on drugs used for rare diseases is being exempted



# SECTOR WISE DUTY RATES

## KEY CHANGES IN BASIC CUSTOMS DUTY EFFECTIVE FROM 2 FEBRUARY 2022

Category	Goods Description	Old Rate	New Rate
Agricultural products and fishery sector	Live black tiger shrimp (Penaeus monodon)	30	10
	Frozen krill	30	15
	Algal oil for manufacturing of aquatic feed	30	15
	Cocoa beans, whole or broken, raw or roasted	30	15
Fuel, chemicals and plastics	Fuel oil	5	2.5
	Straight run fuel oil	5	2.5
	Low sulphur wax residue	5	2.5
Auto	Electrically operated vehicles	10	15/ 25/ 30/40/ 50/ 60/ 100

# SECTOR WISE DUTY RATES

## KEY CHANGES IN BASIC CUSTOMS DUTY EFFECTIVE FROM 2 FEBRUARY 2022

Category	Goods Description	Old Rate	New Rate
Gems and jewellery	Cut and polished diamonds	7.5	5
	Cut and polished natural gemstones	7.5	5
Textile	Pile fabrics, other than long-pile fabrics or looped pile fabrics, of man-made fibres	Higher of 25% or INR 100 per kg	20
	Women/ Men overcoats, suits, trousers and jackets	Higher of 25% or rate as applicable per piece	Higher of 20% or rate as applicable per piece
Electronics	Camera lens for use in manufacture of camera module for cellular mobile phone	10/ 15	2.5
	Specified parts for use in manufacture of transformers of chargers/adapters	10/ 15	5
	Copper/aluminium-based copper clad laminate for use in manufacture of PCB/MCPCB	5/ 7.5	NIL

# SECTOR WISE DUTY RATES

## KEY CHANGES IN BASIC CUSTOMS DUTY EFFECTIVE FROM 2 FEBRUARY 2022

Category	Goods Description	Old Rate	New Rate
Plastics	Vacuum residue, slurry	5	2.5
	Vacuum gasoil	5	2.5
	Sodium cyanide	7.5	10
Capital goods and machinery	S. G. ingot castings used in manufacturing of plastic processing machinery	10	7.5
	Ball screw and linear motion guide used in manufacturing of plastic processing machinery	7.5	5
	Bushing (made up of platinum and rhodium alloy, imported in exchange of worn-out bushing exported for refurbishment)	10	7.5
	Coffee roasting, brewing or vending machineries for use in the manufacturing or processing of coffee	10	5

# SECTOR WISE DUTY RATES

## KEY CHANGES IN BASIC CUSTOMS DUTY EFFECTIVE FROM 2 FEBRUARY 2022

Category	Goods Description	Old Rate	New Rate
Miscellaneous	Microbial fats and oils and their fractions	30	10
	Umbrellas	10	20
	Recovered (waste and scrap) paper or paperboard for use in manufacturing of paper, paperboard or newsprint	NIL	2.5
	Project imports	0/ 2.5/ 5/ 10	7.5

# SECTOR WISE DUTY RATES

## KEY CHANGES IN BASIC CUSTOMS DUTY EFFECTIVE FROM 2 FEBRUARY 2022

Category	Goods Description	Old Rate	Phased wise New Rate			
			2022-23	2023-24	2024-25	2025-26
Hearable devices	PCBA for hearable device	NIL	NIL	10	15	15
	USB cable	10	NIL	5	10	15
	Battery	15	NIL	5	10	15
	Hearable devices	NIL	NIL	NIL	5	10
Smart meters	Assembled/populated PCB for smart meters	7.5	20	20	20	20
	Communication module	10	NIL	NIL	5	10
	LCD and backlight for LCD	15	NIL	5	10	10

# SECTOR WISE DUTY RATES

## KEY CHANGES IN BASIC CUSTOMS DUTY EFFECTIVE FROM 2 FEBRUARY 2022

Category	Goods Description	Old Rate	Phased wise New Rate			
			2022-23	2023-24	2024-25	2025-26
Smart meters	Battery	15	NIL	5	10	15
	Hearable devices	15	20	20	20	20
Wrist wearable devices (smart watches)	PCBA	NIL	NIL	10	15	15
	Charging cable	10	NIL	5	10	15
	Battery	15	NIL	5	10	15
	Display assembly	NIL	NIL	NIL	5	10



# CURRENT BUSINESS SCENARIO

CATEGORIES OF COMPANIES CAN OPERATE, BENEFITS & WTO DISPUTE

# UNIT SET UP - INDIA

## ANY ONE CAN REGISTER A COMPANY UNDER FOLLOWING CATEGORIES

### 01 Domestic Tariff Area (DTA)

- It is a legal entity status granted to anyone who is engaged in trading or manufacturing of the goods or rendering services for local or export markets
- Unit can be set up anywhere in India as per the choice of the management. Unit is entitled for benefits as available for Exports under FTP, Customs & GST laws.
- No RODTEP benefits if exports made under AA

### 02 Export Oriented Unit (EOU)

- It is a legal entity status granted to anyone who is engaged in manufacturing of the goods or rendering of services for export including the DTA Sales as permissible
- It can be set up anywhere in India. Unit is entitled for import of capital goods raw material without payment of duty.
- GST Rebate is not available in case of GST exemption claimed on purchase.
- No RODTEP Benefits

### 03 Special Economic Zone (SEZ) Free Trade Warehousing Zone (FTWZ)

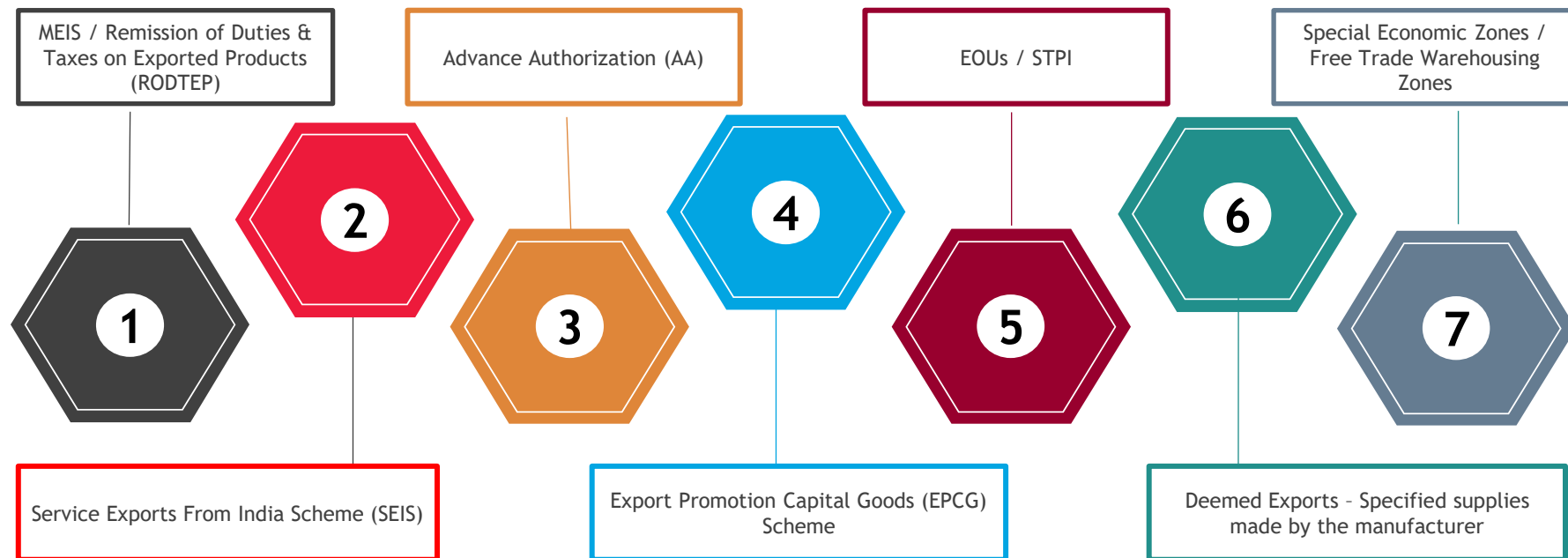
- It is a legal entity status granted to anyone who is engaged in trading or manufacturing of the goods or services for export.
- It can be set up anywhere in India within the specified export processing zones (EPZ) or a place as approved by Development Commissioner, SEZ.
- The unit can enjoy the duty exemption as per the SEZ Act & Rules specified
- No Direct Tax Benefits & RODTEP Benefits

### 04 Custom Bonded Warehouse Scheme (Manufacturing & Other Operations in Warehousing Regulations - MOOWR)

- It is a Custom Bonded Warehouse Scheme wherein the entity is granted registration under Section 58 & 65 of Customs Act
- Unit can be set up anywhere in India or an existing manufacturing site also can be converted.
- A scheme is administered by Commissioner of Customs & only available for those who are engaged in "Manufacturing"
- Custom Duty Deferment on Capital Goods & Raw Material.
- Unit is not eligible for RODTEP Benefits on exports made

# FOREIGN TRADE POLICY (FTP) & OTHERS

## EXPORT INCENTIVES, DUTY EXEMPTION & REMISSION SCHEMES



The FTP is valid till 31<sup>st</sup> March'2022. In view of this, we need to check on alternate scheme for tax optimization.

# WTO - TRADE DISPUTE

## OBJECTION ON DUTY EXEMPTION & INCENTIVES

The Indian programs found in violation of WTO rules are:

- Merchandise Exports from India Scheme (MEIS)
- Export Oriented Units Scheme (EOU)
- Special Economic Zones (SEZ)
- Export Promotion Capital Goods Scheme (EPCG)
- Duty-free imports for exporters program (DFIS)
  - The panel gave India six months to withdraw these prohibited subsidies.
  - Export subsidies provide an unfair competitive advantage to recipients, and WTO rules expressly prohibit them.
  - A limited exception to this rule is for specified developing countries that may continue to provide export subsidies temporarily until they reach a defined economic benchmark.
  - India was initially within this group, but it surpassed the benchmark in 2015. India's exemption has expired, but India has not withdrawn its export subsidies.
  - Panel report rejects India's assertion that it is entitled to additional time to provide export subsidies even after hitting the defined economic benchmark.
  - The panel report concludes that each program is an export subsidy inconsistent with India's WTO obligations.

The MEIS Scheme is replaced with Rebate of Taxes & Duties paid on Export Product (RODTEP) on 1<sup>st</sup> Jan'2021



# EASE OF DOING BUSINESS INITIATIVES (EODB)

TRADE FACILITATION MEASURES BY CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS

# TRADE FACILITATION - INDIA'S APPROACH

Cross Border trade measures taken by Government of India has helped India to jump 14 positions and achieve 63rd rank in the World Bank's Ease of Doing Business India (EODB) rankings-2020.

Advance Filing of  
Bill Of Entry (BOE)  
for imports

Introduction of E-  
Sanchit - Online  
submission of  
documents

Risk Management  
System (RMS) for  
Import & Export

Direct Port  
Delivery (DPD) for  
imports

Direct Port Entry  
(DPE) for exports

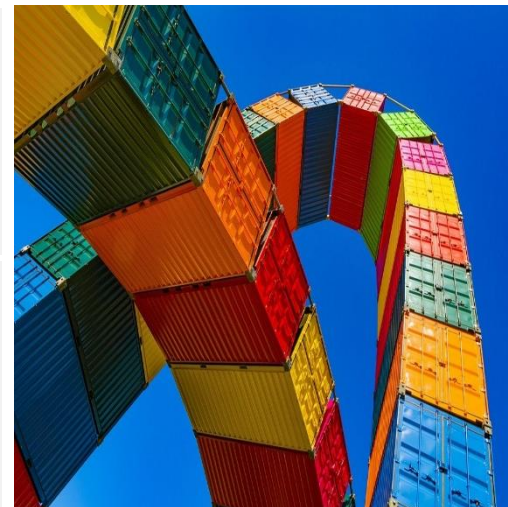
Introduction of  
AEO Program &  
online filing of  
application

Electronic / RFID  
Sealing for  
containers

Deferred Duty  
Payment for AEO -  
T2 & T3 companies

Formation of  
Custom Clearance  
Facilitation  
Committee &  
National Trade  
Facilitation  
Committee

Amendment in  
Warehousing  
Regulations'2016



# TRADE FACILITATION - INDIA'S APPROACH

24 X 7 Custom Clearance	Abolition of MATE Receipt	Reducing print out of BOE / SB & other documents	Courier import & Export amendment regulation & Introduction of Express Cargo Clearance System (ECCS)	Import /Export Data Processing and Management Systems (IDPMS) & (EDPMS)
Electronic Issuance of Delivery order (DO) for imports	Turant Faceless Assessment	Covid - 19 Trade Facilitation Measures	Reduction in Mandatory documents for imports & exports	Indian Customs Single Window Project for online exchange (SWIFT) for PGAS
Compliance Information Portal (CIP)	PLI Schemes for 12 sectors	RODTEP Scheme / ROSCTL Scheme for textile sector	Manufacturing & Other Operations in Warehousing Regulation (MOOWR) Scheme	ICEDASH & Time Release Study (TRS) for monitoring the custom clearance activities at port



# KEY CHALLENGES FACED BY THE INDUSTRY

# CHALLENGES IN CLEARANCE OF GOODS

## MACRO LIST OF VARIOUS QUERIES/ISSUES



Delay in receipt of Shipping Documents



Error in Shipping Documents



Selection of Custom Notification / Wrong GSTIN



Validation of HS Code & Country of origin



Direct Port Delivery (DPD) not taken / LCL Cargo clearance



Delayed Custom Duty Payment



IEC is put in Denied Entity List (DEL)



Non availability of Authorization



Non-Availability of Special Valuation Branch (SVB) Order or investigation report (IR)



Delay in validation of Check list review and approval



Query by Customs on HS Code or valuation



2nd Hand Capital Goods Imports & Valuation / Re-Import etc.



Non-Availability of BIS registration



Screening of HS Code for importation - Free / Restricted



Wrong availment of Custom Notification



Export Obligation Discharge Certificate (EODC) not submitted to customs



Bank Guarantee / Bond not cancelled at Customs



Non availability of AEO registration or no renewal done



Certificate of Origin (FTA) received after arrival of shipment



Delay in Shipping line Delivery order / IGM related issues



# **AUTHORIZED ECONOMIC OPERATOR (AEO)**

RECOGNITION FOR SUPPLY CHAIN SECURITY & CROSS BORDER TRADE MOVEMENT

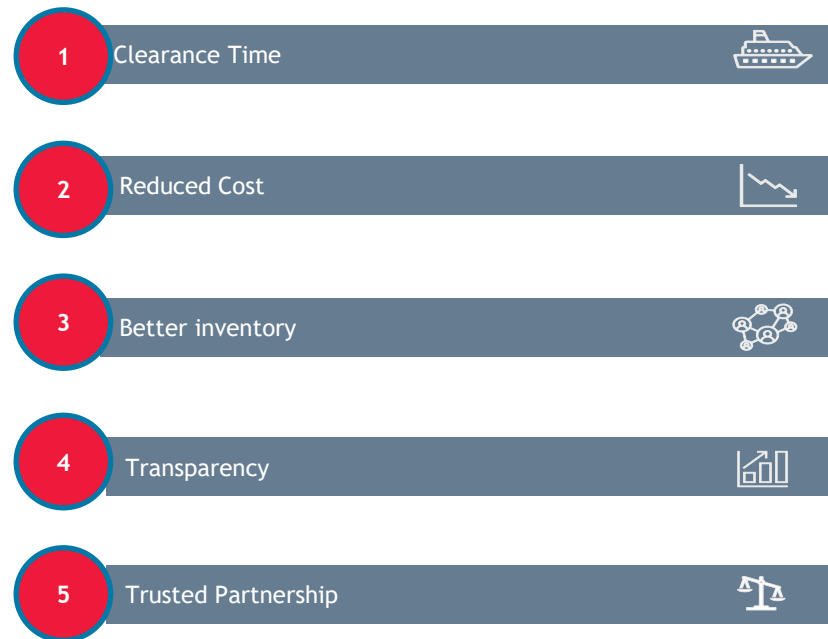
# CHALLENGES FOR THE TRADE

## HOW TO OPTIMIZE THE SUPPLY CHAIN?

Every importer and exporter engaged in the international trade is worried about the transactional cost, dwell time for custom clearance & accurate custom compliance.

Given below are some of the key factors needs to evaluated:-

- ▶ Custom Compliance & Custom Clearance Time
- ▶ Documentation & Cost of Clearance etc.
- ▶ Inventory Management
  - India's Authorized Economic Operator (AEO) Programme is in sync with India's commitments made under Article 7.7 of World Trade Organization's (WTO) Trade Facilitation Agreement (TFA).
  - The AEO Programme enables Indian Customs to enhance and streamline cargo security through close cooperation with the principal stakeholders of the international supply chain.



# AEO - INDIA JOURNEY SO FAR

AEO registration is granted by Central Board of Indirect Taxes & Customs (CBIC) to an entity registered in India :

- Importer
- Exporter
- Logistics operator (LO)

*It certifies that a business has set procedures & standards in relation to:*

- Site Safety and Security
- IT systems to manage commercial records
- Compliance with customs rules & regulations
- Financial solvency

**2001**

Post 9/11, customs authorities changed their approach from revenue collectors to securing international supply chain trade

**2011**

Central Board of Excise and Customs (CBEC) launched the pilot AEO programme in India to secure supply chain of EXIM Trade

**2016**

ACP (Accredited Client Programme) and AEO merged into a combined four-tier AEO programme including all the logistics operators

**2005**

World Custom Organization (WCO), an organisation of 180 Customs administration all over the world, adopted an international ("SAFE Framework") .

India launched the Accredited Client's Programme ('ACP') for security of cargo to eligible importers

**2012**

Based on results form the pilot program, CBEC launched a full scale AEO programme after making certain changes

**2021**

Currently AEO programme with 4 categories is implemented under the aegis of World Customs Organization (WCO) by CBIC in India

# CATEGORIES

AEO programme is governed by Customs Circular No.33/2016-Customs dated 22 July 2016, 26/2018-Customs dated 10 Aug 2018 and 51/2018-Customs dated 7 December 2018, as amended from time to time

## AEO Categories

Importer / Exporter/ Trader who is engaged in the international trade (Import / Export)

Logistics Operators (LO)

Logistics Operators engaged in the international trade: -

- Carriers / Airlines / Freight Forwarder
- Custodian or Terminal Operators
- Authorised Courier Companies
- Custom Brokers
- Port Operators
- Stevedores

AEO  
Tier-1

Validity - 3 years

AEO  
Tier-2

Validity - 3 years

AEO  
Tier-3

Validity - 5 years

AEO  
LO

Validity - 5 years

# REGISTRATIONS SO FAR

Important Dates	AEO Operators	No. of Certificates issued	Mutual Recognition Agreement (MRA)
23 Aug 2011 (Pilot basis) 16 Nov 2012 (Full scale) 22 Jul 2016 (Merged with ACP)	<ul style="list-style-type: none"><li>▪ Importer/Exporter who is engaged in the EXIM Trade</li><li>▪ Logistics Operators (LO) who are the key partners in the international trade:<ul style="list-style-type: none"><li>- Custom Brokers</li><li>- Freight Forwarders</li><li>- Warehouse Operator Custodian Terminal Operator</li><li>- Port operators</li><li>- Authorized couriers</li><li>- Stevedores</li></ul></li></ul>	As on date 01 Feb 2021 (Total 4454 Nos.) <ul style="list-style-type: none"><li>▪ AEO-T1-2935</li><li>▪ AEO - T2- 575</li><li>▪ AEO-T3-49</li><li>▪ AEO -LO - 895</li></ul>	<ul style="list-style-type: none"><li>▪ Three MRAs signed - South Korea, Taiwan and Hong Kong, USA</li><li>▪ Fifteen countries are in discussion</li></ul>

Source: CBIC Website

# BENEFITS

## IMPORTERS & EXPORTERS

Key Benefits	AEO-T1	AEO-Tier 2	AEO-Tier 3
High Level Facilitation	✓	Higher	Highest
Direct Port Delivery (DPD) for Import	✓	✓	✓
Direct Port Entry (DPE) for Export	✓	✓	✓
ID Cards for entry at Custom Premises (Port / ICD / CFS)	✓	✓	✓
Separate Earmarked Space at Custodian Premises	✓	✓	✓
Bank Guarantees (BG)	50% of the requirement	25% of the requirement	Exemption from BG
Investigation	6-9 Months	6-9 Months	6-9 Months
Dispute Resolution at Adjudicating Authority	6 Months	6 Months	6 Months
Post Clearance Audit	Once in 2 years	Once in 3 years	Once in 3 years
E-mail intimation of vessel arrival	✓	✓	✓

# BENEFITS

## IMPORTERS & EXPORTERS

Key Benefits	AEO-T1	AEO-Tier 2	AEO-Tier 3
24 X 7 clearances on request at all seaports and airports - No Merchant Overtime Fee (MOT) charges need to be paid.	✓	✓	✓
They will be given facility to paste MRP stickers in their premises.	✓	✓	✓
They will be given access to their consolidated import/export data through ICEGATE from a date that would be communicated separately.	x	✓	✓
Their containers will not be selected for scanning except on the basis of specific intelligence. Further when any container is selected for scanning, topmost priority	x	x	✓
The assessing/examining custom officer will rely on the self-certified copies of documents submitted by them without insisting upon original documents.	x	x	✓

# BENEFITS

## IMPORTERS & EXPORTERS

Key Benefits	AEO-T1	AEO-Tier 2	AEO-Tier 3
Client Relationship Manager (CRM)	x	✓	✓
Grant of Rebate / Refund in case of complete application	x	Within 45 days	Within 30 days
Trade Facilitation by Foreign Custom Administration under MRA	x	✓	✓
Container Scanning	x	✓	x
Risk based approach in case of requirements	x	x	✓
Site Inspection - On request	x	x	✓
Advance Authorisation on Self Declaration basis	✓	✓	✓
For Importers/Exporters not opting for DPD/DPE, seal verification/scrutiny of documents by Custom officers would be waived. Consignments would be given out of charge or let export order, as the case may be, without any scrutiny by the officers.	X	✓	✓

# BENEFITS

## LOGISTICS OPERATORS (LO)

Category	Key Benefits
Logistics Providers	Waiver of bank Guarantee in case of trans-shipment of goods
	Facility of Execution of running bond
	Exemption from permission on case-to-case basis in case of transit of goods
	In case of international transshipped cargo (Foreign to Foreign), for the pre-sorted containers wherein Cargo does not require segregation, ramp to ramp or tail to tail transfer of cargo can be affected without Customs escorts
Custodians & Terminal Operators	Waiver of bank Guarantee
	Extension of approval for custodians
Customs Brokers	Waiver of Bank Guarantee
	Extended validity (till validity of AEO status) of licenses
	Waiver from fee for renewal of license

# MONETARY BENEFITS

## DIRECT PORT DELIVERY (DPD) / DIRECT PORT ENTRY (DPE)

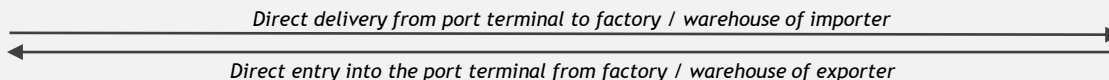
### Deferred duty payment -Due date for payment of duty

B/E from 1-15 <sup>th</sup> day of any month	17 <sup>th</sup> of the month
B/E from 16 <sup>th</sup> to last (except March)	2 <sup>nd</sup> of the following month
B/E from 16-29 March	31 March
B/E from 30-31 March	02 April

### Direct Port Delivery (DPD) / Direct Port Entry (DPE)



Port Terminal

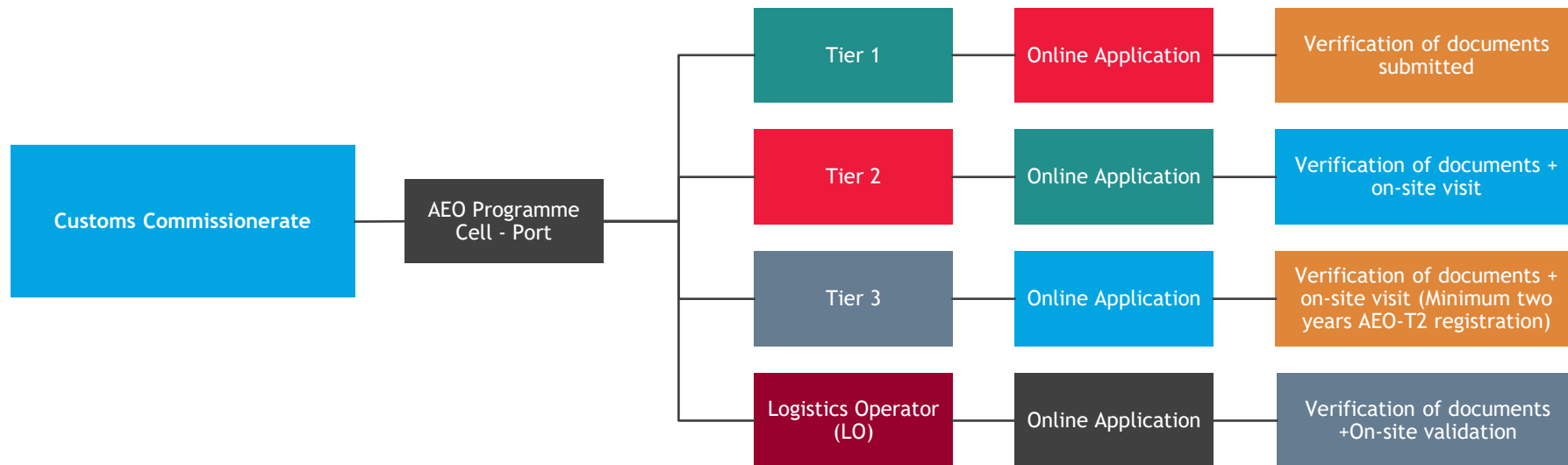


Factory / Warehouse

The quantum of indicative savings (per container) to importer/exporter under direct port delivery/entry is as follows:

- For 20" dry container : **INR 15,000 per container**
- For 40" dry container : **INR 22,000 per container**
- For 20"reefer containers and hazardous cargo: **INR 25,000 per container**
- For 40" reefer containers and hazardous cargo: **INR 32,000 per container**

# APPLICATION PROCESS



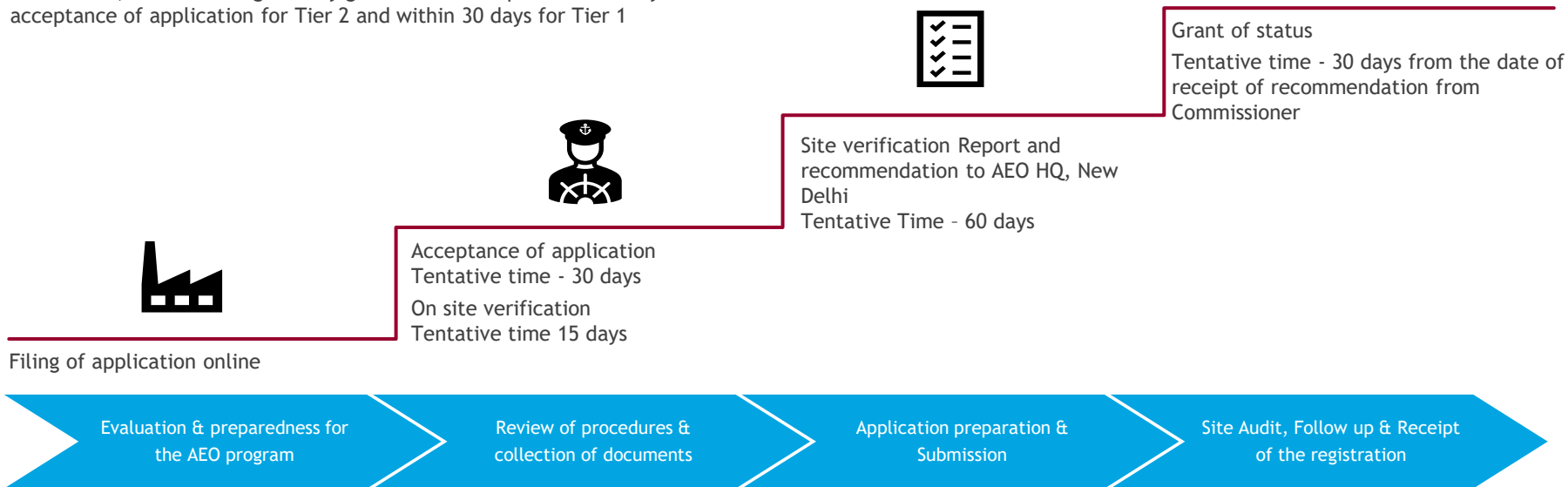
\* Application can be filed online with a copy to jurisdictional Chief Commissioner, Customs office & AEO programme manager, AEO HQ, New Delhi

# DOCUMENT REQUIREMENT

Annexure	Subject	Application for grant of			
		AEO-T1	AEO-T2	AEO-T3	AEO-LO
Annexure A	Application Form	No	Yes	Yes	Yes
Annexure B	Security Plan	No	Yes	Yes	Yes
Annexure C	Process Map	No	Yes	Yes	Yes
Annexure D	Site Plan	No	Yes	Yes	Yes
Annexure E.1	General Compliance	No	Yes	Yes	Yes
Annexure E.2	Legal Compliance	No	Yes	Yes	Yes
Annexure E.3	Managing Commercial and transport records	No	Yes	Yes	Yes
Annexure E.4	Financial Solvency	No	Yes	Yes	Yes
Annexure E.5	Safety and Security	No	Yes	Yes	Yes
Annexure F	Business Partner Details	No	Yes	Yes	No
Annexure 1	General Compliance	Yes	No	No	No
Annexure 2	Legal, Managing Commercial Records and Financing Solvency Compliance	Yes	No	No	No

# APPROVAL PROCEDURE

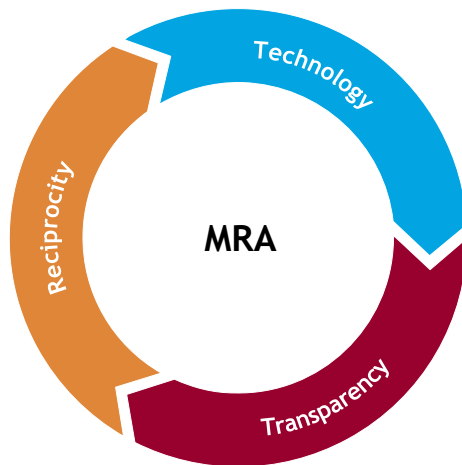
Subject to completeness of information and satisfactory validation of on-site verification, the status is generally granted within a period of 90 days from acceptance of application for Tier 2 and within 30 days for Tier 1



*(On site verification is not applicable for Tier 1 status)*

# MUTUAL RECOGNITION AGREEMENT (MRA)

- ▶ SAFE framework mandates Customs Administrations to facilitate cross border trade through mutual recognition
- ▶ Collaboration by Customs Administrations for development processes for mutual AEO validations and authorizations
- ▶ Customs security control standards and control for efficient cross border trade



## Reciprocity

- AEOs are recognized by the other customs administration and are entitled to receive reciprocal benefits

## Technology

- Utilized to support, maintain and implement AEO programmes and their MRA relationships

## Transparency

- Trade members should be promoted by national AEO programme to maximize the value of partnership

India has signed MRA with South Korea, Taiwan and Hongkong, USA customs to enable trade to get benefits on reciprocal basis

# COMPLIANCE

## ► Maintenance of AEO Status:-

After obtaining AEO status, the AEO status holder should maintain their eligibility.

- Holder is required to notify any significant change in business and processes which may affect the status of AEO to the AEO Programme Team. These changes may include: -
  - Change to the legal entity / Change of business name and/or address.
  - Change in business i.e., manufacturer / exporter etc.
  - Changes to accounting and computer systems.
  - Changes to the senior personnel responsible for Customs matters.
  - Addition or deletion of locations or branches involved in international supply chain.
- Holder should notify the AEO Programme Team as soon as the change is known or within **14** days of change taking place.
- If legal entity status changes, AEO status holder needs to reapply with new legal entity name.
- If holder makes custom related errors, the errors must be reported to Client Relationship Manager and the AEO Programme team.

## ► Review of AEO Status:-

- AEO Programme team will review AEO status periodically.
- AEO status holder should continue to re-assess its compliance with conditions of certifications.
- Frequency of review will be 2 years, 3 years, and 5 years in case of AEO-T1, AEO- T2, AEO-T3 and AEO-LO respectively

# ACTION ON NON-COMPLIANCE

## ► Suspension or downgrading of AEO Status:-

- AEO Programme Manager may suspend the Certificate of AEO Status in the following cases:
  - Non-compliance with the conditions or criteria for the Certificate of AEO Status has been detected; or
  - In the case of a Custodian or Custom Broker or Warehouse Operator, where the basic license has been suspended by the Competent Authority.
- In the case of an AEO importer or an AEO exporter, if any show cause notice has been issued alleging infringement of Customs/Central Excise/Service Tax law, AEO Programme Manager may downgrade the status of of an AEO-T3 to AEO-T2 or AEO-T1 or downgrade the status of an AEO-T2 to AEO-T1, or suspend the status of the AEO, as deemed appropriate.

## ► Restoration of Suspended/ Downgraded AEO Status:-

- The AEO Programme Manager may restore the AEO status from a date to be notified by him: -
  - Where AEO status suspended on account of non-compliance, and AEO holder takes the necessary remedial measures within 60days of suspension.
  - Where AEO status suspended on account of suspension of basic license, and such suspension of basic license is revoked by the competent authority.
  - Where AEO status suspended on account of issue of show cause notice, and the ratio of disputed demand is not more than 10% of the total duty/ drawback.
- If status has been downgraded, it shall be open to the entity to apply again for higher status as and when the eligibility criteria and conditions are met by it.

# ACTION ON NON-COMPLIANCE

## ► Revocation of AEO Status

- In following circumstances, AEO status will be revoked: -
  - Where the Certificate of AEO Status is already suspended and the AEO holder fails to take the remedial measure within 60 days; or
  - Where there is a reasonable belief that an act has been perpetrated liable to prosecution and /or is linked to an arrest of person under Customs Act, 1962; or
  - A show cause notice has been issued involving fraud, forgery, outright smuggling, clandestine removal of excisable goods or cases where Service Tax has been collected but not deposited; or
  - Where the AEO status holder requests the authorization be revoked.
- Applicant will be informed prior to any decision to revoke authorization and revocation is applied from the date of holder being notified.
- In case status is revoked, AEO T1 & AEO T2 status holder will not be entitled to reapply for one year from the date of revocation.
- In case status is revoked, AEO T3 & AEO LO status holder will not be entitled to reapply for three year from the date of revocation.

# AEO CERTIFICATE - SPECIMAN

  
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड  
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
वित्त मंत्रालय  
MINISTRY OF FINANCE  
भारत सरकार  
GOVERNMENT OF INDIA

प्राधिकृत आर्थिक संचालक-प्रमाण-पत्र  
AUTHORIZED ECONOMIC OPERATOR-T1 CERTIFICATE  
(IMPORTER/EXPORTER)

प्रमाण-पत्र संख्या Certificate Number: INAAAPB8321M1F193

कम्पनी का नाम: ASHOK MINERAL ENTERPRISES  
Name of Company: 2A 1 ST STREET KARPA GAMBAL NAGAR KOTTIVAKKAM, Chennai-600041

  
भारतीय सीमा शुल्क  
INDIAN CUSTOMS

अन्तर्राष्ट्रीय आपूर्ति श्रृंखला को सुरक्षित रखने हेतु आपकी प्रतिबद्धता का सम्मान करते हुए एवं डब्ल्यू.सी.ओ. के सेफ फ्रेमवर्क ऑफ स्टैंडर्ड्स के अनुसरण में सी.बी.आई.सी. के परिपत्र संख्या 33/2016-सीमा शुल्क, दिनांक 22.07.2016 के अन्तर्गत भारतीय सीमा शुल्क अपने प्राधिकृत आर्थिक संचालक (ए.ई.ओ.) कार्यक्रम में आपके प्रतिष्ठित संगठन को प्रमाणित करता है।  
यह प्रमाण-पत्र 01/12/2022 तक वैध है।  
In recognition and appreciation of your commitment to secure the international supply chain and in compliance with the WCO's SAFE Framework of Standards, Indian Customs certifies your esteemed organization in its Authorised Economic Operator (AEO) programme under CBIC Circular Number 33/2016-Customs, dated 22.07.2016 as amended.  
This certificate is valid upto 01/12/2022.

स्थान Place : नई दिल्ली New Delhi  
दिनांक Dated: 02/12/2019


यह प्रमाण पत्र ए. ई. ओ. कार्यक्रम प्रबंधक द्वारा डिजिटल हस्ताक्षरित है  
This certificate is digitally signed by AEO Programme Manager

  
केन्द्रीय उत्पाद एवं सीमा शुल्क बोर्ड  
CENTRAL BOARD OF EXCISE AND CUSTOMS  
वित्त मंत्रालय  
MINISTRY OF FINANCE  
भारत सरकार  
GOVERNMENT OF INDIA

प्राधिकृत आर्थिक संचालक-टीयर 2 प्रमाण-पत्र  
AUTHORIZED ECONOMIC OPERATOR-TIER 2 CERTIFICATE  
(IMPORTER & EXPORTER)

प्रमाण-पत्र संख्या Certificate Number: INAAACS0764L2F168


कम्पनी का नाम: M/s Siemens Ltd.  
Name of Company: 130, Pandurang Budhkar Marg, Worli, Mumbai - 400 018

  
भारतीय सीमा शुल्क  
INDIAN CUSTOMS

अन्तर्राष्ट्रीय आपूर्ति श्रृंखला को सुरक्षित रखने हेतु आपकी प्रतिबद्धता का सम्मान करते हुए एवं डब्ल्यू.सी.ओ. के सेफ फ्रेमवर्क ऑफ स्टैंडर्ड्स के अनुसरण में सी.बी.आई.सी. के परिपत्र संख्या 33/2016-सीमा शुल्क, दिनांक 22.07.2016 के अन्तर्गत भारतीय सीमा शुल्क अपने प्राधिकृत आर्थिक संचालक (ए.ई.ओ.) कार्यक्रम में आपके प्रतिष्ठित संगठन को प्रमाणित करता है।  
यह प्रमाण-पत्र 23.11.2019 तक वैध है।  
In recognition and appreciation of your commitment to secure the international supply chain and in compliance with the WCO's SAFE Framework of Standards, Indian Customs certifies your esteemed organization in its Authorised Economic Operator (AEO) programme under CBIC Circular Number 33/2016-Customs, dated 22.07.2016.  
This certificate is valid upto 23.11.2019.

(सुनील के सिन्हा/ Sunil K Sinha)  
ए. ई. ओ. कार्यक्रम प्रबंधक  
AEO Programme Manager

स्थान Place : नई दिल्ली New Delhi  
दिनांक Dated: 29.11.2016

  
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड  
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
वित्त मंत्रालय  
MINISTRY OF FINANCE  
भारत सरकार  
GOVERNMENT OF INDIA

प्राधिकृत आर्थिक संचालक-टी 3 प्रमाण-पत्र  
AUTHORIZED ECONOMIC OPERATOR-T3 CERTIFICATE  
(IMPORTER & EXPORTER)

प्रमाण-पत्र संख्या Certificate Number: INAAACS0764L3F198

कम्पनी का नाम: M/s SIEMENS LIMITED  
Name of Company: BIRLA AURORA, LEVEL 21, PLOT NO. 1, 080, DR. ANNIE BESANT ROAD, WORLI MUMBAI-400030, MAHARASHTRA

  
भारतीय सीमा शुल्क  
INDIAN CUSTOMS

अन्तर्राष्ट्रीय आपूर्ति श्रृंखला को सुरक्षित रखने हेतु आपकी प्रतिबद्धता का सम्मान करते हुए एवं डब्ल्यू.सी.ओ. के सेफ फ्रेमवर्क ऑफ स्टैंडर्ड्स के अनुसरण में सी.बी.आई.सी. के परिपत्र संख्या 33/2016-सीमा शुल्क, दिनांक 22.07.2016 के अन्तर्गत भारतीय सीमा शुल्क अपने प्राधिकृत आर्थिक संचालक (ए.ई.ओ.) कार्यक्रम में आपके प्रतिष्ठित संगठन को प्रमाणित करता है।  
यह प्रमाण-पत्र 24.11.2024 तक वैध है।  
In recognition and appreciation of your commitment to secure the international supply chain and in compliance with the WCO's SAFE Framework of Standards, Indian Customs certifies your esteemed organization in its Authorised Economic Operator (AEO) programme under CBIC Circular Number 33/2016-Customs, dated 22.07.2016.  
This certificate is valid upto 24.11.2024.

(प्रमोद कुमार/ Pramod Kumar)  
ए. ई. ओ. कार्यक्रम प्रबंधक/ प्रधान आयुक्त  
AEO Programme Manager/ Principal Commissioner  
अन्तर्राष्ट्रीय सीमा शुल्क निदेशालय  
Directorate of International Customs

स्थान Place : नई दिल्ली New Delhi  
दिनांक Dated: 25.11.2019



# REMISSION OF DUTIES & TAXES ON EXPORTED PRODUCTS (RODTEP) SCHEME

NEW EXPORT DUTY REMISSION SCHEME

# WTO - TRADE DISPUTE

## OBJECTION ON DUTY EXEMPTION & INCENTIVES

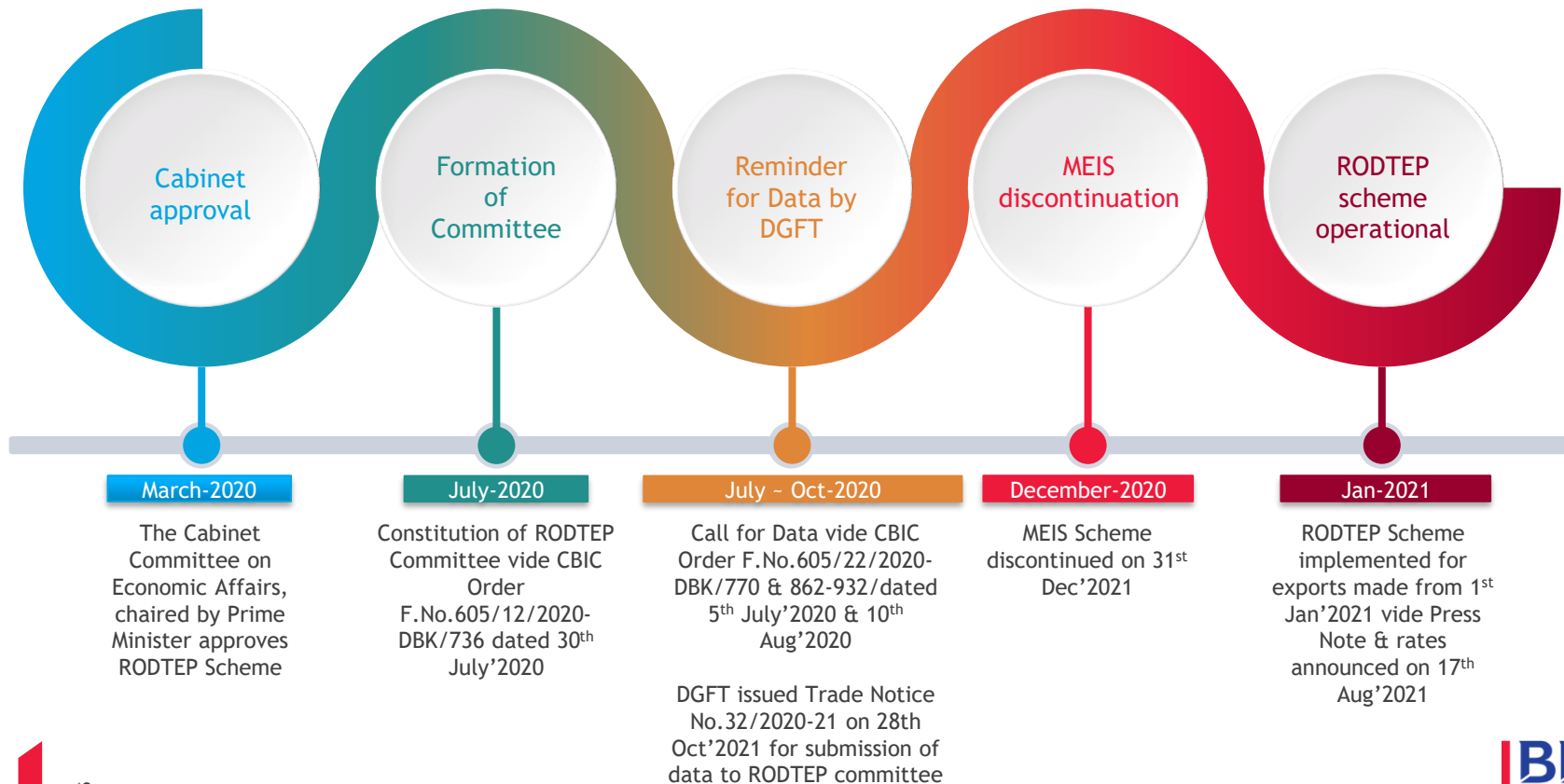
The Indian programs found in violation of WTO rules are:

- Merchandise Exports from India Scheme (MEIS)
- Export Oriented Units Scheme (EOU)
- Special Economic Zones (SEZ)
- Export Promotion Capital Goods Scheme (EPCG)
- Duty-free imports for exporters program (DFIS)
  - The panel gave India six months to withdraw these prohibited subsidies.
  - Export subsidies provide an unfair competitive advantage to recipients, and WTO rules expressly prohibit them.
  - A limited exception to this rule is for specified developing countries that may continue to provide export subsidies temporarily until they reach a defined economic benchmark.
  - India was initially within this group, but it surpassed the benchmark in 2015. India's exemption has expired, but India has not withdrawn its export subsidies.
  - Panel report rejects India's assertion that it is entitled to additional time to provide export subsidies even after hitting the defined economic benchmark.
  - The panel report concludes that each program is an export subsidy inconsistent with India's WTO obligations.

The MEIS Scheme is replaced with Rebate of Taxes & Duties paid on Export Product (RODTEP) on 1<sup>st</sup> Jan'2021

Source: WTO website

# RODTEP SCHEME - JOURNEY SO FAR



# COMPARISON

## MEIS V/S RODTEP

### Merchandise Exports from India Scheme (MEIS)

- The objective is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs.
- Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, were rewarded under MEIS.
- The basis of calculation of reward is on realized FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified.
- The MEIS scrip can be used for Basic Custom Duty Payment and Additional Custom Duty including Central Excise Duty on Domestic Procurement
- The total reward which may be granted to an IEC holder under the Merchandise Exports from India Scheme (MEIS) shall not exceed Rs. 2 Crore per IEC on exports made in the period 01.09.2020 to 31.12.2020 [period based on Let Export Order (LEO) date of shipping bill(s)].

### Remission of Duties & Taxes on Exported Products (RODTEP)

- Scheme for Remission of Duties & Taxes for Export Products (RODTEP) notified by Department of Commerce & Department of Revenue vide insertion of Para 4.01 in Chapter 4 of Foreign Trade Policy
- The objective of the scheme is refund (currently not refunded) Duties/Taxes/Levies at the Central / State & Local Level
- The rebate under the scheme shall not be available if the duties/taxes are already exempted / refunded / credited
- The Appendix-4R containing the eligible RoDTEP export items, rates and per unit value caps, wherever applicable is available at the DGFT portal under Regulatory Updates > RoDTEP.
- Scheme would be implemented through end-to-end digitization of issuance of rebate amount in the form of transferable duty credit/electronic scrip ('e-scrip').

# RODTEP SCHEME IMPLEMENTATION

DGFT NOTIFICATION NO.19/2015-2020 DATED 17<sup>TH</sup> AUG'2021

- In the exercise of Power conferred under section 5 of Foreign Trade (Development & Regulation) Act'1992 read with Para 1.02 of FTP, Govt. amend the Foreign Trade Policy to implement the RODTEP scheme
- Notification 19/2015-2020 dated 17<sup>th</sup> Aug'2021 issued
- The scheme is implemented with immediate effect.
- Chapter 4 of FTP - Duty Exemption & Remission Schemes amended with insertion of sub-Para (e) under Para 4.01
- The overall budget will be finalized by Ministry of Finance in consultation with Department of Commerce.
- The scheme will operate in a budgetary framework for each financial year
- The rebate is subject to realization of Export Proceeds within time frame as stipulated in the Foreign Exchange Management Act (FEMA)'1999



# IN-ELIGIBLE CATEGORIES

## EXPORTS MADE NOT ELIGIBLE FOR RODTEP BENEFITS

Import of Export goods under Para 2.46 of FTP for Re-Export

Exports through Transshipment - goods moving from Third Country trans-shipped through India

Export products which are subject to Minimum export price or export duty

Products restricted for exports under Schedule-2 of Export Policy in ITC (HS)

Products Prohibited for exports under Schedule-2 of Export Policy in ITC (HS)

Supplies of products manufactured by DTA units to SEZ/FTWZ units

Products manufactured by EHTP / BTP

Products manufactured by a warehouse under Section 65 (MOOWR) Section 52 of Customs Act

Products manufactured by Advance Authorization/DFIA Holder

Products manufactured by 100% EOU

Products manufactured for export under notification 32/97

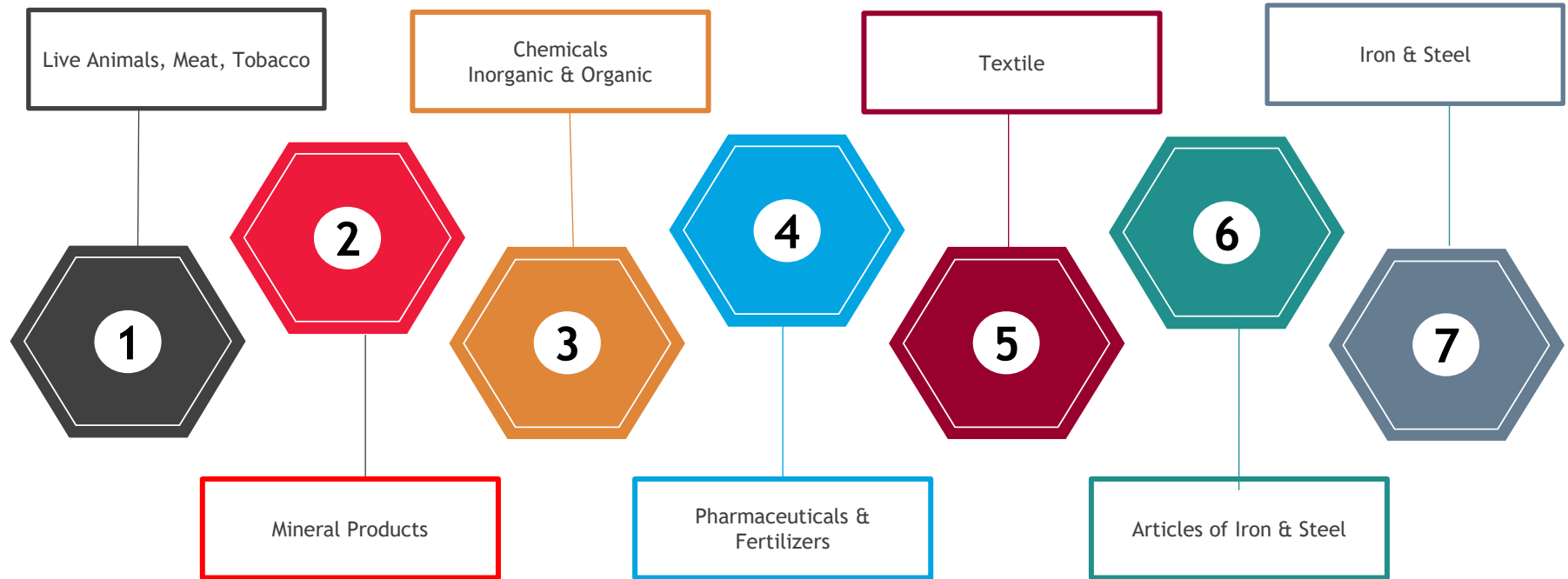
Exports not made through EDI wherein electronic filing is not done

Exports made from Non-EDI ports

Deemed Exports / Goods taken into use after manufacture

Products manufactured by units in SEZ / FTWZ / EPZ

# KEY SECTORS - NOT INCLUDED IN RODTEP



## APPENDIX - 4 R

### RATE ANALYSIS BY CHAPTER HEADING - COVERAGE FOR 8555 PRODUCTS / LINES

Sr.No.	Chapter of Customs Tariff Act	Broad Description	RODTEP Benefit
1	1 & 2	Live animals, Meat and meal offal	Not Applicable
2	03 to 23	Fish, diary, eggs, animal skins, roots, plants, vegetables, fruits, fruit extract, tea, coffee, dried leguminous vegetables, millets, flour, lac, gum, animal fats, oil, cocoa items, juices, essence, concentration, beverages and other food preparations	0.5% to 4.0% (Total 1523 HS Codes)
3	24 to 31	Tobacco, Mineral products, products of the chemical or allied industries (from Chapters 28 to 31)	Not Applicable
4	32 to 49	Products of the chemical or allied industries (from Chapters 32 to 38), Plastics and articles thereof, Raw hide and skins, travel goods etc., Wood and articles of wood, Pulp of wood etc.	0.5% to 2.4% (Total 2046 HS Codes)
5	50 to 60	Textiles and textile articles (other than Chapters 61 to 63)	0.5 % to 4.3% (Total 1382 HS Codes)
6	61 to 63	Textiles and textile articles (Chapters 61 to 63)	Not covered (as covered under RoSCTL)

## APPENDIX - 4 R

### RATE ANALYSIS BY CHAPTER HEADING - COVERAGE FOR 8555 PRODUCTS / LINES

Sr.No.	Chapter of Customs Tariff Act	Broad Description	RODTEP Benefit
7	64 to 67	Footwears, headgears, umbrellas, artificial flowers and articles of human hair	0.5% to 1.3% (105 HS Codes)
8	68 to 70	Articles of stone, plaster, cement etc.	0.5% - 2.3% (256 HS Codes)
9	71	Natural or Cultural Pearls	0.01% - 0.5% (123 HS Codes)
10	72 to 73	Iron, steel and items thereof	Not applicable
11	74 to 81	Base metals and articles of base metal (other than Chapter 82 and 83)	0.3% - 2.3% (341 HS Codes)
12	82 to 85	Base metals and articles of base metal (Chapter 82 and 83) and Machinery and mechanical appliances	0.3% to 2.2% (1839 HS Codes)
13	86 to 89	Vehicles, aircraft, vessels and associated transport equipment	0.5% - 2% (316 HS Codes)
14	90 to 98	Medical & Photographic instruments, clocks & watches, arms & ammunitions, furniture items, toys & games, miscellaneous manufacturing articles and lab chemicals	0.01% - 1% (Total 624 HS Codes)

# RODTEP

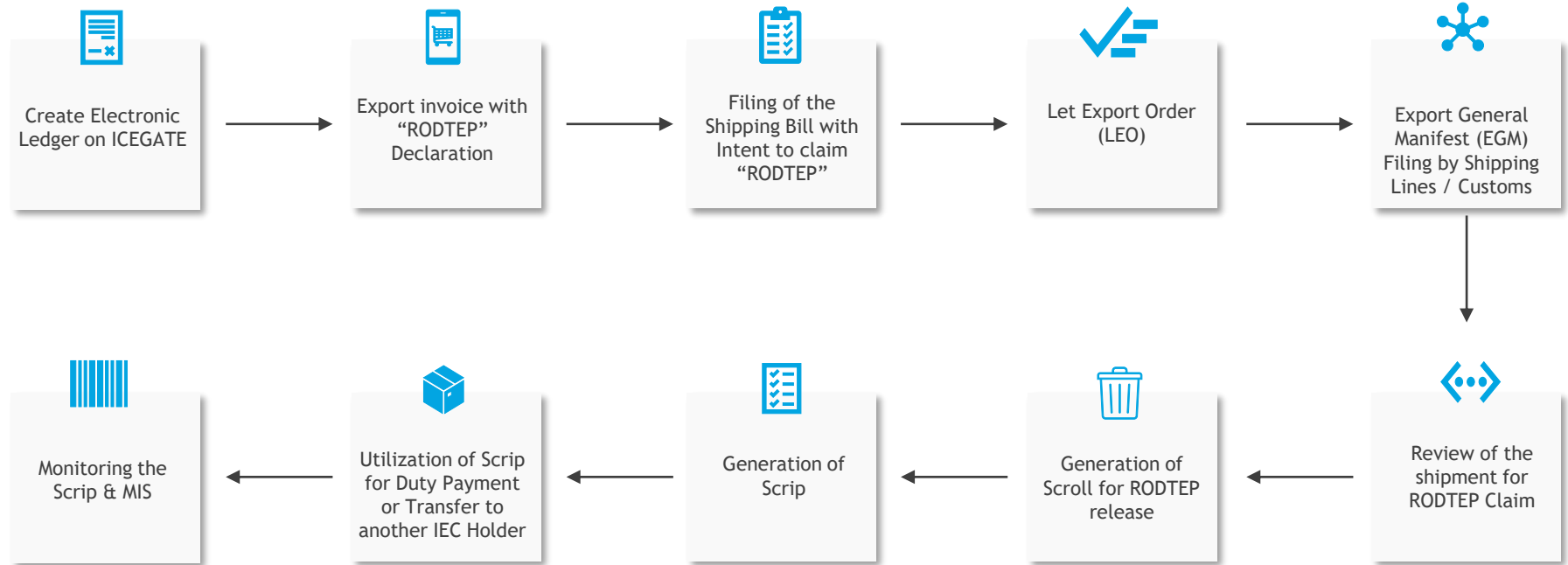
## EXPORT OPERATIONS & MANAGEMENT

### Claim in the Shipping Bill:

- W.e.f. 01.01.2021, it is mandatory for the exporters to indicate in their Shipping Bill whether or not they intend to claim RoDTEP on the export items.
- This claim is mandatory for the items (RITC codes) notified under the new scheme.
- Since the final list of RITC codes eligible for RoDTEP scheme and the corresponding rates are yet to be notified by the Government, this declaration has been made mandatory for all items in the Shipping Bill starting 01.01.2021.
- Unlike Drawback, there is no separate serial numbers based on a schedule for claiming RoDTEP.
- RoDTEP rates will be notified as per the RITC Code and therefore, there will be no need to declare any separate code or schedule serial number for RoDTEP.



# RODTEP FLOW CHART



# DECLARATION - SHIPPING BILL

## ICE GATE ADVISORY

### Annexure

#### DECLARATION TO BE FILED AS PART OF SHIPPING BILL OR BILL OF EXPORT FOR EXPORT OF GOODS UNDER RoDTEP SCHEME

“I/We, in regard to my/our claim under RoDTEP scheme made in this Shipping Bill or Bill of Export, hereby declare that:

- I/ We undertake to abide by the provisions, including conditions, restrictions, exclusions and time-limits as provided under RoDTEP scheme, and relevant notifications, regulations, etc., as amended from time to time.
- Any claim made in this shipping bill or bill of export is not with respect to any duties or taxes or levies which are exempted or remitted or credited under any other mechanism outside RoDTEP.
- I/We undertake to preserve and make available relevant documents relating to the exported goods for the purposes of audit in the manner and for the time period prescribed in the Customs Audit Regulations, 2018.

# PROCESSING OF BENEFIT ICEGATE

- Based on the declarations, System will be processed the eligible RoDTEP.
- The Shipping Bills with RoDTEP and/or Drawback claim will now be routed for officer intervention based on Risk based targeting by RMS.
- All the Shipping Bills will be sent to RMS after the EGM is filed.
- Based on the input by RMS, Shipping Bills will either come to officer for processing of RoDTEP/DBK benefits or will directly be facilitated to the scroll queue without any officer intervention.
- Once the Shipping Bill is processed for DBK and/or RoDTEP either by the officer or as per facilitation by RMS, it will move to the respective scroll queues.
- In case a suspension is placed on any exporter/Shipping Bill for Drawback, the same will also be applicable for the purpose of scrolling out of RoDTEP benefits.



# KEY ISSUES / POINTS FOR CONSIDERATION

Monitoring of Realization of Export Proceeds & surrender of scrip/benefits

1

Decision on Exports made by the holder of AA/Special AA/DFIA

2

Residual issues related to RODTEP shall be dealt by Inter-Ministerial Committee named as “RODTEP Committee” chaired by DGFT comprising members from Department of Commerce & Department of Finance

6



3

Export of goods manufactured, and exports made by SEZ / Free Trade Zones, Export Processing Zones

If the proper declaration not mentioned on the Invoice / shipping bill filing

5

Utilization of Scrip within 12 months from the date of generation (if not used it will lapse)

4

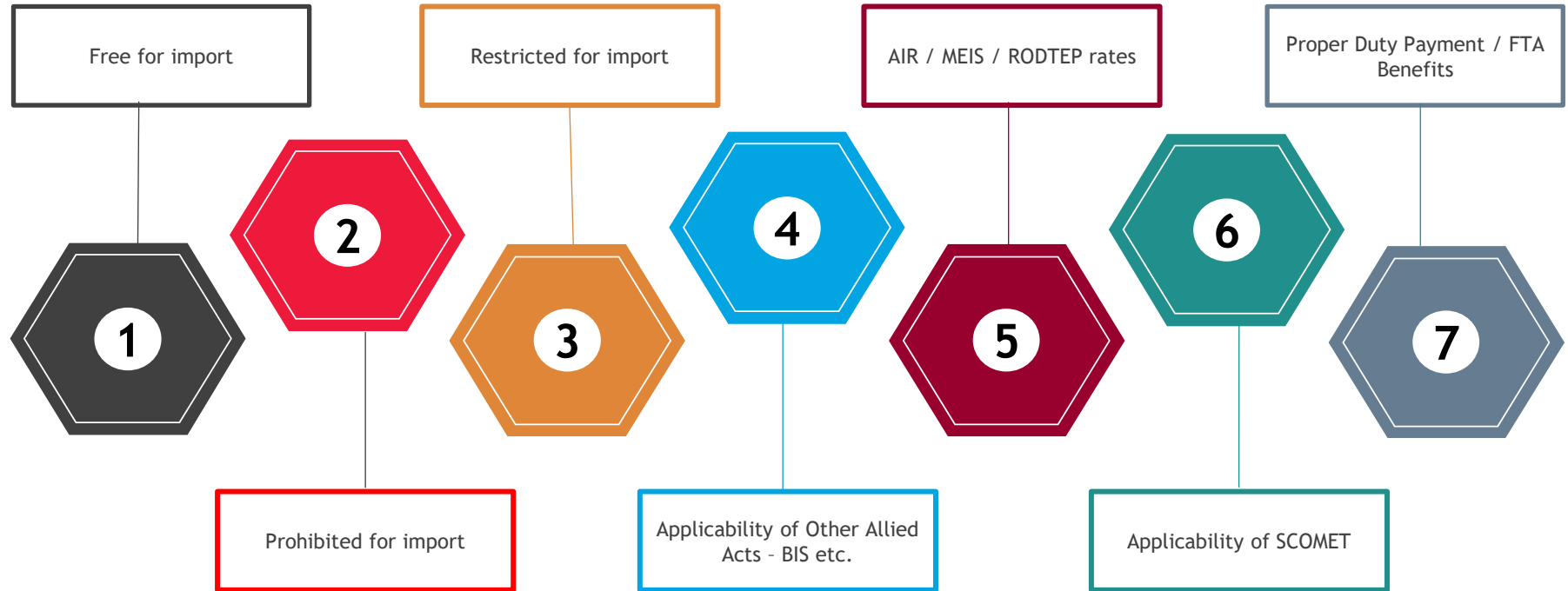
RODTEP committee / Ministry of Commerce / Ministry of Finance reserves the right to modify / alter/ withdraw the RODTEP Benefits



# HSN CLASSIFICATION

# WHY CLASSIFICATION REVIEW?

A PROPER REVIEW OF COMMODITY BEING IMPORTED / EXPORTED IS MANDATORY





# OTHER'S CATEGORY - CLASSIFICATION ALERT

DGFT TRADE NOTICE NO.37/2019-20 DATED 22<sup>ND</sup> OCT'2019 & 46/2019-20 DATED 17<sup>TH</sup> JAN'2020

- India maintains 8 Digits Harmonized Codes under Indian Trade Classification (ITC)
- Many importer while filing the Bill of Entry are not doing due diligence in mentioning correct HS Code at 8-digit level
- Even though the correct HS Code is available in ITC HS Schedule 2017 importers casually tends to adopt the “Others” category
- “Other” is essentially a residual category of the relevant products
- This results in error in India’s import data
- The trade is advised to adopt correct HS Code & Description while filing the Bill of Entry or Shipping Bill
- Any willful mis-declaration will be dealt with under Foreign Trade Development Regulation (FTDR) Act'1992
- Matter will be reviewed and if the non-compliance and mis-declaration continues, the Government may put all Other Category into “Restricted” Category for import
- Trade to adopt the correct HS Codes and not use the “Other” Category

# CLASSIFICATION - PRINCIPLES

## ► *A. Nagaraju Bros v. State of A.P, 1994 Supp( 3) SCC 122*

- There is no one single universal test in classification matters
- **This is probably the reason that the common parlance test or commercial usage test**, as it is called, is treated as the more appropriate test, though not the only one
- There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight or value or on some other basis may have to be applied
- Since the HSN based system of classification is followed internationally, international rulings can be relied upon to determine the correct classification of a commodity.
- It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application”

Westinghouse Saxby Farmer Ltd. (Civil Appeal No. 37 of 2009)

“Rule 3 is only invocable when the goods are capable of being classified under two or more tariff entries”

“The common parlance test”, “marketability test”, “popular meaning test” are all tools for interpretation to arrive at a decision on proper classification of a tariff entry. These tests, however, would be required to be applied if a particular tariff entry is capable of being classified in more than one heads.

# WESTINGHOUSE SAXBY FARMER LTD. VS. COMMISSIONER OF CENTRAL EXCISE, CALCUTTA - SUPREME COURT

## Facts

- Appellant was engaged in the manufacture of “Relays” used as part of Railway signaling system.
- Normal electrical relays fall under Tariff Item No. 8536.90 and ‘Railways and Railways signaling equipment’ fall under No. 8608
- Till February 1993, excise duty under both sub-headings was 15%
- Effective 28-02-93, rate of duty under sub-heading No. 8536.90 became much higher. Therefore, Appellant claimed and classified “Relays” under sub-heading 8608
- Appellant submitted revised classification list, classifying relays under sub-heading 8608 which was approved by the Authority

## Issues

- Whether the “Relays” manufactured by the Appellant would fall under Chapter 86, Tariff Item 8608 or Chapter 85, 8536.90 as claimed by the Department?
- Whether the show cause-cum demand notices issued on various dates barred by time under Section 11-A of the Central Excise Act, 1944, in the absence of any fraud, collusion, willful misstatement or suppression of facts?

## Observations and Decision

- Appellant claimed that relays manufactured were part of railway signaling equipment, therefore, will fall under Chapter heading 8608
- Authorities were of view that these are goods of specific description in Chapter sub-heading 8536.90 and General Rule 3(a) will apply
- Revenue relied upon exclusions as per Note 2(f) of Section XVII, Chapter 86 i.e., excluding electrical machinery or equipment (Chapter 85)
- Court recognized “suitability for use test” or ‘the user test’ in Note 3 and observed that exclusion in Note 2(f) is for goods capable of being marketed independently

# WESTINGHOUSE SAXBY FARMER LTD. VS. COMMISSIONER OF CENTRAL EXCISE, CALCUTTA - SUPREME COURT

The normal period of limitation for invoking Section 11A was six months until 11-5-2000 and the same was modified as one year by Act 10 of 2000 with effect from 12-5-2000. This period of one year was modified as two years by Act 28 of 2016 with effect from 14-5-2016. Keeping this in mind let us now have a look at the dates of issue of show cause notices and the period covered by the show cause notices. They are as follows :

Sr.No.	Date of Show Cause Notice	Period covered by the Show Cause Notice
1	30-8-1995	1-2-1995 to 31-7-1995
2	9-2-1996	1-8-1995 to 31-1-1996
3	5-2-1997	1-8-1996 to 31-1-1997
4	7-8-1997	1-2-1997 to 31-7-1997
5	6-8-1996	1-2-1996 to 31-7-1996
6	6-2-1998	1-8-1996 to 31-1-1997
7	4-9-1998	February, 1998
8	5-9-1998	1-3-1998 to 31-8-1998
9	5-3-1999	1-9-1998 to 28-2-1999

It could be seen from the above table

- that all show cause notices were of a date prior to 12-5-2000 and hence the normal period of limitation was only six months; and
- that at least a couple of show cause notices were issued in respect of a period partly or fully beyond the period of limitation.
- Unfortunately, neither the Appellate Authority nor CESTAT took care to analyze the show cause notices individually with reference to the period covered by them.

# WESTINGHOUSE SAXBY FARMER LTD. VS. COMMISSIONER OF CENTRAL EXCISE, CALCUTTA - SUPREME COURT

- It is confirmed by the Revenue that relays are solely used as part of railway/ traffic control equipment
- Held that it is not proper to invoke Note 2(f) of Section XVII when the revised classification list was itself approved by the Competent Authority
- Court also observed that Appellant specially filed classification list on 27-08-1993, reclassifying product under 8608 and the same was also approved by the Authority. Therefore, no question of any fraud or collusion or any wilful mis-statement , etc. arises with an intent to evade payment of duty.
- Revenue had normal period of limitation available which was 6 months to invoke power under Section 11A
- All notices raising the classification dispute were issued after the normal period of limitation, therefore, the attempt to undo the effect of approved classification list was time barred
- Both the issues were answered in the favour of Appellant



# WESTINGHOUSE SAXBY FARMER LTD. VS. COMMISSIONER OF CENTRAL EXCISE, CALCUTTA - SUPREME COURT

## Legal Provisions covered under this Case

- Chapter Heading 8536 covers “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts; connectors for optical fibres, optical fibre bundles or cables.”
- Chapter Heading 8608 covers “Railway or tramway track fixtures and fittings; mechanical (including electromechanical) signalling safety or traffic control equipment for railway, tramways, roads, inland waterways, parking facilities, port installation or air-fields; parts of the foregoing”.
- Rule 3 of “General Rules for Interpretation” of the First Schedule to the Central Excise Tariff Act, 1985 deals with cases where goods are classifiable under two or more sub-headings. But Rule 3 begins with a reference to Rule 2(b). Therefore, it is necessary to extract Rule 2(b) and Rule 3 together.
- Rule 2(b) states that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
- Rule 3 states that when by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :
  - the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods
  - mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable

# WESTINGHOUSE SAXBY FARMER LTD. VS. COMMISSIONER OF CENTRAL EXCISE, CALCUTTA - SUPREME COURT

when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

- Note 2 of Section XVII, preceding Chapter 86 list out certain articles to which the expressions “parts” and “parts and accessories” mentioned in Chapter 86 do not apply and Note 2(F) excludes electrical machinery or equipment (Chapter 85).
- Note 3 of Section XVII reads as “References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.”





# CUSTOMS VALUATION

COMPLIANCE UNDER SPECIAL VALUATION BRANCH & TRANSFER PRICING

# CUSTOMS VALUATION & TRANSFER PRICING REVIEW

Change in the circumstances surrounding the sale of the goods between us and our related seller Addition of New Related Party / Change in the name of the company - Amalgamation / Merger or De-merger

6

Change to the terms & conditions contained in the agreement (s) / Change in Royalty Agreement (Rate / Percentage) or execution of New Agreement

1

Change in INCOTERMS from CIF to FOB or vice versa

5

2

Transfer Pricing Adjustments - True up or True Down

Change in the Pricing Policy at Global Level which resulted in price adjustments - Credit Note / Debit Note

4

3

Any additional payments being made to the Parent Company post importation in relation to the imports and sales in India



# FREE TRADE AGREEMENTS (FTA)

OVERVIEW - FTA ALREADY ENTERED / UNDER DISCUSSION

# FTA IN FORCE

FTA/PTA	Member countries
South-Asian Free Trade Agreement (SAFTA)	Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka, Afghanistan
SAARC Preferential Trading Agreement	Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka
India - Nepal Treaty of Trade	Nepal
Indo - Bhutan Agreement on Trade, Commerce & Transit	Bhutan
India - Korea CEPA	Korea
India - Japan CEPA	Japan
Singapore - CECA	Singapore
India - Malaysia CECA	Malaysia
Indo Sri Lanka Free Trade Agreement	Sri Lanka

FTA/PTA	Member countries
India - MERCOSUR PTA	Argentine Republic, Brazil, Paraguay, Uruguay
India - Thailand Free Trade Agreement	Thailand
India - Afghanistan Preferential Trading Agreement	Afghanistan
ASEAN India	Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia, Brunei Darussalam, Lao People's Democratic Republic, Cambodia, Philippines
India - Chile Trade Agreement	Chile
APTA (popularly known as Bangkok Agreement)	Bangladesh, People's Republic of China, Republic of Korea, Sri Lanka, Lao People's Democratic Republic
India - Mauritius	Mauritius

# RECENT CHANGES - CAROTAR RULES

- 1 Introduction of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) on 21<sup>st</sup> Sept'2020
- 2 Every Importer who intends to claim FTA benefits has to comply the requirements laid down in these rules
- 3 Chapter VAA and section 28DA were inserted in the Customs Act, 1962, vide clause 110 of Finance Act, 2020
- 4 importer is required to possess while importing the goods has been provided in the rules along with general guidance (Form I appended to the rules)
- 5 Importer needs to declare the origin of the goods and compliance with value addition requirements by the overseas manufacturer in Form I
- 6 Fastening legal onus of declarations being made in respect of Certificate of Origin on the importer of goods

Details to entered in the Form - I / Bill of Entry being filed at the time of Imports:

- certificate of origin reference number & date of issuance / originating criteria; indicate if accumulation/cumulation is applied;
- indicate if the certificate of origin is issued by a third country (back-to-back); indicate if goods have been transported directly from country of origin.

# CERTIFICATE OF ORIGIN (COO)

## Preferential

- Certificate of Origin is an instrument which establishes evidence on origin of goods imported into any country.
- These certificates are essential for exporters to prove where their goods come from and therefore stake their claim to whatever benefits goods of Indian origin may be eligible for in the country of exports.
- These Preferential arrangements/agreements prescribe Rules of Origin which must be met for exports to be eligible for tariff preference.
- Export Inspection Agency (EIC) / FIEO can issue the COO.
- We need to present original COO to customs to claim the preferential duty rate.

S. No.	Certificate of Origin Issued against the FTA
1	SAARC Preferential Trading Agreement (SAPTA)
2	Asia-Pacific Trade Agreement (APTA)
3	India-Sri Lanka Free Trade Agreement (ISLFTA)
4	India Afghanistan Preferential Trade Agreement
5	India - Thailand Framework Agreement for Free Trade Area
6	India- Malaysia Comprehensive Economic Cooperation Agreement (IMCECA)
7	India-Korea Comprehensive Economic Partnership Agreement (CEPA)
8	India-Japan Comprehensive Economic Partnership Agreement (IJEPA)

# SAMPLE - COO (PREFERENTIAL)

PCB ZL 4696 ORIGINAL

<b>1. Exporter's Name and Address, Country</b> SHENZHEN NICE FIT IMP & EXP CO., LTD. CHINA O/B HASSAN TRADERS LTD. ROOM NO. 604 1/F MIRADOR MANSION 54-64 NATHAN ROAD		<b>CERTIFICATE NO.</b> P1347020600001	
<b>2. Consignee's Name and Address, Country</b> NIMAN INTERNATIONAL PVT LTD ADDRESS: NIMAN PLAZA, CHANDNI CHOWK, MODEL TOWN, GUJANWALA, PUNJAB, PAKISTAN CONTACT: NASTIR MAHMOOD TEL: 92 35 384 34 15/92 321 6 63 63 63		<b>CERTIFICATE OF ORIGIN</b> <b>CHINA-PAKISTAN FTA</b> (Combined Declaration and Certificate) Issued in THE PEOPLE'S REPUBLIC OF CHINA (Country) See Instructions Overleaf	
<b>3. Producer's Name and Address, Country</b> AVAILABLE TO THE CUSTOMS UPON REQUEST			
<b>4. Means of transport and route (as far as known)</b> Departure Date Nov. 02, 2013 Vessel / Flight/Train/Vehicle No. SEALAND WASHINGTON/1314 Port of loading NAGESHA Port of discharge KARACHI Q PORT		<b>5. For Official Use Only</b> <input type="checkbox"/> Preferential Treatment Given Under China-Pakistan FTA Free Trade Area Preferential Tariff <input type="checkbox"/> Preferential Treatment Not Given (Please state reason/s)	
<b>Signature of Authorized Signatory of the Importing Country</b>			
<b>6. Item number</b> 1	<b>7. Marks and numbers on packages: Number and kind of packages; description of goods, HS code of the importing country</b> 728 CARTON BOXES CACCO FILLER MASTERSATCH HS CODE 3506 *** *** *** *** *** *** *** *** *** *** Marks and numbers on packages: TM-001	<b>8. Origin Criterion</b> "P"	<b>9. Gross Weight, Quantity and FOB value</b> 18.570KG 0.5 USD: 3660.00
		<b>10. Number and date of invoice</b> Lelcal-20131-015 OCT. 28, 2013	<b>11. Remarks</b>
<b>12. Declaration by the exporter</b> The undersigned hereby declares that the above details and statements are correct, that all the goods were produced in CHINA and that they comply with the origin requirements specified for these goods in the China-Pakistan Free Trade Area Preferential Tariff for the goods exported to PAKISTAN (Importing country) SHENZHEN, OCT. 28, 2013		<b>13. Certification</b> It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. SHENZHEN, OCT. 28, 2013	

Place and date, signature and stamp of authorized signatory

Place and date, signature and stamp of certifying authority

AQSIQ 130027725

ORIGINAL

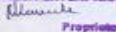
<b>1. Exporter</b> SHENZHEN NICE FIT IMP & EXP CO., LTD WTA PROMOTION SOURCING INTERNATIONAL		<b>Certificate No.</b> CCPIT 113328407 11040031404/0223 <b>CERTIFICATE OF ORIGIN</b> OF THE PEOPLE'S REPUBLIC OF CHINA	
<b>2. Consignee</b> SAMIRAE ADDRESS NO 1104 ABBADIAN ST. SUITE D1, DUBAI		<b>3. Means of transport and route</b> FROM ZHANGJIANG, CHINA TO ABBADIAN, SUITE D1, DUBAI	
<b>4. Country / region of destination</b> UAE D' UYUEN		<b>5. For certifying authority use only</b> CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE IS CHINA-PAKISTAN FTA INTERNATIONAL COMMERCE	
<b>6. Marks and numbers</b> N/W 3102 CARTONS OF WHITE CARDS CIP-0011-000111 TOTAL: SIX THOUSAND TWO HUNDRED AND TWO (1102) CARTONS ONLY *****	<b>7. Number and kind of packages; description of goods</b>	<b>8. H.S. Code</b> 35060000	<b>9. Quantity</b> 3102 CARTONS
<b>10. Number and date of invoice</b> 28020115 SEP. 9, 2013			
<b>11. Declaration by the importer</b> The undersigned hereby declares that the above details and statements are correct, that all the goods were produced in China and that they comply with the Rules of Origin of the People's Republic of China.		<b>12. Certification</b> It is hereby certified that the declaration by the importer is correct.	

Place and date, signature and stamp of authorized signatory

Place and date, signature and stamp of certifying authority

# SAMPLE - COO (PREFERENTIAL)

(ORIGINAL) 2120365602

1. Goods consigned from (Exporter's business name, address, country) <b>M/S. PIONEER ENTERPRISE</b> CRO PUR 3, VATSALYA B CO-OP. HSG. SOC. LTD., OPP NARMI WADI, MAZGADN, MUMBAI - 400 050, INDIA.		Reference No. <b>AI 49815158</b> <b>ASEAN-INDIA FREE TRADE AREA</b> <b>PREFERENTIAL TARIFF</b> <b>CERTIFICATE OF ORIGIN</b> (Combined Declaration and Certificate)	
2. Goods consigned to (Consignee's name, address, country)  Issued in <b>INDIA</b> (See Instructions Overleaf)		FORM A2 (Issued in <b>INDIA</b> )	
3. Means of transport and route (as far as known) Departure date: <b>27.04.2017</b> Vessel's name/course etc.: Port of discharge: <b>JAKARTA, (INDONESIA)</b>		4. For Official Use <input type="checkbox"/> Preferential Tariff Treatment (Goods Under ASEAN-INDIA Free Trade Area Preferential Tariff) <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please State reason(s))  Signature of Authorized Signatory of the Importing Country:	
5. Item number  1.	6. Marks and numbers on packages  1. <b>M/S. PIONEER ENTERPRISE</b> <b>CRO PUR 3,</b> <b>VATSALYA B</b> <b>CO-OP HSG</b> <b>SOC. LTD.,</b> <b>OPP NARMI</b> <b>WADI,</b> <b>MAZGADN,</b> <b>MUMBAI - 400</b> <b>050,</b>	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)  1. <b>INDUSTRIAL VALVES</b> <b>H.S. CODE : 84818090</b>  2. <b>SUPERHEATED WATER</b> <b>BOILERS AND STEAM</b> <b>GENERATING BOILERS</b> <b>FINITS</b> <b>H.S. CODE : 842090</b>	8. Origin criterion (see Notes overleaf)  "WO"  "WO"  9. Gross weight or other quantity (POH)   10. Number and date of invoices   11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct, that all the goods were produced in <b>INDIA</b> , and that they comply with the origin requirements specified for those goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to <b>INDONESIA</b> . (Importing Country)  <b>For PIONEER ENTERPRISE</b>  <b>Proprietor</b>  Place and date, signature of authorized signatory <b>MUMBAI,</b> <b>Dated: 28.04.2017</b> 12. Where appropriate please tick <input type="checkbox"/> Third Country Issuing <input type="checkbox"/> Ex-warehouse <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulative

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) <b>GENERALIZED SYSTEM OF PREFERENCES</b> <b>CERTIFICATE OF ORIGIN</b> (Combined declaration and certificate) FORM A Issued in <b>THE PEOPLE'S REPUBLIC OF CHINA</b> (Country) <span style="float: right;">See Notes overleaf</span>		Reference No. <b>G114401800643447</b>	
2. Goods consigned to (Consignee's name, address, country)  3. Means of transport and route (as far as known) <b>FROM NINGBO, CHINA TO LE HAVRE, FRANCE BY SEA</b> <b>DEPARTER OCT. 10, 2011</b>		4. For official use	
5. Item number  1	6. Marks and numbers of packages  C U (IN DIA.) LE HAVRE ORDERING QTY 1004252 CTN NO: 21-589 MADE IN CHINA	7. Number and kind of packages, description of goods  <b>ELECTRIC POWER CONNECTOR</b> <b>TOTAL: FORTY-NINE (49) CTNS ONLY.</b>  8. Origin criterion (see Notes overleaf) "P"	9. Gross weight or other quantity <b>1380PCS</b>
10. Number and date of invoices <b>IN-005-2011-050</b> <b>SEP. 29, 2011</b>		11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct, that all the goods were produced in <b>CHINA</b> , and that they comply with the origin requirements specified for those goods in the Generalized System of Preferences for goods exported to <b>FRANCE</b> . (Importing country)  <b>GUANGZHOU, CHINA, OCT. 10, 2011</b> Place and date, signature and stamp of certifying authority	

GD98247816

# SAMPLE - COO (PREFERENTIAL)

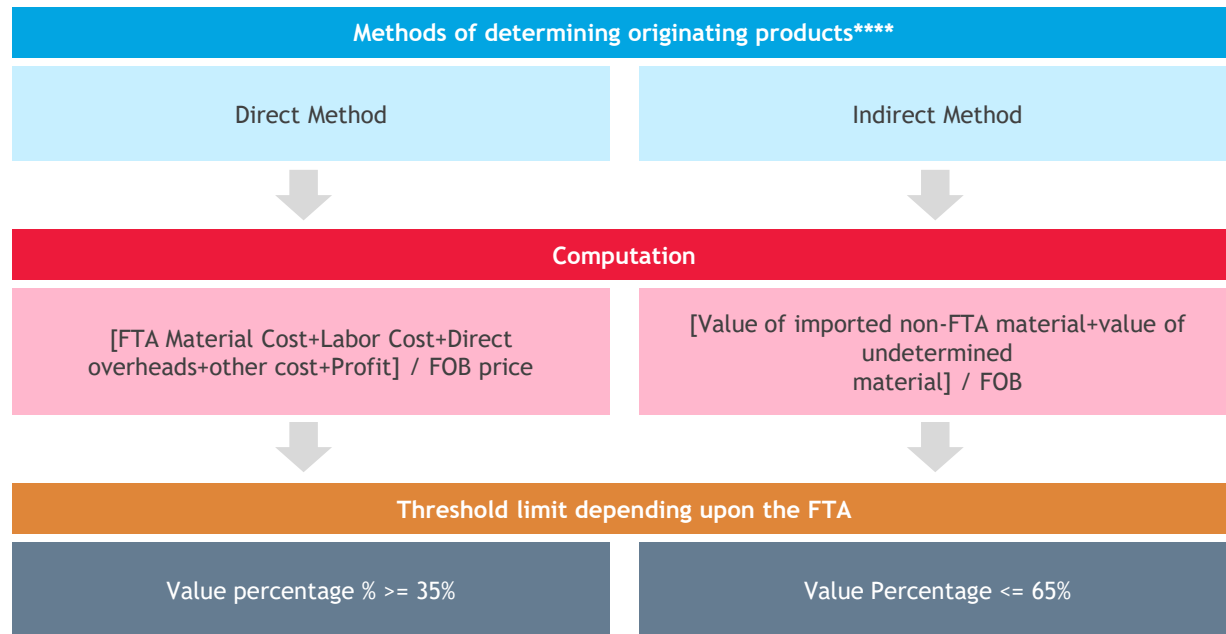
ORIGINAL									
1. Products consigned from (Exporter's business name, address, country)		Reference No.							
2. Products consigned to (Consignee's name, address, country)		<p align="center"><b>ASEAN-CHINA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate) FORM E</b></p> <p align="center">Issued in <b>THAILAND</b> (Country) See Overleaf Notes</p>							
3. Means of transport and route (as far as known)		4. For Official Use:							
Departure date		<input type="checkbox"/> Preferential Treatment Given <input type="checkbox"/> Preferential Treatment Not Given (Please state reason/s)							
Vessel's name / Aircraft etc.		Signature of Authorised Signatory of the Importing Party							
Port of Discharge									
5. Item number	6. Marks and numbers on packages	7. Number and type of packages, description of products (including quantity where appropriate and HS number of the Importing Party)	8. Origin criteria (see Chapter 1)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices				
11. Declaration by the exporter						12. Certification			
The undersigned hereby declares that the above details and statement are correct, that all the products were produced in: _____ (Country)						It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.			
and that they comply with the origin requirements specified for these products in the Rules of Origin for the ACPFTA for the products exported to: _____ (Importing Country)									
Place and date, signature of authorised signatory						Place and date, signature and stamp of certifying authority			
13. <input type="checkbox"/> Issued Retroactively <input type="checkbox"/> Exhibition <input type="checkbox"/> Movement Certificate <input type="checkbox"/> Third Party Invoicing									

No. 000000

Original			
1. Exporter's Name, Address and Country:		Reference No.	Number of page
AGC FLAT GLASS PHILIPPINES, INC. 730 M.H. DEL PILAR STREET ASAHI SPECIAL ECONOMIC ZONE (ASEZ) BRGY. PINAGBUHATAN, PASIG CITY 1602 PHILIPPINES		127875	
2. Importer's Name, Address and Country:		AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF THE PHILIPPINES FOR AN ECONOMIC PARTNERSHIP (FORM JP) CERTIFICATE OF ORIGIN PHILIPPINES Issued in _____	
ASahi GLASS CO., LTD. 3-25-12 TARUMICHO, SUIITA-SHI, OSAKA 564-0062, JAPAN ATTN: MR. MATUOKA FAX: +81-6-6338-8319 TEL: +81-6-6338-8317			
3. Means of transport and route			
VIA: SEAFREIGHT VESSEL: CALICANTO BRIDGE 145N SHIPPING DATE: OCTOBER 09, 2012 FROM: MANILA, PHILIPPINES TO: OSAKA, JAPAN			
4. Item number (as necessary); Marks and numbers; Number and kind of packages; Description of goods(s); HS code		5. Origin criterion	7. Invoice number and date
MADE IN PHILS. C/NO. 1-40 3.2MM TEMPERED SOLITE W/ AR COATING NEW PENTAGON LEFT & RIGHT ANP 001-002 20 CASES 3.2MM TEMPERED SOLITE W/ AR COATING PENTAGON LEFT & RIGHT AMT 027-028 20 CASES HS CODE: 7007.19		"C"	6257E 09-SEPTE-2012
8. Certificate Number of the Phytosanitary Certificate or ITDI Certificate, if applicable.		9. Remarks	
		ISSUED RETROACTIVELY	
10. Declaration by the exporter:		11. Certification	
I, the undersigned, declare that: - the above details and statement are true and accurate. - the good(s) described above meet the condition(s) required for the issuance of this certificate; - the country of origin of the good(s) described above is PASIG CITY, SEPTEMBER 09, 2012 Place and Date: _____ Signature: _____ ROGELO P. IBALÉ JR. Name (printed): _____ Company: AGC FLAT GLASS PHILIPPINES, INC.		It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. Competent governmental authority Designate office: BUREAU OF CUSTOMS, PORT OF MANILA Stamp: _____ MANILA, PHILIPPINES Place and Date: _____ Signature: MA. ROSARIO Y. ACOSTA (Competent Governmental Officer)	

01857782

# HOW TO CALCULATE VALUE-ADDITION?



\*\*\*\*Illustrative methodology for the computation of Value-addition

“\_\_\_\_\_

Non-originating raw materials must have undergone at least a change in the first 6 digits of the HS code,

E.g. Sugar under HS 1701.91 (input) to chocolates under HS 1806.90 (final export product under AIFTA)

\_\_\_\_\_”

# EXAMPLE FOR CALCULATION OF VALUE-ADDITION

Elements of cost			Value
Raw Materials	Country	Category	
Sugar	China	Non-originating	\$75
Cocoa paste	Taiwan	Non-originating	\$60
Milk solids	Vietnam	Originating	\$10
Emulsifiers & preservatives	Malaysia	Originating	\$15
Direct Labor & Overheads			\$22
Profit			\$10
FOB			\$192

Product: Chocolates (HS 1806.90.10)

Minimum 35% originating content in case of AIFTA, Malaysia CECA, etc.

To achieve value-addition, AIFTA requires value-addition to be calculated in the following manner in the country of export:

- Minimum of 35% originating content under direct method OR
- Maximum of 65% non-originating content under indirect method

$$\text{Direct method} = \frac{10 + 15 + 22 + 10}{192} \times 100\% = 29.69\%$$

$$\text{Indirect method} = \frac{75 + 60}{192} \times 100\% = 70.31\%$$

## Assessment:

- Value-addition of the product under direct method is 29.69% (less than minimum requirement of 35%) or
- Value-addition under indirect method is 70.31% (more than maximum allowance of 65%). The product is not eligible for AIFTA benefit.

# WHAT COSTS ARE ALLOWED IN CALCULATION OF VALUE-ADDITION

FOB Price = Ex-Factory Price + Other Costs

↓  
= Production Cost + Profit

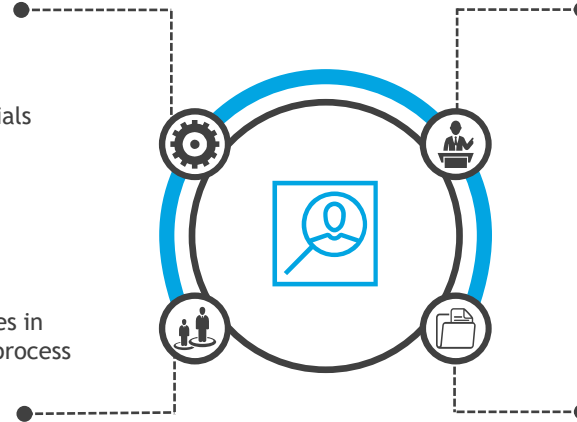
↓  
= Cost of Raw Materials + Labour Cost + Overhead Cost

## Raw Material Cost

- Cost of raw material locally procured
- CIF value of material imported
- Freight and insurance w.r.t to raw materials

## Overhead cost

- Overheads shall include all direct expenses in relation to production or manufacturing process



## Labor Cost

- Wages
- Remuneration
- Othe employee benefits associated with manufacturing process

## Other cost

- Cost incurred in placing the products in ship for export like:
  - Domestic transfer cost
  - Storage and warehousing
  - Port handling
  - Brokerage fees, service charges, etc.

# COO - PROCESS

## Agencies involved in the issuance of COO:

- Export Inspection Agency (EIA)
- Federation of Indian Export Organizations (FIEO)
- Director General of Foreign Trade (DGFT)
- Textile Committee
- Marine Products Export Development Authority
- Noida Special Economic Zone (NSEZ)

## Registration Process for Exporter:

As per Trade notice 34, issued on 19th Sep 2019, DGFT launched online filing and Issuance of Preferential Certificate of Origin through common digital platform, i.e., <https://coo.dgft.gov.in>.

The registration process on to the new digital platform is explained in detail under below document: [Registration Process for Exporter.pdf](#)

## Application for Issuance of COO Process:

Procedure of filing an online application on digital platform is required class 2 and above digital signature of Exporter along with complete IEC linking process to DGFT portal. Detail step by step process of making online application explained under below document visit: [Application for Issuance of COO Process for Exporter.pdf](#)

## Time frame for making application for Issuance of COO:

- Application for Issuance of COO should be submitting on or before shipment loaded date on vessel (Bill of Lading Date) - All FTA except ASEAN
- Application for Issuance of COO should be submitting within 3 days from the shipment loaded date on vessel (Bill of Lading Date) - In case of ASEAN only

# DOCUMENTATION

Documents required for making application for Issuance of COO -

- Covering Letter (Request for Issuance of COO)
- Invoice / Packing List
- Process of Flowchart of Product
- RM / Input declaration (Export item wise consumption)
- Cost Sheet (Bifurcation of FOB of Export Product Value)
- Cost of Indian Original Input
- Cost of Imported Input
- Cost of Direct & Indirect processing cost (Manufacturing Cost)
- Invoices of Indian Original Input or in case of Import then BOE of Imported Input
- FOB Bifurcation Sheet in case of multiple Export Item under one Export Invoice.

Note - In case of Retrospective Issuance of COO, Shipping bill & Bill of Lading copy needs to submit along with above documents.

## Processing Fees

- Export Inspection Agency - INR 736/-
- FIEO - Only Issuance of China APTA - INR 382/-per page of certificate

Direct Link of all COO Related Notices & Documents:

<https://coo.dgft.gov.in/front/relevant-documents>

# NON-COMPLIANCE CONSEQUENCES



FTA violations can attract severe consequences

- **Loss of reputation** and/or brand value
- **Cancellation of FTA benefit, AEO status** or any other facilitation scheme
- Greater scrutiny of ongoing import of goods by the Company (especially concessional imports)
- Scrutiny of historical imports going back to a period of 5 years alleging fraud, etc.
- **Confiscation** of imported goods and **redemption fine**
- High levels of **penalty** - company as well against Senior Company personnel
- Risk of **criminal prosecution** - company as well against Senior Company personnel
- Long drawn **litigation** process - say 5-8 years



# FINES & PENALTIES

S. No.	Offence	Consequences	Applicable to - Company/ Personnel/ both?
1	Making a false declaration, false documents, etc.	Penalty equivalent to 5 times the value of good for intentional use of false declaration	Company
		Penal proceedings resulting in the following - <ul style="list-style-type: none"> <li>• Fine or/and</li> <li>• imprisonment up to 2 years for senior management personnel</li> </ul>	Both
2	Incorrect value-addition / origin related descriptions	Cancellation of FTA benefits & other legal sanctions by both the Governments i.e. India and Exporting Country	Company
		Confiscation of goods	Company
		Levy of Redemption fine equal to duty	Company
		Penalty of 10% of duty sought to be evaded **	Both
3	Any other non-compliance	Penalty equal to duty **	Company
		Penalty up to INR 1 Lakh can be imposed as General or residual penalty for contravention	Both - generally for personnel

For Offences under 1 & 2, all the consequences can be cumulatively applied.

\*\* The statutory provisions prescribe that either of the penalty may be imposed. However, the authorities may seek to impose say penalty of 10% of duty on Company personnel and penalty equal to duty on the Company



# POST CLEARANCE AUDIT (PCA)

A NEW ERA OF COMPLIANCE UNDER CUSTOMS, WTO, WCO GUIDELINES

# GLOBAL PERSPECTIVE

## THE WCO - Revised Kyoto Convention General Annex - Chapter 6 (Customs Control)

- Customs increasingly rely on audit-based controls, using traders' commercial systems
- Controls may vary from a simple post-clearance audit to trader self-assessment
- Standard 6.6 of the General Annex to the Revised Kyoto Convention concerns the principle of audit-based control
- Guidelines to Chapter 6 include details of post-clearance audit and trader self-assessment
- "Audit-Based Control" means measures by which the Customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial data held by persons concerned

## THE WTO - Trade Facilitation Agreement, under ARTICLE 7 states as follows

- Each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations
- Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria
- Each Member shall conduct post-clearance audits in a transparent manner
- Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings
- Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

# CUSTOMS

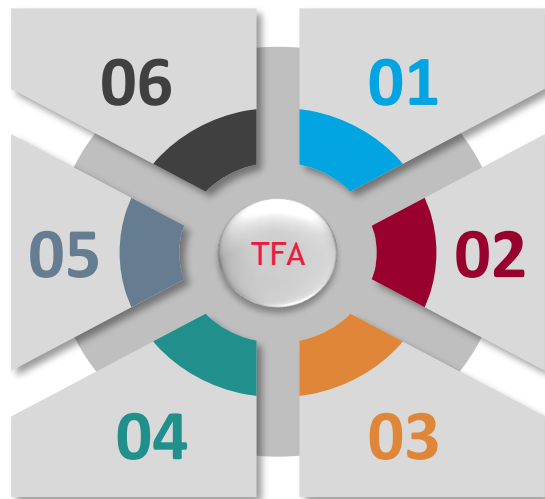
## COMPLIANCE IS THE KEY FOR CONTINUITY OF INTERNATIONAL TRADE & SUPPLY CHAIN

Bureaucratic delays and “red tape” pose a burden for moving goods across borders for traders. Trade facilitation—the simplification, modernization and harmonization of export and import processes—has therefore emerged as an important issue for the world trading system.

Compulsory Compliance Requirement (CCR) under Other Allied Acts - Viz. BIS, FSSAI, Drug Controller etc.

Correct Import Documentation needed for Custom Filing  
E-Sanchit login on ICEGATE

Import / Export Authorizations as needed including the Port Registration, Bank Account, IEC, GSTIN etc.



HS Classification - Customs Tariff Act Review for correct duty payments

Rules of Origin - Manufacturing Country (FTA & Carotar Rules)

Valuation as applicable including the Related Party Transaction which are subject to review by Special Valuation Branch (SVB)

\* Source: WCO / CBIC Website

# CUSTOMS ACT' 1962

## CHAPTER XIIA - AUDIT

**“SECTION 99A. Audit.-** The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

*Explanation.—* For the purposes of this section, “auditee” means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.”

**Chapter XIIA inserted by section 90 of the Finance Act, 2018 (13 of 2018) w.e.f. 29.03.2018**



# AUDIT IN CUSTOMS

## Self Assessment

- Concept of “self assessment” notified
- Onus on importer/ exporter to correctly disclose value, description, classification, duty, etc. in relation to imported or exported goods including with local regulations
- Detailed guidelines notified
- On-site post clearance audit regulations for AEO/ ACP client

2011

Customs Processes

2018

## Audit

- Definition of assessment made more specific
- Specific chapter for audit provisions inserted for audit of assessment. Auditee has been defined to include importer, exporter, custodian, licensee of Warehouse, CFA & persons dealing with imported/ exported goods
- Greater onus now on importer/ exporter vis-à-vis declarations/ disclosures in Shipping Bill/ Bills of Entry

# CHANGES

2011

Post-import audit provisions introduced for AEOs for selected importers & exporters



Legal onus for compliance resting on importers and exporters



Selective examination and reduced control by Customs authorities at the time of import or export Logistics providers



Increased post-import control and monitoring by Customs authorities to ensure compliance

2018

Extended scope of audit provisions covering all importers, exporters, custodians, courier companies, custom brokers, etc.

Trust based clearance at the time of import






Port - Transaction based audit



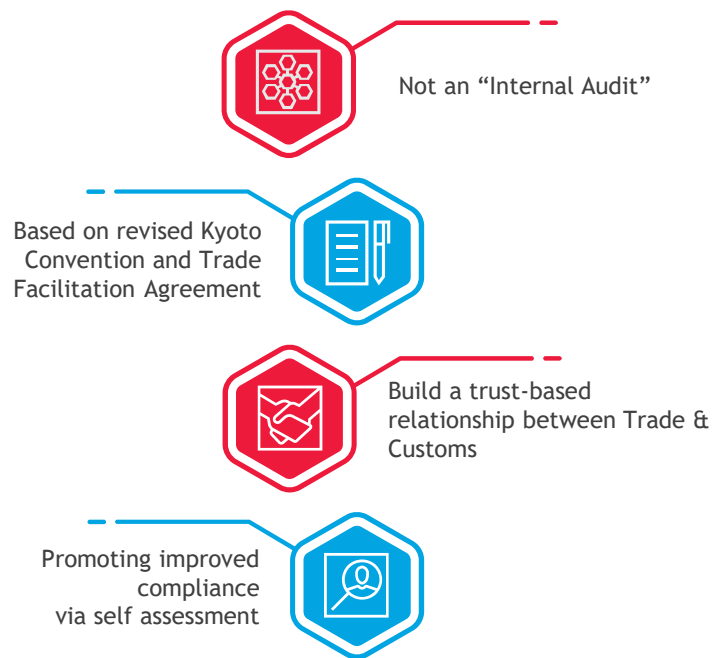
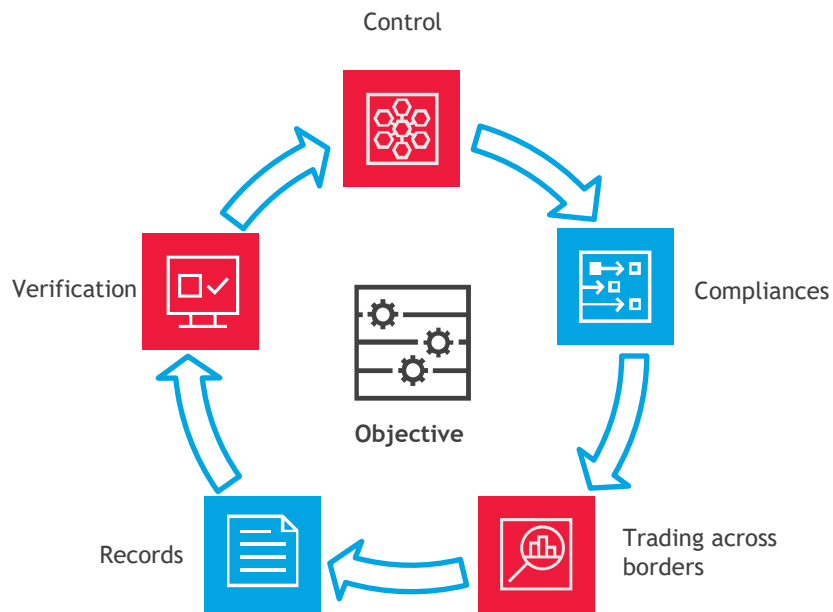
Factory

Premises/  
Theme based audit

# TYPES OF AUDITS

 <b>Transaction Based Audit (TBA)</b>	 <b>Premised Based Audit (PBA)</b>	 <b>Theme Based Audit (THBA)</b>
<ul style="list-style-type: none"> <li>▪ Thorough examination of Bill of Entry/ Shipping Bill, invoice, authorization, etc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Audit of internal control system of auditee through inspection of goods, import documents, financial documents, etc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Focused Audit on specific issues/ sectors</li> </ul>
<ul style="list-style-type: none"> <li>▪ Based on risk parameters determined by Risk Management Centre of Customs including local risks</li> </ul>	<ul style="list-style-type: none"> <li>▪ Based on risk profile and inputs received from DGARM, DGRI, etc.</li> <li>▪ Physical inspection of factory / warehouse / plant</li> </ul>	<ul style="list-style-type: none"> <li>▪ Committee of Chief Commissioners to decide the theme/ issue based on inputs from DGARM/ DGRI and risk analysis, economic indicators, etc.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Monitor, maintain and enhance compliance levels while reducing dwell time of cargo being imported &amp; exporter</li> </ul>	<ul style="list-style-type: none"> <li>▪ Conduct thorough desk review - interviews, audit, report and feedback</li> </ul>	<ul style="list-style-type: none"> <li>▪ Conducted as Transaction Based Audit or desk audit and if required thorough premise audit</li> </ul>
<ul style="list-style-type: none"> <li>▪ Consultative Letter or SCN to be issued for audit point or irregularity after proper review &amp; discussion</li> </ul>	<ul style="list-style-type: none"> <li>▪ Consultative Letter or SCN to be issued for irregularities found during audit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Result to be shared with Audit Commissionerate and other Commissionerate for necessary action and recovery etc.</li> </ul>

# WHY



# SCOPE & PROCESS



## Who is covered

- Importers
- Exporters
- Logistics providers
- Custodians and terminal/port operators
- Customs brokers
- Warehouse operators



## Criteria for audit

- The new regulations prescribe transaction-based and premises-based audits
- The Government may select any criteria or theme for an audit, based on risk evaluation, through the appropriate selection criteria
- AEO and large importers/ exporters or traders dealing within sensitive goods which are subject of industry dispute, investigations, etc., may be audited



## Audit process

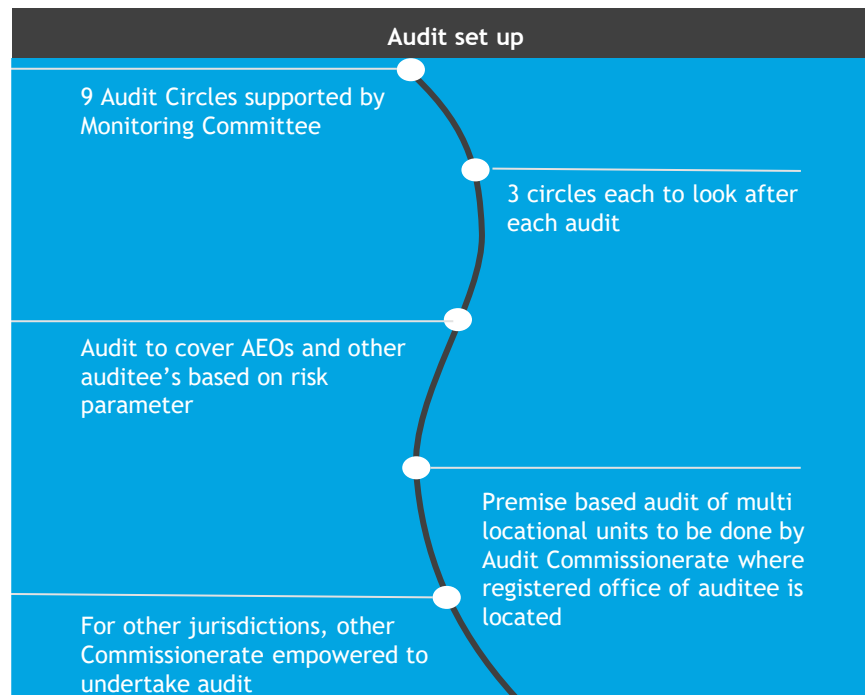
- Preparation of audit report
- Discussions with assessee and further action
- On-site verification
- To be completed within 30 days
- Request to furnish relevant information or document
- Selection for audit based on risk evaluation

# ORGANIZATIONAL STRUCTURE

From April 2018, Audit Commissionerate notified at Chennai, Delhi and Mumbai  
Headed by Principal Commissioner/ Commissioner  
Administrative Control of Chief Commissioner of Customs  
Committee of Chief Commissioners of Delhi, Mumbai and Chennai to guide working of Audit Commissionerate

Audit teams to be organized into:

- Transaction Based Audit
- Theme Based Audit
- Premises Based Audit



# CUSTOMS AUDIT REGULATIONS-2018

## Definitions :

- ▶ Act means Customs Act'1962
- ▶ Audit - includes examination or verification of declaration, record, entry, document, import or export license, authorisation, scrip, certificate, permission etc. books of account, test or analysis reports and any other document relating to imported goods or exported goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples
- ▶ Auditee - Means a person who is subject to an audit under Section 99 A of the act and includes an importer or exporter or custodian approved under Section 45 or license of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or exported goods or dutiable goods
- ▶ Audit Report - includes the audit findings in the report prepared after the audit containing details about objections raised by the proper officer and explanation given by the auditee, if any
- ▶ Books of Account - includes leaders, day-books, cash books, account-books, other accounts related record whether kept in written or printed form or stored electronically
- ▶ Electronic Records - means data or record stored in any form and manner relevant for the purpose of audit under section 99A of the act
- ▶ Premises - includes the registered office, branch office, warehouse, factory or any other premises at which, imported goods or exported goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an Auditee

# CUSTOMS AUDIT REGULATIONS-2018

## Auditee to :-

- ▶ preserve and on request by the proper officer make available in timely manner, for the purposes of audit, true and correct information, records including electronic records, documents
- ▶ Shall render assistance to the proper officer and his team and in no case refuse or obstruct the proper officer or his team

## The Proper Officer:-

- ▶ May request Auditee for documents, data, information as needed for the audit
- ▶ Shall give 15 days advance intimation for audit at the premises
- ▶ May seek assistance of professional like Chartered Accountant, Cost Accountant or an expert in the field of computer science or information technology etc. with the approval of Principal Commissioner or Commissioner of Customs

Any auditee who contravenes any of the above provision shall be liable to a penalty which may extend to INR 50,000.

# WHAT YOU NEED TO DO

Review of HS Classification & Customs Valuation  
Rules of Origin under FTA - CAROTAR Compliance  
Other Allied Acts - Monitoring & Compliance

1

Proper review Check list - Filing for Imports (Bill of Entry)  
and for exports (Shipping Bill)  
Declarations on Duty Exemptions & Export Incentives or  
Benefits are validated

2

Periodic review of Export Obligations under  
various duty exemption scheme like Advance /  
EPCG Authorization

Refund of incentives in case of return/ rejection  
of exported goods

6



3

Customs valuation - Periodic review from GST,  
Customs and Transfer Pricing (TP) perspectives

5

Proper Record Keeping - Electronic & Hard Copies  
Business ERP to be able to capture all required fields to  
maintain the customs compliances

4

Periodic review of Litigation & Disputes  
Free of Cost & Returnable Shipment Monitoring  
Foreign Currency Realization & E-Bank Realization  
Certificate Monitoring

# ANNEXURE 1 - MASTER FILE

Sr. No	Documents / Declarations / Returns / information	Source of Documents
1	Organizational chart of the auditee with names, designations, email address & contact details of the key persons i.e., Managing Director / Directors / Partners / Proprietor. / Company Secretary / Chartered Accountant / Authorized Signatory, Officer handling import and export / Customs Broker	Importer/Exporter
2	Cost Audit / Tax Audit reports of past three years	Importer/Exporter
3	Customs Audit Reports for previous three years	Importer/Exporter
4	Copies of Annual Report of the Company or Balance Sheet, Profit & Loss Account for the past three years	Importer/Exporter
5	Copies of Trial Balance for the current year and for the past two Years	Importer/Exporter

# ANNEXURE 1 - MASTER FILE

Sr. No	Sr. No Documents / Declarations / Returns / information	Source of Documents
6	Import Export Code (IEC) No. & GST Identification No (GSTIN)	Importer/Exporter
7	Audit points raised by “Central Revenue Audit” in the past three audits	Custom Houses
8	Details of cases under investigation including Showcause Notices issued	Custom Houses
9	Details of pending Arrears of Revenue	Custom Houses
10	List of notices, Court cases, pending investigations under other law related to taxes or duties (For e.g., Income Tax, SEBI, GST, Enforcement Directorate etc.)	Importer/Exporter
11	Any other document considered relevant by the Audit Circle	Audit Party



Q & A

For queries regarding our services, please write to [taxadvisory@bdo.in](mailto:taxadvisory@bdo.in)

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